

Sales tax requirements for internet sellers advanced



Sen. Dan Watermeier said LB44 would help Nebraska brick-and-mortar stores compete with online retailers and help the state collect sales tax that already is due.

Lawmakers gave second-round approval March 6 to a bill that would require some retailers without a physical location in Nebraska to collect state sales and use tax, pending a U.S. Supreme Court ruling in June.

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. The requirement to pay sales and use taxes on internet purchases is not new, he said.

"Customers buying from remote sellers have always owed this tax, but they rarely pay it if the remote seller does not collect it," Watermeier said. "The longer we wait before passing legislation like this, the harder it will be for the general public to understand that this is not a new tax."

Senators voted 33-7 to adopt a Watermeier amendment that replaced the original provisions of the bill. It 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 a notice by Jan. 31 of each year showing the total amount paid for taxable items. A retailer that fails to send the notifications would be subject to a \$10,000 penalty.

A non-collecting retailer also would be subject to a \$2,500 penalty for failing to send an annual report to the department 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.

Watermeier said the requirements would only affect businesses outside the state and would help Nebraska brick-and-mortar businesses, which are at a competitive disadvantage to internet

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State personal exemption credit, standard deduction advanced

Senators advanced a bill March 8 intended to prevent a rise in taxes on Nebraskans as a result of recent changes to federal tax law.

Congress made several changes to the federal tax code in December with the Tax Cuts and Jobs Act.

Papillion Sen. Jim Smith, sponsor of LB1090, said that because Nebraska's tax law is tied to the federal code in several places, automatic changes



Sen. Jim Smith

to the state's tax code would generate more than \$220 million in additional state revenue this year.

"LB1090 is an attempt to hold as many Nebraskans harmless as possible and prevent large tax increases due to what happened at the federal level," he said.

One major change is the repeal of the federal personal exemption. The change would effectively repeal Nebraska's personal exemption credit, which is tied to the federal exemption. To offset this change, LB1090 would create a new \$134 state personal exemption credit that individuals could claim for themselves and each of their dependents beginning in 2018.

Congress also made changes to itemized deductions, exemptions for capital expenditures and the federal standard deduction. To offset those changes, Smith said, LB1090 would

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Sales tax requirements for internet sellers advanced

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retailers that are not required to collect state sales tax. The bill could help the state collect an additional \$30 million to \$40 million in revenue annually, he said.

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.

If the court does not overturn the case, Watermeier said, the notice and reporting requirements would serve as an incentive for some retailers to remit state sales tax voluntarily.

Sen. Sue Crawford of Bellevue, who spoke in support of the amend-

ment, said that if the court does overturn *Quill*, LB44 would ensure that the state does not forego tens of millions of dollars in sales tax revenue over the next year.

"The fact that the Supreme Court is deciding this case this summer makes it all the more urgent for us to pass LB44," she said.

Sen. Matt Williams of Gothenburg agreed that the Legislature should not wait another year to start collecting sales tax on internet purchases. He said the issue comes up at every one of his town hall meetings.

"Those businesses that are not in Nebraska now are competing every day with my Main Street businesses," Williams said, "and they're competing with your Main Street businesses also."

Sen. Jim Smith of Papillion opposed the amendment, saying that the notice and reporting requirements would burden small businesses and give false hope to Nebraska retailers. At best, he said, the notices only would remind Nebraskans that sales and use tax is due on their internet purchases—it would not help the state collect it.

"This bill has no teeth in it, it's poor-

ly written and it simply does not do what is being promised here," Smith said.

Lincoln Sen. Mike Hilgers also opposed the amendment, saying that it would create a new regulatory structure on uncertain legal ground. The proposal is based on a guess that the Supreme Court will overturn the physical presence requirement in the *Quill* case, he said, but no one knows exactly what the justices will decide. Hilgers said it would be wiser for the Legislature to wait for the court's decision and then act next session.

"Putting a speculative guess into our statutes is something I cannot support," he said.

Sen. Ernie Chambers of Omaha agreed, saying that Watermeier is speculating on the court's ruling. He introduced a floor amendment that would remove a reference to the *Quill* decision in Watermeier's amendment. It failed on a 7-35 vote.

After three hours of debate on select file, Watermeier filed a motion to invoke cloture, or to cease debate and vote on the bill. The motion succeeded 35-8.

Senators then voted 34-7 to advance the bill to final reading. ■

UNICAMERAL UPDATE

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Personal exemption credit, standard deduction advanced

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establish a Nebraska standard deduction of \$6,750 for single taxpayers, \$9,900 for head of household filers and \$13,000 for those who are married filing jointly.

