

New business tax incentive program debated

Lawmakers debated a bill May 15 that would create a new business tax incentive program to replace the Nebraska Advantage Act. The application period for that program is set to end next year.

Sen. Mark Kolterman of Seward, sponsor of LB720, said the new program, called the ImagiNE Nebraska Act, would be simpler and more transparent than the Nebraska Advantage Act, focus on high-wage jobs and improve the state's ability to attract new business investment.

"The overall tax burden in Nebraska is too high for citizens, and the need to grow our state has never been more important," he said. "In order to find resources to provide this tax relief, we need a competitive business



Sen. Mark Kolterman said businesses would have to maintain required levels of employment and investment in order to receive incentives under the new program.

climate that helps grow and strengthen Nebraska's economy with new jobs and new investment."

A pending Revenue Committee amendment, which includes provisions that Kolterman said are meant to address concerns about the original proposal, would replace the bill.

Under the new program, businesses would apply to the state Department of Economic Development and enter into an agreement with the department if they meet the program's requirements.

Qualifying businesses would receive a varying combination of incentives—wage credits, income tax credits, sales and use tax refunds and exemptions, personal property tax exemptions or real property tax refunds—based on their level of capital investment and the number of employees they hire at a minimum qualifying wage.

The incentives would be limited to certain business activities, including manufacturing; certain testing laboratories; rail and truck transportation;

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State budget package clears second round

Lawmakers gave second-round approval May 15 to the mainline budget bill following a successful cloture vote. Seven additional bills included in the state's \$9.3 billion budget package advanced to the final round of consideration May 14.

LB294, introduced by Speaker Jim Scheer of Norfolk at the request of the governor, is the mainline budget bill and would fund state government for the next two fiscal years. Select file debate focused on an amendment brought by Lincoln Sen. Kate Bolz, vice chairperson of the Appropriations Committee.



Sen. Jim Scheer

The Bolz amendment would make a number of tech-

nical changes to the bill and would add \$4 million in general funds to the Nebraska secretary of state's office to replace Americans with Disabilities Act compliant voting equipment.

The amendment also would incorporate provisions of Bolz's LB181, which she said were inadvertently left out of the committee amendment adopted during general file debate.

The provisions would use \$87,500 from the Nursing Facility Penalty Cash Fund to pay for a study to examine demographic trends, project current and future service needs and provide recommendations for continued state-

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New business tax incentive program debated

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insurance carriers; wired and wireless telecommunications services; telemarketing bureaus; data processing and hosting services; computer facilities management services; and warehousing and storage.

Agriculture, mining, construction, utilities and public administration would not qualify for incentives.

Under the amendment, Kolterman said, businesses would be required to offer health insurance to each new employee.

The amendment also includes provisions of LB605, introduced by Omaha Sen. Brett Lindstrom, which would create a tax credit for companies that produce sustainable materials and renewable chemicals using agricultural products.

Kolterman said the ImagiNE Nebraska Act would reduce state revenue by an average of approximately \$106 million per year over 10 years.

Lincoln Sen. Kate Bolz introduced

an amendment that would include provisions of her LB527, which would create a program to provide job training grants to employers. Bolz said any discussion of business tax incentives should include workforce development because a lack of skilled workers is holding back the state's economic growth.

Bolz also introduced an amendment that she said would cap the proposed incentives to avoid the volatile jumps in lost revenue caused by the state's current tax incentive programs.

"I agree that we need a tax incentive program," she said. "But I think—just like any other aspect of our budget—we should establish a priority and a parameter for what that investment looks like."

Sen. Matt Williams of Gothenburg supported the committee amendment. He said the Legislature should not wait until next year to replace the Nebraska Advantage Act because the

potential loss of tax incentives could deter companies from locating here.

"If there's anything that businesses want, it is certainty," Williams said.

Omaha Sen. John McCollister also supported LB720, saying Nebraska is engaged in an "incentive arms race" with other states. He said the proposal's projected cost due to lost revenue does not account for the economic benefits of new jobs.

McCollister said a mechanism he proposed to help control the program's cost is included in the committee amendment. It would require the speaker of the Legislature, the chairpersons of the Appropriations, Revenue and Legislative Performance Audit committees and the state tax commissioner to meet each fall to review the most recently available data on the program.

Sen. Sue Crawford of Bellevue also supported the proposal. The committee amendment would allow businesses to use incentives they earn to repay job training loans, she said, and

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Sen. Kate Bolz



Sen. Brett Lindstrom

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it would make tax incentives' impact on sales and use tax collections clearer to cities and counties than it is under the Nebraska Advantage Act.

Crawford said capping incentives as Bolz proposed would be difficult because the amount a business receives depends on its performance and is not set in advance. However, the required annual review of program data would make it easier for the Legislature to adjust the program's cost, something senators have been reluctant to do with the Nebraska Advantage Act, she said.

"We're going to have to have a different culture with [LB]720—that it's acceptable and appropriate to change it year to year," Crawford said.

Albion Sen. Tom Briese said he would not support the proposal unless the Legislature also passes "substantial

and significant" property tax relief this session.

"Without property tax relief, business incentives need to stall," he said. "Nebraskans need property tax relief a whole lot worse than businesses need this incentive package."

Sen. Mike Groene of North Platte questioned why the Legislature would approve a new business tax incentive program before addressing high property taxes. He said the Nebraska Advantage Act mainly has helped Lincoln and Omaha, not the state's rural areas, where low commodity prices, population loss and property taxes are the main concerns.

"Quit ignoring the real problem in this state," Groene said. "It's property taxes."

