

# Session Review

105th Legislature  
First Regular Session

July 2017





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# Session Review



## 105th Legislature | First Regular Session

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Research  
Report  
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# INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 105<sup>th</sup> Legislature of Nebraska, First Regular Session. The review describes many, but by no means all, of the issues discussed by the Legislature during the 2017 session. Information gathered from committee counsels and other legislative staff, 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. Bill- and resolution-number indexes are included for ease of reference.

The Legislative Research Office staff acknowledges and thanks the legislative staff who assisted in 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 a specific operative date or the emergency clause is August 24, 2017.

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

If enacted legislation does not have a specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on May 14, the bill takes effect May 15.

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# AGRICULTURE COMMITTEE

Senator Lydia Brasch  
Chairperson



## ENACTED LEGISLATION

### **LB 600—Change Provisions of the Livestock Brand Act Relating to the Nebraska Brand Committee (*Agriculture Committee*)**

The Nebraska Auditor of Public Accounts released a report on July 26, 2016, examining the Nebraska Brand Committee (committee). The report identified numerous areas of concern, and shortly thereafter, the executive director of the committee resigned. In December, the committee announced the hiring of a new executive director and a plan to update policies and procedures.

LB 600 addresses some of the concerns raised by the Auditor’s report by updating and clarifying the statutes related to the committee. The bill prescribes that the committee’s executive director serves as the committee’s administrator, chief investigator, and chief brand inspector. If the executive director does not have a valid law enforcement certificate or diploma at the time of hiring, the certificate or diploma must be obtained within two years. The bill eliminates requirements for a deputy director position.

LB 600 also provides that a brand inspection is not required for a transfer of cattle to a limited liability company when company members are limited to husband, wife, children, or grandchildren of the transferor and there is no consideration for the transfer other than membership interest in the limited liability company. A similar provision already exists for closely held family corporations.

The bill eliminates transportation permits because they are no longer used in the industry. Rather, the bill allows for a “livestock transportation authority form”, as well as a previously permissible certificate of inspection or shipping certificate, authorizing the transport of cattle. If used, a “livestock transportation authority form” must contain certain required information and be signed by the cattle owner or his or her registered agent. LB 600 also clarifies that any person other than the owner transporting cattle



anywhere in the state, not just in the brand area, must have one of these three types of documentation.

Additional provisions in the bill include:

- Eliminating an obsolete provision related to rail car numbers on certificates of inspection;
- Adding genomic testing certificates as a type of documentation brand inspectors can consider to establish satisfactory evidence of cattle ownership;
- Clarifying that terms of committee board members begin on August 28 of the initial appointment year and end on August 27 of the expiration year;
- Eliminating a requirement that a person must own livestock to register a brand;
- Allowing a brand holder to lease the brand to another person with approval from the committee and upon payment of a fee not to exceed \$100;
- Updating the term “purebred” to “seedstock” cattle for cattle registered with a breed association;
- Removing language relating to branding of sheep because the committee has no jurisdiction over sheep; and
- Repealing the voluntary registered dairy program.

LB 600 passed 49-0 and was approved by the Governor on April 27, 2017.



**LEGISLATION NOT ENACTED**

## **LB 477—Prohibit Certain Unlawful Acts as Prescribed Relating to the Weights and Measures Act (*McCollister and Groene*)**

LB 477 would have created a new violation under the Weights and Measures Act to prohibit a gas station from advertising a price for fuel if the price is available at only a limited number of fueling positions, unless the station also advertises a price on the same sign in the same manner for fuel available at all fueling positions. The bill also would have prohibited selling the same grade fuel at different prices if the fuel was stored in the same storage tank or comingled in multiple storage tanks. The price discrepancy prohibition would not have applied to discounts for cash payments, self-service, or customer loyalty programs.

The impetus for the bill is the practice of a small number of gas stations to advertise a very low price for a grade of fuel and then make that fuel grade or price available at only one or two pumps. This practice frustrates both customers, who have trouble locating the pump offering the fuel with the advertised price, and competitors.

LB 477 remains in committee.



## LB 617—Adopt the Industrial Hemp Act (*Wayne and Krist*)

In the 2014 Farm Bill passed by Congress, provisions allowed state departments of agriculture and universities to grow hemp as part of a pilot program or for research purposes. Laws 2014, LB 1001, authorized production of hemp in Nebraska for research purposes.

LB 617 would have adopted the Industrial Hemp Act, expanding the production and sale of hemp under a broader pilot program. The bill was modeled after legislation in Kentucky.

The Nebraska Industrial Hemp Commission (commission) would have been created under the jurisdiction of the Department of Agriculture. The commission would have had numerous responsibilities, including, but not limited to:

- Licensing hemp growers;
- Promoting research and development of hemp products and markets;
- Overseeing a five-year research program of demonstration plots;
- Pursuing any applicable federal waivers or permits needed for production;
- Studying markets and financial incentives for hemp production, processing, and energy and biofuel development;

- Notifying law enforcement of all demonstration plot locations;
- Seeking public and private funding for the program;
- Monitoring demonstration plots and conducting testing of hemp for tetrahydrocannabinol levels;
- Reporting to the Governor and Legislature on policies and practices to grow, manage, use, and market hemp; and
- Adopting and promulgating rules.

Farmers would have been required to apply for an industrial hemp research program grower license to participate. Licenses would have required a fee, and the commission would have had discretion to set acreage limitations and approve or deny locations based upon suitability to grow hemp. The bill contained numerous requirements for licensees relating to recordkeeping and the transport and sale of seed. Provisions for license revocation and forfeiture also would have been included.

Finally, LB 617 would have created the Industrial Hemp Program Fund for financial administration of the program.

LB 617 remains in committee.





# APPROPRIATIONS COMMITTEE

Senator John Stinner  
Chairperson



## ENACTED LEGISLATION

### Biennial Budget Package—LB 327, LB 328, LB 329, LB 330, LB 331, LB 332, LB 149, and LB 171

The Legislature's primary mission (some would argue the only mission) during the 2017 session was to adopt a biennial budget to fund government operations for fiscal years 2017-2018 and 2018-2019.

When the Legislature convened in January, a projected \$900 million budget shortfall greeted lawmakers. As the session progressed and budget news worsened, the Appropriations Committee and Legislature faced the herculean task of closing a projected shortfall that had grown to \$1.1 billion.

The Legislature got a jump-start on closing the gap by passing LB 22 in February. LB 22 cut approximately \$137 million from the current fiscal year ending on June 30, 2017. The cuts were achieved by a combination of across-the-board budget cuts, specific budget reductions, and taking back a percentage of unspent funds. (LB 22 is

discussed in more detail on page 6.)

The biennial budget advanced by the Appropriations Committee to the full Legislature totaled \$4.4 billion for fiscal year 2017-2018 and \$4.5 billion for fiscal year 2018-2019, which represents an average spending increase of 1 percent over the two-year period.

The following bills comprise the biennial budget package:

- **LB 327**, which is the mainline appropriations bill to allocate general funds for ongoing operation of state government;
- **LB 328**, which appropriates funds for state senators' salaries;
- **LB 329**, which appropriates funds for constitutional officers' and judges' salaries;



- **LB 330**, which appropriates funds for several capital construction projects, including deferred maintenance and repairs at the University of Nebraska and state colleges, the State Capitol HVAC project, and the Lincoln Community Corrections Center housing unit;
- **LB 331**, which creates funds, authorizes transfers to various cash funds, and lowers the required minimum cash reserve from 3 percent to 2.5 percent for the 2017-2019 biennium only. (Lowering the minimum cash reserve was added by an amendment adopted on Select File.)The bill also contains provisions of **LB 522**;
- **LB 332**, which makes transfers to and from the state’s Cash Reserve Fund;
- **LB 171**, which provides for payment of approved claims against the state. Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000, made against the state, and approved or denied by the State Claims Board. LB 171 approved tort claims totaling \$2.6 million and miscellaneous claims totaling \$395,000; and
- **LB 149**, which contains additional budget adjustments for the fiscal year ending June 30, 2017.

- (4) \$11.4 million to the Supreme Court for purposes of the Justice Reinvestment Act.

As the budget package advanced through the legislative process, several amendments were introduced, some of which were adopted. However, most of the budget debate focused on budget philosophy rather than specific amendments. Proponents of the budget package noted the difficulties of crafting a package that balanced the budget, while demonstrating the state’s commitment to K-12 education, property tax relief, and corrections. Opponents countered that budget cuts did not go far enough.

Every budget bill passed with the emergency clause. LB 328, LB 329, LB 171, and LB 149 were approved by the Governor on May 12, 2017. LB 332 was approved by the Governor on May 15, 2017.

LB 327, LB 330, and LB 332 were returned by the Governor with line-item vetoes totaling \$56.5 million.

The Governor’s line-item vetoes included:

- Reducing the appropriation to the Highway Cash Fund by \$4,400,000 in fiscal year 2017-2018 and \$2,100,000 in fiscal year 2018-2019;
- Vetoing the proposed use of \$7,500,000 of highway gas tax revenue annually from the Roads Operations Cash Fund for the general operation of state government;
- Reducing by 0.5 percent General Fund appropriations for operations only of various state agencies, boards, commissions, and public postsecondary educational institutions (\$10.6 million);
- Reducing the appropriation for provider rates in programs within the Department of Health and Human Services (DHHS) by \$16,864,489 in fiscal year 2017-2018 and \$16,864,489 in fiscal year 2018-2019. (The programs are Behavioral Health Aid, Medicaid, Child Welfare Aid, and Developmentally Disabled Aid.);
- Reducing the appropriation of \$125,000 of cash funds and \$42,230 salary limit each fiscal year in the Department of Labor; and
- Reducing the appropriation of \$11,062,790 of general funds for fiscal year 2018-2019 for purposes of the State Capitol HVAC project.

Generally, the budget package as sent to the Governor closed the projected shortfall and balanced the budget by (1) a series of budget cuts, (2) withdrawing \$173 million from the Cash Reserve Fund, (3) appropriating nearly \$193 million from various agency cash funds to the General Fund, and (4) lowering the requisite minimum cash reserve from 3 percent to 2.5 percent, freeing up an additional \$43 million.

Cuts included agency operations (including the University of Nebraska and Nebraska state colleges) totaling \$53 million, reduced rates for Department of Health and Human Services providers totaling \$24.8 million, and a reduction in state funds due to an increase in the federal Medicaid match rate totaling \$50.6 million.

The budget was not all about cuts; the following programs received increases to their baseline appropriations:

- (1) \$62.4 million for the Tax Equity and Educational Opportunities Support Act;
- (2) \$35.6 million for Medicaid;
- (3) \$15.4 million for staffing, programs, and equipment for the Department of Correctional Services; and

While the Legislature tried to override the vetoes impacting the DHHS programs, probation services provided by the Nebraska Supreme Court, and the University of Nebraska, none of the override attempts were successful.



## LB 22—Provide, Change, and Eliminate Provisions Relating to Appropriations and Reduce Appropriations (*Speaker Scheer, at the request of the Governor*)

With the passage of LB 22, the Legislature got a jump-start on closing the state's projected \$900 million budget gap.

Generally, LB 22 cut approximately \$137 million from appropriations for the fiscal year ending June 30, 2017. The budget reduction did not eliminate Nebraska's money problems. A projected deficit of nearly \$760 million faced lawmakers as they crafted the budget for the 2017-2019 biennium. (As noted in the discussion of the Biennial Budget Package, by late April, the projected shortfall grew to \$1.1 billion.)

The budget cuts prescribed in LB 22 were achieved by a combination of across-the-board budget cuts, specific budget reductions, and taking back a percentage of unspent funds (also known as reappropriations).

State aid to schools, the Department of Correctional Services, and selected programs administered by the Department of Health and Human Services were spared budget reductions. For the most part, the Governor and the Appropriations Committee agreed on the budget reductions. However, the Appropriations Committee, via its committee amendment, prescribed several changes to LB 22. The adopted committee amendment:

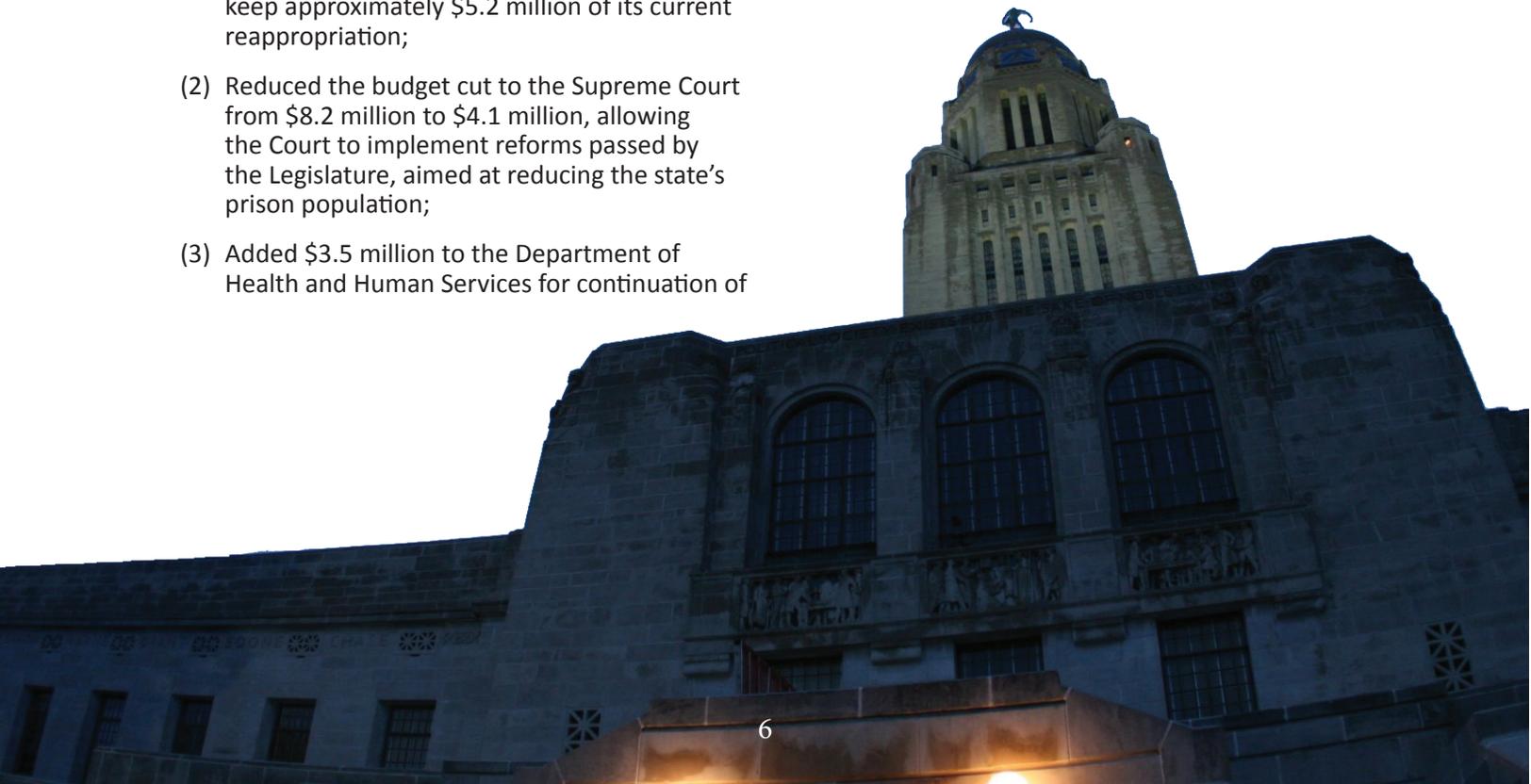
- (1) Authorized the University of Nebraska to keep approximately \$5.2 million of its current reappropriation;
- (2) Reduced the budget cut to the Supreme Court from \$8.2 million to \$4.1 million, allowing the Court to implement reforms passed by the Legislature, aimed at reducing the state's prison population;
- (3) Added \$3.5 million to the Department of Health and Human Services for continuation of

services provided by developmental disability providers; and

- (4) Restored \$600,000 for the Storm Water Management Grant program; \$400,000 for certain education programs; \$75,000 to the Nebraska State Historical Society for compliance with the Native American Graves Protection and Repatriation Act; and \$46,000 to the Commission for the Blind and Visually Impaired to leverage federal funds.

As the bill advanced through the legislative process, lawmakers debated the merits of the proposal. Proponents believed the "jump-start" prescribed in LB 22 would make future budget reductions less onerous and noted the seriousness of the budget situation by saying: "This isn't business as usual." Opponents countered that the current budget was balanced, and taking back a percentage of unspent funds unfairly penalized agencies and jeopardized the completion of current projects already underway.

LB 22 passed with the emergency clause 42-3 and was approved by the Governor on February 15, 2017.





# BANKING, COMMERCE & INSURANCE COMMITTEE

Senator Brett Lindstrom  
Chairperson



## ENACTED LEGISLATION

### **LB 92—Require Health Carriers to Provide Coverage for Telehealth Services and Change Telehealth Provisions Relating to Children’s Behavioral Health (*Kolterman, Baker, Howard, Riepe, and Briese*)**

LB 92 guarantees telehealth a place at the health insurance table. The bill requires certain health insurers to cover telehealth services.

Specifically, LB 92 applies to any insurer offering (1) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in Nebraska; (2) any hospital, medical, or surgical expense-incurred policy; or (3) any self-funded employee benefit plan to the extent not preempted by federal law. These plans cannot exclude services from coverage solely because the service is delivered via telehealth and, therefore, not provided through in-person contact between the health care provider and the patient.

Neb. Rev. Stat. sec. 44-312 defines telehealth to mean “the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care provider in the diagnosis or treatment of a patient.”

LB 92 also removes a statutory provision that had prevented Medicaid from covering telehealth services for children if comparable services were available within 30 miles of the child’s residence. These provisions were originally introduced in **LB 282**.

LB 92 passed 49-0 and was approved by the Governor on April 27, 2017.



