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Session Review:

One-Hundredth Legislature, Second Session

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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the One-Hundredth Legislature of Nebraska, Second Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2008 session. Information gathered from committee counsels, other legislative staff, staff of the Legislative Fiscal Office, legislative records, and the *Unicameral Update* is 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.

A word about effective and operative dates—

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have (1) a specific operative date or (2) the emergency clause is July 18, 2008.

Enacted legislation with a specific operative date takes effect on that date.

If enacted legislation has no specific operative date but passes with the emergency clause, the measure takes effect the day after the Governor signs the measure. For example, if a bill passes with the emergency clause and the Governor signs the measure on April 9, the bill becomes effective April 10.

AGRICULTURE COMMITTEE

Senator Philip Erdman, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1116—Provide for Relocation of the Nebraska State Fair (*Erdman and Aguilar*)

The Nebraska State Fair figured prominently during the 2008 legislative session, and it was for good reason. The move from what has been the fair's home in Lincoln for more than a century to Grand Island, a location deeper in the state's agricultural heartland, is one of the most significant changes in its long history.

The fair has been an annual event since 1868. Early fairs were held in Nebraska City and Brownville, but most were in Lincoln and Omaha. In 1901, the fair was established at its current site, adjacent to the University of Nebraska-Lincoln (UNL) campus. The fair has undergone significant changes in recent years. After years of declining revenue and attendance and deteriorating facilities, it was given a more solid financial foundation, and responsibility for the fair was moved from the State Board of Agriculture to the State Fair Board (board). In 2004, voters approved a ballot measure that provided a lottery subsidy for the fair, which has averaged \$2.7 million annually and has been instrumental in helping the fair secure financial stability.

The idea of moving the fair gained momentum in 2006 when a Lincoln business group proposed acquiring the 251-acre fair site to build a research park. The group also proposed moving the fair to a location in east Lincoln. Other possible locations for the fair included Grand Island, Kearney, North Platte, Sarpy County, and other Lincoln sites.

Controversy surrounding the fair prompted passage of Laws 2007, LB 435. The bill directed the Agriculture Committee, in cooperation with the board, to address two different futures for the fair. The committee hired a consultant, who estimated the cost of establishing an ideal fair at a new location to be around \$175 million. The consultant attached a \$30-million price tag to renovate the Lincoln fair site.

Several bills were introduced during the 2008 session to resolve the uncertainty over the fair's future. However, LB 1116 became the vehicle that settled the issue. With passage of LB 1116, Fonner Park in Grand Island becomes the permanent home of the Nebraska State Fair by 2010. The bill directs the board to work with the city of Grand Island, the Hall County Livestock Improvement Association, and other entities to implement the move, including making improvements and building new facilities, and to help pay for the improvements.

LB 1116 divides the cost of moving the fair, estimated to be \$42 million, among the interested parties. UNL is to provide \$21.5 million from university funds, private donations, and the sale of university lands. Grand Island is to furnish \$8.5 million; the board is to kick in \$7 million; and the state must provide \$5 million from the Cash Reserve Fund. Payments are to be made according to a schedule, with a deadline of July 1, 2009. Additionally, the bill creates the Nebraska State Fair Relocation Cash Fund to receive funds to be used by the board for developing the new fair site.

The bill also implements the development of a research park to be known as Innovation Park at the Lincoln fair location. The measure instructs the Director of Administrative Services to transfer the Nebraska State Fairgrounds in Lincoln to the Board of Regents of the University of Nebraska for development as a research park by December 31, 2009. Before the transfer takes place: (1) UNL and Grand Island must complete their payments for moving the fair; and (2) UNL must submit a master plan and a business plan for the research park by December 1, 2009.

The composition of the State Fair Board is also changed by LB 1116. The current ex-officio members, the chancellor of the University of Nebraska-Lincoln and the chairperson of the Nebraska Arts Council, are replaced by the 4-H Program Administrator of the Cooperative Extension Service of the University of Nebraska and the Executive Director of the Nebraska FFA, or their designees. Both will be nonvoting members.

In addition to membership changes, the bill changes the qualifications for the four board members appointed by the Governor. Three members will continue to represent the state's business community; however, one must now reside in each of the state's three congressional districts. A fourth member will represent the Grand Island business community. Seven members will continue to be elected from county fair districts.

Current board members can complete their terms and be eligible for reappointment, except that the member representing Lincoln will immediately be replaced by the Grand Island representative. The bill retains three-year terms, but new appointees' terms will no longer be staggered. The fair board provisions were originally in **LB 1115**.

Proponents of LB 1116 supported creating a fair that focuses more on agriculture, with the potential to draw people from across the state to a location in central Nebraska. Backers of the research park said it was vital to UNL's future and would have a positive economic impact on the state, partly by providing "new economy" jobs to keep young Nebraskans at home.

Opponents questioned the use of state money to move the fair and wondered whether Grand Island's population base was sufficient to support a profitable fair. They also raised concerns that the state's costs for the research park may mushroom.

LB 1116 passed 44-3 and was approved by the Governor on April 18, 2008.

LB 1027—Provide a Personal Property Tax Exemption Under the Beginning Farmer Tax Credit Act (*Erdman, Burling, Dubas, Fulton, Hudkins, Karpisek, Loudon, and McDonald*)

LB 1027 amends provisions of the Beginning Farmer Tax Credit Act, providing an additional tax incentive for Nebraskans to use the beginning farmer program. Begun in 1999, the program encourages established owners of agricultural land to rent land to beginning farmers and ranchers. The tax credits are intended to compensate a landowner for some of the risk of renting to a new farmer.

The percentage of Nebraska farmers under age 35 has declined substantially over the years. The program is meant to increase the number of new farmers and generally promote agriculture, the state's economic pillar. However, participation in the program has been below expectations, and proponents introduced LB 1027 to increase the number of program participants.

The bill provides a new tax credit directly to the beginning farmer, as opposed to the landowner. Under the bill, farm machinery and equipment used by the beginning farmer on his or her farm is exempt from Nebraska's personal property tax. Exemptions are capped at \$100,000 per year and are limited to one three-year period. The bill prescribes procedures for: (1) applying for the exemption; and (2) filing a protest if an application for the tax break is denied by a county assessor.

Secondly, by enacting provisions that were originally in **LB 875**, the measure expands the definition of "owner of agricultural assets"—the landowner who rents land to a beginning farmer—by eliminating residency, labor, and income requirements. The measure also relaxes the provision prohibiting a landowner who is a relative, partner, or fellow shareholder or trustee of the beginning farmer from receiving the credit. The prohibition does not apply if the rental agreement includes a written succession plan, such as a contract, providing for the land's transfer from the landowner to the beginning farmer.

LB 1027 passed 47-0 and was approved by the Governor on April 21, 2008.

LB 1172—Adopt the Food Supply Animal Veterinary Incentive Program Act (*Dierks, Dubas, and McDonald*)

LB 1172 adopts the Food Supply Animal Veterinary Incentive Program Act, the goal of which is to provide more food supply, or livestock, veterinarians for Nebraska's rural areas. (Food supply or livestock veterinarians provide medical services for large animals owned by farmers and ranchers. Small-animal vets serve pet owners.)

The bill directs the Department of Agriculture (department) to select four applicants annually for the program. Each vet will receive \$80,000, divided over four years, if he or she locates in a rural community approved by the department. (The department will emphasize placement of vets in shortage areas.) The vet must establish a full-time livestock veterinary practice or a mixed practice with a substantial livestock component.

The shortage of livestock veterinarians is related to the growth of pet veterinary medicine. Generally, it is believed that pet veterinary medicine: (1) can be more lucrative; (2) has more traditional work hours; and (3) is more likely practiced in larger communities with more amenities. The shortage of livestock vets is worsened because vets who serve owners of both livestock and pets are finding that the pet component of their practices has increased over the years.

LB 1172 also creates the Food Supply Animal Veterinary Incentive Fund to receive legislative appropriations and other public and private funds to carry out the purposes of the act.

LB 1172 passed 48-0 and was approved by the Governor on April 21, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 1174—Restrict Entity Ownership of Agricultural Land and Farm and Ranch Operations (*Dierks, Chambers, Dubas, Karpisek, Preister, and Wallman*)

LB 1174 would have essentially adopted Initiative 300 (I-300) in the statutes, opening a new front in the long and heated battle over who should own agricultural land and livestock in Nebraska.

A series of federal court decisions finally overturned I-300, Nebraska's ban on corporate farming and ranching. Passed by the voters as a constitutional amendment in 1982, I-300 prohibited nonfamily corporations from owning farmland or livestock. While other Midwestern states had prohibitions on corporate farming, Nebraska's ban, by virtue of its placement in the Constitution, was considered one of the strictest.

Over the years, I-300 survived repeated attempts to change or repeal it, by legislation, petition drive, and court challenge. In 2005, I-300 was overturned by the United States District Court, holding that the amendment violated the commerce clause of the U.S. Constitution because the constitutional provision made it difficult for non-Nebraskans to establish a family farm corporation. The decision was upheld by the Eighth Circuit Court of Appeals. Then, in 2007, the United States Supreme Court declined to review the lower court rulings, essentially affirming them.

As amended by the committee, LB 1174 would have banned corporations, limited liability companies, limited liability partnerships, limited partnerships, cooperative associations, and other entities from owning farm or ranch land or engaging in farming or ranching.

However, LB 1174 also would have exempted specific entities and activities from the ban, including family farm or ranch entities, owner-operator controlled farms and ranches, poultry operations, nonprofit corporations, and farms owned or leased by an Indian tribal corporation on its reservation. Other exceptions, such as seed growers and nurseries, would have been included.

The bill would have defined a family farm or ranch entity as one that farms or owns agricultural land and whose majority ownership is held by: (1) members of a family; or (2) a trust created for the benefit of a family member. To qualify as a family farm entity, a family member must also have been actively engaged in the day-to-day labor and management of the farm.

The committee amendment to LB 1174 would have provided more flexibility than I-300, in that it would have allowed one type of business, the limited liability entity, to farm and own farmland. The entity could have consisted of up to five unrelated partners, all of whom had to be farmers, but only one of whom had to be actively engaged in the management of the joint agricultural operation. The manager could have been located in or outside Nebraska. This would have opened the door for out-of-state farmers to farm in Nebraska, addressing the courts' commerce clause objections.

LB 1174 would have addressed another of the courts' objections, regarding the rights of the disabled, by requiring that any qualifications to farm must be interpreted with regard to the Americans with Disabilities Act.

Finally, the bill would have directed the Secretary of State to monitor farms and purchases of farm land and to notify the Attorney General of any possible violations. When notified, the Attorney General would have been obligated to sue in district court to enforce the law. In the event the two constitutional officers failed to carry out their duties, the bill would have empowered Nebraskans to sue in district court to enforce the law.

LB 1174 advanced to General File, where it was bracketed, and died with the end of the session.

APPROPRIATIONS COMMITTEE

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Adjustments—LB 959, LB 960, and LB 961

2008 marks the midway point in Nebraska's biennial budget cycle. Legislators use the 60-day session to make adjustments necessary to ensure a balanced budget for the remainder of the biennium. While the budget picture looked fairly robust in the Fall of 2007, by January, the revenue picture facing the 2008 Legislature was cloudy. State aid to schools took a large chunk out of the projected budget surplus, forcing lawmakers to re-evaluate the state aid formula for public schools and to hold the line on new spending

LB 959, LB 960, and LB 961, each introduced by *Speaker Flood* at the request of the Governor, comprise this year's budget adjustment package. Generally, the budget reflects a spending growth rate of 3.9 percent for fiscal year 2007-2008 and 5.3 percent for fiscal year 2008-2009. The bulk of the budget adjustments are included in LB 959. LB 960 appropriates funds necessary for salaries and health insurance costs, and LB 961 provides various cash fund transfers.

In addition to the budget package, senators tackled the state aid formula and enacted **LB 988**, which substantially changes the formula and reduces the projected increase in state aid to schools by approximately \$61 million in fiscal year 2008-2009 and \$44 million in fiscal year 2009-2010. LB 988 is discussed beginning on page 23.

Whether to increase the gas tax was one of the "hot button items" of this year's budget debate. As enacted, LB 959 includes an appropriation of \$14.5 million to the Department of Roads. Because the department is funded through a variable gas tax and based on existing revenue estimates, the appropriation results in an increase in the gas tax of approximately 1.2 cents per gallon. During debate on the measure, supporters of the appropriation said the increase would not substantially impact the average driver, while opponents noted the already high price of gas and countered that even a small increase was too much. (The gas tax is also the subject of **LB 846**, which was heard by the Revenue Committee and is discussed beginning on page 74.)

Funding the Beatrice State Developmental Center also occupied center stage during the budget debate. The center was the subject of a report by the U.S. Department of Justice, which questioned the quality of care received by the center's residents and was highly critical of the center. Several amendments were offered to try and address some of the problems cited in the report. Amendments adopted included an appropriation of \$1.5 million in un-

used federal funds to be used to fund staff recruitment and retention efforts and a proposal to allow unexpended appropriations resulting from reduced or discontinued services at the center to be transferred to community-based developmental disability aid and medical assistance.

In recognition that issues surrounding the center need in-depth study, the Legislature approved **LR 283**, which creates a special legislative committee to investigate the center and the issues included in the Justice Department's report. The resolution is discussed on page 31.

Several additional amendments were offered to LB 959, some of which were adopted, including a provision requiring the Department of Roads to provide more detailed information on appropriations for transportation for those who have disabilities.

Amendments transferring \$30,000 from the General Fund to the Agricultural Marketing Information Cash Fund and providing an additional \$500,000 for community aging programs were also adopted.

Other significant appropriations included in LB 959 are:

- \$52.9 million for state aid to schools;
- \$20 million to replace the university and state college information system;
- \$3.9 million for state employee health insurance; and
- \$3 million for developmental disability provider rate increases; and
- \$2.6 million for behavioral health provider rate increases.

As enacted, LB 959 also includes provisions of **LB 807** and **LB 811**.

LB 959 passed with the emergency clause 39-9. Governor Heineman returned the bill with one line-item veto: the appropriation to the Department of Roads, which based on existing revenue estimates results in the gas tax increase. However, the Legislature overrode the veto by a vote of 34-15.

LB 960, which appropriates funds for salaries and health insurance costs, passed with the emergency clause 48-0 and was approved by the Governor on April 2, 2008.

LB 961, which makes various cash fund transfers, passed with the emergency clause 48-0 and was approved by the Governor on April 2, 2008. Provisions originally prescribed in **LB 862**, which change funding provisions of Nebraska's noxious weed program, are included in the bill.

During discussion of LB 961, several senators questioned whether the Legislature could (or should) access funds available in the

various state agency cash funds, as well as whether the Legislature needed to maintain such a large cash reserve (approximately \$500 million). Appropriations Committee members cautioned senators regarding use of the cash funds and noted that the budget process does not offer a lot of flexibility.

LB 956—Change Provisions Relating to Job Training Grants (*Schimek, Ashford, and Dubas*)

With the passage of LB 956, supporters hope to give a leg up to small, rural, and poverty-area employers. Specifically, LB 956 creates a subaccount within the Job Training Cash Fund to provide grants for employers who: (1) employ 25 or fewer people; (2) are located in rural Nebraska; or (3) are located in areas of high concentration of poverty within the corporate limits of a city or village.

The bill also directs the Department of Economic Development to give priority consideration to training services offered by local community college areas.

Finally, the bill requires the department to annually report to the Legislature's Appropriations Committee information regarding each active job training project for which a grant is received. Required information includes the number of positions to be trained, whether new or existing employees are to be trained, the length of time the project has been active, the amount of committed funding, the funding paid out to date, and the projected completion date. And, the department must provide information summarizing the use of community college areas in the training process. If private or in-house training services are used, the department must report the name and qualifications of the service provider.

LB 956 passed 46-0 and was approved by the Governor on April 17, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 587—Eliminate Limitations on Appropriations for County Jail Reimbursement Assistance (*Cornett, Dubas, Gay, Hansen, and Synowiecki*)

For several years, the state has provided reimbursement assistance to county jails for the maintenance and care of state prisoners. In 2002, the Legislature adopted LB 11, which limited reimbursement to the amount appropriated by the Legislature, which is approximately \$3.9 million a year.

Known as the Jail Reimbursement program, the state appropriation allows the program to pay counties a reimbursement rate of approximately \$35 per day; however, the actual daily cost for housing state prisoners is \$78.

LB 587 would have eliminated the reimbursement limitation. Supporters of the measure indicated that the bill would have resulted in property tax relief because counties would be forced to increase property taxes to make up the cost difference if the cap was not removed. Opponents countered that counties are responsible for the care of all prisoners in their jails.

The bill advanced to General File. However, recognizing the other important issues facing the Legislature and the limited amount of time available in the session, the bill's principal sponsor moved to bracket LB 587 until April 17, 2008. The bill died with the end of the session.

Fund the State Expressway System—LB 771, LB 1035, and LB 1139

Completion of the state expressway system was on the minds of many legislators as several proposals addressing the issue were introduced this session. Three bills were heard by the Appropriations Committee, each proposing a means to fund the state expressway system. In addition to these bills, **LB 1034** and **LB 1129** were heard by the Transportation and Telecommunications Committee and are summarized beginning on page 90.

The state expressway system was created in 1988. The system proposes the construction of 600 miles of four-lane highways, designed to link many of Nebraska's smaller communities with the Interstate highway system. While much of the system is complete, approximately 179 miles remain unfinished. Supporters of the expressway proposals believe that completion of the system is necessary to ensure the continued vitality of many of Nebraska's communities.

LB 771, introduced by *Senator Gay*, would have created the Expressway Construction Fund and transferred \$50 million from the Cash Reserve Fund to the Expressway Construction Fund. The fund would have been used to complete construction of the state expressway system.

LB 1035, introduced by *Senator Loudon and Senator Avery*, also would have created the Expressway Construction Fund and called for the transfer of \$16 million from the Cash Reserve Fund. Additionally, the bill would have adopted the map entitled "NEBRASKA EXPRESSWAY SYSTEM" on page 53 of the 2006 State Highway Needs Assessment as the state expressway system.

LB 1139, introduced by *Senator Johnson*, would have transferred \$73 million from the Cash Reserve Fund to the Highway Cash Fund for purposes of building a four-lane expressway between Columbus and Fremont.

None of the expressway bills passed this session, but completing the expressway system is the subject of at least three study resolutions: **LR 232**, **LR 321**, and **LR 360**. It is likely the Legislature will revisit the issue in 2009.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 848—Update the Nebraska Limited Cooperative Association Act to Conform to Changes in the Model Limited Cooperative Association Act (*Erdman*)

LB 848 updates the Nebraska Limited Cooperative Association Act. The changes conform to the Model Limited Cooperative Association Act, as amended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) during the summer of 2007.

LB 848 allows a consolidation of a Nebraska limited cooperative association (LCA). Prior law only allowed mergers. Specifically, LB 848 permits any one or more LCAs to merge or consolidate with or into any one or more LCAs, limited liability companies (LLC), general partnerships, limited partnerships, cooperatives or corporations. It also allows any one or more LLCs, general partnerships, limited partnerships, cooperatives, or corporations to merge or consolidate with or into any one or more LCAs.

The legislation also sets forth certain requirements that—unless the LCA's articles of organization or bylaws provide otherwise—a merger or consolidation plan must meet and likewise provides requirements for approving a merger or consolidation plan, including votes needed for approval of the plan.

Additionally, LB 848 makes several coordinating changes to existing statutes governing LCA mergers so that those statutes will also apply to consolidations, including provisions governing when a merger or consolidation becomes effective, recordkeeping requirements, how a person can become a member of an LCA, and merger or consolidation of an LCA subsidiary organization into itself or into another subsidiary.

LB 848 amends rules governing the calling of special members' meetings and the voting rights, if any, of investor members. The bill also amends laws governing the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members. As such, amounts paid or due on contracts for the delivery to the LCA by its patron members of products, goods, or services are not considered amounts allocated to patron members and amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocable to investor members.

LB 848 allows certain distributions of property—other than cash—to be redeemed or repurchased as provided in the LCA's articles of

organization or its bylaws. However, no redemption or repurchase is allowed without full and final authorization by the LCA's board of directors. The board can withhold authorization for any reason.