Sen. Curt Friesen of Henderson opposed the bill. He said the state has

forgone approximately \$1.5 billion in revenue under existing tax incentive programs without seeing a commensurate increase in economic growth.

Friesen supported the Bolz amendment, saying the state should focus on job training rather than job creation.

"Our unemployment is the lowest it's been in years," he said. "For some reason, we want to incentivize the creation of new jobs."

After three hours of debate, the Legislature recessed before voting on the committee amendment, the Bolz amendment or LB720. 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. ■

State budget package clears second round

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wide access to long-term care services, including nursing facility care, for Medicaid recipients.

Bolz said 33 skilled nursing and long-term care facilities in Nebraska closed between 2015 and 2018, and an

additional 33 were placed under receivership in 2018.

"I think we need to be thoughtful and strategic in how we're supporting our nursing facilities as our population ages," she said.



Sen. Kate Bolz said a comprehensive study of long-term care sustainability in Nebraska should be part of the state's budget package.

Omaha Sen. Sara Howard, chairperson of the Health and Human Services Committee, supported the Bolz amendment. She said it's important to examine the state's long-term care situation both from an administrative perspective and from the perspective of demographic and workforce challenges.

"There is a discrete difference between the two," Howard said. "[The amendment] really gives us the opportunity ... to make sure that we, as policymakers, fully understand what is going on in our long-term care space and what is happening to that very, very vulnerable population."

Sen. Matt Williams of Gothenburg

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State budget package clears second round

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also supported the amendment, saying all of the long-term care facilities in his district are “hanging on by a thread.” He said the recent closing of two facilities is indicative of a “perfect storm” in rural Nebraska of an aging population coupled with a lack of health care providers.

“I got to see firsthand what it looks like when people don’t get paid, yet they still have people to take care of,” Williams said.

Elmwood Sen. Robert Clements opposed the portion of the amendment containing provisions of LB181, which he filed an amendment to strike.

“The Department of Health and Human Services testified in opposition to LB181, mainly because they said the department already completes the long-term care redesign study [so] the amendment is really not necessary,” Clements said. “It places additional administrative mandates and requirements on the [department].”

Sen. Andrew La Grone of Gretna spoke in support of other portions of the Bolz amendment, specifically those that would provide funding for ADA compliant voting machines.

“We have an election technology crisis in this state,” La Grone said, noting that Nebraska’s current 17-year-old election technology has a 10-year expected life span. In addition, he said, allowing the secretary of state to purchase the expensive machines in bulk would result in cost savings.

After extended debate May 14, Sen. John Stinner, chairperson of the Appropriations Committee, offered a motion to invoke cloture. A successful cloture motion ends debate and forces a vote on the bill and any pending amendments. The motion failed on a vote of 31-14. Thirty-three votes were required.

A second attempt at cloture after additional debate May 15 was successful. After voting 47-2 to invoke cloture, lawmakers rejected the Clements amendment 21-28. Twenty-five votes were needed.

The Bolz amendment then was adopted 40-7 and LB294 advanced to final reading, also on a 40-7 vote.

Other provisions

The other components of the budget package advanced to the final round of debate May 14.

Omaha Sen. Robert Hilkemann offered an amendment to LB298, a bill that would repeal and create funds and

make certain fund transfers.

The amendment would require each county treasurer to determine the percentage of property tax credits that are provided to Nebraska residents, or organizations that are located in Nebraska, and the percentage of credits that are paid to nonresidents.

Hilkemann said that possibly as much as 40 percent of payments from the state’s Property Tax Credit Cash Fund may go to nonresidents of Nebraska, but that the information currently isn’t compiled.

“It’s about transparency, folks; let’s find out,” he said. “Maybe this will open up new ideas for us, but we won’t know what we don’t know until we ask the question.”

A report based on ZIP code data would be made to the Legislature and the state Department of Revenue by Dec. 31, 2020.

The Hilkemann amendment was adopted on a 25-17 vote, but Sen. Mike Moser of Columbus immediately offered an amendment to strike it from the bill.

Moser said tax information could be mailed to attorneys—or to only one family member if property is owned jointly—so that ZIP codes associated with tax statements likely would not be an accurate representation of who is obtaining property tax credits from the state.

In addition, he said, there is no plan in place for what to do with the tax credit information once it is gathered.

The Moser amendment was adopted 25-14, and LB298 was advanced to final reading by voice vote.

Also advanced to final reading on voice votes were:

- LB295, which would provide for the \$12,000 annual salaries of Nebraska’s 49 state senators;
- LB296, which would fund salaries and benefits for judges and constitutional officers;
- LB297, which would appropriate funds for reaffirmed and new capital construction projects;
- LB299, which would make a \$54.7 million transfer from the state’s Cash Reserve Fund to the Nebraska Capital Construction Fund to cover costs for two additional high security housing units—384 beds—for the Department of Correctional Services; and
- LB464, which would provide for payment of claims against the state.

Finally, LB293, which would adjust appropriations for the current fiscal year, was advanced on a 45-1 vote following a successful cloture motion. ■

BUSINESS & LABOR

Debt collection bill for workers' comp claims passed

Lawmakers approved a bill May 13 meant to assist individuals facing collection of certain medical debts.

LB418, sponsored by Omaha Sen. Machaela Cavanaugh, prohibits collection of a debt incurred for treatment of a work-related injury while the matter is pending in the Nebraska Workers' Compensation Court.

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

The state attorney general is authorized to investigate collection agencies that do not comply with the bill's provisions.

