

**A Review:
Ninety-Sixth Legislature
Second Session, 2000**

June 2000

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INTRODUCTION

The following report provides a summary of significant legislative issues addressed during the second session of the Ninety-Sixth Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues that arose during the session. Every attempt has been made to present information as concisely and as objectively as possible. The report is comprised of information gathered from legislative records, committee chairpersons, committee staff members, staff of the Legislative Fiscal Office, and the *Unicameral Update*.

Bill summaries can be found under the heading of the legislative committee to which each bill was referred. Because the subject matter of some bills relates to more than one committee, cross referencing notes have been included as needed. A bill number index and a legislative resolution index have been included for ease of reference.

The authors wish to acknowledge the contributions of the legislative personnel who assisted in the preparation of this report. Additionally, a special “thank you” goes to Nancy Cherrington of the Legislative Research Division for her assistance in formatting and producing the report.

AGRICULTURE COMMITTEE

Senator M.L. Dierks, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1348 – Adopt the Agricultural Opportunities and Value-Added Partnerships Act

*(Webrbein, Baker, Bromm,
Connealy, Coordsen, Dierks,
Dickey, Hudkins, Janssen, Jones,
Kremer, Schrock, Stubr, Vrtiska,
and Wickersham)*

LB 1348 adopts the Agricultural Opportunities and Value-Added Partnerships Act (act) and creates the Microenterprise Partnership Program to promote rural economic development in Nebraska.

The bill finds that there is an economic crisis in rural Nebraska and a need to develop programs to create economic opportunity in these areas to stem the declining number of farms and ranches. The bill also finds that there is a particular need to develop value-added products (those products which increase the net worth of food or non-food agricultural products) so that farmers and ranchers can gain a larger share of food profits.

LB 1348 mandates that the Department of Agriculture (department), with the assistance of the Department of Economic Development (DED), establish a competitive grant process to provide annual grants of up to \$75,000. While the grants are for one year, they can be renewed annually for up to three years. A grant recipient can receive only one grant per calendar year for the same project.

Grants will be awarded in the following project areas: (1) research, education, and training; (2) market and cooperatives development; and (3) community, value-added, and farm and ranch initiatives. Counties, educational institutions, nonprofit corporations, agricultural cooperatives and associations, and farms and ranches are eligible for the grants.

Grant proposals must demonstrate that proposed projects will provide economic growth. Priority will be given to projects which increase farm and ranch self-employment. Applicants must match 25 percent of the grant amount with cash or in-kind contributions, or a combination of the two.

The grant program lasts for three years. A minimum of \$250,000 of the funds appropriated annually by the act will go to grants promoting value-added agricultural development. A minimum of \$250,000 will go to further the entrepreneurial goals of the act, and the remaining \$500,000 will go to purposes specified in the bill generally.

The department must submit an annual report to the Governor and the Legislature by January 1 of each year which lists: (1) the grant recipients and amounts for the previous year; (2) the documented impact of the grants; and (3) an evaluation of the grant program. Addi-

tionally, the department and DED must develop an annual performance review process and a program for renewal of successful projects which have a statewide application.

LB 1348 also funds the already-existing Microenterprise Development Act (microenterprise act) by creating the Microenterprise Partnership Program and funding it with \$250,000 annually for three years. The program will continue to provide grants to microbusinesses throughout the state. (Microenterprises are new or existing businesses with five or fewer employees, including startup, home-based, and individually owned businesses.) However, program grants will be raised from the current maximum of \$50,000 to \$75,000 and must be matched with a combination of cash and in-kind contributions equal to 25 percent of the grant funds requested.

The bill also creates the Agricultural Opportunities and Value-Added Partnerships Cash Fund which will be used by the department for grants awarded pursuant to the act. Money credited to the fund will include gifts, grants, donations, and proceeds from service contracts.

The act will terminate on January 1, 2004.

LB 1348 passed 39-0 and was approved by the Governor on April 10, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1092 – Provide for a State Meat Inspection Pilot Program

(Robak, Dierks, Janssen, Jones, Schmitt, and Tyson)

LB 1092 would have provided for a pilot program for state meat inspection. The bill would have authorized the Department of Agriculture (department) to initiate a voluntary, pilot program of state meat inspection for small-to-medium-sized meat-processing plants. (Currently, meat is inspected only by the federal government.) The state-inspected meat could have been sold only in Nebraska.

The bill would have required the department and the Legislature's Agriculture Committee to report to the Legislature by November 15, 2001, on the feasibility of a state meat inspection pilot program. If they had found that there was sufficient interest in such a program and that it would have provided economic benefit to the state, then the department would have implemented the pilot program. The department could have cooperated with the United States Department of Agriculture in implementing the state program, which would have had sanitation and inspection standards at least equal to those imposed by federal law.

If the pilot program had been established, the department and the Department of Economic Development would have reported to the Governor and the Legislature after three years on the number of

state-inspection plants and the number of animals processed, as well as on the economic impact of the plants.

The pilot program would have ended on January 1, 2006. However, it would have terminated earlier if there had been fewer than five state-inspected meat or poultry plants on or after August 1, 2004.

Proponents of LB 1092 argued that it would help small- and medium-sized operators sell their meat products more easily in Nebraska. They contended that Nebraskans would buy meat they know is raised and inspected in Nebraska. Currently, 25 states have state meat inspection programs, including a number of midwestern states.

LB 1092 passed 43-0 but was vetoed by the Governor on April 10, 2000. The motion to override the Governor's veto failed 25-10 on April 11, 2000.

APPROPRIATIONS COMMITTEE

Senator Roger Wehrbein, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1217 – Provide Budget Adjustments for the 1999-2001 Biennial Budget *(Kristensen, at the request of the Governor)*

LB 1217 includes the bulk of the adjustments to Nebraska's biennial budget for the 1999-2001 biennium. The adjustments prescribed in the legislation total \$82.1 million for the biennium – \$14.4 million in deficit appropriations for FY1999-2000 and \$59.2 million for FY2000-01.

Provisions of two other bills were also added to LB 1217 by amendments: **LB 1163**, which authorized construction projects for the Youth Rehabilitation Centers at Geneva and Kearney; and **LB 1416**, which created a task force to study issues relating to health insurance coverage for public employees.

Another component included in LB 1217 is a \$30 million appropriation to community colleges that is intended to lower property taxes. In 1999, the Legislature enacted LB 881, which transferred \$30 million from the Cash Reserve Fund for increased state aid to community colleges. The 1999 legislation also provided that in FY2000-01, \$35 million would be transferred from the Cash Reserve Fund to the Relief to Property Taxpayers Cash Fund to be used for property tax relief.

This year's additional \$30 million appropriation for community colleges is intended to provide property tax relief by maintaining lower community college property tax levies. The majority of the funding for this additional appropriation comes from a \$29.1 million reduction in state aid to schools caused by a high growth in property valuation.

LB 1217 passed with the emergency clause, 42-4, on March 24, 2000. The Governor approved the measure with certain line-item vetoes on March 30, 2000.

Specific appropriations reduced by the Governor included:

- \$2 million in FY2000-01 to the Department of Health and Human Services Finance and Support to increase mental health provider rates;
- \$750,000 in FY1999-2000 to the Department of Health and Human Services Finance and Support for reimbursement of mental health services at the Region VI hospital;
- \$100,000 in FY2000-01 to the Department of Roads for a study by the Nebraska Transit and Rail Advisory Council;

- \$150,000 in FY2000-01 to the Nebraska Library Commission for aid to local libraries;
- \$1.25 million in FY1999-2000 and \$1.25 million in FY2000-01 to the University of Nebraska for costs associated with employee health insurance;
- \$900,000 in FY1999-2000 and \$987,000 in FY2000-01 to the University of Nebraska for renovations at the Sheldon Memorial Gallery;
- \$500,000 in FY2000-01 to the Nebraska Natural Resources Commission for the Natural Resources Enhancement Fund; and
- \$500,000 in FY2000-01 to the Department of Administrative Services for improvements to Centennial Mall in Lincoln.

On April 3, 2000, the Legislature considered several motions to override the Governor's vetoes. The Appropriations Committee presented a package of proposed overrides in one motion. The Appropriations Committee recommended restoring funding for mental health provider rates, the Region VI Hospital, the renovations to Sheldon Memorial Art Gallery, and the improvements to Centennial Mall in Lincoln. However, the Legislature rejected the override package, 18-30.

Following the package vote, several separate override motions were considered. Senator Jensen's motions to restore funding for mental health provider rates and the Region VI Hospital were successful. The remaining override motions failed, leaving the remaining gubernatorial line-item vetoes in place.

The budget, as passed in 1999, reflected a 4.3 percent increase in FY1999-2000 and a 2.8 percent increase in FY2000-01. With the enacted 2000 session budget adjustments, the revised budget growth is 4.7 percent in FY1999-2000 and 5.1 percent in FY2000-01.

The total biennial budget is \$2.34 billion for FY1999-2000 and \$2.45 billion in FY2000-01.

LB 1214 – Eliminate a Fund and Change Provisions Relating to Relief to Property Taxpayers Act

(Kristensen, at the request of the Governor)

LB 1214 eliminates the Tax Equity and Educational Opportunities Support Act Stabilization Fund and provides that any funds that would have been credited to that fund will now be credited to the Relief to Property Taxpayers Cash Fund.

Furthermore, the bill provides that for tax year 2000, the amount of relief granted under the Relief to Property Taxpayers Act will be \$25 million, rather than \$35 million, and provides for the transfer of that amount from the Cash Reserve Fund to the Relief to Property Taxpayers Cash Fund. The reduction was necessary due to the additional

\$30 million appropriation to community colleges prescribed in LB 1217 and discussed on p. 5 of this report.

LB 1214 passed with the emergency clause 45-1 and was approved by the Governor on March 30, 2000.

LB 1215 – Provide for the Use of Certain Funds for the Medical Assistance Program

(Kristensen, at the request of the Governor)

The Introducer's Statement of Intent outlines the reasons behind the introduction of LB 1215. In 1998, the Legislature passed LB 1063, which established the Children's Health Insurance Program. The program covers children from birth through 18 years whose families earn up to 185 percent of the poverty level. Children in families with lower incomes are eligible for health care coverage under the Medicaid program. The health care coverage available to children is identical under either program. Many of the children whose families have asked about the Children's Health Insurance Program are actually eligible for coverage under the Medicaid program. (Federal statutes require the state to provide coverage under the Medicaid program.) This has resulted in fewer than expected numbers of eligible children in the Children's Health Insurance Program and increased participants in the Medicaid program. Medicaid costs have grown larger than anticipated, while the appropriation to the Children's Health Insurance Program has not been fully used. LB 1215 helps both programs meet poor children's health insurance needs.

As enacted, LB 1215 provides that if the state's matching share for program and administrative expenses under the Children's Health Insurance Program are fully funded in any given fiscal year, any additional money in the Children's Health Insurance Cash Fund can be used to fund the state's matching share of the Medicaid program.

LB 1215 passed with the emergency clause 46-0 and was approved by the Governor on March 30, 2000.

LB 1349 – Change Provisions of the Information Technology Infrastructure Act

(Bromm and Wehrbein)

Because of the passage of LB 1349, the Information Technology Infrastructure Act will not sunset on June 30, 2001. The act will continue to receive funds from the cigarette tax and use those funds to pay for approved state technology projects. Today, revenue generated by two cents of the cigarette tax equals approximately \$2.6 million per year.

The Information Technology Infrastructure Act was originally created in 1996 to fund the state's efforts to address and prevent Y2K problems. Revenue equal to two cents of the cigarette tax was dedicated to funding the act. The act was scheduled to sunset on June 30, 2001, and the dedicated cigarette tax revenue would have reverted to the Building Renewal Allocation Fund.

In addition to continuing the act and provisions for funding, LB 1349 authorizes the Legislature to designate technology projects for funding. The Nebraska Information Technology Commission must review and approve detailed project plans for major enterprise projects in order to insure that legislative intent regarding scope, timeframe, and budget of the project are consistent with the proposal originally authorized by the Legislature. (The bill defines “enterprise project” as an “endeavor undertaken over a fixed period of time using information technology, which would have a significant effect on a core business function and affects multiple government programs, agencies, or institutions. Enterprise project includes all aspects of planning, design, implementation, project management, and training related to the endeavor.”)

The bill also authorizes multi-year commitments for large projects; allows the receipt of other funding sources, such as gifts, grants, and other appropriations; and requires semiannual progress reports on projects receiving funding.

LB 1349 passed 34-13 and was approved by the Governor on March 30, 2000.

**LB 1369 – Provide
Funding for a
Comprehensive
Study of Nebraska’s
Natural Gas
Regulatory System**
(Urban Affairs Committee)

LB 1369 was introduced by the Urban Affairs Committee to complete the financing of the comprehensive study of Nebraska’s natural gas regulatory system originally authorized in Laws 1999, LB 805.

The appropriations bill accompanying LB 805, LB 805A, appropriated over the course of the biennium \$100,000 from the General Fund and \$100,000 from the Severance Tax Fund (\$50,000 from each fund each fiscal year) in order to finance the comprehensive study. Unfortunately, LB 805 failed to statutorily authorize the transfer of funds from the Severance Tax Fund, resulting in the Governor’s line-item veto of that portion of the appropriation, thus eliminating half of the contemplated funding for the study. LB 1369 was introduced to remedy the situation.

LB 1369 expressly authorizes the appropriation of \$100,000 from the Severance Tax Fund for the purpose of conducting the comprehensive study of Nebraska’s natural gas regulatory system. The bill further provides that any funds dedicated to the study that have not been expended by June 30, 2001, will be credited to the Permanent School Fund.

LB 1369 passed 44-0 and was approved by the Governor on March 30, 2000.

Following is an update on the status of the study. During the 1999 interim, pursuant to an interim study resolution, LR 74, the Urban Affairs Committee, with the assistance of an advisory committee

composed of representatives from the natural gas industry, the municipal community, and various consumer and public interest groups, developed the goals and terms for the study and drafted and approved a "Request for Proposals." Four proposals were submitted to the Urban Affairs Committee, which analyzed the proposals and recommended to the Executive Board of the Legislative Council the selection of the consulting group to conduct the study. The Executive Board approved the hiring of the successful bidder on April 10, 2000. The study will be conducted under the general oversight of the Urban Affairs Committee, and the consulting group's final report is scheduled to be delivered to the Legislature by December 15, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1425 – Appropriate Funds for an Electro- mechanical and Industrial Main- tenance Program and Agricultural Educational Complex

*(Tyson, Boblke, Connealy, Dierks,
Engel, Janssen, Jensen, Jones,
Lynch, Quandahl, Robak, and
Schmitt)*

LB 1425 would have requested a one-time appropriation of \$1,850,000 from the General Fund for FY2000-01, for Northeast Community College. A portion of the funds would have been used for facility space and technical equipment for a new electromechanical and industrial maintenance program, and a portion would have been used to help establish a new Agricultural Educational Complex.

Northeast Community College has major demands for graduates in its electromechanical and industrial maintenance program that it cannot meet because of a lack of facilities and funding. The program trains technicians in electronics and electricity for servicing and troubleshooting robotics and computer-automated manufacturing processes.

In addition, the college wanted to purchase land for a new Agricultural Educational Complex. The complex would have been used to teach new job skills to farmers to better train them for supplemental employment.

LB 1425 was indefinitely postponed by the committee.

BANKING, COMMERCE, AND INSURANCE COMMITTEE

Senator David Landis, Chairperson

ENACTED LEGISLATIVE BILLS

LB 626 – Adopt the Trademark Registration Act *(Brashear)*

LB 626 adopts the Trademark Registration Act, which provides for a system of state trademark registration and protection that is substantially consistent with the present federal law governing trademark registration and protection. The United States Patent and Trademark Office (PTO) has published general information concerning federal trademark laws and registration at <http://www.uspto.gov/>. The PTO explains that federal registration is *not* required to append the designations TM and SM to a trademark or service mark, but that federal registration *is* required before the designation ® may be appended to a trademark or service mark.

The definitions of the terms “trademark” and “service mark” provided for by LB 626 are similar, but they are not exactly alike. The bill defines the term “trademark” to mean “any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.”

LB 626 defines the phrase “service mark” to mean “any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown.” The bill also permits “[t]itles, character names used by a person, and other distinctive features of radio or television programs” to be registered as service marks.

LB 626 requires an application for registration of a trademark or service mark to be filed with the Secretary of State. An application must contain certain information, such as whether the mark has been registered under federal law; the class of goods or services to which the mark applies; the mode or manner in which the mark is used; the date of first use of the mark anywhere; the date of first use of the mark in Nebraska; a statement of ownership of the mark; and a statement that no other person has a right to use the mark. LB 626 requires the application to be accompanied by “three specimens showing the mark as actually used” and payment of a \$100 application fee.

LB 626 specifies a number of particular reasons why an application for registration can be denied. For instance, an application can be de-

nied if the mark consists of “immoral, deceptive, or scandalous matter” or if it is “merely descriptive.”

LB 626 contains a number of other provisions as well, such as authorizing an examination of an application to see if it conforms with the Trademark Registration Act and authorizing the issuance of a certificate of registration if the applicant has complied with the requirements of the act. Registration is effective for 10 years, and registration can be renewed for 10-year periods by filing an application for renewal and paying a \$100 renewal registration fee.

Also, LB 626 amends Neb. Rev. Stat. sec. 25-2130 to eliminate treble damages for willful trespass injuring specified types of real property.

LB 626 passed 41-0 and was approved by the Governor on February 22, 2000.

LB 929 – Adopt the Uniform Electronic Transactions Act; Adopt the Nebraska Governmental Unit Security Interest Act; and Amend the Uniform Commercial Code
(Landis and Quandahl)

LB 929 adopts the Uniform Electronic Transactions Act. The act has numerous provisions, but the heart of it permits electronic records and signatures to be as legally binding as a paper record or handwritten signature. Specifically, the act provides that a record, signature, or contract cannot be denied legal effect or enforceability solely because it is in electronic form. If the law requires a record to be in writing or a signature, the act provides that an electronic record or electronic signature satisfies the law.

However, the “act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.” It applies to any electronic record or electronic signature “created, generated, sent, communicated, received, or stored” on or after July 13, 2000, but it does not require a record or signature to be in electronic form.

The act defines a number of key terms. For instance, it defines “electronic signature” to mean “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” The act defines “electronic record” to mean “a record created, generated, sent, communicated, received, or stored by electronic means.”

The act provides that an “electronic record or electronic signature is attributable to a person if it was the act of the person” and states that such an act may be shown in any manner. The “effect” of such a record or signature “being attributed to a person” under the foregoing provision “is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties’ agreement, if any, and otherwise as provided by law.”

The act also contains special rules governing automated transactions and instances in which a change or error has been made and contains rules of construction.

LB 1111, the Nebraska Governmental Unit Security Interest Act, was amended into LB 929. The act governs the perfection, priority, and enforcement of all security interests created by the state or its political subdivisions.

LB 931 was also amended into LB 929. The bill is a clean-up bill relating to “Revised” Article 9 of the Uniform Commercial Code (UCC), which was enacted by Laws 1999, LB 550. The bill makes a number of technical corrections; clarifies when a lien creditor has priority over perfected and unperfected security interests; broadens the definition of chattel paper; and contains safe harbor provisions for continuation statements that were centrally filed with the Nebraska Secretary of State during the last six months of 1999.

Finally, LB 929 contains the provisions of **LB 1068**. For a search of records in the Secretary of State’s UCC Division data base, the bill provides for a fee of \$15 for accessing up to 1,000 records. An additional \$15 fee will be imposed for each additional 1,000 records accessed.

LB 929 passed 46-0 and was approved by the Governor on March 30, 2000.

LB 932 – Omnibus Banking Legislation

(Landis)

LB 932 was introduced at the request of the Department of Banking and Finance. In general, the bill contains numerous provisions relating to financial institutions and financial transactions.

LB 932 revises the powers of state-chartered financial institutions so that their powers under state law are equal to the powers of federally chartered financial institutions under state law. The bill changes provisions of the Nebraska Trust Company Act by increasing certain capital stock requirements from \$300,000 to \$500,000 and by changing certain dates.

LB 932 also changes various provisions of the Securities Act of Nebraska (notice requirement and prohibitions on advertising relating to transactional exemptions from registration requirements); the Credit Union Act (a fidelity bond from credit unions in an amount to be determined by the Department of Banking and Finance is required and provisions governing board of director meetings are changed); the Nebraska Bank Holding Company Act of 1995 (require use of mid-year reports rather than calendar-year reports for purposes of determining the amount of deposits for purposes of Neb. Rev. Stat. sec. 8-910); the Mortgage Bankers Registration and Licensing Act (licensees must establish and maintain a toll-free telephone number by

January 1, 2001, or accept collect telephone calls to respond to inquiries from borrowers); and the Delayed Deposit Services Licensing Act (exception to the 31-day maximum check-holding period).

The bill also changes provisions relating to acquisitions and mergers of financial institutions (an acquisition may be made before the disapproval period expires if state banking regulators issue written notice of intent not to disapprove the acquisition); fines imposed by the department (\$50 fine for each day that a trust company fails to furnish required reports or published statements); installment loans (provisions governing the cancellation of insurance and notification requirement); and revolving charge agreements (notification requirement). Also, LB 932 eliminates provisions relating to foreign building and loan associations.

The provisions of **LB 1148** were amended into LB 932. The bill exempts an affiliate of a Nebraska installment loan licensee from installment loan license requirements “if the activities of the affiliate in this state are limited to the securitization of loans made by the licensee and the servicing rights to the loans are retained by the licensee or assigned or otherwise transferred to a financial institution, licensee, or permittee.” However, nothing in the bill “shall be construed to exempt a licensee or affiliate from the provisions of the Securities Act of Nebraska.” The bill also provides definitions of key terms, including “affiliate,” “control,” and “securitization.”

The provisions of **LB 1178** were amended into LB 932. The bill amends the Nebraska Capital Expansion Act and the Public Funds Deposit Security Act. It increases from \$150,000 to \$300,000 the amount of “time deposit open account” funds that the state investment officer is required to offer all banks and building and loan associations in the state. The bill also amends the rule that no one bank or building and loan association may receive funds for deposit under the act that are more than \$1 million (formerly \$500,000) or an amount that does not exceed the amount covered by the Federal Deposit Insurance Corporation (FDIC), plus twice the financial institution’s equity capital or net worth or as otherwise provided for by law, whichever is less. The bill also amends the Public Funds Deposit Security Act by specifically providing that “deposit guaranty bonds” (i.e., bonds underwritten by an insurer authorized to do business in Nebraska providing coverage for deposits of a governmental entity which exceed amounts insured by the FDIC) are exempt from Neb. Rev. Stat. sec. 77-2327, which requires all bonds securing deposits of public money by the state or any county to expire annually on January 1.

