

THE NEBRASKA LEGISLATURE'S
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UPDATE

Improved access to public benefits programs advanced



Sens. Annette Dubas (left) and Tanya Cook discuss LB825.

The state Department of Health and Human Services (DHHS) would be required to increase staff at local offices to provide more assistance with the state's system for accessing public benefit programs under a bill given first-round approval March 30.

Fullerton Sen. Annette Dubas, sponsor of LB825, said the department's reform effort to modernize and streamline access to public benefits - known as ACCESSNebraska - has resulted in delays, anxiety and confusion.

Dubas said the move away from local offices staffed by DHHS case-

workers to online applications and call centers has been particularly hard on the state's elderly and those who lack an advocate to help them navigate the new system.

"There are simply some things that can't be replaced by a computer," she said.

As introduced, the bill would have required DHHS to add 25 local offices throughout the state to provide in-person services to clients.

Offices would have been required to be open a minimum of 40 hours per week and be equipped with a reasonable number of computers, telephones and scanning equipment.

A Health and Human Services Committee amendment, adopted 32-0, removed the provision requiring new local offices and instead would require DHHS to adequately staff existing local offices and provides guidelines to determine the appropriate number of staff needed to provide in-person assistance to clients at each existing office.

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Voter ID bill stalls

Senators rejected a cloture motion March 28 that would have forced a vote on a bill that would require presentation of identification prior to voting in a Nebraska election.

Fremont Sen. Charlie Janssen, sponsor of LB239, said he introduced the measure to protect the integrity and reliability of the state's electoral system. Requiring identification would be reasonable, he said, adding that many of his constituents are surprised to learn that photo ID is not required.



Sen. Charlie Janssen

Janssen said 15 states currently require photo identification and 16 others require at least some form of ID in order to cast a ballot.

"We've had races in our state that have been determined by one vote," Janssen said. "I would hate to think that one illegal vote turned the tide in those [elections]."

Under the bill as introduced last session, a voter who does not present identification at the polls but casts a provisional ballot would have 10 days to submit government-issued photographic identification to the election commissioner in order for the ballot to be counted.

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Cloture attempt on voter ID bill fails

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The bill also would provide exemptions for nursing home residents, voters with religious objections to being photographed and individuals who sign a statement that they are indigent and unable to obtain government-issued photographic identification.

The state Department of Motor Vehicles (DMV) would offer a state identification card at no cost to indigent voters who wish to obtain photographic identification.

A pending Government, Military and Veterans Affairs Committee amendment would replace the bill and provide an alternative to a photo ID in the form of a registration acknowledgment card.

Under the amendment, the election commissioner or county clerk would mail a registration acknowledgment to every registered voter who does not have a motor vehicle operator's license or state ID card prior to every statewide primary and general election.

A voter would not be handed a ballot at any election until he or she has presented a government-issued photographic identification or an acknowledgment of registration. A person who did not present identification at the polling place would be allowed to vote provisionally.

Individuals who vote via early ballot or in an election held by mail would not be required to show identification under the amendment.

Janssen said approximately 2 percent of registered voters in Nebraska do not have a driver's license or state ID, and that allowing use of registration acknowledgment cards would be an effective compromise to protect those individuals' right to vote.

Sen. Burke Harr of Omaha said

studies should be done to discover if voter fraud is an issue in Nebraska before laws are passed to combat it – especially if those laws infringe upon a constitutional right.

“Let's not punish those who have done nothing illegal,” he said. “Voting is our most fundamental right – it determines what our government will look like.”

Omaha Sen. Tanya Cook likened the bill to attempts by southern states to disenfranchise African-Americans following the Civil War.

“You're forgetting your history – your American history,” she said. “This [bill] is Jim Crow lite. Don't try to say that it is anything else, at least not to me.”

Sen. Bill Avery of Lincoln also opposed the bill, saying it would place a disproportionate burden on the state's poor, elderly, disabled and student populations. Nebraska should be seeking ways to encourage voting, he said, not creating impediments to voter participation by certain groups.

“This bill is a step back in time and we don't need it,” Avery said.

Sen. Scott Lautenbaugh of Omaha supported the measure, saying comparisons to Jim Crow laws were “patently offensive.” The bill would not unduly burden potential voters, he said, adding that requiring identification should not be a deter-

rent to voters.

“Anyone who would be dissuaded or disenfranchised by this [bill] would be dissuaded by a rainy day,” Lautenbaugh said.

Omaha Sen. John Nelson also supported the bill, saying it was based on recommendations for strengthening elections outlined in a 2005 report on federal election reform. He said the bill would be a first step toward ensuring that Nebraska elections are not tainted by voter fraud.

Omaha Sen. Brenda Council offered an amendment to the committee amendment, that would have extended the option of conducting an all-mail ballot election to all counties in Nebraska. Currently, counties with a population of fewer than 10,000

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Sen. Brenda Council explains her amendment that would have expanded all-mail elections.

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have the option of all-mail ballot elections.

Council said allowing some counties to conduct elections by mail – in which presentation of ID is not required – while prohibiting other counties from doing so, would create separate classes of voters.

Mello supported Council’s amendment. Without it, he said, LB239 would create two separate systems of voting law dependent on geography.

“We cannot allow a separate but unequal election system in this state,” Mello said.

The Council amendment failed on an 8-27 vote.

After eight hours of debate spanning three days, Jansen offered a motion to invoke cloture, an attempt to cease debate and force a vote on the bill. The motion failed 30-16, three votes short of the number required for adoption.

A failed cloture motion results in debate on a bill ceasing for the day. ■

Benefits program access bill advanced

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The amendment also would require:

- call centers to take appointments for in-person interviews upon request;
- a dedicated caseworker to be assigned upon request to a client with chronic physical or mental disorders, elderly who require continuing care and complex cases;
- local office caseworkers to interview clients, assist with applications, determine program eligibility and answer questions; and
- DHHS to contract with community-based organizations to act as satellite offices for department caseworkers.

Sen. Tanya Cook of Omaha offered an amendment that contained some provisions of LB1041, which she introduced.

