



LEGISLATIVE REPORT

Nebraska Chamber of Commerce & Industry

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February 22, 2019
(Seventh Week)

With Session One-Third Complete, Focus Turns To Priority Bills, Budget

Today, February 22, marked the Legislature's 30th working day of the 90-day session. Senators have adjourned until Tuesday, February 26. When lawmakers return to the State Capitol next week, priority bill designations will start to receive more attention. So far, only a handful of priority bills have been named. Also next week, the Legislature's Appropriations Committee will intensify its efforts to craft the new, two-year budget.

At the State Chamber's Public Affairs Council meeting held earlier this week, Gering Senator John Stinner, chairman of the Revenue Committee, said the preliminary budget would be sent to the full Legislature by March 4. The biennial budget is likely to be influenced by the revised revenue projections coming from the Nebraska Economic Forecasting Advisory Board this Thursday, February 28. The budget is already being affected by Medicaid expansion, which when fully implemented will cost Nebraska taxpayers another \$80 million a year – in addition to the \$850 million currently being allocated to the government health care coverage program for low-income residents. Medicaid currently comprises roughly 20% of state spending.

Labor Bills Advance To Second-Round Debate

This week, two labor-related bills received first-round approval on the floor of the Legislature.

LB254, as originally introduced by Omaha Senator John McCollister, would have prohibited most private employers and employment agencies from requesting upfront that a job applicant disclose information regarding his/her criminal history. Similar to so-called “ban the box” efforts in other states, Senator McCollister’s Fair Chance Hiring Act would have provided very limited exceptions to the prohibition. However, during first-round floor debate this week, LB254 was amended with a proposal (**AM384**) from Blair Senator Ben Hansen. As amended, LB254 instead would require an employer that asks an applicant to disclose his/her criminal history to afford the applicant an opportunity to explain the conviction or criminal history.

The amendment eased concerns raised by the bill’s opponents – including the Nebraska Chamber – such as delayed hiring searches and forcing businesses to assume more legal liability. Following adoption of AM384, senators voted 39-2 to advance LB254 to Select File. The State Chamber is now neutral on LB254, as amended.

Another labor-focused bill that was advanced this week is **LB361**, introduced by Lincoln Senator Matt Hansen. As introduced, the bill would prohibit employers from retaliating or discriminating against an employee or applicant for employment if he/she filed a complaint under the Wage and Hour Act; or testified, assisted, or participated in an investigation, proceeding or action concerning a violation of the act. During the bill's hearing earlier this month, the State Chamber opposed LB361, stating, "The purpose of the Nebraska Wage Payment and Collection Act is to ensure the timely payment of employees. The substance of the act does not apply to applicants for employment. ... We see no basis for which an applicant can make such a complaint under the act and that ability should not be extended to them."

During floor consideration of LB361, an amendment (**AM289**) was offered by the Business and Labor Committee and adopted, thereby removing the term "applicants" – as recommended by the Chamber. Senators voted 26-8 to advance the amended LB361 to Select File. The Nebraska Chamber is now neutral on LB361, as amended.

Income & Property Tax Relief Bill Goes Before Revenue Committee

On February 20, the Legislature's Revenue Committee received testimony on a fiscally responsible, comprehensive tax relief proposal that was crafted with significant input from the State Chamber. **LB615** by Lincoln Senator Mike Hilgers would establish a framework to provide guaranteed income tax and property tax relief on an annual basis, setting the stage for long-term tax reform.

LB615 proposes a minimum balance in the state's Cash Reserve Fund. Once a strong cash reserve was established, dollar-for-dollar tax relief would be implemented for both income and property taxpayers. Income tax relief would be delivered through lower rates, while property tax relief would come through the state's property tax credit fund, unless another method was implemented by the Legislature.

Under a pending amendment (**AM314**) from Senator Hilgers, if the projected growth rate in the state's net General Fund receipts was at least 3.5%, and the cash reserve contained at least \$500 million, LB615 would trigger automatic reductions in Nebraska's top individual and corporate income tax rates. The top corporate tax rate would be reduced gradually from 7.81% to 5.99%, while the top individual rate would fall gradually from 6.84% to 5.99%. At the same time, LB615 would steer \$75 million a year into Nebraska's Property Tax Credit Fund.

In his testimony to the committee, Senator Hilgers said the bill would address Nebraska's "rural property tax crisis" while making the state's income tax a smaller obstacle to economic expansion and population growth. The senator said income tax relief was imperative to Nebraska's efforts to attract and retain residents, noting that high-income tax states were losing residents, while states with low or no income taxes were gaining both people and businesses.