LB 932 also includes the provisions of **LB 1271**. The bill adds nine new sections to the Public Funds Deposit Security Act and makes related changes to existing statutes governing the deposit of public funds. The new sections provide an alternative mechanism for finan-

cial institutions that are eligible to receive public funds to use in order to meet the requirements for collateral for deposits of public funds that exceed the amount of deposits insured by the FDIC.

The provisions of **LB 1341** were added to LB 932 via amendment. The bill permits real estate brokers to keep downpayments, earnest money deposits, and other trust funds in a qualified account at a savings bank, building and loan association, or savings and loan association, as well as at a bank. The account must be a separate insured non-interest-bearing checking account. Using forms provided by the State Real Estate Commission, the broker must notify the commission of the name of the financial institution in which the trust account is maintained and the name of the account.

The provisions of **LB 1387** were also amended into LB 932. The bill clarifies who, *for purposes of Neb. Rev. Stat. sec. 30-3205(3)*, constitutes a “person entitled to receive statements of account activity.” Such persons include court-appointed legal guardians, such as conservators, and agents appointed under a valid durable power of attorney pursuant to the Uniform Durable Power of Attorney Act. A person who is not acting in a fiduciary capacity – but who has been designated by a beneficiary of a fiduciary account to receive statements of account activity – is *not* considered to be a “person entitled to receive statements of account activity.”¹

Finally, the provisions of **LB 1440** were amended into LB 932. The bill requires that notice of certain automatic teller machine (ATM) surcharges be given in accordance with federal law, 15 U.S.C. § 1693b (d)(3)(A) and (B). However, under certain circumstances, ATM operators may not be required to comply with the bill’s notice requirement until January 1, 2005. The bill defines “automatic teller machine surcharge” to mean “a fee that an operator of an automatic teller machine imposes on a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made.”

LB 932 passed with the emergency clause 47-0 and was approved by the Governor on April 13, 2000.

¹ Neb. Rev. Stat. sec. 30-3205(3) requires banks and trust companies (or their affiliates) that render investment advisory services (or other such services) to a mutual fund or other investment company to make certain written disclosures and obtain written consent authorizing the mutual fund to pay reasonable compensation, calculated in certain ways (e.g., a percentage of the mutual fund’s asset value), to the bank for the bank’s investment advisory services. The written consent may be given only by “persons entitled to receive statements of account activity.” The bank must obtain the written consent of, and make the written disclosures to, all such persons. The written consent and disclosure requirements apply if the bank receives compensation from the mutual fund, in addition to the compensation for rendering investment advisory services, that the bank is otherwise entitled to receive.

LB 1119 – Adopt the Property and Casualty Insurance Rate and Form Act; Eliminate the former Property and Casualty Insurance Rate and Form Act; Eliminate the Property and Casualty Insurance Data Reporting Act; and Guarantee Workers’ Compensation Insurance Coverage for “Assigned Risk Employers”

(Landis)

LB 1119 adopts the Property and Casualty Insurance Rate and Form Act, which generally relaxes regulation of insurance rates and forms. Purposes of the act include, among other things, protecting policyholders and the public against excessive rates and the adverse effects of inadequate or unfairly discriminatory rates; promoting rates that reflect the benefits of competition; and providing regulatory oversight in the absence of competition.

Classes of Insurers Subject to the Act

The act applies to property and casualty insurers licensed to do business in Nebraska as an insurer for the following lines of insurance: property insurance; credit property insurance; glass insurance; burglary and theft insurance; boiler and machinery insurance; liability insurance; workers’ compensation and employer liability insurance; vehicle insurance; fidelity insurance; surety insurance; credit insurance; mortgage guarantee insurance; marine insurance; financial guarantee insurance; and miscellaneous insurance, such as legal expense insurance and mechanical breakdown insurance. The act does not apply to certain reinsurance; ocean marine insurance; policy forms for warranties or service contracts; and rating systems for insurance against loss or damage to aircraft, warranties or service contracts, property insurance, glass insurance, or mortgage guaranty insurance written by certain domestic assessment associations.

Regulation Through Price Competition and Duty to Monitor Insurance Markets

The act generally requires insurers to file their rates, rating systems, and policy forms with state regulators. If price competition fails to serve the purposes of the act, insurance rates, rating systems, and policy forms can be disapproved by state regulators.

State regulators must monitor insurance markets to ensure that insurance is commercially available and a lack of competition does not produce excessive rates. If either lack of availability or excessive rates are contributing to problems in insurance markets, state regulators must report their findings to the Legislature.

A competitive market is presumed to exist unless state regulators make a formal determination that the level of competition which exists is not sufficient to justify relying on competition to regulate rates. Factors that state regulators can consider when determining whether a sufficient degree of competition exists include, among other things, deciding if rates would be lower under a prior-approval system of rate regulation; consumers have practical opportunities to get market

information about prices; and tests show workable competition in market structure, market performance, and market conduct.

Two Filing and Review Procedures: One Is A Privilege

The act provides for two different filing and review procedures. One procedure provides for more regulatory oversight than the other.

The minimum-oversight procedure is available only for certain classes of insurance and rating systems. Use of the minimum-oversight procedure is a privilege and if an insurer abuses the privilege or is otherwise not allowed to use that procedure, the insurer can be subject to the heightened level of regulation provided for by the high-oversight procedure. If, after notice and hearing, state regulators find that an insurer has frequently made substandard filings indicating a general business practice that disregards the requirements of the minimum-oversight procedure, the Director of Insurance (director) may issue an order requiring the insurer to comply with the high-oversight procedure. However, the act requires the director to vacate such an order if the insurer demonstrates that the filings it made after the order was issued are in compliance with the requirements of the minimum-oversight procedure and did not need to be amended at the request of the director.

The Minimum-Oversight Procedure

The minimum-oversight procedure generally applies to all rating systems and “prospective loss costs,” except for those specifically required by the act to comply with the more burdensome filing procedure. The minimum-oversight procedure requires an insurer to file every rating system and every modification of a rating system that it “chooses” to use. In contrast to the high-oversight procedure, such a proposal can become effective without the prior approval of state regulators.

Another benefit of filing under the minimum-oversight procedure is that insurers can increase or decrease premiums on an individual risk basis up to 40 percent. However, such a rate adjustment cannot be based on the race, creed, national origin, or religion of the insured, and cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

State regulators are required to disapprove a filing under the minimum-oversight procedure if the proposal would:

- (1) Produce inadequate premiums (a premium level is inadequate if it would endanger the solvency of the insurer or would not be ex-

pected to generate a profit on a direct basis and would be likely to have the effect of diminishing competition);

- (2) Use more than one rating system for the same type of insurance, but it fails to specify objective differences between risks that would determine which rating system would apply for a particular risk or coverage;
- (3) Discriminate between risks based on optional commission differences for insurance agents;
- (4) Discriminate between risks based on race, creed, color, national origin, or religion of the insured;
- (5) Violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; or
- (6) Discriminate between risks based on subjective factors (except that an experience rating plan can use loss reserves).

The High-Oversight Procedure

The high-oversight procedure governs all filings for insurance covering farms and ranches, including crop insurance; advisory organizations; workers' compensation and employers liability insurance; medical professional liability insurance; insurance in noncompetitive markets; insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger non-fleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs; and insurance written in an assigned risk plan.

The high-oversight procedure requires state regulators to review the proposal for excessive premiums and unfairly discriminatory premiums, as well as for inadequate premiums. A premium level is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. (Factors such as loss experience and reasonably anticipated trends must be given due consideration.) Premiums are unfairly discriminatory if, after allowing for practical limitations, price differentials fail to equitably reflect differences in expense requirements or expected losses. The act also requires prospective loss costs to be as near as practical to the expected cost of future losses, including loss adjustment expenses (anticipated special assessments may be included with prospective loss costs).

Furthermore, the high-oversight procedure requires an insurer to file every rating system and every modification of such rating system that it "proposes" to use. In contrast to the minimum-oversight proce-

dure, it requires every proposal to receive the prior approval of state regulators before the proposal can become effective.

State regulators must disapprove a filing under the high-oversight procedure if the proposal would:

- (1) Produce excessive rates, inadequate rates, or discriminatory rates;
- (2) Use more than one rating system for the same type of insurance, but it fails to specify objective differences between risks that would determine which rating system would apply for a particular risk or coverage;
- (3) Discriminate between risks based on optional commission differences for insurance agents; or
- (4) Discriminate between risks based on subjective factors (except that an experience rating plan can use loss reserves).

Regulation of Insurance Policy Forms

The act requires state regulators to disapprove the use of illegal insurance policy forms. Forms that misrepresent coverage or provide coverage contrary to public interest must be disapproved. State regulators must also disapprove forms that contain provisions which are unjust, unfair, ambiguous, inconsistent, inequitable, misleading, deceptive, or contrary to public policy.

Guarantee Workers' Compensation Insurance for "Assigned Risk Employers"

Provisions of **LB 930** were amended into LB 1119. The Director of Insurance must implement a reasonable system for guaranteeing that each employer who qualifies as an "assigned risk employer" will be covered by workers' compensation insurance. An assigned risk employer is one who is entitled, but unable, to obtain workers' compensation insurance through ordinary methods. An employer who is in default on premiums, has failed to pay deductibles, has failed to give an insurer reasonable access to information needed for an audit, or has defrauded or attempted to defraud an insurer is not eligible for coverage. Coverage would become available after an employer files an application and pays the required premium.

Finally, the act eliminates the former Property and Casualty Insurance Rate and Form Act and the Property and Casualty Insurance Data Reporting Act.

LB 1119 passed 48-0 and was approved by the Governor on April 10, 2000.

LB 1125 – Permit Credit Card Issuers to Charge Any Fees Agreed to Between the Issuer and Consumer

(Banking, Commerce, and Insurance Committee)

The provisions of LB 1125 apply in the case of loans initiated by credit card or other type of transaction card. The bill permits lenders to charge any “fees agreed to by the parties,” such as late payment fees. Additionally, the bill permits lenders to compute charges in any “manner agreed to by the parties,” such as “compounding of fees and charges.” According to the Introducer’s Statement of Intent, Nebraska’s law will mirror the law in South Dakota to encourage credit card issuers to locate or relocate in Nebraska.

LB 1125 passed 45-0 and was approved by the Governor on March 21, 2000.

LB 1253 – Require Employer Group Health Insurance to Provide Coverage for Hospitalization and General Anesthesia Related to Dental Care for Developmentally Disabled Children and Children Under Eight Years of Age; Require Employer Group Health Insurance to Cover Newly Adopted Children; and Change Provisions Governing the Comprehensive Health Insurance Pool (CHIP)

(Crosby, Boblke, Bruning, Byars, Kristensen, and Aguilar)

LB 1253 contains various provisions relating to health insurance. The bill requires certain employer group health insurance policies or plans to “include coverage for the reasonable cost of hospitalization and general anesthesia in order for a covered person to safely receive dental care if he or she is under eight years of age or is developmentally disabled.” The entity providing the coverage must make the “reasonable determination that hospitalization and general anesthesia are necessary for safe dental care.” The bill also requires “medical necessity” to be defined by the group policy, contract, or benefit plan.

The provisions of **LB 1267** were amended into LB 1253. The bill requires certain employer group health insurance policies or plans to “cover newly adopted children.” The coverage must be the same as for other dependents.

LB 1208 was also amended into LB1253. The bill clarifies that health insurance coverage under the Comprehensive Health Insurance Pool (CHIP) is intended for “individuals” (as opposed to “persons”). The bill also provides that CHIP will be managed by a seven-member board of directors beginning January 1, 2001. Current law requires a nine-member board of directors to manage CHIP. As the following explains, the amended bill contains a number of other provisions relating to CHIP.

LB 1253 requires the Director of Insurance (director) to select members of the new board beginning January 1, 2001. Four members of the new board must be representatives of domestic insurers. The other members of the new board must consist of one representative of the general public, one representative of individuals eligible for CHIP coverage, and one representative of health agencies involved in advocating for individuals with special health care needs. Other provisions governing the qualifications of board members are also included in the bill (e.g., the representatives for the general public, health agencies, and individuals eligible for CHIP coverage may not be employees, officers, or members of the board of directors of an insurer).

LB 1253 requires the board to distribute copies of its annual determination of CHIP's "paid and incurred losses for the year" to the director, Governor, and each member of the Legislature. Also, the bill creates the Comprehensive Health Insurance Pool Distributive Fund. Money in the fund will be used for the operation of and payment of claims made against the pool. LB 1253 requires the board to "make periodic estimates of the amount needed from the fund" to pay (1) losses from claims, including a reasonable reserve, and (2) administrative, organizational, and interim operating expenses. The bill also requires the board to notify the director of the amount needed and the board's justification for the request.

Revenue from insurance premium and retaliatory taxes paid by health insurers will be credited to the fund each year, beginning with taxes imposed for tax year ending December 31, 2001. LB 1253 requires the director to approve all withdrawals from the fund and authorizes the director to "determine when and in what amount additional withdrawals may be necessary from the fund to assure the continuing financial stability of the pool." Also, the bill requires the State Treasurer to transfer \$3,165,265 from the Department of Insurance Cash Fund to the General Fund by June 30, 2001, and – operative January 1, 2001 – the bill eliminates certain provisions concerning CHIP assessments against insurers.

Finally, the provisions of **LB 1121** were amended into LB 1253. The bill defines the phrases "enrollment date" and "waiting period" for purposes of (1) the Small Employer Health Insurance Availability Act and (2) Neb. Rev. Stat. sec. 44-6901 et seq.

LB 1253 passed 45-0 and was approved by the Governor on April 6, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 63 – Adopt the Uniform Principal and Income Act of 1997 and Eliminate the Nebraska Principal and Income Act

(Landis)

LB 63 would have adopted the Uniform Principal and Income Act of 1997 and eliminated the Nebraska Principal and Income Act. The provisions of the act would come into play in the administration of trusts and estates when the trust instrument or will is silent on an issue or issues pertaining to the allocation of principal and income from the trust or estate.

LB 63 was indefinitely postponed at the end of the session. However, LR 401 provides for an interim study to determine whether the state should adopt the Uniform Principal and Income Act of 1997.

**LB 1389 – Adopt
the Capital Access
Program Act**

(Landis)

LB 1389 would have adopted the Capital Access Program Act. The bill would have provided for establishing an economic development loan program for qualified small businesses. Funds for loans would have come from contributions made by lenders and borrowers, who would have paid a premium for a program loan. The bill would have required the state to make matching contributions. The Department of Economic Development would have administered the program.

LB 1389 was indefinitely postponed on February 25, 2000.

BUSINESS AND LABOR COMMITTEE

Senator Floyd Vrtiska, Chairperson

ENACTED LEGISLATIVE BILLS

LB 953 – Change Voluntary Leave and Experience Account Provisions

*(Business and Labor
Committee)*

LB 953 makes a number of changes to Nebraska's employment security law. The bill provides that if an individual voluntarily leaves work "for the necessary purpose of escaping abuse," he or she will be deemed to have left work for good cause. In addition, the individual will not be disqualified for unemployment benefits if he or she "has made all reasonable efforts to preserve the employment" before leaving. LB 953 also provides that unemployment benefits in such circumstances will not be charged against the employer's experience account.

The provisions of **LB 1311** were amended into LB 953. LB 1311, which was introduced at the request of the Department of Labor, amends Nebraska's law governing unemployment compensation by moving the word "or" from one place in a sentence to another. A corrected Committee Statement for LB 1311 states that the change clarifies that

only services performed by an individual receiving rehabilitative services or remunerative work through a governmental entity or nonprofit [entity] are excluded from the term employment. Because of the misplaced "or" within the current statutory language, it erroneously excludes all service performed in a facility conducted for the purpose of carrying out a program of rehabilitation or providing remunerative work.

Finally, LB 953 makes harmonizing changes to various statutes that pertain to the Employment Security Administration Fund and the Employment Security Special Contingent Fund.

LB 953 passed with the emergency clause 45-0 and was approved by the Governor on April 6, 2000.

LB 1221 – Create the Workers’ Compensation Trust Fund and Change Provisions Pertaining to the Workers’ Compensation Court and Self-Insurers

(Business and Labor Committee)

LB 1221 creates the Workers’ Compensation Trust Fund to replace two funds that were eliminated by the bill, the Second Injury Fund and the Vocational Rehabilitation Fund. The bill also makes a number of changes in the statutes governing workers’ compensation, the Nebraska Workers’ Compensation Court, and self-insurers.

For purposes of Nebraska’s workers’ compensation law, the bill raises various age limits from 18 to 19 years of age. For instance, a child of a deceased employee will be conclusively presumed to be a dependent of the deceased employee until the child is 19 years old (formerly 18 years old). In addition, income benefits payable on account of any child will cease when the child is 19 years old (formerly 18 years old).

LB 1221 eliminates: (1) the requirement that rules and regulations promulgated by the State Claims Board are subject to approval by the compensation court; and (2) the need to have the court approve a decision by the State Claims Board to delegate the handling of a state employee’s workers’ compensation claim to a state agency.

Finally, the bill contains a number of provisions pertaining to employers who wish to self-insure their potential workers’ compensation liability. LB 1221 clarifies that an employer who wishes to self-insure must meet certain minimum standards and provides that those standards, as well as security requirements for self-insurers, will be established by duly adopted regulations. The bill permits a three-judge panel of the Nebraska Workers’ Compensation Court, after notice and hearing, to suspend or revoke approval as a self-insurer if it finds that the self-insurer’s financial condition or failure to comply with an obligation under the Nebraska Workers’ Compensation Act poses a serious threat to the public health, safety, or welfare.

LB 1221 passed with the emergency clause 45-0 and was approved by the Governor on April 11, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1257 – Adopt the Nebraska Workforce Investment Act and Eliminate the Nebraska Jobs Training Act

(Business and Labor Committee)

LB 1257 would have eliminated the Nebraska Jobs Training Act and replaced it with the Nebraska Workforce Investment Act. One purpose of the bill would have been to coordinate the provisions of state law with the federal Workforce Investment Act of 1998. According to the Introducer’s Statement of Intent, Congress’ Workforce Investment Act of 1998 requires states to fully implement the federal act’s requirements by July 1, 2000.

LB 1257 did not advance from committee and died with the end of the session. (However, an executive order issued by the Governor di-

rects the state Department of Labor to fully implement the requirements of the federal act by July 1, 2000.)

**LB 1310 – Change
Procedures
Relating to Unfair
Labor Practices**

(Hilgert)

LB 1310 would have provided that animus is not required to prove an unfair labor practice in a case brought before the Commission of Industrial Relations (CIR). (The bill does not define the term “animus,” but it generally means intent, ill-will, hostility, or animosity.)

The bill would have provided that if “business purpose” is used as a defense in such a case, the CIR must determine whether the stated business purpose is a “pretext” for an unfair labor practice. In addition, LB 1310 would have prohibited “adverse employment action” (i.e., “discipline or any action adversely affecting the employee’s wages, hours, or working conditions”) until the employer meets with the employee to explain the factual basis for the proposed adverse employment action.

LB 1310 advanced to General File but died with the end of the session.

**LB 1312 – Exempt
Certain Elevators
from the Nebraska
Elevator Act**

(Cudaback and Brown)

LB 1312 would have exempted elevators in buildings owned by churches (and used for religious purposes) and fraternal organizations (and used for fraternal activities) from the Nebraska Elevator Act. In addition, LB 1312 would have created the Elevator Code Advisory Board to hold hearings and advise the Department of Labor regarding elevator testing regulations.

LB 1312 was indefinitely postponed on February 17, 2000.

**LB 1384 – Update
Elevator Safety
Regulations**

(Kiel)

LB 1384 would have updated the authority of the Department of Labor to promulgate regulations concerning elevator safety. The bill would have expanded the list of published industry standards with which the department’s regulations could conform. Among other specified standards, the bill would have permitted such regulations to conform with the Uniform Building Code and the National Electrical Code.

LB 1384 advanced to General File but died with the end of the session.

**LB 1443 – Establish
Procedures for Pay
Equity Audits**

(Kiel and Price)

LB 1443 would have established self-evaluation procedures for businesses that wanted to conduct pay equity audits. “Pay equity audit” would have been defined to mean “any document dated and labeled as a confidential pay equity audit and prepared pursuant to a specific written directive to review compliance with an equal pay requirement. . . .” The bill would have defined “equal pay requirement” to mean, among other things, “an equal pay requirement contained in section 48-1221 . . . ,” which generally prohibits an employer from

discriminating between employees on the basis of sex, by paying wages to any employee at a wage rate less than the rate at which the employer pays any employee of the opposite sex for equal work on jobs which require equal skill, effort, and responsibility under similar working conditions.

LB 1443 would have authorized a business that (1) conducts a pay equity audit and (2) determines that it is “paying comparable wages regardless of gender or has initiated efforts to achieve pay equity after the audit” to refer to itself as “a fair-pay company.” In addition, the bill would have granted limited immunity from prosecution under Nebraska law for a business that conducts such a self-audit of its compensation structure.

LB 1443 did not advance from committee and died with the end of the session.

EDUCATION COMMITTEE

Senator Ardyce Bohlke, Chairperson

ENACTED LEGISLATIVE BILLS

LB 812 – Change Provisions Relating to State and Local Educational Standards and the Assessment of Nebraska Students

(Bohlke and Stubr)

Measurable model academic content standards and a statewide system for the assessment of student learning became a reality with the passage of LB 812. The bill directs the State Board of Education to adopt measurable model academic content standards for at least three grade levels no later than July 1, 2001. The standards must be sufficiently clear and measurable so testing student performance to determine mastery of the prescribed subjects can be accomplished. Standards will cover reading, writing, mathematics, science, social studies, and history.

In addition to the adoption of standards by the state board, each local school district must adopt measurable standards in the same subjects. Local districts can enact standards that are the same as, are equal to, or exceed in rigor the standards adopted at the state level. While the local standards must cover the same grade levels as the state standards, local districts are free to adopt standards for other grade levels as well.

LB 812 also directs the state board to implement a statewide system for the assessment of student learning and for reporting the performance of school districts. Provisions calling for a statewide testing program were originally enacted by Laws 1998, LB1228. However, due in part to a lack of consensus among interested parties regarding what the structure and objectives of the statewide testing program should be, funding for the program was eliminated in 1999 via the enactment of LB 144. With the passage of LB 812, statewide assessment is back on track.

LB 812 requires the state board to adopt an assessment and reporting system and begin implementation of the system in the 2000-01 school year, beginning with the assessment of reading and writing. Beginning in the spring of 2001, the state board will select three grade levels and conduct a statewide assessment of writing skills, based on writing samples from students in each of the three selected grades. Each school year thereafter, one of the three selected grades will participate in the statewide writing assessment.