The amendment, adopted 28-0, would require DHHS to:

- coordinate eligibility requirements;
- expand information sharing across programs;
- simplify documentation requirements by using the same or similar documents to verify information across programs; and
- re-establish program eligibility more easily by reopening cases that have been closed in the previous 30 days rather than requiring reapplication.

Cook said the amendment would reduce the administrative burden on DHHS workers and allow them to concentrate on serving ACCESSNebraska clients.

Omaha Sen. Gwen Howard supported both amendments, saying it was irresponsible of DHHS to implement ACCESSNebraska without establishing a pilot program or being responsive to community input.

“This bill will help the department do what they should be doing and put the ‘human’ back in our Health and Human Services Department,” she said.

Senators advanced the bill to select file on a 25-0 vote. ■



COMMITTEE HEARINGS

Tuesday, April 3

Health & Human Services

Room 1510 - 12:30 p.m.

Appointment: Pristow, Thomas - Division of Children and Family Services

Revenue

Room 1524 - 12:00 p.m.

AM2629 to LB727

Thursday, April 5

Judiciary

Room 1113 - 8:30 a.m.

Appointment: Boozer, R.L. (Bob) - Board of Parole ■

Appropriations

Budget package approved

Lawmakers gave final approval March 27 to four bills comprising the Legislature's mid-biennium budget adjustment package.

LB968, introduced by Norfolk Sen. Mike Flood on behalf of the governor, provides for deficit appropriations and passed on a 45-2 vote.



Sen. Mike Flood

Among the significant appropriations outlined in the bill are:

- \$17 million to the state Department of Health and Human Services (DHHS) to cover shortfalls due to developments in the child welfare reform effort and to reduce caseloads;
- \$10 million to state aid to K-12 special education;
- \$9.7 million to reinstate 1.5 percent of a 2.5 percent cut in Medicaid provider rates for the upcoming fiscal year;
- \$6.1 million to fund the design and construction of a veterinary diagnostic center at the University of Nebraska; and
- \$4 million to reduce the state's developmental disability waiting list.

LB969, also introduced by Flood at the request of the governor and passed on a 44-3 vote, authorizes various fund transfers.

LB131, introduced by Elk Creek Sen. Lavon Heidemann, makes transfers from the state's cash reserve, including:

- \$50 million for a cancer research center at the University of Nebraska Medical Center (UNMC) in Omaha;

- \$15 million for the UNMC College of Nursing and School of Allied Health Professions at the University of Nebraska in Kearney;
- \$7.5 million for improvements to the Oak Bowl at Peru State College;
- \$6.7 million for renovation of the Armstrong Gymnasium at Chadron State College; and
- \$800,000 for the Centennial Mall renovation project in Lincoln.

The bill passed on a 43-1 vote.

Finally, LB1072, introduced by the Business and Labor Committee, approves claims exceeding \$50,000 authorized by the state claims board, including:

- \$2.5 million in denied claims made by subcontractors of Boys and Girls Home – a former lead contract agency with DHHS;
- \$495,000 in tort claims; and
- \$275,000 in miscellaneous claims.

The bill also includes \$3.9 million in write-offs for fiscal year 2010-11. LB1072 passed on a 42-4 vote.

The governor must sign, veto or line-item veto the budget within five calendar days, excluding Sunday.

Banking, Commerce & Insurance

Insurance coverage of oral cancer drugs amended, advanced

Senators gave second-round approval March 27 to a bill that would require insurance coverage of oral cancer medications.

LB882, sponsored by Omaha

Sen. Jeremy Nordquist, would require that a health policy, certificate, contract or plan provide coverage for a prescribed, orally



Sen. Jeremy Nordquist

administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits.

The bill also would prohibit an insurance provider from reclassifying an anticancer medication or increasing a coinsurance, copayment, deductible or other out-of-pocket expense to offset the cost of complying with the bill.

Sen. Abbie Cornett of Bellevue offered and later withdrew an amendment that would have required an insurance policy with an out-of-pocket expense limit that includes prescription drug coverage either to include prescription drug expenses in the existing out-of-pocket limit or provide a separate out-of-pocket limit for prescription drugs.

Nordquist offered an amendment that changed the bill's effective date to Oct. 1, 2012, and would sunset the measure Dec. 31, 2015.

Nordquist said insurance companies need more time to prepare to comply with the bill and that uncertainty over the future of federal health care reform should be resolved by 2015. At that time, he said, the state could reconsider how best to address the issue of oral anticancer medications.

The amendment was adopted on a 34-0 vote and senators advanced the bill from select file by voice vote.

Consumer finance bill approved

Senators passed a bill March 30 that updates and amends the state's

consumer finance laws.

LB965, introduced by Boys Town Sen. Rich Pahls at the request of the state Department of Banking and Finance, makes changes to the Nebraska Installment Sales Act (NISA), the Residential Mortgage Licensing Act (RMLA) and the Nebraska Installment Loan Act (NILA).



Sen. Rich Pahls

Among the provisions, the bill:

- amends NISA to transition the current manual licensing process for installment sales companies onto the electronic Nationwide Mortgage Licensing System and Registry (NMLSR);
- allows a licensee to move its place of business anywhere without having to apply for a new license;
- brings the RMLA into compliance with new federal guidelines related to mortgage bankers and loan originators;
- authorizes the department to grant a certificate of exemption to a nonprofit organization that promotes affordable housing or provides homeownership education;
- authorizes the department to issue a mortgage loan originator license to a person who has had certain misdemeanors or any felony expunged from the record;
- allows the department to issue an emergency order to suspend, limit or restrict a mortgage license under specific circumstances; and
- amends NILA to include other state-regulated financial services entities and industries in the definition of NMLSR.

The bill passed on a 43-1 vote.

Business & Labor

Immunity for employer referrals clears second round

Employers providing job references for a current or former employee would receive civil immunity under a bill advanced from select file March 29.

As amended on general file, LB959, introduced by Fremont Sen. Charlie Janssen, would provide immunity to a current or former employer who provides certain information to a prospective employer only upon written consent of the prospective employee.



