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UPDATE



Sen. Lavon Heidemann (left) and Sen. Heath Mello review the Appropriations Committee's budget recommendations.

Budget clears first and second rounds

A cross-the-board agency cuts, cash fund transfers and a dip into the cash reserve are proposed solutions for balancing the state's budget, which senators advanced from general file March 16 and from select file March 18.

During the February meeting of the Nebraska Economic Forecasting Board, which determines revenue figures used by the Appropriations Committee to craft the state's budget, the board reduced their two-year revenue projections by \$31.7 million.

Compounding these revenue losses were additional funding demands. To achieve a fully funded status, the state aid to schools formula requires that \$15.2 million be added to its current

appropriation. In addition, an increase of 700 qualified applicants requires another \$3.6 million to compensate local subdivisions for property tax revenue due to homestead exemptions.

A savings of \$25.5 million was realized, however, from federal government decisions related to required payments for states under the Medicare Part D Prescription Drug program and the ineligibility of unborn children under the Medicaid program.

Budget adjustments

LB935, introduced by Sen. Mike Flood of Norfolk and amended by an Appropriations Committee amendment, would address much of the revenue shortfall and increased funding de-

continued on page 2

Wind energy export bill advances

A bill advanced by the Legislature March 17 would facilitate the development of private renewable energy facilities that export their energy out of state.

LB1048, introduced by the Natural Resources Committee, would provide a process for the Nebraska Power Review Board to approve certified renewable export facilities.

Committee chairperson Sen. Chris Langemeier of Schuyler said the bill would encourage private development and establish a path for the exportation of renewable energy without affecting public power and ratepayers.

"Today is truly a historic day for wind energy in Nebraska," he said.

As amended by a committee amendment, adopted 39-0, the bill defines certified renewable export facilities as facilities that:

- use solar, wind, biomass or landfill gas to generate electricity;
- are constructed and owned by a private entity; and
- made 10-year power purchase agreements that direct 81 to 90 percent of electric output to out-of-state customers.

The percentage of electric output required depends upon whether public electric utilities opt to purchase power from the facility.

The amended bill would provide a two-step process for approving certified renewable export facilities. The board would grant conditional ap-

continued on page 3

A CLOSER LOOK.....

Budget clears first and second rounds

continued from front page

mands. The bill calls for an additional 2 percent cut totaling \$7.1 million from the same operations and aid programs that received a 5 percent across-the-board cut during the 2009 special session.

Select appropriations pertaining to education, health care and law enforcement would not be subjected to cuts.

The bill would authorize cash fund transfers of \$16.7 million to the general fund, including:

- \$12.5 million from the Securities Act Cash Fund;
- \$2.5 million from the Department of Insurance Cash Fund;
- \$1.6 million from the Affordable Housing Trust Fund; and
- \$100,000 from the Clerk of the Legislature Cash Fund.

Adjustments made by LB935 would reduce general fund appropriations by 4.5 percent in fiscal year 2009-10 and increase them by 2.3 percent in FY2010-11, resulting in a 1.2 percent reduction over the biennium.

Appropriations Committee chairperson Sen. Lavon Heidemann of Elk Creek said the budget package would leave less than \$1 million for bills introduced this session that carry a cost.

Lincoln Sen. Danielle Conrad, a member of the Appropriations Committee, called it a good proposal that reflects input from all committee members.

“This budget balances the budget in a difficult economic time with no tax increases,” she said.

Fullerton Sen. Annette Dubas questioned transferring funds from the Affordable Housing Trust Fund. Using a fee paid by the real estate industry, she said, the fund assists in the development and purchase of affordable housing. A \$10 million investment in this fund generates wages for 2,333 workers, \$1.25 million in

state income revenue, \$2.5 million in state sales tax revenue and \$2.5 million in property tax revenue, she said.

“We are taking money out of this particular pot to help balance our budget, but we are also putting our local economies in a tough place,” she said. “It is a slippery slope ... when we resort to these types of budget balancing tactics.”

Much discussion focused on FY2011-12, FY2012-13 and beyond. With the passage of LB935 and a projected annual revenue growth rate of 7.2 percent, the state budget would experience a shortfall of \$670 million in the next biennium.

With this estimated shortfall, Lexington Sen. John Wightman said, the Legislature may need to eliminate programs.

Holdrege Sen. Tom Carlson suggested that other committees contribute to the budget process by evaluating agencies over which they have jurisdiction, prioritizing services and identifying areas for additional cuts.

Amendments to committee amendments

Heidemann said the committee was notified late in budget deliberations that state aid to schools would be recertified, which necessitated a \$3 million transfer from the state’s \$321.7 million cash reserve. The additional \$3 million was applied to the state aid formula in an amendment offered by Heidemann and adopted 39-0.

Other changes made to LB935 included another Heidemann amendment, adopted 42-0, to provide an additional \$250,000 in cash fund appropriations for the Nebraska Power Review Board.

Natural Resources Committee chairperson Sen. Chris Langemeier of Schuyler said the amendment was

needed to ensure that public power can hire personnel or contract services to better represent state needs at meetings of the Southwest Power Pool, of which Nebraska Public Power, Omaha Public Power District and Lincoln Electric System are members. The organization is planning \$10 billion in electricity transmission improvements, he said, and these meetings serve as a forum for determining how to pay for these improvements.

“The Power Review Board finds themselves short of a real technical engineer on their staff to go into those committees and make sure that we are not getting charged more than what we are gaining benefit from,” Langemeier said, adding that the additional funds in the amendment would be collected from NPPD, OPPD and LES.

Senators adopted a technical amendment and voted 44-0 to adopt the committee amendment. The mainline budget bill was advanced from general file 45-0.

During select file debate of LB935, Heidemann offered an amendment to appropriate \$180,000 in cash funds for radio transmitter tower replacement. The amendment also would appropriate \$43,100 in general funds to the Legislative Council for 2011 redistricting.

Heidemann said the redistricting appropriation would lapse back to the general fund, resulting in no net financial impact.

Senators voted 35-0 to adopt the amendment before advancing the bill to final reading on a voice vote.