The legislation also prohibits an LCA from making a distribution if, after the distribution: (1) the LCA would not be able to pay its debts as they become due in the ordinary course of the LCA's activities; or (2) the LCA's assets would be less than the sum of its total liabilities. LB 848 prescribes rules for determining whether a distribution would be prohibited and rules for measuring the effect of an allowable distribution. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is to be treated as a distribution, the effect of which is measured on the date the payment is made. However, a distribution does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

LB 848 reforms other rules pertaining to and governing an LCA's board of directors. The bill permits an LCA's board to adopt policies and procedures that do not conflict with the LCA's articles of organization, its bylaws, or the act. The bill also conforms laws governing voting for directors; suspension of a director by the board; and when, how, and why a director can be removed from the board.

Furthermore, LB 848 expressly provides that a director who consents to a distribution that violates the act is personally liable to the LCA for the amount of the distribution that exceeds the amount that could have been distributed without violating the act; however, it must be established that in consenting to the distribution the director failed to comply with the act. If a lawsuit is brought against a director for consenting to a distribution that violates the act, the director can implead any other director who is liable and compel contribution from that director.

Additionally, a member of an LCA or a holder of financial rights who received a distribution knowing that the distribution violated the act's rules prohibiting certain distributions is personally liable to the LCA, but only to the extent that the distribution exceeded the amount that could have been properly paid under the act.

A lawsuit for any violation of the act must be brought within two years after the distribution.

LB 848 makes a number of other changes, including changing the act's provisions governing marketing contracts; clarifying key terms; authorizing the Nebraska Secretary of State to issue a certificate of good standing (formerly a certificate of existence) to an LCA; permitting an LCA to commence business if it has only one member (two or more patron members are otherwise required), but that one member must be an entity organized under the Ne-

braska Limited Cooperative Association Act, the Nonstock Cooperative Marketing Act, or Nebraska's statutes that govern cooperative companies, including cooperative farm land companies.

LB 848 passed 45-0 and was approved by the Governor on April 16, 2008.

LB 851—Omnibus Financial Institution Legislation (*Banking, Commerce, and Insurance Committee*)

LB 851 is the annual legislation that gives state-chartered banks, savings and loan associations, and credit unions the same rights, powers, and privileges as their federally chartered brethren.

As amended by the committee amendment, LB 851 also includes a variety of changes to the Uniform Commercial Code (UCC) and Nebraska's laws governing financial institutions, including the Nebraska Banking Act, the Nebraska Trust Company Act, the Interstate Branching By Merger Act of 1997, the Credit Union Act, the Delayed Deposit Services Licensing Act, and the Mortgage Bankers Registration and Licensing Act.

LB 851 includes the provisions of six different bills, each of which was advanced to General File by the committee during the 2007 and 2008 legislative sessions:

- **LB 113** redefines the term “bank” for purposes of the Interstate Branching By Merger Act of 1997 to mirror the federal definition.
- **LB 116** amends provisions of the UCC that govern priority of purchase-money security interests in personal property that is livestock. The bill defines “possession” to mean (1) possession by the debtor; or (2) possession by a third party on behalf of or at the direction of the debtor, including possession by a bailee or an agent of the debtor.
- **LB 716** amends provisions of the UCC that govern the effect of certain errors or omissions involving financing statements. Errors that result from computerized searches (using the filing office’s “standard search logic”) will not make a financing statement seriously misleading if the search—in the case of a debtor who is an individual—uses the debtor’s correct last name.
- **LB 717** amends various provisions of the Nebraska Banking Act and the Nebraska Trust Company Act. The bill also amends statutes governing: building and loan associations; mergers and acquisitions of financial institutions; the commencement and limitation of certain lawsuits; and notary publics. The bill includes several other provisions governing financial institutions, including one which increases from 20 to 30 years the period in which a cause of action

for foreclosure of a mortgage or deed of trust accrues with respect to the rights of subsequent purchasers and encumbrances for value.

- **LB 852** amends various sections of the Mortgage Bankers Registration and Licensing Act and the Delayed Deposit Services Licensing Act. The bill also amends the Nebraska Installment Loan Act to provide that a public hearing (when the requirement for such a hearing is not waived by the Director of Banking and Finance) on an application for an original installment loan license will take place (1) after the application has been accepted by the director as “substantially complete” and (2) not less than 30 days after the last publication of notice of such hearing in a qualified legal newspaper.
- **LB 918** amends the Nebraska Bank Holding Company Act of 1995 so that the 22-percent deposit cap (i.e., 22 percent of total bank and savings and loan deposits in Nebraska) that applies to bank holding companies does not apply to segregated deposits from nonresidents of Nebraska in an owned or controlled bank. The bill amends the Interstate Branching By Merger Act of 1997 to harmonize a statutory reference.

LB 851 passed with the emergency clause 47-0 and was approved by the Governor on March 19, 2008.

LB 853—Change Provisions of the Viatical Settlements Act (*Banking, Commerce, and Insurance Committee*)

LB 853 changes provisions of Nebraska’s Viatical Settlements Act, which was first enacted in 2001. The adopted committee amendment struck all of the introduced bill’s original provisions, except those pertaining to Nebraska’s Viatical Settlements Act. No other substantive amendments to LB 853 were adopted and its provisions pertaining to viatical settlements were enacted as introduced.

The Viatical Settlements Act provides for licensing and regulating viatical settlement providers and brokers and governs viatical settlement contracts. A viatical settlement contract often involves a situation where a terminally ill individual sells the right to collect a life insurance policy’s death benefits on his or her life and, in exchange for that, receives something of value from the buyer (e.g., a lump-sum payment of money in an amount equal to a percentage of the life insurance policy’s death benefit). Such contracts are often called stranger-originated life insurance (STOLI) transactions.

Unless one or more of the act’s exceptions apply, the act prohibits a viator (i.e., the owner of a life insurance policy or the holder of a certificate under a group life insurance policy who resides in Nebraska and who enters or seeks to enter into a viatical settlement

contract) from entering into a viatical settlement contract until after the life insurance policy has been in force for at least five years (two years under former law).

LB 853 creates an exception to that prohibition—so that the viator must wait only two years rather than five years—if: (1) the premiums for the life insurance policy have been paid from unencumbered assets; (2) there is no agreement or understanding with any other person to buy the life insurance policy, guarantee any liability for payment of the policy premiums, or forgive any indebtedness; and (3) there has been no evaluation for settlement of either the policy or the insured person.

However, LB 853 repeals several exceptions to the act's waiting period for certain viators, including exceptions for: a viator that is a tax-exempt charitable organization; a viator that is not a natural person; a viator who employed the insured when the policy was issued and the employment relationship terminated; a viator who experienced a significant and unexpected decline in income that impaired the viator's reasonable ability to pay the policy premiums; and a viator or insured who disposed of his or her ownership interest in a closely held corporation.

LB 853 does a number of other things too, including requiring viatical settlement brokers to make numerous disclosures and, unless otherwise exempt, to complete 15 hours of training relating to viatical settlements every two years. Certified financial planners, certified public accountants, and licensed attorneys-at-law are exempt from the licensure requirements that apply to viatical settlement brokers if certain conditions are met.

The act's enforcement provisions and penalties do not apply to a viator unless the viator commits a fraudulent act. LB 853 also provides that a violation of the act, including a fraudulent act, is an unfair trade practice under Nebraska's Unfair Insurance Trade Practices Act.

LB 853 was hotly contested during floor debate and cloture was invoked to halt debate to advance the bill to Final Reading. On Final Reading, a motion was made to return the bill to Select File but the motion was not approved.

LB 853 passed 40-2 and was approved by the Governor on April 17, 2008.

LB 855—Omnibus Legislation Governing Insurance (*Banking, Commerce, and Insurance Committee*)

LB 855 is the annual legislation that makes various changes to Nebraska's laws governing insurance. Among other things, the legislation changes Nebraska's standards governing employer-sponsored group life insurance so that those standards conform to the standards of the National Association of Insurance Commissioners Model Act and it adds two more groups—including credit

unions—to the list of groups authorized by Nebraska statutes to offer group life insurance coverage to their members.

Provisions of three bills were amended into LB 855.

LB 779 changes requirements for filing certain statements with the Director of Insurance under the Multiple Employer Welfare Arrangement Act.

LB 854 adopts the Discount Medical Plan Organization (DMPO) Act and makes related changes to Nebraska's statute governing criminal insurance fraud and the Insurance Fraud Act. The purpose of the DMPO Act is consumer protection, and it establishes standards meant to protect consumers from unfair or deceptive marketing, sales, and enrollment practices of discount medical plan organizations.

The provisions of **LB 853**—as introduced—that had nothing to do with viatical settlements were amended into LB 855. (**LB 853** is discussed on page 14.) As such, LB 855 changes statutes pertaining to: rulemaking under the Community Development Assistance Act; requires policies written only by “assessment insurers” to describe the structure of the insurer writing the policy; increases penalties for insurers that commit unfair trade practices and changes the minimum fine to \$100 for an insurer that fails to permit the Department of Insurance to inspect an insurance policy; clarifies that statutorily required coverage (up to \$2,500) for “TMJ disorder” (i.e., temporomandibular joint disorder) only applies to TMJ disorder and not to other related coverage; adds a new section to the Unfair Insurance Trade Practices Act authorizing the Director of Insurance to adopt rules to protect members of the United States military from dishonest and predatory insurance sales practices; amends several statutes governing the licensing of insurance producers; requires insurance producers to complete certain training before August 1, 2008, to be able to sell, solicit, or negotiate long-term care insurance on or after that date; amends the Insurers and Health Organizations Risk-Based Capital Act to state that the standard for the “tend test” is the standard set forth in the life risk-based capital instructions and also amends that act to adopt a tend test for use by the Director of Insurance; permits the Director of Insurance to disapprove an insurer's filing if the insurer does not provide requested information; and authorizes the Director of Insurance to adopt rules and regulations permitting insurers to voluntarily submit to the jurisdiction of the Director of Insurance for purposes of supervising financial conglomerates.

LB 855 passed 47-0 and was approved by the Governor on March 19, 2008.

LB 907—Change Provisions Governing Corporations and Limited Liability Companies (*Pirsch*)

LB 907 changes provisions governing the use of a deceptively similar trade name by a limited liability company (LLC); authorizes the revival of a defunct LLC's certificate of organization under certain circumstances; and eliminates an obsolete application fee.

LB 907 authorizes an LLC to apply to the Nebraska Secretary of State for authorization—under certain limited circumstances—to use a name that is deceptively similar to one or more LLC or corporation names that already have the exclusive right under Nebraska law to use such name. Specifically, LB 907 permits the Secretary of State to approve such application if: (1) the other LLC or business entity consents to the use in writing; or (2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction that establishes the applicant's right to use the name applied for in Nebraska.

Additionally, LB 907 authorizes the Secretary of State to permit a defunct LLC to have its certificate of organization revived and reinstated at any time after forfeiture of its certificate of organization, by filing any necessary documents, paying any fees, and paying an additional fee of \$100.

Finally, LB 907 eliminates the application fee for use of an indistinguishable name paid to the Nebraska Secretary of State.

LB 907 passed 46-0 and was approved by the Governor on April 17, 2008.

LB1045—Require Notice of Certain Coverage Changes in Property and Casualty and Automobile Liability Policies (*Pankonin*)

LB 1045 requires, under certain circumstances, a property and casualty insurer to send written notice to the person insured under an automobile liability policy if the insurer reduces or eliminates any coverage (or introduces a more restrictive condition) in such insurance policy that is in force and was delivered or issued for delivery in Nebraska. The notice must also be sent to certain specified agencies. However, the notice does not have to be sent if the change in coverage was instituted by the insured person.

LB 1045 passed 45-0 and was approved by the Governor on April 16, 2008.

BUSINESS AND LABOR COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 821—Change Provisions Governing Nebraska’s Risk Manager, the State Claims Board, and Claim Procedures (*Business and Labor Committee*)

LB 821 was introduced at the request of the Department of Administrative Services to change provisions governing claims against the State of Nebraska. In general, the legislation streamlines administrative procedures for resolving claims against the state and—by virtue of the adopted committee amendment—increases to two years (formerly one year) the time within which a lawsuit must be filed under the Contract Claims Act to challenge a decision of the State Claims Board (board) concerning a contract dispute.

LB 821 authorizes the Risk Manager to approve any tort or miscellaneous claims of \$5,000 or less. If a claimant is dissatisfied with the Risk Manager’s decision, he or she can ask the board to review it.

Additionally, LB 821 increases the threshold: (1) from \$5,000 to \$10,000 for tort claims requiring the unanimous approval of the board; and (2) from \$10,000 to \$50,000 for miscellaneous claims requiring review by the Legislature.

Finally, LB 821 authorizes the Nebraska Attorney General to act as attorney for the board and the Risk Manager in tort claims cases, and it permits the Risk Manager to award attorney’s fees for approved tort claims.

LB 821 passed 43-0 and was approved by the Governor on April 16, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 819—Change Provisions of the Nebraska Employment Security Law Governing Information Disclosure, Electronic Payments, Employer Accounts, and Unemployment Compensation and Make Certain Mental Injuries and Mental Illness Suffered by First Responders Compensable under the Nebraska Workers’ Compensation Act (*Business and Labor Committee*)

LB 819 would have changed provisions of Nebraska’s Employment Security Law governing disclosure of confidential information concerning workers’ compensation, electronic payments, employer accounts, and unemployment compensation. Additionally, as amended on Final Reading to include the provisions of **LB 1082**, LB 819 would have made certain work-related mental injuries and mental illness suffered by first responders compensable under the Nebraska Workers’ Compensation Act, even though such injury or

illness was unaccompanied by physical injury, provided that certain evidentiary conditions were met.

Specifically, LB 819 would have permitted the Commissioner of Labor to require any employer whose annual payroll equals or exceeds \$100,000 for either of the two preceding calendar years to file combined unemployment tax returns and pay combined taxes owed, to file wage reports, and to pay reimbursements—by a commissioner-approved electronic method of payment—unless the employer establishes that doing so would be a hardship.

With respect to the unemployment “experience account” provisions of Nebraska’s Employment Security Law, LB 819 would have prohibited any employer who has a positive experience account balance from being assigned to “category 20,” which is the highest experience account category. (An employer’s experience account reflects whether and to what extent the employer lays off employees and helps to determine the employer’s unemployment tax liability.)

LB 819 also would have changed provisions governing certain agreements between the Nebraska Department of Labor, other state departments of labor, and the United States Secretary of Labor concerning the payment of unemployment compensation benefits.

After heated floor debate, the provisions of LB 1082 were amended into LB 819 on Final Reading. (LB 1082 had previously failed to advance to Final Reading.) The amendment would have allowed a first responder to be compensated under the Nebraska Workers’ Compensation Act for a work-related mental injury or mental illness, without accompanying physical injury, if the mental injury or illness was caused by an extraordinary and unusual event compared to normal or usual conditions of employment. First responder would have been defined as a firefighter, a law enforcement officer, a crime scene investigator, and an “out-of-hospital emergency care provider.”

Although LB 819 failed to pass with the emergency clause 27-20, it passed without the emergency clause 28-17. (A two-thirds majority is required by the Nebraska Constitution to pass legislation with the emergency clause.) Governor Heinemann vetoed LB 819 on April 21, 2008. Since the Legislature adjourned sine die April 17, 2008, no attempt to override the veto was made.

LB 1016—Adopt the Proper Employee Classification Act (*Lathrop*)

Controversy has existed for decades over whether a worker is an employee or independent contractor, and employee classification disputes are common under federal and state law.

Employee misclassification occurs when an employer improperly identifies an employee as an independent contractor. The mis-

classification exempts the employer from certain tax obligations and assumptions of liability.

As introduced, LB 1016 would have provided a five-factor test for determining whether a worker is an employee or independent contractor and would have expressly given a cause of action to:

(1) The Nebraska Department of Revenue, to collect unemployment insurance taxes and state income tax withholding from an employer who treats an employee as an independent contractor for tax purposes;

(2) The Nebraska Department of Labor, to collect the difference between the compensation paid to the employee and the average prevailing wage rate for similar work during the time of employment or \$100 for each week during which the employee was employed; and

(3) The employee or other interested party aggrieved by a violation of the proposed legislation (e.g., unlawful retaliation) entitling such party to all legal and equitable relief as appropriate, including attorney's fees and costs.

LB 1016 would have required every employer to post in English and Spanish a specified notice, in a conspicuous place, stating employees' rights under the legislation (e.g., the right to make a complaint to the employer or a governmental agency) and would have prohibited employer retaliation against anyone for exercising any right that would have been granted by LB 1016.

Furthermore, LB 1016 would have required the State of Nebraska and its political subdivisions entering into a contract for labor or services to obtain an affidavit from the contractor and each subcontractor who would perform labor or services under the contract attesting that each worker is properly classified, a completed federal I-9 illegal immigration form is on file for each worker, and that there is no reason to believe that any worker is an illegal immigrant. Providing a false affidavit would have been considered perjury and would have prohibited the contractor or subcontractor from contracting with the state or any political subdivision for five years.

LB 1016 advanced to General File but died with the end of the session.

EDUCATION COMMITTEE

Senator Ron Raikes, Chairperson

ENACTED LEGISLATIVE BILLS

LB 205—Require School Districts to Adopt a Bullying Policy (*Howard, Ashford, Avery, Hudkins, Kopplin, Kruse, Nantkes, Preister, and Adams*)

Recognizing that bullying threatens public safety, creates a negative atmosphere, and disrupts a school's ability to teach its students, the Legislature enacted LB 205, which requires public school districts in Nebraska to develop and adopt a bullying prevention and education policy for its students. The policy must be in place by July 1, 2009, and reviewed annually by the district.

The bill defines bullying as "any ongoing pattern of physical, verbal, or electronic abuse on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose by a school employee or his or her designee, or at school-sponsored activities or school-sponsored athletic events."

LB 205 passed with the emergency clause 41-0 and was approved by the Governor on February 7, 2008.

LB 988—Change Provisions Relating to Calculation of State Aid to Schools (*Raikes*)

With the passage of LB 988, Nebraska's state aid to schools formula is substantially changed. In addition to its original provisions, as enacted, LB 988 includes provisions related to **LB 649, LB 873, LB 879, LB 976, LB 977, LB 1017, LB 1079, and LB 1151.**

Needs-Resources=State Aid. With the adoption of Laws 1990, LB 1059, the Tax Equity and Educational Opportunities Support Act (TEEOSA), that general equation has served as the formula for determining the amount of state aid awarded to Nebraska's public school districts. Generally, the 1990 version of TEEOSA directed that a district's needs were determined by the actual expenditures of school districts of comparable size, while a district's resources included local property tax resources, plus a state income tax rebate, and other actual receipts. State aid, also known as equalization aid, was the amount appropriated by the state to offset the local needs not met by other available resources.

The basic state aid formula established by LB 1059 remains the basic formula in place today. However, TEEOSA has been substantially amended since 1990, most significantly in 1996, via the passage of LB 1050 and in 1997, with the enactment of LB 806. Budget shortfalls forced further formula modifications in 1999 (LB 149), 2002 (LB 898), 2003 (LB 540), and 2004 (LB 1093). And,

the creation of additional learning communities pursuant to Laws 2006, LB 1024, required formula changes.

With the enactment of LB 988, the state aid formula undergoes another substantial modification. Like its predecessors, this measure does not change the basic formula, but rather changes how the needs and resources prongs of the formula are calculated. The formula changes effectively reduce the increase in state aid to schools by approximately \$61 million in fiscal year 2007-2008 and \$44 million in fiscal year 2009-2010.

The changes to the state aid formula prescribed in LB 988 are complicated. For purposes of this summary, the following is a very general explanation of the formula changes included in the bill.

To calculate a school district's needs, LB 988 requires districts of similar size to be compared in order to determine a basic funding level. Funding level adjustments are made for such factors as teacher education, student growth, new school buildings, instructional time, poverty, limited English proficiency, special receipts, transportation, distance education and telecommunications, summer school, remote elementary sites, and elementary class sizes. Additional adjustments are made for: (1) focus schools and increased transportation costs within learning communities; (2) districts with below average costs; and (3) districts which are not within a sparse or very sparse system, have fewer than 390 students, and receive a limited amount of federal funds.

A school district's resources continue to be comprised of local receipts and property taxes; however, when calculating resources, LB 988 provides that for state aid purposes land is to be valued at 96 percent (formerly 100 percent) of actual value for real property other than agricultural and horticultural land and 72 percent (formerly 75 percent) of actual value for agricultural and horticultural land. Correspondingly, local effort rates are increased based on the valuation changes.