The bill also would adjust individual income tax brackets, the personal exemption credit and the standard deduction based on the Consumer Price Index for All Urban Consumers instead of the new federal indexing method.

The state Department of Revenue estimates that the bill would reduce state tax revenue by \$326 million in fiscal year 2018-19 and a further \$257 million in FY2019-20.

Sen. Merv Riepe of Ralston spoke in support of the bill. If the Legislature does not act, he said, Nebraska families and businesses will not enjoy the full impact of the federal tax cuts, and the state's economy would not grow as it otherwise would have.

"Federal tax reform is not intended

to be a windfall for the Legislature, and it is not a tool to help this body avoid difficult spending decisions," he said. "These dollars are not revenue for spending and belong to the hardworking men and women of Nebraska."

Omaha Sen. Bob Krist introduced an amendment that would create a similar state-level personal exemption credit but would limit eligibility to those earning no more than \$100,000 if filing as an individual and no more than \$200,000 if married filing jointly. It also would use some of the additional revenue due to the federal changes to make a one-time payment of \$20 million to the state's property tax credit fund.

Krist said the proposal—which is based on Omaha Sen. Burke Harr's LB1048—would ensure that low- and middle-income Nebraskans are held harmless while giving the state a cushion if the state Department of

Revenue erred when estimating the federal changes' impact.

"I want to make sure that we in the long term do not create a bigger hole in our general fund by overreacting and not allowing the federal tax changes to come to fruition so that we can evaluate how much money we do and do not have available," he said.

Sen. Kate Bolz of Lincoln supported the amendment. She agreed that the Legislature should adjust to the federal tax code changes to avoid tax increases on Nebraskans, particularly low- and middle-income Nebraskans.

"But I also think it's our responsibility to make sure that the tax policy changes we're making don't have inappropriate effects on our long-term ability to budget," she said.

Smith opposed the amendment, saying that it effectively would raise taxes on the state's highest earners by \$66 million this year.

"[LB]1090 keeps everyone whole," he said. "[Krist's amendment] does not further benefit low- and middle-income tax earners more than LB1090."

Columbus Sen. Paul Schumacher also opposed the amendment. He said Smith's proposal is not perfect but is intended to be a "quick and fair fix" to offset the federal tax changes. Limiting the personal exemption credit to those at certain income levels would be more complex than is necessary, he said, and the effects of the federal changes on those earning more than \$100,000 are unclear.

"My suggestion ... would be at this point to do what is simple," Schumacher said.

The Krist amendment failed on a 12-24 vote.

Senators then voted 38-0 to advance LB1090 to select file. ■



Sen. Jim Smith (right) confers with Sen. Burke Harr during debate on LB1090, which is intended to neutralize an increase in state tax revenue due to federal tax code changes.

APPROPRIATIONS

Mechanism for Willa Cather property preservation advanced

A proposal to fund preservation and restoration of properties related to author Willa Cather was narrowed and advanced from general file March 6.

Omaha Sen. Burke Harr, sponsor of LB379, said the bill would create a mechanism to assist with the restoration of the Cather House and the Antonia Farmhouse without using general fund dollars.



Sen. Burke Harr

The property currently is owned by the Nebraska State Historical Society, Harr said, and while they have kept the buildings weathertight, more work is needed.

“[The buildings] are in need of some further TLC that the historical society, due to budget cuts, have been unable to attend to,” he said. “For example, Willa Cather’s childhood home is in need of an HVAC to preserve the wallpaper that she hung as a child.”

The bill would create the Willa Cather Historical Building Cash Fund, which would be administered by the Nebraska State Historical Society. As introduced, the bill would have transferred \$300,000 from the State Visitors Promotion Cash Fund to the new fund.

An Appropriations Committee amendment, adopted 29-0, replaced the bill and removed the cash transfer. As amended, the LB379 instead would permit the state Department of Economic Development to use the Civic and Community Center Financing

Fund to provide grants of assistance in the preservation and restoration of historic buildings owned by a nonprofit organization if a contractual relationship is created between a municipality and the nonprofit organization.

The Cather fund also could accept money donated as fits, bequests or other contributions from public or private entities.

Harr said the amendment resulted from concerns raised regarding the diversion of tourism dollars outlined in the original bill.

“[The amendment] does not place any dollar amount into the [preservation] fund,” Harr said. “Instead, the fund’s existence provides an easy and visible way for the historical society to accept private dollars for the preservation of the Willa Cather properties.”

As amended, the bill also would allow the Nebraska State Historical Society to enter into an agreement with the Willa Cather Foundation to transfer clear title of properties described in the bill from the state to the foundation at no cost to either party other than property transfer transactional costs, which would be shared equally by each party.

