

Budget adjustments advanced with abortion referral restriction after cloture vote



Sens. John Stinner (left) and Jim Scheer confer during debate on the Appropriations Committee's budget proposal.

Lawmakers gave first-round approval March 13 to four bills comprising the Appropriations Committee's adjustment proposal to the state's \$8.8 billion budget.

The state budget is structured on a two-year basis, with the budget enacted during legislative sessions held in odd-numbered years. Adjustments are made during sessions held in even-numbered years.

The committee's proposal would result in 0.5 percent average growth in state spending over the next two fiscal years and would leave \$296.4 million in the state's Cash Reserve Fund—also known as the rainy-day fund—at the end of fiscal year 2019.

Appropriations Committee chairperson Sen. John Stinner of Gering

(continued page 3)

Direct primary care pilot program clears first round

A bill that would create a state employee pilot program for direct primary care was advanced from general file March 12.

LB1119, sponsored by Ralston Sen. Merv Riepe, would create a pilot program for state employees eligible to participate in the Nebraska state health insurance program. The three-year pilot program would begin in fiscal year 2019-20 and require that the state insurance program include at least two primary care options—one



Sen. Merv Riepe

high-deductible and one low-deductible—for state employees.

The University of Nebraska system, state colleges and community colleges would not be included in the pilot program.

Riepe said direct primary care focuses on developing a strong relationship between doctors and patients that allows individuals to obtain care without worrying about co-pays or insurance claims and deductibles.

"Direct primary care is a medical care delivery model between the patient and primary care practitioner," he said. "Under a direct primary care agreement, a patient pays a monthly

retainer for unlimited consultations and an annual physical."

Riepe said that New Jersey recently began a similar voluntary direct primary care pilot program that enjoys strong support from all parties including organized labor.

Under the bill, a participating provider would be required to:

- provide primary care to an enrollee;
- coordinate care across all care settings;
- oversee transitions in care between settings; and
- minimize the risk of gaps in care.

Providers would receive a monthly

(continued page 2)

Direct primary care pilot program clears first round

(continued from front page)

payment of a per-member, per-month fee for each enrollee and would be required to continuously monitor care quality measurements. The state Department of Administrative Services would provide the Legislature an annual report on the clinical and financial performance of the program.

The bill also would establish minimum standards and patient satisfaction measurements—which a provider must continually monitor—including a patient engagement measurement and a prevention measurement.

The prevention measurement is defined as the percentage of enrollees who have received appropriate screenings for their age or gender, including:

- breast, cervical, colon, lung and prostate cancer screenings;
- sexually transmitted disease, latent tuberculosis, hepatitis and HIV screenings; and
- tobacco cessation and alcohol misuse screenings.

Lincoln Sen. Mike Hilgers, who made LB1119 his priority bill for the session, said the rising cost of health care is one of the most important issues facing his legislative district.

While direct primary care is too new to have been subjected to a significant peer-reviewed study, he said, the early findings are promising.

Individuals with direct primary care agreements see their physician more often, he said, which results in early intervention, fewer emergency room and urgent care visits and better health outcomes. Direct primary care also has the potential to increase the quality of life for health care providers, who can see fewer patients and spend less time dealing with insurance companies, he said.

“This is another step forward in the direct primary care movement and I think it’s a wise use of currently allocated tax dollars to help innovate and provide a little more momentum to this effort, which I think will have significant outcomes for Nebraska families and workers around the state of Nebraska,” Hilgers said.

Sen. Mark Kolterman of Seward agreed, saying that for \$600 a year an adult in Nebraska with a direct primary care plan could have their basic health care needs addressed and have increased access to their provider.

A pilot program for state health care workers would include major-medical insurance for issues that direct primary care does not cover, he said.

“I think this is the future of our state,” Kolterman said. “If we’re going to control health care costs, this is one of the ways that we’re going to do it.”

Omaha Sen. Bob Krist raised concerns regarding the bill’s fiscal note, which states that the pilot program’s start-up costs cannot be estimated. Passing a bill without knowing the cost—either in the current fiscal year or in the future—is problematic, he said.

“[Direct primary care] could be the best thing since sliced bread ... it could be great preventative medicine, but if we don’t know what it costs, how can we vote for this?” Krist said.

Riepe said there was “every reason to believe” that the bill would result in cost savings in the future. In addition, he said he would bring an amendment during select file debate that would align the bill’s timeline with the negotiating cycle of the state’s public employee union.

LB1119 advanced to select file 30-0. ■

UNICAMERAL UPDATE

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(continued from front page)

said the proposal hewed very closely to Gov. Pete Rickett's proposal. The overall budget would maintain the state's priorities, he said, including K-12 education, property tax relief, corrections funding and maintaining the rainy-day fund.

"Our committee used this as a template for our preliminary budget and we were pretty much in sync across the board," Stinner said.

Mainline budget bill

LB944, introduced by Speaker Jim Scheer of Norfolk at the request of Gov. Pete Ricketts, was replaced by an Appropriations Committee amendment, adopted 41-1. The amendment proposes adjustments to appropriations for state operations, aid and construction programs in the current and next fiscal year.

The governor's recommendation contained an across-the-board reduction in general fund appropriations to many state agencies and operations budgets of 2 percent in FY2017-18 and 4 percent in FY2018-19.

The committee's proposal would retain the 2 percent operations budget reductions in FY2017-18 and lower the reduction in FY2018-19 to 2 percent. The University of Nebraska, state and community colleges would see a 1 percent reduction in FY2018-19. Reductions in state aid—except for community colleges—would be retained at 4 percent in FY2018-19.

Among other provisions, the amendment also would provide \$55 million to the state Department of Health and Human Services to cover increased child welfare costs and \$15

million to offset reductions in the federal Medicaid match rate.

Debate focused on a proposed change to the use of Title X funding that would impact disbursement to health clinics that also provide abortion services.

Nebraska receives funds from the federal Title X program that are used to subsidize reproductive and preventive health services, including the diagnosis and treatment of sexually transmitted diseases, cancer screenings and family planning services. Federal grant funds dispersed by the state through the program cannot be used to perform abortions.