A school district's budget authority is based on the current calculation with fewer exceptions or 120 percent of the needs calculation, whichever is greater. Special education costs are not included in either the calculation of the maximum budget or the expenditures to be limited.

While many school districts will see increases in their state aid due to the formula changes in LB 988, several experience a decrease in aid. To lessen the financial impact on those districts receiving less state aid, LB 988 includes provisions which slow the decreases in aid for those districts.

As LB 988 progressed through the legislative process, debate was focused and intense. Supporters of the measure believed the formula changes more accurately reflected the cost of a school district's actual needs and especially helped schools with large numbers of disadvantaged students. Opponents were concerned with

the schools experiencing a cut in state aid and the unknown future ramifications of the formula changes.

In addition to changes to the state aid formula, LB 988 adds another circumstance by which land can be transferred from one district to another. (The process is called freeholding.) Pursuant to the bill, land located within any class of school district can be transferred to a contiguous district if the original district has approved a budget that caused the combined levies to exceed the greater of \$1.20 or the maximum levy authorized by a vote.

Finally, LB 988 removes insurance payments funded by new bonds from an exception to the levy limits for school districts and educational service units.

LB 988 passed with the emergency clause 33-14 and was approved by the Governor on April 2, 2008.

LB 1153—Provide for Certificates of Attendance for and Allow Participation in Graduation Ceremonies by Students Receiving Special Education Services and Change Provisions Relating to Early Childhood Programs and Grants (*Raikes*)

As introduced, LB 1153 would have implemented the recommendations of the Special Education Task Force, which was created by Laws 2007, LB 316 and charged with conducting an in-depth examination of Nebraska's special education services. However, as the bill advanced through the legislative process, the bill's original provisions were replaced with provisions prescribed in **LB 990**. The provisions of **LB 650** and **LB 1125** were also added to the bill.

As passed by the Legislature, LB 1153 allows a parent or guardian of a student who: (1) is at least 17 years old; (2) is receiving special education services; and (3) has not completed his or her individualized education plan (IEP) to ask the school district to issue a certificate of attendance to the student so he or she can participate in graduation ceremonies with his or her class. The attendance certificate does not alter the school district's obligation to continue to provide special education services to the student.

While a student can participate in only one ceremony based on the attendance certificate, he or she can still receive a high school diploma by meeting prescribed graduation requirements or requirements prescribed in his or her IEP. The student can participate in graduation ceremonies to receive the diploma if allowed to do so by the district.

As LB 1153 advanced through the legislative process, several amendments relating to early childhood education programs were adopted to the bill, including amendments, which:

- For school year 2008-2009, authorize a school district to allow children who meet the required age for kindergarten but who are not yet enrolled in kindergarten to enroll in an early childhood education program.
- Change provisions relating to the deposit of earnings from the private endowment to the Early Childhood Education Endowment Cash Fund.
- Remove educational service units from eligibility for early childhood education grants.
- Increase from five percent per-fiscal-year to 10 percent per-fiscal-year the amount in the Early Childhood Education Endowment Cash Fund to be reserved for evaluation and technical assistance for programs for at-risk children from birth to age three.
- Change the selection process for the member who represents an at-risk urban area on the Board of Trustees of the Early Childhood Education Endowment.

LB 1153 passed with the emergency clause 46-0 and was approved by the Governor on April 17, 2008.

LB 1154—Change Provisions Relating to Learning Communities, Schools, Educational Service Units, and Job Training Grants (*Raikes*)

As originally introduced, LB 1154 changed provisions relating to learning communities. As enacted and in addition to its original provisions, LB 1154 contains provisions related to **LB 605, LB 886, LB 1005, LB 1021, LB 1081, LB 1083, and LB 1158.**

Learning communities were first created via the passage of Laws 2006, LB 1024. Generally, as the law applies to the school districts in Douglas and Sarpy counties, the learning community is designed to bring all public school districts in those 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, have common property tax levies. The learning community is governed by a coordinating council.

Changes to the learning-community provisions prescribed in LB 1154 include:

- Adding nonvoting members to the 18-member learning community coordinating council. Any member school district which does not have an elected or appointed representative on the council is entitled to have a nonvoting member on the council. The nonvoting member is appointed by the applicable school board to serve a two-year term and must reside in the appointing district.
- Creating an advisory committee composed of the superintendent, or his or her designee, from each member school. The advisory committee is to review issues related to open enrollment and proposals for focus programs and schools,

- magnet schools, and pathways; provide recommendations for improving academic achievement across the learning community; and provide input to the coordinating council.
- Directing the Secretary of State to call and coordinate the inaugural meeting of the coordinating council.
 - Authorizing the modification of school district boundaries prior to establishment of the learning community.
 - Changing the distribution of the common levy to reflect the previous resources for the first three years of the learning community.
 - Limiting uses of the learning community capital levy.
 - Allowing a school district to exceed its allowable growth rate for expenditures to pay for the transfer of land from another district.
 - Changing provisions regarding diversity plans and education options within the learning community.
 - Eliminating a requirement that the coordinating council pays for mediation services.
 - Requiring free transportation to be provided to any student contributing to the socioeconomic diversity of enrollment who is attending another school in the learning community if the student lives more than one mile from the school to which he or she transfers.
 - Authorizing the learning community to use state funds to hire up to six social workers for elementary learning centers.
 - Requiring member districts to report truancy information to the coordinating council.

LB 1154 also requires educational service unit (ESU) core services and technology infrastructure funds to be shared with learning communities.

Among its many other provisions, LB 1154 eliminates levy authority, beginning in fiscal year 2013-2014, for those ESUs which have only one member school district. (ESUs having one member district serve Omaha Public Schools and Lincoln Public Schools.) The bill also modifies the budget lids currently imposed on ESUs.

Additionally, LB 1154 adds a sibling preference to provisions relating to open enrollment.

Finally, the bill allows businesses partnering with learning communities or school districts to qualify for an additional \$5,000 in job training grants per job created.

LB 1154 passed 30-15 and was approved by the Governor on April 14, 2008.

LB 1157—Change Provisions Relating to Statewide Assessment and Reporting (*Raikes*)

According to the introducer of LB 1157, changes are needed in the state's recently adopted statewide assessment and reporting system to effectively measure and monitor the educational performance of Nebraska's schools and students.

In 2007, the Legislature passed LB 653, which required implementation of a statewide assessment and reporting system beginning with the 2009-2010 school year. Specifically, the 2007 measure directed the State Board of Education (state board) to adopt a plan for a statewide assessment and reporting system and to develop, implement, and maintain the system pursuant to the plan. As articulated in LB 653, the purposes of the statewide system are to:

- Determine how well public schools are performing in terms of student achievement in relation to state academic content standards;
- Report the performance of public schools based upon the results of state and national assessment instruments;
- Provide information for the public and policymakers on the performance of public schools; and
- Provide for comparison of Nebraska's public schools with each other and with public schools elsewhere.

The 2007 legislation required statewide reading assessments to begin in school year 2009-2010, while statewide math assessments were to begin in school year 2010-2011. Three grade levels were to be selected for testing and local school districts were to develop practices, procedures, tests, and other tools (identified collectively as assessment portfolios) to comply with the prescribed assessment and reporting requirements.

LB 1157 requires the state board to annually submit its assessment and reporting plan to the State Department of Education (department), the Governor, the chairperson of the Legislature's Education Committee, and the Clerk of the Legislature.

The bill also directs the state board to select the assessment instruments to be used by school districts and the grade levels to be assessed. A technical advisory committee, appointed by the Governor and confirmed by the Legislature, is created to review the assessment plan and selected instruments. The committee is to be composed of three nationally recognized experts in educational assessment and measurement, one Nebraska school district administrator, and one Nebraska school teacher. Members are to serve staggered three-year terms.

While LB 1157 eliminates provisions relating to the development of assessment portfolios by local districts, the bill requires the state board to appoint committees of teachers from each subject area and local administrators to assist in the development of the required statewide assessments.

Statewide assessments are to be phased in as follows:

- Reading assessments are to begin in school year 2009-2010. Students in grades three through eight and one grade in high school designated by the state board will participate in the assessment process.

- Math assessments will begin no later than school year 2010-2011. Like the reading assessments, students in grades three through eight and one grade in high school designated by the state board will participate.
- Science assessments will begin no later than school year 2011-2012, with at least one grade in elementary school, one grade in middle or junior high school, and one grade in high school as designated by the state board participating.

It should be noted, statewide writing assessments are already in place.

Each school district is to report individual student data for scores and subscores according to procedures established by the state board and the department.

Additionally, LB 1157 authorizes the department to determine appropriate accommodations for the testing of students with disabilities or receiving special education services.

The bill further allows the state board to choose other grade levels and subject areas for statewide assessments if necessary to comply with federal requirements.

Finally, the state board is prohibited from requiring school districts to administer assessments or assessment instruments other than those selected by the state board.

LB 1157 passed 33-15 and was approved by the Governor on April 10, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 1141—Provide for an Annual Evaluation for Students Attending Nonaccredited Schools (*Schimek*)

Statewide assessment of students was also the subject of LB 1141. LB 1141 would have called for an annual evaluation of all students who attend a nonaccredited private, denominational, or parochial school in Nebraska. Practically, the bill would have required students who attend school at home to undergo an annual assessment administered by the State Department of Education (department).

Specifically, the bill would have required every student attending a nonaccredited private, denominational, or parochial school to submit to an annual evaluation using:

- (1) A nationally recognized standardized achievement test or other assessment tool developed or approved by the Commissioner of Education and chosen by the child's parent or guardian from a list of approved evaluations or assessment tools provided by the department; or

- (2) Evidence of academic progress submitted by the parent or guardian, including some kind of written record detailing subjects and activities; a portfolio of the child's work containing copies of homework assignments and examples of completed class projects; and copies of completed assessment evaluations, other than the annual achievement evaluation.

If the results of the evaluation indicated the child was making sufficient academic progress, a report indicating such progress would have been submitted to the department, the public school district in which the child lives, and the child's parent or guardian. Conversely, if the evaluation indicated a lack of sufficient progress, LB 1141 would have required the student to attend an accredited or approved public, private, denominational, or parochial school until such time as the child could demonstrate sufficient academic progress.

Believing that it is the state's responsibility to educate all children, the bill's proponents stated that LB 1141 was necessary to determine, and subsequently help, those children attending home schools who might not be receiving an adequate education. Opponents countered that the courts have already determined that parents are responsible for their children's education, and the bill places another burden on families of home schoolers.

LB 1141 did not advance from committee and died with the end of the session.

EXECUTIVE BOARD

Senator Pat Engel, Chairperson

ENACTED LEGISLATIVE BILLS

LR 283—Create the Developmental Disabilities Special Investigative Committee (*Flood*)

With passage of LR 283, the Legislature extends its oversight to a near-crisis situation at the Beatrice State Developmental Center. The center is a residential facility that currently provides services to about 300 persons with developmental disabilities.

In March 2008, the U.S. Department of Justice issued a report to the Governor regarding its investigation of the center. The highly critical report concluded that residents' legal rights had been violated and specifically charged the center with failing to provide adequate protection, care, and behavioral health services to its residents. The report recommended hiring additional employees and placing residents in the most integrated setting possible, emphasizing living in nonrestrictive situations, including among the general population, as possible remedial solutions.

The state risks losing \$28.6 million in federal funding for the center and possible civil rights lawsuits if conditions at the center do not improve.

LR 283 creates the Developmental Disabilities Special Investigative Committee (committee) to be composed of seven members of the Legislature appointed by the Executive Board.

The resolution authorizes the committee to study quality of care, staffing, placement, and funding issues at the center and at other 24-hour facilities and community-based programs for the developmentally disabled throughout the state. The committee can hold hearings and issue subpoenas.

The committee is required to report to the Legislature by December 15, 2008.

LR 283 passed 43-0 and was signed by the Speaker of the Legislature on April 8, 2008.

On April 10, the Executive Board selected Senators Adams, Cornett, Gay, Harms, Lathrop, Stuthman, and Wallman to the committee. Senator Lathrop will serve as the committee's chair.

GENERAL AFFAIRS COMMITTEE

Senator Vickie McDonald, Chairperson

ENACTED LEGISLATIVE BILLS

LB 995—Change Provisions Relating to Cemeteries (*General Affairs Committee*)

LB 995 makes several changes to Nebraska's cemetery laws. The changes, while small, are important nonetheless to persons working to preserve the state's abandoned or neglected cemeteries. Because the state did not begin keeping birth and death records until 1905, the inscriptions on old tombstones may be the only record that an individual lived.

To help preserve these memorials of the state's first residents, LB 995 shortens the time that must pass – from 20 years to five consecutive years – before county residents can petition the county board to undertake the care of an abandoned or neglected pioneer cemetery. Nebraska law provides that county boards must pay for the preservation and maintenance of an abandoned or neglected pioneer cemetery when petitioned to do so by 35 adult residents of the county.

LB 995 requires the county to provide notice of the petition and county boards to provide “continuous” maintenance, including mowing, of pioneer cemeteries. Such cemeteries must be mowed at least once each year, and one of the mowings must be within a two-week period prior to Memorial Day. LB 995 provides that additional mowings are at the discretion of the county board, which can hold hearings to discuss whether additional mowing is necessary.

The bill also changes an “and” to an “or,” so that pioneer cemeteries do not have to be both abandoned *and* neglected before the county will act.

Further, LB 995 raises the cap on the amount a county can spend on the care and maintenance of each abandoned or neglected cemetery and requires county boards to use money from their general funds for this purpose. Prior law provided for up to \$500 in any one year when the cemetery is totally abandoned or \$400 in any one year when the cemetery is partially abandoned. LB 995 removes the distinction between totally and partially abandoned cemeteries and raises the total amount that can be spent to \$1,000 per year, per cemetery.

Finally, LB 995 contains other measures pertaining to cemeteries.

To address problems with finding enough individuals to serve on cemetery boards in smaller communities, LB 995 allows cemetery boards in municipalities with 25,000 or fewer residents to have three to six members. Prior law required six-member boards. The

bill also allows the city council or board of trustees to issue warrants from the cemetery fund if a payment is due and the cemetery board is not scheduled to meet prior to the bill's due date.

LB 995 passed 47-0 and was approved by the Governor on April 17, 2008.

LB 1058—Rename and Change Powers and Duties of the State Advisory Committee on Problem Gambling (*McDonald and Pankonin*)

Stronger advocates and a tighter-run gambler's assistance program are the intentions behind LB 1058, which beefs up an existing state committee on problem gambling and adds intent language to the statutes pertaining to how lottery funds are used to help problem gamblers.

The State Advisory Committee on Problem Gambling and Addiction Services is now known as the State Committee on Problem Gambling via the passage of LB 1058. With the name change comes additional duties, including developing and recommending guidelines and standards, based on nationally recognized standards for compulsive gambler assistance programs, for the distribution of money in the Compulsive Gamblers Assistance Fund.

Additionally, the committee is to develop recommendations for:

- Evaluating and approving provider applications and contracts for treatment funding;
- Reviewing and using evaluation data;
- Using funds for educational efforts aimed at reducing and preventing problem gambling;
- Creating and implementing outreach and educational programs; and
- Other activities it finds necessary to carry out its duties.

The Department of Health and Human Services Division of Behavioral Health is to take the committee's recommendations into consideration before adopting guidelines and standards for distributing money in the problem gamblers' fund and administering problem gambling services in Nebraska. The committee and the division are to jointly submit a report at the end of each fiscal year to the Legislature and the Governor detailing the administration of services and distribution of funds.

LB 1058 also adds findings and intent language to Neb. Rev. Stat. sec. 71-816, which creates the committee. The Legislature finds that the main sources of funding for the Compulsive Gamblers Assistance Fund are the Charitable Gaming Operations Fund and the State Lottery Operation Trust Fund. Further, it is the intent of the Legislature that the Compulsive Gamblers Assistance Fund be used primarily for counseling and treatment services for problem gamblers and their families who are Nebraska residents.

LB 1058 passed with the emergency clause 45-0 and was approved by the Governor on April 14, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 760—Create the Nebraska State Library Task Force (*Gay, Avery, and Schimek*)

It serves as the repository for some of the state's oldest documents and is itself the state's oldest public library. But time has taken its toll on the Nebraska State Library, which was the reason LB 760 was introduced.

LB 760 would have created the Nebraska State Library Task Force to study the needs of the state library and the vulnerable, historical documents in its possession.

In particular, the task force would have been directed to evaluate the physical needs of the library, including the condition of the structural space the library occupies in the Capitol Building, its furnishings and fixtures, and its heating, ventilating, and air conditioning systems.

The task force also would have been directed to review how to best store the library's collection of rare and irreplaceable historical materials, including using digital reproduction.

The Chief Justice of the Nebraska Supreme Court, the State Librarian, the Director of the Nebraska State Historical Society, the Director of the Nebraska Library Commission, the State Capitol Administrator or their designees, and a member of the Legislature appointed by the Executive Board would have been task force members. After studying the issues related to the State Library, the task force would have made its recommendations, with cost estimates, in a study to be completed by December 15, 2008.

LB 760 advanced to General File but died with the end of the session.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Ray Aguilar, Chairperson

ENACTED LEGISLATIVE BILLS

LB 39—Provide Restrictions Relating to Petition Circulation and Change Campaign Reporting Provisions (*Schimek, Howard, Mines, and Pahls*)

Passage of LB 39 signals success in efforts to tighten the petition process.

The measure requires the circulator of an initiative, a referendum, or a recall petition to be an elector. An elector is a person eligible to vote in Nebraska; one must: (1) be a citizen of the United States; (2) be a resident of Nebraska; and (3) have turned 18 by the upcoming general election.

LB 39 also prohibits paying petition circulators based on the number of signatures gathered, although circulators can still be paid in other ways for their work. Additionally, the bill requires petition campaign statements to include the amount paid to individual circulators. However, the circulator's name or other personal information cannot be listed.

Proponents maintained the bill's limitations on the petition process are needed to keep the process free of fraud and corruption. They are particularly concerned about out-of-state interests who spend millions of dollars trying to place initiative proposals on the ballot.

Opponents of the bill questioned placing further restrictions on the petition process, citing federal free speech guarantees. They noted the importance given the petition process by the Nebraska Constitution. Opponents also defended paying circulators per signature, arguing that this method allows for better organization of petition drives.

The bill does not affect petition drives to put measures on the 2008 ballot.

LB 39 passed 31-14; however, the bill was vetoed by the Governor on February 12, 2008. The Legislature overrode the veto by a vote of 30-17 on February 19, 2008.

LB 720—Change Requirements Regarding Prerecorded Messages (*Schimek*)

Responding to complaints about the excessive use of "robocalls" during the election season, LB 720 restricts automatic telephone calling using a computer or automatic calling device. The bill

amends the Automatic Dialing-Announcing Devices Act and the Nebraska Accountability and Disclosure Act.

In 2007, the Legislature passed a similar bill, LB 198. However, the Governor vetoed the measure, citing his concerns about the bill's constitutionality because it was limited to political robocalls.

LB 720 addresses this concern by applying the restrictions to all nonsolicitation telephone messages from automatic dialing-announcing devices not just to political robocalls.

The bill requires robocalls to: (1) be made only between 8 a.m. and 9 p.m.; (2) begin the message by stating the identity of the person on whose behalf the call is being made; and (3) state clearly the telephone number or address of the person operating the device. However, the bill places no limit on the number of robocalls.

LB 720 makes practical exceptions to the new law, and does not apply to robocalls made by: (1) a school to students, parents, or employees; (2) a person who knows the people he or she is calling; (3) an employer to its employees regarding work schedules; or (4) a political subdivision (cities, counties, villages, etc.) to its residents or employees.

The measure also requires persons who hire operators to make robocalls to file the recorded message with the Public Service Commission within 24 hours of transmitting it. If an operator violates the automatic dialing law, the hiring entity will be liable for any damages caused by the violation.

The changes prescribed in LB 720 do not apply to 2008 political campaigns.

LB 720 passed 45-0 and was approved by the Governor on April 21, 2008.

LEGISLATIVE BILLS NOT ENACTED

LR 225CA—Constitutional Amendment to Require Manually Counted Paper Ballots at Elections (*Karpisek*)

LR 225CA would have proposed an amendment to Article I, section 22, of the Nebraska Constitution that, if passed by the voters, would have required all elections in the state to use paper ballots. The proposal also would have required ballots to be counted manually.

