

**A Review:  
Ninety-Fourth Legislature  
Second Session, 1996**

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# INTRODUCTION

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The following report provides a summary of significant legislative issues addressed during the second session of the Ninety-Fourth Legislature of Nebraska. The report briefly describes many, but by no means all, of the issues which 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, members of the Fiscal Office staff, and the *Unicameral Update*.

Summaries of bills from the second session can be found under the heading of the legislative committee to which each 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 has also been included for ease of reference.

The authors wish to acknowledge the contributions of the committee 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 and to the other administrative support staff of the Legislative Research Division.



# AGRICULTURE COMMITTEE

## Senator M.L. Dierks, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 1174—Provide for the Issuance of Brand Inspection Area Permits**

*(Dierks, Jones, Schmitt, Schrock,  
and Wickersham)*

LB 1174 creates a permit system authorizing the movement of cattle across Nebraska's brand inspection area boundary without inspection. (Nebraska's brand inspection area includes most of central and western Nebraska.) The system provides for the issuance of two annual permits: One permit allows cattle to be moved between different tracts of land that are separated by the brand inspection area boundary when the tracts are all owned or rented by the same cattle owner; and the second permit allows the movement of cattle across the brand inspection area boundary for veterinary care. Both permits are issued by the Brand Committee, and the annual fee for each permit is \$10.

Additionally, the bill specifically authorizes a peace officer to stop a vehicle transporting livestock when there is probable cause to question the ownership of the transported livestock or the legality of the transport.

Finally, LB 1174 changes a provision relating to the liability of livestock owners for damages caused by livestock to another's property. Prior law provided for liability only for damage to cultivated property. Under LB 1174, liability may attach when any property—cultivated or not—is damaged.

LB 1174 passed 48-0 and was approved by the Governor on April 15, 1996.

### LEGISLATIVE BILLS NOT ENACTED

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#### **LB 1066—Adopt the Livestock Contract Sale Act**

*(Dierks)*

LB 1066 was introduced in response to a concern that Nebraska cattle and hog producers are at a disadvantage vis-a-vis packing houses and other livestock purchasers because of current livestock procurement practices. Under the practice at issue (which is known as "forward contracting"), a livestock purchase contract leaves the delivery date(s) open at the time the contract is entered into. The purchaser has the right to establish the date of delivery at a later time. This practice is detrimental to the seller-producers from a pricing standpoint.

The bill would have enacted the Livestock Contract Sale Act requiring all contract purchases of livestock for slaughter to specify either a calendar day or calendar month for delivery. (In the latter case, the seller would have the right to designate the week for delivery during the month specified.)

Additionally, LB 1066 would have required purchasers to report all purchase agreements to the Director of Agriculture within three days of their creation and to remit a fee of one cent per animal unit purchased. Each report would have included the number of animals purchased, the delivery date or the range of dates, the average price paid per animal and any differential from the average price, and the destination by processing plant.

The director would have been required to publish weekly cumulative summaries of contract purchases reported. These summaries would have been made available to the public.

Fines of \$1,000 for the first violation of the act and \$5,000 for each subsequent violation would have been imposed on purchasers not complying with the provisions of the bill. The director would have been given inspection, enforcement, and rule-and-reg-making authority under the act; and the Livestock Contract Sales Fund would have been created as a cash fund that would have been used to defray investigative, enforcement, and reporting expenses incurred by the Department of Agriculture under the act.

LB 1066 did not advance from committee and died at the end of the session.

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**LB 1208—Change  
Provisions of  
the Nebraska  
Apiary Act**  
*(Schrock and Cudaback)*

LB 1208 would have, among other things, created a system for providing notice to beekeepers of impending pesticide applications in the vicinity of bee colonies registered with the Department of Agriculture. Under the provisions of the bill, a beekeeper wishing to be notified of such pesticide applications would have had to request such notification in writing. Once notified, the owner of or tenant on the land where the application was to occur would have had to give notice to the beekeeper at least 24 hours before the application, unless the beekeeper agreed to a shorter notification period. Notice would have had to be given only in the case of colonies registered with the department under the act.

If proper notification was given, the property owner, tenant, or pesticide applicator could not have been held liable for damages incurred by the beekeeper as a result of the pesticide application.



The bill also would have changed the annual date for the registration of bee colonies with the department from July 1 to March 1, and it would have reduced from ten days to seven days the time period within which colonies being moved into the state would have to be registered. Penalties for failure to timely register such colonies would also have been established.

Under the bill, a beekeeper would also have had to (1) obtain permission to place bee colonies in a given location from the owner or tenant of the property in question and from owners/tenants of any "adjacent property within a two-mile radius," (2) notify the department when he or she moved colonies to a different location, and (3) mark bee colonies with signs visible to passersby and flags visible to aircraft. Any person not in compliance with any of these provisions would have forfeited his or her right to recover from any property owner/tenant or pesticide applicator for damages to bee colonies (presumably resulting from pesticide applications).

LB 1208 did not advance from committee and died at the end of the session.



# APPROPRIATIONS COMMITTEE

## Senator Roger Wehrbein, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 29—To Impose Reimbursement Fees for Loan- Default Costs**

*(Warner, at the request of the  
Governor)*

LB 29 was introduced in response to the federal Omnibus Reconciliation Act of 1993 (ORA).

The ORA was adopted to help offset the costs to the federal government of paying default claims resulting from high loan-default costs incurred by participating postsecondary educational institutions. The ORA authorizes the United States Department of Education to assess a fee on any state that has postsecondary educational institutions that (1) participate in a federal student loan program and (2) have a cohort default rate exceeding a certain percentage established by the department.

LB 29 requires each postsecondary educational institution in Nebraska that participates in the federal student loan program to reimburse the state for the institution's proportionate share of any default-cost fee charged to the state by the United States Secretary of Education. The Coordinating Commission for Postsecondary Education will promulgate rules and regulations and develop a fee structure for determining the amount to be reimbursed from each institution.

The bill further provides that, in addition to its proportionate share of the default-cost fee, each postsecondary educational institution which (1) is currently in operation, (2) participated in the federal student loan program, and (3) for the relevant time period had a cohort default rate equal to or in excess of the percentage that directly triggered the default-cost fee charged to the state must remit an excess default-rate fee of 200 percent of the institution's proportionate share of the default-cost fee.

Additionally, the bill provides that any institution operating under the Private Postsecondary Career School Act (PPCSA) that has a cohort default rate which triggers state liability commits a violation of the PPCSA, and a hearing on the violation will be held to determine whether the institution's permit to operate should be revoked.

LB 29 passed with the emergency clause 42-1 and was approved by the Governor on April 14, 1996.

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**LB 33—Change the Percentage Amount of Certain Fees Credited to the General Fund**

*(Warner)*

Pursuant to Nebraska law, 15 percent of the fees collected from certain state boards, bureaus, divisions, funds, and commissions are credited to the General Fund. With the enactment of LB 33, the fee-transfers are frozen at 15 percent. Subsequently, those transfers will be phased out in annual increments of five percent, which means that the General Fund will receive ten percent of the fees in FY1997-98 and five percent of the fees in FY1998-99. Beginning FY1999-2000 and thereafter, no fees will be credited to the General Fund.

The fiscal note indicates that the freeze will result in General Fund losses of \$33,672 in FY1996-97, \$259,149 in FY1997-98, and \$658,269 in FY1998-99. However, the General Fund reductions will be offset dollar-for-dollar by increases in cash fund balances within the specific agencies currently paying the 15-percent fee.

LB 33 passed with the emergency clause 44-0 and was approved by the Governor on April 15, 1996.

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**LB 1189—Provide for Deficiency Appropriations for State Agencies**

*(Withem, at the request of the Governor)*

LB 1189 is the mainline deficit bill and contains budget adjustments to the biennial budget adopted in 1995. As originally introduced, LB 1189 increased General Fund appropriations by \$1,907,620 in FY1995-96 and \$15,966,077 in FY1996-97, for a two-year total increase of \$17,873,697.

Appropriations Committee amendments adopted to LB 1189 essentially replaced the bill's original provisions. Committee amendments resulted in a reduction in General Fund appropriations totaling \$371,344 for FY1995-96 and an increase in General Fund appropriations totaling \$19,210,472 for FY1996-97, for a two-year net total increase of \$18,839,128.

The committee's most significant recommendations included:

- ◆ A reimbursement of \$1,813,417 from the General Fund for preschool special education programs and transportation;
- ◆ A reduction of \$1,500,000 from the General Fund for FY1995-96 from the special education base appropriation;
- ◆ A reduction of state aid to schools by \$1,836,983 in FY1996-97 (as per intent prescribed in Laws 1995, LB 392);

- ◆ Annualized aid for vocational rehabilitation (\$750,000 from the General Fund for FY1996-97). Annualizing refers to maintaining the funding of a budget item for the second year of the biennial budget at the same amount as the first year, thus avoiding both a decrease and an increase in a program's budget.
- ◆ A reduction of \$2,100,000 from the General Fund for FY1996-97 in the homestead exemption program;
- ◆ An appropriation of \$1,273,599 from the General Fund for FY1996-97 for juvenile community-based service grants;
- ◆ A continued appropriation of \$552,837 from the General Fund for the Youth Rehabilitation and Treatment Centers at Kearney and Geneva;
- ◆ An appropriation of \$350,000 from the General Fund for funding design development for a medium-minimum adult correctional facility;
- ◆ An appropriation of \$630,470 from the General Fund for the Secure Youth Confinement Facility;
- ◆ Annualized faculty and staff salaries at the University of Nebraska for FY1996-97 at \$3,000,000 from the General Fund and an appropriation of \$2,000,000 from the General Fund for such salary increases for FY1996-97;
- ◆ An appropriation of \$6,340,589 from the General Fund for FY1996-97 to provide for an increase of rates to a minimum of 80 percent methodology rates for community-based developmental disability service providers. This appropriation will help compensate the providers at a level comparable to state employees in similar employment positions. (This provision was originally included in LB 1128);
- ◆ Reallocation of a one-time Medicare rate adjustment using \$1,000,000 of Federal Funds for mental health aid;
- ◆ Annualizing the funds necessary for additional probation officers (\$342,750 from the General Fund for FY1996-97);

- ◆ Restoration of \$300,000 from the General Fund in FY1996-97 to the Nebraska Natural Resources Commission for the Resource Development Fund; and
- ◆ Restoration of \$206,642 from the General Fund for FY1996-97 to the Coordinating Commission for Post-secondary Education for student aid.

Several amendments were adopted during floor debate on LB 1189 resulting in significant changes to the budget. The amendments included funding for the following:

- (1) \$3,506,100 of General Funds in FY1996-97 for the construction of two modular prison housing units;
- (2) \$79,685 of General Funds for computer automation of the George W. Norris Legislative Chamber;
- (3) \$108,939 of General Funds for aid to community colleges;
- (4) \$172,872 of General Funds earmarked within the Department of Correctional Services' current budget for six additional security staff positions;
- (5) Annualizing \$73,500 of General Funds for domestic violence programs within the Department of Social Services which was vetoed from the agency's FY1996-97 budget in 1995;
- (6) Authorizing the Department of Administrative Services to negotiate for the use or acquisition of Rivendell Psychiatric Hospital in Seward, Nebraska for mental health or substance abuse treatment; and
- (7) Authorizing the transfer of \$18,189,565 from the General Fund to the Cash Reserve Fund in June 1996 rather than June 1997.

LB 1189 passed with the emergency clause 41-1 and was approved by the Governor with several line-item vetoes. The Governor vetoed \$5,762,379 of General Fund appropriations for FY1995-96 and \$9,590,744 of General Fund appropriations for FY1996-97. The most significant General Fund vetoes were:

- ◆ \$79,685 from the Legislative Council appropriation for computer automation of the George W. Norris Legislative Chamber;
- ◆ \$1,639,490 in FY1995-96 and \$1,084,781 in FY1996-97 from the Department of Revenue appropriation as a result of an over-appropriation in the homestead exemption program;
- ◆ \$1,075,000 in FY1996-97 from the appropriation to the Department of Public Institutions to offset a one-time federal fund windfall from a Medicare rate adjustment. This veto reduces state aid for community-based outpatient services. An additional \$3,170,295 in FY1996-97 was vetoed from the department appropriation for rate equity funding for developmental disability service providers;
- ◆ \$2,063,000 in FY1995-96 from the Department of Social Services appropriation for public assistance savings and \$1,967,000 in FY1995-96 for Medicaid savings;
- ◆ \$500,000 in FY1996-97 from the Department of Water Resources appropriation for legal expenses in the water dispute between Nebraska and Wyoming;
- ◆ \$636,800 in FY1996-97 from the Department of Correctional Services appropriation for juvenile community-based service grants and \$200,000 in FY1996-97 for design development plans for a medium-minimum adult correctional facility;
- ◆ \$2,000,000 in FY1996-97 from the appropriation to the University of Nebraska for salary increases; and
- ◆ \$300,000 in FY1996-97 from the appropriation to the Nebraska Natural Resources Commission for the Resource Development Fund.

On April 18, 1996, the Legislature overrode the earmark veto of \$1,075,000 of General Funds within the Department of Public Institutions. The earmark veto reduces state aid for community-based outpatient services. By overriding the earmark language only and not overriding the program total amount, the department reduces its operations budget by the vetoed amount of \$1,075,000.

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**LB 1190—Adopt  
the Information  
Technology  
Infrastructure Act  
and Change the  
Distribution of  
Cigarette Tax  
Proceeds**

*(Withem and Wehrbein, at the  
request of the Governor)*

The Information Technology Infrastructure Act (ITIA) is enacted with the passage of LB 1190. The ITIA addresses enterprise-wide information technology issues and designates the potential problems resulting from the century date-change conversion project within state computer systems as its top priority project.

Consultants estimate that the century date-change conversion project will cost Nebraska between \$28 million to \$31 million. Because of the estimate, LB 1190 initially earmarked two cents of the annual cigarette tax revenue from FY1997-98 through FY2000-01 to defray the cost of the conversion project. This earmark reduced the amount of cigarette tax revenue previously earmarked for the Building Renewal Allocation Fund (also known as the 309 Task Force). However, an amendment subsequently adopted during floor debate prescribed that two cents of the annual cigarette tax revenue is subject to express appropriation by the Legislature for the century date-change conversion project, and any portion of the appropriated revenue not used to finance the conversion project and the ITIA would then be available to support the Building Renewal Allocation Fund.

Additionally, adopted committee amendments provide that:

- ◆ The ITIA will be administered by the Director of Administrative Services;
- ◆ The Department of Administrative Services will bill state agencies for project expenses and sign agreements with agencies regarding project scope and funding;
- ◆ The director will hire a qualified project administrator to provide full-time project management; and
- ◆ The department will report to the Governor and the Legislature's Appropriations Committee on a quarterly basis.

LB 1190 passed with the emergency clause 41-6 and was approved by the Governor on April 15, 1996.



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**LB 1265—Allow Financing Agreements for Real and Personal Property Acquisitions and Capital Construction in the Nebraska State Capitol Environs District**

*(Brashear)*

LB 1265 authorizes the Director of Administrative Services to enter into financing agreements for real property acquisitions and capital construction projects within the Nebraska State Capitol Environs District once there is a specific legislative appropriation for financing the acquisition or project and the Governor and the Executive Board of the Legislative Council approve the financing agreement.

The director cannot enter into financing agreements for real property acquisitions or capital construction projects outside the district unless he or she has the approval of the Legislature through the capital construction budget process.

LB 1265 passed with the emergency clause 44-0 and was approved by the Governor on April 12, 1996.

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**LEGISLATIVE BILLS NOT ENACTED**

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**LB 1061—Appropriate Funds for Salaries for Cooperative Extension Educators and Assistants**

*(Wehrbein, Engel, Hillman, Jones, Stuhr, Vrtiska, and Warner)*

LB 1061 would have appropriated \$2.1 million for FY1996-97 and \$2.1 million for FY1997-98 from the General Fund to the Board of Regents of the University of Nebraska. The appropriations were to be used to pay the salaries and benefits of the university's cooperative extension educators and assistants.

The bill advanced to General File but died with the end of the session.

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**LB 110—Appropriate Funds for the Purchase of Video Equipment for Law Enforcement Motor Vehicles**

*(Crosby)*

The Law Enforcement Video Equipment Purchasing Fund would have been created via the passage of LB 110. The fund would have been administered by the Department of Motor Vehicles and authorized the purchase and installation of videotaping equipment in law enforcement motor vehicles. Distributions from the fund would have been based on guidelines prescribed by the State Office of Highway Safety.

Funds would have been available to all state, county, and local law enforcement agencies which enforce the drunk driving laws, resolutions, or ordinances in Nebraska.

The bill would have appropriated from the General Fund to the Law Enforcement Video Equipment Purchasing Fund \$100,000 for FY1995-96 and \$100,000 for FY1996-97.

The bill did not advance from committee and died with the end of the session.

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**LB 1192—Appropriate Funds to the State Department of Education to Provide State Aid to Schools**

*(Withem, Boblke, Bromm, Coordsen, McKenzie, Warner, and Wehrbein)*

LB 1192 would have appropriated \$71,239,491 from the General Fund for FY1996-97 to the State Department of Education to be used for state aid to public schools.

Section 79-3822 requires the Governor to prepare legislation that appropriates a portion of the funds necessary to financially support the state's public school districts. The appropriation must equal 45 percent of the estimated general fund operating expenditures of school districts for the 1996-97 school year.

There was concern that the Governor did not meet the statutorily required 45 percent; therefore, this bill was introduced to appropriate the money necessary to meet the requirement.

LB 1192 did not advance from committee and died with the end of the session.

However, LB 1050, which the Legislature enacted and is discussed in the Education Committee section of this report, clarifies that the 45-percent funding goal applies not to individual school districts, but to the state as a whole. LB 1050 also includes in the 45-percent funding goal money to be transferred from the Help Education Lead to Prosperity Act to school employee retirement systems.

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**LB 1382—Provide for Transfers from the Wastewater Treatment Facilities Construction Loan Fund**

*(Bromm)*

As originally introduced, LB 1382 would have allowed the Department of Environmental Quality to transfer funds between the Petroleum Release Remedial Action Cash Fund and the Wastewater Treatment Facilities Construction Loan Fund. The transfers would have provided the necessary state match required to obtain federal capitalization grants under the federal Clean Water Act and would have allowed the department to provide state aid payments for underground storage tank cleanup projects.

An amended version of LB 1382 was amended into LB 1226. LB 1226 was passed by the Legislature and is discussed in the Natural Resources Committee section of this report.

**BANKING, COMMERCE  
AND INSURANCE COMMITTEE**  
**Senator David Landis, Chairperson**

**ENACTED LEGISLATIVE BILLS**

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**LB 515—Authorize  
Associations to  
Obtain Workers’  
Compensation  
Insurance Covering  
Members and  
Eliminate a Restriction  
on Insurer’s  
Investments**

*(Landis)*

LB 515, a carryover bill from last session and a 1995 Speaker priority bill, authorizes certain associations to

obtain individual workers’ compensation insurance policies through an agent licensed under the Insurance Producers Licensing Act for any and all of the voting members of the association covering the liability to which each individual employer may be subject under the Nebraska Workers’ Compensation Act from an insurer authorized to transact the business of workers’ compensation insurance in this state.

Eligible associations include those that have a constitution and bylaws and have been organized in Nebraska for at least two years. Furthermore, to be eligible, an association must be “maintained in good faith for purposes other than that of obtaining insurance. . . .”

LB 515 also requires such associations to “adopt and maintain a plan of operation that includes the methods for administering insurance policies. . . , including the payment of premiums, the distribution of discounts, and the methods for providing risk management.” A violation of LB 515 is a Class II misdemeanor. However, LB 515 specifically provides that eligible associations are *not* deemed to be insurers transacting the business of insurance under Nebraska law.

Finally, LB 515 was amended to include the provisions of LB 1185, which eliminates a restriction on insurer’s investments. Formerly, subsection (3) of section 44-5133 prohibited an insurer’s investments authorized under section 44-5133 (asset-backed securities) from exceeding 20 percent of its “admitted assets.” LB 1185 strikes that restriction in its entirety. (This change becomes operative under the bill’s emergency clause, whereas the bill’s other provisions do not become operative until July 19, 1996.)

LB 515 passed 37-0 and was approved by the Governor on April 9, 1996.

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**LB 681—Registered  
Limited Liability  
Partnerships; the  
Nebraska Non-  
profit Corporation  
Act; Changes to the  
Limited Liability  
Company Act; and  
Shareholders’ Pre-  
emptive Rights**

*(Kristensen, Lindsay, and  
Abboud)*

**Registered Limited Liability Partnerships**

LB 681 allows foreign and domestic general partnerships to do business as registered limited liability partnerships (LLPs). LB 681 makes the registered LLP provisions a part of Nebraska’s Uniform Partnership Act.

The organizational structure of a registered LLP is similar to that of a general partnership. LB 681 defines “partnership” to mean “an association of persons organized as a separate entity to carry on a business for profit and includes, for all purposes of the laws of this state, a registered limited liability partnership.”

Whereas all general partners in a general partnership are personally liable for the debts and obligations of the partnership, a partner in a registered LLP would *not* be held personally liable, directly or indirectly, for partnership debts, obligations, and liabilities arising from *another partner’s* “omissions, negligence, wrongful acts, misconduct, or malpractice” occurring (1) while the partnership is a registered LLP and (2) in the course of partnership business. (The same rule applies to omissions, negligence, etc., committed by an employee, agent, or representative of the partnership who was *not* under the direct supervision and control of the partner in question.)

Furthermore, this type of liability shield applies in cases involving actions for “indemnification, contribution, assessment, or otherwise. . . .” LB 681 also extends its liability shield to situations involving the dissolution of the partnership, when the liability of the firm’s partners to one another may be at issue.

However, a partnership must first comply with the applicable registration requirements before its partners may enjoy this type of limited liability. LB 681 contains three general registration requirements.

First, a registration application executed by a majority in interest of the partners (or by one or more partners authorized by a power of attorney to execute the application) must be filed with the Secretary of State, who may prescribe forms for registration. Second, an application filing fee of \$200 must be paid to the Secretary of State along with the recording fees required by subdivision (4) of section 33-101. Third, the name of a registered LLP must contain “LLP,” “L.L.P.,” or “registered limited liability partnership” as the last words or letters of the partnership’s name.

A registration is effective at the time the registration application is filed and remains effective until voluntarily withdrawn. A registration may be withdrawn either by (1) filing a written withdrawal notice executed by a majority in interest (or by related power of attorney) or (2) failing to pay the required fees, in which case the withdrawal occurs 30 days following receipt of a notice from the Secretary of State stating that the partnership has failed to timely pay the required fees.

LB 681 also contains a number of provisions which address issues involving the personal liability of partners in foreign LLPs and the related judicial "internal affairs doctrine." In the past, some courts (*i.e.*, those in states that do not recognize LLPs) have had to resolve what are essentially legislative policy issues regarding the extra-territorial force and effect of the LLP liability shield. To avert such problems, section 17 of LB 681 and the LLP statutes in many states contain declarations of policy and legislative intent concerning whether, and to what extent, the liability shield of an LLP organized under the laws of another state or foreign country applies in the host jurisdiction.

Specifically, LB 681 allows a registered LLP formed under Nebraska law to conduct its business and exercise its powers "in any state, territory, district, or possession of the United States or in any foreign country." Also, LB 681 expressly states the Legislature's "intent" that the "legal existence" of an LLP formed under Nebraska law be recognized in other jurisdictions and that Nebraska law governing registered LLPs which do business in other jurisdictions "be granted the protection of full faith and credit under the Constitution of the United States." Finally, LB 681 provides that Nebraska's "policy" is that the internal affairs of registered LLPs formed under Nebraska law be subject to and governed by Nebraska law and that the internal affairs of registered LLPs formed under the laws of another jurisdiction be subject to and governed by the laws of that other jurisdiction.

The bill's LLP provisions become operative July 19, 1996.

### **Nebraska Nonprofit Corporation Act**

LB 681 was amended during the 1996 legislative session to include the provisions of LB 673. The Nebraska Nonprofit Corporation Act, is based, in large part, upon the American Bar Association's Revised Model Nonprofit Corporation Act. As amended to include the provisions of LB 673, LB 681 now contains comprehensive provisions governing nonprofit corporations. These provisions

govern nonprofit corporations' organization, purposes, powers, names, officers and agents, members and memberships, members' meetings and voting, directors and officers, ability to amend the articles of incorporation and bylaws, merger, sale of assets, distributions, dissolution, foreign corporations, records and reports, and transition provisions, as well as general provisions. The Nebraska Nonprofit Corporation Act provisions become operative January 1, 1997.

### Change Provisions of the Limited Liability Company Act

LB 681 was also amended to include the provisions of LB 489, which advanced to General File by the end of the 1995 legislative session. As amended in this regard, LB 681 now changes a number of restrictions currently governing the organization of limited liability companies (LLCs) and the withdrawal of an LLC member's capital contributions. As originally enacted in 1993, the Nebraska Limited Liability Company Act required at least a two-thirds affirmative vote of a "majority in interest" before an LLC could authorize many different types of formal action. LB 681 basically eliminates or modifies such super-majority voting requirements.

As amended, LB 681 also changes other LLC supermajority voting requirements and eliminates a written notice requirement that may arise in connection with the withdrawal of an LLC member's capital contributions. The bill clarifies the scope of the Limited Liability Company Act's general prohibition against LLCs being organized to conduct business as a bank or insurance company and redefines, for purposes of the Insurance Producers Licensing Act, the term "insurance agency" to include LLCs. Finally, in connection with LLC registration requirements, LB 681 provides that when licensing records of regulating boards—such as those governing medical professionals and certified public accountants—are electronically accessible to the Secretary of State, the Secretary of State must access such records electronically.

The limited liability company provisions in LB 681 become operative July 19, 1996, except that the provisions pertaining to electronically accessible records become operative under the bill's emergency clause.

