

Nebraska Council of School Administrators

NCSA Legislative Bill Summaries

101st Legislature, Second Session

*Presented by
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Administration Legislation

Bill: LB 966

One-liner: Adopt the Classroom Educational Expenditure Act

Introduced by: Pahls

Committee: Education

LB 966 creates the Classroom Educational Expenditure Act. The bill represents a second attempt by Senator Pahls at relatively the same idea. The first such attempt was made in 2009 under LB 240.

LB 966 states that no public school district may spend less than 65% of its total operating expenditures on “direct classroom instruction” in any consecutive three-year period (based on the school fiscal year). Any district failing to meet this requirement is not eligible for accreditation.

The bill defines direct classroom instruction as the amount of funds expended by a district related to:

- Regular instructional programs;
- English language learners’ instructional programs;
- poverty programs;
- early childhood education programs; and
- special education instructional programs.

The items specifically not considered direct classroom instruction include amounts expended by a district related to:

- Support services for pupils;
- support services for safety and security;
- regular pupil transportation;
- school-age special education pupil transportation;
- support services for staff;
- support services for school improvement;
- support services for implementation of standards;
- the school board or board of education and its members;
- executive administration services;
- general administration business services;
- vehicle acquisition and maintenance for vehicles other than pupil transportation vehicles;
- any principal or his or her office;
- maintenance and operation of building and sites;
- any federal programs or funds received or expended;
- categorical grants from corporations and other private interests;
- community services;
- state categorical programs;

- debt service;
- summer school;
- adult education; and
- transfers of funds.

LB 966 defines “total operating expenditures” as the amount of funds expended by a district related to all items included as direct classroom instruction plus all those items not included as direct classroom instruction.

While LB 966 contains an operative date of September 1, 2013, the bill specifically includes school fiscal years 2011-12 and 2012-13 in the three-year requirement described above.

Assessment Legislation

Bill: LB 1007

One-liner: Provide for performance measures under the Quality Education Accountability Act

Introduced by: Adams

Committee: Education

LB 1007 amends the Quality Education Accountability Act, which was first enacted in 1998.

Index: The bill provides that, by December 1, 2010, the State Board of Education must establish an index to be used to measure the performance of individual public schools beginning with school year 2012-13. The index must combine multiple measures, including, but not limited to, graduation rates, student growth and performance on the statewide assessment system currently in place, and other school performance indicators as established by the board.

Priority School: The measures selected by the board for the index must be combined into a school performance score and district performance score. The board must establish levels for the index in order to classify school performance. Any school that does not meet the minimum level of performance established by the board must be designated as a “priority school.”

Intervention Team: LB 1007 requires the Commissioner of Education to establish an “intervention team.” The school board of a school district containing a priority school must permit the intervention team full access to the priority school, school personnel of the priority school, the school district, school district personnel, academic information, financial information, and any other requested information.

Progress Plan: The intervention team, in collaboration with the priority school and the district, must develop a progress plan for approval by the State Board. The progress plan must include specific actions required by the school and the district in order to remove its classification as a

priority school. Compliance with progress plans would be a requirement to maintain accreditation for any school district that has at least one priority school.

A progress plan is required for a school for each year that it is classified as a priority school. The State Board must annually review any progress plans and determine whether any modifications are needed. If a school has been designated as a priority school for the fifth consecutive year, the State Board must determine whether further steps should be taken.

Report: The Commissioner must annually report to the Governor, the Clerk of the Legislature, and the chair of the Education Committee of the Legislature on all schools designated as priority schools. The report must include the name of the school, the grades included in the priority school designation, the name of the school district, the years for which the school was designated a priority school, a summary of the progress plan, and the measurement of progress.

Budget (State/School) Legislation

Bill: LB 815

One-liner: Change requirements for political subdivision budget statements and financial information on the state web site

Introduced by: Haar

Committee: Government

Under the Nebraska Budget Act, each governing body of each applicable political subdivision must annually prepare a proposed budget statement on forms prescribed and furnished by the State Auditor. The proposed budget statement must be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement. The proposed budget statement must contain such information as revenue from all sources, cash balance at the beginning and end of the year, and the amount of actual expenditures.

LB 815 would make two changes to state law. The first change would amend the Nebraska Budget Act by requiring political subdivisions to include in the budget statement a provision setting out separately the amount of money received as (i) private donations, (ii) gifts, or (iii) grants in the past two fiscal years and estimated to be received in the current and ensuing fiscal years AND the source, allocation, and expenditure of the money which was received in increments of \$1,000 or more.

The second change proposed in LB 815 is to require the State Treasurer to publish online the amount of money received as private donations, gifts, or grants and the source, allocation, and expenditure of such money that was received in increments of \$1,000 or more.

NOTE: LB 815 represents a continuation of the effort set forth in the passage of the Taxpayer Transparency Act (LB 16, 2009). The Act required the State Treasurer to develop and maintain

a single, searchable web site with information on state tax receipts and expenditures that is accessible by the public. The web site was to be up and running by January 1, 2010. The web address is: <http://www.NebraskaSpending.gov/>.

Bill: LB 935

One-liner: Provide for deficit appropriations and change certain appropriations

Introduced by: Flood

Committee: Appropriations

LB 935 represents the mid-biennium budget bill for the Legislature to modify, as needed, the 2009-11 State Budget. The bill was introduced by Speaker Flood on behalf of the Governor.

Bill: LB 972

One-liner: Change a date related to certain political subdivision budget filings

Introduced by: Utter

Committee: Revenue

LB 972 amends the Nebraska Budget Act and other relevant statutes to extend the time by which budget statements must be filed. Under current law, a governing body must publish a proposed budget statement, hold a hearing, and then file with and certify to the levying board(s) by September 20th each year. A copy of the budget statement must be filed with the State Auditor, together with the amount of the tax required to fund the adopted budget.

LB 972 extends the deadline date to September 30th.

Bill: LB 976

One-liner: Change a budget limitation

Introduced by: Cornett

Committee: Revenue

LB 976 amends the law relating to exceeding the base limitations on political subdivisions. As a matter of background, “base limitation” means the budget limitation rate applicable to school

districts and the limitation on growth of restricted funds applicable to other political subdivisions. While school districts use the budget limitation system, ESUs and all other local governments use the restricted funds model.

LB 976 amends section 13-519, which currently provides that any governmental unit may exceed the allowable growth percentage by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation at least 20 days prior to the meeting.

At least 10% of the registered voters residing in the governmental unit would constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action must be forwarded to the State Auditor along with the budget documents.

LB 976 clarifies that any amount approved by the registered voters to exceed the allowable growth percentage would become part of the budgeted restricted funds of the governmental unit for the ensuing fiscal years.

Bill: LB 1008

One-liner: Provide for cash basis or modified accrual or encumbrance basis budget statements under the Nebraska Budget Act as prescribed

Introduced by: Janssen

Committee: Government

LB 1008 amends the Nebraska Budget Act (§ 13-504). Under current law, each governing body of a political subdivision must annually prepare a proposed budget statement on forms prescribed and furnished by the State Auditor. The proposed budget statement must be made available to the public by the political subdivision prior to publication of the notice of the hearing on the proposed budget statement.

LB 1008 requires that the proposed budget statement be made on a cash basis or on a modified accrual or encumbrance basis at the discretion of the governing body.

The bill also requires the State Auditor to create forms to allow a governing body to report the information required in § 13-504 on a cash basis or the equivalent information on a modified accrual or encumbrance basis.

Criminal and Juvenile Codes Legislation

Bill: LB 694

One-liner: Provide restrictions for sexual predators and penalties

Introduced by: Price

Committee: Judiciary

LB 694 amends the Nebraska Criminal Code relating to sexual predators. LB 694 defines “sexual predator,” for purposes of this bill, as an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense, and who has victimized a person eighteen years of age or younger.

The bill prohibits a sexual predator to:

- Be present in a school, on school grounds, or at a school-sponsored activity or school-sponsored athletic event without the written permission of the principal of the school or his or her designee or, if more than one school is involved, the written permission of the principal of each school involved or his or her designee; or
- Be present on or in any vehicle or other conveyance owned, leased, or contracted by a school without the written permission of the principal of the school or his or her designee when the vehicle is in use to transport students to or from a school or school-sponsored activity or school-sponsored athletic event, unless the vehicle is simultaneously made available to the public as a form of public transportation.

The measure applies to any public, private, denominational, or parochial school. A sexual predator violating the provisions of the bill would be guilty of a Class I misdemeanor.

Bill: LB 800

One-liner: Provide methods of early intervention for children at risk

Introduced by: Ashford

Committee: Judiciary

LB 800 represents a comprehensive series of changes to the Nebraska Juvenile Code and also amends the compulsory attendance laws and the Nebraska Learning Community Act.

The changes to the Juvenile Code include elimination of juvenile review panels, expediting appeals, and providing for civil citations. The bill would also change evaluation, detention, and

placement provisions, provide plenary jurisdiction over parents, guardians, and custodians, and provide for videoconference hearings.

Truancy:

- Removes language allowing each district to define and use the distinction between excused and unexcused absence.
- Removes language allowing the school to end efforts to meet with parents after the parent refuses to participate in a meeting to address the student's truancy if the request and refusal are documented.
- Adds provision requiring school administrators, attendance officers or enforcement officers to make contact with family of the truant student after 5, 10 and 20 truantries and document the contact. After the third contact, the case can be referred to the county attorney. There must be three documented attempts to get the student to school or the county attorney will not accept the filing.
- Authorizes county attorney to issue an infraction against the parent of a truant student. The first infraction would carry a \$300 fine that could be waived if the parent participates in mediation with a representative from the school. The second infraction would carry a \$500 fine and could be waived with participation in mediation. After the third infraction, the parent can be charged with a Class III misdemeanor.
- Requires each school district to provide a report to Department of Education regarding truancy and strategies developed by district to address truancy.

Authorizes school districts within a Learning Community to establish a reintegration center to assist students who have been out of school for some time or those who have dropped out completely. Authorizes the Learning Community Coordinating Council to award grants to non-profit organizations providing intervention services for at-risk juveniles focusing on closing the learning gap.

Requires school districts to report to NDE on expulsions, suspensions, referrals to the county attorney for truancy and any contact with law enforcement within 48 hours of occurrence.

Establishes a child-at-risk task force that includes NDE, Probation, HHS, school superintendents and the UNMC College of Public Health.

Early Childhood Education Legislation

Bill: LB 1006

One-liner: Change provisions relating to kindergarten entrance age

Introduced by: Adams

Committee: Education

Under LB 1006, the kindergarten entrance age law (§ 79-214) would be changed effective for the 2012-13 school year and thereafter.

The bill provides that a district may not admit any child into the kindergarten or beginner grade unless the child has reached the age of 5 years on or before July 31st immediately preceding the school year for which the child is seeking admission.

LB 1006 further provides that a school board may admit a child who will reach the age of 5 years on or after August 1 and on or before October 15 if the parent/guardian requests entrance and provides an affidavit stating that:

- (i) the child attended kindergarten in another jurisdiction in the current school year;
- (ii) the family anticipates relocation to another jurisdiction that would allow admission within the current year, or
- (iii) the child has demonstrated through a recognized assessment procedure approved by the board that he/she is capable of carrying the work of kindergarten or the beginner grade.

The bill requires that, by January 1, 2012, each school board must approve and make available a recognized assessment procedure for determining if a child is capable of carrying the work of kindergarten or the beginner grade. The board may approve a model assessment procedure adopted by the State Board of Education or may approve another recognized assessment procedure.

NOTE: LB 1006 requires the State Board to adopt one or more model assessment procedures for determining if a child is capable of carrying the work of kindergarten or the beginner grade and update procedures as appropriate by July 1, 2011.

Educational Service Units Legislation

Bill: LB 1069

One-liner: Change technology purchase and funding provisions relating to educational service units

Introduced by: Adams

Committee: Education

LB 1069 incorporates technical and substantive changes to the Nebraska Educational Service Unit Act and the Nebraska Information Technology Infrastructure Act.

The bill outright repeals several outdated and obsolete statutes. It modifies and clarifies several key provisions within the ESU equalization formula for aid to ESUs. It updates several provisions related to the Nebraska Information Technology Commission.

One of the more substantive provisions contained in the bill is to set out in statute the nature of and powers of the ESU Coordinating Council. Since its inception in 2008, this entity has been somewhat in limbo as to what it may or may not do to carry out the recent changes to the ESU statewide structure.

The Educational Service Unit Coordinating Council was created on July 1, 2008 as a result of legislation passed in 2007 (LB 603). The council is composed of one administrator from each ESU and funded from 1% of the core services and technology infrastructure funding, appropriations by the Legislature for distance education, and fees established for services provided to educational entities. The council is a political body and must adhere to the Open Meetings Act.

LB 1069 attempts to further describe the nature of the council. The bill describes the council as a political subdivision and a public body corporate and politic of this state, exercising public powers separate from the participating ESUs. The council would have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic but may not have taxing power. The council would have power to:

- (1) sue and be sued,
- (2) have a seal and alter the same at will or to dispense with the necessity thereof,
- (3) make and execute contracts and other instruments,
- (4) receive, hold, and use money and real and personal property,
- (5) hire and compensate employees, including certificated employees, and
- (6) act as a fiscal agent for statewide initiatives being implemented by employees of one or more ESUs.

The bill also authorizes the council to make, amend, and repeal bylaws, rules, and regulations not inconsistent with existing law. This power must only be used as necessary or convenient to carry out and effectuate the powers and purposes of the council.

Bill: LB 1095

One-liner: Change distribution of educational service unit funds

Introduced by: Lathrop

Committee: Education

Prior to 2008, the distribution of state aid to ESUs for core services and technology infrastructure was calculated based upon a very simple system, essentially on a per student basis, with a modest increase in the overall appropriation (if any increase at all).

LB 603 (2007) established a new equalization formula to allocate the combined total of core service and technology infrastructure state aid funds. The new formula became operative in the 2008-09 school year.