A provision included in LB944 would prohibit federal Title X funds from being paid or granted to an organization that performs, assists, provides counseling in favor of or refers for abortion services. An otherwise qualified organization that is affiliated with, but objectively independent from, such an organization—which the bill defines as legal, physical and financial separation—would not be disqualified from receiving funds under the bill.

Sen. Adam Morfeld of Lincoln opposed the provision, saying it targeted Planned Parenthood, which provides health care to 8,000 of the 28,000 Nebraskans who utilize Title X funding. Many low-income men and women would lose access to vital services if entities that provide abortion services are not able to comply with the provision, he said.



Sen. Adam Morfeld said the Title X provision would hinder health care access.

"There are not enough agencies to provide the services as it is, and that's one of our big problems," Morfeld said. "This is about trying to shut down an agency that provides a lot of non-abortion services."

Syracuse Sen. Dan Watermeier disagreed. The provision is not directed at any specific entity, he said, and clinics that provide abortion services could continue to do so if they maintain a clear delineation between Title X funds and abortion services.

"If every single one of these dollars went to Planned Parenthood for them to provide services, I'm fine with that," he said. "We need to have a very strict, concrete wall so that we do not lose the \$1.5 million of Title X funding. And this amendment inside of the budget bill does exactly that—no more and no less."

Heartwell Sen. John Kuehn said a recent state audit showed that Planned Parenthood had misused Title X funds for abortion services in violation of state and federal law. The error placed

(continued page 4)

all of the state's Title X funding at risk, he said, and without clarification funds still could be misused to provide abortion services.

"We don't have to suspect, we don't have to speculate," Kuehn said. "We already have clear, definitive evidence that it has taken place."

Sen. Anna Wishart of Lincoln said the audit findings were the result of coding errors. She said the issues were addressed by the state Health and Human Services Department through oversight and monitoring recommendations outlined in the audit without the language in LB944, which she said could negatively impact all of the state's Title X providers by potentially putting them in conflict with federal referral requirements.

Lincoln Sen. Kate Bolz offered an amendment that sought to clarify the Title X provision by mirroring federal regulatory language. She later withdrew it, saying lawmakers would work on a compromise before the bill is considered again on select file.

After six hours of debate, Stinner offered a motion to invoke cloture, or cease debate and vote on the bill. The cloture motion was adopted 33-3, the minimum number of votes required. Lawmakers then voted 38-6 to advance LB944 to select file.

Cash reserve

LB946, also introduced by Scheer at the request of the governor, would transfer \$108 million from the Cash Reserve Fund to the General Fund. It also would reduce by \$2.3 million a transfer from the Nebraska Capital Construction Fund due to the lower cost of the Central Nebraska Veterans' Home project.

An Appropriations Committee amendment, adopted 37-9, became the bill and reduced the proposed

\$108 million transfer to the General Fund to \$100 million. It also would change the timing and individual transfer amounts to the Nebraska Capital Construction Fund related to the heating, ventilation and air conditioning project at the state Capitol Building.

Stinner said the changes would ensure adequate cash flow for the current phase of the HVAC project but would not increase the transfer amounts or the project's total cost.

The amendment would leave the rainy-day fund at \$296.4 million, he said, which is more than the 2.5 percent in excess of the state's appropriations and obligations that is required by state law. That number would be \$250 million, he said, which also is the median for state contingency funds across the United States.

"[We need to] build this reserve back to be ready to put us on good financial and fiscal ground," Stinner said. "I think that this is a beginning. I think that \$296 million is a good number."

Lincoln Sen. Kate Bolz, vice chairperson of the committee, said the \$100 million transfer to the state's General Fund was done by the committee in support of priorities that have consensus support among lawmakers, including funding K-12 education, the state's pension obligations, the state Department of Corrections and protecting the property tax credit program.

She said the ultimate goal is to build the cash reserve back to \$740 million, which would be the recommended level of 16 percent of the budget. For that reason, she said, when the state's economic forecast improved in



Sen. Kate Bolz said the committee's proposal would safeguard the state's funding priorities.

February, that revenue was designated for the Cash Reserve Fund.

"The cash reserve has allowed us to smooth out some of the rough spots in the budget and protect our priorities into the future," Bolz said. "We have not only goals to protect our priorities but also goals to protect our cash reserve and to build that cash reserve back up to a level so we can have comfort into the future to manage contingencies as they come forward."

Kuehn opposed the amendment, saying the cash reserve would be reduced to a level that would leave the Legislature "hamstrung" in efforts to deal with looming issues such as prison overcrowding and underfunded public schools.

The cash reserve has decreased from \$680 million to less than \$300 million, he said, in part by using those rainy-day funds to plug holes in the budget for ongoing expenses.

"I'm not sure how long it's going to continue to rain," Kuehn said. "And I have significant concerns that we have taken down the balance in our cash reserve to a point where some of the other major priorities and large expenses that this body may need to address in the next couple of years cannot be adequately covered through cash reserve transfers."

Echoing those concerns was Co-

lumbus Sen. Paul Schumacher, who told lawmakers that they are “in freefall with a noose around [their] necks” in relation to the state’s economic situation. Nebraska is at nearly full employment and the agricultural sector is normalizing, he said, yet state revenues are not rebounding.

In addition, he said, the state continues to spend more than it takes in while reducing revenue through incentive programs and giving tax cuts that have not produced the growth that they promised.

“There are some truths that are self-evident,” Schumacher said. “And the truth that is self-evident is we are in really bad financial shape and we are making it worse.”

Omaha Sen. Ernie Chambers offered a series of unsuccessful motions to extend debate on the bill, saying lawmakers lacked the courage to significantly alter the governor’s budget recommendations.

“The easy way out is what politicians will choose,” he said. “The kind of wholesale reworking [of the proposal] that ought to be done—the Legislature will never do it.”

Following adoption of the committee amendment, LB946 advanced to select file on a 34-9 vote.

Other fund transfers

A number of fund transfers and changes to transfer provisions would be made by LB945, also introduced by Scheer at the request of the governor. An Appropriations Committee amendment, adopted 38-0, became the bill.

