

Sales tax hike would decrease property taxes via additional school aid



Members of the Revenue, Education and Nebraska Retirement Systems committees heard input April 24 on a property tax relief proposal.

Three legislative committees heard testimony April 24 on a proposal to direct new sales tax revenue to the state's public schools in an effort to reduce property taxes.

Elkhorn Sen. Lou Ann Linehan, sponsor of LB289, presented an amendment that would replace the bill to

a joint hearing of the Revenue, Education and Nebraska Retirement Systems committees.

The proposal would increase the state sales tax rate from 5.5 percent to 6.25 percent, increase the tax on a package

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Wind turbine decommissioning requirements stall

A bill that would require owners to remove a wind turbine's concrete foundation after decommissioning stalled on first-round debate April 23.

Introduced by Brainard Sen. Bruce Bostelman, LB700 would make any person who owns, operates or manages a wind energy conversion system responsible for decommissioning



Sen. Bruce Bostelman

or reclamation costs necessary for removal of the system.

A pending Natural Resources Committee amendment would replace the bill. It would require a wind turbine owner who is a party to a wind agreement to provide every landowner who also is a party to that agreement with information about the materials and equipment that will be removed from, and that will remain on, the landowner's property when a wind turbine is decommissioned.

The amendment would require

every wind agreement executed on or after Jan. 1, 2020, to provide for the removal of a wind turbine's foundation material and equipment—which the bill defines as anchor bolts, rebar, conduits and concrete—below grade upon decommissioning. The requirement would not apply to a wind turbine that is used for repowering within 24 months after it would have been decommissioned.

Any void left from the removal of

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Wind turbine decommissioning requirements stall

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foundation material and equipment would be restored to the condition of the land prior to the installation of the turbine or to an improved condition.

Bostelman said state law requires wind energy companies to create a plan for decommissioning wind turbines when they reach the end of their useful lives, but the law does not specify what those plans must include.

He said companies generally leave most of a turbine's concrete foundation in the ground, which he said could affect soil health and the future land use. Wind turbine owners, not landowners, should be held responsible for removing that material, Bostelman said.

"We want to make sure that the land is returned to a natural state so the [landowner] can utilize that land in the future," he said.

Sen. Robert Clements of Elmwood supported the bill, saying the cost of removing the entire concrete foundation is only 3 percent of the revenue that a wind turbine generates during its useful life.

"This is a very small ... requirement in this bill that's not going to harm

wind energy at all and is definitely going to help the environment," he said.

Hastings Sen. Steve Halloran also supported LB700, saying its provisions are a "worthwhile precaution." He said companies that generate renewable energy logically should support a requirement that they leave the land in as good or better condition than they found it when decommissioning a wind turbine.

Sen. John McCollister of Omaha opposed the bill, saying the proposed requirement to remove the entire foundation is "burdensome and unrealistic." He said the requirement would increase the cost of decommissioning a turbine by 25 to 35 percent.

Bellevue Sen. Carol Blood also opposed LB700, saying it would restrict the right of landowners to negotiate contracts with wind energy companies as they see fit.

She said the bill also would single out the wind energy industry by not applying the same requirements to other businesses and utilities that place concrete and steel in the ground. The EPA does not consider either

material to be hazardous, Blood said.

"This is not good policy that benefits all of Nebraska," she said. "I believe this is policy that ... picks on a particular industry."

Sen. Matt Williams of Gothenburg also opposed the bill. He said wind energy development has benefited Nebraska by generating property tax revenue for counties and lease payments for landowners. Although protecting the state's land and environment is important, he said, the bill would create barriers to growing the wind energy industry in Nebraska.

"I believe LB700 goes beyond what is reasonable," he said, "and I would argue that removal of this [material] clear to the base could cause more damage than it would be worth."

The Legislature moved to the next item on its agenda before voting on the committee amendment or LB700. Per a practice implemented by Speaker Jim Scheer, the sponsor of a bill that is facing a potential filibuster must demonstrate sufficient support for a cloture motion before the measure will be scheduled for additional debate. ■

UNICAMERAL UPDATE

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Sales tax hike would decrease property taxes via additional school aid

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of cigarettes from 64 cents to \$1 and impose taxes on bottled water, candy and soft drinks, as well as storage, moving, plumbing, HVAC and certain veterinary services.

The amendment would direct the new revenue to the state's property tax credit cash fund and from there to additional school aid.

The amendment also would reduce the value of residential, commercial and industrial property to 90 percent of its actual value for purposes of taxation. Agricultural and horticultural land would be valued for taxation at 65 percent of its actual value rather than the current 75 percent.

Linehan said the proposal also would reduce the maximum school levy and make several changes to the state's school aid formula such that no school would receive less than one third of its funding from the state. The increase would boost Nebraska from 47th to 20th in the nation in terms of state aid to schools, she said.

"What we're trying to do is treat everybody fairly," Linehan said.

Jack Moles, executive director of the Nebraska Rural Community Schools Association, testified in support of the amendment, particularly the provision requiring a certain amount of state foundation aid per student.

"This would help to slow the flow of state funds from the rural areas, which has caused such a high reliance on property taxes," he said.

Art Nietfeld also testified in support, saying the proposal would help farmers like him who pay high property taxes to support rural school districts and counties. He said the

property taxes on his farm have more than doubled in the last nine years and represent roughly half of his net cropland income in an average year.

"With these constant property tax increases and lower commodity prices, we just can't take it anymore," Nietfeld said.

Blaine Wilcoxson testified in opposition to the amendment on behalf of several organizations representing plumbers, pipefitters and HVAC technicians. He said the proposed tax on plumbing and HVAC services would make it more expensive for Nebraskans to repair or renovate their homes.

"These are not luxury services or services that are nice to have," Wilcoxson said.

Liz Standish, associate superintendent for business affairs at Lincoln Public Schools, also opposed the measure. She said LPS could lose up to \$7 million under the proposed changes to the state's school aid formula because the increase in state aid would not offset the district's lost property tax revenue due to the proposed valuation reduction.