In order to carry out any agreements made, the Nebraska State Historical Society would be authorized to dispose of these real properties using the vacant building and excess land process.

Following adoption of the committee amendment, the bill advanced to select file 31-0.

State funds to counties for jail incident costs advanced

Lawmakers gave first-round approval March 7 to a bill intended to assist counties facing costs from correctional institution incidents.

LB861, introduced by Syracuse

Sen. Dan Watermeier, would require the state to pay a county’s prosecution costs that arise from a single correctional institution incident—defined as one in which a crime is allegedly committed by one or more inmates confined in a state correctional institution—if it exceeds the threshold amount for the county.



Sen. Dan Watermeier

Under the bill, the threshold amount is the amount of property tax revenue raised by the county from a levy of 2.5 cents per \$100 of taxable valuation of property subject to the levy. The threshold amount would be determined using valuations for the year in which the correctional institution incident occurred.

Costs of prosecution would include, but would not be limited to, the costs of defense for indigent defendants, such as attorney and expert witness fees.

“I look at LB861 as a catastrophic insurance policy,” Watermeier said. “It will only kick in when the prosecution costs become an extreme hardship for the county residents. It may never kick in and I hope it never is needed.”

Watermeier said the threshold amount for Johnson County, which includes the Tecumseh State Correctional Institution, is approximately \$228,000. The potential costs of the Mother’s Day riot that occurred at Tecumseh in 2015 may exceed that amount, he said, adding that while the state Department of Correctional Services paid for some expenses related to the riot, it will not pay any additional claims.

As a result, he said, the county must bear the cost of prosecuting inmates for murders that occurred during the incident. While the public defender

and the Nebraska Commission on Public Advocacy will assist with the costs, he said, the county will be required to hire additional attorneys to represent numerous co-defendants.

“Counties cannot fail to prosecute a murder just to save the money,” Watermeier said. “The county must bear the cost even though, since 2007, I am not aware of even one person—not one person in [the Tecumseh facility]—that has been charged with a crime who was originally from Johnson County.”

An Appropriations Committee amendment, adopted 26-0, would limit the bill’s provisions to incidents occurring on or after May 1, 2015. It also would define an incident as one in which one or more crimes were committed.

Watermeier said the change would specify that an event such as the Mother’s Day riot would be considered one incident even though several crimes were committed during the course of the riot.

Lincoln Sen. Kate Bolz supported the bill and the amendment, although she cautioned lawmakers that it could mean an unknown commitment of state resources down the road.

“Voting for this bill could have future fiscal impacts for people who are serving in this Legislature in the future,” she said.

Omaha Sen. Burke Harr offered an amendment to incorporate into the bill provisions of his LB883. The amendment would outline a process through which the Nebraska attorney general could request that a district court appoint an independent counsel in a case where there is a perceived personal or ethical conflict in the prosecution of an alleged crime.

Harr said the amendment simply would clarify that the attorney general has the same ability as county attorneys do to have alternate counsel

appointed in such a circumstance.

“This [amendment] allows the attorney general—does not force the attorney general, but allows them at their discretion if they believe they have a conflict—[to] go to a judge and ask that a conflict counsel be appointed,” Harr said.

The amendment was adopted 26-1 and LB861 advanced to select file on a 27-0 vote.

GENERAL AFFAIRS

Electronic transfer of keno funds advanced

A bill that would change the way keno locations handle keno revenue was advanced from the first round of debate March 7.

State law requires a keno operator to keep keno revenue separate from other sources. Omaha Sen. Justin Wayne, sponsor of LB724, said that keno sales outlets accomplish this by keeping two bank accounts, one for keno revenue and another for all other funds. LB724 would allow keno operators to commingle funds in a single account.

The bill also would allow the state tax commissioner to authorize the electronic transfer of keno funds from a sales outlet’s general business account to the bank account of a lottery operator, county, city or village no later than five business days after they were collected.

“This bill will allow us to make the end-of-the day deposits more efficient and safe by allowing a process similar to the one that is already used in the

Nebraska Lottery,” Wayne said.

LB724 would require that gross lottery proceeds be deposited into the account of the sales outlet location, lottery operator, county, city or village no later than five business days after they were collected. The funds currently must be deposited within four business days.

After adopting a technical amendment, senators voted 28-0 to advance the bill to select file.

HEALTH & HUMAN SERVICES

Child support updates advanced

A bill that would harmonize Nebraska’s child support program with federal law advanced from general file March 7.

Seward Sen. Mark Kolterman, sponsor of LB702, said the federal government has issued new regulations mandating changes in the child support enforcement program. As a result, Nebraska law currently is in conflict with federal law in two areas, he said.

