



# LEGISLATIVE REPORT

## Nebraska Chamber of Commerce & Industry

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March 8, 2019  
(Ninth Week)

### Revenue Committee Discusses Options For Comprehensive Tax Plan

On Thursday, March 7, the Nebraska Legislature completed its 38th legislative day of the current 90-day session. Following a four-day recess, senators will return to the State Capitol Tuesday, March 12.

March is a key month at the Legislature. Committee hearings on bills will conclude by March 28, so that full-day floor debate can begin April 2. Lawmakers have until March 19 to designate their priority bills, which generally are considered before other measures for floor debate. (Note: A listing of priority measures selected thus far by senators appears at the end of this *Legislative Report*.) Among the priority bills already designated is **LB720** by Seward Senator Mark Kolterman to revise and modernize Nebraska's business incentives. The State Chamber supports LB720, which was heard by the Revenue Committee earlier this week. (See the story on the hearing elsewhere in this issue.)

This week, senators passed several bills that had been on Final Reading – the third and final stage of bill consideration in the Legislature. One such bill was an amended version of **LB103** by Revenue Committee Chair and Elkhorn Senator Lou Ann Linehan to add transparency for local property taxpayers. Under the bill, a governing body of a county, municipality, school district or other local entity would be required to hold a public hearing to set its property tax request if the annual assessment of property would result in an increase in the total property taxes levied. This would give the public additional opportunity to weigh in with local leaders if they wanted to set their property tax request at an amount that exceeded the prior year.

Also this week, the Legislature's Revenue Committee held an executive session to discuss options for a comprehensive tax bill this session. Press reports said the committee is "eyeing a half-cent hike in Nebraska's sales tax rate" in hopes of reaching an agreement on a plan to raise sufficient state funding to reduce local property taxes. No votes were taken in this week's executive session, but committee members generally agreed that they would raise additional revenue only for the purpose of property tax relief, according to news articles. Nebraska's state sales tax rate is currently 5.5% – the 21st lowest (or 29th highest) state sales tax rate in the nation.

Other options discussed by the committee were removing some current sales tax exemptions – including those on soda and candy – along with a possible increase in the state cigarette tax. The Revenue Committee agreed to meet again in executive session on Thursday, March 14, to continue discussions on a possible comprehensive tax plan.

## **Modernized Business Incentives Plan Goes Before Revenue Committee**

On March 8, the Revenue Committee held its hearing on legislation that would bring the first major overhaul of Nebraska's business incentives in 14 years. Introduced and prioritized by Seward Senator Mark Kolterman, **LB720** is titled the ImagiNE Nebraska Act. It would replace the Nebraska Advantage Act of 2005 – the state's primary economic development tool that has resulted in 850 business expansions, \$13 billion in capital invested or committed, and roughly 100,000 new jobs statewide. The Nebraska Advantage Act is set to expire at the end of next year, making LB720's passage critical this session.

During this week's hearing, LB720 supporters noted that Nebraska's business incentives must compete with more than 2,000 other state and local incentive programs nationwide. According to reports, the Cornhusker State invests the second-lowest amount in tax credits among its neighboring states, despite Nebraska's high-tax climate.

In general, LB720 would encourage high-quality investment and job creation, more robust reporting, and more overall transparency. It incorporates improvements suggested by independent studies conducted for state policymakers in 2015 and 2018.

The ImagiNE Nebraska Act would retain the state's "pay for performance" model for incentives, providing a base level of assistance to all qualified projects while additionally rewarding higher wage projects and increased capital investment. Specifically, LB720 would encourage growth of existing businesses by providing tax credits and/or refunds/exemptions for high-wage job creation; high-wage jobs and new investment; mega-projects; and facility modernization.

LB720's credits would be used to offset withholding liability, sales tax, and corporate income tax – but also could be utilized for job training and recruitment of new, high-wage employees for qualified projects. Credits could also be utilized to repay loans from the ImagiNE Nebraska Revolving Loan Fund for workforce training and infrastructure development.

Chad Denton, president of CFO Services and chair of the State Chamber's Economic Development Council, testified in support of the ImagiNE Nebraska Act. He highlighted LB720's proposed process improvements, saying the bill would increase the value of incentives to businesses by making simplifications, including during the application process. Companies would provide more information through regular reporting to the Department of Revenue under the new program, thus ensuring that businesses receive earned incentives sooner, while also eliminating unnecessary audits. Denton pointed out that under LB720, qualified wage levels for the incentives program would be increased compared to current requirements under the Nebraska Advantage Act – increasing to \$19.53 an hour at the lowest level, to more than \$21 per hour under the most utilized level. He noted that there was concern from some State Chamber members regarding the proposed wage levels, especially among rural manufacturers – and that further discussion with these employers was needed.