## LB 137—Adopt the Unclaimed Life Insurance Benefits Act (*Lindstrom and Watermeier*)

LB 137 is a consumer protection bill that requires life insurers to regularly determine whether any of their policyholders are deceased and benefits due to survivors.

The bill enacts the Unclaimed Life Insurance Benefits Act, model legislation similar to that adopted in at least 20 other states.

Under the provisions of LB 137, life insurance companies doing business in Nebraska must, at least semi-annually, perform a computer search of the U.S. Social Security Administration's Death Master File or similar database for matches with any policyholders' in-force policies and retained asset accounts. The search must include commonly used but inexact identifiers, such as nicknames, transposed numbers (for example, on a birth date), and incomplete Social Security numbers.

If the insurer finds a match, LB 137 requires the company to document a good faith effort to confirm the death, determine whether benefits are due, and attempt to contact beneficiaries to provide them with the necessary forms and instructions to claim their benefits.

Policies affected by the bill include any policy or certificate of life insurance that provides a death benefit or any annuity contract, but does not include:

- Employee benefit plans subject to the Employee Retirement Income Security Act of 1974 or federal employee benefit program;

- Pre-need funeral contract or prearrangement;
- Credit life or accidental death insurance;
- Policies issued to a group master policyholder for which the insurer does not provide record-keeping services; or
- Annuities used to fund an employment-based retirement plan or program if the insurer does not perform record-keeping services or is not committed by terms of the contract to pay death benefits to the beneficiaries of specific plan participants.

If a beneficiary cannot be found, insurers are required to follow Nebraska law as it relates to unclaimed funds, and once the funds are presumed abandoned (five years after death has been determined under state law), the insurer must notify the State Treasurer. LB 137 does not restrict the State Treasurer's authority to conduct unclaimed property audits of life insurance companies.

Failure to comply with the requirements of LB 137 constitutes an unfair trade practice in insurance, subjecting insurers to administrative penalties, including fines, by the Department of Insurance. However, the Director of Insurance has the discretion to phase-in or modify the requirements in cases of hardship for individual insurers.

LB 137 passed 49-0 and was approved by the Governor on April 27, 2017.

## LB 140—Change Provisions Relating to the Nebraska Banking Act, Department of Banking and Finance Powers and Duties, and other Financial Institution Regulation (*Williams*)

A year of work by senators, the state Department of Banking and Finance, and representatives from the banking industry resulted in what those involved termed the first comprehensive review of the state's banking laws since 1963 and provided the proposals contained in LB 140.

The original copy of LB 140 ran to 143 pages, created several new provisions, amended numerous others, and deleted obsolete provisions, such as one requiring the Department of Banking and Finance to provide notice of bank insolvency via telegram.

Among its new provisions, LB 140 allows banks to own stock of another financial institution or of a company controlling another financial institution if the transaction is part of a merger, consolidation, or acquisition of assets and (1) the



merger, consolidation, or acquisition of assets occurs on the same day as the stock purchase; (2) the other financial institution or company controlling another financial institution will not be operated as a separate entity; and (3) the transaction has the prior approval of the Director of Banking and Finance (director).

Financial institution means a bank, savings bank, credit card bank, savings and loan association, building and loan association, trust company, or credit union organized under the laws of any state or the federal government.

Additionally, LB 140 increases from 15 to 25 the maximum number of persons who can sit on a bank's board of directors, provides that the board select a bank president from among its members, and deletes the requirement that the board appoint a secretary. The bill also expands board member residency preferences to include residence in counties where a bank has branch offices.

Other substantial provisions provide that bank-affiliated individuals cannot be paid a higher rate of interest on deposits than paid by the bank on similar deposits (doing so is a Class IV felony); allow minors to open and maintain safe deposit boxes; and authorize the director to allow all financial institutions to open temporary offices in cases of emergency. Permission by the director can be given orally, with such authorization valid for four business days. Financial institutions can operate a temporary emergency office for up to 30 months; a temporary office can be a mobile branch if the office closed due to the emergency was a branch office.

LB 140 defines an emergency as "any condition or occurrence, actual or threatened, which interferes physically with the conduct of normal business operations" or "poses an imminent or existing threat to the safety or security of persons or property." Examples listed in LB 140 include "fires, floods, earthquakes, hurricanes, wind, rain, snow storm, labor dispute and strike, power failure, transportation failure, interruption of a communication facility, shortage of fuel, housing, food, transportation, or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion, any other act of lawlessness or violence, actual or threatened."

Additionally, as enacted, LB 140 contains provisions originally introduced in **LB 196**, which updates statutory reference dates to align state financial institutions with their federal counterparts; **LB 454**, which allows credit unions to opt out of licensing its executive officers; and **LB 341**, which similarly allows banks to opt out of requiring their executive officers to be licensed. Occupational licensing reform was a minor theme in this Legislature, with a package of bills reducing or removing licensure requirements in several disparate occupations promoted by the Governor.

LB 140 passed with the emergency clause 48-0 and was approved by the Governor on March 29, 2017.



## LB 148—Change Provisions of the Securities Act of Nebraska (*Schumacher*)

Following recommendations of a 2016 interim study, LB 148 updates the state's securities law, a comprehensive review of which had not been done since 1965. According to the bill's sponsor, the goals of the study and subsequent legislation are to reduce regulatory complexity, encourage capital formation, and enhance investor protections.

The Securities Act of Nebraska governs the sale of securities, which are instruments representing financial value, such as stocks, bonds, shares, notes, and debentures. The act imposes obligations on businesses selling securities in the state, provides protections against fraud for investors, and imposes civil and criminal penalties on violators.

The federal government also regulates the sale of securities. Several of the changes enacted via LB 148 update Nebraska law to reflect federal changes. Other provisions are technical in nature. Substantive changes generally address exemptions from the act's registration requirements and clarify the enforcement authority of the Department of Banking and Finance.

Because registration is an expensive endeavor, providing exemptions, especially as they pertain to small business formation, is seen as encouraging entrepreneurial activity in the state.

Current law exempts from registration sellers effecting transactions with specified types of financial institutions. LB 148 adds credit unions to the list of those institutions. Additionally, Canadian broker-dealers, who have no business or other physical presence in the state and whose activities are limited to specified transactions with other Canadians temporarily in the state, are excluded from the broker-dealer registration requirements.

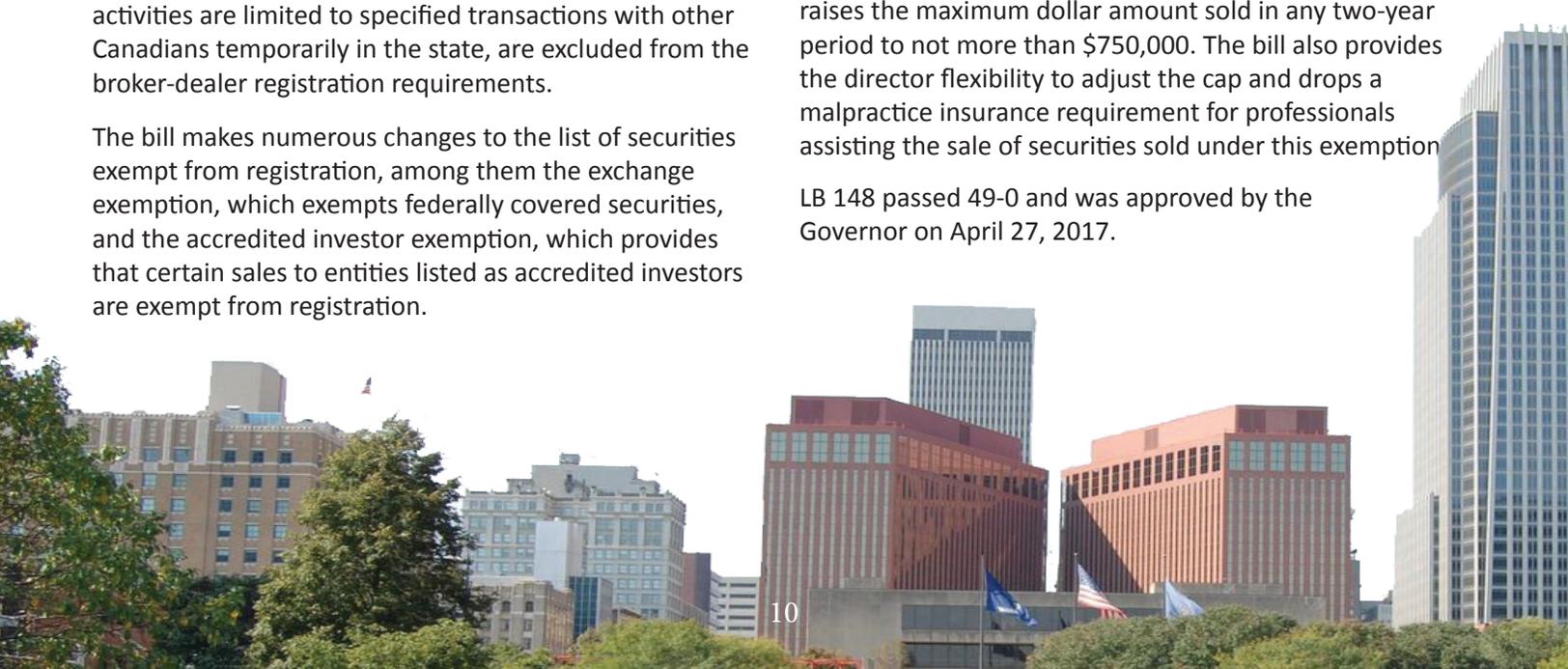
The bill makes numerous changes to the list of securities exempt from registration, among them the exchange exemption, which exempts federally covered securities, and the accredited investor exemption, which provides that certain sales to entities listed as accredited investors are exempt from registration.

The exchange exemption is broadened to include any security issued by an entity with securities listed on an exchange approved by the Securities and Exchange Commission and authorizes the Director of Banking and Finance (director) to approve additional exchanges for this exemption. The accredited investors exemption is also broadened to include corporations, business trusts, partnerships, and other trusts with assets over \$5 million and entities in which all of the equity owners are individual accredited investors.

LB 148 clarifies the director's enforcement authority regarding broker-dealers, issuer-dealers, investment advisers, and investment adviser representatives. The director can (1) initiate an enforcement action against a registered entity for failing to cooperate with an examination; (2) determine, by rule and regulation or order, that a violation of any provision of fair practices or ethical rules or standards adopted by federal authorities constitutes a dishonest or unethical practice in the securities or commodities business; and (3) issue a notice of abandonment if an applicant for registration fails to respond to a notice to correct deficiencies within 120 days.

Finally, LB 148 also includes provisions found in **LB 187**. These provisions pertain to an exemption to the registration requirement for transactions not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when, among other things, the proceeds from all sales of securities by the issuer in any two-year period do not exceed \$250,000 and at least 80 percent of the proceeds are used in Nebraska. LB 148 raises the maximum dollar amount sold in any two-year period to not more than \$750,000. The bill also provides the director flexibility to adjust the cap and drops a malpractice insurance requirement for professionals assisting the sale of securities sold under this exemption.

LB 148 passed 49-0 and was approved by the Governor on April 27, 2017.





## LB 641—Create a Bioscience Innovation Program and the Nebraska Economic Development Task Force (*Morfeld, Lindstrom, and Baker*)



The intent of LB 641 is to kick start the bioscience industry in Nebraska by creating a program to provide financial assistance to qualifying enterprises.

LB 641 directs the state Department of Economic Development (DED) to create a Bioscience Innovation Program under the state's Business Innovation Act.

The Legislature created the act in 2011 with the purpose of encouraging and supporting "the transfer of Nebraska-based technology and innovation in rural and urban areas of Nebraska in order to create high growth, high technological companies, small businesses, and microenterprises and to enhance creation of wealth and quality jobs." (Neb. Rev. Stat sec. 81-12,154.) The act was originally slated to expire on October 1, 2016, but subsequent legislation extended the time to December 1, 2021.

Bioscience-related businesses must provide a 100 percent match to qualify for the assistance. The types of activities LB 641 is intended to promote include:

- Supporting small enterprise formation in the bioscience sector;
- Developing bioscience communities and economic opportunity through innovation in biofuels, biosensors, and biotechnology;
- Creating high-wage bioscience jobs for postsecondary graduates;
- Developing new technologies in the bioscience sector and creating new startups focused on bioscience;
- Leveraging the state's agricultural sector to support emerging bioscience technologies impacting livestock operations and crop production; and

- Leveraging the bioscience research and development conducted at the state's higher education institutions to create private-sector bioscience enterprises.

LB 641 creates the Bioscience Innovation Cash Fund and proposes to fund it primarily with repayments of loans authorized under a state-administered federal program intended to help states encourage small-business lending. According to the bill's fiscal note, the state anticipates \$1,492,000 in loan repayments in fiscal year 2017-2018 and \$961,000 in fiscal year 2018-2019. Under the terms of LB 641, the Bioscience Innovation Cash Fund terminates upon exhaustion of its funds.

Finally, LB 641 creates a task force composed of state senators to coordinate legislation addressing economic development. The Nebraska Economic Development Task Force includes three senators appointed by the Legislature's Executive Board, one from each congressional district; and the chairs of the Appropriations, Banking, Commerce and Insurance, Business and Labor, Education, Revenue, Planning, and Urban Affairs committees or their designees.

LB 641 directs the members of the task force to improve the climate for economic development in Nebraska by collaborating with the state departments of Economic Development and Labor; monitoring analysis and policy development; and discussing long-range strategic plans. The task force must annually identify economic development priorities and submit a report to the Legislature. The creation of the task force was originally proposed in **LB 230**. The task force terminates on January 1, 2021.

LB 641 failed to pass with the emergency clause. However, the bill passed 31-5 with the emergency clause stricken and was approved by the Governor on April 27, 2017.



# BUSINESS & LABOR COMMITTEE

Senator Joni Albrecht  
Chairperson



## ENACTED LEGISLATION

### LB 171—Provide for Payment of Claims Against the State (*Albrecht*)

Nebraska law requires the Legislature to review any tort claim and miscellaneous claim of more than \$50,000, made against the state and approved or denied by the State Claims Board. This legislative review is accomplished by introduction of what are known as the “state claims bills.” Each year, two claims bills—one approving certain claims and one denying them—are introduced and heard by the Business and Labor Committee.

This year LB 171 details the approved state claims. The bill approved tort claims totaling \$2.6 million and miscellaneous claims totaling \$395,000.

LB 171 passed with the emergency clause 44-1 and was approved by the Governor on May 12, 2017. The bill is part of this year’s biennial budget package and is also referenced on page 5.

### LB 203—Change Provisions Relating to Maximum Annual Unemployment Benefits and Disqualification for Benefits (*Kuehn*)

With the passage of LB 203, Nebraska joins 47 other states by requiring an employee who leaves work voluntarily without good cause to requalify for unemployment benefits.

Specifically, LB 203 provides that for any benefit year beginning on or after October 1, 2018, an employee who leaves work voluntarily without good cause and subsequently finds other insured employment must earn wages equal to at least four times the weekly benefit amount he or she would have otherwise been eligible to receive in order to be eligible for any future unemployment benefits.

As enacted, the bill also includes the provisions of **LB 273**,

which was amended into LB 203 on General File. The bill provides that the minimum base period earnings required for unemployment insurance benefits be rounded down to the nearest whole dollar amount. To be eligible for unemployment benefits, an individual must earn a total sum of wages, which is adjusted annually equal to the previous amount plus the percentage change in the Consumer Price Index. For new claims filed in 2016, the amount is \$4,107.61; in 2017, the amount is \$4,145.74. With the changes prescribed in LB 203, the amounts are rounded to \$4,107 and \$4,145, respectively.

LB 203 passed 47-0 and was approved by the Governor on March 29, 2017.



# LB 518—Adopt the Rural Workforce Housing Investment Act and Transfer Funds from the Affordable Housing Trust Fund (*Williams and Briese*)



Lawmakers signaled their commitment to rural economic development via the enactment of LB 518. The bill creates the Rural Workforce Housing Investment Act (RWHIA).

Current economic conditions and limited availability of modern housing negatively impact the ability of Nebraska’s rural communities to recruit and retain a quality workforce and develop viable economies. To help communities develop workforce housing, the RWHIA establishes a workforce housing grant program to be administered by the Department of Economic Development. “Workforce housing” is defined as an owner-occupied home that costs no more than \$275,000 to build or a rental housing unit that costs no more than \$200,000 to build.

Under the RWHIA, a nonprofit development organization can apply to the Director of Economic Development for approval of a workforce housing grant. The director can award grants on a competitive basis until grant funds are no longer available. The maximum grant amount to each organization cannot exceed \$1 million over a two-year period and cannot exceed \$2 million per grantee through fiscal year 2020-2021. A grant applicant must guarantee a minimum of one-to-one matching funds to be considered.

In addition to matching funds, the following factors will be considered when awarding grants:

- (1) A demonstrated and ongoing housing need as identified by a recent housing study;
- (2) A community or region with low unemployment, which is having difficulty attracting workers and filling available positions;
- (3) A community or region that exhibits a demonstrated commitment to growing its housing stock;

- (4) Projects that can reasonably be ready for occupancy within 24 months; and
- (5) A demonstrated ability to grow and manage a workforce housing investment fund.

To receive a grant, a nonprofit development organization must also invest or intend to invest in workforce housing eligible activities; use any fees, interest, loan repayments, or other funds it receives as a result of the administration of the grant to support qualified activities; and have an active board of directors with expertise in development, construction, and finance, which meets at least quarterly to approve the organization’s investments.

Grants will be financed from funds credited to the Rural Workforce Housing Investment Fund, which is created in the RWHIA. Appropriations, grants, private contributions, and money from other sources, as well as a one-time transfer of \$7,300,000, will be used to bolster the newly created fund.

A nonprofit development organization which fails to appropriately use or allocate the grant funds within two years of receipt must return the funds to the Department of Economic Development for credit to the Rural Workforce Housing Investment Fund.

