

UNICAMERAL UPDATE

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Session ends, eight senators depart



Gov. Pete Ricketts greets senators as he is escorted into the legislative chamber to deliver his end of session remarks.

The second session of the 105th Legislature adjourned sine die April 18.

Six senators are leaving the Legislature due to term limits: Bancroft Sen. Lydia Brasch, Omaha Sen. Burck Harr, Omaha Sen. Bob Krist, O'Neill Sen. Tyson Larson, Columbus Sen. Paul Schumacher and Papillion Sen. Jim Smith. Two more, Lincoln Sen. Roy Baker and Heartwell Sen. John Kuehn, have decided not to seek reelection to a second term.

In his remarks, Gov. Pete Ricketts commended senators for working together to pass legislation to prevent opioid abuse, increase speed limits on the state's highways, ensure Nebraska students can read at grade level by the end of third grade and remove onerous occupational licensing regulations.

"I think this session underscores the importance of that collaboration—working together—and how by doing that we can accomplish much," he said.

Turning to tax policy, Ricketts praised lawmakers for passing a bill intended to prevent a nearly \$200 million tax increase on Nebraskans due to changes in the federal tax code last year. However, he said, the Legislature failed to pass a bill that would provide property tax relief despite support from the public and various agricultural and business groups.

Ricketts also thanked the Ap-

propriations Committee for tackling a \$200 million budget shortfall this session while making investments in child welfare services, services for those with developmental disabilities and corrections.

"Once again, by working together, we closed that gap, we balanced our budget, and we did it without raising taxes," he said.

Speaker Jim Scheer of Norfolk told lawmakers they had accomplished much during the 60-day session, but they left several issues—such as property tax reform, economic development, Medicaid expansion, marijuana policy and others—for future legislatures to address. The speaker encouraged senators who will return next session to spend the interim thinking about what they would like to accomplish.

"Start working with other senators this summer on the big issues," he said. "Sit down with those outside of your usual circle of support to explore ways that compromise can be reached."

The first session of the 106th Legislature is scheduled to convene Jan. 9, 2019. ■



Sen. Jim Scheer thanked his fellow senators for trusting him to serve as speaker for the past two years, saying, "It has truly been my honor to serve in this capacity."

Operation of autonomous vehicles approved

Lawmakers passed a bill April 18 that will allow driverless cars to travel on the state's roads.

LB989, as originally introduced by Lincoln Sen. Anna Wishart, would have authorized a city of the primary class to conduct a pilot project to test autonomous vehicles, which operate without a human operator. Currently, Lincoln is the only primary class city in the state.



Sen. Anna Wishart

A proposed Transportation and Telecommunications Committee amendment would have authorized the testing of autonomous vehicles statewide under a special permit authorized by the state Department of Motor Vehicles.

However, O'Neill Sen. Tyson Larson introduced an amendment, adopted 32-1 April 5, that replaced both the committee amendment and the original bill. As amended, these provisions authorize the operation of an autonomous vehicle on all state roads and highways, as long as the vehicle is capable of operating in compliance with traffic and motor

vehicle safety laws.

Wishart said state statute currently is silent on the issue of autonomous vehicles. Implementing a regulatory framework would help Nebraska to become a national leader in autonomous vehicle technology, she said.

An autonomous vehicle may or may not contain a human driver. If a human driver is present in the vehicle, he or she must be a licensed driver and covered by insurance.

The amended bill also authorizes the operation of an on-demand autonomous vehicle network, which could provide transportation of persons or goods, including for-hire transportation or public transportation.

Political subdivisions will be prohibited from imposing any additional performance requirements or taxes that relate specifically to the operation of an autonomous vehicle.

Henderson Sen. Curt Friesen introduced a motion to recommit the bill to the Transportation and Telecommunications Committee. He said fully autonomous vehicles still have not been approved by the Federal Highway Administration and are meant to be used only in pilot programs.

"The risk is too great to just open this up to all vehicles," Friesen said. "We have no process in place where we can suspend this if something goes wrong."

The motion failed on a 14-16 vote. Papillion Sen. Jim Smith introduced an amendment, adopted 33-9 April 9, which requires the state Department of Motor Vehicles to consult with railroad companies before providing an exemption that would allow fully autonomous vehicles to cross railroads.

An amendment introduced by Friesen would have removed a provision allowing autonomous vehicles to deliver goods. It failed on a 20-26 vote. He then introduced a series of motions and amendments in an effort to extend debate on the bill.

Wishart offered a motion to invoke cloture, or cease debate and vote on the bill April 9. The cloture motion was adopted 37-8. Thirty-three votes were needed.

Lawmakers then voted 32-10 to adopt the committee amendment and advanced the bill to select file 33-13.

The bill was passed by the Legislature April 18 on a 34-8 vote. ■

UNICAMERAL UPDATE

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THE NEBRASKA LEGISLATURE'S OFFICIAL NEWS SOURCE SINCE 1977

THIS YEAR MARKS THE END OF SERVICE FOR EIGHT SENATORS. BEFORE ADJOURNMENT, DEPARTING SENATORS ADDRESSED THEIR COLLEAGUES, REFLECTING ON THEIR TIME IN THE NEBRASKA UNICAMERAL.



SEN. ROY BAKER

“I’ve never ceased to appreciate the ability to walk into this marvelous building each day.”



SEN. LYDIA BRASCH

“[Eventually] this will all be a humbling memory of the honor and privilege to serve an incredible state.”



SEN. BURKE HARR

“It has been a privilege—no matter how short—to be a steward of this unique institution.”



SEN. BOB KRIST

“I was appointed and came in and within 10 days we were in a special session. I had a 3-hour orientation and a 10-year tutelage.”



SEN. JOHN KUEHN

“My service would not have been possible without the sacrifice of many, many [friends and family] who may not realize the role they’ve played in my service.”



SEN. TYSON LARSON

“I’ve cherished my time in this body and all that I’ve learned, but at the ripe age of 32, I’m ready to move on to the next chapter of my life.”



SEN. PAUL SCHUMACHER

“For now, in this fleeting moment, time draws to a close and I must take leave of this chamber.”



SEN. JIM SMITH

“There’s no avoiding the challenges, but I’m confident there are solutions to be found when each legislator looks beyond the borders of his or her district, seeks understanding and fosters statewide views and perspectives.”

AGRICULTURE

Prairie dog management act repealed

Lawmakers voted April 18 to repeal the Black-Tailed Prairie Dog Management Act.

The act, passed by the Legislature in 2012, authorizes county boards to adopt and carry out coordinated management programs to control black-tailed prairie dog colonies on property within the county.

The law requires a landowner to effectively manage prairie dog colonies on his or her property to prevent them from expanding to adjacent property if the owner objects to the expansion. If a landowner does not provide evidence that a colony is being managed within 60 days of a county board's notice, the county may enter upon the property to manage the prairie dogs.

The landowner would be responsible for any expenses, and unpaid assessments would become a lien on the property. Landowners who do not comply also could receive a fine of up to \$1,500. The law allows a county to file a foreclosure suit to recover the debt.

Omaha Sen. Ernie Chambers, sponsor of LB449, has said the act violates property owners' rights by allowing government agents to come onto their land without notice when a neighbor makes an unverified complaint about prairie dogs on the property.

Senators voted 26-13 to pass the bill, repealing the law.



Sen. Ernie Chambers

APPROPRIATIONS

State funds to counties for jail incident costs amended, approved

Lawmakers passed a bill April 11 intended to assist counties facing costs from correctional institution incidents.

LB861, introduced by Syracuse Sen. Dan Watermeier, requires the state to pay a county's prosecution costs that arise from a single correctional institution incident—defined as one in which a crime allegedly is committed by one or more inmates confined in a state correctional institution—if those costs exceed the threshold amount for the county.

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 is determined using valuations for the year in which the correctional institution incident occurred.

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

Watermeier offered an amendment during select file debate April 9, adopted 36-0, which clarified that the risk management division of the state Department of Administrative Services has the power to receive and investigate claims under the bill's provisions.

The amendment also struck from the bill provisions of LB883, origi-



Sen. Dan Watermeier

nally introduced by Omaha Sen. Burke Harr, which were amended into LB861 during general file debate. The provisions outlined a process by 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.

Following adoption of the Watermeier amendment April 9, the bill was advanced to final reading by voice vote. Lawmakers passed the bill April 11 on a vote of 44-0.



Sen. Burke Harr

BANKING, COMMERCE & INSURANCE

Restrictions approved for payday lenders

Providers of short-term, delayed deposit loans will be required to provide more information to borrowers under a bill passed by lawmakers April 18.