## Shareholders' Preemptive Rights

The provisions of LB 1258 were also added to LB 681 via amendment. As amended in this regard, LB 681 enacts a grandfather provision that restores the rule governing shareholders' preemptive rights<sup>1</sup> as it existed prior to the passage of Laws 1995, LB 109, which basically "provides that preemptive rights do not exist, unless provided for in the articles of incorporation."<sup>2</sup> By contrast, "the traditional Nebraska approach to preemptive rights" had been to grant "shareholders preemptive rights, unless such rights" were "limited or denied in the articles of incorporation."<sup>3</sup>

Before LB 109 became operative on January 1, 1996, the rule was that "if a corporation's articles are silent with respect to preemptive rights, then the shareholders have such rights."<sup>4</sup> The rule adopted by LB 109 changed the traditional approach by basically providing that "preemptive rights will exist only if stated in the articles of incorporation."<sup>5</sup> Thus, under the provisions of LB 109,

shareholders in existing Nebraska corporations would be required to amend their articles to retain their preemptive rights. In certain circumstances, an amendment to the articles may not be forthcoming, though minority shareholders may have originally bargained for preemptive rights. Thus . . . , a grandfather provision should be provided to retain the preemptive rights of shareholders in corporations formed prior to the adoption of the new business corporation act.<sup>6</sup>

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<sup>1</sup> A preemptive right is generally defined as "An existing stockholder's 'right to buy additional shares of a new issue to preserve his [or her] equity before others have a right to purchase shares of the new issue. The purpose of such rights is to protect shareholders from dilution of value and control when new shares are issued.'" R. Santoni, "Why Nebraska Should Adopt the Revised Model Business Corporation Act," 28 *Creighton L.Rev.* 149, 155, n. 29 (1994)(quoting *Black's L. Dict.*, p. 815 (6th ed. 1990)).

<sup>2</sup> R. Santoni, "Why Nebraska Should Adopt the Revised Model Business Corporation Act," 28 *Creighton L.Rev.* 149, 155 (1994).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, pp 155-56.

LB 681—as amended to include the provisions of LB 1258—supplies this type of grandfather provision by amending subsection (1) of section 21-2048 to state that

The shareholders of a corporation organized prior to January 1, 1996, shall continue to have a preemptive right to acquire the corporation's unissued shares in the manner provided in this section if the articles of incorporation of the corporation did not, on or after January 1, 1996, expressly eliminate such preemptive rights to its shareholders.

The preemptive rights provisions in LB 681 become operative under the bill's emergency clause.

LB 681 passed 40-1 and was approved by the Governor on April 12, 1996.

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**LB 972—Adopt the Charitable Gift Annuity Act and Repeal Provisions Governing the Illegal Solicitation of Funds**

*(Hilgert and Abbond)*

LB 972 adopts the Charitable Gift Annuity Act. The Legislature's intent, as stated in the bill, is "to encourage philanthropic donations and activities through the issuance of charitable gift annuities." *The Wall Street Journal* reported on October 5, 1995, that a charitable gift annuity "allows a donor to name the recipient for a chunk of money but obtain income from it while alive, plus an immediate tax deduction."

Legislation similar to the Charitable Gift Annuity Act has already been enacted in Texas. Texas House Bill Nos. 3104 (insurance law) and 1543 (banking law) were enacted during 1995 in reaction to a class-action lawsuit brought in federal district court in Texas, *Ozee v. The American Council on Gift Annuities, et al*, 888 F.Supp. 1318 (D.C. Tex. 1995), which held, in ruling on a motion for summary judgment, that the sale of charitable gift annuities and the imposition of annuity management fees by the Lutheran Foundation of Texas constituted the unauthorized business of insurance under Texas law and that the foundation illegally accepted and acted as trustee of two Texas trusts in violation of state law.

The lawsuit also alleged federal antitrust and securities law violations, which led to Congress' enactment of related legislation during 1995. The Charitable Gift Annuity Antitrust Relief Act of 1995 clarifies that certain charitable gift annuities are exempt from



federal antitrust laws.<sup>7</sup> “The antitrust exemption generally applies to both federal and state laws. However, a state has three years from the date of enactment (*i.e.*, December 8, 1998) to subject gift annuities to state antitrust laws.”<sup>8</sup> The Philanthropy Protection Act of 1995 exempts the issuance of charitable gift annuities from federal *and state* securities “registration requirements and fees,” but “charities that maintain ‘charitable income funds’ must disclose in writing to donors of life-income gifts the ‘material terms of the operation of such fund[s].’”<sup>9</sup> However, “[a]ny state that wishes to regulate gift annuities as securities has three years from the date of enactment (*i.e.*, until December 8, 1998) to enact new regulatory laws.”<sup>10</sup>

With respect to Nebraska law, section 3 of LB 972 provides that the issuance of a charitable gift annuity does *not* constitute engaging in business as a trust company or as an insurance company under Nebraska law and does not constitute an act in violation of Nebraska’s statutes prohibiting restraint of trade or deceptive trade practices. However, section 3 of the bill also provides that “conduct other than issuance of a charitable gift annuity, including the marketing of a charitable gift annuity, is not exempt from application of the Uniform Deceptive Trade Practices Act.”

Section 2 of LB 972 specifically defines “charitable gift annuity” to mean

a charitable gift annuity described by section 501(m) and section 514(c)(5) of the Internal Revenue Code that is issued prior to, on, or after the effective date of this act by a charitable organization that, on the date of the annuity agreement, has been in continuous operation for at least three years or is the successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

Finally, section 20 of LB 1221 was amended into LB 972. That provision outright repeals sections 28-1440 to 28-1449, which,

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<sup>7</sup> See “Legislation On Gift Annuities,” *Techniques*, unnumbered p. 3 (Spring, 1996).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, unnumbered p. 2.

<sup>10</sup> *Id.*

among other things, required certain persons soliciting funds to pay a ten-dollar fee to obtain a “letter of approval” from the county attorney in the county where the solicitation was to occur and a related “certificate” of solicitation from the Secretary of State. (Exceptions had been provided for qualifying churches and charitable organizations.) In addition, “voluntary health and welfare organizations” engaged in solicitation activities were formerly required to file certified annual financial reports with the Secretary of State.

LB 972 passed with the emergency clause 41-0 and was approved by the Governor on March 25, 1996.

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## **LB 973—Adopt the Uniform Management of Institutional Funds Act**

*(Lindsay, Hartnett, and  
Landis)*

LB 973 adopts the Uniform Management of Institutional Funds Act, which basically delineates the investment authority of, and imposes duties of care upon, persons charged with managing institutional funds or endowment funds. The act defines “institution” to mean “an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes” and it defines “governing board” to mean “the body responsible for the management of an institution or of an institutional fund.”

### **“Standard of Care” for Fund Management**

LB 973 requires the members of a governing board to “exercise ordinary business care and prudence under the facts and circumstances prevailing at the time” of the board’s “action or decision” during “the administration of” its “powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds. . . .” In exercising such care and prudence, the act requires board members to “consider long-term and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected return on its investments, price level trends, and general economic conditions.” However, section 6 of LB 973 *generally* permits a governing board to (1) delegate its investment authority to officers and other agents of the institutional fund and (2) contract with independent investment advisers (and others such as trust companies) “to act in place of the board in investment and reinvestment of institutional funds. . . .”

## Rules for “Institutional Funds”

The bill defines “institutional fund” to mean “a fund held by an institution for its exclusive use, benefit, or purposes,” exclusive of a fund: (a) held for an institution by a noninstitutional trustee; or (b) in which a noninstitutional beneficiary “has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.” Subject to certain conditions noted below, LB 973 permits the governing board of an institutional fund to:

- (1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, limited liability companies, or individuals, and obligations of any government or subdivision or instrumentality thereof;
- (2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;
- (3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and
- (4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

This investment authority is “[i]n addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make,” but is, nonetheless, “subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary. . . .”

## Special Rules for “Endowment Funds”

LB 973 defines “endowment fund” to mean “an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument” and permits the governing board of an endowment fund to

appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the [ordinary business care and prudence] standard.

However, this provision “does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution” and “does not apply if the applicable gift instrument indicates the donor’s intention that net appreciation shall not be expended.” (For gift instruments executed or in effect before or after the effective date of LB 973, a rule of construction prohibits implying that a “restriction upon the expenditure of net appreciation” exists simply because a gift is designated as “an endowment” or because of “a direction or authorization in the applicable gift instrument to use only ‘income,’ ‘interest,’ ‘dividends,’ or ‘rents, issues, or profits,’ or ‘to preserve the principal intact,’” or some such similar direction.)

## Release of Restrictions in Gift Instruments

Section 8 of LB 973 provides means by which an institution’s governing board may “release a restriction” imposed by a “gift instrument.” However, such a release may not function to “allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.” Furthermore, the bill specifically provides that the provisions of section 8 do “not limit the application of the doctrine of *cy pres*.” “The rule of *cy-pres* is a rule for the construction of instruments in equity, by which the intention of the party is carried out *as near as may be*, when it would be impossible or illegal to give it literal effect.” [*Black’s L. Dict.* 387 (6th ed. 1990)(emphasis in original).]

LB 973 passed 44-0 and was approved by the Governor on March 19, 1996.

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**LB 1028—Adopt  
Uniform Commer-  
cial Code Provi-  
sions Governing  
Letters of Credit**  
*(Landis)*

LB 1028 adopts the Uniform Commercial Code's (UCC) provisions governing letters of credit. The bill defines "letter of credit" to specifically mean

a definite undertaking that satisfies the requirements of section 5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

Section 5-104 of the Uniform Commercial Code permits a letter of credit (or a "confirmation, advice, transfer, amendment, or cancellation") to be "issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 5-108(e)." Section 5-108(e) of the Uniform Commercial Code requires an issuer to "observe standard practice of financial institutions that regularly issue letters of credit." Although a "[d]etermination of the issuer's observance of the standard practice is a matter of interpretation for the court" under section 5-108(e), the court is nonetheless required to "offer the parties a reasonable opportunity to present evidence of the standard practice."

LB 1028 also contains several related provisions. For instance, section 5 of LB 1028 sets forth the scope of UCC Article 5 while section 7 of the bill states that "[c]onsideration is not required to issue . . . or cancel a letter of credit. . . ." The bill contains several other related provisions as well, such as those pertaining to issuers' rights and obligations, fraud and forgery, warranties, remedies, assignment of proceeds, limitation of actions, and choice of law and forum.

LB 1028 passed 43-0 and was approved by the Governor on March 25, 1996.

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**LB 1275—Technical  
Corrections Re-  
garding Mergers  
and Acquisitions of  
Financial  
Institutions**  
*(Landis)*

According to the bill's Committee Statement, LB 1275 amends the Nebraska Bank Holding Company Act of 1995 to close gaps between existing state statutes and regulations promulgated by the Department of Banking and Finance concerning "reverse" bank mergers and "phantom" savings and loan company mergers. LB 1275 provides that if certain conditions are fulfilled, a "bank" may be permitted to acquire another bank in Nebraska and a "financial institution" may be permitted to acquire another financial

institution in Nebraska “as a result of a cross-industry merger or acquisition under section 8-1510.”

However, neither of those rules applies “to any application for merger in which a financial institution has been organized to merge with an existing financial institution following the merger and the merger involves a purchase of substantially all of the assets and liabilities of the former existing financial institution.” (LB 1275 defines “bank” to mean a bank organized to do business in Nebraska under either Nebraska law or federal law, and it defines “financial institution” to mean “a bank, savings bank, savings and loan association, building and loan association, trust company, industrial loan and investment company, or credit union” organized to do business in Nebraska under either Nebraska law or federal law.) The bill contains a number of related, coordinating provisions as well.

LB 1275 passed with the emergency clause 36-0 and was approved by the Governor on April 4, 1996.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 748—Adopt the Uniform Custodial Trust Act** *(Landis)*

Although it was introduced during the 1995 legislative session, LB 748 was designated as a Banking, Commerce, and Insurance Committee priority bill during 1996. LB 748 would have adopted the Uniform Custodial Trust Act (UCTA), which was developed by the Uniform Law Commissioners.

The concise summary of the bill provided in the Committee Statement indicates that LB 748 would have provided:

for the creation of a statutory custodial trust for adults. The UCTA allows any kind of property, real or personal, tangible or intangible, to be made the subject of a transfer to a custodial trustee for the benefit of a beneficiary. A transaction under the UCTA would involve a person who would transfer property to a custodial trustee but with retention by the transferor of direction over the property. Later, this direction could be relinquished, or it could be lost upon incapacity.

However, a proposed amendment would have made a number of changes in the bill’s provisions. One such provision would have provided that the “net value” of property transferred to such a custodial trust may not, in the aggregate, exceed \$100,000.

However, that dollar limitation would not have applied “to any income received by the custodial trust and any appreciation in the value of the property held in the custodial trust,” though a “good faith violation” of those provisions would not have invalidated the custodial trust.

Another change proposed by the same amendment would have lowered from \$20,000 to \$10,000 the threshold for requiring a court-authorized transfer of certain property or debt to “an adult member of the beneficiary’s family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual.” In connection with establishing the order in which “unexpended custodial trust property” is to be transferred by the custodial trustee upon termination of the trust in the event of the beneficiary’s death, another of the amendment’s provisions would have required that “at least two witnesses” subscribe their notarized signatures on either “the instrument creating the custodial trust” or the “writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary. . . .” Nonetheless, a “[f]ailure to comply with the witness or acknowledgement requirement” would not have affected “the validity of the custodial trust during the the life of the beneficiary,” but would have invalidated “only the direction or designation of the beneficiary on termination of the custodial trust” in certain circumstances.

The amendment also would have changed the name of the act from the *Uniform Custodial Trust Act* to the *Nebraska Custodial Trust Act*.

LB 748 advanced to General File but died with the end of the session.





# BUSINESS AND LABOR COMMITTEE

## Senator Chris Abboud, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 1072—Income Tax Withholding on Unemployment Compensation**

*(Abboud, Schimek, and Vrtiska)*

LB 1072 authorizes individuals to choose to have federal income taxes withheld from their unemployment compensation. Funds that are withheld from such payments remain in the Unemployment Compensation Fund until transferred to the Internal Revenue Service. However, withholding to pay child support obligations, overpayments of unemployment compensation, and “any other amounts required to be withheld under the Employment Security Law” have priority over withholding to pay federal income taxes. (LB 1072 is silent with respect to state income tax withholding.)

The bill also requires unemployment compensation recipients to be informed that such compensation is subject to federal and state income tax, that estimated tax payment requirements exist under federal tax law, that federal income tax withholding is authorized, and that the recipient has the right to change a previously elected income tax withholding status.

Finally, LB 1072 authorizes payment of certain administrative costs from the Employment Security Administration Fund, provides that the district court of Lancaster County is the proper forum for actions involving nonresident employees working outside Nebraska, and makes changes concerning service of process on the Commissioner of Labor. LB 1072 becomes operative on July 1, 1996.

LB 1072 passed with the emergency clause 42-0 and was approved by the Governor on March 25, 1996.

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#### **LB 1230—Permit Insurers to Electron- ically Notify the Nebraska Workers’ Compensation Court When Policies Are Cancelled or Not Renewed**

*(Vrtiska)*

LB 1230 authorizes an insurer to electronically file a required notice with the Nebraska Workers’ Compensation Court (1) whenever a workers’ compensation insurance policy is not renewed or is cancelled during the contract or policy period and (2) only if the means of electronic filing is approved by the compensation court.

LB 1230 passed 41-0 and was approved by the Governor on April 15, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 903—Prohibit Employment Discrimination Based on Sexual Orientation** *(Chambers)*

LB 903 would have prohibited employment discrimination based on sexual orientation. The provisions of LB 903 are substantially similar to the provisions of LB 400, which was introduced during the 1995 legislative session. LB 903 would have prohibited employment discrimination based on “sexual orientation” and defined that phrase to mean “having an orientation for heterosexuality, homosexuality, or bisexuality, having a history of such an orientation, or being identified with such an orientation.” The bill also provided that the phrase “sexual orientation” would “not be construed to protect conduct otherwise proscribed by law” and would have exempted from the prohibition employers engaged in or responsible for the care and education of children under 18 years of age in a residential care facility.

LB 903 also included a provision which would have exempted from the prohibition “any bona fide religious organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society” and would have prohibited any construction of the Nebraska Fair Employment Practice Act “to authorize or permit the use of numerical goals or quotas or other types of affirmative action programs with respect to sexual orientation in the administration or enforcement of such act.”

Finally, the bill would have amended Nebraska’s equal employment opportunity law to include the definition of “sexual orientation” and would have changed the meaning of “equal employment opportunity” to include the right of all persons to work and advance on the basis of merit and ability without regard to sexual orientation.

LB 903 did not advance from committee and died with the end of the session.

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### **LB 1042—Increase Minimum Wage Rate** *(Wesely, Chambers, Hilgert, Preister, Schimek, and Will)*

LB 1042 would have increased the minimum wage from \$4.25 per hour to \$4.70 per hour beginning December 1, 1996, and to \$5.15 per hour one year later. For persons compensated by gratuities, such as waiters and waitresses, the current minimum wage rate of \$2.13 per hour would have been increased to \$2.35 per hour beginning December 1, 1996, and to \$2.58 one year later.

LB 1042 did not advance from committee and died with the end of the session.

An attempt to increase the minimum wage from \$4.25 per hour to \$4.50 per hour, by amending LB 1368, the Union Pacific tax incentives bill, was made during floor debate on LB 1368. The amendment failed 18–24.

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**LB 1126—Include  
Newspaper Carriers  
as Employees for  
Purposes of Workers’ Compensation**  
*(Will)*

LB 1126 would have expanded the definition of the term “employee” to include newspaper carriers. The provisions of LB 1126 are substantially similar to the provisions of LB 221, which was introduced during the 1995 legislative session. For purposes of the Nebraska Workers’ Compensation Act, LB 1126 would have expanded the definition of the term “employee” to include newspaper carriers—specifically, “[e]very person who delivers or distributes newspapers for the owner or operator of a newspaper business. . . .”

The catalyst for each bill was a lawsuit involving a newspaper carrier who was paralyzed after being hit by a car while she was delivering Fremont Tribune newspapers. A trial judge of the Nebraska Workers’ Compensation Court initially ruled that the carrier was an employee of the newspaper, but a three-judge workers’ compensation review panel later reversed that decision.

Subsequently, the Nebraska Court of Appeals overturned the review panel’s decision and ruled 3–0 that whether a newspaper carrier is an employee (who might be entitled to workers’ compensation benefits) or an independent contractor (who ordinarily would not be entitled to such benefits) depends on the degree of control the newspaper exercises over carriers. Citing case law in other jurisdictions, the Court of Appeals concluded that “in some situations, a newspaper carrier can be an independent contractor as a matter of law; in others, an employee as a matter of law; and in still others, the status of the newspaper carrier to the newspaper is a factual issue. . . . The result in each case is dictated by the amount of control the newspaper maintains over the carrier. . . .” The Court of Appeals also noted that there is no one test to decide if a worker is an employee or an independent contractor and that the classification issue must be decided on the basis of the facts and circumstances in each case.

On December 8, 1995, the Nebraska Supreme Court affirmed the decision of the Court of Appeals 5–0. *See Larson v. Hometown Communications, Inc*, 248 Neb. 942 (1995). Although no single factor is controlling, the High Court quoted, with approval, language in *Hemmerling v. Happy Cab Co.*, 247 Neb. 919, 929 (1995), listing ten factors that are to be considered when

determining whether a worker is an employee or independent contractor:

(1) the extent of control which, by the agreement, the employer may exercise over the details of the work, (2) whether the one employed is engaged in a distinct occupation or business, (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision, (4) the skill required in the particular occupation, (5) whether the employer or the one employed supplies the instrumentalities, tools, and the place of work for the person doing the work, (6) the length of time for which the one employed is engaged, (7) the method of payment, whether by time or by the job, (8) whether the work is part of the regular business of the employer, (9) whether the parties believe they are creating an agency relationship, and (10) whether the employer is or is not in business.

In applying this ten-factor analysis, the Court noted, among other things, that the newspaper company in the *Larson* case maintained control over delivery routes and times, manner of delivery, the cost of the newspapers charged to carriers and subscribers, bundling methods, collection activities, and complaint procedures. The company also provided comprehensive supervision of carriers and developed procedures for the use of substitute carriers. The Court also upheld the findings of the trial judge that carriers were used to further the business of the newspaper company, no special skill was required of carriers, the work was continuous rather than temporary, delivery services constituted a significant part of the newspaper company's business, and an attempt to characterize carriers "little merchants" through the use of an "Independent Carrier Agreement" did not control the determination of whether carriers are employees or independent contractors. The Court also upheld the trial judge's finding that the newspaper company was engaged in business and that its failure to withhold federal and state taxes from payments made to carriers did not influence the determination of the classification issue one way or another because state and federal tax laws exempt the earnings of newspaper carriers under 18 years of age from tax withholding requirements.

LB 1126 advanced to General File but died with the end of the session.

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**LB 1129—Increase  
Unemployment  
Compensation  
Weekly Benefit  
Amount for  
Unemployed High-  
Wage Earners**

*(Lindsay, Hilgert, Preister,  
Wesely, and Will)*

LB 1129 would have increased the unemployment compensation weekly benefit amount for higher-wage earners.

For any benefit year beginning on or after July 1, 1996, through June 30, 1997, LB 1129 would have increased the maximum weekly benefit amount, for unemployed persons whose wages paid in the highest quarter of the base period exceeded \$4,500.00, from \$184.00 to \$210.00 per week and would have increased the maximum weekly benefit amount, for unemployed persons whose wages paid in the highest quarter of the base period ranged from \$4,450.01 through \$4,500.00, from \$182.00 to \$184.00.

For any benefit year beginning on or after July 1, 1997, the bill would have increased the maximum weekly benefit amount for the highest-wage earners from \$210.00 to \$235.00, but would have decreased the benefit amount from \$184.00 to \$182.00 for those unemployed persons whose wages paid in the highest quarter of the base period ranged from \$4,450.01 through \$4,500.00.

LB 1129 was indefinitely postponed on February 6, 1996.

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**LB 1130—Increase  
Unemployment  
Compensation  
Weekly Benefit  
Amount for All  
Unemployed  
Individuals**

*(Lindsay, Hilgert, Preister,  
Wesely, and Will)*

LB 1130 would have increased the unemployment compensation weekly benefit amount for all recipients of unemployment compensation. Under current law for any benefit year beginning on or after January 1, 1995, unemployed individuals may be eligible to receive an unemployment compensation weekly benefit amount between \$20.00 and \$184.00, depending on the wages earned during the highest quarter of the base period.

For any benefit year beginning on or after July 1, 1996, through December 31, 1996, LB 1130 would have increased the weekly benefit amount from \$20.00 to \$23.00 for the lowest wage-earning recipients of unemployment compensation and from \$184.00 to \$210.00 for the highest wage-earning recipients. Unemployed individuals having wage-bases between those two extremes also would have had their weekly benefit amount increased for the last six months of 1996.

For any benefit year beginning on or after January 1, 1997, through December 31, 1997, the bill would have increased the weekly benefit amount from \$23.00 to \$26.00 for the lowest wage-earning recipients of unemployment compensation and from \$210.00 to \$235.00 for the highest wage-earning recipients. Unemployed

individuals having wage-bases between these two extremes also would have had their weekly benefit amount increased.

For any benefit year beginning on or after January 1, 1998, similar increases in the weekly benefit amount would have been provided, resulting in a weekly benefit amount for the lowest wage-earning recipients of \$29.00, while the maximum weekly benefit amount would have been \$261.00.

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

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**LB 1212—Exempt  
Employers’  
Experience  
Accounts from  
Charges for  
Employees Who  
Voluntarily Quit  
for Nonwork-  
Related Illness or  
Injury**  
*(Vrtiska)*

Under the provisions of LB 1212, employers’ unemployment insurance “experience accounts” would have been exempt from charges for employees who voluntarily quit their jobs for nonwork-related illness or injury. (Subdivision (3)(a) of section 48-652 already provides exemptions from such charges when employees voluntarily quit without good cause and when employees are discharged for work-related misconduct.)

In addition, the provisions of LB 1167 were amended into LB 1212. LB 1167 contained provisions aimed at closing an apparent loophole in the Employment Security Law which allowed persons who have a “total” disability (as opposed to a “partial” disability) to simultaneously claim *both* unemployment compensation benefits as well as workers’ compensation benefits. Under LB 1167, persons who have suffered a total disability and who are receiving workers’ compensation benefits would have been disqualified for the purpose of claiming unemployment insurance benefits.

LB 1212 advanced to Final Reading but died with the end of the session.

# EDUCATION COMMITTEE

## Senator Ardyce Bohlke, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 604—Change Provisions for Affiliation and Transfer of Property Between School Districts**

*(Schrock, Beutler, Dierks, Matzke, Wehrbein, and Wickersham)*

LB 604 provides that a county superintendent cannot issue an order changing boundaries pursuant to an affiliation of school districts and a county reorganization committee must reject petitions and plans for affiliation if 20 percent or more of any tract of land under common ownership is not contiguous to the high school district with which affiliation is proposed, unless (1) one or more resident students on the tract of land has attended the high school within the last ten years or (2) approval of the petition or plan would allow preschool-age siblings of resident students to attend the same high school as the resident students.

The bill also requires that if a freeholder petitions a board (consisting of the county superintendent, county clerk, and county treasurer) asking to have a tract of land set off from a Class I, II, III, or VI school district in which the tract is situated and attached to another school district, the other school district must be a contiguous school district. A contiguous school district is defined as a “school district sharing a common boundary with twenty percent or more of the tract of land sought to be transferred.”

Finally, the provisions of LB 1311 were added to LB 604. LB 1311 was originally heard before the Urban Affairs Committee and eliminates the statutory requirement that the county treasurer of a county which includes a city of the metropolitan class must serve as the ex officio treasurer of the school district of that city. The bill in turn authorizes a Class V school district to select a treasurer from outside the membership of the district school board.