Under the current ESU aid formula, the adjusted valuation for each ESU is equal to the total adjusted valuation of the member districts used for the calculation of state aid for school districts for the school fiscal year for which the distribution is being calculated. A special provision exists for districts within a learning community such that the adjusted valuation for member districts of a learning community is reduced by 50%. The adjusted valuation for each learning community is equal to 50% of the total adjusted valuation of the member districts used for the calculation of state aid for school districts for the school fiscal year for which the distribution is being calculated.

LB 1095 would eliminate this special distinction related to adjusted valuation and all other distinctions for school districts that are members of a learning community. The idea behind the bill is to increase the ESU state aid for the ESU(s) within or a part of a learning community. The impact, of course, would be a redistribution of the total amount of funds available for ESU state aid.

Election Law Legislation

Bill: LB 718

One-liner: Change requirements for petitions and petition signatures

Introduced by: Avery

Committee: Government

LB 718 amends the Nebraska Election Act pertaining to petitions, including petitions for recall of elected officials.

Current law requires each circulator of a petition to personally witness the signatures on the petition and must sign the circulator's affidavit. LB 718 requires that, in order to make certain that the circulator makes available to each signer the object of the petition, the circulator must read or show the printed portion of the petition that contains the object statement to each person before he/she signs the petition.

Bill: LB 852

One-liner: Provide for write-in space on official ballots for certain offices

Introduced by: Avery

Committee: Government

Under current election law, a blank space must be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot (write-in). However, the law provides exceptions to this general rule. On general election ballots there may be no write-in space for:

- members of the board of educational service units,
- directors of reclamation districts,
- directors of natural resources districts,
- directors of public power districts, or
- members of county weed district boards.

LB 852 would eliminate these exceptions so that voters may write-in candidates for these offices on general election ballots.

Bill: LB 875

One-liner: Provide for voter registration on the Secretary of State's web site

Introduced by: Giese

Committee: Government

LB 875 requires the Secretary of State to prescribe a registration application that may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's web site.

An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application to register to vote or to update his/her voter registration record with changes in his/her personal information or other information related to his or her eligibility to vote.

For each electronic application, the Secretary of State must obtain a copy of the applicant's digital signature from the Department of Motor Vehicle's records of his/her motor vehicle operator's license or state identification card for purposes of voter registration and forward the signature to the election commissioner or county clerk.

The Secretary of State may employ additional security measures to ensure the accuracy and integrity of voter registration applications submitted electronically. Every election commissioner or county clerk must accept the application for registration.

If the application is submitted electronically and the applicant is registering in the state for the first time and has not previously voted within the state, the applicant must submit a copy of a photo identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the applicant as they appear on the application when voting for the first time.

To vote at the polling place on election day, the completed application must be submitted electronically on or before the third Friday before the election.

An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false would be guilty of a Class IV felony. The penalty for a Class IV felony is up to five years imprisonment, a fine of up to \$10,000, or both.

Bill: LB 965

One-liner: Change school board and educational service unit vacancy provisions

Introduced by: Sullivan

Committee: Education

Under current law (§ 32-570), any vacancy in the membership of a school board of a district that does not nominate candidates at a primary election and elect members at the following general election must be temporarily filled by appointment of a qualified registered voter by the remaining members of the board. A registered voter must be nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district.

LB 965 changes this provision of law to state that a vacancy in the membership of a school board resulting from any cause other than the expiration of a term must be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs prior to the filing deadline for non-incumbents for the primary election preceding the general election in the middle of the vacated term, a registered voter must be nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the deadline, the appointment would be for the balance of the unexpired term. A registered voter appointed or elected must meet the same requirements as the member whose office is vacant.

LB 965 also amends section 79-1217 related to educational service unit boards. The bill provides that a vacancy on an ESU board will be deemed to have occurred when a member is absent from the geographical boundaries of the ESU for a continuous period of 60 days at one time or from more than two consecutive regular meetings of the board unless excused by a majority of the remaining members of the board.

Bill: LB 1059

One-liner: Provide for digital and electronic signatures on initiative and referendum petitions

Introduced by: Avery

Committee: Government

LB 1059 requires the Secretary of State to design a system to allow electors to use digital or electronic signatures (as defined in § 86-611) to sign initiative and referendum petitions via the Internet at the request of the sponsors of the petitions.

The petition form used via the Internet must comply with the Nebraska Election Act. For petitions via the Internet, there would not be a circulator. The petition must appear on the Secretary of State's web site. The elector must be able to view the petition, affix his/her digital or electronic signature, complete the required information, and return the petition electronically to the Secretary of State.

Any person who signs any name other than his/her own to any petition or who is not qualified to sign the petition would be guilty of a Class I misdemeanor. Any person who accepts money or other things of value for signing a petition or who offers money or other things of value in exchange for a signature upon any petition would be guilty of a Class IV felony.

Resolution: LR 279CA

One-liner: Constitutional amendment to change the number of signatures required on initiative petitions

Introduced by: Avery

Committee: Government

Under current provisions of the Nebraska Constitution, Article III, Section 2, a popular measure (petition) for the enactment of a law must be signed by 7% of the registered voters of the state. If the petition is for the amendment of the Constitution, the petition must be signed by 10% of registered voters.

In all cases the registered voters signing petition must be so distributed as to include 5% of the registered voters of each of 2/3s of the counties of the state.

LR 279CA is a proposed constitutional amendment to change some provisions of Article III, Section 2 such that a petition for the enactment of a law must be signed by 4% of the registered voters of the state. If the petition is for the amendment of the Constitution, the petition must be signed by 15% of registered voters.

If LR 279CA is passed by the Legislature, it would appear on the General Election ballot in November 2010 for approval by the voters.

Resolution: LR 300CA

One-liner: Constitutional amendment to change signature requirements for initiative petitions

Introduced by: Nelson

Committee: Government

LR 300CA is a constitutional amendment to change Article III, section 2, relating to initiative petitions.

The measure would lower the signature threshold for both initiative petitions that propose amendments to the Constitution and those that effect state law. If the petition is for effecting state law, LR 300CA lowers the signature requirement from 7% to 3% of the registered voters of the state, and if the petition is for the amendment of the Constitution, the petition must be signed by 5% rather the current 10% of registered voters.

The measure also states that, for a petition effecting state law, the registered voters signing the petition must be so distributed as to include 3% of the registered voters of each of two-fifths of the counties of the state. Currently, the Constitution requires 5% of the registered voters of each of two-fifths of the counties of the state.

LR 300CA maintains the current constitutional requirement that initiative petitions to amend the Constitution must be so distributed as to include 5% of the registered voters of each of two-fifths of the counties of the state.

If approved by the Legislature, this measure would appear on the 2010 General Election ballot.

Resolution: LR 301CA

One-liner: Constitutional amendment to change initiative and referendum petition signature requirements

Introduced by: Price

Committee: Government

LR 301CA proposes a constitutional amendment to change Article III, sections 2, 3, and 4 with regard to the number of signatures required on initiative and referendum petitions.

Article III, section 4 currently provides that the whole number of votes cast for Governor at the general election next preceding the filing of an initiative or referendum petition serves as the basis on which the number of signatures to such petitions are computed.

LR 301CA would eliminate this long-standing benchmark and replace it with a more up-to-date approach. Under the proposed scheme, the total number of registered voters of the state would be set at that number as calculated on January 1st of the calendar year in which the petition signatures are filed.

LR 301CA does not change the percentages of the total number of registered voters required for initiative and referendum petitions.

If approved by the Legislature, this constitutional amendment would appear on the 2010 General Election ballot.

Employment Issues Legislation

Bill: LB 833

One-liner: Provide for confidentiality of Nebraska Workers' Compensation Court records

Introduced by: Fulton

Committee: Business and Labor

LB 833 amends the Nebraska Workers' Compensation Act. The bill provides that any Nebraska Workers' Compensation Court record, regardless of physical form or characteristics, is confidential and not open to public inspection or copying. Such records include those that reveal:

- the identity of an employee,
- the nature of an employee's alleged injury,
- an employee's past or present medical condition,
- the extent of an employee's disability,
- the amount, type, or duration of benefits paid to an employee, or
- the application information for self-insurance.

Exceptions: The compensation court must deny any request to inspect or copy a record that is confidential unless:

- (1) The requester is the employee who is the subject of the record or an attorney or authorized agent of that employee. An attorney or authorized agent of the employee must provide a written authorization for inspection or copying from the employee if requested by the compensation court;
- (2) The requester is the employer, workers' compensation insurer, risk management pool, or third-party administrator that is a party to the record or an attorney or authorized agent of such employer, workers' compensation insurer, risk management pool, or third-party administrator. An attorney or authorized agent of an employer, workers' compensation insurer, risk management pool, or third-party administrator must provide a written authorization for inspection or copying from the employer, workers' compensation insurer, risk management pool, or third-party administrator if requested by the compensation court;
- (3) The record will be used for the purpose of state or federal investigation or examinations or for the state or federal government to compile statistical information;
- (4) The record requested is a pleading filed in a compensation court docketed file, an exhibit offered and received into evidence by the compensation court, or a final order, award, or judgment of the compensation court; or
- (5) The record requested identifies the number and nature of any injuries to employees of an employer identified in the request, or any benefits paid to such employees, without revealing the identity of any employee or the medical condition or extent of disability of any employee.

Bill: LB 884

One-liner: Require employers to provide employees with wage and deduction information as prescribed

Introduced by: McGill

Committee: Business and Labor

LB 884 proposes to amend the Nebraska Wage Payment and Collection Act. Specifically, the bill suggests a change in § 48-1230, requiring that, within 10 working days after a request is made by an employee, an employer must furnish such employee with an itemized statement listing the wages earned and the deductions made from the employee's wages for each pay period earnings and deductions were made. The statement must be in print or electronic format, whichever is requested by the employee.

The bill also provides that an employee having a claim for lack of an itemized statement requested may institute suit for an injunction to order the employer to comply. The employee must be awarded reasonable attorney's fees if an injunction is ordered.

Bill: LB 908

One-liner: Change workers' compensation provisions relating to claims for legal services or disbursements

Introduced by: Conrad

Committee: Business and Labor

LB 908 amends the Nebraska Workers' Compensation Act. Under current law, section 48-108, no claim or agreement for legal services or disbursements in support of any demand made or suit brought under the Nebraska Workers' Compensation Act will be an enforceable lien against the amounts to be paid as damages or compensation or be valid or binding in any other respect, unless it is approved in writing by the judge presiding at the trial or, in case of settlement without trial, by a judge of the Nebraska Workers' Compensation Court.

LB 908 provides that the claim or agreement may be signed by any judge of the Nebraska Workers' Compensation Court whether or not it went to trial.

Bill: LB 913

One-liner: Adopt the Criminal Offender Employment Act

Introduced by: Council

Committee: Judiciary

LB 913 creates the Criminal Offender Employment Act to protect the opportunities of criminal offenders or ex-convicts to secure employment or to engage in a lawful trade, occupation, or profession, and to remove barriers to employment to make rehabilitation feasible.

The measure provides that in determining eligibility for employment, the regulatory board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction may not operate as an automatic bar to obtaining public employment or license. The regulatory board, department, or agency may not make an inquiry regarding a conviction on an initial application for employment and may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

The criminal records that may not be used, distributed, or disseminated in connection with an application for any public employment, license, or other authority are:

- (i) Records of arrest not followed by a valid conviction; and
- (ii) Misdemeanor convictions not involving moral turpitude.

LB 913 provides that a regulatory board, department, or agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business, or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment for any one or any combination of the following causes:

- (a) If the applicant, employee, or licensee has been convicted of any felony or of a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business, or profession;
- (b) If the applicant, employee, or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business, or profession, if the regulatory board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or
- (c) If the applicant, employee, or licensee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses, or child abuse and the applicant, employee, or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility, or employment at a child-care facility, regardless of rehabilitation.

The regulatory board, department, or agency must explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business, or profession if the decision is based in whole or in part on conviction of any crime described above.

Completion of probation or parole supervision or expiration of a period of 3 years after final discharge or release from any term of imprisonment without any subsequent conviction will create a presumption of sufficient rehabilitation for purposes of (b) above.

LB 913 amends a series of statutes pertaining to licensure and certification, including those pertaining to teaching and administrative certification by NDE. The bill amends current law, § 79-814.01, relevant to criminal background checks such that any such requests by the commissioner are subject to adherence with the Criminal Offender Employment Act.

Bill: LB 963

One-liner: Change Nebraska Workers' Compensation Act provisions governing disability compensation after retirement

Introduced by: Carlson

Committee: Business and Labor

LB 963 amends the Nebraska Workers' Compensation Act to state that, for injuries occurring after the effective date of the bill, compensation for total and partial disability benefits or compensation for disability benefits for classes of permanent injury that would, upon retirement of the employee, be reduced by 50% of the amount of old age and survivors insurance retirement benefits being received by the employee under the federal Social Security Act.

The amount of the reduction would not be affected by any subsequent increase or decrease in benefits. (The bill does not compel an employee to apply for early old age and survivors insurance retirement benefits under the federal Social Security Act.) The reduction provided for would not be applicable to employees receiving benefits while collecting compensation for total and partial disability benefits for an injury sustained prior to the employee reaching the age of 55 years and more than 5 years prior to his/her date of retirement.

The bill defines "retirement" as a preponderance of the evidence supporting a conclusion that an employee has retired. The subjective statement of an employee that the employee is not retired is not sufficient in itself to rebut objective evidence of retirement but may be considered along with other evidence.

For injuries occurring after the effective date of the bill, an employee who receives old age and survivors insurance retirement benefits under the federal Social Security Act or who receives any other military-service-based government retirement pension, not including a disability-based government pension, is presumed to be in retirement. These presumptions are rebuttable by a preponderance of the evidence.

Bill: LB 1014

One-liner: Create the Teacher Performance Pay Fund and provide for additional teacher pay

Introduced by: Haar

Committee: Education

LB 1014 creates the Teacher Performance Pay Fund to provide supplemental pay to teachers. The source for the fund would derive from rental income from solar and wind leases on school lands and the rental income from other leases of school lands that relates to carbon sequestration rights. The bill requires the Board of Educational Lands and Funds to remit these amounts to the State Treasurer to credit the Teacher Performance Pay Fund.