The measure includes provisions of LB360, originally sponsored by Lincoln Sen. Matt Hansen. These 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 are better served by someone other than the consular officer of their resident country, or if no consular officer exists.

Provisions of LB178, sponsored by

Lincoln Sen. Mike Hilgers, also are included in the bill. These update and change references to the state Department of Administrative Services' risk manager and make changes to allow for a more efficient claims process.

LB418 passed on a 35-0 vote.



Sen. Mike Hilgers

GENERAL AFFAIRS

Mechanical amusement regulation bill amended, advanced

The Nebraska Department of Revenue would determine in advance of distribution whether certain mechanical amusement devices are games of skill or chance under a bill advanced from select file May 13.

LB538, introduced by Omaha Sen. Steve Lathrop, would add electronic video games of skill to the definition of a mechanical amusement device and require the department to determine if such devices are games of skill or chance.

"This bill is about trying to provide a practical enforcement mechanism," Lathrop said. "We're going to eliminate those machines that are essentially slot machines."

Under current law, games of chance other than the state lottery and certain charitable enterprises are illegal. A device would be considered a game of chance under LB538 if one of the following applies:

- a player's chances of winning are affected by the wins and

losses of previous players;

- the game can be controlled by a source other than the person playing the game;
- the success of a player is determined by chance and cannot be altered by the player's actions;
- game features that are not visible, or known by the players, can affect the outcome; or
- a player's success is impacted by skills no reasonable player could exercise.

The bill would require distributors of such games to pay a \$500 application fee, submit a sample game to the Nebraska Department of Revenue, provide evidence that the device is a game of skill and provide an affidavit to the tax commissioner that no functional changes would be made to the device's hardware or software without the commissioner's approval after the license is granted.

Possession of an illegal device would be a Class II misdemeanor under the bill.

LB538 also would require game owners to pay an annual \$250 licensure fee per device. The bill would not apply to pickle cards, lotteries or bingo games.

Lathrop offered an amendment during select file debate that would:

- allow owners of mechanical amusement devices to continue operating them while the department reviews their devices;
- establish 19 as the legal age to play such devices; and
- bar use of a credit or debit card for payment.

Lathrop said Sen. Joni Albrecht of Thurston was instrumental in drafting the amendment, adopted 32-1, which addressed concerns she expressed during general file debate.

Albrecht said she opposes gambling in all forms, but wanted to regulate



Sen. Machaela Cavanaugh



Sen. Steve Lathrop



Sen. Matt Hansen

gaming devices as much as possible.

“When you pay money out, that’s what gives me heartburn. I don’t want young children starting sooner than they need to and I don’t want to see more machines than there have to be,” she said.

A second Lathrop amendment, adopted 42-0, would set a maximum of four devices for establishments up to 4,000 square feet in size. Larger establishments would be allowed one additional device per 1,000 square feet up to a maximum of 15 devices.

Following adoption of the amendments, LB538 was advanced to final reading 40-0.

Bill amended to change farm winery definition

The definition of a farm winery would change under a bill advanced to select file May 15.

LB592, as originally introduced by Sen. Tom Briese of Albion, would have addressed the state Liquor Control Commission’s ability to close establishments due to violations of the Liquor Control Act.



Sen. Tom Briese

A General Affairs Committee amendment, adopted 35-0, stripped those provisions and replaced them with portions of LB584, introduced by Sen. Mike Hilgers of Lincoln.

The amended bill would reduce from 75 to 60 the percentage of fruit or other suitable agricultural product grown in Nebraska required to meet the definition of a farm winery. It also would increase from one to



Sen. Mike Hilgers

four the number of branch outlets that allow sampling and sale of a farm winery’s product.

Hilgers said the amendment would encourage Nebraska wineries to expand.

“As these entrepreneurs keep growing, they use more grapes and it becomes harder and harder to reach the 75-percent threshold,” Hilgers said.

An amendment offered by Peru Sen. Julie Slama would have allowed farm wineries to sell beer and other alcoholic beverages if the winery owner also holds an appropriate retail license.

Under current law, Slama said, Nebraska wineries must apply for a one-day Special Designated License to sell alcohol other than wine when they host events.

“If you’ve got a college graduation party scheduled for Friday, [a] wedding scheduled for Saturday and a family reunion scheduled for Sunday, they’d have to apply for a separate SDL for each of those days.” She said. “This leads to stacks upon stacks of paperwork.”

Sen. Curt Friesen of Henderson supported the Slama amendment, saying it would encourage economic development in small towns.

“They’re not going to put anybody else out of business. They’re not going to damage the distributors,” Friesen said. “All they want is the ability for someone to come in and have a beer instead of a glass of wine.”

Briese opposed the amendment, which he said could erode Nebraska’s three-tiered liquor control system that separates producers, distributors and retailers.

Sen. Carol Blood of Bellevue said she opposed Slama’s amendment because it would allow Nebraska wineries to sell other alcohol while non-Nebraska wineries could not do the same, potentially leading to lawsuits.

Sen. John Lowe of Kearney also opposed the amendment, saying it would

allow local wineries to become “super bars” that would compete unfairly with other alcohol vendors.

Slama’s amendment failed on a vote of 11-21.

Following adoption of the committee amendment, LB584 advanced to select file on a vote of 38-0.



Eminent domain bill approved

Landowners have the ability to contest the use of eminent domain by renewable energy developers under a bill passed May 13.

As introduced by Gordon Sen. Tom Brewer, LB155 would have prohibited a private entity from using eminent domain to provide access to build transmission lines or other infrastructure related to a privately developed wind energy project.



