



**A Review:
Ninety-Ninth Legislature
Second Session, 2006**

May 2006

**Legislative
Research
Division**
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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the second session of the Ninety-ninth Legislature of Nebraska. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2006 session. Information gathered from committee chairpersons and staff members, staff of the Legislative Fiscal Office, legislative records, and the *Unicameral Update* are used to produce the review.

Bill summaries and summaries of legislative resolutions proposing constitutional amendments are found under the heading of the legislative committee to which each bill or resolution was referred. Because the subject matter of some legislation relates to more than one committee, cross-referencing notes are included as needed. A bill-number index and a legislative-resolution index are included for ease of reference.

The authors acknowledge and thank the legislative staff who assisted in the preparation of this review.

AGRICULTURE COMMITTEE

Senator Bob Kremer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 856—Change Poultry Disease Control Provisions, Regulate Exotic Animal Auctions and Swap Meets, and Change Provisions of the Commercial Dog and Cat Operator Inspection Act (*Kremer, Combs, Fischer, and Mines*)

In order to improve regulations of various animals, wild and domesticated, the Legislature enacted LB 856.

First and foremost, the bill steps up the state's monitoring of commercial and domesticated birds, such as chickens and turkeys (poultry), allowing the state to respond more quickly to the potentially devastating bird flu.

Bird flu is a virus that occurs naturally among birds, particularly wild birds. Poultry can become infected with the bird flu virus by contact with wild birds, other poultry, dirt, cages, water, or feed. Bird flu viruses are capable of mutating. These mutated forms can infect humans and sometimes spread from person to person, potentially causing a pandemic. Bird flu is currently spreading around the world and has reached Asia, Europe, and Africa, but has not yet been reported in North America. To date, the virus strain that is spreading has not demonstrated an ability to spread from person to person.

LB 856 authorizes the Department of Agriculture (department) to monitor breeding and commercial poultry for bird flu, as it already does for other poultry diseases. The bill also extends the department's surveillance to noncommercial poultry, generally farmyard or backyard flocks kept for eggs, show, or other noncommercial purposes. These birds roam more freely than commercial poultry and are more likely to come into contact with wild birds that might carry the virus. Under the bill, surveillance of noncommercial flocks is permitted with the cooperation of their owners. However, the department retains the authority to inspect a noncommercial flock if necessary, even without the owner's permission. The provisions regulating noncommercial poultry were originally prescribed in **LB 873**.

If bird flu appears in Nebraska's poultry flocks, birds will be killed only if they test positive for the most virulent strains. The bill prescribes that the state is not obligated to compensate poultry owners for destroyed birds. However, the United States Department of Agriculture may establish a bird flu compensation program.

Proponents of LB 856, including representatives of the commercial poultry industry, argued that the increased surveillance is nec-

essary to prevent the catastrophic human and economic consequences that might occur if there is an uncontrolled outbreak of bird flu.

The bill also increases regulation of exotic animals, considered potential carriers of diseases that might threaten Nebraska livestock. The bill gives additional authority to the department to regulate events such as exotic animal auctions and swap meets where exotic animals are bought, sold, and bartered. Exotic animals include llamas, pot-bellied pigs, birds, and miniature cattle, horses, and donkeys. Under the bill, event organizers are required to: (1) notify the department 30 days prior to an event; and (2) maintain records of auctions, including information about any transactions for exotic animals that occurred. The provisions were originally prescribed in **LB 855**.

Finally, the bill amends the Commercial Dog and Cat Operator Inspection Act, with the goal of eliminating “puppy mills.” “Puppy mill” is a negative term used to describe breeding operations that mistreat dogs and cats. Puppy mill owners often keep animals in overcrowded and unclean conditions and breed females repeatedly.

LB 856 designates the department’s commercial dog and cat inspectors as law enforcement officers, providing them with additional powers to enforce animal cruelty statutes. Previously, officers had to call in law enforcement personnel if they discovered abuses by dog and cat breeders. The bill also bans taking puppies and kittens younger than eight weeks from their mothers, rather than six weeks under prior law, and raises licensing fees.

Proponents expressed hope that the provisions will help rid the state of puppy mills. Opponents contended that the additional regulations will cause puppy mill owners to avoid licensure. (Legislation licensing commercial dog and cat breeders was passed in 2000. Nebraska has 695 licensed dog and cat kennels.) The puppy mill provisions were originally contained in **LB 584**.

LB 856 passed 44-0 and was approved by the Governor on April 12, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 934—Eliminate Provisions Relating to Fence Viewers and Provide for Resolution of Fence Disputes (*Agriculture Committee*)

LB 934 would have amended Nebraska’s fence law. Generally, fence law regulates boundary and fence disputes, by providing procedures to be used when disputes between rural landowners cannot be resolved.

Nebraska’s early fence law was considered to be “fence-out,” reflecting the open range of settlement days. The law required land-

owners to fence agricultural land to keep out neighboring livestock. Current fence law is considered to be “fence-in,” and requires a landowner to fence his or her property to contain livestock, with the provision that landowners are required to share the cost and responsibility of building and maintaining fence that separates adjoining properties (division fence).

However, rural-land use in Nebraska and throughout the country is no longer so exclusively agricultural. Rural land is increasingly used for residential purposes, such as acreages and ranchettes. Despite this fact, the state’s fence law has continued to obligate all rural residents to build and maintain fence, even if they do not benefit from it.

LB 934 would have better adapted fence law to the new uses of rural land. Neighboring landowners would have continued to share the cost and maintenance of division fence, determining the exact arrangement themselves. However, if a dispute arose, the bill would have prescribed an equal (50-50) responsibility only if both landowners used division fence to contain livestock.

LB 934 also would have ended the “fence viewer” system, by which county officials or persons appointed to be “fence viewers” arbitrate fence disputes. Alternatively, LB 934 would have established a process by which neighboring landowners would have been encouraged to settle disputes themselves and, if unsuccessful, would have then been directed to mediation.

LB 934 advanced to General File but died with the end of the session.

APPROPRIATIONS COMMITTEE

Senator Don Pederson, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Adjustments—LB 1060, LB 1061, and LB 1131

The 2006 legislative session is a “budget adjustment” session, and lawmakers worked diligently to make the necessary adjustments to ensure a balanced budget for the remainder of the biennium. The state’s relatively strong fiscal condition continues for the second straight year; and, while constructing and achieving consensus on the state’s budget is always a difficult task, lawmakers accomplished it with few major skirmishes.

LB 1060, introduced by *Speaker Brashear*, at the request of the *Governor*, contains the majority of this year’s budget adjustments and, as enacted, reflects an average spending growth rate of 7.3 percent for each year of the biennium.

Major budget increases sent to the Governor include:

- \$21.4 million for federal Medicaid match rate programs;
- \$11 million for higher utility costs at the University of Nebraska, state colleges, state institutions, and other state buildings;
- \$7.8 million for employee health insurance rate changes;
- \$5.8 million for expansion of community corrections programs;
- \$4.4 million for State Capitol masonry projects;
- \$4.2 million for contamination investigation and cleanup at the Agricultural Research and Development Center;
- \$3.9 million for water policy implementation and compact compliance;
- \$1.8 million for homestead exemptions;
- \$1.8 million for increased aid to public health departments;
- \$1.2 million in restored funding for the Nebraska Scholarship Program;
- \$1.1 million for fire aid safety projects at the Norfolk Regional Center; and
- \$1 million for a public safety communications system.

Not all programs received budget increases. LB 1060 also includes several budget decreases, including:

- \$32.7 million in state aid to schools;
- \$9.4 million for Medicaid and the Comprehensive Health Insurance Pool program; and

- \$9 million for projected swings within the corrections system.

Additionally, the provisions of **LB 1128**, which appropriates \$700,000 each fiscal year of the biennium to the Ryan White AIDS Program, were added to the bill by amendment.

On March 28, 2006, the Legislature passed LB 1060 with the emergency clause, 41-7, and sent the bill to the Governor for his approval and line-item vetoes.

The Governor approved LB 1060 on April 3 2006, with line-item vetoes totaling \$22.8 million. The vetoes reduce the biennial budget by approximately \$1 million, thus reducing the spending growth rate from 7.3 percent to 7 percent.

The Governor's vetoes include:

- \$5.3 million for projected increased utility costs for fiscal year 2006-2007;
- \$4.5 million for the Children's Health Insurance Program and developmental disability aid;
- \$2 million for the Nebraska Arts Council for the Cultural Preservation Endowment Fund;
- \$1.2 million for the Nebraska Scholarship Program;
- \$1.4 million from the Nebraska Commission on Law Enforcement and Criminal Justice for the Community Corrections Council;
- \$564,384 in aid to community colleges;
- \$427,703 from the Health and Human Services System for mental health regional centers; and
- \$325,000 from the Nebraska Library Commission for the Nebraska Access online database system.

Senators voted to override only one line-item veto, by voting to restore \$218,750 for qualified community health centers.

The 2006 budget package also includes **LB 1061**, introduced by *Speaker Brashear*, at the request of the Governor, and **LB 1131**, introduced by *Senator Beutler*.

LB 1061 creates and transfers funds necessary to carry out the appropriations process, while LB 1131 provides transfers from and changes the allocation of interest earned on the Cash Reserve Fund. LB 1131 also includes provisions of **LB 1062**, which makes additional transfers from the Cash Reserve Fund.

LB 1061 passed with the emergency clause 47-0 and was approved by the Governor on April 3, 2006. LB 1131 also passed with the emergency clause 47-0 and was approved by the Governor on April 3, 2006.

LB 605—Create the University of Nebraska Facilities Program of 2006 and the State Colleges Facilities Program of 2006
(Thompson, Cudaback, and D. Pederson)

In recognition of the critical importance of maintaining the facilities at the four campuses of the University of Nebraska and Nebraska's three state colleges, the Legislature enacted LB 605.

LB 605 creates the University of Nebraska Facilities Program of 2006 and the State Colleges Facilities Program of 2006 for purposes of establishing long-term funding for maintenance and renovation projects at the state's public postsecondary educational institutions.

The bill contemplates a 14-year program designed to maintain, repair, renovate, and replace university and state college facilities. Specifically, LB 605 appropriates \$5.5 million each year for fiscal year 2006-2007 through fiscal year 2007-2008 and \$11 million each year for fiscal year 2008-2009 through fiscal year 2019-2020, to the university facilities program. Likewise, the bill appropriates \$1,125,000 each year for fiscal year 2006-2007 through fiscal year 2019-2020 for the state colleges facilities program.

In addition to the state appropriations, LB 605 requires the university and state colleges to provide matching funds necessary to complete the projects. The university must contribute approximately \$121 million and state colleges \$14.4 million in order to insure completion of the projects.

The bill includes a specific list of projects to be completed and requires each project to be approved by the Coordinating Commission for Postsecondary Education. Additionally, the bill directs the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges to record and report, on the Nebraska State Accounting System, expenditures from the respective programs and to issue semiannual progress reports regarding the status of the building projects.

LB 605 passed with the emergency clause 44-1 and was approved by the Governor on April 11, 2006.

LB 746—Provide for Grants for Civil Legal Services to Eligible Low-Income Persons
(D. Pederson, Brashear, Chambers, Mines, and Flood)

In an attempt to expand the availability of civil legal services to eligible low-income Nebraskans, the Legislature enacted LB 746, which establishes the Civil Legal Services Program. The program is to provide grants for civil legal services to eligible low-income persons.

LB 746 designates the State Court Administrator as the grant administrator. The administrator establishes guidelines for grant ap-

plications, reviews the applications, and selects and distributes the grants to qualified recipients.

To be eligible to receive a grant, a civil legal services provider must:

- (1) Be a nonprofit organization chartered in Nebraska;
- (2) Employ or contract with attorneys admitted to practice before the Nebraska Supreme Court and the United States District Court;
- (3) Have offices located throughout the state;
- (4) Have as its principal purpose and mission the delivery of civil legal services to eligible low-income Nebraska residents;
- (5) Distribute its resources equitably throughout the state;
- (6) Be a recipient of financial assistance for the delivery of civil legal services from the Legal Services Corporation established by the federal Legal Services Corporation Act; and
- (7) Certify that any grant funds received will be used to supplement existing funds used by the applicant and that such funds will not replace other funds used to provide civil legal services to eligible persons.

LB 746 further provides that an independent certified accountant must annually audit the books of the grant recipient to insure the grant funds are being properly used.

To assist program funding, the bill provides for the imposition of a one-dollar fee, to be taxed as costs, in each criminal proceeding filed in all state courts for violations of state law or city or village ordinance. Fees are to be credited to the Civil Legal Services Fund, which is also created in LB 746.

Finally, as enacted, LB 746 includes provisions relating to the Law Enforcement Training Fund that were originally found in **LB 429** and **LB 1078**.

As included in LB 746, the scheduled termination of the Law Enforcement Improvement Fund is changed from January 1, 2007 to January 1, 2011. The bill further provides that beginning January 1, 2007, the fee credited to the Law Enforcement Improvement Fund will be reduced from two dollars to one dollar.

LB 746 passed 44-0 and was approved by the Governor on April 11, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 1121—Appropriate Funds for an Environmental Study of a Hydroelectric Dam Project (*Brown and Pahls*)

While short in length, LB 1121 was long on impact, as it would have appropriated \$3 million from the General Fund for fiscal year

2006-2007 to the Department of Economic Development to contract for an environmental study to consider the impact of placing a hydroelectric dam on the Platte River. Supporters of the study contemplated the creation of an 80-square-mile lake where the city of Ashland is currently located. A map depicting the area in the future resulted in the relocation of Ashland from its current location to west of the proposed lake.

Supporters of the study testified that the project would provide an extraordinary economic development opportunity for the state and could increase tax revenue by as much as \$60 million. Opponents of the measure indicated that the uncertainty surrounding the area's future was having an immediate negative impact on Ashland's business community. Moreover, utility representatives indicated that flooding the Ashland area would negatively impact well fields.

LB 1121 was indefinitely postponed by the committee.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Mick Mines, Chairperson

ENACTED LEGISLATIVE BILLS

LB 693—Allow the Nebraska Investment Finance Authority (NIFA) to Authorize Projects in Connection with the Federal “New Markets Tax Credit” (*Landis*)

LB 693 allows NIFA to authorize projects connected with the federal new markets tax credit provided for by Internal Revenue Code (IRC) sec. 45D. LB 693 adds to the list of legislative findings that guide NIFA and expands its mission by granting additional powers and imposing additional duties on NIFA.

LB 693 sets forth three additional legislative findings applicable to the NIFA Act, including: (1) a need to give NIFA additional powers to adequately address the problems it was meant to solve—because the amount of funding and other resources presently available to NIFA is insufficient—and to do so with funding from public and private sources and state and federal sources; (2) carrying out the NIFA Act’s purposes may necessitate innovative public-private agreements and establishing a policy to encourage such public-private and intergovernmental cooperation; and (3) that better, more broad-based sources of financing must be made available to NIFA and by NIFA to the private sector to enable NIFA to address the problems it was meant to solve.

LB 693 also expands NIFA’s mission to include encouraging cooperation with public agencies; using entrepreneurial methods and approaches to better access federal, state, and local government resources; and stimulating more private sector and joint public-private initiatives to carry out the NIFA Act’s purposes.

LB 693 defines “economic-impact project,” to mean things (e.g., land, buildings, equipment, and personal property, but not operating capital) wholly or partly financed by using the federal new markets tax credit and broadly defines “public agency” to include political subdivisions and instrumentalities of Nebraska or any other state; instrumentalities of local governments in Nebraska or any other state; and the federal government, including its political subdivisions, instrumentalities, and affiliates. The term “project” is redefined to include an economic-impact project.

Additional powers are granted to NIFA with passage of LB 693, including power to: issue bonds to finance economic-impact projects; enter into interagency and intergovernmental agreements in connection with financing or providing resources for economic-impact projects; create, operate, manage, invest in, and own enti-

ties or other consortia created for the purpose of facilitating economic-impact projects; and providing resources—up to \$10 million per project—for economic-impact projects, including making loans or providing equity investments in such projects.

Finally, LB 693 requires a public hearing (with written notice of the hearing published at least two weeks before the hearing in a newspaper of general circulation within the county affected by the economic-impact project) be held before NIFA can exercise any of those additional powers.

LB 693 passed with the emergency clause 47-0 and was approved by the Governor on February 6, 2006.

Primer on the Federal New Markets Tax Credit: IRC Section 45D

The federal new markets tax credit is a federal income tax credit designed to encourage investment in low-income or economically disadvantaged areas.

The credit can be claimed annually for up to seven years and is a percentage of the taxpayer-entity's qualified equity investment in a qualified community development entity (CDE). The amount of the credit is five percent for the first three years and six percent for the final four years; thus, the total credit over a seven-year period can be 39 percent of the qualified equity investment. However, the credit will be recaptured if a recapture event occurs within the seven-year period.

Moreover, IRC sec. 45D places certain limits on the aggregate amount of investment that can be used to claim the credit (\$3.5 billion in 2006 and 2007). The U.S. Department of Treasury can allocate the \$3.5 billion to qualified CDEs and give priority to CDEs that meet certain criteria (e.g., CDEs that have successfully provided capital or technical assistance to disadvantaged communities or businesses).

IRC sec. 45D also provides that an accountability test will be used to ensure the taxpayer-entity's investments benefit businesses in low-income communities. One way of meeting that test is to ensure that at least 20 percent of the CDE's governing board is representative of the low-income community, according to the U.S. Department of Treasury.

LB 875—Omnibus Insurance Legislation (Banking, Commerce, and Insurance Committee)

LB 875 was introduced at the request of the Department of Insurance and includes a variety of changes to Nebraska's insurance laws. LB 875 adopts the Nebraska Senior Protection in Annuity Transactions Act; outright repeals the Interstate Insurance Receivership Compact; and changes statutes pertaining to the Motor

Vehicle Service Contract Reimbursement Insurance Act, the Managing General Agents Act, regulation of insurance policy forms, group life insurance, certain mandated coverage, and title insurance.

Adopt the Nebraska Senior Protection in Annuity Transactions Act

LB 875 adopts the Nebraska Senior Protection in Annuity Transactions Act. The purpose of the act is to set standards and procedures for insurance producers and insurers to follow when making recommendations to senior consumers regarding annuity transactions so that senior consumers' insurance needs and financial objectives at the time of the transaction are appropriately addressed.

The act applies to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance producer, or an insurer if an insurance producer is not involved, that results in the recommended purchase or exchange. However, in general, the act does not apply to (1) recommendations involving certain direct response solicitations or (2) contracts used to fund certain employee pension plans, welfare benefit plans, and deferred compensation plans, including an employee pension or welfare benefit plan covered by the federal Employee Retirement Income Security Act of 1974 (ERISA); government and church welfare benefit plans; deferred compensation plan of a tax-exempt organization or a state or local government under Internal Revenue Code sec. 457; nonqualified deferred compensation plans established or maintained by employers or plan sponsors; settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; and contracts entered into under Nebraska's Burial Pre-Need Sale Act.

The act requires the insurance producer or insurer to have reasonable grounds to believe the recommendation is suitable for the senior consumer based on facts disclosed by the senior consumer. Additionally, the recommendation must be based on facts disclosed by the senior consumer relating to his or her investments, other insurance products, and his or her financial situation and needs.

An insurance producer or insurer must make reasonable efforts to obtain certain information before executing a purchase or exchange of an annuity resulting from a recommendation, including information concerning the senior consumer's financial status, tax status, investment objectives, other insurance products, and other information used or considered to be reasonable.

In general, no insurance producer's or insurer's obligation under the act extends to a senior consumer who: refuses to provide relevant information requested by the insurance producer or insurer; decides to enter into an insurance transaction that is not based on a recommendation of the insurance producer or insurer; or fails to provide complete or accurate information. However, if a senior

consumer provides such information, the insurance producer or insurer must make a recommendation that is reasonable under all the circumstances that are actually known to the insurance producer or insurer at the time of the recommendation.

The act also imposes a number of other duties on an insurer, including establishing and maintaining a system to supervise recommendations.