To secure a delayed deposit loan—often called a payday loan—a borrower typically submits a personal check for the loan amount, which is then held and cashed by the lender at the end of the loan period, which typically is 34 days.

LB194, introduced by Omaha Sen. Tony Vargas, requires that a lender provide written notice to a borrower including the name of the borrower, transaction date and amount, payment due date and total payment



Sen. Tony Vargas

due and the total fees imposed on the transaction, both as a dollar amount and an annual percentage rate.

The notice also will state that such loans should be used only to meet short-term cash needs, that the total cost of a transaction cannot exceed \$500, that the borrower has the right to rescind a transaction before the end of the next business day and that the borrower has the right to rescind authorization for an electronic payment.

Any fees charged to individuals on active military duty or their spouses and dependents cannot exceed the amount allowed under federal law.

If a check held by a lender is returned unpaid due to insufficient funds, a closed account, a stop-payment order or other reason, the lender can exercise all civil means to collect the face value of the check. The lender can collect one returned check charge for each delayed deposit, not to exceed \$15, plus court costs and attorney's fees.

A borrower who is unable to pay back a loan when due can request an extended payment plan once in any 12-month period. The bill also requires lenders to accept prepayment of a loan from a borrower without any penalty.

Finally, lenders will be required to provide information annually to the state Director of Banking and Finance, who will submit a final report to the Legislature.

The bill passed on a 49-0 vote.



Stronger scrutiny approved for police misconduct cases

Lawmakers passed a bill April 18 that eliminates certain conflicts of interest and provides accountability and transparency in Nebraska State

Patrol investigations.

LB791, introduced by Crete Sen. Laura Ebke, requires law enforcement agencies to document the reason for and circumstances surrounding an officer's separation of service from that agency. The head of that agency must then submit the report to the Nebraska Crime Commission.

Additionally, agencies will be required to submit a more detailed report to the Nebraska Crime Commission if an officer is terminated from employment or allowed to resign in lieu of termination for conduct that constitutes incompetence, neglect of duty, incapacity, dishonesty, a guilty plea to a felony charge, a felony conviction or another violation of the officer's oath of office, code of ethics or statutory duties.

The report must include a summary of the relevant allegations and identification of any witnesses to such allegations. The law enforcement agency report must be submitted within 30 days of the employee's termination.

A law enforcement officer terminated under such circumstances will be required to sign a waiver upon application for employment with a new agency that allows the prospective employer to contact the officer's former agency and obtain a copy of the report detailing his or her separation from previous service.

The former employer will be required to provide the report if requested. The person designated to prepare such a report will be immune from civil liability if he or she provides the information in good faith.

Finally, the bill allows state employees to report sexual harassment directly to the state Department of



Sen. Laura Ebke

Administrative Services. The investigation will be conducted either by the department or the state agency where the employee works.

The department or agency conducting the investigation will maintain the confidentiality of the reporting employee and any other person participating in such an investigation except in cases when disclosure is authorized in writing by the person or when necessary to conduct the investigation or impose discipline. Additionally, the person against whom the allegation is made will be informed of the reporting employee's identity.

The state agency employing the reporting employee will be prohibited from retaliating or discriminating against the employee or any other person for participating in the investigation.

A hiring agency will have authority to subpoena records only from the Nebraska State Patrol. Law enforcement agencies will be required to retain employment records for five years after an employee's separation from the agency.

During general file floor debate April 9, Grand Island Sen. Dan Quick spoke in opposition to the bill. LB791 would create a precedent for courts to follow, he said, that could negatively affect a union's collective bargaining authority.

"We already have a law within the state to regulate how the process works and I'm afraid we're going to lose that process for other unions down the road," Quick said.

The bill would have only a limited impact on collective bargaining, Ebke said, and only for the state patrol, which she said agrees with the proposed changes.

"It's important for us to have a level of confidence that those who are doing things wrongfully are being appropri-

ately dealt with and to have transparency through the process,” Ebke said.

Nothing in the state patrol disciplinary procedures or collective bargaining agreement:

- limits the discretion of the superintendent of law enforcement and public safety from disclosing the status of an internal investigation or discipline to the Legislature, Nebraska Commission on Law Enforcement and Criminal Justice or a complainant;
- limits the consideration by the state patrol of disciplinary action in a prior case that occurred within the 10 years preceding the date such progressive discipline is imposed;
- limits the misconduct for which a new disciplinary proceeding may be initiated that occurred within the two years preceding the date discipline is imposed;
- requires the release of reports and materials concerning an internal investigation of a member alleged to have committed a Class I misdemeanor, felony or an allegation involving dishonesty prior to the initial investigation interview;
- limits or restricts access of individuals conducting the internal investigation to materials regarding a member under investigation; or
- prevents, limits or restricts access by the commission to internal investigation reports or materials.

After several hours of debate, Ebke offered a motion April 9 to invoke cloture, or cease debate and vote on the bill. The cloture motion was adopted 34-3. Thirty-three votes were needed. Lawmakers then voted 35-0 to advance the bill to select file.

The bill then passed April 18 on a 38-2 vote.

Changes approved for workers' compensation settlements

Lawmakers passed a bill April 18 that will help injured workers receive settlement payments more efficiently.

LB953, introduced by Thurston Sen. Joni Albrecht, requires the Workers' Compensation Court to approve a lump-sum settlement in cases when the employee is eligible for Medicare, is a Medicare beneficiary or has a reasonable expectation of becoming eligible for Medicare within 30 months of the time of settlement.



Sen. Joni Albrecht

The lump-sum settlement also will apply in cases when the medical expenses incurred for treatment of the injury will not fully be paid as part of the settlement if the employee's attorney affirms that the settlement is in conformity with the compensation schedule and in the best interests of the employee or his or dependents.

The bill eliminates a requirement for a duly-executed release if a lump-sum settlement is approved by the court.

Finally, it clarifies that the 50 percent penalty imposed on settlement payments made more than 30 days late to an employee still would apply unless the court enters an order of dismissal with prejudice.

Medicare's interests must be approved by the court if the employee's attorney affirms that the resolution of payment of disputed medical, surgical or hospital services is in conformity with the compensation schedule and in the best interests of the employee or his or her dependents.

The application for a lump-sum settlement must include a statement explicitly stating that the parties have considered the interests of Medicare and have taken reasonable steps to protect any interests of Medicare.

The court will not be required to approve other areas of the settlement.

The bill includes provisions of LB784, introduced by Omaha Sen. Tony Vargas. These prohibit contractors and employers who have unpaid fines for violating the Employee Classification Act from entering into a contract with the state or any political subdivision until the fines are paid.



Sen. Tony Vargas

The bill passed on a 48-0 vote.

EDUCATION

Certificate exemption for early childhood education teachers created

A bill meant to address a shortage of qualified early childhood education teachers in rural Nebraska received final approval by the Legislature April 11.

Introduced by Gering Sen. John Stinner, LB803 as amended authorizes the state Board of Education to adopt rules and regulations that exempt a prekindergarten program from the requirement that all teachers and administrators in prekindergarten programs hold a valid certificate or permit.



Sen. John Stinner

The bill passed on a vote of 47-0.

Social worker approved for each ESU

Senators approved a proposal April 18 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 creates a fund for a collaborative school behavioral and mental health program. Once the initiative receives \$3.6 million in funding, each ESU or the ESU coordinating council may hire a social worker 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.

As amended on select file, the program’s funding would be limited to private donations, and it would end in 2022.

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

The coordinating council will 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 will create and maintain a statewide map of behavioral and mental health services.

Each school district with which a social worker interacts is required designate a contact person for that social worker at each school in the district.

As amended on select file, 26-5, both public and private schools may



Sen. Lynne Walz

participate in the program, and the state Department of Education will administer the fund.

The bill passed on a vote of 31-15.

Special instruction for dyslexic students approved

Nebraska schools are required to provide special reading instruction for students with dyslexia beginning this fall under a bill passed by lawmakers April 11.

LB1052, introduced by Lincoln Sen. Patty Pansing Brooks, requires schools to provide students who are identified as exhibiting characteristics of dyslexia with evidence-based literacy instruction using a multisensory approach. A technical assistance document created and distributed by the state Department of Education will provide guidance on that instruction.



Sen. Patty Pansing Brooks

The document also provides information on dyslexia’s characteristics, its associated conditions and indicators and the screening, evaluation, instruction and intervention for dyslexia. Information will be distributed to all school districts, educational service units and teacher education programs in the state to promote awareness of dyslexia.

LB1052 prohibits school districts from requiring a student who exhibits characteristics of dyslexia to obtain a medical diagnosis in order to receive interventions.