Sen. Tom Brewer

Currently, state law authorizes the use of eminent domain in those situations because it is considered a public use.

The bill was amended on general file to define the public use aspect of such exercise of eminent domain as a “rebuttable presumption”—meaning that it may be challenged in court by an impacted landowner.

Lawmakers passed LB155 on a 44-0 vote.

Omnibus election bill passed

A bill containing several election measures was passed by lawmakers May 13.

Sen. Jim Scheer of Norfolk introduced LB411, which allows county boards to place a question on the ballot regarding a change in county board membership. The bill applies to counties with a population of less than 400,000 people that are not under township organization.



Sen. Jim Scheer

Under the bill, a qualifying county board may adopt a resolution by majority vote to allow voters to alter the number of commissioners on the board. Currently, such a question only can be placed on the ballot by a petition signed by at least five percent of registered voters in the county.

Also included were provisions of 10 other bills:

- LB98, introduced by Sen. Justin Wayne of Omaha, which changes the number of signatures needed by a candidate to appear on a statewide and county and other political subdivision partisan ballots;
- LB101, also introduced by Wayne, which changes provisions of the Nebraska Political Accountability and Disclosure Act relating to a potential conflict of interest by an elected office holder of certain cities or villages or a school district;
- LB246, introduced by Gordon Sen. Tom Brewer, which makes technical changes to several election procedures;
- LB280, also introduced by Brewer, which increases the maximum fine under the Ne-



Sen. Justin Wayne

braska Accountability and Disclosure Act from \$200 to \$500;

- LB342, introduced by Gretna Sen. Andrew La Grone, which moves oversight of metropolitan utilities district elections from county election commissioners to the Nebraska secretary of state's office;



Sen. Andrew La Grone

- LB522, introduced by Elkhorn Sen. Lou Ann Linehan, which authorizes the Douglas County Board to appoint a department director and have final



Sen. Lou Ann Linehan

- say in personnel matters;
- LB574, introduced by Brewer, which allows the members of a metropolitan utilities district to set the date of monthly meetings;
- LB608, introduced by La Grone, which removes outdated language regarding electronic voting and allows ballots to be counted at polling places;
- LB618, introduced by Lincoln Sen. Mike Hilgers, which redefines electioneering; and
- LB733, introduced by Sen. Rick Kolowski of Omaha, which expands access to the polls for voters with disabilities.



Sen. Rick Kolowski

LB411 passed on a 46-0 vote and takes effect immediately.



Community-based disability services plan required

Nebraska is required to create a statewide plan to provide disability services under a bill passed May 13.

LB570, introduced by Sen. Lynne Walz of Fremont, requires the state Department of Health and Human Services to develop what is known as an "Olmstead Plan," which is a plan to provide services to qualified individuals with disabilities in the most integrated community-based settings.



Sen. Lynne Walz

DHHS is required to develop the plan with the University of Nebraska, the Equal Opportunity Commission and the state departments of Correctional Services, Economic Development, Labor, Transportation and Education. The plan will be completed by Dec. 15, 2019.

The bill also adds the Commission for the Deaf and Hard of Hearing, the Commission for the Blind and Visually Impaired and the Public Service Commission to the Olmstead Plan stakeholder advisory committee.

LB570 requires DHHS to work with an independent consultant to assist with continued analysis and revision of the Olmstead Plan. This analysis will be provided in a report to the Legislature by Dec. 15, 2021, and every three years going forward.

The bill passed 44-0 and takes effect immediately.

Extension of public counsel authority amended, advanced

Senators amended and advanced a bill May 13 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 citizen 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 to 24 months.



Sen. Lynne Walz

The bill was amended on general file to include provisions of Lincoln Sen. Kate Bolz’s LB330. The provisions would eliminate the July 2019 termination date for the Nebraska Children’s Commission.



Sen. Kate Bolz

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.

During select file debate, Bolz offered an amendment to add provisions of her LB332, which would revise the Youth Bridge to Independence Program—a system of supports for

older teenagers and young adults who are at or near the end of their time in foster care.

The amendment would expand the program to include young adults who age out of the state’s juvenile justice system. It also would limit participation in the program to Nebraska residents and eliminate benefits to recipients who already are receiving residential funding through the home and community-based waiver program.

Bolz said the change would “right-size” the program to make the best use of state resources without increasing expenditures.

“This is a very narrow population of young people who don’t otherwise have a home to go to when they age out of the juvenile justice system and have that experience with the child welfare system in their history,” she said.

Following adoption of the amendment 28-3, senators advanced LB600 to final reading by voice vote.

JUDICIARY



Legalization of medical cannabis stalls

A bill that would approve certain forms of cannabis for medical use stalled on general file May 15.

LB110, introduced by Lincoln Sen. Anna Wishart, would create a framework for legalizing medical cannabis use in Nebraska.



Sen. Anna Wishart

Wishart said a 2017 study shows that over 70 percent of Nebraskans support legalizing medical cannabis. While supporters span the political, age and

geographic spectrums, she said, they all share a common desire to help those struggling with chronic illnesses who could be helped by medical cannabis.

“I introduced LB110 on behalf of the countless Nebraskans who have reached out to me in favor of cannabis reform,” Wishart said. “These are Nebraskans ... who all share a common desire for change because they or family and friends are struggling with a chronic illness and desperately want access to cannabis for medicinal purposes.”

A pending Judiciary Committee amendment would replace the original bill. As amended, it would create a new state regulatory agency—the Cannabis Enforcement Department—that would be tasked with reviewing and approving applications for medical cannabis use.