LB 604 passed with the emergency clause 43-0 and was approved by the Governor on April 12, 1996.

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#### **LB 754—Authorize Fingerprinting of Applicants for Certain School Positions**

*(Bohlke and Hilgert)*

In an effort to prevent the hiring of teachers, administrators, or supervisors who may have a history of sexual misconduct, abuse, or neglect, LB 754 was enacted. The bill requires an applicant who has lived in Nebraska for less than five years and is applying for a teaching, counseling, supervisory, or administrative position in a Nebraska public elementary or secondary school to submit a release and provide a complete set of fingerprints to the State Department

of Education or the Nebraska State Patrol for purposes of conducting a criminal-history record check.

LB 754 also authorizes the department to issue a temporary certificate while the criminal-history record check is being conducted. The temporary certificate remains valid throughout any proceeding brought pursuant to the record check and cannot be revoked until a final determination is made. Additionally, the bill includes provisions requiring the department to consider any information submitted by the applicant about any convictions prior to the denial of any certificate and provisions providing for an appeal of any such denial.

LB 754 passed 42-3 and was approved by the Governor on April 12, 1996.

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**LB 900—Transfer,  
Combine, and  
Eliminate Sections  
Relating to  
Education**  
*(Bohlke)*

LB 900 has the distinction of being one of the largest bills ever enacted by the Legislature. The Final Reading copy of the bill was over 423 single-spaced pages long. The bill recodifies Chapter 79 by deleting all current section numbers and renumbering the sections in a new organizational scheme and updating the statutory language. Over the past several years the education statutes have been extensively amended, and the reorganization is intended to present the education statutes in an updated, logical manner.

LB 900 passed 39-0 and was approved by the Governor on February 29, 1996.

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**LB 1050—Change  
Provisions Relating  
to the School  
Finance System**  
*(Education Committee)*

LB 1050 makes several changes to Nebraska's public-school finance system. The chief tenet of the bill is to distribute a larger percentage of the state's total school-aid money through the equalization formula. Among its many provisions, the bill:

- ◆ Caps the amount of income tax rebate given back to school districts at \$102.3 million—the amount of the FY1992-93 rebate appropriation—instead of distributing the rebate at the current level, which is 20 percent of all state income taxes paid by district residents;
- ◆ Allows a school district to receive payments only for the net number of students who option into the district, instead of the total number;



- ◆ Requires the money for option-student payments to come out of the \$102.3 million income tax rebate appropriation;
- ◆ Allows all districts, not just nonequalization districts, to receive payments if they have a net gain in option students;
- ◆ Counts option-student payments as part of the school district's resources for the purpose of calculating equalization aid;
- ◆ Eliminates the requirement that a school district accept a student who options into the district if any sibling of the student was accepted earlier;
- ◆ Allows a district to make the final decision about the school building to which an option student is assigned. (This provision was originally part of LB 1178.)
- ◆ Recognizes transportation costs as being unique to individual districts by separating a district's transportation allowance from other general operating costs for the purpose of calculating the district's formula needs;
- ◆ Defines a district's transportation allowance as the lesser of the district's regular transportation costs or the regular transportation mileage multiplied by 400 percent of the state reimbursement rate of 29 cents per mile;
- ◆ Authorizes a study of the unique costs associated with providing quality education in sparsely populated areas of the state;
- ◆ Includes in the equalization formula insurance tax funds that school districts receive;
- ◆ Clarifies that the goal of the state providing 45 percent of all funding for public education in Nebraska applies not to individual districts but to the state as a whole;
- ◆ Includes in the 45-percent funding goal the money that LB 700 would transfer from the Help Education Lead to Prosperity Act to school employee retirement systems; and

- ◆ Amends student discipline statutes to allow certain types of student conduct to be grounds for suspension or expulsion if the conduct takes place in vehicles leased or contracted by a school, not just vehicles owned by the school.

Additionally, the provisions of several other bills were added to LB 1050 by amendment.

LB 600 prescribes incentive payments for three years for school district reorganizations that move students into lower-cost tiers.

LB 676 provides funds to school districts for reorganization studies and allows teachers in a reorganizing district to either retire under an incentive plan, terminate their employment and receive tuition aid and a stipend for a limited time, or remain employed subject to the personnel policies and staffing requirements of the reorganized district.

LB 1116 requires Class II or Class III school districts that contract out their high school students to either have enough students to reopen the next year or become Class I districts regardless of the distance to the nearest high school.

LB 1149 changes the calculation of valuation for determining state aid from a current-year to a preceding-year basis and provides for earlier notice regarding a district's state aid.

LB 1050 passed with the emergency clause 36-11 and was approved by the Governor on April 5, 1996.

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## **LB 1205— Authorize the Sale of School Lands**

*(Bromm, Bernard-Stevens,  
Coorsen, Elmer, Hillman,  
Hudkins, Jensen, Jones,  
Kristensen, Matzke, Pirsch,  
Schellpeper, Schrock, Stubr,  
Wickersham, and Witek)*

LB 1205 authorizes the sale of two-thirds of state school lands by the year 2008. On or before December 1, 1996, the state investment officer and the Board of Educational Lands and Funds must develop a plan for selling the lands and diversifying the assets held for support of the state's public schools and submit the plan to the Legislature's Education Committee. The bill requires the sale of enough land by January 1, 2008, so that one-fourth of the value of the school trust portfolio is invested in land and three-fourths is invested by the state investment officer in other assets, such as stocks and bonds.

Additionally, LB 1205:

- ◆ Stipulates the mineral rights on any school lands are not subject to sale;
- ◆ Requires the Board of Educational Lands and Funds and the Nebraska Investment Council to report annually to the Legislature. The board must include in the report the legal description of each tract of land sold, the sale price, the amount of sale funds received in the year covered by the report, the disposition of the funds, the total number of acres per county of any unsold lands remaining under the control of the board, and the total appraised value of the unsold land. The council must include a cost-benefit analysis of the land being sold versus the investment potential of proceeds resulting from the sale; and
- ◆ Provides that the land must be offered for sale at public auction and sold to the highest bidder at no less than either the appraised value or the fair market value of the land.

The bill passed 36–9 and was approved by the Governor on April 12, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 349—Change Provisions of the Tax Equity and Educational Opportunities Support Act**

*(Robak, Dierks, and Jones)*

As originally introduced, LB 349 would have amended the Tax Equity and Educational Opportunities Support Act and authorized the use of an income factor to adjust the valuations used in computing state aid under the act. Formula valuation would have replaced adjusted valuation for calculating the local effort rate and the local effort rate yield.

Formula valuation was defined as a district's adjusted valuation multiplied by the district income factor, and the district income factor was defined as:  $1 + .30$  (the district income ratio–1). The district income ratio was then defined as the ratio of the district adjusted gross income per return divided by the state adjusted gross income per return. Finally, district adjusted gross income per return was defined as the total Nebraska individual adjusted gross income reported on returns by residents of a school district divided by the total number of returns filed by residents of that district for the second preceding year.

Education Committee amendments incorporated the provisions of LB 526 into the bill.

LB 526 would have placed a cap on the amount of money that any school district would receive from allocated income tax funds, depending on how a preliminary calculation of the local effort rate yield compared to the district's formula need.

Allocated income tax funds would have been determined as follows. Beginning with FY1996-97, the certified allocation income tax liability would have represented a preliminary allocation. Using the preliminary allocations, the State Department of Education would have calculated a preliminary local effort rate yield for each school district. Districts with a preliminary local effort rate that equaled or exceeded 65 percent would not have received any allocated income tax funds.

Any funds that were not allocated would then have been used for equalization.

LB 349 failed to advance from General File.

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## **LB 1145—Change Provisions Relating to School Finance**

*(Withem, Bernard-Stevens, Beutler, Crosby, Hartnett, Hilgert, Hillman, Landis, Lindsay, Lynch, Maurstad, Pedersen, Pirsch, Preister, Schimek, Wesely, and Will)*

LB1145 was another of the legislative efforts to amend Nebraska's school finance system. Generally, the bill would have clarified the statutory 45-percent funding goal (45 percent of district expenditures are funded by the state), recognized transportation and special education costs as being unique to individual districts, eliminated the "hold harmless" provision of the option school provisions, moved insurance tax funds and school land funds into equalization aid, modified provisions for dissolution and contracting for education, added an adjustment to the tier costs for high schools which are within 20 miles of another high school and have less than 85 students, created aid for bonded indebtedness, and adjusted the student numbers used to certify state aid. Many of the concepts found in LB 1145 are included in LB 1050—the school finance measure passed by the Legislature and discussed on pages 34 to 36 of this report.

LB 1145 was indefinitely postponed by the committee.

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**LB 1302—Change  
Data Requirements  
Under the Tax  
Equity and  
Educational  
Opportunities  
Support Act**

*(Boblke, at the request of the  
Governor)*

Currently, section 79-3822 requires the State Department of Education to provide data to the Governor to assist him or her in the preparation of legislation appropriating funds so that state aid to education equals 45 percent of the funding for school district operating expenditures. LB 1302 would have excluded school retirement contributions from the data required to be reported.

LB 1302 was indefinitely postponed by the committee.

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**LR 299CA—  
Constitutional  
Amendment to  
Change the  
Maximum Age for  
Receiving Free  
Instruction in  
Schools**

*(Stubr, Bernard-Stevens, Beutler,  
Janssen, and Warner)*

LR 299CA would have amended Article VII, section 1, of the Nebraska Constitution which provides that the "Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." The amendment would have provided that such instruction be given to all persons between the ages of five and nineteen years.

LR 299CA was indefinitely postponed by the committee.



**EXECUTIVE BOARD OF THE  
LEGISLATIVE COUNCIL  
Senator George Coordsen, Chairperson**

**ENACTED LEGISLATIVE BILLS**

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**LR 27CA—  
Authorize Legisla-  
tors to Participate  
in Employee  
Benefit Programs  
Available to Other  
State Officials**  
*(Chambers)*

LR 27CA proposes an amendment to Article III, section 7, of the Nebraska Constitution which would allow state senators to participate in employee benefit programs that are available to other state officers. Currently, the Nebraska Constitution prohibits a senator from receiving any compensation other than his or her salary and per diem.

LR 27CA passed 41-4 and was presented to the Secretary of State on April 11, 1996. The proposed amendment will appear on the general election ballot in November 1996.

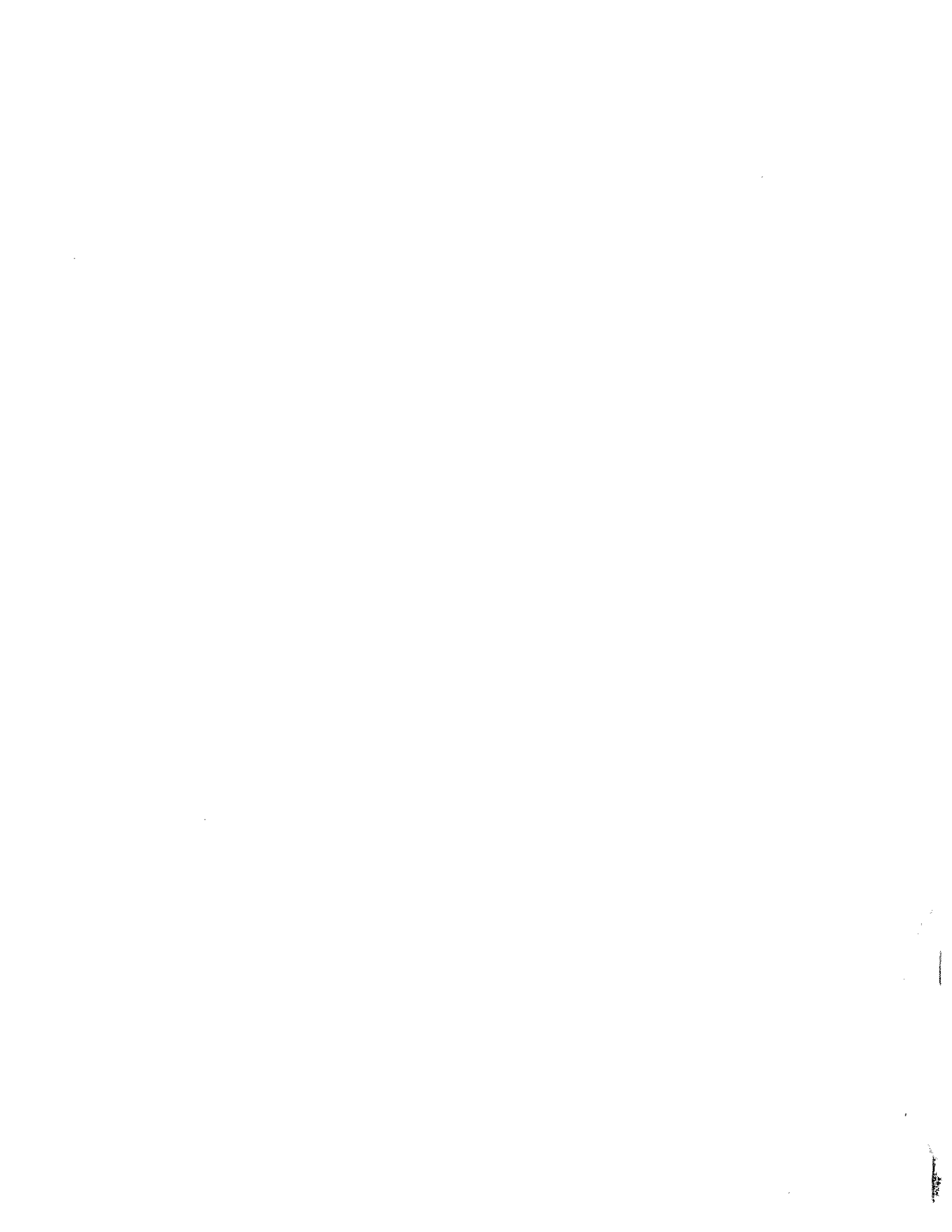
**LEGISLATIVE BILLS NOT ENACTED**

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**LR 276CA—  
Provide Salary  
Increase for  
Legislators**  
*(Withem)*

LR 276CA proposed an amendment to Article III, section 7, of the Nebraska Constitution which would have increased the salary of each legislator from \$12,000 annually to about \$16,000 annually. Legislators' salaries were last increased in 1988 (from \$4,800 annually to the current \$12,000), and the increase proposed in the 1996 resolution was intended to account for the increase in the cost of living since 1988.

LR 276CA did not advance from committee and died with the end of the session.





# GENERAL AFFAIRS COMMITTEE

## Senator Stan Schellpeper, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### LB 750—Provide for Craft Brewery License

*(Landis, Schimek, and Priester)*

Via the enactment of LB 750, brewpubs gained the ability to distribute beer through wholesalers to other bars, restaurants, and liquor retailers. (As originally introduced, LB 750 changed provisions relating to liability for high-level nuclear waste; however, on Select File, the bill was gutted and replaced by the provisions of LB 1088)

LB 750 creates the categories of microbrewery and craft brewery and redefines brewpub. The bill defines a microbrewery as any small brewery producing a maximum of 10,000 barrels of beer per year, while a craft brewery is defined as a term meaning either brewpubs or microbreweries or both. LB 750 redefines a brewpub as any brewery producing on its premises a maximum of 10,000 barrels of beer annually. Previously, brewpubs were limited to 5,000 barrels, 50 percent of which had to be sold on premises. The bill also removes the requirement that a brewpub's main business be as a restaurant.

Additionally, the bill retains the three-tier system of marketing alcohol, which has delineated manufacturers, wholesalers, and retailers in law since the repeal of Prohibition.

LB 750 passed 31-10 and was approved by the Governor on April 17, 1996.

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#### LB 1255—Change Provisions Relating to Horseracing

*(General Affairs Committee)*

As originally proposed, LB 1255 would have allowed racetracks not conducting live racing to be issued a simulcast facility license. It also provided for the distribution of simulcasting revenue to be used for purse supplements or breeder and stallion awards at tracks that conduct live racing.

As amended and subsequently enacted, LB 1255 provides that simulcasting revenue from tracks not conducting live races be distributed among tracks that do. The money will be used for purse supplements or breeder and stallion awards.

Additionally, LB 1255 provides that revenue deducted per contract with the organization representing a majority of horse owners and

trainers at the track's most recent live meet will be used to promote live horseracing or as purse supplements at racetracks that conduct live racing. The bill also reduces the amount of time—from six months to 90 days—a mare is required to be in Nebraska prior to foaling in order for the foal to qualify as Nebraska-bred.

An adopted amendment struck a section of the bill clarifying that a racetrack can conduct interstate simulcasting in the event it was unable to conduct live racing. An Attorney General's opinion said the Nebraska Racing Commission already had authority under current statute to allow simulcasting at tracks without live racing.

LB 1255 passed with the emergency clause 36-3, and was approved by the Governor on April 15, 1996.

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**LB 1276—Adopt  
the Museum  
Property Act**  
*(Maurstad and Brown)*

LB 1276 establishes provisions for museums to determine the status of property in their possession, as well as procedures for its handling or disposal. Previously, state law was silent on how property loaned to a museum is to be returned, retained by the museum, or disposed of.

The bill provides that a museum may acquire title to property on permanent loan or loaned for a specific time if notice is given to the lender, who then fails to respond within a year. Museums may also acquire title to undocumented property held for at least seven years if notice is given indicating the museum intends to assert title over the property and no lender or claimant responds within three years. LB 1276 also prescribes record-keeping requirements for museums, and allows museums to keep property on loan at the time of an owner's death rather than require it to revert to the owner's estate.

LB 1276 passed 44-0, and was approved by the Governor on April 9, 1996.

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**LEGISLATIVE BILLS NOT ENACTED**

**LR 43CA—  
Authorize Casino  
Gaming Activities**  
*(Schellpeper, Bernard-Stevens,  
Hall, Hartnett, Pedersen, and  
Robak)*

LR 43CA would have opened the possibility for greatly expanded gambling in Nebraska by amending Article III, section 24, of the Nebraska Constitution to permit the Legislature to authorize casino-type gaming. If passed by the Legislature, the question of casino-type gaming would have been put on the November general election ballot for voter approval. It would then have been up to the Legislature to authorize by statute any expanded gambling permissible under the constitutional amendment.

If approved, the amendment would have required gaming proceeds to be used only for charitable or community betterment purposes, for civic benefit, for tax relief, or for the promotion of agriculture or livestock breeding. Among the games the amendment would have authorized with legislative approval were player-activated electronic, video, or mechanical lottery devices, dice, and card and table games of chance.

A pending amendment provided for the creation of a state Gaming Commission, which would have regulated any new form of gaming authorized by the Legislature on or after November 1, 1996. Other pending amendments would have added the Nebraska thoroughbred horseracing industry and "needed government programs" to the list of beneficiaries of gambling proceeds and would have allowed for a local option vote before games of chance authorized by the Legislature could be played in the county, city, or village where such games were proposed.

LR 43CA was bracketed until June 1, 1996 by a vote of 36-9.

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## Authorize Electronic Gaming

LB 688 (*Will*)

LB 765 (*General Affairs  
Committee*)

LB 915 (*Robak*)

LB 1281 (*Will*)

LB 1314 (*Elmer*)

LB 1345 (*Robak*)

All of these bills dealt in some fashion with authorizing electronic gaming devices. Largely because of constitutional concerns raised most recently in two Attorney General's opinions, all were indefinitely postponed by the committee.

In an opinion dated November 8, 1995, the Attorney General said that "slot machines" and other forms of "electronic gaming devices" run afoul of the state constitutional prohibition (Article III, sec. 24) against "games of chance." The Attorney General said the Legislature could not authorize the devices absent a constitutional amendment. Previous court cases declaring video lotteries to be legal addressed only the statutory definitions and did not go to the broader issue of constitutionality; given the chance to rule on the devices' constitutionality, the Supreme Court would likely rule they violated Article III, sec. 24 of the Nebraska Constitution, the Attorney General said. In one of these cases, *Video Consultants v. Douglas*, 219 Neb. 867, 367 N.W. 2d 697 (1985), the Nebraska Supreme Court held video lotteries were legal as the Legislature had not expressly outlawed electronic lottery devices when writing the governing statute.

In another opinion dated January 22, 1996, the Attorney General said in response to an inquiry regarding LB 915 that the constitutional issue is not electronic or video gambling devices per se but whether the gambling activity to be conducted by use of the video

or electronic devices involves a constitutionally impermissible game of chance or a permissible lottery. The Attorney General concluded that “slot machines, video or electronic devices based on a slot machine theme, or video, computer, or electronic gambling devices based on games such as poker, blackjack, or dice, constitute ‘games of chance’ which the Legislature may not authorize under art. III, sec. 24.” In essence, the opinion said that “the Legislature may not employ its definitional power to defeat or circumvent the Constitution.”

The bills:

LB 688 would have amended the Nebraska Pickle Card Lottery Act to allow electronic pickle-card machines.

LB 765, LB 915, LB 1281, LB 1314, and LB 1345 would have amended the Nebraska County and City Lottery Act to allow electronic gaming devices.

As originally drafted, LB 765 would have permitted racetracks and sites licensed for on-premises liquor consumption to conduct lotteries under this act and allow the use of electronic player-activated lotteries after a local vote approving their use. Pending amendments would have replaced the bill and created the Nebraska Local Option Lottery Act. In addition to the provision allowing electronic lotteries at racetracks, the act would have allowed an interlocal agency, created under the auspices of the Nebraska Interlocal Cooperation Act, to conduct a joint lottery.

LB 915 would have added mechanical, computer, electronic, or video gaming devices to lottery games allowable under Nebraska law, essentially reinstating video lotteries to the legal status they held prior to the passage of Laws 1984, LB 744, which required all video lotteries to cease operation at midnight December 31, 1984.

LB 1281 would have changed Nebraska law regarding keno, bingo, pickle cards, and Indian gaming.

**Indian gaming**—Counties, cities, and villages could have contracted with a federally recognized Indian tribe to conduct gambling activities allowed the tribe under federal law.

**Bingo**—Currently, local lottery operators pay a tax of two percent of gross sales to the state while bingo operators pay a tax of six percent to the state and two percent to the local

subdivision, LB 1281 would have eliminated the two percent tax bingo operations are required to pay to the local subdivision, and required both bingo and local lotteries to pay a state tax of three percent. (Another bill, LB 687, also addressed the bingo tax differential. It advanced to General File, but died with the end of the session.)

**Pickle cards**—The bill would have authorized electronic pickle-card machines.

**Keno**—LB 1281 would have authorized player-activated keno machines at main keno sites—not satellite sites—and exempted the machines from the statutory requirement that five minutes must elapse between each keno game.

LB 1314, the contents of which were similar to the keno provisions of LB 1281, would have struck the requirements that a keno game use a paper ticket and that games be conducted no more often than every five minutes, and the prohibition against player-activated games. LB 1314 also would have struck language in section 9-607 prohibiting electronic gaming devices.

LB 1345 contained keno provisions similar to LB 1314 and LB 1281, plus would have allowed established racetracks to conduct keno games.

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**LB 468—Eliminate Provisions for Registration of Beer Kegs**  
*(Hartnett)*

LB 468 would have repealed sections 53-167.01 to 53-167.04, which require beer kegs of five gallons or more to be registered and labeled. The registration information must be kept by keg sellers for at least six months. That information consists of the date of sale, keg identification number, and the purchaser's name, address, and driver's license or other photo identification number.

Keg registration requirements were enacted by LB 332 in 1993 and require the Nebraska Liquor Control Commission to report annually to the Legislature on the law's effectiveness. In its 1995 report, the commission recommended eliminating keg registration requirements due to the very small number of convictions reported. The majority of law enforcement agencies responding to the liquor commission's annual survey also supported repeal of the law.

LB 468 advanced to General File but died with the end of the session.

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**LB 590—Provide  
for Public Libraries  
and Public Library  
Federation**

*(Will, Schellpeper, Cudaback,  
Elmer, Hartnett, Hudkins,  
Robinson, Robak, and Crosby)*

LB 590 would have allowed for the establishment of county libraries by public vote and for the merger of county libraries with public libraries in cities, villages, or townships. As originally proposed, LB 590 was intended to streamline the state's library system, save taxes, and provide better access to libraries for Nebraskans in rural areas.

As amended, LB 590 became a vehicle for library system restructuring, providing for the takeover of city libraries by county libraries after an authorizing public vote.

LB 590 advanced to General File but died with the end of the session.

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**LB 1045—Change  
Provisions for  
Issuance of Liquor  
Licenses**

*(Will)*

LB 1045 represented one response to a 1993 Supreme Court decision declaring unconstitutional the provisions of the Nebraska Liquor Control Act that permitted counties, cities, and villages to issue or deny retail liquor licenses. An alternative bill, LB 355, was introduced in the 1995 session.

Both LB 1045 and LB 355 would have returned the authority to issue or deny retail liquor licenses to the Nebraska Liquor Control Commission, with local governing bodies having the authority to make recommendations to the commission.

LB 1045 would have required a hearing by the local governing body prior to making a recommendation whether the license should be issued or denied, did not allow a local governing body to suspend a retail license, and would have required all appeals to be made to the Nebraska Liquor Control Commission. LB 355 would have allowed the local governing body to opt out of the hearing process, would have permitted suspension of a retail license by the local governing body, and would have required appeals of orders by the local governing body to revoke or cancel a license to be made to the local district court pursuant to the Administrative Procedure Act.

Both bills advanced to General File but died with the end of the session.

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**LB 1240—Change  
Provisions for  
Investments on  
Interest Received  
from Lottery  
Proceeds**

*(Withem, Avery, and Brashear)*

LB 1240 would have allowed communities to invest interest income earned from gaming authorized by the Nebraska County and City Lottery Act. Currently, section 9-650 provides that any interest received from the proceeds of a county or city lottery must be used solely for “community betterment.” LB 1240 also would have provided that up to five percent of this interest income could be put into any investment that a person of “prudence, intelligence and discretion” would make in dealing with the property of another. (Current law requires that all interest income be invested in government securities.)