LB317 provides enabling legislation for transfers from the cash reserve to the general fund. A committee amendment, adopted 40-0 authorizes the \$3 million transfer, and the bill was advanced from general file 40-0. It advanced from select file by voice vote.

continued on page 13

A CLOSER LOOK.....

Wind energy export proposal advances

continued from front page

proval if a facility meets the requirements of a certified renewable export facility, provides public benefits including economic development and has a memorandum of understanding to export at least 90 percent of its output.

The board would grant final approval if the facility agrees to additional requirements and is deemed to have no materially detrimental effect on retail electric rates paid by Nebraskans. The facility also must show that it does not pose a substantial risk of causing regulatory, legislative or market changes that would prevent any existing generation or transmission facility owned by public electric utilities from earning a favorable economic return.

An applicant approved by the board would not be subject to eminent domain by public electric utilities or any other entity if the facility is intended for electric generation or transmission. The amended bill would provide eminent domain powers to public electric utilities for transmission infrastructure serving certified renewable export facilities. Public electric utilities and governmental entities with regulatory jurisdiction over a facility could apply to the board, or the board could file its own motion, to decertify a facility if it fails to meet the requirements. If, after a hearing, the facility is found noncompliant, the facility would have one year to reclaim certification before its protection from eminent domain would be revoked.

LB1048 as amended would exempt wind turbines from personal property tax and institute a nameplate capacity tax of \$3,518 per megawatt of energy produced. Turbines owned by govern-

mental entities, cooperatives and net-metering customers would be exempt from the nameplate capacity tax, the revenues from which would be directed to local taxing entities that levied personal property taxes on the turbines.

Langemeier said the nameplate capacity tax would recalculate the revenues received by local taxing authorities during the five-year depreciation schedule of wind turbines and spread them out over the 28.95-year useful life of the turbine.

Ogallala Sen. Ken Schilz said the bill represents a watershed moment for energy development in the state. He said billions of dollars in investment could flow to Nebraska communities for projects and stimulate economic development in rural areas of the state.

“A billion dollar investment, no matter where it is in Nebraska, helps to lessen everyone’s [tax] burden, he said.”

Malcolm Sen. Ken Haar said the state’s “enormous wind potential,” combined with the provisions of LBO148, would provide many benefits to citizens.

“We have discovered gold in Nebraska,” he said.

Current net metering and C-BED laws aid the construction of small and medium-sized wind projects, but nothing has been done to promote large-scale wind farms until now, Haar said.

While he supported the bill, Haar said allowing public utilities to reclaim eminent domain over decertified facilities is “toxic” to investors and bankers.



Schuyler Sen. Chris Langemeier explains the provisions of LB1048.

“We have some work to do, but this is a great step forward,” he said.

Langemeier introduced an amendment, adopted 41-0, that would allow certified renewable export facilities and public utilities to negotiate power purchase agreements. The committee amendment would have required that facilities sell energy at a price not to exceed their per-kilowatt-hour cost, net of government incentives, plus a commercially reasonable rate of return.

“Our committee was concerned that this preferential treatment on pricing might affect the power purchase agreement in a negative manner,” Langemeier said.

Senators voted 44-0 to advance the bill. ■

ISSUES UPFRONT

Business & Labor

Employee classification bill advances

Senators advanced a bill March 18 that would address the misclassification of employees as independent contractors.

Omaha Sen. Steve Lathrop, introducer of LB563, said misclassification of employees has become a significant problem because it allows employers to avoid following labor laws, which cuts labor costs by 30 percent. Independent contractors are not eligible for unemployment, health insurance or workers' compensation benefits, he said.



Sen. Steve Lathrop

"It is time to end this practice of the unscrupulous contractor," Lathrop said.

As introduced, LB563 would have created a cause of action against a contractor for a misclassified employee and the state departments of Labor and Revenue. A Business and Labor Committee amendment, adopted 38-0, became the bill and replaced the cause of action provision with civil penalties.

Under the bill as amended, an independent contractor is defined as one who is registered under the Contractor Registration Act and is assigned a combined tax rate or is exempt from unemployment insurance coverage. A violation would result in a \$500 fine



per misclassified employee for the first offense and a \$5,000 fine per misclassified employee for subsequent offenses.

The bill would require the Department of Labor to establish and operate a hotline and Web site, which could be used to report suspected violations. As amended, the bill would require public construction contractors to submit an affidavit attesting that each employee has completed an I-9 form and is properly classified and that the contractor has complied with E-verify, the federal program that verifies the legal resident status of newly hired employees.

Lincoln Sen. Danielle Conrad spoke in support of the bill.

"It's about leveling the playing field so that our responsible contractors can compete fairly," she said.

Omaha Sen. Bob Krist also supported the bill, saying it would reduce the number of undocumented workers.

LB563 was advanced from general file on a 38-0 vote.

Education

Bill would change levy authority for learning communities

Senators advanced a bill March 15 that would change several provisions relating to learning communities.

York Sen. Greg Adams said he introduced LB1070 to make adjustments to the learning community coordinating council.



Sen. Greg Adams

The learning community is a political subdivision encompassing all school districts in Douglas and Sarpy counties. Among other duties, its 18-member coordinating council is charged with levying and distributing a common property tax levy, developing a diversity plan and establishing elementary learning centers.

"This is an attempt to help the learning community council, which has been in existence for only one year, to do their job," Adams said.

An Education Committee amendment, adopted 34-0, replaced the bill. As amended, LB1070 would modify the council's tax levy authority. Currently, the council may levy up to 5 cents for elementary learning center facilities and up to 50 percent of the capital costs for a focus school or program.

Under the bill, the council could levy up to 2 cents for up to 50 percent of the capital costs for a focus school or program and up to 1 cent for contracts with third party providers for

ISSUES UPFRONT.....

elementary learning center programs, services and leased facilities.

The amended bill also would address funding for educational service units (ESUs). Current law provides that the learning community receive a student allocation in the ESU distribution formula. As amended, the bill would attribute 90 percent of the students and valuation in the learning community districts to the ESU and 10 percent to the learning community for evaluation and research of the learning community. The learning community would report the evaluation and research results to the committee by Dec. 1 of each year after the first full year of operation.