A violation of the act is an unfair trade practice in the business of insurance under the Unfair Insurance Trade Practices Act. Sanctions for violations of that act are the province of the Director of Insurance who can order that various corrective actions be taken and who has discretion to reduce or eliminate certain penalties if corrective action for the senior consumer was taken promptly after discovery of a violation.

Repeal the Interstate Insurance Receivership Compact

LB 875 outright repeals the Interstate Insurance Receivership Compact, which was first adopted by Laws 1995, LB 178, sec. 1, and subsequently codified as Neb. Rev. Stat. sec. 44-6501. Article XII, sec. A(1), of the compact states “that a Compacting State may withdraw from the Compact . . . by enacting a statute specifically repealing the statute which enacted the Compact into law.”

Amend the Motor Vehicle Service Contract Reimbursement Insurance Act

The provisions of **LB 652** were amended into LB 875. The measure changes provisions of the Motor Vehicle Service Contract Reimbursement Insurance Act, including redefining the phrase “motor vehicle service contract reimbursement insurance policy.” The measure also imposes a written notice requirement and clarifies the extent of required reimbursements. The act essentially is a consumer protection measure that initially arose from the failure of a bankrupt off-shore risk retention group to honor its contractual obligations with policyholders.

Change Title Insurance Provisions

LB 875 changes reserve requirements for domestic title insurers to a flat-rate of \$0.17 per \$1,000 of net retained liability for each policy (formerly \$0.25 per \$1,000 for policies under \$500,000 and \$0.12 per \$1,000 for policies over \$500,000). The change is operative for policies written or assumed after calendar year 2005. According to the Committee Statement for LB 875, currently there are no domestic title insurers in Nebraska; however, LB 875 also provides a transitional reserve calculation for a title insurer domiciled in another state that transfers its domicile to Nebraska.

Change the Managing General Agents Act

LB 875 changes a number of provisions in the Managing General Agents Act. Among other things, it defines two new terms (“business entity” and “person”) and redefines an existing term (“managing general agent”) for purposes of the act.

Regulation of Insurance Policy Forms

LB 875 provides that an existing statutory exemption from regulation of insurance policy forms does not apply to workers’ compensation insurance policy forms.

Other Provisions in LB 875

LB 875 removes two restrictions on the issuance of group life insurance policies, so that a policy can be issued where: (1) the entire premium is derived from funds contributed by insured employees; or (2) part of the premium is derived from funds contributed by insured employees even if fewer than 75 percent of the eligible employees elect to make the required contributions. Thus, the premium for a group life insurance policy must be paid either from the employer’s funds or from funds contributed by the insured employees or from both such funds.

LB 875 makes a technical change in a statute first enacted last year (Laws 2005, LB 119, sec. 38) pertaining to the applicability of other states’ mandated coverage and services to nonresidents of such states. The technical change distinguishes “policies” of insurance from “certificates” of insurance.

LB 875 passed with the emergency clause 48-0 and was approved by the Governor on March 13, 2006.

LB 876—Omnibus Banking Legislation (*Banking, Commerce, and Insurance Committee*)

LB 876 was introduced at the request of the Department of Banking and Finance. Its main purpose is to revise and update laws governing financial institutions and companies under the jurisdiction of the department. As enacted, LB 876 includes provisions of **LB 877, LB 917, LB 926, LB 927, LB 929, LB 985, LB 1124, LB 1193, and LB 1259.**

In addition to its original provisions (e.g., the annual legislation updating the operative date of Nebraska’s Credit Union Act and changes to the Nebraska Mortgage Bankers Act), LB 875 changes the maximum investment a bank can make in any one community development company to 10 percent of its capital and surplus (formerly five percent).

Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006

The Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006 is enacted via passage of LB 876. The act requires individual or commercial entities to conduct in good faith a reasonable and prompt investigation to determine the likelihood personal information has been or will be used for unauthorized purposes when they become aware of a breach of their data system security. The individual or commercial entity must give notice as soon as possible and without unreasonable delay. The act applies to entities that own or license computerized data with personal information about Nebraska residents.

The act provides a safe-harbor rule assuring “deemed compliance” for entities that maintain their own notice procedures as part of an information security policy for the treatment of personal information and that is otherwise consistent with the timing requirements prescribed in the act. Any waiver of the act is contrary to public policy.

The Nebraska Attorney General can issue subpoenas and seek and recover direct economic damages for each affected Nebraska resident injured by a violation of the act.

Nebraska Trust Deeds Act

LB 876 changes the Nebraska Trust Deeds Act to permit, in default situations, an attorney for the: trustee to file a notice of default; trustee to fulfill the trustee’s obligation to provide written notice of the time and place of the trustee’s sale; trustee or beneficiary to fulfill the obligation of the trustee or beneficiary to provide a copy of a recorded notice of default using registered or certified mail; and trustee to sign a cancellation of notice of default on behalf of the trustee.

Uniform Commercial Code (UCC)

LB 876 also changes UCC sec. 9-705, so that UCC sec. 9-705(c)(2) will not apply to a financing statement filed in the proper place in Nebraska before July 1, 2001, pursuant to UCC sec. 9-401 (as such section existed immediately before that date) and for which the proper place of filing in Nebraska was not changed pursuant to UCC sec. 9-501 (as such section existed on July 1, 2001).

Nebraska Installment Sales Act and Nebraska Installment Loan Act

Changes to the Nebraska Installment Sales Act and the Nebraska Installment Loan Act are part of LB 876. The provisions authorize buyers or borrowers, in connection with installment sales or installment loans, to purchase debt-cancellation contracts or debt-suspension contracts if such contracts are contracts of a financial institution and are sold directly by the financial institution.

Other changes to the Nebraska Installment Loan Act include provisions that: (1) motor club services (e.g., towing service, emergency road service, map service, and bail and arrest bond service) can be provided for the benefit of a borrower or the borrower's immediate family; (2) the motor club service contract fee can be collected from the borrower or financed through the loan contract when the loan is made; and (3) the motor club services must be obtained through a motor club that holds a certificate of authority from the Department of Insurance pursuant to the Motor Club Services Act.

Bankers Banks

LB 876 changes rules governing so-called “bankers banks.” To be a bankers bank, a bank must be a bank that is insured by the Federal Deposit Insurance Corporation (FDIC); owned substantially by other Nebraska banks, bank holding companies, foreign bank holding companies, or a combination of such entities; and directly and through all its subsidiaries engaged exclusively in providing services for other banks and their officers, directors, and employees.

A bank can invest in or own voting stock of one or more bankers banks, foreign bankers banks, bank holding companies, or foreign bank holding companies of such bankers bank or foreign bankers bank in an amount up to five percent of any class of voting stock. But in no event can the bank's holdings of such stock exceed 10 percent of the capital stock and paid-in and unimpaired surplus of the bank holding such stock.

Delayed Deposit Services Licensing Act

LB 876 changes the Delayed Deposit Services Licensing Act by providing a short-form license application procedure and requiring additional surety bond up to \$100,000.

Securities Act of Nebraska

Finally, LB 876 creates a transactional exemption under the Securities Act of Nebraska for an offering of certain securities—generally pooled funds—by one qualified charitable organization to another. However, there are certain conditions that must be met for the exemption to apply, including no public solicitation and filing a notice with the department after the first sale of such a security. The act also restricts who can sell such securities and prohibits any additional compensation to sellers of such securities.

LB 876 passed with the emergency clause 44-0 and was approved by the Governor on April 6, 2006.

BUSINESS AND LABOR COMMITTEE

Senator Doug Cunningham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 489—Increase Maximum Fees for Elevator Inspections and Adopt the Conveyance Safety Act (*Business and Labor Committee*)

LB 489 increases the maximum elevator inspection fees that can be charged by the Department of Labor. The bill increases the maximum annual inspection fee to \$150 (up from \$75) per elevator serving up to five floors. It increases a number of other, related inspection fees too.

For new installations, the bill increases: (1) the maximum “preliminary” inspection fee to \$150 per unit serving up to five floors plus an additional fee of \$5 for each floor over five floors; and (2) the maximum “initial” inspection fee to \$200 per unit serving up to five floors and an additional fee of \$5 for each floor over five floors. If an elevator fails to pass an initial inspection and a reinspection is required, LB 489 requires imposition of another inspection fee each time the elevator is reinspected.

For the class of elevators that includes escalators, moving sidewalks, conveyors, and dumbwaiters, LB 489 increases: (1) the maximum “preliminary” inspection fee to \$150 (up from \$50) per unit up to five floors plus an additional fee of \$5 for each floor over five floors; (2) the maximum “initial” inspection fee to \$150 (up from \$50) per unit serving up to five floors plus an additional fee of \$5 per floor over five floors; and (3) the maximum annual inspection fee to \$150 (up from \$50) per unit serving up to five floors plus an additional fee of \$5 for each floor over five floors. If an escalator, moving sidewalk, conveyor, or dumbwaiter fails to pass an initial inspection and a reinspection is required, LB 489 requires imposition of another inspection fee each time such conveyances are reinspected. Fees must be paid by the owner or user before the inspection certificate is issued.

LB 489 also increases the “special” inspection fee to \$200 for each elevator inspected plus an additional fee of \$5 for each floor served over five floors.

The provisions of **LB 99**, the Conveyance Safety Act, were amended into LB 489. The act, which becomes operative January 1, 2008, establishes a comprehensive system for inspecting and regulating nonexempt conveyance devices, including elevators, escalators, moving sidewalks, and dumbwaiters.

The act creates the Conveyance Advisory Committee, for purposes of advising the Commissioner of Labor on issues relating to conveyance safety, and it also creates the Conveyance Inspection

Fund, to receive money collected from inspection fees. The act directs the commissioner to adopt and promulgate rules and regulations to enforce the act and to establish a schedule of fees—after holding a public hearing—for licenses, permits, certificates, and inspections authorized by the act. In addition, the act requires the state elevator inspector to be familiar with the inspection process prescribed in the act, as well as applicable rules and regulations.

However, the act applies only to: (1) counties with a population over 100,000; and (2) the design, construction, operation, inspection, testing, maintenance, alteration, and repair of conveyances, including certain hoisting and lowering equipment. Conveyances used exclusively for agricultural purposes, stairway chairlifts, and certain other conveyances are exempt from the act. Conveyances in private residences require inspection at the time of installation but will not require annual inspection.

The act imposes criminal sanctions for certain violations of the act; namely, (1) anyone who knowingly violates the act is guilty of a Class V misdemeanor and each such violation will be considered a separate offense; and (2) anyone who installs a conveyance in violation of the act is guilty of a Class II misdemeanor.

Finally, LB 489 requires—until January 1, 2008—the Nebraska Workers' Compensation Court to establish procedures for informal dispute resolution and arbitration for a dispute regarding fees owed for certain medical, surgical, or hospital services.

LB 489 passed with the emergency clause 36-3 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 554—Increase Minimum Wage and Training Wage Rates (*Beutler and Redfield*)

As introduced, LB 554 would have gradually increased Nebraska's minimum wage rate to \$6.26 per hour (up from \$5.15 per hour) over a three-year period. Each year thereafter, the Department of Labor would have been required to adjust the minimum wage rate to account for inflation.

LB 554 also would have gradually increased the state's minimum "tipping wage" rate to 50 percent of the state's minimum wage rate over the same three-year period and would have gradually increased the state's minimum "training wage" rate to \$5.15 per hour (up from \$4.25 per hour) over a three-year period.

However, the amended Committee Amendment struck the bill's original provisions and replaced them with provisions that would have increased the state's minimum wage rates by adding an inflation factor and would have phased in the proposed increases over a period of years beginning in 2006. In so doing, the minimum

wage rate would have increased to \$5.59 per hour for the period October 1, 2006, through September 30, 2007; \$6.02 per hour for the period October 1, 2007, through September 30, 2008; and \$6.46 per hour on and after October 1, 2008. The minimum tipping wage rate would have been one-half those amounts. The minimum training wage rate would have been increased to \$4.61 per hour for the period October 1, 2006, through September 30, 2007; \$ 4.97 per hour for the period October 1, 2007, through September 30, 2008; and \$5.33 per hour on and after October 1, 2008.

LB 554 advanced to General File during the 2005 legislative session. In 2006, during debate on General File, a motion to invoke cloture was offered but the motion was ruled out of order. Ultimately, the bill died with the end of the session.

LB 1237—Change Provisions of the Nebraska Workers’ Compensation Act and the Workplace Safety Consultation Program (Cunningham, Baker, Burling, Combs, Engel, Erdman, Kremer, Preister, Raikes, and Redfield)

LB 1237 would have changed provisions of the Nebraska Workers’ Compensation Act and the Workplace Safety Consultation Program.

However, the Committee Amendment would have struck the bill’s original provisions and added the provisions of three other bills, including a revised version of **LB 1238**, which would have changed provisions governing medical fees for purposes of the Nebraska Workers’ Compensation Act.

The Committee Amendment also would have added the provisions of **LB 230**, which would have required nonunion employees who use union legal representation in any grievance or legal action to reimburse the union for their pro rata share of the actual legal fees and court costs.

Finally, the Committee Amendment would have added the provisions of **LB 415** to provide certain confidentiality protections for Nebraska Workers’ Compensation Court documents and information available by electronic means. Confidential information would have included the employee’s name; the nature of the alleged injury; the employee’s past or present medical condition; the extent of the employee’s disability; the amount, type, or duration of benefits paid to the employee; or the information from an application for self-insurance.

Confidential information would not be open to public inspection or copying, except as otherwise provided and as necessary for the compensation court to administer and enforce other provisions of the Nebraska Workers’ Compensation Act. Thus, the amendment would have required the compensation court to deny any request to inspect or copy a confidential record unless, for instance, the

requestor is the employee who is the subject of the record or such employee's attorney or authorized agent.

LB 1237 advanced to General File but died with the end of the session.

EDUCATION COMMITTEE

Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1024—Authorize the Creation of Learning Communities (Raikes)

A boundary dispute between the state's largest public school district and its neighboring districts dominated the Education Committee's agenda during the 2006 session.

The dispute resulted from the attempt by the Omaha Public School District (OPS) to annex parts of the Millard, Ralston, and Elkhorn school districts. Proponents of the annexation, citing their theme of "one city, one district," believed that annexation was necessary to prevent OPS from becoming more racially, socially, and economically isolated; while annexation opponents claimed the issue was educational choice and a bigger school district was not necessarily a better district. The ongoing dispute migrated from school board and town hall meetings to hearings before the Education Committee, to the floor of the Legislature. While several bills were introduced in an effort to resolve the dispute, LB 1024 was advanced to the floor of the Legislature. Debate was heated. A wealth of amendments were offered, some of which were adopted.

As enacted, LB 1024 authorizes the creation of learning communities.

Specifically, LB 1024 creates a learning community, designed to bring all public school districts in Douglas and Sarpy counties under one administrative umbrella. While each member district continues to operate independently, with its own budget, curriculum, and school board, the districts, via the learning community, will have common property tax levies.

The learning community is governed by a coordinating council, composed of one school board member from each member school district; each school district's superintendent serves as an ex officio member.

LB 1024 prescribes a procedure for changing school district boundaries within the learning community. Boundaries can be changed by petition of the coordinating council and approval of the petition by the State Committee for the Reorganization of School Districts and the districts impacted by the change.

For now, LB 1024 provides that school district boundaries within Douglas and Sarpy counties are to remain unchanged until the learning community is up and running. However, the bill directs the coordinating council to submit recommendations for dividing OPS into separate school districts. Each district must include two

or three of the seven high schools currently operating within OPS, and recommendations must be submitted by July 1, 2007.

The provision calling for the division of OPS was adopted as an amendment on General File and was one of the more controversial provisions of LB 1024. The provision generated emotional debate on both General and Select File. Proponents cited the desire for local control and the belief that smaller school districts do a better job educating students as their reasons to adopt the amendment, while opponents believed the provision resulted in the unlawful segregation of OPS.

Recognizing that integration is an issue, LB 1024 establishes an integration task force to examine diversity issues and to recommend policies or procedures to address potential problems.

The bill authorizes the learning community to levy a property tax beginning in the 2008-2009 school year. (Prior to 2008, the Legislature will appropriate funds necessary for the learning community to perform its duties.) Learning communities will be allowed a general fund levy no greater than \$1.02 per \$100 of property valuation. Member districts will be authorized to levy up to \$1.02 minus the learning community levy. The learning community can also levy up to 1 cent for the learning community's budget and up to 2 cents for special building funds. The total combined levy limit is \$1.05.

The learning community is also authorized to develop focus schools and programs, which are geared toward meeting more specific goals in addition to the standard curriculum.

Students residing within the learning community can attend any member school with capacity, and the receiving school district will provide transportation.

Beginning in 2009 and every two years thereafter, the learning community must issue a report regarding the diversity and academic achievement of its member schools.

LB 1024 also includes necessary changes to the state aid formula. One change—an adjustment in the state aid stabilization factor for those districts with declining enrollments and property tax levies of 99 cents or more—will provide more state aid to many smaller schools throughout the state.

Finally, the bill directs the Commissioner of Education to appoint a high needs education coordinator to evaluate and coordinate programs and resources for students who are impoverished, have limited English proficiency, and are highly mobile.

While LB 1024 passed 31-16 and was approved by the Governor on April 13, 2006, resolution of the school boundary dispute is far from over.

LB 239—Change Provisions Relating to Determination of Residency for Purposes of Tuition at Public Postsecondary Educational Institutions (*Schimek, Aguilar, Combs, Kruse, Preister, Dw. Pedersen, and Synowiecki*)

LB 239 allows a student who is illegally in Nebraska to qualify as a resident for purposes of tuition at a Nebraska college, university, or other postsecondary educational institution, if the student resides with a parent, guardian, or conservator while attending high school and (1) graduates from a Nebraska high school or receives the equivalent of a high school diploma, (2) resides in Nebraska for at least three years before the date the student graduates or receives a diploma, (3) registers as an entering student in a Nebraska college, university, or other postsecondary educational institution not earlier than the 2006 fall semester, and (4) files an affidavit with the postsecondary institution, stating an intent to file an application to become a permanent resident as soon as he or she is eligible.

With the passage of LB 239, Nebraska joins at least nine other states that have enacted similar measures. The bill's supporters generally believed giving these students—who are almost always the children of immigrants, who come to this country with their parents—an education would help students break the cycle of poverty that often afflicts immigrant families and contribute to the state's economy.

However, opponents noted the controversy surrounding the immigration issue generally and raised the question whether LB 239 violates federal law. The federal law provides that immigrants who are not legally in the United States cannot be eligible, based on their residence in a state, for any postsecondary benefit, unless a citizen or national of the United States is also eligible for the benefit. While legislation has been repeatedly introduced at the federal level to change or repeal the provision, the provision remains unchanged. Additionally, lawsuits challenging the legality of the tuition benefit measure are ongoing in several states that have enacted the measure.

Nevertheless, on the final day of the 2006 session, the Legislature passed LB 239 on a 27-18 vote. Later that same day, the Governor vetoed the measure. With its last official legislative vote of the 2006 regular session, the Legislature voted 30-16 to override the Governor's veto.

LB 690—Adopt the Career Education Partnership Act (*Stuhr, Combs, Heidemann, McDonald, Raikes, Schrock, and Price*)

Recognizing a need to establish strategies and programs that develop skills which enable Nebraska's young people to complete high school, pursue postsecondary education, find jobs, and remain in their communities, the Legislature enacts the Career Education Partnership Act.

LB 690 directs the State Department of Education to establish and administer a competitive grant process for purposes of awarding grants to those schools and educational service units which collaborate with each other and local business leaders to establish career education and entrepreneurship programs for their students.

Grants cannot exceed \$75,000 per project, recipients have two years to spend the funds, and no applicant can receive funding for more than one project at a time. Grants are to be used to assist schools in at least two of the following areas:

- (1) Developing academic competencies, technical competencies, and basic work-skill foundations for students;
- (2) Developing curriculum;
- (3) Employing certified teachers related to the purpose of the act; and
- (4) Providing professional development for certified teachers who provide course instruction.

The Career Education Partnership Act terminates on January 1, 2011.