“It is important to know that failing to comply with the mandated changes by Oct. 1, 2018, would subject the state of Nebraska to the loss of all federal IV-D child support and [Temporary Assistance for Needy Families] funding, amounting to over \$81 million [annually],” Kolterman said.

A Health and Human Services Committee amendment, adopted 36-0, replaced the bill with what Kolterman described as clearer language that mirrors federal regulations.

As amended, LB702 would clarify



Sen. Justin Wayne



Sen. Mark Kolterman

that children who are covered by Medicaid and other needs-based health care programs in Nebraska do have health care coverage. The bill also would reflect federal law regarding the reduction of child support orders for an incarcerated parent.

The bill would require the state Department of Health and Human Services to notify parents of their right to request a review and adjustment of a child support order within 15 days of learning that a noncustodial parent will be incarcerated for longer than 180 days.

Finally, the bill would clarify that incarceration is not considered voluntary unemployment for child support purposes.

LB702 advanced to select file on a 38-0 vote.

JUDICIARY

Bill would equalize district court caseloads

Lawmakers gave first-round approval March 7 to a bill that would help equalize caseloads in the district court system.

LB697, introduced by Crete Sen. Laura Ebke, would change the geographic boundaries of Judicial Districts 1, 2 and 10. Otoe County would be moved from District 2 to District 1. Clay and Nuckolls counties would move from District 1 to District 10.

Ebke said the recommendations contained within the bill are based on an analysis of judicial workload statistics and litigants' access to the court system.



Sen. Laura Ebke

“Making these changes will help the courts balance the workloads across the districts without requiring additional resources,” she said.

Omaha Sen. Bob Krist supported the bill, saying it would positively impact juveniles engaged in the court system.

“We only have a few dedicated juvenile court systems across the state,” he said. “This allows for districts across the state to have one or two judges that spend time doing just that by shuffling them in the right direction.”

The bill advanced to select file on a 34-0 vote.

Emancipation process for minors advanced

The Legislature advanced a bill March 7 that would allow certain minors to seek legal independence.

LB714, introduced by Omaha Sen. Sara Howard, would allow minors at least 16 years old to seek emancipation from their parents or guardians. Howard noted that the current age of majority in Nebraska is 19, but many teens move away from home and gain independence at 18.



Sen. Sara Howard

There are many reasons a minor might seek emancipation, she said, but ultimately it is about ensuring the rights of mature, independent teenagers.

“There are many who seek to emancipate who have been on their own for a while and have supported themselves and don't have the backing of an adult to make certain decisions like opening a checking account or buying a car,” Howard said.

After a motion to grant emancipation is filed and the individual's par-

ents or guardians have been notified, a judge would determine whether or not the minor possesses the maturity and knowledge to sufficiently manage his or her affairs and finances.

A Judiciary Committee amendment, adopted 34-0, would require that the court hold an initial hearing on the petition no sooner than 45 days after the petition is filed and no later than 60 days of filing. The petitioner would be required to notify his or her parent, legal guardian or nearest known relative residing in Nebraska of the hearing at least 30 days before the hearing date.

A parent or legal guardian could file an objection to the petition for emancipation within 30 days of receiving notice of the hearing.

If emancipation is granted, the minor legally would be allowed to incur debt, sign contracts, acquire property, file litigation, consent to medical services, enroll in any school or college and establish his or her own residence.

Emancipation status would not affect a minor's status in any juvenile court proceedings.

Any person could file a motion to void an emancipation decision if the minor would become indigent or unable to financially support themselves or if the emancipation were obtained through fraud, misrepresentation or the withholding of relevant information.

Likewise, a minor would be allowed to file a written objection in response to any such petition to rescind an emancipation order.

Finally, the amended bill would clarify that in the event an emancipation order is rescinded, the parents or legal guardian would not legally be held liable for any debts incurred by the minor during the period of emancipation.

Senators advanced the bill to select file on a 35-0 vote.

Bill would control high-cost calls for inmates

Senators debated a bill on general file March 6 that would improve inmates' access to communication.

LB776, introduced by Omaha Sen. John McCollister, would require county and city jails to provide inmates with affordable communication by telephone or videoconferencing with their families and legal counsel.



Sen. John McCollister

Under the bill, each jail could establish a prepaid or collect telephone system, or a combination of both. Inmates' family members could deposit money into a prepaid account with a third-party provider of telephone services to cover the cost of the call. Any company contracted by a jail to provide such services would be prohibited from charging excessive service rates or commissions.

The bill would ensure that phone calls or videoconference sessions between an inmate and an attorney are free of charge. Monitoring or recording of such communications would be prohibited.