The bill also requires the state board to develop an assessment and reporting system and prescribe standards for reading, mathematics, social studies, and history as follows. The first year the assessment and reporting system for each subject area will be based on locally developed assessments. Following the first assessment in each subject area, the State Department of Education will contract with recognized assess-

ment experts to review and rate locally developed assessments. Based on criteria identified by the department, the assessment experts will identify the locally developed assessments receiving the highest ratings and designate those assessments as model assessments. (The bill states that no more than four assessments will be designated model assessments.) Thereafter, local districts can adopt one of the four model assessments, as well as adopt their own locally developed assessments, for purposes of measuring their students' mastery of the subject areas in accordance with prescribed standards.

The results of the assessments in each school building will be reported to the citizens of the school district, while the aggregate district results will be reported as part of the statewide assessment.

LB 812 passed 39-1 and was approved by the Governor on April 10, 2000.

**LB 1243 –
Change Provisions
Relating to Special
Education and
Residency for
School Purposes**

*(Bohlke, Cudaback, Engel,
Hudkins, Lynch, Matzke,
D. Pederson, Price, Raikes,
Robak, Schimek, Stubr, Suttle,
Thompson, Wickersham, and
Redfield)*

The maximum allowable annual growth rate for special education appropriations is increased from three percent to five percent with the passage of LB 1243. Practically speaking, the increase results in an appropriation to special education of approximately \$2.6 million in FY2000-01 and \$5.5 million in FY2001-02.

The increase will be used to provide state reimbursement for certain requisite medical expenses incurred by school districts as the districts carry out individualized education plan services for special education students. The federal Individuals with Disabilities Education Act (known as IDEA) requires school districts to provide necessary medical services to insure that a disabled student receives a free appropriate public education. To that end, the bill also redefines the term "allowable costs" to include medical expenditures.

On Select File, amendments were adopted that allow preschool children to be eligible for support under the flexible funding option of a school district's special education budget and plan. Also added to LB 1243 via amendment were changes to student residency provisions. Residency for school purposes, except in specified circumstances, will now be determined by the student's residence, rather than the residence of the parent or guardian. Plus, any homeless student who desires admission to a school district will be admitted to the district without charge.

LB 1243 passed 43-1 and was approved by the Governor on April 10, 2000.

LB 1010 – Change Procedures Relating to the Appraisal and Sale of School Lands

(Baker, Boblke, Bromm, Engel, Jones, Kremer, Matzke, Raikes, Stubr, and Wehrbein)

In 1996, the Legislature passed LB 1205, which required the Board of Educational Lands and Funds to develop a plan for selling state school lands and diversifying the assets held for support of the state's public schools. The bill required the sale of enough land by January 1, 2008, so that one-fourth of the value of the school trust portfolio is invested by the state investment officer in other assets, such as stocks and bonds.

This year, the Legislature passed , which establishes a minimum sale price on state school lands. Supporters of the measure believe the bill will help the board comply with the 1996 state mandates.

LB 1010 establishes the minimum price for auctions of school lands at either:

- (1) The property's adjusted value as determined by the Property Tax Administrator, multiplied by 1.25 for agricultural and horticultural land or by 1 for all other classes of real property; or
- (2) The property's value as determined by an appraisal conducted by a certified real estate appraiser as directed by the Board of Educational Lands and Funds.

The bill requires any person requesting the sale of a tract of school land at public auction to submit the request to the board. The request must include an agreement by the requester to pay, as a minimum opening bid for the land, the appraised value or a higher value.

Within 60 days after receiving the request, the board must decide whether to offer the land for sale at auction and notify the requester of its decision. If an auction is held, it must be held within 120 days after the board accepts the agreement for the minimum opening bid. Conversely, if the board decides not to sell the land, the offering price and legal description of the land must be included in the board's annual report to the Legislature.

The bill also directs the board to include in its annual report the percentage of the investment portfolio remaining in real estate, including all nonagricultural real estate, and any corresponding information for any land that has been acquired or traded.

LB 1010 passed 29-15 and was approved by the Governor on April 11, 2000.

LB 495 – Create the Education and Career Preparation Task Force

(Stuhr, Baker, Boblke, Brashear, Bromm, Connealy, Coordsen, Dierks, Engel, Hartnett, Hudkins, Jones, Kremer, Matzke, D. Pederson, C. Peterson, Price, Raikes, Robak, Schellpeper, Schimek, Schmitt, Schrock, Suttle, Thompson, Vrtiska,

As originally introduced in 1999, LB 495 would have provided additional state funding to secondary schools for purposes of improving career preparation programs, such as agricultural programs, business education programs, career guidance and counseling programs, family and consumer science programs, and industrial technology programs. Schools could have used the funds for equipment acquisition, professional development for teachers, improvement of career counseling activities, development of curricular materials, implementation of applied courses, collaboration with employers, and program operation and maintenance. Although the bill was discussed on General File, the bill did not advance, and at the end of the 1999 session, LB 495 remained on General File.

This year, when LB 495 came up for discussion on General File, amendments were adopted which significantly changed the bill. The amended version of LB 495 advanced to Select File and was eventually passed by the Legislature.

As passed, LB 495 creates the Education and Career Preparation Task Force. Task force members include: one member of the Legislature's Education Committee; one member of the Legislature's Business and Labor Committee; the Commissioner of Education or his or her designee; a representative from the Governor's Policy Research Office; a secondary teacher involved in career preparation and technical education programs; a teacher who is a member of an association for career preparation and technical education programs; a representative from business; a representative from labor; the vocational education program manager at the State Department of Education; a representative from the State Department of Education who works with student organizations in the area of career preparation and technical education; a high school student leader involved in a student organization in the area of career preparation and technical education; a representative of an association of school boards; a taxpayer from a Class II or III school district; a taxpayer from a Class IV or V school district; a representative of an association of school administrators; a representative from a community college who is involved in career preparation and technical training; and a representative of a career preparation and technical education teacher education program.

Specifically, the task force will study the following topics:

- (1) The purpose, role, and mission of career preparation and technical education programs;
- (2) The prevalence of and need for career preparation and technical education programs at the middle school and high school levels;

- (3) The funding for career preparation and technical education programs, curriculum, and equipment at both the middle school and high school levels;
- (4) The availability of teachers of career preparation and technical education programs;
- (5) The need for career preparation and technical education and the status of career preparation programs in high schools and post-secondary educational institutions;
- (6) The feasibility of operating different delivery systems for career preparation and technical education programs, including a career preparation and technical high school; and
- (7) Any other topics related to career preparation and technical education.

The task force will hold at least one public hearing in each congressional district and must report its findings and recommendations to the Clerk of the Legislature and the Legislature's Education Committee no later than October 1, 2000.

The task force will cease to exist on December 31, 2000.

LB 495 passed with the emergency clause 44-0 and was approved by the Governor on April 11, 2000.

LB 1399 – Create the Teacher Salary Task Force, Adopt the Master Teacher Program Act and the Attracting Excellence to Teaching Program Act, and Provide Duties for the Nebraska Volunteer Service Commission

(Bohlke, Coordsen, Wehrbein, Wickersham, and Vrtiska)

Via the enactment of LB 1399, the 14-member Teacher Salary Task Force will embark on an in-depth study of teacher salaries in Nebraska in hopes of attracting and retaining quality teachers throughout the state.

LB 1399 specifically directs task force members to address the following topics:

- (1) Paying teachers for what they know and how they perform;
- (2) Creating and funding alternate pay scales for teachers who choose extended contracts;
- (3) Appropriate compensation levels for attracting and retaining teachers;
- (4) The impact of benefits as a part of total compensation for teachers;
- (5) Funding methods and sources for any increases in teacher compensation suggested by the task force;

- (6) Whether there should be greater control of the educational process and facilities for the schools by the state, if the state provides substantial additional funding for teachers' salaries; and
- (7) Other topics determined by the task force.

The chairperson of the Legislature's Education Committee will serve as the chairperson of the task force. Additionally, the chairpersons of the Appropriations and Revenue committees, as well as persons representing teachers, former teachers, school boards, school administrators, business, retirement concerns, a tax research organization, and taxpayers, will serve on the task force.

The task force must report its findings and recommendations to the Clerk of the Legislature and the Education Committee by October 1, 2000. Upon receipt of the findings and recommendations, the Education Committee must hold at least one public hearing in each congressional district before December 31, 2000. The task force terminates on December 31, 2000.

In addition to creating the task force, LB 1399 adopts the Master Teacher Program Act. The intent of the Master Teacher Program is to build a group of recognized teachers of high achievement and reward the high achievers with annual salary bonuses of up to \$5,000. To achieve the rank of master teacher, an educator must complete a national certification program to earn credentials as an exceptional teacher and make application for master teacher status to the State Department of Education.

Another program aimed at attracting quality teachers to the state included in LB 1399 is the loan forgiveness program prescribed in the Attracting Excellence to Teaching Program Act. Essentially, the program provides student loans for those teacher education students in Nebraska who teach in Nebraska upon completion of their higher education. For each year a loan recipient teaches in Nebraska, one year of his or her student loan is forgiven. If a teacher serves a high poverty or very sparse district, the teacher can receive two years of loan forgiveness for each year of teaching.

As a final incentive to encourage teachers college graduates to establish their teaching careers in Nebraska, LB 1399 authorizes the Nebraska Volunteer Services Commission to apply for funding from the Corporation for National Service. Funding from this program helps teachers pay off student loans and pay for continuing education. Program participants who participate for one year in the AmeriCorps program will in return be eligible for up to two grants of \$4,725 each.

LB 1399 passed with the emergency clause 44-1 and was approved by the Governor on April 10, 2000. LB 1399A, the appropriations bill

accompanying LB 1399, also passed and was approved by the Governor, but with certain line-item vetoes. The Governor vetoed funds earmarked for the loan forgiveness program embodied in the Attracting Excellence to Teaching Program Act. In his veto message, the Governor cited the fiscal impact of the bill on the current state budget, as well as the fact that the loan forgiveness program may be one of many alternatives studied by the Teacher Salary Task Force. No attempt was made to override the veto, and funding necessary to carry out the remaining programs in LB 1399 was left intact.

LB 1003 – Establish an Education Savings Plan

*(Schrock, Brown, Dierks,
Hilgert, Price, Smith, Tyson,
and D. Pederson)*

Nebraskans wishing to save for their child's college education will be encouraged to do so by the plan encompassed in LB 1003. With the passage of LB 1003, Nebraska joins 37 other states that have some type of qualified prepaid tuition plan or higher education savings plan in place. As originally introduced, the plan was patterned after an existing Iowa statute and was drafted in conformance with the federal enabling statute.

The education savings plan program accepts and invests contributions from participants to pay for future education costs for designated beneficiaries. Program participants enter into an agreement with the state that the investments, earnings, and interest will be used for college expenses by a named beneficiary. A person can be designated as a plan beneficiary from birth up until, but not including, the beneficiary's 18th birthday.

The bill provides that the minimum annual contribution is \$300 per beneficiary. Additionally, a program participant can deduct not more than \$1,000 in annual contributions from a joint state income tax return (or \$500 from a married return, filing separately). While the contributions are tax deductible to the participant, the beneficiary must pay tax on the earnings generated by the contributions to the plan when he or she withdraws the funds. Another component of the savings plan is the creation of an endowment fund for purposes of accepting private contributions.

The State Treasurer will manage the program, while the state investment officer will manage the investment of plan funds.

The bill mandates the program be up and running by January 1, 2001. A one-time appropriation of \$300,000 will be made for FY2000-01 to cover start-up costs and administrative expenses.

LB 1003 passed 46-0 and was approved by the Governor on April 11, 2000.

LB 26 – Provide State Reimbursement for Public School Breakfast Programs

(Lynch)

In recognition that sound nourishment is important to successful education for children, the Legislature enacted LB 26. Originally introduced in 1999, the bill, in its final form, requires the Legislature to reimburse qualifying public schools 5 cents for each breakfast the school serves. To qualify, school districts must operate a school lunch program. Payments will be made according to rules and regulations for disbursements adopted and promulgated by the State Department of Education.

LB 26 passed 36-7 and was approved by the Governor on April 11, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1107 – Change the Calculation of the Local Effort Rate and Adjust Levy Amounts for School Finance Purposes

(Wickersham, Bohlke, Coordsen, Dierks, Engel, Matzke, D. Pederson, Raikes, Schrock, Stubr, Vrtiska, Wehrbein, and Preister)

The enactment of LB 1107 would have capped property tax support for public schools at 47 percent.

Specifically, LB 1107 would have changed the calculation of the local effort rate and adjusted the allowable minimum and maximum levies for purposes of raising the necessary 47 percent of local revenue needed to support public schools. The local effort rate is the factor used to help determine a school system's available property tax resources. Current law sets the local effort rate at 10 cents less than the allowable property tax levy. Right now, the maximum levy is \$1.10 per \$100 of valuation, which makes the local effort rate \$1. Beginning FY2001-02, the maximum levy will be \$1 per \$100 of valuation, making the local effort rate 90 cents.

LB 1107 would have mandated the local effort rate to be the lesser of:

- a level that, when multiplied by the total adjusted value of all taxable property, would produce the amount necessary to support 47 percent of the needs of local school systems statewide; or
- 90 cents.

Additionally, LB 1107 would have set the maximum levy at 10 cents more than the local effort rate beginning in FY2001-02 and the minimum levy at two cents less than the local effort rate.

LB 1107 passed 35-10, but was vetoed by the Governor on April 10, 2000. A motion to override the veto failed, 23-23.

LB 715 – Change the Calculation of a School System’s Needs for Purposes of State Aid to Schools

(Raikes and Bohlke)

According to one of the bill’s introducers, the purpose of LB 715 was to address the growing disparity between per pupil costs in the various cost groupings in Nebraska’s school finance formula.

Nebraska’s state aid formula is essentially an equalization formula. If a local school system has greater financial needs than financial resources, the school system receives state equalization aid to make up the difference. A school system’s need is determined by using a statewide average cost per student. Need is determined by a school system’s adjusted weighted formula students and demographic factors, such as residency on American Indian land, English language skills, and poverty levels. School systems are divided into either a standard, sparse, or very sparse cost grouping, based upon the population of the area. A statewide average cost per student is then determined for each cost grouping. The sparse and very sparse cost groupings each have a higher statewide average cost per student than the standard cost grouping.

LB 715 would have changed the way a school system’s need is calculated. While the bill would have kept the cost-grouping classifications, the bill proposed calculating a system’s cost per student by using a basic student cost and providing for future adjustments to the basic student cost based on a cost growth factor and other fixed values. The bill also would have added a system cost and a scale factor when calculating need. Finally, the bill would have taken into account a school system’s spending history when determining its budget growth authority.

During discussion of the measure, many senators acknowledged that changes in the state aid formula might be necessary, but were uncomfortable adopting the changes proposed by LB 715 because of the complexity of the formula and the relatively short time left in the session to work on the issue.

The bill advanced to Select File but was bracketed until April 11, 2000. LB 715 died with the end of the session.

Proposals to Increase Teachers’ Salaries

Increasing the salaries of Nebraska’s public school teachers was near the top of the Education Committee’s agenda for the 2000 session. According to the Nebraska State Education Association, Nebraska ranks 43rd in the nation in average annual salaries for teachers, while salaries for beginning Nebraska teachers rank 44th in the nation. (The average annual salary for a Nebraska teacher is \$33,473, and the average annual salary for a beginning teacher in Nebraska is \$21,949.)

Four proposals relating to teachers’ salaries were introduced this session. Two of the measures provided additional aid for teacher salaries and two of the measures called for studies on the issue. One of

the measures calling for a study was **LB 1399**, which the Legislature passed and is discussed beginning on p. 31 of this report. Following is a brief summary of the other three measures heard by the Education Committee.

- **LB 1397**, introduced by Senator Bohlke, would have created the Quality Professional Educators Financial Incentive Fund. Forty million dollars would have been appropriated to the fund for FY2000-01. In the following school years, the Legislature would have appropriated funds necessary to enable Nebraska to maintain teacher salaries at an average level when compared to Iowa, Missouri, Kansas, Colorado, and Wyoming. The funding would have been designated professional staff incentive aid, and the bill included provisions for the calculation and distribution of the funds.
- **LB 1400**, introduced by Senator Bohlke, would have provided teacher salary supplements to school systems that meet minimum salary levels for newly hired teachers and teachers with advanced degrees. School systems that receive state aid would have received additional funds in the form of teacher salary supplements for four years. Thereafter, a teacher salary factor would have been included in the state aid formula.
- **LB 1323**, introduced by Senator Kristensen, would have created the Teaching Profession Team. The 10-to-13-member team was charged with making recommendations to the Governor and the Legislature on how to transfer public school teachers from local to state employment. Specifically, the bill directed the team to consider potential funding alternatives, contractual issues, local staffing levels, personnel issues, and the feasibility of transferring all school employees to state employment.

None of the three proposals advanced from committee. The bills died with the end of the session.

EXECUTIVE BOARD

Senator George Coordsen, Chairperson

ENACTED LEGISLATIVE BILLS

LR 6CA – Constitutional Amendment to Require the Resignation of Members of the Legislature who are Elected to other State or Local Offices

*(Kristensen, Bentler, Brown,
Coordsen, Hudkins, and
Thompson)*

LR 6CA proposes an amendment to Article III, section 9, of the Nebraska Constitution which, if passed by the voters, will require that a member of the Legislature who is elected to another state or local office prior to the end of his or her legislative term must resign from the Legislature, unless otherwise provided by law. The amendment requires that the legislator resign prior to the beginning of the legislative session during which the term of his or her new state or local office begins.

The amendment resulted from controversies involving legislators who were elected to other state or local offices but who remained in the Legislature after they had been elected to their new offices.

LR 6CA passed 43-2 and was presented to the Secretary of State on April 11, 2000. The proposed amendment will appear on the general election ballot in November 2000.

GENERAL AFFAIRS COMMITTEE

Senator Ray Janssen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 659 – Change Provisions Relating to the Compulsive Gamblers Assistance Fund *(Lynch)*

LB 659 takes money earned from charitable gaming and puts it into a fund to help treat problem gamblers. Previously, that money was used for regulatory enforcement of charitable gaming, with any remaining funds going to the state's General Fund. LB 659 requires that any funds remaining after paying for the regulation of charitable gaming go to the Compulsive Gamblers Assistance Fund instead. That fund supports eight gambling addiction treatment programs in Nebraska.

Originally, LB 659 was designed to address declining charitable gaming revenue by allowing electronic pickle-card dispensing devices. Supporters argued that electronic pickle cards would give a fundraising boost to charities, which have lost revenue due to the competition from casinos in neighboring states. On Select File, an amendment was adopted requiring a portion of the charitable gaming dollar to go to treat compulsive gamblers. However, the amended LB 659 failed to advance to Final Reading. In a second debate on Select File, lawmakers rejected an amendment to add electronic keno to the state's charitable gaming arsenal, stripped the electronic pickle-card provisions from the bill, and advanced LB 659 as a measure to increase funding for treating problem gamblers.

The bill also requires that the first \$500,000 of available state lottery proceeds, after expenses, go to the problem gamblers fund. Previously, the fund received only one percent of available state lottery proceeds, with the remainder split between the Education Innovation Fund and the Nebraska Environmental Trust Fund

LB 659 passed 42-1 and was approved by the Governor on April 13, 2000.

LB 973 – Change Provisions Relating to Alcoholic Liquor Transportation, Taxation, Fees, Licenses, and Penalties *(General Affairs Committee)*

LB 973 is designed to capture taxes on liquor purchased by Nebraskans outside the state. Previously, the law required that taxes be paid on all liquor, excluding beer, shipped into the state that was intended for resale. LB 973 requires that taxes must be paid for liquor intended for personal use. The tax can be paid either in the state of purchase or in Nebraska. The measure also extends the tax to beer.

During floor debate, supporters said that Nebraska loses as much as \$450,000 annually in liquor tax revenue because people do not pay the tax as required. As outlined in LB 973, the Department of Reve-

nue will collect the tax and the resulting revenue will be deposited into the state's General Fund.

Additionally, LB 973 authorizes the suspension or cancellation of liquor licenses for establishments that have illegal gambling devices on their premises and raises the special designated liquor license fee to \$40 (from \$25) and the registration fee to \$45 (from \$30).

LB 973 passed 46-1 and was approved by the Governor on April 10, 2000.

LB 1086 – Change Provisions Relating to Bingo and Other Gambling

(General Affairs Committee)

LB 1086 is the charitable gaming “cleanup” bill. It accomplishes several, largely technical, things.

First, the bill allows the Department of Revenue to waive fingerprinting requirements for individuals or parties holding or applying for a license as a pickle card operator, sales agent, gaming manager, lottery operator, or sales outlet location if the applicant already has been fingerprinted in order to receive a liquor license. Additionally, LB 1086 allows the department to approve variations in pickle-card formats without the adoption of rules and regulations, as was previously required.

LB 1086 also permits the biennial renewal of gaming licenses, which previously had to be renewed annually, allows nonprofit organizations conducting small lotteries and raffles to use “duck races” as a form of winner determination, and increases from seven to twelve the number of days per year in which a licensed organization can conduct bingo games.

LB 1086 passed 44-0 and was approved by the Governor on April 11, 2000.

LEGISLATIVE BILLS NOT ENACTED

LR 289CA – Constitutional Amendment to Permit Gaming on Indian Lands

(Schimek, Janssen, Boblke, Bourne, Connealy, Cudaback, Hilgert, Lynch, Robak, Schmitt, and Crosby)

LR 289CA would have allowed Nebraskans a vote on whether the Nebraska Constitution should be changed to permit gaming on Indian reservations. The measure proposed amending Article III, section 24, of the Constitution to make gaming operated by a federally recognized Nebraska Indian tribe on reservation land an exception to the constitutional prohibition of gambling in the state.

Currently, the Constitution allows the following exceptions to the gambling prohibition:

- A lottery established by the Legislature;
- Wagering on the results of horse races; and

- Bingo games conducted by licensed nonprofit associations.

A law enacted in 1993 allows Nebraska's Governor to enter into a Class III gambling compact with Nebraska tribes, as per the federal Indian Gaming Regulatory Act of 1988. However, it was later determined that a constitutional amendment would be necessary because of the state constitutional prohibition against Class III gambling. Class III gambling includes blackjack, baccarat, electronic facsimiles of games of chance, and slot machines.

A companion measure, **LB 1347**, would have provided further statutory guidelines for the negotiation and operation of such compacts.

The committee did not advance LR 289CA. A floor vote to place the resolution on General File failed, and the measure was indefinitely postponed on March 1, 2000. LB 1347 did not advance from committee and died at the end of the session. However, the issue of gaming on Indian lands and tribal sovereignty is the topic of an interim study, LR 338.