LB 690 passed 43-0 and was approved by the Governor on April 11, 2006.

LB 821—Provide for Part-Time Enrollment by Exempt Students in Public School Courses and Activities (*Erdman and Redfield*)

With the passage of LB 821, a student who attends home school can also attend a science or journalism class offered at the public school in the student's district.

LB 821 directs a public school board to: allow a student who is a resident of the district and enrolled in a private, denominational, parochial, or home school to enroll part time in the public school; and establish policies and procedures for such part-time enrollment. The policies and procedures can also include provisions governing part-time enrollment of nonresident students who attend private, denominational, parochial, or home schools.

LB 821 passed 34-9 and was approved by the Governor on April 13, 2006.

LB 962—Change Provisions Relating to the Nursing Faculty Student Loan Act, the Rural Health Systems and Professional Incentive Act, Peru State College, the Coordinating Commission for Postsecondary Education, and Student Financial Awards (Price, Beutler, Byars, Combs, Cunningham, Flood, Heidemann, Howard, Hudkins, Johnson, Kruse, McDonald, Stuhr, Synowiecki, Thompson, and Aguilar)

The Nursing Faculty Student Loan Act was first enacted in 2005, with the passage of LB 146. The act establishes a loan forgiveness program designed to encourage more nurses to pursue higher education in order to teach more nursing students.

Specifically, the act authorizes the Department of Health and Human Services Regulation and Licensure to grant annual loans up to \$5,000 each year for up to three years to nurses who pursue master's or doctoral degrees to become nursing instructors. The loan must be used for educational expenses and is forgiven at a rate of \$5,000 loaned per two years of full-time nursing instruction in Nebraska. The 2005 act specifically stated that the act was to be implemented without any appropriation from the General Fund. The bill's supporters hoped to finance the act through grants from private entities.

Unfortunately, no health care foundation, private nursing organization, or other private entity committed any funds to the act. To correct the funding deficiency, LB 962 was introduced. As introduced, the bill removed the prohibition on the use of General Fund dollars and stated the intent of the Legislature to appropriate \$150,000 from the General Fund for fiscal year 2006-2007 to the Nursing Faculty Student Loan Cash Fund for purposes of carrying out the act.

As enacted, LB 962 removes the prohibition on the use of General Fund dollars, and an accompanying appropriations bill, LB 962A, specifically appropriates \$150,000 from the General Fund to carry out the act. Supporters hope that the infusion of state funds will encourage private donations to the program.

Several other provisions were added to LB 962 via amendment, including the provisions of **LB 830**, **LB 953**, and **LB 1012**.

LB 962 increases the amount of financial assistance awarded to recipients under the Rural Health Systems and Professional Incentive Act. The act provides assistance, in the form of loan forgiveness, to qualifying health care professionals who agree to practice in medically underserved areas.

For physicians, dentists, and psychologists, the bill increases the loan forgiveness amount from \$10,000 to \$20,000 per recipient per year of full-time practice in a designated health profession shortage area and increases the maximum amount such recipient

can receive from \$30,000 to \$60,000. For physician assistants, advanced practice registered nurses, pharmacists, physical therapists, occupational therapists, and mental health practitioners, the loan forgiveness amount is increased from \$5,000 to \$10,000 per year, and the corresponding cap is changed from \$15,000 to \$30,000 per recipient.

Additionally, LB 962:

- Delays the reduction of the maximum amount of grant money an eligible student can receive under the Nebraska Scholarship Act from the 2006-2007 award year to the 2007-2008 award year;
- Authorizes Peru State College to offer a master of science degree in organizational management with an emphasis on entrepreneurship and economic development; and
- Prescribes the state's priorities for postsecondary education and directs the Coordinating Commission for Postsecondary Education to report to the Legislature on the state's progress toward achieving such priorities.

LB 962 passed 39-1 and was approved by the Governor on April 12, 2006.

Create the Early Childhood Education Endowment Fund—LB 1006 and LB 1256

With the passage of LB 1006, and its subsequent ratification by Nebraska voters, and LB 1256, Nebraska will become the first state in the nation to establish an early childhood education endowment fund, to be funded by a partnership of public and private money.

According to supporters, the endowment fund is the brainchild of a coalition of early childhood professionals brought together by the Nebraska Children and Families Foundation. Supporters hope to allocate \$40 million in public funds and \$20 million in private donations to the endowment fund.

Amending the Nebraska Constitution is the first step necessary to make the endowment fund a reality. The Legislature took that step with the passage of **LB 1006**.

LB 1006 proposes to amend Article VII, sections 7, 8, and 9, of the Nebraska Constitution. The proposed amendment:

- Creates the early childhood education endowment fund;
- Allocates an amount equal to the greater of \$40 million or 10 percent of the value of the perpetual funds for the common schools to the endowment fund; and
- Limits appropriations by the Legislature to the interest or income on the early education endowment fund for the benefit of the common schools and for the exclusive purpose of supporting early childhood education in Nebraska.

The proposed amendment defines “early childhood education” to mean “programs promoting social, emotional, intellectual, language, physical, and aesthetic development and learning for children from birth to kindergarten-entrance age.”

LB 1006 passed 43-2 and was presented to the Secretary of State on April 13, 2006. The amendment will appear on the general election ballot in November 2006.

LB 1256, introduced by *Senators Brashear, Baker, Dw. Pedersen, Raikes, and Schimek*, is the second step necessary to make the endowment fund a reality.

LB 1256 statutorily establishes the Nebraska Early Childhood Education Endowment for purposes of awarding grants to qualifying school districts, cooperatives of school districts, educational service units, and community-based organizations for early childhood education programs for children from birth to age three. The endowment is in addition to the state’s Early Childhood Education Grant Program, which provides grant funds to qualifying early childhood prekindergarten programs.

The bill creates the Early Childhood Education Endowment Board of Trustees to administer the endowment program. (The State Department of Education will continue to administer its early childhood education grant program.) And, the bill establishes the Early Childhood Education Endowment Fund and the Early Childhood Education Endowment Cash Fund to be used to award grants and to otherwise administer the endowment.

LB 1256 directs the department to solicit proposals from private endowments with experience in managing public and private funds to be the endowment provider. Once selected, the department and endowment provider must enter into an endowment agreement, which directs the deposit, management, and use of endowment funds. And, the endowment provider must:

- (1) Within five years, place at least \$20 million in the private endowment, of which at least \$5 million has already been pledged on the agreement’s effective date;
- (2) Commit all interest, earnings, and proceeds from the private endowment to the Early Childhood Education Endowment Cash Fund; and
- (3) Agree to allow the board of trustees to determine the allocation of the cash fund.

Finally, the bill authorizes the board of trustees to establish eligibility criteria and to award grants to qualifying programs from across the state and in urban and rural areas.

LB 1256 passed 42-3 and was approved by the Governor on April 13, 2006.

LB 1208—Change Provisions Relating to Distance Education (Raikes, Baker, D. Pederson, Stuhr, and Erdman)

In 2005, the Legislature enacted LB 689, which created the Distance Education Enhancement Task Force. Generally, the task force's charge was to develop an improvement plan to upgrade and coordinate distance education in Nebraska. LB 1208 is the result of the task force's efforts.

As enacted, LB 1208 transfers the responsibility for providing distance education services from distance education consortia (created by cooperative agreements between area educational institutions) to educational service units (ESUs). The bill also establishes Network Nebraska—a series of service contracts coordinated by the state's chief information officer—to enable access for schools and government to a reliable, high-speed telecommunications network.

The Distance Education Council is created in LB 1208. The council, composed of one representative from each ESU, is to coordinate course offerings through the distance education network.

Enhanced funding is the key to an enhanced distance education program, and LB 1208 provides funding for distance education improvements via state lottery proceeds. Pursuant to the bill, 19.75 percent of lottery proceeds (approximately \$3.8 million) will be dedicated to the Education Innovation Fund. (Currently the fund receives 22.25 percent. The difference resulting from the decrease will be used for the Nebraska State Fair.)

Beginning in fiscal year 2006-2007, the Education Innovation Fund will be divided between distance education, school reorganization, and a teacher loan forgiveness program as follows:

- In fiscal year 2006-2007, \$250,000 for the loan forgiveness program, \$1 million for an existing school district reorganization incentive program, and the remainder for distance education;
- In fiscal year 2007-2008, \$500,000 for the loan forgiveness program and the remainder for distance education;
- In fiscal year 2008-2009, \$750,000 for the loan forgiveness program and the remainder for distance education;
- In fiscal years 2009-2010 through 2015-2016, \$1 million for the loan forgiveness program and the remainder for distance education; and
- In fiscal years 2016-2017 and thereafter, for education purposes as determined by the Legislature.

LB 1208 also makes necessary changes in the state aid formula to account for the cost differences between school systems for telecommunications and data transmission. Receipts for courses provided by the Distance Education Council are excluded from budget limits.

In addition to distance education, LB 1208, as enacted, includes provisions of **LB 969** and **LB 1049**.

Beginning in the 2009-2010 school year, LB 1208 prohibits schools from establishing alternating courses offered every other year toward accreditation in mathematics, science, social science, and reading and writing (subject areas for which the State Department of Education has developed content standards).

Finally, LB 1208 allows Nebraska Educational Telecommunications (NET) to enter contracts, which will generate revenue from excess transponder capacity and excess transmission spectrum and transmission and production facilities. However, the bill prohibits NET from using its facilities for the production of commercials and for the distribution or retransmission of commercials to subscription-based television.

LB 1208 passed 40-2 and was approved by the Governor on April 11, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 228—Authorize All-Day Kindergarten (*Howard, Kruse, and Thompson*)

As amended by the Education Committee and advanced to General File, LB 228 would have required all public school districts to offer all-day kindergarten by school year 2009-2010. While the bill did not provide any special funding for making the switch, schools providing all-day kindergarten would have qualified for increased funding under the state aid formula.

According to the State Department of Education, as of 2004, approximately 256 school districts are already providing all-day kindergarten.

LB 228 failed to advance from General File by a vote of 17-11, and the bill died with the end of the session.

Class I School Districts—LR 253CA, LB 839, and LB 1119

In 2005, the Legislature passed LB 126, which, beginning in school year 2006-2007, requires all school districts in Nebraska to be included in school districts offering instruction in grades kindergarten through 12. This change in governance essentially eliminates Nebraska's Class I (elementary only) and Class VI (high school only) districts.

Passage of the bill sparked a heated reaction among the loyal proponents of the small schools in Nebraska. Citizens launched a successful referendum petition drive calling for voters to repeal the measure. Voters will cast their votes on the general election ballot in November 2006.

Legislators who support Nebraska's smallest school districts introduced several legislative proposals aimed at stopping the reorganization.

LR 253CA, introduced by *Senator Hudkins*, would have proposed a constitutional amendment to Article VIII, by adding a new section requiring an affirmative vote of the residents of the impacted school districts before a district could be dissolved or affiliated with or merged into another district.

LB 839, also introduced by *Senator Hudkins*, would have directed the State Committee for the Reorganization of School Districts to issue orders reestablishing all Class I and Class VI school districts if LB 126 is repealed by referendum.

Finally, **LB 1119**, introduced by *Senator Heidemann*, would have delayed the implementation of LB 126 until the 2007-2008 school year. The bill's introducer believed that delaying the bill's implementation would have given voters a chance to decide the issue before the drastic change in governance.

In part because of the pending referendum calling for the repeal of Laws 2005, LB 126, the committee took no action on the measures, and all died with the end of the session.

EXECUTIVE BOARD

Senator Pat Engel, Chairperson

ENACTED LEGISLATIVE BILLS

LR 449—Adopt Articles of Impeachment Against University of Nebraska Regent C. David Hergert (*Chambers, Beutler, McDonald, Stuthman, and Thompson*)

LR 449 calls for the impeachment of University of Nebraska Regent C. David Hergert.

Hergert was elected to the Board of Regents of the University of Nebraska in November 2004. After the election, it came to light that Hergert violated the Campaign Finance Limitation Act (CFLA) by failing to timely file campaign spending reports and by borrowing more money than the CFLA allows. His failure to properly file the requisite reports prevented his opponent, incumbent Don Blank, from receiving \$15,000 in CFLA funds during the election. The Political Accountability and Disclosure Commission investigated Hergert's violations and fined him a record \$33,512.

In 2005, the Legislature adopted LR 98, which called for Hergert's resignation. After Hergert failed to resign, the Executive Board appointed a special legislative committee to consider and recommend legislative options regarding the controversy. The special committee recommended that the Executive Board draft articles of impeachment. Subsequently, the Executive Board voted to introduce articles of impeachment against Hergert.

LR 449 contains 10 articles of impeachment. Allegations include violating the CFLA, mail fraud, violating the oath of office, and making false statements to investigators.

Supporters of Hergert's impeachment argued that he willfully violated the CFLA and that his actions hurt the reputation of the Board of Regents. They also contended that failure to impeach Hergert would send a message that Nebraska's election laws can be broken with little consequence. Opponents questioned whether violations of campaign finance laws prior to taking office were impeachable offenses.

LR 449 passed 25-22. Upon passage of the articles of impeachment, the Supreme Court conducts a civil trial and makes the final decision regarding whether Regent Hergert should be impeached and removed from office. Until then, Hergert is suspended from office. The alleged offenses must be proven by "clear and convincing evidence," and at least five of the seven Supreme Court justices must concur on any of the allegations to remove Hergert from office.

Hergert's impeachment trial began May 8, 2006. At press time, no ruling had been handed down.

LB 588—Change Provisions of the Legislative Performance Audit Act (*Beutler, Price, Brashear, Engel, McDonald, and D. Pederson*)

LB 588 amends the Legislative Performance Audit Act to ensure access to records to facilitate performance audits by the Legislative Performance Audit Section (section). The bill assures the section the same access to confidential state agency records as the Auditor of Public Accounts.

The act authorizes the Legislative Performance Audit Committee, through the section, to conduct performance audits of state agencies and programs, including departments, boards, commissions, and other entities. Generally, a performance audit assesses whether a program is operating efficiently and effectively, pursuant to legislative intent. As such, it is different from a financial audit, which assesses whether an agency or a program is spending its funds appropriately. While a review of an agency's or program's funds and expenditures can be part of a performance audit, the audit's scope and purpose is broader.

The bill provides the section with access to all information and records, confidential or otherwise, of any state agency, unless the section is denied access by state or federal law. If denied for this reason, the agency is required to provide the committee with written explanation of why it cannot produce the information and to provide any information that may be released.

LB 588 prescribes that information provided by an agency must be kept confidential by section employees. (Consultants assisting with an audit are considered section employees.) However, if necessary for the performance of an audit, section employees can share the information with the Chairperson of the Performance Audit Committee.

In the event an agency challenges the accuracy of an audit, the Speaker of the Legislature, as a member of the committee, is authorized to evaluate the information.

Illegal disclosure of confidential information by the Speaker, a chairperson, or a section employee can trigger a potential criminal charge and, in the case of an employee, dismissal.

Proponents of LB 588 contended that the section needs the additional information to do its job effectively. They pointed out that Nebraska's performance audit section as it now exists has less authority than most in the country. Opponents argued that the enhanced powers provided by the bill are beyond the Legislature's policymaking role.

LB 588 passed 42-5 and was approved by the Governor on February 6, 2006.

LB 956—Provide for the Legislative Auditor and the Office of Legislative Audit and Research (*Legislative Performance Audit Committee*)

With the passage of LB 956, the Legislative Research Division is renamed the office of Legislative Audit and Research. For more than a decade, the process known as performance audit has been housed in the research division, and passage of LB 956 formally acknowledges that fact. In addition to renaming the division, the bill establishes the position of Legislative Auditor, who will be responsible for supervising the performance audit staff.

The Director of Research continues to be responsible for the management of the division, including preparation of the budget. In addition to performance audit, the division provides legal and public policy research and maintains the legislative reference library for senators and legislative staff.

LB 956 passed 40-0 and was approved by the Governor on April 12, 2006.

LEGISLATIVE BILLS NOT ENACTED

Term Limits

Efforts to overturn legislative term limits stalled in the 2006 session. Term limits, passed by the voters in 2002, restrict state senators to two consecutive four-year terms. After four legislative resolutions proposing to repeal term limits failed to advance from the committee, the fight turned to the courts. In December 2005, the Nebraska Supreme Court declined to hear a constitutional challenge to term limits on behalf of three state senators who argued that the term-limits provision in the Constitution is so poorly written it forces senators out of office in the middle of their second terms. However, the Lancaster District Court judge dismissed the challenge. Efforts to overturn term limits may be too late for the 20 senators forced to leave office at the end of 2006. Sixteen others, of a total of 49, will not be able to run again in 2008.

Some senators have had second thoughts about term limits as the full impact of term limits has become more clear. Limit opponents argue that term limits rob the Legislature of necessary expertise, experience, and institutional memory. They also argue that term limits cause a power shift from elected legislators to unelected lobbyists, legislative staff, and state government bureaucrats.

Term-limit proponents contend that the turnover caused by term limits is exactly what is needed. They also argue that voters have spoken on the issue, and the Legislature should honor the will of the voters and let term limits work as intended.

GENERAL AFFAIRS COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 562—Change and Eliminate Provisions Relating to Alcohol (*Janssen, Mines, and Redfield*)

LB 562 makes several significant changes to the laws governing alcohol. The bill recognizes the gaseous form of alcohol and authorizes the Nebraska Liquor Control Commission to regulate it; lets dinner patrons take home an unfinished bottle of wine, if resealed by the restaurant and stored in the trunk or similar cargo space; and allows farm wineries to hold catering licenses. Additionally, LB 562 eliminates an annual report regarding keg registration. In addition to its original provisions, LB 562, as enacted, includes provisions first proposed in **LB 388**, **LB 889**, and **LB 1004**.

LB 562 redefines alcohol to include the gaseous form of alcohol, otherwise known as alcohol without liquid (AWOL). Proponents of the measure feared AWOL did not meet the definition of alcohol under the Nebraska Liquor Control Act and therefore fell outside the regulatory purview of the commission.

According to the Committee Statement, AWOL is consumed using a machine with two components, an oxygen generator and a hand-held vaporizer that are connected by tubes. An 80-proof spirit of the drinker's choice is poured into the vaporizer, where oxygen mixes with the alcohol, producing a mist that is inhaled through the mouth. Alcohol enters the bloodstream through the lungs rather than the stomach. But once it hits the bloodstream, the gaseous alcohol's effect on the body is the same as drinking, minus the calories.

Additionally, restaurant customers who purchase a full-course meal and a bottle of wine will be able to take their unfinished bottle of wine home, with the passage of LB 562. The unfinished bottle must be securely resealed and accompanied by a dated receipt, verifying the purchase of the meal and the wine. The bill grants the same privilege, with the same conditions, to customers of farm wineries. Additionally, the bill requires any resealed bottle of wine to be placed in the trunk of a vehicle or, if a vehicle does not have a trunk, in the unoccupied area behind the last upright seat of the vehicle.

LB 562 also allows farm wineries to obtain a special designated liquor license for sale or consumption at a designated location and an annual catering license, measures intended to help promote Nebraska-produced wines.

Finally, LB 562 eliminates the annual report from the commission to the Legislature on the effectiveness of the keg registration statutes. Keg registration statutes, intended to reduce underage drinking, have been deemed successful at accomplishing this goal.

LB 562 passed 45-0 and was approved by the Governor on April 6, 2006.

LB 845—Adopt and Change Provisions Relating to Retail Liquor Licensing and Server Training (*Landis and Aguilar*)

LB 845 gives the Nebraska Liquor Control Commission greater discretion in approving or disapproving the siting of bars, liquor stores, and craft breweries.

Prior law said the commission “shall” grant a retail license or a craft brewery license to qualified applicants who met the statutory requirements. The commission issued a license upon finding that the applicant was able to provide the proposed service; could meet the provisions of the Nebraska Liquor Control Act and the corresponding rules and regulations; would provide the type of management necessary to conform with the law; and the issuance of the license was required by the “present or future public convenience and necessity.” LB 845 says the commission “may” grant a retail license or a craft brewery license to qualified applicants.