A Judiciary Committee amendment, adopted 33-7, clarified that an inmate's access to any attorney would be protected.

A person housed in a city or county jail has not necessarily been found guilty of a crime yet, said McCollister. In fact, he said, a study by the ACLU found that over half of inmates held in jail are awaiting trial and are in jail simply because they cannot afford to post bail.

McCollister said no one can prepare properly for an upcoming trial if they cannot talk with their attorney on a regular basis. The cost of a 15-min-

ute call can vary from \$2 to \$20, he said, depending on where the inmate is housed, which can be prohibitive, McCollister said.

Further, he said, research has shown that regular contact between inmates and their families and attorneys leads to lower rates of recidivism upon their release.

"This would ensure that city and county budgets are not based on the assumption that they'll be making a profit from detainees and their families," McCollister said.

Sen. Ernie Chambers of Omaha spoke in support of the bill. He said regular phone access is vital to preserving an inmate's dignity.

"To break a connection between a person and his or her family goes against all conservative values," Chambers said. "A person is never excused from the human race. A human being should never be deprived of his or her dignity."

Jails should focus on building people back up, not building more jails or making profits, said Bancroft Sen. Lydia Brasch in support of the bill.

"If these inmates want to or need to reach out to their children or their wives in hopes of building a citizen who can contribute and not return to jail, that should be everyone's goal here," she said. "We need to show them the right path and the right road and not make it financially burdensome."

McCollister introduced an amendment that would allow city and county jails that generate revenue from inmate phone calls to retain such revenue to fund inmate programs, so long as it is not excessive. The amendment also would allow the Jail Standards Board to consider the acceptable rates set by the Federal Communications Commission in setting comparable rates for city and county jails.

Sen. Mike Groene of North Platte

filed a motion to bracket the bill until April 18, 2018. He said the bill would impose a one-size-fits-all solution on something that is not a problem statewide.

"My opposition has nothing to do with opinions on punishments or rights of felons or inmates," Groene said. "It strictly has to do with local control. The system isn't broken and it doesn't need any more guidance."

Gordon Sen. Tom Brewer agreed, saying it might make sense in large counties like Douglas and Lancaster, but that it would amount to an unfair cost shift for smaller counties.

"The fact remains that we're going to shift a cost to the counties who are already overburdened," he said. "What is so broken now that we have to change the way we do business?"

The bracket motion failed on a 5-28 vote and the Legislature moved to the next item on the agenda without taking action on the bill.

Sovereign city proposal fails

A proposal to create a new, sovereign city would be placed on the ballot for voters' consideration under a measure debated by lawmakers March 7.

LR269CA, introduced by Columbus Sen. Paul Schumacher, would place the issue on the November 2018 general election ballot. If approved by voters, the Legislature would be constitutionally authorized to delegate complete or partial sovereignty to an area of the state, not to exceed 36 square miles in area, with a population density of 10 people per square mile. The sovereignty agreement would not exceed 99 years.



Sen. Paul Schumacher

Schumacher said the measure

would promote a statewide discussion about the trends, possibilities and consequences impacting the future of Nebraska. He said a large international company like Amazon could view the project as a perfect self-contained city to support its corporate goals.

“This concept is about the long-range future of the state and the issues that we face,” he said. “Some are uncomfortable, some are difficult and some would be easier just to avoid. But they are at the core of our future.”

Crete Sen. Laura Ebke supported the measure. She said the idea would not appeal to everyone, but could be an interesting experiment in small government.

“For those of us who think taxes are too high, this idea is very appealing,” Ebke said. “It’s exciting to think about the possibilities.”

The newly created city could be the thing that sparks significant economic development in western Nebraska, said Henderson Sen. Curt Friesen in support.

“When you look at the risk, it’s not that great,” he said. “We might find out what free enterprise can do when it’s untethered from all the fees and permitting.”

Opposed to the measure was Gothenburg Sen. Matt Williams. He agreed that there is a need to do something to encourage growth in rural Nebraska, but he doubted that a newly created city could sustain itself.

“We want to keep rural America and rural Nebraska alive, but doing that in an artificial way won’t work because many of these things require population density,” Williams said. “What does work is making sure we maintain our strong education system and maintaining our strong medical facility institutions.”

Sen. Carol Blood of Bellevue also opposed the measure. She said

Schumacher’s comparison to Brasilia, a planned city in Brazil that promised similar “utopian” ideals, is concerning because the project has been a failure. The city was planned to accommodate 500,000 people, both rich and poor, Blood said, but is now home to over 2.5 million primarily rich people.