LB1070 also would:

- allow expenses to be paid to non-voting members of learning community coordinating councils;
- change learning community reporting provisions;
- provide an allowance for the first year of focus school operation; and
- ease the restrictions on terminating an elementary learning center executive director.

Senators advanced the bill from general file on a 36-0 vote.

Bill amended to address student data sharing, ESU council issues

Senators amended and advanced an education bill March 15 that would change administrative procedures ranging from state aid formula deadlines to student data sharing.

LB1071, introduced by York Sen. Greg Adams, would set Oct. 15 as the deadline for schools to provide to the state Department of Education information relating to the state aid to schools formula. Currently, different deadlines are set for different types of

information.

The bill also would change the graduate program requirements for the Enhancing Excellence in Teaching Program to include graduate studies other than teacher education programs.

An Education Committee amendment, adopted 37-0, would change the deadline for the certification of state aid from Feb. 1 to April 1 for 2011 and March 1 for each year thereafter.

Additionally, the amendment would provide for the calculation of state aid for unified systems and make changes related to the early childhood education programs to be included in the calculation of state aid, as well as district responsibilities for students participating in open enrollment.

The amendment incorporated into LB1071 provisions from two other bills introduced by Adams that relate to schools.

Provisions from LB957 would require the board to adopt a policy for sharing student data with the University of Nebraska Regents, the Nebraska State Colleges board of trustees and the board of governors from each community college area. Student data would be shared in compliance with the federal Family Educational Rights and Privacy Act and would be provided to researchers such as post-secondary educational institutions, school districts and public policy and research advocacy organizations.

Provisions from LB1069 would define the educational service unit coordinating council as a political subdivision, but would not grant taxing authority. This would clarify that it is subject to open meeting laws, Adams said. The ESU funding formula currently contains two hold harmless provi-

sions based on aid received in prior years. Under LB1069, the hold harmless provisions instead would be based on prior year needs and the distance education and telecommunications allowance would be subtracted. Adams said this would help stabilize aid to ESUs.

LB1069 would require that only school purchases of technological hardware totaling more than \$10,000 be subject to approval by the Nebraska Information and Technology Commission. The bill also clarifies that schools are not required to join Network Nebraska, a series of service contracts providing access for schools and government to a high-speed telecommunications network.

Among other provisions, LB1071 would:

- remove a redundant reporting requirement for county assessors to certify taxable value of school districts;
- clarify residency provisions for school districts;
- modify qualifications for preschool programs that receive state aid funds; and
- harmonize the calculation of unused budget authority with recent changes in the budget authority provisions for school districts.

Adams offered an amendment to the committee amendment that would require the state board of education to approve policies developed by school districts for the evaluation of certified employees and make other technical changes.

Senators adopted the Adams amendment 34-0 and advanced LB1070 from general file on a 38-0 vote.

ISSUES UPFRONT.....

Executive Board

Bill would establish entrepreneurship task force

A bill that would establish a task force to bring high-wage employment to Nebraska advanced from general file March 18.

As introduced by Lincoln Sen. Danielle Conrad, LB1109 would establish the Innovation and Entrepreneurship Task Force. Comprised of six to 10 legislators appointed by the Executive Board, the task force would commission a nonprofit organization to provide research, analysis and recommendations for the development of a statewide strategic plan to encourage entrepreneurship in Nebraska.

The plan would include an inventory of existing state and locally sponsored programs and resources targeted at small business, micro-enterprise and entrepreneurship endeavors in the state. The task force would be required to present the plan to the Legislature by Dec. 1, 2010.

As introduced, the bill would reallocate \$100,000 of fiscal year 2010-11 general fund monies appropriated to administer the Microenterprise Development Act to fund the study.

Conrad said the study would provide the task force with information on what other states are doing to encourage small, local businesses and would help to develop a comprehensive plan for Nebraska.

“These conversations are happening,” she said. “What they lack at the present time is a statewide platform.”



Sen. Danielle Conrad

Omaha Sen. Heath Mello supported the bill, saying it would provide new tools for encouraging local businesses that already exist, rather than concentrating on bringing in business from out of state.

“It’s about finding a way to help them be more successful in a changing global economy,” he said. “This will let us see what is working and what is not working.”

Sen. John Harms of Scottsbluff agreed, saying many entrepreneurs struggle with technology and marketing and don’t know where to go for assistance. Developing a strategic plan to assist entrepreneurs and small business owners would be a good investment for the state, he said.

“If we’re truly interested in economic development, this is a great tool,” Harms said.

An Executive Board amendment, approved 31-0, would change the funding provision and limit the number of task force members to six.

As amended, LB1109 would specify that the unexpended balance available in the Microenterprise Development Cash Fund revert to the general fund on the effective date of the bill. The Legislature would then appropriate \$48,000 to fund the study.

Lexington Sen. John Wightman said approximately \$82,000 of the \$1 million initial transfer that created the microenterprise fund in 2007 has not been spent. The fund receives a \$450,000 annual appropriation, he said, which will not be impacted by the bill.

“The lapse will not harm the program,” Wightman said, “because the general fund support is still ongoing.”

Senators voted 28-0 to advance the bill.

General Affairs

Liquor law changes advance

Legislators amended and advanced a bill from general file March 17 that would make a variety of changes to the Nebraska Liquor Control Act.

As introduced, LB861, sponsored by Wilber Sen. Russ Karpisek, would make technical changes to the act. A General Affairs Committee amendment, adopted 30-0, added provisions from seven other bills.



Sen. Russ Karpisek

LB786, introduced by Karpisek, would remove a prohibition on adding alcohol to beer or selling beer to which alcohol has been added. He said the restriction on combining beer and alcohol stems from a Prohibition-era bootlegging practice and is outdated.

LB869, introduced by Karpisek, would increase the liquor license application fee from \$45 to \$400 and make the fee non-refundable.

Karpisek said it costs the commission approximately \$300 to \$400 to process an initial liquor license application. Taxpayers should not be required to subsidize the process, he said.

Omaha Sen. Gwen Howard agreed. “It is high time that we charge what it costs us to issue a license,” she said. “We have a responsibility to charge a reasonable fee rather than imposing additional taxes on our citizens.”