Beginning January 15, 2016, and each January 15th thereafter, the State Treasurer is required to make a complete exhibit of all money belonging to the Teacher Performance Pay Fund and

deliver same duly certified to the Commissioner of Education. By February 25th, the Commissioner must make the apportionment of the funds to each school district according to the pro rata enumeration of children who are 5 through 18 years of age in each district last returned from the school district. The calculation of apportionment for each school fiscal year must include any corrections to the prior school fiscal year's apportionment.

The Commissioner must then certify the amount of the apportionment of the Teacher Performance Pay Fund to the Director of Administrative Services (DAS). The DAS must then draw a warrant on the State Treasurer in favor of the various districts for the respective amounts so certified by the Commissioner of Education.

Each school district is required to use the funds received for teacher performance pay. Teacher performance pay is defined as a systematic process for measuring teachers' performance and linking the measurements to changes in teacher pay. Indicators of teacher performance may include, but are not limited to, improving professional skills and knowledge, classroom performance or instructional behavior, and instructional outcomes.

The teacher performance pay may include predetermined bonus amounts and payout criteria. Additional pay may be provided in addition to the salary schedule for new skills and knowledge acquired through graduate education programs, with demonstrated performance mastery. The salary schedule provided in local collective bargaining agreements must remain intact in teacher performance pay systems.

Bill: LB 1041

One-liner: Change provisions relating to findings and orders of the Commission of Industrial Relations

Introduced by: Fulton

Committee: Business and Labor

Under current law, section 48-818, the findings and orders of the Commission on Industrial Relations (CIR) may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making these findings and orders, the CIR must establish rates of pay and conditions of employment that are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.

In establishing wage rates the commission must take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees.

LB 1041 amends this provision of the Nebraska Collective Bargaining Act to state that the CIR must establish rates of pay and conditions of employment that are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of public and nonpublic workers exhibiting like or similar skills in the same labor market, unless the evidence establishes that substantial differences exist which preclude limiting the comparison to the same labor market, in which case the commission must limit its comparison to those labor markets in which the population of the labor market is not less than half nor more than twice the population of the labor market of the employer involved in the industrial dispute.

Comparative Analysis: In establishing wage rates and conditions employment, the CIR must require a “job match comparative analysis” to be done and must limit its comparison to only those jobs that have a job match percentage of 85% or more.

Bill: LB 1042

One-liner: Change provisions relating to findings and orders of the Commission of Industrial Relations

Introduced by: Fulton

Committee: Business and Labor

Under current law, section 48-818, the findings and orders of the Commission on Industrial Relations (CIR) may establish or alter the scale of wages, hours of labor, or conditions of employment, or any one or more of the same. In making these findings and orders, the CIR must establish rates of pay and conditions of employment that are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.

In establishing wage rates the commission must take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees.

LB 1042 amends this provision of the Nebraska Collective Bargaining Act to state that the CIR must establish reasonable rates of pay and conditions of employment that are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions.

In establishing wage rates the CIR must:

- (a) weigh, compare, and adjust for any “economic dissimilarities” shown to exist which have a bearing on prevalent wage rates and

- (b) take into consideration the overall compensation presently received by the employees, having regard not only to wages for time actually worked but also to wages for time not worked, including vacations, holidays, and other excused time, and all benefits received, including insurance and pensions, and the continuity and stability of employment enjoyed by the employees.

Bill: LB 1044

One-liner: Change employer liability under the Nebraska Workers' Compensation Act

Introduced by: Lautenbaugh

Committee: Business and Labor

The Nebraska Workers' Compensation Act (§ 48-101) currently provides that when personal injury is caused to an employee by accident or occupational disease, arising out of and in the course of hi/her employment, the employee must receive compensation from his/her employer if the employee was not willfully negligent at the time of receiving the injury.

LB 1044 stipulates that compensation is owed to the employee by the employer if personal injury is caused by accident or occupational disease AND the accident or occupational disease was the "prevailing factor" of the personal injury and if the employee was not willfully negligent at the time of receiving such injury.

The bill defines "prevailing factor" as the primary factor, in relation to any other factor, causing both the personal injury and the resulting disability.

Bill: LB 1086

One-liner: Change provisions relating to determination of the state unemployment insurance tax rate

Introduced by: McCoy

Committee: Business and Labor

LB 1086 would amend the Employment Security Law in to reinstate a hearing whereby employers can communicate to the Commissioner at the Department of Labor the impact of proposed unemployment insurance tax rates on their ability to do business in Nebraska, including the effects on employees and on the state's economy. The Commissioner would then have some discretion in adjusting or phasing in the rate depending on the economic conditions.

The bill provides that each calendar year the Labor Commissioner must make an initial determination of the state's unemployment insurance rate for the following year by December 1 of the current year.

By December 1 of the current year, the Commissioner must communicate that a final determination of the tax rate, or phase in requirements, of all categories of the tax rate will be available on the department's web site by December 20.

By December 15 of the current year, the Commissioner must hold a public hearing on the proposed tax rate and, based on public testimony received at that hearing and information available through the Department of Labor, determine whether or not to adjust the initial tax rate or phase the tax rate in for the period of January 1 through June 30 of the following year. The Commissioner must also at that time determine the proposed tax rate for the period July 1 through December 31 of the following year. This information must be posted to the department's web site by December 20 of the current year.

By June 1, the Commissioner must set the tax rate for July 1 through December 31 of that year.

NOTE: Part of the impetus behind this bill was an unusually high increase in the unemployment insurance tax rate at the end of last year, which became a concern to some.

Energy-Related Legislation

Bill: LB 916

One-liner: Authorize leases on school lands for solar and wind energy production

Introduced by: Heidemann

Committee: Education

LB 916 creates an act relating to leases and the production of solar or wind energy on school lands.

The measure permits the Board of Educational Lands and Funds to authorize leases for the production of solar or wind energy on school lands for such durations and under such terms and conditions as the board may deem appropriate. However, the initial term for any wind energy lease may not exceed 40 years. In making determinations, the board must consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such leases. Any lease authorized by the board must be created in writing and filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the lease is located.

The board is authorized to adopt and promulgate rules and regulations as deemed necessary to regulate these leases and to prescribe terms and conditions of the leases as it may deem necessary to protect the interests of the state. Failure of the lessee to utilize the land for the purpose for which the land was leased will be cause for cancellation of the lease.

Bill: LB 1096

One-liner: Adopt the Nebraska High Performance Schools Initiative Act

Introduced by: Haar

Committee: Education

LB 1096 creates the Nebraska High Performance Schools Initiative Act to address the upfront costs of high performance schools and to authorize school districts to implement a financing procedure to pay for these improvements through the savings realized by increased efficiency.

The sponsors of the bill believe that high performance schools provide the following benefits of:

- (1) Improving student performance;
- (2) Improving the health and well-being of students and staff;
- (3) Saving tax dollars;
- (4) Reducing negative environmental impacts of energy generation and consumption;
- (5) Generating positive economic activity; and
- (6) Creating jobs.

Initial Assessment: Each school district wishing to qualify for financing under the Act must conduct an assessment of the buildings that the district intends to have participate in a “high performance school contract.” The assessment must include, but not limited to:

- (a) An audit of energy usage and methods for reducing energy consumption;
- (b) An audit of air quality in the facility and methods for increasing fresh-air flow;
- (c) An audit of lighting in the facility and methods of improving lighting in educational spaces, including the use of natural light;
- (d) An audit of water use and recommendations for reducing water use;
- (e) An audit of use of other resources and recommendations for making more efficient use of resources; and
- (f) Whether the recommended changes fulfill the requirements for Leadership in Energy and Environmental Design Green Building Rating System, developed by the United States Green Building Council that provides standards and certification for environmentally sustainable construction.

Grants: LB 1096 provides that school districts would be eligible for grants from the Nebraska Environmental Trust and for grants or loans from funds allocated to the Nebraska Energy Office for energy efficiency loans from the federal American Recovery and Reinvestment Act of 2009 in order to carry out assessment and evaluation procedures described above. First priority for

funding would be given to projects intended to seek Leadership in Energy and Environmental Design certification.

Contract: The bill defines “high performance school contract” as a contract for building improvements that will reduce energy and other operational costs. A school district may enter into an energy financing contract. An energy financing contract is an agreement between an energy service company and a governmental unit for the implementation of one or more energy conservation measures in an existing facility in exchange for a portion of the energy cost savings produced. Energy financing contract includes, but not limited to, a performance contract, shared-savings contract, guaranteed contract, and lease-purchase contract. [Ref. § 66-1062(2)]

LB 1096 authorizes a school district to utilize an energy financing contract as outlined in sections 66-1065 and 66-1066.

Documentation: Each school district that enters into a contract under the Act must document the energy and operational savings realized on an annual basis.

State Aid: LB 1096 provides that no school district would lose state aid as a result of reduced energy or operational costs or because of any contract entered into under the Nebraska High Performance Schools Initiative Act.

Income Tax Legislation

Bill: LB 958

One-liner: Exempt retirement benefits and social security benefits from income tax

Introduced by: Giese

Committee: Revenue

LB 958 amends the Nebraska Revenue Act to provide that the federal adjusted gross income for certain qualified individuals would be reduced by the amount received as benefits under:

- (1) the federal Social Security Act which are included in the federal adjusted gross income;
- (2) the amount received as a retirement benefit under a retirement plan qualified under section 401(a) or 403(a) of the code; and
- (3) the amount received as a retirement benefit from the:
 - (a) Class V (OPS) School Employees Retirement Act,
 - (b) County Employees Retirement Act,
 - (c) Judges Retirement Act,
 - (d) Nebraska State Patrol Retirement Act,
 - (e) School Employees Retirement Act,
 - (f) State Employees Retirement Act,

- (g) United States civil service retirement system, and
- (h) United States military employee retirement system.

The amount of the reduction in income tax liability would follow a schedule provided in the bill a follows:

<i>Tax Year</i>	<i>Married filing joint return</i>	<i>Individual return</i>
2011	\$20,000	\$10,000
2012	\$30,000	\$15,000
2013*	\$40,000	\$20,000

* and all tax years thereafter

NOTES: Similar such measures introduced in the Nebraska Legislature have not been successful. It should be noted, in the case of LB 958, that Senator Abbie Cornett is both a cosponsor of the bill and the chair of the Revenue Committee having jurisdiction over this legislation.

A 401(a) Money Purchase Plan is a retirement savings plan that allows an individual to set aside money for retirement. A 401(a) Plan may allow contributions to be made by the employer, the employee, or both. Contributions may be made on either a mandatory or a voluntary basis. The employer decides on the method of participant contribution, as well as whether participant contributions will be made on a pre-tax (picked-up contributions) or an after-tax basis.

A 403(a) annuity is a retirement annuity. It is a deferred compensation plan that is established by an employer and is not self-directed by the person for whom the annuity is held in trust. This annuity can function as a pension plan, profit sharing or individual retirement account.

Learning Community Legislation

Bill: LB 937

One-liner: Eliminate per diem payments for members of learning community coordinating councils

Introduced by: Fischer

Committee: Education

LB 937 amends the Learning Community Act. Under current law, each voting member of the coordinating council is paid a per diem in an amount determined by the council up to \$200 per day for official meetings of the council and the achievement subcouncil for which he/she is a member, up to a maximum of \$12,000 per fiscal year, and would also be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council.

LB 937 would eliminate all pay provisions entirely but would allow for reasonable expense reimbursement as currently provided in law.

Bill: LB 974

One-liner: Change permissible uses of a learning community levy as prescribed

Introduced by: Avery

Committee: Education

LB 974 amends section 77-3442 so that a learning community may levy a maximum levy of 5¢ subject to the levy for any uses or projects approved by the learning community coordinating council, including, but not limited to, projects for elementary learning center facilities. Currently, such levy authority may only be used for elementary learning center facility projects.

The bill harmonizes several sections of law within the Nebraska Learning Community Act with the intent to permit use of the 5¢ levy for purposes approved by the coordinating council.

The bill contains the emergency clause.

Bill: LB 1070

One-liner: Change provisions relating to learning communities

Introduced by: Adams

Committee: Education

LB 1070 provides technical and substantive changes to the Nebraska Learning Community Act.

Member Expenses: The bill amends § 32-546.01, which, in part, provides per diem and expense reimbursement for voting members of the coordinating council. LB 1070 amends this law to provide that nonvoting members will be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council.

Other Levy: Under current law (§ 77-3442), a learning community may levy a maximum levy of 2¢ subject to the levy for special building funds for member school districts. The proceeds from the levy would be distributed by the county treasurer to all member school districts proportionally based on the formula students used in the most recent certification of state aid.

Also, for each fiscal year, a learning community may levy a maximum levy of 5¢ subject to the levy for elementary learning center facilities and for up to 50% of the estimated cost for capital projects approved by the learning community coordinating council.

LB 1070 amends these provisions of law to state that, for each fiscal year, a learning community may levy a maximum levy of 2¢ subject to the levy for up to 50% of the estimated cost for capital projects approved by the coordinating council.

The bill adds new language to state that, for each fiscal year, a learning community may levy a maximum levy of 1¢ subject to the levy for elementary learning center programs, services, and facilities with the amount available from such levy for each elementary learning center to be determined by a formula established by the coordinating council.

Existing law to permit a learning community to levy a maximum of 2¢ subject to the levy for special building funds for member districts remains unchanged by LB 1070.

Dropout/Excluded Student Report: Under current law, § 79-527, a learning community coordinating council must annually report to the commissioner the number of students who have dropped out of school or were for any reason suspended, expelled, or excluded from school during the year for all of the member school districts.

LB 1070 eliminates the requirement for this report.

Other Reports: LB 1070 eliminates the requirements for a variety of reports from member districts to NDE and reverses the reporting requirements so that the department reports the necessary information to the member districts and/or coordinating council of a learning community.