Among other provisions, the amended bill would:

- create the Nebraska Film Office Fund to be administered by the state Department of Economic Development;
- transfer the unobligated balance

of the Nebraska Progress Loan Fund as of Sept. 30, 2017, to the Intern Nebraska Cash Fund;

- allow transfers to be made from the State Visitors Promotion Cash Fund to the General Fund at the direction of the Legislature and transfer \$1 million to it; and
- transfer \$200,000 from the Affordable Housing Trust Fund to the Lead-Based Paint Hazard Control Cash Fund.

Stinner said that the committee proposal would add \$14.7 million in transfers from 19 different funds to the governor’s recommendation.

“These [cash] funds are funds that we have determined to be sustainable and stable,” Stinner said. “They have a source of revenue that is at least equal to the expenditures—or maybe greater than the expenditures—so we are taking excess funds and leaving them at about a break-even [point].”

Omaha Sen. Bob Krist offered an amendment that would include modified provisions of his LB679 to increase the annual transfer from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund from \$50,000 to \$100,000.

Krist said the fund supports the Nebraska Commission of Problem Gambling, which is unable to keep up with the growing demand for services to those with gaming addictions.

“This is simply a transfer from [the Charitable Gaming Operations Fund] to make sure that they have adequate funds to move forward,” he said.

Sen. Carol Blood of Bellevue opposed the amendment, saying the commission’s expendi-

tures last year used almost all of its \$1.88 million appropriation. Those funds serve only 300 people annually, she said, while other forms of addiction impact far more people and receive far less funding.

“I don’t feel they’re being efficient with their money,” she said. “I don’t feel that they understand the many, many departments that have really had to tighten their belts.”

The Krist amendment was adopted on a 25-13 vote and the bill advanced to select file 35-8.

Also advanced was LB950, introduced by Business and Labor Committee chairperson Sen. Joni Albrecht, which would provide for payment of claims against the state. If a person sues the state, he or she files with the state claims board. Approved claims exceeding \$50,000 must be reviewed by the Legislature.

LB950 includes tort and workers’ compensation claims totaling \$1.65 million, along with several agency write-offs totaling \$978,000 for various uncollectable debts.

A committee amendment, adopted 33-0, added two claims to the bill that were processed after the bill was introduced. Following adoption of the committee amendment, senators voted 36-0 to advance LB950 to select file. ■



Sen. Carol Blood questioned the need to increase funding for the state’s problem gambling program.

APPROPRIATIONS

Alternative contracting methods approved for state parks projects

The state Game and Parks Commission may use alternative contracting methods for public projects in the state park system under a bill passed by the Legislature March 15.

Introduced by Gering Sen. John Stinner, LB775 authorizes the commission to use the design-build and construction manager/general contractor contracting methods.



Sen. John Stinner

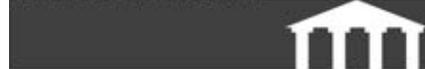
A design-build contract is one that is subject to a value-based selection process to provide architectural, engineering and related design services as well as labor, materials, supplies, equipment and construction services.

A construction manager/general contractor contract is one that is subject to a qualification-based selection process to provide preconstruction services during the design development phase of the project and—if a satisfactory agreement can be reached—construction services.

The bill authorizes the commission to hire a licensed architect or engineer to assist with the development of requests for proposals, the evaluation of proposals and evaluation of the construction. It also leaves the intellectual property contained in a proposal in the creator's possession if it is not selected and if the creator does accept a stipend offered by the commission.

The bill passed on a 46-1 vote.

BANKING, COMMERCE & INSURANCE



Updates to property appraiser statutes advanced

Lawmakers gave first-round approval March 14 to a bill that would update Nebraska's Real Property Appraiser Act.

LB741, introduced by Omaha Sen. Brett Lindstrom, would bring Nebraska's Real Property Appraiser Act into compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Uniform Standards of Professional Appraisal Practice, and the Policy Statements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.



Sen. Brett Lindstrom

Lindstrom said failure to comply with federal regulations would negatively impact nearly 80 percent of all mortgage loans in the state.

"If the state of Nebraska is found to be out of compliance with Title XI by the Appraisal Subcommittee, they could remove the credentials of all real property appraisers in Nebraska," he said. "The result would be not having any qualified appraisers available for federally-related transactions."

The bill would lessen the burden to obtaining or maintaining a credential by removing the required demonstration of general knowledge of Nebraska appraiser law, as well as the report writing update course continuing education requirement.

It also would simplify the standards for evaluation of a reciprocal applicant's jurisdiction of practice.

Finally, the bill would make minor changes to the administration of the Nebraska's Real Property Appraiser Act and would eliminate provisions relating to the separate credential of real property associate.

Lawmakers advanced the bill to select file on a 31-0 vote.

Insurance producer, public adjuster requirements approved

A bill that would amend state law related to insurance producers was approved March 15.

LB743, introduced by Omaha Sen. Brett Lindstrom, creates regulations for public adjusters—individuals who provide compensated assistance to an insured in the filing and settlement of a property claim against an insurer—through adoption of the National Association of Insurance Commissioners model law.

Among other provisions, the bill:

- establishes criteria for resident and nonresident public adjusters;
- provides for administration of exams and licensure requirements;
- creates a continuing education requirement for public adjusters;
- eliminates a pre-licensing requirement for insurance producers;
- requires public adjusters to secure a minimum \$20,000 surety bond;
- provides criteria for a business entity to become a public adjuster in Nebraska;
- removes a paper certificate requirement for insurance producer continuing-education activities and limits approval of those activities to four years; and

- prohibits an individual from acting as a public adjuster without being licensed in accordance with the act, misrepresenting that they work for an insurer or entering an agreement to repair property that the adjuster was engaged to adjust.

The bill was amended to include provisions of LB220, introduced by Omaha Sen. Burke Harr, which provide protections for consumers who assign their property insurance rights or benefits to a contractor following a loss. Those provisions:

- expand the definition of a residential contractor;
- provide that an assignment of rights or benefits to a residential contractor may authorize the contractor to be named as a copayee for payment of benefits under a property and casualty insurance policy;
- expand notice provisions in order to inform an insured homeowner that with an assignment, the residential contractor would be entitled to pursue any rights or remedies that the insured homeowner has under the insurance policy; and
- require that the itemized description of the work, materials, labor, fees and total amount to be paid be furnished to the insured and insurer prior to commencement of repair or replacement work.