The bill also requires that each teacher education program approved by the State Board of Education include dyslexia instruction in its initial program course requirements beginning in July 2019.

Lawmakers voted 44-0 pass the bill.

Update to Americanism statute stalls

The Legislature debated a bill April 9 intended to ensure civic competence among Nebraska students.

Under current law, each school district’s board is required to appoint three members to an Americanism committee that inspects and approves the textbooks used in the teaching of American history and government. As introduced by Bancroft Sen. Lydia Brasch, LB1069 would make several updates to state law regarding the committees’ responsibilities and the teaching of American history and social studies.



Sen. Lydia Brasch

Brasch said the bill is meant to ensure that schools give students foundational knowledge of American history and civics—subjects that she fears some schools do not emphasize.

“We’re falling behind on that knowledge,” she said.

Senators voted 27-13 on March 29 to place the bill on general file, even though the Education Committee had taken no action to advance it. This unusual maneuver requires a majority vote of the Legislature.

A pending amendment introduced by Brasch would replace the bill. It would require each Americanism committee to hold at least three public meetings annually and to keep minutes from those meetings. The committee would ensure that the school’s social studies curriculum is aligned with the standards adopted by the state Board of Education and “teaches and assesses foundational knowledge in civics, history, economics, financial literacy and geography.”

The committee also would be required to ensure that the district

develops and gives assessments to eighth- and 11th-graders to measure mastery of the social studies standards. The assessments would include, but not be limited to, the civics portion of the naturalization exam administered by U.S. Citizenship and Immigration Services. The scores for each student would be made available to the parents or guardians of the student.

Sen. Mike Groene of North Platte supported the amendment. He said the state Department of Education asked for clarification of the Americanism statute—which has been in place since 1949—before it revamps state social studies standards next year. LB1069 would modernize the law in several ways, Groene said, including by adding Dr. Martin Luther King Jr.’s birthday and American Indian Day as occasions on which the superintendent of every school holds patriotic exercises.

“This isn’t American pride,” Groene said. “This is teaching civics, how to be an American.”

Sen. Steve Halloran of Hastings also supported the amendment, saying that requiring students to take the civics exam would teach them foundational knowledge of American history and government, including the Constitution, the three branches of government and states’ rights.

“We can’t expect our students to graduate with less knowledge than new immigrants will have when they’re successful at becoming new citizens,” he said.

Sen. Kate Bolz of Lincoln said that any changes to curriculum regarding American history and civic engagement should include the movements to secure civil rights, women’s rights, workers’ rights, voting rights and rights for people with disabilities.

“Debating a bill about Americanism without debating our history and

about the rights that have been fought for by all kinds of people who have overcome oppression is not, to me, a debate about Americanism at all,” she said.

Lincoln Sen. Adam Morfeld opposed the amendment, saying that it emphasizes rote memorization of facts instead of teaching critical thinking skills and civil discourse.

“We build good citizens by ensuring that people have critical thinking skills and the ability and the confidence to tackle issues in their community,” he said.

The Legislature adjourned before voting on the amendment or the bill. LB1069 is unlikely to be scheduled for additional debate this session.

Education cleanup bill passed with reading intervention programs

Senators approved a bill April 11 that makes several technical changes to state education law. As amended, it includes provisions of a bill intended to ensure that Nebraska students are able to read at or above grade level by third grade.

LB1081, introduced by the Education Committee, is an annual cleanup bill that includes technical changes requested by the state Department of Education.

The bill requires the Learning Community coordinating council to file an annual financial report with the department and authorizes the commissioner of education to direct that learning community funds be withheld if the report is not filed. It also requires the coordinating council to complete an audit of its books, accounts, records and affairs at least once every three years.

The department no longer is required to file several reports with the coordinating council, including

a census count of 5- to 18-year-olds, an end-of-the-school-year annual statistical summary, an annual financial report and a fall membership report.

The bill eliminates the requirement that school districts submit poverty and limited English proficiency plans to the department and the coordinating council.

LB1081 also changes a current provision that “no more than three” schools may be designated priority schools to “no less than three.” It reduces from five to three the number of years that a school can be designated a priority school before the board reevaluates the school’s progress plan.

Finally, the bill requires school boards to collaborate with their county attorney to review the rules and standards for student conduct that would require the school to contact law enforcement.

The bill was amended on general file to include provisions of LB651, introduced by Elkhorn Sen. Lou Ann Linehan, which is intended to provide intensive interventions for students identified as having a reading deficiency.



Sen. Lou Ann Linehan

These require each school district to administer an approved reading assessment three times during the school year to all students in kindergarten through third grade. Students who score below a set threshold would be identified as having a reading deficiency, and school districts would be required to provide those students with a supplemental reading intervention program.

The program would be implemented during regular school hours in addition to regular reading instruction unless otherwise agreed to by a parent or guardian. The bill also would require schools to make avail-

able a summer reading program for students in first grade or higher who are identified as continuing to have a reading deficiency at the end of the school year.

As amended on select file April 9 35-0, the reading intervention programs may include several intensive intervention strategies, such as daily targeted small-group reading, parent training workshops and access to before-school or after-school supplemental reading intervention.

The bill passed on a vote of 46-1.

EXECUTIVE BOARD

Agency reporting regulation updates approved

Reporting requirements to the Legislature from state agencies were updated by a bill passed April 11.

LB751, introduced by the Legislative Performance Audit Committee, requires that only reports of regulations mandated by law—rather than all regulations—be reported to the Legislative Performance Audit Committee. Agencies are required to report to the committee as to why regulations have not been timely promulgated.

The bill also removes a requirement that the Executive Board or the appropriate standing legislative committee receive annual reports regarding mandatory regulations that have not been promulgated within the time frame required by law. Instead, the bill requires agencies to include that information in the reports that they already provide to the Legislative Performance Audit Office.

The Executive Board or a standing committee also may request the information.

LB751 passed on a 48-0 vote.

Legislative oversight of mental health facilities approved

The Legislature voted April 11 to create a special legislative committee to look into state-licensed care facilities housing residents diagnosed with mental illness.

Fremont Sen. Lynne Walz, sponsor of LR296, said Nebraskans who struggle with persistent and severe mental illness deserve better treatment than they are receiving from facilities that are licensed by the state Department of Health and Human Services.

She said that many facilities across the state are not providing residents with the most basic medical and nutritional needs. The DHHS licensure inspection system has not responded effectively to reports of “shocking” treatment, she said, including substandard living conditions, neglect, abuse, and violations of independence and trust.

For example, Walz said, an 80-page report on conditions at the Life Quest state-licensed mental health facility in Palmer from 2017 “sat on a desk” at DHHS and was not acted upon. The failure of the state’s oversight safeguards resulted is a crisis, she said, in which a resident at the facility—a female veteran—died after three days of severe illness.

“The report of events that led to the veteran’s death is one of the most appalling things I’ve ever read,” Walz said. “I knew I could not in good conscience disrespect her life with inaction.”

Lincoln Sen. Kate Bolz spoke in favor of the proposal, calling an oversight committee “the right step at the right time.”



Sen. Lynne Walz

She said that the issue is not new and that Disability Rights Nebraska, the state’s federally-designated protection and safety organization, has been investigating concerns in these facilities dating back to 2012. Several bills and resolutions have been brought forward as a result, she said, but have not been acted on.

“We have a responsibility to protect our most vulnerable citizens,” Bolz said. “We are responsible for the licensing and accreditation of these facilities and if that needs to be strengthened, it is our responsibility to take action.”

An Executive Board amendment, adopted 37-6, changed the committee from an investigative to an oversight body.

Sen. Dan Watermeier of Syracuse, chairperson of the Executive Board, said the amendment also would address fiscal concerns by removing references to hiring outside legal counsel, consultants and investigators and eliminating the committee’s ability to issue subpoenas.

The amendment also narrows the scope of the proposal to assisted living facilities “where many of the residents are diagnosed with a mental illness.” Specific language regarding an examination of the recent closures of mental health centers in Palmer and Blue Hill also was added by the amendment.

The committee will study the:

- lack of adequate conditions of state-licensed care facilities;
- treatment of individuals residing in such facilities;
- effectiveness of regulation and licensure by the Division of Public Health in providing oversight; Department of Health and Human Services implementation and administration of services through the behavioral health regions;

- steps the department has taken to advance the recommendations proposed by the Technical Assistance Collaborative; and
- department measures taken to ensure behavioral health services are administered in the most integrated setting pursuant to the federal Americans with Disabilities Act.

Sen. Sara Howard of Omaha supported the resolution and the amendment, saying she recently was alerted by a constituent on social media to a facility that had been without hot water for three weeks. She said the “weak” response she received upon notifying DHHS regarding the resulting sanitation issues was that they also were concerned.