"It is very likely that we could be growing, our city could be growing, and our revenue per student could be shrinking under this proposal," Standish said.

She said large and growing school districts that receive equalization aid—state aid intended to cover the needs of districts that cannot be met by other resources—fear that the proposal's new funding components would grow too quickly for the state to afford them, making it likely that the Legislature would cut equalization aid to balance

the state's budget.

Also testifying in opposition was Larry Dix, executive director of the Nebraska Association of County Officials. He said the proposed valuation reduction would decrease counties' property tax base by approximately \$28 billion.

The reduction would force many counties to increase their levies in order to maintain their budgets, Dix said, but some could not because they are at or near the statutory 50-cent levy limit.

Renee Fry, executive director at OpenSky Policy Institute, also opposed the amendment. She said the proposed sales tax rate increase is too high and would fall most heavily on low- and middle-income families. The proposal also does not go far enough to broaden the state's sales tax base by eliminating exemptions, Fry said.

Ken Herz, president of the Nebraska Cattlemen, gave neutral testimony on behalf of the Agriculture Leaders Working Group, comprising the leaders of seven agricultural organizations.

Herz said the group supports reducing property valuations statewide as well as increasing state aid to schools with new sales tax revenue. However, he said, the group opposes using the state's property tax credit cash fund for additional school aid.

"We respectfully request that the committee not repurpose the dollars in that fund to pay for this plan until we know exactly how the newly structured program will operate," Herz said.

No immediate action was taken on the amendment. ■

AGRICULTURE

Expanded right-to-farm protections amended, advanced

Lawmakers gave second-round approval April 25 to a bill that would expand legal protections for agricultural producers under Nebraska’s 1982 Right to Farm Act after amending it to protect the rights of neighboring landowners.

Under the act, a farm or public grain warehouse—a grain elevator or receptacle in which grain is held for longer than 10 days—cannot be found to be a public or private nuisance if it existed before a change in the land use or occupancy of land in its locality and would not have been considered a nuisance before the change.

As introduced by Sen. Dan Hughes of Venango, LB227 would expand the conditions under which those operations are shielded from nuisance liability.



Sen. Dan Hughes

Under the bill, as amended on general file, a farm or public grain warehouse could not be found to be a public or private nuisance after two years following the established date of operation.

If the operation undergoes any subsequent change—including a conversion from one type of farm to another or a change in size—the date of that change would be considered the established date of operation and the two-year window would reset.

Omaha Sen. Steve Lathrop introduced an amendment during select file debate, adopted 38-0, that would replace the bill. Under the amendment, no suit for public or private

nuisance could be maintained against a farm or public grain warehouse more than two years after the condition that is the subject matter of the suit reaches a level of offense sufficient to sustain a nuisance claim.

The limitation would not apply to any action brought to determine compliance with or to enforce a previous court order related to the same nuisance claim or to any claims for additional damages or relief available when an operation fails to remediate a nuisance pursuant to the court order.

Lathrop said the amendment is a compromise that would preserve existing protections for agricultural operations under the Right to Farm Act, while giving neighboring landowners two years in which to bring a nuisance action if a change to an operation causes problems that could support a nuisance claim.

Hughes supported the amendment, saying it would increase protections for farmers and livestock producers who expand their operations.

Following adoption of the Lathrop amendment, senators advanced LB227 to final reading by voice vote.

BUSINESS & LABOR

Debt collection bill for workers’ comp claims advanced

Lawmakers gave first-round approval April 24 to a bill meant to assist individuals facing collection of certain medical debts.

LB418, as originally sponsored by Omaha Sen. Machaela Cavanaugh, would prohibit collection of a



Sen. Machaela Cavanaugh

debt incurred for treatment of a work-related injury while the matter is pending in the Nebraska Workers’ Compensation Court.

The bill would not prevent the eventual collection of the debt or lower the amount of the debt, Cavanaugh said, but it would give some peace of mind to employees going through worker’s compensation proceedings.

“It’s a stressful time for the employee and their family,” she said. “Medical bills start piling up, calls from debt collectors are coming with no end in sight and with no way to pay them because all of this is happening before the claim has made its way through the workers’ compensation system.”

A Business and Labor Committee amendment, adopted 32-0, replaced the bill.

Under the amended bill, written notice would be provided to collection agencies seeking to collect on a debt that the matter is pending. A second notice would be sent within 30 days of the initial notice, including specific details of the debt.

The state attorney general would be authorized to investigate collection agencies that do not comply with the bill’s provisions.

The committee amendment incorporated provisions of LB360, sponsored by Lincoln Sen. Matt Hansen.

These would allow the Nebraska Workers’ Compensation Court to appoint a power of attorney for a claim, settlement or disbursement of money for nonresident alien dependents if the court believes the dependents would be better served by someone other than the consular officer of their resident country, or if no consular officer exists.



Sen. Matt Hansen

Provisions of LB178, sponsored by Lincoln Sen. Mike Hilgers, also were incorporated into the bill. These would update and change references to the state Department of Administrative Services' risk manager and make changes to allow for a more efficient claims process.



Sen. Mike Hilgers

The bill advanced to select file on a 32-0 vote.

EDUCATION

Community college aid program expanded

Lawmakers gave final approval April 26 to bill that increases the number of programs eligible for the state's community college gap assistance program.

The program provides funding for community colleges to provide awards to students in programs that are aligned with training programs with stackable credentials that lead to a program awarding college credit, an associate degree, a diploma or a certificate in an in-demand occupation such as health services, transportation and computer services.

Previously, only programs that are not offered for credit and that have a duration of at least 16 contact hours were eligible for the program.

Under LB180, introduced by Lincoln Sen. Kate Bolz, programs that are offered for credit but are of insufficient clock, semester or quarter hours to be eligible for



Sen. Kate Bolz

Federal Pell Grants also qualify for the program.

Senators voted 46-0 to pass LB180.

GENERAL AFFAIRS

Lottery advertisements will change

The odds of winning will be posted on all Nebraska Lottery advertisements under a bill passed April 26.