LB 975 – Change Provisions Relating to Minors in Possession of Alcoholic Liquor

(General Affairs Committee)

LB 975 would have prohibited the consumption of alcohol by minors unless the consumption takes place in the minor's permanent place of residence. Under current law, minors are prohibited from selling or dispensing alcohol or from having alcohol in their possession or physical control.

The bill was intended to address a loophole in the law that permits minors to simply put down their drinks when the police arrive and thereby avoid a minor in possession charge. The measure also would have allowed counties, cities, and villages to regulate or prohibit the consumption, possession, control, and transportation of beer or alcoholic liquor by minors in a motor vehicle. State law currently does not allow for the regulation or prohibition of alcohol consumption by minors in a motor vehicle.

LB 975 was one of several bills addressing underage drinking in the 2000 session. **LB 1130**, sponsored by Senator Tyson, also would have prohibited the consumption of alcohol by minors and would have added a "rebuttable provision" that any container of alcohol within an arm's length of a minor would be considered possession. The measure also would have increased penalties for minors charged with possession or consumption of alcohol. **LB 1171**, sponsored by Senator Dickey, would have increased the penalties against retailers who are charged with selling alcohol to minors and would have removed the retailer's option to pay a fine rather than suspend alcohol sales. Finally, **LB 1034**, sponsored by Senator Robak, would have provided that charges against a retailer for sales to a minor would be

dropped if charges were not filed or were subsequently dropped against the minor.

LB 975 and LB 1130 advanced to General File but died at the end of the session. LB 1171 did not advance from committee and died at the end of the session. LB 1034 was indefinitely postponed by the committee. Underage drinking is part of an interim study resolution, LR 371, which also addresses underage tobacco use.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator DiAnna Schimek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 438 – Change Late Contribution and Expenditure Provisions Under the Political Accountability and Disclosure Act

(Schimek)

LB 438 amends the Nebraska Political Accountability and Disclosure Act to require independent campaign committees (committees other than candidate, ballot question, or political party committees) to report late expenditures of more than \$1,000 within two days of making them to the Nebraska Political Accountability and Disclosure Commission (commission). Late independent expenditures are those over \$1,000 made after campaign statements are due.

The report must include the: (1) name and address of the recipient of the expenditure; (2) name and the office sought of the candidate whose nomination or election is supported or opposed; and (3) ballot question which is supported or opposed. The report can be made in writing or by electronic means approved by the commission. The late expenditure must also be reported on subsequent campaign statements.

If an independent committee fails to report a late expenditure, it must pay a late filing fee of \$100 for each day the report is not filed. The late fee cannot exceed the greater of \$3,000 or 10 percent of the late independent expenditure.

Proponents of the bill argued that these stricter reporting requirements provide more opportunity for disseminating information about large expenditures made by independent committees at the end of campaigns.

The bill also shortens from five to two days (from the date of expenditure) the time that campaign committees have to report late contributions. The report must include the amount and the date of receipt of the contribution and can now be made by electronic means.

LB 438 requires ballot question committees to file a surety bond of \$5,000 within 30 days after the committee first receives contributions or makes expenditures in excess of \$100,000 for a calendar year. The bond amount increases by \$5,000 for each additional \$500,000 received or expended in a calendar year.

The bill also provides that: (1) interest will begin to accrue on all late filing fees and civil penalties 30 days after the commission has sent notice; (2) committee treasurers are personally liable for any filing fees, civil penalties, and interest for failing to file required statements and; (3) committees will be dissolved only when a statement of dis-

solution is filed with the commission and the payment of all fees, penalties, and interest has been made.

LB 438 passed 45-0 and was approved by the Governor on March 21, 2000.

LB 956 – Change Provisions Relating to the Salaries of State Constitutional Officers

(Schimek, Beutler, Boblke, Coordsen, Kiel, Kristensen, Matzke, D. Pederson, and Wehrbein)

LB 956 raises the salaries of state constitutional officers, effective the first day of their next elected terms of office, January 9, 2003.

The new salaries compared with the previous salaries are: (1) Governor, \$85,000 from \$65,000; (2) Lieutenant Governor, \$60,000 from \$47,000; (3) Secretary of State, \$65,000 from \$52,000; (4) Attorney General, \$75,000 from \$64,500; (5) State Treasurer, \$60,000 from \$49,500; (6) Auditor of Public Accounts, \$60,000 from \$49,500; and (7) Public Service Commissioners, \$50,000 from \$42,000.

Proponents of the bill argued that the increase is necessary because constitutional officers' salaries have not been raised since 1991. They also cited the fact that the Nebraska Governor's salary is currently the lowest of the 50 states.

LB 956 passed 44-1 but was vetoed by the Governor on April 11, 2000. The motion to override the Governor's veto passed 45-1 on April 12, 2000.

LB 1021 – Change Provisions for Filings Required by Lobbyists and Principals and Statements of Financial Interest

(Chambers and Bromm)

LB 1021 makes several changes to Nebraska's lobbying laws. The bill places a \$50 limit on the total value of individual gifts that a lobbyist can *give* executive or legislative branch officials (public officials) in a month. The \$50 limitation also applies to gifts made to staff members and immediate family members of public officials. The bill also establishes a \$50 total limit on gifts that public officials, their staff members, and family members can *accept* in a month.

The bill provides an exception to the \$50-limit for gifts of admission to a state-owned facility or state-sponsored event given by a state agency, political subdivision, or publicly funded postsecondary educational institution (state entity). These admissions to state facilities and events can be accepted regardless of value; however, the state institution must report these admissions to state facilities and events on a form prescribed by the Nebraska Political Accountability and Disclosure Commission. The report must include: (1) a description of the admission and its value; (2) the name of the recipient and whether he or she is a public official; (3) the public official's office and title; and (4) whether the recipient is a family member of the public official. The report must be filed with the Clerk of the Legislature within 15 days after the end of the quarter in which the gift of admission was given.

LB 1021 changes the definition of “gift” to omit: (1) food or meals provided for immediate consumption; and (2) occasional transportation within Nebraska.

The bill also redefines “relative” to mean any person related to another by blood or marriage to the third degree of consanguinity. This definition includes foster parents and foster children, stepparents and stepchildren, and adopted children and adoptive parents.

The bill adds several items which a registered lobbyist must report on his or her quarterly statement. The report must now include a lobbyist’s: (1) compensation and reimbursement for expenses, listed separately; (2) total amounts expended for gifts other than admissions to a state-owned facility or state-sponsored event; and (3) total amount expended for admissions to a state-owned facility or a state-sponsored event.

LB 1021 authorizes lobbyists to report their aggregate expenses paid for entertainment, gifts, and admissions for public officials (members of the Legislature and officials in the executive branch). The bill also limits entertainment expenses to the average cost attributable to a public official if the entertainment expense is for an event to which persons other than public officials are invited.

LB 1021 passed 42-6 and was approved by the Governor on April 13, 2000.

**LB 1135 – Eliminate
Certain Boards,
Committees,
Commissions,
Authorities,
Councils, and
Task Forces**

*(Government, Military and
Veterans Affairs Committee,
Kremer, and Preister)*

LB 1135 eliminates 19 boards and commissions (commissions). Some of the commissions discontinued by the bill are the: (1) Capitol Murals Commission; (2) Committee on Continuing Pharmacy Education; (3) Marriage and Family Therapy Committee; (4) Nebraska Commission on Intergovernmental Cooperation; and (5) Nebraska Pesticide Board. The commissions were eliminated pursuant to a survey done by the Government, Military and Veterans Affairs Committee which sought to find commissions which are no longer functioning.

The committee will continue to look for non-functioning commissions among the more than 300 remaining. The bill also consolidates several existing entities concerned with early childhood education into the Early Childhood Interagency Council.

LB 1135 passed 47-0 and was approved by the Governor on March 30, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 510 – Provide for Election of the Attorney General on a Nonpartisan Ballot

(Chambers)

LB 510 would have provided that the Attorney General be elected on a nonpartisan ballot. Currently, all constitutional officers are elected on a partisan basis.

Proponents of the bill argued that the nonpartisan ballot was necessary because the Attorney General is an administrator of the law and as such, should be removed from partisan politics as much as possible. They also pointed out that nonpartisanship works in the Nebraska Legislature.

Opponents countered that making the office nonpartisan would not guarantee that partisanship was removed from the office. They also argued that partisan elections for Attorney General help voters because a political party serves as an “identifier” of a candidate’s political philosophy.

LB 510 passed 28-19 but was vetoed by the Governor on February 25, 2000.

Motions to reconsider the Governor’s veto failed on March 1 and March 9, 2000.

LB 729 – Provide Powers and Duties for the Secretary of State Regarding Initiative and Referendum Measures

(Schimek)

LB 729 would have required the Secretary of State (secretary) to determine if an initiative or referendum measure passed legal scrutiny before the start of a petition drive to place the measure on the ballot.

The bill also would have defined what makes an initiative or referendum measure “legally sufficient.” Under the bill, a measure would have been legally sufficient if it: (1) did not interfere with the Legislature’s constitutional prerogative to raise revenue for the state and its governmental subdivisions; (2) complied with statutory requirements for such petitions; (3) did not interfere with the United States Constitution or the laws of the United States; and (4) complied with the procedural limitations imposed by the Nebraska Constitution.

LB 729 would have prohibited the secretary from providing a comment or opinion on his or her decision regarding a particular initiative or referendum.

Additionally, the bill would have allowed the secretary’s decision to be challenged. Any Nebraska resident could have applied to the Lancaster County district court to enjoin the secretary’s decision. The bill would have required that the district court decide these appeals as quickly as possible. Appeals of the district court’s decision would have to have been made within 10 days to the Nebraska Court of Appeals.

Proponents of LB 729 argued that the proposal would have speeded up the initiative and referendum review process, saving time and money for supporters of measures which were deemed unconstitutional. Currently, a measure's constitutionality is not determined until it has been approved by voters and then challenged in court.

Opponents contended that the bill would have violated Article II, section 1, of the Nebraska Constitution, by delegating the judicial-branch functions of legal review to the Secretary of State of the executive branch.

LB 729 passed 30-18 but was vetoed by the Governor on February 15, 2000.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Jim Jensen, Chairperson

ENACTED LEGISLATIVE BILLS

LB 352 – Adopt the Commission for the Blind and Visually Impaired Act and Change and Eliminate Services for Disabled Persons

(Crosby, Lynch, Dw. Pedersen, Bourne, and Bruning)

Blind persons in Nebraska will be served with their own independent state agency via LB 352, which enacts the Commission for the Blind and Visually Impaired Act.

LB 352 transfers resources and personnel from the Division of Rehabilitation Services in the Department of Health and Human Services (HHS) to the new Commission for the Blind and Visually Impaired. The act provides for a governing board of five, appointed by the Governor with the approval of a majority of the members of the Legislature. Board members must have “reasonable knowledge or experience in issues related to blindness” and three of the members must be blind, according to the act. LB 352 grants board members a per diem of \$70 and reimbursement for actual and necessary expenses incurred in the performance of their official duties. Employees of the commission, except for the director who serves at the pleasure of the commission board, are included within the State Personnel System.

Among its duties, the commission is to administer the vending facility program pursuant to the federal Randolph-Sheppard Act and to promote self-sufficiency of blind persons by providing vocational rehabilitation, activities, and services aimed at securing employment for the blind. The commission is also authorized to accept the provisions of the federal Rehabilitation Act of 1973 and to receive federal funds for vocational rehabilitation of blind persons as provided in the act and in Titles II and XVI of the federal Social Security Act. LB 365 also creates the Commission for the Blind and Visually Impaired Cash Fund. On the operative date of the act, the fund will receive the money existing in the Small Business Enterprises Cash Fund and any portion of the HHS Cash Fund or any other cash funds attributable to the Division of Rehabilitation Services for the Visually Impaired within HHS.

LB 352 also creates the rehabilitation council to aid in providing services to the blind. This council, appointed by the Governor, is not to exceed 15 members. The act spells out member qualifications and specific duties of the council.

Additionally, LB 352 requires the commission to establish standards and procedures for a statewide digital voice newspaper delivery system and to oversee its operation. The digital voice newspaper was a concept originally contained in **LB 1366**. Another amendment to LB 352 added the elements of **LB 696**, which requires all state agency contracts after January 21, 2001, to include a technology access clause

calling for equal access to technology for visual and non-visual use. The commission, along with the Nebraska Information Technology Commission and the Chief Information Officer, is given the duty for developing the technology access clause.

Finally, LB 352 includes the provisions of **LB 1298**, which repeals the requirement for the Commission on the Deaf and Hard of Hearing to provide a daily videotext news and information service for deaf and hard of hearing persons. The use of this service had been declining due to outdated technology. The \$10,000 from the General Fund used for this service is redirected to provide similar information in a different format.

LB 352 passed with the emergency clause 37-10 and was approved by the Governor on April 10, 2000.

LB 480 – Create the Women’s Health Initiative of Nebraska

(Schimek, Beutler, Dierks, Hudkins, Preister, Robak, Stubr, Suttle, Thompson, Price, and Chambers)

LB 480 creates the Women’s Health Initiative of Nebraska within the state Department of Health and Human Services (HHS). The duties of the initiative are to serve as an information clearinghouse, to provide education and support services to women, and to provide technical assistance to communities addressing women’s health issues. (For a more detailed description of LB 480, please see *A Review: Ninety-Sixth Legislature First Session, 1999. Legislative Research Division, August 1999.*)

The bill establishes the Women’s Health Initiative Advisory Council, whose 30 members are appointed by the Governor, to advise the initiative of its duties and allow the solicitation of private funds to support the initiative. LB 480 provides that the council terminates on December 31, 2004.

Finally, LB 480 creates the Women’s Health Initiative Fund, which is intended to receive gifts, donations, and grants made to the Women’s Health Initiative, as well as any fees or charges collected from any federal, state, public, or private source. The fund is to be used to reimburse the expenses of the Women’s Health Initiative and the expenses of its advisory council. The head of Health and Human Services is directed to employ an executive director and any other personnel necessary to carry out the initiative. Administrative and technical support for the initiative is provided through the Governor’s Policy Research Office, the Health and Human Services System, and other state agencies as necessary.

LB 480 passed 28-15 but was vetoed by the Governor on April 10, 2000. A motion to override the Governor’s veto was successful, 32-5. However, the Governor line-item vetoed the General Fund appropriation for LB 480 contained in the appropriation bill, a total of \$40,000 for fiscal years 2000-01 and 2001-02. The motion to override failed, 21-

23. This left \$20,000 appropriated in both fiscal years to the Women's Health Initiative Fund, which is to be administratively funded.

LB 523 – Adopt the Nurse Licensure Compact

(Suttle)

LB 523 authorizes Nebraska to enter into a compact with other states for regulating and licensing nurses. This allows nurses whose home state is a compact state to practice in other compact states without having to be separately licensed in each state. The bill provides for the reciprocal licensure of registered, licensed practical, and vocational nurses. (The latter is a category not statutorily recognized in Nebraska.)

Supporters of the measure said the previous system of duplicative licensure for nurses practicing in multiple states was cumbersome and redundant to both nurses and states. Opponents said the bill is an unconstitutional delegation of legislative authority, a view supported by two previous Attorney General's opinions. However, these concerns were addressed, as per the Attorney General's advice in Opinion #99048, via an amendment allowing the Nebraska Nursing Board to first determine that the qualifications for a nursing license in a compact state are substantially equivalent to or more stringent than the minimum qualifications for a Nebraska nursing license.

LB 523 authorizes a multistate license privilege (MLP) to practice registered nursing, licensed practical, or vocational nursing in Nebraska if an appropriate license for such practice has been issued by the nurse's home state. Party states can limit, revoke, or take other actions against the MLP, and licensees must comply with applicable state practice laws. LB 523 does not affect state law pertaining to the practice of advanced registered nursing.

The bill allows for a coordinated licensure information system by which information about licensed nurses, including any actions against their licenses, is exchanged between member states. The bill names the head of the state's nursing board as the administrator of the compact for Nebraska.

LB 523 passed 46-0 and was approved by the Governor on February 15, 2000.

LB 819 – Adopt the Health Care Facility Licensure Act

(Jensen)

LB 819 enacts the Health Care Facility Licensure Act. Among its provisions, the act outlines standards and provides for rules and regulations governing health care facilities and services, changes the method of assessing licensure fees, and broadens the number of health facilities to be licensed.

The act updates and revises the law relative to the licensure of health care facilities and services found in Neb. Rev. Stat. secs. 71-2017 to 71-2029 and related sections. Among the changes, LB 819:

- Adds adult day services, respite care services, and pharmacies as health care facilities or services that will require licensure as of January 1, 2002;
- Changes license fee provisions to require an annual base fee of \$50 for all health care facilities and services, an additional fee based on statutorily enumerated criteria of up to \$1,000 for assisted living facilities, hospitals, intermediate care facilities, intermediate care facilities for the mentally retarded, and nursing or skilled nursing facilities, and an additional fee of up to \$500 for all other health care facilities and services;
- Adds language relating to provisional licensure;
- Provides for temporary suspension or limitation of a license; and
- Outright repeals various duplicative or conflicting sections of prior law.

Additionally, the act provides that license fees are to be deposited into the Department of Health and Human Services Regulation and Licensure Cash Fund. These fees are to be used solely for activities associated with licensure of health care facilities and services. (Prior law put license fees into the General Fund.) The act further creates a new category of provisional licenses to be issued to health care facilities or services that “substantially” comply with the act’s requirements for licensure. Provisional licenses are valid for up to a year. They cannot be renewed but can be converted to a regular license upon a showing of full compliance with the act.

LB 819 passed 47-0 and was approved by the Governor on April 13, 2000.

LB 950 – Adopt the Infant Hearing Act

(Byars, Schimek, Stubr, Suttle, Thompson, Price, Dw. Pedersen, Bromm, and Engel)

LB 950 requires hospitals and other facilities where children are born to phase in a system to screen newborns for hearing loss.

The bill sets a number of deadlines for meeting requirements of the Infant Hearing Act. By December 1, 2000, LB 950 requires the Department of Health and Human Services (HHS) to develop a system to track newborns and infants with hearing loss. Beginning on the same date, “birthing facilities” and “confirmatory testing facilities” (as defined in LB 950) are to annually report to HHS the number of newborns and infants receiving hearing screening, any required follow-up screening, and the results.

Further, LB 950 requires birthing facilities to provide hearing screening education to parents of newborns by January 1, 2001. HHS is required to provide educational materials to parents of newborns who are not

born at a birthing facility. Then, beginning January 1, 2002, HHS is required to annually report to the Legislature information regarding newborn screening at birthing facilities, including how many facilities are screening newborns for hearing loss, how many infants are screened versus how many are not, and the results of the screenings.

By December 1, 2003, LB 950 requires birthing facilities to include hearing screening tests as part of the standard of care for newborns and to provide a mechanism for compliance review. By that same date, the bill requires that 95 percent of all infants born in the state must be screened for hearing loss. If the mandated percentage is not met or if it falls below 95 percent at any time thereafter, then LB 950 requires HHS to immediately adopt and promulgate rules and regulations implementing a hearing screening program.

LB 950 provides that Medicaid will pay for the tests for children who qualify for the medical assistance program and that the test cost be included in the cost of private insurance coverage. Private insurers can require copayments, coinsurance, deductible and dollar-limited benefits under their plans.

LB 950 passed with the emergency clause 39-1 and was approved by the Governor on April 10, 2000.

LB 1025 – Adopt the Nebraska Center for Nursing Act

(Suttle, Byars, and Price)

Responding to concerns about the nursing shortage identified in the 1999 LR 96 interim study, LB 1025 enacts the Nebraska Center for Nursing Act and creates the Nebraska Center for Nursing Board to study the shortage and propose solutions.

The center is to address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization. The act outlines three goals for the Nebraska Center for Nursing:

- Develop a strategic statewide plan to alleviate the nursing shortage in Nebraska;
- Convene various groups representing nurses to review data, recommend systemic changes, and evaluate and report the results of these efforts to the Legislature and the public; and
- Enhance and promote nursing.

The act creates a 10-member, governor-appointed board of persons in the health care field – primarily, nurses – to set policy for the center. The act provides that board members are to be reimbursed for their actual and necessary expenses.

LB 1025 originally contained provisions establishing scholarship, student loan, loan repayment, and nursing incentive programs. These provisions were struck after being deemed too expensive. The Nebraska Center for Nursing Act terminates on July 1, 2005.

LB 1025 passed 46-0 and was approved by the Governor on April 13, 2000.

LB 1101 – Adopt the Nebraska Senior Companion Volunteer Program Act

*(Aguilar, Baker, Bromm, Bruning,
Coorsen, Dickey, Jensen, Jones,
Dw. Pedersen, Price, Robak,
Schmitt, Smith, Tyson, Vrtiska,
and Landis)*

LB 1101 establishes a program that pairs low-income elderly with frail elderly persons to provide benefits to both groups at a hoped-for savings to taxpayers.

The bill funds the Nebraska Senior Companion Volunteer Program, which pays senior volunteers a tax-free \$2.55 hourly stipend to help frail elderly persons with tasks such as grocery shopping, simple household chores, and transportation to appointments. LB 1101 provides companion services to the frail elderly who meet one of three criteria:

- They are bedfast or too frail or too ill to be transported to special programs;
- They have withdrawn from all social interaction or are confined due to psychological problems; or
- They desire but are unable to participate in adult day services because openings are unavailable.

In return, the volunteers, who must be age 60 or older and have an annual income not exceeding 125 percent of the federal poverty level, get transportation expenses, one meal per day, accident and liability insurance, an annual physical exam, and the nontaxable hourly stipend. Supporters of the measure said the cost of the service – \$3,850 a year for one volunteer serving five recipients – compares to the average annual cost of \$35,000 for keeping one person in a nursing home. Providing in-home services through the program is intended to help keep recipients from having to move to a nursing home or assisted-living facility.

Prior to the passage of LB 1101, senior companion programs existed in Douglas and Lancaster counties.

LB 1101 passed 48-0 and was approved by the Governor on April 13, 2000.

LB 1115 – Change Provisions Relating to Health and Human Services

(Health and Human Services Committee)

LB 1115 is the annual cleanup bill for the Health and Human Services System (HHSS). It also contains portions of **LB 898**, **LB 1033**, **LB1140**, **LB 1194**, and **LB 1212**.

Among its technical changes, LB 1115 does the following:

- Revises the definition of a program in advanced practice registered nursing and adds purposes for the state Board of Advanced Practice Registered Nurses;
- Requires industrial radiographers that work in Nebraska to pass a national certification exam;
- Transfers authority for the state rabies control program from HHS to HHS Regulation and Licensure; and
- Authorizes HHS Regulation and Licensure to certify laboratories for testing drinking water.

The bill also makes various changes to statutes concerning licensed practical nurses-certified (LPN-C). These changes include, defining the “direct supervision” of an LPN-C by a registered nurse, allowing LPN-Cs to perform appropriate activities associated with central venous lines under direct supervision, and requiring a licensed practitioner or RN to provide the direct supervision. These provisions were originally part of LB 1140.