- By August 31, NDE must issue to each learning community coordinating council a report showing the number of children from 5 through 18 years of age belonging to the learning community based on the member school districts according to the school district reports filed with the department.
- By July 31, the commissioner must issue to each learning community coordinating council an end-of-the-school-year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the commissioner.
- By December 15, the commissioner must issue to each learning community coordinating council an annual financial report for the learning community based on the member school districts according to the annual financial reports filed with the commissioner, showing:
 - i. the aggregate amount of money received from all sources during the year for all member districts and the aggregate amount of money expended by member districts during the year,
 - ii. the aggregate amount of bonded indebtedness for all member districts,
 - iii. other aggregate information as deemed necessary to fulfill the requirements of the TEEOSA and computing adjusted average per pupil cost of the preceding year for all member districts, and
 - iv. other aggregate information as the commissioner directs for all member districts.

- By November 15, the department must issue to each coordinating council the fall learning community membership report, which must include the aggregate number of children from birth through 20 years of age enrolled in the member districts on the last Friday in September of a given school year for all member districts.

Finally, by October 15, each learning community coordinating council must issue to NDE a report that enumerates the learning community levies and total assessed valuation for the current fiscal year. (Current law requires each member district to report this information to the coordinating council. LB 1070 eliminates this requirement.)

Powers of the Council: LB 1070 harmonizes the changes in the levy structure noted above so that one of the powers of the coordinating council is to levy for elementary learning center programs, services, and facilities.

Elementary Learning Center Director: Under current law (§ 79-2112), an elementary learning center executive director must be appointed by the coordinating council and will serve a term of six years, unless removed by a vote of two-thirds of the members of the coordinating council upon their determination that he/she has become incapacitated or has been guilty of neglect of duty or misconduct.

LB 1070 removes the language relevant to incapacitation, neglect or misconduct so that coordinating council may remove the individual as deemed necessary.

Miscellaneous Legislation

Bill: LB 742

One-liner: Provide requirements for settlement agreements involving public entities and provide that such agreements are public records

Introduced by: McCoy

Committee: Government

LB 742 requires a public entity that enters into or is otherwise a party to a settlement regarding any claim or potential claim against it to execute a settlement agreement concerning the claim. The settlement agreement must contain a brief description of the claim.

The bill defines “settlement agreement” as a contractual agreement between parties to actual or potential litigation by which each party agrees to a resolution of the underlying dispute. Public entities would include all political subdivisions, including school districts and ESUs.

Agenda Item: Except for settlement agreements involving the state, any state agency, or any employee of the state or for claims filed under the State Tort Claims Act, any settlement agreement entered into by a public entity directed by a governing body must be included as an agenda item for the next regularly scheduled public meeting of the governing body. Advance

publicized notice of the public meeting as required by law must specifically designate the settlement agreement as an agenda item.

Public Record: A settlement agreement entered into by a public entity, or to which a public entity is otherwise a party, would be considered a public record under the Nebraska Public Records law.

Void Clauses: A confidentiality or nondisclosure clause or provision contained in or relating to a settlement agreement entered into by a public entity, or to which a public entity is otherwise a party, is void as against public policy and unenforceable and may not operate to prevent an officer or employee of the public entity or any other party to the settlement agreement from disclosing or commenting upon the substance of the settlement agreement or other public record except as otherwise settlement agreement that designates as confidential, or in any other way restricts public access to or the unconditional dissemination of, material, knowledge, or information contained in or relating to the settlement agreement except as otherwise provided by law.

NOTE: Senator McCoy said he introduced the bill in response to the secret settlement reached in 2009 involving then Papillion Mayor James Blinn and an executive assistant, who had accused the mayor of sexual harassment. Senator McCoy believes the public deserves to know how public funds are spent.

Bill: LB 826

One-liner: Adopt the County Consolidation Act

Introduced by: Pahls

Committee: Government

LB 826 creates the County Consolidation Act with the intent that services and functions of county governments be consolidated to “realize economic efficiencies for taxpayers.”

Under the bill, the Legislature would have a “Planning Committee” to develop a plan that will reduce the number of counties in Nebraska to approximately 30 by 2018. The committee would work with the Legislature’s Government, Military and Veterans Affairs Committee to develop legislation for introduction to accomplish the intent of the County Consolidation Act.

The Planning Committee would also work with county officials and other “interested residents” from across the state to achieve a fair plan.

Bill: LB 898

One-liner: Adopt the Student Expression Act

Introduced by: Haar

Committee: Education

LB 898 creates the Student Expression Act. The bill includes findings that:

[T]he State of Nebraska has an obligation to protect the First Amendment rights of public school students in order to instill in students the value of democracy and to prepare students for informed and active civic participation. To that end, the right of students to free expression in all public schools in Nebraska shall not be abridged except as provided in the Student Expression Act.

Definition: The bill defines “student expression” to include the right of a student to express his or her thoughts and beliefs through speech and symbols; create, write, publish, perform, and disseminate his or her views; and assemble peaceably with other students on school property for the purpose of expressing opinions.

Prohibited: LB 898 prohibits the following forms of student expression:

- (1) Student expression that is obscene;
- (2) Student expression that is defamatory; and
- (3) Student expression that creates a clear and present danger of unlawful acts, causes material and substantial disruption of the orderly operation of the school, violates the privacy rights of others, or is otherwise unprotected by the First Amendment.

Immunity: The bill provides the following protections for school districts, boards and personnel:

- (1) No student expression made in the exercise of a First Amendment right may be deemed to be an expression of school policy, and no public school, school district, teacher, administrator, or school board member may be held responsible or liable in any civil or criminal action for any student expression; and
- (2) No certificated public school employee or administrator may be fired, transferred, reassigned, or removed from his/her position for supporting the rights of student expression protected by the Student Expression Act if the employee or administrator is acting within the guidelines of the code of ethics of his/her profession.

Policy Required: Each school board must adopt a written student expression policy that must include the provisions of LB 898 and must also include, but not limited to, reasonable provisions for the time, place, and manner of student expression. The policy must be distributed to all students at the beginning of each school year.

Bill: LB 944

One-liner: Provide for publication of certain items on school district web sites

Introduced by: Harms

Committee: Education

Current law (§ 79-580) requires school districts, within 10 days after any regular or special meeting of the board, to publish one time in a legal newspaper published in or of general circulation in the district a list of the claims, arising on contract or tort, allowed at the meeting.

LB 944 permits the school district, as an alternative to publishing in a newspaper, to post the list on the school district's web site if the school district maintains a web site.

Bill: LB 971

One-liner: Change provisions relating to care and placement of neglected children and children in foster care

Introduced by: Campbell

Committee: Judiciary

LB 971 amends the Nebraska Foster Care Review Act, which was first enacted in 1982.

Removal Notification: LB 971 incorporates new provisions concerning removal of a child from a home. In such instances, if a child is removed from a home, the Department of Health and Human Services must provide written notification, within 15 days of removal, to any non-custodial parent and to all grandparents, adult siblings, aunts, uncles, and adult relatives suggested by the child or the child's parents (unless the relative's history of family or domestic violence makes notification inappropriate). The notification must include the following information:

- (a) The child has been removed from the custody of his/her parent or parents or guardians;
- (b) An explanation of the various options to participate in the care and placement of the child and support for the child on a temporary or permanent basis, including any options that may be lost by failing to respond, participation in legal proceedings, and any services and support available in out-of-home placements. (The notice must include specific information regarding, as appropriate, adoption, adoption assistance, and relative caregiver assistance); and

- (c) A description of the requirements for the relative to serve as a foster care provider or other type of care provider for the child and the additional services, training, and other support investigating the names and locations of the relatives, including, but not limited to, asking the child in an age-appropriate manner about relatives important to the child and obtaining information regarding the location of the relative.

The department must provide to the court, within 30 days, the names and relationship to the child of all relatives contacted, the method of contact, and the response received from the relative.

Sibling Placement: If the court orders emergency custody of a child and siblings to the Department of Health and Human Services for placement, the department must make a reasonable effort to place the child and siblings together in the same placement. This requirement applies even if the custody orders of the siblings are made at separate times.

If the siblings are not placed in the same placement together, the department must provide the siblings and the court with the reasons why placement together would be contrary to the safety or wellbeing of any of the siblings.

Sibling Time: When siblings are not placed together in the same placement, the department must make a reasonable effort to provide for frequent and meaningful “sibling time” as a type of visitation to further ongoing contact and interaction between the child and the child’s siblings from the time of the child’s out-of-home placement until the child returns home or is in a permanent placement, unless the department provides the siblings and the court with reasons why such sibling time would be contrary to the safety or wellbeing of any of the siblings. The court must determine the type and frequency of sibling time to be implemented by the department. The court must periodically review and evaluate the effectiveness and appropriateness of the sibling time.

Placement and frequency and type of sibling time would be determined by considering the following factors:

- (a) The nature of the relationship between the child and siblings, including (i) whether the siblings were raised together in the same home, (ii) whether the siblings have shared significant common experiences or have existing close and strong bonds, and (iii) whether either sibling expresses a desire to live or have contact with the other sibling; and
- (b) the appropriateness of developing or maintaining the sibling relationships, including whether placement together or sibling time would be contrary to the safety or well-being of any of the siblings.

For children in foster care, a child, sibling, parent, legal guardian, or the department may file a petition for sibling time in the court committing the child to the custody of the department.

If an order is entered for termination of parental rights of a child, unless the court has suspended or terminated sibling time, the department must do the following to facilitate frequent sibling time between the child and siblings when the child is adopted or enters a permanent placement:

- (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships;
- (b) provide prospective adoptive parents with information regarding the child's siblings; and
- (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

Any information regarding court-ordered or authorized sibling time must be provided by the department to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

Transition Plan: LB 971 provides that when a child placed in foster care turns 16 years of age or enters foster care and is at least 16 years of age, a written "transition plan" of services must be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to adulthood. The transition plan must be personalized based on the child's needs. The transition plan must include, but not limited to:

- (a) Education;
- (b) Employment services and other workforce support;
- (c) Health and health care coverage;
- (d) Financial assistance, including education on credit card financing, banking, and other services;
- (e) Housing;
- (f) Relationship development; and
- (g) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, an application for adult services.

The transition plan must be considered a working document and must be, at the least, updated for and reviewed at every permanency or review hearing by the court. The plan must be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team must be comprised of the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child.

The final transition plan must specifically identify how the need for housing will be addressed. If the child is interested in pursuing higher education, the transition plan must provide for the process in applying for any applicable state, federal, or private aid.

On or before the date the child reaches 19 years of age, the department must provide the child a certified copy of the child's birth certificate and facilitate securing a federal social security card. All fees associated for securing the certified copy must be waived by the state.

Bill: LB 1001

One-liner: Change and eliminate residency provisions relating to postsecondary education

Introduced by: Janssen

Committee: Education

LB 1001 would amend Nebraska's current statute concerning undocumented immigrants and how they are treated relative to tuition rates when they attend Nebraska postsecondary institutions.

Currently if they have graduated from a Nebraska high school, lived in Nebraska for at least three years and sign an affidavit that they will seek legal status as soon as they are eligible, the students may attend college in Nebraska at in-state tuition rates.

LB 1001 would repeal this provision.

NOTE: The current law was a part of LB 239, which passed in 2006, and set up the current system to handle such matters. In 2006 leaders of the University of Nebraska, the State Colleges, the Community Colleges, NASB, NCSA, and NSEA issued a joint statement in support of the concept proposed under LB 239.

Bill: LB 1021

One-liner: Adopt the High School Activities Association Act

Introduced by: Avery

Committee: Education

LB 1021 creates the High School Activities Association Act and represents the most recent piece of legislation attempting to affect change in the Nebraska School Activities Association (NSAA). The bill contains an operative date of August 1, 2011.

The bill provides intent language by the Legislature "to provide an equitable governing structure by which an association governing state high school activities shall provide administration, management, enforcement, and interpretation of public policy pertaining to high school students." Additional intent is provided "to compel, as far as possible, the promotion of ethnic minority, gender, and geographical area representation on all executive, legislative, and appeals bodies of such association."

Designation: The bill designates one association as the governing nonprofit organization of high school activities in Nebraska high schools. Public high schools may become voluntary members

of the association for the purpose of participating in interscholastic competition with other member schools. Private high schools may become voluntary members of the association for the purpose of participating in interscholastic competition with other member schools and must be treated as public schools for purposes of the Act.

The association is required to work in consultation and cooperation with NDE and the Legislature to formulate and implement public policy with respect to high school interscholastic eligibility and competition.

The idea here is that if the NSAA does not abide by the provisions of the Act, then another association may take its place.

Forfeiture: If the association fails to meet the provisions of the Act:

- (1) it will forfeit its right to do business in the State of Nebraska;
- (2) the Attorney General must institute a proper proceeding to enforce the forfeiture; and
- (3) the Commissioner of Education must designate, with the approval of a majority of the members of the State Board of Education, another organization or entity to govern high school activities in Nebraska.

The association would forfeit all membership, participation, gate receipts, and other funds to NDE for allocation to the new designated organization or entity. Any remaining assets after liquidation and reallocation would be distributed to member schools based on the proportion of each member school's students to the total number of students in member schools statewide, using the most recent enrollment figures available from NDE.

Bylaws: The association is required to revise, amend, or adopt provisions in its bylaws or other governing documents to include the following:

- (1) Compliance with the Open Meetings Act and the public records laws. All meetings of the association must be called in accordance with the Open Meetings Act, and a majority of members of any governing body within the association would constitute a necessary quorum to conduct business. The public shall be admitted to all meetings of the association except for closed sessions of the board.
- (2) Provide 30 days' notice of all meetings relating to any association business. If a meeting relating to association business is initiated on specific emergency grounds, a written explanation must be made available for public record within 3 days.
- (3) An independent audit must be completed prior to December 1st of each year, which includes a comprehensive and clear itemization of income by source and all expenditures for the previous school year and providing a copy of such annual audit to NDE.
- (4) A decennial redistricting plan based on the most recent federal decennial census administered by the U.S. Department of Commerce, Bureau of the Census, which must include:

- (a) an evaluation of geographic and demographic composition each administrative district in the state, and
- (b) a comprehensive proposal for realigning administrative district boundaries with a copy of the redistricting plan sent to the commissioner, not later than two months following the federal decennial census results, for timely approval.

The association shall adjust administrative district boundaries as necessary based on such approved redistricting plan.