“But they didn’t do anything, and they haven’t done anything,” Howard said. “I think that LR296 could not be more timely. I will not be the only senator who will hear about facilities in his or her district where individuals who are vulnerable are not being taken care of in the manner in which a proud Nebraskan should be. We should be ashamed of the way people are treated in these facilities.”

Bellevue Sen. Sue Crawford also spoke in support, saying an oversight committee would bring together senators with a wide range of expertise to address a broad range of complex issues, including funding and legal concerns, as well as knowledge of health policy.

As a longtime member of the Health and Human Services Committee, Crawford said the oversight committee would complement, rather than challenge, the standing committee’s authority.

“This has been an effective tool when we have had a crisis before,” she said.

Sen. Merv Riepe of Ralston, chair-

person of the Health and Human Services Committee, opposed the resolution. The death at Life Quest was “tragic,” he said, but it is the job of the standing committee to examine the issues and establish sound policies that serve the entire state.

“The members of the HHS Committee act as subject matter experts regarding HHS issues,” he said. “HHS issues are complicated. The issue addressed in LR296 is one of those complicated issues and one that needs to be within the jurisdictional committee.”

The resolution was adopted on a vote of 26-13.

The following members of the State-Licensed Care Facilities Oversight Committee were appointed by the Executive Board and announced April 18:

- Sen. Curt Friesen of Henderson;
- Sen. Steve Halloran of Hastings;
- Sen. Lou Ann Linehan of Elkhorn;
- Sen. Dan Quick of Grand Island;
- Sen. Theresa Thibodeau of Omaha;
- Sen. Lynne Walz of Fremont; and
- Sen. Anna Wishart of Lincoln.

The oversight committee will issue a report to the Legislature by Dec. 15, 2018.



Liquor law bill amended to include bottle clubs, approved

A bill that makes changes to the state’s liquor laws was amended to specify bottle club provisions and given final approval April 18.

LB1120, introduced by Sen. Tyson Larson of O’Neill, makes various changes to the state’s liquor laws. It

was amended on general file to license private membership establishments—commonly known as bottle clubs—where members who have purchased their own alcohol congregate to consume it.



Sen. Tyson Larson

Omaha Sen. Theresa Thibodeau offered an amendment during select file debate April 9 to address concerns ensuring enforcement mechanisms for bottle club licensure. She said the amendment clearly defines bottle clubs and adds them to the type of businesses that are required to obtain a liquor license.

“With the creation of a bottle club license, we wanted to make sure that all of the provisions within the Liquor Control Act and the [state Liquor Control] Commission’s rules and regulations apply,” Thibodeau said.

Under the amendment, a bottle club licensee cannot hold any other license under the Nebraska Liquor Control Act and is required to close between 5 a.m. and 6 a.m. A club’s private membership list will not be made public except as required by a court order, warrant or subpoena.

The amendment was adopted on a vote of 34-0.

As amended on general file, LB1120 also:

- allows Class C licensees with a bottling endorsement to increase the size of their growlers from 32 to 64 ounces;
- clarifies that the fees collected for beer shipper licenses are to be deposited in the Nebraska Beer Industry Promotional Fund;
- allows a party to apply for a rehearing when a liquor license application is denied by the Li-

- quor Control Commission; and
- creates the Music Licensing Agency Act.

The Music Licensing Agency Act requires a music licensing agency to register with the state Department of Revenue starting Jan. 1, 2019, and file an annual electronic copy of each performing rights agreement that provides for payment of royalties made available from the music licensing agency to any Nebraska proprietor.

A \$10,000 fine will be imposed for each 45-day period following each Feb. 15 if a music licensing agency fails to renew a registration or engages in business without registration.

Following adoption of the Thibodeau amendment on April 9, LB1120 was advanced to final reading by voice vote. Lawmakers voted 48-0 to pass the bill April 18.



Periodic legislative review of occupational licensing laws approved

The Legislature will regularly review Nebraska’s occupational licensing laws under a bill passed April 18.

LB299, introduced by Crete Sen. Laura Ebke, requires each legislative standing committee to review and analyze approximately 20 percent of the occupational regulations under its jurisdiction each year and all regulations under its jurisdiction every five years.



Sen. Laura Ebke

Committees are required to analyze whether a regulation uses the least restrictive method of accomplishing its

goal and to submit an annual report to the Clerk of the Legislature that includes the committees’ recommendations on whether regulations should be ended or modified.

The bill also accelerates 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 may apply to 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 is required to make its determination within 90 days of receiving an application and could charge no more than \$100 for each application.

The bill was amended on select file, 42-0, to ensure that its provisions would not 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.

The bill requires committees to review those reports when developing recommendations on occupational regulations.

The amendment requires that, when analyzing health profession regulations, the committees use the least restrictive method of regulation in the current law governing those professions.

For other professions, it directs

committees to use the least restrictive regulation that “is necessary to protect consumers from undue risk of present, significant and substantiated harms that clearly threaten or endanger the health, safety or welfare of the public when competition alone is not sufficient and which is consistent with the public interest.”

The bill passed on a vote of 45-1.

Bill sends Cather, Chief Standing Bear to U.S. Capitol

Two different icons will represent Nebraska at the U.S. Capitol under a bill passed by lawmakers April 18.

The National Statuary Hall Collection, established by Congress in 1864, houses two statues that represent important historical figures from each state. Statues of Julius Sterling Morton and William Jennings Bryan currently represent Nebraska.

Federal legislation passed in 2000 authorized states to request that one or both statues be replaced by the Joint Committee on the Library of Congress.

LB807, introduced by Omaha Sen. Burke Harr, directs the Nebraska secretary of state to submit a request to approve the replacement of the Morton statue with one of Pulitzer Prize-winning author Willa Cather.



Sen. Burke Harr

A National Statuary Hall Selection Committee composed of members of the Nebraska Hall of Fame Commission will be tasked with selecting a sculptor for the statue and securing funding.

The bill also authorizes the replacement of the William Jennings Bryan statue with one of Chief Standing Bear. The costs associated with replacing both statues will be covered by

private donations.

The bill passed on a 47-1 vote.

Firearm public information exemption approved

Lawmakers gave final approval April 11 to a bill that authorizes the withholding of certain public information relating to firearms.

Under current law, specific types of information may be withheld from the public unless disclosed in an open court, open administrative proceeding or meeting or disclosed by a public entity pursuant to its duties.

LB902, introduced by Brainard Sen. Bruce Bostelman, adds to those exemptions information regarding firearm registration, possession, sale or use that is obtained by a government entity for an application or permit. Such information will, however, be available to any federal, state, county or local law enforcement agency.

The bill passed 47-0.

Voter registration deadline extended

Nebraska voters have more time on the final day of online voter registration under a bill passed April 11.

The deadline for online registration to vote in person on election day in Nebraska is the third Friday before the election. The deadline is 5 p.m. unless otherwise specified in state law.

LB1038, introduced by Omaha Sen. Theresa Thibodeau at the request of the Nebraska secretary



Sen. Bruce Bostelman



Sen. Theresa Thibodeau

of state's office, creates a deadline of midnight on that day.

The bill passed on a 47-0 vote and takes effect immediately.

Use of electronic poll books approved

Nebraska counties and election commissioners are authorized to use electronic poll books under a bill given final approval April 18.

LB1065, introduced by Gretna Sen. John Murante, authorizes the use of electronic poll books in all precincts in the state, beginning July 1, 2019. If provided, each EPB will contain the list of registered voters and the sign-in register for the precinct combined in one database. The EPB will include registration information and the digital signature for registered voters of the precinct.

The bill passed 34-1.

Exclusion of noncitizen population from redistricting process discussed

A portion of Nebraska's redistricting process would exclude the state's noncitizen population under a bill debated on general file April 9.

The Legislature is responsible for drawing new governmental boundaries every 10 years after the decennial census for districts pertaining to the U.S. House of Representatives, Legislature, Nebraska Supreme Court, Public Service Commission, University of Nebraska Board of Regents and the state Board of Education.

Redistricting will be undertaken next in 2021.

LB1115, as introduced by Gretna



Sen. John Murante

Sen. John Murante, would require that the boundaries for legislative districts, state Supreme Court districts and political subdivisions be determined by Nebraska's total population as determined by the U.S. Bureau of the Census, less the noncitizen population of the state.

District lines for members of the U.S. House of Representatives would not be subject to the bill's provisions.

A pending Government, Military and Veterans Affairs Committee amendment would remove state Supreme Court districts from the bill's provisions. Murante said the state constitutional provision underlying the bill applies unambiguously only to legislative districts.