Further, LB 1115 as amended addresses smoking. The bill prohibits smoking in places where licensed child care is provided, except when the child care program is located in the home of the provider, and within 10 feet of a state-owned or -leased building. These measures were originally found in LB 1194 and LB 1033, respectively.

Additionally, under a provision originally found in LB 1212, dental students are now eligible for loan assistance under the Rural Health Systems and Professional Incentive Act. And, finally, the life of the Community-Based Neurobehavioral Rehabilitation Advisory Board is extended. The act was to terminate on July 31, 2000. LB 1115 delays the termination date until July 1, 2001. The time extension was originally a part of LB 898.

LB 1115 passed with the emergency clause 46-1 and was approved by the Governor on April 13, 2000.

LB 1167 – Change Provisions Relating to Juvenile Justice

(Thompson, Jensen, Dw. Pedersen, Price, Suttle, and Tyson)

As enacted, LB 1167 incorporates the provisions of four bills, all dealing with elements of Nebraska's juvenile justice system.

LB 1167 states legislative findings relating to the need for additional secure detention facilities for juveniles through the expansion of existing facilities and the construction of new secure facilities; the need to expand existing probation staff resources and program services; and the need for statewide availability of juvenile diversion programs.

The bill creates the Juvenile Diversion, Detention, and Probation Services Implementation Team. This provision was an original element of LB 1167. The team is charged with several tasks, among them:

- Examining juvenile detention practices, identifying risk factors to be examined in making a detention decision, and recommending a standardized juvenile detention screening instrument to the Office of Probation Administration no later than December 15, 2000;
- Developing a plan for regional, secure juvenile detention facilities and detention services and recommending a funding strategy;
- Developing statewide standards for juvenile diversion services throughout the state; and
- Reviewing the structure, purpose, and function of juvenile probation, analyzing juvenile probation offender characteristics, and determining the staffing level and types of services needed for juvenile probation to fulfill its core responsibilities.

The team is to submit a final report to the Governor and Legislature before its termination on June 1, 2002.

Further, recommendations from the team are to be considered by the Office of Probation Administration in preparing a standardized juvenile detention screening instrument that is to be distributed to probation officers and judges before October 1, 2001. The screening instrument is to be used to make juvenile detention decisions, including whether secure or nonsecure detention is indicated. LB 1167 provides definitions of secure and nonsecure detention.

LB 1167 also adopts the Court Appointed Special Advocate (CASA) Act, which allows for programs to provide trained volunteers who will advocate for children in juvenile court proceedings. CASAs generally operate in neglect and abuse cases and are appointed by the judge. LB 1167 stipulates that a memorandum of understanding is necessary between courts and CASA programs in any county where such a program wishes to operate. The bill enacts training guidelines in accordance with the national CASA organization and provides civil

immunity for actions made in the course of CASA duties. The CASA provisions were originally found in **LB 223**.

Another element of LB 1167 merges two juvenile services grant committees of the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission) into one grant committee named the Nebraska Coalition for Juvenile Justice. This provision was originally contained in **LB 1164**. The bill outlines membership qualifications and duties of the coalition. In addition to its duties relative to grants, the coalition is charged with identifying juvenile justice issues, sharing information, and monitoring and evaluating programs in the juvenile justice system. The coalition is required to annually report its activities to the Governor and Legislature.

Further, LB 1167 contains the provisions of **LB 1392**, which creates the County Juvenile Services Plan Act. Under these provisions, all Nebraska counties are required to develop a county or multi-county juvenile services plan by January 1, 2003. The plans, to be submitted to the crime commission, are to identify what juvenile services are available in the county or nearby, what facilities the county primarily uses for detention and their costs, and what delinquency risk factors exist in the county and service needs. Additionally, counties are to include a coordination plan and an enhancement, development, and expansion plan of community services to help prevent delinquency through intervention services.

Finally, LB 1167 requires that court-appointed guardians ad litem – persons who represent youth in out-of-home placements in court proceedings – must be licensed attorneys.

LB 1167 passed with the emergency clause 42-0 and was approved by the Governor on April 11, 2000.

LB 1352 – Create a Public Assistance Task Force and Eliminate Trust Provisions

(Janssen, Baker, Bohlke, Hudkins, and Schimek)

LB 1352 creates the Electronic Benefit Transfer Task Force whose job it is to prepare the state for the introduction of a swipe-card system to replace food stamps.

Supporters of the measure say the swipe-card system will save the state money, prevent fraud, and provide more convenience for recipients of food assistance.

The task force will advise the Department of Health and Human Services and the Policy Cabinet. Task force members include the State Treasurer, the Director of Administrative Services, the Director of Banking and Finance, the Director of Health and Human Services, the executive director of the Nebraska Grocery Industry Association, and the president of the Nebraska Electronic Transfer System, Inc. or their designees. Other members include representatives from the

banking and retail grocery industries, recipients of public assistance or organizations which advocate for the poor, the chairperson of the Legislature's Health and Human Services Committee, and another member of the Legislature chosen by the chairperson of the Executive Board.

The bill directs the State Treasurer to prepare an annual report containing the task force's findings and recommendations and detailing progress toward developing and implementing the electronic benefit system. The task force terminates on January 1, 2004.

Additionally, LB 1352 outright repeals Neb. Rev. Stat. sec. 68-1047 pertaining to Medicaid trusts. The state statute was considered redundant since the trusts are now addressed in federal law.

LB 1352 passed with the emergency clause 46-0 and was approved by the Governor on April 7, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 708 – Change Provisions for Admission of Persons to State Hospitals and Use of Other Facilities *(Hudkins)*

LB 708 would have given first priority status for admittance to the state's regional centers for the mentally ill to persons who had been committed by county mental health boards or district courts. It also would have required the Department of Health and Human Services (HHS) to assume custody of patients within 24 hours after receiving notice of a commitment order from a mental health board or district court. If a state mental health hospital were unable to accommodate all patients committed, the director of HHS would have been required to certify other public or private hospitals with acute psychiatric care facilities to accommodate committed patients and to ensure they received appropriate services. The cost of care would have been assessed to the state.

The measure was intended to address the situation, especially acute in the most urban counties of the state, that occurs when there is no room in the state hospitals for persons committed by the local mental health boards. This in turn creates a situation where there is no room at the county level for emergency committals to local facilities made by law enforcement agencies.

LB 708 advanced to General File with committee amendments but died with the end of the session.

**LB 1210 – Adopt
the Program for
Assertive
Community
Treatment Act**

*(Robak, Bohlke, Kiel, Price,
Schimek, and Suttle)*

LB 1210 proposed to assure adequate community-based services for Nebraskans with severe and persistent mental illness by establishing the Program for Assertive Community Treatment (PACT).

The bill would have required the Director of Health and Human Services (HHS) to establish one or more PACT teams per mental health region. The PACT teams were to be within the regional center budgets and HHS would have been required to seek a Medicaid waiver to assist in funding the PACT teams.

The measure would have provided specific duties for the regional teams. These duties would have included assisting persons' transition into the community from inpatient hospitalization; providing 24-hour clinical responsibility to persons in their care; maintaining a clinical relationship with clients after admission to inpatient treatment programs with the goal of minimizing inpatient stays; and providing continuous treatment as a self-contained service unit responsible for the assessment, evaluation, and treatment of persons in their care.

LB 1210 advanced to General File but died with the end of the session.

**LB 1407 – Authorize
Child-Care Expense
Reimbursement for
Low-Income
Families**

(Appropriations Committee)

LB 1407 would have placed an income eligibility limit in state statute for the child-care assistance program. However, the original bill did not specify an income level, but was intended to “begin the discussion on whether income eligibility for the child care program should be defined in state statute,” according to the Introducer’s Statement of Intent.

The measure also would have repealed the 24-month cap currently in statute on child care assistance for families transitioning off the Aid to Dependent Children (ADC) program. It also would have required a study by the Health and Human Service System (HHSS) on the economic and social impacts of increasing the family cost share for child care.

The impetus behind LB 1407 was a \$28 million cost overrun in the state’s child-care program that some blamed on an administrative change in the eligibility requirements for the subsidies made by the former HHSS director without legislative input or approval. The change increased the number of families qualifying for the program, which was designed to help the working poor by subsidizing child-care costs. According to the Introducer’s Statement of Intent, “This change could be made without the Legislature’s knowledge because of the program surplus [before the change was made] and because the statute is silent on the income eligibility criteria for families not transitioning from ADC.”

The pending committee amendment would have provided for the study, but would have limited assistance under the program to families with incomes up to 185 percent of the federal poverty level for up to 24 months. Also, the amendment would have required HHSS to consider a family's assets in determining the amount of child-care aid.

LB 1407 was bracketed until April 11, 2000, and died with the end of the session.

JUDICIARY COMMITTEE

Senator Kermit Brashear, Chairperson

ENACTED LEGISLATIVE BILLS

LB 921 – Change Provisions Relating to Court Procedure *(Brashear)*

LB 921 makes numerous technical and clarifying changes in criminal and civil procedure statutes, including measures originally found in **LB 1013**, pertaining to the statute of limitations for torts, and **LB 1204**, pertaining to the method of service in small claims court.

The changes made by LB 921 include:

- Resolving an inconsistency between Nebraska’s discovery rules and hearsay statutes involving the use of a deposition when the witness is at a distance greater than 100 miles from the place of trial or hearing;
- Placing the burden on the plaintiff for serving a certified mail notice of a small claims court hearing, as opposed to the clerk of the county court who currently performs this duty;
- Lengthening the statute of limitations for certain intentional torts – such as assault and battery, false imprisonment, or malicious prosecution – from one year to four years;
- Defining entry of a judgment – not the date of rendition – as the relevant time for marking the starting time to appeal, a change in conformance with changes already made by Laws 1999, LB 43;
- Defining entry of a judgment as the uniform point for measuring time for all post-trial reviews, also to be consistent with Laws 1999, LB 43; and
- Clarifying statutory language as it relates to appeals from the county court in domestic relations cases, so that all appeals clearly proceed to the Court of Appeals.

LB 921 passed 44-0 and was approved by the Governor on March 21, 2000.

**LB 972 –
Implement Child
Support Payments
Through the State
Disbursement Unit**

*(Brown, Beutler, Jensen,
and Wehrhein)*

LB 972 fulfills the state's intention to comply with the federal statute requiring a centralized child support collection and disbursement unit. In 1999, lawmakers passed LB 637, which created the State Disbursement Unit (SDU). LB 972 details the functions and responsibilities of the SDU and establishes a customer service center.

The state Treasurer's Office is given responsibility as contractor for the state for the SDU. Starting on the bill's operative date, all child support orders will be made to the SDU instead of the clerks of the district courts. The bill provides an operative date of April 1, 2000 or whenever the state has a certified child support computer system. According to the bill's Fiscal Note, the upgrading of the state computer system is projected to be completed by September 1, 2001.

The bill requires the SDU to receive and send out child support payments, distribute information on the status of payments, and provide one location for employers to send income withholding payments. LB 972 also establishes a toll-free telephone line to answer child support disbursement questions and creates a State Disbursement Advisory Committee. The committee is to advise the state Department of Health and Human Services on ways to improve the SDU and customer service.

LB 972 also became a vehicle for economic development in rural Nebraska when the provisions pertaining to the customer service unit were amended to require that the unit be established in a county where its employees would make up at least 0.25 percent of the county's total labor force. (Originally, the figure was 0.5 percent of the county's total labor force. The smaller figure allows some customer service employees to be in Lancaster County along with the employees of the SDU.)

LB 972 passed with the emergency clause 47-0 and was approved by the Governor on April 13, 2000.

**LB 994 – Change
Provisions Relating
to the Nebraska
Law Enforcement
Training Center**

*(Dw. Pedersen and Smith, at the
request of the Governor)*

LB 994 allows the state university, state colleges, and community colleges to offer academic training for law enforcement hopefuls by providing pre-certification education to take place outside the 12-week program at the Nebraska Law Enforcement Training Center in Grand Island.

The bill also requires students to pay tuition themselves, rather than receiving training at state expense. Sponsoring agencies are also allowed to pay for their students' training. The transition to a complete tuition-based system is authorized to take until June 30, 2005, during which tuition expenses may be financed by the training center through other appropriated funds.

The bill's supporters said that shifting the academic portion of officer training to colleges and the university would free up resources at the law enforcement training center. This would enable the center to train 25 percent more officers, producing a pool of trained candidates from which police departments could choose. LB 994 also retains the \$2 court cost fee, which funds the center, until 2007, when the fee will be eliminated. The implementation delay is intended to give the center time to find alternate funding sources.

LB 994 allows the Nebraska Commission on Law Enforcement and Criminal Justice and the Nebraska State Patrol to maintain the independent and distinct operation of their own training academies.

LB 994 redefines the purposes of the training center. It is given authority to test all law enforcement candidates and other training schools to ensure they meet pre-certification and certification requirements as set by the Nebraska Police Standards Advisory Council and to conduct pre-certification and certification programs. The council's new duties under the bill are also enumerated, including the authority to impose fines on individuals, political subdivisions, or agencies for violating its rules and regulations pertaining to the law enforcement pre-certification and certification programs.

LB 994 passed 42-0 and was approved by the Governor on March 22, 2000.

**LB 1008 – Authorize
Funding for, Access
to, and Judicial
Notice of Specified
Criminal Justice
Reports**

(Chambers and Brashear)

LB 1008 authorizes changes necessary to complete a study of Nebraska's death penalty authorized in 1999, including more money, a longer timeframe, and access to confidential materials.

LB 1008A appropriates an additional \$40,000 to complete the study as requested by the Nebraska Commission on Law Enforcement and Criminal Justice (crime commission) and \$20,000 each in FY2000-01 and FY2001-02 to pay for ongoing costs. The original appropriation authorized in Laws 1999, LB 76A was \$160,000.

The bill authorizes the release of presentencing reports to the crime commission, under the direction and supervision of the Chief Justice of the Supreme Court, for the sole purpose of carrying out the study. The crime commission must treat the information as confidential and cannot release anything identifying individuals.

LB 1008 also extends the deadline for completing the study to August 1, 2001, and provides explicit statutory authority and direction to the executive director of the crime commission to conduct the study. State statute lacked intent language for the death penalty study because the Governor vetoed the original bill detailing the study, LB 76, along with its appropriation bill in 1999. However, the Legislature

was able to override the veto of LB76A, which gave the crime commission \$160,000. At the time, senators said floor debate would have to suffice as legislative intent for the extra funding granted the commission via LB 76A.

Subsequently, LB 1008 authorizes the review and analysis of all cases involving criminal homicide committed on or after April 20, 1973, in order to examine:

- The facts, including mitigating and aggravating circumstances;
- The race, gender, religious preference, and economic status of the defendant and of the victim to the extent such can be ascertained;
- The charges filed;
- The result of the judicial proceeding in each case; and
- The sentence imposed.

LB 1008 provides for the release of the study to the Governor, Legislature, and Supreme Court and directs the crime commission to undertake annual updates. Finally, LB 1008 directs that the Nebraska Supreme Court can take judicial notice of the study's findings and any subsequent updates in its reviews of convictions receiving the death penalty as per Neb. Rev. Stat. secs. 29-2521.01 through 29-2521.04.

LB 1008 passed with the emergency clause 48-0 and LB 1008A passed 47-0. The Governor approved LB 1008 with a line-item veto of \$40,000 that duplicated money provided in LB 1008A.

LEGISLATIVE BILLS NOT ENACTED

LB 414 – Transition the Office of Clerk of the District Court to a State Reimbursed Position

(Beutler)

LB 414 would have merged the positions of county court clerk and district court clerk into the position of clerk of the court. The clerk of the court would have had all the duties, obligations, and powers of both the clerk magistrate of the county court and the clerk of the district court. The transfer of district and county clerk positions to state employment would have allowed for the integration of the entire state court system, according to the bill's introducer.

Under provisions of the bill, if the position of clerk of the county court or clerk of the district court were vacant or if there were an ex officio clerk of the district court on or after the effective date of the act, then the state Supreme Court could have ordered that the positions be consolidated into one, to be called clerk of the courts. The clerk of the courts and employees would have become state employees as of the merger date. LB 414 guaranteed that no employee would lose salary or accrued benefits as a result of consolidation and pro-

vided that the clerk in office at the time of the merger would be the clerk of the court, if he or she so desired the position and was willing to comply with required training. The bill also provided guidance to districts if no consolidation had been ordered by the Supreme Court on or after the act's effective date.

LB 414 would have required that a merger plan be developed prior to merger and enumerated how this was to be accomplished. Plan approval by a majority of judges in the affected district would have been required. If a plan were not developed within the specified time-frame, then LB 414 would have given the job of developing the plan to the Supreme Court.

Further, LB 414 would have made the new position appointive rather than elected. Clerk of the court vacancies in a consolidated district would have been appointed by the presiding district court judge and the presiding county court judge of the judicial district and the Chief Justice of the Supreme Court, or their designees.

LB 414 passed 25-19, but was vetoed by the Governor on April 10, 2000.

LB 652 – Change Provisions Relating to the Secure Youth Confinement Facility

(Thompson and Lynch)

LB 652 would have transferred the Nebraska Correctional Youth Facility, an Omaha secure facility for juveniles, from the control of the state Department of Correctional Services to the Office of Juvenile Services (OJS) within the Health and Human Services System. The transfer would have been effective on January 1, 2002. Additionally, LB 652 would have made other changes in how juveniles are placed within the criminal justice system.

The bill originally proposed a cigarette tax increase to pay for a juvenile correctional facilities master plan. That was accomplished, however, through an amendment to the mainline budget package passed during the 1999 legislative session. As amended, LB 652 contained provisions originally found in **LB 472**, **LB 512**, and **LB 610**.

The transfer of the Correctional Youth Facility would have provided a placement option to OJS for serious, chronic juvenile offenders, which it currently lacks. The lack of placement options for serious juvenile offenders leads to a high number of this population being placed in out-of-state facilities. Federal law requires that secure facilities be placed under the jurisdiction of the state's juvenile justice system in order to provide programs for serious, chronic juvenile offenders, as well as housing juveniles who have been convicted as adults.

Further, LB 652 would have required the state, through OJS, to assume responsibility for juveniles requiring out-of-home placement. This responsibility would have included making placement decisions

and paying for the costs of those placements. This would have shifted the costs of placement from counties to the state. The bill would have maintained the county responsibility for transportation costs for juveniles needing out-of-home placements.

LB 652 passed with the emergency clause 42-2 but was vetoed by the Governor on April 10, 2000. The motion to override the Governor's veto failed, 24-18.

LB 1405 – Adopt the Fetal Tissue Research Act

(Hilgert, Aguilar, Baker, Brashear, Bruning, Byars, Coordsen, Cudaback, Dickey, Dierks, Engel, Hartnett, Hudkins, Jensen, Jones, Kremer, Dw. Pedersen, Preister, Quandabl, Redfield, Schmitt, Schrock, Smith, Stubr, Tyson, Wehrbein, Crosby, and Vrtiska)

LB 1405 would have banned the use of fetal tissue from elective abortions in medical research. The bill took aim at an earlier disclosure that the University of Nebraska Medical Center was using aborted fetal tissue to conduct research into Alzheimer's disease and other neurodegenerative diseases.

The bill would have made it unlawful for any public employee or public institution to engage in the use of aborted fetal tissue or any public funds to be expended for the use of aborted fetal tissue. Further, LB 1405 would have made it unlawful for "any person to engage or participate in the use of aborted fetal tissue." Sanctions in the bill were limited to seeking injunctive relief or civil contempt for intentionally violating an injunction to cease and desist in the use of aborted fetal tissue.

LB 1405 was pulled from committee by a vote of 28-17. However, it was removed from the agenda after three hours of debate on March 28, 2000, and died with the end of the session.

LB 1413 – Change Provisions Relating to Offenses Against Animals

(Brashear)

LB 1413 would have made a criminal distinction in state law between persons who are convicted of neglecting or abandoning an animal and persons who are convicted of cruelly mistreating an animal.

The Introducer's Statement of Intent articulated two benefits. "Such a change furthers the ongoing goal of providing for proportionality under the law. The law should punish those who abuse and torture an animal differently than those who abandon an animal. . . . Moreover, studies indicate a link between animal abuse and violence against people. Treating animal cruelty differently than animal neglect or abandonment acknowledges such a link and furthers efforts to address this problem."

The bill would have made conviction of abandoning or cruelly neglecting an animal a Class II misdemeanor for the first offense and a Class I misdemeanor for any subsequent offense. Conviction of cruelly mistreating an animal, however, would have been a Class IV felony for the first offense and a Class IIIA felony for any subsequent offense.

Further, the bill would have directed the court to give preference to “adoption alternatives through humane societies or comparable institutions and to the protection of such animal’s welfare” for any animal seized or held as the result of an abuse or neglect action. Another provision would have allowed the court to stipulate that adopting parties could not sell these animals for at least one year.

LB 1413 advanced to General File but died with the end of the session.

NATURAL RESOURCES COMMITTEE

Senator Ed Schrock, Chairperson

ENACTED LEGISLATIVE BILLS

LB 900 – Merge the Department of Water Resources and the Nebraska Natural Resources Commission and Change Water Appropriation Provisions

(Natural Resources Committee, at the request of the Governor)

LB 900 creates a new agency, the Department of Natural Resources, by merging the Nebraska Department of Water Resources and the Nebraska Natural Resources Commission.

The Natural Resources Commission retains its 16-member makeup and most of its responsibilities under the provisions of the bill. However, responsibility for floodplain management and approval of water planning and review reports transfer to the new agency. The bill specifies that the commission also acts in an advisory capacity to the Director of Natural Resources. The director, to be appointed by the Governor, must meet the previous statutory requirements of the Director of Water Resources – at least five years' experience in irrigation work and registration as a professional engineer.

The new Department of Natural Resources becomes the official agency of the state for water resources development, soil and water conservation, flood prevention, watershed protection and flood control.

According to the *Nebraska Blue Book*, the Department of Water Resources was originally created by the Legislature in 1895 as the Board of Irrigation, with jurisdiction over water rights used for irrigation, power, and other purposes. The department's current duties include regulating facilities that use ground water, regulating water use rights in Nebraska streams and measuring stream flows, and approving petitions for creating public irrigation and reclamation districts. The Nebraska Natural Resources Commission was created in 1937 as the Soil Conservation Committee and its main duties included long-range planning, management, and use of Nebraska's land and water resources. The commission has been responsible for soil and water conservation, floodplain management, watershed protection, and the storage of natural resource information. The commission created the original natural resources district boundaries in 1971.