Representative Democracy: The association is required to operate as a “representative democracy” in which “sovereign authority” rests with member schools. The association must govern its affairs through its constitution and bylaws and must make any exception or waiver to the constitution or bylaws in written form for public record prior to the effective date of the exception or waiver, except in case of emergency. In case of emergency, a written explanation must be made available for public record within 3 days after such effective date.

Districts: The association would divide the state into 6 administrative districts.

- The districts must, to the extent possible, follow county boundary lines and may not divide cities of the metropolitan, primary, first, or second class.
- If a school district boundary crosses one or more county lines, the school district must be considered to be located in the county in which its headquarters is located.
- Each administrative district must contain an equal or nearly equal number of students participating in high school activities as the other administrative districts, within a 5% margin above or below total projected participating population of students, divided by the number of districts.
- The administrative districts must be equally represented in number and vote on the association’s board of directors, district managing committee, representative assembly, district committees on appeals, and association appeals board.

Any member school may petition the association appeals board for transfer into an adjoining administrative district. The association appeals board must grant the petition if the member school can establish “just cause” for the transfer and is 25 miles or less from the adjoining district boundary line.

Official Representative: Each member school, on its annual application for membership in the association, must name its official representative to the association. A member school’s representative must be a full-time educator in the member school holding a Nebraska teacher’s or administrator’s certificate or such educator’s designee who must also be a full-time educator in the member school holding a certificate. Each representative or designee will represent one vote in any matter properly before the body.

Board of Directors: The executive authority of the association would be vested in a board of directors elected by the member schools’ representatives. Any full-time educator in a member

school holding a Nebraska teacher's or administrator's certificate is eligible for membership on the board of directors. The board of directors must meet not less than twice per school year. The board of directors must include:

- (a) One elected member from each administrative district, representing all member schools within the administrative district;
- (b) The Commissioner of Education;
- (c) One member of the State Board of Education, in a nonvoting, ex officio capacity; and
- (d) The Speaker of the Legislature or his/her designee, in a nonvoting, ex officio capacity.

Board Vacancy: In the event of an unexpected vacancy of an elected member on the board of directors, the executive director of the association must make an interim appointment from qualified applicants residing in the district in which the vacancy occurs. The appointment must be in writing and must continue for the remainder of the unexpired term and until a qualified successor is elected during the next term. The written appointment must be filed with the office of the commissioner.

Executive Director: The board of directors must appoint and set the compensation for an executive director of the association and any necessary administrative staff to carry out the duties of the association. The term of the executive director would be 3 years and he/she may be reappointed, but no executive director may serve more than 9 consecutive years.

Board Duties: The board of directors must carry out the duties and responsibilities of the association as per its bylaws, including the organization and management of:

- district managing committees,
- a representative assembly,
- district committees on appeals, and
- an association appeals board.

The board of directors may not participate or provide guidance in interpretation of the constitution or bylaws with respect to any investigation of an alleged rule violation or a ruling by a district committee on appeals or the association appeals board made under an appeal by a student or a member school.

District Managing Committees: The bill creates six "district managing committees" that must plan and manage interscholastic competitions and other tasks as outlined in the association's bylaws. Members of the district managing committees and alternates would be elected by the member schools' representatives of each respective district. Any full-time educator in a member school holding a Nebraska teacher's or administrator's certificate is eligible for membership on a district managing committee. Members and alternates would serve terms of 3 years and may serve not more than 9 consecutive years. The association's bylaws must establish a system of staggered terms to ensure that a majority of members' terms do not expire concurrently. Each member of a district managing committee will represent one vote. Each district managing committee must meet at least twice per school year.

Representative Assembly: Members of the representative assembly and alternates must be elected by the member schools' representatives of each respective district. Any full-time

educator in a member school holding a Nebraska teacher's or administrator's certificate is eligible for membership in the representative assembly. The representative assembly must:

- establish policies for regulation of interscholastic competition,
- review and confirm or reject, by a majority vote of a quorum, all proposals for changes in the constitution and bylaws of the association that originate from member schools and are passed by a majority in its originating administrative district, and
- carry out other responsibilities determined by the association in its bylaws.

Members of the representative assembly and alternates would serve terms of 3 years and may serve not more than 9 consecutive years. The association's bylaws must establish a system of staggered terms to ensure that a majority of members' terms do not expire concurrently.

There must be an equal number of representative assembly members from each administrative district. Each member of the representative assembly would represent one vote. The representative assembly must meet at least twice per school year.

District Committees on Appeals: Each administrative district must have a district committee on appeals established by the association. Members of each district committee on appeals must be elected by the member schools' representatives of each respective district. Any full-time educator in a member school holding a Nebraska teacher's or administrator's certificate is eligible for membership on a district committee on appeals.

A single member of the district committee on appeals may not fill more than one of the seats listed in the representation list below. Each district committee on appeals must include:

- (a) One public school representative;
- (b) One private school representative;
- (c) One women's athletics representative;
- (d) One men's athletics representative; and
- (e) One fine arts representative.

Members of each district committee on appeals would serve terms of 3 years and may serve not more than 9 consecutive years. The association's bylaws must establish a system of staggered terms to ensure that a majority of members' terms do not expire concurrently. No member of a district committee on appeals may hold another position within the association.

The district committees on appeals may:

- investigate alleged rule violations in its district and issue penalties and sanctions when appropriate,
- interpret the constitution and bylaws and issue opinions and rulings when appropriate, and
- establish an equitable procedure of due process that ensures each individual student or member school the opportunity to appeal an unfavorable ruling with regard to a student's eligibility to compete.

Each district committee on appeals must consider requests by students or member schools seeking exceptions or waivers to bylaws and regulations, hear undue-hardship eligibility cases filed by member schools on behalf of students, and hear appeals filed by member schools. The initial appeal must be made to the district committee on appeals within the administrative district in which the student resides or the school is located.

Each member of the district committee on appeals shall represent one vote. Each district committee on appeals must meet at least twice each school year.

Appeals Board: The association must establish an association appeals board. Members of the association appeals board must be elected by the member schools' representatives. Any full-time educator in a member school holding a Nebraska teacher's or administrator's certificate is eligible for membership on the association appeals board.

A student or a member school that receives an unfavorable ruling from a district committee on appeals may appeal that decision to the association appeals board at the next regularly scheduled meeting of the association appeals board.

A single member of the association appeals board may not fill more than one of the seats listed below. Membership on the association appeals board must include:

- (a) One public school representative;
- (b) One private school representative;
- (c) One women's athletics representative;
- (d) One men's athletics representative; and
- (e) One fine arts representative.

Members of the association appeals board would serve terms of 3 years and may serve not more than 9 consecutive years. The association's bylaws must establish a system of staggered terms to ensure that a majority of members' terms do not expire concurrently. No member of the association appeals board may hold another position in the association.

The association appeals board may:

- issue a final and binding decision with respect to interpretation of constitution or bylaws violations, which may not be subject to further review within the association,
- issue penalties and sanctions, when appropriate, and
- uphold, reverse, or amend the decision of any district committee on appeals.

The decision of the association appeals board would be final.

Each member of the association appeals board would represent one vote. The association appeals board must meet at least twice per school year.

Elected Officials' Compensation: The elected members of the association would receive no financial compensation for their services but would be reimbursed for their actual and necessary expenses incurred in attending meetings or in the performance of duties as directed by the board and provided in the association's constitution and bylaws.

Bill: LB 1071

One-liner: Change provisions relating to schools

Introduced by: Adams

Committee: Education

LB 1071 represents the technical cleanup bill for NDE and provides changes to existing law and/or removes obsolete language. The bill contains the emergency clause.

Section 1: Amends the Nebraska Budget Act. Under current law (§ 13-509), by August 20th each year, the county assessor is required to (a) certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy, and (b) certify to NDE the current taxable value of the taxable real and personal property subject to the applicable levy for all school districts. LB 1071 removes the requirement that county assessors certify to NDE the current taxable value of the taxable real and personal property subject to the applicable levy for all school districts. This information is provided to NDE by the Property Tax Administrator and therefore is unnecessary to be certified by county assessors.

Section 2: Amends the compulsory attendance law (§ 79-201). Removes obsolete language but leaves in tact the rule that a child is of mandatory attendance age if the child (a) will reach 6 years of age prior to January 1 of the then-current school year, and (b) has not reached 18 years of age.

Section 3: Amends the residency law (§ 79-215). The general rule is that a student is a resident of the school district where he or she resides or any school district where at least one of his or her parents reside and must be admitted to any such school district upon request without charge. LB 1071 leaves the general essentially in tact but clarifies that a student is a resident of the school district where he or she resides and must be admitted to any such school district upon request without charge. A separate subsection is created to state that a school board must admit a student upon request without charge if at least one of the student's parents resides in the school district.

The bill also adds a new subsection relating to learning communities. LB 1071 provides that a school board of any school district that is a member of a learning community must admit nonresident students to the school district under the open enrollment provisions of a diversity plan in a learning community, and the admission must be without charge.

Section 4: Amends the Excellence in Teaching Act, which was first enacted in 2000. In 2009 the Act was expanded to incorporate the Enhancing Excellence in Teaching Program. The Program is designed to: (a) retain teachers in the accredited or approved public and private schools of Nebraska; (b) improve the skills of existing teachers in Nebraska through the graduate education programs of Nebraska's postsecondary educational institutions; and (c) establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from a graduate teacher education program.

LB 1071 provides clarifying language in section 79-8,137.01 to state that an eligible graduate program means a program of study offered by an eligible institution that results in obtaining a graduate degree. It also clarifies that an eligible student means an individual who is, among other qualifications, enrolled in a graduate program, whether or not it is a teacher education program, so long as it is an eligible institution offering the program.

Section 5: Amends the Excellence in Teaching Act, and specifically the Enhancing Excellence in Teaching Program (§ 79-8,137.03). Stipulates that to be eligible for the program, an eligible student must complete an eligible graduate program at an eligible institution and to complete the major on which the applicant's eligibility is based as determined by NDE. The idea in section 5 is afford a greater range of eligible students in the program.

Section 6: Harmonizes changes proposed in sections 4 and 5 above within section 79-8,137.04 relevant to eligible graduate programs.

Section 7: Amends the Tax Equity and Education Support Act (TEEOSA). Under the current definitions section (§ 79-1003), "qualified early childhood education average daily membership" is computed, in part, from the number students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by NDE. LB 1071 expands this provision to include the number of students who will be eligible to attend a prekindergarten program approved by NDE.

LB 1071 also harmonizes the definition of "qualified early childhood education fall membership" to incorporate approved prekindergarten programs.

Prekindergarten programs are outlined in current law (§ 79-1104) and are established by school boards or ESUs. They must be approved by NDE subject to regulations adopted by the State Board of Education and may include such components as (a) the utilization of appropriately qualified staff, (b) an appropriate child-to-staff ratio, (c) appropriate group size, (d) compliance with minimum health and safety standards, (e) appropriate facility size and equipment, (f) a strong family development and support component, (g) developmentally and culturally appropriate curriculum, practices, and assessment, (h) well-defined language development and early literacy emphasis, and (i) a plan for ongoing professional development of staff, all in accordance with sound early childhood educational practice, research, and evaluation. (*NOTE: LB 1071 does not change the current provisions of section 79-1104.*)

Section 8: Amends the Tax Equity and Education Support Act (TEEOSA). LB 1071 changes the procedure for calculating the summer school allowance provision (§ 79-1003.01). Under the proposed change, the summer school allowance would only be computed for those school districts that submit the information required for the calculation on a form prescribed by NDE by October 15th of the school fiscal year preceding the school fiscal year for which aid is being calculated.

Section 9: Amends the Tax Equity and Education Support Act (TEEOSA). LB 1071 changes the procedure for calculation of the elementary class size allowance (§ 79-1007.04). Current law requires NDE to determine the elementary class size allowance for each school district. The bill stipulates that the elementary class size allowance would be computed only for those school

districts that submit necessary information on a form prescribed by NDE by October 15th of the school fiscal year preceding the school fiscal year for which aid is being calculated.

Section 10: Amends the Tax Equity and Education Support Act (TEEOSA). LB 1071 changes the procedure for calculation of the focus school and program allowance for districts within a learning community (§ 79-1007.05). The bill stipulates that the allowance would only be calculated for those school districts within a learning community that submit the required information on a form prescribed by NDE by October 15th of the school fiscal year preceding the school fiscal year for which aid is being calculated.

Section 11: Amends the Tax Equity and Education Support Act (TEEOSA). LB 1071 changes the procedure for calculation of the instructional time allowance (§79-1007.23). The bill stipulates that the allowance would only be calculated for those school districts that submit the required information on a form prescribed by NDE by October 15th of the school fiscal year preceding the school fiscal year for which aid is being calculated.

Section 12: Amends the Tax Equity and Education Support Act (TEEOSA). Under current law (§ 79-1013), the submission of poverty plans to NDE from school districts must occur by October 10th each year. LB 1071 would extend this deadline to October 15th each year.

Section 13: Amends the Tax Equity and Education Support Act (TEEOSA). Under current law (§ 79-1014), the submission of limited English proficiency plans to NDE from school districts must occur by October 10th each year. LB 1071 would extend this deadline to October 15th each year.

Section 14: Amends the Tax Equity and Education Support Act (TEEOSA) relating to unused budget authority. Under current law (§ 79-1030), a district may choose not to increase its general fund budget of expenditures by the full amount of its “applicable allowable growth rate.” LB 1071 merely strikes the expression “applicable allowable growth rate” and substitutes “budget authority” as calculated under sections 79-1023 and 79-1026.01.

Resolution: LR 289CA

One-liner: Constitutional amendment to prohibit laws that restrict or interfere with choice of health care plans or direct payment for medical services

Introduced by: McCoy

Committee: Health

This proposed constitutional amendment is cosponsored by 11 lawmakers: Carlson, Christensen, Coash, Fulton, Harms, Janssen, Krist, Lautenbaugh, Price, Schilz, and Utter.