To qualify for a medical cannabis registration card under the bill, a person must receive written certification from a physician, nurse practitioner or physician’s assistant with whom they have an established, bonafide relationship.

The practitioner evaluating a person would be required to perform a physical exam, including an assessment of potential alcohol or substance abuse issues, as well as personal or family history of schizophrenia or psychotic disorders. Applicants with terminal illnesses would be subject to a basic physical exam only.

The certification would include a patient’s qualifying diagnosis, which could include:

- cancer;
- glaucoma;
- ALS;
- HIV or AIDS;
- epileptic seizures;
- Tourette’s syndrome;
- Hepatitis C;
- Crohn’s disease;
- Huntington’s or Parkinson’s disease;

- PTSD, when at least one other treatment has failed;
- autism with frequent or serious self-injurious or aggressive behavior;
- terminal illness with less than one year to live; or
- serious medical conditions causing severe nausea or cachexia.

Registered medical cannabis users could purchase cannabis through regulated in-state dispensaries or home delivery from out-of-state suppliers. Patients would be limited to no more than 2.5 ounces of cannabis or cannabis products containing no more than 2,000 mg of THC. The department could grant waivers to patients who demonstrate a greater medical need.

LB110 would prohibit any registered user of medical cannabis from driving, operating a boat, train or aircraft, or undertaking any task that would be negligent or constitute malpractice while under the influence of cannabis. They also could not work on transportation property, equipment or facilities.

The committee amendment would prohibit use of cannabis or a cannabis product in any vehicle, whether the patient is the driver or a passenger. Smoking marijuana also would be prohibited under the amended bill.

Medical cannabis would not be covered by Medicaid and private insurers would not be required to cover its costs. Any registered user who sells their medical cannabis would be banned from the program and be subject to criminal prosecution.

Bellevue Sen. Sue Crawford introduced an amendment that would prohibit edible cannabis products under LB110. She said she was concerned that a child might mistakenly ingest medical cannabis if it were in the form of a brownie or gummy candy.

Sen. Patty Pansing Brooks of Lin-

coln spoke in support of the bill. Senators should consider the treatment needs of others and not simply their own experience, she said.

“You and I might not need it, but the parents who come here with their children who have helmets on their heads so that during seizures they didn’t get brain injuries need it,” Pansing Brooks said.

Also supporting the bill was Lincoln Sen. Adam Morfeld. He cautioned senators that LB110 was the Legislature’s last opportunity to approve and regulate medical cannabis before the issue goes to 2020 general election voters through an initiative petition drive.

“We are making criminals out of people who are simply trying to seek treatment,” he said. “LB110 is eminently reasonable and one of the [narrowest] bills in terms of construction for this type of [program].”

Lincoln Sen. Suzanne Geist spoke in opposition to the bill, saying state senators should not be responsible for approving a drug.

“This is the job of a scientist, not a citizen legislator,” she said. “There is so much we do not know about this drug.”

As a former member of the Judiciary Committee, Gothenburg Sen. Matt Williams said he heard from many constituents suffering from chronic illnesses who support medical cannabis.

“I have great empathy for them, but when I think about creating public policy ... and the direction we take our state in legalizing a Schedule I drug, I can’t go there,” he said. “Legalizing medical marijuana is the first step taking us down a path that I’m not willing to go [down].”

After three hours of debate, the Legislature adjourned for the day before voting on the bill or the

pending amendments. 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.

Appeals of certain motions approved

A bill allowing the immediate appeal of certain legal motions was passed by the Legislature May 13.

LB179, sponsored by Lincoln Sen. Mike Hilgers, makes an order denying a motion for summary judgment eligible for immediate appeal, if the motion is based on an assertion of sovereign immunity or the immunity of a government official.



Sen. Mike Hilgers

The bill passed on a 43-0 vote.

Bill passed to prohibit minor consent defense

Senators passed a bill May 13 that provides stronger sexual assault protections for minors.

LB478, introduced by Omaha Sen. Tony Vargas, makes a victim’s consent inadmissible in any civil case alleging sexual penetration when a perpetrator is 19 or older and the victim is younger than 16.



Sen. Tony Vargas

It also makes 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.

The bill passed on a 46-0 vote.

Human trafficking statute of limitation bill expanded, advanced

A bill that would extend and eliminate certain statutes of limitation for labor and sex trafficking was amended and advanced from general file May 16.

LB519, introduced by Peru Sen. Julie Slama, would eliminate a statute of limitation for creation of child pornography or labor or sex trafficking of a minor.



Sen. Julie Slama

A fear or distrust of law enforcement prevents many survivors from seeking help, Slama said, and by the time they do report the crime, the statute of limitation has elapsed and charges cannot be filed.

“The victims of human trafficking need to feel like they can come forward and report the crimes against them,” she said, “but many victims feel shame and embarrassment that they were trafficked, and they fear retaliation of violence against them or their families by their traffickers if they report the crime.”

The bill would increase the statute of limitations from three years to seven for labor or sex trafficking of an adult. It also would extend the statute of limitations for possession of child pornography to seven years, or seven years beyond a victim’s 18th birthday.

Finally, LB519 would allow law enforcement to apply for wiretap authorization to intercept electronic communications relating to labor or sex trafficking of adults and minors.

A Judiciary Committee amendment incorporated three additional bills.

Provisions of LB517, originally introduced by Lincoln Sen. Patty

Pansing Brooks, would allow a trafficking victim to recover damages for physical and mental pain and suffering, and the reasonable value of medical care and supplies, transportation, housing, child care, lost wages and potential relocation costs.