Additionally, the bill allows the commission to consider whether the issuance of a license results in or adds to an undue concentration of liquor licenses and burden local law enforcement. The commission has previously reported that areas with a large number of liquor establishments correspond with an increase in law violations.

LB 845 also contains provisions originally introduced in **LB 1160**, pertaining to beverage-server training programs. LB 845 directs the commission to adopt rules and regulations governing such programs, including: minimum standards governing training beverage servers and management staff; minimum standards governing how the training is to be furnished (i.e., Internet, interactive video, or live training); methods for approving beverage-server training organizations and programs; enrollment fees; and procedures and fees for certification.

Further, the commission can create its own program for beverage servers and managers. The commission’s program must include training on the issues of selling or serving alcohol to minors and to visibly inebriated patrons. The commission can charge a fee of up to \$30 per person for its classes, to be remitted to the Nebraska Liquor Control Commission Rule and Regulation Cash Fund.

Persons who complete a training program, whether offered by the commission or another entity, are entitled to certification by the

commission upon the payment of a certification fee and proof of completion of such a program.

LB 845 passed 42-0 and was approved by the Governor on April 13, 2006.

LB 1039—Provide for and Establish Limits on Expenditure of State Lottery Revenue (*McDonald, Wehrbein, and Combs*)

“The odds of winning the lottery are 1 in 146 million.” That’s an example of a message the supporters of LB 1039 want to publicize. LB 1039 requires a certain percentage of the state lottery’s advertising budget be spent on public service announcements highlighting problem-gambling awareness.

The bill directs the Lottery Division of the Department of Revenue to spend not less than five percent of the advertising budget for the state lottery on problem-gambling prevention, education, and awareness messages. These messages are to be coordinated with the messages developed by the Compulsive Gamblers Assistance Program.

LB 1039 passed 44-0 and was approved by the Governor on April 13, 2006.

LR 259CA—Constitutional Amendment to Change Distribution of State Lottery Funds (*McDonald, Kopplin, Wehrbein, and Combs*)

LR 259CA gives voters the option of amending the Nebraska Constitution in order to increase the amount of lottery funds directed to help problem gamblers.

The Constitution currently provides that the first \$500,000 of lottery proceeds – after payment of prizes and operating expenses – be deposited into the Compulsive Gamblers Assistance Fund. LR 259CA, if approved by voters, would increase this amount to \$1 million.

The division of the lottery profits after payment of prizes, operating expenses, and the initial take for aid to compulsive gamblers would remain the same: 44 ½ percent to the Nebraska Environmental Trust Fund; 44 ½ percent to education as directed by the Legislature; 10 percent to the Nebraska State Fair Board; and 1 percent to the Compulsive Gamblers Assistance Fund.

Proponents of the increase said it will help more than 600 additional persons get treatment for their gambling addiction.

LR 259CA passed 38-2 and was presented to the Secretary of State on April 6, 2006. The proposal will appear on the general election ballot in November 2006.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator DiAnna Schimek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 188—Change Provisions Relating to Campaign Finance and Political Accountability and Disclosure (*Beutler*)

LB 188 revises Nebraska's Campaign Finance Limitation Act (CFLA), which establishes voluntary spending limits for state political campaigns.

Under the CFLA, candidates can receive funds from the Campaign Finance Limitation Cash Fund for their campaigns if: (1) they agree to campaign 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. Only three candidates have received funds under the CFLA since the law's passage in 1996.

The bill mandates higher spending limits for candidates who agree to abide by the CFLA. The new limits are: (1) \$2,297,000 for Governor; (2) \$209,000 for Attorney General, Auditor of Public Accounts, State Treasurer, and Secretary of State; (3) \$100,000 for Board of Regents of the University of Nebraska; (4) \$89,000 for the Legislature; and (5) \$70,000 for State Board of Education and Public Service Commission. The bill also provides that, beginning in 2008, spending limits be adjusted every four years based on the rate of inflation reported in the Consumer Price Index.

LB 188 tightens CFLA reporting requirements by mandating that a non-abiding candidate: (1) report to the Nebraska Accountability and Disclosure Commission within two days of when his or her expenditures reach 40 percent of the limit; and (2) file a third pre-election campaign statement, no later than the sixth day before the election. The measure also establishes a \$25 per day fine for late filing of campaign statements and increases other fines under the act.

Additionally, the bill prohibits a candidate from accepting contributions from independent committees, businesses, professional associations, and unions that total more than 40 percent of his or her campaign spending limit. LB 188 also limits the CFLA funds available to an abiding candidate to an amount no greater than three times the spending limit for the office being sought.

Proponents of the CFLA believed that the act has been successful in controlling campaign spending in state races and prevents wealthy candidates from buying elections. Opponents argued that the act favors incumbents and limits free speech because it re-

stricts the amount of money candidates can spend to communicate their ideas to voters.

LB 188 passed 30-10 and was approved by the Governor on April 6, 2006.

LB 817—Change Salaries of State Constitutional Officers (Chambers and Schimek)

LB 817 raises the salaries of state constitutional officers, effective the first day of their next elected terms of office, January 4, 2007.

The new salaries compared with the previous salaries are: (1) Governor, \$105,000, up from \$85,000; (2) Lieutenant Governor, \$75,000, up from \$60,000; (3) Secretary of State, \$85,000, up from \$65,000; (4) Attorney General, \$95,000, up from \$75,000; (5) State Treasurer, \$85,000, up from \$60,000; (6) Auditor of Public Accounts, \$85,000, up from \$60,000; and (7) Public Service Commissioners, \$75,000, up from \$50,000.

Proponents of the bill argued that Nebraska's constitutional officers are underpaid. They noted that the Governor's salary is among the lowest in the nation and many state agency heads are paid more than the Governor. Opponents contended the pay increases were too big compared to those received by many Nebraskans.

Constitutional officers' salaries were last raised in 2003.

LB 817 passed 39-3 but was vetoed by the Governor. The motion to override the Governor's veto passed 33-9 on April 13, 2006.

LB 898—Change Provisions Relating to the Open Meetings Act (Preister)

In an attempt to make Nebraska's Open Meetings Act even more open, the Legislature passed LB 898.

LB 898 requires a public body to:

- Adequately describe the agenda items of an upcoming meeting to ensure the public understands the issues and subjects to be covered at the meeting; and
- Post a current copy of the Open Meetings Act in the meeting room and call attention to the act for those attending the meeting.

Additionally, a board member must state a reason for requesting a closed session and the subject matter to be discussed.

Finally, LB 898 provides that if a citizen sues a public body for a violation of the Open Meetings Act, failure of the citizen to object during the public meeting is not available to the public body as a defense.

LB 898 passed 41-0 and was approved by the Governor on April 12, 2006.

LB 940—Create the Office of Homeland Security and the Homeland Security Policy Group and Change Provisions Relating to Election Laws (*Schimek*)

LB 940 creates the Office of Homeland Security (office) to coordinate anti-terrorism activities in Nebraska with the United States Department of Homeland Security and directs the Governor to appoint a director. Prior to the passage of LB 940, the Lieutenant Governor was in charge of Nebraska's homeland security efforts.

Additionally, the bill creates the Homeland Security Policy Group to make recommendations for preventing terrorism and responding effectively if any acts of terrorism occur in Nebraska. The director serves as chair of the policy group and the Governor appoints its members. The Executive Board of the Legislature Council also selects one member each from the Legislature's Government, Military and Veterans Affairs and Appropriations committees to serve as non-voting members.

The policy group must report annually to the Executive Board, accounting for federal homeland security funds provided to state and local government. The policy group is not subject to the Open Meetings Act.

Proponents of the bill argued that the office will provide the Legislature needed oversight of federal homeland security funding. Opponents contended that the office adds an unnecessary layer of bureaucracy to state government.

The bill also amends Nebraska's Election Law. The bill prescribes that a political party may not include the term "independent" or "nonpartisan" in its party name because each word describes a voter who is not registered with a political party. The provision is intended to prevent confusion regarding the political affiliation of voters and candidates.

LB 940 also prohibits the Secretary of State from serving as an officer of a political campaign committee, other than his or her own, and extends the prohibition on electioneering at polling places to include the time period a polling place or building is set up for voting.

These changes were originally prescribed in **LB 1154**, **LB 1184**, and **LB 1246**.

LB 940 passed 43-1 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 894—Change Provisions Relating to Presidential Electors (Langemeier)

LB 894 would have returned Nebraska to a “winner-take-all” system of electing its Electoral College electors, by providing that the presidential candidate winning the most popular votes in Nebraska would win all of Nebraska’s electoral votes.

Under current law, in effect since 1991, candidates receiving the highest number of votes statewide win the electoral votes representing Nebraska’s two United States Senate seats, while the remaining three votes are determined by the highest number of votes received in each of the state’s three congressional districts. Under this arrangement, more than one presidential candidate can win electoral votes in Nebraska. Maine is the only other state that authorizes a split of its electoral votes.

LB 894 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 915—Provide Standards and Procedures for Rehabilitation of Clandestine Drug Lab Sites (*Aguilar, Bourne, Combs, Erdman, Flood, Friend, Howard, Mines, Pahls, Preister, Stuthman, Thompson, Burling, and Smith*)

Methamphetamine continues to dominate the state's concerns when it comes to illegal drugs. The Legislature passed LB 117 in 2005, aimed at shutting down the proliferating homegrown methamphetamine labs by limiting access to some common, over-the-counter cold and allergy medications used to make the drug. The measure appears to be working. Now, LB 915 focuses on cleaning up the toxic mess left behind.

LB 915 requires expedited reporting duties for everyone involved in discovering a meth lab.

Property owners must tell their local law enforcement agency or the Nebraska State Patrol as soon as practicable. Law enforcement agencies must report the lab's location to the patrol within 30 days of making the discovery and must furnish, as soon as practicable, a complete list of the chemicals found at or removed from the site. Upon receiving the information, the patrol must promptly forward a copy of the report and a list of the chemicals to the Department of Health and Human Services Regulation and Licensure (department), the Department of Environmental Quality, the municipality or county where the lab is located, the director of the local public health department, and the property owners.

LB 915 places the local public health department in charge of monitoring the rehabilitation of meth-contaminated property while the department is charged with developing rules and regulations, which must be in place by July 15, 2007.

The local departments can contract with another health department or other appropriate agency to assist in monitoring and can charge property owners fees to cover costs directly associated with rehabilitating the property. Property owners are barred from allowing anyone to live on the property until it is cleaned up and may terminate a lease with three days' written notice for reasons related to cleanup.

LB 915 passed 44-0 and was approved by the Governor on April 6, 2006.

LB 994—Change Provisions Relating to the Nebraska Health and Human Services System (*Health and Human Services Committee*)

Largely a technical measure as introduced, LB 994 became the vehicle for health-related measures originally introduced in 14 other bills. Those bills are **LB 318, LB 445, LB 844, LB 866, LB 882, LB 892, LB 903, LB 950, LB 1002, LB 1079, LB 1088, LB 1179, LB 1220, and LB 1254.**

LB 994 transfers the Division of Home and Community-Based Services for Aged Adults and Children with Disabilities from the Department of Health and Human Services to the Department of Health and Human Services Finance and Support. The change affects adult protective services, lifespan respite services, the Early Childhood Interagency Coordinating Council, programs that serve medically handicapped children, genetically handicapped persons, and disabled persons and programs pertaining to early childhood intervention and social services.

LB 994 expands the membership of the Board of Veterinary Medicine and Surgery to include a veterinary technician, changes the name of the Division of Dental Health to the Office of Oral Health and Dentistry, and adds the director of the Division of Veterans Homes to the list of exempt, appointed positions within the Department of Health and Human Services.

The bill makes changes to the Wholesale Drug Distributor Act in an attempt to prevent the introduction of counterfeit drugs into pharmacies and enacts the Immunosuppressant Drug Repository Program Act to benefit transplant patients. Following the trend of Laws 2003, LB 756, which first allowed former cancer patients or their survivors to donate unused, unopened drugs at participating health-care sites, LB 994 creates a similar program for drugs used by transplant patients.

Any person or entity, including an immunosuppressant drug manufacturer or transplant center, can donate immunosuppressant drugs to a participant or return previously prescribed immunosuppressant drugs to the transplant center where they were originally prescribed. The Department of Health and Human Services Regulation and Licensure is given the duty of establishing the program. Participating in the program is voluntary and no charge can be asked for the donated drugs.

Another provision of LB 994 replaces the policy secretary of the Health and Human Services System with a chief administrative officer, to be appointed by the Governor, and eliminates the State Behavioral Health Council, created pursuant to the Nebraska Behavioral Health Services Act.

The bill also names the new veterans' home being built in Bellevue the Eastern Nebraska Veterans' Home. The new facility replaces one built 25 years ago, which was named for former state Senator

Thomas Fitzgerald, and caps an emotional battle by Senator Fitzgerald's heirs to retain that name.

LB 994 also enacts the Rural Behavioral Health Training and Placement Program Act to address the shortage of behavioral health care practitioners in rural areas. As reported by the Department of Health and Human Services Regulation and Licensure, 74 percent of the state's psychiatrists, psychologists, and licensed mental health practitioners live and practice in Omaha and Lincoln. LB 994 commits the intent of the Legislature to annually appropriate \$200,000 to pay for programs administered by the Monroe Meyer Institute at the University of Nebraska Medical Center to encourage behavioral health care practitioners to locate in rural areas and general practitioners to integrate behavioral health into primary care practices.

Among its other provisions, LB 994, makes changes to the Radiation Control Act, changes child-care reporting requirements, alters the prescribing authority and scope of practice for nurse practitioners, and adopts the Physical Therapy Practice Act, requiring licensure of physical therapists and certification of physical therapist assistants.

Further, the bill contains provisions to, it is hoped, reduce the deaths of infants from shaken baby syndrome (SBS) and sudden infant death syndrome (SIDS) by increasing public awareness and providing training to new parents. The measure requires hospitals, birth centers, and other medical facilities that discharge babies to request each maternity patient and the father of the newborn, if available, to watch a video and read printed materials on SBS and SIDS. Parents are asked to sign a form stating they viewed the presentation and read the printed material or refused to do so. The bill further requires the department to conduct public awareness activities designed to promote SIDS and SBS prevention.

LB 994 passed with the emergency clause 44-0 and was approved by the Governor on April 12, 2006.

LB 1086—Adopt the Nebraska Prostitution Intervention and Treatment Act and Provide and Change Penalties Relating to Prostitution and Forced Labor (*Synowiecki and Howard*)

The justice system has become a revolving door for many individuals involved in prostitution, who often suffer from the co-occurring disorders of substance abuse and mental illness, said supporters of LB 1086, a bill that offers the alternative of intervention and treatment. However, the Governor may have slammed that door shut when he vetoed funding for the program and declared he would seek to have the measure removed from statute next session.

In the meantime, LB 1086 states the Legislature's intent to fund behavioral health regions that can demonstrate they have a prostitution problem. The funds would have provided community-based education and treatment programs.

LB 1086 also contains provisions originally introduced in two separate bills heard before the Judiciary Committee. **LB 1253** changes penalties for prostitution and creates the new crime of solicitation of prostitution, while **LB 842** introduces criminal sanctions pertaining specifically to human trafficking.

While LB 1086 reduces the penalty for a first or second conviction for prostitution to a Class II misdemeanor, it creates a new penalty for customers. Solicitation of prostitution is a Class I misdemeanor for the first offense; subsequent offenses are Class IV felonies. Conviction for prostitution on second or subsequent charges remains a Class I misdemeanor. Persons sentenced to probation for either prostitution or solicitation of prostitution, besides paying a fine, must also attend and complete an appropriate mental health and substance abuse assessment.

Additionally, LB 1086 adds "sexual contact" in exchange for money or other goods as an act constituting prostitution; previously the definition of prostitution was limited to "sexual penetration."

The bill also makes it a crime to knowingly subject or attempt to subject another person to forced labor or services, creating a class of crimes identified with the activity of human trafficking. Under this scheme, to inflict or threaten to inflict serious personal injury or to physically restrain or threaten to physically restrain another person is a Class III felony; to knowingly destroy, conceal, remove, confiscate, or possess any actual or purported passport or other immigration document, or any other actual or purported government identification of another person is a Class IV felony; and to cause or threaten financial harm to another person is a Class I misdemeanor.

LB 1086 also prohibits knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means, a minor for commercial sexual activity, sexually explicit performance, or the production of pornography, or attempting to get a minor to engage in any of these activities. Penalties for this, depending on the age of the victim and the use of force, can be either a Class II or Class III felony. Finally, the bill makes it a Class III felony to recruit, entice, harbor, transport, provide, obtain or attempt to do any of these activities against another person or to benefit financially by participating in such activities, while intending or knowing that the other person will be subject to forced labor or services.

LB 1086 passed 38-3 and was approved by the Governor on April 5, 2006. However, the appropriations bill, LB 1086A, which would have provided \$750,000 from the General Fund in fiscal year

2006-2007 and fiscal year 2007-2008 for intervention and treatment for persons involved in prostitution, was vetoed.

In his veto message, the Governor said, “Creating a program financed with state General Funds to benefit a population that is engaged in illegal activity is objectionable public policy and certainly should not be a spending priority for our state.”

Bills to Allow Students to Self-Manage Medical Conditions at Schools and Related Activities—LB 1107 and LB 1148

LB 1107, introduced by *Senators Thompson, Redfield, Schimek and Price*, and LB 1148, introduced by *Senators Cornett, Aguilar, Baker, Bourne, Brown, Byars, Combs, Connealy, Cunningham, Erdman, Foley, Heidemann, Janssen, Jensen, Johnson, Kruse, Landis, Pahls, Dw. Pedersen, Preister, Price, Schimek, Schrock, Smith, Stuhr, Stuthman, Synowiecki, Thompson, Wehrbein, Mines, and Redfield*, are parallel bills that allow students to treat certain medical conditions themselves while at school or school-related functions. LB 1107 addresses diabetes and LB 1148 deals with asthma and anaphylaxis.

Both bills permit students who attend public, private, denominational, or parochial schools to self-manage their medical condition in any part of the school, the school grounds, or at any school-related activity.

The process begins with a written request from the student’s parent or guardian, accompanied by authorization from the student’s physician and a signed statement from the parent or guardian absolving the school and its employees from liability for any injury, death, or claim arising from a student’s self-management of his or her condition.

The school and parents, in consultation with the student’s physician, must develop a medical management plan for the student for the current school year. The plan identifies the health-care services the student can receive at school; evaluates the student’s understanding of his or her illness and ability to self-manage it; permits regular monitoring by an appropriately credentialed health care professional; and carries the signature of the parent and physician. In the case of a child with asthma or anaphylaxis, the plan must also include the name, purpose, and dosage of the medications prescribed for the student and include procedures for storage and access to backup medication supplies.

Both bills make parents or guardians liable if a student injures another student or school personnel as the result of misusing supplies or medications. The bills allow the schools to place necessary restrictions on the self-management of medical conditions or take other disciplinary action when students have endangered themselves or others by their use of supplies needed for self-

management, except that the school cannot deny access to medication for asthma or anaphylaxis.

LB 1107 passed 45-0 and was approved by the Governor on April 6, 2006. LB 1148 passed 49-0 and was approved by the Governor on April 13, 2006.

LB 1248—Adopt the Medical Assistance Act (*Jensen and Erdman*)

The enactment of the Medical Assistance Act in LB 1248 begins the process of Medicaid reform first envisioned by Laws 2005, LB 709. If Medicaid reform were a theatrical play, LB 709 would be its prologue, LB 1248 would be the first act, and the final act, yet to be written, could bring a fundamental shift in how and what the state provides in the way of medical assistance for the low-income and medically needy Nebraskans who use it. As such, LB 1248 provides foreshadowing of major changes ahead.

The introduction of LB 1248 followed months of public hearings by the Medicaid Reform Advisory Council, created by LB 709, and the work of the appointed designees – one named by the Governor and one by the Legislature – who were statutorily vested with developing the state’s Medicaid Reform Plan.