LB252, introduced by Sen. Suzanne Geist of Lincoln, requires that all state lottery ads disclose the odds of winning the largest prize in a font no smaller than 35 percent of the largest font used in the ad. Online advertisements must disclose the odds in at least 10-point font.



Sen. Suzanne Geist

Lawmakers passed the bill on a 45-0 vote.

HEALTH & HUMAN SERVICES

Residential child care background checks advance

A bill that would require residential child care workers to submit to a new federally mandated background check advanced from general file April 23.

LB460, sponsored by the Health and Human Services Committee, would mandate that any adult employed at a residential child-caring agency pay for fingerprinting and a national criminal history record information check at least once every five years.

An employee also would be checked against national and state sex offender registries, state criminal registries and state child abuse and neglect registries.

Sen. Sara Howard of Omaha, chairperson of the committee, said that without LB460 the state would lose \$39 million in federal funding.

"Not to be really dramatic, but we'll lose all our [Title] IV-E funding; [it] is how we pay for child welfare," Howard said.

A committee amendment, adopted 39-0, added provisions contained in LB341, introduced by Sen. John Arch of La Vista. Currently, Nebraskans who qualify for child care subsidies become eligible for transitional child care assistance if their income exceeds 130 percent of the federal poverty level. The amendment would allow families to continue to receive transitional child care if their income is below 185 percent of the federal poverty level, as long as the family's income does not exceed 85 percent of the Nebraska median income for a family of the same size. It also would eliminate the program's 24-month eligibility limit.



Sen. John Arch

Arch said the amendment would ease the "cliff effect"—when a person or family receives a pay raise sufficient to put them above the income limit and results in a loss of benefits. The amendment also would bring Nebraska into compliance with federal law, he said.

"Under the federal law, states are required to provide families receiving child care subsidies a gradual phase out if the family income is increased," Arch said. "This allows for greater stability as the family moves toward self-sufficiency."

The committee amendment also added the background check provisions of LB459, introduced by Howard, that cover child care providers. Howard said Nebraska currently is out of compliance with a federal law that took effect in September, which allows the federal government to withhold some child care block grant funds.



Sen. Sara Howard

The provisions would require all prospective child care staff members to submit to a criminal history record check prior to employment, beginning Sept. 1, 2019. Child care staff currently employed would have until Sept. 1, 2021.

“If we continue to be out of compliance we risk a 5-percent penalty, which means we’d have to pay back about \$2.5 million,” she said.

Following adoption of a technical amendment, lawmakers voted 38-0 to advance LB460 to select file.

Medicaid managed care restrictions clear first round

A bill that would delay the transition of long-term care facilities to the state’s Medicaid managed care program advanced from general file April 24.

LB468, as introduced by Fremont Sen. Lynne Walz, originally would have prohibited any new service or population from being added to Medicaid managed care until Jan. 1, 2020, or until an evaluation of the managed care program is completed.



Sen. Lynne Walz

Walz said the state’s Medicaid

managed care program has a history of delayed and incomplete payments to providers, which long-term care facilities would not be able to absorb. Nursing facilities in many Nebraska communities are struggling, she said, and the state Department of Health and Human Services should be cautious in how it proceeds with changes that would impact the state’s most vulnerable populations.

“They are already stretching every dollar they have to provide services to people in their care,” Walz said. “There have already been a number of facilities that have gone into receivership across Nebraska.”

A Health and Human Services Committee amendment, adopted 34-0, would limit the bill to specify that long-term care and supports, including skilled nursing facilities, nursing facilities, assisted living facilities and home and community-based services could not be added to the Medicaid managed care program before July 1, 2021.

It also would remove the bill’s evaluation requirement.

Omaha Sen. Sara Howard, chairperson of the committee, said the amendment essentially would ask DHHS to “pump the brakes” and slow the transition of long-term care services to managed care, which she said would provide predictability for impacted facilities.

Gothenburg Sen. Matt Williams supported the bill and the amendment, saying DHHS currently is facing the challenge of Medicaid expansion and continued efforts to improve the managed care system.

“Their plate is so full that I believe it would not be in conformity with good policymaking to move [DHHS] forward into managed care [in] the long-term care arena at this point in time,” Williams said.

Sen. Joni Albrecht of Thurston

expressed concern about the estimated fiscal impact of the proposal, noting that DHHS has indicated a need to purchase a new data system in order to continue processing claims on a fee-for-service basis for long-term care facilities if their move to managed care is delayed.

Howard called the department’s suggestion an “outrageous assertion,” and said that even if such a purchase were necessary, the Legislature previously set aside funds for that project. In addition, she said, the cost of a new data system would be matched by the federal government at 90 percent.

The committee amendment also would incorporate a provision of LB328, originally introduced by Lincoln Sen. Kate Bolz. The provision would remove a termination date and pilot project status of the family finding program. The program was scheduled to end June 30, 2019.

Bolz said the program is an evidence-based process to link hard-to-place young people in foster care with extended family and help them build relationships.

“It has significantly increased the number of children who have been placed with a permanency option—in other words, adoption or guardianship—through this facilitated family finding process,” she said.

Following adoption of the amendments, lawmakers voted 34-0 to advance LB468 to select file.

Extension of public counsel authority advanced

Senators advanced a bill April 23 that would extend a time frame for the authority of the deputy public counsel for institutions.

The public counsel—also known as the state Ombudsman’s Office—is an independent office that handles citi-

zen complaints regarding the actions of administrative agencies of Nebraska state government.

Currently, the authority of the deputy public counsel for institutions extends to individuals who have been patients at a state-owned or state-operated regional center within the prior 12 months. LB600, introduced by Fremont Sen. Lynne Walz, would extend that time frame from 12 to 24 months.

Walz said the bill would provide the public counsel with more information to assess the needs of individuals as they transition out of the state's regional centers.

"This would allow for more follow up with individuals who have been released from regional centers to see if they are receiving the necessary supports and services, as well as give us a more robust examination of the mental health needs and systems challenges within regional centers," she said.