“We promote utopia and that is what is being done here,” she said. “I have yet to see a utopian government or idea truly be successful because usually the people who benefit from it are the rich and the rich.”

The proposed constitutional amendment failed to advance on a 19-19 vote. It is unlikely to be debated again this session.



NRD levy extension stalls

A bill that would extend a levy authority for certain natural resources districts in central and western Nebraska failed to advance from the first round of debate March 7.

Introduced by Sen. Curt Friesen of Henderson last session, LB98 would extend the three-cent levy authority for NRDs located in fully or over-appropriated river basins from fiscal year 2017-18 to FY2025-26. The levy may be used only for ground water management and integrated management programs under the Nebraska Ground Water Management and Protection Act.

Friesen said that the NRDs use the 3-cent levy to meet streamflow requirements under state-mandated integrated water management plans,

which are designed to reduce water use in the Republican and Platte river basins. Removing the levy would not eliminate that requirement, he said.

“To say that you’re going to take away a tool of somebody that’s managing the most precious resource we have in the state is very shortsighted and shouldn’t be done,” he said.

Sen. Dan Hughes of Venango supported the bill, saying that the levy helps pay for technology, such as soil moisture probes, that helps farmers use water more efficiently. If the Legislature does not extend the levy, he said, it would take away a tool that some NRDs are using to extend the life of the Ogallala Aquifer and sustain irrigated agriculture in western Nebraska, something that benefits the entire state.

“This 3 cents is necessary,” Hughes said. “Just because the NRDs are not all using it today doesn’t mean they’re not going to use it in the future.”

Sen. John Stinner of Gering also supported extending the levy, saying that NRDs will need it to meet even more stringent streamflow requirements in coming years. If the NRDs cannot fund the necessary water management projects, Stinner said, they could respond only by reducing irrigation allocations for farmers, devastating agricultural production and hurting the state’s economy.

“If we go forward without [LB]98,” he said, “God help us.”

Sen. Steve Erdman of Bayard opposed the bill, saying that extending the levy authority amounts to a property tax increase. The NRDs’ remaining 5.5-cent taxing authority would be enough to meet water management requirements in the future, he said.

“This has got to stop,” Erdman said. “That’s why we put sunsets in place.”

Sen. Mike Groene of North Platte



Sen. Curt Friesen

agreed, saying that the 3-cent levy is “unnecessary” and “frivolous” and that NRDs have not used it to make substantive changes to water management practices in fully and over-appropriated basins.

“We need to send a message across the state that we’re serious about property tax relief,” he said. “This is one little straw on the taxpayers’ back that we can pick off.”

After 90 minutes of debate on general file, Friesen filed a motion to invoke cloture, or cease debate and vote on the bill. The motion failed 27-14. Thirty-three votes were needed.

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

Records exemption for public power utilities sought

The public power industry would not be required to provide certain records to the public under an amendment considered by the Natural Resources Committee in a hearing March 7.

Introduced by Sen. Dan Hughes of Venango, LB822 was proposed to make a technical change to state law relating to the duties and responsibilities of the state Department of Natural Resources.



Sen. Dan Hughes

Hughes has filed an amendment that would replace the bill. Under the amendment, the public power industry would not be required to release proprietary or commercial information if it would benefit business competitors.

Hughes said he introduced the amendment in response to a Nebraska Supreme Court decision made in February. The justices reversed a Platte County District Court’s decision that

would have allowed the Nebraska Public Power District to withhold proprietary information from a competitor that had requested documents showing cost and revenue information for each of NPPD’s generation units.

The Supreme Court wrote that, in order to withhold the information, NPPD had to show that releasing it would give an advantage to competitors and serve no public interest. It overturned the lower court’s decision because NPPD did not prove the second element of that two-pronged test.

Hughes said the decision could have significant effects on Nebraska’s public power utilities and ratepayers. Both courts interpreted relevant public records statutes differently, Hughes told the committee, and both speculated on the Legislature’s intent.

“I believe that the courts want the Legislature to clarify its intent as to whether we want public power in Nebraska to open its records to give an advantage to its competitors,” Hughes said.

Testifying in support of the amendment on behalf of the Lincoln Electric System and the Nebraska Power Association was LES vice president and general counsel Shelley Sahling-Zart. She said that the Supreme Court’s ruling is “an immediate concern” and that AM2191 would allow LES and other public power utilities to protect proprietary and confidential information that would give private competitors an edge.

The Nebraska Athletic Department’s budget, schedules and employee salaries are freely available, Sahling-Zart said, just as similar information is available from other public entities, including utilities. But head football coach Scott Frost’s playbook is not.

“How competitive would the Husker football team be if he was required to divulge the Husker playbook,

but nobody else in the Big 10 had to divulge theirs?” she said. “What we’re asking you to do is protect our playbook.”