The Medicaid Reform Plan bluntly states the problem facing Nebraska: As currently structured, the Medicaid program in Nebraska is not fiscally sustainable. To illustrate, from state fiscal year 1987 to fiscal year 2005, total Medicaid appropriations grew from \$201 million (8.8 percent of General Fund appropriations) to \$1.4 billion (17.2 percent of General Fund appropriations). The average annual growth in Medicaid appropriations outstripped the average annual growth in state General Fund revenues during that time.

Importantly, current Medicaid recipients will not notice many changes as a result of the bill’s passage. It does not affect eligibility nor alter mandatory or optional services. It retains all Medicaid rules and regulations, state plan amendments, and waivers. And it provides that many of these things cannot be changed without the Legislature’s tacit approval.

LB 1248 recodifies the Medicaid statutes, implements portions of the Medicaid Reform Plan, and gives the state some flexibility in providing medical assistance. For example, LB 1248 allows the Department of Health and Human Services Finance and Support (department) to pay for premiums, deductibles, and coinsurance for private health insurance coverage, employer-sponsored coverage, catastrophic health insurance coverage, and long-term care insurance.

LB 1248 directs the department to expand home and community-based services for the elderly and the disabled and authorizes the department to establish premiums, co-payments, and deductibles

and limits on the amount, duration, and scope of goods and services. The department can also require eligible persons, as a condition of continued receipt of medical services, to actively participate in care coordination and appropriate disease management programs and activities.

The bill also greatly increases legislative oversight of how the department administers or changes Medicaid. It requires the department to submit a biennial summary and analysis of Medicaid and to report, at least biennially, on changes to Medicaid and their effect on eligible recipients and state expenditures. Further, before the department revises the administration of the program or changes or limits coverage for mandatory and optional services, it must provide a report to the Legislature, the Governor, and the Medicaid Reform Council that summarizes the purpose and content of any proposed changes.

Any proposed changes relating to premiums, copayments, or deductibles or limits on covered services, however, cannot become effective until the end of the next regular legislative session to allow the Legislature a reasonable opportunity to respond. The department may change rules and regulations without legislative oversight that are (1) required by federal or state law; (2) related to a waiver in which recipient participation is voluntary; or (3) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category.

In order to provide for public comment, LB 1248 establishes the Medicaid Reform Council, consisting of 10 persons appointed by the chairperson of the Legislature's Health and Human Services Committee, in consultation with the committee, the Governor, and the director of the department. The council must include at least one representative from providers, recipients of medical assistance and their advocates, business, insurers, and elected officials. The council's duties are to oversee and support the reform process; conduct at least two public hearings annually; and provide comments and recommendations to the department. The council also must hold public hearings as part of its comment and review of the reports required of the department.

The bill also gives the department two specific, potentially cost-saving proposals to study that were initially recommendations of the Medicaid Reform Plan. Both would significantly alter state medical assistance.

The first study proposal affects changing the children's health insurance program (CHIP). CHIP, also called Kid's Connection in Nebraska, provides health care for children in families who earn up to 185 percent of the federal poverty level – too high to qualify for Medicaid—and is designed as an extension of the state's Medicaid program. LB 1248 directs the department to study administering CHIP as a separate program and determine if such a change would allow the state flexibility to limit coverage and charge higher co-payments, premiums, and deductibles. The department

must report its draft findings to the committee and the council by October 1, 2007. The department's final report is due to the Governor, the Health and Human Services Committee, and the Medicaid Reform Council by December 1, 2007.

The second study proposal directs the department to study restructuring Medicaid, changing it from a defined benefit program to a defined contribution model. Under a defined benefit program, eligibility and benefits are fixed, but costs are variable. This means that once a person qualifies for Medicaid, he or she becomes entitled to receive all of the medically necessary services available, regardless of cost.

In a defined contribution plan on the other hand, eligibility and costs are fixed, but benefits are variable and targeted to meet individual needs. This would be a substantive and controversial change to Medicaid. The draft recommendations of this study are due by October 1, 2008; the final report is due no later than December 1, 2008 and would follow the same structure of public comment and review as established for the Kid's Connection study and for the reports the bill requires of the department.

Finally, LB 1248 directs the Health and Human Services Committee to provide for an independent study and actuarial analysis of the impact of behavioral health insurance parity legislation in Nebraska. This provision was originally introduced in **LB 1232**. A report on the findings is due to the Governor, the committees of Health and Human Services and Banking, Commerce, and Insurance by December 1, 2006.

LB 1248 passed with the emergency clause 45-1 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 949—Provide for a Statewide Immunization Registry (*Jensen and Howard*)

Hurricane Katrina can be blamed for many horrendous things, but the hurricane did spawn at least one good thing. It made apparent the benefits of a statewide immunization registry to track health records on children and adults. LB 949 would have permitted the Department of Health and Human Services Regulation and Licensure to create and maintain a statewide immunization registry in Nebraska.

The bill's sponsor said the idea behind LB 949 was brought to him by health-care workers who tended Katrina refugees being housed in Omaha's Civic Center. Those workers were pleased to discover that Louisiana's statewide immunization registry made it easy for them to find information on the children and determine what immunizations they needed before being enrolled in local schools. The recent outbreak of mumps is another reminder of the value of

knowing immunization status. A statewide registry could be useful in locating people who need to be vaccinated in case of an epidemic, supporters noted.

The registry would have been available to public and private immunization providers. Costs associated with administering the registry would have been paid from cash funds, contract receipts, gifts and grants. No General Funds could have been used to pay costs associated with the registry. However, the bill's Fiscal Note said that development costs of \$45,000 would have to be paid from the General Fund unless a cash source could be found.

The purposes of the registry, as outlined in the bill, would have been to: (1) collect, store, analyze, release, and report immunization data; (2) assure that necessary immunizations are provided and over immunization is avoided; (3) assess immunization coverage rates; (4) determine areas of under-immunization and other epidemiological research for disease control purposes; (5) document that required immunizations have been provided as required for school or child care admission; and (6) accomplish other public health purposes as determined by the Department of Regulation and Licensure.

LB 949 advanced to General File and died with the end of the session. An interim study, LR 406, will look at immunization registries.

JUDICIARY COMMITTEE

Senator Pat Bourne, Chairperson

ENACTED LEGISLATIVE BILLS

LB 57—Adopt Provisions Relating to Assault of or Serious Bodily Injury to an Unborn Child (*Foley, Dw. Pedersen, Erdman, Flood, Friend, and Redfield*)

LB 57 creates the criminal offense of assault of an unborn child.

The bill establishes three degrees of assault of an unborn child. First-degree assault of an unborn child, a Class III felony, is committed when a person intentionally or knowingly causes serious bodily injury to an unborn child during a criminal assault on a pregnant woman. Assault of an unborn child in the second degree, a Class IIIA felony, is committed when a person, while assaulting a pregnant woman, recklessly causes serious bodily injury to the unborn child with a dangerous instrument. Third-degree assault of an unborn child is a Class I misdemeanor, which is defined as recklessly causing serious bodily injury to the unborn child during the criminal assault of the mother.

LB 57 also makes it a Class IIIA felony to injure the unborn child of a pregnant woman while driving drunk.

The bill exempts from prosecution any act or conduct committed by the mother; any medical procedure performed with the consent of the mother; and dispensing or administering a drug or device in accordance with law.

Assault on a pregnant woman and the assault on her unborn child are separate acts for purposes of prosecution. LB 57 also enhances penalties for assaulting a pregnant woman; the prosecution must prove beyond a reasonable doubt that the victim was pregnant.

LB 57 passed with the emergency clause 46-1 and was signed by the Governor on April 13, 2006.

LB 173—Change Provisions Relating to Gift Certificates (*Hudkins, Bourne, Engel, Jensen, McDonald, Stuthman, Cunningham, and Price*)

Gift cards can be the gift that keeps on giving, with clearer terms of use, under the provisions of LB 173. The bill allows consumers an unlimited amount of time in which to use gift cards or gift certificates (gift cards) when the face value is less than \$100, if the retailer foregoes the use of expiration dates and inactivity fees.

LB 173 requires retailers to clearly print on their gift cards whether the cards are subject to fees for inactivity or expiration dates and

the cards must state the amount of the fee, that the fee is triggered by inactivity, when the fee is triggered, and how often.

As to when the cards are considered abandoned, LB 173 provides that gift cards with a face value of less than \$100, that are not assessed any fees and do not contain an expiration date, are not presumed to be abandoned. Prior law required that all cards were considered abandoned property if not used within three years from the date they were purchased. Abandoned gift cards were turned over to the State Treasurer, and the unclaimed, abandoned funds were ultimately deposited in the permanent school fund.

The bill also applies retroactively to gift cards purchased prior to November 2, 2006, if the retailer agrees to waive expiration dates and any type of post-sale finance charges or fees. Retailers must conspicuously post this new policy by July 1, 2006.

Gift cards with a face value of \$100 or more will still be considered abandoned after three years from the date of issuance. They are considered abandoned at face value, minus any applicable fees or purchases made.

Besides allowing consumers practically unlimited time to use the cards, the bill's proponents said the changes would benefit retailers by providing an incentive for the retailers to forgo fees and expiration dates because they could keep any unredeemed money from cards of less than \$100 value. Opponents countered that unclaimed abandoned funds end up in the permanent school fund and result in property tax relief.

The new requirements do not apply to general use prepaid cards from financial institutions.

LB 173 passed 42-0 and was approved by the Governor on March 6, 2006.

LB 287—Prohibit Picketing of a Funeral (*McDonald, Janssen, Loudon, Combs, and Friend*)

Nebraska becomes the sixth state to restrict protests at funerals with the passage of LB 287. The bill responds directly to the actions of the congregants of a small Baptist church in Topeka, Ks., who picket at the funerals of soldiers killed in Iraq and Afghanistan, including at least two in Nebraska, because they believe God is striking down Americans for harboring homosexuals. Members of this church have protested at the funerals of AIDS victims and prominent individuals for years.

LB 287 contains legislative findings that families have the right to peacefully and privately mourn the death of a loved one and that this right is violated when funerals are targeted for picketing or protesting. Therefore, the bill creates the new crime of unlawful picketing of a funeral. Protesters must stand at least 300 feet away

from a cemetery, mortuary, church, or other place of worship from one hour prior to two hours following the start of a funeral.

LB 287 was originally a General Affairs Committee bill that would have required a study of Nebraska cemeteries. Ultimately, legislation was deemed unnecessary to conduct the study and the bill was amended on Select File to contain the anti-picketing provisions, which were originally introduced in **LB 773**.

LB 287 passed with the emergency clause 44-0 and was approved by the Governor on April 4, 2006.

LB 385—Rename and Change Provisions of the DNA Detection of Sexual and Violent Offenders Act to Apply to Missing Persons (*Johnson and Price*)

Finding missing persons and identifying human remains become two new uses for Nebraska's DNA database under the provisions of LB 385, which also adds burglary, if committed at a residence, and robbery to the list of crimes for which a convicted offender is required to submit a DNA sample. Supporters of the change cited research that as many as half of all violent offenders have previously committed nonviolent crimes. Of those, 25 percent have committed a robbery or burglary.

The DNA database, since its creation in 1997, has served as the repository for the DNA profiles of persons convicted of felony sex offenses, murder, manslaughter, or stalking. The Nebraska State Patrol maintains the database and uses it primarily for criminal investigations.

To correspond to the new uses of the DNA database, the DNA Detection of Sexual and Violent Offenders Act becomes the DNA Identification Information Act with the passage of LB 385.

LB 385 passed 43-2 and was approved by the Governor on April 13, 2006.

LB 454—Adopt the Concealed Handgun Permit Act (*Combs, Aguilar, Baker, Cornett, Cudaback, Cunningham, Erdman, Fischer, Flood, Friend, Hudkins, Janssen, Jensen, Kremer, Langemeier, McDonald, Pahls, Dw. Pedersen, Redfield, Schrock, Smith, Stuhr, Wehrbein, Engel, and Connealy*)

Ten years in the making, the right to carry concealed handguns was bestowed on the average Nebraskan willing to take the training and apply for the privilege pursuant to the Concealed Handgun Permit Act. The first bill to allow Nebraskans to carry concealed weapons was introduced in 1996 by the late Senator Stan Schellpeper. The measure, in slightly varying forms, has been before lawmakers every year since.

The bill that finally passed the Legislature, LB 454, requires persons wishing to carry concealed handguns to apply in person to the Nebraska State Patrol and present a current Nebraska motor vehicle operator's license or state or military identification card, be fingerprinted, and submit to a criminal history background check. The bill makes providing false information to the patrol when applying for the permit a Class IV felony. The fee for the initial permit, good for five years, is \$100. Renewal fees are \$50. Permit holders must carry their permit and a valid Nebraska driver's license or state or military identification whenever they are carrying a concealed handgun.

Applicants must meet 10 criteria as enumerated in LB 454, including the completion of a patrol-approved handgun training and safety course, be a citizen of the U.S. and a resident of Nebraska for at least the past 180 days, not be a felon or a mentally ill dangerous person, and be at least 21 years old. Permit holders must continue to meet the criteria for the life of their permit or risk it being revoked. If an applicant meets the 10 criteria, pays the fee, and passes the criminal history check, the patrol must issue a permit.

The patrol is also given duties pertaining to handgun training courses and instructors and in creating the form and content of the concealed-carry permit.

The bill defines handguns as "any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand." Concealed handgun means "the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun."

LB 454 passed 33-12 and was approved by the Governor on April 5, 2006.

LB 924—Restrict the Use of Eminent Domain and Change Provisions Relating to Condominium Purchaser Rights (*Fischer, Baker, Burling, Combs, Cudaback, Cunningham, Erdman, Flood, Heidemann, Hudkins, Kremer, Loudon, McDonald, Dw. Pederesen, Schrock, Smith, Stuhr, Stuthman, and Wehrbein*)

LB 924 restricts the government's authority to exercise eminent domain in reaction to the U.S. Supreme Court ruling in *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), which upheld the taking of homes to clear the way for a private redevelopment project. In its ruling, the court said states are free to ban such takings.

LB 924 says that property cannot be taken through the use of eminent domain if it is primarily for an economic development purpose. The bill defines economic development purpose as taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

The bill includes seven allowable uses of eminent domain, among them, public projects or private projects that make all or a major portion of the property available for use by the general public, acquiring abandoned property, and taking private property based upon a finding of blighted or substandard conditions under the Community Development Law. However, the bill specifically provides that agricultural or horticultural land cannot be declared blighted or substandard.

LB 924 also contains the provisions of **LB 1143** as amended by the Banking, Commerce, and Insurance Committee. It amends the Nebraska Condominium Act to provide that, after receiving the public-offering statement, a purchaser has the right to have an independent inspection of the building's structure and mechanical systems conducted at the purchaser's expense.

LB 924 passed 43-0 and was approved by the Governor on April 13, 2006.

LB 925—Change Penalty Provisions Relating to Certain Motor Vehicle Offenses, Motor Vehicle Homicide, and Driving Under the Influence (*Friend, Erdman, Kruse, and Burling*)

Twenty percent of Nebraska's 254 motor vehicle fatalities in 2004 involved a driver whose blood alcohol content (BAC) was .16 or more, according to the National Highway Traffic Safety Administration. The legal limit for adults to drive is .08. The problem of drunken driving, opponents say, is increasingly with the population of drinkers who repeatedly drive drunk or who drive with an exceptionally high BAC. LB 924 addresses these concerns by increasing the criminal penalties for habitual drunken drivers and persons who drive with very high BAC levels.

LB 924 imposes a one-year license revocation for persons convicted of a first offense driving under the influence (DUI) if their BAC is greater than .15, which is double the revocation time given a first-time offender with a lower BAC. If the high-BAC defendant is sentenced to probation or given a suspended sentence, in addition to a one-year license revocation, he or she must pay a \$500 fine and serve either two days in jail or perform 120 hours of community service.

Each conviction with a high BAC is punishable at the level above what a DUI conviction would bring without the high BAC. The bill also increases penalties for repeat offenders with a BAC under .15 for second and subsequent convictions.

LB 925 also increases penalties for leaving the scene of an accident resulting in property damage, injury, or fatality and for motor vehicle homicide when the defendant was driving drunk. Further, LB 925 requires all persons convicted of DUI to receive a chemical dependence assessment from a certified drug and alcohol counselor and allows prosecutors to use blood samples obtained for

medical purposes in prosecutions for manslaughter, DUI resulting in serious bodily injury, and motor vehicle homicide.

LB 925 gives judges the flexibility to revoke a driver's license for a period of between two and 15 years if the driver's BAC was under .15, and between five and 15 years for BAC levels of .15 or above for persons convicted of third offense DUI who are sentenced to probation.

As an added perk, the enhanced sanctions for convicted offenders with a BAC of .15 or higher qualify the state to receive an additional \$4.6 million in federal highway safety funding over the next four years. The state Department of Motor Vehicles can use that money for drunken driving education, prevention, and increased enforcement.

The provisions of **LB 295** were amended into the bill. These provisions eliminate the 12-hour period a driver had to report a property-damage collision with an unattended vehicle and assess six points against the license of the driver for failing to stop and report the accident. The changes harmonize the law with changes made to another section of law four years ago.

LB 925 passed 39-2 and was approved by the Governor on April 13, 2006.

LB 1113—Clarify Language Regarding Obscene Literature or Material (*Bourne and Mines*)

LB 1113 clarifies language relating to obscene literature. Additionally, provisions from 12 other bills were amended into LB 1113. They are **LB784, LB 1009, LB 1047, LB 1070, LB 1075, LB 1144, LB 1146, LB 1149, LB 1181, LB 1196, LB 1224, and LB 1257.**

LB 1113 contains several provisions that pertain to juveniles. The bill adds the crimes of sexual assault of a child or a vulnerable adult, child pornography, and child enticement by means of a computer to the list of crimes for which a county attorney can subpoena evidence before a grand jury or seek a court order for the interception of wire, electronic, or oral communications.

The bill requires an autopsy, death scene investigation, and a review of a child's medical history before a death can be attributed to Sudden Infant Death Syndrome and requires the Attorney General to create, by July 1, 2007, guidelines for county coroners or coroners' physicians regarding autopsies on persons less than 19 years of age. The bill further allows counties to seek reimbursement of up to 50 percent for the cost of an autopsy from the Attorney General.

Juvenile offenders are given the right to a judicial hearing within 48 hours and courts must review every 14 days the status of a ju-

venile placed in detention. The bill further provides that detention is not considered treatment.

LB 1113 recognizes in law the state's seven child advocacy centers and gives them specific duties in the investigation of child abuse and neglect cases. Meanwhile, the Department of Health and Human Services is given the task of determining whether a minor ward of the court is a foreign national or holds dual citizenship and providing duties in those cases.

And, LB 1113 renames the State Disbursement and Child Support Advisory Commission the Child Support Advisory Commission and provides that the commission is to be convened when the Supreme Court notifies the Executive Board of the Legislative Council of its intent to review the child support guidelines. The two legislative members on the commission are replaced with the chairs of the Judiciary and Health and Human Services committees.

LB 1113 also tackles issues related to the collection of DNA. The bill allows DNA to be collected from convicted offenders by either a cheek swab or a blood draw and exempts accredited laboratories authorized to perform DNA testing from purging all records, samples, and personal identifying information when a person's DNA sample clears him or her of a crime. The exemption from the statutory requirement that law enforcement return samples in such cases is necessary for the Nebraska State Patrol Criminalistics Laboratory to maintain its accreditation with the American Society of Crime Laboratory Directors-Laboratory Accreditation Board.

Among other disparate provisions, LB 1113 requires natural resources districts to ensure that any project undertaken, which is beneficial to the district, gives the public a right of access for recreational use and requires a city or village to ensure that the public has a right of access to property acquired for public purposes. The bill protects against identity theft by deleting references to Social Security numbers in dissolutions of marriage, domestic relations orders, paternity orders, child support orders, and foreign support orders. And, the bill makes various changes to the Community Corrections Council as recommended by the council, including adding three new members and providing authority to award grants to eligible local agencies.