In addition, the bill specifies that the itemized description does not limit the insured or a residential contractor from identifying other goods and services necessary to complete repairs or replacements.

The bill passed on a 48-0 vote.

EDUCATION

Certificate exemption for early childhood education teachers advanced

Lawmakers gave first-round approval March 14 to a bill meant to address a shortage of qualified early childhood education teachers in rural Nebraska.

As introduced by Sen. John Stinner of Gering, LB803 would require that school districts offer full-day kindergarten programs beginning with the 2019-20 school year. It also would repeal a requirement that all teachers and administrators in prekindergarten programs hold a valid certificate or permit. Instead, the state Department of Education would be granted authority over teacher and administrator qualifications for those programs.

An Education Committee amendment, adopted 34-0, replaced the bill's provisions and would authorize the state Board of Education to adopt rules and regulations that exempt a prekindergarten program from the teacher and administrator certification requirement.

Stinner said all early childhood education programs still would need to meet the board's standards under its rules and regulations. As a member of the Buffett Early Childhood Institute's early childhood workforce commission, Stinner said, he understands the need for quality in Nebraska's prekindergarten programs, but he also sees the lack of certified teachers for those programs, particularly in rural areas.

"While workforce shortages are not uncommon in [the] early childhood education profession," he said, "it is amplified in rural areas like western Nebraska."

Sen. Mike Groene of North Platte supported the amendment, saying that it recognizes how difficult it is for early childhood programs in the state's rural areas to find certified staff.

It also would address a looming problem for the Head Start program administered by the educational service unit in Scottsbluff, which risks losing its federal funding if its teachers do not meet state certification, Groene said.

Omaha Sen. Theresa Thibodeau also supported the amendment. As an early childhood educator and the owner of an early childhood development center, she said, it is hard to find certified teachers, even in an urban area.

"I can imagine that it's even harder in the rural areas," Thibodeau said.

Lawmakers voted 35-0 to advance the bill to select file.

Social worker for each ESU debated

Senators debated a proposal March 12 to place a social worker in each of the state's 17 educational service units to aid students with behavioral and mental health problems.

Introduced by Fremont Sen. Lynne Walz, LB998 would create a collaborative school behavioral and mental health program. Once the initiative receives \$3.6 million in funding, each ESU would hire a social worker



Sen. Lynne Walz

who would train teachers and school personnel and work with parents, schools, behavioral and mental health care providers and other resources to connect students with services.

"This is a great step in connecting schools, students, families and

resources by collaborating and bringing all players to the table to make sure that kids are being successful in school,” Walz said.

Social workers hired under the program could use screening and assessment tools to identify students in need of services and assist in matching students with appropriate health care providers.

The ESU coordinating council would solicit annual program plans from each ESU, identify evidence-based best practices in interventions for students, coordinate training for social workers and other school personnel and complete annual evaluations of the program. It also would create and maintain a statewide map of behavioral and mental health services.

Walz said that private donors have agreed to fund the program for three years. After that, each ESU would determine the program’s cost in its service area. If the ESU decides to continue, the program’s cost would be shared by the ESU, school districts within the ESU, state general funds and private donations. The program would end if its costs exceed the ESU’s available funds.

A pending Education Committee amendment would authorize ESUs or the coordinating council to hire a social worker but would not require them to. It would require that, if an ESU extends the program beyond three years, the ESU, school districts within the ESU and private donors would pay for it—not the state.

Elkhorn Sen. Lou Ann Linehan agreed that student behavioral and mental health is a concern for schools across the state. But she questioned whether the proposed number of social workers would be enough to serve the estimated 35,000 Nebraska students in need of services.

“I don’t see how 17 social workers,

as good as they may be—and I’m sure they’re all wonderful—how 17 can help 35,000 kids,” she said. “The numbers just don’t make sense to me.”

Linehan introduced an amendment to the committee amendment that she said would make each social worker more effective. It would require each school district with which a social worker interacts to designate a contact person for that social worker at each school in the district.

Sen. Kate Bolz of Lincoln supported the bill, saying that the program is based on the Connections project, a collaboration between Omaha Public Schools and Project Harmony, a child advocacy center in Omaha. An independent evaluation suggested that Connections, which identifies children in need of mental health services and matches them with providers, can be a sustainable approach for improving the behavioral and mental health of children, she said.

“It is overwhelming to think about serving large numbers of kids with one person,” Bolz said, “but if you strategize and prioritize, as the bill recommends, we can make a start in making a difference here.”

Also in support was Sen. Sue Crawford of Bellevue. She said the proposal is an opportunity to provide three years of mental and behavioral health services to students across the state, including those in rural areas where such services are harder to find.

“Over and over and over again I hear teachers need help, parents don’t know where to turn, kids are falling through the cracks,” Crawford said. “This bill gives us a way to try to prevent those kids from falling through the cracks.”

Sen. Matt Williams of Gothenburg also supported the bill, saying that such a program could have helped a 17-year-old student who was suspend-

ed from Gothenburg Public Schools last week after allegedly making terroristic threats. If students fear for their safety, he said, they will not be able to concentrate on learning.

“If we want our kids to thrive ... we need to provide them with a safe environment, and oftentimes our teachers and administrators are not fully equipped to be able to do that,” he said.

Sen. John Kuehn of Heartwell questioned whether a statewide program is necessary. If an ESU needs to hire a social worker or start a program modeled on the Connections program, he said, it already may solicit private funding or apply for grants.

Kuehn said he also is concerned about the degree to which a private donor’s intent could influence the program.

“I guess I would certainly like to see some sort of restrictions or qualifications or an explicit separation between the source of any funds and how decisions are made,” he said.

Sen. Steve Erdman of Bayard opposed the bill. Once the initial funds are spent, he said, an ESU that decides to continue the program could use property tax dollars to pay for it at a time when farmers already are suffering from high property tax bills.

“I think there’s a far better way to do it,” Erdman said. “I’m not against treating people who have a mental illness, but we need to do it in an efficient way.”