The RWHIA requires each organization receiving grants to submit an annual report to the Director of Economic Development, detailing the organization’s compliance with and activities conducted pursuant to the RWHIA. The director must also include the organization’s report in the department’s statutorily required annual status report. The director can impose a civil penalty of not more than \$5,000 on any organization failing to file the requisite report.

LB 518 passed 49-0 and was approved by the Governor on April 27, 2017.



## **LB 639—Change When a Preference is Required for Certain Government Employment Relating to Servicemembers and their Spouses and Veterans (*Bostelman, Blood, Brewer, Kolowski, Quick, and Lowe*)**

With the passage of LB 639, Nebraska continues its efforts to make the state a welcoming place for military families.

Specifically, LB 639 expands Nebraska's state hiring preference for military veterans to include the spouse of a servicemember serving on active duty in the armed forces of the United States. Under the bill, the spouse is preference-eligible for the time period during which the servicemember serves on active duty and up to 180 days after the servicemember's discharge or separation of service.

Additionally, the veterans hiring preference is expanded to include a return to employment with the state or its governmental subdivisions, if the separation from previous employment was for other than disciplinary reasons.

LB 639 passed 48-0 and was approved by the Governor on April 25, 2017.





**LEGISLATION NOT ENACTED**

**LB 181—Provide for Reimbursement to Employees for Medical Exams under the Nebraska Workers’ Compensation Act (*Quick, Chambers, Crawford, Hansen, Howard, McDonnell, Pansing Brooks, and Vargas*)**



Under the Nebraska Workers’ Compensation Act, an employee who is injured on the job and seeks workers’ compensation for his or her injury must submit to a medical examination by a physician furnished by the employer or the employer’s insurer.

LB 181 would have amended the compensation act to authorize the injured employee, who disagrees with

the findings of the employer-appointed physician and seeks a second opinion from a different physician, to be reimbursed by the employer (or its insurer) for the costs of the second opinion, including reasonable transportation expenses.

LB 181 advanced to General File, where the bill was bracketed until January 10, 2018.

**LB 248—Adopt the Youth Opportunities in Learning and Occupations Act (*Harr*)**

LB 248 would have adopted the Youth Opportunities in Learning and Occupations Act to be administered by the Department of Labor.

According to the bill’s introducer, the act was intended to be a job training act and would have encouraged employers to work with young people between the ages of 16 and 24 and offer training to help them identify individual abilities and interests by exposing them to potential employment opportunities, teaching the soft skills necessary to succeed in employment, identifying demand occupations, and assessing required skills.

Under the act, the Commissioner of Labor would have awarded grants to those businesses and nonprofit corporations wishing to participate in this skills development program. Specifically, grant funds would have been used to: (1) prepare qualified young people to enter the workforce; (2) develop marketable skills, increase earning power, and secure jobs; (3) provide career counseling; (4) reduce unemployment for young people; (5) provide a basis for young people to increase skills to access higher education; (6) engage employers in preparing young people for gainful employment; (7) prepare young people to fulfill employment needs of businesses in this state; and (8) assist in identifying and developing young people to meet the demand for skilled workers in Nebraska.

The act also would have created the Youth Opportunities in Learning and Occupations Fund to finance the grants.

LB 248 advanced to General File, but after a robust discussion, remained on General File.



# EDUCATION COMMITTEE

Senator Mike Groene  
Chairperson



## ENACTED LEGISLATION

### LB 62—Eliminate Prohibition on Teachers Wearing Religious Garb (*Scheer*)

Historically, prohibiting public school teachers from wearing religious garb while they were in the classroom was a public policy that first garnered national attention in 1919. During that time, a majority of states enacted some form of statutory prohibition against religious garb in the classroom. Times change, and by the end of 2016, only Nebraska and Pennsylvania continued the statutory prohibition.

With the passage of LB 62, Nebraska becomes the second-to-last state to eliminate the prohibition. Proponents of the repeal believed that the prohibition on wearing religious garb in the classroom “tramples on the First Amendment Rights of teachers,” and public schools should maintain religious neutrality.

LB 62 passed 39-5 and was approved by the Governor on March 27, 2017.

### LB 119—Change Dates Related to Certification and Distribution of State Aid to Schools (*Groene and Stinner*)

On March 1 of each year, the State Department of Education certifies the amount of state aid to be distributed to each school district pursuant to the Tax Equity and Educational Opportunities Support Act (TEEOSA) formula. TEEOSA determines the amount of state equalization aid received by a school district based on a district’s needs (student enrollment multiplied by basic funding and allowances or adjustments) minus resources (adjusted valuation multiplied by the local effort rate and other receipts) available for the district.

Due to a projected budget shortfall, the Education Committee deemed it necessary to enact LB 119 in order to delay the certification date to June 1 for the school fiscal year 2017 only. Delaying the certification date allows the Appropriations Committee additional time to account for and recommend the appropriate TEEOSA funding amount for the 2017-2018 school year.

LB 119 passed with the emergency clause 45-0 and was approved by the Governor on February 15, 2017.



## LB 409—Change the Base Limitation, Local Effort Rate, and Net Option Funding for School Districts and the Learning Community Transition Aid Calculation (*Groene, Erdman, and Linehan*)

As enacted, LB 409 changes provisions of the Tax Equity and Educational Opportunity Support Act.

LB 409 reduces the base limitation rate for school districts from 2.5 percent to 1.5 percent for school fiscal years 2017-2018 and 2018-2019. Reducing the base limitation rate in turn reduces the amount of aid provided by the state. In 2019-2020, the base rate returns to 2.5 percent.

The bill also changes the local effort rate from \$1.00 to

\$1.02030 for purposes of increasing recognition of local resources for school fiscal years 2017-2018 and 2018-2019.

Finally, LB 409 reduces net option funding by 4.5 percent and clarifies that community achievement aid is to be considered a resource when determining transition aid.

LB 409 passed with the emergency clause 44-0 and was approved by the Governor on May 10, 2017.

## LB 427—Authorize Schools and the Department of Education to Adopt Policies Relating to Pregnant and Parenting Students, Authorize Training Regarding such Policies, and Authorize Breastfeeding Accommodations for Student-Parents (*Vargas, Blood, Ebke, Walz, and Wayne*)

Lawmakers signaled their intent to help pregnant and parenting students and schools with the passage of LB 427. As enacted, LB 427 also includes provisions of **LB 428**.

LB 427 mandates the State Department of Education to develop and distribute a model policy designed to encourage the educational success of pregnant and parenting students. The policy must:

- (1) Identify procedures that provide for student absences due to pregnancy and allow students to return to school;
- (2) Provide alternatives to keep a pregnant or parenting student in school by allowing coursework to be accessed at home or by allowing the use of tutors;
- (3) Provide private, clean spaces for mothers to breastfeed or express breast milk during the day; and
- (4) Establish a procedure to help student-parents find quality child care.

In addition to the model policy, the department will also offer training for teachers, counselors, and administrators on policy provisions and the rights of pregnant and parenting students.

Each school district must adopt a pregnant and parenting



student policy, which must include procedures that conform to the minimum standards prescribed in any model policy designed by the department. School district policies must be in place by the beginning of the 2018-2019 school year.

Lastly, the bill expands a definition in law granting mothers the right to breastfeed in any public or private location. The “breastfeeding mother” definition is expanded to include a mother who is attending a public, private, or denominational school in Nebraska.

LB 427 passed 31-7 and was approved by the Governor on May 8, 2017.



## LB 512—Change Provisions Related to Education (Education Committee)



Each year, the State Department of Education (department) introduces what is known as its “technical clean-up bill.” LB 512 is this year’s bill. In addition to its original provisions, the bill includes provisions from **LB 123**, **LB 175**, **LB 235**, **LB 398**, and **LB 457**.

As enacted, LB 512 allows entities sponsoring a summer food program to be eligible for up to \$15,000 in grants. The bill provides sponsors the ability to expend the full amount for opening or increasing a department administered child nutrition summer food service program. This change eliminates the requirement to prorate funds over the number of months that the program operates. LB 512 reduces the total funds to be appropriated for the grant program from \$140,000 to \$100,000.

Additionally, LB 512 creates the Guaranty Recovery Cash Fund to be administered by the Nebraska Coordinating Commission for Postsecondary Education. The commission

is directed to assess each for-profit institution one-tenth of one percent of the prior school year’s gross revenue from tuition and requires the fund maintain a minimum balance of \$250,000. Each for-profit institution must file a surety bond to guarantee payment until the fund reaches the minimum balance. Students affected by the closure of a for-profit institution can file a claim against the cash fund.

These provisions also protect against the loss of vital information by requiring that, upon the closing of a for-profit institution, all student records are to be transferred to the central depository at the University of Nebraska-Lincoln.

LB 512 also ensures that a qualifying veteran and his or her spouse and dependents are treated as state residents for purposes of tuition. This change guarantees Nebraska’s postsecondary institutions receive federal funds from programs such as the Post 9/11 G. I. Bill, designed to educate members of our military.



Finally, LB 512 makes the following changes:

- Allows the department to use lottery funds to pay for eleventh graders to take the ACT;
- Extends the completion deadline, from August 31, 2017 to August 31, 2019, by which all public school buildings are to be evaluated by the department school security director;
- Authorizes the Legislature to repeal language pertaining to vocational education and adds federally required language for Perkins career and technical education;
- Strikes “best practice allowances” and eliminates outdated language under the Tax Equity and Educational Opportunities Support Act;
- Permits the department to use special education funds to repay the U.S. Department of Education for a school district’s failure to comply with provisions of the Individuals with Disabilities Education Act;
- Repeals the Council on Student Attendance due to a loss of appropriations for fiscal years 2017-2018 and 2018-2019;
- Adopts the Student Online Personal Information Act, which forbids companies operating a website, online service, or application service as part of a contract with a school from collecting a student’s personal data for non-educational advertising purposes;
- Requires swimming pools used for school sanctioned swimming practices or events to certify lifeguards and swimming instructors. At least one certified lifeguard or swimming instructor must be in attendance for the duration of the school activity; and
- Revives a requirement for voluntary termination agreements to qualify for a budget and levy exception.

LB 512 passed with the emergency clause 47-0 and was approved by the Governor on May 22, 2017.



## LB 595—Provide for the Use of Physical Restraint or Removal from a Class in Response to Student Behavior (*Groene*)

According to the Introducer’s Statement of Intent, LB 595 would have allowed teachers and administrators to maintain order in classrooms by allowing them to set boundaries and use necessary force or physical restraint to subdue a violent student until the student no longer poses a danger to himself or herself, the teacher, the administrator, or other students.

Under the bill, if a student became significantly or repeatedly disruptive and prevented the instruction of other students, a teacher could have removed the student from the classroom. While the school principal and classroom teacher would have decided the appropriate disciplinary action and whether to allow the student back into the classroom, the final decision regarding the student’s behavior would have been determined at a conference with the student’s parents or guardians. (A student whose classroom attendance is mandated under the federal special education act could not have been removed from the classroom.)

Any teacher deemed to be responding in a reasonable manner pursuant to LB 595 would not have been subject to administrative discipline or legal action.

LB 595 is on General File.





## LB 651—Adopt the Nebraska Reading Improvement Act (*Linehan*)



Recognizing the connection between strong reading skills and lifetime success, LB 651 would have created the Nebraska Reading Improvement Act to require that a student meet or exceed the appropriate reading proficiency level in order to advance to the next grade. According to the 2015-2016 Nebraska Statewide Reading Assessment, 17.66 percent of students taking the assessment read below the state reading standard.

Beginning in school year 2019-2020, LB 651 would have required all students demonstrate adequate reading skills and score at or above grade level on statewide assessments by the end of third grade before advancing to the fourth grade.

Pursuant to the bill, a student could be advanced to the fourth grade without meeting the proficiency goal, if he or she met one or more of the following exemptions:

- Performs at or above a third-grade reading level on an alternative assessment approved by the State Board of Education;
- Shows an exemplary performance of third-grade reading standards through the use of multiple work samples;
- Has a disability and participates in an Individualized Education Plan (IEP), which indicates taking statewide assessments is not suitable;
- Has a disability, participates in an IEP, participates in statewide assessments, has received intensive reading instruction for two years and still demonstrates a reading deficiency, and was

previously held back in kindergarten, first, second, or third grade;

- Has limited English proficiency with less than two years of instruction per the student's Limited English Proficiency Plan;
- Participates in an intensive reading plan for two or more years, is still deficient, and was previously held back in kindergarten, first, second, or third grade for a total of two years;
- Was previously held back in third grade; or
- Upon a parent's request.

Any student meeting one or more of the exemptions, who was allowed to advance to the fourth grade, would continue to receive intensive reading services. Third-graders scoring below the appropriate reading level would have been expected to attend a summer reading camp with a minimum of 70 hours of instructional reading.

LB 651 would have authorized school boards to develop policies for reading instruction and intervention services. Additionally, school policies would have mandated that students identified as being deficient must be placed on an individualized reading plan and receive reading services within 30 days. Parents or guardians must have been informed of the students' deficiency within 15 days of identification.

While the committee did not advance LB 651 to General File, a motion to pull the bill from committee was successful, and LB 651 is on General File.



# EXECUTIVE BOARD

Senator Dan Watermeier  
Chairperson



## ENACTED LEGISLATION

### **LB 539—Change the Office of Inspector General of the Nebraska Correctional System Act (*Krist*)**

LB 539 gives the Inspector General of the Nebraska Correctional System expanded authority to investigate injuries sustained by corrections employees.

Created in 2015, the Office of Inspector General is designed to provide oversight of the Department of Correctional Services and investigate injuries and deaths that occur at state correctional institutions. LB 539 expands the Inspector General’s reporting authority to include all cases that result in the death, serious injury, hospitalization, or urgent medical treatment of a corrections employee while on duty.

In addition, LB 539 adds whistleblower protections for corrections employees who alert the Inspector General to misconduct or malfeasance in the prison system. Under the bill, employees who provide evidence or testimony of wrongdoing in the course of an investigation cannot be fired, disciplined, or targeted for reprisal because of their actions. The bill also removes a provision that limited the Inspector General to only one annual report.

LB 539 passed with the emergency clause 42-2 and was approved by the Governor on April 27, 2017.



## LB 407—Create and Provide Duties for the Whiteclay Public Health Emergency Task Force (*Pansing Brooks, Baker, Brewer, Crawford, Kolterman, Lindstrom, McDonnell, and Wishart*)



Lawmakers created a task force to address the longstanding Whiteclay crisis, amid a flurry of legal activity that resulted in the closure of beer stores in the small northwest Nebraska town.

The situation in Whiteclay has frustrated the efforts of legislators for over two decades. Even though it only has a handful of official residents, local beer stores in Whiteclay sell a combined 3.5 million cans of beer each year. Those sales are made almost exclusively to residents of the Pine Ridge Indian Reservation just across the border in South Dakota, where alcohol is banned.

The result has been described as a public health catastrophe.

Residents of Pine Ridge have among the shortest life expectancies in the Western Hemisphere, while fetal alcohol syndrome and infant mortality rates are many times higher than the national average. Nearly half of its population subsists below the federal poverty threshold and unemployment often exceeds 80 percent. Many

of these problems have been tied directly to pervasive alcoholism on the reservation.

LB 407 creates the Whiteclay Public Health Task Force, which will study the impacts of alcoholism, the absence of detox facilities, and the feasibility of job training and treatment programs. The task force will be composed of five lawmakers appointed by the Executive Board and nonvoting members from the University of Nebraska Medical Center and the Nebraska Commission on Indian Affairs. It must provide a report to the Governor by 2019.

The legislation comes at a pivotal moment in the ongoing Whiteclay saga. In April, the town's four beer stores were shut down after the Nebraska Liquor Control Commission voted to deny their license renewals, citing a lack of adequate law enforcement. A series of appeals followed, culminating in a Supreme Court decision to take up the case later in the year.

LB 407 passed 48-0 and was approved by the Governor on April 27, 2017.



## LR 127—Provide the Executive Board Appoint a Special Committee of the Legislature to be known as the Nebraska Justice System Special Oversight Committee (*Krist*)

Nebraska’s prison system faces renewed scrutiny after repeated violent incidents over the past two years have resulted in the deaths of five inmates and caused millions of dollars in damage.

LR 127 creates another special committee, the third since 2014, to investigate the ongoing problems at state prisons.

The Nebraska Justice System Special Investigative Committee will review progress on the recommendations of previous special committees and continue oversight of the Department of Correctional Services (DCS). The new committee will take a more holistic approach to the justice system, examining the role played by the Board of Parole, the Office of Parole Administration, the Nebraska Commission on Law Enforcement and Criminal Justice, the Office of Probation Administration, and other state agencies. The committee will conduct a briefing of its preliminary findings in December and issue a final report in 2018.

In 2014, the Legislature formed its first special committee to probe various corrections issues, including the case of Nikko Jenkins, who was convicted of murdering four people in Omaha shortly after being released from prison that year. A subsequent committee

was formed in 2015 to oversee DCS efforts to improve rehabilitation programs and alleviate prison overcrowding. Unlike the two previous committees, the latest incarnation will not have subpoena power.

Resolution proponents said that despite the work of previous committees, DCS still faces many challenges related to security, overcrowding, staffing, mental health treatment, reentry programming, and restrictive housing. Opponents of the bill argued that yet another layer of oversight distracts the agency from implementing existing recommendations and developing new improvement plans.

LR 127 was adopted 28-11 on May 18, 2017.





# GENERAL AFFAIRS COMMITTEE

Senator Tyson Larson  
Chairperson



*LEGISLATION NOT ENACTED*

## LB 632—Change Provisions Relating to the Nebraska Liquor Control Act and Name the Music Licensing Agency Act (*Larson*)

LB 632 would have made a plethora of changes to the Nebraska Liquor Control Act. However, proponents of the original measure pulled the bill from the agenda after a controversial provision related to craft breweries was struck from the bill.

Nebraska currently has a three-tier system of alcohol distribution that includes defined roles for manufacturers, distributors, and retailers. For example, most manufacturers are required to ship beer through a licensed distributor on its way to bars, liquor stores, and restaurants across the state. However, current state law includes an exemption that allows in-state craft breweries to bypass the second step, shipping beer directly to retail without first going through a warehouse.