Further, LB 1113 changes the crime of stalking to prohibit the harassment of a stalking victim's family or household members and provides enhanced penalties for stalking if the victim is under 16, the perpetrator possessed a deadly weapon, the perpetrator had a prior conviction within the past seven years against the same victim; or the perpetrator was subject to various protection orders at the time of the stalking charge.

Finally, LB 1113 reinstates a duty for law enforcement to collect racial profiling data. The duty, first created in 2001, expired January 1, 2006. The new requirement extends until 2010.

LB 1113 passed 47-0 and was approved by the Governor on April 13, 2006.

LB 1199—Change Provisions Relating to the Punishment, Prosecution, Treatment, and Monitoring of Sex Offenders (*Bourne, Aguilar, Combs, Connealy, Erdman, Flood, Foley, Friend, Howard, Dw. Pedersen, Stuthman, and Synowiecki, at the request of the Governor*)

Two high profile child abductions and murders by known sex offenders in Florida, the enactment of residency restrictions for sex offenders in Iowa, as well as a case in Lincoln in which a child was sexually assaulted at his school, galvanized the Legislature to deal with sex offenders, particularly violent offenders who prey on children.

LB 1199 emerged from a field of eight sex offender-related bills. Another bill, **LB 1205**, pertaining to the qualifications of persons who treat sex offenders, was amended into LB 1199 via the Committee Amendment.

LB 1199 sets out a comprehensive approach to dealing with sex offenders that includes residency restrictions, civil commitment procedures, longer prison sentences, and lifetime supervision for certain dangerous sex offenders. The bill also creates the new crimes of sexual assault of a child in the first, second, and third degrees and makes a second offense of first-degree sexual assault punishable by a mandatory minimum of 25 years in prison.

LB 1199 allows municipalities to impose residency restrictions against convicted sexual predators of no more 500 feet from a school or day-care. Sexual predators are defined as individuals who have victimized a person 18 years of age or younger, with a high risk of recidivism as determined by the State Patrol.

The bill allows exceptions to the residency restrictions for places where sex offenders reside while receiving treatment and grandfathers in sex offenders who established their residence before July 1, 2006 and have continuously lived there or established their residences after that date but before the school or child-care facility triggering the restriction was established. State law trumps the tougher residency restrictions – some of up to 2,000 feet, mirroring the Iowa statute – that were enacted in several eastern Nebraska communities in response to fears that Iowa's displaced sex offenders would move across the river to Nebraska.

LB 1199 makes several changes to the sex offender registry. Chief among them, the bill increases the penalty for a repeat conviction of failing to comply with Nebraska's Sex Offender Registration Act. The bill also expands the list of offenses that trigger registration to include the new offenses of sexual assault against a child and debauching a minor. It also closes a loophole pertaining to homeless offenders by requiring them to notify the county sheriff within five

working days that they have become homeless and to check in with the State Patrol at least once every 30 calendar days while they remain homeless.

LB 1199 enacts the Sex Offender Commitment Act. The purpose of the act is to provide for the court-ordered treatment of sex offenders who have completed their sentences but continue to pose a threat of harm to others. The bill provides a framework for committing sex offenders separate from but parallel to the civil commitment procedure for persons deemed mentally ill and dangerous.

The Attorney General is notified, along with the appropriate county attorney, when high-risk sex offenders are about to be released from prison, allowing the Attorney General to initiate civil commitment proceedings if the county attorney declines. Civil commitment evaluations must be done prior to the completion of a criminal sentence for violent offenders, repeat offenders, and child predators who refuse treatment.

LB 1199 also provides for lifetime supervision for sex offenders who have more than one conviction for a sex offense, who are convicted of first-degree sexual assault of a child, or who are convicted of or complete a term of incarceration for an aggravated offense as defined in Neb. Rev. Stat. sec. 29-4005. The Office of Parole Administration must perform a risk assessment and evaluation on persons subject to lifetime supervision to determine the conditions of community supervision to be imposed to best protect the public. Conditions imposed on such individuals can include restrictions on employment, leisure time activities, and residence; drug and alcohol testing; and electronic monitoring.

Additionally, every person convicted of a crime requiring registration as a sex offender must attend appropriate sex offender treatment and counseling programs offered by the Department of Correctional Services. Failure to do so triggers an automatic civil commitment evaluation prior to completion of the offender's criminal sentence.

Finally, LB 1199 directs the Director of Health and Human Services Regulation and Licensure to establish a working group to study sex offender treatment and management and recommend improvements. The study is to be completed by December 1, 2006.

LB 1199 passed 47-0 and was approved by the Governor on April 13, 2006.

LR 274CA—Constitutional Amendment to Change Separation of Powers Provisions to Permit Supervision of Individuals Enrolled in Court Programs or Services by the Judicial and Executive Departments as Provided by the Legislature (*Brashear and Synowiecki*)

The growth of drug courts and other specialty courts has drawn attention to the exceptionally strict separation of powers clause in the Nebraska Constitution and gave rise to LR 274CA, which would eliminate separation of powers questions from issues related to offender supervision.

The separation of powers clause prohibits a member of one branch of government from exercising the powers belonging to another branch of government. In Nebraska, probation administration is within the judicial branch and parole administration and corrections are executive branch functions. Specialty courts and the state's new emphasis on community corrections have drawn attention to the inefficiencies of the strict separation of powers clause.

If adopted, LR 274CA would allow individuals sentenced to probation, released on parole, or enrolled in specialized services within a court to be supervised by either the judicial or executive department as provided by the Legislature.

LR 274CA passed 49-0 and was presented to the Secretary of State on April 12, 2006. LR 274CA will appear on the November 2006 general election ballot.

LEGISLATIVE BILLS NOT ENACTED

LR 254CA—Constitutional Amendment to Prohibit Laws Infringing Upon or Interfering with Privacy (*Landis and Combs*)

LR 254CA would have amended Article I of the Nebraska Constitution to prohibit the making or enforcing of any law that would infringe upon an individual's privacy, if ultimately approved by voters.

The proposal would have been placed on the November 2006 general election ballot. It would have added a new section 30 to Article I, which would have read, "This state shall not make or enforce any law which infringes upon or interferes with the privacy of the person, family, home, property, documents, correspondence, or information of any person unless the rights of others are directly infringed or unless public safety can be ensured by no lesser means."

LR 254CA did not advance from committee and died with the end of the session.

NATURAL RESOURCES COMMITTEE

Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 548—Adopt the Public Entities Mandated Project Charges Act (Jensen)

LB 548 allows public power entities to charge customers for the costs of mandated improvement projects. In turn, it allows the entities to let bonds to pay for mandated projects that will be repaid with the dedicated revenue stream from the customer surcharges.

The bill's supporters credited the Omaha Public Power District with developing the funding mechanism, which would allow public power entities to secure bonds with an AAA bond rating instead of an AA rating. The Introducer's Statement of Intent noted that the bill is structured to enable public power entities to obtain favorable financing from the bond market because the dedicated revenue stream from the customer surcharges provides a secure source of repayment.

Mandated projects include capital projects at new or existing electric generation, transmission, or distribution facilities, if undertaken as a result of a state or federal mandate. The bill defines mandate as a federal or state statutory requirement, rule, or regulation; an administrative or judicial order; a licensing requirement of a regional transmission organization; or any consent order or agreement between the federal or state governments or their agents and a public entity.

Under the bill, the governing board of a public power entity can adopt a resolution electing to pay or reimburse mandated project costs, including financing costs, through the use of mandated project charges. The bill sets out requirements for the authorizing resolution, including a description of the mandate to be addressed; the authorization to add a separate charge to each customer's electric service bill that represents the customer's portion of the mandated project charge; and a description of the financial calculation, formula, or other method the public entity used to determine each customer's portion.

LB 548 began life in 2005 as a measure pertaining to the state's tobacco settlement trust fund. However, some provisions of the original LB 548 were amended into **LB 426**, which passed in 2005. The provisions dealing with the mandated projects surcharge were first included in **LB 336** and amended into LB 548 on Select File.

LB 548 passed 46-0 and was approved by the Governor on February 6, 2006.

LB 776—Change Requirements Relating to Disposal of Yard Waste (*Engel*)

LB 776 allows landfills to accept yard waste year-round in order to capture methane gas for use as an energy source. Landfills naturally release methane as organic materials decompose. Methane, an odorless, colorless, and explosive gas, is considered a greenhouse gas with the potential to damage the atmosphere. According to the federal Environmental Protection Agency, municipal solid waste landfills are the largest source of human-related methane emissions in the United States, accounting for about 34 percent of these emissions.

Landfill gas is extracted from landfills using a series of wells and a blower/flare (or vacuum) system. This system directs the collected gas to a central point where it can be processed and treated depending upon its intended use. Ultimately, it can be used to generate electricity, replace fossil fuels in industrial and manufacturing operations, fuel greenhouse operations, or be upgraded to pipeline quality gas.

As an example of how methane gas can be converted into fuel, the introducer cited an ethanol plant being built about one mile from the Jackson landfill, which will use the provisions of LB 776 to capture methane and sell it to the ethanol plant to supplement its natural gas. The Omaha landfill is also using the technology to generate electricity.

Previously, landfills in Nebraska were prohibited from accepting yard waste from April 1 through November 30, unless the yard waste was collected separately from other trash and used to make compost. LB 776 allows landfills to accept yard waste without condition from December 1 through March 31. Landfills can accept yard waste all year if it is to be used for composting or for the production and recovery of methane gas. The bill allows landfills to collect yard waste along with the regular garbage pickup, an added convenience for customers who will not have to separate yard waste from their other trash and a potential gas saver for haulers who will be able to make fewer garbage pickups.

Landfills wishing to capture methane gas must get the approval of the Department of Environmental Quality and must have a permit from the department to operate as a solid waste management facility pursuant to the department's rules and regulations.

LB 776 passed with the emergency clause 44-0 and was approved by the Governor on March 7, 2006.

LB 818—Provide for the Use of Tires as Safety Barriers (*Burling*)

Old tires can get a second life on the racetrack under the provisions of LB 818. Not on the cars, of course, but as a safety barrier. Tires become a notoriously tricky waste product, as they do not

decompose and improperly disposed tires can become a breeding ground for mosquitoes, among other environmental hazards.

LB 818 enacts precautions to preclude tires used for safety barriers from becoming a public safety threat or environmental hazard. Tires must be bolted together and properly wrapped in order to prevent them from harboring mosquitoes. Further, racetrack operators must file an approved tire disposal plan with the Department of Environmental Quality to cover what happens to the tires when no longer used as a safety barrier or when the racetrack closes.

LB 818 passed with the emergency clause 45-0 and was approved by the Governor on March 7, 2006.

LB 975—Change Provisions of the Livestock Waste Management Act (*Natural Resources Committee*)

A federal court ruling that invalidated parts of a rule governing environmental regulation of livestock waste drove enactment of LB 975. The changes affect the state's Livestock Waste Management Act, which legislators had amended in 2004 to comply with the now-disallowed Environmental Protection Agency rule.

The U.S. Appeals Court for the Second Circuit, in *Waterkeeper Alliance, Inc. v. American Farm Bureau Federation, et al.*, 399 F.3d 486 (2d Cir. 2005), invalidated three sections of the rule governing livestock waste control facilities for concentrated animal feeding operations (CAFOs), including one that affects Nebraska's current livestock program. This provision required all large CAFOs to apply for a National Pollutant Discharge Elimination System (NPDES) permit or demonstrate that the operations have no potential to discharge into the state's waters.

Supporters say LB 975 gives guidance to Nebraska's producers left in limbo by the suspension of a rule they were in the process of complying with, while allowing the Nebraska Department of Environmental Quality (DEQ) the flexibility it will need to write regulations implementing the rule once it is revised by the EPA.

LB 975 eliminates the requirement that all large animal feeding operations must have an NPDES permit. Instead, only those animal feeding operations that discharge waste to waters of the state must have an NPDES permit. LB 975 also reinstates a state permit, called a construction and operating permit, which existed in Nebraska law prior to Laws 2004, LB 916. It applies to feeders who do not discharge into state waters and therefore are not covered under the CAFO rule but which are not exempt under the state's Livestock Waste Management Act.

The Sierra Club and livestock producers—groups usually at loggerheads over environmental regulation of the livestock industry—both testified in support of LB 975.

However, the bill, as amended, was not without controversy.

LB 975 also requires county officials to grant conditional use permits or special exceptions to existing CAFOs when the permits or exceptions are sought because the operators are making mandated changes to their livestock waste control facilities and allows limited expansions under certain circumstances. This provision was originally introduced as **LB 1195** and would have allowed existing operations to expand up to 10 percent when making compliance changes. Supporters said the move would be cost effective, since compliance with environmental regulations is costly. Opponents worried that the measure would erode local control.

Both sides compromised with an amendment that limits the number of beef or dairy cows by which an operation could expand. Existing facilities with more than 5,000 beef cattle or 3,500 dairy cattle could not expand under this provision. Facilities not seeking to expand can be granted an unlimited number of permits or exceptions to comply with mandated changes. Further, facilities that wish to expand when making mandated changes cannot receive more than one automatic approval of a special use or exception permit.

Several other bills found their way into LB 975 via amendment.

Existing livestock feeding operations are barred from expanding if their livestock waste control facility is located within one mile of a designated cold water class A stream and within the same cold water class A stream watershed. An exception is granted for a facility operated by the University of Nebraska if DEQ determines, based on scientific information, that the proposed expansion does not pose a potential threat to the stream. New animal feeding operations are barred from being permitted in any part of a cold water class A stream watershed. These measures were originally introduced as **LB 120**.

Another provision requires DEQ to send a copy of a construction and operating permit application to the affected natural resources district board and the county board within five days of receipt and gives the local authorities 30 days in which to comment. This section was originally introduced as **LB 293**.

Finally, LB 975 contains a measure originally found in **LB 901** that requires public notice for applications to a variance from provisions of the Nebraska Environmental Protection Act. Previously, public notice was required only for a renewal of a variance.

LB 975 passed with the emergency clause 45-0 and was approved by the Governor on March 16, 2006.

LB 1226—Change Provisions Relating to Water Appropriations, Water Wells, Ground Water Management and Protection, and Natural Resources District Tax Levies (*Langemeier*)

“Water, water everywhere and not a drop to drink.” Well, not exactly, but with eight natural resources districts or portions of districts in the state deemed fully appropriated, water conservation was much on the minds of Natural Resources Committee members, who heard no fewer than 10 bills dealing with water policy issues of some stripe. LB 1226 combines water-related measures originally introduced in five separate bills and a sixth bill pertaining to noxious weeds.

Among its more substantive provisions, LB 1226 creates two new grant programs to be funded with annual General Fund appropriations and increases the taxing authority of certain natural resources districts. To a large extent, LB 1226 tinkers with the technicalities of Laws 2004, LB 962 and addresses problems with its implementation. Laws 2004, LB 962 integrates the management of groundwater and surface water and provides a framework for natural resources districts (NRDs) to proactively manage water usage in the state’s river basins. It requires an annual evaluation of those river basins not already subject to an integrated water management plan by the Department of Natural Resources. If the department determines that a basin is fully appropriated or over-appropriated, it immediately suspends new uses until the department and the affected NRD develop a basin-wide, water management plan.

LB 1226 establishes the Interrelated Water Management Plan Program, a grant program to be administered by the department and the Natural Resources Commission, upon recommendations by the commission. Its purpose is to help fund water management duties given NRDs under the Nebraska Ground Water Management and Protection Act. The commission is given the task of developing guidelines for the grant program. The program establishes a state budget line item for ongoing appropriation purposes. The appropriations bill accompanying LB 1226 gives the program \$2.5 million each in fiscal years 2006-07 and 2007-08 from the General Fund. NRDs receiving the grants must provide a local match equivalent to 20 percent of the total project cost. These provisions were originally introduced in **LB 805**.

The bill also bestows a grant program on cities and counties to help them deal with their particular water albatross, storm water runoff. LB 1226 establishes the Storm Water Management Plan Program, a grant program to help cities and counties comply with the federal Clean Water Act’s requirements to manage storm water runoff under the National Pollutant Discharge Elimination System (NPDES). These provisions were originally introduced in **LB 1097**. Funding for this grant program would also be from General Fund appropriations, but the program would be administered by the Department of Environmental Quality. LB 1226A appropriates

\$2.5 million each in fiscal years 2006-07 and 2007-08. Cities and counties must have a storm water management plan approved by DEQ that meets NPDES requirements and provide a 20 percent local match in order to qualify for the grants.

LB 1226 also allows NRDs that contain river basins deemed fully or over appropriated to increase their tax levy by up to three cents for fiscal year 2006-07 and two cents for fiscal years 2007-08 and 2008-09. The extra revenue is intended to be used to administer and implement water conservation strategies. These provisions were originally found in **LB 971**.

LB 1226 also makes numerous technical changes to the Water Policy Task Force's recommendations that were originally introduced in **LB 933** and **LB 805**.

Among these changes is an exemption, with some exceptions, for municipalities and nonmunicipal commercial and industrial water users from restrictions imposed in areas deemed fully or over appropriated, because, as supporters said in testimony before the committee, "Municipalities have to serve their systems." The exemption ends January 1, 2026, when the bill provides a mechanism for determining how to set usage allocations for municipalities and commercial entities.

Finally, LB 1226 contains a weed control measure originally introduced as **LB 1081**, which was heard by the Agriculture Committee. This provision grants a limited right of entry to weed control authorities to carry out certain control projects without the prerequisite of individual landowner notice required by Neb. Rev. Stat. sec. 2-955. The Introducer's Statement of Intent notes that the authority would be particularly helpful for projects to control weeds growing in riparian areas where ownership is often ambiguous. Authorities still must publish notice of the weed control plans in one or more newspapers of general circulation in the area over which the weed authority has jurisdiction and must do so weekly for four successive weeks prior to the project's start.

LB 1226 passed with the emergency clause 45-2 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 783—Prohibit Hunting through the Internet (*Mines*)

What isn't available via the ubiquitous Internet these days? Hunting in Nebraska, for one, if supporters of LB 783 had had their way.

The bill's introducer said he had read about Internet websites that set up remote-control hunting sites with rifles and cameras in hunting areas. Participants use a computer mouse to fire the guns. A representative of the Nebraska Game and Parks Commission

called the practice “unethical.” Supporters of the measure, however, did not think the potential for Internet hunting was imminent in Nebraska.

LB 783 would have amended the state’s Game Law to prohibit hunting through the Internet, which the bill defined as hunting wildlife in real time using Internet services to remotely control actual firearms and to remotely discharge live ammunition. Hosting hunting through the Internet or otherwise enabling another to hunt via the Internet also would have been prohibited. The bill would have allowed any firearm, computer, equipment, appliance, or conveyance used to hunt game in Nebraska over the Internet to be seized by authorities as contraband and forfeited to the state.

Hunting through the Internet or hosting hunting through the Internet would have been a Class II misdemeanor, with a fine of not less than \$75. Persons found guilty of this offense would have been prohibited from hunting, fishing, or trapping in Nebraska for a period of not less than one year from the date of sentencing.

LB 783 advanced to General File but died with the end of the session.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Elaine Stuhr, Chairperson

ENACTED LEGISLATIVE BILLS

LB 366—Change Contribution Rate and Membership Provisions for State and County Retirement Plans (*Nebraska Retirement Systems Committee*)

In an effort to improve pension benefits for state and county employees, the Legislature enacted LB 366.

Specifically, the bill raises contribution rates for members of the state employees retirement system to 4.8 percent of pay. Prior law required state employees to contribute 4.33 percent on the first \$19,954 of salary and 4.8 percent of salary over that amount. Because the state matches the employee contribution at a rate of 156 percent, the increased contribution level also results in a higher state contribution.

The higher contribution rate is partly the result of a consultant's study of the state's pension system, conducted by the Public Employees Retirement Board and completed in 2000. The study concluded that total annual contributions to a state employee's retirement account should equal approximately 12 percent of his or her salary to provide an adequate retirement benefit. With the passage of LB 366, the total contribution to an employee's account will exceed 12 percent.