Sen. Mike Groene of North Platte said that the bill is “well meaning” but unnecessary and that it would duplicate services already provided by the state Department of Health and Human Services.

Groene, chairperson of the Education Committee, said he would vote against the bill on general file. He said he voted to advance the bill to debate

on the floor of the Legislature so that the public could understand that the major discussion in public education in recent years is not about reading, math or civics but about providing mental health services to students.

“That’s where we’re at in public education right now,” he said. “It’s all I’ve heard since I’ve been chairman of the Education Committee.”

After three hours of debate spanning two days, the Legislature moved to another item on the agenda. Per a practice implemented last year by Speaker Jim Scheer, the sponsor of a bill that is facing a potential filibuster must demonstrate sufficient support for a cloture motion before the measure will be scheduled for additional debate.

EXECUTIVE BOARD

Bill to improve tax incentive audits approved

Lawmakers passed a bill March 15 intended to improve legislative performance audits of the state’s tax incentive programs.

LB936, introduced by the Legislative Performance Audit Committee, makes a number of changes to the Legislative Performance Audit Act. The act requires the Legislative Audit Office to conduct performance audits that review state agency programs in order to evaluate the agency’s success in effectively implementing legislative intent.

Among other changes, the bill extends from three to five the number of years between audit reviews of tax incentive programs. The bill also requires that audits analyze the cost per full-time worker and whether job growth in businesses receiving tax

incentives is at least 10 percent above industry average.

Finally, the bill defines a high-quality job as one that averages at least 35 hours of employment per week and pays wages that are at least 10 percent higher than the statewide industry sector average. The wage also must equal or exceed 110 percent of the Nebraska average weekly wage if the job is in a county with a population of less than 100,000 inhabitants, or 120 percent if the job is in a county with a population of more than 100,000 inhabitants.

LB936 passed on a vote of 48-0.

Child sexual abuse reporting requirement amended, advanced

Lawmakers amended and advanced a bill March 15 that would strengthen reporting requirements regarding children in the state’s child welfare and juvenile justice systems.

Currently, all cases of death or serious injury of a child in a foster home, private agency, child care facility or other program licensed by the state Department of Health and Human Services must be reported to, and investigated by, the office of the inspector general of Nebraska child welfare.

LB1078, introduced by Bellevue Sen. Sue Crawford, would add to that requirement all allegations of sexual abuse of a state ward or a juvenile on probation, in a detention facility or residential child-caring agency.

The bill would require that the annual report of the DHHS Division of Children and Family Services include the number of sexual abuse allegations that occurred among children being

served by the division and those placed at a residential child-caring agency.

Also required would be the number of corresponding screening decision occurrences by category, open investigations by category and agency substantiations, court substantiations and court-pending status cases.

Two amendments regarding other reporting requirements for the state’s child welfare system were adopted during select file debate.

Crawford offered an amendment, adopted 31-0, to add provisions of her LB1073. The amendment would require DHHS to include in their existing weekly report to the Foster Care Review Office whether relative and kinship placements are licensed or received a waiver.

“It’s critical that the state know how many of these homes are not meeting this licensing requirement,” Crawford said.

An amendment also was offered by Lincoln Sen. Kate Bolz to add provisions of her LB411, which was introduced last session. She said the proposal would ensure that reasonable efforts are made to place children in state care with their siblings.

“The amendment addresses a concern that was raised by the [department] regarding appeal,” Bolz said. “We’ve removed any appeal language so as not to delay any permanency for any child in the child welfare system, while also retaining the rights of siblings and promoting sibling placement.”

The amendment would require that DHHS file a written sibling placement report with the court within 30 days of a juvenile being placed in state care and at specified intervals while he or she remains in state care. It also would clarify that a sibling can be in the group of parties to a case who may file a motion for joint-sibling placement, visitation or ongoing interac-



Sen. Sue Crawford

tion between the siblings.

The sibling report would include:

- the reasonable efforts of the department to locate the child's siblings;
- if a joint-sibling placement is made, whether such placement continues to be consistent with the safety and well-being of the children;
- if joint-sibling placement is not possible, the reasons why a joint-sibling placement is and continues to be contrary to the safety or well-being of any of the siblings;
- the department's continuing reasonable efforts to place a child with a sibling in the same foster care or adoptive placement; and
- the department's continuing reasonable efforts to facilitate sibling visitation.

The amendment also would require that DHHS file a notice of placement with all of a child's known siblings. A parent or sibling could choose to opt-out of receiving such notifications.

DHHS would be required to make reasonable efforts to place siblings together even if there is no preexisting relationship between them. It would be left to the court to determine what constitutes such reasonable efforts.

Following adoption of the Bolz amendment 32-0, the bill was advanced to final reading by voice vote.



Periodic legislative review of occupational licensing laws advanced

Senators advanced a bill March 14 that would require the Legislature to regularly review Nebraska's occupa-

tional licensing laws.

As introduced by Sen. Laura Ebke of Crete, LB299 would create a legislative office responsible for reviewing proposed legislation that would enact or modify occupational licensing regulations to ensure that they are the least restrictive means of achieving the regulations' ends.



Sen. Laura Ebke

"My overarching goal for this bill is to make it easier for people to work hard and make a living in Nebraska," Ebke said.

A Government, Military and Veterans Affairs Committee amendment, adopted 27-0, would require legislative committee staff, instead of a new office, to evaluate the effects of proposed legislation on occupational licensing, compare it with policies enacted in other states and to issue a report on that legislation to the relevant committee.

Ebke introduced an amendment to the committee amendment, adopted 30-0, meant to address concerns that opponents expressed during debate on the bill last month, including the scope of a report that committee staff would be required to complete.

Each standing committee would be required to review and analyze approximately 20 percent of the occupational regulations under the committee's jurisdiction each year. Committees would be required to complete that process for all regulations under their jurisdiction every five years.

Committees also would be required to analyze whether the regulations meet the least-restrictive standards and to submit an annual report to the Clerk of the Legislature that includes the committee's recommendations on whether the occupational regulations

should be ended or modified.