The provisions of **LB 902** pertaining to water rights were added to LB 900 via committee amendment. Specifically, those provisions allow three things: (1) Holders of small water rights can divert or pump water at a rate greater than the permitted rate, as long as the total amount of water pumped over seven days does not exceed the amount that could have been pumped continuously at the permitted rate over the same period; (2) an appropriator of water rights can add a second water right to an existing water right for a given piece of land, as long as the two water rights together do not exceed a rate of

one cubic foot per second for 70 acres; and (3) a well or a replacement well in existence prior to the effective date of the act and located within 50 feet of the banks of a stream can be pumped without obtaining a surface water permit.

Finally, LB 900 allows surface-water irrigators to be eligible for cost-share programs to install measuring devices for diversions from the Republican River and extends a deadline to June 1, 2001, for meeting a requirement that 90 percent of active eligible wells in that basin be measured.

LB 900 passed with the emergency clause 44-0 and was approved by the Governor on March 22, 2000.

LB 901 – Change Provisions Relating to the Nebraska Power Review Board and Certain Public Utility Districts and their Governing Boards

(Natural Resources Committee)

LB 901 represents the next step in Nebraska’s electrical restructuring evaluation process, as recommended by the LR 455 study, which said the state should base future electrical restructuring on deregulation when certain conditions are present.

The bill states, “It is . . . the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. . . . Consequently, there is a need for the State of Nebraska to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.” To accomplish this task, LB 901 directs the Nebraska Power Review Board to hold public hearings on retail electrical competition. It also requires the board to annually report to the Governor and the Legislature whether the state would benefit from competition in the electrical industry. The measure outlines pertinent information the board must include in its reports, including an update on the deregulation activities in other states and at the federal level.

Further, LB 901 introduces two new terms to state statutes. “Regional transmission organization” refers to an entity independent of those entities that generate or market electricity at wholesale or retail, with operational control over the electric transmission lines in a designated geographic area. A regional transmission organization is intended to reduce constraints in the flow of electricity and ensure that all power suppliers have open access to transmission lines. “Unbundled retail rates” means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers. These components include, but are not limited to, the separate charges for the generation, transmission, and distribution of electricity.

LB 901 also contains parts of **LB 823**, which increases salaries for board members serving on public power and public irrigation districts, and increases the per diem rate from \$50 to \$70 for irrigation district board members.

LB 901 passed 47-0 and was approved by the Governor on April 11, 2000.

LB 1234 – Create the Niobrara Council and the Ethanol Pricing Task Force; Provide for Wastewater Treatment Facility Grants and a Water Quality Monitoring Study; and Prohibit the Sale of MTBE

(Schrock, Aguilar, Beutler, Boblke, Bourne, Bromm, Bruning, Byars, Connealy, Coordsen, Cudaback, Dickey, Hartnett, Hudkins, Janssen, Jensen, Jones, Kiel, Kremer, Kristensen, Lynch, D. Pederson, Preister, Schimek, Stubr, Thompson, Tyson, Vrtiska, Wehrbein, and Wickersham)

Among its far-flung provisions, LB 1234 reconstitutes a state council to oversee the management of the scenic Niobrara River in concert with federal officials, creates a task force to study how ethanol is priced in the state, undertakes a water quality study, and bans the oxygenated gasoline additive MTBE. As originally introduced, LB 1234 would have required that all nonpremium gasolines sold in Nebraska contain ethanol.

Supporters of the original measure had hoped to give ethanol, a corn-derived gasoline additive, a competitive edge against regular, unleaded gasoline, which is often priced lower at the pump. However, in the face of stiff opposition, the ethanol provisions of the bill were amended to create a nine-member Ethanol Pricing Task Force to examine the “practices, policies, and methods by which ethanol prices are set,” including a comparison of ethanol prices to other motor fuel prices in Nebraska.

The bill outlines membership requirements of the task force, requires the task force file a written report with the Legislature concerning its findings and recommendations, and provides that the task force will terminate on December 31, 2000.

Another provision of LB 1234 prohibits retailers from offering petroleum products with more than 1 percent of MTBE by volume after October 1, 2000. MTBE was originally added to gasoline to make fuel burn cleaner, thereby protecting air quality. However, MTBE has since been found to have deleterious effects on groundwater. LB 1234 also authorizes the Department of Environmental Quality (DEQ) to conduct a two-phase, comprehensive study of water quality monitoring in Nebraska. The first phase will consist of a detailed description of all current water quality monitoring in Nebraska at the state and local levels and an analysis of whether this monitoring is sufficient and scientifically sound. Phase two of the study will outline any changes deemed necessary in the current water quality monitoring to establish a comprehensive, integrated statewide monitoring system.

Yet another provision of LB 1234 authorizes DEQ to make emergency grants to communities in the event that wastewater treatment facilities are damaged or destroyed by a natural disaster or other unanticipated circumstances. Funding for the grants comes from the existing balance of the Construction Administration Fund. This provision was originally found in **LB 1000**.

Finally, LB 1234 contains the provisions originally found in **LB 1381**, which eliminates the Niobrara Scenic River Local Management

Council and creates the Niobrara Council to manage the Niobrara scenic river corridor. The act allows the Game and Parks Commission to provide up to \$50,000 per year to the new council for administrative support. The change was deemed necessary to comply with a recent federal court ruling to grant the local council the express authority and responsibility to manage the Niobrara scenic river corridor in conjunction with the National Park Service.

LB 1234 passed 43-4 and was approved by the Governor on April 11, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1331 – Require Covering Certain Wastewater Treatment Lagoons

(Schrock, Boblke, Dierks, Engel, Bruning, and Aguilar)

In an attempt to address the odor and pollution released from anaerobic wastewater treatment lagoons, LB 1331 would have required all large, animal-slaughtering facilities to cover their lagoons.

The bill would have defined the type of facility affected by the new requirements as “any agriculture processing facility with a primary Standard Industrial Classification code of 2011 and a daily production capacity of more than one thousand animal units, as defined in section 54-2402, whose primary purpose is the slaughter of livestock. . . .” The bill also would have required all new anaerobic wastewater treatment lagoons meeting the definitions of the bill to include covers on their lagoons. A civil penalty of \$10,000 per day per offense could have been assessed against violators.

The bill would have given existing facilities until September 30, 2000, to file compliance plans with the Department of Environmental Quality (DEQ) and 120 days upon approval of the plans to actually have the lagoons covered.

LB 1331 advanced to General File but died with the end of the session.

LB 1426 – Prohibit Certain Acts Relating to Livestock Waste Control Facilities

(Tyson, Aguilar, Beutler, Boblke, Dierks, Engel, Janssen, Jensen, Lynch, Preister, Quandabl, Robak, and Schmitt)

LB 1426 would have prohibited livestock operations with less than 1,000 animal units from locating within the watershed of a trout stream. Current law prohibits operations with more than 1,000 animal units from operating in such watersheds, with certain exceptions.

The bill was introduced in response to a proposed dairy expansion near the headwaters of the East Branch of the Verdigre Creek in Antelope County. LB 1426 followed on the heels of Laws 1999, LB 822, which prohibited larger livestock operations from building or expanding within the watersheds of trout streams, statutorily defined as Class A cold water streams. There are 15 such watersheds in Nebraska, according to the state Department of Environmental Quality.

LB 1426 was held by the committee and died at the end of the session.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Elaine Stuhr, Chairperson

ENACTED LEGISLATIVE BILLS

LB 155 – Change Provisions of the Class V School Employees Retirement System

(Lynch and Kiel)

LB 155 makes several changes to the Class V (Omaha) School Employees Retirement System. The bill increases the multiplier used for calculating the final average compensation for determining members' retirement from 1.85 to 2 percent. This change will increase pensions for future retirees.

The bill also places in statute the current district practice of contributing to the retirement plan an amount equal to the greater of: (1) 100 percent of employee contributions; or (2) the amount needed to maintain the plan's solvency.

LB 155 establishes a "deferred disability retirement" by which a member is permitted to defer receipt of his or her retirement if he or she becomes totally disabled. A disabled applicant can defer retirement up to the time that he or she must collect his or her pension, but not for more than a maximum of 35 years of total creditable service. The disabled person's retirement annuity will be based on the total number of years of his or her creditable service, including the service before and after the person became totally disabled. Cost-of-living adjustments provided to retirees during the deferral period will be added to the person's retirement annuity.

Lastly, the bill allows a member's former spouse to receive a lump-sum payment of the member's pension if the former spouse has received the right to the pension pursuant to a "qualified domestic relations order."

LB 155 passed with the emergency clause 42-0 and was approved by the Governor on March 21, 2000.

LB 1192 – Change Retirement-Related Membership, Reporting, Liability, and Bidding Provisions

(Nebraska Retirement Systems Committee)

LB 1192 encompasses changes to several different portions of Nebraska retirement systems law. The bill makes several changes to provisions of all five of the state-administered retirement systems (the state, county, school, judges, and State Patrol retirement systems.) The bill mandates that each system provide the Public Employees Retirement Board (PERB) with accurate and complete information regarding their membership. The bill permits PERB to carry out sampling procedures to verify the accuracy of the information and directs PERB to implement an employer education program to help the retirement systems properly file this information.

The bill also makes specific changes to the School Employees Retirement System. The bill clarifies the definition of “termination of employment.” Under the bill, a member is not considered terminated if he or she returns to work with any school employees retirement system employer (employer) within the same plan year or within 180 days, whichever period is longer. If the member returns to work with an employer after this time, he or she will be considered terminated from their previous school system’s employment.

LB 1192 also increases from one to five years the time that members of the school system can claim a work-related-disability-retirement benefit. If the disability is not related to work in a Nebraska public school, the member has only one year from his or her termination to apply for a disability-retirement benefit.

The bill also clarifies the definition of “termination of employment” for the State Patrol system. Under the bill, a member is not considered terminated if he or she returns to work within the same plan year or within 120 days, whichever is longer. If a member returns to work with the State Patrol after this time, he or she will be considered terminated from his or her previous State Patrol employment.

LB 1192 also allows PERB to extend its contract for actuarial services for up to three years without a competitive, formal bidding process if PERB considers the extension to be cost effective. The bill also requires that PERB send a summary statement to each contributing member of each retirement system every two years. The statement must contain: (1) the member’s salary and creditable service; and (2) other information determined by PERB to be necessary to calculate the member’s retirement benefit. If a member does not dispute the statement within 90 days, then he or she is barred from challenging the information contained in the statement.

LB 1192 passed with the emergency clause 43-0 and was approved by the Governor on March 21, 2000.

REVENUE COMMITTEE

Senator Robert Wickersham, Chairperson

ENACTED LEGISLATIVE BILLS

LB 419 – Change Provisions Relating to the Valuation of Farm Sites for Property Tax Purposes

(Coordsen, Baker, Bohlke, Cudaback, Dierks, Hudkins, Jones, Kremer, Matzke, Raikes, Schellpeper, Schmitt, Schrock, Stuhr, Vertiba, and Wehrhein)

LB 419 provides rules for establishing the value of a “farm site” for property tax purposes. A “farm site” is the portion of land contiguous to land actively devoted to agriculture that includes agricultural or horticultural improvements, such as a barn, silo, or corral, or an uninhabitable or unimproved farm home site. A “farm home site” is up to one acre of land that is contiguous to a farm site and that includes an inhabitable residence and improvements (i.e., utility connections, water and sewer systems, and improved access to a public road) used for residential purposes.

Land being used as a farm site that is not occupied or being used for any other nonagricultural purpose will be “valued at the same assessed value as the contiguous agricultural land which is under the same ownership” and which is being used as agricultural land. LB 968, which is discussed beginning on p. 79 of this report, amended LB 419 to provide that it will become operative January 1, 2002.

LB 419 passed 41-0 and was approved by the Governor on February 22, 2000.

LB 482 – Provide Adoption Incentive Payments for Adopting Wards of the State

(Matzke, Baker, Engel, Jensen, Landis, Schimek, and Smith, at the request of the Governor)

As introduced, LB 482 would have provided an individual income tax credit for residents of the state who adopt a qualifying child under six years of age. Adoptive parents would have been allowed to claim a refundable income tax credit equal to \$1,000 each year until the year in which the child turned six years old.

However, as amended by the committee amendment, LB 482 provides for paying an individual or couple who adopt a ward of the state \$1,000 for the year of adoption and \$1,000 each year for up to four succeeding years. Only adoptions decreed on or after January 1, 2000, are eligible for the payments. Payment will not be made for a year in which the child reaches the age of majority, is emancipated, or is no longer living in the home of the adoptive parent or parents.

LB 482 also provides an application procedure that adoptive parents must use to obtain payment. An application form must be submitted by the adoptive parents to the Department of Health and Human Services during January of the year following the year for which payment is sought.

The department must review all applications to determine eligibility for payment and approve or deny payment within 30 days after receipt of the application. Any person aggrieved by a decision of the department may appeal the department's decision in accordance with the Administrative Procedure Act. The bill also requires the department to adopt and promulgate rules and regulations to carry out the provisions of LB 482.

LB 482 passed 43-1 and was approved by the Governor on April 10, 2000.

LB 936 – Adopt the Rural Economic Opportunities Act

(Matzke, Aguilar, Baker, Bourne, Brashear, Bromm, Brown, Bruning, Byars, Coordsen, Crosby, Cudaback, Dickey, Dierks, Engel, Hartnett, Hudkins, Jones, Kremer, Kristensen, Lynch, D. Pederson, Price, Quandahl, Redfield, Robak, Schimek, Schmitt, Schrock, Smith, Stubr, Tyson, Vrtiska, Wehrbein, and Dw. Pedersen, at the request of the Governor)

LB 936 adopts the Rural Economic Opportunities Act. The act provides for certain nonrefundable income tax credits relating to qualified economic development projects. The act also provides for the recapture of the tax credits if a company fails to meet the act's investment and employment requirements. Further, the act contains legislative findings and a declaration of policy, defines key terms and phrases, provides for an application process and a written agreement, contains taxpayer confidentiality protections, provides for an annual report to the Legislature, and provides a sunset date.

A qualifying taxpayer will be entitled to:

- (1) A credit equal to five percent of the amount by which the total compensation paid during the year exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees; and
- (2) A credit equal to 10 percent of the investment made in qualified property at the project.

Both credits are allowable during each year that the taxpayer is at or above the required levels of employment, wages, and investment. However, the 10-percent credit also is allowable during the first year of the entitlement period after the date of the application and before the required levels of employment, wages, and investment are met. Unused credits may be carried over until fully used, except that no credit may be carried over more than three years after the end of the "entitlement period" (i.e., "the year during which the required increases in employment, wages, and investment were met or exceeded and the next six years").

A taxpayer must file an application for the credits on forms provided by the Tax Commissioner. The application must contain specified information and documentation, such as a written statement describing the plan of employment, wages, and investment for a qualified business in Nebraska, and must be accompanied by payment of a nonre-

fundable \$500 application fee. Application fees will be deposited in the Rural Economic Opportunities Fund, which is created by the bill.

The act provides that the Tax Commissioner will approve the application only if it meets certain conditions. The application must:

- (1) Define a project in one or more “qualified business” activities in Nebraska;
- (2) Show that the project will result in the hiring of a number of new employees equal to at least one-half of one percent of the labor force in the county or counties in which the project will be located. (“Labor force” is defined as “the total annual average county labor force for the most recent calendar year reported as of July 1 by the Department of Labor.”);
- (3) Show that the project will result in paying the number of new employees annual wages that will average at least the “qualifying wage” (i.e., the greater of 125 percent of the county average annual wage in the county or counties where the project is located or 100 percent of the regional average annual wage in the region or regions where the project is located);
- (4) Show that the investment in “qualified property” will be at least (a) \$100,000 multiplied by 0.5 percent of the labor force if the project is located in a county or counties where the labor force is greater than 3,000 or (b) \$50,000 multiplied by 0.5 percent of the labor force if the project is located in a county or counties where the labor force is 3,000 or less; and
- (5) Contain plans for achieving the required levels of employment, wages, and investment for the project before the end of the second year after the year in which the application is submitted and maintaining the required levels of employment, wages, and investment for the entitlement period.

“Qualified business” means “any business in the storage, warehousing, distribution, transportation, or sale of tangible personal property,” as well as any business engaged in certain specified “activities.” Qualified activities include data processing; telecommunications; insurance; financial services; assembling, fabricating, manufacturing, or processing tangible personal property; administrative management of any activities, including headquarters facilities relating to such activities; or any combination of such activities. “Qualified business” does *not* include a livestock operation or “any business activity” in which 80 percent or more of total sales are sales to the ultimate consumer of: (a) food prepared for immediate consumption (e.g., fast food establishments); or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or which

is not used by the purchaser in any of the above-listed qualified activities (e.g., retail stores).

“Qualified property” means “any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code, or the components of such property, that will be located and used at the project.” However, “qualified property” does *not* include “(a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Rural Economic Opportunities Act to another person.”

“Base-year employee” means “any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the project.” An employee of a “qualified employee leasing company” will be considered to be an employee of the client-lessee for purposes of the act if the employee performs services for the client-lessee. A qualified employee leasing company must provide access to the Department of Revenue to the records of employees leased to the client-lessee.

Additionally, certain specified “transactions” (e.g., purchasing or leasing property which was previously owned by the taxpayer or a related person) or “activities” (e.g., moving a business from one location to another when the business was operated in Nebraska during the 360 days before the date of the application) will not create any credits or allow any benefits under the act.

If the Tax Commissioner approves the application, the taxpayer must enter into a written agreement with the Tax Commissioner. The taxpayer must agree to complete the project. The Tax Commissioner will designate the approved plans of the taxpayer as a project and, in consideration of the agreement, will agree to allow the taxpayer to use the incentives provided for by the Rural Economic Opportunities Act. The act also contains a list of items that must be stated in the written agreement, such as the time period under the act in which the required levels must be met.

The act prohibits project applications from being filed on or after July 1, 2004. However, the bill provides that “all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.”

The act requires the Tax Commissioner to submit an annual report to the Legislature by June 30 each year showing certain information (e.g., credits earned and number of jobs created) by “industry group.” Nevertheless, the act’s taxpayer confidentiality protections could, under certain circumstances, prohibit the disclosure of certain information otherwise required to be published in the annual report. The act

provides that the application and all supporting information will be confidential, except (1) the name, location, and qualification level of approved projects and (2) information required to be contained in the annual report. But the act also provides that “[n]o information shall be provided in the report that is protected by state or federal confidentiality laws.” Thus, for instance, if only one project has been approved for a particular “industry group,” information such as the dollar amount of credits earned by the taxpayer in that industry group would be protected from disclosure by state and federal confidentiality laws.²

LB 936 passed 44-5 and was approved by the Governor on April 10, 2000.

**LB 968 – Omnibus
Property Tax
Legislation**
(Revenue Committee)

LB 968 is an omnibus bill that generally concerns property taxation.

Taxation of Public Property

The bill includes provisions governing the taxation of property owned by the state or a governmental subdivision which is leased but not used for a public purpose. By January 31, 2001, the state and each governmental subdivision must give a copy of each lease in effect on January 1, 2001, for property owned by such unit of government, to the appropriate county assessor. In subsequent years, the state and each governmental subdivision must provide to the appropriate county assessor: (1) each new lease; (2) each preexisting lease that went into effect during the previous year but which has materially changed; and (3) a listing of previously reported leases that are still in effect.

LB 968 provides that taxes assessed to the lessee are due and payable in the same manner as other property taxes. The bill eliminates language which required taxes on leased governmental property to be paid by the leaseholder and which provided that the payment of taxes would be a lien against the leaseholder’s interest. If the property is leased by the state or a governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee, the bill requires the lessor to immediately forward to the lessee the notice, sent by the county assessor, indicating that the state or governmental

² The confidentiality and annual report requirements of LB 936 are substantially similar to the confidentiality and annual report requirements of the Quality Jobs Act. Whenever there has been only one project approved in a particular industry group, the annual report for the Quality Jobs Act has not shown the dollar amount of tax credits or the number of jobs created for that industry group. The Nebraska Department of Revenue takes the position that taxpayer confidentiality laws prohibit the publication of such information because the information for the industry group is a particular taxpayer’s information.

subdivision has property not being used for a public purpose for which a payment in lieu of taxes has not been made.

LB 968 permits the lessee to protest the county assessor's determination that the property is not being used for a public purpose. (Current law permits the state or governmental entity to file such a protest with the county board of equalization as well.)

Tax-Supported Nonprofit County Historical Societies

If a county levies the nonprofit county historical society property tax permitted by Neb. Rev. Stat. sec. 23-355.01, the levy will be subject to the county's property tax levy limit and the historical society will be subject to the Nebraska Budget Act. If the historical society does not receive funding from such a property tax levy, it may nevertheless request funding from the county. If such funding exceeds \$5,000, the historical society will be subject to the Nebraska Budget Act; however, the historical society's budget and audit will be included as part of the county's budget and audit.

Joint Public Agencies

LB 968 also contains a number of provisions relating to joint public agencies. Agreements entered into under the Joint Public Agency Act may be subject to the Volunteer Emergency Responders Recruitment and Retention Act. The bill authorizes the Auditor of Public Accounts to audit cemetery districts and joint public agencies and it authorizes joint public agencies to hold meetings via telephone conference call.

Property Tax Administration

The bill also contains a number of provisions relating to property tax administration. For instance, the bill shifts responsibility from the Department of Revenue to the Property Tax Administrator (PTA) for promulgating regulations and developing forms concerning property taxation of oil, gas, and mineral interests. In addition, the bill requires the PTA to hold examinations for certification as county assessor in February, May, August, and November each year. LB 968 also provides that personal property in transit will be listed and assessed in the "tax district" where the owner resides. However, if the personal property is intended for a business, it will be listed assessed in the tax district where the property of the business is required to be listed and assessed.

In addition, LB 968 contains a number of administrative provisions relating to centrally assessed railroads, car line companies, and public service entities. LB 968 requires the PTA to "annually calculate the

density factor used in distributing value along the [railroad] line based upon an average of the most recent three years.” If the density factor cannot be determined in that manner, the bill permits the PTA to “use other information to develop a fair and reasonable factor in lieu of the density factor.” The bill also changes a number of filing deadlines. For instance, a car line company has until February 15 (formerly March 1) each year to file an appeal with the PTA and a public service entity has until April 15 (formerly April 30) each year to file required information with the PTA. The bill contains a number of other provisions relating to public service entities as well, such as a provision that redefines “operating property” to mean property “owned or leased” that contributes to the public service entity’s function.

LB 968 eliminates the requirement that the “sales comparison approach” must take into account “factors such as location, zoning, and current functional use.” The bill provides that the term “county assessor” includes “an elected or appointed county assessor or a county clerk who is an ex officio county assessor.” Also, the bill defines the term “taxing official” to mean “any federal, state, or local government officer or employee charged with the duty of auditing, assessing, equalizing, levying, computing, and collecting taxes.”