Lincoln Sen. Kate Bolz introduced an amendment, adopted 26-0, to include provisions of her LB330. The provisions would eliminate the July 2019 termination date for the Nebraska Children's Commission. Bolz said the commission was established in 2012 in response to the state's failed attempt to privatize Nebraska's child welfare system.

Under the amendment, the commission would become a permanent forum for collaboration among state, local, community, public and private stakeholders in child welfare and juvenile justice programs and services. It also would streamline the commission's duties and shift its administration to the Legislature.



Sen. Kate Bolz

The new commission—which would consist of 15 governor-appointed members—would be funded through the Nebraska Health Care Cash Fund. Bolz said funds are available due to the expiration of a study that was approved by the Legislature and since has been completed.

She said the commission houses five subcommittees created by the Legislature that examine foster care reimbursement rates, the prescription of psychotropic drugs for state wards and other issues.

"If we don't take action, the legislatively created committees will have no home base to work from," Bolz said. "The commission has proven its worth, done great work, submitted reports and made lives better for our state's children."

Following adoption of the amendment, senators voted 30-0 to advance LB600 to select file.

JUDICIARY

Repeal of death penalty fails to advance

A bill that would repeal Nebraska's death penalty failed to advance from general file April 25.

Sponsored by Omaha Sen. Ernie Chambers, LB44 would replace death penalty provisions with a sentence of life without the possibility of parole. The bill would apply retroactively to inmates currently serving capital punishment sentences.

The bill would not prevent a sentencing court from ordering restitution, or alter the authority of the state

Department of Correctional Services to determine appropriate measures for incarceration of an offender.

The Legislature abolished the death penalty in 2015, overriding a veto by Gov. Pete Ricketts. Voters then rejected the repeal measure in the 2016 general election, maintaining capital punishment in Nebraska.

People's minds are made up on the issue of the death penalty, Chambers said.

"Nothing I say will change anybody's mind, but I have to do everything I can as long as I'm in the Legislature to try and stop the state from killing its residents," he said.

Omaha Sen. Steve Lathrop said he understands why people might want to retain the death penalty, but that it is a policy that is applied inconsistently and ineffectively.

"There are a whole host of people who have committed heinous crimes who never got the death penalty [because] it was taken off the table," he said. "I have to support the bill because ... my moral compass points in the direction of repeal."

The death penalty in Nebraska is a settled issue, said Peru Sen. Julie Slama, who spoke in opposition to the bill. She said 92 out of 93 counties voted to retain the death penalty in 2016.

"Make no mistake, the critical aspect of today's debate is not the merits of the death penalty," Slama said. "It's about us as a legislative body overriding the voice of Nebraskans a mere two years after they spoke loud and clear [on the death penalty]."

Lincoln Sen. Suzanne Geist also opposed LB44. She said she understands all sides of the argument, but that she ultimately believes the death penalty is justified in certain cases.

"There are people who have done such egregious things to innocent human beings who have value and who



Sen. Ernie Chambers

have left families in shambles,” Geist said. “I believe that there is a tipping point that you can commit such an egregious act against another human being that it requires the taking of your life.”

Senators voted 17-25 on advancement of LB44 to select file, eight votes short of the number required.

Appeals of certain motions advanced

A bill that would allow the immediate appeal of certain legal motions was advanced from general file April 24.

Currently, certain decisions of a trial court only can be appealed after the case has been litigated.

Under LB179, as originally introduced by Lincoln Sen. Mike Hilgers, an order denying a motion to dismiss, for judgement on the pleadings or for summary judgement based on sovereign or government official immunity would be considered a final decision and eligible for appeal within 30 days.



Sen. Mike Hilgers

These motions already are immediately eligible for appeal in practice, Hilgers said, but the bill would codify that in state law.

“We brought LB179 to essentially keep ... the status quo and ensure there’s a statutory basis to continue to have these immediate appeals of sovereign immunity to decisions,” he said.

A Judiciary Committee amendment, adopted 39-0, replaced the bill. As amended, only an order denying a motion for summary judgement would be eligible for immediate appeal when such motion is based on the assertion of sovereign immunity or the immunity of a government official.

Omaha Sen. Ernie Chambers spoke in support of the bill. It would amend an “esoteric” portion of statute, he said, but would benefit those who are involved in such litigation.

Senators advanced the bill to select file on a 42-0 vote.

Updated landlord requirements advanced

A bill that would require landlords to return security deposits more quickly was advanced from general file April 24.

Currently, a tenant formally must request return of a security deposit from their landlord. LB433, sponsored by Lincoln Sen. Matt Hansen, would require landlords automatically to provide the balance due on a security deposit to a tenant within 14 days of termination of a rental agreement.



Sen. Matt Hansen

One way to address access to affordable housing in Nebraska, Hansen said, is by updating landlord-tenant laws.

“It’s important to remember that a security deposit is just that—a deposit of a tenant’s own money for the landlord to hold in case damage is done to the property,” he said. “If no damage is done ... that money should be returned to the tenant, regardless of whether or not the tenant contacts the landlord.”

If a landlord fails to return the security deposit within 14 days, the tenant could recover any property or money due to him or her, as well as liquidated damages equal to one month’s rent plus costs and reasonable attorney’s fees.

If a government entity deems a residence to be uninhabitable due to negligence, the tenant could not be

held liable for any damage as a direct result of forcible removal.

A Judiciary Committee amendment, adopted 30-5, incorporated provisions of Hansen’s LB434, which would extend the period of time for payment of rent after a notice of intent to terminate from three to seven days.

Bayard Sen. Steve Erdman opposed lengthening the payment period.

“The tenants know they’re supposed to pay the rent on time,” he said. “I don’t believe giving them another four days is going to make a difference.”

Sen. Steve Lathrop of Omaha, who serves as the Judiciary Committee chairperson, said the committee proposed the change because delays in mail delivery sometimes can mean that a person receives notice on the same day that their grace period has expired.

“This is only to provide people with a meaningful opportunity to actually pay back rent,” he said. “Most landlords want back rent paid and for the tenants to continue living there.”

Senators advanced the bill to select file on a 32-6 vote.

Bill to prohibit minor consent defense advanced

Senators advanced a bill from general file April 23 that would provide stronger sexual assault protections for minors.