Sen. Patty Pansing Brooks

The amendment also included portions of LB516, also introduced by Pansing Brooks, which would require the state Department of Health and Human Services to collect and report information on children who are reported or suspected trafficking victims, the number of reports alleging trafficking of a minor, the services and costs provided to minor victims, the number of ongoing cases opened due to alleged trafficking and the number of substantiated victims and their demographic information.

The committee amendment also would expand the definition of child abuse to include placing a child in a situation to be sexually abused or exploited, a provision originally included in Omaha Sen. Steve Lathrop’s LB458.



Sen. Steve Lathrop

It also would expand the definition of out-of-home child abuse to include cases where the perpetrator of such abuse is not a member of the victim’s household, no longer has access to the victim or is unknown or cannot be identified.

Brainard Sen. Bruce Bostelman spoke in support of the bill. Human trafficking is a serious problem, he said, and all Nebraskans should be vigilant.

“In my district, there have been arrests for human trafficking of a child,” Bostelman said. “If you don’t think human trafficking exists in the state or happens in your community, you’re wrong.”

Lincoln Sen. Anna Wishart introduced an amendment, adopted 37-0, which added portions of her LB479 into the bill. As amended, these would prohibit a law enforcement officer from using consent as a defense for sexual contact with a person who is detained or in custody.



Sen. Anna Wishart

Further, it would codify that any person detained by law enforcement is not able to consent to sexual contact.

Current state law establishes that an inmate or parolee cannot consent to sexual contact with a correctional officer and imposes increased criminal penalties for sexual contact, Wishart said, but these same prohibitions do not apply to law enforcement.

“As of 2018, 35 states including Nebraska have a loophole in their statutes that don’t specifically prohibit a law enforcement officer from having sexual contact with someone they are detaining,” she said. “This would extend protection to all Nebraskans who are detained by law enforcement.”

The amendment would classify sexual penetration of a detainee as first-degree sexual abuse, which is a Class IIA felony. Conviction could result in up to 20 years imprisonment.

Sexual contact with a detainee would be classified as second-degree sexual abuse, which is a Class IIIA felony. It would carry a penalty of up to three years in prison with 18 months of post-release supervision, a \$10,000 fine or both.

Anyone convicted under the

amended provisions would be required to register as a sex offender.

Following the 40-0 adoption of the committee amendment and a technical amendment, senators advanced LB519 to select file on a 45-0 vote.

Restorative justice bill passed

The use of restorative justice programs in Nebraska was expanded by a bill passed May 13.

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, introduced by Thurston Sen. Joni Albrecht, specifies that any restorative justice agreement reached between parties is considered confidential. It makes 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 can 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 changes 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



Sen. Joni Albrecht

Attorneys Association.

It also allows a licensed attorney to act as a mediator in developing parenting plans, if agreed to by all parties.

The bill passed on a 47-0 vote.

Criminal, civil penalties for ‘revenge porn’ advanced

Lawmakers advanced two bills from general file May 16 that would prohibit the intentional or threatening distribution of intimate images.

LB630, sponsored by Lincoln Sen. Adam Morfeld, would outlaw nonconsensual distribution of intimate images and video. Morfeld said the bill would ensure that bad actors are punished when it comes to sexual extortion, commonly referred to as “revenge porn.”



Sen. Adam Morfeld

“The bill would also create more options for prosecutors to have discretion to ensure the consensual sharing of images between two minors is appropriately addressed, but does not result in a lifetime sentence [on the] sex offender registry and a felony when the prosecutors determine the circumstances do not warrant that,” he said.

A Judiciary Committee amendment, adopted 36-0, replaced the bill. As amended, it would create the offense of distributing a private image of another person’s intimate area or of a person engaged in sexually explicit conduct.

Omaha Sen. Steve Lathrop spoke in support of the bill. Technological advances have made it possible for people to create high-quality photographs and videos and immediately share them on the internet or through social media, he said.

“There may be some benefit to

these new technologies,” Lathrop said, “but they’ve also made it easier for people to harass, threaten and extort others, particularly through the creation and distribution of intimate or sexually explicit images and videos.”

A person who violates this provision would be charged with a Class I misdemeanor for a first offense, punishable by up to one year in prison, a \$1,000 fine or both. Second and subsequent offenses would be a Class IV felony, punishable by up to two years in prison with 12 months post-release supervision, a \$10,000 fine or both.

The bill also would create the offense of threatening to distribute intimate images with the intent to intimidate, threaten or harass a person. Violation of this provision would be considered a Class I misdemeanor.

LB630 also would provide an affirmative defense for juveniles who possess a visual depiction that was knowingly and voluntarily provided by another juvenile who is within four years of age of the defendant.

The bill was advanced from general file on a 36-0 vote.

Senators also advanced LB680, sponsored by Bennington Sen. Wendy DeBoer, which would allow plaintiffs who prevail in criminal actions authorized by LB630 to recover monetary damages in a civil action.



Sen. Wendy DeBoer

A Judiciary Committee amendment, adopted 36-0, replaced the bill. As amended, a prevailing plaintiff could recover economic and noneconomic damages proximately caused by the defendant, including damages equal to any monetary gain made by the defendant and for emotional distress.

If the actual damages could not be quantified, the court could award

reasonable presumed damages—not to exceed \$10,000—against each defendant.

LB680 also would hold internet service providers liable only if actively involved in the creation or distribution of the prohibited material.

Senators advanced LB680 to select file on a 39-0 vote.