LB870, also introduced by Karpisek, would create a temporary operator’s permit for new owners of

ISSUES UPFRONT.....

a business with a liquor license. Currently, when such a business is sold, the buyer may operate the establishment under the seller's liquor license until an application for a new license is processed. Any Liquor Control Act violations apply to the seller's license.

Under the bill, a seller's license is immediately terminated and the buyer may apply for a temporary permit to operate the establishment until issuance of a new liquor license.

"This bill is necessary to hold the buyer accountable for his or her own actions," Karpisek said.

LB883, introduced by Lincoln Sen. Colby Coash, would allow farm wineries to store products at an offsite facility. Under the bill, farm wineries must notify the Liquor Control Commission of the warehouse location and alcohol consumption would be prohibited at the offsite location. The bill also would make state law consistent with federal law regarding reporting and tax payment schedules for farm wineries.

LB906, introduced by Karpisek, would remove a prohibition on granting liquor licenses to establishments located within 150 feet of a church. Under the bill, the commission could grant such a license only after providing notice to an affected church and holding a hearing.

Grand Island Sen. Mike Gloor said the measure would assist economic development in communities with a proliferation of storefront churches. For example, he said, the current prohibition makes it difficult to attract upscale restaurants to downtown Grand Island because most potential locations are within 150 feet of one of the town's many storefront churches.

LB1000, introduced by Karpisek, would require that any officer or director of a limited liability company (LLC), or any member with an owner-

ship interest of more than 25 percent, meet the qualifications for a liquor license. The bill also would require that an LLC manager be a citizen and a resident of Nebraska.

Finally, LB1012, introduced by Sen. Kent Rogert of Tekamah, would increase the membership of the State Racing Commission from three to five members. Under the bill, three members would be appointed from each of the state's congressional districts and two would be at-large appointees. No more than three members could be from the same political party and no more than two members could reside in the same congressional district or the same county. Terms of office would be four years.

The bill also would remove prohibitions on commission members:

- having an interest in a horse that is racing under the commission's jurisdiction;
- placing wagers on the outcome of any race under the commission's jurisdiction or supervision; or
- having a financial interest in or engaging in any private employment with any business that is regulated by or conflicts with the commission's duties, or that does business with any racing association licensed by the commission.

Under the bill, members could engage in these activities, but would be required to file a conflict of interest statement and could not vote on matters where a conflict of interest exists.

Rogert said the bill would open the commission up to individuals eager to help sustain the horse racing industry in Nebraska.

Senators advanced LB861 to select file on a 31-0 vote.

Health & Human Services

Omnibus health bill amended, advanced

Lawmakers gave first-round approval March 15 to a bill that makes various changes to health and human services provision in Nebraska.

LB849, sponsored by Papillion Sen. Tim Gay, is the Health and Human Services Committee's annual "clean-up" bill. As introduced, the bill would:



Sen. Tim Gay

- update state law regarding references to the Federal Social Security Act;
- move decision-making authority on appeals from a hearing officer to the director of the division of developmental disabilities; and
- remove a requirement that governing boards for developmentally disabled specialized services include elected officials.

A committee amendment, adopted 29-0, added provisions from nine other bills.

LB25, introduced in 2009 by former Sen. Mike Friend of Omaha, would add children's day health services to the definition of health care service under the Health Care Facilities Licensure Act.

LB702, introduced by Grand Island Sen. Mike Gloor, would allow a longer time frame for written authorizations for the release of health information. Currently, a request is effective for 180 days. Under the bill, an authorization would expire in 12

ISSUES UPFRONT.....

months if it does not contain an expiration date or specify an event that causes the authorization to expire.

LB726, introduced by Wilber Sen. Russ Karpisek, would require four hours of annual education and training for direct care staff pertaining to the care or treatment outlined in the Alzheimer's Special Care Disclosure Act. The four hours specified would not increase the aggregate hourly training requirement of the Alzheimer's Special Care Unit nor would the state Department of Health and Human Services be responsible for the curriculum.

LB734, introduced by Gay, would eliminate a requirement that municipal and private utility companies use certified mail to give notification of service termination to welfare recipients. Notification by first-class mail would be required seven days prior to termination of utility service to any domestic subscriber.

LB766, introduced by Gloor, would eliminate the July 1, 2010 termination date for the Nebraska Center for Nursing Act.

LB828, introduced by Gloor, would redefine, limit and change education requirements for medical radiographers under the Medical Radiography Practice Act.

LB857, introduced by Gay, would consolidate the Modular Housing Units Cash Fund and the Manufactured Homes and Recreational Vehicles Cash Fund into a new Public Service Commission Housing and Recreational Vehicle Cash Fund. The bill also would eliminate specified statutory dollar amounts for manufactured home and recreational vehicle seals and allow the commission to determine annually the amount charged for the seals. Currently, the fee is set in statute as not less than \$10 and not more than \$75.

LB930, introduced by Gloor, would amend the Pharmacy Practice Act by defining prescription drugs and devices as those not carrying an FDA-approved prohibition on their sale except on the order of a licensed health care provider. The bill also would specify that the practice of pharmacy does not include a business or person who sells, delivers or distributes such devices.

LB941, introduced by Gay, would add to the practice of optometry the dispensing and sale of a contact lens containing an ocular pharmaceutical agent, which the FDA classifies as a drug and an optometrist is authorized to prescribe.

Gay said there was no opposition to any of the bills included in LB849 when heard in committee and that none would impact the state budget.

The bill advanced to select file on a 32-0 vote.

New prenatal care program bracketed

Senators gave unanimous consent March 17 to bracket a bill that would establish a program to offer prenatal services to low-income women regardless of immigration status.

Lincoln Sen. Kathy Campbell, sponsor of LB1110, said the bill was intended to allow Nebraska to continue a 20-year practice of covering the cost of prenatal and pregnancy-related services connected to the health of an unborn child.

Citing a "certain veto" of the bill should it pass, Campbell asked the Legislature to bracket the measure.