Proponents of LR 225CA contended that the measure would help guarantee transparent elections. They contended that paper ballots are reliable and provide accurate recounts, while electronic voting can be inaccurate, malfunction, and be susceptible to fraud.

Backers of electronic voting countered that electronic voting speeds ballot counting, is more accurate, and provides improved accessibility for disabled voters.

LR 225CA was indefinitely postponed by the committee.

**LB 878—Change Provisions Relating to Recall of Public Officials
(Engel, Adams, Aguilar, Ashford, Friend, Gay, Kruse, Lathrop, Nant-
kes, Pahls, Pankonin, Pedersen, Raikes, Rogert, Synowiecki, and
Wightman)**

LB 878 would have prescribed limits to the recall of public officials, a process some say is used frivolously.

The bill would have narrowed the factors subjecting an official to a recall action. Current law provides no standards for recall, and an official can be recalled for any reason.

As amended, public officials (most elected officials other than constitutional officers) could have been recalled only for malfeasance, misfeasance, or nonfeasance in office and for conviction of a crime involving dishonesty or moral turpitude.

LB 878 would have defined: (1) malfeasance as an official's commission of an illegal or wrongful act; (2) misfeasance as the negligent performance of an act or the negligent failure to perform an official duty; and (3) nonfeasance as the intentional failure to perform a duty of the office.

The bill would have authorized a registered voter to propose an official's recall by submitting a statement to election administrators about alleged actions, meeting the legal definition of recall, by the official. The voter submitting the statement would have been considered the petition's principal circulator.

LB 878 would have allowed the official targeted by the recall attempt to challenge the allegations in district court.

However, the bill also would have given some advantage to recall proponents by mandating that the court presume the truth of the circulator's allegations and favorably interpret the allegations. The court would have had to rule within five days on the sufficiency of the claims.

LB 878 advanced to General File but died with the end of the session.

**LB 884—Change Provisions Relating to the Director of Personnel and
Employee Health Benefits (Gay)**

LB 884 would have established a new formula for payment of state employees' health insurance premiums and tied it to employee participation in a wellness program established by the Department

of Administrative Services (DAS). The bill was meant to advance the public policy goals of improving the health of state employees and saving health care costs.

Currently, the state pays 79 percent of an employee's health insurance premium, and the employee pays the remaining 21 percent. (The formula applies to state employees other than those of the University of Nebraska, state colleges, and community colleges.)

As amended by the committee, the state would have continued to pay at least 79 percent of an employee's health insurance premium but only if the employee participated in the state wellness program (program). Nonparticipating employees would have had a less generous arrangement, with the state paying a maximum 69 percent of the total premium, and the employee paying as much as 31 percent. The exact premium would have been determined by any savings generated by the program. The Director of Personnel would have administered the new plan.

Wellness programs typically include health assessment, education, and goal-setting for participants. Additionally, there is a prevention component that can include exercise, healthy eating, stress management, and disease screening and prevention. Combating significant causes of health care costs such as smoking, obesity, and high cholesterol are also usually part of the regimen.

The committee amendment also would have created a Wellness Program Design Advisory Group. The group would have been composed of five members appointed by the Governor, including: the chief medical officer of the Division of Public Health; the DAS director; an employee representing a code agency and another from a noncode agency; and a representative of the private sector with experience in wellness or health benefits.

LB 884 advanced to General File but died with the end of the session.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Joel Johnson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 245—Change Provisions Relating to Fluoridation of Drinking Water (Johnson)

LB 245 requires all Nebraska cities and villages with populations over 1,000 to begin fluoridating their public water supplies by June 1, 2010.

The bill exempts communities that have sufficient amounts of naturally occurring fluoride from the requirement and allows communities without fluoridation in their water supplies as of January 1, 2008, to opt out of fluoridation with a vote of the people. A measure to opt out of fluoridation can be placed on the ballot by a majority vote of the governing body or by citizen initiative. The vote must be taken before June 1, 2010.

Under provisions of the bill, rural water districts that provide water to affected cities and villages do not have to shoulder the costs of equipment, testing, or maintenance related to fluoridation unless the district has agreed with the city to assume such responsibilities.

Fluoridation was first required in Nebraska law in 1973, under a similar set of circumstances that allowed communities to opt out, but provided no option for reconsideration without another vote of the public. Most public drinking water supplies in the state are fluoridated, but 64 communities that are potentially impacted by LB 245 are not, including the larger cities of North Platte, Grand Island, and Norfolk.

Proponents of the measure pointed to fluoridation's success in reducing dental cavities in children and turned away opponents' arguments calling fluoridation a poison. Proponents also said fluoridation has reduced the costs of dental care, leading to savings in the state's Medicaid program. Opponents countered that fluoridating water supplies carried its own expenses, costing about \$5,000 to treat each water well.

LB 245 passed with the emergency clause 34-8 but was vetoed by the Governor as an "unfunded mandate" from the state on cities who would either be forced to pay for fluoridation or to shoulder the cost of an election to opt out. Lawmakers voted to override the veto, 31-4, on the last day of the session.

LB 308—Adopt the Automated Medication Systems Act (*Stuthman and Burling*)

LB 308 adopts the Automated Medication Systems Act, which allows pharmacies and hospitals to use automated devices to dispense drugs, new technology touted as saving time and money. The bill also provides for the practice of telepharmacy.

The bill defines an automated medication system as a mechanical system capable of performing activities that involve storing and packaging medication for dispensing or distribution. Such machines also collect, control, and maintain records of all transactions. The machines cannot compound drugs or perform administrative tasks.

LB 308 specifically recognizes two types of automated medication systems, but does not rule out others. One type, called an automated medication distribution machine, is used by doctors and other credentialed health care providers in hospitals pursuant to a chart order. The other, a prescription medication distribution machine, is operated by pharmacists pursuant to a prescription. Neither automated medication system can be directly accessed by a patient or customer.

The bill requires hospitals and pharmacies to develop and follow policies and procedures for using automated medication systems. At a minimum, these policies and procedures must include:

- A description of the machine and its location within the facility;
- The name of persons responsible for implementation and compliance;
- Procedures for medication and information access;
- Security of inventory and confidentiality of records to comply with state and federal laws, rules, and regulations;
- A description of how and by whom the device is being used, including processes for filling, verifying, dispensing, and distributing medications;
- Staff education and training;
- Quality assurance and quality improvement programs and processes;
- Inoperability or emergency downtime procedures;
- Periodic system maintenance; and
- Medication security and controls.

LB 308 further requires that drugs placed in the devices must be in the manufacturer's original packaging or in containers repackaged according to applicable state and federal law.

The telepharmacy provisions of LB 308 allow pharmacists to provide services to sites other than where the pharmacist is located. Nebraska already allows telemedicine, and both practices are seen as advantageous in a largely rural state like Nebraska, with vast stretches of sparsely populated areas.

To practice telepharmacy under the auspices of the bill, pharmacists must be located somewhere within the United States and must maintain adequate security and privacy in accordance with law. The telepharmacist must be linked to one or more hospitals or pharmacies for which services are provided and must have access to each patient's necessary medical information via computer link, video link, audio link, or facsimile transmission. The telepharmacist must be employed or have a contractual agreement with the hospital or pharmacy where the patient is located.

Finally, any person who violates the Automated Medication Systems Act is subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act, the Uniform Licensing Law, or the Uniform Credentialing Act.

LB 308 passed with the emergency clause 47-0 and was approved by the Governor on April 21, 2008.

LB 395—Adopt a New Nebraska Clean Indoor Air Act (*Johnson, Aguilar, Hansen, Howard, Kruse, Pankonin, Preister, Schimek, and Stuthman*)

The Legislature opted into a statewide smoking ban with the enactment of LB 395.

Effective June 1, 2009, LB 395 prohibits smoking in public places and places of employment, including private residences if they are used for licensed child-care programs, when one or more children who do not live in the residence are present.

Three exemptions to the indoor smoking ban are allowed. They are:

- Rented guestrooms and suites that are designated as smoking rooms. No more than 20 percent of rooms rented to guests in an establishment can be designated as smoking. Smoking rooms on the same floor must be contiguous and smoke from those rooms cannot infiltrate areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;
- Indoor areas used for research into the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education; and
- Tobacco retail outlets, which the bill defines as stores that sell only tobacco and products directly related to tobacco. Such products do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline.

Violating the smoking ban is a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. The Department of Health and Human Services or local public health departments can pursue action in any court with jurisdiction to enjoin violations of the act. A person charged with violating the act has the option of enrolling in a department-approved smoking cessation class and having the charges dropped upon successful completion.

LB 395 was on Final Reading, in much different form, when the session began. As amended in a compromise to advance the bill in 2007, LB 395 would have allowed local communities to opt out of the statewide ban by either an act of a governing body or by initiative petition. Supporters of the original bill said this would have resulted in a confusing patchwork of different local ordinances that would be difficult to enforce.

Subsequently, LB 395 was laid over by its introducer because uniformity throughout the state was an original intent of the bill. Upon taking up LB 395 in 2008, it was returned to Select File for a specific amendment to remove the local opt-out provisions. Repeated attempts to amend the bill to allow exceptions to the statewide ban failed or were withdrawn prior to invoking cloture.

LB 395 passed 34-14 and was approved by the Governor on February 26, 2008.

LB 765—Change Provisions Relating to Certificates of Need (*Gay, Schimek, and Stuthman*)

Differing interpretations of the Nebraska Health Care Certificate of Need Act regulating when Nebraska health care facilities can increase their long-term care and rehabilitation beds drove LB 765. A certificate of need is written authorization required from the Department of Health and Human Services before a project is undertaken that would establish, increase, relocate, or convert long-term care beds or rehabilitation beds in a facility licensed under the Health Care Facility Licensure Act.

LB 765 clarifies that no health care facility can increase long-term care beds by more than 10 long-term care beds or more than 10 percent, whichever is less, over a two-year period without applying for a certificate of need. The same provision applies to rehabilitation beds. LB 765 also clarifies the terms under which a health care facility can initially establish a long-term care or rehabilitation unit.

Further, LB 765 adds an exception to the current statutory moratorium on adding rehabilitation beds to meet concerns that the moratorium unfairly impacts rural, smaller population areas. Under the exception, a certificate of need for up to three rehabilitation beds could be granted if the average occupancy for all rehabilitation beds within a health planning region exceeds 80 percent

during the three consecutive calendar quarters prior to application and no comparable services are available in the health planning region.

The certificate of need process was created by Laws 1979, LB 172, to prevent duplication of health care services and facilities and to conserve limited health care resources. The law was substantially modified and certificates of need repealed for most health care facility uses by Laws 1997, LB 798.

LB 765 passed 44-4 and was approved by the Governor on April 11, 2008.

LB 782—Allow Disclosure of Child Abuse and Neglect Information
(Howard, Adams, Ashford, Avery, Burling, Dierks, Dubas, Engel, Erdman, Flood, Friend, Gay, Hansen, Hudkins, Janssen, Johnson, Karpisek, Kopplin, Kruse, Langemeier, Lathrop, Loudon, McDonald, McGill, Nantkes, Nelson, Pahls, Pankonin, Pedersen, Pirsch, Raikes, Rogert, Schimek, Stuthman, and Wallman, at the request of the Governor)

The ability to correct damaging and incorrect information in the media concerning high-profile cases of child abuse and neglect is in the best interest of the child, stated supporters of LB 782, which expands the state's ability to release information in such cases involving state wards.

LB 782 allows the Chief Executive Officer (CEO) of the Department of Health and Human Services (HHS) or the director of the HHS Division of Children and Family Services to disclose information regarding child abuse and neglect cases, their investigation, and any services related to such cases if those officials determine disclosure is in the best interests of the child, the child's siblings, or other children in the household and any one of the following factors is present:

- The alleged perpetrator has been charged;
- A judge, law enforcement official, county attorney, or other state or local investigative agency or official has publicly disclosed the information;
- The parent, custodian, foster parent, provider, or guardian of the victim has made a prior knowing, voluntary, public disclosure;
- The information relates to a child fatality or near fatality;
- The information is released to confirm, clarify, or correct information concerning an allegation or actual instance of child abuse or neglect by sources outside HHS; or
- A child in HHS custody is missing from his or her placement, in which case the CEO or director may release the name and physical description of the child.

Information allowed to be disclosed includes, but is not limited to, child placement, whether in-home or out-of-home; terms of contact; hearing dates; the reason for removal from parents or place-

ment; the number and types of placements; permanency objectives; court-ordered services or other services provided by the division; and the status of the court process. The ward's date of birth, social security number, and protected health information; the name of the person who reported the abuse or neglect; and the names of the foster parents, unless the foster parents are perpetrators, cannot be made public absent a court order.

HHS cannot disclose any of the above information if it would impede a pending or current criminal investigation by a law enforcement agency.

LB 782 passed with the emergency clause 47-0 and was approved by the Governor on March 10, 2008.

LB 830—Adopt the Medicaid Prescription Drug Act (*Lathrop and Gay*)

A potential savings of millions of dollars in the state's Medicaid drug program is the promise of LB 830, which institutes a Medicaid preferred drug list. Preferred drug lists are believed to reduce costs by encouraging the use of the least expensive therapeutically appropriate drug for a given condition.

The bill requires the Department of Health and Human Services to establish and maintain a preferred drug list by July 1, 2010. Preferred drugs do not need prior authorization to be prescribed to Medicaid recipients.

New drugs are to be included on the list, according to the bill, if they are therapeutically equivalent or superior to a prescription drug already on the list and the net cost of the new drug is equal to or less than the net cost of the listed drug, after consideration of any rebates or discounts negotiated by the department. If the department finds that two or more prescription drugs being considered for the preferred drug list are therapeutically equivalent, the department is to include the less costly prescription drug on the preferred drug list.

LB 830 establishes a 15- to 20-member pharmaceutical and therapeutics committee to advise the department on all matters relating to establishing and maintaining the preferred drug list. No more than 25 percent of the members can be state employees. Further, the committee must include at least eight physicians, four pharmacists, a university professor of pharmacy or a person with a doctoral degree in pharmacology, and two public members. Committee members must disclose any conflicts of interest.

The department and the committee are required to consider all therapeutic categories of prescription drugs for the preferred drug list, except drugs that are antidepressants, antipsychotics, or anti-convulsants.

The bill requires the department, in consultation with the committee, to publish policies and procedures relating to the list, includ-

ing guidelines for presentation and review of drugs for inclusion on the list; the manner and frequency of audits for appropriateness of patient care and cost effectiveness; an appeals process for resolving disputes; and other policies and procedures as the department deems necessary and appropriate.

LB 830 allows health care providers to prescribe drugs not on the list to a Medicaid recipient under certain circumstances. These circumstances occur when (1) the prescription drug is medically necessary; (2) the provider certifies the preferred drug has not been or is not likely to be therapeutically effective or is likely to cause adverse or harmful reactions in the recipient; and (3) the department gives prior authorization for the drug. The department has 24 hours to respond to an authorization request.

Further, health care providers do not need prior authorization for prescribing drugs not on the preferred list if the provider certifies the patient is doing well on a drug they are currently taking if the drug is an antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or if the patient has experienced a prior therapeutic failure with a medication.

To further capture savings in the Medicaid drug program, LB 830 requires the department to enter a multistate purchasing pool; negotiate directly with manufacturers or labelers; or contract with a pharmacy benefit manager for negotiated discounts or rebates for all Medicaid prescription drugs.

The bill's fiscal note projects saving up to nearly \$4 million with the preferred drug list and up to \$9 million from joining a multistate purchasing pool, once those programs are fully implemented.

LB 830 passed 47-0 and was approved by the Governor on April 17, 2008.

LB 1022—Adopt the Veterinary Drug Distribution Licensing Act (*Hansen and Christensen*)

LB 1022 creates a new class of licensure for distributors of veterinary legend drugs. A veterinary legend drug is a prescription drug, which is required to carry a label that says it must be for use by or on the order of a licensed veterinarian as required by federal law. The bill is particularly important to those in the food animal industry.

The bill authorizes licensed veterinary drug distributors to distribute veterinary legend drugs to (1) licensed veterinarians or to another veterinary drug distributor or (2) a layperson responsible for the control of an animal, under certain conditions. These conditions include that a licensed veterinarian has issued the prescription in the course of an existing, valid veterinarian-client-patient

relationship; that the distributor possesses a copy of the prescription at the time the prescribed drugs leave the licensed location of the veterinary drug distributor; and that the original veterinary prescription is retained on the premises of the veterinary drug distributor or an authorized central location for three years.

Persons or entities who act as veterinary drug distributors in Nebraska must obtain a veterinary drug distributor license from the Department of Health and Human Services Division of Public Health prior to selling any veterinary legend drugs.

The bill requires applicants for an initial or renewal license to submit an application and pay a fee to the department. The fee for new or renewing licenses is set at a base of \$50, with an additional fee of not more than \$500 based on variable costs to the department for inspections, investigating complaints, other similar direct and indirect costs, and the costs of administering the Veterinary Drug Distribution Licensing Act. Licenses expire on July 1 of each odd-numbered year.

Prior to licensure, each applicant must be inspected by the department. The bill also provides for random inspections of distributors by the department. As part of the inspections, the department can require an analysis of the distributor's drugs to determine authenticity.

LB 1022 also provides for provisional licensure to quickly establish the distribution of veterinary legend drugs in the state. Provisional licenses can be issued on or before July 1, 2009, to any applicant who meets certain requirements, including that the applicant has not violated any of the act's prohibitions which could result in the denial or revocation of a license; has established the required written policies and procedures; and has paid the \$500 fee.

LB 1022 passed 47-0 and was approved by the Governor on April 21, 2008.

LB 1048—Provide for Issuance of Birth Certificates for Stillbirths (*Nantkes, Engel, and Fulton*)

The mental pain of giving birth to a child born dead might be eased a bit, supporters of LB 1048 suggested, if the state recognized the birth as well as the death of the baby. To that purpose, LB 1048 provides that Nebraska will issue, upon parental request, a birth certificate in the cases of stillbirths of at least 20 weeks' gestation, the threshold at which the state requires death certificates to be issued.

The document is named a certificate of birth resulting in stillbirth. Twenty-one other states issue birth certificates for stillborn children.

Responsibility to inform parents that they can request such a certificate and how to do so is given to the person responsible for fil-

ing fetal death certificates. Parents of stillborn children can request the certificate regardless of when the corresponding fetal death certificate is filed.

LB 1048 provides that a fee can be collected for issuing the certificates. Further, certificates can include the baby's name, if one is given. If not, it will be entered as "baby boy" or "baby girl" and the requesting parent's last name. The name must match and include the state file number on the corresponding fetal death certificate.

LB 1048 passed with the emergency clause 45-0 and was approved by the Governor on April 16, 2008.

JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 157—Prohibit Prosecution for Abandoning a Child (*Stuthman, Adams, Ashford, Carlson, Christensen, Fischer, Fulton, Gay, Hansen, Howard, Johnson, Lautenbaugh, McDonald, Nantkes, Pahls, Pankonin, Pirsch, and Wallman*)

In the end, simplicity won the day for getting a so-called safe haven law enacted in Nebraska.

Safe haven laws, in place in every state in the union with Nebraska's passage of LB 157, provide troubled parents an outlet for legally abandoning their children. The hope is to prevent infants from being dumped in dumpsters or otherwise left in unsafe places where they may die before being found.

LB 157 prohibits prosecuting individuals for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The bill further requires the hospital to promptly contact the appropriate authorities to take custody of the child.

During floor debate it was agreed that a child-protection system was already in place in the state to manage what happens when children are abandoned. As the bill's introducer stated, "There are agencies that fall into place as far as the safety of a child. We don't have to reinvent the wheel for those situations."

As originally introduced in 2007, LB 157 was much more specific. It would have allowed parents to surrender their infant to a hospital staff member on duty at a hospital or a firefighter on duty at a fire station. The child could not have been older than 72 hours. Further, the bill specified that individuals accepting the child were authorized to perform any act necessary to protect the child's safety and health and that law enforcement was to be notified of the abandoned infant within four hours. The bill also originally assigned duties to the Nebraska Department of Health and Human Services (HHS) to track the number of infants abandoned and submit an annual report to the Legislature.

The bill's critics said information from other states failed to show safe haven laws worked. Other senators objected to the bill's details, particularly the age limit for abandonment and language in a proposed amendment that would have given the abandoning parent only 48 hours to return for the child before HHS would begin the process to terminate parental rights.