LB 632 would have removed the exception for in-state craft breweries, requiring all beer in the state to go through a distributor, where it would sit “at rest” before delivery.

Proponents said the measure was necessary to create a consistent regulatory framework for both in-state and

out-of-state manufacturers, ensuring all beer was properly taxed. Opponents of the change argued that the provision would stifle growth in the nascent microbrew industry.

An amendment during floor debate eventually struck the controversial microbrew provision.

Among its many other components, LB 632 would have:

- Required “private bottle clubs” — where customers bring their own alcohol — to obtain a state liquor license;
- Required the Nebraska Liquor Control Commission to keep track of licensees who become delinquent on bills owed to distributors; and
- Created the Music Licensing Agency Act, which would have required music licensors to file paperwork with the state on performance agreements and royalties.

LB 632 is on Select File.



# GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator John Murante  
Chairperson



## ENACTED LEGISLATION

### **LB 85—Provide a Requirement for Persons Seeking Appointive or Elective Office as Prescribed and Provide a Duty for the Nebraska Accountability and Disclosure Commission (*Blood, Baker, Chambers, Crawford, Hansen, McDonnell, Morfeld, Vargas, and Wayne*)**

With enactment of LB 85, no person is eligible to file for elective office, or be appointed to elective or appointive office, until he or she has paid any outstanding civil penalties and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act. However, if the person has appealed the penalty and filed a surety bond pending the appeal, LB 85 provides that he or she can file for public office.

The bill also prescribes changes to candidate filing forms by requiring the addition of a statement as to whether or not civil penalties are owed, and if so, whether or not a surety bond has been filed.

The Nebraska Accountability and Disclosure Commission must provide information or a list of persons owing civil penalties and interest to election filing officers on or before December 1 prior to the statewide primary election. Further, the commission must update the information or list upon request of a filing officer.

LB 85 passed 48-0 and was approved by the Governor on March 29, 2017.



## **LB 340—Transfer Powers and Duties from Division of Veterans’ Homes of Department of Health and Human Services to Department of Veterans’ Affairs (*Murante, at the request of the Governor, Brewer, and Briese*)**



Effective July 1, 2017, the administration and services of the Division of Veterans’ Homes will be transferred from the Department of Health and Human Services to the jurisdiction of the Department of Veterans’ Affairs.

Originally, Nebraska’s four veterans homes were managed by the Department of Health. Management responsibility was transferred to the Department of Health and Human Services in 1996 as part of a multi-agency merger.

Responsibilities of the Department of Veterans’ Affairs include the management and administration of the state’s veterans’ homes and providing veterans quality skilled care and assisted living services.

Supporters of LB 340 believe the merger will result in better quality care, while streamlining services and increasing efficiency.

Additionally, LB 340 creates the Department of Veterans’ Affairs Cash Fund for purposes of collecting revenue paid to the state by members of the veterans’ homes.

LB 340 passed with the emergency clause 49-0 and was approved by the Governor on April 25, 2017.



## LB 451—Change Provisions Relating to Elections as Prescribed (*Murante*)

The Government, Military and Veterans Affairs Committee’s omnibus bill addresses a variety of issues and makes numerous changes to Nebraska’s election laws. As enacted, LB 451 includes provisions of **LB 314**.

LB 451 extends the time period prior to an election that ballot questions on whether to adopt an economic development plan must be submitted to voters. Questions must be submitted no later than:

- (1) 50 days prior to a special election or municipal primary or general election not held in conjunction with a statewide election;
- (2) March 1 prior to a statewide primary election; and
- (3) September 1 prior to a statewide general election.

Another provision of LB 451 changes procedures for filling vacancies occurring in the Nebraska Legislature. Nebraska law requires the Governor to make appointments to fill an unexpired term in the Legislature. LB 451 changes how long the gubernatorial appointee serves. Pursuant to the bill, if a vacancy occurs:

- (1) On or after May 1 of the second year of the term of office, the appointee serves the remainder of the unexpired term;
- (2) Prior to May 1 of the second year of the term of office, the appointee serves until the first Tuesday following the first Monday in January following the next regular general election and at the regular general election, a member of the Legislature shall be elected to serve the unexpired term;
- (3) On or after February 1 and prior to May 1 during the second year of the term of office, the vacancy shall be filled at the regular election in November and candidates must file petitions to appear on the general election ballot; or
- (4) Prior to February 1 of the second year of the term of office, the procedure for filling the vacancy is the same as the procedure for filling the office at the expiration of the term and candidates are nominated and elected at the statewide primary and general elections during the second year of the term.

The length of time a gubernatorial appointee to the University of Nebraska Board of Regents serves is also changed with the passage of LB 451. Pursuant to the bill,

if a vacancy occurs:

- (1) During the first year of the term or before February 1 in a year of a statewide general election, the appointee serves until the first Thursday following the first Tuesday in January following a general election, at which a member of the Board of Regents shall be elected to serve the unexpired term;
- (2) On or after February 1 in a year of a statewide general election and the vacated term expires on the first Thursday following the first Tuesday in January following a statewide general election, the appointee serves the unexpired term; or
- (3) On or after February 1 in a year of a statewide general election and the vacated term extends beyond the first Thursday following the first Tuesday in January following a general election, the appointee serves until the first Thursday following the first Tuesday in January following the second general election next succeeding his or her appointment and at such election a member of the Board of Regents shall be elected to serve the unexpired term.

LB 451 changes the timeframe, from July 1 to no later than June 15 in even-numbered years, that certain political subdivisions are given to certify offices up for election. Affected political subdivisions include reclamation districts, county weed districts, villages, counties under township organization, public power districts with an annual gross revenue of less than \$40 million, and educational service units.

Additionally, LB 451 allows election commissioners to file for elective office within 30 days after leaving office. Nebraska law prohibits election commissioners from filing or running for elective office while serving as election commissioners.

Finally, LB 451 authorizes using appropriations from the General Fund to pay for the creation and maintenance of a centralized, digital voter registration list by the Secretary of State; increases the minimum length of time, from 40 days to 42 days, that notices of election must be published in a newspaper of general circulation for primary and general elections; and makes clarifying changes and codifies the delivery and return processes for early ballot voting.

LB 451 passed 48-0 and was approved by the Governor on May 12, 2017.



## LEGISLATION NOT ENACTED

### **LB 68—Prohibit Certain Regulation of Firearms, Ammunition, and Firearm Accessories by Counties, Cities, and Villages as Prescribed and Create Firearm Offenses (*Hilgers, Bostelman, Brasch, Brewer, Clements, Ebke, Geist, Groene, Halloran, Kolterman, Larson, Lindstrom, Lowe, Murante, and Watermeier*)**



In an attempt to address a perceived disparity between municipal gun ordinances, state law, and the constitutional right to possess firearms, LB 68 sought to eliminate a number of regulations currently enacted by municipalities and other political subdivisions.

LB 68 would have amended existing law to give the Nebraska Legislature exclusive authority and deny political subdivisions the ability to regulate ownership, possession, transportation, carrying, registration, transfer, and storage of firearms, ammunition, and firearm accessories. The bill would have preserved local authority to regulate the discharging of firearms within corporate limits, approve appropriate zoning designations, and enact ordinances related to the use of firearms by local law enforcement and other city employees.

Additionally, LB 68 would have created a cause of action for any person or membership organization adversely affected by action taken by the city or village in violation of the prohibition against political subdivisions regulating firearms. Plaintiffs who were successful in making a case against a city or village would have been able to recuperate actual damages, court costs, or attorney's fees.

Lastly, the amended version of LB 68 would have added the following provisions:

- (1) A prohibition on possessing a handgun in a public

place in a city of the metropolitan class;

- (2) A prohibition on transporting or possessing firearms, machine guns, air guns, air rifles, or paintball guns in a public place in a city of the metropolitan class unless the item is unloaded and contained in an enclosed case or unloaded and broken down;
- (3) A requirement that firearms being transported in a vehicle in a city of the metropolitan class be unloaded and inaccessible to persons in the vehicle passenger compartment; and
- (4) A new affirmative defense to prosecution for failing to obtain a handgun purchase certificate if a person presents a valid purchase certificate, which verifies that he or she possessed such certificate at the time the handgun was purchased, leased, rented, acquired, or received.

LB 68 would have provided some exceptions to the firearm prohibitions for cities of the metropolitan class, including for persons who are lawful possessors or who have a valid concealed handgun permit and members of the military or law enforcement; carrying unloaded and uncased rifles in parades; possession at bona fide gun shows or exhibits; and any other lawful use as defined by LB 68.

LB 68 is on Select File.





## **LR 6—Resolution to Congress for Convention of the States to Propose Amendments to the U.S. Constitution (*Ebke, Bostelman, Brewer, Clements, Erdman, Friesen, Halloran, Kolterman, Larson, Lindstrom, Watermeier, and Williams*)**

Citing concerns over the ballooning federal debt, federal overreach, and the ineffectiveness of career politicians, numerous states have submitted an application to Congress for a convention of the states per Article V of the United States Constitution.

According to Article V, Congress must call a convention for the purpose of proposing constitutional amendments upon the application by the legislatures of two-thirds (2/3) of the several states.

Under the provisions of LR 6, the convention would be confined to proposals to address limiting the size and scope of the federal government, implementing fiscal restraints, and imposing congressional term limits. Proposed amendments approved at a convention of the states would be submitted to the states and would require ratification by three-fourths (3/4) of state legislatures before becoming law.

LR 6 is on General File.

## **LR 1CA—Constitutional Amendment to Require Voter ID (*Murante*)**

LR 1CA would have given voters the opportunity to weigh in on the issue of voter identification.

LR 1CA, if adopted by voters, would have amended Article I, section 22 of the Nebraska Constitution to require presentation of identification prior to voting as provided by the Legislature.

Nebraska is one of 18 states that do not require proof of identification to vote.

LR 1CA advanced to General File, where a cloture motion failed 26-17. LR 1CA remains on General File.

## **LR 15CA—Constitutional Amendment Prohibiting Requiring a Voter to Present Identification Prior to Voting (*Morfeld*)**

In an effort to protect the fundamental constitutional right of each eligible citizen to vote, LR 15CA would have proposed an amendment to Article I, section 22 of the Nebraska Constitution to prohibit requiring proof of voter identification prior to being able to vote.

LR 15CA remains in committee.

## **LR 18CA—Constitutional Amendment to Change the Age for Eligibility for Public Office (*Larson and Hansen*)**

Nebraskans under the age of 21 will have to find other ways to become engaged in state government, after a constitutional amendment to lower the age to run for office stalled on General File.

Nebraska law requires an individual to be 21 years old to serve as a state senator and 30 years old to serve as

Governor, Lieutenant Governor, or Supreme Court Judge.

LR 18CA would have proposed an amendment to Article III, section 8; Article IV, section 2; and Article V, section 7 of the Nebraska Constitution to change the age of eligibility for public office to 18 years of age.

LR 18CA is on General File.



# HEALTH & HUMAN SERVICES COMMITTEE

Senator Merv Riepe  
Chairperson



## ENACTED LEGISLATION

### **LB 18—Change Licensure and Scope of Practice for Dental Assistants and Dental Hygienists (*Kolterman and Hilkemann*)**

Recognizing the importance of oral health and expanding access to dental services in underserved areas, LB 18 allows dentists to assign additional duties to dental assistants and dental hygienists who have achieved the proper training and credentials.

LB 18 creates the new licensure category of licensed dental assistant, but allows dental assistants to continue to practice without being licensed. The bill also creates a permitting process for expanded practice dental assistants and expanded practice dental hygienists

and expands the scope of practice for public health hygienists.

To become a licensed dental assistant, applicants must have graduated from an accredited dental assisting program or have at least 1,500 hours of experience working as a dental assistant during the five-year period prior to application and pass an exam administered by the Dental Assisting National Board or an equivalent exam approved by the state Board of Dentistry (the board).



Licensed dental assistants are authorized to perform all procedures unlicensed dental assistants are authorized to perform plus the additional duties of taking dental impressions for fixed prostheses, taking dental impressions and making minor adjustments for removable prostheses, cementing prefabricated fixed prostheses on primary teeth, and monitoring and administering nitrous oxide analgesia. The duties must be performed under the indirect supervision of a licensed dentist, which means the dentist must be on the premises.

Licensed dental assistants with at least 1,500 hours of experience can take additional coursework and pass an exam to gain a permit to practice as an expanded function dental assistant, allowing them to perform certain tasks of restorative dentistry (essentially, placing fillings once a licensed dentist has removed the decay).

LB 18 expands the scope of practice for licensed dental hygienists who have met additional education requirements to perform interim therapeutic techniques (temporary fillings), write prescriptions for antimicrobial mouth rinses and fluoride products, and administer and titrate nitrous oxide. Licensed dental hygienists with at

least 1,500 hours of experience, who have completed additional education hours and passed an exam, can seek certification as an expanded function dental hygienist. Expanded function dental hygienists can perform all the duties of a licensed hygienist plus certain tasks of restorative dentistry.

Finally, LB 18 expands the duties that can be performed by a public health dental hygienist. Nebraska law authorizes a public health dental hygienist to practice certain preventive dental services without the supervision of an on-site dentist under a permitting process administered by the Department of Health and Human Services. Public health dental hygienists provide services in settings such as community health clinics, nursing homes, and school-based preventive health programs.

Under provisions in LB 18, public health dental hygienists can provide interim therapeutic techniques, write prescriptions for antimicrobial mouth rinses and fluoride products, and make minor denture adjustments.

LB 18 passed 46-0 and was approved by the Governor on March 29, 2017.

## **LB 335—Change Provisions Relating to a Child Care Market Rate Survey (*Riepe, at the request of the Governor*)**

LB 335 suspends the statutory requirement that child care subsidy rates be adjusted to fall between the sixtieth percentile and the seventy-fifth percentile of statewide provider rates.

State and federal law require the Department of Health and Human Services (DHHS) to conduct a market rate survey of the state's child care providers and based on the results, adjust the reimbursement rate for providers who accept families receiving the child care subsidy. State law requires DHHS to adjust the rates in every odd-numbered year.

Under the provisions of LB 335, for fiscal year 2017-2018, the child care rate cannot be less than the fiftieth percentile or the rate for the immediately preceding fiscal year. For fiscal year 2018-2019, the rate cannot be less than the sixtieth percentile for the last three quarters of the fiscal year or the rate for the fiscal year beginning on July 1, 2016. The change is expected to save the General Fund \$1,830,964 over the biennium.

New federal child care reimbursement guidelines go into effect on October 1, 2018, requiring states to meet an "access rule" (that is, rates must be sufficient to assure equal access to affordable child care for eligible children). Therefore, the child care rates need to be set so as not to jeopardize the state's receipt of \$30 million in federal aid.

LB 335 passed with the emergency clause 42-0 and was approved by the Governor on May 12, 2017.



## **LB 88—Adopt the Interstate Medical Licensure Compact and the Nurse Licensure Compact and Change and Eliminate Other Provisions Relating to the Regulation of Health Professionals (*Blood, Hansen, Morfeld, Wayne, Williams, Brewer, Linehan, Crawford, and Halloran*)**

LB 88 addresses numerous licensure issues pertaining to health professionals and contains measures originally introduced in six separate bills.

The original provisions of LB 88 allow the spouses of military members living in Nebraska to apply for a temporary license to practice in a variety of health care professions. To qualify for a temporary license, military spouses must provide copies of their military dependent identification card; the military orders reflecting an active-duty assignment in Nebraska; their credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential; and their fingerprints for a criminal background check; and pay application and licensure fees.

The temporary licensure provisions exclude the practice of dentistry. Otherwise, temporary licensure is valid until the application for the regular credential is approved or rejected, not to exceed one year.

Efforts to accommodate members of the armed forces and their spouses transition to civilian jobs in health care serve the dual purpose of recognizing their valuable service to the country and addressing health care workforce shortages. Another way states have addressed shortages and planned for responding to emergencies is the creation of interstate medical licensure compacts.

Joining a medical licensure compact is not new to Nebraska. In 2000, Nebraska was among the first states to adopt the Nurse Licensure Compact allowing eligible Nebraska nurses to apply for a multistate license and practice in states where the license was recognized.

Provisions of LB 88 enact the Enhanced Nurse Licensure Compact, which updates the previous Nurse Licensure Compact. These provisions were originally introduced in **LB 342**. The enhanced compact becomes effective on December 31, 2018, or when 26 states have joined. (With the adoption of LB 88, Nebraska becomes the nineteenth state to join the compact.)

Among other changes, the enhanced compact addresses patient safety concerns. The new compact aligns compact

states' licensing standards with adoption of the National Council of State Boards of Nursing's Uniform Licensure Requirements (ULRs). The ULRs establish consistent standards for initial, endorsement, renewal, and reinstatement licensure. Additionally, all applicants for a multistate nursing license must undergo a federal and state criminal background check and cannot receive a multistate license if ever convicted of a felony.

Additionally, LB 88 authorizes Nebraska to join the Interstate Medical Licensure Compact, provisions of which were originally introduced in **LB 61**. The Interstate Medical Licensure Compact applies to physicians who meet the eligibility requirements of the compact, including that they hold a full and unrestricted license to engage in the practice of medicine issued by the appropriate board of their member state, have never been convicted of a felony, nor had their medical license subject to discipline.

Joining the compact does not alter Nebraska's physician licensure laws nor impede the authority of the state medical board. However, the terms of the compact as adopted in LB 88 state that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter and requires the physician to be under the jurisdiction of the state medical board where the patient is located.

Finally, LB 88 contains measures addressing scope of practice and licensure reform. LB 88 authorizes licensed practical nurses to provide intravenous therapy under certain conditions and updates education requirements for nurse practitioners, clarifies the transition-to-practice requirement for new nurse practitioners, and simplifies licensure requirements for experienced nurse practitioners relocating to Nebraska. These provisions were originally introduced in **LB 283** and **LB 425**.