Sen. Charlie Janssen

A consent form would be provided during the application process and would be valid only for the length of time that the application is considered active by the prospective employer but no longer than six months.

Information that may be provided would include:

- employment date and duration;
- job description and duties;
- pay rate and wage history;
- attendance information;
- drug and alcohol test results;
- threatening or harassing behavior;
- most recent written performance evaluation; and
- whether the employee is eligible for rehire.

An employer providing information pursuant to a written consent would be immune from civil liability and presumed to be acting in good faith. The good faith presumption could be rebutted upon a showing by a preponderance of the evidence that the information was known to be false or that the employer acted with malice

or reckless disregard for the truth.

Papillion Sen. Jim Smith offered an amendment on select file, adopted 29-0, that would allow disclosure of a written performance evaluation only if the evaluation was provided to the employee during the course of his or her employment.

Sen. Bill Avery of Lincoln offered an amendment that would have required that any threat disclosed by an employer be documented, saying it would protect employees from false accusations.

Omaha Sen. Steve Lathrop opposed the amendment, saying it would upset the balance between the interests of business owners and labor and could jeopardize the bill.

“It is very, very difficult to bring employees and employers together and get them to agree on fair treatment of this subject,” he said.

The Avery amendment failed on a 7-23 vote and senators advanced the bill from select file 33-3.

Education

Progress measurement for schools advanced

A bill that would create an educational accountability system based on student progress, in addition to universal benchmarks, was advanced from select file March 27 after its implementation was delayed by one year.

LB870, introduced by York Sen. Greg Adams, would broaden the criteria used to assess a school’s effectiveness.

Schools currently are held accountable for students’ results on content area assessments. LB870 would add ad-



Sen. Greg Adams

ditional measures, including student growth and improvement and graduation rates. Schools would be required to report the data annually.

As amended on general file, the bill would:

- make data collected by the statewide accountability system available to all citizens;
- require that all probationary teachers – regardless of school classification – be evaluated once per semester; and
- provide stronger authorization to the state Department of Education to create and support career academies.

An Adams amendment, adopted 31-0 on select file, postponed the implementation of the accountability system until the 2013-14 school year.

Senators advanced the bill to final reading on a voice vote.

Compulsory school attendance compromise reached

Students dropping out of high school would be required to undergo an exit interview under a bill amended and advanced from select file March 28.

Currently, a student may terminate school enrollment with the notarized consent of a parent or guardian at age 16. LB996, introduced by Lexington Sen. John Wightman, originally would have raised the age of compulsory attendance to 18 years of age.

“The era when a high school dropout can earn a living wage is over,” Wightman said. “It is in the best interest of the child to stay in school.”

A Wightman amendment, adopted 32-1, instead would provide a mecha-



Sen. John Wightman

nism for students wanting to drop out of school for financial or health reasons. Wightman said the amendment would make it more difficult for students to drop out but still would give them a method of recourse.

“This amendment is designed to make the parent as accountable as possible for allowing their student to drop out,” Wightman said. “We would be sending a message to parents and students that they should stay in school.”

Under the amendment, any parent or legal guardian wishing to withdraw a student from school must notify the student’s school district. An exit interview would be conducted with the student, parent or legal guardian, superintendent and school principal.

The parent or guardian would be required to provide evidence that the student is facing either a financial hardship that requires that the student be employed to support the student’s family or an illness making attendance improbable or impossible.

During an exit interview, a superintendent would be required to provide information about alternative educational opportunities and reduced future earning potential and likelihood for unemployment for high school dropouts. At the end of an interview, if the parties wished to continue with the withdrawal, both the parent or legal guardian and the student would be required to sign the withdrawal form.

York Sen. Greg Adams supported the amendment, acknowledging that the exit interview may have no effect on a student’s decision.

“The conversation may never change their mind,” Adams said. “But we’re making sure everyone in the decision-making process makes an attempt to encourage that young man or woman to finish school.”

Senators advanced the bill to final reading on a 25-9 vote.

General Affairs

Sunday morning spirit sales allowed

Lawmakers passed a bill March 27 that removes a prohibition on selling and dispensing alcoholic liquor in Nebraska on Sundays between 6 a.m. and noon.

Under LB861, introduced by Bellevue Sen. Abbie Cornett, alcohol sales during Sunday morning hours still could be restricted by local ordinances.

The bill passed on a 44-0 vote.



Sen. Abbie Cornett

Entertainment districts approved

Lawmakers gave final approval March 30 to a bill authorizing the designation of common areas where alcohol may be consumed.

LB1130, introduced by Lincoln Sen. Colby Coash, authorizes the creation of entertainment districts and a licensing process for those districts.



Sen. Colby Coash

Under the bill, an entertainment district may be designated and regulated by a local governing body via city ordinance and may be revoked if found to be a nuisance or a threat to public health, safety or welfare. Entertainment district designations will be filed with the state Liquor Control Commission (LCC).

A local governing body may designate a commons area within the district that:

- is shared by entertainment district authorized licensees;

- abuts the licensed premises of the licensees;
- is closed to vehicular traffic when used as a common area; and
- has limited pedestrian accessibility by use of a physical barrier on a permanent or temporary basis.

To operate in the commons areas, a business will be required to:

- file an application with the LCC and pay a \$300 fee;
- be located adjacent to a commons area within an entertainment district;
- have a retail liquor license, craft brewery license or microdistillery license; and
- only serve alcoholic liquor in a container that displays the business' logo or trade name.

LB1130 passed on a 44-1 vote.

Government, Military & Veterans Affairs

Bill expands video and telephone conference public meetings

Senators gave final approval March 27 to a bill that allows additional public entities to hold public meetings by video and telephone conferencing.

LB735, introduced by Columbus Sen. Paul Schumacher, extends the authorization to community college boards and public power and public power irrigation districts.

The bill passed 47-0.



Sen. Paul Schumacher

Bill to require electronic reports passes

Senators gave final approval March 30 to a bill that requires electronic submission of all reports submitted to the Legislature, including reports to standing committees and the fiscal office.

LB782, introduced by Omaha Sen. Beau McCoy authorizes the clerk of the Legislature to establish requirements for the electronic format, submission and distribution of required reports.