Concern was expressed that the bill could violate Article III, section 24, of the Nebraska Constitution, which requires the proceeds of all lotteries to be used “solely for charitable or community betterment purposes.”

LB 1240 advanced to General File but died with the end of the session.





# GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator C.N. "Bud" Robinson, Chairperson

## ENACTED LEGISLATIVE BILLS

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### **LB 964—Provide for Special Elections in Certain Political Subdivisions to be Conducted by Mail**

*(Cudaback, Dierks, Janssen,  
Schimek, Schmitt, and Vrtiska)*

LB 964 permits political subdivisions to conduct special elections by mail if certain conditions are met. Some of the conditions include: (1) the governing body of the political subdivision must approve the by-mail election by a two-thirds vote; (2) all registered voters in the political subdivision must be eligible to vote on the issue or issues; (3) only registered voters of the political subdivision must be eligible to vote in the election; (4) only issues, not candidates, can be on the ballot; and (5) the by-mail election cannot be held on the same day as another election in the political subdivision.

The bill requires ballots to be mailed to all registered voters in a political subdivision not more than 20 days and not less than 10 days prior to the day of the election. The bill also requires that the mailing include a secrecy envelope, a return identification envelope, and instructions sufficient to describe the voting process.

Illegally interfering with the vote-by-mail process is a Class IV felony.

LB 964 passed 30-14 and was approved by the Governor on April 12, 1996.

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### **LB 1248—Create the Local Govern- ment Catastrophic Emergency Fund**

*(Vrtiska, Beutler, and Robinson)*

LB 1248 allows local governments to apply for financial relief from the state, in the form of grants and low- or no-interest loans, to help meet costs incurred as a result of "catastrophic financial emergencies." Catastrophic financial emergencies include natural disasters such as floods and tornados and costly criminal trials. The bill defines "local governments" to include counties, cities, and villages.

To receive assistance, a local government must file a claim for relief with the State Risk Manager. The claim must include documentation showing that the local government has exhausted all unobligated sources of funds. Following an investigation, the claim is forwarded to the State Claims Board for a decision. Under the bill, the Legislature has granted itself the authority, upon appeal by the local government, to reverse a decision denying a claim.

Payments allowed under the bill will be made from the Local Government Catastrophic Financial Emergency Fund, created in LB 1248. LB 1248A appropriates \$200,000 from the General Fund to the newly created fund.

The fund will sunset on June 30, 1998.

LB 1248 passed with the emergency clause 44-2 and was approved by the Governor on April 15, 1996.

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### **LB 1375—Prohibit State Agencies from Collecting Fees for Certain Public Records**

*(Bromm, Abboud, Cudaback, Hilgert, Janssen, Pirsch, Preister, Robinson, Witek, Schmitt, Stubr, and Vrtiska)*

LB 1375 prohibits state agencies from contracting to sell public records or provide electronic access to public records for a fee greater than that allowed by state law. Given "super" priority status by Speaker Withem, the bill was introduced as a result of a controversy involving a contract entered into by the Nebraska Library Commission and a private company to provide electronic access to certain state documents. Under the contract, charges for electronic access exceed those authorized by statute.

As amended by the committee, LB 1375 provided that the contract in question would be cancelled immediately. However, because of a concern that the immediate cancellation of the contract would limit access to the records, a compromise was reached whereby the contract is allowed to remain in effect until January 31, 1998.

The bill establishes that a state agency desiring to contract to sell public records or provide electronic access to public records for a fee, when no fee is set forth in state law, must provide a written report to the Executive Board of the Legislature at least 30 days prior to entering into the contract. The Executive Board must hold a public hearing on the proposed contract.

LB 1375 also creates a Task Force on Electronic Access to State Government Information which will recommend changes in state law to facilitate electronic access to public records. The task force will sunset on December 31, 1996.

LB 1375 passed with the emergency clause 46-1 and was approved by the Governor on April 15, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### Initiative and Referendum Resolutions

Several resolutions proposing constitutional amendments to the initiative and referendum process were introduced this session or carried over from 1995.

LR 6CA was introduced in 1995 in response to a 1994 Supreme Court decision regarding the number of petition signatures required to place a constitutional amendment on the ballot. The resolution advanced to Final Reading in 1995, remained on Final Reading in 1996, and died with the end of the session. For a discussion of this resolution, see *A Review: Ninety-Fourth Legislature First Session, 1995*, pp. 45-46.

LR 281CA, LR 307CA, LR 308CA, and LR 309CA, were introduced in 1996. These resolutions also proposed changes to the initiative and referendum process and generally provided either alternative signature thresholds or different procedural requirements. None of the resolutions advanced from committee.

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### LR 46CA— Authorize Counties to Establish a County Adminis- trator Form of Government

*(Hillman, Crosby, Engel, Hall,  
Lynch, and Maurstad)*

LR 46CA would have proposed an amendment to Article IX, section 4, of the Nebraska Constitution authorizing counties to establish a county administrator form of government if approved by a majority of the registered voters of the county voting on the issue.

A county administrator form of government provides for the election of members of the county board of commissioners or supervisors and the appointment of other county officers, such as the county clerk, county treasurer, and register of deeds.

LR 46CA advanced to General File but died with the end of the session.



# HEALTH AND HUMAN SERVICES COMMITTEE

## Senator Don Wesely, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 414—Adopt the Advanced Registered Nurse Practitioner Act** *(Withem, Will, and Day)*

LB 414 adopts the Advanced Registered Nurse Practitioner Act. The bill makes a number of changes relating to nurse practitioners and changes the statutory references for nurse practitioners to “advanced registered nurse practitioners.”

Much of the debate on LB 414 focused on the level of autonomy advanced registered nurse practitioners would have to practice independently from physicians. An amendment to allow the advanced registered nurse practitioners to work more independently was defeated. As passed, the bill provides that advanced registered nurse practitioners must practice with the consultation and direction of a physician.

Advanced registered nurse practitioners are required to sign a written agreement, called an integrated practice agreement, with a physician. The agreement defines their collaborative relationship for providing health care. The requirement for such agreement may be waived if: The advanced registered nurse practitioner meets all education and practice requirements set forth in the bill; he or she has made a diligent effort but is unable to obtain an integrated practice agreement; or the advanced registered nurse practitioner will practice in an area where there is a shortage of health care services. Additionally, an advanced registered nurse practitioner who has less than 2,000 hours of supervised practice must work under protocols designed to guide the advanced registered nurse practitioner’s practice.

The bill requires that any patient with a condition beyond an advanced registered nurse practitioner’s scope of practice must be referred to a physician or other health care practitioner. The advanced registered nurse practitioner may refer patients to providers other than the one with whom he or she has an integrated practice agreement.

LB 414 also establishes the Board of Advanced Registered Nurse Practitioners. The board is responsible for establishing standards for integrated practice agreements, monitoring the scope of practice of advanced registered nurse practitioners, and adopting rules and regulations, with the approval of the Department of Health and the Board of Nursing, to carry out LB 414.

LB 414 passed with the emergency clause 43-0 and was approved by the Governor on April 3, 1996.

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**LB 496—Adopt the  
Parkinson’s Disease  
Registry Act**

*(Health and Human Services  
Committee, Beutler, Schrock,  
and Fisher)*

LB 496 creates a Parkinson’s Disease Registry for the State of Nebraska. The registry will provide a central source of information, for research purposes, on Parkinson’s disease cases and cases of other related movement disorders.

The Department of Health must establish and manage the registry and publish an annual report containing statistical information obtained from the registry.

LB 496 requires a physician to report a case of Parkinson’s disease or related movement disorder within 60 days of diagnosis, and an individual diagnosed with Parkinson’s disease or related movement disorder may self-report to the department. Additionally, pharmacists are required to file a semiannual report with the department listing persons to whom the pharmacist has dispensed any drugs which are used for the treatment of Parkinson’s disease.

The bill provides sanctions for the unauthorized release of information from the registry. Persons allowed access to registry information are required to obtain physician approval before contacting the person on the registry or his or her family.

LB 496 will terminate on June 30, 2015, or if after January 1, 2002, no requests for information are received for two years, the act will terminate two years after the last request.

LB 496 passed 44-0 and was approved by the Governor on April 9, 1996.

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**LB 642—Authorize  
the Foster Care  
Review Board to  
Conduct Six-  
Month Case  
Reviews**

*(Avery, Brashear, Brown,  
Crosby, Dierks, Engel, Hartnett,  
Hudkins, Jensen, Kristensen,  
Lynch, Maurstad, McKenzie,  
Schellpeper, Vrtiska, Warner,  
and Wehrbein)*

LB 642 transfers authority to conduct federally required reviews of all children in foster care to the Foster Care Review Board (FCRB) and eliminates a program in the Department of Social Services (DSS) which had previously conducted these reviews.

Prior to the bill's enactment, a unit in DSS conducted six-month case reviews on all cases required to be reviewed under Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980. The FCRB also conducted reviews on more than half of these cases.

LB 642 was the result of a two-year study, initiated by the Appropriations Committee, of ways to reduce duplication in the reviews of children in foster care. In addition to the reviews conducted by DSS and FCRB, state law requires that courts conduct case reviews every six months. LB 642 does not change the requirement for court reviews.

The bill eliminates ten positions in DSS—seven on July 1, 1996, and three on October 1, 1996. (These positions are then transferred to the FCRB.)

LB 642 also requires a study of the reviews conducted by the FCRB. The Legislature's Executive Board, or its designee, will conduct a study between January 1, 1998 and August 1, 1998. Recommendations from this study will be reported to the Legislature by November 1, 1998.

LB 642 passed 37-6 and was approved by the Governor on April 12, 1996.

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**LB 1044—Adopt  
the Nebraska  
Partnership for  
Health and Human  
Services Act**

*(Wesely, Withem, at the request  
of the Governor, Brown, Dierks,  
Hillman, Jensen, Klein, Matzke,  
Pirsch, Robak, Robinson,  
Schimek, Warner, Wehrbein,  
Lindsay, Brashear, and Boblke)*

LB 1044 authorizes the merger of the Department on Aging, the Department of Health, the Department of Public Institutions, the Department of Social Services, and the Office of Juvenile Services of the Department of Correctional Services. The merger will combine the functions and responsibilities of these entities into three agencies. The new agencies will be:

- ◆ The Department of Health and Human Services, which will carry out all service-related functions;
- ◆ The Department of Health and Human Services Regulation and Licensure, which will administer the licensing, rulemaking, and evaluation functions; and

- ◆ The Department of Health and Human Services Finances and Support, which will provide financial and administrative support to the three agencies.

Each agency will be headed by a director. A single policy secretary position is created to work with the directors and assist in coordination of programs. Additionally, the bill creates a Partnership Council, consisting of seven to 15 members, appointed by the Governor and approved by the Legislature, to advise the directors and policy secretary.

LB 1044 was amended to articulate the Legislature's intent that the merger will reduce the size of state personnel and state expenditures, focus on local control, and consider privatization of services.

The bill requires current agency directors to submit a report to the Governor and Legislature by December 1, 1996, which will include a transition plan for implementation of the redesign of the five agencies. The report will also include draft legislation necessary for full implementation of proposed program and policy changes.

LB 1044 passed with the emergency clause 33-13 and was approved by the Governor on April 3, 1996.

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## **LB 1155—Change Provisions Relating to Public Health and Welfare**

*(Health and Human Services Committee)*

LB 1155 is the annual cleanup bill for the Department of Health. As originally introduced, the bill exempted Christian Science nurses from the Nurse Practice Act as long as a Christian Science nurse did not identify himself or herself as a registered nurse or a licensed practical nurse. The original bill also combined statutory terminology referring to alcoholic or drug treatment to substance abuse treatment, among other things. Several other bills were amended into LB 1155, including:

LB 954, which adopts the Hospice Licensure Act, providing standards for hospice programs and for the licensure process;

LB 961, which changes the definition of health clinic to exempt facilities which provide only routine health screening, health education, and immunizations from licensing requirements;



LB 1154, which adopts the False Medicaid Claims Act, providing the state with authority to file a civil action against a person who makes a false claim and to collect damages and investigation costs;

LB 1156, which includes recommendations of the Health and Human Services Committee resulting from a study of the Lincoln Regional Center (LR 179);

LB 1210, which provides that health care practitioners who relocate into a health professional shortage area can qualify for the state loan repayment program; and

LB 1366, which provides a definition of air ambulance and air ambulance service in the emergency medical services statutes.

LB 1155 passed with the emergency clause 43-2 and was approved by the Governor on April 15, 1996.

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**LB 1188—Adopt  
the Nonprofit  
Hospital Sale Act**  
*(Matzke, Jensen, Klein, Pirsch,  
Schimek, Wesely, and  
Wickersham)*

LB 1188 requires the Department of Health to approve or disapprove any proposed acquisition of a hospital by a for-profit hospital or other group. "Acquisition" is defined as a transaction that results in a change of at least 20 percent of the ownership or controlling interest in a hospital or that results in the acquiring party owning or controlling at least 50 percent of the hospital. The bill provides that all documents related to the application for acquisition be public records. Public notice of the application in a newspaper and a public hearing are also mandated.

The bill also requires notification to the Attorney General of a proposed nonprofit hospital sale by a for-profit entity, and the Attorney General may, but is not required to, review and approve or disapprove the proposal. The decision by the Department of Health, and Attorney General if applicable, must be made within 60 days after receipt of the acquisition application.

If the two nonprofit entities have substantially similar charitable health care purposes, a transfer between two nonprofit hospitals is exempt from state review. However, entities which are not required to obtain approval from the Department of Health must still give 30 days' notice to the Attorney General.

The bill also combines the acquisition-application process with the existing certificate-of-need process.

LB 1188 passed with the emergency clause 46-0 and was approved by the Governor on April 15, 1996.

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**LB 1322—Adopt  
the Nebraska  
Affordable  
Housing Act and  
Change Provisions  
of the Nebraska  
Investment Finance  
Authority Act**

*(Wesely, Schimek, Chambers,  
Hillman, and Klein)*

LB 1322 adopts the Nebraska Affordable Housing Act, which creates a state trust fund to finance acquisition, construction, or rehabilitation of housing to assist low-income families. The bill lists the organizations that are allowed to receive funding and includes governmental subdivisions and local housing authorities. Individuals are not eligible to receive funds.

No general funds were appropriated to the trust fund this session, and the bill requires that any future funding must be approved as a separate bill. LB 1322 identifies other sources of funding for the trust fund, including grants and private contributions.

The bill creates a housing advisory committee to address issues related to the operation of the fund and to recommend a plan to coordinate low-income housing efforts throughout the state. The committee is required to report to the Legislature and Governor by December 15, 1996, on the most viable revenue source or sources for the fund and on proposed rules and regulations for implementation of the fund.

LB 1322 also creates a Housing Code Task Force to examine, in consultation with state and local entities, factors influencing the cost of housing construction. The task force will report to the Legislature and Governor by December 15, 1996, on its findings and recommendations. The task force will terminate on December 31, 1996.

The bill also expands the investment authority of the Nebraska Investment Finance Authority to include issuing bonds to leverage federal grants for safe drinking water facilities, to guarantee loans for microenterprises, and to finance street and sewer construction for affordable housing projects.

LB 1322 passed with the emergency clause 37-5 and was approved by the Governor on April 17, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 1059—Transfer Duties for Providing Health and Human Services Programs from Counties to the State**

*(Health and Human Services  
Committee and Warner)*

LB 1059 was introduced as a result of LR 208, a study of the state property tax system. One use of property tax revenue by counties is to fund mental health, substance abuse, developmental disability, and aging services. LB 1059 would have transferred responsibility for these programs to the state. The bill also would have eliminated the existing regional service administrative structures and delivery systems.

An adopted amendment to the bill eliminated a provision to transfer to the state other costs currently paid by the counties, including medical care and general assistance to low-income people who fail to qualify for other programs, and services for county residents at certain state facilities.

Amendments also were adopted to state the Legislature's intent that the state's service delivery system for health and human services should have common regional boundaries and to require the involvement of regional and community representatives at all stages of the bill's implementation.

LB 1059 advanced to Select File but died with the end of session.



# JUDICIARY COMMITTEE

## Senator John Lindsay, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 645—Provide for Registration of Sex Offenders and Change and Eliminate Provisions Relating to Sexual Offenders and Convicted Sex Offenders**

*(Abboud, Bromm, Preister,  
Pedersen, Day, Witek, Pirsch,  
and Wesely)*

LB 645, the Sex Offender Registration Act, requires convicted sex offenders who live in Nebraska to register with the sheriff of the county where they live. Offenders must register during probation or parole and remain registered for at least ten years after discharge from probation, discharge from parole, or release from prison, whichever date is the most recent. LB 645 also applies to offenders convicted of similar offenses in other states and offenders incarcerated or on probation or parole in Nebraska for one or more of the listed offenses.

The registration form must provide the following information:

- ◆ Name, including all aliases;
- ◆ Complete description, including date of birth, Social Security number, photographs, and fingerprints;
- ◆ The offense(s) for which the sex offender was found guilty, the jurisdiction in which the offense(s) occurred, the court, and the name under which the person was convicted;
- ◆ The name and location of where the person was incarcerated and the actual time served; and
- ◆ The person's address and employer.

This registration information must be verified annually by the Nebraska State Patrol, which is to maintain a central registry of convicted sex offenders subject to the act.

Under the provisions of LB 645, offenders who plead guilty or are found guilty of committing or attempting to commit one or more of the following offenses must register:

- ◆ Kidnapping of a minor, except when the person is the parent of the minor and was not convicted of any other offense under the act;

- ◆ False imprisonment of a minor;
- ◆ Sexual assault;
- ◆ Sexual assault of a child;
- ◆ Sexual assault of a vulnerable adult;
- ◆ Incest of a minor;
- ◆ Pandering of a minor; and
- ◆ Visual depiction of sexually explicit conduct of a child.

The Legislature adopted an amendment allowing the sentencing court to determine whether a person was a “sexually violent offender,” who is likely to commit future offenses. A person so judged will be required to continue to register, conceivably indefinitely, until the court determines otherwise. The amendment also requires sexually violent offenders to verify his or her status every three months.

Other amendments adopted by the Legislature:

- ◆ Allow judges at the time of sentencing to make case-by-case determinations whether the law should apply to individuals convicted of kidnapping or false imprisonment;
- ◆ Incorporate provisions of LB 1021. The bill removes the sentencing court’s role in the overview of inmate treatment under the Convicted Sex Offender Act and no longer requires that annual progress reports and discharge aftercare plans be sent to the sentencing court. LB 1021 came about in response to a Supreme Court ruling finding the involvement of the sentencing court in aftercare placement an unconstitutional abridgement of the Parole Board’s jurisdiction;
- ◆ Clarify when a convicted individual must register, if he or she is convicted in another state; and
- ◆ Provide further clarification of sentencing guidelines when a person is found guilty of sexual assault of a child.

The registration requirements of LB 645 become effective January 1, 1997. The bill also raises the penalty for a second-offense conviction of sexual assault of a child in enumerated circumstances.

LB 645 passed 40-0 and was approved by the Governor on April 3, 1996.

## **LB 952—Change Provisions Relating to Vehicular Pursuit Damages and Training**

*(Maurstad, Bernard-Stevens, and  
Chambers)*

*As originally introduced, LB 952 would have put more of a burden upon individuals injured in police pursuits—innocent third parties—to prove negligence on the part of law enforcement officers before collecting damages, a fundamental shift from the previous standard of strict liability.*

LB 952 also would have required the allocation of fault among all parties, including the fleeing driver, the vehicle's owner, and all law enforcement personnel involved in the chase. In order to collect damages for pain and suffering, an individual would have to prove negligence on the part of a law enforcement officer. The agency employing that officer would have had to pay damages only in proportion to the fault allocated to that agency. Additionally, in any claim for damages under LB 952 when negligence could not be proven, the amount of compensation owed by the political subdivisions would be reduced by any other sources available to the victim, including compensation from the fleeing driver and from insurers.

In contrast, prior state law required all costs for third-party damages proximately caused as a result of a police pursuit to be paid by the law enforcement agency (vis-a-vis its political subdivision). Negligence did not have to be proven.

LB 952 was killed by the committee, but a motion to advance the bill to the floor notwithstanding committee action was successful.

As amended and subsequently enacted, LB 952 continues to require that any damages proximately caused to an innocent party as the result of a police chase will be borne by the political subdivision employing that officer. But, after payment to the innocent party, the political subdivision is entitled to reimbursement from:

- (1) The fleeing driver;
- (2) Any business or group liable for the conduct of that driver;

- (3) Every insurer liable for that driver;
- (4) Any uninsured- or underinsured-motorist insurer liable to the innocent third party; and
- (5) Other governmental entities whose actions contributed to the proximate cause of injuries or damages, apportioned equally among all the entities involved.

If the damages are not entirely recoverable from government because of the cap on liability under the Political Subdivisions Tort Claims Act, LB 952 also provides for additional sources for payment of the innocent party's damages.

Additionally, LB 952 mandates that law enforcement agencies annually review training regarding police pursuits with each officer and dispatcher. Plus, each new police recruit must receive specialized training in pursuit driving at the Nebraska Law Enforcement Training Center or an equivalent program approved by the Nebraska Police Standards Advisory Council.

LB 952 passed with the emergency clause 48-0 and was approved by the Governor on April 15, 1996.

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## **LB 908—Prohibit Knowing Intrusion**

*(Lindsay)*

Dubbed the "Peeping Tom bill," LB 908 makes it unlawful to watch or record someone without his or her knowledge while in public places where undressing is necessary, such as department store dressing rooms, tanning beds, and public restrooms.

The adopted committee amendment clarified that knowing intrusion can be committed either by electronic or natural viewing, defined "intrude" to mean viewing a person in a state of undress, and clarified that a "place of solitude or seclusion" is a place where a person would intend to be in a state of undress. The amendment also added dressing room to the laundry list of places where a person might be in a state of undress with a reasonable expectation of privacy.

Violation of this new offense is a Class III misdemeanor unless the victim is under 18, in which case it is a Class II misdemeanor. Lack of knowledge of the victim's age is not a defense.

LB 908 passed 43-0 and was approved by the Governor March 19, 1996.



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**LB 1055—Provide  
for Firearm Profi-  
ciency for Law  
Enforcement  
Officers and for  
Access to Informa-  
tion for Purposes  
of Handgun  
Purchases**

*(Schmitt, Chambers, and  
Wesely)*

LB 1055 requires mandatory firearm proficiency training of law enforcement officers, who must qualify annually on a firearm shooting course approved by the director of the Nebraska Law Enforcement Training Center and conducted by a qualified firearm instructor.

The provisions of LB 960 were added to the bill via amendment. LB 960 establishes a framework by which the Nebraska State Patrol can request and receive mental health information from the Department of Public Institutions on persons applying for permits to buy handguns. This updates the handgun certificate law passed by the Legislature in 1992, which requires a background check of persons before purchasing a handgun. The State Patrol is authorized to receive only the information necessary to determine whether an applicant is prohibited by law from buying a handgun.

LB 1055 passed 47-1 and was approved by the Governor on April 15, 1996.

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**LB 1296—Change  
County Court  
Jurisdiction to  
Include Concurrent  
Jurisdiction for  
Domestic Relations  
Matters**

*(Beutler)*

The enactment of LB 1296 is intended to reduce the workload in Nebraska's district courts. The bill provides that county courts have concurrent original jurisdiction with the district courts in divorce cases. Prior to the enactment of LB 1296, divorce cases were heard only in district court.

As originally introduced, county courts would have been authorized to handle all types of divorce proceedings unless one of the parties in the divorce requests the case be moved to district court. But amid concerns the bill signaled a major policy shift and would essentially begin the merger of the court system, the bill was amended to allow district court judges to assign divorce cases and other domestic relations matters to county court judges who consent to the assignment. The amendment delayed the authorization for county courts to handle all divorce proceedings and the other provisions of the original bill until October 1, 1997.

On Final Reading, LB 1296 was returned for the addition of an amendment that would require lower courts to follow precedents set by decisions of the Nebraska Court of Appeals unless the decisions are modified, reversed, or overruled by the Supreme Court. The amendment was in response to a Supreme Court ruling earlier this year that said Appeals Court decisions should not be binding on lower courts.

LB 1296 passed 39-1 and was approved by the Governor on April 15, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### **LB 256—Change Provisions for Maintenance Costs of Individuals Determined to be Mentally Incompetent**

*(Hudkins, Beutler, Crosby, Cudaback, Hartnett, and Vrtiska)*

LB 256, as originally proposed, would have relieved counties of the costs of people found mentally incompetent to stand trial by shifting the cost of commitment to the state. As amended, the bill would have left some of the costs of committal with the county—\$10 or \$15 a day, depending on the hospital, for the first 30 days of committal; \$3 a day after that.

The Legislature passed LB 256, 43-0, but the Governor vetoed the measure on April 10, 1996. An attempted veto override failed, 15-13.

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### **LB 592—Adopt the License Revocation Act**

*(Beutler and Day, at the request of the Governor)*

LB 592, a legislative response to the Child Support Study Group's recommendation for retrieving nearly \$286 million in delinquent child support, would have proposed a system for revoking professional and drivers' licenses of noncustodial parents who are at least three months behind in making child support payments. The Child Support Study Group was created by Laws 1994, LB 1224, which was known as the "Welfare Reform Act."

LB 592 advanced to Select File but died with the end of the session.

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### **LB 750—Adopt the High-Level Nuclear Waste Liability Act**

*(Landis, Schimek, Vrtiska, and Preister)*

As amended, LB 750 would have provided a legal standard for compensating Nebraskans exposed to radiation from an accident involving the transport of high-level nuclear waste across the state. Federal law, in the guise of the Atomic Energy Act of 1954 and the Price-Anderson Amendments Act of 1988, provides for liability in the event of a high-level nuclear waste accident. LB 750 would have outlined how injured Nebraskans could recover damages in a public liability action arising under the federal law.