The bill also exempts audiologists from the requirement to be separately licensed as a hearing instrument specialist. This measure was originally contained in **LB 343**.

LB 88 passed with the emergency clause 49-0 and was approved by the Governor on April 25, 2017.



## LB 225—Change Provisions of the Child Protection and Family Safety Act, the Nebraska Juvenile Code, the Foster Care Review Act, and the Nebraska Strengthening Families Act as Prescribed (*Crawford and Howard*)

LB 225 contains several measures pertaining to child welfare.

The bill reauthorizes and expands statewide the alternative response pilot project.

“Alternative response” is a new approach to help families with less severe reports of child abuse and/or neglect, connect with supports and services needed in order to enhance the parents’ ability to keep their children safe and healthy.

LB 225 requires the Department of Health and Human Services (DHHS) to report to the Legislature and the Nebraska Children’s Commission by November 15, 2018, outlining the potential challenges, barriers, and opportunities to be gained if alternative response were to become a permanent program. DHHS is authorized to use alternative response until December 31, 2020.

Another provision of LB 225 allows DHHS to charge a reasonable fee, not to exceed three dollars, for conducting central registry records checks. DHHS can waive the fee in cases of hardship.

The central registry contains the records of all child and adult protection cases involving reports of abuse or neglect that have been substantiated by the courts or by DHHS investigation. The registry is used by agencies and businesses, often before hiring individuals who will work around children or vulnerable adults. Some entities, such as child-placing agencies, are required to check the registry before hiring employees. This provision was originally introduced in **LB 336**.

LB 225 also creates the Children and Juveniles Data Feasibility Study Advisory Group, a measure originally proposed in **LB 297**.

The advisory group is tasked with overseeing a study to identify how existing state agency data systems used to track services, programs, and facilities for children and youth can be used to establish an independent, external data warehouse. The advisory group continues the work

begun in 2015 with the creation of the Out-of-Home Data Pilot Project (Laws 2015, LB 265) and builds upon its recommendations.

Advisory group members include: the Inspector General of Nebraska Child Welfare, the State Court Administrator, the probation administrator of the Office of Probation Administration, the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, the Commissioner of Education, the executive director of the Foster Care Review Office, the Chief Information Officer, and the chief executive officer of DHHS, or their designees.

The advisory group must meet at least twice a year, carry out in good faith its assigned duties, create a Data Steering Subcommittee and an Information-Sharing Subcommittee, and submit a report to the Legislature on October 1 of 2017 and 2018. The report must detail the technical and legal steps needed to establish the Children and Juveniles Data Warehouse by July 1, 2019.

The bill defines an “external data warehouse” as “a data system which allows for the collection, storage, and analysis of data from multiple agencies but is not solely controlled by the agencies providing the data.” The advisory group terminates on December 31, 2019.

Finally, LB 225 renames the Normalcy Task Force the Nebraska Strengthening Families Act Committee; applies certain provisions of the Nebraska Strengthening Families Act to youth placed in juvenile facilities; and requires child-care institutions (e.g., group homes), juvenile facilities, and youth rehabilitation and treatment centers to develop a written normalcy plan for each youth placed in their care. These provisions were originally introduced in **LB 298**.

The Nebraska Strengthening Families Act, passed in 2016, was intended to ensure foster youth avoid exploitation, experience normal childhood activities such as participating in extracurricular sports, and make a successful transition to adulthood.



LB 225 requires DHHS foster care contracts with child-care institutions to include a written normalcy plan describing how each child-care institution ensures all children entrusted to its care have access to age or developmentally appropriate activities. Normalcy plans must acknowledge the barriers to having a normal childhood inherent in living in a child-care institution and specific measures to address those barriers. Each child-care institution is also required to annually file a normalcy

report with DHHS discussing how it has implemented its normalcy plan. Youth rehabilitation and treatment centers must also meet the normalcy plan requirements, but out-of-state child-care institutions and psychiatric residential treatment facilities are exempted from such requirements.

LB 225 passed with the emergency clause 48-0 and was approved by the Governor on April 27, 2017.

## **LB 333 — Change Provisions Relating to Custody, Services, and Assistance for Persons with Developmental Disabilities (*Riepe, at the request of the Governor*)**

As originally introduced, LB 333 would have eliminated the State Disability Program by ending the independent review required of the Department of Health and Human Services (DHHS) for persons who are denied benefits by the U.S. Social Security Administration based on the duration of their disability. The state program provides temporary financial assistance and medical coverage for low-income disabled persons.

The bill's fiscal note indicated a savings of \$3,174,539 in fiscal year 2017-2018 and \$4,232,719 in fiscal year 2018-2019.

However, concerns arose during General File debate that ending the State Disability Program would put financial pressure on counties and act as an unfunded mandate on county general assistance programs. Subsequently, senators adopted an amendment removing the provisions pertaining to the State Disability Program.

As enacted, LB 333 makes numerous changes to laws affecting developmental disability (DD) services that were originally proposed in **LB 417** and **LB 495** and added to LB 333 via the committee amendment.

Significantly, LB 333 eliminates the requirement that DHHS coordinate independent Quality Review Teams (QRTs), which the state has used to assess DD residential services since 1991, and clarifies funding priorities for persons served on the state's DD waiver as required to preserve federal funding for these services.

In place of QRTs, DHHS is tasked with developing and implementing a comprehensive quality management and

improvement plan to promote and monitor the quality of life for persons receiving DD services, with assistance and support from the Advisory Committee on Developmental Disabilities.

The plan must reflect national best practices for DD services, using qualitative and quantitative measures to assess such things as the ability of services to meet the needs of persons with developmental disabilities and their families, their satisfaction with the process of determining eligibility for services, and the quality of life offered by the services.

The bill contains numerous reporting requirements including that, by September 30, 2017, DHHS must provide a quality management plan to the Legislature detailing its approach to ensuring a sustainable, continuous, quality improvement management system for the delivery of DD services. Implementation reports must be published on the DHHS website by the end of 2017 and in March 2018, and an annual progress report must be published on its website and electronically delivered to the Legislature.

Another provision of LB 333 repeals, only for fiscal years 2017-2018 and 2018-2019, an entitlement to prioritize specialized services for persons who graduate from high school or turn age 21. Historically, Nebraska has statutorily guaranteed this population specialized services as availability to fund the services allows. This funding priority in Nebraska statute is now at odds with the funding priority required by the federal Centers for Medicare and Medicaid Services (CMS) to prioritize individuals based on highest need. Not changing Nebraska law, proponents



argued, jeopardizes the state’s Medicaid Home and Community-Based Services Waiver, which helps pay for these services.

However, in a compromise between eliminating the entitlement for high school graduates and maintaining it at the risk of losing federal funds, LB 333 was amended to reinstate the entitlement beginning in fiscal year 2019–2020. The change ensures General Fund budget savings over the biennium because this population as a priority would have to be completely state funded.

LB 333 sets the priorities for funding in the Medicaid Home and Community-Based Services Waiver as serving:

- (1) Persons with developmental disabilities in immediate crisis due to caregiver death, homelessness, or a threat to the life and safety of the person;
- (2) Persons who have resided in an institutional setting for a period of at least 12 consecutive months and are requesting community-based services;
- (3) DHHS wards or persons placed under the supervision of the Office of Probation Administration by the courts who are transitioning at age 19 with no other alternatives to receive residential services necessary to pursue economic self-sufficiency;

- (4) Persons transitioning from the education system at age 21 to maintain skills and receive the day services necessary to pursue economic self-sufficiency; and
- (5) All others based on their date of application for services.

Additionally, LB 333 adds new members to the Advisory Committee on Developmental Disabilities, which advocates statewide for persons with developmental disabilities and advises DHHS regarding funding and delivery of services. The new members include representatives from Nebraska’s designated protection and advocacy organization, the Nebraska Planning Council on Developmental Disabilities, and the University Center for Excellence in Developmental Disability Education, Research, and Service. Further, LB 333 requires DHHS to provide the committee notice of proposed systemic changes to DD services at least 30 days prior to implementation or as soon as possible.

Finally, LB 333 updates the definitions of “developmental disability” and “intellectual disability” in the Developmental Disabilities Court-Ordered Custody Act to harmonize with definitions in the Developmental Disabilities Services Act.

LB 333 passed with the emergency clause 48-0 and was approved by the Governor on May 23, 2017.



# LB 506—Adopt the Compassion and Care for Medically Challenging Pregnancies Act and Provide Duties for the State Child and Maternal Death Review Team *(Albrecht, Blood, Brasch, Lowe, Quick, Kolterman, Halloran, Hilgers, Hilkemann, Bostelman, and Riepe)*

When prenatal testing reveals life-limiting fetal abnormalities, parents-to-be face excruciating decisions that supporters of a new movement to provide perinatal hospice services hope will help. LB 506 provides statutory recognition to those services in Nebraska.

Perinatal hospice is not a place, but a set of services. LB 506 defines “perinatal hospice” as providing comprehensive support to the pregnant woman and her family from diagnosis, through the birth and death of the infant, and into the postpartum period. Supportive care includes counseling and medical care by a host of health professionals, clergy, and social workers to ensure the family experiences the life and death of their infant in a “comfortable and supportive environment.”



The bill provides that medical professionals who diagnose a lethal fetal anomaly can share information about available perinatal hospice services with their patients. A lethal fetal anomaly is a condition diagnosed before birth that, with reasonable certainty, results in the infant’s death within three months of birth. To aid this endeavor, LB 506 directs the Department of Health and Human Services (DHHS) to create and organize a list of available perinatal hospice services in Nebraska and nationwide and to post the information on its website. The information must be printable so that medical professionals can provide patients with a copy of the information.

Specific information DHHS must include on the website includes:

- A statement that perinatal hospice is an “innovative and compassionate model of support” for women who are told their babies have a life-limiting condition and who choose to continue their pregnancies;

- A general description of the health care services available from the programs; and
- Contact information that specifically includes 24-hour services.

As enacted, LB 506 contains provisions originally introduced in **LB 287** that authorize the Nebraska Child and Maternal Death Review Team to store electronic data containing personally identifying information with entities providing secure storage of electronic data. Previously, the Nebraska statute for storing this data had been interpreted to require a bifurcated storage system that separated personal and incident identifying information, which was stored in-house at DHHS. The practical effect of LB 506 is to allow the team to contract with one electronic data storage entity for electronic storage of all of its collected data.

LB 506 passed 49-0 and was approved by the Governor on April 26, 2017.



# JUDICIARY COMMITTEE

Senator Laura Ebke  
Chairperson



## ENACTED LEGISLATION

### **LB 8 — Change and Eliminate Provisions Relating to Juvenile Detention and Probation and Provide for Graduated Response Sanctions and Incentives (*Krist*)**

Nebraska is set to begin taking a more nuanced approach to juveniles who violate the terms of their probation.

LB 8 directs the Office of Probation Administration to develop a statewide matrix of sanctions for juvenile probation violations. Under the bill, juveniles can avoid detention for probation violations by completing prescribed sanctions. Failing to complete a sanction can result in either repetition of the sanction or implementation of an entirely new sanction. Beyond sanctions, the matrix will also include incentives to encourage compliance with court orders.

According to the University of Nebraska Center on Children, Families, and the Law, one out of every four juveniles in detention in the state is there because of a minor probation violation. Proponents said sending youth to detention for technical violations increases recidivism and impedes rehabilitation efforts. Implementing a graduated response system of targeted intervention is considered a best practice among juvenile justice experts nationally.

Under the bill, a probation office could still revoke a juvenile offender's probation if he or she repeatedly fails to complete sanctions, commits a new crime, or is deemed a risk to public safety.

LB 8 passed 45-0 and was approved by the Governor on March 29, 2017.



## LB 259 — Adopt and Change Competency and Financial Ability Provisions Relating to Court Proceedings (*Hansen and Chambers*)

County courts will have expanded authority to determine a person’s competency to stand trial under LB 259.

Currently, when a motion is filed in county court to determine a defendant’s competency, the case must be put on hold while a determination is made by a district court judge. LB 259 authorizes county court judges to determine competency without having to file a separate civil motion in district court. The bill also allows city attorneys to challenge a defendant’s competency.

LB 259 includes provisions from three other bills related to a defendant’s ability to pay fines, debts, and bonds:

- **LB 145** requires courts take into account a

defendant’s ability to pay a fine before imposing a sentence for nonpayment. If the defendant is unable to pay the fine, the court can alter the fine, substitute an installment plan, or impose community service as an alternative.

- **LB 395** requires judges to consider a defendant’s ability to pay when determining bond.
- **LB 526** prevents the arrest of debtors unless they are found to be in contempt of court and requires debtors be provided with a public defender in the event a contempt hearing could lead to jail time.

LB 259 passed 41-3 and was approved by the Governor on May 12, 2017.

## LB 289 — Change and Provide Provisions Relating to Sex Offenses and Domestic Violence Protection Orders, Provide for Sexual Assault Protection Orders, and Change Provisions Relating to Paternity of a Child Conceived as a Result of Sexual Assault (*Pansing Brooks, Brasch, Linehan, Morfeld, Scheer, Walz, Watermeier, Wishart, Blood, McCollister, McDonnell, Albrecht, Hilkemann, Wayne, Brewer, Kolterman, and Hansen*)

With the passage of LB 289, human traffickers in Nebraska potentially face life behind bars.

LB 289 includes a broad spectrum of penalty enhancements aimed at cracking down on coerced labor and sexual exploitation. One of the most significant provisions in the bill equates solicitors — customers who purchase sex — with the traffickers themselves by adding solicitation to the definition of human trafficking. Now, individuals who either solicit or traffic children can be convicted of a Class IB felony, punishable by up to life in prison.

The bill also equalizes the penalties for solicitation and trafficking of adults, making both Class II felonies, punishable by up to 50 years in prison. The crime of pandering — essentially enticing a vulnerable person into prostitution — increases from a Class III to a Class II felony. In addition, the bill ensures that trafficking victims cannot be prosecuted for being unwilling participants in the trafficking of other victims.

LB 289 includes provisions from three other bills related to sexual assault and domestic violence:

- **LB 178** allows victims of sexual assault to file for civil protection orders against their attackers. The order prohibits the perpetrator from contacting the victim, mirroring civil protection orders that exist for harassment and domestic abuse.
- **LB 188** allows for the parent of a child conceived via a sexual assault to petition the court for the termination of the assailant’s parental rights.
- **LB 191** allows victims of domestic abuse to renew a protection order 30 days before the expiration of the previous protection order. The measure is meant to eliminate gaps between filings of protection orders.

LB 289 passed 48-0 and was approved by the Governor on May 22, 2017.



## LB 300 — Change the Statute of Limitations on Civil Actions for Sexual Assault of a Child (*Krist and McDonnell*)

Victims of childhood sexual abuse in Nebraska will have more time to seek financial damages with the passage of LB 300.

Previously, civil lawsuits in childhood sexual abuse cases had to be filed before the alleged victim turned 33. LB 300 removes the statute of limitations for suing the perpetrator. However, the bill retains the deadline for suing individuals who were party to the abuse, but not the actual perpetrator.

Nebraska has no statute of limitations for filing criminal charges in child sexual assault cases.

Proponents said the bill was necessary, as victims of childhood trauma often take many years to come to terms with the experience. Thus, removing the statute of limitations increases the likelihood a victim will eventually come forward and confront a past abuser.

LB 300 passed 46-0 and was approved by the Governor on May 9, 2017.

## LB 444 — Prohibit Cities and Counties from Canceling Health Insurance Coverage for Injured First Responders as Prescribed and Include Under the Nebraska Workers' Compensation Act Frontline State Employees with Respect to Personal Injuries (*Walz*)



First responders in Nebraska can no longer lose their health insurance coverage after being assaulted on duty.

LB 444 prohibits cities and counties from canceling the existing health insurance policy of any first responder who suffers a serious bodily injury from an assault while on the job. The original bill only applied to law enforcement officers but was amended to include firefighters and emergency medical personnel.

Under the bill, cities and counties are obligated to maintain health coverage of injured first responders for up to a year while they recuperate. If the first responder does not return to the job after 12 months, the insurance policy can be cancelled.

LB 444 also incorporates provisions from **LB 244**, extending workers' compensation benefits to frontline public employees at the Department of Correctional Services and Department of Health and Human Services. Specifically, the measure provides benefits to employees who regularly work with high-risk individuals in state custody with a history of violent or physically intimidating behavior.

Proponents said that public employees who put their personal safety at risk deserve the protections found in the bill. Opponents argued that the costs were too high and insurance premiums around the state will inevitably go up as a result.

LB 444 passed 31-8 and was approved by the Governor on April 27, 2017.



## LB 487 — Provide and Change Immunity Provisions Relating to Naloxone and Asthma and Allergic Reactions and Change Provisions of the Uniform Controlled Substances Act (*Morfeld*)



Calling for help for a drug overdose can no longer result in criminal charges with the passage of LB 487.

The bill grants limited legal immunity to both the person suffering the overdose and anyone present who calls for emergency help and cooperates with first responders. Individuals involved with a drug overdose call will be shielded from drug possession or possessing drug paraphernalia based on evidence obtained through the call. Other charges, like drug-induced homicide, can still be brought if investigators think it is warranted.

The bill is very similar to a bill passed two years ago (LB 439) that protects minors who call for help in cases of alcohol poisoning.

LB 487 includes provisions from three other related bills:

- **LB 167** reclassifies cannabidiol, a substance obtained from marijuana plants, to a Schedule V controlled substance. This would make the

drug available by prescription if it wins approval from the federal Food and Drug Administration. Cannabidiol does not contain THC, the psychoactive substance in marijuana.

- **LB 293** updates the Uniform Controlled Substances Act to classify a synthetic opioid called “U-47700” as a Schedule I drug.
- **LB 296** provides civil immunity to health care professionals who prescribe or dispense emergency medication in response to a life threatening case of asthma or anaphylaxis. For immunity to apply, the medication cannot be patient-specific and it must be administered by a school, an educational service unit, or an early childhood education program.