Under the bill, the state Department of Health and Human Services

would be required to establish a program under the Children's Health Insurance Program (CHIP) solely for the unborn children of mothers who are ineligible for coverage under Medicaid. Eligibility for service would be determined using an income budgetary methodology of no greater than 185 percent of the federal poverty guideline.

Benefits would include:

- laboratory testing;
- outpatient hospital care;
- pharmaceuticals and prescription vitamins;
- radiology, ultrasound and other necessary imaging;
- services related to conditions that could complicate the pregnancy; and
- professional fees and hospital costs related to labor and delivery.

The bill would require the department, within 30 days of passage of LB1110, to seek federal approval of a state plan amendment or waiver for Nebraska's program.

When offering the bracket motion, Campbell said she would willingly discuss LB1110 at length if it would achieve the bill's success.

"But I know from our conversations that this would not change the outcome," she said.

Senators gave unanimous consent to bracket the bill until April 14, 2010, effectively ending further action on the measure this session.



Sen. Kathy Campbell

Judiciary

Bill would create Crime Victim Fund

Senators advanced a bill March 15 that would create the Nebraska Crime Victim Fund.

ISSUES UPFRONT.....

LB510, introduced by Omaha Sen. Pete Pirsch, would assess a \$1 surcharge on defendant fines for state and local criminal and traffic offenses. The state Commission on Law Enforcement and



Sen. Pete Pirsch

Criminal Justice would administer the charges to the Victim Information and Notification Everyday Network, comprehensive crime victim assistance programs and nonprofit crime victim organizations. LB510 also would allow up to 5 percent of wages earned by inmates in work release programs to be directed to the Crime Victim Reparations program.

Pirsch said the bill would help relieve crime victims' financial burdens by placing the cost of crime on the right people.

A Judiciary Committee amendment, adopted 32-2, would assess a \$1 fee on each misdemeanor and felony conviction in district and county court and each affirmation on appeal. As amended, the bill would direct 75 percent of the funds from the surcharge to the Victims Compensation Fund and 25 percent to the Reentry Cash Fund, which funds the Work Ethic Camp in McCook.

Imperial Sen. Mark Christensen spoke in support of the bill.

"The Work Ethic Camp has been a very successful program," he said. "We need to expand this program to allow prisoners to become effective citizens in the state."

Omaha Sen. Brenda Council opposed the measure, saying the Work Ethic Camp serves only a small population.

"The money would have a broader impact and a greater effect on reduc-

ing crime if it went to the Office of Violence Prevention," she said.

After voting 33-0 to adopt a technical amendment offered by Pirsch, senators advanced LB510 from general file on a 35-1 vote.

Bill would reform juvenile justice system

Senators gave first-round approval March 15 to a bill that would reform Nebraska's juvenile justice system.

Omaha Sen. Brad Ashford, sponsor of LB800, said the bill's provisions would remove significant obstacles for juveniles in the areas of education and employment.



Sen. Brad Ashford

LB800 addresses early intervention, parental involvement, school attendance and alternatives to detention by bringing together law enforcement, courts, schools, parents and the community to solve problems related to youth crime, he said.

"Nebraska needs to be in the vanguard on these issues," Ashford said.

A Judiciary Committee amendment, adopted 33-0, became the bill.

Discussion of LB800 focused on truancy, alternatives to secure detention for non-violent offenders and the sealing of juvenile records.

Calling truancy "a crisis in our state," Ashford said the bill would encourage a collaborative approach to keeping juveniles in school, while respecting local circumstances and solutions.

"We are not mandating any specific truancy policy," he said.

To address truancy issues, the amended bill would require each school district to develop a policy

on excessive absenteeism in collaboration with the county attorney. A district would be required to report a case to the county attorney after a student has been absent 20 days per year, whether excused or unexcused. School districts would be required to report truancy issues to the state Department of Education on a monthly basis.

Grand Island Sen. Mike Gloor said an interlocal agreement between schools and the county attorney in his district resulted in an annual reduction in the number of truancy cases filed at one middle school from 30 to 3.

"Early intervention with truancy is much cheaper than paying for crime later," he said.

In the areas of law enforcement and the courts, the bill would authorize establishment of a civil citation pilot project in Omaha, allowing issuance of civil citations to juveniles for minor offenses. This would allow juveniles to avoid an arrest record, but still be held accountable, Ashford said.

The bill also would codify the authority of probation officers to impose administrative sanctions on juveniles who violate the conditions of their probation and would phase out the practice of sending status offenders to secure detention by Jan. 1, 2013.

A status offender is a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult.

"This would give counties sufficient time to find alternatives for status offenders," Ashford said. "Juvenile detention for non-violent status offenders is not a good thing."

Sen. Gwen Howard of Omaha agreed, saying non-violent juvenile offenders learn how to engage in more serious crimes while in deten-

ISSUES UPFRONT.....

tion.

“These are certainly not the kinds of lessons we want them to learn,” she said.

The amended bill also includes provisions of LB923, introduced by Ashford, which would specify the process for sealing records of interactions with the state’s juvenile justice system.

Ashford said the current process keeps too many people who have made minor mistakes in their youth from being gainfully employed as adults.

Under the bill, the sealing process would be available for juveniles who are:

- offered pretrial diversion or mediation by a county attorney;
- filed upon in juvenile court for a misdemeanor, felony, status or traffic offense; or
- filed upon in a county court for a misdemeanor offense or infraction, except for waivable traffic offenses.

An individual whose records are sealed may respond on an employment application as if the incident leading to the record did not occur.

Sen. Brenda Council of Omaha said records would be sealed only if a juvenile has successfully completed all aspects of his or her diversion plan and that sealed records should not be held against an individual later in life.

LB800 also would transfer \$350,000 from the Probation Program Cash Fund to the Violence Prevention Cash Fund. The funds would be distributed to various entities through a grant process administered by the Office of Violence Prevention for programs to reduce street, gang and gun violence.

Among other measures, LB800 also would:

- establish a Truancy Intervention Task Force;
- eliminate the use of three-judge appeal panels;
- establish a time frame for hearings on evaluation results;
- authorize the juvenile court to suspend driving privileges of truant juveniles and to issue fines not exceeding \$500 or order community service for parents of truant juveniles; and
- allow law enforcement to take a juvenile into temporary custody when there are reasonable grounds to believe the juvenile is truant or has committed a misdemeanor offense.