LB 750 advanced to Select File. On Select File, the bill was amended and LB 750 was replaced by the provisions of LB 1088, which provided for craft brewery licenses. The enacted version of LB 750 is discussed in the General Affairs Committee section of this report.

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## **LB 927—Adopt the Athlete Agent Registration and Accountability Act**

*(Brashear, Lindsay, Robinson, Hilgert, and Will)*

LB 927 would have required agents wanting to recruit student athletes to register with the state and abide by accountability provisions. LB 927 was intended to protect student athletes from unscrupulous athletic agents and create a level playing field for all agents attempting to recruit from Nebraska.

The bill defined an athlete agent as a person who:

- (1) Directly or indirectly contacts any person with the intent to recruit, solicit, or induce an athlete to discuss or enter into a contract for representation;
- (2) For any type of financial gain, makes promises, offers, or attempts to secure benefits for an athlete with a professional sports team or attempts to market an athlete's athletic ability or reputation; or
- (3) Manages or agrees to manage or invest an athlete's earnings from the marketing of an athlete's ability or athletic reputation or provides financial planning or advice with respect to such earnings.

The act would have applied to any athlete enrolled at an institution of higher learning who participates in intercollegiate athletics or has given written notice of his or her intent to compete. It would have required athletic agents to obtain a certificate from the Consumer Protection Division of the Nebraska Attorney General's Office and to file a disclosure statement with the division and all institutions of higher learning that had notified the Attorney General of their desire to receive such mailings. The bill also proscribed the manner in which agents could contact student athletes. Violation of the act would have been a Class I misdemeanor.

A pending committee amendment provided that an athlete who agreed to a professional contract in one or more sports but who also retained amateur standing in one or more other sports would be considered an athlete for purposes of the act with respect to the sports in which he or she retained amateur standing.

LB 927 advanced to General File but died with the end of the session.

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**LB 997—Require  
State Payment of  
Costs for Prisoners  
in Jails who Violate  
State Law**

*(Judiciary Committee and  
Warner)*

LB 997 would have required the state to pay the costs of county or city jail prisoners who violate state laws. It was part of a package of Judiciary Committee proposals introduced after an interim study last year on ways to reduce the property tax (LR 209).

Counties and cities use property tax revenue to pay for incarcerating inmates. But LB 997 would have required the state to pay for the incarceration of inmates who broke state law, even if they served their time in county or city jails. The bill would have shifted an estimated \$18 million to \$28 million in jail costs from local governments to the state.

The other bills in the Judiciary Committee's package were LB 994 and LB 1056, essentially similar bills calling for transferring district court clerks' duties from the county to the state and consolidating county and district court clerks' offices, and LB 993, which would have created a district attorney and district public defender system in Nebraska. LB 993 would have shifted to the state some prosecution and defense costs that are now largely paid by the property tax. Of the four bills, only LB 997 was voted out of committee.

LB 997 advanced to General File but died at the end of the session.

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**Change the  
Number of  
County Court  
and District  
Court Judges**

**LB 1244** *(Beutler)*

**LB 1286** *(Stuhr,  
Hudkins, Matzke, Robak,  
and Wickersham)*

LB 1244 grew out of a recommendation of the Judicial Resources Commission that county court vacancies in District 5 (Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders counties) and district court vacancies in District 12 (Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel counties) not be filled. The measure would have reduced the number of district judges in District 12 from five to four, and the number of county judges in District 5 from six to five as recommended by the commission.

An alternative view to the commission's recommendation was encompassed in LB 1286, which would have added county court judges to District 4 (Douglas County) and District 2 (Sarpy, Cass, and Otoe counties) and would have kept six judges in District 5. It also called for major changes in the role of the Judicial Resources Commission. As a result of Laws 1995, LB 189, the Judicial Resources Commission decides the number of judges per district based on caseload statistics. If the caseload rises above the median, the commission is to hold a hearing to determine if an additional

judgeship were warranted. LB 1286 would have removed that language from the statute and instead would have had the commission automatically declare a vacancy upon the retirement, resignation, or removal of a judge. LB 1286 was killed in committee.

Pending amendments to LB 1244 would have offered various policy approaches to filling judicial vacancies, including the substance of LB 1286. One amendment would have deleted the additional third judge provided for Lancaster County in Laws 1995, LB 19.

LB 1244 advanced to General File but died with the end of the session.

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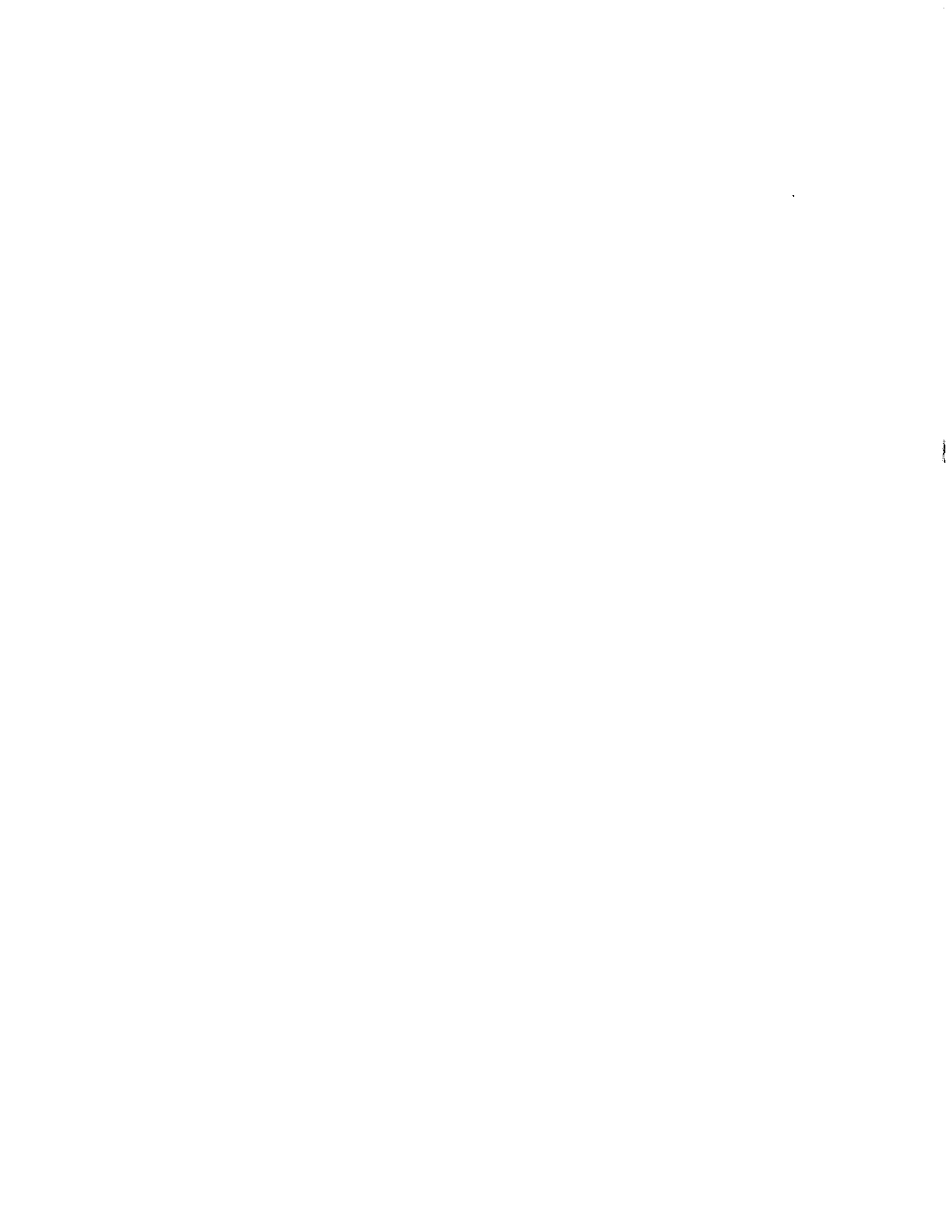
### **LB 1380—Change Provisions Relating to Abortion**

*(Lindsay, Dierks, Hilgert, Jensen, Pedersen, Schrock, Hartnett, and Pirsch)*

LB 1380 would have changed Nebraska's laws on abortion by declaring that, "[l]ife is present in an unborn child when circulatory and respiratory functions or cerebral function is present" and outlawing abortion at that point. The definition of when life is present in LB 1380 was inverted from the definition of when the law recognizes death as occurring.

LB 1380 would have made it a Class III felony to perform or assist in an abortion in which there is circulatory and respiratory functions or cerebral functions in the fetus. A pending amendment would have allowed for an exception to save the life of the woman.

LB 1380 advanced to General File, but died with the end of the session.



# NATURAL RESOURCES COMMITTEE

## Senator Chris Beutler, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 108—Provide for Management of Interrelated Ground Water and Surface Water Resources**

*(Natural Resources Committee)*

LB 108 consolidates and revises the Nebraska Ground Water and Management Act, making statutory changes that mark a significant departure from past water-management policy in Nebraska. Under the provisions of the bill, the state legally recognizes for the first time a relationship between surface water (such as streams and lakes) and ground water (water in the subsoil), and provides for water-use management in those areas of the state where the two are deemed interrelated or “hydrologically connected.”

Historically, Nebraska law has treated ground water and surface water as unrelated, with different laws and agencies responsible for the management of each. The Department of Water Resources (DWR) regulates surface water, while the natural resources districts (NRDs) manage ground water.

Under the system that has been in place, a surface-water user is granted a permit by DWR to use a specific amount of water during a designated time period. Permit holders have a constitutionally protected property right to the surface water. The permits are assigned a “priority date” based upon the date of application, and during times of surface-water shortage, priority of use goes to those who acquired their water rights first. Ground-water users, on the other hand, can claim no property right because ground water is considered to be owned by the public. Instead, state law grants ground-water users the right to a “reasonable and beneficial use” of ground water. During times of shortage, the NRDs allocate the available ground water equally among all users.

This legal framework will remain in effect under LB 108 in those areas where ground water and surface water are not deemed to be hydrologically connected. However, the bill creates an additional system providing for regulation in areas where ground water and surface water are interrelated.

In the such cases, LB 108 authorizes an NRD, subject to a finding by the DWR, to create a “management area” for the purpose of protecting the quantity and quality of interrelated ground water and surface water. The DWR finding must be that the use of hydrologically connected ground water and surface water has contributed to

or is likely to contribute to: (1) a conflict between ground-water and surface-water users; (2) a dispute over an interstate compact; or (3) difficulties fulfilling provisions of a state contract or agreement. If necessary, the DWR will conduct hydrological studies to make this determination.

Once a management area is created, the NRD can do the following: (1) Reduce the number of irrigated acres; (2) place a moratorium on new wells; (3) require water monitoring and soil and water sampling analysis; (4) require educational programs promoting good water use; (5) adopt reasonable rules and regulations to carry out the goals of the management area; and (6) allocate ground water among ground-water users.

LB 108 also gives the DWR backup authority to create management areas or require NRDs to better administer existing management areas if the DWR determines an NRD has not responsibly regulated hydrologically connected ground water and surface water in areas involving interstate compacts. Until January 1, 1999, this backup authority is limited to river basins subject to interstate compacts involving three or more states. (Currently, this affects only the Republican River compact. Proponents of LB 108 believe the bill may prevent Kansas from filing a lawsuit against Nebraska for alleged violations of the Republican River compact. Kansas officials allege that pumping ground water from irrigation wells near the Republican River has caused reduced river flow in violation of the compact.) After January 1, 1999, the backup authority is available to the DWR in conjunction with a dispute involving any interstate compact or other state contract or agreement.

LB 108 gives NRDs the power to treat existing water wells in a management area differently from wells constructed after the date the management area is designated. This provision is meant to protect existing investment in ground-water development.

The bill also creates the Interrelated Water Review Committee of the Nebraska Natural Resources Commission to decide conflicts between NRDs and the DWR arising from the implementation of the bill.

LB 108 passed 36-10 and was approved by the Governor on April 12, 1996.



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**LB 296—Provisions  
for the Development  
of Recreational  
Trails**

*(Beutler)*

LB 296 expands the state's involvement in the development of recreational trails. The bill, which incorporates provisions of LB 854 and LB 554, is meant to encourage the growth of trails and improve opportunities for outdoor recreation.

The bill establishes the position of state recreational trails coordinator to be appointed by the Game and Parks Commission. The state trails coordinator will be responsible for administering the state's trails program and for maintaining and updating the Nebraska Comprehensive Trails Plan.

LB 296 also authorizes state agencies and political subdivisions that own or operate recreational trails to collect user fees or voluntary fees for use of the trails. The money collected can then be used for trail acquisition, operation, and maintenance.

Additionally, the bill allows for Nebraska's continuing participation in the National Recreational Trails Funding Program. As a result of its involvement with this program, the state will receive \$180,000 in federal matching funds for trail development in the current federal fiscal year.

LB 296 passed with the emergency clause 29-15 and was approved by the Governor on March 20, 1996.

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**LB 584—Change  
Provisions Relating  
to Outdoor  
Recreation**

*(Natural Resources Committee)*

LB 584, which incorporates provisions of LB 98, LB 198, LB 258 and LB 338, makes several changes in Nebraska outdoor recreation law. Among the changes are the following:

- ◆ Fishers aged 18 and over, except those who possess a lifetime fishing permit, must purchase an annual Aquatic Habitat Stamp. The stamp will cost between \$5 and \$6.50 with the exact amount to be set by the Game and Parks Commission. Revenue from the stamp will go to the Nebraska Habitat Fund and will be used to improve fishing in Nebraska lakes and waterways. The bill eliminates the Trout Stamp.
- ◆ Persons born after January 1, 1977, must complete a one-time, 10-hour hunter education program to qualify to hunt with a firearm or bow and arrow.
- ◆ The Game and Parks Commission, with the consent of the Governor, is authorized to acquire abandoned railroad

rights-of-way for recreational trail use. The acquisition is subject to the condition that rail service can be re-established in the future.

LB 584 also makes several changes in the laws authorizing the issuance of "limited" hunting permits to individuals wishing to hunt on their own farm or ranch land. The new provisions would allow for the issuance of a limited permit to the owner or lessor of 80 acres or more of farm or ranch land or any member of that person's immediate family living in the same household. The bill does not require the holder of such a permit to reside on the land; however, it specifies that the permit holder must be a resident of Nebraska.

Such a permit would authorize the hunting of deer, antelope, elk and wild turkey; however, new language specifies that to hunt elk on a limited permit, the permit holder's land must lie within a Game and Parks Commission-designated "elk zone." The limited permit would authorize the holder to hunt on any land—not just his or her own—lying within that "elk zone." New language also provides that only one limited permit for each species will be issued annually for each piece of land, except that a turkey permit can be issued both in the spring and in the fall. The bill also changes the fee-setting structure for limited permits. Under the provisions of LB 584, farmers and ranchers and members of their families who reside on the farm or ranch land may continue to hunt upland game and other game except migratory waterfowl, shore birds, elk, deer, antelope and wild turkey without obtaining any hunting permit.

LB 584 passed with the emergency clause 25-16 and was approved by the Governor on March 1, 1996.

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**LB 1201—Change Provisions Relating to the Disposal of Low-Level Radioactive Waste**

*(Beutler)*

LB 1201 amends the Low-Level Radioactive Waste Disposal Act (LRWDA), administered by the Department of Environmental Quality (DEQ), and the Radiation Control Act (RCA) administered by the Department of Health (DOH). Both agencies are responsible for the regulation of low-level radioactive waste in Nebraska.

Nebraska, along with Kansas, Oklahoma, Louisiana, and Arkansas, are members of the Central Interstate Low-Level Radioactive Waste Compact, established to cooperatively develop a disposal facility for low-level radioactive waste generated within the compact region. The compact entered into a contract with US Ecology, a private developer, to site, develop, and operate a disposal facility. Nebraska

was chosen as the "host state," a site to build a facility was located in Boyd County, and US Ecology submitted a license application to the state. The application is currently under review by DEQ and DOH.

In order to clarify the statutory responsibilities of a facility operator with respect to ownership of the land on which a facility is located, financial assurance, and the operation and permanent closure of a facility, LB 1201 defines "licensed facility operator" for purposes of the LRWDA and the RCA. A licensed facility operator is defined as "any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the department."

Additionally, LB 1201 eliminates the requirement that the State of Nebraska own the land on which a disposal facility is located prior to the permanent closure of a facility. The bill requires the licensed facility operator to own the land during the "operational life" of a facility and provides for the state to assume ownership of the land after the facility is permanently closed by the licensed facility operator pursuant to specific statutory criteria and rules and regulations. Plus, state ownership of the land is contingent upon the licensee's compliance with all financial assurance requirements and by Congressional ratification of the amendments passed in 1991 to the Central Interstate Low-Level Radioactive Waste Compact. The bill further provides that state ownership of the land does not relieve the developer, the licensee, or the generators of low-level radioactive waste from liability for any damages resulting from the disposal of such waste.

The assignment of remedial cleanup costs arising during the operation of the facility and after its permanent closure are also addressed in LB 1201. Remedial cleanup costs arising during the operational life of the facility are assigned first to the licensed facility operator who is required to demonstrate financial assurance to cover the costs of environmental cleanup. If the costs should exceed the financial assurance, the costs will be assessed against the generators proportionately by waste volume and finally against the compact member states pursuant to the terms of the compact.

Remedial cleanup costs arising after a facility has been permanently closed will be assessed against the following in the order listed: (1) An established site closure fund; (2) the licensed facility operator;

(3) the generators of the waste based upon proportionate volume of waste; and (4) the compact member states based upon proportionate volume of waste.

LB 1201 passed 41-3 and was approved by the Governor on April 16, 1996.

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## **LB 1226—Change Provisions Relating to the Leaking Underground Storage Tank Program**

*(Bromm, Beutler, Boblke, Cudaback, Elmer, Hillman, Janssen, Jones, Preister, Vrtiska, McKenzie, and Brown)*

The Leaking Underground Storage Tank (LUST) program, administered by the Department of Environmental Quality (DEQ), regulates the cleanup of petroleum-contaminated sites caused by leaking underground storage tanks. The program also manages a reimbursement fund established to help pay for certain costs related to cleanups. The program is authorized by the Petroleum Products and Hazardous Substances Storage and Handling Act (the storage and handling act) and the Petroleum Release Remedial Action Act (the reimbursement act).

The storage and handling act requires owners and operators of underground petroleum storage tanks to monitor tanks for leakage, to promptly report leaks, to clean up resulting contamination, and to pay for the costs of a cleanup. The reimbursement act establishes the Petroleum Release Remedial Action Cash Fund (commonly called the Title 200 Fund) and authorizes DEQ to make reimbursement payments from the fund to tank owners and operators for costs resulting from the cleanup of a contaminated site. Work related to a cleanup must be approved by DEQ in order for associated costs to be reimbursable. The act also authorizes DEQ to pay the program's administrative costs from the fund.

The primary source of revenue for the Title 200 Fund is per-gallon fees on gasoline and diesel fuel. Those fees are currently 6/10 of 1¢ per gallon on gasoline and a 2/10 of 1¢ per gallon on diesel fuel. The fees generate approximately \$7 million annually.

According to the introducer's statement of intent for LB 1226, the bill was introduced to address shortcomings in the administration of the LUST program that became evident as a result of a 1995 evaluation of the program done by the Legislature's Program Evaluation Committee and a decision made by DEQ in April 1995 to suspend cleanup activity at more than 600 sites. The suspension action was taken because the Title 200 Fund lacked sufficient funds to pay more than \$6 million in pending reimbursement claims. The shortfall was due, in large part, to the failure of DEQ to require cost estimates for approved work and to track expenditures of the fund on a "cash-flow" basis.

LB 1226, as amended by the Natural Resources Committee and passed by the Legislature, authorizes a transfer of approximately \$6.5 million from the Wastewater Treatment Facilities Construction Loan Fund to the Title 200 Fund to pay the backlog of reimbursement claims. (The wastewater treatment fund is federally funded and administered by DEQ to provide loans to municipalities for construction of wastewater treatment facilities.) Under the provisions of the bill, DEQ is required to repay the wastewater treatment fund from the Title 200 Fund as the latter is replenished by gasoline and diesel fees. The LUST program plans to reactivate cleanups at suspended sites in about 12 to 18 months.

In addition to providing a means of addressing the reimbursement backlog, LB 1226 requires DEQ to obtain cleanup-cost estimates from tank owners and operators before work is approved to assist in the management of the Title 200 Fund. The bill also allows DEQ to make partial reimbursement payments if approved cleanup work takes more than 90 days. The bill provides that reimbursement payments from the fund are subject to the requirements of the Prompt Payment Act, which requires the state to make interest payments on bills or claims that have been pending for more than 60 days. In an effort to keep the Legislature updated on the status of the fund, the bill further requires the director of DEQ to provide annually to the Legislature an estimate of the total cost for all approved remedial action work, the total amount of pending reimbursement claims, and the balance in the Title 200 Fund.

LB 1226 requires the Environmental Quality Council, the rule- and reg-making entity for DEQ, to adopt regulations specific to the LUST program. In adopting rules and regulations relating to cleanups, the council is directed to take into account a cleanup strategy called risk-based corrective action, commonly referred to as RBCA or "Rebecca." Under a traditional strategy, cleanup requirements are the same for all sites and are based on very stringent drinking water standards. Under RBCA, each site is considered individually and cleanup is customized to a site based on site-specific conditions. In some circumstances, cleanup requirements will be less stringent and will allow a level of, if not all, contamination to be left in place.

In an effort to promote public participation in the LUST program, LB 1226 establishes a technical advisory committee, composed of "stake-holders" in the program such as tank owners and environmental engineers and consultants. The advisory committee will

assist DEQ in the development of regulations, review the administration of the LUST program in general, and make recommendations to DEQ for revisions. The committee will also make recommendations to the Legislature's Natural Resources Committee relative to the use of land where contamination is left in place under RBCA and relative to the certification of those holding themselves out as consultants for cleanup projects. The committee is to finish its work by March 1, 1998, at which time it will cease to exist.

LB 1226 passed with the emergency clause 44-5 and was approved by the Governor on April 15, 1996.

# NEBRASKA RETIREMENT SYSTEMS COMMITTEE

## Senator Robert Wickersham, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 700—Provide for Maintaining the Purchasing Power of Retirement Benefits**

*(Wickersham)*

LB 700 establishes cost-of-living adjustments (COLAs) for members of the school employees, judges, and State Patrol retirement systems. The COLA will be .3 percent annually, beginning in the sixth year of an individual's retirement and will be available only to those retiring after the effective date of the bill.

The bill finances the COLAs by transferring money from the fund created by the Help Education Lead to Prosperity Act (HELP), which is repealed by LB 700. (HELP was enacted in 1989 to provide more money for teacher salaries and benefits.)

For the school employees retirement system, the bill also (1) establishes a minimum employee contribution rate of 7.25 percent, (2) increases the formula annuity factor from 1.73 to 1.8 percent of final average salary for employees who end their service after the effective date of LB 700, and (3) provides a one-time 3 percent COLA for employees who ended their employment prior to the effective date of the bill.

LB 700 passed with the emergency clause 42-1 and was approved by the Governor on April 9, 1996.

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#### **LB 847—Change the Administration of the State Investment Council and PERB and Certain Investments**

*(Wickersham, at the request of the Governor)*

LB 847 makes significant changes in the administration of Nebraska's retirement systems. LB 847 transfers the authority for investing state and county retirement funds, as well as funds in the deferred compensation program, from the Public Employees Retirement Board (PERB) to the state investment officer. This change was originally recommended by a consultant hired to study Nebraska's retirement systems.

The bill also (1) provides for cross membership on the State Investment Council and PERB, (2) upgrades qualifications for the appointed members of the council and PERB, (3) requires that both the council and PERB present an annual plan of action to the Legislature's Retirement Committee, and (4) requires that an external audit of PERB be conducted every four years to determine compliance with state and federal laws.

Among other provisions, LB 847 (1) eliminates the requirement that employer portions of retirement funds be invested only in guaranteed investment contracts, (2) expands investment options for certain employee accounts, (3) allows employees to allocate their contributions among the various investment options in smaller units of money, (4) changes the definition of “final average compensation” for the judges and State Patrol retirement systems to mean the three highest 12-month periods of compensation instead of the three final years of service, and (5) allows rollovers into and out of the retirement systems in accordance with federal law.

LB 847 passed 42-0 and was approved by the Governor on April 3, 1996.

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**LB 1076—  
Change Various  
Provisions Relating  
to Retirement**

*(Nebraska Retirement Systems  
Committee)*

LB 1076 makes changes in and clarifies provisions of the five, state-administered retirement systems.

The bill (1) defines “eligibility” and “vesting credit” more precisely in the county, school employees, State Patrol, and state retirement systems, (2) clarifies that the “deferred vested benefit” cannot be taken until on or after the member’s 55th birthday, (3) provides that the Public Employees Retirement Board will adjust contributions or benefits which are not in accordance with statutory provisions, and (4) mandates that elected officials must participate immediately in the county retirement system.

In addition, the bill clarifies that a participant in the school employees retirement system can qualify for up to ten years of creditable teaching service for employment in public schools in another state or for service in Nebraska schools covered by the school employees retirement system.

Finally, LB 1076 (1) extends the time for buy-backs and repayment of withdrawn contributions from three to five years, (2) mandates that the payment required for buy-backs be at full actuarial cost, and (3) provides a two-year statute of limitations for claims made against a retirement system.

LB 1076 passed 34-7 and was approved by the Governor on April 16, 1996.