LB478, as introduced by Omaha Sen. Tony Vargas, would prohibit consent by a minor



Sen. Tony Vargas

younger than 18 from being used as a defense or mitigating factor in a civil case arising out of a sexual assault perpetrated by an adult in a position of authority over the minor.

Vargas said that in 2017 a Florida court found four third graders at least partially at fault when they were molested by a teacher.

“It should be easy to say that a minor cannot provide consent to a person of authority,” he said. “It should be equally easy to say that a victim and their family should not be further victimized by a statutory framework that can result in a [defendant] victim blaming their way out of paying damages.”

Vargas said there currently is nothing in Nebraska statutes that prevents victims in civil cases from being blamed under a defense known as “comparative negligence,” which means both parties share fault in a matter.

A Judiciary Committee amendment, adopted 36-0, would replace the bill. As amended, a victim’s consent would not be admissible in any civil case alleging sexual penetration when a perpetrator is 19 or older and the victim is younger than 16.

It also would make inadmissible a victim’s consent in a civil case alleging sexual contact when a perpetrator is 19 or older and the victim is younger than 15.

Omaha Sen. Machaela Cavanaugh spoke in support of the bill, calling it another important step in making sure that children are protected.

“Sometimes it’s easy to discount what it looks like to be a victim of sexual assault and what consent means,” Cavanaugh said. “[There are] many forms of consent [but] a child cannot give consent. It’s just not possible.”

Senators advanced the bill to select file on a 37-0 vote.

Restorative justice bill clears first round

Senators gave first-round approval April 23 to a bill that would expand

the use of restorative justice programs in Nebraska.

Restorative justice programs provide an informal opportunity for a person who causes harm to accept responsibility and for victims to describe the impact of the harm and identify the losses incurred. Programs can include mediation, conferences, panels, projects or classes.

LB595, as originally introduced by Thurston Sen. Joni Albrecht, would have changed the Office of Dispute Resolution to the Office of Restorative Justice and Dispute Resolution. Albrecht said the office has successfully implemented restorative justice programs since 2015 using grant funding.

“LB595 would solidify these successful practices into our statutes and provide for the future of restorative justice under the [office],” she said.

A Judiciary Committee amendment, adopted 38-0, replaced the bill and removed the office title change.

Among other provisions, the amendment also would specify that any restorative justice agreement reached between parties would be considered confidential. It would make any admission, confession or incriminating information obtained through a restorative justice program inadmissible as evidence against a juvenile, except as rebuttal or impeachment evidence in any future juvenile adjudication or criminal proceeding.

A judge could order an adjudicated juvenile to participate in a restorative justice program based on his or her age, intellectual capacity, living environment or the nature of the case.

LB595, as amended, would change membership of the 15-member dispute

resolution advisory council to include a district court judge, county court judge and juvenile court judge, as well as representatives from the Office of Parole Administration, Nebraska State Bar Association and Nebraska County Attorneys Association.

The amendment also would allow a licensed attorney to act as a mediator in developing parenting plans, if agreed to by all parties.

Senators advanced the bill to select file on a 38-0 vote.



Sen. Joni Albrecht



Bond authority extension for certain NRDs advanced after cloture vote

A bill that would extend certain bonding authority for an Omaha-area natural resources district advanced to the final round of debate April 25 after a successful cloture vote.

Current law authorizes natural resources districts encompassing a city of the metropolitan class to issue bonds payable from a flood protection and water quality enhancement levy on the taxable value of property in the district. The levy may not exceed 1 cent per \$100 of taxable valuation annually without voter approval.

Omaha Sen. Brett Lindstrom, sponsor of LB177, has said that only the Papio-Missouri River NRD currently has that bonding authority, which is set to end Dec. 31, 2019.



Sen. Brett Lindstrom

As amended on general file, LB177 would extend the termination date to Dec. 31, 2024.

Lindstrom said flood control

projects that the NRD has completed over the past few years helped protect Omaha and surrounding communities from recent floods. He said the bonding authority allows the NRD to begin projects sooner than it otherwise could, which allows it to avoid higher construction costs due to inflation.

Sen. Sue Crawford of Bellevue supported the bill, saying the extension is needed to help complete levy improvements around Offutt Air Force Base and for flood control in rapidly growing Sarpy County.

According to Mayor David Black of Papillion, she said, the NRD needs the bonding authority to purchase tracts of land before they are developed. If the NRD cannot keep pace, Crawford said, development would need to slow down to ensure that existing homes, businesses and infrastructure are protected.

Bayard Sen. Steve Erdman opposed the bill and filed several motions to delay a vote on it. He said the NRD already has \$71 million in bond debt and could pay for future projects by increasing its levy. Because the NRD must use property taxes to pay down its debt, extending the authority effectively would increase property taxes, he said.

Erdman said the general absence of flooding in the Papio Creek Watershed in March proved that the NRD no longer needs the bonding authority.

“Everything that this NRD needed to do with this bonding authority has been accomplished,” he said.

Sen. Mike Groene of North Platte also opposed LB177. He said the NRD held an election in 2016 to increase its special bonding authority, as allowed under current law, but the measure failed and was supported by a majority of voters in only a single county within the NRD.

“The majority of people in the Papio NRD do not want their NRD going in further debt,” Groene said.

After three hours of debate on select file, Lindstrom filed a motion to invoke cloture, or cease debate and vote on the bill. The motion succeeded on a vote of 36-9. Thirty-three votes were needed.

Senators then voted 34-9 to advance LB177 to final reading.



Study of OPS retirement system management approved

Lawmakers gave final approval April 26 to a study of the possible transfer to the state of management duties for the Omaha school retirement plan.

LB31, introduced by Seward Sen. Mark Kolterman, requires the Public Employees Retirement Board—in consultation with the Nebraska Retirement Systems Committee, the



Sen. Mark Kolterman

Omaha School Employees Retirement System board of trustees, Omaha Public Schools board of education and other stakeholders—to prepare a work plan that examines the possible transfer of management responsibilities for the OSERS plan to the PERB.