After stalling on General File in 2007, LB 157 gained supporters and momentum in 2008. In the interim, two separate cases of infant abandonment by young mothers in Nebraska drew renewed attention to the issue. Both mothers left their children in hospitals and both were later identified. The mother in Omaha claimed she believed Nebraska already had a safe haven law and charges against her were not filed. In Lincoln, the mother was charged, although those charges were eventually dropped. At least one of the mothers sought and eventually was given custody of her child.

LB 157 passed 41-1 and was approved by the Governor on February 13, 2008.

LB 606—Adopt the Stem Cell Research Act (*Ashford, Flood, Howard, Lathrop, Langemeier, and Pahls*)

A decade-long battle between two powerful adversaries, the University of Nebraska Medical Center and the Nebraska Right to Life lobby, between those who seek cures for crippling diseases such as Alzheimer's and Parkinson's and those who believe life begins at conception, reached a compromise in the passage of LB 606. The first bill to prohibit research on fetal tissue was introduced in the Legislature in 1999 and bills on the topic have been introduced in nearly every session since.

LB 606 prohibits the state's facilities, resources, and funds from being used to destroy human embryos for the purpose of research or to create cloned human embryos for any purpose. But the bill provides a new funding mechanism for Nebraska institutions and researchers who are engaged in nonembryonic stem cell research.

The bill creates the Stem Cell Research Cash Fund. Grants from this fund are to be distributed on a dollar-for-dollar matching basis, up to \$500,000 each fiscal year. The state's match is appropriated from the Nebraska Tobacco Settlement Trust Fund. No institution or researcher can receive more than 70 percent of the funds available annually.

A Stem Cell Research Advisory Committee is created to administer the grant process. The committee is composed of six members, including the deans of the NU Medical Center and Creighton University Medical Center or their designees and four scientists from outside Nebraska who are conducting human stem cell research with funding from the National Institutes of Health. Each dean is to submit a list of three nominees for the scientist positions on the committee, from which the state's chief medical officer picks two members from each dean's pool of nominees. Appointees must receive legislative approval.

LB 606 requires the committee to report annually to the Legislature the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded. The bill also requires the committee to report to the Legislature on

the progress of any projects that have been awarded grants under the Stem Cell Research Act within three years of the act's effective date

LB 606 passed with the emergency clause 48-0 and was approved by the Governor on March 25, 2008.

LB 736—Provide for Ignition Interlock Permits and Change Penalties for Driving Under the Influence (*Fulton*)

Like an electronic parole office—that is how the introducer of LB 736 described the bill's potential effect on drunk drivers.

LB 736 requires that ignition interlock devices be installed in the vehicles of persons convicted of first- and second-offense drunk driving. Prior law gave judges discretion to install ignition interlock devices for conviction of third-offense drunk driving.

Ignition interlock devices require the driver to blow into a breath analyzer connected to the vehicle's electrical system. If the device detects an alcohol concentration above the legal limit of 0.08, the vehicle will not start. The device also periodically notifies the driver while driving to pull over and test again. If the request is ignored, the vehicle's horn will start honking. The ignition interlock system is made so that a car will not start for 30 minutes after a failed sobriety test.

LB 736 creates a new class of driver's license, the ignition interlock permit (IIP). The permit must be obtained before persons can operate a motor vehicle equipped with an ignition interlock device. Persons driving with an IIP are limited to driving to their job, to school, an alcohol treatment program, or to an ignition interlock service facility. The devices must be installed on any vehicle the offender drives but cannot be used on commercial vehicles.

The bill actually gets offenders back behind the wheel sooner than previous law, with the tradeoff being a hoped-for reduction in drunk driving. After New Mexico passed a similar law, drunk driving fatalities dropped 25 percent, the bill's supporters noted.

Under LB 736, a person convicted for first-offense driving under the influence loses his or her license for 60 days, followed by the required installation and use of an ignition interlock device for 120 days. For a second offense, or first offense if the blood alcohol level is more than 0.15, the penalty is a 120-day license revocation, followed by mandatory installation and use of an ignition interlock device for 245 days. Previously, first-time offenders lost their driving privileges for six months; repeat offenders lost their licenses for one year.

Tampering with or circumventing an ignition interlock device or driving a vehicle without one in defiance of a court order is a Class II misdemeanor and will also result in the revocation of the IIP

and the loss of driving privileges during the period of license revocation.

The bill also authorizes the Board of Pardons to order the use of an ignition interlock device for anyone granted a reprieve after losing his or her operator's license under the state's 15-year license revocation law for repeat DUI offenders.

Persons ordered to comply with the terms of an ignition interlock device must pay for its installation, removal, and maintenance, unless they cannot afford it. The fee is set at \$45 for an ignition interlock device, \$40 of which is deposited into the newly created Ignition Interlock Device Fund to be used to provide ignition interlock devices for indigent defendants.

LB 736 passed 43-0, but, after a technical error was noticed, it was returned without consideration or action by the Governor. The Legislature suspended the rules to reconsider the vote on final passage and then returned the bill to Select File to correct the language. LB 736 passed a second time 44-0 and was approved by the Governor on April 16, 2008.

LB 766—Regulate Scrap Metal Recycling (*Cornett, Flood, Fulton, and Preister*)

LB 766 was introduced to thwart the theft of scrap metals, which have grown attractive to thieves as metal prices have skyrocketed in recent years.

The bill requires salvage yards—called secondary metals recyclers in the bill—to keep detailed records of purchases of theft-prone metals, specifically catalytic converters, all nonferrous metal except gold and silver, and metal beer kegs, including those made of stainless steel.

The bill's introducer said the requirements placed on scrap dealers via LB 766 are similar to those demanded of pawnbrokers. For every transaction involving the purchase of a metal regulated by LB 766, the scrap dealer must record specific information to include:

- The scrap dealer's business name and address;
- The name and signature of the person entering the information;
- The date and time of the transaction;
- The weight and grade of the regulated metals property purchased;
- The description of the metals purchased;
- The amount paid;
- The name, signature, and address of the vendor of the metals;

- The seller's motor vehicle operator's license number, state identification card number, or federal government-issued identification card number;
- A photocopy of the identification card presented;
- A fingerprint of the seller if the item being sold is either copper or a catalytic converter; and;
- A date- and-time-stamped photo or video of the scrap metal.

Further, LB 766 prohibits scrap dealers from paying cash for purchases over \$25 for any metals regulated by the bill. Purchase of copper or catalytic converters must be by check, regardless of the amount. For purposes of the bill, purchases made from the same person within a four-hour period is considered a single transaction.

The bill also prohibits purchases from minors or persons who lack valid identification and bars dealers from buying beer kegs from which the serial number or other identifying insignia has been removed.

The bill does not apply to businesses that generate or sell scrap metals in the ordinary course of business; to the collection or purchase of beverage or food cans; or to recycling or neighborhood cleanup programs contracted or sponsored by the state or any political subdivision.

Violating any part of the measure is a Class II misdemeanor.

LB 766 passed 44-5 and was approved by the Governor on April 11, 2008.

LB 844—Change Penalty Provisions for Marijuana Possession (*Karpisek, Christensen, and Pedersen*)

Getting caught possessing pot just became more expensive with the enactment of LB 844, a bill its sponsor said reflected the belief that the penalties for marijuana possession should be at least equal to penalties given minors who possess alcohol to discourage youthful experimentation with marijuana.

LB 844 increases the penalty for possessing marijuana weighing more than one ounce but less than one pound to a Class III misdemeanor. The penalty carries a \$500 fine and up to three months in jail. Previously, this was a Class IIIA misdemeanor, which carries a \$300 fine and up to seven days in jail.

LB 844 also increases the fine from \$100 to \$300 for possessing up to one ounce of marijuana. However, the crime remains an infraction. The fine for a second offense for possessing one ounce or less of marijuana is increased from \$200 to \$400 with possible jail time of up to five days. Second offense remains a Class IV misdemeanor. Finally, for third conviction, same offense, the fine in-

creases from \$300 to \$500 and up to seven days in jail. Third offense remains a Class IIIA misdemeanor.

LB 844 passed 40-2 and was signed by the Governor on April 16, 2008.

LB 1055—Change Provisions Relating to Animal Abuse, Dogs Running at Large, and Dangerous Dogs (*McDonald*)

Every county must designate an animal control authority under the terms of LB 1055, a bill that also expands the definition for dangerous dogs and prohibits persons convicted of dog fighting from owning another animal for up to 15 years.

The bill grew from painful personal experience when a dog attacked animals on the introducer's daughter's farm, killing the family cats and a puppy. The family had no recourse because in their rural area no one was responsible for regulating dangerous dogs.

LB 1055 redefines dangerous dog. Previously, the definition of a dangerous dog was one that had inflicted "severe injury" on a person while on public or private property other than its owner's property. The bill removes the requirement that injury to a human be "severe."

Specifically, a dangerous dog is one that has (1) killed a human; (2) inflicted injury on a human that requires medical treatment; (3) killed a domestic animal without provocation; or (4) been previously determined to be a potentially dangerous dog and inflicts an injury not requiring medical attention on a human, injures a domestic animal, or threatens the safety of humans or domestic animals. The definition of domestic animal is expanded to include buffalo, deer, antelope, fowl, and other animals in a zoo, wildlife park, refuge, wildlife area, or nature center.

The bill clarifies that dangerous dogs must be confined to protect the public and requires that they be spayed or neutered and implanted with microchip identification. Dangerous dogs cannot be transported to another county, city, or village except for the purposes of reasonable veterinary care or for permanent relocation. Owners must have the written permission of the animal control authorities in both former and future jurisdictions to permanently relocate a dangerous dog. Counties can enact ordinances barring the relocation of dangerous dogs.

LB 1055 also prohibits dogs running at large in counties with populations over 80,000 and cities of the first class contained in those counties. Counties meeting that description are Douglas, Lancaster, and Sarpy counties. LB 1055 allows any county to impound dogs running at large.

Current law provides that repeated violations of the dog running at large statute allows for disposition of the offending dog. LB 1055 adds that disposition can include sterilization, seizure, permanent assignment of the dog to a court-approved animal shelter, or destruction of the dog in an expeditious and humane manner. The costs for disposition are the responsibility of the owner.

LB 1055 authorizes all counties to collect a license tax, an authority previously limited to counties with more than 15,000 population. The bill prohibits the destruction of dogs for the owner's failure to pay the license tax. The bill also expands the definition of animal control authority to include any local law enforcement agency or other agency designated by a community to enforce animal control.

As enacted, the bill also contains provisions originally introduced in **LB 769** dealing with statutes that prohibit animal fighting, abandonment and cruel neglect. The bill adds definitions for "mutilation," "repeated beating," and "torture," terms used in the existing statute but not defined. It adds an exemption for conduct performed by veterinarians or conduct that conforms to accepted veterinary practices under the definitions of mutilation and torture.

LB 1055 also prevents persons convicted of a Class IV felony under the animal fighting and cruelty statutes from owning, possessing, or residing with any animal for at least five years and up to 15 years after conviction. Persons convicted of a misdemeanor animal cruelty violation can be prohibited from owning, possessing, or residing with any animal for up to five years.

LB 1055 passed with the emergency clause 44-0 and was approved by the Governor on April 21, 2008.

LEGISLATIVE BILLS NOT ENACTED

LR 233CA—Constitutional Amendment to Prohibit Discrimination or Preferential Treatment by the State, State Agencies, and Political Subdivisions (*Christensen*)

LR 233CA would have placed a measure to constitutionally ban affirmative action programs by the state or any political subdivision on the 2008 general election ballot.

The measure would have added a new section 30 to Article I of the Nebraska Constitution that would have read, in part: "The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting."

The measure was withdrawn by its sponsor before it had a public hearing. A separate effort to put such a measure on the ballot by petition was not affected by the legislative action.

LB 958—Change Provisions Relating to Firearms (*Ashford, Avery, Howard, Kruse, and McGill*)

Dubbed the “Von Maur bill” by the media after the horrific shooting spree in an Omaha department store in December 2007, LB 958 was introduced to address gun violence in Nebraska.

The bill ran into stiff opposition from gun-rights advocates and underwent two major revisions before advancing from General File.

As amended, LB 958 would have had four chief components. The bill would have:

- Required the Nebraska Commission on Law Enforcement and Criminal Justice to study aspects of gun violence in the state and issue a report to the Legislature;
- Established a hotline for individuals to report lost or stolen guns, with no criminal penalties attached;
- Prohibited persons who had been found mentally ill and dangerous or mentally incompetent within the previous 10 years from purchasing guns; and
- Eliminated a provision in state law that required individuals to get a permit before purchasing handguns and replaced it with a federal instant background check, which is what Nebraskans who purchase long guns are subject to currently.

However, during floor debate on Select File, it became apparent that the approval of the National Rifle Association had not been conveyed to its constituents and some senators expressed reservations about voting for the bill after telling their constituents they would not support it based on the NRA’s initial opposition.

LB 958 failed to advance to Final Reading on a 20-20 vote.

LB 963—Require Verification of Lawful Presence in the United States to Receive Public Benefits (*Friend, Erdman, Fulton, Lautenbaugh, and Pahls, at the request of the Governor*)

Federal law bars illegal immigrants from receiving public benefits, such as Medicaid and unemployment, but LB 963 would have made it a state mandate for all state agencies and political subdivisions to verify the lawful status of individuals who apply for federal, state, or local benefits.

LB 963 defined federal, state, or local benefits fairly comprehensively. They would have included “any grant, contract, loan, pro-

professional license, commercial license, retirement benefit, welfare benefit, health benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are provided to an individual, a household, or a family eligibility unit by an agency of the United States or the State of Nebraska or a political subdivision.”

The bill mirrored federal law in exempting certain critical services, including emergency medical benefits, short-term disaster relief, public health assistance for prevention and treatment of communicable diseases, and programs, services or assistance necessary for the protection of life and safety.

Additionally, LB 963 would have repealed Laws 2006, LB 263, which allows persons who are in the country illegally but who graduate from a Nebraska high school to attend a Nebraska college or university and pay in-state tuition rates.

Proponents of LB 963, including the Governor and Attorney General who testified at the hearing, said the federal government has failed the states on immigration issues and Nebraska needed to act to prevent taxpayer dollars being used to pay benefits to illegal immigrants. Opponents pointed out that LB 963 would have duplicated what the federal government already requires and they disputed the savings, since the verification system would have involved additional administrative costs to state agencies.

LB 963 was killed by the committee.

LB 1063—Change a Provision from Death to Life in Prison without Possibility of Parole (*Chambers*)

A U.S. Supreme Court jurist once famously said, “I shall no longer tinker with the machinery of death,” in reference to the death penalty. The Nebraska Unicameral has been “tinkering” with it for more than 30 years.

The now-annual bill to repeal the state’s death penalty took on new meaning in the 2008 session when the Nebraska Supreme Court ruled early in the session that the electric chair – the state’s sole means of execution – constituted cruel and unusual punishment, effectively leaving the state without a means of carrying out executions.

As originally introduced, LB 1063 would have made all first-degree murders Class I felonies, with a maximum penalty of life imprisonment without possibility of parole and with an order of restitution. The minimum penalty for first-degree murder would have been life imprisonment. The bill also would have removed first-degree murder as a Class IA felony and changed the punishment for Class IA felonies from life imprisonment without parole to life imprisonment.

The committee amendment would have made life imprisonment without the possibility of parole the only penalty for first-degree murder, thus eliminating the need for an extra hearing to determine aggravating and mitigating factors in the sentencing process. Further, the requirement in the original bill for mandatory restitution would have been stricken, maintaining judicial discretion in ordering any restitution.

The committee amendment was not adopted and LB 1063 failed to advance from General File on a vote of 20-28. The bill died with the end of the session.

LB 1130 – Provide for the Merger of Adult Probation and Parole Services (*Synowiecki and Pedersen*)

Merging the offices of probation and parole to more efficiently deliver community-based offender services was the intent of LB 1130. Supporters said it was a natural evolution of the community corrections process begun by Laws 2003, LB 46. LB 46 addressed rising prison costs by creating the infrastructure to get more offenders into less expensive community-based alternatives to incarceration

LB 1130 envisioned getting past the divide—probation is a judicial office and parole is an executive branch office—to get at the fact that probation and parole officers do essentially the same work, albeit with offenders on opposite ends of the criminal justice spectrum. Both probationers, who are placed on probation as an alternative to incarceration, and parolees, who have served some time in the penitentiary before being eligible for supervised release, are supervised while living in the community.

The state employs about 240 probation officers and 20 parole officers who would have been impacted by the bill.

As originally introduced, LB 1130 would have merged the Office of Probation Administration with the Parole Administration Office to create the Office of Adult Probation and Parole Administration under the Department of Correctional Services. However, the pending committee amendment would have made the merged office its own agency, to be called the Department of Community Corrections.

The courts would have continued to run juvenile probation, pre-sentence investigations, drug courts, and problem-solving courts.

LB 1130 advanced to General File but died with the end of the session.

NATURAL RESOURCES COMMITTEE

Senator LeRoy Louden, Chairperson

ENACTED LEGISLATIVE BILLS

LB 690 – Provide for Apprentice Hunter Education Exemptions Under the Game Law (*Fischer, Adams, Avery, Burling, Carlson, Christensen, Cornett, Dierks, Dubas, Engel, Erdman, Flood, Friend, Fulton, Gay, Hansen, Harms, Heidemann, Hudkins, Janssen, Johnson, Karpisek, Kopplin, Lathrop, Louden, McDonald, Nantkes, Nelson, Pahls, Pankonin, Pedersen, Rogert, Wallman, and White*)

Hunting is a part of Nebraska's heritage and a constitutionally protected activity, but proponents fear a decline in new hunters will translate into a drop in revenue for wildlife conservation activities and the Nebraska Game and Parks Commission. LB 690 was introduced to encourage more young persons to try hunting.

The regular hunter education course required of persons younger than 30 involves a commitment of time and money that may deter individuals from trying hunting, supporters of LB 690 said.

LB 690 authorizes the apprentice hunter education exemption certificate, allowing persons between 12 and 29 years of age, who have not taken the required hunter education course, to experience hunting. The certificate can be issued only once during a person's lifetime, but it can be renewed one time. The certificate costs \$5 and expires at the end of the year in which it was purchased. Persons using the certificate must still have the appropriate permit or stamp for the type of game they are hunting.

LB 690 requires unlicensed hunters to be accompanied by a licensed hunter who is at least 19 years of age. The apprentice hunter must remain in unaided verbal and visual contact with the licensed hunter, who cannot supervise more than two unlicensed hunters at once. The provisions of the bill apply equally to persons hunting with firearms or bow and arrow.

Additionally, LB 690 drops the age from 12 to 10 at which youth, accompanied by an adult, can hunt deer.

LB 690 passed 46-1 and was approved by the Governor on February 7, 2008.

LB 798 – Change Provisions Relating to Irrigation Water Reuse Pits, Transfer of Water Appropriations, and Intentional Underground Water Storage Permits (*Louden*)

LB 798 makes several changes to the state's water laws.

The original portions of LB 798 address water reuse pits, which are excavations or impoundment structures built to capture runoff

from ground water irrigation for reuse. Nebraska law recognizes reuse pits as an efficient use of the state's water resources and that they are best situated in natural streams. To avoid conflicting with statutes that require individuals to get a permit before pumping water out of streams or reaches of streams for irrigation, the statutes exempt pumping from reuse pits by recognizing that the water is there primarily because it is irrigation runoff.

The Department of Natural Resources has relied on 50-year-old U.S. Geological Survey maps to determine whether streams are permanent and subject to state regulation or whether the streams are there because of runoff or rainfall. The department has requested updated maps, but the federal agency has responded that it lacks the money to update them. LB 798 authorizes the department to continue to use the maps but to conduct its own investigations to determine whether streams are permanent or, in the new language of the bill, "ephemeral."

LB 798 defines the term "ephemeral stream" to mean "that portion of a natural stream in which water flows only after a precipitation event or when augmented by surface water runoff caused by the pumping of ground water for irrigation." Ephemeral stream replaces the term, "headwater segment," to reflect current usage in the field of hydrology.

The bill also contains two changes recommended by the Water Policy Task Force.