Joseph Young, chair of the State Chamber's Taxation Council, testified in support of LB615. Young said Nebraska is in the midst of "a fierce battle for people and jobs," and that the concepts of LB615 should be part of Nebraska's growth strategy.

“We support property tax reform, but doing so on the backs of other taxpayers who are already paying high income taxes and high sales taxes is not sustainable,” Young said. “It has been proved time and again that such an approach will not work.”

Below are Nebraska’s individual and corporate tax rates as compared to those imposed by neighboring states. The information comes from the Small Business & Entrepreneurship Council.

<u>Personal Income Tax Rates</u>			
National Rank	State	Top Rate	Income Threshold
1.	South Dakota, Wyoming	0%	N/A
17.	Colorado	4.63%*	Flat
25.	Kansas	5.20%	\$30,000
27.	Iowa	5.66%**	\$69,930
31.	Missouri	6.00%	\$9,072
35.	Nebraska	6.84%	\$30,420

* Colorado taxes only federal taxable income.
** Iowa permits deduction for federal taxes. Rate reflects deductibility of federal taxes.

<u>Corporate Income Tax Rates</u>			
National Rank	State	Top Rate	Income Threshold
1.	South Dakota, Wyoming	0%	N/A
9.	Colorado	4.63%	Flat
15.	Missouri	5.16%*	Flat
30.	Kansas	7.00%	\$50,000
35.	Nebraska	7.81%	\$100,000
50.	Iowa	12.00%*	\$250,000

* Tax rate reflects deductibility of federal income taxes.

The Revenue Committee took no immediate action on LB615.

Bill Would Fix Tax Code For Manufacturers, Other Producers

Another bill heard by the Revenue Committee on Wednesday, February 20, was legislation to restore Nebraska’s favorable tax treatment of income derived from manufacturing, mining, construction and certain other production businesses.

LB664, introduced by Henderson Senator Curt Friesen – and crafted with significant input from the State Chamber – would ensure that Nebraska tax law maintains competitive provisions for production activities. The deduction would be available for tax years beginning on or after January 1, 2020, and would be equal to 9% of the lesser of the taxpayer’s qualified production activities or taxable income. The deduction could not exceed 50% of the W-2 wages paid to employees for the taxable year.

The bill is necessary due to changes made in the federal tax code by the 2017 Tax Cuts and Jobs Act, which repealed Section 199 and the domestic production activities deduction (DPAD). LB664 specifies

that the deduction would be applied by taking into account only items attributable to the actual conduct of a trade or business.

Bryan Sloane, president of the Nebraska Chamber, testified in support of LB664. In his statements, Sloane said restoring the previous deduction would be similar to the technical changes made by the Legislature last year under LB1090, which corrected these types of situations for individual taxpayers. He noted that LB664 would simply put manufacturing and other production businesses in the same relative position as they were prior to enactment of the 2017 federal tax overhaul.

No immediate committee action was taken on LB664.

Revenue Committee Examines More Property Tax Bills

On February 20, the Legislature's Revenue Committee heard testimony on LB661, a tax-shifting bill offered by Henderson Senator Curt Friesen. LB661 would eliminate the state's inflation adjustment for income tax brackets, while phasing out personal exemptions for higher income earners – and then direct the new revenues collected as a result of these income tax hikes to the Property Tax Credit Cash Fund.

The Nebraska Chamber submitted a letter of opposition to LB661. In its communication to the Revenue Committee, the State Chamber wrote: "We support property tax reform, but merely doing so on the backs of other taxpayers who are paying high income taxes is not sustainable and has proven not to work time and time again."

A day later, on February 21, the Revenue Committee received testimony on three more bills related to property taxes. The bills heard were:

- **'Circuit Breaker' for Property Tax Relief:** Introduced by Lincoln Senator Kate Bolz, LB420, the Property Tax Circuit Breaker Act, would provide a refundable income tax credit based on the amount of property taxes paid in relation to the income of the taxpayer. It is estimated the bill would cost the state more than \$190 million in Fiscal Year 2020-21. Under the bill, only residential or agricultural property owners under certain income thresholds would qualify for the bill's benefits. In a letter to the Revenue Committee, the State Chamber noted its opposition to LB420. The Chamber wrote that because property, income and sales tax are all currently at rates that put Nebraska at a competitive disadvantage, balanced tax reform is needed. "LB420 purports to deliver property tax relief by simply shifting the mix of tax collections from property to sales and income taxes," the Chamber said, adding that LB420 would do "nothing to lower Nebraska's uncompetitive income and sales tax burdens" or "ensure that local spending is controlled."
- **Lower Ag Land Valuation:** Introduced by North Platte Senator Mike Groene, LB530 would amend provisions related to the valuation of ag and horticultural land for purposes of property taxation, lowering the valuation percentage from 75% to 65% of actual value. Under the bill, the Tax Equalization and Review Commission (TERC) could decrease ag land valuation to as low as 59%. The Nebraska Chamber wrote the committee in opposition to LB530 and any other legislation that attempts to establish further separate classifications of property for tax purposes. Since 1972, agricultural land has been treated differently in Nebraska than other real property for

tax purposes. Legislation implemented in 2007 decreased the assessment of ag land to 75% of its actual value, rather than the 100% of actual value that is imposed on other types of real property. In 2017, more than two-thirds of property taxes in Nebraska were paid by residential or business property owners, who paid more than \$2.75 billion in real property taxes, according to the Department of Revenue, while agricultural land owners paid \$1.24 billion in real property taxes.

- **Section 1031 Business Equipment Federal Conformity:** **LB663** by Henderson Senator Curt Friesen would provide a technical fix to last year's LB1089, which restored the state's personal property tax exemption for purchases of agricultural and business equipment when using trade-ins, thereby preventing valuation increases on personal property taxed at the local level. Under LB663, the adjusted basis for purchases of depreciable personal property – if similar property is traded in as part of payment – would be the remaining federal tax basis of the property traded in, plus the additional amount paid for the new property. As explained in the hearing, for an ag producer who purchased a new combine using a trade-in, the enactment of LB663 could mean the difference between paying property taxes on a \$200,000 piece of equipment versus a \$400,000 piece of equipment. Kristen Hassebrook of the Nebraska Chamber testified in support of LB663, saying the legislation represented good tax policy that would fix an error in the state's tax code.

No immediate committee action was taken on any of the property tax-related bills.

Online Sales Tax Collection Bill Advances From Revenue Committee

On Thursday, February 21, the Revenue Committee voted to advance a bill that would authorize the collection of sales taxes for online purchases, meaning the legislation could soon be taken up by the full Legislature. As introduced, **LB284** by Omaha Senator John McCollister would require sellers of goods over the internet to collect and remit sales tax if their gross revenue exceeded \$100,000 a year, or if the seller made 200 or more separate Nebraska sales during the previous or current year. Under LB284, if a seller makes sales through an internet marketplace facilitator's platform, such as Amazon, the duty to collect and remit sales tax would fall to the marketplace facilitator. LB284 would apply to sales made after July 1, 2019.

The Nebraska Chamber supports the concept of LB284. The legislation comes after last summer's U.S. Supreme Court ruling in *South Dakota v. Wayfair*, in which the court said a state could require collection of sales tax by out-of-state internet retailers, as long as the state's law did not discriminate against or place excessive burdens on those engaging in interstate commerce. The ruling upheld a South Dakota law that exempted sellers with \$100,000 or less in sales, or fewer than 200 separate transactions.

The Nebraska Department of Revenue has already ordered businesses to start collecting sales taxes on orders placed within the state, but state lawmakers have not yet passed legislation to require it. Nebraskans making online purchases are already required by law to submit sales taxes to the state, although few are doing so. It is estimated that the state could bring in an additional \$40 million to \$50 million annually with the collection of sales tax from out-of-state retailers.

In other developments from this week's executive session held by the Revenue Committee, the committee has scheduled an evening executive session for March 4 to begin discussion of proposed legislation aimed at reducing or reforming local property taxes, according to media reports. Committee Chair Lou Ann Linehan of Elkhorn has set a goal of moving a property tax package to the floor of the Legislature by mid-April.

Chamber Supports Asbestos Litigation Reform Bill

On February 21, the Legislature's Judiciary Committee heard testimony on **LB421**, introduced by Lincoln Senator Mike Hilgers to ensure fairness and transparency for all parties involved in civil litigation related to damages or injuries suffered as a result of a plaintiff's exposure to asbestos or to products containing asbestos.

During the hearing, it was noted that more than 8,000 businesses have been brought into asbestos litigation over the past 30 years – and that most of those businesses were not involved in the direct production of goods containing the mineral. Proponents of LB421 said it would prevent “double dipping” by plaintiffs’ lawyers, and that neighboring states had already passed similar legislation.