LR 289CA creates a new section 31 in Article I. The proposed language states that because all people should have the right to make decisions about their health care, no law may be passed that:

- (1) Restricts a person's freedom of choice of private health care systems or private health plans of any type;
- (2) Interferes with a person's or an entity's right to pay directly for lawful medical services; or
- (3) Imposes a penalty or fine of any type for choosing to obtain or decline health care coverage or for participation in any particular health care system or health plan.

If approved by the Legislature, the measure would appear on the 2010 General Election ballot.

Property Tax Legislation

Bill: LB 877

One-liner: Change property assessment and tax provisions

Introduced by: Cornett

Committee: Revenue

LB 877 represents technical and substantive changes to revenue-related statutes. One of the proposed changes worth noting is a provision to amend the powers and duties of the Property Tax Administrator along with the Tax Commissioner.

The bill amends § 77-701 to state that the Tax Commissioner or Property Tax Administrator may appeal any actions or decisions of a county board of equalization or the Tax Equalization and Review Commission (TERC) pertaining to the exemption of real and personal property or any actions or decisions of a county board of equalization or the Tax Equalization and Review Commission pertaining to the valuation and equalization of real property.

Bill: LB 1077

One-liner: Change the manner of valuing agricultural land for property tax purposes

Introduced by: Karpisek

Committee: Revenue

LB 1077 represents the latest in a long line of attempts to change the way agricultural land is valued. The late Senator George Coordsen was known for introducing such measures. The idea

behind this bill, as previous bills, is to base the value of ag land on the income the land produces. This bill has far reaching impact on valuation as used for purposes of calculating state aid to schools.

LB 1077 first changes the manner in which actual value of agricultural and horticultural land is determined. For purposes of taxation, actual value would mean the “agricultural income value” of the land. Agricultural income value would be defined as the capitalized annual earning capacity on a per-acre basis, which has been adjusted by an amount that reflects the landowner’s share of the gross return. Agricultural income value would be determined on the basis of productivity and the annual agricultural earnings capacity of the land. Productivity and annual earning capacity would be based on data collected and analyzed.

Agricultural and horticultural land is currently valued at 75% of its actual value. LB 1077 would change the law such that ag land is valued at its agricultural income value. The bill also eliminates current statutory language relating to the acceptable assessment range of 69% to 75%.

Determining Agricultural Income Value: Beginning January 1, 2012, the Tax Commissioner would make annual earning capacity income and expense calculations using data obtained on rents, crop prices, and expenses. The capacity of cropland to produce agricultural or horticultural products would be based on the income from crops and plants produced on the land. The capacity of grassland or non-cropland to produce agricultural or horticultural products would be based on cash rents or the animal-unit carrying capacity of the land, or a combination of both. Net agricultural income would be capitalized at a rate that results in a total taxable agricultural land and horticultural land valuation, which is equal to that certified as of August 20, 2011.

The Tax Commissioner is required under LB 1077 to enter into contracts with the University of Nebraska Institute of Agriculture and Natural Resources and the Department of Agriculture to determine the agricultural income from agricultural land and horticultural land by county.

The county cropland data used must include, but not limited to: (i) Acres planted to cropland by type of crop; (ii) yield per acre; (iii) crop prices; (iv) cash rents; (v) rangeland acres; (vi) pastureland acres; (vii) rangeland animal-unit months per acre; (viii) pastureland animal-unit months per acre; (ix) grazing season data; and (x) statewide cow and calf prices.

The Tax Commissioner may contract for additional surveys for collection of cash rent information for all uses of agricultural land and horticultural land when deemed necessary. Such information must be developed for calendar years beginning in 2005 and each year thereafter. Five-year averages must be used in calculating agricultural income value.

State Aid Value: Of particular importance to public schools, LB 1077 changes the way state aid value is calculated. State aid value represents a unique way of valuing residential and ag land solely for the purpose of calculating state aid to schools.

Under current law, the Tax Commissioner is required to adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes. Current law defines state aid value as:

- (a) For real property, other than agricultural and horticultural land, 96% of actual value;

- (b) For agricultural and horticultural land (and also special valuation land), 72% of actual value; and
- (c) For personal property, the net book value.

LB 1077 would propose to eliminate the inclusion of ag land within the calculation of state aid value effective January 1, 2012.

Bill: LB 1097

One-liner: Change property tax levy limitations

Introduced by: Cornett

Committee: Revenue

LB 1097 amends the levy exception provision of the Nebraska Revenue Act. Section 77-3442(10) provides the following exceptions (i.e., exclusions) to the property tax levy limitations, which apply to political subdivisions:

- (a) judgments, except judgments or orders from the Commission of Industrial Relations (CIR), obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent the judgment is not paid by liability insurance coverage of a political subdivision;
- (b) preexisting lease-purchase contracts approved prior to July 1, 1998;
- (c) bonded indebtedness approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by ESUs and school districts; and
- (d) payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport.

LB 1097 focuses on (c) relating to bonded indebtedness. The bill would reword this provision to state:

- (c) bonds as defined in section 10-134 approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts...

Section 10-134(1) currently defines “bond” as any bonds, notes, interim certificates, evidences of bond ownership, bond anticipation notes, warrants, or other evidence of indebtedness.

NOTE: Section 44-4317 relates to authorized tax levies for public agencies. The relevant

portions of this statute to ESUs and school districts state that:

- taxes levied by an ESU or school district on or after April 3, 2008, for the payment of the principal of, premium of, or interest on such a general obligation bond of the public agency, the payment of the insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool are subject to the levy limitations;
- Taxes levied by an ESU or school district for the payment of the principal of, premium of, or interest on such a general obligation bond of an ESU or school district issued prior to April 3, 2008, are excluded from the levy limitations.

These provisions were the result of legislation in 2008 when it was discovered that some educational entities were excluding, from the applicable levy limitation, general obligation bonds issued to pay premium costs for insurance. Senator Raikes introduced LB 1017 to eliminate this loophole. The intent of the bill was later amended into LB 988 (the comprehensive school finance bill of 2008), which was passed by the Legislature.

Resolution: LR 271CA

One-liner: Constitutional amendment to permit exemption of increased value resulting from home improvements

Introduced by: Pirsch

Committee: Revenue

LR 271CA proposes a constitutional amendment to change Article VIII, section 2 so that the Legislature may by general law, and upon any terms, conditions, and restrictions it prescribes, provide that the increased value of real property resulting from construction of improvements for the purpose of renovating, rehabilitating, remodeling, improving, or increasing the size of a homeowner's residence on such real property be, in whole or in part, exempt from taxation for a period of six years.

If approved by the Legislature, the measure would appear on the 2010 General Election ballot.

Resolution: LR 276CA

One-liner: Constitutional amendment to permit exemption from taxation of real property, the use of which is donated to the state or a governmental subdivision

Introduced by: Pirsch

Committee: Revenue

LR 276CA proposes a constitutional amendment to change Article VIII, section 2 so that the Legislature may by general law, and upon any terms, conditions, and restrictions it prescribes, provide that the value of real property, the use of which is donated to the state or a governmental subdivision of the state for public purposes, will be, in whole or in part, exempt from taxation.

If approved by the Legislature, the measure would appear on the 2010 General Election ballot.

Retirement Legislation

Bill: LB 899

One-liner: Change retirement benefit adjustment provisions

Introduced by: Nordquist

Committee: Retirement

LB 899 represents a potential controversy for the Legislature and even among school employees. This is quite literally the \$7 million question: specifically, where should this amount of state funds be allocated from this fiscal year forward.

Under current laws for the School Employees, Judges, and State Patrol retirement systems, a specified portion of \$6,895,000 in state appropriations is allocated to each retirement plan. This automatic annual appropriation is set to expire after the 2010-11 state fiscal year. The Omaha Public Schools (OPS) Retirement plan also receives a portion of this appropriation, but the relevant statute concerning this appropriation does not contain a sunset provision (§ 79-988.01). Hence, LB 899 only changes three separate statutes in the School Employees, Judges, and State Patrol retirement systems.

LB 899 would eliminate the sunset provision in each of the three state defined benefit plans so that the \$7 million appropriation would continue to be applied toward those plans plus the OPS retirement plan as follows:

- 81.7873% or \$5,639,235 for the School Employees Plan
- 14.11604% or \$973,301 for the OPS Plan
- 3.04888% or \$210,220 for the State Patrol Plan
- 1.04778% or \$72,244 for the Judges Plan

To understand why this is such an issue (outside the obvious implications for four retirement plans), it is important to review the history of this \$7 million appropriation.

The \$7 million appropriation is what remains of the now repealed Help Education Lead to Prosperity (HELP) Act, which was enacted during comparatively good economic times in 1989.

The concept behind the HELP Act was to provide state sponsored supplemental pay to Nebraska's teachers with an original total annual appropriation of \$20 million. This amount was

gradually reduced over the years due to fiscal concerns until, by 1995, the appropriation was no more than \$6.9 million. By this time, the average annual payout to an individual teacher was \$174 before taxes -- hardly a major increase in compensation.

The HELP Act was not producing the intended results and in 1996 Senator Bob Wickersham, with the acquiescence of the NSEA, opted to divert this roughly \$7 million appropriation toward the three state defined benefit plans plus the OPS plan proportionately based on the number of members in each plan. This is why the School Employees plan receives the bulk of the appropriation.

The vehicle for this great transfer, and the end of the HELP Act, was LB 700 (1996), which passed and became law. Since then we have had this somewhat mysterious amount of funds flowing to the various retirement plans on an annual basis. It has been the source of controversy with some past administrations, and even some lawmakers, desiring to use those funds for something else. The NSEA has clung to the deal struck in 1996 and, we must admit, the NCSA has been a party to the effort to maintain those funds for retirement plan purposes.

Now that the funds are essentially set to go away after 2010-11, the question becomes what or where do we think those funds should be allocated (e.g., retirement, state aid, etc.)

For more information about the policy history of these funds, please visit:

<http://nrsa.org/modules/groups/homepagefiles/cms/1007583/File/Legis/LB700-history.pdf>

Bill: LB 927

One-liner: Change employee deposit requirements under the School Employees Retirement Act

Introduced by: Retirement Committee

Committee: Retirement

LB 927 represents a “placeholder” bill in the event it is determined that a change is necessary to the School Employees Retirement Plan contribution rate.

The current employee contribution rate is 8.28% of compensation and the employer rate is 101% of that rate (8.36%). This rate is currently set to expire on August 31, 2014 at which time the rate would automatically decrease to 7.28%.

With the volatile economic times, the chair of the Retirement Committee, Senator Dave Pankonin, believes it is prudent to have a bill in waiting this session in case additional contributions the retirement plan become necessary.

Bill: LB 950

One-liner: Change provisions relating to retirement

Introduced by: Retirement Committee

Committee: Retirement

LB 950 represents the technical cleanup bill for the Retirement Agency and introduced by the Retirement Committee. As it pertains to the School Employees Retirement Plan and the Omaha Public Schools (OPS) Plan, the following changes are proposed.

Termination of Employment: Under current law (79-902), a bona fide termination of employment does not include ceasing employment if the member subsequently provides service on a regular basis in any capacity for any school district other than OPS within 180 calendar days after ceasing employment or if the board determines that a purported termination was not a bona fide separation from service with the employer.

LB 950 amends this provision to state that termination of employment does not include ceasing employment if the member subsequently provides service in any capacity for any employer participating in the retirement system provided for in the School Employees Retirement Act within 180 calendar days after ceasing employment or if the board determines that a purported termination was not a bona fide separation from service with the employer. The technical revision would preclude subsequent employment at, for example, an ESU within 180 calendar days after ceasing employment.

Regular Employee: Under current law (79-902), regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for 15 or more hours per week.

LB 950 amends this provision to state that an employee hired to provide service for less than 15 hours per week but who provides service for 15 hours or more per week in any 3 calendar months of a plan year must immediately commence contributions and will be deemed a regular employee.

Temporary Employee: Under current law (79-902), temporary employee means an employee hired by a public school who is not a regular employee.

LB 950 amends this provision to state that a temporary employee means an employee hired by a public school who is not a regular employee AND who is hired to provide service for a limited period of time to accomplish a specific purpose or task. The measure states that when the specific purpose or task is complete, the employment of the temporary employee must terminate and in no case may the temporary employment period exceed one year in duration.

Mandatory Participation: LB 950 clarifies that each person employed by a public school who is a school employee and who is qualified to participate in the retirement system must, in fact, participate in the retirement system. (*ref. § 79-910.01*)

Qualified Members: Under current law (79-915), persons residing outside of the United States and engaged temporarily as school employees in the State of Nebraska may not become members of the retirement system.

LB 950 expands upon this statute to provide that, on and after the operative date of the bill, no school employee may be authorized to participate in the School Employees Retirement Act unless the employee:

- (a) is a United States citizen or
- (b) is a qualified alien under the federal Immigration and Nationality Act, U.S.C. 1101 et seq., as the act existed on January 1, 2009, and is lawfully present in the United States.

State School Officials: Current law (79-920) provides that a “state school official” employed by NDE after July 1, 1989, may elect to become a member of the School Retirement System (defined benefit plan) or the State Employees Retirement System (defined contribution plan).

The existing law defines “state school official” as the Commissioner of Education and his/her professional staff. LB 950 first clarifies the commissioner’s professional staff are those who are required by law or by NDE to hold a “certificate.” As defined in 79-807(3), “certificate” means an authorization issued by the commissioner to an individual who meets the qualifications to engage in teaching, providing special services, or administering in prekindergarten through grade twelve in the elementary and secondary schools in this state.

LB 950 also clarifies the election process of a state school official between the two plans available to him/her. The bill provides that an individual who is or was previously a school employee or who was employed in an out-of-state or the OPS school district, who becomes employed by NDE after July 1, 1989, and who is a state school official may file with the retirement board within 30 days after employment an election to become or remain a member of the School Retirement System.

Employees electing not to participate in the School Retirement System must participate in the State Employees Retirement System. An individual will be required to participate in the State Plan if:

- (a) the individual terminated employment from a school participating in the School Retirement System and retired under the School Employees Retirement Act and
- (b) the employment by NDE began or will begin within 180 days after terminating employment from the school.