LB 366 makes additional changes to improve the retirement prospects for new members of both the state and county employees retirement systems. The bill prescribes that permanent, full-time employees of both plans be enrolled when they begin work. Previously, full-time employees were allowed to enroll only after they had worked for 12 months. Additionally, the bill allows permanent, part-time employees who are at least 20 years old to choose to join their state or county plan upon employment.

LB 366 passed 46-0 but was vetoed by the Governor. The motion to override the Governor's veto passed 30-14 on April 13, 2006.

REVENUE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 542—Create the Tax Policy Reform Commission (*Burling, Baker, Bourne, Combs, Erdman, Janssen, Kremer, Loudon, Price, Schrock, Stuhr, Stuthman, Synowiecki, Foley, Wehrbein, Kruse, Jensen, Engel, D. Pederson, and Friend*)

Finding there are significant issues relating to tax policy that need periodic review, the Legislature enacted LB 542 to create the Tax Policy Reform Commission.

The commission is a 16-member group of legislators, other public officials, and private citizens. Eight of the commission's members are legislators appointed by the Executive Board of the Legislative Council. The remaining eight members include the Tax Commissioner; the Director of Economic Development; four persons appointed by the Governor, including one economist, one representative of production agriculture, one representative of industry and manufacturing, and one representative of the telecommunications sector; and two persons appointed by the Executive Board, including one representative of the labor sector and one representative of the low-income sector. The commission is to select a chairperson from its membership and must meet at least four times a year.

LB 542 directs the commission to: (1) evaluate current Nebraska tax policies and how they relate to generally recognized tax policies of adequacy, equity, competitiveness, simplicity, and accountability and recommend improvements; (2) examine household and business tax burdens as compared to the United States as a whole and to states that have demographics similar to Nebraska and recommend improvements; (3) examine tax rates as compared to the United States as a whole and to states that have demographics similar to Nebraska and recommend improvements; (4) evaluate current business tax incentive programs and recommend improvements; (5) examine demographic changes in Nebraska, anticipate the effects of such changes on revenue adequacy and stability for Nebraska in the future, and recommend changes; (6) examine previous studies, including the "Comprehensive Tax Study" conducted by Syracuse University from 1986 to 1988, and determine whether any recommendations from the studies can be used in the commission's research; and (7) issue a preliminary report containing findings and recommendations to the Executive Board and the Governor by December 15, 2006 and, by December 15, 2007, issue a final report with any recommendations for legislation to reform tax policy, including, if appropriate, drafts of proposed language for legislation.

The commission can hold public hearings throughout Nebraska to receive input from the public on pertinent issues. To help carry out its mission, the commission can get assistance from employees of the Department of Revenue, the Department of Property Assessment and Taxation, and the Legislative Council. LB 542 further requires the commission to contract with a meeting facilitator and authorizes the commission to contract with experts from any institution of postsecondary education in Nebraska to provide assistance, specific research, research or policy reports, or presentations to carry out the commission's duties.

Funding for the commission cannot exceed \$100,000, and the commission terminates on December 31, 2007.

LB 542 passed with the emergency clause 40-2 and was approved by the Governor on April 11, 2006.

LB 965—Adopt the Long-Term Care Savings Plan Act and Authorize Related Individual Income Tax Benefits; Repeal the Long-Term Care Partnership Program Development Act; and Create the Long-Term Care Partnership Program (*Jensen, Cunningham, Combs, Redfield, Erdman, Smith, and Price*)

LB 965 adopts the Long-Term Care Savings Plan Act.

Individual Income Tax Benefits of the Long-Term Care Savings Plan Act

To the extent not deducted for federal income tax purposes, LB 965 allows individuals to make monetary contributions to a long-term care savings plan under the act and reduce their federal adjusted gross income (AGI) for Nebraska income tax purposes by: (1) up to \$2,000 for married joint filers and up to \$1,000 for single filers, head-of-household filers, and married separate filers; and (2) the amount of investment earnings made as a participant in a qualified plan. However, lifetime contributions cannot exceed \$165,000, as adjusted for inflation pursuant to Internal Revenue Code (IRC) sec. 151.

Certain qualified participants (i.e., an individual age 65 or older who has a medical necessity for long-term care during the taxable year or a disabled person who has a medical necessity for long-term care during the taxable year) can make withdrawals as a participant in the plan to pay or reimburse long-term care expenses. Other qualified participants (i.e., an individual age 62 or older who made payments for long-term care insurance premiums during the taxable year) can make withdrawals as a participant in the plan to pay or reimburse long-term care insurance premiums.

If a nonqualified participant makes a withdrawal for any reason other than transferring funds to a spouse, paying long-term care expenses or long-term care insurance premiums, or death of the participant (including withdrawals made because the participation

agreement was canceled or the plan terminated), the participant's AGI must be increased by an amount equal to the withdrawal, to the extent such amount was previously deducted as a contribution or as investment earnings. Moreover, any nonqualified participant who withdraws funds for any reason other than the above allowable reasons must pay a penalty tax equal to 10 percent of the amount withdrawn. The State Treasurer collects all revenue received from the penalty taxes.

Establishment and Administration of the Long-Term Care Savings Plan Act

The Nebraska long-term care savings plan is established via the passage of LB 965. The bill requires the State Treasurer to select a plan administrator and permits the State Treasurer to promulgate rules and regulations to carry out its duties under the act. If there are no acceptable responses to a request for proposals for a plan administrator by November 1, 2006, the State Treasurer can enter into agreements with state or federally chartered banks, savings banks, building and loan associations, savings and loan associations, or credit unions or a subsidiary of any such entity to receive contributions in the form of account deposits. If a plan administrator is not selected, participants can make contributions to an account with a financial institution with which the State Treasurer has an agreement.

If a plan administrator is selected, participants must enter into participation agreements with the State Treasurer. Each participation agreement must provide that the agreement can be cancelled or transferred to a spouse upon terms and conditions established by the plan administrator. If a participation agreement is canceled or the Nebraska long-term care savings plan is terminated, a participant can receive the principal amount of all contributions made by or on behalf of the participant plus the actual investment earnings on the contributions, minus any losses incurred on the contributions. A participant cannot receive more than the fair market value of his or her account under the participation agreement on the applicable liquidation date.

Outright Repeal the Long-Term Care Partnership Program Development Act and Establish the Long-Term Care Partnership Program

Provisions of **LB 854** were amended into LB 965. The measure outright repeals the Long-Term Care Partnership Program Development Act, which was first enacted by Laws 2005, LB 709, and establishes the Long-Term Care Partnership Program to be administered by the Department of Health and Human Services Finance and Support, in accordance with federal requirements on state long-term care partnership programs. To implement the program, the department must file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. sec. 1396p(b).

LB 965 passed 45-0 and was approved by the Governor on April 13, 2006.

LB 968—Income, Sales, and Property Tax Changes (*Redfield, Erdman, Foley, Friend, Combs, Preister, Smith, Mines, and Stuhr*)

As introduced, LB 968 would have reduced the number of individual income tax brackets from four to three and would have built in an inflation adjustment for future years. However, adoption of the Committee Amendment and other amendments during floor debate dramatically altered the provisions of LB 968. As enacted, LB 968 generates an estimated \$100 million in broad-based tax benefits for income, sales, and property taxpayers and includes provisions of six other bills: **LB 798, LB 810, LB 959, LB 960, LB 1033, and LB 1171.**

Income Tax Changes

LB 968 creates—for the first time in Nebraska—an earned income credit (EIC) tied to the federal EIC. Operative for tax years beginning on or after January 1, 2006, the act provides for a refundable individual income tax credit equal to eight percent of the federal EIC allowed under Internal Revenue Code (IRC) sec. 32.

For tax years beginning after 2005, LB 968 changes income tax brackets for individual income tax return filers, except estates and trusts. As under the former law, there are four income brackets for each class of tax return filer (i.e., single, married joint, head-of-household, and married separate). In general, the changes made by LB 968 are beneficial for individual income taxpayers. The following table shows the old and new income brackets for each class of tax return filer (changed amounts are shown in bold typeface).

Nebraska’s Old and New Individual Income Brackets

Single		Married Joint		Head-of-Household		Married Separate	
Old	New	Old	New	Old	New	Old	New
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
\$2,400	\$2,400	\$4,000	\$4,000	\$3,800	\$3,800	\$2,000	\$2,000
\$17,000	\$17,500	\$30,000	\$31,000	\$24,000	\$25,000	\$15,000	\$15,500
\$26,500	\$27,000	\$46,750	\$50,000	\$35,000	\$35,000	\$23,375	\$25,000

Also operative for tax years beginning on or after January 1, 2006, LB 968 eliminates the forced phase-out of the standard deduction, itemized deductions, and tax credit for dependents that applied to high-income taxpayers.

LB 968 *eliminates*—for tax years beginning on or after January 1, 2006—the requirement that a taxpayer who claims the so-called federal “bonus depreciation” deduction or deduction under IRC sec. 179 for qualified capital expenditures must add back to adjusted gross income (in the case of an individual income taxpayer)

or taxable income (in the case of a corporate or fiduciary income taxpayer): (1) 85 percent of the amount of federal bonus depreciation deducted for federal income tax purposes; and (2) the amount deducted under IRC sec. 179 that exceeds \$25,000.

Property Tax Changes

Beginning January 1, 2007, agricultural and horticultural land is valued for purposes of property taxation at 75 percent (formerly 80 percent) of its actual value. The acceptable range of value for such land is 69 to 75 percent of actual value for purposes of equalization. When determining "state aid value" and when applying the special valuation rules, such land also is valued at 75 percent of its actual value.

LB 968 cements the K-12 property tax levy limit at \$1.05 per \$100 of taxable value. That levy limit had been slated for reduction to \$1.00 per \$100 of taxable value beginning in fiscal year 2008-09.

Operative January 1, 2007, LB 968 changes Nebraska's homestead property tax exemptions as follows:

- (1) For purposes of the exemption based on the claimant's household income, the exempt amount is the lesser of (a) the homestead's taxable value or (b) 100 percent of the average assessed value of single-family residential property in the claimant's county of residence or \$40,000, whichever is greater. In addition, the bill redefines "maximum value" to mean 200 percent of the average assessed value of single-family residential property in the claimant's county of residence or \$95,000, whichever is greater.
- (2) For purposes of the exemption based on disability and the claimant's household income and the exemption for certain veterans and widows or widowers of certain veterans, the exempt amount is the lesser of (a) the homestead's taxable value or (b) 120 percent of the average assessed value of single-family residential property in the claimant's county of residence or \$50,000, whichever is greater. In addition, the act redefines "maximum value" to mean 225 percent of the average assessed value of single-family residential property in the claimant's county of residence or \$110,000, whichever is greater.

Sales and Use Tax Changes

Beginning July 1, 2006, a sales and use tax exemption is available for labor of a construction contractor purchased in connection with:

- (1) The first or original construction of a new structure, building, or unit. This provision is similar to the old law, except that the act specifies that the first or original construction must be construction of a *new* structure, building, or unit.

- (2) Construction, repair, or annexation of any structure used to generate, transmit, or distribute electricity. (This provision is the same as under the current law.)
- (3) The major addition, remodeling, restoration, repair, or renovation of an existing structure or building or a unit of an existing building that is a single construction project of any type that costs at least 50 percent of the current assessed value of the existing structure or building or unit of an existing building.
- (4) Construction services on dwellings designed for occupancy by one family or duplexes designed for occupancy by two families.

LB 959 also makes changes to the provisions governing refunds of sales and use taxes paid for certain construction services. Construction services performed on an owner-occupied residential unit are subject to sales and use taxes, except that beginning July 1, 2006, the owner is entitled to a refund of any sales or use taxes paid by the owner in certain situations—including any sales tax paid on labor for a qualified major addition, remodeling, restoration, repair, or renovation—if an application for a sales tax refund is filed with the Department of Revenue along with certain supporting information. However, until July 1, 2007, a taxpayer can still seek prior approval from the department that a qualified project and the labor performed in annexing building materials to real estate will be exempt from tax.

LB 968 purports to exempt from sales and use taxes purchases of building materials and construction services by a qualified housing agency; *but* Laws 2006, LB 1189, outright repeals the exemption and replaces it with a similar exemption. LB 1189 is discussed on page 82.

Other Provisions in LB 968

The bill expresses legislative intent to transfer \$5 million in General Fund money to the Ethanol Production Incentive Cash (EPIC) Fund for fiscal year 2005-06 and fiscal year 2006-07. (The \$5 million figure is in addition to other amounts that the Legislature has already expressed its intent to transfer from the General Fund to the EPIC Fund for those fiscal years.)

LB 968 passed with the emergency clause 42-2 and was approved by the Governor on April 6, 2006.

LB 990—Change the Nebraska Advantage Rural Development Act and the Beginning Farmer Tax Credit Act (*Wehrbein, Baker, Connealy, Erdman, Fischer, Hudkins, Kremer, Langemeier, Raikes, Schrock, Stuhr, Stuthman, Combs, and Smith*)

LB 990 makes changes to the Nebraska Advantage Rural Development Act and the Beginning Farmer Tax Credit Act for purposes

of allowing tax credits for (1) livestock modernization or expansion and (2) livestock production.

Changes to the Nebraska Advantage Rural Development Act

LB 990 requires a taxpayer's application for an agreement with the Tax Commissioner for benefits under the act to contain a written statement describing the type of livestock production and the investment amount. The application and all supporting information is confidential, except for the name of the taxpayer, the location of the project, and the amount of increased employment and investment.

The Tax Commissioner must approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that (1) the plan in the application defines a project that meets the requirements for credits under the act, (2) such requirements will be reached within the required time period, and (3) for projects that are not livestock modernization or expansion projects, the project is located in an eligible county or enterprise zone.

LB 990 allows refundable sales and income tax credits for a taxpayer who (1) has an approved application, (2) is engaged in livestock production, and (3) after January 1, 2007, invests at least \$50,000 for livestock modernization or expansion. The amount of the credit is 10 percent of the amount invested or \$30,000, whichever is less. A livestock producer can qualify for such credit or for the act's credit for increased employment and investment, but he or she cannot qualify for more than one credit per application.

LB 990 exempts livestock modernization or expansion projects from the act's project-specific reporting requirements. However, the bill requires certain information about such projects to be disclosed in the Tax Commissioner's annual report on the Nebraska Advantage Rural Development Act; namely, the taxpayer's identity, the total credits used and refunds approved during the preceding calendar year, and the location of the project.

Changes to the Beginning Farmer Tax Credit Act

Changes to the Beginning Farmer Tax Credit Act were first proposed in **LB 346**. The provisions were added to LB 990 by amendment and are operative for all credits earned in tax years beginning after 2006.

The act authorizes two refundable individual income tax credits. One credit is available only to an owner of agricultural assets, while the other is available only to individuals who qualify as a beginning farmer or livestock producer for tax years beginning after 2005.

The latter credit is a one-time credit for a qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement and is for the cost of participating in the act's required financial management program. The credit is equal to the lesser of \$500 or the cost incurred during the tax year for participating in an approved financial management program. The act requires the Beginning Farmer Board to certify the eligibility of beginning farmers and livestock producers for the one-time tax credit. The act also requires the board to meet at least twice a year, rather than at least four times a year under prior law.

The tax credit for a qualified rental agreement is equal to 10 percent of the gross rental income stated in the rental agreement that is a cash-rent agreement in its first, second, or third year; or 15 percent of the cash equivalent of gross rental income in a rental agreement that is a share-rent agreement. To qualify for the greater rate of credit, a share-rent agreement must provide for sharing production expenses or risk of loss, or both, between the agricultural asset owner and the qualified beginning farmer or livestock producer. If a rental agreement is not approved and certified by the board, the board cannot approve the related tax credit.

LB 990 also directs the board to adopt and promulgate rules and regulations consistent with the act and to further define the standards that share-rent agreements must meet for approval and certification of the tax credit under the act.

LB 990 passed 44-1 and was approved by the Governor on April 11, 2006.

LB 1189—Change Sales and Use Tax Exemptions (*Synowiecki, Baker, Connealy*)

Operative July 1, 2006, LB 1189 creates three new sales and use tax exemptions and expands an existing sales and use tax exemption for certain molds and dies.

LB 1189 creates sales and use tax exemptions for:

- (1) Purchases of fine art by any museum, which is defined as an institution located in Nebraska and operated by a non-profit corporation or a public agency, primarily for educational, scientific, historic preservation, or aesthetic purposes, and which owns, borrows, cares for, exhibits, studies, archives, or catalogs property. Museum includes, but is not limited to, historical societies, historic sites or landmarks, parks, monuments, libraries, and zoos.
- (2) Purchases by any nonprofit organization certified by the Department of Health and Human Services to provide

community-based services for people with developmental disabilities.

- (3) Purchases by a local or regional housing agency, or controlled affiliates of a housing agency, except for any commercial operation that does not exclusively benefit the residents of an affordable housing project.

LB 1189 amends the definition of manufacturing machinery and equipment to include materials necessary to create molds and dies that are exempt from sales and use taxes. The tax exemption applies whether the molds or dies are permanent or temporary in nature and applies to any chemicals, solutions, or catalysts used in the mold or die process even if such items are consumed during the course of the mold or die process.

LB 1189 passed with the emergency clause 43-0 and was approved by the Governor on April 12, 2006.

LEGISLATIVE BILLS NOT ENACTED

Economic Development Tax Incentives—LB 478, LB 500, and LB 1105

Three proposed economic development tax incentive measures made it out of committee and advanced to Select File but failed to advance any further.

For retired military personnel working in certain high-wage defense-related civilian sector jobs, **LB 478**, introduced by *Senators Cornett, Aguilar, Baker, Brown, Byars, Combs, Connealy, Erdman, Flood, Foley, Friend, Janssen, Jensen, Johnson, Koppin, Kruse, Pahls, Smith, Synowiecki, Thompson, Dw. Pedersen, and Redfield*, would have exempted from individual income taxes military retirement income equal to “one-half the income earned as wages and salaries by the taxpayer . . . to the extent that such wages and salaries exceed \$40,000 during the tax year.” The exemption would have been operative for tax years beginning after 2005.

LB 500, introduced by *Senators Landis and Koppin*, would have adopted the Entertainment and Tourism Development Act to permit local governments to create entertainment and tourism districts and to finance qualified business development within the district by issuing bonds backed by sales and use tax revenue generated within the district. Newspaper reports indicate the bill aimed to entice Cabela’s, a Nebraska-based retailer of outdoor sporting equipment, to construct another retail store within the state. Despite being a retail establishment, a Cabela’s store—with its distinctive outdoors sport theme—is considered by some people to be a tourist and entertainment destination in itself. An amendment adopted during 2006 floor debate rewrote the bill so that it would apply to athletic stadiums too—a provision meant to help finance a new stadium for the Omaha Royals, the Triple-A farm

team affiliated with major league baseball's Kansas City Royals. The adopted amendment also contained provisions governing the exercise of eminent domain powers in connection with the acquisition of a project site pursuant to the bill.

LB 1105, introduced by *Senator Landis*, would have changed the name of the Convention Center Facility Financing Act (originally enacted in 1999) to the Convention Center Facility and Sports Arena Facility Financing Act and would have allowed financial assistance for sports arenas and convention centers even if fewer than 50 percent of attendees are from states other than Nebraska. LB 1105 would have redefined "new regional, national, or international event" to include a sporting event, concert, or other recreation or entertainment event held in a sports arena approved for financial assistance under the act. That would have been an important change because the act defines "new regional, national, or international event" to include a convention only if the convention had not been held in Nebraska during the three-year period immediately preceding construction of the convention facility and at least half of the participants at the convention are from states other than Nebraska. In addition, the adopted Committee Amendment would have allowed an annual stockholders' meeting that was held in Nebraska before construction of the Qwest Convention Center in Omaha and that draws more than 10,000 attendees (e.g., Berkshire Hathaway's annual stockholder meeting) to qualify as a "new event" for purposes of the act.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Tom Baker, Chairperson

ENACTED LEGISLATIVE BILLS

LB 79—Change Provisions Relating to Railroad Crossing Safety (*Baker and Brown*)

LB 79 requires the closure of any public railroad crossing without gates, signals, alarm bells, or warning personnel if the crossing is located within one-quarter mile of a public railroad crossing equipped with gates, signals, alarm bells, or warning personnel. The bill provides exceptions to the closure if the crossing is the only railroad crossing which provides access to property.