The work plan must identify the tasks, issues, costs and timelines to transfer management and provide a comparison of the annual OSERS administration costs to the estimated cost for PERB to assume management of the plan.

PERB is authorized to assess OS-

ERS for costs related to the work plan, which must be completed and submitted to the Legislature by June 30, 2020.

LB31 passed 47-0 and takes effect immediately.



Affordable housing bill expanded, advanced

Affordable housing projects in extremely blighted areas would receive first priority for state assistance under a bill advanced from general file April 24.

As introduced by Omaha Sen. Justin Wayne, LB86 would increase the documentary stamp tax on the sale of real estate and direct some of the additional revenue to the state’s Affordable Housing Trust Fund, which is used to increase the supply and improve the quality of the state’s affordable housing stock.



Sen. Justin Wayne

A Revenue Committee amendment, adopted 35-0, would replace the bill. It would require the state Department of Economic Development, which administers the fund, to give first priority to projects located in an area that has been declared extremely blighted when selecting projects for assistance.

The amendment would require the governing body of a city that intends to build workforce housing in an extremely blighted area under the state’s Community Development Law—or intends to declare an area as extremely blighted for purposes of funding decisions under the Affordable Housing Trust Fund—first to adopt a resolution

that the area is extremely blighted after a public hearing.

State law defines an extremely blighted area as a census tract with an average unemployment rate that is at least 200 percent of the average state unemployment rate and an average poverty rate of more than 20 percent according to the most recent federal decennial census.

Wayne introduced an amendment, adopted 37-0, that would include provisions of his LB88. The amendment would provide a \$5,000 nonrefundable income tax credit to any individual who purchases a residence located in an extremely blighted area if it is his or her primary residence and was not purchased from a family member.

The credit would be subject to recapture by the state Department of Revenue if the individual claiming the credit sells the residence or stops using it as his or her primary residence within five years.

Wayne said he introduced the proposals to increase the number of affordable homes in north Omaha and to increase homeownership in historically impoverished areas of the city where minorities typically reside.

The amendment also would include provisions of LB694 and LB737, both introduced by Sen. Tony Vargas of Omaha.

Under the amendment, only for-profit entities would be required to provide matching funds to receive assistance from the Affordable Housing Trust Fund. Political subdivisions, local housing authorities and nonprofit organizations would not be required to provide matching funds.

“My hope is that by removing this initial match requirement preventing

many entities [from] doing these projects and developments, that work will be done quicker and the needs of so many low-income Nebraskans will be met,” Vargas said.

The amendment also would require the state Department of Economic Development to include more information in its annual status report on the Affordable Housing Trust Fund. The report would be required to include the total amount of funds for which applications were received, the year-end fund balance and an explanation of why any remaining funds have not been committed.

Bellevue Sen. Sue Crawford supported the bill as amended. She said removing the matching requirement would make it easier for nonprofits to replace affordable housing units destroyed by recent flooding.

Senators voted 38-0 to advance the bill to select file.

Volunteer emergency responder tax credit clarified

Lawmakers passed a bill April 26 intended to simplify administration of the Volunteer Emergency Responders Incentive Act.

The act provides a \$250 refundable income tax credit for qualifying volunteers serving a county, city, village or rural or suburban fire protection district. A certification administrator at each volunteer department keeps a record of points awarded to members based on their activities. Members qualify for the credit if they accumulate enough points.

Under LB222, introduced by Sen. Joni Albrecht of Thurston, the certification administrator will provide each volunteer

member with notice of the total points he or she has accumulated during the first six months of the current calendar year no later than July 15 of each year.

The bill also requires the administrator to provide each volunteer member a written certification stating the total number of points accumulated by the member during the immediately preceding year and whether that member qualified as an active emergency responder, active rescue squad member or active volunteer firefighter for the year. The notification may be sent no later than Feb. 1 of each year.

LB222 clarifies that a volunteer member may claim the credit by including a copy of the certification with his or her state income tax return.

The bill requires the certification administrator to file a list of qualifying volunteer members with the state Department of Revenue and the governing body of the county, city, village, or rural or suburban fire protection district.

LB222 passed on a vote of 46-0.

County funds for motor vehicle sales tax collection amended, advanced

A bill that would reinstate a commission counties receive in return for their collection of state motor vehicle tax was advanced from select file April 25 after senators amended it to direct more of the funds to county roads and bridges.

Bellevue Sen. Sue Crawford, sponsor of LB237, has said county treasurers currently may withhold 2.5 percent of the first \$3,000 in state motor vehicle sales and use tax that they remit,



Sen. Tony Vargas



Sen. Joni Albrecht



Sen. Sue Crawford

which amounts to \$75 per month.

Under LB237, as amended on general file, counties also could withhold 0.5 percent of all amounts in excess of \$6,000 remitted each month. Seventy-five percent would be deposited in the county general fund and 25 percent would be deposited in the county road fund.

Crawford introduced an amendment on select file that instead would direct 50 percent to the county general fund and 50 percent to the county road fund prior to Jan. 1, 2023, when the distribution would revert to the original percentages.

Crawford said the change meets opponents' request that more of the funds be used to repair county roads and bridges damaged by this spring's floods. At the same time, she said, it recognizes that the bill is intended to address an unfunded state mandate on county treasurers' offices to collect the tax.

The amendment also would change the bill's operative date from Oct. 15, 2019, to Jan. 1, 2020.

Following adoption of the Crawford amendment on a 34-0 vote, senators advanced LB237 to final reading by voice vote.

College savings proposal amended, advanced

Lawmakers gave first-round approval April 24 to a bill intended to make it easier for families and others to contribute to a beneficiary's state college savings plan.

The Nebraska Education Savings Trust Plan provides tax-advantaged 529 accounts meant to encourage saving for postsecondary education costs. Contributions grow tax-deferred, and withdrawals are exempt from state and federal taxes as long as they are used for a beneficiary's qualified higher

education expenses such as tuition, books, supplies and room and board.