Disability: Current law (79-951) provides that a member is considered retired due to disability, either (i) upon his/her own application or (ii) the application of his/her employer or a person acting in his/her behalf, if a medical examination, made at the expense of the retirement system and conducted by a competent disinterested physician, selected by the retirement board, certifies to the retirement board that the member is unable to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration.

LB 950 clarifies that the physical or mental impairment must have begun while the member was a participant in the plan.

OPS Plan: For the OPS Retirement System, LB 950 proposes editorial changes to two statutes (79-978 and 79-990) to change a U.S. Code citation pertaining to military service.

Sales Tax Legislation

Bill: LB 1053

One-liner: Exempt prepared food, computer software, and certain tangible personal property from sales tax

Introduced by: Pahls

Committee: Revenue

LB 1053 amends the Nebraska Revenue Act to exempt sales tax on the gross receipts from the:

- sale of and the storage, use, or other consumption in this state of prepared food or meals for human consumption;
- sale, lease, or rental of and the storage, use, or other consumption in this state of furniture or appliances intended for household, business, or other purposes;
- sale, lease, or rental of and the storage, use, or other consumption in this state of computer software or hardware and computer, MPEG-1, MP3, or global positioning peripheral devices or equipment; and
- sale, lease, or rental of and the storage, use, or other consumption in this state of clothing.

These new sales tax exemptions become operative on October 1, 2010.

School Finance Legislation

Bill: LB 741

One-liner: Exclude lobbying expenses as a general fund operating expenditure for purposes of the Tax Equity and Educational Opportunities Support Act

Introduced by: Avery

Committee: Education

Beginning in school fiscal year 2010-11 and thereafter, LB 741 would exclude any amounts paid by a school district for lobbyist fees and expenses in the computation of general fund operating expenditures (GFOE). The GFOE is used in the calculation of state aid under the Tax Equity and Educational Opportunities Support Act (TEEOSA).

The bill carries the emergency clause.

Bill: LB 750

One-liner: Provide for gifts of real property to the Board of Educational Lands and Funds

Introduced by: Adams

Committee: Education

LB 750 permits the Board of Educational Lands and Funds to receive gifts of real property located in Nebraska. At the time of transfer of title to the real property, the donor may direct the terms upon which the real property is to be held and managed by the board. The board may reject any gift if it determines that ownership of the real property is unduly burdensome or is not in the “best interests” of its beneficiaries.

The bill provides that the net income from any gift of real property must be held by the board in a fund separate from the temporary school fund or the permanent school fund. The total net income in the separate fund must be distributed at the end of each year to the school district or districts designated by the donor. Such funds must be used only for educational purposes as directed by the donor at the time of making the gift. If the donor does not direct the educational purposes to which the net income is to be applied, the school board of each recipient district may use its discretion in applying such net income for educational purposes within the district.

The net income from gifts of real property must include all the income attributable to such real property each year after the payment of all costs of administering and managing the real property, including, but not limited to, expenses necessary for conserving, maintaining, and developing such real property for its most productive use. The Board of Educational Lands and Funds may sell the real property:

- (a) if the donor directs at the time of the gift the circumstances under which it may be sold or
- (b) if the board determines at any time that it is no longer feasible for the board to hold and manage such real property and the members of the board unanimously agree to such sale.

The net sale proceeds must be paid to the school district or districts designated to benefit from the net income from the gift of real property.

LB 750 also amends the applicable school finance provisions under the TEEOSA relevant to the definition of general fund operating expenditures (GFOE) and to list donations of real property as other miscellaneous noncategorical local receipts for purposes of calculating state aid.

School Organization Legislation

Bill: LB 711

One-liner: Change interlocal agreement provisions relating to unified school systems

Introduced by: Dierks

Committee: Education

In 1998 the Legislature passed LB 1219 to allow two or more Class II or III school districts to create a unified system and participate in an interlocal agreement with approval from the State Committee for the Reorganization of School Districts. This was seen as a compromise to the act of actual consolidation. The bill was described by then Education Chair, Senator Ardyce Bohlke, as a creative way to address the issue of consolidation. LB 1219 was sponsored by Senator Cap Dierks and the bill was generally well received by the education community.

The interlocal agreement for the unified system must include, among other provisions:

- Have a duration of at least three school years;
- Provide that all property tax and state aid resources be shared by the unified system;
- That a board (a “super board”) composed of school board members, with at least one school board member from each district, determine the general fund levy, and determine the distribution of property tax and state aid resources within the unified system.

Member school districts within a unified system retain their own identity, school board, administration, and staff. (It should be noted that the unified system was essentially the precursor to the learning community legislation passed in 2006.)

In 2010 Senator Dierks returns to the issue of unified systems. Under LB 711, he proposes that the interlocal agreement to form a unified system include the permissible method or methods for accomplishing the partial or complete termination of the interlocal agreement and for disposing of assets and liabilities upon the partial or complete termination.

Current law provides that the withdrawal of a participating district from a unified system or dissolution of a unified system may occur only if each participating district in the unified system either will be merged with at least one other district or will continue participation in the unified system with at least one other participating district following the withdrawal or dissolution.

The withdrawal of a participating district from a unified system or dissolution of a unified system may be accomplished and the rights and liabilities of the participating districts determined through an action for declaratory judgment under the Uniform Declaratory Judgments Act.

For more information on the history of unified systems, please refer to the following web address: <http://schoolfinance.ncsa.org/policy/fullhistory/1998-1999/g2.htm#anchor1219>

Bill: LB 1028

One-liner: Adopt the Charter Schools Act

Introduced by: Louden

Committee: Education

LB 1028 creates the Charter Schools Act. A charter school is defined as a school reporting directly to the State Board of Education, not under the jurisdiction of a school board, and operated under an approved charter.

Application Process: LB 1028 permits applications to the State Board for charter schools and authorizes the board to issue and revoke charters as provided in the act.

A group of at least three Nebraska residents or a Nebraska nonprofit organization may apply to operate a charter school. An application must be filed by January 1st of a given year with operation of the proposed charter school to begin no later than the beginning of the next school year, based on the school calendar of the school district within the boundaries of which the proposed charter school is located.

The application must include the following:

- (1) The names, addresses and social security numbers of the applicants. If the applicant is a Nebraska nonprofit corporation, the application must include the name, address, and social security number of at least one individual who will serve as registered agent for the applicant for all correspondence;
- (2) Notarized letters of intent signed by parents who intend to send their children to the charter school, indicating that the charter school will serve no fewer than 5 students in prekindergarten through grade eight;
- (3) A notarized statement signed by at least one teacher holding a teaching certificate in which the teacher agrees to teach in the charter school and to accept responsibility for completing the required reports;
- (4) A map demonstrating that the proposed location of the charter school is more than 7 miles from the nearest elementary attendance site operated by the school district within the boundaries of which the charter school will be located or operated by an adjacent school district;
- (5) Proof of adequate liability insurance;
- (6) The method that the applicant will use to provide adequate internal financial controls for the charter school; and

(7) Such other information as the State Board requires.

Consideration: The State Board must review and make a decision on each application by April 1st immediately following submission of the application. The board may issue a charter or deny the application. If the board denies the application, it must notify the applicant in writing of the reasons for denial.

Term of Charter: An initial charter must be granted for a term of 3 years. The charter may be renewed annually if the charter school meets “academic growth requirements” as noted below.

Employees: A charter school may hire, establish compensation, and provide for termination of employees of the charter school. The charter school may execute an agreement with one or more other charter schools or with one or more public schools to participate in a group health insurance program, a group life insurance program, or both. If the charter school is unable to execute an agreement, the charter school may participate in the State’s program of group life and health insurance.

Requirements: Charter schools are subject to the requirements of the Nebraska Special Education Act and the federal Individuals with Disabilities Education Act (IDEA).

Charter schools would be subject to all requirements relating to fire safety, life safety, and hazardous materials contained in statutes, rules, regulations, ordinances enacted by the city or village, if any, in which the charter school is located, and resolutions having the force of law adopted by the county in which the charter school is located.

Charter schools are subject to the requirements of the Quality Education Accountability Act and the federal No Child Left Behind Act.

Charter Renewal: In order for a charter school to qualify for “automatic” charter renewal, the average annual improvement of individual students’ test scores for students enrolled in a charter school must meet or exceed those for the nearest public elementary school, except that a charter school operating under an initial charter must have three years to meet the requirement of this provision. Students who have no applicable individual assessment record for the preceding year must take the assessment in the autumn of their first year of attendance at a charter school to determine their base measurement.

Charter Revocation: The State Board may revoke a charter school’s charter before its renewal date under the following circumstances:

- (1) Failure to maintain the minimum number of students required;
- (2) Failure to maintain the buildings, grounds, or facilities of the charter school in a safe condition;
- (3) Failure to correct within a reasonable time clearly identified financial accountability errors identified by the Auditor of Public Accounts or the board; or

- (4) Gross negligence on the part of an employee or any other person responsible for operating or maintaining the charter school.

Annual Audit: The State Auditor must make an annual audit of the financial books and records of each charter school and must provide a report to the Clerk of the Legislature and the State Board of the financial condition of each school. The expense of the audit must be paid by the charter school.

Funding: Each charter school would receive funding from the school district in which the charter school is located in an amount equal to 100% of the district average cost per elementary pupil, adjusted for inflation, multiplied by the number of students in the charter school. The district must provide transportation reimbursement with respect to charter school students at the rates and under the conditions required by law.

Regulations: The State Board is authorized to adopt and promulgate rules and regulations to carry out the Charter Schools Act.

Retirement: LB 1028 places employees of charter schools under the School Employee's Retirement System for purposes of retirement benefits.

Special Education Legislation

Bill: LB 754

One-liner: Adopt the Blind Persons Literacy Rights and Education Act

Introduced by: Giese

Committee: Education

LB 754 creates the Blind Persons Literacy Rights and Education Act.

Individualized Education Program: The bill provides that the "individualized education program" for a child who is blind or visually impaired must provide for instruction in and use of Braille unless the members of the child's individualized education program team determine, after an evaluation of the child's reading and writing skills, needs including future needs, and appropriate reading and writing media that such instruction is not appropriate for the child. The bill uses the definition of "individualized education program" as found in the U.S. Code, 20 U.S.C. 1414(d)(1)(A).

If the child's parent/legal guardian disagrees with the determination of the individualized education program team that instruction in or use of Braille is not appropriate, the parent may request review of the determination as per the Nebraska Special Education Act and the school district must provide instruction in and use of Braille for the child until the review process is complete.

NOTE: The bill does not require the exclusive use of Braille if other special education services are appropriate to the child's educational needs, and the provision of other appropriate services does not preclude instruction in or use of Braille.

LB 754 provides guidance on the instruction of Braille such that it be sufficient to enable a blind or visually impaired child to communicate effectively and efficiently with the same level of proficiency expected of the child's peers of comparable intelligence and grade level. A blind or visually impaired child's individualized education program must specify:

- (a) The results obtained from the evaluation as required for the individualized education program;
- (b) How Braille will be implemented as the primary mode of learning through integration with other classroom activities;
- (c) The date on which Braille instruction will commence;
- (d) The length of the period of Braille instruction and the frequency and duration of each instructional session; and
- (e) The level of competence in Braille reading and writing to be achieved by the child by the end of the period of instruction and the objective assessment measures to be used to determine such level of competence.

If the individualized education program team has determined that instruction in or use of Braille is not appropriate for the child, the child's individualized education program must include:

- (a) a statement that such determination was reached after a review of pertinent literature describing the educational benefits of instruction in and use of Braille and
- (b) the specific evidence used to determine the child's ability to read and write effectively without instruction in and use of Braille.

Regulations: NDE is required to adopt the National Instructional Materials Accessibility Standard established under 20 U.S.C. 1412(a)(23)(A). NDE and all local education agencies are required to cooperate with the National Instructional Materials Access Center established under 20 U.S.C. 1474(e). The cooperation must include the contractual requirement specified for the state in 20 U.S.C. 1412(a)(23)(C) and for local educational agencies in 20 U.S.C. 1413(a)(6)(A).

The bill authorizes NDE to adopt and promulgate rules and regulations to carry out the Blind Persons Literacy Rights and Education Act.

Teacher Competence: A teacher employed by or under contract with a school district, ESU, other education agency, or NDE who teaches blind or visually impaired children must demonstrate competence in reading and writing Braille. Such competence may be demonstrated by:

- (1) Possession by the teacher of an active National Certification in Literary Braille from the National Blindness Professional Certification Board; or
 - (2) Passing an examination developed and administered by NDE, which includes, but not limited to, Braille writing using a Braille writer, Braille writing using a slate and stylus, proofreading, identifying Braille errors, correct usage and rules, and other matters determined by the department to demonstrate competence to provide instruction in Braille. The examination must be no less stringent than the examination to obtain a National Certification in Literary Braille.
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Bill: LB 929

One-liner: Require schools to distribute certain information to parents of children with special hearing needs

Introduced by: Ashford

Committee: Education

LB 929 amends the Nebraska Special Education Act. A new section of law would be added to the Act to require all school districts to distribute information to all parents of children who are deaf, hard of hearing, or have other special needs related to hearing regarding all placement options for auditory-oral learning and spoken language education.

Bill: LB 1087

One-liner: Change provisions relating to payment for educational services

Introduced by: Adams

Committee: Education

LB 1087 amends the “residency law” (§ 79-215) and the Nebraska Special Education Act, and also provides for the creation of interim-program schools.

An “interim-program school” is defined as a school approved by the State Board of Education and located in or operated by:

1. a county detention home,
2. a juvenile emergency shelter, or
3. any institution that is a public or private facility, not owned or operated by a school district, which provides a residential program and regular or special education services with a special education rate approved by the State Department of Education.

LB 1087 stipulates that if a residential setting does NOT maintain an interim-program school or an approved or accredited school, the resident school district must contract with the district in which the residential setting is located for the provision of all educational services, including all special education services. This represents current law.

However, the bill stipulates that if a residential setting DOES maintain an interim-program school or an approved or accredited school, the resident school district must contract with the residential setting for the provision of all educational services, including all special education services, with the amount of payment for all educational services determined under the Special Education Act.