Like the original bill, Ebke's amendment also would accelerate the process by which those with criminal histories could determine whether their conviction would disqualify them from obtaining an occupational license.

A person with a criminal conviction could petition an occupational board at any time for a determination as to whether the person's conviction would disqualify him or her from obtaining a license. The board would be required to make its determination within 90 days of receiving a petition and could charge no more than \$100 for each petition.

Ebke said her amendment also would address concerns that the bill could conflict with the state Department of Health and Human Services' credentialing review program, also called the 407 process.

The 407 process reviews proposals for changes in scope of practice or for new credentialing of health professions. A technical review committee, the state Board of Health and the director of the Division of Public Health evaluate the proposals to determine whether they would benefit public health and welfare. They then submit reports to the Legislature's Health and Human Services Committee to assist them in evaluating bills related to credentialing.

Ebke's amendment would require committees to review those reports when developing their recommendations on occupational regulations that are under review.

Omaha Sen. Sara Howard and Bellevue Sen. Sue Crawford supported Ebke's amendment, but they said they would continue to work with Ebke on another amendment to the bill ensuring that it would not conflict with the 407 certification process.

"We don't disagree with the crimi-

nal provisions, and we don't disagree with the regular review," Howard said, "but we do want to make sure that it dovetails nicely with an already existing review standard, and I believe that we can get there between now and select."

Sen. John McCollister of Omaha also supported Ebke's proposal, saying that it represents a more comprehensive approach toward licensure than what currently exists. Reviewing and eliminating requirements that are too restrictive would help more people pursue their chosen occupations and support their families, he said.

"This bill will combat that bureaucratic inertia that exists in government, no matter what level," McCollister said.

Also in support was Omaha Sen. Justin Wayne, who agreed that legislative committees should be required to routinely review regulations under their jurisdiction.

"As technology changes, licenses and regulations should at a minimum be reviewed, and [they] should be reviewed by the governing body who granted them the ability to do it, and that is us as a Legislature."

Senators voted 31-0 to advance the bill to select file.

JUDICIARY

Bill to provide statewide legal representation for juveniles fails

At the close of first-round debate March 14 on a bill that would ensure that all Nebraska juveniles appearing in court could have legal representation, an attempt to invoke cloture failed by two votes.

Under LB158, introduced by Lincoln Sen. Patty Pansing Brooks,

legal counsel would be appointed each time a juvenile court petition is filed anywhere in the state. The juvenile and his or her parent or guardian would be informed of the right to retain such counsel as needed.

The bill also would require any legal counsel representing a juvenile to continue representation through post-dispositional proceedings unless the juvenile requests new counsel.

Senators had passed legislation in 2016 ensuring that juveniles in counties with a population greater than 150,000 would be guaranteed access to counsel. LB158 would expand that legislation to cover juveniles in every county.

Justice is not being properly executed if the most vulnerable are not adequately represented before the court, Pansing Brooks said.

"No parent should allow their child to go before a judge and let the judge and prosecutor just decide what's going to happen," she said. "No adult who faces possible incarceration would accept that standard."

A pending Judiciary Committee amendment would clarify that a juvenile who waives the right to counsel could rescind the waiver at any time. It also would clarify that counsel need not be appointed for a juvenile who participates in a pre-trial diversion program.

Pansing Brooks also filed an amendment that would create a Juvenile Indigent Defense Fund to provide grants to counties to cover the cost of providing legal counsel to indigent juveniles. This would be funded by a \$1 increase in court filing fees.

Sen. Mike Groene of North Platte filed a motion to bracket the bill until April 18, 2018. He said Nebraska



Sen. Patty Pansing Brooks

already has strong provisions in place to protect a juvenile's right to counsel. Requiring every juvenile to have counsel would force county budgets to the breaking point, Groene said.

"This will just send a bill to middle-class families that can't afford it," he said. "We're making justice unaffordable to society."

Supporting the bracket motion was Bayard Sen. Steve Erdman. Requiring counsel for juveniles might make sense in larger counties, he said, but one solution will not work for the entire state.

"Judges are very cognizant of children who do need counsel," Erdman said. "To force someone to have a lawyer that doesn't need one is not something we need to do."

The Legislature should make sure that if a child decides to waive counsel, he or she does it with a full understanding of the potential consequences, said Omaha Sen. Bob Krist in opposition to the bracket motion.

"Kids have legal problems all across the state," he said. "We're asking you if you want to make sure these kids are represented and then give them the right to waive counsel when it's appropriate."

After several hours of debate, Pansing Brooks offered a motion to invoke cloture, or cease debate and vote on the measure.

"We have the ability to do something really positive for the kids of our state today," she said. "If it's not successful, I will continue to work to fight for these kids."

The cloture motion failed on a vote of 31-8. Thirty-three votes were needed. A failed cloture motion results in debate on a proposal ceasing for the day. LB158 is unlikely to be placed on the agenda again this session.

Transport of firearms on campus for sport shooters approved

Lawmakers passed a bill March 15 that allows college students competing in shooting sports to lawfully transport their firearms on campus.

Firearms currently are prohibited from the grounds and buildings on the state's college and university campuses. School-sponsored rifle team members already are exempt from this ban as long as their weapons are safely transported and stored.

LB321, introduced by Kearney Sen. John Lowe, adds additional teams that compete in rifle, pistol and shotgun disciplines to the team description in state statute.



Sen. John Lowe

The bill was passed on a 46-0 vote.

Prohibition against threatening electronic communications amended, advanced

Senators advanced a bill March 15 that would make it a criminal offense to threaten someone with a text or email message after adopting an amendment related to chip-based payment cards.

Under current law, a person commits the offense of intimidation by telephone call if he or she telephones someone with the intent to terrify, intimidate, threaten, harass, annoy or offend. The offense is a Class III misdemeanor with a maximum penalty of three months in prison, a \$500 fine or both.



Sen. Robert Clements

LB773, sponsored by Sen. Robert Clements of

Elmwood, would amend the law to include intimidation by electronic communication, such as a text message or an email. It also would remove the terms "terrify," "annoy" and "offend" to address a possible conflict with the First Amendment.