Additionally, the bill allows any interested party to object to the crossing closure by filing a written objection with the Department of Roads. The objection must be completed by a Nebraska-licensed professional engineer who is familiar with the statutory requirements and all other aspects of the railroad crossing and must include a statement detailing why the crossing should not be closed. As part of the statement, the engineer must verify he or she has personally examined the crossing and believes it to be safe.

LB 79 passed 45-0 and was approved by the Governor on April 13, 2006.

LB 663—Change Provisions Relating to Certificates of Title for Assembled, Kit, and Historical Vehicles and Mobile and Manufactured Homes (*Cudaback and Baker*)

Receiving certificates of title for historical, assembled, and kit vehicles will be easier with the passage of LB 663.

Historically, certificates of title were not issued for vehicles manufactured prior to 1940, and this was a problem for vehicle collectors and restorers. Prior law required a certificate of title to bear the date of any major component part installed in the vehicle after the vehicle's manufacture. This was a problem for historical car owners who believed the date on the title did not accurately reflect the vehicle's true, historical nature. LB 663 is intended to fix the problem.

Generally, LB 663 authorizes the issuance of a certificate of title indicating the year, make, and model originally designated by the vehicle manufacturer for a historical vehicle (a vehicle manufactured more than 30 years ago) upon inspection and verification by a qualified car club representative that the vehicle is essentially the

same in design and material to that originally supplied by the manufacturer.

Additionally, the bill prescribes similar procedures for certificates of title for assembled and kit vehicles, except that a certificate of title for an assembled or a kit vehicle indicates the vehicle year as the year application for title is made and the make of the vehicle as assembled.

The bill provides processes and procedures for a car club to become recognized and a recognized car club member to become qualified by the department. A “car club” is defined as “an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.”

The fee to register a certificate of title for a historical, an assembled, or a kit vehicle is \$25.

LB 663 also authorizes historical vehicle owners to apply for historical license plates or use license plates of the vehicle’s manufacture year. If a vehicle owner wants to use license plates of the vehicle’s manufacture year, the plates must be inspected by the Department of Motor Vehicles (department) to make sure the plates are legible and serviceable and that the plate numbers do not conflict or duplicate any already assigned numbers.

LB 663 also includes the provisions of **LB 1215**, which prescribe a procedure for the surrender of a certificate of title for any mobile or manufactured home when the home is affixed to real property. Specifically, the bill directs the owner of the mobile or manufactured home to present the certificate of title, along with an affidavit of affixture, on a form provided by the department, to the appropriate county official, who then records the cancellation, notifies the department, and delivers a duplicate original to the register of deeds for the county in which the real property is located.

Once the certificate of title is canceled, the mobile or manufactured home is considered part of the real estate to which it is affixed.

LB 663 passed with the emergency clause 45-0 and was approved by the Governor on March 16, 2006.

LB 853—Change Provisions Relating to Motor Vehicles and Transportation (*Stuthman*)

As originally introduced, LB 853 updated references to federal law relating to motor vehicle registrations, operators’ licenses, and oc-

cupant protection systems. During the course of the 2006 session, the bill also became the “vehicle” for several other bills heard by the Transportation and Telecommunications Committee. In addition to its original provisions, as enacted, LB 853 includes provisions of **LB 631, LB 796, LB 832, LB 895, LB 947, and LB 1172.**

LB 853 provides an expedited process for the Department of Motor Vehicles to follow when a trucking company, required to pay registration fees or fuel taxes under the International Registration Plan Act (IRPA) or the International Fuel Tax Agreement Act (IFTA), pays the fees or taxes with an insufficient funds check or draft. (These provisions were originally included in LB 947, and according to the Introducer’s Statement of Intent, the bill is aimed at “giving the department a means to deal with the few bad actors, but not affect the majority of trucking companies that comply with the law.”)

Specifically, the bill directs the Director of Motor Vehicles, after seven days’ written notice, to suspend, revoke, cancel, or refuse to renew a license or registration issued under the IRPA or IFTA, if the check or draft is returned because of insufficient funds, no funds, or a stop-payment order. The director can immediately reinstate the license or registration upon receipt of payment by the company of any fees or taxes due, plus reasonable administrative costs.

The trucking company can contest the department’s action; however, the contested action does not stay the department’s order.

LB 853 also changes the law relating to school permits, by authorizing a court to impound or revoke a school permit upon violation of the terms of the permit. Prior law allowed only the revocation of the permit.

Uniformed military personnel operating military vehicles can operate such vehicles in Nebraska without a Nebraska-issued commercial driver’s license pursuant to changes prescribed in LB 853. Personnel must have a valid military driver’s license unless an individual is operating the vehicle under written order from a commanding officer in a declared emergency.

In order to comply with findings of the recent federal commercial driver’s license and commercial motor vehicle audit by the Federal Motor Carrier Safety Administration, LB 853 authorizes the operation of commercial motor vehicles by license holders from other jurisdictions and changes provisions relating to LPC-learner’s permits. According to the Introducer’s Statement of Intent, compliance is necessary to preserve the receipt of federal highway funds.

LB 853 further allows local authorities to place and maintain road name signs on the same sign posts as signs under the jurisdiction

of the Department of Roads as long as the signs do not hinder highway visibility.

And, the Department of Roads is given more flexibility when issuing permits for entering a freeway. When a highway is converted into a freeway, restrictions relating to use of the freeway by certain vehicles, such as farm tractors, are often added. Prior law authorized the department to issue one-time permits to enter the freeway only in cases of extreme emergency. LB 853 eliminates the reference to an extreme emergency, thus giving the department more flexibility when making its decision.

Finally, LB 853 changes the length limitations on certain vehicles pursuant to changes in length allowances at the federal level. Specifically, the bill authorizes the operation of a truck tractor and two trailers or semitrailers if the length of the property-carrying units does not exceed 81 feet, 6 inches and the combination is only used to transport equipment used by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during harvest. And, the length limitation for a driveaway saddle-mount vehicle transporter combination is increased from 75 feet to 97 feet.

LB 853 passed with the emergency clause 45-0 and was approved by the Governor on March 16, 2006.

LB 1008—Change Provisions Relating to Operators’ Licenses for Persons Wearing Bioptic and Telescopic Lenses (*Stuthman and Price*)

Beginning January 1, 2007, operators’ licenses issued to persons using bioptic and telescopic lenses will be valid for two years from the date of issuance unless specifically restricted to a shorter renewal period, according to the provisions of LB 1008. Prior to such date, operators’ licenses were only issued annually.

LB 1008 further provides that the examining optometrist or ophthalmologist who makes the determination that a person needs bioptic or telescopic lenses to operate a vehicle must also indicate when the person should be reexamined. If the interval between examinations is two years or more, the person’s operator’s license is valid for two years; if the interval between examinations is less than two years, the license is only valid for that time period.

Finally, LB 1008 increases the fees for the issuance of licenses or provisional operators’ permits with bioptic or telescopic lens restrictions, which are valid for more than one but not more than two years.

LB 1008 passed 48-0 and was approved by the Governor on March 13, 2006.

LB 1069—Provide for Reimbursement of Transportation Costs for Eligible Persons and to Eliminate Certain Provisions Related to Transportation of Hazardous Materials (*Byars*)

Transportation for persons eligible to receive transportation services from the Health and Human Services System (HHSS) is made easier with the passage of LB 1069.

LB 1069 authorizes the Department of Health and Human Services Finance and Support to reimburse a person for his or her costs when the person transports another who is eligible for HHSS transportation services if:

- (1) The driver is under contract with HHSS and provides transportation to the eligible person; and
- (2) The eligible person chooses the driver.

The bill limits the reimbursement amount to a rate no greater than that prescribed for state employees, which currently is 44.5 cents per mile, and specifically states that the transportation provided is not to be deemed transportation for hire.

The bill's sponsor pointed out that passage of the measure would eliminate the need for certain persons to take taxis or hire van transportation services, which can be very expensive for many. Supporters also highlighted the peace of mind a choice brings to those dependent on transportation services.

In addition to transportation services, LB 1069 includes provisions originally prescribed in **LB 801**, which eliminate the requirement that transporters of hazardous materials in intrastate commerce register with the Public Service Commission.

LB 1069 passed 46-0 and was approved by the Governor on April 6, 2006.

LB 1222—Change Provisions Relating to Enhanced 911 Service (*Transportation and Telecommunications Committee*)

With the passage of LB 1222, the Legislature authorizes the assessment of a surcharge of up to 50 cents for wireless telephone (cell phone) customers in a city of the metropolitan class and up to 70 cents for cell phone customers in the rest of the state. (Omaha is Nebraska's only city of the metropolitan class.) As cell phone use increases exponentially, supporters of LB 1222 emphasized the importance of providing access to 911 emergency services for cell phone users throughout the state and the need for increased funds to make 911 service a reality for all.

The bill directs the Public Service Commission to: (1) collect the surcharges and remit the collected funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund; and (2) establish a mechanism for determining the level of funding available to each

public safety answering point (PSAP) and wireless carrier. However, the commission is not required to provide compensation for costs to more than one PSAP in any county.

If any county does not have enhanced wireless 911 service, the bill allows the commission to designate a PSAP that has enhanced services to receive wireless 911 service calls placed from that county and to relay calls to the appropriate emergency service provider.

Finally, LB 1222 directs every county in Nebraska to implement enhanced 911 service by July 1, 2010.

LB 1222 passed with the emergency clause 41-2 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 958—Change Provisions Relating to Vehicle Weight (*Heidemann, Burling, Byars, Combs, Connealy, Cunningham, Erdman, Fischer, Flood, Hudkins, Janssen, Kremer, Loudon, McDonald, Schrock, Smith, and Stuthman*)

LB 958 would have changed certain vehicle weight limitations by allowing a load of grain or products to exceed the maximum load limit by not more than 15 percent on any single tandem axle.

LB 958 advanced to General File but died with the end of the session.

LB 1151—Provide for Firefighters License Plates (*Cornett and Pahls*)

LB 1151 would have authorized the design and marketing of a Nebraska Firefighter license plate. To be eligible to receive the specialized plate, the applicant would have to be serving as a volunteer or full-time firefighter in Nebraska, as verified by a letter signed by the fire chief of the department in which the firefighter was serving.

Fees for the firefighter plates would have been credited to the Firefighter Response Cash Fund, which would have been used to fund training for firefighters and other emergency response providers.

LB 1151 advanced to General File but died with the end of the session.

URBAN AFFAIRS

Senator Mike Friend, Chairperson

ENACTED LEGISLATIVE BILLS

LR 2CA—Constitutional Amendment to Authorize the Use of Revenue Bonds to Develop and Lease Property for Use by Non-profit Enterprises (*Landis*)

LR 2CA proposes an amendment to Article XIII, section 2, of the Nebraska Constitution, to authorize the use of revenue bonds to acquire, develop, or lease property for use by certain nonprofit enterprises.

The proposed amendment empowers the Legislature to authorize a county, city, or village to issue revenue bonds to acquire, own, develop, and lease real and personal property for use by nonprofit enterprises. The revenue bonds are to be used to defray the cost of the property's acquisition and development. (A similar amendment, LR 4CA, was adopted by the Legislature in 2002, appeared on the 2002 general election ballot, but was defeated.)

While the amendment mandates any property acquired pursuant to this provision be dedicated to a public purpose, the amendment specifically prohibits use of the property as a place for sectarian instruction, devotional activities, or religious worship.

Additionally, the amendment prohibits a political subdivision from using its power of condemnation to acquire the property and from operating the property as a business.

Finally, the amendment provides that revenue bonds issued under this provision will not become general obligation bonds of the issuing political subdivision.

LR 2CA passed 40-0 and was presented to the Secretary of State on February 28, 2006. The amendment will appear on the general election ballot in November 2006.

LR 272CA—Constitutional Amendment to Remove the Requirement that Property be Blighted for Purposes of Rehabilitating, Acquiring, or Redeveloping the Property through Use of Debt (*Connealy and Redfield*)

LR 272CA proposes to amend Article VIII, section 12, of the Nebraska Constitution. The proposed amendment specifically removes the requirement that a city or village declare property as substandard and blighted in order to use public debt or special property tax treatment (known as tax increment financing) to develop, rehabilitate, acquire, or redevelop the property.

Additionally, the proposal expands the use of tax increment financing to county projects and city or village projects located outside the corporate boundaries of the city or village.

Finally, the proposal authorizes the Legislature to extend the term of tax increment financing from 15 to 30 years if more than one-half of a project's property area is owned by the State of Nebraska and the indebtedness incurred for the project cannot reasonably be financed within 15 years. (A version of this concept was first presented in LR 275CA.)

LR 272CA passed 44-0 and was presented to the Secretary of State on April 13, 2006. The proposal will appear on the general election ballot in November 2006.

LB 75—Constitutional Amendment to Authorize the Investment of Public Endowment Funds by Political Subdivisions (*Beutler*)

As originally introduced in 2005, LB 75 authorized cities of the metropolitan and primary classes to make public improvements and assess the costs of those improvements. However, on General File, the original provisions were replaced via amendment with a proposed amendment to Article XI, section 1, of the Nebraska Constitution.

As enacted LB 75 amends Article XI, section 1, of the Nebraska Constitution, which authorizes the Legislature to allow cities, villages, school districts, public power districts, and other political subdivisions to invest their public endowment funds in a manner and in investments as the governing bodies of the political subdivisions may determine, subject to limitations by the Legislature.

A similar amendment, **LR 18CA**, was introduced in 2005.

The proposed amendment is in response to an Attorney General's opinion, which held that the Nebraska Constitution prohibited the expanded investment authority prescribed in this proposal. The amendment corrects the deficiency.

LB 75 passed 42-0 and was presented to the Secretary of State on April 3, 2006. The measure will appear on the general election ballot in November 2006.

LB 1066—Change Provisions Relating to Proposed Proprietary Budget Statements (*Connealy*)

With the passage of LB 1066, a budget statement filed pursuant to the Municipal Proprietary Budget Function Act must include a description of the revenue received from all sources, the amount received by taxation, and the amount of actual expenditures for the immediately preceding fiscal year. (Prior law mandated the inclusion of the fiscal information for the preceding two fiscal years.) The purpose of the change is to make the budget statement re-

quirements mirror the budget statement requirements prescribed in the Nebraska Budget Act.

Proprietary functions generally are nongovernmental activities conducted by a city or village, which generate revenue for the city or village and for which funds are expended based on customer demand. Proprietary functions can include a water supply or distribution utility; a wastewater collection or treatment facility; an electric generation, transmission, or distribution utility; or a hospital or nursing home owned by the city or village.

LB 1066 passed 48-0 and was approved by the Governor on March 13, 2006.

LB 1175—Change Provisions Relating to Certain Installment Contracts, Redevelopment Projects, Issuance of Citations for Code Violations, Construction Contracts, and Mutual Finance Organizations (*Urban Affairs Committee*)

LB 1175 addresses several areas of concern raised by representatives of a variety of political subdivisions.

As originally introduced, the bill's purpose was to insure that any municipal finance organization created pursuant to the Mutual Finance Assistance Act (MFAA), which qualified for state funds, was truly operating jointly and in conformity with either the Interlocal Cooperation Act or the Joint Public Agency Act. (A mutual finance organization is an entity that allows local governments to provide services under a common tax levy.) As enacted, LB 1175 also includes the provisions of **LB 452**, **LB 850**, **LB 1029**, and **LB 1173**.

LB 1175 requires any mutual finance organization making an application for funding to submit to the State Treasurer, in addition to the application, any additional financial information detailing how any funds received under the MFAA in the immediately preceding year were expended or distributed. The bill further directs the State Treasurer to provide copies of the financial reports to the Legislature and prohibits the disbursement of any additional funds to the mutual finance organization until it has provided the required information.

Fire and building inspectors in cities of the second class and villages can issue fire, safety, health, and building code violation citations with the passage of LB 1175. Inspectors in all other Nebraska cities already possess this authority.

LB 1175 also authorizes cities of the primary class to purchase real property by installment contract or lease agreement. Prior law only allowed primary-class cities to purchase personal property in this manner. (Currently, Lincoln is Nebraska's only city of the primary class.)

Additionally, the bill requires a sanitary and improvement district to bid out all contracts for construction work or the purchase of equipment or materials estimated to cost more than \$20,000. The contract must be awarded to the lowest responsible bidder.

Finally, LB 1175 changes provisions relating to redevelopment projects using tax increment financing. Current law requires a redevelopment authority to file with the county assessor notice of its intent to use tax increment financing. LB 1175 provides that failure to file the notice prohibits the use of tax increment financing for any of the taxable years affected by the failure. The bill further provides that the valuation of the redevelopment project for the remaining years in which tax increment financing is used is to be the last certified valuation for the taxable year immediately prior to the date of the financing application. (In other words, failure to file the requisite notice does not impact the valuation of the property.)

LB 1175 passed with the emergency clause 45-1 and was approved by the Governor on April 13, 2006.

LB 1249—Change Provisions Relating to the State Natural Gas Regulation Act (*Landis*)

With the adoption of the State Natural Gas Regulation Act (state act) in 2003, Nebraska was no longer the only state without some form of state-level natural gas regulation. The state act empowered the Public Service Commission (PSC) to exercise its “full power, authority, and jurisdiction to regulate natural gas utilities” in Nebraska. However, the grant of power prescribed in the state act was not without limits. While the PSC was allowed to regulate rates and services of private, investor-owned companies, municipally owned providers and the Metropolitan Utilities District (MUD) generally were exempt from the commission’s regulatory control.

While the state act transferred regulatory authority over natural gas service areas, the act did not address the issue of natural gas service area boundaries. The boundary issue has become increasingly contentious as investor-owned utilities and public natural gas providers compete for new customers. In 2005, five bills were introduced proposing various solutions to the problem. Unfortunately, no measure garnered the votes for passage and no compromise was reached.

The issue continued to dominate the Urban Affairs agenda in 2006. All sides continued to aggressively advocate their positions on the boundary issue. However, unlike 2005, the 2006 session resulted in the passage of LB 1249, a compromise measure aimed at resolving the boundary dispute.

As enacted, LB 1249 changes procedures for natural gas providers to follow when expanding service to a new area.

The bill requires a natural gas provider to notify the PSC of its intent to expand service in a new area prior to installing any natural gas pipes. The PSC then determines whether the expansion is in the public interest, by notifying the public of the proposed expansion and holding a public hearing. If no protest (alleging the expansion is not in the public interest) is filed with the PSC within 15 business days, the proposed expansion is presumed to be in the public interest.

LB 1249 exempts MUD from the prescribed expansion procedures if MUD is expanding its service area within Omaha's boundaries or its extraterritorial zoning jurisdiction. However, the bill specifically states that the exercise of eminent domain within Omaha and its extraterritorial jurisdiction by MUD is considered to be in the public interest.

LB 1249 passed 46-0 and was approved by the Governor on April 13, 2006.

LEGISLATIVE BILLS NOT ENACTED

LB 907—Change Provisions Relating to Payment of Outstanding Obligations of Annexed Fire Protection Districts (*Price*)

As amended by the committee and advanced to General File, LB 907 would have established that on the date of annexation of a fire protection district by a municipality, the municipality assumes responsibility for paying the portion of the district's outstanding obligations attributable to the annexed area.

Additionally, the bill would have directed the municipality and fire protection district to conduct an accounting to determine a division of the assets, liabilities, maintenance, and other district obligations based upon the valuation of the portion of the district being annexed and the valuation of the district remaining. The municipality would have been required to pay to the district the difference between the value of the liabilities remaining after the division of the assets.

The bill further would have: required the municipality to provide the district with formal notice at least 10 days before the public hearing on the proposed annexation; and clarified that the municipality would be responsible for fire and rescue service to the annexed area as of the date of annexation.

LB 907 remained on General File and died with the end of the session.

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