School Finance

LB 968 also contains provisions relating to school finance. The bill redefines the phrase “state aid value” to mean, among other things, 100 percent of the special valuation accorded greenbelt property.

Under current law, on August 16, 2000, the State Treasurer will transfer to the Tax Equity and Educational Opportunities Support Act Stabilization Fund (fund) any money appropriated for purposes of the Tax Equity and Educational Opportunities Support Act which exceeds the amount of state aid certified pursuant to Neb. Rev. Stat. sec. 79-1022. LB 968 requires the State Treasurer to transfer additional amounts to the fund on August 16, 2000 (i.e., amounts set aside for “base fiscal year incentive payments” pursuant to Neb. Rev. Stat. sec. 79-1010(5)).

LB 968 clarifies that the aggregate school tax levy for a Class V school district (excluding a special levy for accrued retirement benefits and a levy for a site and building fund) is subject to the property tax levy limits of Neb. Rev. Stat. sec. 77-3442. (Before it was changed by the bill, Neb. Rev. Stat. sec. 79-1082 provided that such an aggregate school tax levy “shall be without restriction.”)

Tax Equalization and Review Commission

The provisions of **LB 967** were amended into LB 968. The bill clarifies powers and procedures of the Nebraska Tax Equalization and Review Commission (TERC) and makes certain changes with respect to average levels of assessment and acceptable ranges of valuation.

Whenever the TERC orders a change in the valuation of a class or subclass of real property – so that all classes or subclasses of property are within the acceptable range of value – its order must specify a percentage-change in valuation resulting in an average level of assessment equal to 96 percent of actual value for nonagricultural real property; 77 percent of actual value for agricultural land; and beginning January 1, 2001, 96 percent of the special or recapture value of greenbelt agricultural land. If the order changes the valuation for a subclass of real property, the order must also change the value of the class so that it is within the acceptable range of values.

Beginning January 1, 2001, the acceptable range of value for greenbelt real property must be 92 percent to 100 percent of the special value. However, for recaptured greenbelt property, the acceptable range of value must be 92 percent to 100 percent of the recapture value.

Also, LB 967 clarifies rules governing county wide equalization proceedings before the TERC and provides that only the county assessor may appeal a county board of equalization's decision to grant a real or personal property tax exemption.

Duties of special masters appointed by TERC will largely be confined to fact-finding missions. The bill provides that such duties may not include “the determination of conclusions of law or the final disposition of any case or controversy.”

The bill provides that the rules of evidence applicable in district court will apply in formal hearings held by the TERC and requires a written request for a formal hearing to be filed with the TERC within 30 days after the appeal is filed.

In addition, the bill requires TERC decisions to be certified; clarifies that judicial review of a TERC decision is instituted by filing a petition, paying docket fees, and delivering a copy of the petition to TERC within the prescribed time; and clarifies that bond is not required to appeal a TERC decision to the Court of Appeals.

Nebraska Budget Act

LB 1279 was amended into LB 968. The bill redefines the term “governing body,” for purposes of the Nebraska Budget Act, to include

political subdivisions that have authority to make a property tax request or that receive state aid. The term includes, among other political subdivisions, a public building commission, railroad transportation safety district, reclamation district, offstreet parking district, and transit authority.

Pursuant to section 5 of LB 968, when a governing body prepares its proposed budget statement, it will no longer be required to separately report information – such as allocations of revenue and unencumbered cash balances – for each fund.

Certain public power districts, public power and irrigation districts, rural power districts, municipal agencies engaged in operating power projects, and irrigation districts are still exempt from the Nebraska Budget Act. The bill moves the exemption from Neb. Rev. Stat. sec. 13-515 (which is outright repealed by LB 968, sec. 91) to Neb. Rev. Stat. sec. 13-502.

Property Tax Installment Payments and Taxation of Mobile Homes

LB 1048 was amended into LB 968. The bill authorizes any county board to pass a resolution allowing current (or delinquent) real or personal property taxes (and related interest, penalties, and publication costs) to be paid in minimum installments, provided for by the resolution.

Payments will be held in escrow by the county treasurer (or possibly a third-party escrow agent) in trust for the benefit of the taxpayer. The bill permits escrow funds to be held in a designated bank account or commingled with other county funds. The county board can decide to pay interest on funds held in escrow or not. Funds held in escrow for payment of delinquent taxes must be applied to the oldest delinquencies first. The bill provides that such a payment arrangement will not affect any collection procedure that is underway or available to the county until the delinquency is fully satisfied.

The bill also contains provisions relating to the taxation and collection of taxes on mobile homes, cabin trailers, manufactured homes, and similar property located on leased land. Such homes will be assessed and taxed as improvements to leased land. The bill also requires delinquent taxes on such homes to be stricken from the tax list if at least two years have expired; the treasurer has used due diligence to collect the taxes; and the person against whom the taxes have been charged has (1) moved out of the county or died and left no property from which the taxes can be paid or (2) it appears impossible to collect the taxes.

Bonds and the Municipal Infrastructure Redevelopment Fund

Provisions of **LB 1098** were amended into LB 968. The bill permits any municipality to enact an ordinance to issue bonds in one or more series for constructing or acquiring an infrastructure project and to pay the principal and interest on any such bonds by pledging funds received from the Municipal Infrastructure Redevelopment Fund (MIRF). The date of final maturity for such bonds cannot be later than August 1, 2009. A municipality issuing such bonds can dedicate a portion of its property tax levy authority to meet debt service obligations under the bonds, but only to the extent the receipts from the MIRF “pledged to the payment of such bonds and any other money made available for that purpose are insufficient to pay the principal and interest on such bonds as they mature.”

Redemption of School District Bonds

LB 1145 was amended into LB 968. Neb. Rev. Stat. sec. 10-126 generally permits counties, municipalities, school districts, drainage districts, irrigation districts, municipal corporations, and governmental subdivisions of the state to redeem bonded indebtedness at any time on or after five years from the date the bonds are issued. However, the statute provides exceptions for bonds issued by certain public power districts, municipalities, and housing authorities.

The bill adds an exception for school districts that have 1,000 or more students and that issue bonds of \$10 million or more. Such a school district may issue a bond that may not be redeemed before a certain date, which may be more or less than five years from the issuance of the bond. This new flexibility might help attract investors who expect interest rates to decline during the period in which the bond may not be redeemed. If such a bond required redemption within a relatively short period of time after issuance, investors who expect interest rates to rise over the mid- to long-term future might think of the bond as an attractive short-term investment opportunity.

Applications for Personal Property Tax Exemptions

LB 1188 was amended into LB 968. The bill was recommended by the Department of Property Assessment and Taxation and its numerous provisions are designed to enhance administration of property tax laws. Some provisions are technical changes while others may affect taxpayers’ substantive rights. For instance, the bill requires an assessor to file a personal property tax return on behalf of a taxpayer if the taxpayer fails or refuses to do so.

If a taxpayer wants to claim a personal property tax exemption in connection with an LB 775 economic development project agreement, the taxpayer must file an application for the exemption with the Property Tax Administrator (PTA) by May 1 each year on forms and schedules prescribed by the PTA. "A separate claim for exemption must be filed for each project and each county in which the property is claimed to be exempt." A copy of the exemption-claim form "must also be filed with the county assessor in each county in which the applicant is requesting exemption." The PTA will be allowed access to LB 775 applications and other records of the Department of Revenue for the purpose of determining whether the property is eligible for exemption and will certify the tax-exempt status of the property to the taxpayer and appropriate county assessors by August 10 each year. The exemption will be forfeited for the tax year in question if the appropriate forms are not timely filed.

For all deeds and all memoranda of contract and land contracts executed and recorded on and after January 1, 2001, the bill *prohibits* putting a taxpayer's social security number or federal employer identification number on Form 521, the so-called property record card. The bill provides that information on such forms will *not* be confidential. The reason for the change is that information on Form 521 will be used to develop a sales file.

The bill also contains a number of other provisions relating to property tax administration.

Development of a Sales File

The provisions of **LB 1100** were amended into LB 968. All transactions in real property for which Form 521 has been filed must be made available for developing a "sales file." The sales file will be used for analyzing the level of value and quality of assessment in reports to the Tax Equalization and Review Commission. The sales file will also be used by assessors in establishing assessed valuations.

If the stated consideration for the transaction exceeds \$100 or if the payment of documentary stamp taxes for the transaction exceeds \$1.75, the transaction will be considered a sale. All sales are deemed to be arms-length transactions unless the contrary is shown. Furthermore, the bill prohibits the Department of Property Assessment and Taxation from overturning a county assessor's decision regarding the qualification of a sale, unless the department conducts a review and determines that the assessor's decision is incorrect.

Greenbelt Valuation

LB 1260, which makes changes to Nebraska's greenbelt valuation laws, was amended into LB 968. The purpose of Nebraska's green-

belt valuation laws “is to provide a special valuation for qualified agricultural or horticultural land so that the current assessed valuation of the land for property tax purposes is the value the land would have without regard to the value the land would have for other purposes or uses.” The bill also redefines terms and adds a new section to the greenbelt statutes.

The new section requires the county assessor to approve or deny an application for greenbelt valuation by July 15 in the year of the application. An applicant has until August 15 to protest a denial of the application to the county board of equalization, which has until September 15 to render a decision. An appeal of the decision of the county board of equalization is allowed to be brought before the Tax Equalization and Review Commission, but such an appeal must be brought within 30 days after the county board of equalization renders its decision. All valuations of greenbelt property (including land valued at its recapture value) are subject to equalization.

Publication of a List of Entities Applying for Property Tax Exemptions

Portions of **LB 1276** also were amended into LB 968. Beginning January 1, 2001, the bill requires the publication, in a newspaper of general circulation in the county, of a list of organizations that are applying for a property tax exemption. The list must also include a description of the property and the recommendation of the county assessor. The bill also contains a number of other provisions relating to such a list.

Change Operative Dates of Two Previously Enacted Bills

LB 968 amends two previously enacted bills. LB 968 amends LB 419, which concerns the valuation of farm sites, to change the operative date of that bill to January 1, 2002. LB 968 also changes the operative date of Laws 1999, LB 271, from January 2, 2000, to January 1, 2001. (LB 271 provides, among other things, that property of the state and its governmental subdivisions is exempt from property tax to the extent that the property “is used or being developed for use by the state or governmental subdivision for a public purpose.”)

Outright Repeal Certain Property Tax Statutes

Finally, LB 968 outright repeals five statutes relating to property taxes and collection of property taxes:

- (1) Neb. Rev. Stat. sec. 77-110, which defined the terms “villages,” “cities,” and “town lots;”

- (2) Neb. Rev. Stat. sec. 77-210, which granted a lien against property to agents who pay their principal's taxes;
- (3) Neb. Rev. Stat. sec. 77-398, which concerns certain duties of county assessors with respect to the taxation of the estate of a deceased person.
- (4) Neb. Rev. Stat. sec. 77-1213, which provided that payment of personal property taxes has precedence over other claims against the proceeds of the sale of such property when seized by legal process; and
- (5) Neb. Rev. Stat. sec. 77-1333, which required the Property Tax Administrator to provide appraisers for appraising major industrial and commercial properties.

LB 968 passed with the emergency clause 44-0 and was approved by the Governor on April 6, 2000.

**LB 1067 –
Eliminate the
State Tax Board
and Change the
Manner for Setting
the “Variable”
Fuel Tax Rates**

(Kristensen)

LB 1067 eliminates the State Tax Board and changes the manner in which variable fuels tax rates will be established. Members of the State Tax Board included the Governor, Secretary of State, State Treasurer, Auditor of Public Accounts, and Tax Commissioner. The State Tax Board was responsible for setting the variable fuels tax rates. Pursuant to LB 1067, variable fuel tax rates will be set periodically by the Director-State Engineer of the Department of Roads according to the formulas and procedures set forth in Neb. Rev. Stat. sec. 66-4,141, et seq.

The provisions of **LB 1066** were amended into LB 1067. The bill makes a number of changes requested by the Motor Fuels Division of the Department of Revenue. The bill permits fuel tax returns to be filed electronically and it provides an incentive for doing so. The due date for filing an electronic fuel tax return is five days later than the due date for filing a paper fuel tax return. The bill contains a number of other provisions as well, including one that requires all fuel taxes (and related interest and penalties) to be remitted to the State Treasurer for credit to the Highway Trust Fund or the Highway Cash Fund as appropriate. The bill also contains various provisions relating to fuel exporters.

LB 1067 passed with the emergency clause 44-0 and was approved by the Governor on April 11, 2000.

LB 1124 – Create the Greenbelt Advisory Committee

*(Coordsen, Baker, Bromm,
Byars, Connealy, Cudaback,
Dierks, Engel, Hudkins,
Janssen, Jones, Kremer, Matzke,
Raikes, Robak, Schmitt,
Schrock, Smith, Stubr, Vrtiska,
and Wehrbein)*

LB 1124 creates the Greenbelt Advisory Committee to meet at least once each year to develop various recommendations concerning Nebraska's greenbelt property tax laws and to provide related advice to the Property Tax Administrator and the Legislature. The recommendations must be provided by October 1 each year and must provide for an annually updated analysis based on a three-year average of the information used.

The bill requires the advisory committee to assist and advise the Property Tax Administrator in developing processes and methods for uniformly and proportionately valuing greenbelt property. The advisory committee must recommend methods for gathering information to be used in connection with the comparable-sales and income-capitalization approaches to valuation and recommend "approved methods" for determining the capitalization rate when the income-capitalization approach is used. The bill permits, but does not require, the advisory committee to recommend valuation methods for land used in specialized agricultural crop production that is "unique or localized to a specific area."

The Property Tax Administrator must provide a degree of administrative staff support for the advisory committee. In addition, the bill requires the Property Tax Administrator to respond to the recommendations and explain why he or she is approving or rejecting the recommendations.

The members of the advisory committee, to be appointed by the Governor, must include two active farmers; an active rancher; an expert agricultural real estate appraiser; a professor of agricultural economics for the University of Nebraska's Institute of Agriculture and Natural Resources; an elected county assessor (or his or her designee); a local planning and zoning official; an elected county official who was or is a member of an agricultural and horticultural land valuation board; and a county attorney who understands appraisal processes and real property valuation problems. Members of the advisory committee will serve four-year terms, except that three of the advisory committee's initial members will serve two-year terms. The Governor must designate which three initial members of the advisory committee will serve two-year terms.

LB 1124 passed with the emergency clause 45-0 and was approved by the Governor on April 4, 2000.

**LB 1251 –
Authorize the Tax
Commissioner to
Require Certain
Taxpayers to Make
Tax Payments
Electronically**

*(Raikes, Redfield, Wehrbein,
and Wickersham)*

LB 1251 authorizes the Tax Commissioner to require certain taxpayers to submit tax payments (and other payments such as fees and penalties) using electronic fund transfers. The authorization applies for payments due after January 1, 2001, and extends to payments for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner.

Any taxpayer who made payments in excess of \$100,000 for a “tax program” (e.g., income tax withholding paid by employers) “in the prior year for that tax program” may be required to make such electronic payments. Failure to make a required payment by electronic fund transfer will result in a penalty of \$100 for each required payment that was not made by electronic fund transfer. The penalty is in addition to all other penalties and applies even if payment by some other method is timely made. However, the Tax Commissioner may waive the penalty upon a showing of good cause.

The bill provides that the requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. However, notice of the requirement to make electronic fund transfers must be provided at least three months before the date the first electronic payment is required to be made.

LB 1251 passed 46-0 and was approved by the Governor on April 11, 2000.

LEGISLATIVE BILLS NOT ENACTED

**LB 171 – Sales and
Use Tax Exemp-
tion for Certain
Purchases of
Television Broad-
casting Equipment**

(Kristensen and Jones)

As passed by the Legislature, LB 171 would have provided for a refund of one-half the amount of Nebraska sales and use taxes and local option sales and use taxes paid on qualifying purchases of certain equipment used to broadcast “high definition television” (commonly referred to as HDTV). To qualify for the refund, a purchase would have to be necessary to comply with the federal Telecommunications Act of 1996.

LB 171 passed 25-21 but was vetoed by the Governor on April 10, 2000.

LB 383 – Provide for a Capital Gains Deduction and Limit Use of the Special Capital Gains Exclusion that was Enacted by Laws 1987, LB 775

(Wickersham, Coordsen, Landis, C. Peterson, and Schellpeper)

LB 383 would have allowed income taxpayers to deduct 50 percent of the amount by which their net long-term capital gains exceed their short-term capital losses. In addition, the bill would have limited to one year the number of times that an individual income taxpayer could claim the so-called “special capital gains exclusion” that was enacted as part of Laws 1987, LB 775, for employees who acquire shares of ownership in their employer’s company. LB 383 also contained a number of other related provisions.

LB 383 was laid over on January 18, 2000, following a motion to indefinitely postpone the bill. Ultimately, LB 383 died with the end of the session.

LB 919 – Allow Limited Exclusions of Income from Pensions, Other Distributions, Dividends, and Interest

(Bruning, Hartnett, Aguilar, and Dw. Pedersen)

LB 919 would have allowed certain retirement income to be excluded from an individual’s income for state income tax purposes. The bill would have limited the amount of the exclusion to \$17,196 per year.

LB 919 was indefinitely postponed February 28, 2000.

LB 925 – Business Tax Credits for Child Care Expenditures

(Landis and Hilgert)

As passed by the Legislature, LB 925 would have entitled business firms that are providing child care services for the children of their employees to credits against the firm’s income tax, financial institution tax, or insurance premium tax liability. The amount of the credit would have been equal to 30 percent of the qualified costs incurred by the firm to provide qualified child care services in a given year. However, credits could not exceed 50 percent of the firm’s total tax liability and unused credits could not be carried forward for use in subsequent years.

Business firms would have been allowed tax credits for qualified costs incurred beginning in 2001. In general, credits could have been claimed for up to three years (up to five years if the child care facility is or becomes an accredited “early childhood education” provider). However, credits would not have been allowed for more than two years if the firm was operating a child care facility on the effective date of LB 925. A sunset provision would have required firms to *initially* qualify for the tax credits no later than December 31, 2005. Thus, a firm would have been able to claim tax credits through 2010 if the employer first qualified in 2005 and if the child care facility was accredited.

LB 925 would have defined the phrase “providing child care services” to mean:

expending funds to build, furnish, license, accredit, qualify for accreditation, staff, operate, or subsidize a child care facility licensed by the Department of Health and Human Services Regulation and Licensure which provides child care services to children of employees of the business firm or contracting with a child care facility licensed by the department to provide child care services to children of such employees.

However, the bill also stated that a business firm would not be “providing child care services” unless such services are provided to classifications of employees that do not discriminate in favor of “highly compensated employees.” LB 925 defined the phrase “highly compensated employee” to mean:

an employee who was a five-percent owner of the business firm at any time during the year or the preceding year or, for the preceding year, either (a) had compensation from the employer in excess of eighty thousand dollars or (b) was among the highest twenty percent of employees ranked by compensation, whichever results in the smaller group.

Expenditures that would and would not have qualified as costs incurred are set forth in the bill. LB 925 provided that costs incurred *exclude* expenditures for acquiring land and constructing new buildings, but *include*:

- (1) Amounts expended by the business firm during the year for improvements to the premises for purposes of making the premises suitable in whole or in part for use as a child care facility, including furnishing the facility with fencing, landscaping, sidewalks, furniture, fixtures, equipment, supplies, and other improvements and materials reasonably required to operate a child care facility and the direct operating costs of staffing, operating, and maintaining a child care facility;
- (2) Payroll taxes and employee benefit costs of staffing the child care facility and sales and use taxes on purchases otherwise included in the costs of providing child care, but not an allocation of the business firm’s general, administrative, and other operating expenses; and
- (3) Payments to third parties to reimburse the third parties for amounts expended by them for and which would have been qualified costs if incurred directly by the employer or to subsidize

the cost of providing child care for the children of employees in such third parties' facility.

A business firm would have been required to reduce the dollar amount of costs incurred by the amount of payments, if any, received from employees (e.g., payments for child care services or payments to fund the acquisition of a site for, or construction of, a child care facility). Also, a business firm would have been required to exclude a portion of the child care facility's direct operating costs if the facility provided child care services for children of individuals who were not employees of the firm.

Also, LB 925 contained special provisions governing the allocation of tax credits among members, owners, or beneficiaries of pass-through entities such as partnerships, limited liability companies, S corporations, and trusts. If two or more business firms share in the cost of providing child care services for children of the firms' employees, the tax credits would have been allocated among the firms in proportion to each firm's share of the total costs.

In addition, LB 925 provided that a so-called disregarded entity under federal income tax law – such as a qualified subchapter S subsidiary (QSSS) – would be “disregarded for purposes of defining the business firm which is providing child care services.” For example, if an S corporation creates a QSSS to provide child care services for employees of the S corporation, the QSSS would be “disregarded” and the S corporation would be considered to be the “business firm” for purposes of LB 925.

The Department of Revenue and the Department of Insurance would have been required to issue a report by December 1 each year showing each qualifying business firm's name and address; the number of “child-years” of child care provided to employees; the fees, if any, charged to employees to use the facility during the year; the total amount of tax credit that the firm qualified for and used; and whether the child care facility was accredited or inspected during the year.

Each of the departments also would have been required to promulgate rules and regulations to carry out the provisions of LB 925. In addition, the Department of Revenue would have been required to develop a form for claiming the tax credits and none of the information provided on the form would have been considered confidential.

Finally, the provisions of **LB 914** were amended into LB 925. The bill would have provided an exemption from various training requirements (e.g., family nurturing and pre-employment skills) for adult welfare recipients whose youngest child is less than 12 months old (formerly 12 weeks old). The bill also would have increased to 12 months various age limits that apply to children of an adult welfare

recipient. In general, the provisions of the bill would have permitted an adult welfare recipient to stay at home longer and, presumably, render day care services for his or her young child before being required to begin work under the rules governing Nebraska's welfare program.

LB 925 passed 34-14 but was vetoed by the Governor on April 13, 2000.

LB 1138 – Change Provisions for State Aid to Political Subdivisions

(Revenue Committee)

LB 1138 would have consolidated various funds that are used for distributing state aid to counties, municipalities, and natural resources districts (NRDs); changed the distribution formulas for state aid to such political subdivisions; and required property tax notices to show the amount of state aid allocable to each parcel of property.

LB 1138 would have created three new funds to be used for distributing state aid to counties, municipalities, and NRDs: the State Aid to Municipalities Fund; the State Aid to Counties Fund; and the State Aid to Natural Resources Districts Fund. For FY2000-01, the Legislature would have been required to appropriate money to the new funds in the amount of \$30 million for municipalities, \$60 million for counties, and \$4.6 million for NRDs. (The committee amendment would have required an appropriation of \$2.3 million for NRDs rather than \$4.6 million.)