Omaha Sen. Brett Lindstrom introduced an amendment on select file, adopted 35-0, that would add provisions from his LB811. These would update Nebraska law to reflect new payment card technology and make it a crime to possess a scanning device or encoding machine with the intent to use it to obtain information encoded on a card without authorization from the card's user, the card's issuer or a merchant.



Sen. Brett Lindstrom

Lawmakers voted 38-0 to advance the bill to final reading.

Bill clarifying legal immunity for overdoses advanced

The Legislature advanced a bill from general file March 14 that would extend legal immunity to certain law enforcement employees who deal with drug overdose victims.

A 2015 bill passed by the Legislature exempts an individual from prosecution who prescribes or dispenses naloxone to a person experiencing an opioid-related overdose. Naloxone is a medication that reverses the effects of opioids.

LB923, introduced this session by Lincoln Sen. Adam Morfeld, would add law enforcement employees to the list of people who receive such an exemp-



Sen. Adam Morfeld

tion. He said the bill would address concerns expressed by Omaha's crime laboratory that its employees would not be protected under the 2015 legislation.

"My focus has always been keeping Nebraskans safe across the state, particularly when they're experiencing an alcohol or drug overdose," Morfeld said. "This would help clarify and make the standards uniform."

The bill would define law enforcement employee as an employee of a law enforcement agency or agency contractor, or its employee, who regularly handles, processes or is likely to come into contact with evidence or property containing opioids.

Further, the bill would clarify that a minor who reports a possible alcohol overdose would be legally immune only if he or she makes a good faith request for emergency medical assistance. The person experiencing the overdose also would be immune.

A current requirement that the minor be the first person to call for assistance to qualify for immunity would be eliminated.

Omaha Sen. Ernie Chambers spoke in favor of the bill. He said he supported addressing opioid addiction from a medical standpoint and not from a law-enforcement perspective.

"People who, as part of their duties, are rendering a service that may harm their own health ... if there's anything that can be done that will give them a feeling of security so that they'll continue to do it, then I am pleased to vote for it," Chambers said.

The bill was advanced to select file on a 31-1 vote.

REVENUE



Sales tax requirements for internet sellers stalls on final round

A bill that would require some retailers without a physical location in Nebraska to collect and remit state sales and use tax stalled on final reading March 15.

As introduced last session by Sen. Dan Watermeier of Syracuse, LB44 would apply to retailers outside the state if their sales to Nebraska purchasers exceeds a certain amount.



Sen. Dan Watermeier

As amended on select file, the bill would require a retailer that does not collect state sales or use tax to notify Nebraska purchasers that the tax is due and to send them an annual notice showing the total amount paid for taxable items. A non-collecting retailer also would be required to send an annual report to the state Department of Revenue showing the total amount paid for taxable items by Nebraska purchasers.

The requirements would apply to retailers with more than \$100,000 in total annual sales of taxable items or 200 or more separate transactions to Nebraska purchasers.

The notice and reporting requirements would end on the later of July 1, 2018, or the first day of the first calendar quarter after a court decision or federal legislation repeals the physical presence requirement of a 1992 U.S. Supreme Court case. After that, a retailer without a physical presence in Nebraska would be subject to state sales and use tax if it meets the sales threshold.

In *Quill Corp. v. North Dakota*, the court found that states could not collect sales tax from retail purchases made over the internet if the seller does not have a physical presence in the state. The justices will rule on a South Dakota case challenging the *Quill* decision during the court's 2018 term, which ends in June.

Watermeier filed a motion on final reading to return the bill to select file for an amendment that he said is a compromise with Papillion Sen. Jim Smith and Gov. Pete Ricketts. The amendment would remove the notice and reporting requirements to ensure that the bill is passed and signed into law this year, Watermeier said.

"Although I thought it was imperative to be covered either way—through reporting if the court didn't overturn *Quill* and collection if it did—most people are now fairly confident that *Quill* will be altered or overturned," he said.

Sen. Tom Briese of Albion spoke in support of the amendment, saying that it addresses concerns that the Supreme Court could only partially repeal *Quill's* physical presence requirement.

"It's our duty and responsibility to protect our Main Street retailers," he said, "and I think the quicker we can get this policy in place, it's better for those folks."

Smith said the amendment is necessary to remove the reporting requirements, which he said create an unnecessary burden on businesses. However, even with the amendment, the bill does not create certainty that state sales tax on internet purchases will be collected, he said.

"Passage of this bill does not assure that the state sales tax collections will increase or that our local retailers will be helped," Smith said.

Sen. John Kuehn of Heartwell opposed the amendment and the bill,

saying that it would set a dangerous precedent to create tax law contingent on a Supreme Court decision. He said the Legislature should wait for the court's decision and then decide what course of action to take when it reconvenes in January.

"There is no real harm in waiting until the Supreme Court rules," he said. "There is the potential for very real harm if we advance forward without having that clarity."

Watermeier then filed a motion to invoke cloture, or cease debate and vote on the bill. The motion failed on a 31-13 vote. Thirty-three votes were needed.

The bill is unlikely to be scheduled for further debate this session.

Expanded tax credit for volunteer emergency responders advanced

Volunteer emergency responders serving a county could qualify for a tax credit under a bill advanced by the Legislature March 14.

In 2016, the Legislature created a \$250 refundable income tax credit for volunteer emergency responders, rescue squad members and firefighters who serve a city, village or rural or suburban fire protection district. A point system determines annual qualifications for the credit.

Sen. Dan Hughes of Venango, sponsor of LB760, said the 2016 bill inadvertently left out county volunteers. LB760 would include those volunteers and provide retroactive eligibility for 2016 and 2017 for those who meet the criteria.



Sen. Dan Hughes

Hughes said a wind-driven fire that forced evacuations in McCook last

week underscored the importance of volunteer emergency responders. Nineteen volunteer fire departments assisted the city's fire department, he said, helping to avert a disaster.

"The number of volunteers across the state has been steadily decreasing," Hughes said, "and this is an incentive to those who donate their time by providing a service to their communities."

A county board could approve and certify a list of qualifying volunteers for 2016 and 2017 no later than 30 days after the effective date of the bill. Volunteers who met the requirements for both years would be eligible for the tax credit for the 2017 tax year.