First, LB 798 contains provisions originally introduced as **LB 799**, allowing expedited transfers of surface water rights under certain limited conditions even if the point of diversion is changed. Prior law required notice to other appropriators and a hearing, if there were any objections to the proposed change, whenever a water-right transfer included changing the point of diversion. LB 798 allows expedited transfers in cases of minor changes of diversion points so long as the new point of diversion is on the same named stream, tributary, river, or creek as the previous point of diversion; the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and the proposed point of diversion is not above or below a tributary stream, a constructed river return, or a constructed drain.

Secondly, LB 798 strikes an age restriction that prevented irrigation canals built before August 26, 1983, from being used for intentional water storage. This provision was originally introduced in **LB 800**. Practically speaking, the change allows any irrigation district the opportunity to create an intentional recharge project, subject to the approval of the Department of Natural Resources, to convert existing water rights from irrigation to ground-water recharge. The change is seen as enhancing water management capabilities in basins deemed fully or overappropriated, such as the Republican and Platte river basins. The date change does not otherwise affect existing law.

LB 798 passed 44-0 and was approved by the Governor on April 16, 2008.

LB 1049 – Change Membership Provisions of the Game and Parks Commission (*Erdman, Christensen, Dubas, and Wallman*)

Appointment to the Game and Parks Commission is considered such a plum that folks will switch political parties to qualify. LB 1049 puts an end to that practice. The bill also changes the terms that members serve and the qualifications they must possess – changes the introducer said will lead to better accountability, provide more opportunities for Nebraskans to serve, and conform the commission to other agencies.

Prior law set the term length at five years and then required a member to sit out a term before becoming eligible for reappointment. LB 1049 changes the term to four years and allows members to be reappointed to one more four-year term, whether consecutive or not. After serving two terms, members would be ineligible to serve on the commission. Mid-term appointments do not count as a full term.

LB 1049 also expands the eight-member commission to nine members and provides that the ninth member serves at-large. Previously, all members of the commission were appointed from eight districts. Members who are appointed by district must be bona fide residents of their districts. The term of the at-large member is to begin January 15, 2009.

No more than five members of the commission can be from the same political party. (Prior law said no more than four.) To deter people from switching affiliation in order to qualify for appointment, LB 1049 stipulates the political party affiliation of each prospective member is to be determined by how the member was registered to vote in the last statewide general election prior to his or her appointment.

LB 1049 also addresses other requirements for appointment to the commission.

Prior law required three of the commissioners to be engaged in agricultural pursuits, at least two of whom also must live on a farm or ranch. LB 1049 strikes the requirement to live on a farm or ranch, reflecting the fact that fewer persons engaged in agriculture actually live on the land, supporters said.

Prior law also required commission members to be well informed on “wildlife conservation and restoration.” LB 1049 stipulates that members must be well informed and “interested in matters under the jurisdiction of the commission.” LB 1049 retains the requirement that members must be legal residents and citizens of Nebraska.

LB 1049 passed 40-2 and was approved by the Governor on April 11, 2008.

LB 1094 – Provide for Payments to Certain Holders of Water Rights and Change Provisions Relating to River-Flow Enhancement Bonds
(Carlson and Christensen)

Republican River irrigators left in the lurch by a lawsuit will be repaid under the provisions of LB 1094. To accomplish this, LB 1094 authorizes the transfer of \$9 million from the state's Cash Reserve Fund to the Water Contingency Cash Fund, which is created via the bill. The three natural resources districts (NRDs) in the Republican River basin will use the money to repay about 350 irrigators who gave up water in 2007 to comply with an interstate compact.

The money to repay the irrigators was to have come from taxes collected by the districts under new taxing authority given them by last year's Legislature. Laws 2007, LB 701 gave the NRDs bonding authority to finance water conservation projects, including buying or leasing water rights. To pay off the bonds, the NRDs could levy a property tax of up to 10 cents per \$100 value on all property owners in their districts and an occupation tax of \$10 per acre of irrigated farmland. But payment to the irrigators was put on hold when nine landowners in the Republican River basin sued over the constitutionality of the property tax.

The lawsuit was recently decided in the landowners' favor. The ruling in *Garey v. Nebraska Department of Natural Resources*, CI07-4610, May 19, 2008, struck down the property tax portion of LB 701 because it violates the Nebraska Constitution's prohibition against special legislation.

How does the ruling impact LB 1094? LB 1094 directs the NRDs to repay the state using the proceeds from the property tax or the occupation tax once those proceeds become available for distribution. The court decision eliminates the availability of property tax proceeds. However, LB 1094 allows the Legislature to provide other means for the NRDs to repay the state. By whatever means, the money must be repaid by June 30, 2013.

LB 1094 also requires that an agreement to acquire water rights by purchase or lease must contain provisions regarding the method of payment, the distribution of funds, the water use or rights subject to the agreement and the water use or rights allowed by the agreement.

Finally, LB 1094 contains somewhat technical provisions originally proposed in **LB 1131** and **LB 1132**. These provisions allow counties collecting the NRDs' occupation tax to receive the collection fee authorized in statute and clarify that the occupation tax is to be collected by the county treasurers "in the same manner" as real property taxes. County treasurers are also required to publish and post a list of delinquent occupation taxes and to provide the NRDs with this list.

LB 1094 passed with the emergency clause 46-0 and was approved by the Governor on April 1, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 880 – Provide for Watershed Enhancement Bonds (*Kopplin, Cornett, and Gay*)

Urban water issues are as critical and urgent this year as the rural water issues were last year, according to supporters of LB 880, a bill that would have given bonding authority to the Papio-Missouri River Natural Resources District (NRD) so it could implement a regional storm-water management plan.

More specifically, LB 880 would have allowed a natural resources district, whose district included a city of the metropolitan class, to issue general obligation bonds and to repay the bonds with an annual special watershed enhancement bond levy on the taxable value of all taxable property in the district. The levy necessary for financing the water enhancement bonds could not have caused the district to exceed its current tax levy limitation of 4.5 cents per hundred dollars of taxable property. Omaha is the only city of the metropolitan class, therefore the Papio-Missouri River NRD would have been the only NRD affected.

The bonds were to be used to pay the costs of design, right-of-way acquisition, and construction of storm-water management projects. The area under discussion stretches across Douglas, Sarpy, and Washington counties and includes the cities of Omaha, Bellevue, Papillion, and Bennington.

Similar bills were introduced in 2005 and 2007. The most recent bill, LB 272, was heard by the Revenue Committee. Both prior bills called for a 3-percent increase in the NRD's overall tax levy to repay the bonds.

Proponents said the bill was needed to deal regionally with the increased potential for flooding in an area that has seen rapid development, while opponents maintained there were other cheaper, methods to deal with federal water quality mandates and the threat of flooding. The proposed NRD solution, they said, favored private developers who would build expensive lakeside homes on the newly created reservoirs at the expense of taxpayers in the district. The bill did not contain plan specifics, but the Papio-Missouri River NRD has developed a proposal that calls for the construction of many new dams and reservoirs.

To address these concerns, the committee amendment would have imposed three additional conditions. Any reservoir funded with bond money could not have exceeded 500 surface acres in a permanent pool, and any permanent pool greater than 20 surface acres would have been required to provide public access. Finally, the amendment would have prohibited the use of eminent domain to acquire real property if that property would be turned over to a nonpublic entity after the acquisition.

LB 880 was on General File, with the committee amendment pending, when it was bracketed until April 17, 2008, the final day of the session. The bill died with the end of the session.

LB 986 – Adopt the Electronics Recycling Act (*Preister, Carlson, Christensen, Dierks, Dubas, Fischer, Kopplin, and Wallman*)

LB 986 would have provided Nebraskans a way to recycle their castoff electronics. So-called “e-waste” is the fastest growing municipal waste stream in the country, according to the bill’s sponsor. Most e-waste ends up in landfills, where it poses environmental hazards.

To establish a comprehensive electronics recycling system and to encourage the design of recyclable electronics, LB 986 would have imposed a manufacturers’ fee on electronics sold in the state. The money generated from the fee would have been used to fund an e-waste recycling grant program under the auspices of the Department of Environmental Quality (DEQ).

LB 986 would have defined “electronic device” as a computer, monitor, video display device, or television, intended for use in a home or residential environment and marketed to the general public. It would not have included phones, electronic auto parts, or electronic parts of home appliances.

On or before January 31, 2009, and each subsequent January 31, manufacturers who sold at least 500 electronic devices in Nebraska in the previous year would have had to register with the DEQ and pay an annual registration fee based on the number of units sold. The fees would have been credited to the Waste Reduction and Recycling Incentive Fund, which would have been earmarked for grants for education and information about electronics recycling, infrastructure development, and the collection, transportation, and recycling of electronic devices. The bill would have offered a carrot in the form of reductions in their annual fees for manufacturers who attained recycling goals.

LB 986 passed 42-4, but was vetoed by the Governor on April 21, 2008, after the legislative session had ended.

LB 1065 – Provide for Customer-Generators of Electricity (*Louden*)

LB 1065 would have provided a process for persons with qualified renewable electric generation facilities to interconnect with their local electric utility so that the customer-generator could get monetary credit for the energy he or she did not take from the power grid.

The bill would have required public power districts, public power and irrigation districts, individual municipalities, or nonprofit electric cooperative corporations to hook up the qualified renewable energy generation units of their customers to the local electri-

cal power distribution system and provide them with a meter capable of measuring the flow of electricity in both directions at the same rate. Customer-generators would have been responsible for all installation costs.

Currently, customer-generators can be hooked up to local utilities, but since Nebraska lacks net-metering standards, there is no process to credit the customer-generator for the energy he or she does not use unless the utility has adopted its own net-metering guidelines based on federal law.

The bill would have divided customer-generators into two classes based on size: those producing less than 10 kilowatts and those producing more.

For qualified generation units larger than 10 kilowatts, LB 1065 would have allowed utilities to create rate classes and recover certain unavoidable facilities costs from the customer. For customer-generators with systems that were 10 kilowatts or smaller, LB 1065 would have allowed for simple net-metering. These small customer-generators would not have required a rate class, nor would they have been liable for a facilities charge for using the distribution system.

Opponents asserted that the bill favored the power industry over the individual customer-generator because the 10-kilowatt limit would have excluded most farm and ranch operations and the additional requirements for meeting standards and insurance would have been burdensome to customer-generators.

When it became apparent that determined opposition would stall the bill, LB 1065 was bracketed until April 5, 2008. It remained on General File and died with the end of the session.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator John Synowiecki, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1147—Change Provisions Relating to Retirement and the Nebraska Investment Council (*Nebraska Retirement Systems Committee*)

LB 1147 was originally a technical “cleanup” bill; however, substantive provisions of other bills making changes to different portions of the Nebraska Retirement Systems law were amended into the bill. As enacted, LB 1147 also includes provisions originally prescribed in **LB 365** and **LB 1143**.

LB 1147 changes the early retirement component of the judges retirement system, one of the state’s three defined benefit plans. (The others are the Nebraska State Patrol and the school employees retirement systems.) The new formula is considered to be more generous for judges who retire before the normal retirement age, particularly for members who retire from ages 62 to 65.

The measure allows a judge to receive a reduced retirement annuity if he or she retires prior to the normal retirement age of 65. A judge retiring at 62 will receive an annuity reduced by 9 percent of what the judge would have received at 65. If a judge leaves employment at 63, there will be a 6-percent reduction. At age 64, there is a 3-percent decrease. If a judge retires before 62, he or she will receive a reduced annuity that is actuarially equivalent to the amount payable at 62.

LB 1147 also provides for a review of the operations of the Nebraska Investment Council (NIC), the state’s investment manager. The NIC is responsible for the investment of various state funds and trusts, including those of the state’s retirement plans. The NIC devises appropriate investment strategies and hires a state investment officer who invests the funds. As of September 2007 the NIC managed more than \$15.3 billion in assets of 30-plus state entities.

The NIC consists of a seven-member board, including five members appointed by the Governor and two ex-officio members, the State Treasurer and Executive Director of the Nebraska Public Employees Retirement Systems.

Because the world of investments and money management continually grows more complex, the bill directs the NIC to hire an independent consultant with expertise in the area of state investments to review its current status, including the NIC’s legal and organizational structure. The consultant’s report is to compare the NIC’s status with equivalent entities in other states and make rec-

ommendations to ensure that the NIC continues to effectively carry out its role as custodian of Nebraska's investments.

LB 1147 passed with the emergency clause 45-0 and was approved by the Governor on April 21, 2008.

However after the Legislature adjourned sine die, the Governor line-item vetoed \$100,000 for the study from the NIC's Cash Fund. It is uncertain whether the study will be funded by other means.

LEGISLATIVE BILLS NOT ENACTED

LB 371—Adopt the Nebraska Peace Officers Retirement Act (*Erdman*)

LB 371 would have adopted the Nebraska Peace Officers Retirement Act. The act would have established the Nebraska Peace Officers Retirement System, providing a defined benefit pension for all sworn law enforcement officers (officers) in the state.

Defined benefit pensions are generally the preferred retirement plan, in part because they offer a guaranteed, predictable annuity for a retiree's lifetime. A defined benefit pension typically has a "formula benefit" that determines the annuity received at retirement and takes into account such factors as years of service, age at retirement, and the average salary over a set number of years. (Social Security is a defined benefit pension.) Contributions are made by employees and employers, and the risk of investment gains and losses is borne by the members as a whole and not by individual members.

As amended by the committee, the peace officer retirement plan (plan) was modeled on some elements of the Nebraska State Patrol retirement system, one of the state's three defined benefit pensions. However, unlike the State Patrol plan, plan members would have continued to actively participate in and make contributions to Social Security. The plan would have been administered by the Public Employees Retirement Board (PERB), and its funds would have been invested by the Nebraska Investment Council.

Pursuant to LB 371, a county or city would have participated in the peace officer retirement system and would have been liable for any underfunding of the system. The State of Nebraska would not have financially backed up the plan, as it does the state's three existing defined benefit systems.

All officers employed by counties and cities on January 1, 2009, would have been eligible to participate in the plan. Officers would have included town marshals, chiefs of police, police officers, sheriffs and deputy sheriffs, and Game and Parks Commission conservation officers. However, the bill's provisions would not have covered officers of the cities of Omaha and Lincoln, Douglas County, or the Nebraska State Patrol.

Some officers covered by the plan could have chosen to remain members of their retirement systems, including: (1) members of the state or county employees retirement systems; and (2) certain members of retirement plans of cities of the first class (cities with populations between 5,000 and 100,000, such as Grand Island, Norfolk, McCook, and Scottsbluff).

Pursuant to the bill, an officer would have contributed 9.25 percent of his or her compensation to the plan, and employers would have matched this amount. Officers would have been eligible for a full retirement benefit at age 55 with 20 years of service. The benefit formula for a full pension would have been calculated at 2.25 percent of an officer's final average monthly compensation, per year of service. (Final average monthly compensation would have been the average of an officer's highest three individual years of compensation.) However, an officer's pension could not have been greater than 72 percent of his or her final pay.

The bill also would have prescribed: (1) a mandatory retirement age of 62; (2) a reduced annuity that included a survival benefit for an officer's spouse; (3) disability annuities for work-related and nonwork-related disabilities; and (4) rollovers from other qualified retirement plans, such as those of local governments.

LB 371 advanced to General File but died with the end of the session.

REVENUE COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 777—Redefine Agricultural and Horticultural Land for Purposes of Nebraska’s “Greenbelt” Property Tax Valuation Law (*Hudkins*)

LB 777 was introduced in response to fallout from a 2006 change in the laws governing the valuation of land located in so-called “greenbelt” areas of the state. As a result of the way that change was interpreted by county officials, a substantial number of rural properties — most located in Lancaster County — were denied the favorable tax treatment that had for years been accorded them. LB 777 sought to revisit the 2006 change, which the bill’s sponsor believed established a valuation process that was problematic.

Greenbelt designation applies to certain areas of agricultural or horticultural land that exist outside (or, in some instances, within) the corporate boundaries of cities, villages, and sanitary and improvement districts, but which are close enough to them to be affected by residential and commercial development. The tax value of property located in such areas can be significantly higher when based on the land’s development potential rather than agricultural use. Additionally, agricultural land in Nebraska is valued for property tax purposes at 75 percent of its actual value, whereas other classes of real property are valued at 100 percent of actual value.

In order to protect agricultural activity in such areas from increased taxation resulting from nearby development, the Legislature passed laws several decades ago designed to grant “special valuation” status to qualifying “agricultural and horticultural land” located near cities and villages. Over time, however, criticism arose because of situations in which acreage owners who were not believed to be involved in “agricultural or horticultural” activity received the favorable greenbelt valuation.

In an attempt to remedy this, Laws 2006, LB 808, amended the greenbelt law by changing the definition of “agricultural and horticultural land” from “land which is primarily used for the production of agricultural or horticultural products” to “a parcel of land which is primarily used for agricultural or horticultural purposes.” By remaining silent on how a parcel’s “primary use” was to be determined, the Legislature left it up to county officials across the state to set the standards.

As noted above, the most significant impact of the enactment of LB 808 was felt in Lancaster County in 2007, when the assessor notified almost a thousand rural property owners that the special valuation they had enjoyed was denied. Half that number appealed their valuations to the Lancaster County Board of Equalization, which, according to a May 11, 2007, Lincoln Journal Star article, reinstated roughly 80 percent of the special valuations. The Lancaster County Assessor appealed these reinstated cases to the state

Tax Equalization Review Commission, as did some property owners whose special valuations were not reinstated by the board of equalization.

LB 777 sought to eliminate problems in the valuation process believed to have resulted from the passage of LB 808. In an attempt to resolve the uncertainty and potential county-to-county inconsistency involved in having county assessors define "primary use," the bill as originally drafted employed the concept of "multi-use" parcels of land. On such a parcel of land, different uses – for example, residential and agricultural – could be considered separately in arriving at the valuation of the parcel in its entirety.

As enacted into law, LB 777 addresses the "primary use" problem by redefining "agricultural and horticultural land" to mean "a parcel of land, excluding of any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes." Proponents of the amended version of the bill indicated during floor discussion that they believed the amended version accomplished the goals of the introducer of the bill.

The bill becomes operative on January 1, 2009.

LB 777 passed 25-15 and was approved by the Governor on April 11, 2008.

LB 846—Change Motor Fuel Taxes and Allocations of Motor Fuel Tax Proceeds (*Fischer*)

LB 846 changes Nebraska's motor fuel taxes by decreasing the so-called "fixed" portion of Nebraska's gas tax rate from 10.5 cents per gallon to 7.5 cents per gallon. However, for motor fuel tax periods beginning on or after July 1, 2009, LB 846 imposes a 5-percent tax on the wholesale price of motor fuels, including gasoline and compressed fuel. The changes are expected to be tax-revenue neutral and retail-price neutral because the variable gas tax rate will decrease from \$0.14 per gallon to \$0.04 per gallon beginning July 1, 2008.

Revenue derived from the 5-percent wholesale tax will be credited to the Highway Trust Fund. After accounting for credits and refunds, the balance of the amount received that is attributable to the 5-percent tax will be distributed from the Highway Trust Fund as follows: (1) 66 percent to the Highway Cash Fund for the Nebraska Department of Roads; (2) 17 percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and (3) 17 percent to the Highway Allocation Fund for allocation to the various cities for road purposes.

Finally, LB 846 appropriates a total of \$15 million from the state's Cash Reserve Fund to the Roads Operations Cash Fund. \$5 million is required to be transferred on July 7 each year, 2009 through 2011.

2004 was the last time major changes were made to Nebraska's fuel tax laws. Laws 2004, LB 983, was the first major change to

those laws since the enactment of Laws 1994, LB 1160. Among other things, LB 983 repealed the special fuel tax and established separate laws governing the taxation of diesel fuel and alternative fuels.

LB 846 passed 39-5 and was approved by the Governor on April 21, 2008.

LB 888—Reduce Corporate Income Taxes (*Burling, Gay, and Pirsch*)

LB 888 changes corporate income tax brackets but does not change corporate income tax rates. Under prior law, corporate taxable income of \$50,000 or less was taxed at a rate of 5.58 percent, while taxable income over \$50,000 was taxed at a rate of 7.81 percent.

As enacted, LB 888 provides for taxing corporate taxable income of \$100,000 or less at a rate of 5.58 percent and corporate taxable income over \$100,000 at a rate of 7.81 percent.

LB 888 passed 48-0 and was approved by the Governor on April 9, 2008.