LB 487 passed 34-5 and was approved by the Governor on April 27, 2017.



## LEGISLATION NOT ENACTED

### LB 158 — Change Provisions Relating to Appointment of Counsel for Juveniles (*Pansing Brooks and Hansen*)

A guarantee that juvenile offenders have legal representation in court stalled this session.

Last year, LB 894 guaranteed representation in juvenile court for minors in counties with more than 150,000 people. LB 158 would have extended the law to cover all counties in the state. Under the bill, legal counsel would have been appointed every time a petition is filed in juvenile court, including throughout post trial proceedings. A pending amendment would have created the Juvenile Indigent Defense Fund, to provide grants to counties for the cost of providing legal representation to juveniles.

The U.S. Supreme Court, in the landmark case *In re Gault*, 387 U.S. 1 (1967), ruled that minors have the right to an attorney in juvenile proceedings. However, proponents of LB 158 pointed out that today, half a century after the *Gault* decision, due process rights are not available for thousands indigent juvenile defendants across the state.

Opponents argued that judges should be trusted to



provide legal representation on a case-by-case basis to juvenile defendants that truly need it. Others said the bill went too far, taking power away from parents and handing it over to the justice system. In addition, there were concerns about costs and the funding mechanism in the bill.

LB 158 is on General File.

### LB 447 — Change Penalty Provisions Relating to Criminal Conspiracy and Certain Drug-related Offenses (*Chambers, Ebke, and McCollister*)

An effort to eliminate certain mandatory minimum sentences did not make it past second round debate this session.

As introduced, LB 447 would have eliminated the mandatory minimums for Class IC and Class ID felonies, which include crimes such as the use of a firearm to commit a felony, assaulting a police officer, and distributing child pornography. The mandatory minimums for Class IC and Class ID felonies are currently set at five and three years, respectively.

The scope of the proposal was narrowed considerably during General File debate, when an amendment restricted the bill to serious drug offenses.

Proponents said that by giving judges more discretion in sentencing, punishments could be determined on a case-by-case basis and thus more closely tailored to fit the crime. It was also argued that eliminating mandatory minimums had the potential to reduce prison overcrowding and give prisoners extra incentive to behave. This is because offenders must serve their minimum sentence before becoming eligible for a reduced sentence under Nebraska's "good time" law.

Opponents argued that mandatory minimums were not responsible for prison overcrowding and even the scaled-down version of the bill would seriously undermine public safety.

LB 447 is on Select File.



# LB 622 — Adopt the Medical Cannabis Act (*Wishart, Craighead, Ebke, Hansen, Kolowski, Krist, Morfeld, Pansing Brooks, Vargas, and Wayne*)

An attempt to legalize medical marijuana in Nebraska failed for the third session in a row.

LB 622, also known as the Medical Cannabis Act, would have allowed patients to use medical cannabis with a recommendation from their doctor. The bill would have authorized a limited number of growers, processors, and distribution centers to provide medical cannabis for people suffering from a wide range of medical conditions.

Smoking and growing marijuana would have remained illegal under the bill. However, patients could have used medical marijuana via pills, oils, creams, or through vaporizers.

LB 622 called on the Department of Health and Human

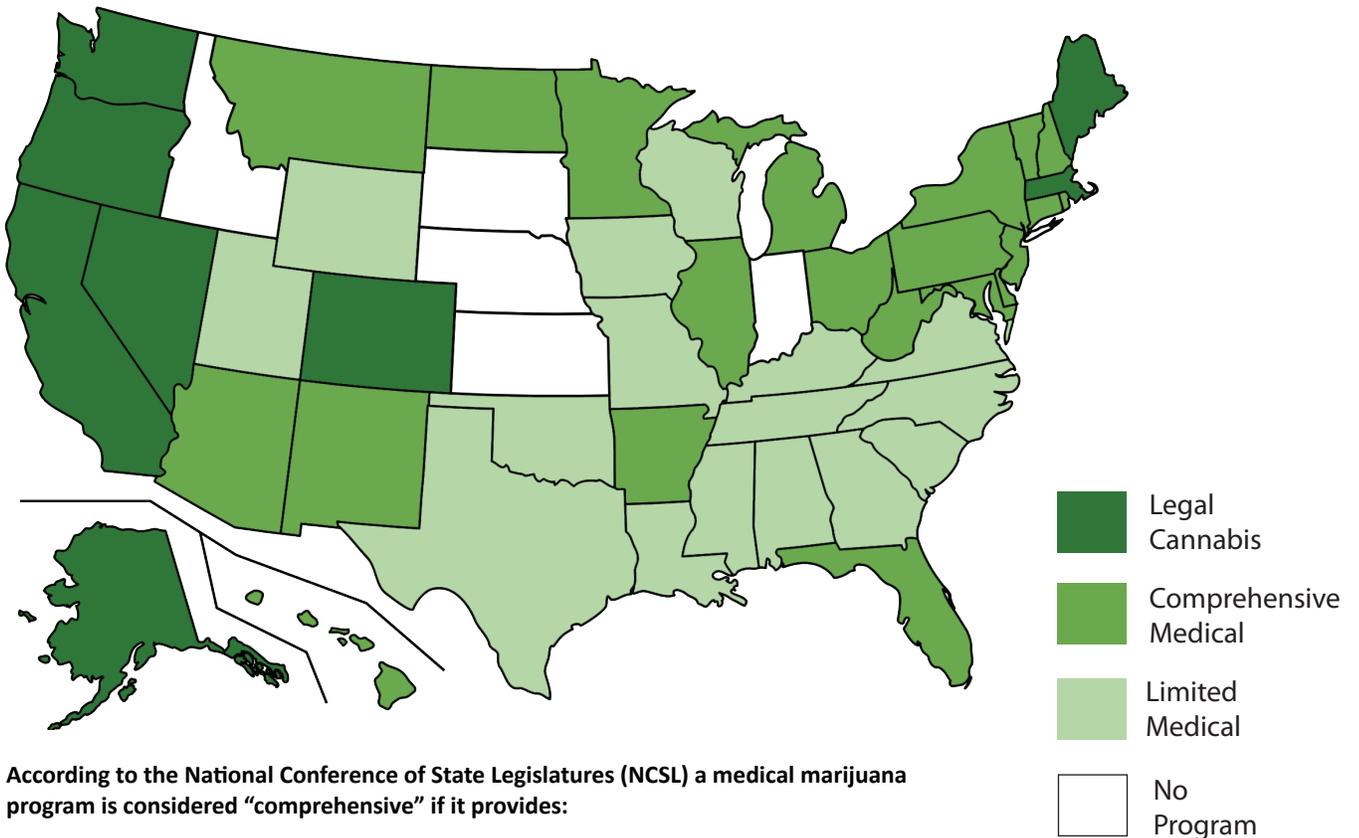
Services to regulate and administer the program, including approving patient and caregiver registry applications and regulating and licensing manufacturers and dispensaries.

Proponents said that marijuana helps alleviate the suffering of individuals with chronic medical conditions and is safer than prescription opioids for pain management. They also cited a pending petition drive to legalize marijuana statewide, arguing that it would be better for lawmakers to set up a limited medical program.

Opponents' concerns ranged from the lack of FDA approval of medical marijuana, to fears the law would lead to the legalization of recreational marijuana use.

LB 622 is on General File.

## Medical Cannabis Laws in the U.S.



According to the National Conference of State Legislatures (NCSL) a medical marijuana program is considered "comprehensive" if it provides:

1. Protection from criminal penalties for using marijuana for a medical purpose;
2. Access to marijuana through home cultivation, dispensaries or some other system;
3. The option to smoke or vaporize some kind of marijuana product, plant material or extract.

Source: NCSL



# NATURAL RESOURCES COMMITTEE

Senator Dan Hughes  
Chairperson



## ENACTED LEGISLATION

### **LB 182—Change Powers and Duties of the Department of Environmental Quality under the Drinking Water State Revolving Fund Act (*Hughes*)**

LB 182 clarifies the qualifications for political subdivisions applying for assistance pursuant to the Drinking Water State Revolving Fund Act (act).

Under the act, any political subdivision operating a public water system is eligible for assistance for engineering studies, research projects to find options to achieve compliance with safe drinking water standards, water system planning, source water protection, and other studies. Prior to enactment of LB 182, the public water system must have been operated by a political subdivision with a population of 10,000 inhabitants or less and demonstrate serious financial hardship. The bill changes the population requirement so a political subdivision is eligible to apply if the public water system provides service to 10,000 persons or less.

There are 15 rural water systems operated by natural resources districts (NRDs) in the state, and in nearly all cases, the population of the NRD exceeds 10,000, while the population served by the water system does not. Under LB 182, the NRD is now able to apply for loans, grants, and loan forgiveness for eligible purposes for the rural water district even if the NRD itself has a population exceeding 10,000.

LB 182 passed 49-0 and was approved by the Governor on April 27, 2017.



## LB 566—Adopt the Interstate Wildlife Violator Compact and Change Other Penalties and Fines under the Game Law (*Natural Resources Committee*)

LB 566 adopts the Interstate Wildlife Violator Compact (compact). The compact is a multi-state effort to crack down on game law violators by allowing for reciprocity and reporting between states. Nebraska becomes the 45<sup>th</sup> state to join the compact.

LB 566 authorizes the Game and Parks Commission (commission) to enter into the compact, enforce the compact on behalf of the state, and promulgate applicable rules and regulations. Annual dues for compact members are \$500.

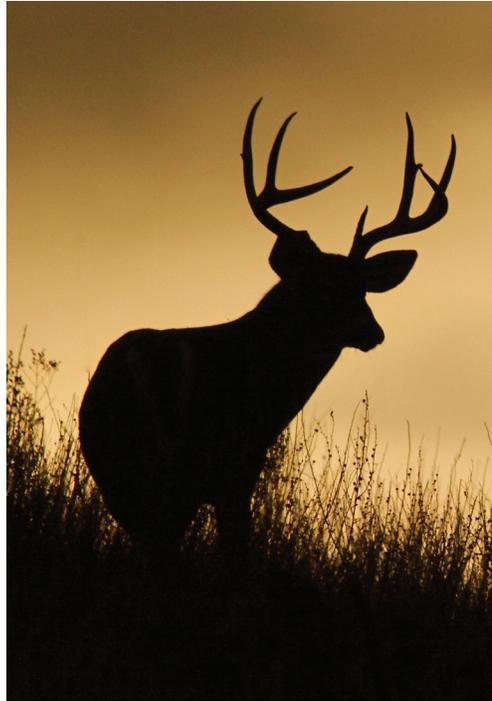
The compact allows a state to issue a citation for a violation of the game law to a nonresident in the same manner as if that person were a resident. Notice of a violation in the issuing state is sent to the licensing authority in the violator’s home state. The violator’s home state and all participating states can recognize any revocation or suspension of a license by the issuing state as though it occurred in their state. The compact also includes provisions for withdrawal from the compact and a severability clause.

LB 566 also includes the provisions of **LB 635**, which increases certain penalties for violations of the Nebraska Game Law. The penalty for unlawfully hunting, trapping, or possessing an elk increases from (1) a Class III misdemeanor to a Class II misdemeanor and (2) a minimum fine of \$200 to a minimum fine of \$1,000 for each violation. The penalty for unlawfully hunting, trapping, or possessing a mountain sheep increases from a Class II misdemeanor to a Class I misdemeanor.

Minimum fines are increased from \$100 to \$500 for:

- Unlawfully hunting, trapping, or possessing quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl; and
- Unlawfully shooting any wildlife from the highway or roadway.

Additionally, the bill clarifies that any person who unlawfully takes or possesses game will be fined at least \$50 per animal up to the maximum fine authorized by law.



When a person is convicted or pleads guilty to a Game Law violation, a court can revoke any license to hunt, fish, or trap and suspend that person’s privileges to purchase new permits. The bill increases the revocation and suspension period from one-to-three years to a minimum of three years for the following offenses:

- Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;
- Purposely taking or possessing a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the established limits;
- Taking any species of wildlife protected by the Game Law during a closed season;
- Resisting or obstructing any officer or employee of the commission in discharge of his or her duties; and
- Being a habitual offender of the Game Law.

LB 566 also changes the revocation and suspension period from one-to-three years to a minimum of one year for the following offenses:

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

For any other violation, the revocation and suspension period changes from one year to a minimum of one year.

The bill also stiffens penalties for any person who violates the Game Law while his or her permits are revoked and suspended. For a violation, the penalty is increased from a Class III misdemeanor to a Class I misdemeanor, and the five-year cap on an additional revocation and suspension period is eliminated.

Finally, LB 566 removes the requirement for the commission to notify permit agents of any suspension and revocation and the date on which the suspension and revocation ends.

LB 566 passed 49-0 and was approved by the Governor on April 27, 2017.



## LEGISLATION NOT ENACTED

### LB 218—Provide for Installation of Ground Water Pumps by Public Entities (*Groene and McDonnell*)



N-CORPE, the Nebraska Cooperative Republican Platte Enhancement Project, was formed in 2012 by four natural resources districts (NRDs) and purchased approximately 19,500 acres in Lincoln County to begin a streamflow augmentation project for the Republican River and Platte River basins to meet obligations under the Republican River Compact and the Platte River Recovery Implementation Program.

LB 218 would have created a process for political subdivisions, joint agencies, or other government entities, like N-CORPE, to obtain approval for pumping ground water to comply with an interstate compact prior to acquiring land or beginning any pumping. The entity would have been required to publish notice and hold a public hearing regarding the purpose, duration, and amount of the proposed ground water pumping and adopt a resolution to do so.

The bill also would have allowed land acquisition and installation of ground water wells and pumps after the notice, hearing, and resolution requirements were met. Every five years thereafter, a review of the resolution, including a public hearing, would have been required to

address the: (1) entity's compliance with the resolution; (2) continued need for ground water pumping; (3) effect of pumping on other landowners' rights within five miles of the land used; (4) effect on surface water resources, ground water resources, and the water table; and (5) expected duration and amount of ground water pumping to be continued.

After the first five-year review, a new resolution would have been required. Additionally, the entity would have been required to sell any land purchased for these purposes, but could have retained the irrigation and water well rights.

The bill would have required any entity that had already begun ground water pumping for these purposes to hold a hearing by July 1, 2018, and to follow the procedures set forth for entities conducting a review.

LB 218 did not advance from committee, but generated interest to further examine the underlying issues. **LR 126** was introduced to evaluate N-CORPE, including its impact on Nebraska's compliance with interstate compacts and agreements, the effect on property tax revenues, and management and sustainability of the project.



## Legislation Relating to Privately Owned Electricity Generation Facilities and Retail Choice—LB 547, LB 657, and LB 660

Three bills, **LB 547**, **LB 657**, and **LB 660**, introduced this session would have challenged the public power structure in Nebraska.

LB 547, introduced by Senator Watermeier, would have eliminated the authority of a public power district to use eminent domain to acquire renewable energy generation facilities using wind power and privately owned electric generation or transmission facilities. The bill also would have exempted privately owned electric generation or transmission facilities from review by the Power Review Board in certain circumstances.

LB 657, introduced by Senator Wayne, would have adopted the Retail Electricity Transparency Act (act). The act would have required each retail electricity supplier in the state to provide customers with separately stated charges for energy, generation, transmission, and distribution of electricity, including charges for:

- Kilowatt-hour use of electricity using the market price or the cost to purchase;
- Generation based on kilowatt-hour use that covers infrastructure to generate electricity;
- Transmission based on cost to transmit from generation sources to distribution facilities, including physical infrastructure;
- Distribution based on the cost to transmit electricity from the transmission system to the retail customer, including power lines, transformers, trucks, labor, and other costs;
- Meter service, which covers administrative costs like billing, postage, software, and overhead costs;
- Decommissioning fees to cover costs of removing generation from service;
- Demand charge based on the rate of electricity at a given time; and
- Special assessments.

Additionally, the act would have required each retail bill to include account details regarding usage and contact information for disputes for benefit of the customer. Informational inserts would have been required for rate

changes, and the Public Service Commission (PSC) would have been granted authority to resolve disputes.

LB 660, introduced by Senator Wayne, would have adopted the Nebraska Retail Electricity Choice Act. Under the act, the PSC would have been authorized to establish criteria for retail competition for electricity in the state by holding public hearings, promulgating rules and regulations, and reporting to the Governor and Legislature. Beginning July 1, 2018, private electric suppliers would have been authorized to sell electricity in the state, but would not have been given the power of eminent domain.

All three bills were indefinitely postponed by the committee, but an interim study, **LR 125**, will examine issues raised by the legislation.





# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Mark Kolterman  
Chairperson



## ENACTED LEGISLATION

### LB 415—Change Provisions Relating to Retirement (*Kolterman*)

According to the Introducer’s Statement of Intent, one of the primary purposes of LB 415 was to prescribe several policy and benefit changes to the School Employees and Class V School Employees Retirement Systems, aimed at eliminating or reducing the practice of “double dipping” and encouraging retirement plan members to work until they are truly ready to retire.

As the committee began its work on LB 415 and the bill advanced through the legislative process, it morphed into an omnibus retirement measure, and in addition to many of its original provisions, LB 415 includes portions or provisions of seven other retirement-related bills: **LB 31**, **LB 32**, **LB 110**, **LB 219**, **LB 278**, **LB 413**, and **LB 532**.

A policy change to the school employees and Class V school employees systems originally included in LB 415—and the primary focus of debate on the bill—was the proposed elimination of the exemptions which allowed for intermittent, voluntary, or substitute service during the 180-day separation of service after termination. Specifically, LB 415 tried to create a bright line between a member’s retirement (separation of service) and his or her return to service as a volunteer or substitute teacher. The bill prohibited any return to



service for 180 days after retirement (which essentially translated into the first semester of the following school year). Additionally, if an employee retired and received an early retirement incentive, he or she could not return to service for three years.

Supporters of the policy changes believed them necessary to comply with bona fide separation of service requirements of the Internal Revenue Code and to eliminate “sham” retirements. Opponents countered that the changes unfairly punished those teachers who wanted to offer their services to schools after retirement and might make it more difficult for schools, especially those in rural areas, to find substitute teachers.