Tim Burke, president and CEO of the Omaha Public Power District, also testified in support of the amendment. He said the Supreme Court’s ruling could have a chilling effect on the state’s economic development because companies would not want to share confidential information with public power utilities if they cannot keep it secret.

“Requiring public power utilities to disclose this proprietary information will negatively impact the strides utilities have made here in Nebraska in attracting new business and could considerably hamper our future efforts,” Burke said.

Chris Dibbern, general counsel for the Nebraska Municipal Power Pool and the Municipal Energy Agency of Nebraska, also spoke in support. She said that MEAN’s participation in the Southwest Power Pool—a group of utilities and power generation companies that oversees electricity infrastructure in Nebraska and 13 other states—depends on its ability to keep confidential certain electric power generation parameters and cost information.

Failing to pass Hughes’s proposal would give competitors an advantage over public power, Dibbern said.

“Simply put,” she said, “ratepayers would be harmed, communities would be harmed, and the Nebraska Supreme Court turned back to you, the lawmakers, to clarify this situation.”

Testifying in opposition to the bill was Korby Gilbertson, speaking on behalf of Media of Nebraska. The state’s print and broadcast news outlets are concerned that the proposed exemption would give broad authority to public power utilities to determine what information they disclose to the public.

“We want to help them be able to protect specific information,” Gilbertson said, referring to public power entities. “We just want to make sure that [the exemption is] not so broad that they lose their accountability to the citizens of Nebraska.”

Also testifying in opposition was Dave Bundy, editor of the Lincoln Journal Star. Any amendment that addresses the Supreme Court’s decision should allow the public power industry to compete in a way that minimizes harm to transparency, he said.

“An erosion of those public records moves these public power providers—or at least creates the appearance of a move—further from the public and closer to a private, profit-driven operation, driving a wedge between themselves and the communities that they were expressly drafted and created to serve.”

Mikel Lauber, news director for 10/11 News in Lincoln, also testified in opposition. He said restricting information that could be in the public interest erodes public trust in its institutions and limits taxpayers’ ability to make informed decisions about those institutions.

“The amendment would very clearly allow information that could serve a public purpose to be withheld,” he said. “That’s concerning for us, and I think it would be for our viewers, too.”

The committee took no immediate action on the amendment.

TRANSPORTATION & TELECOMMUNICATIONS

Greater child seat requirements advanced

Child safety seats would get more use under a bill advanced by lawmakers March 8.

Under current law, any child up to age 6 must be secured in an approved child safety restraint device that is correctly installed in the vehicle. LB42, introduced by Omaha Sen. Robert Hilke-
mann, would raise this age to 8.

The device would have to be located in a vehicle’s rear seat, if available. Additionally, the bill would require that all children up to age 2 use a rear-facing device until the child outgrows the device manufacturer’s height or weight requirements.

Hilke-
mann said while some parents may do their own research into height and weight requirements for child safety seats, many do not. It is up to the Legislature to set appropriate standards, he said.

“I’m sure there are some that do but some simply put their trust in the laws of the state of Nebraska,” Hilke-
mann said. “They accept and comply based on what this body determines is safe and with today’s laws, we are doing them a disservice.”

Omaha Sen. Theresa Thibodeau supported the bill, saying that a rear-facing seat lessens the physical impact of a car accident.

“Children’s bones don’t fully develop and they’re not strong enough to hold the impact of an airbag until they’ve gone through puberty,” Thibodeau said. “This protects the children of our state—our state’s most vulnerable people.”

Also supporting the bill was Sen. Lydia Brasch of Bancroft. She said the Legislature must ensure the safety of children, especially in dangerous situations.

“We do need to protect them and remind citizens of how vulnerable they



Sen. Robert Hilke-
mann

are to injury,” Brasch said. “It would ensure that they abide by laws that protect them for life.”

The bill would impose additional unnecessary government regulations, said Bayard Sen. Steve Erdman in opposition to the bill. He said laws already do a good job in keeping kids safe.

“We already have an opportunity to restrain our kids according to the law we currently have,” Erdman said. “Parents need to be able to make decisions for their own children.”

Following the adoption of a technical Transportation and Telecommunications Committee amendment, senators advanced the bill to select file on a 36-3 vote.

Creation of 911 service committee advanced

The Legislature advanced a bill March 9 that would improve access to 911 services throughout the state.

A bill passed by the Legislature in 2016 authorized the Nebraska Public Service Commission to organize funding for a statewide system capable of next-generation service. This would enable public safety answering points to receive 911 calls via voice, text or video using internet protocol.