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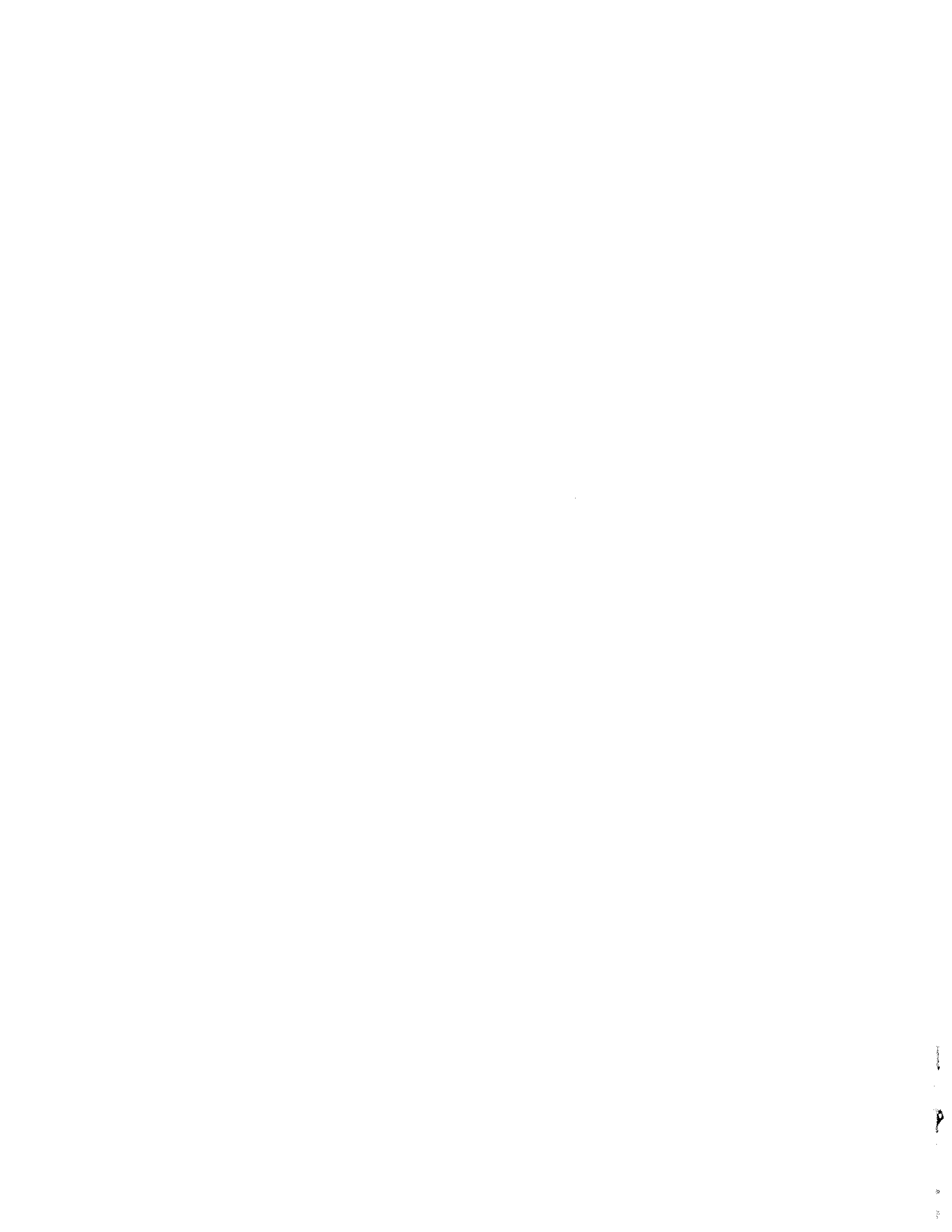
**LR 343—Request  
the Attorney  
General to Initiate  
Action Relating to  
Noncertificated  
School Employees  
and Membership  
in the School  
Employees Retirement  
System**

*(Wickersham, Crosby, Lynch,  
Robak, and Wehrbein)*

Due to an administrative error by the Nebraska Public Employees Retirement Systems Office, certain noncertificated school employees hired prior to July 1, 1978, were allowed access to the school employees retirement system which they were not legally authorized to have.

LR 343 directs the Attorney General to initiate court action to determine the rights of these employees. The resolution also directs the Attorney General to determine whether noncertificated employees who have not elected to join the school employees retirement system have any right to do so.

LR 343 passed 30-12 and was signed by the Speaker on April 10, 1996.



# REVENUE COMMITTEE

## Senator Jerome Warner, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 106—Sales and Use Tax Exemption for Veterinary Medicines and Agricultural Chemicals**

*(Dierks, Jones, Schellpeper,  
and Vrtiska)*

LB 106 exempts from sales and use taxes purchases of veterinary medicines “for consumption by, to be used on, or which are otherwise used in caring for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or of a kind the pelts of which ordinarily are used for human apparel.” The bill also provides exemptions for certain purchases of agricultural chemicals, feed, and water. LB 106 defines veterinary medicines to mean “medicines for the prevention or treatment of disease or injury. . . .” The exemptions will be available beginning October 1, 1996.

Additionally, LB 106 clarifies that, for purposes of sales and use taxation, the amount of certain rebates (*i.e.*, sales price discounts given at the time of sale) granted by motor vehicle manufacturers or dealers and the value of a motor vehicle trade-ins before, on, or after January 1, 1997, are not includable in “gross receipts.” These provisions became a part of LB 106 via an E&R amendment which was adopted May 19, 1995, to clarify that Laws 1994, LB 123, section 21, simply extended the rebate and trade-in exclusions to sales of motorboats beginning January 1, 1997.

LB 106 passed 31-13 and was approved by the Governor on April 15, 1996.

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**LR 292CA—  
Local Government  
Mergers and  
Consolidations;  
Differences in Tax  
Rates and Classes  
of Property; Elim-  
inate Towns and  
Townships; and  
Limit Tax Exemp-  
tions for the  
State and Local  
Governments**

*(Warner, Coordsen, Hartnett,  
Kristensen, Landis, Schellpeper,  
Wickersham, Will, Elmer, and  
Maurstad)*

LR 292CA amends Article XV, section 18, of the Nebraska Constitution to permit the Legislature to “provide for the merger or consolidation of counties or other local governments.” However, with respect to counties and municipalities, LR 292CA requires any such combination to be approved by “a majority of the people voting in each municipality or county to be merged or consolidated as provided by law.” The measure also allows such combinations to be “initiated by petition as provided by law” and specifically states that “annexation” will “not be considered a merger or consolidation for purposes of this section.”

LR 292CA repeals Article IX, section 5, of the Constitution, which requires the Legislature to “provide by general law for township organization” and strikes various references to “town,” “towns,” and “townships” in Articles III, VIII, IX, XI, and XVII of the Nebraska Constitution.

The measure also amends Article VIII by permitting the Legislature to

provide for differences in tax rates within and outside municipalities and on different classes of property so long as any such differences and classifications are reasonable and are required by either or both (a) an agreement between local governments for the support of a joint exercise of powers, duties, or conduct of an office or offices or (b) an agreement governing a merger or consolidation of local governments. . . .

The measure also changes a restriction in Article VIII, section 1, concerning the allocation of proceeds from motor vehicle taxes. Only counties, cities, villages, and school districts will receive motor vehicle tax proceeds—the measure strikes related references to “townships” and “other governmental subdivisions” and also strikes the formula by which such tax proceeds are currently allocated among units of local government. (See discussion of LB 1176, *infra*.)

Finally, LR 292CA amends Article VIII, section 2, to limit the tax exemption for the property of the state and its political subdivisions, “to the extent such property is used by the state or governmental subdivision for public purposes authorized to the state or governmental subdivision by this Constitution or the Legislature.” However, “[t]o the extent such property is not used for public purposes, the Legislature may classify such property,

exempt such classes, and impose or authorize some or all of such property to be subject to property taxes or payments in lieu of property taxes. . . .”

LR 292CA passed 46-1 and was presented to the Secretary of State on April 11, 1996. The measure will appear on the November 1996 general election ballot.

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**LB 299—Local  
Government  
Spending  
Limitations**  
*(Warner)*

As originally introduced in 1995, LB 299 provided for changing the rates of Nebraska’s income tax and sales and use taxes. The bill did not specify any particular rate changes but was drafted with the intent that it could be amended to increase or decrease the tax rates in question. However, the original provisions of LB 299 were struck by the Revenue Committee amendment, which established local government spending limitations.

As enacted, LB 299 establishes spending limitations that generally apply to all local governments, exceptions to the spending limits, and related procedures. The bill contains a number of other provisions as well.

**General Budget Limitation Rules**

LB 299 prescribes general budget limitation rules applicable to all units of local government. The general budget limitation rules are:

- (1) “For fiscal years beginning on and after July 1, 1996, and before July 1, 1997, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year’s total of budgeted restricted funds plus population growth plus two percent expressed in dollars.” (For cities of the first and second classes and villages, restricted funds must be reduced to account for “the fourteen-month fiscal year for 1995-96.”)
- (2) “For fiscal years beginning on and after July 1, 1997, and before July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year’s total of budgeted restricted funds plus population growth expressed in dollars.”

Pursuant to those general rules, LB 299 defines “governmental unit” to mean “every political subdivision which has authority to levy a

property tax except sanitary and improvement districts which have been in existence for five years or less and school districts.” The bill defines “restricted funds” to mean

(a) property tax, excluding any amounts required to pay interest and principal on bonded indebtedness and any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) state aid, and (e) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee. . . .

### **Exceptions to the LB 299 Budget Limits**

A number of exceptions to the general budget limitation rules are prescribed in LB 299. As previously mentioned, the budget limitation rules do not apply to school districts or sanitary and improvement districts in existence for five years or less. (School districts are subject to the budget limitation rules of the Tax Equity and Educational Opportunities Support Act, which are discussed below.)

Certain “restricted funds” also are exempt from the LB 299 budget limits. The bill’s budget limits do not apply to the following restricted funds:

(1) restricted funds budgeted for capital improvements financed by the proceeds from a bond issue, appropriations from a sinking fund, or any other means, (2) restricted funds pledged to retire bonded indebtedness, (3) restricted funds budgeted in support of a service which becomes the subject of an interlocal cooperation agreement or modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity for two fiscal years beginning with the first budget adopted after the agreement or modification is signed, (4) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared an emergency disaster pursuant to the Emergency Management Act, or (5) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial

Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit.

Another exception permits a governmental unit to “exceed the budget limit for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.”

### **Treatment of Consolidated Governmental Units and Annexations**

LB 299 requires governmental units that have annexed property or that have consolidated to base their general budget limitation calculations “on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit or a portion thereof.”

### **Treatment of Transfers of Financial Responsibility to Other Governmental Units**

LB 299 provides that if “a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service” must be “subtracted from the last prior year’s total of budgeted restricted funds for the previous provider and may be added to the last prior year’s total of restricted funds for the new provider.”

### **Carry Forward of Unused Restricted Funds Authority**

As an alternative to increasing its total restricted funds by the full amount allowed by law, LB 299 permits a governmental unit to “choose not to increase its total of restricted funds by the full amount allowed by law for a particular year” in favor of carrying forward “to future budget years the amount of unused restricted funds authority.” Furthermore, the bill allows such unused restricted funds authority to “then be used in later years for increases in the total of restricted funds allowed by law.” Additionally, “[a]ny unused budget authority existing on the effective date of this act by reason of any prior law may be used for increases in restricted funds authority.”

## State Enforcement of Budget Limitations

With respect to matters of enforcing the bill's budget limitations, LB 299 requires the Auditor of Public Accounts to "prepare budget documents to be submitted by governmental units which calculate the restricted funds authority for each governmental unit" and provides that

[i]f the Auditor of Public Accounts determines from the budget documents that a governmental unit is not complying with the budget limits . . . , he or she shall notify the governing body of his or her determination and notify the State Treasurer of the noncompliance. The State Treasurer shall then suspend distribution of state aid allocated to the governmental unit until such sections are complied with. The funds shall be held for six months until the governmental unit complies, and if the governmental unit complies within the six-month period, it shall receive the suspended funds, but after six months, if the governmental unit fails to comply, the suspended funds shall be forfeited and shall be redistributed to other recipients of the state aid or, in the case of homestead exemption reimbursement, returned to the General Fund.

Also note that the bill appropriates \$5,000 from the General Fund to the Auditor of Public Accounts for FY1996-97 to aid in carrying out the provisions of LB 299; however, no such funds may be used for salaries or per diems for state employees.

### Budget Limitation Rules Applicable to School Districts

The budget limitations that apply to school districts are contained in the Tax Equity and Educational Opportunities Support Act, as amended by LB 299. The act's general rule is that a school district may not increase "its general fund budget of expenditures more than the allowable growth percentage." However, beginning FY1997-98, a school district's general fund budget of expenditures may not exceed

the general fund budget of expenditures adopted for the immediately preceding school fiscal year unless a district . . . , by an affirmative vote of seventy-five percent of the school board, votes to exceed such limitation, in which case the budget limitations and



all other provisions of [section 79-3814 (1)] and sections 79-3815 to 79-3821 shall apply.

The Tax Equity and Educational Opportunities Support Act requires the Legislature to establish an allowable growth range each year. The allowable growth range is "expressed as basic allowable growth rates plus a specified number of percentage points." Under the provisions of LB 299, the basic allowable growth rate for general fund expenditures (other than expenditures for special education) will be "two percent plus growth in students" for FY1996-97; "growth in students" for FY1997-98; and "three percent" for all other fiscal years. LB 299 also provides that, beginning FY1998-99, the allowable growth range will be "from three percent to five and one-half percent." LB 299 defines "growth in students" as "the percentage increase in the number of students calculated by dividing the fall membership count from the school year immediately preceding the school year for which the budget is being determined multiplied by the average ratio of average daily membership to fall membership for the most recent available data year and the two school years prior to that year by the average daily membership in the school district from the second school year preceding the year for which the budget is being determined and then subtracting one from the ratio. If the calculated growth in students is negative, the growth in students shall be zero for the purposes of this section."

LB 299 also provides a number of exceptions to the rules governing allowable growth rates. For FY1996-97 and FY1997-98 only, LB 299 provides that

a district may exceed its allowable growth rate for (a) budgeted expenditures for capital improvements . . . financed by the proceeds from a bond issue, appropriations from a sinking fund, or any other means, (b) expenditures to retire bonded indebtedness, (c) expenditures in support of a service which becomes the subject of an interlocal cooperation agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or an independent joint entity for two fiscal years beginning with the first budget adopted after the agreement or modification is signed, (d) expenditures to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (e) expenditures to pay for judgments, except judgments or orders from the

Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district, or (f) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment.

Beginning FY1998-99, exceptions to the allowable growth rate will be permitted for certain new program requirements, projected increases in formula students, increases in building operation and maintenance costs of five percent or more, orders of the Commission of Industrial Relations, certain disputed contracts or final judgments, and costs pursuant to Retirement Incentive Plans or Staff Development Assistance. Also, a school district will be allowed to exceed its "allowable growth percentage" (as determined by the State Department of Education) "by an amount approved by a majority of registered voters voting on the issue at a special election called for such purpose upon the recommendation of the board or upon receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the registered voters in the district."

LB 299 states the Legislature's intent that "any reductions in a school district budget, made to comply with the budget limitation in the Tax Equity and Educational Opportunities Support Act, affect classroom expenses as a last resort."

Finally, the changes made by LB 299 do not apply to expenditures for special education. The bill does not change the rule governing special education budget expenditures. Thus, the "budget authority for special education" is "the actual anticipated expenditures for special education subject to the approval of the state board."

### **Task Force on Unfunded Mandates**

The Task Force on Unfunded Mandates is created by LB 299. The task force is required to "identify and review all programs and services enacted by the Legislature which resulted or may result in an increase in expenditures of funds by political subdivisions assigned to perform or provide programs and services." Task force members include the chairperson of the Legislative Council's Executive Board, seven additional Nebraska state senators selected by the Executive Board, and five representatives of local governments (one to represent municipalities, one to represent counties, and three to represent the "education community") selected by the

senators on the task force. The task force must submit a written report to the Legislature by December 1, 1996, "which may include recommendations for any changes to state law which may either modify or repeal all identified programs and services with the intent of reducing the fiscal impact of the programs and services entirely." Other language in the bill *requests* each standing committee of the Legislature to undertake (and report findings to the task force by November 1, 1996) "an interim study during 1996 to identify unfunded mandates and to recommend, if desirable, the modification or repeal of unfunded mandates impacting the subject matter of the committee." The task force terminates at the end of 1996.

### Elimination or Reduction of Burden of Public Notice Requirements

The provisions of LB 978 were added to LB 299 via amendment. The provisions provide for eliminating or otherwise changing various publication requirements. For instance, county agricultural societies are no longer required to publish lists of awards and cities of the first class are now required to publish notice inviting application for private ownership and operation of off-street parking facilities once each week for at least three weeks rather than once each week for at least 30 days. County sheriffs or constables are no longer required to publish notice of public auction in a newspaper of general circulation for the sale of any stallion, jack, bull, buck, or boar caught running at large in the county. Posting notice of the public auction for 20 days in three public places in the township or precinct where the animal was found will now be sufficient. In general, when publication still is required, the bill reduces the length of time for publication— usually from four or five weeks to three weeks.

LB 299 passed with the emergency clause 36-11 and was approved by the Governor on April 16, 1996.

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### LB 693—Nebraska Commission on Local Government Innovation and Restructuring (Warner)

LB 693, a component of the Legislature's 1996 property tax reform effort, creates the Nebraska Commission on Local Government Innovation and Restructuring. The commission's main purpose is to encourage local government restructuring and service-delivery innovations. The bill gives the commission various powers and duties, such as evaluating efforts to develop public services innovation, restructuring, and cooperative efforts; sponsoring related educational activities; identifying certain intergovernmental mandates; and funding, on a matching-fund basis, "outstanding local

government projects in government innovation, restructuring, and cooperative services provisions." The commission's 18 members will be appointed by the Governor.

LB 693 also creates the Nebraska Commission on Local Government Innovation and Restructuring Fund, which must be used to carry out the purposes of the bill. LB 693 requires the State Treasurer to transfer \$100,000 annually to the fund from August 1, 1996, through August 1, 1999. The fund will be administered by the Department of Administrative Services. The department will receive \$100,000 appropriations from the fund for each of the next two fiscal years, FY1996-97 and FY1997-98, to aid in carrying out the provisions of the bill.

Finally, LB 693 amends certain provisions in Laws 1996, LB 1085, which is discussed *infra*. LB 693 amended LB 1085 by requiring preliminary property tax levies to be "certified" by county clerks and by adding related provisions pertaining to school systems with multiple school districts.

LB 693 passed 41-3 and was approved by the Governor on April 18, 1996.

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**LB 1085—"Preliminary" Property Tax Levy and Related Matters; Intercounty and Intracounty Consolidation Procedures; Miscellaneous Provisions**  
*(Revenue Committee)*

LB 1085 contains a number of different provisions. The bill contains procedures for the use of "preliminary" and "final" property tax levies; changes provisions governing the state assumption of county assessment functions; changes the personal property tax due date and the county property tax levy date; changes certain levy powers of county boards; changes procedures for intercounty and intracounty consolidation; provides for a study of natural resources districts; requires a report by drainage districts; changes residency requirements for certain county officers; and changes a salary provision for veterans service officers. (Also note that Laws 1996, LB 693, amended sections 54-56 of LB 1085.)

**"Preliminary" and "Final" Property Tax Levy Procedure and Property Tax Levy Dates**

As amended by LB 693, LB 1085 requires county clerks to "certify" a preliminary property tax rate for each political subdivision on or before September 10 each year. The preliminary property tax rate is to be "calculated by dividing the amount requested for property taxes in the budget of the previous year by the final valuation in the political subdivision for the current year." For school systems with multiple school districts, LB 1085 (as amended by LB 693) requires

“the county clerk to certify to each school district the combined valuation of the school system with the multiple school districts and the proportion of valuation in each district by September 10” each year. The county clerk is also required to “certify the preliminary levy based on the combined valuation and the amount requested for the school system for the prior year.”

If a political subdivision (*e.g.*, community college or school district) levies taxes in more than one county, LB 1085 requires the county clerks of all the affected counties to agree on the preliminary levy. Except for school systems with multiple school districts, the preliminary levy is required to “be published for each political subdivision in a newspaper of general circulation in the county on or before September 15.” As amended by LB 693, the bill requires school systems with multiple school districts to “hold a hearing to approve or modify the preliminary systemwide levies on or before September 15” each year and authorizes the school board of a Class VI school district or K–12 school district “to set the tax rate for the school system.”

The preliminary levy will be considered the final levy as set by the county board of equalization, unless changed by the political subdivision’s governing body before October 15 following the adoption (by a majority vote and after holding a special public hearing) of an ordinance or resolution setting the levy at a different amount.

The bill also changes the date on which general personal property taxes are due from November 1 to November 15 of each year, except as provided in section 77-1214. The bill also changes the date, from September 30 to October 15 each year, by which county boards of equalization must meet to levy taxes for the current year.

### **State Assumption of County Assessment Function**

The provisions of LB 1058 were amended into LB 1085 by the committee amendment. Section 77-1340 permits county boards to adopt resolutions requesting the state Property Tax Administrator to take over the county assessment function. LB 1085 requires such resolutions to be “adopted before the end of the calendar year” and to “state an effective date for the assumption of the assessment function,” which may not be any “sooner than the beginning of the fiscal year which begins July 1 of the year immediately following the passage of the resolution by the county board.” A formal agreement between the county and the Property Tax Administrator is

no longer required. Additionally, when the Property Tax Administrator assumes the assessment function, the incumbent county assessor's term of office automatically terminates and the county is no longer required to elect a county assessor.

### **Property Tax Levy Powers of County Boards**

Portions of LB 1062 were also amended into LB 1085 by the committee amendment. Generally, the bill provides discretionary authority to county boards to decide whether, and to what extent, levies for certain purposes will be made. For example, the bill eliminates the requirement that counties levy taxes "to provide medical, surgical, and hospital care for needy persons of the county" before "levying taxes for any other functions of county government. . . ."

### **Intercounty/Intracounty Consolidation and Residency Requirements**

LB 212 was another bill added to LB 1085 by the committee amendment. The bill permits, pursuant to certain procedures and requirements, two or more adjoining counties to (1) consolidate if the number of counties is reduced, (2) consolidate one or more county or township offices, or (3) provide for joint performance of any common function or service.

Any county is also authorized to "consolidate the office of clerk of the district court, county assessor, county clerk, county engineer, county surveyor, or register of deeds, except that the consolidated officeholder" must "meet the qualifications of each office as required by law."

The bill also changes certain residency requirements. For instance, a candidate for the office of county attorney does not have to be a resident of the county when he or she files for election. But if elected, the attorney must "reside in a county for which he or she holds office, except that a county attorney serving in a county which does not have a city of the metropolitan, primary, or first class may reside in an adjoining Nebraska county." However, when a county attorney is not elected, the county board still is permitted to appoint "a qualified attorney from any Nebraska county to the office of county attorney." LB 1085 also changes the residency requirements governing county clerks, county treasurers, sheriffs, county surveyors, public defenders, and registers of deeds.

## Nebraska Natural Resources Commission Study

The provisions of LB 1385 were added to LB 1085 as well. The Nebraska Natural Resources Commission must “undertake a study of the state’s natural resources districts” and “make two reports to the Legislature which include, if appropriate, specific legislative recommendations for change.” The first report is due September 1, 1997, and must “include the commission’s analysis of natural resources district revenue base, board of director size, boundary changes, and consolidation of districts.” The second report is due one year later and must include the commission’s “analysis of natural resources district cost effectiveness, program effectiveness, duplication of responsibilities and authorities, and other services or areas that could facilitate property tax relief.”

### Reports by Drainage Districts and Natural Resources Districts

LB 1085 directs the board of supervisors for a drainage district organized under sections 31-301 to 31-377 to submit a report before January 1, 1997, to each natural resources district in which the drainage district is located. The report must contain certain identifying information and “the method of taxation used by the district.” Plus, each natural resources district is required to submit a report to the Clerk of the Legislature and the Natural Resources Committee before April 1, 1997. The report must include information concerning the existence of drainage districts, including any information obtained from drainage districts and any other information obtained by the natural resources district. (These provisions were originally in LB 1384.)

### County Veterans Service Committees and Officers

The provisions of LB 1303 were also amended into LB 1085 by the committee amendment. Generally, the bill authorizes a county board to exercise discretion in deciding whether, and to what extent, a property tax will be levied in support of a county veterans service committee. A county veterans service committee is required to “determine the amount it considers necessary for providing aid, including food, shelter, fuel, wearing apparel, medical or surgical aid, or funeral expenses” for qualifying veterans and their relatives. The bill states the qualifications for receiving such aid and requires the county board to make an annual “levy or levies as needed to raise the required aid fund . . . as the county board determines is necessary,” up to \$0.01 per \$100 of taxable value in the county. The amount paid to each claimant is determined by the committee (or

a majority thereof), "subject to any amounts in the aid fund." The county clerk is to issue related warrants, "as amounts in the aid fund permit." The bill also requires the county board to fix the "salaries of all . . . appointive veterans service officers of the county," whether such individuals are full- or part-time officers.

LB 1085 passed 45-0 on April 10, 1996, and the Governor approved the measure on April 16, 1996. (However, LB 1085A was vetoed by the Governor on April 16, 1996. LB 1085A would have appropriated from the General Fund \$20,000 for FY1996-97 and \$50,000 for FY1997-98 to the Nebraska Natural Resources Commission for the purpose of conducting a study of the state's natural resources districts and making recommendations to the Legislature. According to the Governor's veto letter, the study (Program 334) was to cover a number of topics including district boundaries, consolidation, bases of revenue, and program delivery.