According to Senator Hilgers’ statement of intent, in the wake of numerous court cases and judgments against several manufacturers of asbestos and products containing asbestos, a number of manufacturers were forced to declare bankruptcy.

To protect parties injured by these bankrupt companies, trusts were established to provide compensation. As a result, individuals who have suffered injuries from products made by these now-bankrupt companies may file for and receive money from the asbestos trusts. This trust compensation is based on a fee schedule.

LB421 would help ensure transparency of all potential exposures to asbestos resulting in a plaintiff’s injury by requiring plaintiffs in asbestos-related injury cases to file for and disclose any trust claims for which they may be eligible prior to advancing their civil claim. This would ensure that all parties to a case are made fully aware of all alleged exposures suffered by a plaintiff.

The bill would create certain deadlines for these filings and disclosures to ensure that there is adequate time for the parties to review all information related to the potential causes prior to trial. In doing so, LB421 would protect the effectiveness of the asbestos trust system.

The Nebraska Chamber submitted a letter of support for LB421. In its letter to the Judiciary Committee, the Chamber wrote that “the Nebraska judicial system should be able to strike the appropriate balance between expeditiously compensating injured individuals who have filed claims, and protecting the U.S. bankruptcy system from inappropriate claims.”

The committee took no immediate action on LB421.

Section 404 Permitting Bill Moves To Final Reading

Receiving second-round approval this week was LB302, a bill introduced by Venango Senator Dan Hughes on behalf of the governor to merge the State Energy Office into the Department of Environmental Quality, renaming the combined agencies the Nebraska Department of Environment and Energy (DEQE). The merger would be effective July 1, 2019.

In addition to enhancing government efficiency, LB302 would also allow the new state agency to issue Section 404 permits, which relate to the discharge of dredged or fill material. These permits are currently administered jointly at the federal level by the U.S. Army Corps of Engineers and the EPA. Before construction can begin on almost anything – whether a highway, housing development or commercial property – businesses and states must receive a 404 permit. Lengthy delays in the issuance of these permits are common.

The Nebraska Chamber supports LB302 and its provision to establish a state-administered Section 404 permitting program. The Chamber believes experts in Nebraska are better suited to understand and execute a regulatory structure that focuses on environmental factors unique to the state.

LB302 now awaits action on Final Reading, the third and last stage at which a bill is considered by the full Legislature.

At A Glance: Key 2019 Economic Development & Workforce Bills

Several economic development and workforce-related bills have been introduced by Nebraska lawmakers this session. The following is a summary of some of the key bills being monitored by the State Chamber, and their current status:

- **Residency for Veterans:** LB122 by Bellevue Senator Sue Crawford would allow military service members and veterans with service-connected disabilities who are receiving vocational rehabilitation services through the VA to be considered resident students and charged the resident rate for courses at public institutions of higher learning. The State Chamber supports LB122, which is currently on Final Reading.
- **Early Childhood Education:** LB160 by Grand Island Senator Dan Quick would amend the Local Option Municipal Economic Development Act (LB840 program) by redefining it to include early childhood infrastructure development. The Chamber supports LB160, which is now on Select File.
- **Early Childhood Education Credit:** LB266 by Omaha Senator Brett Lindstrom would amend the School Readiness Tax Credit Act to include self-employed individuals providing early childhood education. Owners of an eligible program could be a partnership, LLC, S-Corp or an estate or trust. The Chamber supports LB266, which remains in the Revenue Committee.
- **Apprenticeship Training Incentives:** LB272 by Lincoln Senator Adam Morfeld would provide a non-refundable income tax credit to an employer for wages paid to apprentices as part of a qualified apprenticeship training program. The credit would be capped at the lesser of \$2,000 or 50% of the

wages paid to the apprentice, and the program would be limited to \$2.5 million in credits a year. The Chamber supports LB272, which remains in the Revenue Committee.