LB 895—Change Provisions of Tax Incentive Laws (*Janssen, Adams, Burling, Cornett, Dierks, Gay, Langemeier, Pahls, Preister, and White, at the request of the Governor*)

LB 895 changes provisions of the Nebraska Advantage Act and the Nebraska Advantage Rural Development Act.

Changes Made to the Nebraska Advantage Act

The Nebraska Advantage Act is Nebraska's large-scale, broad-based, business tax incentives program. It has multiple tiers of investment and employment that entitle a business to certain tax incentives when the required levels of investment and employment have been met. LB 895 adds another tier—Tier 6—to the Nebraska Advantage Act. Any type of business, except a retail business, can qualify for Tier 6 incentives. Table 1, on page 76, shows the required levels of investment and employment and the tax incentives for all project-tiers under the act, following passage of LB 895.

The act requires a business to file an application with the Tax Commissioner for approval or disapproval of the proposed project and the tax benefits sought. The act requires all businesses to file an application and pay a nonrefundable filing fee. The nonrefundable application fee for a Tier 6 project is \$10,000.

Tier 6 incentives include: (1) refunds of sales and use taxes paid on qualifying project-related purchases; (2) wage tax credits; (3) investment tax credits; (4) exemption from personal property taxes

that would otherwise be imposed on *all* personal property located at a Tier 6 project; and (5) a real property tax subsidy.

The real property tax subsidy for a Tier 6 project is unprecedented in Nebraska. If certain conditions are met, credits earned for a Tier 6 project can be used by the business to eventually obtain a payment from the State of Nebraska to reimburse the business for real property taxes imposed and paid after the year the required levels of employment and investment are met and before the end of the so-called “carryover” period. (The carryover period is explained below.) But only certain real property will qualify for the subsidy (i.e., real property that is included in the Tier 6 project and that is purchased or leased by the business after the day the application is filed).

If a business cannot use all of its Tier 6 tax credits in one tax year, the act allows the business to carry over the amount of unused tax credits for use in future tax years. Such tax credits can be carried over from year-to-year until fully used, but they cannot be carried over more than one year past the end of the “entitlement period” for a Tier 6 project. The entitlement period for a Tier 6 project begins the year during which the required increases in employment and investment are met or exceeded and continues year after year, until the end of the ninth year after the entitlement period began.

Table 1. Nebraska Advantage Act: Required Levels of Investment and Employment and Related Tax Incentives

Tier	Investment Level	New Employees at the Project	State & Local Sales & Use Tax Refunds on Qualifying Project-Related Purchases	Wage Tax Credit	Investment Tax Credit	Property Tax Exemption For Qualified Personal Property
1	\$1 million	10	50% refund	3% to 6%	3%	None
2	\$3 million	30	100% refund	3% to 6%	10%	None
3	\$0	30	None	3% to 6%	None	None
4	\$10 million	100	100% refund	3% to 6%	10%	Yes
5	\$30 million	0	100% refund	None	None	None
6a	\$10 million	75	100% refund	10%	15%	Yes
6b	\$100 million	50	100% refund	10%	15%	Yes

Significantly, LB 895 expands the list of qualified businesses that may be eligible for the act’s tax incentives to include a business engaged in “the research, development, and maintenance of an Internet web portal.” Not all business websites are portals. For example, IBM’s current website is not a portal, but the websites of Yahoo! and Google are portals. LB 895 tells us that an Internet web portal is “an Internet site that allows users to access, search, and navigate the Internet.” If a business’ Internet web portal project meets the required level of investment for a Tier 5 project, it will be eligible for a property tax exemption for qualified personal property located at the project.

Changes Made to the Nebraska Advantage Rural Development Act

The Nebraska Advantage Rural Development Act is another business tax incentive program. Among other things, it provides incentives for livestock modernization or expansion. However, pursuant

to LB 895, livestock modernization or expansion projects undertaken within a specified five-year time frame to correct violations of certain environmental protection laws are ineligible for incentives under the act (e.g., projects to correct violations of the Environmental Protection Act, Integrated Solid Waste Management Act, Livestock Waste Management Act, or any order of the Nebraska Department of Environmental Quality).

Provisions of **LB 1033** and **LB 1046** were amended into LB 895. As amended to include the provisions of those two bills, LB 895 changes provisions of the Nebraska Advantage Rural Development Act by making eligible for the act's tax incentives a qualified applicant located in any village, any city of the second class, and any area within the corporate limits of a city of the metropolitan class (i.e., Omaha) consisting of one or more contiguous census tracts (which has more than 30 percent of its people living below the poverty line) and all census tracts contiguous to such tract or tracts. Additionally, beginning with fiscal year 2009-2010 and each fiscal year thereafter, the legislation increases to \$4 million per fiscal year the maximum aggregate dollar amount of tax incentives that can be granted statewide pursuant to the act. Until July 1, 2009, the maximum aggregate dollar amount of tax incentives that can be granted statewide pursuant to the act remains \$3 million per fiscal year.

Changes to Other Laws Pertaining to Economic Development

Provisions of **LB 997** were amended into LB 895. The legislation eliminates a statutory requirement—pertaining to economic development loan fund programs in cities and villages—that the individual responsible for loan servicing must establish a separate account in a financial institution for each loan made from the loan fund.

LB 895 passed 43-1 and was approved by the Governor on April 17, 2008.

LB 912—Change Provisions of the Convention Center Facility Financing Act (*Avery, Ashford, Cornett, Flood, Fulton, Hudkins, McGill, Nantkes, Preister, Schimek, and Wallman*)

Much to the benefit of the City of Lincoln, LB 912 enables the city to qualify for state financial assistance for a convention center and an arena under the Convention Center Facility Financing Act. That is now possible because LB 912 redefines the terms “associated hotel” and “eligible facility” to include publicly owned facilities and those changes are operative for applications for financial assistance received on or after February 1, 2008.

LB 912 passed 47-0 and was approved by the Governor on April 11, 2008.

LB 916—Omnibus Sales and Use Tax Changes (*Revenue Committee*)

LB 916 is a Revenue Committee priority bill that was introduced at the request of the Nebraska Department of Revenue. The adopted committee amendment [AM 1932] rewrote the bill.

As enacted, LB 916 provides for sales and use taxation of specified digital products delivered electronically—provided that such products are taxable when delivered on tangible storage media—and it treats satellite service and satellite service operators the same as community television service operators for purposes of sales and use taxation. The legislation provides that retail sales of “digital audio works,” “digital audiovisual works,” “digital codes,” and “digital books” that are “delivered electronically” are gross receipts subject to Nebraska’s sales and use taxes beginning October 1, 2008. “Delivered electronically” means “other than delivery of tangible storage media.” LB 916 defines those terms so that they conform to the definitions set forth in the Streamlined Sales and Use Tax Agreement. Additionally, LB 916 makes related coordinating changes to the definition of “sale for resale.”

LB 916 also makes several other changes to Nebraska’s sales and use tax statutes. Except as otherwise noted, the following changes are operative October 1, 2008.

LB 916 clarifies that insulin and prescription drugs do not have to be reimbursable under Medicaid to be exempt from Nebraska’s sales and use tax and it accomplishes that by rewriting the exemption. Only prescriptions for durable medical equipment, home medical supplies, prosthetic devices, oxygen, oxygen equipment, and mobility enhancing equipment must be reimbursable under Medicaid to be exempt from Nebraska’s sales and use taxes. The change becomes operative on December 1, 2008.

Under current law, gross receipts include income earned for the service of installing and applying tangible personal property that is subject to sales and use taxation. LB 916 clarifies that if any or all of such installation charge is free to the customer but is paid by a third-party service provider, any tax owed due on the part of an activation fee, finder’s fee, installation charge, or similar payment made by the third-party service provider must be paid by the third-party service provider and must be collected and remitted by the installer.

LB 916 requires retailers to give the Tax Commissioner the name and address of any officer, director, partner, limited liability company member, or employee (other than an employee with purely ministerial duties) who has a substantial interest in the business and who is or will be responsible for collecting and remitting sales tax. The bill further permits the Tax Commissioner to revoke or suspend a retailer’s registration if such person fails to provide for audits, makes a material misrepresentation of fact, or fails to disclose such a fact to the Nebraska Department of Revenue.

With respect to a claim for a refund of sales or use taxes paid, the requirement that the Tax Commissioner allow or disallow the claim within 180 days after the claim has been filed is waived if the claimant requests a hearing on the matter. However, if a hearing has not been requested, and the Tax Commissioner has not allowed or disallowed the claim within either the 180-day period or other period agreed to by the claimant and the Tax Commissioner, then the claim will be deemed to be allowed.

Finally, provisions of three bills relating to sales and use tax exemptions were amended into LB 916 by the committee amendment.

LB 1126 exempts from sales and use taxes documents prepared by court reporters and copies of medical records. The fiscal note for LB 1126 estimates that the exemption will reduce state sales and use tax revenue by \$379,000 for fiscal year 2008-2009 and by \$632,000 for fiscal year 2009-2010. The exemption is operative October 1, 2008.

LB 1134 expands the sales and use tax exemption for sales of animals used for human consumption (e.g., live cattle, hogs, and poultry) to include other species of live “game birds” (e.g., ducks and pheasants), the hunting of which is subject to permit and regulation by the Nebraska Game and Parks Commission. The fiscal note for LB 1134 estimates the exemption will reduce state sales and use tax revenue by \$287,000 for fiscal year 2008-2009 and by \$294,000 for fiscal year 2009-2010. The exemption is operative October 1, 2008.

LB 1137 clarifies the Rural Community-Based Energy Development (C-BED) Act and the related statutes governing the sales and use tax exemption for qualified new wind energy projects. For purposes of the sales and use tax exemption, the legislation defines “power purchase agreement payments” and redefines “new wind energy project” to mean “any tangible personal property used to manufacture, install, construct, repair, or replace a device used to convert wind energy into electrical energy.”

Other changes concern the required “ownership structure” of a C-BED project: There can be “one or more” qualified owners of a C-BED project; there is a distinction between direct and indirect ownership interests; and, if there is a change in project ownership that disqualifies the project for C-BED status, the project developer and the Tax Commissioner must notify the electric utility that has a power purchase agreement with the formerly qualified C-BED project.

The legislation also permits the Tax Commissioner to audit actual payments and distribution of the payments to determine if the projected distributions were met and to require the filing of various documents (e.g., articles of incorporation and power purchase agreements), including documents showing compliance with the requirement that, to the extent feasible, a C-BED project developer must provide, in writing, an opportunity to become a qualified

owner in the C-BED project to each property owner on whose property a wind-energy turbine is located. The legislation further permits a project to voluntarily surrender its sales and use tax exemption and pay the sales and use tax that would have otherwise been due, plus the applicable statutory rate of interest from the date the tax would have been due if no exemption was granted until the date paid. Another change requires an electric utility to prepare, by March 1, the required annual report that summarizes its efforts to buy energy from C-BED projects and post the annual report on its web site. The fiscal note for LB 1137 estimates that the exemption will reduce state sales and use tax revenue by \$52,000 for fiscal year 2008-2009 and by \$73,000 for fiscal year 2009-2010.

LB 916 passed 34-4 and was approved by the Governor on April 14, 2008.

LB 965—Change Property Tax Provisions (*Revenue Committee*)

LB 965 is designed to enhance enforcement of Nebraska's property tax laws. It clarifies that the state Property Tax Administrator has authority over the county assessor in counties where the state has taken over the property assessment function, and it requires taxpayers to file protests of depreciable tangible personal property assessments on or before June 30 (formerly May 1).

LB 965 also changes procedures for filing an amended personal property tax return upon the discovery of an error or omission, allows the assessor to accept or reject the amended return, and permits the taxpayer to appeal the assessor's decision to reject it. The bill also clarifies refund procedures.

Additionally, LB 965 eliminates: (1) obsolete language pertaining to real estate transfer statements; and (2) a requirement that Form 521, which is used to report the sales price of real property, be produced in quadruplicate.

Finally, provisions of **LB 964** were amended into LB 965. The legislation changes various provisions governing and pertaining to the Tax Equalization and Review Commission.

LB 965 passed 43-0 and was approved by the Governor on April 14, 2008.

LB 1001—Adopt the Low-Income Home Energy Conservation Act, Create the Energy Conservation Improvement Fund, and Change Provisions Governing Income Tax Withholding for Independent Contractors (*White and Howard*)

LB 1001 adopts the Low-Income Home Energy Conservation Act, creates the Energy Conservation Improvement Fund, and changes provisions governing income tax withholding for independent contractors.

As advanced to Final Reading, LB 1001 provided for earmarking up to 5 percent of the total sales taxes collected on sales of electricity by the utility. The utility would then match the earmarked amount and fund conservation improvements for low-income customers. However, due to budgetary constraints, the bill was amended on Final Reading to postpone the earmarking of such revenue until fiscal year 2009-2010.

Additionally, LB 1001 imposes a 5-percent income tax withholding requirement on any construction contractor who pays more than \$600 for construction services to a contractor or an independent contractor. (An independent contractor is a worker who is not an employee.)

LB 1001 passed 43-1 and was approved by the Governor on April 16, 2008.

LB 1004—Change Income Tax Withholding Amount (*Cornett*)

LB 1004 changes the minimum individual income tax withholding amount from 3 percent of gross wages (minus qualified deductions) to 1.5 percent.

Such tax withholding is required to be at least the minimum amount, unless the employee provides satisfactory evidence that a lower amount is justified.

LB 1004 passed with the emergency clause 44-0 and was approved by the Governor on April 16, 2008.

LEGISLATIVE BILLS NOT ENACTED

LR 220CA—Permit Residential Property to be a Separate and Distinct Class of Property for Purposes of Property Taxation and Permit a Different Method of Taxing Such Property (*Kopplin*)

LR 220CA would have amended Article VIII, section 1, of the Nebraska Constitution to permit the Legislature to provide that residential property, as defined by the Legislature, is a separate and distinct class of property for purposes of property taxation. The measure also would have allowed the Legislature to provide for a different method of taxing such property even if the resulting property values are not uniform and proportionate with all other classes of real property and franchises. However, the measure would have required the values of all residential property to be uniform and proportionate with respect to all residential property.

LR 220CA was indefinitely postponed by the committee.

LR 230CA—Expand the Homestead Exemption for Qualified Elderly Property Taxpayers (*Pedersen*)

LR 230CA would have amended Article VIII, section 2, of the Nebraska Constitution to permit the Legislature to expand the homestead exemption for qualified property taxpayers. To qualify for

the exemption in a given year, the property taxpayer would have had to be age 65 or older with gross household income from all sources of \$40,000 or less and would have had to actually occupy the residence as a homestead. LR 230CA also would have permitted the Legislature to exempt from taxation the increased value of a qualified taxpayer when the increase in value results from appreciation in value for reasons other than improvements, beginning with the year the owner reaches 65 years of age.

LR 220CA was indefinitely postponed by the Revenue Committee.

LR 231CA—Create a Property Tax Appellate Court (Erdman)

LR 231CA would have amended two different articles of the Nebraska Constitution. It would have amended Article IV, section 28, to eliminate the Tax Equalization and Review Commission, which was first established by Laws 1995, LR 3CA, and Laws 1995, LB 490. It also would have amended Article V, section 1, to vest "the judicial power of the state" in, among other courts, "a property tax appellate court. . . ."

LR 231CA was withdrawn by the introducer shortly after LR 231CA was referred to the **Reference Committee**. The measure is summarized here—with other proposed constitutional amendments relating to taxation—solely for historical purposes.

LB 235—Incentives for Film and Music Production in Nebraska (*Nantkes, Gay, Rogert, Wallman, Karpisek, Lathrop, and Nelson*)

As introduced, LB 235 would have provided four different incentives for film and music production activities in Nebraska; would have created the Film and Music Office; and would have provided certain powers and duties for the Game and Parks Commission and the Tax Commissioner.

The incentives would have included a 15-percent rebate of qualified expenditures; an income or sales tax credit of either 10- or 25-percent of qualified costs incurred to establish a film or music production and development facility; an income tax credit equal to 25 percent of the profits from a qualified production that reinvests in another qualified production; and a sales tax exemption for purchases of goods and services consumed while producing a Nebraska documentary, music video, or television program or commercial.

LB 235 advanced to General File during the 2007 legislative session with a committee amendment that, after being adopted in 2008, rewrote the bill. That amendment proposed to create the "Film Office" within the Nebraska Game and Parks Commission and it proposed a two-tiered rebate incentive for qualified film production costs.

The tier-one rebate incentive would have been available for qualified film productions with a budget of at least \$30 million. The tier-one rebate would have been equal to 25 percent of qualified film production costs.

The tier-two rebate incentive would have been available for qualified film productions with a budget of at least \$2 million, of which at least \$1.25 million would have to be expended for qualified film production costs incurred in Nebraska. The tier-two rebate would have been equal to 25 percent of qualified production costs if more than 50 percent of the film production crew are Nebraska residents or 10 percent if less than 25 percent of the film production crew are Nebraska residents.

Additionally, the adopted committee amendment proposed to create the Film Enhancement Rebate Program. Rebate incentives would have been paid from that program, which would have obtained money from private donations and legislative appropriations.

LB 235 advanced to Select File during 2008. Floor debate touched on a number of policy issues, including whether any incentives for film production would benefit the state.

A motion to bracket the bill until March 1, 2008, was approved on February 5, but there was no further consideration of the bill and it died at the end of the session.

LB 784—Prohibit Taxpayers Who Violate Federal Immigration Laws from Receiving Tax Incentives under the Nebraska Advantage Act
(Howard and Kopplin)

LB 784 would have prohibited taxpayers who violate federal immigration laws from receiving tax incentives under the Nebraska Advantage Act.

LB 784 would have required an application filed under the act to contain the taxpayer's certification that it had not knowingly violated federal immigration laws by employing aliens unauthorized to work in the United States during the five-year period before the date of the application. The penalty for violating the bill's prohibition would have been disallowance or recapture of all incentives set forth in the act. The bill would have been operative for all applications filed on or after the bill's effective date.

The committee amendment would have required a violation to occur between the date of the application and the end of the tax incentive entitlement period to be punishable and such punishment would have been recapturing 100 percent of past tax incentive benefits and disallowing future tax incentive benefits.

LB 784 advanced to General File but died with the end of the session.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 755—Change Provisions Relating to the Public Service Commission’s Powers and Duties (*Transportation and Telecommunications Committee*)

As enacted, LB 755 clarifies the Public Service Commission’s power to investigate any alleged neglect or violation of law or regulation under its jurisdiction and to impose a civil penalty upon finding any violation. The commission-imposed penalty is in addition to other penalties and relief provided by law.

The bill also changes the cap on the Nebraska Competitive Telephone Marketplace Fund. If money in the fund exceeds \$30,000, the excess funds are credited to the Nebraska Internet Enhancement Fund. (Prior law placed the cap at \$100,000.)

Additionally, LB 755 changes certain reporting requirements by (1) eliminating a requirement that local exchange carriers provide information for the Public Service Commission’s annual report regarding the existence of any interlocal agreements to provide 911 service, (2) asking wireless carriers in their quarterly reports to report the number of telephone numbers or functional equivalents (as opposed to reporting all the actual numbers), and (3) exempting any carrier whose users do not have access to 911 service from having to provide quarterly reports.

Finally, LB 755 prohibits a wireless carrier receiving funds from the Enhanced Wireless 911 Fund from assessing any of the costs associated with the implementation or provision of enhanced wireless 911 service to any public safety answering point, county, or municipality without the express consent of the Public Service Commission. This concept was originally included in **LB 829**.

LB 755 passed with the emergency clause 47-0 and was approved by the Governor on March 19, 2008.

LB 756—Change Provisions Relating to Transportation (*Transportation and Telecommunications Committee*)

LB 756 is this year’s committee “cleanup bill.” In addition to its original provisions, as enacted, LB 756 includes provisions from several other bills: **LB 712**, **LB 827**, **LB 834**, **LB 841**, **LB 874**, **LB 917**, **LB 919**, and **LB 1087**.

The bill includes Nebraska’s annual update of references to federal law in the state’s motor vehicle provisions and provisions govern-

ing occupant protection systems, commercial drivers' licenses, motor carrier safety, and hazardous materials transportation. The vehicle industry is heavily regulated at the federal level and it is important that Nebraska's motor vehicle statutes comply with federal law. Updated references to the International Registration Plan, which becomes effective on July 1, 2008, are also included.