Murante said LB1115 would put into force a provision of the Nebraska Constitution, which requires that apportionment be based on the population "excluding aliens." He said that the term "alien" was understood to refer to noncitizens when the current version of the state constitution was drafted in 1920.

The state excluded noncitizens until the U.S. Census Bureau stopped asking the citizenship question in the 1960s, he said, and has not adhered to it since. The bureau produces a noncitizen population estimate that the state could be using to adhere to the constitutional requirement, he said.

"In my view, simply put, we don't have a choice," Murante said. "We have to enact legislation to effectuate this provision of the [state] constitution."

Murante offered an additional amendment to specify that if the U.S. Census asks the citizenship question in 2020, that information will be used to obtain the count of noncitizens required in the bill. If the census does not include that information, the noncitizen estimate that the bureau compiles annually would be used.

He said that the Trump Administration has announced that they are exploring the possibility of asking the citizenship question as part of the 2020 census.

Lincoln Sen. Adam Morfeld opposed the bill and offered a motion to bracket it until April 18. He said the provision in the state constitution regarding the state's "alien" population likely violates the Equal Protection clause of the U.S. Constitution, which would take precedence if the attempt to exclude noncitizens from the population count for redistricting were challenged in court.

"This legislation is not necessary," Morfeld said. "I believe it's constitutionally suspect."

Sen. Mike Hilgers of Lincoln disagreed, saying the courts haven't directly addressed the issue and that states have wider latitude when it comes to apportionment for state legislative districts in terms of population deviation considerations.

"If the reason that you're thinking about voting against this is because you think our constitutional provision is itself unconstitutional, I don't think there [are] grounds under Supreme Court authority to make that determination, certainly as it stands today," Hilgers said.

Omaha Sen. Tony Vargas opposed the bill and the amendments, saying the proposal could result in thousands of the people in his district not being counted for purposes of representation. The state should seek ways to increase civic engagement rather than finding ways to exclude individuals who are taxpaying community members but may not be citizens, he said.

"I believe, inherently, that every single individual in our community deserves a voice in the political process," Vargas said.

Murante said the state constitu-

tion's language is plain and that lawmakers cannot ignore it.

"If this Legislature proceeds in 2021 to move a district out of rural Nebraska and put it into Douglas County because noncitizens are counted, I guarantee you there will be a lawsuit," he said. "The people of Nebraska are not going to stand for that."

The Legislature moved on to another item on the day's agenda without taking any action on LB1115.



Investigational drug use bill amended, approved

Drugs in U.S. Food and Drug Administration clinical trials may be used by eligible Nebraska patients under a bill given final approval April 18.

LB117, introduced last session by Omaha Sen. Robert Hilkemann, allows an eligible patient under the Investigational Drug Use Act to be treated with any drug, biological product or medical device



Sen. Robert Hilkemann

that has successfully completed Phase 1 of a clinical trial but has not yet been approved for general use by the FDA—provided that the drug remains in an FDA-approved clinical trial.

To be eligible, a patient must:

- have a documented, advanced illness;
- have considered all other approved treatment options;
- not be receiving inpatient treatment in a licensed hospital;
- give written, informed consent for the use of the investigational

treatment; and

- have a recommendation from his or her treating physician for an investigational drug, biological product or device.

Under the bill, a manufacturer may provide an investigational treatment without compensation and is prohibited from seeking reimbursement for such treatment if an eligible patient dies while being treated.

Heartwell Sen. John Kuehn, who had expressed numerous concerns about the bill on general file, offered an amendment to address those issues during select file debate April 10.

"[The amendment] takes away some of the potential financial risk and ethical concerns, as well as insures that there's still accountability should a physician act outside of their ethical framework within the state of Nebraska," Kuehn said.

Adopted 38-0, the amendment removed automatic immunity provisions for health practitioners and entities based solely on a provider's recommendation to an eligible patient regarding access to or treatment with an investigational drug, biological product or device.

Instead, the amendment specifies that a good-faith recommendation to an eligible patient will not subject a health care provider to discipline or an adverse licensure action. Penalties under federal law are not precluded.

The amendment also:

- specifies that the bill's provisions apply only to a patient whose condition likely will result in death within six months;
- removes a provision that would preclude insurance companies from being responsible for any care consequent to using an investigational treatment; and
- removes a provision that would reduce access to hospice care for individuals who use investi-

gational treatments under the bill's provisions.

Hilkemann supported the amendment, which he said made the bill better.

"We can't forget what we're doing," he said. "We're helping people who are suffering [and] near the end of their life."

Following adoption of the Kuehn amendment, lawmakers advanced LB117 to final reading on a 29-9 vote on April 10. The bill passed April 18 on a 35-13 vote.

Assisted living updates approved

Lawmakers passed a bill April 11 intended to improve the services provided by Nebraska assisted living facilities.

LB439, sponsored by Lincoln Sen. Anna Wishart, permits an assisted living facility nurse to provide nursing care to residents on a part-time, intermittent basis. Such care is defined as less than 10 hours each week for each resident, with a predictable end time within a 21-day period.



Sen. Anna Wishart

The bill also requires assisted living facilities to disclose in writing if brief nursing care is available in their facility and updates a variety of definitions.

Any expenses resulting from the bill will be paid from the Nebraska Health Care Cash Fund for fiscal year 2018-19 and FY2019-20.

LB439 passed on a vote of 47-0.

Animal massage bill passed

Lawmakers gave final approval April 11 to a bill intended to enable the practice of equine, dog and cat massage in Nebraska.

LB596, sponsored by North Platte

Sen. Mike Groene, defines dog, cat and equine massage practice as the application of hands-on massage techniques for the purpose of increasing circulation, relaxing muscle spasms, relieving tension, enhancing muscle tone and increasing range of motion.



Sen. Mike Groene

An individual who engages solely in dog, cat or equine massage practice is not subject to the Veterinary Medicine and Surgery Practice Act.

LB596 passed on a vote of 46-0.

Omnibus occupational licensure bill approved

A bill that makes numerous changes to licensure requirements for health-related occupations passed April 18.

Introduced by Gothenburg Sen. Matt Williams, LB731 allows a pharmacy to provide remote dispensing at a location staffed by a certified pharmacy technician and owned by a supervising pharmacy licensed and located in the state.



Sen. Matt Williams

A remote pharmacy must be located at least 10 driving miles from the nearest pharmacy and dispensing must occur under remote supervision via a real-time audiovisual communication system by a licensed pharmacist employed by a supervising pharmacy.

LB731 includes provisions of six additional bills:

- LB681, introduced by Bellevue Sen. Carol Blood, which adopts the physical



Sen. Carol Blood

- therapy licensure compact;
- LB788, introduced by Ralston Sen. Merv Riepe, which requires certain providers to enroll in opiate administering and prescribing continuing education;



Sen. Laura Ebke

- LB790, introduced by Crete Sen. Laura Ebke, which provides for licensure of mobile cosmetology and nail technology salons;
- LB794, introduced by Riepe, which removes a current ban on consuming, serving, possessing or distributing alcohol by entities operating under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Act;

- LB1042, introduced by Omaha Sen. Sara Howard, which addresses regulation and licensure under the Act; and



Sen. Sara Howard

- LB1107, introduced by Elkhorn Sen. Lou Ann Linehan, which reduces licensure hour requirements for barbers, cosmetologists, estheticians and nail technologists.



Sen. Lou Ann Linehan

The bill passed on a 49-0 vote.

Developmental disability entitlement eliminated, aging resource center pilot extended

An entitlement that prioritized services for high school graduates with developmental disabilities was eliminated by a bill passed April 18.

The entitlement was halted for fiscal year 2017-18 and FY2018-19 during the 2017 legislative session in order to bring Nebraska into compliance with federal law. The entitlement prioritized services for graduates or those reaching age 21, which violates a federal requirement that the state first serve individuals with the highest priority status.

LB793, as introduced by Ralston Sen. Merv Riepe, permanently eliminates the entitlement, which otherwise would have resumed in FY2020.



Sen. Merv Riepe

As amended during general file debate April 6, the bill creates a safety net that will be triggered to require the state Department of Health and Human Services to provide comparable services only to high school graduates if the department does not have enough funds to provide services to all eligible individuals under the waiver.

The provision will sunset June 30, 2021, which Riepe said will provide enough time to demonstrate that individuals are being funded through the Medicaid waiver.

Riepe offered an amendment during select file debate April 10 that limits the bill's provisions to individuals who are transitioning from the education system upon reaching age 21 on or after July 1, 2019.