The proposed changes did not make it to the Final Reading copy of LB 415; the changes were struck from the bill on Select File, with the two sides agreeing to work on the issue over the interim to try and craft a solution.

As enacted, among its myriad provisions, LB 415:

- (1) Creates a new “Rule of 85” in the School Employees and Class V School Employees Retirement Acts, for employees hired on or after July 1, 2018. The new rule prescribes that an employee hired on or after July 1, 2018, can retire with full benefits, if he or she is 60 years old and has 25 years of creditable service. For employees hired before such date, the Rule of 85 kicks in when an employee is 55 years old and has at least 30 years of creditable service. (Age plus years of creditable service must equal at least 85.)
- (2) Redefines creditable service for all school employees hired on or after July 1, 2018. For those employees, creditable service means only specifically itemized days and types of leave, including working days, used accrued sick days, used accrued vacation days, federal and state holidays, and jury duty leave for which the employee is fully compensated.
- (3) Under the County Employees Retirement Act, allows a county to pay a prior service annuity on a monthly, quarterly, semiannual, or annual basis, whichever is easier for the county. Additionally, the Public Employees Retirement Board (PERB) no longer is required to provide certain federal income tax information to county or state employee retirement plan members.
- (4) Beginning December 31, 2018, requires political subdivisions offering defined benefit retirement plans to electronically file an annual report with the Auditor of Public Accounts and the Nebraska Retirement Systems Committee. The report must include the levels of benefits of plan participants, number of members eligible for a benefit, total present value of such members’ benefits, and funding sources to be used to pay the benefits, as well as a copy of a full actuarial analysis of each defined benefit plan. The bill also eliminates the duty of political subdivisions with defined contribution retirement plans to file annual reports with the PERB and the committee.
- (5) Allows the use of updated mortality tables, as recommended by the actuary and approved by the PERB, for purposes of calculating annuities for new employees hired on or after July 1, 2017, in all of the state pension plans. The current mortality tables will be used in calculating annuities for employees hired prior to July 1, 2017.
- (6) Redefines and clarifies the definition of disability for purposes of the County, State, and School Employees Retirement Acts.
- (7) Includes technical changes to the Judges’ and State Patrol Retirement Acts intended to provide uniformity within those defined benefit plans.
- (8) Makes changes regarding military service in all of the state pension plans. Beginning immediately in the Judges’, State Patrol, and School plans, and beginning January 1, 2018 in the State and County plans, the respective employer will pay both the employee and employer contributions for the period of military service for plan members who are reemployed after qualified military service.

LB 415 passed with the emergency clause 48-0 and was approved by the Governor on May 23, 2017.



# REVENUE COMMITTEE

Senator Jim Smith  
Chairperson



## ENACTED LEGISLATION

### **LB 161—Change a Carryover Period under the Nebraska Advantage Act (*Friesen and McDonnell*)**

LB 161 amends the timeframe to carry over tax credits for businesses with approved project applications under Tier 6 of the Nebraska Advantage Act (act). To earn tax credits under Tier 6 of the act, a project must (1) make an investment in qualified property of at least \$10 million and hire at least 75 employees; or (2) make an investment in qualified property of at least \$100 million and hire at least 50 new employees.

Tax credits earned under the act may be carried over until fully utilized by the project during the allowable carryover period. The bill extends this carryover period for an approved project under Tier 6 from one year to 16 years. The carryover period begins at the end of the “entitlement period,” which for a Tier 6 project is a nine-year period when credits can be earned.

LB 161 specifies that the change in the carryover period applies to applications approved prior to, on, or after the bill’s effective date. While currently there is only one approved application under Tier 6, the estimated fiscal impact of extending the carryover period in future fiscal years is approximately \$1.8 million per year, beginning in fiscal year 2024.

LB 161 passed 44-2 and was approved by the Governor on April 27, 2017.



## LB 217—Change Revenue, Taxation, Economic Development, and Tax Incentive Provisions (*Harr*)

LB 217 is an omnibus package that amends numerous provisions relating to revenue and taxation. As enacted, the bill contains portions and provisions of **LB 49**, **LB 228**, **LB 233**, **LB 238**, **LB 251**, **LB 288**, and **LB 387**. LB 217:

- Delays the beginning date for accrual of interest if an application for a homestead exemption is denied or reduced. Delinquency interest of 14 percent now begins to accrue 30 days after the county assessor receives notice from the county board of the denial or reduction;
- Eliminates obsolete language related to lotteries and raffles;
- Allows county assessors to certify the current taxable value of taxable real and personal property by mail (if requested), electronically, or by listing on their respective websites and allows county assessors to use electronic forms in processing homestead exemptions;
- Allows electronic filing of forms for cigarette manufacturers, wholesalers, and exporters;
- Eliminates certain distribution requirements for funds from the Affordable Housing Trust Fund;
- Allows owners of rent-restricted housing projects to file forms electronically with the Rent-Restricted Housing Projects Valuation Committee, changes the filing form deadline from October 1 to July 1 each year, and requires the Department of Revenue to forward the forms to the applicable county assessor by August 15;
- Establishes that, for assessment purposes, the determination that land is used primarily for agricultural purposes is made regardless of whether the land is subdivided into separate lots, platted, or developed with improvements like sidewalks, streets, sewer lines, and water lines;
- Amends service of process provisions for tax certificate sales to allow for service by certified mail or designated delivery to owner-occupants and to require certified mail service to every encumbrancer of record to the address filed with the register of deeds;
- Amends the allowable credits for an affordable housing project; clarifies distribution of credits for partnerships, limited liability companies, and corporations; and updates notification procedures if the project is sold or transferred;
- Changes the withholding filing date to January 31 of each year to match the federal date;
- Requires a report from the Tax Commissioner to the Governor, the Legislative Fiscal Analyst, the Speaker of the Legislature, and the chairs of the Revenue Committee, Appropriations Committee, and Executive Board within 60 days of any amendment to the Internal Revenue Code that will result in a change in state tax revenue exceeding \$5 million per fiscal year;
- Updates provisions to allow for changes based on mathematical or clerical errors on a tax return to match federal provisions;
- Updates definitions for employer tax credits for employees who previously received assistance under the Temporary Assistance for Needy Families Program;
- Requires county treasurers to electronically file reports with the Property Tax Administrator indicating any amounts returned or any unused credits under the Property Tax Credit Act;
- Clarifies that the date property is placed in service, rather than the date the property is acquired, is the applicable date for purposes of the property tax exemption under the Nebraska Advantage Act;
- Changes the dates for county assessors to report school adjusted value from August 25 to August 20 and amended school adjusted value from September 30 to August 31 of each year;
- Amends the Nebraska Advantage Microenterprise Tax Credit Act, the Angel Investment Tax Credit Act, and the Business Innovation Act to eliminate references to “distressed areas”; and
- Allows information held by the Business Recruitment Division of the Department of Economic Development regarding business recruitment, location, relocation, and expansion projects to be withheld from the public until (1) a public announcement is made by the department or the business or (2) negotiations have been completed, whichever is earlier.

LB 217 passed with the emergency clause 47-0 and was approved by the Governor on April 27, 2017.



## LB 253—Authorize Intergovernmental Service Agreements under the County Industrial Sewer Construction Act and Provide for a Special Tax Levy (*Crawford, McDonnell, Smith, and Blood*)



LB 253 amends the County Industrial Sewer Construction Act to authorize a county or city to enter into a service agreement with a joint entity which owns or operates a sewerage disposal plant.

Service agreements can be for existing service or the right to obtain service and can extend for a term of years. Payments under an agreement can be determined based on any of the following factors: (1) operating, maintenance, and management expenses, including debt service on bonds; and (2) amounts needed to build or maintain operating reserves, capital reserves, and debt service reserves. Additional provisions can include the right to obtain real estate; construction of facilities; and

operation, maintenance, and management of services and facilities.

LB 253 allows a county to pay for a service agreement using an existing three-and-a-half cent levy authority available for owning, operating, constructing, maintaining, and equipping a sewerage disposal system and plant. The bill allows the tax used for a service agreement to have the same status as a tax levied for repayment of bonds, but requires it to fall within the county's 50-cent levy limitation.

LB 253 passed 46-0 and was approved by the Governor on May 9, 2017.

## LB 535—Provide an Exception for Filing a Statement with the Register of Deeds when Recording an Oil, Gas, or Mineral Lease (*Hughes*)

LB 535 eliminates the requirement to file a real estate transfer statement for an oil, gas, or mineral lease, including any subsequent assignment of the lease. The statements, filed on Form 521 with the Department of Revenue, are required for transfers of real estate, except most easements, and used to calculate the amount of documentary stamp tax due. Because ownership and value of the land do not change when an oil, gas, or mineral lease is executed, the Form 521 is burdensome and unnecessary. The bill does not change requirements that oil, gas, and mineral leases are recorded with the county register of deeds.

As enacted, the bill includes provisions of **LB 38**, which allows instruments filed with county registers of deeds to have digital or electronic signatures.

LB 535 passed 49-0 and was approved by the Governor on April 27, 2017.



# LEGISLATION NOT ENACTED

## LB 44—Adopt the Remote Seller Sales Tax Collection Act (*Watermeier*)

A 1992 U.S. Supreme Court case, *Quill Corp. v. North Dakota*, 504 U.S. 298, held a tax collection statute requiring out-of-state sellers to collect and remit use tax on resident purchasers violated the commerce clause because the sellers did not have a physical presence in the state, meaning the sellers did not have the required “substantial nexus” to the state to be subject to tax collection requirements. Since that time, the nature of out-of-state sales has changed drastically, and states have made numerous efforts to collect sales and use tax on purchases made by resident buyers online from out-of-state sellers. *Quill*, however, has not been overturned.

In addition to other states, South Dakota in 2016 and Wyoming in 2017 passed legislation requiring collection of sales tax by any out-of-state seller with sales of more than \$100,000 per year. South Dakota’s law was promptly challenged in court as a violation of the holding in *Quill*.

Additionally, Colorado attempted a different approach to capture the lost sales and use tax revenue from online sales: notice and reporting requirements. Colorado enacted legislation several years ago that required out-of-state retailers, which had sales in excess of \$100,000 in Colorado and did not collect sales and use tax, to report all in-state purchases to the Colorado Department of Revenue and to send notices of potential use tax due to Colorado customers. A federal appellate court has held this law does not violate the commerce clause.

Following in the footsteps of neighboring states’ efforts, LB 44 addresses reporting and sales tax collection by online retailers without a physical presence in Nebraska.

LB 44 would have adopted the Remote Sellers Sales Tax Collection Act (act). The act would have required any remote seller, or out-of-state retailer who sells products

electronically with more than 200 transactions and gross sales in the state in excess of \$100,000 annually, to remit sales tax as if the business were located in the state.

For any seller who refused to collect sales tax, LB 44 would have required the seller to notify, by first class mail by January 31 each year, all Nebraska buyers of their products that sales and use tax was due on those purchases.

Notification must have included the date, amount, and category of the purchase and whether the item was subject to or exempt from taxation. Failure to notify the purchaser would have resulted in a penalty of \$10 per instance for the seller.

Remote sellers subject to the act also would have been required to file a statement by March 1 each year with the Department of Revenue. The annual statement would have shown the total amount of purchases by Nebraska buyers, and failure to file would have resulted in a penalty of \$10 per purchaser.

An Attorney General’s opinion was filed on the bill and determined the collection requirements were unconstitutional under *Quill*, but that the notice and reporting requirements were likely constitutional. To address these concerns, a pending amendment would have made the collection provision optional.

Opponents of LB 44 argued that pending court cases challenging *Quill* could provide future guidance to pass better legislation. On the other hand, proponents argued that LB 44 was necessary to know who owed sales and use tax on online purchases, so that collection and enforcement would be possible.

After lengthy discussion, LB 44 remains on General File.





## LB 98—Extend Levy Authority for Natural Resources Districts (*Friesen*)

LB 98 would have extended a sunset date for a limited property tax levy for natural resources districts (NRDs) from fiscal year 2017-2018 to fiscal year 2025-2026.

The property tax levy at issue can only be used in fully appropriated or over appropriated river basins to implement and administer ground water management and integrated management activities. A one-cent levy for these activities in appropriated and over appropriated river basins was originally implemented by Laws 2004, LB 962, and increased to three cents in 2006. The sunset has been extended several times.

Proponents argued that NRDs in appropriated and over appropriated river basins needed the levy authority to continue water management projects to comply with interstate compacts, regulate irrigators, and effectively manage water supplies. Opponents countered that the levy was no longer necessary due to increased land valuations in the river basins where the levy applied, and extending the sunset amounted to a tax increase.

A motion to invoke cloture failed 31-9, and LB 98 remains on General File.

## LB 233—Change Revenue and Taxation Provisions (*Smith and Stinner*)

The original provisions of LB 233 and its committee amendment were amended into **LB 217**, discussed on page 51. Subsequently, LB 233 was used as a vehicle for new provisions that were not the subject of another bill, and a public hearing was held on the new content.

The proposed changes would have disallowed a personal property tax exemption for the first \$10,000 of personal property valuation for tax years 2017 and 2018 and would have disallowed tax credits under the Angel Investment Tax Credit Act for 2018. (The personal property tax exemption was enacted in 2015, and the Angel Investment Tax Credit Act has been in place since 2011.)

The new provisions were intended as budget-saving measures, but as the debate continued on the biennial budget package and other bills, LB 233 was passed over and remains on General File.

## LB 291—Adopt the Special Economic Impact Zone Act (*Larson, Brewer, and Lindstrom*)

LB 291 would have created Special Economic Impact Zones (SEIZs) on Native American reservations and any land held in trust for the beneficial use of Native American tribes.

Qualified businesses located in SEIZs would have been allowed to exclude income earned in the SEIZ when calculating their income tax liability and would have been exempt from sales and use tax on the first \$10 million in purchases within the SEIZ. The definition of “qualified business” would have excluded businesses that derive more than five percent of their income from the sale of grain and businesses that engage in Class III casino gaming. The bill provided that a qualified business could have been eligible for tax incentives within the SEIZ and the Nebraska Advantage Act, but would not have been eligible if the business simply relocated from another part of the state to the SEIZ.

The bill also would have allowed for a scoring bonus for low-income housing projects located in SEIZs. The low-income housing tax credit program is administered by the Nebraska Investment Finance Authority. The program involves a complex application process where eligible projects receive points for meeting certain criteria. Projects with the most points and matching important priorities of the program are awarded the credits.

LB 291 was debated and amended on General File, reducing the amount of the sales and use tax exemption to the first \$250,000 in purchases and changing the provisions for payment of sales tax on purchases above that amount.

LB 291 advanced to Select File.



## LB 461—Correct References to a Federal Act in a Revenue Statute (*Smith*)



As originally introduced, LB 461 was a shell bill, intended to provide a vehicle for comprehensive tax reform. The original provisions would have been replaced by the standing committee amendments, which if adopted, would have included changes to Nebraska's income and property taxes and included provisions of **LB 337**, **LB 338**, and **LB 452**.

The amendment would have adopted the Agricultural Valuation Fairness Act, which would have changed the system of valuing agricultural and horticultural land from a market-based system to an income-based system. An Agricultural Land Valuation Committee would have been created to develop income and expense estimates for agricultural and horticultural land and to calculate capitalization rates, resulting in a use-value for agricultural and horticultural land that would have been between 55 and 65 percent of the actual value. Total growth in use-value for a class of agricultural or horticultural land would not have been able to exceed three and one-half percent per year.

The amendment also would have changed the number of income tax brackets from four to three and lowered the highest income tax rate over time if certain conditions were met. The Tax Rate Review Committee would have been charged with examining the expected rate of economic growth, and if growth was expected to exceed a certain annual rate for the upcoming fiscal year, a decrease in the highest income tax rate would have been triggered

following an eight-step schedule. The highest corporate income tax rate would have been reduced if growth exceeded a higher rate.

Finally, the amendment would have:

- Increased the earned income tax credit to 12 percent of the federal credit by tax year 2020;
- Phased out the personal exemption for high income earners;
- Incorporated a new nonrefundable tax credit for single taxpayers with adjusted gross income of \$14,000 or less and married taxpayers with adjusted gross income of \$28,000 or less; and
- Halted applications until 2023 for the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment Act.

Numerous other amendments were filed, and debate was lengthy. Proponents focused on the need for tax relief for all taxpayers. Opponents expressed concerns about the income tax triggers prescribed in the bill, the timing of tax relief in consideration of the current budget shortfall, and the amount dedicated to income tax relief in relation to property tax relief.

A motion to invoke cloture failed 27-9. The bill remains on General File.



## **LB 640—Change Provisions of the Property Tax Credit Act and Provide School District Property Tax Relief (*Groene, Erdman, Friesen, Halloran, Hughes, Lowe, Smith, and Stinner*)**

LB 640 was an effort to reduce the reliance of school districts on property tax revenue, especially in rural districts which do not receive state aid under the Tax Equity and Educational Opportunities School Act (TEEOSA) and therefore use a high proportion of property tax revenue to fund schools. The bill would have affected funding in 159 districts that do not receive any state aid under TEEOSA and 26 districts that receive minimal aid.

As introduced, the bill had three main components: (1) lower the property tax levy limit for school districts; (2) cap the percentage of revenue obtained from property taxes for school districts; and (3) use state funding to compensate school districts that previously relied on property tax revenue and now were subject to the cap.

The committee amendment would have replaced the original bill. The amendment would have lowered the levy limit for school districts from \$1.05 to \$0.987 per \$100 of valuation, beginning in the 2018-2019 school year. A provision in the amendment would have allowed for an increase in the levy limitation for a school district if a temporary reduction in TEEOSA aid occurred for that district.

For tax year 2018 and after, the State Department of Education would have had to certify the change in TEEOSA funding due to the change in the levy limitation, and the difference would have been taken out of the Property Tax Credit Fund and used in TEEOSA to support school districts.