Beginning in FY2001-02, the Legislature would have been required to increase annual appropriations to the three funds by a percentage equal to the basic allowable growth percentage of the base limitation. Neb. Rev. Stat. sec. 77-3446 provides that the base limitation is 2.5 percent, until adjusted by the Legislature, and defines "base limitation" to mean the budget limitation rate applicable to school districts and the budget limitation on growth of restricted funds applicable to other political subdivisions.

LB 1138 also would have changed distribution formulas for state aid to counties, municipalities, and NRDs. Distributions of state aid to counties would have been determined using two formulas. The formulas would have utilized a number of factors, including a property tax-effort factor, a road-mile factor, and a poverty factor. Distributions of state aid to municipalities would have been determined using the equalization formula that is currently used to determine distributions of state aid to municipalities from the Municipal Equalization Fund. Distributions of state aid to NRDs would have been based on population, share of registered water wells, and share of acres under acceptable soil conservation practices. Current law provides for the following fiscal-year distributions of state aid:

- (1) \$17.9 million to municipalities, \$13.5 million to counties, and \$700,000 to NRDs. The money comes from sales and income tax revenue and is distributed to municipalities on the basis of population. The money is distributed to counties and NRDs on the basis of property taxes levied.
- (2) From money credited to the Insurance Tax Fund, 10 percent is distributed to counties, 30 percent to municipalities, and 60 percent to the State Department of Education for further distribution to schools.
- (3) Qualifying municipalities and counties also receive distributions of state aid from the Municipal Equalization Fund. The Municipal Equalization Fund is used to equalize the property tax capacity of incorporated cities. The money is distributed based on an equalization formula.

LB 1138 would have eliminated the Municipal Equalization Fund and the appropriations from sales and income tax revenue for municipalities, counties, and NRDs. Also, 60 percent of the money credited to the Insurance Tax Fund would have been appropriated to the Tax Equity and Educational Opportunities Fund (rather than to the Department of Education) for distribution to schools. The bill contained various coordinating provisions as well, such as a provision that would have amended the definition of “state aid” in the Nebraska Budget Act.

LB 1138 advanced to General File but died with the end of the session. An interim study provided for by LR 440 will examine alternative ways of distributing state aid to municipalities, counties, and NRDs.

**LB 1330 – Extend
the Deadline for
Filing Project
Applications for
Wage Benefit Tax
Credits under the
Quality Jobs Act**
(Wickersham)

As introduced, LB 1330 would have extended the deadline for filing project applications for wage benefit tax credits under the Quality Jobs Act from February 1, 2000, to January 1, 2001. The adopted committee amendment would have extended the deadline to July 1, 2001.

LB 1330 was laid over following a motion to indefinitely postpone consideration of the bill. Ultimately, LB 1330 died at the end of the session.

LB 1353 – Change Provisions Relating to Valuation of Agricultural and Horticultural Land
(Wickersham and Coordsen)

LB 1353 would have established a hybrid valuation method to be used annually for determining the value of agricultural and horticultural land for purposes of property taxation. The bill would have provided for using a combination of the sales- and income-methods of valuation. In addition, the bill would have repealed the requirement under present law that agricultural and horticultural land be assessed at 80 percent of market value.

The assessed taxable value of a particular parcel of land would have been equal to the market value of the land multiplied by a “uniform” percentage factor. The uniform percentage factor would have been the ratio between two statewide values for the particular class of land (e.g., irrigated cropland). The statewide “economic” value for the class would have been calculated using an income-capitalization approach (i.e., statewide net cash rental income divided by a capitalization rate). The statewide “sales” value for the class would have been based on market information collected by the Property Tax Administrator.

Example

- Statewide “Economic” Value Per Acre for Irrigated Cropland:
 1. Statewide Average Per-Acre Cash Rent \$ 116
 2. Less: State Average Per-Acre Expenses \$ 10
 3. Equals: Statewide Average Per-Acre Net Rental Income \$ 106
 4. Divided by: Capitalization Rate 8%
 5. Equals: Statewide “Economic” Value Per Acre \$1,325

- Statewide “Sales” Value Per Acre for Irrigated Cropland: \$2,000

- Uniform Ratio: Statewide Economic Value divided by Sales Value: 66%

- Assessed Taxable Value for a Particular One-Acre Parcel of Irrigated Cropland:
 1. Market Value of the Particular Parcel: \$2,000
 2. Multiplied by: the Uniform Ratio 66%
 3. Equals: Assessed Taxable Value \$1,325

For purposes of equalization, the bill would have provided that the statutory “acceptable range” of value for agricultural and horticultural land could have been as low as six-percentage points below the uniform ratio. (In the above example, the acceptable range for irrigated cropland would have been from 60 percent to 66 percent of market value.)

LB 1353 was indefinitely postponed March 14, 2000.

**LB 1445 –
Increase Fuel
Taxes to Fund
Railroad Crossing
Projects and
Increase the
Train-Mile Excise
Tax on Railroads
Transporting
Freight**

*(Bromm, Baker, Byars, Hudkins,
Jones, Dw. Pedersen, Robak,
Wehrbein, and Wickersham)*

LB 1445 was assigned to a Joint Committee comprised of the Revenue Committee and the Transportation and Telecommunications Committee. The bill would have increased fuel taxes to fund railroad crossing projects and increased the train-mile excise tax imposed on railroad companies that transport freight.

LB 1445 never emerged from the Joint Committee. However, the train-mile excise tax, the gas tax, and the needs of the state in improving railroad crossings will be the subject of interim studies provided for by LR 340 and LR 465.

LB 1445 died with the end of the session.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Curt Bromm, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1004 – Recognize Certain Out-of-State Convictions for Purposes of Assessing Drunk- Driving Penalties

*(Engel, Baker, Brashear,
Bromm, Brown, Bruning,
Byars, Connealy, Coordsen,
Crosby, Dickey, Dierks, Hartnett,
Jensen, Jones, Kremer, Matzke,
D. Pederson, Preister, Price, Raikes,
Redfield, Schmitt,
Schrock, Smith, Tyson, Vrtiska,
Wehrbein, Wickersham, and
C... ..)*

With the passage of LB 1004, an out-of-state drunk-driving or test-refusal conviction can be used to enhance the penalty for a driver convicted of drunk driving or test refusal in Nebraska. The legislation imposes certain limits on the use of such out-of-state convictions. The out-of-state conviction can only be used if it was incurred within 12 years of the Nebraska conviction and if, at the time of the out-of-state conviction, the offense also would have been a law violation in Nebraska. That means drunk-driving convictions in states that impose a .08 blood alcohol level for purposes of drunk-driving charges cannot be used.

The bill directs the prosecutor or investigating agency to use “due diligence” to obtain both the defendant’s in-state and out-of-state driving records. For purposes of sentence enhancement, an authenticated copy of a prior out-of-state conviction will serve as prima facie evidence of the conviction.

The provisions of **LB 1089** were added to the bill via amendment. LB 1089 amends Neb. Rev. Stat. sec. 60-6,196, which previously allowed a judge to order a person convicted of drunk driving to follow through on alcohol assessment results **in lieu of** or in addition to any penalty. LB 1089 strikes the phrase “in lieu of”, thus eliminating an element of judicial discretion.

LB 1004 passed 47-0 and was approved by the Governor on April 11, 2000.

LB 1018 – Change Provisions Relating to the Motor Vehicle Industry

*(Transportation and
Telecommunications Committee
and Cudaback, Janssen, Kremer,
Lynch, D. Pederson, Hartnett,
Aguilar, Schrock, Stubr, Engel,
Matzke, and Vrtiska)*

According to its supporters, LB 1018 provides economic protection to motor vehicle dealers licensed in Nebraska.

The bill prohibits motor vehicle manufacturers or distributors from:

- Owning an interest in a franchise, franchisee, or consumer care or service facility;
- Operating or controlling a franchise, franchisee, or consumer care or service facility; or
- Acting in the capacity as a franchisee.

- LB 1018 specifically exempts manufacturers of manufactured housing, recreational vehicles, or trailers from the prescribed prohibitions.

Additionally, LB 1018 provides that if an out-of-state transaction for the sale of a new motor vehicle requires or authorizes delivery of the vehicle in Nebraska, delivery must occur through a Nebraska-licensed motor vehicle dealer.

Several amendments were added to the bill, including:

- Redefining the term “motor vehicle dealer” to include persons who sell manufactured homes. (This concept was originally part of **LB 1268**.); and
- Repealing language that authorized persons who were neither Nebraska residents nor Nebraska-licensed motor vehicle dealers to obtain special event permits for selling vehicles at temporary locations, such as county fairs or auto shows. (This was originally introduced as **LB 1419**.)

LB 1018 passed 43-2 and was approved by the Governor on March 21, 2000.

LB 410 – Change Provisions Relating to Child Passenger Restraint and Occupant Protection Systems

(Baker, Hudkins, Schmitt, Byars, and Thompson)

LB 410 was first introduced in 1999 and advanced to General File, where it remained at the conclusion of the 1999 legislative session. As enacted this year, the bill requires all children under the age of five and weighing less than 40 pounds to use a correctly installed, federally approved child passenger safety seat when traveling in a motor vehicle. (Prior law required all children under the age of four **or** weighing less than 40 pounds to be in a child passenger safety seat.)

The bill also expands mandatory seat-belt use by requiring all children under the age of 16 and weighing 40 pounds or more to wear a seat belt when being transported in a motor vehicle. (This concept was originally found in **LB 970**, which was amended into LB 410.) Prior law required all children weighing 40 pounds or more or between four and five years of age to wear a seat belt.

Any violation of these provisions is an infraction; except that for a first offense, any person who purchases or rents for at least one year an approved child passenger restraint system will not have any fine imposed nor have any points assessed against his or her driving record. Furthermore, enforcement of the seat-belt requirement for children under 16 is a secondary action, meaning the operator of a motor vehicle can only be cited for the seat-belt violation if he or she is cited or charged with a violation of some other offense.

LB 410 passed 45-0 and was approved by the Governor on February 16, 2000.

LB 1285 – Change Powers and Duties of the Public Service Commission

*(Transportation and
Telecommunications
Committee)*

The passage of LB 1285 enables the Public Service Commission to assess a civil penalty of up to \$10,000 per day on telecommunications companies that fail to follow or violate commission orders. The maximum penalty cannot exceed \$2 million.

Additionally, LB 1285 provides that a telecommunications company can appeal a commission order pursuant to the Administrative Procedure Act; however, the appealed order will take effect unless the commission or district court issues an order staying the order or the commission, district court, Court of Appeals, or Supreme Court issues an order reversing or modifying the original order.

Furthermore, a stay can only be granted if the commission or district court finds that: (1) the applicant for the stay is likely to prevail when the matter is finally decided; (2) without relief, the applicant will suffer irreparable injury; and (3) the grant of relief to the applicant will not substantially harm other parties to the proceedings. The grant or denial of a stay is not considered a final order. (The provisions relating to staying a commission order while it is under appeal were originally prescribed in **LB 1240**.)

LB 1285 passed with the emergency clause 46-0 and was approved by the Governor on April 6, 2000.

LB 1317 – Change Provisions Relating to the Disclosure of Certain Records by the Department of Motor Vehicles

(Bromm)

The passage of LB 1317 brings Nebraska into compliance with recently enacted federal amendments to the Driver's Privacy Protection Act. As enacted, LB 1317 prohibits the Department of Motor Vehicles, or any officer, employee, agent, or contractor thereof, from disclosing sensitive personal information about any person obtained by the department in connection with a motor vehicle record without the express written consent of the person to whom such information pertains.

The bill defines "sensitive personal information" to mean an "individual's operator's license photograph or computerized image, social security number, and medical or disability information."

However, the bill authorizes the disclosure of motor vehicle records, including sensitive personal information, for certain purposes, including:

- (1) For use by any governmental agency or court, or any private individual acting on behalf of the governmental agency or court, in carrying out its duties;

- (2) For use in litigation or service of process or pursuant to an order of a governmental agency;
- (3) For use in insurance for claims investigation, antifraud activities, rating, or underwriting; and
- (4) For employers verifying information required under the federal Commercial Motor Vehicle Safety Act of 1986 or Nebraska's commercial driver's license provisions.

LB 1317 passed with the emergency clause 44-0 and was approved by the Governor on March 21, 2000.

LB 1361 – Change Provisions Relating to Transportation

(Bromm)

As introduced, LB 1361 was Nebraska's annual adoption of the federal Motor Carrier Safety Regulations. In addition to its original provisions, LB 1361, as enacted, also includes provisions of **LB 1146**, **LB 1249**, and **LB 1357**.

LB 1361 changes provisions for harvest-time hauling. The bill eliminates certain permit requirements and allows a vehicle hauling commodities or other farm products to haul such products for up to 70 miles with a load that exceeds the maximum allowable load by not more than 15 percent if:

- The product is being transported from the field where it was harvested to storage, market, or stockpile or from stockpile to market or factory; and
- The product owner furnishes the vehicle driver with a statement verifying the grain's origin and destination.

Additionally, LB 1361 redefines the term "implements of husbandry" and removes the requirement to give an audible signal (honking the horn) when passing an implement of husbandry.

The bill also provides for the issuance of a new "continuing permit" to operate a vehicle that exceeds maximum weight and length requirements. The continuing permit will be in addition to the special and continuous permits already authorized. It is hoped that the continuing permit will provide both the Department of Roads and permit applicants additional options and will be more cost effective.

Finally, LB 1361 authorizes any local authority to adopt and enforce an ordinance or resolution prohibiting the use of engine brakes on the National System of Interstate and Defense Highways that has a grade of less than five degrees within its jurisdiction.

LB 1361 passed 47-0 and was approved by the Governor on April 13, 2000.

LEGISLATIVE BILLS NOT ENACTED

LB 1050 – Provide Duties for Telephone Solicitors and Provide Procedures and a Penalty

(Suttle and Beutler)

LB 1050 would have imposed duties on telephone solicitors. The bill would have required a telephone solicitor making a call to any person in Nebraska at the beginning of the call to clearly state the solicitor's identity. At the same time, LB 1050 would have prohibited a telephone solicitor from knowingly using any method to block or circumvent a subscriber's use of a caller identification service.

LB 1050 also would have empowered the Public Service Commission to investigate any alleged violations of the bill and if necessary initiate proceedings against the violator. The commission could have: (1) issued a cease and desist order; (2) levied a fine of up to \$2,000 for each knowing violation; and (3) sought additional relief in court. The solicitor's implementation and establishment of reasonable practices and procedures designed to prevent unwanted solicitations would have been available as a defense in any legal action brought against a solicitor.

LB 1050 was indefinitely postponed by the committee.

LB 1097 – Change Cramming Provisions

(Landis)

LB 1097 would have prohibited a telecommunications carrier from initiating or billing a telephone subscriber for charges that the subscriber did not specifically request or authorize. This practice is known as cramming.

According to the Introducer's Statement of Intent, cramming can occur in two ways: (1) charging a subscriber for telephone services that the subscriber did not request or authorize; and (2) when a telephone company acts as a billing agent for a third party and charges a subscriber for services not directly related to the telecommunications services offered by the billing telecommunications company, which are not authorized or have not been received by the subscriber.

LB 1097 would have given a cramming victim several remedies. A telecommunications company initiating an unauthorized charge would have been required to either refund the charge or, with the subscriber's approval, credit the subscriber's next monthly bill. A subscriber could also have filed a complaint with the Public Service Commission, and the commission would have processed the cramming complaint in the same manner as a slamming complaint. (Slamming is the unauthorized switching of a telecommunications company selected by a subscriber to another company without the subscriber's knowledge or explicit consent.) Violators could have been subject to an administrative penalty of up to \$2,000.

Additionally, the bill would have directed the telecommunications company that received notice from a subscriber of an unauthorized

charge to inform the subscriber of the ability to block future uses and charges.

LB 1097 advanced to General File but died with the end of the session.

URBAN AFFAIRS COMMITTEE

Senator D. Paul Hartnett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 1258 – Change a Provision of the Local Option Municipal Development Act

(Aguilar)

With the passage of LB 1258, cities of the first class – which are those cities with populations between 5,000 and 100,000 – can appropriate up to two million dollars from funds derived from local sales and property taxes to help finance voter-approved economic development projects. (Prior law allowed cities of the first class, as well as cities of the second class and villages, to appropriate up to one million dollars.) The cap for cities of the second class and villages remains at one million dollars. Also unchanged is the three-million-dollar cap prescribed for cities of the metropolitan and primary classes.

LB 1258 passed with the emergency clause 43-0 and was approved by the Governor on March 16, 2000.

LB 1369 – Provide Funding for a Comprehensive Study of Nebraska’s Natural Gas Regulatory System

(Urban Affairs Committee)

LB 1369 was introduced by the Urban Affairs Committee to complete the financing of the comprehensive study of Nebraska’s natural gas regulatory system that was originally proposed and authorized by Laws 1999, LB 805. While the bill was introduced by the Urban Affairs Committee, it was heard by the Appropriations Committee. LB 1369 passed 44-0 and was approved by the Governor on March 30, 2000. LB 1369 is specifically summarized on p. 8 of this report.

LEGISLATIVE BILLS NOT ENACTED

LB 1370 – Change Provisions of the Volunteer Emergency Responders Recruitment and Retention Act

(Urban Affairs Committee)

The Volunteer Emergency Responders Recruitment and Retention Act was enacted by the Legislature in 1999 in an effort to attract and retain volunteer firefighters and rescue squad personnel. The act authorizes first- and second-class cities, villages, and fire protection districts, or combinations of such entities, to establish service award benefit programs to be funded by local dollars. Prior to its passage, the 1999 legislation included a provision that the state would contribute to the local benefit programs when the city, village, or fire protection district had met a minimum contribution level of \$100 for each participant. However, the state-funding provision was struck by an amendment, and the bill passed absent the state-funding provision. The Urban Affairs Committee introduced an interim study resolution, LR 266, to study other potential sources of funding. LB 1370 is the result of that interim study.

LB 1370 would have reinserted the provision authorizing the state contribution to local benefit programs that had previously been struck from the 1999 legislation. In addition, the bill would have identified other potential sources of state revenue, other than general funds, to be credited to the local benefit programs, including:

- The dedication of the sales tax revenue from the sale of fireworks for the benefit programs;
- A one-dollar increase in annual park entry permit fees, and a 50-cent increase in temporary park entry fees for distribution to the benefit programs;
- A mandatory burn permit fee and an increase in the existing allowable fee to provide more program revenue; and
- The diversion of lapsed funds from the Mutual Finance Assistance Fund to the Nebraska Service Award Benefit Fund.

The bill was amended by the committee and advanced to General File. The committee amendments would have eliminated most of the proposed additional sources of state revenue, retaining only the diversion of the lapsed funds from the Mutual Finance Assistance Fund to the Service Award Benefit Fund and replacing the other funding options with a proposal to credit the revenue generated by a new five percent sales tax on the sale of fireworks to the local benefit programs. (The five-percent tax would have been in addition to the existing sales tax.) The amendments also would have changed the terms and conditions for qualification as an active volunteer eligible to participate in the benefit program.

LB 1370, and the pending committee amendments, died with the end of the session.

LB 1238 – Eliminate Bond Requirements for Certain Cities and Villages

*(Bromm, Hudkins, D. Pederson,
Quandabl, Smith, and
Wickersham)*

LB 1238 would have eliminated the obligation of first- and second-class cities and villages to post bond in any court proceeding or court action in which the city or village was a real party in interest in the proceeding. The exemption also would have been extended to any city or village officer, board or commission member, department head, agent, or employee if, because of his or her official capacity, he or she is a litigant.

Current law provides the same exemption to the State of Nebraska and any state officer and to other political subdivisions, including natural resources districts, cities of the primary and metropolitan classes, metropolitan utilities districts, municipal cooperative financing agencies, counties, and public power districts.

LB 1238 advanced to General File but died with the end of the session.

LB 1320 – Provide for Highway Fund Distributions to Sanitary and Improvement Districts

(Hartnett)

LB 1320 would have required counties to share a portion of their annual distribution of motor fuel tax receipts from the Highway Trust Fund with the sanitary and improvement districts which are located within the counties' boundaries. Each sanitary and improvement district would have received a proportion of the county allocation in the same proportion that its number of road miles bears to the total number of road miles in the county.

According to the Introducer's Statement of Intent, the adoption of LR 219CA by Nebraska voters in 1998 and the passage of Laws 1999, LB 142, provided the impetus for the introduction of LB 1320. LR 219CA changed the distribution of the tax proceeds from the taxation of motor vehicles. Prior to the adoption of the constitutional amendment, the proceeds had been divided among all the political subdivisions levying a property tax in the same proportion that the levy of each bears to the total levy of the county on taxable property. After the amendment's adoption, the proceeds are now allocated among the counties, cities, villages, and school districts as the Legislature provides.

Via Laws 1999, LB 142, the Legislature provided that 22 percent of the proceeds are credited to the county where the vehicle is located, 60 percent to the school district where the vehicle is located, and 18 percent to the city or village where the vehicle is located. (If the vehicle is not located in a city or village, the proceeds are credited to the county, and if the vehicle is located in a city of the metropolitan class, 22 percent is credited to the city and 18 percent is credited to the county.)

Consequently, sanitary and improvement districts have lost a significant source of revenue, and LB 1320 represented an attempt to recover some of that lost revenue.

LB 1320 was indefinitely postponed by the committee.

LB 1367 – Change Provisions Relating to Formation of Sanitary and Improvement Districts and the Deposit of Funds

(Urban Affairs Committee)

LB 1367 was introduced to address two problems with sanitary and improvement districts (SIDs) identified by the Auditor of Public Accounts and brought to the attention of the committee during a 1999 interim study.

The first identified problem involved the numbering of SIDs. SIDs are required to be numbered consecutively in the order of their establishment. However, currently, some county clerks are assigning numbers to proposed SIDs prior to their formal creation. A problem occurs if a proposed SID is never formally created because the requisite consecutive number is not available to a subsequent SID that is

formally created. To correct the confusion, LB 1367 would have provided that numbering of SIDs be done by the district court at the time of their formal creation, and each newly created SID would be given the next unassigned number.

The second identified problem involved the service fee fund. Every SID has a service fee fund. All SID receipts, other than those that must be deposited in the district's general fund or construction fund, are credited to the service fee fund. Over the course of a full budget year, if the SID's average weekly balance in its service fee fund does not exceed \$5,000, the SID trustees can authorize the SID clerk to establish an interest-bearing checking account to be maintained as the service fee fund. The county treasurer must then pay over the balance in the SID's service fee fund to the SID clerk. LB 1367 would have allowed smaller SIDs to maintain separate service fee funds under their own control by authorizing the SID clerk to make deposits to and disbursements from the service fee fund from the interest-bearing checking account, thus bypassing the county treasurer.

LB 1367 advanced to General File but died with the end of the session.