He said the change ensures that the state's safety net program will apply only to residents with developmental

disabilities who are graduating from Nebraska high schools. He said that without the amendment, the bill would have a fiscal note of approximately \$5 million.

The amendment also clarifies the type of services that will be available under the program and limits the bill's provisions related to aging and disability resource centers.

LB793 contains provisions of Lincoln Sen. Kate Bolz's LB1004, which extend a pilot program that requires the state's area agencies on aging to establish partnerships with one or more lead organizations that specialize in serving people with disabilities to develop an ADRC plan.



Sen. Kate Bolz

The Riepe amendment limits that provision to area agencies on aging that choose to receive funding from the department for that purpose.

Following adoption of the Riepe amendment on a 41-0 vote, LB793 advanced to final reading April 10 by voice vote. The bill passed April 18 on a 46-1 vote and takes effect immediately.

Omnibus public health measure passed

Lawmakers passed an omnibus public health measure April 18.

LB1034, sponsored by Ralston Sen. Merv Riepe, requires the standards of care and protection for school-age child care programs located within an accredited or approved school to meet the same standards of an accredited or approved school under state Department of Education regulations.

The measure contains provisions of eight additional bills:

- LB344, sponsored by Thurston

Sen. Joni Albrecht, which changes credentials and regulations for substance abuse centers;



Sen. Joni Albrecht

- LB686, sponsored by Bellevue Sen. Carol Blood, which adopts the Psychology Interjurisdictional Compact;
- LB703, sponsored by Seward Sen. Mark Kolterman, which provides an exemption from Nebraska's unlawful practice of medicine statutes for physicians from another state who accompany an athletic team or organization into the state for an event;



Sen. Mark Kolterman

- LB704, sponsored by Kolterman, which reduces the requirement for licensure of physician graduates of foreign medical schools from three to two years;
- LB894, sponsored by Bellevue Sen. Sue Crawford, which adopts the Emergency Medical Services Personnel Licensure Interstate Compact, known as REPLICA;



Sen. Sue Crawford

- LB924, sponsored by Riepe, which changes provisions within the EMS Practice Act, Occupational Therapy Practice Act and Uniform Credentialing Act;
- LB1035, sponsored by Riepe, which makes a technical change to the state's Stroke System of Care Act; and

• LB 1057, sponsored by Heartwell John Kuehn, which changes provisions relating to the prescription drug monitoring program. The bill passed on a 49-0 vote.



Sen. John Kuehn

Early miscarriage commemorative certificates approved

A bill authorizing the provision of a commemorative certificate of nonviable birth for early miscarriages passed April 11.

LB1040, sponsored by Thurston Sen. Joni Albrecht, requires a health care practitioner who attends or diagnoses a nonviable birth, or his or her designee, to advise the patient that they can request a certificate of nonviable birth.



Sen. Joni Albrecht

The certificate will be issued by the state Department of Health and Human Services within 60 days of request for a fee not to exceed the cost of issuing the certificate.

The commemorative certificate will not result in the registration of a live birth or be used to calculate live birth statistics. The certificate also cannot be used in support of a civil action seeking damages for injury or wrongful death.

LB1040 passed on a 44-1 vote.

Direct primary care pilot program approved

Lawmakers passed a bill April 11 that creates a pilot program offering direct primary care to state employees.

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



Sen. Merv Riepe

The University of Nebraska system, state colleges and community colleges are not included in the pilot program. Providers will receive a monthly payment of a per-member, per-month fee for each enrollee and be required to continuously monitor care quality measurements. The state Department of Administrative Services will provide the Legislature an annual report on the clinical and financial performance of the program.

The bill includes provisions of LB604, also sponsored by Riepe, which adopt the Nebraska Right to Shop Act. The act applies to any health insurance carrier in the state that elects to be subject to it and gives DAS the discretion to develop and implement a right-to-shop program for state employees.

The act requires participating insurers to disclose the allowed amount for a nonemergency admission, procedure or service within three working days. The information provided to a patient or prospective patient by the insurance carrier also must identify out-of-pocket costs.

Participating insurers are required to develop and implement a program that provides incentives for insured individuals who opt for services from network providers that charge less

than the average price paid by the insurer for that health care service. Individuals will receive at least 50 percent of the insurer's saved costs for each service chosen.

Lawmakers passed LB1119 on a 42-2 vote.



Emancipation process approved for minors

The Legislature passed a bill April 11 that allows certain minors to seek legal independence.

LB714, introduced by Omaha Sen. Sara Howard, allows minors at least 16 years old to seek emancipation from their parents or guardians.



Sen. Sara Howard

After a motion to grant emancipation is filed and the individual's parents 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.

The court will 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 will 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 can file an objection to the petition for emancipation within 30 days of receiving notice of the hearing.

If emancipation is granted, the minor legally is 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 will not affect a minor's status in any juvenile court proceedings.

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

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

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

The bill passed on a 45-1 vote.

Civil liability for foster care misrepresentation approved

The state Department of Health and Human Services can be held liable in certain civil proceedings under a bill passed by the Legislature April 18.

Under LB729, introduced by Omaha Sen. Justin Wayne, state agencies and their employees no longer will have legal immunity from civil claims arising from misrepresentation or deceit under the State Tort Claims Act, which can make those parties liable in civil court proceedings.

Specifically, the department can be liable if it fails to inform potential adoptive or foster parents of issues relating to a state ward's behavioral health, mental health, or educational or medical history, including a ward's



Sen. Justin Wayne

potential history being a victim or perpetrator of sexual abuse.

The bill passed on a 49-0 vote.

Bill to control high-cost calls for inmates passed

Senators passed a bill April 11 that will improve inmates' access to communication.

LB776, introduced by Omaha Sen. John McCollister, requires 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 can establish a prepaid or collect telephone system, or a combination of both. Inmates' family members can deposit money into a prepaid account with a third-party provider of telephone services to cover the cost of the call.

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

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

The bill passed on a 38-8 vote.

Requirement for correctional overcrowding emergency plan approved

The state Department of Correctional Services will be required to

develop an accelerated release plan for inmates under a bill passed by the Legislature April 11.

Introduced by Lincoln Sen. Patty Pansing Brooks, LB841 calls for an accelerated release plan to go into effect if the department is operating at 140 percent of capacity on July 1, 2020. The plan will remain in place until the inmate population reaches 125 percent of capacity.



Sen. Patty Pansing Brooks

The plan will provide a process for the department director to certify that an overcrowding emergency exists, prepare and submit a list of parole-eligible inmates to be considered for accelerated release and develop a process by which the board of parole would examine inmates for potential release.

The department's plan must be delivered to the Legislature no later than Dec. 1, 2018.

The bill includes provisions of four additional bills, including:

- LB366, introduced by Hastings Sen. Steve Halloran, which changes the name of the Office of Parole Administration to the Division of Parole Supervision



Sen. Steve Halloran

and places the division within the Board of Parole;

- LB692, introduced by Bellevue Sen. Carol Blood, which directs the department to complete a



Sen. Carol Blood

comprehensive analysis of its system-wide staffing needs and provide a report to the Legislature by Sept. 15, 2020 and every six years thereafter;

- LB852, introduced by Lincoln Sen. Kate Bolz, which authorizes the department to allow an inmate to temporarily leave a facility to participate in substance abuse treatment, attend rehabilitative programming or seek residency or employment; and
- LB932, introduced by Omaha Sen. Sara Howard, which requires the department's medical director to establish a protocol for determining whether an inmate soon to be released should be prescribed and dispensed a medication-assisted treatment to reduce or eliminate an inmate's use of opiates upon release.



Sen. Kate Bolz



Sen. Sara Howard

The bill passed on a 42-1 vote.

Child custody cannot be denied due to disability

The Legislature passed a bill April 18 that protects the custodial rights of people with disabilities.

LB845, introduced by Albion Sen. Tom Briese, prohibits a court from giving custodial preference to a parent based on the disability of a parent.



Sen. Tom Briese

Lincoln Sen. Patty Pansing Brooks introduced an amendment, adopted 37-0 April 10, which incorporates provisions of her LB1051. As amended, these set forth county court procedures and practices relating to family member visitation petitions when it is alleged that visitation has been denied arbitrarily.

She said the change provides clear guidance to courts when dealing with petitions authorized by her LB122, passed in 2017.

The bill passed on a 49-0 vote.

Bill clarifying legal immunity for overdoses passed

The Legislature passed a bill April 11 that extends 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, adds law enforcement employees to the list of people who receive such an exemption.



Sen. Adam Morfeld

The bill defines 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 clarifies that a minor who reports a possible alcohol overdose is legally immune only if he or she makes a good faith request for emergency medical assistance. The

person experiencing the overdose also is legally immune.