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**LB 1114—  
Property Tax  
Levy Limitations**

*(Warner, Coordsen, Hartnett,  
and Will)*

LB 1114 establishes various maximum property tax levy limits for units of local government in Nebraska. Except as otherwise provided in sections 1 through 3 of LB 1114, the following levy limits apply:

- (1) **School Districts:** Beginning with FY1998-99 and ending after FY2000-01, \$1.10 per \$100 of taxable valuation. Beginning FY2001-02, this maximum levy limit decreases to \$1.00 per \$100 of taxable valuation. However, "[e]xcluded from this limitation are amounts levied to pay for sums agreed to be paid by a school district to certified employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings." Additionally, LB 1114 permits "federal aid school districts" (*i.e.*, "any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382") to exceed the maximum levy limitation "to the extent necessary to qualify to receive federal aid. . . ."
- (2) **Community Colleges:** Beginning with FY1998-99 and ending after FY2000-01, \$0.08 per \$100 of taxable valuation. Beginning FY2001-02, this maximum levy limit decreases to \$0.04 per \$100 of taxable valuation.



- (3) **Natural Resources Districts:** Beginning FY1998–99, \$0.045 per \$100 of taxable valuation.
- (4) **Educational Service Units:** Beginning with FY1998–99, \$0.015 per \$100 of taxable valuation.
- (5) **Incorporated Cities and Villages** Beginning with FY1998–99, \$0.45 per \$100 of taxable valuation—plus an additional \$0.05 per \$100 of taxable valuation to provide financing for the municipality’s share of revenue required under an Interlocal Cooperation Act agreement.
- (6) **Sanitary and Improvement Districts (SIDs):** Beginning FY1998–99, \$0.40 per \$100 of taxable valuation for SIDs which have been in existence for more than five years. (The bill specifically provides that there is no maximum levy limit for SIDs which have been in existence for five years or less. This provision becomes operative July 1, 1998.)
- (7) **Counties:** Beginning with FY 1998–99, \$0.50 per \$100 of taxable valuation. Of that amount, up to \$0.05 per \$100 of taxable valuation may be levied to provide financing for the county’s share of revenue required under an Interlocal Cooperation Act agreement. LB 1114 also provides that a county may allocate up to \$0.15 of its property tax levy authority to political subdivisions other than those listed above (e.g., airport authorities and rural fire districts) “to levy taxes as authorized by law” which do not collectively exceed \$0.15 per \$100 of taxable valuation “on any parcel or item of taxable property.”
- (8) **Other Political Subdivisions (e.g., Airport Authorities, Cemetery Districts, Weather Control Districts, Etc.):** “All political subdivisions other than school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, and sanitary and improvement districts and all county agricultural societies may levy taxes as authorized by law which are authorized by the county board and are counted in the county levy limit . . . and which do not collectively total more than \$0.15 per \$100 of taxable valuation on any parcel or item of taxable property, except that such limitation shall not apply to property

tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, and for bonded indebtedness approved according to law and secured by a levy on property.”

LB 1114 also provides that the maximum property tax levy limits “are to include all other general or special levies provided by law” and makes numerous coordinating changes throughout the statutes to reflect the new levy limit provisions.

Four general exceptions to the maximum property tax levy limits are prescribed in the bill. Three of the four exceptions are for (1) property taxes levied in connection with certain judgments, (2) bonded indebtedness, and (3) preexisting lease-purchase contracts approved before July 1, 1998.

With respect to the fourth exception, LB 1114 permits political subdivisions to exceed the maximum levy limits “by an amount approved by a majority of registered voters voting in a primary, general, or special election at which the issue is placed before the registered voters.” (A vote to exceed the levy limits “must be approved prior to September 30 of the fiscal year which is to be the first to exceed the limits.”) LB 1114 also provides that, in lieu of such election procedures, any political subdivision that is *not* a school district, community college, natural resources district, educational service unit, city, village, county, sanitary and improvement district, or county agricultural society, “may approve a levy in excess of the limits” or “the allocation provided by a county board . . . for a period of one year at a meeting of the residents of the political subdivision or village” following proper published notification of such meeting. (Ten percent or more of the registered voters residing in the political subdivision or village constitutes a quorum for purposes of taking action to exceed the limits, and a majority vote in favor of exceeding the limits will require the county board to authorize the levy as approved by the residents for the year, provided that a copy of the record vote of that action is forwarded to the county board before September 30.)

LB 1114 also permits the creation of a

council on public improvements and services . . . within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are

authorized to levy property taxes or which may benefit from property taxes affected by the levy limits. . . .

Such councils “may meet, beginning in 1996, as often as necessary” before “the adoption of budgets and property tax requests affected by the levy limits” and are required to “jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax.”

Finally, LB 1114 provides that no new weather control districts may be organized under the Weather Control Act of Nebraska on or after January 1, 1997.

LB 1114 passed 36–12 and was approved by the Governor on April 16, 1996.

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**LB 1177—Equalization Aid for Municipal Governments and Joint Financing and Operation of Public Safety Services under the Interlocal Cooperation Act**

*(Warner)*

LB 1177, a component of the Legislature’s 1996 property tax reform effort, creates the Municipal Equalization Fund for the purpose of providing state-funded equalization aid to qualifying municipal governments in Nebraska beginning July 1, 1998. The dollar amount of such state aid would be equal to (1) the municipality’s per capita property tax levy multiplied by the municipality’s current population, *minus* (2) the municipality’s average property tax levy multiplied by the certified valuation of taxable property within the municipality. If the application of this formula results in a negative number, the municipality is ineligible to receive equalization aid for the year in question.

LB 1177 also contains a number of provisions pertaining to the joint financing and operation of public safety services under Nebraska’s Interlocal Cooperation Act. Among other things, the provisions (1) authorize counties to levy sales and use taxes in certain instances and (2) grant additional property tax levy authority under some circumstances.

LB 1177 passed 43–3 and was approved by the Governor on April 16, 1996.

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## **LB 1373—Create the Review Incentives Program Committee**

*(Warner, Coordsen, Hartnett,  
Kristensen, Landis, Schellpeper,  
Wesely, Wickersham, and Will)*

LB 1373 creates the Review Incentives Program Committee (RIPC) for a two-year period beginning July 19, 1996. The stated legislative intent is to “accurately and objectively measure the costs and benefits of tax incentives granted by state and local government to businesses, individuals, and communities using the tax incentives,” to “establish objective and measurable standards by which the State of Nebraska and local governments may in the future determine benefits of tax incentives,” and to “apply measurable cost-benefit standards to tax incentives and projects.”

The committee will consist of seven members, each of whom is required to have “demonstrated expertise in economics, public finance, and financial analysis.” Four members must be appointed by the Executive Board of the Legislative Council, one of whom must be a legislative staff representative recommended by the Revenue Committee. The remaining three members must represent the Tax Commissioner, the Director of Economic Development, and the Legislative Fiscal Analyst. Members will be entitled to reimbursement for their actual and necessary expenses.

The RIPC will have “the authority to examine models and methods for measuring the costs and benefits of tax incentive projects and statutory incentives” and is required to “consider, develop, and provide a brief review to the Legislature of a list of representative projects created under state law,” including, among other laws,

the Air and Water Pollution Control Tax Refund Act, the Community Development Law, the Employment and Investment Growth Act, the Employment Expansion and Investment Incentive Act, the Ethanol Development Act, the Local Option Municipal Economic Development Act, the Quality Jobs Act, the Research and Development Authority Act, the Small Business Development Authority Act. . . .

However, the “confidentiality requirements” applicable to taxpayers are to be preserved in selecting and analyzing the representative projects.

The RIPC also must (1) report “its recommendations for the development of a tax incentive cost-benefit analysis model or method to be used by the State of Nebraska on or before January 15, 1997;” (2) “review available techniques and models for use in the objective measurement of costs and benefits;” (3) “develop a proposed list of measurement techniques, criteria for selection of a model, and cost-

benefit analysis models for use by the Legislature;” and (4) “provide a list of recommended private contractors or public agencies which can provide models and analysis.” In addition, the report must “provide advice to the Legislature on which, if any, publicly available models would be useful to taxpayers and legislators” and must include “a suggested request for proposals document. . . .”

The Legislature may issue requests for bids to provide cost-benefit analysis models, following review and approval by the Executive Board of the Legislative Council. LB 1373 requires the RIPC to “review all bids” and permits it to “make recommendations to the executive board concerning bidders on the project,” but selection of the final bidder will be made by the executive board. However, any models proposed for use by the RIPC must consider and analyze

- (1) Tax shifts resulting from the granting of tax incentives;
- (2) Public infrastructure and community public service needs impacts and local tax impacts arising from projects receiving incentives;
- (3) Impacts on employers and employees of firms receiving tax incentives;
- (4) Impacts on those Nebraska employers and employees not receiving direct incentives or benefits; and
- (5) Any other impacts determined by the committee to be relevant to the consideration of costs and benefits arising from tax incentive programs.

Finally, LB 1373 requires the RIPC to “present a review of current incentives and a public outcomes financial feasibility report to the Legislature” by January 1, 1998. The report must include “a cost-benefit analysis of representative projects” selected by the RIPC, and the project or projects must be reviewed using the model developed by the contractor chosen by the Executive Board. A list of any specific projects chosen for review must be presented to the Executive Board for approval or disapproval prior to review using the model.

LB 1373A appropriates \$105,000 from the General Fund for FY1996-97 to the Legislative Council to aid in carrying out the provisions of LB 1373, but no such funds are to be used for salaries or per diems for state employees.

LB 1373 passed 49-0 and was approved by the Governor on April 15, 1996.

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**LB 1368—Quality  
Jobs Act Tax Incen-  
tives and Businesses  
Subject to Collec-  
tive Bargaining  
under the National  
Labor Relations Act**

*(Brashear, Avery, Bernard-  
Stevens, Bohlke, Brown, Crosby,  
Hartnett, Hilgert, Jensen, Klein,  
Lindsay, Maurstad, Pedersen,  
Pirsch, Robinson, Warner,  
Wehrbein, Wickersham, Will,  
and Witek)*

LB 1368 makes changes to the Quality Jobs Act (Laws 1995, LB 829). The Quality Jobs Act became law as part of an effort to have Micron Industries, Inc., of Idaho locate a computer-chip manufacturing facility in Nebraska and provides for a wage-benefit credit that is generally equal to the amount of Nebraska income-tax withholding attributable to each qualifying employee's compensation for services rendered in connection with a qualifying project.

LB 829 requires the "income tax withholding" credit to be "paid or applied by the employee for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as designated by the employee or as agreed to by the company and employee." Because the National Labor Relations Act (NLRA) may prohibit certain employers (e.g., Union Pacific Railroad Company) from entering into agreements with individual employees, employers may be unable to use the LB 829 income-tax withholding credit without violating the collective bargaining provisions of the NLRA. LB 1368 amends the Quality Jobs Act to permit all qualifying employers to claim a related "wage benefit credit" against their income taxes.

The wage-benefit credit established by LB 1368 is "in lieu of" the income tax withholding credit established by LB 829 and does not require a designation by the employee or an agreement between the employer and employee. The LB 1368 tax credit is equal to (1) a certain percentage multiplied by (2) "the amount by which the total compensation paid during the project year to employees of the company while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees." The applicable percentage is three, four, or five percent, depending on if the average compensation for the project year is from \$20,001 to \$30,000 (3%); \$30,001 to \$40,000 (4%); or over \$40,000 (5%). Additionally, the tax credit is nontransferable, allowable for each project year, subject to recapture under section 77-4929, and may be carried over for up to eight years after the end of the entitlement period until fully utilized.

With respect to the LB 829 income-tax withholding credit, LB 1368 provides that if the credit withheld by the employer exceeds the nonrefundable credit allowed the employee, the employer must refund the difference to the employee. Employers must notify

“employees individually in writing at the time the company reports the wage benefit credit to the employee of the right to claim a refund . . . by April 1 of each year.” The claim for refund must be “made by September 1 of the year when the employee files his or her tax return or fifteen days after the employee files such tax return, whichever is later.” The employer must pay the refund to the employee within 30 days after the claim is filed, and although the employer may request verification of the amount of refund claimed, information pertaining to verification is subject to confidentiality requirements.

LB 1368 passed 39-7 and was approved by the Governor on April 18, 1996.

## LEGISLATIVE BILLS NOT ENACTED

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### **LR 297—State Legislative Intent Regarding Property Taxes**

*(Warner, Bohlke, Wickersham,  
Beutler, Wesely, Coordsen,  
Robinson, Will, Withem,  
Hartnett, Schellpeper,  
Kristensen, and Lindsay)*

In an unprecedented move, Nebraska’s state senators kicked off the 1996 property tax reform effort by convening a meeting of the “committee of the whole” in the George W. Norris Legislative Chamber on January 10 as a prelude to the introduction of LR 297 and a number of related property-tax reform measures.

LR 297 would have stated the Legislature’s intent to achieve a number of goals concerning property tax reform during the 1996 legislative session. These goals would have been to enact legislation which would have: (1) Restructured “public services and the financing of public services;” (2) caused “greater cooperation among political subdivisions and unification of service delivery to deliver essential public services effectively;” (3) “more fully” informed “taxpayers of the amount and purpose of any taxes which are collected;” (4) phased in “overall levy caps to be effective in stages for future years;” (5) restructured “the financing of local services to eliminate, to the greatest extent possible, overlapping jurisdiction and financing using general state aid so that clear responsibilities for the provision of services” would have been “established and financed from a single source;” (6) “maximized the amount of state aid” which might have been “provided to local governments in an equalized manner” and “to minimize distributions of state aid” which might have been “made per capita or through some other nonequalized manner;” and (7) accommodated “the loss of revenue using local savings through efficiency and unification, local taxes conditioned on joint provision of services, and actual decreases in local services” as well as “limiting appropriations for state operations to less than the historic growth rate of state revenue plus expected reductions in federal funds.”

LR 297's "Conclusion" states that

[t]he issue of property tax relief cannot be separated from the issue of providing public services which are needed by the citizens of Nebraska. Any long-term, conscientious solution to the problem of excessive property taxes must examine issues of government consolidation and cooperation, accountability to taxpayers, a proper matching of services, tax sources, and program control, limitations on spending in general and the use of property tax in particular, and proper targeting of our aid programs. Achieving lasting and substantial property tax reduction will require thoughtful, deliberate, and continuous effort over a number of years. It is the goal of the Legislature to undertake this effort beginning with the passage of this resolution and ending some years in the future.

Following a number of successful and unsuccessful attempts to amend LR 297 during the course of floor debate, further consideration of the resolution was "pending" as of January 16, 1996. Ultimately, however, no further action was taken and LR 297 died with the end of the 1996 legislative session.

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**LR 93CA—  
Property Tax  
Levy Limitations  
for Political  
Subdivisions**  
*(Revenue Committee)*

LR 93CA would have established property tax levy limitations per \$100 of actual market value as follows: (1) One dollar for the operation of primary and secondary educational systems; (2) thirty cents for the operation of counties; (3) seven cents for the operation of community colleges; (4) three cents for the operation of natural resources districts; (5) sixty cents for the operation of incorporated cities and villages that are not part of a rural or suburban fire protection district and fifty cents for incorporated cities and villages that are part of a rural or suburban fire protection district; (6) ten cents for the operation of rural or suburban fire protection districts or other entities created under state law for purposes of fire protection; and (7) fifty cents for the operation of sanitary and improvement districts. LR 93CA would have prohibited the levy of any other ad valorem property taxes.

LR 93CA would have provided exceptions to the levy limitations for voter-approved property tax levies used to repay bonded indebtedness and for property taxes levied against taxable property validly assessed before January 1, 2000, pledged to repay bonded indebtedness.



LR 93CA failed to advance from committee.

**LR 284CA—Limit  
State and Local  
Government Taxes  
and Spending**  
*(Withem and Warner)*

The provisions of LR 286CA resemble the provisions of the current initiative petition drive spearheaded by Ed Jaksha, a member of the Nebraskans for Tax Relief organization. LR 284CA would have established state and local government tax and spending limitations. Beginning with FY1997-98 and continuing through FY1999-2000, LR 284CA would have prohibited the State of Nebraska and any local governmental subdivision from enacting any tax or spending increase over the prior fiscal year unless voters would have approved the increase or the increase would have been necessary due to population growth or temporary emergency.

For subsequent fiscal years beginning with FY2000-01, LR 284CA would have prohibited the State of Nebraska and any local governmental subdivision from enacting, making, or allowing any tax or spending increase over the prior fiscal year unless the increase had been approved by voters, would have been necessary due to population growth or temporary emergency, or would have been necessary due to inflation.

Additionally, the resolution would have allowed a limited special exception to its general tax and spending limitation rules in situations involving unfunded federal-state government mandates. (LR 284CA generally would have prohibited unfunded state-local government mandates, the only exception would have come into play in situations involving unfunded federal mandates.)

The resolution also would have allowed any two or more contiguous or noncontiguous governmental units to merge “functions, services or the units themselves.” In such instances, “the determination of whether a tax increase or spending increase” would occur would “be based on the combined tax revenue and spending of the merged government units, allocated as determined by agreement of the respective governing bodies.”

LR 284CA also contained a number of miscellaneous provisions, such as a severability clause and clauses pertaining to standing-to-sue and rights to attorney’s fees. Another clause would have provided an effective date of January 1, 1997, for the entire measure. Finally, LR 284CA would *not* have prohibited “a government unit from establishing reasonable reserves as required by law or as determined to be necessary and appropriate by the respective governing body

in carrying out its governmental purposes,” as long as circumvention of the provisions of LR 284CA would *not* have been a “principal purpose” of such a reserve.

LR 284CA failed to advance from committee.

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**LR 285CA—  
Prohibit All  
Property Taxes;  
Establish State  
and Local Govern-  
ment Spending  
Limitations; and  
Establish a Right  
to Due Process,  
Equal Protection  
of the Law, and  
Unabridged  
Privileges and  
Immunities**  
*(Withem and Warner)*

LR 285CA would have amended the Nebraska Constitution in a number of different respects. LR 285CA would have abolished all property taxes beginning January 1, 1998; established state and local government spending limits tied to inflation and population-growth factors beginning January 1, 1998; and prohibited “government” from abridging the “privileges and immunities” of citizens of Nebraska, prohibited “the State of Nebraska” from depriving “any person of life, liberty, or property without due process of law,” and prohibited apparently any type of authority from “denying to any person within its jurisdiction, regardless of race, sex, age, religious beliefs, or national origin, equal treatment and protection of the laws” (all effective immediately upon voter approval).

The property tax prohibition provisions of LR 285CA resemble the provisions of the current initiative petition drive spearheaded by Sandhills rancher Stan Dobrovolny, while the state and local government spending limitation provisions of LR 285CA resemble the provisions of both the Dobrovolny initiative petition and the provisions of Article XX of the Colorado Constitution.

LR 285CA failed to advance from committee.

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**LR 286CA—  
Establish Standards  
of Efficiency for the  
Delivery of Local  
Government  
Services; Make  
Quality Education  
a Fundamental  
Right; Provide for  
Thorough and  
Efficient Public  
Education; Estab-  
lish “Per Pupil”  
School Funding  
Guarantees; and  
Establish Property  
Tax Levy Limits**

*(Withem and Warner)*

The provisions of LR 286CA resemble the provisions of the current initiative petition drive spearheaded by Citizens for Responsible Tax Policy, a coalition of individuals and statewide groups, such as the Nebraska Farm Bureau and the Nebraska State Education Association. LR 286CA would have required the Legislature to “establish standards of efficiency for the delivery of local government services” and would have made “quality education” a “fundamental right of each person.” The measure also would have provided that “[i]t is a paramount duty of the state to provide for the thorough and efficient education of all persons between the ages of five and twenty-one years who are enrolled in the common schools of the state.” In addition, LR 286CA would have required the Legislature to “provide for a system of school finance,” beginning with the 1998–99 school year, which entitles “each school district” to receive no fewer funds “per pupil than the funds per pupil received for the 1997–98 school year from ad valorem taxes on property and state aid” except that the measure requires the “funds per pupil” to be “adjusted for the 1998–99 school year by the amount of the percentage change in the Consumer Price Index - All Urban Consumers . . . for the previous year.”

With respect to matters of property tax valuation, LR 286CA would have provided that “values shall not exceed eighty percent of fair market value for agricultural and horticultural land” and for all other types of real property, “shall . . . not exceed one hundred percent of fair market value.” The measure also would have established property tax levy limits of \$1.80 per \$100 of assessed value for taxable property located within cities and villages; \$1.30 per \$100 of assessed value for taxable property not located within cities and villages; and \$0.90 per \$100 of assessed value for taxable property to fund the operation of common schools.

LR 286CA would have required the Legislature to “determine the remaining ad valorem property tax levy authority of other governmental subdivisions” and would have eliminated the current law’s “aggregate levy limit of \$0.50 per \$100 of taxable value that applies to county authorities beginning January 1, 1998. Exceptions to the levy limits of LR 286CA would have been allowed for voter-approved increases and for taxes levied to repay bonded indebtedness.

LR 286CA failed to advance from committee.

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**LR 293CA—  
Provide for Con-  
solidated Home  
Rule Charter  
Government**

*(Brown, Bernard-Stevens,  
Brashear, Bromm, Engel,  
Hilgert, Hillman, Jensen, Klein,  
Robinson, Schmitt, Witek, and  
Preister)*

LR 293CA would have permitted county boards, governing bodies of other political subdivisions, and registered voters to propose the consolidation of various units of local government. A county board would have been allowed to propose the consolidation of the county and any number of political subdivisions within or adjoining the county. Registered voters also would have been allowed to propose the consolidation of a county and any number of political subdivisions within or adjoining the county, by filing with the county board petitions signed by at least five percent of the voters registered in each of the affected areas. Finally, the governing body of a political subdivision (other than a county) would have been permitted to propose the consolidation of the political subdivision and any adjoining county or the county in which it is located.

A majority of registered voters in the affected areas voting in favor of consolidation would have permitted a "consolidated home rule charter government" to "be formed by holding a charter convention." Conventioneers would have been determined according to the rules of appointment contained in LR 293CA. (The convention's purpose would have been to produce a proposed charter.)

Thereafter, a consolidated home rule charter government would have been "convened" and the governing bodies of the county and other affected political subdivisions "dissolved" upon a majority vote of registered voters in the affected areas voting in favor of the charter. The consolidated home rule charter government would have had "all functions, obligations, duties, rights, powers, and privileges exercised by, held by, or granted to the county and other consolidated political subdivisions prior to consolidation."

Under the provisions of LR 293CA, a properly consolidated home rule charter government would have been exempt from the provisions of Article IX, section 3, of the Nebraska Constitution (which governs the treatment of "prior indebtedness" and "existing liabilities" of counties that are "added to" or "stricken off and attached to" other counties) and the provisions of Article IX, section 2, of the Nebraska Constitution (which governs voting requirements whenever a county is to be "divided" for purposes of consolidation). Nonetheless, the "general obligation bonds and indebtedness of the county and the applicable political subdivisions existing at the time of consolidation" would have remained "a charge on the taxable property solely of the territory comprising the county or applicable political subdivision as it existed prior to consolidation unless otherwise specified in the charter."

With respect to matters of taxation, LR 293CA would have permitted a consolidated home rule charter government to “assess taxes up to the aggregate of all combined limits of all political subdivisions consolidated into the government.” However, voter-approved taxes in excess of such limits would have been allowed.

Finally, LR 293CA would have provided various rules of construction to help coordinate its provisions with existing constitutional provisions.

LR 293CA failed to advance from committee.

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**LR 310CA—  
Provide for Local  
Government  
Mergers and  
Consolidations**  
*(Maurstad and Elmer)*

LR 310CA would have required the Legislature to permit the merger and consolidation of local governments with like local governments in the same or adjacent counties. LR 310CA would have specifically permitted the merger and consolidation of municipalities with other municipalities in the same or adjacent counties; counties with adjacent counties; and any municipality with the county in which such municipality is located. However, no such merger or consolidation would have been permitted without a vote of the people residing within each local government that would have been merged and consolidated.

LR 310CA also would have required the Legislature to permit any local government to provide services jointly by agreement with any other local government. Such agreements would have been specifically permitted regarding administration, financing agreements, and utilization of land, equipment, and facilities.

However, any such merger and consolidation or joint-service agreement would have been subject to initiative and referendum procedures. Finally, LR 310CA would have permitted different tax rates to be levied within and outside the boundaries of municipalities and on different classes of property, but only if (1) required by a joint-service agreement that provides for levying the taxes as a source of funds for a jointly operated service or (2) required by a merger and consolidation agreement.

LR 310CA failed to advance from committee.

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**LR 311CA—  
Property Tax  
Limitations for  
School Districts  
and ESUs**

*(Jones, Coordsen, and  
Schellpeper)*

LR 311CA would have prohibited school districts and educational service units from levying property taxes “except for transportation and building maintenance and construction, including revenue bonds.” Additionally, LR 311CA would have eliminated language in Article VIII, section 1, of the Nebraska Constitution, which provides that school districts are to receive percentage allocations of local motor vehicle property tax revenue. LR 311CA also would have eliminated language in Article VIII, section 11, which entitles school districts located in cities and villages to receive percentage distributions of “in-lieu-of-tax” payments made by public corporations and political subdivisions that are organized primarily to provide electricity or irrigation and electricity. The provisions of LR 311CA would have become operative January 1, 1998.

LR 311CA failed to advance from committee.

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**LB 1176—Eliminate  
Motor Vehicle  
Property Taxes and  
Institute a Motor  
Vehicle Fee System**

*(Warner)*

LB 1176, a component part of the Legislature’s 1996 property tax reform effort, would have eliminated property taxes on motor vehicles and would have established a motor vehicle fee system instead. Motor vehicle fee revenue would have been distributed as follows: 65 percent for K–12 equalization aid; 20 percent for counties; and 15 percent for municipalities. However, the proper functioning of LB 1176 would have depended, at least in part, on voter approval of LR 292CA, because Article VIII, section 1, of the Nebraska Constitution currently requires that property taxes levied against motor vehicles be allocated among the political subdivisions of a county “in the same proportion that the levy of each bears to the total levy of the county on taxable property.”

LB 1176 advanced to General File but died with the end of the session.