Council supported the bill and the amendment, saying the changes would bring the state’s juvenile justice system closer to its original goals.

“The system was meant to be rehabilitative in purpose as opposed to punitive,” she said.

Senators voted 39-0 to advance BL800 to select file.

Natural Resources

Hunting radius adjusted in deer control bill

Senators gave select file approval March 17 to a bill that would provide additional opportunities for citizens to hunt deer.

LB836, introduced by Omaha Sen. Scott Lautenbaugh, would authorize the state Game and Parks Commission to extend existing deer hunting seasons. In addition, the one-deer-per-permit rule applied to permits

issued for special deer depredation seasons would be removed and the commission would be given the authority to determine the deer species to be hunted and bag limits of depredation seasons or extensions.

The bill also would provide for an unlimited number of free permits for antlerless deer to be issued to any person owning or operating at least 20 acres of farm or ranch land within the geographic area specified by the commission for the season. Immediate family of the aforementioned landowners or operators would be offered permits as well. All revenues from the sale of special depredation season permits would be used for the abatement of damage caused by deer.

The bill would permit hunting within a 100-yard radius of an inhabited dwelling or livestock feedlot. The current restriction is 200 yards. Select file debate focused on this provision. Three amendments were introduced to adjust the radius in which hunting is prohibited.

North Platte Sen. Tom Hansen offered the first, which would have prohibited hunting within 440 yards of a dwelling or livestock facility.

Hansen said the sound of shots fired within a quarter mile of livestock can startle animals and the close proximity of hunters to homes would present a danger to children.

“If you can’t get more than 100 yards away from your property to shoot a deer, there may be too many houses [for it to be a safe hunting area],” Hansen said.

Lautenbaugh spoke in opposition to the amendment, saying it sent “a disastrous message to hunters” that they could not trust that the bill was negotiated in good faith.

Hansen’s amendment failed on a 4-24 vote.



Sen. Scott Lautenbaugh

ISSUES UPFRONT.....

Platte Center Sen. Arnie Stuthman offered an amendment that would have removed the 100-yard radius provision from the bill, leaving the current policy of 200 yards in place.

“Let’s leave it as it is,” he said.

Stuthman’s amendment failed on a 4-22 vote.

Lautenbaugh then offered an amendment, which would restore the 200-yard radius restriction, but only for rifle hunters. He said the compromise would ensure public safety while still increasing hunting access.

“We need more places for hunters to hunt,” he said. “Access and hunting are the preferred ways to manage the [deer] herd.”

Senators voted 34-1 to adopt Lautenbaugh’s amendment before advancing the bill on a voice vote.

New eminent domain procedures for recreational trails advanced

Natural resources districts no longer would have absolute authority to use eminent domain for the acquisition of land for recreational trails under a bill receiving first-round approval March 15.

LB1010, introduced by Louisville Sen. Dave Pankonin, would create a process NRDs must follow before eminent domain may be used to take private land for a recreational trail or corridor.

If an agreement to purchase land cannot be negotiated with landowners, the bill provides that a 75 percent supermajority of an NRD board could vote to conduct a public hearing, after which another 75 percent supermajority could vote to exercise eminent domain. A Natural



Sen. Dave Pankonin

Resources Committee amendment, adopted 40-0, reduced the supermajority requirement to 67 percent. To proceed, the board would need to find, by clear and convincing evidence, that all of the following criteria have been met:

- public notice and mailed notice have been provided to landowners with affected property;
- good faith attempts to negotiate agreements with property owners have been made and have failed for some or all of the property necessary for the trail to be developed;
- route alternatives have been considered;
- the selected trail route took into consideration the directness of the route, trail design and costs, and safety to users, vehicle operators and adjacent landowners;
- good faith attempts have been made to address the concerns of landowners regarding trail design, privacy, land protection, management and maintenance; and
- any development and management of the trail is designed to harmonize with and complement any established forest or agricultural plan for the affected land.

Landowners who disagree with the district’s decision could appeal to the district court in the county where the land is located. The bill would prohibit the use of eminent domain before the court’s final decision. The amended bill also would provide some liability protection for affected landowners and require formal agreements between districts and landowners that outline each party’s rights and obligations regarding the use of the trail.

Pankonin said Nebraska is one of eight states that provide unlimited use of eminent domain to construct recreational trails. With the passage of LB1010, he said, the state would join 12 other states in offering limited use of eminent domain for trails. He said the bill would provide a “mid-range alternative” for eminent domain use and offer protections to landowners.

“This bill ... will have a set procedure and process to give people more opportunity to protest, comment and make suggestions,” he said.

Ellsworth Sen. LeRoy Loudon said he is concerned that the bill would not ensure access to landowners whose properties are divided by recreational trails. Eminent domain is intended for public works projects that benefit all citizens, like canals, roads and power lines, he said, adding that he was not convinced it should apply to bike trails.

Omaha Sen. Tom White spoke in support of the bill. He said trails are long-term economic development tools.

“As you find that bikers, horsemen, runners and others start using those trails, the economic development opportunities they will present to your communities will be substantial,” he said.

LB1010 advanced from general file on a 41-0 vote.

Transportation & Telecommunications

Texting while driving ban advances

A bill advanced from general file March 16 would make texting while driving illegal.

ISSUES UPFRONT.....

LB945, introduced by Scottsbluff Sen. John Harms, would prohibit drivers from using handheld wireless communication devices to read, type or send written communications while operating a motor vehicle in motion.



Sen. John Harms

A technical amendment offered by the Transportation and Telecommunications Committee and adopted 37-3 would clarify that the bill addresses both reading and typing written communications. Written communication would be defined to include text messages, instant messages, e-mails and Web sites. Handheld wireless communication device would be defined to include cellular phones, text messaging devices, PDAs, pagers and laptops, but not an electronic device that is part of the vehicle, permanently attached to the vehicle or a hands-free device. Violators would be fined \$200 for the first offense, \$300 for the second and \$500 for the third and subsequent offenses and would be assessed three points on their driver's licenses.