The bill eliminates a provision in statute that the minor be the first person to call for assistance to qualify for immunity.

The bill passed on a 44-1 vote.

Guns prohibited for certain juveniles

Certain adjudicated youth will be temporarily barred from possessing firearms under a bill passed by the Legislature April 11.

Under LB990, introduced by Omaha Sen. Justin Wayne, a person younger than 25 will be prohibited from possessing a firearm if they have been adjudicated in juvenile court of a misdemeanor domestic violence charge or any felony.



Sen. Justin Wayne

A person who violates the bill's provisions will be guilty of a Class IV felony, which carries a penalty of up to two years imprisonment with one year of post-release supervision, a \$10,000 fine or both. Second and subsequent offenses are a Class IIIA felony, which carries a penalty of up to three years imprisonment and 18 months post-release supervision, a \$10,000 fine or both.

The prohibition does not apply to the possession of firearms by members of the U.S. Armed Forces, National Guard, Reserve Officers Training Corps, or law enforcement officers while on duty or during training.

A person subject to the bill's provisions can file for an exemption. The court will consider the person's behavior following adjudication, their likelihood of recidivism and any other relevant information.

When a petition initially is filed in juvenile court charging a juvenile with a misdemeanor domestic violence or felony charge, the court will be required to inform the juvenile of the specific legal impact on the juvenile's rights to possess a firearm.

The bill passed on a 41-0 vote.

Convictions to be set aside for sex trafficking victims

Victims of sex trafficking can have their convictions set aside and their court records sealed under a bill passed by the Legislature April 11.

Under LB1132, a bill introduced by Lincoln Sen. Patty Pansing Brooks, a victim of sex trafficking can file a motion to set aside a criminal conviction or adjudication of a prostitution-related offense.



Sen. Patty Pansing Brooks

The victim will be required to submit evidence proving that he or she was a victim of sex trafficking at the time the crime was committed. Evidence considered by the court can include a copy of an official record, certification or eligibility letter from a federal, state, tribal or local proceeding indicating that the person was a victim of trafficking.

The court also can consider an affidavit or sworn testimony from an attorney, member of the clergy, a medical professional, staff member of a victim services organization or other professional from whom the victim sought assistance in addressing trauma related to trafficking.

A judge can consider additional evidence in determining the credibility of the person as a victim of trafficking, such as:

- branding or other tattoos on

the person that identify him or her as having a trafficker;

- testimony or affidavits from those with firsthand knowledge of the person's involvement in the commercial sex trade;
- financial records showing profits from the commercial sex trade;
- internet listings, print advertisements or business cards used to promote the person for commercial sex; or
- emails, texts or voicemail records between the person and the trafficker or solicitors of sex.

If a set aside is granted, it will nullify the conviction and remove all civil disabilities and disqualifications imposed as a result of the conviction. Upon receiving a set aside, the victim can file to have his or her criminal record sealed.

The bill includes provisions of LB855, introduced by Omaha Sen. Brett Lindstrom. These allow a person who has received a pardon to file to have his or her criminal record sealed.



Sen. Brett Lindstrom

Provisions of Omaha Sen. Sara Howard's LB897 also are included in the bill. These remove a mandatory reporting requirement that medical professionals contact law enforcement when a patient is suspected to be a victim of sexual assault.

The medical professional now must secure written consent from the patient before contacting law enforcement.

The bill passed on a 45-0 vote.



OPS, omnibus retirement bill approved

Lawmakers passed a bill April 18 that makes numerous changes to the state's retirement plans.

LB1005, introduced by Seward Sen. Mark Kolterman, addresses the withdrawal of a county or school entity from the state's retirement plans. The bill authorizes the Public Employees Retirement Board (PERB) and the Nebraska Public Employees Retirement System (NPERS) to act if an employer in the county or school plan makes a business decision to withdraw from the plan in whole or in part.



Sen. Mark Kolterman

The PERB and NPERS are granted authority that:

- allows the PERB to determine employer and employee eligibility to participate in the retirement systems;
- allows employers to request an actuarial study that calculates what the employer needs to pay to fund the retirement benefits for plan members affected by the employer's business transactions;
- provides direction on how the actuarial study calculates the employer's liability to fund the retirement benefits for affected plan members; and
- outlines how the employer would pay for the actuarial study and the amount necessary to fund the retirement benefits

for affected plan members.

Under the bill, affected employees who are terminated from the retirement plan will be considered fully vested and considered inactive within 90 days of an entity's withdrawal or determination of ineligibility. On or after Jan. 1, 2019, no county hospital facility may elect or discontinue participation in the retirement system.

The bill also includes provisions of an amendment to LB548, a bill introduced last session by Omaha Sen. Brett Lindstrom. Originally the bill would have consolidated the Class V (Omaha) School Employees Retirement System (OSERS) with the School Employees Retirement Plan.

Those provisions were replaced by an amendment adopted this session that change definitions in the Class V School Employees Retirement Act to reflect new actuarial assumptions regarding mortality tables and interest rates.

The provisions also insert a new definition of solvency as the actuarially required contribution (ARC) amount as annotated in each annual valuation report. The school district is required to deposit the annual ARC into the retirement fund by Aug. 31.

Also included in LB1005 are provisions of three additional bills introduced by Kolterman:

- LB698 makes permissive the promulgation of rules and regulations by plans administered by PERB;
- LB699 harmonizes language in the state plans that inadvertently was left out of a bill passed last session; and
- LB700 removes the obligation of the state investment officer and the Nebraska Investment Council to invest the funds in the University Trust Fund. The fund is overseen and managed

by the University of Nebraska and does not contain tax dollars. LB1005 passed on a 48-0 vote.



Indexing of Social Security tax exemption thresholds approved

Income thresholds the state uses to determine whether Social Security benefits are exempt from taxation will be indexed for inflation under a bill passed by the Legislature April 11.

Under current law, federal adjusted gross income for state tax purposes is reduced by the amount received as Social Security benefits if AGI is \$58,000 or less for those married filing jointly or \$43,000 or less if filing as an individual.

LB738, introduced by Omaha Sen. Brett Lindstrom, indexes those exemption thresholds for inflation in the same way the state's income tax brackets are indexed, beginning with tax year 2020.



Sen. Brett Lindstrom

The state Department of Revenue estimates that the bill would decrease state revenue by \$1.3 million in fiscal year 2019-20. That would increase to \$3.9 million by FY2021-22.

Senators voted 44-2 to pass the bill.

State personal exemption credit, standard deduction approved

Senators passed a bill April 11 intended to prevent a tax increase 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, has said that because Nebraska's tax law is tied to the federal code in several places, automatic changes to the state's tax code would generate more than \$220 million in additional state revenue this year.



Sen. Jim Smith

The repeal of the federal personal exemption effectively repealed Nebraska's personal exemption credit, which is tied to the federal exemption. To offset this change, LB1090 creates a new \$134 state personal exemption credit that individuals may 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, LB1090 establishes 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 adjusts 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 will reduce state tax revenue by \$326 million in fiscal year 2018-19 and a further \$257 million in FY2019-20.

The bill passed on a vote of 44-0.

TRANSPORTATION & TELECOMMUNICATIONS

Extension of superintendent license approved

Lawmakers passed a bill April 10 that extends the duration of certain superintendent licenses.

Under LB733, introduced by Omaha Sen. Theresa Thibodeau, the duration of a Class B county highway or city street superintendent license changes from one to three years. The renewal fee increases from \$10 annually to \$30 every three years.



Sen. Theresa Thibodeau

The bill also allows those holding Class A and Class B licenses to renew both at once.

The bill passed on a 45-0 vote.

Study of rural broadband availability due in 2019

A proposal to study expanding high-speed internet access to rural areas of the state was passed by the Legislature April 11.

Henderson Sen. Curt Friesen introduced LB994, which creates the Rural Broadband Task Force to assist in developing enhanced broadband telecommunications service to unserved and underserved areas in rural Nebraska.



Sen. Curt Friesen

Membership on the task force will include a member of the Nebraska Public Service Commission, the director of the state Department of

Economic Development and the director of the state Department of Agriculture. Additional members will be appointed by the governor, including representatives from the state's agribusiness, business, telecommunications, public power and educational communities.

The Transportation and Telecommunications Committee chairperson and another member of the Legislature appointed by the Executive Board will serve as nonvoting, ex officio members. The chairperson of the Nebraska Information Technology Commission will chair the task force.