Sen. Beau McCoy

The clerk may accept a report in written form only upon a showing of good cause.

Provisions of the bill relating to reports filed by lobbyists and principals has an operative date of Jan. 1, 2015.

The bill passed on a 42-0 vote.

State contracting requirements amended, advanced

Lawmakers gave second-round approval March 27 to a bill that seeks to improve the procedure by which state agencies contract for services.

Introduced by Lincoln Sen. Bill Avery, LB858 as amended would apply to contracts valued at more than \$15 million and would require the involvement of the state Department of Administrative Services (DAS).



Sen. Bill Avery

The bill would require a state agency to submit a copy of a proposed contract and a proof-of-need analysis to DAS, which would certify a submitted analysis as complete before an

agency could proceed with contracting services.

The bill also would remove a current exemption from state bidding requirements for state contracts over \$15 million with direct providers of medical, behavioral or developmental health services, child care or child welfare service to an individual.

Lincoln Sen. Tony Fulton offered an amendment containing provisions of LB1006, a bill he introduced this session dealing with state contracts to operate vending facilities in state- or federally-owned buildings in Nebraska.

The amendment, adopted 32-0, would give priority to blind or visually impaired bidders if the product price in a submitted bid is comparable in price to the other bids for products sold in similar buildings or on similar property and the qualifications and capabilities of the vendors bidding the contract are similar to other bidders.

Fulton said the amendment was based on federal law and would give special consideration to a blind or visually impaired vendor if his or her bid otherwise is equal to other bids.

Avery supported the amendment, saying it would address a recent change in the DAS bidding process that took into account the cost of renting space for vending machines, which resulted in a visually impaired bidder losing the vending contract at the Nebraska State Office Building.

He said the amendment would reaffirm the state's traditional special consideration provisions for blind and visually impaired vendors and provide them with valuable economic opportunities.

Following adoption of the Fulton amendment, senators advanced the bill from select file by voice vote.

Health & Human Services

Child welfare strategic plan and oversight bill amended, re-advanced

A bill intended to provide a strategic plan and legislative oversight for child welfare programs in Nebraska was returned from final reading March 30 for consideration of an amendment.

LB821, sponsored by the Health and Human Service Committee, would create a 22-member Nebraska Children's Commission tasked with creating a statewide strategic plan to reform child welfare programs and services in the state.

Among other issue areas, the commission would be required to create committees to examine foster care reimbursement rates and state policy regarding prescription of psychotropic drugs to state wards. The commission would be required to report on the strategic plan to the Legislature and the governor by Dec. 15, 2012.

The bill also would create the Office of Inspector General within the Office of Public Counsel, also known as the Ombudsman's Office.

The inspector general would be appointed by the public council and approved by the Legislature. The office would be authorized to investigate allegations of possible misconduct, death or serious injury in foster homes, private agencies, child-care facilities and programs.

The office also would review the role and effectiveness of the state's youth rehabilitation and treatment centers, analyze data and report to the Legislature and the governor annually.

Under the bill, law enforcement agencies and prosecuting attorneys would be required to cooperate with investigations conducted by the inspector

general, regardless of any criminal investigation or prosecution in progress.

Lincoln Sen. Kathy Campbell, chairperson of the Health and Human Services Committee, made a motion to return LB821 from final reading to consider an amendment



Sen. Kathy Campbell

that would more clearly specify the coordination outlined in the bill between law enforcement, prosecuting attorneys and the inspector general.

Senators voted 44-0 to return the bill to select file and Campbell offered an amendment that narrowed the parameters of the information law enforcement and prosecutors would be required to provide the inspector general.

Among other provisions, the amendment would:

- require that only information relevant to a particular investigation be shared;
- clarify that police reports are not public records and not subject to discovery by another agency or entity;
- require the inspector general to maintain the confidentiality of all law enforcement reports received; and
- prohibit the inspector general from interviewing a minor in connection with an ongoing investigation who already has been interviewed by authorities.

Campbell said the changes would allow the inspector general's office to perform its duties without compromising the work of law enforcement and would promote cooperation that ultimately would benefit the state's vulnerable children.

After adopting the amendment 43-0, senators re-advanced LB821 to final reading by voice vote.

Increased spending flexibility for county hospitals approved

County hospitals will have more authority to make large purchases under a bill passed by the Legislature March 30.

LB995, introduced by Elk Creek Sen. Lavon Heidemann, allows county hospitals to obtain lines of credit without a public vote.



Sen. Lavon Heidemann

The bill allows a county hospital to:

- encumber hospital property;
- obtain a line of credit or borrow money;
- make improvements and additions to facilities with county board approval;
- participate in group purchasing organizations for large items; and
- open clinics in communities outside its jurisdiction.

Use of general bonds to fund new projects still will require a public vote.

County board approval will be required for any issuance of revenue bonds for which the revenue of the facility has been pledged. The hospital's board of trustees will be required to file bylaws, rules and regulations with the county board.

Senators passed the bill on a 45-0 vote.

Change in foster care oversight amended, advanced

Nebraska's current Foster Care Review Board would be replaced by a Foster Care Review Office under a bill advanced from select file March 28.

The 11-member Foster Care Review Board was created by the Legislature in 1982 as an independent agency to

provide oversight to the state's foster care system.

LB998, introduced by Omaha Sen. Bob Krist, would abolish the board and establish a Foster Care Review Office. Terms of the current 11-member Foster Care Review Board would terminate immediately.



Sen. Bob Krist

Under the bill as amended on general file, the newly created office would be a non-code agency within the executive branch. All staff except the executive director would be transferred from the Foster Care Review Board to the Foster Care Review Office.

The bill also would create a Foster Care Advisory Committee. Lists of potential appointees would be submitted to the governor by the Legislature and members would be limited to two consecutive three-year terms.

No member of the advisory committee could have a financial interest in the foster care system or be employed by the state Department of Health and Human Services, a county, court, child-caring agency or child-placement agency.

Cedar Rapids Sen. Kate Sullivan offered an amendment on select file, adopted 33-0, which added to the bill an operative date of July 1, 2012.