The residential setting must contract with the resident school district and provide all educational services, including special education services required under any current IEP established by the resident school district for the student. The educational services may be provided through:

- (i) the interim-program school or approved or accredited school,
- (ii) a contract between the residential setting and the school district in which such residential setting is located,
- (iii) a contract between the residential setting and another service agency, or
- (iv) a combination of such educational providers.

If a school district pays either a residential setting or school district in which a residential setting is located for educational services and it is later determined that a different school district was the resident school district for the student at the time the educational services were provided, the school district that was later determined to be the resident school district must reimburse the school district that initially paid for the educational services 110% of the amount paid. If the school district that was later determined to be the resident school district fails to reimburse the amount, the school district that initially paid for the educational services may file a complaint with NDE, setting out the issue and the amount in dispute.

If a resident school district fails to contract with a residential setting or a school district in which a residential setting is located or fails to pay for educational services provided under the contract, the residential setting or school district in which a residential setting is located may file a complaint with NDE, setting out the issue and the amount in dispute.

Upon a determination by the Commissioner of Education, or the State Board of Education if an appeal has been filed, that a complaint outlined above is valid, then NDE must withhold special education payments calculated under the Special Education Act from the resident school district in the amount of 200% of the disputed amount until the dispute is resolved.

The bill requires NDE to adopt and promulgate rules and regulations to provide for the Commissioner of Education to determine the validity of complaints filed as described above, and to provide for an appeal of these determinations to the State Board of Education.

NOTE: The Nebraska Special Education Act currently provides that each school district must pay an amount equal to the average per pupil cost of the service agency of the preceding year or the cost as agreed upon under the contract to the agency providing the educational program for

every child with a disability who is a resident of the district and is attending an educational program not operated by the school district, including programs operated by:

- the State Department of Education,
- the Department of Health and Human Services, and
- any other service agency whose programs are approved by NDE.

LB 1087 would amend the Act to include payment for every child who is in a residential setting that maintains an interim-program school or an approved or accredited school, who is in such residential setting for reasons other than education, and who is a resident of the district. For such children in residential settings, the minimum contract amount would be the average per pupil cost of the service agency of the preceding year.

State Board of Education/Commissioner Legislation

Bill: LB 957

One-liner: Provide for memoranda of understanding related to student information sharing

Introduced by: Adams

Committee: Education

LB 957 appears to require secondary and postsecondary institutions to build a data-sharing network on student information for purposes of study and research.

The bill amends § 79-318 relating to the duties of the State Board of Education to require, by September 1, 2010, the board to enter into memoranda of understanding with:

- the Board of Regents of the University of Nebraska,
- the Board of Trustees of the Nebraska State Colleges, and
- the board of governors of each Nebraska community college area.

The memorandum of understanding would be to adopt a policy to share student data. At a minimum, the policy must ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g.

The policy must additionally require the State Board, upon request, to share student data with qualified researchers, including postsecondary educational institutions, school districts, and public policy research and advocacy organizations.

Similarly, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college system must, by September 1, 2010, enter into a memorandum of understanding with the State Board of Education to adopt a policy to share student data.

Student Health Legislation

Bill: LB 713

One-liner: Change provisions relating to school health inspections

Introduced by: Gloor

Committee: Education

LB 713 changes laws relevant to the duty of school districts to cause the physical examination of children for “defects” and contagious or infectious diseases. The bill contains three components.

Current law, § 79-248, provides that every school district must cause each child under its jurisdiction to be “separately and carefully inspected” to ascertain if the child is suffering from:

- (1) defective sight or hearing,
- (2) dental defects, or
- (3) other conditions as prescribed by the Department of Health and Human Services (department).

LB 713 requires that such inspections will be conducted on a schedule prescribed by the department and must be based on current medical and public health practice. The schedule would presumably be adopted by the department through the promulgation of rules and regulations as provided in § 79-249.

The second component of LB 713 is to amend § 79-249 to permit, but not require, the department to make available to schools methods for the gathering, analysis, and sharing of school health data that do not violate any privacy laws.

The third component of LB 713 is to change the timeframe by which the “inspections” are to occur. Section 79-250 currently provides that during the first quarter of each school year the school district must provide the inspections for the children then in attendance. The current law further provides that as children enter school during the year, such inspections must be made immediately upon their entrance.

LB 713 eases the current law to simply require inspections to be conducted each school year for the children then in attendance. For children who enter school during the year, such inspections must be confirmed upon their entrance.

Bill: LB 962

One-liner: Require blood lead testing prior to school enrollment

Introduced by: Council

Committee: Education

Enrollment Qualification: Under current law (§ 79-217), each school district (public and private) must require each student to be protected against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, and tetanus by immunization prior to enrollment.

LB 962 extends this requirement to include blood lead testing after the age of 18 months and before the age of four years or, in the case of a transfer student four years of age or older enrolling in the district for the first time, within six month prior to enrollment.

The bill defines “blood lead testing” as taking a capillary or venous sample of blood and sending it to a laboratory to determine the level of lead in the blood.

When Not required: The bill also amends current law (§ 79-221), relating to when immunization and, as per LB 962, blood lead testing are not required.

Under LB 962, blood lead testing would not be required for a student’s enrollment in any school if a statement signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his/her respective certification act, provides that, in the health care provider’s opinion, the child is at very low risk for elevated blood lead levels.

The bill defines “very low risk” to mean that the child:

- (a) has not lived in or spent significant time in any building built before 1960,
- (b) has not eaten nonfood items,
- (c) has not lived with or frequently come in contact with an adult who works with lead on the job or as part of a hobby,
- (d) has not lived near a battery manufacturing plant, battery recycling plant, lead smelter, or other source of significant lead emissions,
- (e) was not born in or has not spent more than three months in Mexico, central America, eastern Europe, or southeast Asia,
- (f) has not ingested food, candy, or remedies containing lead,
- (g) has not played with toys, jewelry, or other items recalled by the United States Consumer Products Safety Commission due to lead contamination, or
- (h) has not had significant exposure to any other product or substance determined to contain lead by the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the Centers for Disease Control and Prevention or the Food and Drug Administration of the U.S. Department of Health and Human Services.

Provisional Enrollment: LB 962 also amends § 79-222 relating to provisional enrollment of students to allow such enrollment if the student is scheduled to undergo blood lead testing.

As a condition for the provisional enrollment of a student, a parent or guardian must provide the school with a signed written statement certifying that the student will undergo blood lead testing within 15 days or the date and results of the student’s blood lead testing.

NOTE: LB 962 was cosponsored by 14 lawmakers, mostly from the Lincoln and Omaha areas.

Bill: LB 1106

One-liner: Provide for school-based health centers under the Medical Assistance Act

Introduced by: Nordquist

Committee: Health

LB 1106 amends the Nebraska Medical Assistance Act, which was first enacted in 2006. The bill would make or cause two major actions.

First the bill seeks to cover school-based health centers under Nebraska's managed care contract. The bill would make health services provided by school-based health centers a "covered item or service" under Nebraska's managed care contract.

LB 1106 defines school-based health center as a health center that:

- Is located in or is adjacent to a school facility;
- Is organized through school, school district, learning community, community, and provider relationships;
- Is administered by a sponsoring facility;
- Provides school-based health services onsite during school hours to children and adolescents by health care professionals in accordance with state and local laws, rules, and regulations, established standards, and community practice;
- Does not perform abortion services or refer for abortion services; and
- Does not serve as a child's or adolescent's medical home but augments and supports services provided by the medical home;

School-based health services may include any combination of the following as determined in partnership with a "sponsoring facility," the school district, and the community:

- Medical health;
- Behavioral and mental health;
- Preventive health; and
- Oral health;

The bill defines a "sponsoring facility" as:

- A hospital;
- A public health department;
- A federally qualified community health center as defined under the federal Social Security Act;

- A nonprofit health care entity whose mission is to provide access to comprehensive primary health care services;
- A school, school district, or learning community; OR
- A program administered by the Indian Health Service or the Bureau of Indian Affairs or operated by an Indian tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act, or an urban Indian program under Title V of the federal Indian Health Care Improvement Act.

LB 1106 also directs the Department of Health and Human Services to submit a state plan amendment to Nebraska’s Medicaid plan to cover eligible legal permanent residents under Children’s Health Insurance Program (CHIP). Currently, legal permanent residents receive benefits that are financed completely out of state general funds. CHIP offers matching federal funds to help finance these services.

Transportation Legislation

Bill: LB 697

One-liner: Prohibit use of wireless devices by school bus drivers

Introduced by: Pahls

Committee: Transportation

LB 697 amends existing law, § 79-609, to state that the operator of a school bus may not, whenever the vehicle is in motion, use any type of interactive wireless communication device (as defined in § 60-470.02). The bill specifically does not apply to any dispatch communication device.

Section 60-470.02 defines “interactive wireless communication device” any wireless electronic communication device that provides for voice or data communication between two or more parties, including, but not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer.

LB 697 applies to any school bus, including any school bus that transports pupils by direct contract with the pupils or their parents and not owned by or under contract with a school district or nonpublic school.

Bill: LB 739

One-liner: Eliminate provisions relating to driver training schools

Introduced by: Fischer

Committee: Transportation

Senator Fischer introduced LB 739 to outright repeal a series of statutes concerning driver training schools. The bill was brought to Senator Fischer by the Department of Motor Vehicles for introduction. The statutes at issue in the bill pertain, not to those offered by schools and community colleges, but rather those driver training programs offered independent of education entities. The DMV asserts that since they have no real oversight of these private training programs, the statutes currently in place were not necessary, hence the introduction of LB 739.

Bill: LB 831

One-liner: Change Motor Vehicle Operator's License Act provisions relating to school permits

Introduced by: Utter

Committee: Transportation

Current law provides that a person younger than 16 years and three months of age but older than 14 years and two months of age may be issued a school permit if:

- the person lives a distance of 1.5 miles or more from the school he/she attends, and
- either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class, and
- if such person has held an LPE-learner's permit for two months.

LB 831 creates a second set of criteria that would qualify an individual (under the same age restrictions) for a school permit. Under the bill, an individual may also qualify if:

- such person lives a distance of 1.5 miles or more from the school he/she attends, and
- resides in a city of the first class, and
- if such person has held an LPE-learner's permit for two months.

Bill: LB 920

One-liner: Provide for school transportation safety committees

Introduced by: Haar

Committee: Education

LB 920 requires each school board to establish a school transportation safety committee for each school year. The committee must be composed of:

- (1) A representative of the school board, appointed by the school board;

- (2) A representative of a parent-teacher association or parent-student-teacher association within the district, appointed by the school board from a list of names submitted by such associations within the school district;
- (3) A member of the city council of the city or the board of trustees of the village in which the district is located, if any, or his or her designee, appointed by the chairperson of the city council or village board of trustees;
- (4) A member of the county board of commissioners of the county in which the district is located or his or her designee, appointed by the chairperson of the county board;
- (5) The chief of police of the city or village in which or nearest to which the school district is located;
- (6) The sheriff of the county in which the district is located or his or her designee;
- (7) The county engineer of the county in which the district is located or his or her designee; and
- (8) The city engineer of the city or village, if any, in which the district is located.

General Duty: The school transportation safety committee would receive suggestions and concerns from parents, teachers, and others on transportation issues relating to the district.

Child Access Routing Plan: Also, by the end of the 2013-14 school year and each school year thereafter, each school transportation safety committee must review and submit to NDE, the Education Committee of the Legislature, and any affected city, village, and county a “child access routing plan” for each school within the district.

Transportation Plans: When a new school is proposed within a district, the committee must convene regular and ongoing public discussions regarding transportation. The district must also provide notice to each affected city and county planning entities when land is acquired for school purposes. The committee must receive public input through mechanisms including, but not limited to, citizen panels, consensus conferences, and deliberative discussions. A neutral third party must facilitate the discussions.

At the conclusion of these discussions, the committee must create a “transportation plan” for the new school that identifies areas of concern and any recommendations offered as a product of the public discussions and must submit the transportation plan to the school board for consideration.

The board may approve or reject the transportation plan. If the board rejects the plan, the board must return it to the committee. The committee must then revise and resubmit the plan to the board.

The board may not authorize the opening of a new school building in the district until it has implemented an approved transportation plan.

Bill: LB 945

One-liner: Prohibit use of handheld wireless communication devices while driving

Introduced by: Harms

Committee: Transportation

LB 945 amends the Nebraska Rules of the Road. The bill prohibits a person from using a handheld wireless communication device to read, manually type, or send a written communication while operating a motor vehicle that is in motion.

Excluded from this rule are:

- (a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or
- (b) A person operating a motor vehicle in an emergency situation.

A person who violates the proposed rule would be guilty of a traffic infraction, assessed 3 points on his/her motor vehicle operator's license and fined:

- (a) \$200 for the first offense;
- (b) \$300 for a second offense; and
- (c) \$500 for a third and subsequent offense.

The bill defines a handheld wireless communication device as any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication, such as a mobile or cellular phone, a text messaging device, a personal digital assistant, a pager, or a laptop computer. It would not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a hands-free wireless communication device.

Resolution: LR 286CA

One-liner: Constitutional amendment to create the Highway Trust Fund, designate revenue sources, and provide for uses

Introduced by: Fischer

Committee: Transportation

LR 286CA would amend the constitution, Article VIII, by adding a new section 14 to place the existing Highway Trust Fund. As authorized by law on January 1, 2011, the revenue raised from taxes imposed on motor vehicle fuel and motor vehicle sales, from motor vehicle registration fees, and from any other source specified by law would be placed in the Highway Trust Fund. The Legislature may provide for any other source of revenue to be placed in the Highway Trust Fund. The Fund must be used exclusively for:

- (1) maintenance, preservation, and expansion of the state highway system, county roads, and municipal streets and related expenses, including expenses related to bonds authorized under Article XIII, section 1, of this Constitution;
- (2) expenses related to administration of laws imposing taxes on motor vehicle fuel and motor vehicle sales and laws requiring registration of motor vehicles, and
- (3) any other use authorized by law as of January 1, 2011.

If approved by the Legislature, the measure would appear on the 2010 General Election ballot.