Criminal justice reforms advanced

The Legislature advanced a bill from general file May 15 that would make several changes to current criminal justice statutes.

LB686, as originally introduced by Omaha Sen. Steve Lathrop, would have imposed new requirements on the Nebraska Department of Correctional Services for declaring a prison overcrowding emergency.



Sen. Steve Lathrop

A Judiciary Committee amendment, adopted 42-0, replaced the bill.

The committee heard 143 bills this year, Lathrop said, many of which were drafted to address overcrowding issues at NDCS.

The amendment includes provisions of LB91, originally sponsored by Omaha Sen. Justin Wayne, which would allow a court to enter a deferred judgment for a person found guilty of committing a crime.



Sen. Justin Wayne

Persons granted a deferred judgment instead would be placed on probation. After successful completion of the terms of probation, he or she would have their charge dismissed

without the entry of judgment.

In examining a person’s eligibility for deferred judgment, the court would consider if such a judgment would provide the maximum opportunity for rehabilitation while also maintaining community safety. The court also would consider a defendant’s age, prior record of convictions and deferred judgments, employment and family circumstances, mental health, substance abuse history and the circumstances of the offense.

A defendant would not be eligible for deferred judgement if he or she has a previous felony conviction, has received two or more deferred judgments, has received a deferred judgment in the past five years or is ineligible for probation.

Provisions of Wayne’s LB233 also were included in the committee amendment. These would prohibit a person from bringing an electronic communication device into a correctional facility or providing it to an inmate. Violation of this provision would be a Class I misdemeanor, punishable by up to one year in prison, a \$1,000 fine or both.

Attorneys, public counsel employees, law enforcement and first responders would be exempt from the prohibition. The amended bill also would allow for the seizure of such an electronic communication device.

The committee amendment also included provisions of LB739, originally sponsored by Omaha Sen. Tony Vargas, which would prohibit NDCS after Oct. 1, 2019 from placing a member of a vulnerable population in restrictive housing. Vulnerable populations would include inmates who are younger than 18, pregnant



Sen. Tony Vargas

or diagnosed with serious mental illness, developmental disabilities or traumatic brain injury.

It would not prevent NDCS from establishing secure mental health housing or placing vulnerable inmates in temporary segregation pending classification.

Finally, the committee amendment incorporated provisions of four additional bills, including:

- LB90, sponsored by Wayne, which would remove a requirement for post-release supervision for Class IV felonies;
- LB240, sponsored by Lincoln Sen. Matt Hansen, which would allow a private contract facility to provide treatment to criminal defendants found to be mentally incompetent to stand trial;
- LB262, sponsored by Bennington Sen. Wendy DeBoer, which would require the NDCS director to share the annual restrictive housing report with members of the long-term restrictive housing work group prior to release of the report; and
- LB684, sponsored by Lathrop, which would allow judges to sentence a person found to have violated terms of post-release supervision to a period of incarceration equal to the length of his or her original term of post-release supervision.



Sen. Matt Hansen



Sen. Wendy DeBoer

Lincoln Sen. Patty Pansing Brooks spoke in support of LB686 as amend-

ed, but cautioned that it is insufficient to address ongoing problems at NDCS.

“I believe this package [of bills] does not go nearly far enough ...” she said. “This [legislative] body has continually kicked the can down the road when it comes to addressing some of the issues at the root of overcrowding problems.”

Senators advanced the bill to select file on a 40-0 vote.

REVENUE



Beginning farmer tax credit clarified

Lawmakers passed a bill May 13 that clarifies the number of rental agreements beginning farmers and agricultural asset owners may make under an existing tax credit program.

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, introduced the bill to address a Legislative Performance Audit Committee’s audit of the program.



Sen. Suzanne Geist

It was replaced on general file with a committee amendment containing provisions of LB623, introduced by Gothenburg Sen. Matt Williams.

Under those provisions, qualified beginning farmers or livestock produc-

ers and owners of agricultural assets who have participated in a three-year rental agreement are eligible to file subsequent applications for different assets. The bill clarifies that tax credits for an asset may be issued for a maximum of three years.

The bill also defines a flex or variable rent agreement, in which a predetermined base rent is adjusted for actual crop yield or price.

Finally, the bill clarifies that the credits issued under the act are refundable.

LB560 passed on a vote of 46-0.

Tax credit for private school scholarship donations stalls

A bill that would create an income tax credit for those who donate money to nonprofits that grant scholarships to students to attend a private elementary or secondary school stalled on general file May 13.

Under LB670, introduced by Elkhorn Sen. Lou Ann Linehan, individuals, passthrough entities, estates, trusts and corporations could receive a nonrefundable income tax credit equal to the total amount of their contributions or 50 percent of their income tax liability for the year, whichever is less.

The scholarships could be used to pay tuition and fees at a qualifying non-governmental, privately operated elementary or secondary school in Nebraska.

Linehan said similar programs in other states have saved money because



Sen. Matt Williams

they lower the number of students attending public schools. She said the proposal would not reduce funding for Nebraska’s public schools but would give more students from low-income families the opportunity to attend a school that best fits their needs.

Students who are Nebraska residents and whose household income does not exceed twice the eligible income for the federal reduced-price lunch program could qualify for the scholarships.

LB670 would limit the amount of tax credits available for calendar year 2020 to \$10 million. After that, the annual limit would increase by 25 percent if the tax credit amounts in the prior calendar year exceeded 90 percent of that year’s cap.

A nonprofit could apply to the state Department of Revenue to become a certified scholarship granting organization under the bill.

Among other requirements, an organization would be required to provide the department sufficient information to show that it would not limit scholarships to only one qualified school.