She said the change would coincide with the start of the state's fiscal year and would allow more time for the transition.

"LB998 as amended represents a major change to how a state agency operates ... so I think it's only right that we make sure this change takes place in a reasonable and logical fashion," she said.

Following adoption of two technical amendments offered by Krist, lawmakers advanced the bill from select file by voice vote.

Managed care contract bill clears first round

Senators advanced a bill from general file March 29 that would outline the parameters of future medical assistance contracts for delivery of behavioral health service in Nebraska.

LB1158, introduced by Omaha Sen. Bob Krist, would require an at-risk managed care model for behavioral health managed care contracts after July 1, 2012.

Krist said at-risk managed care contracts allow contractors to make a fair profit while improving care to those who are served by them.

As introduced, the bill would:

- cap administrative contract spending at 7 percent;
- restrict contract profits to a maximum of 2.5 percent per year;
- provide for a minimum medical loss ratio of 85 percent;
- require that a minimum of 1 percent of contract payment be contingent on performance metrics; and
- provide for reinvestment of any profits in excess of the contract amount and any fees imposed by the state Department of Health and Human Services (DHHS) to fund community-based services.

A Health and Human Services Committee amendment, adopted 29-0, would require the department, when contracting for managed care plans, to include the Nebraska Behavioral Health Services Act requirements for behavioral health managed care contracts.

Krist offered an amendment, adopted 30-0, that made several changes to the percentages outlined in the bill and would:

- allow administrative spending to exceed 7 percent if necessary to improve the health status of the population being served,

but would cap administrative spending at 10 percent;

- restrict contract profits and losses to a maximum of 3 percent per year as a percentage of aggregate income and revenue; and
- require that a minimum of 0.25 percent of contract payment be contingent on performance metrics.

"All of these numbers were changed to ensure fair and open competition," Krist said.

An amendment offered by Kearney Sen. Galen Hadley, adopted 32-0, removed the provision requiring reinvestment of any profits in excess of the contract amount and any fees imposed by the state Department of Health and Human Services (DHHS) to fund community-based services.

Hadley said the provision would bypass the Legislature's standard appropriations process and would hinder lawmakers' oversight of how money is spent by state agencies.

Hoskins Sen. Dave Bloomfield also offered an amendment, adopted 34-0, that clarified the definition of stakeholders within the bill.

Senators advanced LB1158 to select file on a 34-0 vote.

Judiciary

Threats of harm considered cause for protection orders

A bill modifying the definition of domestic abuse in relation to protection orders was passed March 30.

LB310, introduced by Lincoln Sen. Amanda McGill, makes a credible threat a reason for granting a protection order. Violating a



Sen. Amanda McGill

protection order—currently a Class II misdemeanor—will be a Class I misdemeanor. Subsequent violations will be considered a Class IV felony.

The bill was returned to select file March 27 for the adoption of an amendment containing provisions of two other bills.

LB1056, introduced by Omaha Sen. Pete Pirsch, deems that a respondent of a protection order has been served notice of the order if he or she is present at a hearing. If the respondent has been properly served with the ex parte order and fails to appear at the required hearing, the temporary order shall be deemed to be granted.

LB920, introduced by McGill, contained additional provisions allowing a petitioner to request a hearing, as well as federal requirements further preventing offenders from carrying firearms.

The amendment was adopted 46-0 and LB310 was re-advanced to final reading by voice vote.

The bill passed March 30 on a vote of 42-0.

Transfer of death deed approved

Senators passed a bill March 30 that provides an asset specific mechanism for the nonprobate transfer of land.

LB536, introduced by Lexington Sen. John Wightman, permits individuals with an interest in real property to enable the owner to pass the property to a beneficiary on the owner's death directly and without probate.

Under the bill, a transferor must sign a document under oath and in the presence of two disinterested witnesses affirming that he or she is not a minor and is of sound mind and that the transfer is voluntary.



Sen. John Wightman

If the transferred property is agricultural land, a transferor may designate his or her interest in growing crops to the estate or to one or more of the designated beneficiaries. If a deed does not contain a crop designation, a transferor's interest in the growing crops passes to the estate.

Finally, property deeds between a spouse and ex-spouse or between a parent and child are tax exempt under the bill.

LB536 passed on a 40-0 vote.

Bill would ban "bath salts" drug

Provisions of a bill banning a drug called "bath salts" replaced those of a bill dealing with the juvenile code March 29.

LB670, introduced by Sen. Mike Flood, originally would have authorized court-ordered conditions for dispositions under the Nebraska Juvenile Code.



Sen. Mike Flood

Omaha Sen. Brenda Council filed a motion to suspend the germaneness rule for consideration of an amendment to the bill that would prevent the manufacture a drug commonly known as bath salts. While the germaneness rule requires that amendments relate only to details of the specific subject of the bill, Council said, the proposed amendment would replace the bill's original provisions, so the germaneness standard should not apply.

Senators approved the motion 37-0.

The amendment contained provisions originally introduced by Ogallala Sen. Ken Schilz as LB814. It would expand the Uniform Controlled



Sen. Ken Schilz

Substances Act to ban the compounds that are used to make bath salts, which are chemically altered substances that have similar effects as methamphetamines, LSD and PCP. The product is manufactured and marketed as bath salts to skirt current drug laws.

Under the amendment, the penalty for possessing bath salts would be a Class IV felony and manufacturing or trafficking the drug would be a Class III felony.

Schilz said the drug can cause extreme paranoia, erratic behavior and a loss of motor control in those who take it.

He described the drug as a swiftly growing problem. Bath salts were the cause of 303 calls to poison control in 2010, he said, but that number grew to 6,072 calls the following year.

Schilz said the drug is popular among some children and young adults due to its low price and easy accessibility, as it can be ordered online and found in novelty stores.

The amendment was adopted 33-0 and LB670 was advanced to final reading on a voice vote.

Historic horse race wagering clears second round

Senators amended and advanced a bill from select file March 29 that would authorize the state Racing Commission to license and regulate pari-mutuel wagering on historic horse races.

A historic horse race creates a pari-mutuel pool from wagers placed on a previously held race at a licensed racetrack.