Additionally, the amendment would have created Property Tax Relief Aid (PRTA). School districts could have qualified for PRTA if property tax revenue exceeded 55 percent of the total general fund revenue from state and local sources for the year. Funds remaining in the Property Tax Credit Cash Fund after the TEEOSA adjustments were

made would have been available as PRTA to the qualifying school districts.

Proponents of LB 640 focused on the need for property tax relief in rural areas, citing the large portion of overall property taxes that go to local schools. Opponents were concerned about further limiting the levy authority of school districts and using the Property Tax Credit Cash Fund, which has gone to all property taxpayers in the state, for this purpose.

LB 640 is on General File.



## **LR 17CA—Amendment to Eliminate Requirements that Property Taxes be Levied by Valuation Uniformly and Proportionately (*Wayne*)**

LR 17CA would have proposed an amendment to Article VIII, section 1, of the Nebraska Constitution to remove the requirement that property taxes be levied by valuation “uniformly and proportionately” upon property in the state. The amendment also would have removed authority of the Legislature to classify agricultural and horticultural land as a separate and distinct class of property and to tax agricultural and horticultural land differently than other types of property.

LR 17CA did not advance from committee.



# TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Curt Friesen  
Chairperson



## ENACTED LEGISLATION

### LB 45—Change Provisions Relating to Military Honor Plates (*Watermeier and Lindstrom*)

Members of the armed forces reserves and former reservists have the opportunity to put Military Honor Plates on their vehicles beginning January 1, 2018, under the provisions of LB 45. The change expands the number of Military Honor Plate designs from six to eleven.

Additionally, LB 45 extends the option to purchase Military Honor Plates to individuals who are current or former commissioned officers of the U.S. Public Health Service or National Oceanic and Atmospheric Administration, if the individuals were detailed directly to any branch of the armed forces for service on active or reserve duty. Persons who have left service must have done so with either an honorable discharge or general discharge under honorable conditions. These provisions were originally proposed in **LB 419**.

The new plates can be issued either as alphanumeric or message plates. Alphanumeric plates cost an extra \$5, which is credited to the Nebraska Veteran Cemetery System Operation Fund. The fee for message plates is \$40, 75 percent of which goes to the cemetery fund and 25 percent to the Department of Motor Vehicles Cash Fund. Applicants for Military Honor plates also must pay the regular per plate fee, currently \$3.50.

To qualify for a Military Honor Plate, current or former members of the armed forces must first register with the Nebraska Department of Veterans' Affairs to verify their eligibility.

LB 45 passed 46-1 and was approved by the Governor on March 7, 2017.



## **LB 46—Provide for Choose Life License Plates (*Watermeier, Hilkemann, Quick, Geist, Riepe, Linehan, McDonnell, and Hilgers*)**



“Choose Life” becomes a license plate option for Nebraska drivers under the provisions of LB 46. The plates will be available beginning January 1, 2018.

LB 46 directs the Department of Motor Vehicles to design plates reflecting support for protecting Nebraska children. Opponents said the bill promotes political speech and puts the state in the middle of the abortion debate. Proponents countered, saying the message was broader than abortion.

As enacted, Choose Life License Plates can be issued either as alphanumeric plates for an added fee of \$5 or as message plates for a \$40 fee. The \$5 fee on alphanumeric plates and 75 percent of the message plate fee will be credited to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program. The remaining 25 percent of the message plate fee will be credited to the Department of Motor Vehicles Cash Fund.

LB 46 passed 35-5 and was approved by the Governor on April 5, 2017.

## **LB 263—Change Provisions Relating to Motor Vehicles, the Public Service Commission, Motor Carriers, and the Statewide One-Call Notification Center (*Transportation and Telecommunications Committee*)**

Marking a milestone in motor vehicle titling and registration, LB 263 authorizes the Department of Motor Vehicles (DMV) to implement an electronic dealer services system by January 1, 2021. Once operational, the system will allow buyers to title and register their motor vehicles upon purchase at the dealership. The change is part of DMV’s Vehicle, Title, and Registration (VTR) computer system upgrade, which has been underway for several years and is intended to increase the effectiveness and efficiency of motor vehicle titling and registration.

Participation in the new system is voluntary for both motor

vehicle dealers and their customers. Dealers wishing to participate in the new system must apply to the Director of Motor Vehicles. Buyers can choose to use the new system or continue to pay motor vehicle fees and taxes at their county treasurer’s office.

LB 263 authorizes participating dealers to: (1) collect all fees relative to certificates of title, notations of lien, and registrations; motor vehicles taxes and fees; and sales taxes required by law; (2) electronically submit the information to the VTR system; and (3) remit the fees and taxes to the appropriate county treasurer or DMV. The bill allows dealers



to charge customers a service fee of up to \$50. Customers can choose to have their license plates, registration certificates, or certificates of title mailed to them or the appropriate county agency.

DMV can terminate a dealer's participation in the system for violating state motor vehicle laws, failing to remit the collected fees and taxes in a timely manner, or for any conduct the director deems adversely affects the public or a governmental entity. Dealers are prohibited from releasing personal or sensitive information about buyers contained in the VTR system, except as allowed to transmit information in the system.

Another provision of LB 263 provides a process for persons to obtain certificates of title for vehicles more than 30 years old that have had no major component parts replaced. This is important for hobbyists who purchase and restore classic cars.

Under this process, owners can request DMV to search its records for evidence of a certificate of title. If DMV finds no title issued for the vehicle, the owner can apply for a title by presenting a notarized bill of sale, an affidavit in support of the application for title, and a statement that an inspection has been conducted on the vehicle. The documents must show the year, make, and model of the vehicle as originally designated by the manufacturer. LB 263 authorizes DMV to charge a fee of \$25 to issue titles for these vehicles.

Additionally, LB 263 authorizes DMV, in consultation with the Commission on Indian Affairs, to design Native American Cultural Awareness and History Plates. The design must reflect the unique culture and history of tribes historically and currently located in Nebraska.

The plates can be issued as alphanumeric plates for an additional fee of \$5 or as personalized message plates for an additional fee of \$40. Proceeds from the plates are directed to the Native American Scholarship and Leadership Fund, which is created by the bill. The fund is designed to provide scholarships to Native Americans to attend colleges in Nebraska and other leadership opportunities for Native Americans. The proposal to create Native American plates was originally introduced in **LB 355**.

Nine additional bills were amended into LB 263. Briefly, these measures provide:

- An exception to the statutory provision requiring a driver to remove his or her key from a car left unattended on a highway if the car has a keyless start function (**LB 54**);

- Judges with discretion whether to impose an additional one-year driver's license revocation for persons placed on probation for a first-offense driving under license revocation (**LB 70**);
- The registrations for fleet vehicles owned by public power districts are to be kept at the principal place of business of the power district rather than in the vehicles (**LB 143**);
- A person who holds a commercial driver's license that is subject to multiple periods of disqualification must serve the disqualifications consecutively (**LB 164**);
- Personal information contained in records pertaining to motorboats, all-terrain vehicles, utility-type vehicles, snowmobiles, and minibikes is protected to the same extent as information contained in motor vehicle records (**LB 164**);
- DMV authority to enter into a reciprocity agreement with a foreign country to mutually recognize operator's licenses if the licensing standards are comparable to Nebraska's (**LB 294**);
- Adoption of the annual update of the Federal Motor Carrier Safety and Hazardous Material regulations as required for the state to receive federal funds (**LB 418**);
- The State Fire Marshal authority to promulgate regulations that prescribe (1) requirements necessary to comply with U.S. Department of Transportation programs and (2) best practices for activities pertaining to the One-Call Notification Center, which oversees the "digger's hotline" (**LB 459**);
- The Division of Medicaid and Long-term Care authority to manage the routes of carriers providing non-emergency medical transportation contracted either directly with the Department of Health and Human Services (DHHS) or through a Medicaid-managed care organization under contract to DHHS; such carriers are still required to meet Public Service Commission certification requirements (**LB 460**); and
- An exemption for the Public Service Commission from the requirements of the Administrative Procedure Act pertaining to granting or denying a petition for intervention (**LB 483**).

LB 263 passed with the emergency clause 49-0 and was approved by the Governor on April 27, 2017.



## **LB 271—Authorize the Department of Roads to Assume Certain Responsibilities under Federal Environmental Laws and Provide for Limited Waiver of the State’s Sovereign Immunity (*Hilgers and Geist*)**

Currently, when a roads project is identified, the Department of Roads (DOR) conducts an environmental analysis on the project’s impact to the surrounding area and communities. The findings are documented and submitted to the Federal Highway Administration for its review and approval. All of this takes time and not a shovel has yet been put in the ground. Lawmakers hope the passage of LB 271 speeds up that process.

LB 271 authorizes DOR to negotiate a memorandum of understanding with the U.S. Secretary of Transportation to assume all or part of the responsibilities for the environmental, social, and economic reviews required under federal law—primarily, the National Environmental Policy Act (NEPA)—before ground can be broken on federal-aid highway projects.

If DOR can reach an agreement with its federal

counterpart, DOR will conduct its own review of the findings. Nebraska must still comply with all applicable local, state, and federal environmental laws and is subject to an annual review and audit by the federal government. Additionally, assumption of the NEPA review authority requires the state to waive its sovereign immunity as it pertains to the state’s actions under the review process. (Waiving sovereign immunity means the state agrees to be sued if someone finds fault with its actions.)

DOR expects changing to a state environmental review of roads projects will result in efficiencies, shaving time off the environmental review process and resulting in reduced pre-construction costs and more timely completion of roads projects.

LB 271 passed 48-0 and was approved by the Governor on April 27, 2017.

## **LB 339—Merge the Department of Aeronautics into the Department of Roads and Rename as the Department of Transportation (*Friesen, at the request of the Governor*)**

Two transportation-related agencies merge to form the state Department of Transportation under the provisions of LB 339.

The bill transfers the powers and duties of the state Department of Roads and the state Department of Aeronautics into the new department. The Director of Roads, who also serves as the State Engineer, is named the Director of Transportation. The Department of Aeronautics, meanwhile, becomes a division within the merged agencies. The Director of Aeronautics is named the Director of the Division of Aeronautics.

Beginning January 2018, the Director of Transportation assumes the duty of appointing the Director of the Division of Aeronautics, a position previously appointed by the Governor when Aeronautics was a separate agency. Under LB 339, appointment to the position requires aeronautical experience and must be confirmed by the Legislature.

The bill retains the state Aeronautics Commission but requires it to advise the Director of Transportation relative to the appointment and activities of the Director of Aeronautics. The commission also advises the Governor on the general status and state of aviation in Nebraska.

Although no immediate savings are noted in the fiscal note for LB 339, proponents said they expected the change to ultimately improve government efficiency.

LB 339 passed with the emergency clause 47-0 and was approved by the Governor on April 27, 2017.



### **LB 346—Eliminate the Requirement for a Motor Vehicle, Motorcycle, or Trailer Salesperson License (*Lowe, at the request of the Governor*)**

LB 346 repeals the requirement that persons who sell motor vehicles, motorcycles, or trailers be licensed by the Motor Vehicle Licensing Board (board).

Occupational licensure historically has been seen as emblematic of expertise, a mark guaranteeing the purchaser of those services some level of quality and accountability. More and more, however, licensure has been viewed critically.

Fearing occupational licensure requirements had become needlessly burdensome and a bar to employment for some, the Governor championed a package of legislation promising occupational licensing reform. LB 346 is one of those bills. (Licensure reform bills discussed elsewhere in this report include LB 341 as amended into **LB 140**, page 8, and provisions from LB 342 and LB 343, as amended into **LB 88**, page 33.)

Currently, about 8,000 salesperson licenses are issued annually by the board, according to the bill’s fiscal note. The fee for licensure is \$20. Motor vehicle salespersons have been licensed in Nebraska since at least 1957, when the board was created. At that time, the licensure fee was \$2. Motor vehicle dealers must still be licensed.

LB 346 passed 47-0 and was approved by the Governor on May 9, 2017.



### **LB 368—Change Helmet Provisions, Change Passenger Age Limits, and Require Eye Protection for Operators of Motorcycles and Mopeds (*Lowe, Ebke, and Erdman*)**

LB 368 would have stricken Nebraska’s requirement that motorcyclists—at least those age 21 and older—be required to wear helmets. The current helmet requirement was enacted in Nebraska in 1988. Numerous repeal bills have been introduced since.

From 1967 until 1977, Nebraska law required motorcycle operators and passengers to wear “protective headgear,” as did most states because the federal government tied such laws to receiving certain federal transportation funds. In 1976, Congress lifted the requirement and many states changed their laws.

Currently, Nebraska is one of 19 states requiring all riders wear helmets. However, of Nebraska’s six border states, only Missouri requires all riders to wear helmets. Most states have a partial helmet law, generally based on age. Only three states—Iowa, Illinois, and New Hampshire—

have no helmet restrictions.

LB 368 would have required motorcycle or moped riders to wear eye protection, but would have removed the helmet requirement for all riders age 21 and older. Additionally, the bill would have prohibited children younger than 6 years of age from riding on motorcycles and mopeds.

A cloture motion to stop a filibuster of LB 368 on General File failed 32-12, effectively ending debate on the bill for the session.





# URBAN AFFAIRS COMMITTEE

Senator Justin Wayne  
Chairperson



## ENACTED LEGISLATION

### **LB 625—Change the Property Assessed Clean Energy Act (*Larson*)**

LB 625 changes provisions of the Property Assessed Clean Energy (PACE) Act.

Pursuant to LB 625, counties are authorized to create clean energy assessment districts. However, a county cannot create a PACE district within a city or village or within the extraterritorial zoning jurisdiction (ETJ) of a city or village. (Only a city or village can create PACE districts within its ETJ.)

LB 625 also allows third-party lenders to collect PACE assessments from property owners for certain qualifying projects. Lenders collecting assessments are required to notify the municipality or county about delinquent assessments within three business days.

The PACE Act authorizes local governments to assist residents and businesses with upfront financing for energy efficiency and renewable energy improvements. A qualifying property owner can apply for loans, which are repaid with an annual assessment on his or her property tax bill. Loans must be repaid within the useful life of the improvements.

LB 625 passed with the emergency clause 40-3 and was approved by the Governor on April 27, 2017.





## LB 9—Adopt the Radon Resistant New Construction Act and Create a Task Force (*Krist*)

LB 9 adopts the Radon Resistant New Construction Act.

According to the National Safety Council, radon is a naturally occurring carcinogenic gas produced from the breakdown of uranium in soil, rock, and water. Radon gas enters a structure through cracks in the foundation, gaps in the wall, or around utility service pipes. Regular, long periods of exposure to radon gas can cause lung damage, lung cancer, and death.

The Department of Health and Human Services reports Nebraska as having a high number of incidences of radon gas in homes. It is estimated that over 50 percent of homes in the state would test above the action level of 4.0 picocuries (equivalent to four grams) per liter of air.

The act establishes a task force to propose minimum standards for radon resistant new construction in Nebraska. The Chief Medical Officer for the Division of Public Health of the Department of Health and Human Services, or his or her designee, serves as chairperson of the task force.

Task force members are appointed by the Governor and include:

- Three representatives from home builders' associations, one from each congressional district;
- One representative from a home inspectors' association;
- One representative from a commercial construction association with experience in large-

scale remediation projects;

- One representative from a commercial construction association with experience in small-scale remediation projects;
- One representative from a realtors' organization;
- One representative from a respiratory disease organization;
- One representative from a cancer research and prevention organization;
- One representative from the League of Nebraska Municipalities;
- Three representatives from community public health organizations, one from each congressional district;
- A professional engineer;
- A professional architect; and
- An expert in residential or commercial building codes.

The task force must present its minimum standard recommendations to the Legislature by April 15, 2018. The task force terminates on May 1, 2018.

LB 9 passed 35-4 and was approved by the Governor on April 27, 2017.

## LB 590—Change State Building Code Provisions (*Crawford*)

In 2015, the Legislature passed LB 540, which updated the State Building Code.

The passage of the 2015 measure put certain occupancy provisions of the State Building Code in potential conflict with child care regulations issued by the Department of Health and Human Services (DHHS).

LB 590 corrects this conflict by making occupancy provisions prescribed in the building code applicable only to facilities containing 12 or fewer children, which aligns with DHHS rules and regulations.

Additionally, LB 590 clarifies the ability of state agencies to adopt or enforce any rule or regulation that may be contrary to the State Building Code, if the authority to do so is explicitly granted elsewhere in statute.

LB 590 passed with the emergency clause 47-0 and was approved by the Governor on April 27, 2017.



## **LB 496—Define and Redefine Terms under the Community Development Law (*Stinner*)**

Rural and urban communities in Nebraska are seeing a decrease in available housing, which is negatively impacting economic development. LB 496 would have amended the Community Development Law to make the construction of certain qualifying workforce housing projects undertaken in Nebraska cities of the first and second class and villages eligible for tax increment financing (TIF).

Pursuant to LB 496, workforce housing would have been defined as single-family or multi-family housing for which the municipality:

- (1) Receives a housing study, which must be current within 24 months;
- (2) Prepares an incentive plan for housing construction with the focus of providing accommodations to existing or new workers;
- (3) Holds a public hearing on the housing incentive plan in compliance with the Community Development Law; and
- (4) Concludes the incentive plan is essential to combat blighted and substandard conditions, encourages additional housing for individuals and families working within the community, and ensures that any individual or company involved in the housing project will not be unjustly enriched.

LB 496 advanced to Select File, where a cloture motion failed 32-9. LB 496 remains on Select File.

## **LR 16CA—Constitutional Amendment to allow Cities and Villages to Pledge Taxes Relating to a Redevelopment Project for up to Twenty Years if Area is Extremely Blighted (*Wayne*)**

LR 16CA proposed an amendment to Article VIII, section 12, of the Nebraska Constitution to authorize the Legislature to extend the length of time for the repayment of indebtedness related to tax increment financing.

The proposed amendment would have authorized the Legislature to extend the repayment period from 15 years to 20 years, if more than 50 percent of the property in the project area is designated as extremely blighted.

LB 16CA is on General File.



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