Currently, individuals other than the plan's participant, or registered owner, are ineligible for the state income tax deduction on contributions they make to NEST accounts. Annual deductions are limited to \$5,000 for those married filing separately and \$10,000 for other filers.

As introduced by Gretna Sen. Andrew La Grone, LB470 would allow "nonparticipants" to claim the state income tax deduction on contributions they make to a beneficiary's NEST account and would eliminate the cap on deductions for contributions.



Sen. Andrew La Grone

La Grone said his proposal would make it simpler to use Nebraska's 529 accounts to save for college by allowing an individual other than a plan's participant to receive the income tax deduction for contributions to that plan, rather than requiring him or her to open a separate account in order to receive the deduction.

"No one who is not currently entitled to a deduction under the current law will be able to get one under my bill," he said. "It simply streamlines the process so [contributions] can go into one account."

A Revenue Committee amendment, adopted 37-0, would replace the bill. It also would allow nonparticipants to contribute to NEST accounts but would leave the cap on deductions in place.

La Grone introduced an amendment, adopted 35-0, that would replace the committee amendment. Rather than add language to a section of current law regarding nonparticipants, he said, the amendment would remove language referring to partici-

pants, allowing for multiple individuals, including employers, to claim the tax deduction for those contributions.

La Grone's amendment also included provisions of two other bills included in the committee amendment: LB444, sponsored by Omaha Sen. Mike McDonnell, and LB545, introduced by Sen. Justin Wayne, also of Omaha.

McDonnell's proposal would exempt military housing units from property taxation but would require the owners of those dwelling complexes to make payments in lieu of taxes to local school districts, the county in which the complex is located and an infrastructure maintenance fund used for capital repairs, maintenance and improvement of the complex.



Sen. Mike McDonnell

Under Wayne's measure, an individual could claim an income tax deduction against contributions an employer makes to his or her NEST account. The amendment also would prohibit a government program administered by any state agency that provides benefits or aid to individuals based on financial need from taking employer contributions into account when determining a person's income.



Sen. Justin Wayne

Wayne said this would ensure that employer contributions to low-income Nebraskans' NEST accounts would not cause those individuals to lose certain state benefits.

Sen. Carol Blood of Bellevue questioned how LaGrone's measure would interact with LB610, introduced by Omaha Sen. Brett Lindstrom. Under that bill, an employer could apply to

the state treasurer for an incentive payment of up to \$2,000 for contributing to an employee's NEST account.

If both measures pass, Blood said, an employer could receive both the incentive payment and the tax deduction for contributions.

Lincoln Sen. Patty Pansing Brooks also questioned how the proposal's provisions relate to those of LB610 and several other 529-related bills introduced this session, as well as how those measures would be funded.

"Maybe this isn't obfuscation, but it feels like it," she said. "It feels like we can't get the whole story."

Senators voted 39-1 to advance the bill to select file.

County sales tax to pay certain federal judgments vetoed

A bill that allows a county to impose a sales tax to help pay a federal judgment against it was vetoed by Gov. Pete Ricketts April 24.

Introduced by Adams Sen. Myron Dorn, LB472 authorizes a county board to adopt a resolution to impose a sales and use tax of 0.5 percent on transactions within the county to pay a qualified judgment, which the bill defines as a judgment rendered against a county by a federal court for a violation of federal law.

Dorn has said the proposal is intended to help the residents of Gage County. In 2016, a federal judge awarded more than \$28 million in damages to the six men and women wrongfully convicted of the rape and



Sen. Brett Lindstrom

homicide of a Beatrice woman in 1985. The individuals, commonly known as the "Beatrice Six," had sued Gage County in federal court after DNA evidence exonerated them.

Lawmakers passed the bill April 18 on a vote of 43-6.

In his veto message, the governor called the events leading to the introduction of LB472 "tragic," but said the Legislature should not authorize political subdivisions to impose new taxes on Nebraskans without a vote of the people.

Dorn filed a motion April 25 to attempt to override the governor's veto. Thirty votes will be required. The Legislature has five legislative days after receiving a veto message to take up an override motion.

Beginning farmer tax credit clarifications advanced

A bill that would clarify the number of rental agreements beginning farmers and agricultural asset owners could make under an existing tax credit program advanced from general file April 24.

The Beginning Farmer Tax Credit Act, adopted in 1999, provides a personal property tax exemption of up to \$100,000 and an income tax credit of up to \$500 for qualified beginning farmers or livestock producers.

An owner of agricultural assets—such as cropland, pasture or machinery—is eligible for an income tax credit on the rent of those assets to a beginning farmer or producer.

Lincoln Sen. Suzanne Geist, sponsor of LB560, said she introduced the bill to address a Legislative Performance Audit Commit-



Sen. Suzanne Geist

tee's audit of the program. The audit found that the Beginning Farmer Board, which approves applications under the act, has interpreted and applied the act in a way not consistent with the letter of the law, she said.

A Revenue Committee amendment, adopted 35-0, would replace the bill with provisions of LB623, introduced by Gothenburg Sen. Matt Williams. Williams said the proposal would change the act to reflect the way the board has administered the program.

Under the amendment, qualified beginning farmers or livestock producers and owners of agricultural assets who have participated in a three-year rental agreement would be eligible to file subsequent applications for different assets. The amendment would clarify that tax credits for an asset could be issued for a maximum of three years.

Williams said the provisions also would define a flex or variable rent agreement, in which a predetermined base rent is adjusted for actual crop yield or price. Farmers did not use such agreements when the program was created, but they are now common, he said.

Finally, the amendment would clarify that the credits issued under the act are refundable.

Geist supported the bill as amended, saying the Legislative Performance Audit Committee believes that Williams' proposal addresses the audit report's recommendations.

Sen. Tom Brandt of Plymouth also supported LB560, saying the proposed changes reflect current agricultural practices.

Senators voted 38-0 to advance the bill to select file.



Sen. Matt Williams

TRANSPORTATION & TELECOMMUNICATIONS

Statewide regulations for small wireless facilities advanced

Lawmakers gave first-round approval April 23 to a bill that would give wireless companies the right to place small cell wireless facilities in public rights of way.