LB806, introduced by Omaha Sen. Scott Lautenbaugh, originally would have allowed instant racing terminals



Sen. Scott Lautenbaugh

at licensed horse racing premises only with approval from the county board where the licensed facility is located. A general file amendment removed that requirement.

The amended bill would establish a Historic Horse Racing Distribution Fund comprising taxes collected from the races and licensing fees, which would be \$1,000 per machine. Half of the fund's proceeds would be credited to the Racing Commissions Cash Fund to be used by the commission for equitable treatment of equine species and the other half would be directed to the Compulsive Gambler's Assistance Fund.

Lautenbaugh offered an amendment on select file that he said was intended to address concerns about LB806 raised by opponents during the previous round of debate.

The amendment, adopted 29-0, stipulates that historic horse racing would end if it were found by a court to allow any additional Class III gaming as defined in the federal Indian Gaming Regulatory Act.

The amendment also would terminate authority to license and regulate historic horse racing if specific criteria were not met within four years of continuous use of instant racing terminals, including:

- construction of a race track enclosure in a county that contains a city of the primary class;
- a 25 percent increase in purses compared to 2011; and
- a 30 percent increase in the number of live horse racing days at tracks with instant racing terminals in counties other than Douglas, or a 40 percent increase in Douglas County.

In addition, the amendment clarifies that half of the proceeds credited to the cash fund be used for programs that facilitate equine therapy for youth and veterans and that promote equine

and equestrian activities in Nebraska.

Lautenbaugh said the amendment was evidence that he did not have ulterior motives to expand gaming in Nebraska.

"I took the opponents' concerns at face value," he said. "This [bill] is about horse racing, plain and simple."

Sen. Annette Dubas of Fullerton supported the amendment, saying it reaffirmed the narrow focus of the bill on the horse racing industry in Nebraska.

"It's an amendment that will give this very important industry in our state an opportunity to prove themselves," she said.

Lincoln Sen. Bill Avery opposed the amendment, saying it did not address the "social pathologies" that accompany gambling, which he said does not produce genuine economic development because it does not produce goods or add value to society.

"This is essentially going to create additional negative economic activity in our state," he said. "This is not sound public policy."

A second amendment offered by Lautenbaugh would have eliminated the current exemption on the first \$10 million of pari-mutuel wagering profit. He said the amendment was introduced in exchange for withdrawal of a series of amendments offered by opponents to LB806 in an attempt to filibuster the bill.

Opponents withdrew their amendments and Lautenbaugh's amendment failed on a 2-24 vote.

Senators advanced LB806 from select file 26-18.

Collaboration planned for youth rehabilitation centers

Senators gave first-round approval March 28 to a bill that would promote administrative collaboration at each of the state's youth rehabilitation and

treatment centers (YRTCs).

Currently, the state Department of Health and Human Services (DHHS), through the Office of Juvenile Services (OJS), oversees YRTCs in Kearney and Geneva.

LB972, as originally introduced by Omaha Sen. Brad Ashford, would have transferred oversight and control of the centers to the state Department of Correctional Services (DOC).



Sen. Brad Ashford

An Ashford amendment, adopted 37-0, replaces the bill and instead would facilitate collaboration between the Office of Juvenile Services and the Department of Correctional Services in regard to operating YRTCs. Ashford said the DOC should play a role in youth rehabilitation but that OJS should remain the lead agency.

"We've looked at the situation and determined that the appropriate agency is the Office of Juvenile Services," Ashford said. "However, the Department of Correctional Services has the expertise in the area of security and keeping order in a facility with lots of adjudicated youth."

The bill as amended would authorize DOC to provide training to OJS employees on the safety and security of youth living at YRTCs. OJS would be required to submit an annual status report to the Legislature.

Kearney Sen. Galen Hadley supported the bill, saying it retains the focus on rehabilitation of the youth.

"This is the start to a workable solution," Hadley said. "We wanted to make sure that those youth that can really be served by going to YRTC are properly served."

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

Natural Resources

Appropriation of Republican River repayments lowered, advanced

Reimbursement payments from Republican River natural resource districts (NRDs) would be dedicated to funding future water projects under a bill advanced from select file March 27.

LB950, as originally introduced by Imperial Sen. Mark Christensen, would have directed all future loan payments to be deposited into the Water Resources Cash Fund, where they would be granted for future water projects. The funds currently are directed to the Water Contingency Cash Fund.

Holdrege Sen. Tom Carlson supported the bill, saying the dedication of reimbursement payments for future water projects would benefit all Nebraskans.

“Thirty years ago, no one knew the water problems we were going to face,” Carlson said. “We want to do things that will ensure we have water generation after generation.”

An amendment introduced by Elk Creek Sen. Lavon Heidemann, adopted 31-0, would ensure reimbursement payments would be transferred from the general fund.

An amendment to Heidemann’s amendment, introduced by Christensen, would lower the amount of money to be transferred from the general fund from \$10.5 million to \$5.7 million in fiscal year 2012-13 and from \$7.2 million to \$2.4 million in subsequent years.

Christensen said he brought the

amendment to be mindful of the state’s budget. The amendment was adopted on a 31-0 vote.

Senators advanced the bill to final reading by voice vote.

Oil pipeline regulation bill amended, advanced

Lawmakers advanced a bill from general file March 29 related to oil pipeline routing in Nebraska.

LB1161, sponsored by Papillion Sen. Jim Smith, would make changes to law enacted during a November 2011 special session called by Gov. Dave Heineman to regulate oil pipeline routing in Nebraska.



Sen. Jim Smith

Concern over the state’s lack of oil pipeline regulation was sparked by TransCanada’s proposed Keystone XL pipeline, which is intended to carry crude oil from Canada to Gulf Coast oil refineries.

Lawmakers passed LB4 during the special session, authorizing the state Department of Environmental Quality (DEQ) to collaborate with a federal agency in a review under the National Environmental Policy Act involving a supplemental environmental impact statement (EIS) for oil pipeline projects within the state.

The bill also specified that Nebraska would fully fund the state portion of the process and the preparation of the supplemental EIS, to avoid any appearance of impropriety.