LB993, introduced this year by Henderson Sen. Curt Friesen, would create the 911 Service System Advisory Committee to assist the commission in its mission to fully implement the 911 service system.

Friesen said the bill is the result of a 2017 interim hearing on the ongoing development of the next-generation service and would move the project forward to more adequately serve all Nebraskans.



Sen. Curt Friesen

Eighty percent of calls received at 911 centers are from wireless phones, he said, but the current system cannot take advantage of phone location services to identify where a caller is calling from.

“This would allow for a seamless flow of information so a dispatcher from a 911 center can direct help immediately to the caller,” Friesen said. “First responders would know where to go, even if the caller doesn’t know where he or she is.”

Membership of the advisory committee would include the 911 director and the state chief information officer, as well as:

- four representatives of public safety agencies within the state, including an emergency manager, member of a law enforcement agency, member of a fire department and a member of an emergency medical service;
- two county officials or employees;
- two municipal officials or employees;
- two representatives of the telecommunications industry;
- two managers of public safety answer points, one of whom is employed by a county sheriff;
- one representative of the Nebraska Association of County Officials; and
- one representative of the League of Nebraska Municipalities.

Of the 14 members appointed to the committee, at least four members must be appointed from each of the state’s three congressional districts. Each would serve a term of three years.

The commission would be tasked with creating a mechanism for determining the level of funding available to local governing bodies, public safety answering points and third-party service or infrastructure providers from the 911 Service System Fund.

Costs incurred for providing 911 service, acquiring new equipment, training personnel and maintaining, upgrading or modifying services all could be eligible for funding under LB993.

Additionally, the commission would be able to apply for federal funds available for next-generation 911 service and could distribute the funds accordingly.

Lincoln Sen. Suzanne Geist spoke in support of the bill. She said improving the technology used by 911 centers is a statewide public safety issue.

“This takes a step forward in helping us as a state upgrade our technology so that we can, through GIS tracking, find the exact location of a cell phone call,” Geist said.

As originally introduced, the bill would have provided legal immunity to people installing, maintaining or providing service, except in cases of failure to use reasonable care or for intentional acts.

A Transportation and Telecommunications Committee amendment instead would establish a standard of actions or inactions that constitute gross negligence or intentional wrongful acts. In effect, this would mean a plaintiff would have to meet a higher burden of proof in alleging negligence.

The committee amendment also would integrate the Enhanced Wireless 911 Fund into the 911 Service System Fund.

Columbus Sen. Paul Schumacher questioned the wisdom of raising the negligence standard for live-saving technology that costs millions of dollars.

“I would think we would not need to change the standard to one that’s really strict,” he said. “What’s the justification for making it darn near impossible to sue a negligent provider?”

Sen. Ernie Chambers of Omaha agreed, saying that the original standard for negligence only asks that people

perform a job in the same way as a person of ordinary intelligence would under the same set of circumstances.

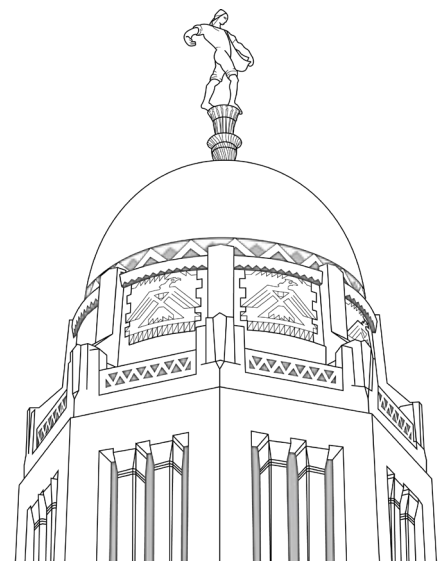
“I’m attacking the concept that people who are going to do a job could be told by the Legislature that they don’t even have to be careful when they do it,” he said. “That’s what happens when you do away with the standard of ordinary negligence.”

Service providers would be hesitant to even submit a proposal to be part of the next-generation 911 system without the changes proposed in the committee amendment, said Lincoln Sen. Mike Hilgers.

“I share the baseline concern that we ought not deviate from a negligence standard without a good policy justification to do so,” he said. “However, without a gross negligence standard, it would discourage providers from being engaged in the 911 network.”

To address concerns raised about the negligence standard, Friesen introduced an amendment to the committee amendment that would remove the proposed language. It was adopted 34-0.

Following the 36-0 adoption of the committee amendment, senators advanced the bill to select file on a 39-0 vote. ■



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The Concordia Jr.-Sr. High School Concert Band performed in the Capitol's Rotunda March 8 as part of Music Education Week in the Capitol.