The facilities are short-range cellular nodes needed to support fifth-generation wireless technology, or 5G, in high-traffic areas.

Henderson Sen. Curt Friesen, sponsor of LB184, said the bill would encourage wireless companies to accelerate their deployment of 5G in Nebraska by providing for reasonable fees, access to the public right of way and a uniform permit application process in cities across the state.



Sen. Curt Friesen

“Instead of a few hundred different sets of rules, they want some common-sense uniformity in terms of requirements, reviews and approval,” he said.

A Transportation and Telecommunications Committee amendment, adopted 32-1, would replace the bill. Under the amendment, a political subdivision, or authority, could require wireless providers to apply for and obtain permits to collocate, or attach, small wireless facilities to wireless structures and utility poles and to install, modify or replace a utility pole associated with a small wireless facility in the public right of way.

The bill would give wireless providers the right—as a permitted use not subject to zoning review or approval—

to collocate small wireless facilities and install, maintain, modify, operate and replace utility poles within the right of way as long as they do not obstruct or hinder usual travel or public safety on the right of way or obstruct its legal use by utilities.

The application fee to collocate small wireless facilities on an existing or replacement authority pole could not exceed \$500 for up to five small wireless facilities on the same application and \$100 for each additional small wireless facility on the same application. The rate to collocate a small wireless facility on an authority pole could be no more than \$20 per pole per year.

The application fee for the installation, modification or replacement of a utility pole and the collocation of an associated small wireless facility could not exceed \$250 per pole.

A provider could file a consolidated application for up to 30 individual small wireless facilities if the population of the authority’s jurisdiction is 50,000 or more or up to five individual facilities if the population is less than 50,000.

An application would be deemed approved if the authority fails to approve or deny it within 90 days of its receipt.

An authority could require a wireless provider to repair damage to the right-of-way caused by the provider’s activities. Providers also would be required to remove any small wireless facility that is not operated for a continuous period of 90 days after the initial installation.

Sen. John McCollister of Omaha supported LB184. He said Nebraska risks falling behind 14 other states that have passed similar legislation, including Arizona, Colorado and Texas.

“With wireless infrastructure so critical to business investment,” he

said, “not passing this legislation could put Nebraska at a competitive disadvantage not only locally but in the entire region.”

Omaha Sen. Machaela Cavanaugh opposed the bill, saying it would benefit large wireless companies at the expense of municipalities and consumers. She said the proposal is overly prescriptive and removes municipalities’ ability to negotiate contracts with providers.

“If municipalities want to have small cell wireless in their communities, they will negotiate contracts that will result in that,” Cavanaugh said. “I think this is an overstep and overreach of the state government.”

Senators voted 35-1 to advance the bill to select file.

URBAN AFFAIRS

Clean energy economic development changes adopted

Lawmakers passed a bill April 26 that makes changes to the Nebraska Property Assessed Clean Energy Act, commonly known as PACE.

The act allows cities and counties to authorize PACE financing within their jurisdictions for energy efficiency, water conservation and renewable energy projects for commercial, agricultural and residential property.

LB23, sponsored by Seward Sen. Mark Kolterman, adds new public purpose language to the PACE Act and changes the classification of co-generation and tri-generation systems under the act from a renewable energy resource to an energy efficiency



Sen. Mark Kolterman

improvement.

The bill also allows municipalities, on a case-by-case basis, to waive a requirement that the energy savings generated by a PACE project exceed the cost of the project.

LB23 passed on a 45-0 vote.

Statewide building code advances

A bill to make the state's building code the default code for municipalities advanced to select file April 23.

Currently, the state building code only applies to state-owned buildings and buildings in political subdivisions that have adopted the state code.

LB96, introduced by Omaha Sen. Justin Wayne, would make the state building code applicable in any county, city or village that does not adopt a building code within two years of an update to the state building code.



Sen. Justin Wayne

An Urban Affairs Committee amendment, approved on a 36-0 vote, would exempt any building that is on a farm or is used for farm purposes.

Wayne said that many areas of Nebraska have no code in place, which is problematic if an insurance company requires a damaged home to be rebuilt to code.

"This is really a way to protect builders and homeowners," Wayne said. "The goal of LB96 is to provide homeowners with a potential recourse in the event they build a new home in part of the state that does not currently have an adopted building code."

Lawmakers advanced LB96 to select file on a 37-0 vote. ■

Economic forecasting board raises revenue projections

In its final meeting before debate begins on the state budget, the Nebraska Economic Forecasting Advisory Board voted April 25 to raise revenue projections.

The board provides an advisory forecast of general fund receipts that the Legislature uses to craft the state's budget.

Revenue projections for the current fiscal year were raised by \$45 million to \$4.76 billion. The adjustment was based on anticipated increases of \$30 million in corporate income tax receipts and \$20 million in individual income tax receipts, offset by an anticipated \$5 million decrease in miscellaneous tax receipts.

Total projected revenue receipts for FY2019-20 were raised to \$4.88 billion, an increase of \$10 million. The FY2020-21 projections remain unchanged.

The next meeting of the board is set for Oct. 24.

FIND YOUR SENATOR

If you want to know which legislative district you live in, www.NebraskaLegislature.gov provides an easy tool for locating your district and senator.

Enter your full address into the "Find Your Senator" search field located on the right side of the home page. This opens a map that shows your legislative district and a picture of your senator, along with a link to that senator's web page. This page includes senators' contact information and links to their biography and photos. It also provides a list of committees they serve on and the bills they've introduced.

The screenshot shows a web interface titled "Find your Senator and District". At the top, there is a search bar containing "elmwood nebraska" and a magnifying glass icon. Below the search bar is a map of Nebraska with a red pin indicating the location of "elmwood nebraska" in "District 2". To the right of the map, there is a profile for "District 2 Robert Clements", which includes a portrait photo of Robert Clements and a "Web Page" button. The map interface includes "Map" and "Satellite" tabs, a "Map data ©2019 Google Imagery ©2019 TomTom" footer, and standard map navigation controls like zoom in (+) and zoom out (-) buttons.

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