Smith said LB1161 was introduced in response to action taken at the federal level since the November special session. DEQ had hired a consultant for the supplemental EIS regarding TransCanada’s permit application for the Keystone XL pipeline, he said,

when the federal government abruptly halted the process.

A Natural Resources Committee amendment was adopted on a 34-2 vote and replaced the bill. An amendment offered by Schuyler Sen. Chris Langemeier and adopted 33-2 in turn replaced the committee amendment.

As amended, the bill would broaden DEQ’s authority to study proposed pipeline routes and allow a DEQ study to determine the route of an oil pipeline within the state to be included in an application to a federal agency or agencies.

A pipeline carrier that did not file for a required federal permit or did not use DEQ’s evaluation would be required to reimburse the department for the cost of the evaluation within 60 days after notification of the cost.

As amended, the bill also would change the effective date of the Major Oil Pipeline Siting Act, passed as LB1 during the November special session.

Under the act, the Public Service Commission (PSC) is responsible for evaluating and approving pipeline siting applications, as well as holding public hearings to gather citizen input. In addition, an approved application is required prior to a company being granted eminent domain rights.

As amended by LB1161, the Major Oil Pipeline Siting Act would apply only to applications received after Jan. 1, 2013.

Langemeier said the amendment would uphold the agreement made during the special session because TransCanada intends to reapply for a permit to construct Keystone XL.

“The whole purpose of the amendment was to keep with the spirit of what was negotiated during the special session,” he said.

But Sen. Ken Haar of Malcolm said Nebraska should not grant TransCanada a one-year extension in order to exempt Keystone XL from the regulatory

framework of the pipeline siting act.

"I believe that TransCanada is the victim of their own machinations," he said. "I believe that LB1 is the law that should be applied in this case."

Omaha Sen. Steve Lathrop expressed concern that changing the operative date of the Major Oil Pipeline Siting Act would result in TransCanada being the only company that would be subject to the provisions of LB4, effectively creating a closed class.

Doing so would create constitutional concerns, he said, and could result in costly legal battles.

"It seems like every time we try to fix something - whether we're doing it in Lincoln or in Washington, D.C. - we're making it worse," Lathrop said.

Smith said LB1161 does not create a closed class because there is no legal impediment to another company meeting the criteria of LB4 prior to the Major Oil Pipeline Siting Act taking effect.

"[This bill] creates a responsible and reasonable process for all pipelines going forward," he said.

The bill advanced to select file on a 35-2 vote.

Protection of hunting, fishing and trapping will be on ballot

A resolution containing a proposed amendment to the state constitution regarding the right to hunt, fish and harvest wildlife was passed by the Legislature March 27.

LR40CA, introduced by Omaha Sen. Pete Pirsch, places on the ballot a proposed amendment to establish that the right to hunt, fish and harvest wildlife is subject only to laws, rules and regulations that preserve the future of hunting, fishing and the promotion of



Sen. Pete Pirsch

wildlife conservation and management. If adopted by voters, the constitutional amendment would declare public hunting and fishing as the preferred means of managing and controlling wildlife.

Omaha Sen. Brenda Council filed a motion to return the resolution to select file for consideration of an amendment that would have struck the language pertaining to the use of traditional hunting methods. The motion to return to select file failed on a 5-27 vote and Council withdrew the amendment.

Senators passed the resolution on a 41-3 vote and the proposed constitutional amendment will be placed on the November 2012 general election ballot.

Revenue

Occupation tax threshold would trigger public vote

Occupation tax revenue projected to exceed established thresholds would be subject to a popular vote under a bill advanced from general file March 28.

LB745 as originally introduced by Valentine Sen. Deb Fischer would have required that any proposed occupation tax be subject to a vote of the people, have a specific purpose and indicate a sunset date. Any change in the rate of a current occupation tax also would be subject to a vote. The bill would not eliminate occupation taxes currently in place.

"Nebraskans are concerned with occupation taxes levied by municipalities for things other than telecommunication purposes," Fischer said.

A Revenue Committee amendment, adopted 27-3, would allow municipalities to adjust the rate or terminate an existing occupation tax



Sen. Deb Fischer

without submitting it to a public vote.

York Sen. Greg Adams introduced an amendment, adopted 25-5, which would establish revenue thresholds for implementing new occupation taxes. Under the amendment, a proposed occupation tax would be subject to a public vote if the projected revenue exceeds:

- \$1 million for cities of the metropolitan class;
- \$750,000 for cities of the primary class;
- \$500,000 for cities of the first class; and
- \$250,000 for cities of the second class and villages.

Opponents of the bill argued the thresholds were too restrictive for local governments.

Omaha Sen. Steve Lathrop said the thresholds specified under the Adams amendment were too low and would infringe on cities' autonomy.

"For us to require a vote of the people and lower the threshold for them to perform a function of administering the government, I think is the wrong direction to go," Lathrop said.

Lincoln Sen. Bill Avery said it was important to set thresholds that still would allow elected officials to conduct business without disproportionate oversight.

"We have to be careful with how we tinker with the legitimate obligations of elected officials and restrict their ability to serve on behalf of the people who elected them," Avery said.

An amendment introduced by Bellevue Sen. Abbie Cornett, adopted 38-2, adjusted the bill's occupation tax revenue thresholds. Under the amendment a proposed occupation tax would be subject to a public vote if the projected revenue exceeded:

- \$6 million for cities of the metropolitan class;
- \$3 million for cities of the primary class;

- \$700,000 for cities of the first class; and
- \$300,000 for cities of the second class and villages.

Senators advanced the bill to select file on a 38-2 vote.

Public property tax exemption amended, re-advanced

Property owned by governmental entities would be exempt from paying property taxes under a bill returned to select file and amended March 27.

Currently, a governmental entity wishing to issue tax-free bonds without a public vote must form a nonprofit leasing corporation. The corporation issues bonds and purchases the property. Ownership remains with the corporation until the bonds are paid off, at which time the property title is transferred to the government entity.

LB902, introduced by Omaha Sen. Burke Harr, would exempt such properties from paying property taxes. Purchases made by the leasing corporations also would be exempt from sales and use taxes.