The bill exempts from its provisions law enforcement, firefighters, emergency responders and those operating a vehicle in an emergency situation.

Harms said drivers who text are six times more likely to be involved in a crash than other drivers. He cited Federal Motor Carrier Safety Administration findings that drivers engaged in the act of texting take their eyes off the road for an average of 4.6 seconds out of every 6 seconds, a length of time that would permit vehicles traveling at 55 mph to go the length of a football field.

"No driver has any business texting while driving," he said. "It's dangerous, it's harmful and it kills."

Lexington Sen. John Wightman, who prioritized the bill, said the legislation would encourage people to refrain from texting while driving, which he said would save lives.

Driving impairments caused by texting can exceed those caused by intoxication, according to studies cited by Kearney Sen. Galen Hadley. In a driving simulation, participants who were tasked with sending and receiving texts took an average of 1.36 seconds to react to a command to stop, he said, whereas those who were legally drunk were able to respond within 0.64 seconds.

Omaha Sen. Tom White spoke in opposition to the bill, saying it would undermine existing laws that address distracted driving. He said charges ranging from careless driving to willful reckless driving currently can be filed against texting drivers.

With LB945, White said, the law would distinguish between people who drive distracted because of texting and those who are distracted because they are, for instance, watching a movie on their wireless device.

"It undermines the general prohibition to operate a motor vehicle in a way that is less than safe," he said.

Omaha Sen. Pete Pirsch said the sole act of texting likely would not be enough to sustain willful reckless driving charges. Higher courts have held that driving at 150-160 mph alone does not necessitate willful reckless driving charges, he said, which discourages prosecutors from pursuing these charges against texters.

Harms said that authorities should not have to wait for a driver to demonstrate careless driving or willful reckless driving before stopping their

texting. He said only 0.8 percent of traffic infractions in 2009 were attributed to willful reckless driving and only 1 percent to careless driving.

"To wait until the behavior of the driver reaches the level of willful reckless driving is too late," he said. "He or she has either been in an accident, killed themselves or put themselves at harm."

Tekamah Sen. Kent Rogert spoke in opposition to the bill, comparing it to a similar texting ban in Missouri that led to only eight drivers being cited in a five-month period. He said wireless devices also serve as calculators and music players, which also can distract drivers but are not covered in the bill.

Omaha Sen. Brenda Council said that law enforcement would not have the authority to administer the bill. Once texters clear their screens of any evidence that they had sent or received a text, she said, law enforcement would not have the authority to confiscate the phone to prove a text was sent or received.

"The practical effect of this legislation is that it is not practical," she said.

Lawmakers voted 27-19 to advance the bill from general file. ■



A CLOSER LOOK.....

Budget

continued from page 2

School-based health centers

A bill authorizing school-based health centers is projected to provide additional savings for the state.

LB1106, introduced by Omaha Sen. Jeremy Nordquist, defines a school-based health center as a facility:

- located in or adjacent to a school;
- organized through the school system;
- administered by the sponsoring facility;
- providing health services on-site during school hours to children and adolescents;
- augmenting and supporting services provided by a child's primary medical home; and
- not performing or referring abortions.

A school-based health center may provide medical, behavioral, mental, preventive and oral health care. A sponsoring facility may be a hospital, public health department, federally qualified community health center, nonprofit entity, school system or program administered by an Indian health entity.

A Health and Human Services Committee amendment, adopted 34-0 during general file debate:

- removes learning communities from the bill's provisions;
- stipulates that school-based health centers will not serve as a child's dental home; and
- prohibits school-based health centers from counseling for, prescribing or dispensing contraceptive drugs or devices.

The committee amendment also calls for the creation of a School Health Center Advisory Council to ensure school-based health centers address the needs of school districts, communi-

ties and health care providers.

Additionally, LB1106 would direct the state Department of Health and Human Services to submit a state plan amendment to Nebraska's Medicaid plan to cover eligible legal permanent residents under the Children's Health Insurance Program (CHIP).

The committee amendment added to the bill's provisions treatment of pregnant women who are lawfully residing in the U.S. and who are otherwise eligible for Medicaid.

With the adoption of the committee amendment, Nordquist said, the bill would provide a net savings of \$1.2 million. He said the federal Children's Health Insurance Reauthorization Act offers matching funds for the coverage of legal non-residents, which he said had been paid solely by the state since the mid-1990s.

"This bill is a step forward for children's health care to get them access to a convenient location in our schools, and it will have a significant positive impact on our state's general fund," he said.

LB1106 advanced from general file 39-0, and its accompanying appropriation bill, LB1106A, was advanced 35-0.

During select file debate, Nordquist offered an amendment that would establish school health center advisory councils at each school hosting a school-based health center. His amendment also would clarify that federally qualified health centers be reimbursed for services provided at school-based health centers at the federally qualified health center reimbursement rate.

After adopting Nordquist's amendment 35-0, lawmakers considered an amendment offered, and later withdrawn, by Sen. Arnie Stuthman of Platte Center. His amendment would have incorporated into LB1106 provisions of LB938, which would provide cost-based reimbursement for federally qualified health departments.

Senators advanced LB1106 and LB1106A from select file on voice votes.

State claims

The final components of the budget package deal with claims against the state, which are required to be reviewed by the Legislature.

LB1090, introduced by the Business and Labor Committee at the request of the state Department of Administrative Services, would approve claims against the state and agency write-offs including:

- a \$413,878 write-off requested by HHS for bad debt incurred by the department's facilities and benefit programs;
- a \$225,869 claim against the Nebraska Supreme Court made by the widow of a former employee of the court who was not properly notified of his ability to convert his group life insurance plan to an individual policy; and
- a \$145,000 claim against HHS made by parents of children placed by the department in a foster home where a child allegedly sexually assaulted other children.

An amendment offered on general file by the Business and Labor Committee and adopted 31-0 added a \$1.45 million claim against the state Department of Roads. The claim resulted from a dislodged piece of steel hitting a driver, resulting in a disability that prevents the claimant from returning to work.

LB1090 advanced from general file on a 32-0 vote.

Also introduced by the Business and Labor Committee, LB1091 outlines three claims that are disapproved. The bill was advanced from general file 28-0.