Sen. Mark Kolterman of Seward supported the bill, saying that rural Nebraska communities are having an increasingly hard time finding volunteers to fight fires and respond to emergencies.

"Anything we can do to encourage that is beneficial," he said.

Senators voted 33-0 to advance the bill to select file.

URBAN AFFAIRS

Vacant property registration ordinances approved

Lawmakers passed a bill March 15 intended to help cities address the problem of vacant properties.

Under LB256, sponsored by Al-
bion Sen. Tom Briese, a municipality may adopt an ordinance that allows it to identify and register vacant properties, collect fees to compensate for the public costs of property vacancy, plan for rehabilitation and



Sen. Tom Briese

encourage occupancy.

The bill does not apply to metropolitan- and primary-class cities. Currently, Omaha is the state's only metropolitan-class city and Lincoln is the only primary-class city.

A registry could include commercial or residential property and could apply only to buildings located within a city or village's corporate limits. An ordinance is required to exempt vacant properties that are advertised in good faith for sale or lease.

If adopted, a vacant property registration ordinance requires registration of a property vacant for 180 days or longer. An initial registration fee of no more than \$250 for a residential property and \$1,000 for a commercial property would be assessed. Supplemental fees are allowed and exemptions to the fee requirement may be provided.

Unpaid registration fees and fines will become a lien on the applicable property upon notice to the county.

LB256 passed on a 47-0 vote.

TIF rules updated

An extensive update to the state's tax-increment financing rules passed March 15.

Introduced by the Urban Affairs Committee, LB874 is the result of an interim study to answer questions about the use of TIF that were raised in a 2016 report by the state auditor of public accounts.

Under a segment of the state's community development law, Nebraska municipalities are able to designate areas as substandard and blighted, allowing them to be redeveloped. When a redevelopment plan is approved, TIF bonds may be issued for the acquisition and improvement of the property. The increased property taxes generated by the improvements

are used to pay for the financing of TIF projects.

Among other provisions, LB874 authorizes the state auditor to audit a community redevelopment authority whenever the auditor believes it necessary, or when requested to do so by the governing body.

The bill requires that:

- a planning commission hearing be held on a redevelopment plan;
- municipalities conduct or contract for a substandard and blighted analysis on whether a redevelopment project meets the requirements and include that analysis in the public hearing notice;
- cost-benefit analyses on TIF projects consider the impact on school districts and be made available to the public;
- if a redevelopment project divides the tax on only a portion of the real property included in the project, the property must be related to the redevelopment project;
- proceeds from indebtedness incurred for a TIF project be prohibited from being used to establish a revolving loan fund;
- TIF redevelopment contracts include a provision requiring developers to retain copies of all supporting documents associated with the project and provide them to the municipality;
- an annual TIF report on projects be provided to a municipality's governing body; and
- each municipality that utilizes TIF retain copies of all redevelopment plans, substandard and blighted studies and analyses, cost-benefit analyses and supporting documents associated with the redevelopment plan

or any related substandard and blighted declaration.

The bill incorporated a provision of LB846, introduced by Albion Sen. Tom Briese, which require that findings commonly referred to as the “but/for” test be documented in writing.

LB874 also:

- limits reimbursement of costs incurred prior to the approval of a redevelopment project;
- redefines the term redevelopment project to include enhancements to structures in the redevelopment project area that exceed minimum building and design standards in the com-

munity and prevent recurrence of substandard and blighted conditions;

- allows redevelopment projects to include a provision that requires that all property taxes levied on a redevelopment project be paid before such taxes become delinquent to be eligible to receive TIF funds;
 - clarifies that audits done of a community redevelopment authority be paid for by that authority; and
 - makes a series of reporting, auditing and notice clarifications.
- Lawmakers passed the bill 47-0. ■



★UNICAMERAL YOUTH★
LEGISLATURE

High school students with an interest in law, government, leadership or public speaking are encouraged to register for the 2018 Unicameral Youth Legislature, which will convene June 10-13.

The Unicameral Youth Legislature is a four-day legislative simulation conducted at the State Capitol Building and coordinated by the Clerk’s Office of the Nebraska Legislature. Student senators will sponsor bills, conduct committee hearings, debate legislation and discover the unique process of the nation’s only unicameral.

Students will learn about the inner workings of the Legislature directly from senators and staff. Bills will be based on legislation considered during the current legislative session.

Registrants are encouraged to apply for a Speaker Greg Adams Civic Scholarship award, which covers the full cost of admission. Applicants must submit a short essay. Other \$100 scholarships are also available.

The University of Nebraska-Lincoln’s Extension 4-H Youth Development Office coordinates housing and recreational activities for the camp as part of their Big Red Summer Camps program.

Registration forms can be obtained from the Legislature’s Unicameral Youth Legislature page: www.NebraskaLegislature.gov/uyl.

The registration deadline is May 15. ■

COMMITTEE HEARINGS

Current hearing schedules are always available at:
NebraskaLegislature.gov/calendar

Monday, March 19

Health & Human Services

Room 1510 - 9:00 a.m.

- Nebraska Dental Medicaid Briefing - Invited Testimony Only
 - Nebraska Dental Medicaid Hearing - Open for Public Comments
 - Heritage Health Quarterly Briefing - Invited Testimony Only
- Heritage Health Quarterly Hearing - Open for Public Comments

Thursday, March 22

Education

Room 1525 - 12:30 p.m.

- Appointment: Paul Von Behren
- Coordinating Commission for Postsecondary Education
- Appointment: Frederik Ohles
- Nebraska Educational Telecommunications Commission
- Appointment: Nicholas Baxter
- Nebraska Educational Telecommunications Commission

Natural Resources

Room 1524 - 1:00 p.m.

- Appointment: John W. Orr - Nebraska Environmental Trust Board

Friday, March 23

Nebraska Retirement Systems

Room 1525 - 8:00 a.m.

- Presentation of the Nebraska Investment Council Annual Report to the Nebraska Retirement Systems Committee pursuant to §72-1243(2)
- Presentation of the Nebraska Public Employees Retirement Systems Annual Report to the Nebraska Retirement Systems Committee pursuant to §84-1503(3) ■

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