An organization also would be required to show that it would give first priority to eligible students who received an education scholarship during the previous year and then to new applicants whose household income does not exceed 185 percent of the federal poverty level or who are in foster care or out-of-home care.

A pending Education Committee amendment would add two requirements for scholarship granting organizations. It would require an organization to limit the maximum scholarship awarded to any student to the cost of tuition and fees at the school the student attends.

It also would require an organization to limit average scholarship



Sen. Lou Ann Linehan

amounts to no more than 75 percent of the statewide average general fund operating expenditures per student.

Sen. Mike Groene of North Platte supported the bill, agreeing with Linehan that it would not affect funding for public schools. Groene said he opposed similar proposals in the past because of their cost but that he now sees the tax credits as a way to expand educational opportunity and improve Nebraska's workforce.

"LB670 is workforce development, another opportunity ... for young people to seek an education that fits who they are, who their families are, and we need to expand educational opportunities as wide and as far as we can," he said.

Omaha Sen. Rick Kolowski opposed LB670, saying it attempts an "end run" around a constitutional prohibition against directing public dollars to private schools.

"We constantly debate how to fund public schools and how to administer education funding," he said. "This bill would put even more pressure on funding for public schools and our constitutional duty to educate students."

Sen. Kate Bolz of Lincoln expressed concern about the proposal's impact on the state budget. If the amount of credits increased each year, as the bill would allow, the state would forgo approximately \$93 million per year by 2030, she said.

"Foregone revenue is revenue we can't use to pay the bills of the state," Bolz said, "and this is foregone revenue through a tax credit mechanism."

Fremont Sen. Lynne Walz also opposed the bill. By reducing state revenue, she said, it would divert state funding away from public schools at a time when the Legislature is trying to reduce Nebraska's reliance on property taxes to fund them.

She said the projected cost of the credits by 2030 would be more than the state currently spends on aid to educational service units, high-ability learning programs, early childhood programs, school meal programs, adult education programs and several others combined.

After three hours of debate, the Legislature adjourned for the day before voting on the committee amendment or LB670. 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.

TRANSPORTATION & TELECOMMUNICATIONS

Statewide regulations for small wireless facilities approved

Wireless companies have the right to place small cell wireless facilities in public rights of way under a bill passed by the Legislature May 13.

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

Under LB184, introduced by Sen. Curt Friesen of Henderson, a political subdivision, or authority, may 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 gives 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 may 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 may 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 may not exceed \$250 per pole.

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

Senators voted 44-0 to pass LB184.

Changes to one-call system amended, advanced

A bill that would make changes to the One-Call Notification System Act was amended and advanced from general file May 16.

Great Plains One-Call Service is a system used by excavators to identify and locate underground facilities prior to excavation to protect the facilities from damage. A notice to the service center is required prior to performing an excavation.



Sen. Curt Friesen

LB462, as originally introduced by Henderson Sen. Curt Friesen, would have created a dispute resolution board to hear disputes between excavators and operators regarding damage to underground facilities caused by excavation. It also would have required all persons locating underground facilities to be licensed by the state fire marshal.

A Transportation and Telecommunications Committee amendment, adopted 37-0, removed those provisions and replaced the bill. As amended, it would allow the board of directors to review locator training materials and propose best practices.

The board would be required to assess the effectiveness of enforcement programs and actions, as well as the board's damage prevention and public awareness programs. A report of its findings would be submitted to the governor and Legislature no later than Dec. 1, 2021, and biennially after that.

Finally, LB462 as amended would require the state attorney general to submit a report annually to the Leg-

islature, state fire marshal and board of directors detailing the number of complaints filed and prosecuted each year under the One-Call Notification System Act.

The committee amendment also incorporated provisions of LB617, originally introduced by Lincoln Sen. Mike Hilgers, which would eliminate notice and hearing requirements for local telecommunications companies if they wish to raise local service rates.



Sen. Mike Hilgers

Cavanaugh opposed removing the notice and hearing requirements, saying doing so would eliminate consumer protections that have been in place since the 1980s. Hilgers then introduced an amendment, adopted 37-0, to reinstate the 60-day notice requirement for all local service rate increases.

Following adoption of a technical amendment, senators advanced the bill to select file on a 37-0 vote.

URBAN AFFAIRS

Statewide building code adopted

A bill making the state's building code the default code for municipalities passed May 13.

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, makes 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. Any building that is on a farm or is used for farm purposes is exempt.



Sen. Justin Wayne

Senators approved LB96 on a 39-0 vote. ■

Legislative Calendar: May 2019*

Sun	Mon	Tue	Wed	Thur	Fri	Sat
May						
			1	2	3	4
			DAY 69	DAY 70	RECESS	
5	6	7	8	9	10	11
	RECESS	DAY 71	DAY 72	DAY 73	DAY 74	
12	13	14	15	16	17	18
	DAY 75	DAY 76	DAY 77	DAY 78	RECESS	
19	20	21	22	23	24	25
	RECESS	DAY 79	DAY 80	DAY 81	DAY 82	
26	27	28	29	30	31	
	HOLIDAY	RECESS	RECESS	DAY 83	DAY 84	

Speaker Jim Scheer announced his intention to adjust the session calendar May 16. The Unicameral now is scheduled to adjourn sine die May 31. The Speaker also added May 28 and 29 as recess days.

Legislative Recess Days

May 3, 6, 17, 20, 28, 29

Federal & State Holidays

May 27 – Memorial Day

*The Speaker reserves the right to revise the session calendar.

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