Both LB1090 and LB1091 were advanced from select file on voice votes. ■

BUDGET PROCESS

The primary constitutional duty of the Legislature is to pass the state budget. Before a budget is passed, however, the Legislature must consider virtually thousands of funding requests for the creation, maintenance or improvement of government services, programs, equipment and infrastructure.

This lengthy process is governed and guided by provisions of the Nebraska Constitution, state statutes and legislative rules.

BIENNIUM

Nebraska's budget cycle consists of two fiscal years, called a biennium. Biennial budgets are enacted during regular 90-day legislative sessions held in odd-numbered years. Budget adjustments are made during regular 60-day sessions held in even-numbered years. Consequently, the volume of issues and dollar value of decisions during short sessions typically is less.

The Legislature's Appropriations Committee is responsible for reviewing budget requests and presenting a budget recommendation to be considered by the full Legislature. Before submitting its recommendation, the committee considers recommendations of the governor, requests from state agencies and fiscal impacts of bills sponsored by senators.

The process begins when state agency requests come to the Legislative Fiscal Office in the fall prior to each session. Fiscal office staff study the requests and prepare briefings for the Appropriations Committee. At the same time, budget analysts from the executive branch are reviewing agency requests and working with the governor to formulate his or her budget recommendation.

GOVERNOR'S RECOMMENDATION

The governor is required to submit his or her budget recommendation by Jan. 15 in odd-numbered years, except that in the first year of office a governor may submit a proposal on or before Feb. 1. The governor communicates his or her proposals through a state of the state address and formally submits his or her recommendation to the Legislature through one or more bills, introduced by the speaker of the Legislature at the request of the governor.

The governor's appropriation bills routinely are referred to the Appropriations Committee. Other substantive bills that are instrumental to the governor's budget recommendation are referred to the standing committee having subject matter jurisdiction. Such substantive bills are not subject to the Jan. 15 deadline.

During the first 10 days of session, senators introduce other bills, which may require an appropriation to implement.

In January and February, the Appropriations Committee reviews the fiscal office analysis of each agency budget request. Under legislative rules, the committee must submit

its preliminary recommendations in a report to the Legislature 20 to 30 legislative days after the governor's budget submission.

The report includes preliminary funding levels and an overall analysis of the state's spending capacity based on current revenue forecasts, tax rate assumptions and compliance with the statutory minimum reserve, which must fall between 3 and 7 percent of available general funds. The estimates in the preliminary report become the basis of discussion during subsequent public hearings with state agencies and other interested parties.

During this time, other standing committees are conducting hearings on bills referred to them. Each bill has an accompanying fiscal note, which is an estimate of the financial impact of the legislation, including expenditures and revenues.

The fiscal note becomes the basis for estimating what appropriation may be necessary if the bill becomes law. When a committee advances a bill that has a financial impact, a companion bill authorizing an appropriation is introduced. This bill is assigned the same number as its companion along with an "A" suffix.

BUDGET PROCESS

COMMITTEE RECOMMENDATION

After issuing its preliminary report, the Appropriations Committee conducts public hearings on the budget and then reviews all preliminary decisions, information obtained during the hearings and any other information brought to its attention.

The committee meets for about two weeks to complete a set of recommendations that is offered to the full Legislature in the form of amendments to the governor’s legislation or new bills.

During a long session the committee has until the 70th day to place its budget bills on general file. During a short session, the deadline is the 40th legislative day. If the committee fails to introduce its bills by the deadline, legislative rules require that senators consider the appropriation bills as introduced by the governor.

At a minimum, the Legislature must consider three appropriation bills: one for legislators’ salaries; another for constitutional officers’ salaries, which generally include other elected officials and judges; and a third to appropriate for all other expenditures.

However, the committee typically introduces several bills that fall under broad categories. One large bill appropriates most state funds, for operations and state aid. A second bill typically is offered to make appropriations for capital construction projects. Another bill provides for deficit appropriations, which are adjustments to appropriations previously authorized for the current year. It is not unusual for the deficit bill to be considered early in the session because some of the adjustments

may be emergencies that apply to the current year.

Other bills also may be offered, including bills making appropriations for salary increases, increased benefit costs or substantive law changes — such as authorization for a fee and creation of a fund — that implement some aspect of the committee recommendation.

STATUS REPORT

After the committee’s bills are placed on general file, a daily financial status report of the general fund accompanies the daily agenda. The status report indicates the amount of budgeted funds under the committee recommendation and the amount of additional spending that could be accommodated beyond the statutorily required minimum reserve.

For planning purposes, the status also indicates financial conditions for the biennium under consideration plus the two following years. Although the Legislature only considers the first two years for appropriations, simulating impacts for two additional years provides useful information on the state’s ability to sustain future obligations.

During long sessions, all other bills having a general fund expenditure or a general fund revenue loss are held on final reading and may not be read until the Appropriations Committee’s budget bills pass. During short sessions, other bills may be read after the 45th day.

By rule, the Legislature must pass appropriations bills by the 80th day in a long session or the 50th day in a short session. There is no penalty for not passing appropriation bills

as provided by rule, other than the holdup of bills during a long session. Circumstances such as volume of amendments, length of debate and full discussion of appropriations matters can extend passage of the appropriations bills beyond the prescribed deadlines. Appropriations bills usually carry the emergency clause, which requires 33 votes for passage on final reading. This is also true of deficit bills. Bills without the emergency clause need 25 votes to pass.

VETOES

On appropriation bills, the governor has the option of signing the bill, letting the bill become law without his or her signature, vetoing the bill, or returning the bill to the Legislature with one or more line-item vetoes. Within a day of the return of appropriation bills to the Legislature with total or line-item vetoes, the Appropriations Committee must report on the impact of the vetoes and may offer a motion to override all or part of them.

Individual members of the Legislature may then offer their own veto override motions. For an override motion to succeed, two-thirds of the Legislature must vote for it.

All final appropriations ultimately enacted take effect July 1 of the designated fiscal year or, if passed without the emergency clause, three calendar months after the end of the legislative session. Deficit bills making adjustments to current-year appropriations with the emergency clause are effective immediately. ■

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