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**LB 1250—  
Individual Income  
Tax Rate Reduction  
and Increased State  
Aid for K-12 School  
Districts**

*(Will, at the request of the  
Governor)*

LB 1250 would have reduced individual income tax rates and would have increased the amount of income tax revenue used for aid to K-12 schools. The bill would have decreased the tax rates for each of the four individual income tax brackets by an average of 3.629 percent. The income tax rate would have been reduced by 3.7994 percent for the first tax bracket, 3.5091 percent for the second tax bracket, 3.7314 percent for the third tax bracket, and 3.4762 percent for the fourth tax bracket.

In addition, LB 1250 would have increased the amount of income tax revenue used as aid to K-12 schools by an average of 4.25 percent. Section 79-3804 currently requires 20 percent of “the projected

state income tax receipts” to be “dedicated to the use and support of the public school system,” for distribution as “state aid to districts” according to the statute’s allocation formula. LB 1250 would have provided for distributing 20.85 percent of such income tax revenue as state aid to schools.

LB 1250 did not advance from committee and died with the end of the session. (However, the provisions of LB 1250 did surface in a failed attempt to amend LB 750, the “brewpub” bill. A related motion to suspend the rules failed April 9, 1996, on a vote of 7-10.)





# TRANSPORTATION COMMITTEE

## Senator Douglas A. Kristensen, Chairperson

### ENACTED LEGISLATIVE BILLS

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**LB 253—Provide  
For a Bonded  
Certificate of Title  
and Distinguishing  
Identification  
Number Plates**  
*(Maurstad and Day)*

LB 253 authorizes the issuance of a bonded certificate of title. A bonded certificate of title is issued to any person who:

- (1) Presents reasonably sufficient evidence that he or she owns or possesses a security interest in a motor vehicle;
- (2) Provides evidence of a title identification inspection;
- (3) Pays a fee of \$50;
- (4) Files an approved bond; and
- (5) Cannot provide any of the documentation prescribed in section 60-106, including a manufacturer's or importer's certificate or a certified copy thereof, a certificate of title, a court order, a manufacturer's certificate of origin, and an assigned registration certificate (if the law of the state from which the motor vehicle was brought does not have a certificate-of-title law).

The approved bond must be issued by a surety company authorized to do business in Nebraska and be in an amount equal to one-and-one-half times the value of the vehicle. The bond will indemnify any prior owner and secured party, any subsequent purchaser and secured party, and any successor of the purchaser and secured party for any expense, loss, or damage incurred by reason of the issuance of the certificate of title. Additionally, the bonded certificate of title must contain a notice indicating that the title is in fact a bonded title. After three years, any person who owns a vehicle with a bonded certificate of title may apply to the Department of Motor Vehicles for a release of the bond and removal of the notice from the face of the certificate of title.

Subsection (2) of section 60-105 provides that the county clerk, subject to the approval of the Department of Motor Vehicles, must assign a distinguishing identification number to any motor vehicle, commercial trailer, semitrailer, or cabin trailer whenever the vehicle identification number is destroyed, obliterated, or missing.

It is the vehicle owner's duty to have such number affixed to the vehicle "in a manner prescribed by the department."

LB 253 amends the subsection and further provides that before a certificate of title for an assigned number is released to an applicant by the county clerk (or designated county official), the applicant must provide proof that an identification inspection was conducted. Upon application for a metallic assigned number plate, the applicant must pay a \$20 fee. The Department of Motor Vehicles then develops a 17-character assigned number plate, using the vehicle identification number, if the number is known, or if the vehicle is assembled and the identification number is unknown, another distinguishing identification number, with the last two characters of the plate being "NE."

LB 253 passed 44-0 and was approved by the Governor on April 1, 1996.

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**LB 323—Change  
Provisions Relating  
to Commercial  
Motor Vehicles**  
*(Kristensen)*

LB 323 changes several provisions relating to commercial motor vehicles. Besides defining and redefining terms and harmonizing provisions, the bill provides that any person who violates an out-of-service order will result in a disqualification. (An out-of-service order is an order prohibiting a commercial vehicle operator from driving a commercial motor vehicle for 24 hours issued by a law enforcement officer when the operator operates or is suspected of operating a commercial motor vehicle under the influence of alcoholic liquor or when he or she refuses to submit to blood, breath, or urine testing.) The first violation of an out-of-service order results in a 90-day disqualification, the second violation, a one-year disqualification, and the third or subsequent violation, a three-year disqualification.

Additionally, if the violation of the out-of-service order occurs when the commercial vehicle operator is transporting hazardous material in an amount requiring the vehicle to be placarded or is operating a vehicle designed or used to transport 15 or more passengers, a conviction for such a violation results in a 180-day disqualification for the first violation and a three-year disqualification for a second or subsequent violation.

The procedure for issuance of a disqualification order is also changed by LB 323. The bill provides that upon receipt of a report of an implied consent refusal or a .04 violation involving a commercial vehicle operator, the director serves a notice of disqualification by registered or certified mail upon the vehicle operator. The notice

must contain an explanation of the disqualification procedure and a petition form to request a hearing before the director. The petition must be returned to the director within ten days of receipt, or the operator's right to a hearing is foreclosed and the disqualification automatically takes effect 30 days after the date of mailing of the notice. If the director receives the petition, the director must notify the operator of the date and location of the hearing.

Additionally, the bill provides that a disqualification order must be in writing and that notice of a hearing must be given to the disqualified driver within seven days of the hearing. A disqualification order may be appealed to the district court of the county where the alleged violation occurred. The appeal must be made pursuant to the Administrative Procedure Act and will not suspend any disqualification order unless a stay is allowed by the court.

LB 323 passed 45-0 and was approved by the Governor on April 12, 1996.

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**LB 901—Change Provisions Relating to Speed Limits and Automobile Liability Insurance**  
*(Chambers and Maurstad)*

LB 901 changes the speed limits on Nebraska's highways and roads. The new speed limits are as follows:

- ◆ Hard-surfaced roads not a part of the state highway system—55 mph;
- ◆ On and after September 1, 1996, on any part of the state highway system other than an expressway or freeway—60 mph; however, the Department of Roads can increase the maximum speed limit to 65 mph on those roads where, according to an engineering study, existing design and traffic conditions are favorable to the higher speed limit;
- ◆ On expressways—65 mph; and
- ◆ On freeways, including the Interstate System—75 mph; except that on any portion of a freeway in Douglas County, I-129 in Dakota County, and I-180 in Lancaster County, the speed limit is 60 mph.

In conjunction with the new, generally higher speed limits, LB 901 provides for a new schedule of fines for violations of the new limits. Fines are as follows:

- ◆ One to five mph over the speed limit—\$10;

- ◆ Six to ten mph over the speed limit—\$25;
- ◆ 11 to 15 mph over the speed limit—\$75;
- ◆ 16 to 20 mph over the speed limit—\$125; and
- ◆ 21 mph and over the speed limit—\$200.

Additionally, the bill provides that any person found guilty of speeding in a maintenance, repair, or construction zone will have his or her fine doubled. (This provision was originally included in LB 38.)

Besides speed limits, LB 901 also changes provisions relating to motor vehicle proof-of-insurance requirements. The bill provides that any vehicle owner convicted of violating proof-of-insurance requirements will be advised by the court that his or her operator's license and vehicle registration will be suspended by the Department of Motor Vehicles until he or she complies with the proof-of-financial-responsibility requirements prescribed in sections 60-505.02 and 60-528.

The bill further provides that any person who at the time a citation is issued did in fact have a valid proof of insurance but could not demonstrate that fact at the time the citation was issued may, within ten days of the issuance of the citation, present proof of insurance to the appropriate prosecutor and have the citation dismissed without cost. The department is also authorized to reinstate the operator's license and vehicle registration and rescind any requirement relating to certified insurance for any person who can demonstrate to the department that at the time a citation was issued for a proof-of-insurance violation, there was in fact a current motor vehicle liability policy in existence for the vehicle involved.

LB 901 passed with the emergency clause 34-15 and was approved by the Governor on April 15, 1996.

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**LB 939—Change  
Provisions Relating  
to Administrative  
License Revocation  
and Driving Under  
the Influence**

*(Kristensen, Crosby, and  
Pedersen)*

LB 939 requires the application for a motor vehicle operator's license to include the following advisement language (which is prescribed in subsection (10) of section 60-6,197): "Any person who is required to submit to a chemical blood, breath, or urine test or test pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged."

The bill also changes provisions relating to hearings conducted pursuant to the administrative license revocation process. Prior to the passage of LB 939, the issues under dispute and heard at an administrative license revocation hearing were limited to:

- (1) In the case of a refusal to submit to a chemical test of blood, breath, or urine:
  - (a) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196;
  - (b) Was a lawful arrest effected;
  - (c) Was the person advised of the consequences of refusing to submit to such test, including that his or her operator's license would be immediately impounded and automatically revoked in 30 days; and
  - (d) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or
- (2) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:
  - (a) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196;
  - (b) Was a lawful arrest effected;
  - (c) Was the person advised of the consequences if the chemical test disclosed the presence of alcohol in a concentration specified in such section; and

- (d) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

LB 639 eliminated the questions of lawful arrest and whether the person was advised of the consequences of either refusing to submit to a chemical test or of a test result indicating the presence of alcohol as issues for dispute at administrative license revocation hearings.

LB 639 passed with the emergency clause 38-0 and was approved by the Governor on February 26, 1996.

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**LB 1218—Transfer  
and Provide Duties  
Relating to Motor  
Carriers**

*(Kristensen and Avery, at the  
request of the Governor)*

The passage of LB 1218 creates the Division of Motor Carrier Services within the Department of Motor Vehicles and the Motor Carrier Advisory Council.

The new division will be headed by an administrator appointed by the Director of Motor Vehicles and will serve as the agent of the Public Service Commission in the filing of proof of insurance by intrastate motor carriers and the agent of the Department of Roads in the issuance of routine permits administered by that department. Additionally, the division will carry out the powers and duties previously exercised by the Department of Revenue under the International Fuel Tax Agreement Act and the Public Service Commission under sections 75-348 to 75-358.

The new advisory council consists of five members representing a for-hire truckload carrier, a less-than-truckload carrier, a private carrier, a shipper, and a member of the public. Council members are appointed to four-year terms by the Governor and confirmed by the Legislature. The Director of Motor Vehicles serves as an ex-officio council member, and the administrator of the newly created Division of Motor Carrier Services serves as the council's secretary.

The council's duties include reviewing the law and regulations administered by the new division, reviewing and making recommendations regarding the administration of the commercial driver's license program, assisting and facilitating the uniform and consistent administration and enforcement of Chapter 75, article 3 (provisions relating to motor carriers), reviewing and making recommendations regarding federal law and legislation, and assisting in the identification of potential government functions that are candidates for privatization, offering assistance in making the

vehicle registration system more efficient, and reviewing and forwarding at least three names to the Director of Motor Vehicles when the director is required to fill a vacancy in the division administrator position.

In addition to establishing the division and the council, LB 1218 transfers the enforcement authority for the interstate insurance registration program from the Public Service Commission to the Carrier Enforcement Division of the Nebraska State Patrol and gives the division the on-road enforcement authority related to regulated motor carriers and motor carriers previously administered by the commission; however, the commission retains enforcement authority over regulated motor carriers and intrastate motor carriers that file insurance pursuant to section 75-307.

Finally, the provisions of LB 1288 were added to the bill. LB 1288 expands the commission's authority to engage in the economic regulation of household goods movers.

LB 1218 passed with the emergency clause 42-1 and was approved by the Governor on April 3, 1996.

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## **LB 1264—Provide for Nebraska Cornhusker Spirit Plates**

*(Brashear, Witbem, and  
Wehrbein)*

LB 1264 authorizes the issuance of a new class of specialty license plates—Cornhusker Spirit Plates. The license plates can be issued in lieu of regular number plates to any passenger vehicle, self-propelled mobile home, cabin trailer, or commercial truck registered for ten tons or less.

The fee for the spirit plates is \$70. Of that amount, \$30 is credited to the Department of Motor Vehicles Cash Fund, while \$40 is credited to the Spirit Plate Proceeds Fund.

The license plate design will:

- ◆ Prominently display the word “Cornhuskers” or “Huskers;”
- ◆ Use cream as the background color and scarlet as the print color;
- ◆ Use a design reflecting support for the University of Nebraska Cornhusker athletic programs; and
- ◆ Number plates consecutively, beginning with the number one, and will not display county designation numbers.

The Spirit Plate Proceeds Fund will be used to (1) help finance an endowment fund for former athletes to pursue undergraduate and graduate studies at any university campus, (2) financially support the athletic department's academic service unit at every university campus, and (3) help finance the repair, maintenance, upkeep, and improvement of university facilities at every university campus.

LB 1264 passed 39-4 and was approved by the Governor on April 15, 1996.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 713—Provide for the Issuance of License Plates and Drivers' Licenses for Certain Undercover Investigations** *(Kristensen)*

LB 713 would have authorized the Department of Motor Vehicles to issue license plates to any federal, state, county, city, or village agency to be used solely for legitimate undercover criminal or regulatory investigations. Additionally, the plates would have been used only on government-owned vehicles. The decision to issue the license plates would have been at the discretion of the Director of Motor Vehicles.

Besides the license plates, the bill would have provided for the issuance of operators' licenses to governmental agencies for legitimate undercover criminal or regulatory investigation purposes. The license would have been returned to the department when the license had expired and was not renewed, the investigation for which the license was issued was completed, or the director demanded its return.

LB 713 advanced to General File but died with the end of the session.

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### **LB 715—Change Provisions Relating to Drunk Driving** *(Transportation Committee)*

LB 715 would have changed provisions relating to penalties, suspension, revocation, or impoundment of operators' licenses and impoundment of motor vehicles. Among its many provisions, the bill would have:

- ◆ Eliminated the penalties for fourth or subsequent offenses for Class W misdemeanors;
- ◆ Specified that a physician, registered nurse, or other person trained to withdraw blood for purposes of testing for violations of the provisions of driving or boating while intoxicated (DWI) would be an agent of the State of Nebraska when he or she is withdrawing blood at the request of a peace officer. Any person withdrawing a



blood specimen would have, upon request, furnished to any law enforcement agency a certificate stating that the specimen was taken in a medically acceptable manner;

- ◆ Increased the mandatory minimum fine for a first conviction DWI offense from \$200 to \$500. Additionally, the bill would have provided that when probation is ordered following a first, second, or third DWI conviction, one of the terms of probation would have included the payment of a \$500 fine, and if probation was ordered following a fourth or subsequent conviction, one of the terms of probation would have been payment of a \$1,000 fine;
- ◆ Provided that an impounded motor vehicle was a public nuisance and subject to forfeiture pursuant to the Uniform Controlled Substances Act. The bill also would have changed provisions relating to the impoundment of motor vehicles by persons subject to suspension or revocation of their operating privileges;
- ◆ Provided that any person subject to the penalty for second, third, fourth, or subsequent convictions for DWI would have spent the following minimum time periods incarcerated in a correctional facility: Second conviction, 48 hours; and third or subsequent conviction, five days;
- ◆ Provided that any person convicted of a fourth or subsequent DWI offense would have been guilty of a Class IV felony, and the court could have ordered the revocation of the operator's license for 15 years; and
- ◆ Increased from eight to 12 years the period of time that prior convictions or violations could be used to enhance the penalty for revoking an operator's license for a current offense.

LB 715 advanced to General File but died with the end of the session.

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**LB 1305—Adopt  
the Nebraska  
Essential Air Ser-  
vice Subsidy Act**  
*(Kristensen)*

The Nebraska Essential Air Service Subsidy Act would have imposed a surcharge of three dollars upon every paying passenger enplaned at a commercial service airport located within Nebraska. The money collected would have been deposited in the Nebraska Essential Air Service Subsidy Fund and used to maintain and support essential air service throughout the state.

LB 1305 advanced to General File but died with the end of the session.

# URBAN AFFAIRS COMMITTEE

## Senator D. Paul Hartnett, Chairperson

### ENACTED LEGISLATIVE BILLS

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#### **LB 469—Change Provisions of the Municipal Natural Gas Regulation Act** *(Urban Affairs Committee)*

LB 469 amends section 19-4616 of the Municipal Natural Gas Regulation Act, which prescribes the procedure for conducting rate area hearings. It is at those hearings that the official record of city investigations into the validity of utility rate-increase requests is created for transmission to the individual cities for final action and the adoption of a new rate ordinance. At those hearings, utility customers are provided the opportunity to appear, participate, and present testimony on the proposed rate increase. Occasionally, the same utility will make rate increase requests in several rate areas at the same time.

The bill provides a mechanism for conducting rate-area hearings in those circumstances when the same utility is requesting increases in several rate areas. LB 469 authorizes all affected rate areas to conduct a consolidated rate-area hearing at one site by video conference when both the utility and the cities, which have received loans from the state to pay for the conduct of studies on the rate request and which represent a majority of the rate areas, consent to the procedure.

If a joint hearing is held, the bill requires at least one remote site be provided at which interested persons could view the proceedings and participate as witnesses. Additionally, the bill requires, even though a joint hearing is held, that a separate record be created for each rate area.

The provisions of LB 782 and LB 783 were added to LB 469 via amendment.

LB 782 requires a utility engaged in a rate-setting procedure to notify its customers of a scheduled rate area hearing no later than 20 days prior to the hearing. The notice must be sent by United States mail, postage prepaid, to the billing address of each directly affected customer, or the utility can provide notice by including it in the customer's bill. An additional provision was added by the committee to ensure sufficient notice of the particulars of the hearing is provided to the utility so the utility can in turn provide the requisite notice to the customer.

LB 783 requires a complete presentation at the rate-area hearing of the terms of any agreement reached by city negotiators and the natural gas utility. The intent of the bill is to make all of the terms of any agreement public, not just those relating to rates, if the agreement encompasses other matters. Plus, any customers of the utility present at the hearing will be provided a full and complete opportunity to appear at the hearing, participate and present testimony with regard to the agreement and its terms.

LB 469 passed 35-0 and was approved by the Governor on February 12, 1996.

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**LB 575—Change Provisions Relating to Membership on City Planning Board**  
*(Pedersen)*

While statutorily recognized, the size, terms, manner of appointment, and other provisions relating to the city planning board of a city of the metropolitan class are addressed in the city's charter. (Currently, Omaha is Nebraska's only city of the metropolitan class.) The charter provides that the city planning board is composed of seven members who serve five-year terms. Six members are residents of the city and one member resides outside the city limits but within the extraterritorial zoning jurisdiction of the city (within three miles of the city limits). As originally introduced, LB 575 would have changed the membership of the board and provided that five members be city residents and two members reside outside the city limits.

However, an amendment adopted on General File changed the requirement that two members of the planning board be residents of the extraterritorial zoning jurisdiction back to the requirement prescribed in the Omaha City Charter that only one member be a resident of that area.

As enacted, LB 575 requires that, after January 12, 1998, the nonresident planning board member will be chosen by the county board of the county in which the city of the metropolitan class is located and not by the city council (as is the current practice). This change will ensure that the nonresident member will be chosen by county board members elected by the residents of the extraterritorial zoning jurisdiction.

LB 575 passed 42-0 and was approved by the Governor on April 12, 1996.

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## **LB 1211—Change Provisions Relating to Handicapped Parking**

*(Robak, Abboud, Hartnett, and Lynch)*

LB 1211 makes extensive changes to the handicapped parking laws applicable throughout the state. The bill requires that signs designating handicapped parking spaces be aboveground and immediately adjacent to and visible from the spaces. (This provision was originally found in LB 1093.) Additionally, the bill provides that any person who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to the American Heart Association, is eligible for a handicapped parking permit.

The bill also provides that the Department of Motor Vehicles, upon receipt and verification of the necessary forms and certifications, will mail the handicapped parking permit directly to the applicant. It is hoped that this change will streamline the permit application process because, prior to the enactment of LB 1211, permit applicants had to file with the appropriate city or county official who in turn filed the forms and certifications with the department. The department, after verification, mailed the permit to the official who then gave the permit to the applicant.

Copies of medical forms submitted with the permit application are to be kept on file by the appropriate county official so that new medical forms are not required if a duplicate permit is needed. Plus, the bill provides that the possession of an expired but otherwise valid handicapped parking permit, within 30 days following the date of its expiration, is a defense in any action for a handicapped parking infraction resulting from the absence of a handicapped parking permit arising during that 30-day period.

Provisions of LB 1017 and LB 1237 were also added to the bill by amendment.

LB 1017 adds two new offenses for which operators' licenses could be suspended and fines could be imposed: (1) Knowing possession of more than one handicapped parking permit; and (2) knowingly providing false information on an application for a handicapped parking permit.

LB 1237 authorizes counties to designate persons who are not peace officers to issue citations for handicapped parking infractions.

LB 1211 passed 46-0 and was approved by the Governor on April 15, 1996.

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**LB 1362—Change  
Provisions Relating  
to Budgets, Levies,  
and Tax  
Statements of  
Certain Political  
Subdivisions**

*(Urban Affairs Committee)*

LB 1362 is a product of the committee's 1995 interim study on cities and villages and property tax issues (LR 213). The study revealed that the absence of any reliable listing, which would distinguish between that portion of a sanitary and improvement district's (SID's) property tax levy attributable to bond financing and that portion attributable to financing the district's general operations, made it difficult to determine what, if any, levy limit for SID operations would be appropriate. Public accountability was also an issue. SID residents did not have a full and complete understanding of what portion of their property tax levy was attributable to operations and what portion was for the payment of bond indebtedness.

LB 1362 requires the clerk of the SID to annually file with the county register of deeds a statement containing basic information about the SID, such as the names of the SID trustees and officials, the SID's total bond and warrant indebtedness, and the current property tax levy. The clerk must set out the current bond tax levy and the current operating tax levy of the district separately.

Additionally, the bill provides that the property tax statement sent out to each person liable for property tax payments must separately list the levy rate and the amount of taxes due as the result of principal and interest payments on bonds issued by the SID (known as the bond levy) and the portion attributable to the general operations of the SID (known as the operating levy).

An amendment was adopted on Select File that extended this concept to all political subdivisions subject to the Nebraska Budget Act. (This amendment also incorporated into the bill the provisions of LB 1363, another Urban Affairs Committee bill which arose from the LR 213 study.) Under this amendment, each political subdivision is required to determine at each stage of the budget process and separate out for reporting the amount of property tax revenue required for the purpose of paying the principal and interest on bonds issued by the subdivision from the property tax revenue required for all other purposes.

The separate levies are to be calculated and reported as follows:

- (1) In the proposed budget statement (filed by August 1 of each year);
- (2) In the certification of the amount to be received from property taxes filed with the levying board after the

public hearing on the budget held by each political subdivision;

- (3) In the certification of the amount of property taxes to be levied (to be filed by September 20 of each year);
- (4) In the property tax statement provided to each property taxpayer (beginning in 1997); and
- (5) In the property tax report and certification made by the county to the Property Tax Administrator (by December 1 of each year).

LB 1362 passed 42-0 and was approved by the Governor on April 15, 1996.

## **LEGISLATIVE BILLS NOT ENACTED**

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### **LB 1311—Change Provisions Relating to Certain Treasurers** *(Pirsch)*

LB 1311 eliminated provisions providing that the county treasurer of a county which includes a city of the metropolitan class serve as the ex officio treasurer of a school district within such city. The bill was heard before the Urban Affairs Committee and advanced to Select File. LB 1311 was subsequently added by amendment to LB 604, which passed and is discussed in the Education Committee section of this report.

### **LB 1354—Motor Vehicle and Wheel Taxes** *(Hartnett, Avery, Pedersen, Robinson, and Withem)*

LB 1354 would have prohibited the collection of the local motor vehicle taxes and motor vehicle registration and license fees (generally referred to as “wheel taxes”) from nonresidents. The bill also would have provided for the reimbursement of any person or legal entity required by a city or village to aid in the collection of the tax or fee. Reimbursement would have been limited to the actual costs incurred by the person or legal entity in the collection process and would not have been available to the owner of the motor vehicle or any governmental body.

LB 1354 advanced to General File but died with the end of the session.

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**LB 1359—Adopt  
the Nebraska  
Municipal  
Development Fee  
Authorization Act**  
*(Urban Affairs Committee)*

LB 1359 would have enacted the Nebraska Municipal Development Fee Authorization Act.

This bill was another product of the 1995 interim study on cities and villages and property tax issues, LR 213.

One of the major consumers of tax revenue in a city or village budget is the planning, development, construction, and maintenance of capital improvements, such as streets, highways, sewers, and parks, and the construction and maintenance of other public facilities. Additionally, the development of new land or the cleanup and improvement of older areas within the city or village requires investment in improvements to serve both the new population and new businesses. How to finance those developments and improvements is an important hurdle cities and villages face on a regular basis.

The Nebraska Municipal Development Fee Authorization Act would have authorized cities and villages to allocate the costs of public improvements and facilities to the new residents who need those improvements or facilities by the imposition of a development fee. By ordinance, every time any new development occurred within the jurisdiction of a city or village, the city or village would make an assessment of what capital improvements would be required because of the new development. The amount of the development fee would then have been based on an estimate of the costs incurred by the local government as a result of the new development and needed capital improvements and in an amount reasonably related to the benefits accrued by the new development.

LB 1359 was indefinitely postponed by the committee.

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**LB 1360—Change  
Provisions Relating  
to Approval of  
Redevelopment  
Plans**  
*(Urban Affairs Committee)*

LB 1360 would have amended the Community Development Law by providing for expanded review and approval of any redevelopment plan that prescribed the use of tax-increment financing.

Under current law, the decision as to whether to authorize and approve a redevelopment plan using tax-increment financing is solely that of the city or village governing body. However, under circumstances in which property tax revenue is restricted, the loss of revenue from future growth in valuation and in the tax base can have a significant impact upon budgets of every political subdivision, most particularly the school district.



LB 1360 would have required the approval of all other property-taxing political subdivisions before the governing body of the city or village could approve a redevelopment plan that prescribes tax-increment financing.

The bill was indefinitely postponed by the committee.



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