Sen. Burke Harr

Harr filed a motion to return the bill to select file for consideration of an amendment to remove the bill's emergency clause and a retroactive provision that was adopted on general file. Senators obliged 37-0 and adopted the amendment 42-2.

The bill would require a public vote for any project exceeding established spending thresholds. Any project costing more than \$50,000 or 0.6 percent of total or actual value of real and personal property of the governmental subdivision would be subject to voter approval.

The bill passed March 30 on a 44-0 vote.

Transportation & Telecommunications

Additional penalties approved for failing to stop for a school bus

Failing to stop for a school bus will result in additional penalties under a bill passed by the Legislature March 30.

Under LB1039, introduced by Bancroft Sen. Lydia Brasch, violations will result in a \$500 fine and the assessment of three points on a driver's license.



Sen. Lydia Brasch

Drivers will be required to decrease speeds to 25 mph when the yellow warning lights on a bus are flashing and to stop if the red lights are flashing. At locations where a school district determines that 400 feet of clear vision in each direction is not possible, a bus may stop if a sign indicates that a school bus stop is ahead.

Senators passed the bill on a 45-0 vote.

Prepaid wireless phones would be subject to surcharge

Retailers selling prepaid wireless phones would be required to collect surcharge fees under a bill advanced from general file March 29.

Under LB1091, introduced by Valentine Sen. Deb Fischer, prepaid wireless phones would be subject to both the wireless E911 fee and the telecommunication relay system fee. The fees would be collected at the point of sale. Fischer said wireless phones under service contracts



Sen. Deb Fischer

already are subject to the fee.

"Prepaid wireless phones account for 21 percent of the wireless phone industry today," Fischer said. "This bill develops a new method for collecting surcharges on prepaid wireless customers."

Columbus Sen. Paul Schumacher opposed the bill, saying phone companies currently include the surcharge fees within the price of a prepaid phone. He said collecting the surcharge from customers without adjusting prices would amount to double taxation.

"When you trace where the money really goes, a bulk of it goes back to the phone companies as one of those hidden charges," he said.

Senators advanced the bill to select file on a 25-1 vote.

Urban Affairs

Updates to building codes passed

A bill that updates building codes was passed by the Legislature March 27.

LB42, introduced by Kearney Sen. Galen Hadley, adds references to the 2009 Uniform Plumbing Code into current building statutes.



Sen. Galen Hadley

Cities and villages are granted the authority to adopt a plumbing code containing rules and regulations. In the absence of a city or village code, the 2009 Uniform Plumbing Code will apply. In the case that a city code is similar to the 2009 Uniform Plumbing Code, the city ordinance will take precedence.

Senators passed the bill on a 46-0 vote.

Film production incentives passed

Production film companies are included in the Local Option Municipal Economic Development Act (LOMED) under a bill passed by the Legislature March 30.

LOMED authorizes incorporated cities and villages to appropriate local sales and property tax dollars – if approved by local voters – for economic development purposes.

Under LB863, introduced by Lincoln Sen. Colby Coash, LOMED will include the production of films, commercials and television programs as businesses that qualify for the program.



Sen. Colby Coash

Film companies will be required to acknowledge cities where a production was created as well as the state of Nebraska in a production’s credits, unless prohibited by local, state or federal law or regulation. Film companies will be required to provide notice of such projects to the Nebraska Film Office.

Senators passed the bill on a 44-0 vote.

Bill to increase natural gas capacity advanced

Lawmakers gave first-round approval March 28 to a bill that would allow jurisdictional utilities to construct and authorize natural gas pipeline facilities.

Norfolk Sen. Mike Flood, sponsor of LB1115, said he introduced the bill because many rural Nebraska communities lack



Sen. Mike Flood

adequate natural gas pipeline capacity to meet the demand of existing or potential end-use business customers. He said the bill would provide a streamlined, less-regulated process for natural gas pipeline construction in the state.

Under the bill as introduced, a jurisdictional utility could implement a plan to construct rural natural gas infrastructure. Prior to constructing a natural gas facility, the jurisdictional utility would be required to consider factors such as the environmental impact on the area and the project’s economic feasibility.

Following a determination that an area is unserved or underserved, the bill would require a jurisdictional utility to make a tariff filing with the Public Service Commission (PSC) that adjusts the utility’s residential and commercial customer rates to recover costs.

An Urban Affairs Committee amendment, adopted 31-0, would include villages and first and second class cities in the bill’s provisions and grant them authority to utilize funds under what is known as an LB840 plan to facilitate the type of infrastructure outlined in the bill.

The amendment also would require a jurisdictional utility to file proposed rural infrastructure surcharge tariffs with the PSC consistent with the proposed rate increases negotiated in an agreement with a community prior to undertaking rural infrastructure development.

A rural infrastructure surcharge tariff or gas supply adjustment tariff would become effective immediately upon filing of all required items with the PSC, including a copy of the agreement with the community and a map of the underserved area.

Finally, the amendment would:

- ensure that tariffs are consistent

with the proposed rate increase negotiated in an agreement;

- limit a jurisdictional utility’s ability to recover costs to only the customers in a city who are benefitting from the development;
- provide for a refund to rate payers determined to have overpaid for an infrastructure development; and
- limits PSC authority to one annual public hearing and determination of whether rural surcharges reflect the annual cost of development.

Flood said finding a means to increase natural gas capacity is essential for economic development in rural areas. He said the amended bill would provide a framework for communities and jurisdictional utilities to work together to achieve industrial expansion.

“The bottom line is that this problem will not solve itself,” Flood said. “Rural Nebraska is worth fighting for.”

Sen. Paul Schumacher of Columbus supported the bill, saying rural areas did not envision the kinds of natural gas capacity that would be required to support ethanol plants and other manufacturing businesses. LB1115 would provide rural communities a mechanism to try to increase capacity, he said.

“You can’t employ people unless you have the ability to invest in the proper infrastructure,” Schumacher said.

Following adoption a technical amendment offered by Flood, senators advanced LB1115 to select file on a 32-0 vote. ■

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