- **Angel Investment Credit Repeal & Expansion of Business Innovation Act: LB334** by Gering Senator John Stinner would eliminate \$4 million in funding for the Angel Investment Tax Credit Act and increase funding by \$4 million for the Business Innovation Act. The bill would repeal the sunset date of the Business Innovation Act, which promotes successful entrepreneurial firms by providing access to capital in early stages of product development. A 2016 NU study found that Nebraska businesses have attracted considerable investment due to BIA programs, receiving \$6.72 in capital for every \$1 of state funding. The Chamber supports the concept of LB334, which awaits action by the Appropriations Committee.
- **Access College Early Tech Scholarships: LB563** by Lincoln Senator Kate Bolz would establish the Access College Early (ACE) Tech Promise Program, which would award scholarships to encourage early post-secondary participation in career education programs related to in-demand occupations. The Chamber supports the concept of LB563, which is currently in the Education Committee.
- **Scholarships for H3 Careers: LB639** by Gering Senator John Stinner would establish a college scholarship program for students studying high-wage, high-skill, high-demand career fields. Administered by the Nebraska Department of Labor, the scholarships could be no more than 30% of educational expenses for the student and would require the educational institution to cover the remaining 70% in scholarship funds. The bill would give post-secondary institutions the ability to award competitive scholarships to promising students, while allowing labor experts to determine which jobs are most in demand. LB639 would also require that eligible students take part in internships to connect them with the business community, which thereby increases the likelihood of them remaining in Nebraska. The Chamber supports the concept of LB639, which is in the Education Committee.
- **Workforce Diploma Act: LB644** by Omaha Senator Mike McDonnell would create a grant program within the Nebraska Department of Labor to reimburse workforce programs administered by a public or private high school for individuals (at least 22 years of age) who did not graduate from high school and have not earned a GED. Programs could be reimbursed by the state based on the number of students who complete minimum credit hours, an employability skills certificate, or an industry recognized credential. The program would be capped at \$2.5 million a year. The Chamber supports LB644, which is currently in the Business and Labor Committee.
- **Business Incentives Rewrite: LB720**, introduced and prioritized by Seward Senator Mark Kolterman, would replace the Nebraska Advantage Act as the state's primary economic development tool. LB720 would modernize Nebraska's incentives to keep the state competitive in the national and international battle for jobs and talent. In general, the bill would encourage better investments, better jobs, more robust reporting, and more overall transparency. Under LB720, as introduced, wage thresholds would be increased by 35% compared to current requirements under the Nebraska Advantage Act. LB720 would also accelerate the distribution of incentives to businesses by simplifying the application process. The Chamber supports LB720, which is currently awaiting a hearing in the Revenue Committee.

- **Early Sunset of Nebraska Advantage Act:** **LB413** by Plymouth Senator Tom Brandt would end the Nebraska Advantage Act on December 31, 2019, instead of December 31, 2020, as under current law. The Chamber opposes LB413, which is awaiting a hearing in the Revenue Committee.
- **Early Sunset of Multiple Incentive Programs:** **LB417** by Henderson Senator Curt Friesen would accelerate the end of the New Markets Job Growth Investment Act, the Nebraska Advantage Rural Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the Beginning Farmer Tax Credit Act, and the Nebraska Advantage Act from current deadlines to December 2019. The intent of the bill is to use the savings for state-funded property tax relief. The Chamber opposes LB417, which is currently in the Revenue Committee.
- **Broadband Mapping Mandate:** **LB549** by Plymouth Senator Tom Brandt would require the creation and maintenance of a geographic information system (GIS) map under the Nebraska Telecommunications Regulation Act to outline the availability and details of advanced telecommunications (broadband) in rural communities, creating a large financial burden on telecommunications providers. The Chamber opposes LB549, which is currently in the Transportation and Telecommunications Committee.

THE WEEK AHEAD: Upcoming Hearings for Key Legislation

During the week of February 25 – March 1, hearings will be held on several noteworthy bills. Please note that the Legislature will not be in session Monday, February 25. The following are upcoming hearings on key bills of interest:

Wednesday, February 27, 2019

*Revenue Committee
Room 1524 - 1:30 p.m.*

LB303 – Change the amount of relief under the Property Tax Credit Act. (Chamber opposes.)

LR8CA – Constitutional amendment to limit the total amount of property tax revenue that may be raised by political subdivisions.

LB506 – Adopt the Property Tax Request Limitation Act.

Thursday, February 28, 2019

*Revenue Committee
Room 1524 - 1:30 p.m.*

LB710 – Change provisions relating to tobacco including sales, crimes, a tax increase, and distribution of funds. (Chamber opposes.)

LB529 – Change provisions relating to a property tax exemption for hospitals. (Chamber opposes.)

Friday, March 1, 2019

*Revenue Committee
Room 1524 - 1:30 p.m.*

LB507 – Impose sales tax on certain services and eliminate sales tax exemptions. (Chamber opposes.)

LB508 – Impose sales and use taxes on certain services, eliminate sales tax exemptions, and use the increased revenue for property tax credits. (Chamber opposes.)

LB614 – Change revenue and taxation provisions. (Chamber opposes.)