It will study issues relating to the availability, adoption and affordability of broadband services in rural areas of the state. Specifically, the task force will:

- determine how the average advertised subscription rates and download and upload speeds compare with neighboring states;
- determine whether the administration of the Nebraska Telecommunications Universal Service Fund is effective in bringing comparable and affordable broadband service to rural residents;
- review the feasibility of alternative technologies and providers in expediting access to faster and more reliable broadband service in rural areas;
- study alternatives for deployment to unserved or underserved areas such as reverse auction programs, public-private partnerships and funding for competitive deployment;
- recommend state policies to effectively leverage state Universal Service Fund dollars with federal support; and
- recommend to the governor and Legislature the most effective and efficient ways to use federal broadband rural infrastructure funds.

and Legislature the most effective and efficient ways to use federal broadband rural infrastructure funds.

The Nebraska Information Technology Commission will host a Rural Broadband Task Force Fund to pay for the study, which initially will be funded by a \$50,000 transfer from the Nebraska Internet Enhancement Fund.

A final report of the task force's findings will be delivered to the Legislature's Executive Board no later than Dec. 1, 2019.

LB994 also authorizes the Nebraska Public Service Commission to withhold funding from companies that have not provided adequate broadband internet to unserved or underserved areas. The withheld funds could be used to institute a reverse auction program that would award funding to broadband internet service providers to support high-speed internet infrastructure deployment projects in these areas.

Such funding must be used only in the exchange area where it originally was granted.

The commission will establish a registry of locations within the state that receive complaints of a lack of wireless coverage. The annual report will be publicly available and can be used in future funding decisions.

Finally, the bill includes provisions of LB966, also introduced by Friesen. These exempt the sale, lease or rental of and the storage, use or consumption of dark fiber from state sales and use taxes.

The bill passed on a 48-0 vote

Highway speeds increased

Lawmakers passed a bill April 11 that authorizes the state Department of Transportation to increase highway speed limits.

LB1009, introduced by Gretna Sen. John Murante, authorizes the department to increase the maximum speed limit from 60 mph to 65 mph on any four-lane divided highway that is not a part of the state highway system and any part of the state highway system other than an expressway or freeway.



Sen. John Murante

Speeds will increase from 65 mph to 70 mph on expressways that are part of the state highway system and freeways that are a part of the state highway system but not part of the National System of Interstate and Defense Highways.

Finally, the maximum speed limit will be increased from 60 mph to 65 mph on any portion of the National System of Interstate and Defense Highways located in Douglas, Lancaster and Dakota counties.

The bill passed on a 44-1 vote.

URBAN AFFAIRS

Tax incentive approved for workforce housing construction

Certain cities may use tax increment financing to support the construction of workforce housing under a bill passed by lawmakers April 18.

As introduced by Gering Sen. John Stinner last session, LB496 would have authorized cities of the first and second class and villages to include the construction of single-family or multi-family housing as part of a re-



Sen. John Stinner

development project eligible for TIF.

During second-round debate April 10, Stinner said that demand for such homes is high in rural communities across the state, from Scottsbluff to Kearney to Norfolk. Allowing TIF to be used for construction of those homes would make them more affordable, he said.

The bill requires a municipality to conduct a housing study, prepare an incentive plan for the construction of housing meant for new or existing workers and hold a public hearing on the plan. As amended, a public hearing on a workforce housing incentive plan would be separate from a public hearing on a TIF redevelopment plan.

After the hearing, the municipality will be required to determine that the plan is necessary to prevent the spread of blight and substandard conditions within the municipality, will promote additional safe and suitable housing for people employed there and will not result in the unjust enrichment of any individual or company.

Sen. Matt Williams of Gothenburg introduced an amendment on select file, adopted 34-6, that restricts the bill's provisions to rural communities, which the amendment defines as any municipality in a county with fewer than 100,000 inhabitants.

The amendment also defines workforce housing as owner-occupied housing units that cost no more than \$275,000 to build or rental housing units that cost no more than \$200,000 to build.

Williams, who supported the bill, said those criteria are consistent with LB518, passed by the Legislature last year, which set aside \$7 million to provide matching grants to nonprofits to build workforce housing in rural communities. He said the program began in January and already has stopped accepting applications because of high demand.

"Twenty-one communities submitted grant applications for more than double the amount of dollars that we have in the program," Williams said, "showing clearly that there is a demonstrated need for rural workforce housing."

Omaha Sen. Justin Wayne also introduced an amendment on select file, adopted 39-1, that allows the use of TIF to finance workforce housing in areas with high unemployment and poverty rates within cities.

"The issue in some small towns across Nebraska are no different than many issues that we face in North Omaha when it comes to housing," he said. "There is a gap that we have to fill."

Sen. Mike Groene of North Platte opposed the bill during select file debate. He said TIF was conceived to help cities redevelop blighted and substandard areas, not to boost economic development. Using TIF for housing construction would divert property tax revenue away from schools and other local government entities and distort the housing market, he said.

"Do you believe in the free markets at all?" Groene said. "If there is demand for housing, it is being built."

Also in opposition was Columbus Sen. Paul Schumacher. If a city allows one developer to use TIF, all of its competitors will want it too, he said, and cities that choose not to grant TIF for single-family housing projects will lose those projects to cities that do.

"If you start this intercommunity war," Schumacher said, "you will never have any number of houses built without TIF."

Sen. Curt Friesen of Henderson also opposed the bill. He said he supports the use of TIF to build infrastructure—such as streets, sewer systems and water systems—that supports private development, but he opposes its use

for building houses.

“If we would focus on bringing more jobs—better paying jobs—to the state and to the rural areas,” he said, “we wouldn’t have to worry about subsidizing housing.”

Stinner filed a motion to invoke cloture, or cease debate and vote on the bill. The motion prevailed on a vote of 33-11. Thirty-three votes were needed.

Senators then voted 34-6 to advance the bill to final reading.

Stinner filed another cloture motion on final reading April 18. It prevailed on a vote of 34-10, and the bill was passed on a vote of 35-8.

Urban affairs omnibus bill approved

An omnibus Urban Affairs measure was given final approval April 18.

LB873, introduced by the Urban Affairs Committee, makes a variety of clean-up changes to state law related to the governing of cities, including clarifying terms and eliminating antiquated and unnecessary language.

The measure contains provisions of seven additional bills:

- LB735, introduced by Bellevue Sen. Carol Blood, which clarifies that municipalities have the authority to enter into an interlocal agreement with a county in which the extra-territorial zoning jurisdiction of the municipality is located to provide for joint and cooperative action to abate, remove or prevent nuisances within the ETJ;
- LB748, introduced by Lincoln Sen. Matt Hansen, which clarifies



Sen. Carol Blood

references to municipal population thresholds, providing that such thresholds are met based on either the most recent federal decennial census or the most recent revised certified count by the U.S. Bureau of the Census;



Sen. Matt Hansen

- LB765, introduced by the Urban Affairs Committee, which amends sections of law governing first class cities to clarify that they apply only to first class cities;
- LB768, introduced by Grand Island Sen. Dan Quick, which authorizes first- and second-class cities and villages to make grants and loans under the Local Option Municipal Economic Development Act for early childhood infrastructure development;
- LB880, introduced by Hansen, which requires cities to include an early childhood element in their comprehensive plans no later than Jan. 1, 2022, either when adopting a new or updating an existing comprehensive plan;
- LB854, introduced by Quick, which allows any Nebraska municipality to create a land bank under the Nebraska Municipal Land Bank Act and clarifies that land banks may enter into agreements under the Interlocal Cooperation Act for the joint administration of multiple land banks; and



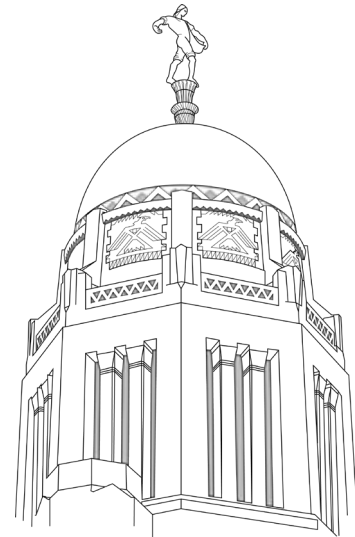
Sen. Dan Quick

- LB756, introduced by Lincoln Sen. Adam Morfeld, which prohibits municipalities from adopting or enforcing an ordinance or regulation that prohibits the use of a property as a short-term rental, unless necessary to protect public health and safety.



Sen. Adam Morfeld

Lawmakers passed LB873 on a 26-15 vote. ■



This is the final weekly issue of the Unicameral Update for 2018.

Look for our annual session review issue in May.

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Speaker Jim Scheer holds his grand-daughter, Stella, in the Norris Chamber on the final day of the legislative session.