Recognizing the technological advancements in motor vehicles and recordkeeping, LB 756: (1) repeals the prohibition on driving with only parking lights on; and (2) reduces from six years to three years the time required for the Department of Motor Vehicles (department) to keep paper motor vehicle registration records. The information is electronically stored by the department, making the paper records unnecessary.

LB 756 also provides that when transferring an out-of-state title of a motor vehicle or boat into Nebraska, an out-of-state title with a valid lien noted on its face serves as sufficient proof of the lien to have it noted on the Nebraska-issued certificate of title.

Additionally, the bill authorizes the department to prescribe a dealer assignment form, which can be attached to a manufacturer's statement of origin when all reassignment spaces have been used on the manufacturer's statement of origin. (Reassignment of the manufacturer's statement of origin allows a dealer to transfer vehicles he or she has in stock to another dealer without having to apply for certificates of title.)

Companies using equipment such as truck-mounted boom pumps can now receive a yearly highway use permit via the changes prescribed in LB 756. The bill strikes the phrase "rubber-tired crane with a fixed load" and replaces it with the phrase "self-propelled specialized mobile equipment." Prior law required companies using such equipment to continually purchase a 10-day highway use permit.

LB 756 defines "idle reduction technology," which allows a commercial truck driver to use heat, air conditioning, or electricity without operating the truck's main engine, and increases by not more than 400 pounds the maximum gross weight and axle weight limits for those trucks equipped with idle reduction technology.

Refunds for registration fees for apportioned vehicles will now be calculated from the date of the transaction involving the vehicles as opposed to the date of the refund application. A transaction could include a transfer of ownership, removal of the vehicle from service, or loss of possession due to fire or theft. Conversely, if a vehicle is added to a registered fleet, the owner will pay the proportionate registration fee from the date the vehicle was placed into service, the expiration date of the out-of-state registration, or the date Nebraska becomes the base jurisdiction of the fleet, whichever occurs first. Any refund or prorated registration application must be made within the requisite registration period.

Finally, LB 756 provides that either a certificate showing the date of transfer or a certificate of title as satisfactory proof of the right of possession to a newly purchased or sold motor vehicle.

LB 756 passed with the emergency clause 47-0 and was approved by the Governor on March 19, 2008.

LB 911—Change Provisions Relating to the Issuance of Vehicle Operators' Licenses and Identification Cards (*Hudkins*)

The aptly named LB 911 expresses the Legislature's intent that the Department of Motor Vehicles (department) change its processes for issuing drivers' licenses and identification cards. As introduced, the bill was intended to bring Nebraska into compliance with the federal Real ID Act.

In December 2004, in response to recommendations made by the 9/11 Commission, Congress passed and the President signed into law the National Intelligence Reform Act of 2004. Among its many provisions, the law directed the U.S. Secretary of Transportation to establish a negotiated rule-making process to establish minimum standards for state-issued drivers' licenses and identification cards.

Subsequently, in May 2005, the federal government enacted the Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005. This legislation eliminated the negotiated rule-making process and replaced it with the Real ID Act of 2005, which mandates federal standards for drivers' licenses and personal identification cards.

Carrying out the mandate prescribed in the Real ID Act requires substantial changes to the processes Nebraska uses when issuing drivers' licenses and personal identification cards. The required changes also come with an estimated hefty price tag. The department estimates Nebraska's implementation costs to be \$26 million.

In 2007, the Legislature adopted LR 28, calling on Congress to repeal the Real ID Act. That same year, the Transportation and Telecommunications Committee introduced LB 285, authorizing the Director of Motor Vehicles to do all things necessary to comply with the Real ID Act. The bill did not advance from committee. While discussing the federal act, the committee recognized security and fraud concerns in Nebraska's license-issuing process. As enacted, LB 911 addresses those concerns.

LB 911 directs the department to develop, implement, and maintain a process for the issuance of drivers' licenses and identification cards designed to protect the identity of applicants and license- and card-holders and reduce identity theft, fraud, forgery, and counterfeiting to the greatest extent possible. The process is to be in place no later than April 1, 2009. Additionally, all persons

handling source documents or engaged in the issuance of drivers' licenses and identification cards under the new process are to have periodic training in recognizing fraudulent documents.

The department also must adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of drivers' licenses and identification cards in order to maximize the integrity of the process.

Generally, the process envisioned by LB 911 allows an applicant to apply locally for a driver's license or an identification card, but provides for the actual production and issuance of the license or card at one central location.

Practically, rather than receive the actual license or card immediately upon successful completion of the application process, the bill provides that the successful applicant will receive an issuance certificate, which he or she must present to the county treasurer, along with payment of the necessary fees and surcharge, within 90 days of issuance. The county treasurer, in turn, issues a receipt to the applicant. The receipt, which is good for 30 days, serves as a temporary driver's license or identification card until the actual license or card is mailed and received by the applicant.

The new process also requires racial and ethnic information to be placed on the operators' licenses and identification cards. Supporters of this change say it is necessary to provide more accurate information to the court system as it studies the issue of racial profiling.

Finally, LB 911 changes several fees relating to the issuance and renewal of operators' licenses and identification cards. In addition to the fees, the bill authorizes the department to collect a surcharge, in an amount determined by the department but not to exceed eight dollars, to cover the cost of security and technology practices used by the department to protect the identity of applicants and holders of drivers' licenses and identification cards.

LB 911 passed 33-9 and was approved by the Governor on April 21, 2008.

LB 1068—Create the Classification of Remote Residential Road and Require Reports Regarding the Public Transportation Assistance Program (*Louden and Erdman*)

With the passage of LB 1068, rural highways are divided into nine (as opposed to eight) functional classifications. The new classification is "remote residential road."

Under LB 1068, a remote residential road is a road or segment of a road located in a remote area of a county with (1) a population density of no more than five people per square mile or (2) an area of at least 1,000 square miles, and which road or segment serves

as primary access to no more than seven residences. Including remote residential roads within the rural highway classifications guarantees that the various counties within which the roads are located are responsible for the design, construction, reconstruction, maintenance, and operation of these roads.

The bill also directs the Board of Public Roads Classifications and Standards to develop specific criteria for remote residential roads and requires a county board to hold a public hearing if the board wants a road to be classified as a remote residential road.

Finally, LB 1068 requires the Department of Roads to submit an annual report, on or before December 1 of each year, to the Legislature's Appropriations Committee regarding funds requested by each applicant for eligible operating costs and the total amount of state grants projected to be awarded pursuant to the public transportation assistance program. (This provision was originally prescribed in **LB 811** and was added to LB 1068 by an amendment adopted on Select File.)

LB 1068 passed 46-0 and was approved by the Governor on April 14, 2008.

LEGISLATIVE BILLS NOT ENACTED

LB 786—Regulate Movement of Traffic Approaching or Passing a Stopped Authorized Emergency Vehicle (*Howard, Engel, Kruse, Cornett, Harms, Hudkins, Kopplin, McDonald, Pahls, Schimek, Ashford, Avery, Lathrop, McGill, Preister, and White*)

Dubbed the "move over bill," LB 786 would have required the driver of a vehicle on a controlled-access highway to proceed with caution or to move into the passing lane, if possible, when he or she encountered an authorized emergency or road assistance vehicle, which was stopped on the side of the highway with its proper audible or visual signals in use.

Any driver who failed to exercise caution or move over would have been guilty of a traffic infraction for the first offense and a Class IIIA misdemeanor for a second or subsequent offense.

The bill advanced to General File but was bracketed until April 6, 2008. The bill died with the end of the session.

LB 812—Provide for Primary Enforcement of Nebraska's Seat Belt Law (*Kruse, Cornett, Engel, Howard, Aguilar, Avery, Harms, Pankonin, Pedersen, and Schimek*)

By eliminating language requiring a violation of Nebraska's seat belt law to be enforced as a secondary action, LB 812 would have made such a violation an infraction, imposing a \$25 fine on any person violating the provision.

Currently, Nebraska's law authorizes enforcement of the seat belt law only when a motor vehicle operator has been cited or charged with some other offense or violation, unless the violation involves a person younger than 18 years of age riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

LB 812 is another attempt by lawmakers to provide for primary enforcement of Nebraska's seat belt law. Citing public safety, supporters of the change have tried several times over the years to make the change but to date have been unsuccessful.

LB 812 did not advance from committee and died with the end of the session.

LB 1092—Require Seat Belts on Certain School Buses (*Harms, Pedersen, Schimek, and Howard*)

LB 1092 would have required any new school bus purchased on or after January 1, 2010 to be equipped with lap-shoulder belts sufficient to allow each student-passenger to use a separate belt. Had the measure passed, Nebraska would have joined Texas, California, Florida, Louisiana, New York, and New Jersey as states mandating seat belts on school buses.

As amended by the committee, the bill also would have required schools to provide training twice a year to teach students how to use seat belts and would have limited the liability of schools if a bus accident resulted in an injury to a student who was misusing or not wearing his or her seat belt.

While supporters of the bill maintained that safety of children was a paramount concern, opponents believed the bill represented an unfunded mandate and could lead to increased property taxes.

LB 1092 advanced to Select File. However, faced with a filibuster, Senator Harms, the bill's principal introducer, moved to bracket the bill until April 5, 2008, and the bill died with the end of the session.

Proposals Relating to the State Expressway System—LB 1034 and LB 1129

The completion of the Nebraska expressway system was the subject of several bills and study resolutions this session. The expressway system is a planned 600-mile system of four-lane highways designed to link communities to the Interstate highway system. Currently, approximately 179 miles of the expressway system are unfinished. Generally, sponsors of the proposals believe that completion of the system is necessary to bring needed economic development to many of Nebraska's smaller cities.

LB 1034, introduced by *Senators Loudon, Adams, Avery, Engel, and Erdman*, would have designated the map entitled "NEBRASKA EXPRESSWAY SYSTEM" on page 53 of the 2006

State Highway Needs Assessment, prepared by the Department of Roads and on file with the Clerk of the Legislature, as the state expressway system.

According to the bill's fiscal note, defining the state expressway system using the 2006 Needs Assessment would have added 220 miles to the 600-mile expressway system.

The introduction of **LB 1129** by *Senators Flood, Adams, Cornett, Dubas, Erdman, Heidemann, Janssen, Johnson, Langemeier, Pankonin, Rogert, Stuthman, and Harms*, would have added two additional factors for the department to consider when prioritizing construction projects: (1) the ability of residents of cities with a population of 15,000 or more inhabitants to access the Interstate highway system through a completed expressway; and (2) the impact of uncompleted portions of the expressway system on the economic development of cities along the expressway system.

LB 1034 and LB 1129 advanced to General File, where each bill died with the end of the session. However, the issue of completing the state expressway system lives on as several resolutions were introduced calling for studies on the issue.

Senators Flood, Adams, Cornett, Dubas, Erdman, Heidemann, Janssen, Johnson, Langemeier, Pankonin, Rogert, Stuthman, and Harms introduced **LR 232**, which calls for the Transportation and Telecommunications Committee to hold one or more public hearings to address the importance of prioritizing the uncompleted segments of the expressway system, to ask the Department of Roads to advise the Legislature of its plans to prioritize the uncompleted segments of the expressway system, and to address the importance of economic development as a factor necessitating the completion of the expressway system.

LR 321, introduced by *Senator Fischer*, chair of the Transportation and Telecommunications Committee, directs the committee to examine issues relating to the Nebraska expressway system, including an analysis of how the Department of Roads views the expressway system in conjunction with its overall needs and possible funding methods to complete the system.

LR 360, introduced by *Senator Lautenbaugh*, asks the committee to examine the feasibility of including Highway 133 as part of the expressway system.

In addition to the proposals heard by the Transportation and Telecommunications Committee, **LB 771**, **LB 1035**, and **LB 1139** were heard by the Appropriations Committee. Each bill presented funding options to complete construction of the system and are discussed on page 10.

URBAN AFFAIRS

Senator Mike Friend, Chairperson

ENACTED LEGISLATIVE BILLS

LR 5CA—Constitutional Amendment to Authorize Use of Revenue Bonds to Develop and Lease Property for Use by Nonprofit Enterprises (*Friend*)

“The third time’s the charm.” That is the hope of the Legislature as it passed LR 5CA, which proposes to amend 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 Legislature passed similar amendments in 2002 and 2006, LR 4CA and LR 2CA, respectively, but both amendments were defeated by the voters.

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 will be used to defray the cost of the property’s acquisition and development. The amendment prohibits the governing body of the political subdivision from imposing taxes for the payment of the bonds.

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

The amendment also 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 do not become general obligation bonds of the issuing political subdivision.

LR 5CA passed 48-0 and was presented to the Secretary of State on February 1, 2008. The amendment will appear on the primary election ballot in May 2010.

LR 229CA—Constitutional Amendment to Change the Powers of Municipalities Relating to Fund Sources for Economic or Industrial Development (*McDonald*)

LR 229CA proposes to amend Article XIII, section 2, of the Nebraska Constitution, by eliminating a limitation on the source of revenue that cities and villages could use for economic or industrial development projects.

Currently, section 2 defines the phrase “funds from local sources of revenue” to mean “funds raised from general taxes levied by the city or village and shall not include any funds received by the city or village which are derived from state or federal sources.” The proposed amendment eliminates the definition.

If the amendment is adopted by the voters, the Legislature could amend the Local Option Municipal Development Act to authorize the use of any revenue from any source for a municipal project undertaken pursuant to this constitutional provision and approved by a majority vote of the municipality.

LR 229CA passed 46-0 and was presented to the Secretary of State on April 17, 2008. The amendment will appear on the General Election ballot in November 2008.

LB 768—Allow a Sanitary and Improvement District to Contract for Library Services (*Cornett, Gay, Kopplin, and Preister*)

LB 768 authorizes a sanitary and improvement district (SID) to contract with a neighboring city or village for access to its library facilities and library system services.

According to the bill’s principal sponsor, passage of the legislation eliminates a problem for many residents of areas surrounding Bellevue, NE, who, because they reside within the boundaries of an SID, are required to pay a fee of \$50 in order to receive a library card.

LB 768 passed 45-0 and was approved by the Governor on March 19, 2008.

LB 947—Increase Minimum Bidding Amount Requirements for Cities of the First and Second Classes and Villages (*Friend*)

LB 943 directs cities of the first and second classes and villages to bid out any contract for basic infrastructure enlargements or improvements, such as water extensions, sewers, public heating systems, bridges, or streets, expected to cost more than \$30,000. (Prior law set the minimum threshold at \$20,000.)

The bill also provides that any municipal electric utility seeking to enter a contract to enlarge or improve its electric system or purchase equipment for the project does not have to solicit bids if the contract amount is: (1) \$30,000 or less; (2) \$60,000 or less if the utility has gross revenue from annual retail sales of more than \$1 million; (3) \$90,000 or less if the utility has gross revenue from annual retail sales of more than \$5 million; and (4) \$120,000 or less if the utility has gross annual revenue from retail sales of more than \$10 million.

LB 947 passed 43-0 and was approved by the Governor on April 16, 2008.

LB 1056—Adopt the First-Class City Merger Act (*Erdman and Harms*)

The passage of LB 1056 paves the way for the merger of Scottsbluff and Gering, two first-class cities located in Western Nebraska.

The First-Class City Merger Act authorizes the full merger of two first-class cities if the cities share a common border and are located within the same county. Specifically, the act prescribes the process by which a merger can occur.

Each city council of the respective cities must adopt a joint, concurrent resolution signaling the intention to merge. Once the councils adopt the resolution, the cities may hold an advisory vote of the residents of each city to determine community support for the merger. While the election can be held at a general or special election, it must be held on the same day in both cities. However, the results of the advisory election are not binding on the city councils.

Once the resolution is adopted, the councils begin work on a merger plan. Each council can appoint an advisory committee to assist the respective councils in preparing the merger plan. The plan must include:

- The proposed name of the new city;
- The manner of allocating and financing the costs of the merger;
- The nature and value of property owned by the cities;
- The indebtedness of both cities (bonded and otherwise) and a plan for repayment after the merger;
- The proposed form of organization and government of the new city, including the number of wards and representatives from each ward;
- The redistricting of the new city;
- The pay and perquisites of the officers of the new city;
- The treatment of related city organizations, such as housing authorities or airport authorities; and
- Any other issues needed to effect the merger.

Upon completion of the merger plan, the councils must hold a public hearing on the plan to solicit public opinion and feedback. After the hearing, both councils must vote to approve the plan.

If approved by a majority of both councils, the merger plan is submitted to the voters of both cities at a primary or special election held on the same day in each city. If a special election is held, the election must occur at least 180 days before the next statewide general election.

If the merger plan is approved, candidates for the new city officers will be nominated at another special election held at least 30 days after the merger-plan vote but not less than 60 days before the next statewide general election. Subsequently, the new city officers

will be elected at the statewide general election. Terms of the new city officers will begin at the first council meeting held in December immediately following the general election.

Any merger completed pursuant to the First-Class City Merger Act is permanent, and the new city is recognized as the full legal successor to all the powers, duties, rights, privileges, property, assets, and liabilities of the merged cities.

Additionally, the act provides that the boundaries of school districts and election districts for non-city officers are not changed by the merger.

LB 1056 passed 46-0 and was approved by the Governor on March 19, 2008.

LB 1072—Change Provisions Relating to the Public Service Commission and the State Natural Gas Regulation Act (*Friend*)

Currently, the State Natural Gas Regulation Act prescribes a process by which a city representing more than 50 percent of the area ratepayers can exercise limited authority to set natural gas rates on a negotiated basis with the agreement of the affected natural gas utility. If the utility files a request for a rate review, the city has 60 days to file evidence of its intent to negotiate the proposed new rates. Before passage of LB 1072, if the filing was not certified for negotiations, the Public Service Commission had 210 days from the date of the initial filing (for a rate review) to determine the new rates.

LB 1072 changes the time frame for the process. Under LB 1072, the Public Service Commission now has 180 days from the end of the 60-day certification period or the date the commission receives notice or has documentary evidence of the rejection of negotiation from the city, whichever occurs earlier, to determine the new natural gas rates. Supporters of the change believe it is necessary to ensure that the parties involved have sufficient time to investigate proposed rates and to minimize the impact of interim rates.

LB 1072 also extends the prohibition on ex parte communications between the commission and its staff and employees with parties in a contested case under the State Natural Gas Regulation Act.

Finally, LB 1072 provides a series of exceptions from the general prohibition against extending duplicative or redundant gas mains or other utility infrastructure. The exceptions operate under specified circumstances with regard to specified natural gas utilities when the proposed new pipeline is a large volume transmission line. The exceptions apply to jurisdictional utilities, the Metropolitan Utilities District, and cities that own or operate their own natural gas distribution systems.

LB 1072 passed with the emergency clause 47-0 and was approved by the Governor on April 17, 2008.

LB 1096—Authorize Certain Cities of the First Class to Hire a Fire Chief, Change Provisions Relating to Volunteer Department Trust Funds, and Adopt the Volunteer Emergency Responders Job Protection Act (*Friend and Pahls*)

According to the principal introducer of LB 1096, the changes prescribed in the bill are intended to promote public safety, organization, and accountability of volunteer fire departments.

With the enactment of LB 1096, by January 1, 2009, any Nebraska first-class city with a population greater than 37,500 must employ a full-time fire chief. (Currently, Bellevue is the only first-class cities in the state with populations greater than 37,500 that does not employ a full-time professional fire chief.)

The bill requires the newly hired fire chief to be a career firefighter or emergency medical first responder and to have appropriate training, credentials, and experience. The chief's duties include administering fire and emergency services and equipment and personnel training.

LB 1096 mandates that all fees charged for fire department services are to be designated public funds and be accounted for separately from department donations and fundraising proceeds, which are credited to the department's trust fund. And, the bill allows the city to request an audit of a department's trust fund if the fund reports economic activity of \$100,000 or more in a given year.

Finally, LB 1096 adopts the Volunteer Emergency Responders Job Protection Act. Originally proposed in **LB 948**, the act was added to LB 1096 on Select File.

The goal of the Volunteer Emergency Responders Job Protection Act is to protect volunteer first responders by preventing their employers from disciplining or terminating them if they are absent or late for work because they were responding to an emergency call. The protections do not apply to career firefighters or law enforcement officers who might also serve as volunteer first responders.

The act allows an employer to subtract from an employee's wages any time the employee is away from the job because of his or her volunteer duties and requires the employee to make a reasonable effort to notify the employer that he or she might be absent or late in order to answer an emergency call.

LB 1096 passed 48-0 and was approved by the Governor on March 31, 2008.

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