Other highlights from the hearing included:

- Senator Kolterman said he has prepared an amendment to make technical changes to the bill and minor improvements, calling the bill a “work in progress.”
- Nebraska Department of Economic Development Director Dave Rippe testified in support of LB720, saying it would make Nebraska “very competitive” regionally, while allowing the state to build “more meaningful relationships with business.” Director Rippe noted that a recent sampling of Nebraska Advantage Act agreements showed two-thirds of the agreements were with companies that had operations in other states. He told the committee that these companies could have created jobs or invested elsewhere, highlighting the importance of state incentives.
- David Brown, president and CEO of the Greater Omaha Chamber, testified in support of LB720, saying that in today’s competitive climate, companies expect state economic development incentives. Brown said, “If indeed incentives disappear, so does economic development in the state.” He noted that Nebraska needs a mainline economic development program to work with local incentive tools, like the LB840 program.
- The Nebraska League of Municipalities also testified in favor of LB720, praising the bill’s transparency and language to provide an estimate to cities before incentives are awarded.

During the hearing, much of the focus from opponents was related to the bill’s cost, estimated to be around \$29 million in Fiscal 2020-21, but projected to grow to more than \$150 million as more projects ramp up under the program. Senator Kolterman noted that over the years, costs related to Nebraska’s business incentive programs (LB775 and the Nebraska Advantage Act) have, on average, totaled an amount equal to roughly only 3% of the state’s annual budget. Other supporters told senators that allowing businesses keep more of the money they earn in exchange for new jobs and investment should not be viewed as costs, since such economic activity would not likely have occurred but for incentives.

In his concluding remarks, Senator Kolterman told his fellow Revenue Committee members that he has repeatedly supported efforts to reduce Nebraska’s property tax burden.

“But we cannot grow our state by just reducing the property tax burden,” he said, adding that doing away with incentives would be like hanging up a “closed for business” sign.

Currently, 22 senators are cosponsoring the ImagiNE Nebraska Act.

The Revenue Committee also heard testimony related to Plymouth Senator Tom Brandt’s **LB413**, which would change the sunset date of the Nebraska Advantage Act from December 2020 to December 2019, as well as Henderson Senator Curt Friesen’s **LB417** to change the application deadlines of the Nebraska Advantage Act to December 31, 2019. The State Chamber submitted letters opposing both LB413 and LB417.

No immediate action was taken by the committee on any of the bills.

## **Workers' Comp Bills Heard By Business & Labor Committee**

On March 4, the Business and Labor Committee heard testimony on several proposals to amend the Nebraska's workers' compensation law. In recent years, employers in Nebraska have paid nearly \$400 million to the Workers' Comp Fund, which is funded 100% by employers. Even employers who are self-insured are affected by changes made to workers' comp law. The bills heard this week were:

- **Workers' Compensation – Evidenced-Based Drug Formulary: LB487** by Gretna Senator Andrew La Grone would establish an evidence-based drug formulary for workers' compensation claims with a date of injury on or after January 1, 2020. In short, the formulary would contain a list of drugs covered by workers' comp when prescribed for approved claims. The bill was introduced in part to help combat the over-prescribing of opioids and the resulting dependencies on these pain killers. Robert J. Hallstrom with Nebraskans for Workers' Compensation Equity and Fairness (NWCEF) testified on behalf of the State Chamber in support of LB487. Several states are currently utilizing drug formularies, and many – particularly Texas and Ohio – have seen dramatic reductions in cases of opioid addictions, as well as reduced prescription drug costs.
- **Workers' Comp – Temporary Disability: LB526** by Omaha Senator Mike McDonnell would attempt to fill a so-called “gap” in workers' comp coverage for employees between the termination of their temporary disability payments and commencement of their permanent disability payments. Critics of LB526 noted the State Supreme Court has ruled that a disability cannot be both temporary and permanent, but LB526 would impose policy contrary to that ruling, allowing “double dipping” into the workers' comp trust fund. Other critics said the bill is too broadly crafted and could lead to “doctor shopping” due to its provisions addressing independent medical examiners. Robert J. Hallstrom, in his capacity as state director for NFIB/Nebraska, testified on behalf of the State Chamber in opposition to LB526.
- **Workers' Comp – Burial Benefits: LB448**, also introduced by Senator McDonnell, would revise the manner in which an employer's responsibility for burial expenses is determined by setting the burial expense at 14 times the state's average weekly wage to be automatically adjusted annually. Robert J. Hallstrom with Nebraskans for Workers' Compensation Equity and Fairness (NWCEF) testified on behalf of the State Chamber in opposition to LB448. He noted that the business community was part of a compromise to increase burial benefits from \$6,000 to \$10,000 six years ago and that this level of benefit is still fair and reasonable based on current median funeral costs.
- **Workers' Comp – Death Benefits: LB408** by Grand Island Senator Dan Quick would provide that upon the death of an employee – if there is no spouse, child or other dependent entitled to benefits – that \$25,000 is to be paid to the personal representative of the estate of the decedent. Critics note that the bill would provide payment to non-dependents, thereby grossly expanding the Workers' Compensation Act beyond its intended purpose. Robert J. Hallstrom with Nebraskans for Workers' Compensation Equity and Fairness (NWCEF) testified on behalf of the Nebraska Chamber in opposition to LB408.

No immediate action was taken by the committee on any of the bills.

## **Internet Sales Tax Collection Bill Gets First- And Second-Round Approval**

On March 4, senators voted 44-0 to give first-round approval to legislation that would formally authorize the State of Nebraska to collect sales taxes owed from out-of-state, internet vendors selling to Nebraska residents. Three days later, on March 7, the bill was given second-round approval, moving it to Final Reading – the third and final stage of consideration in the Legislature.

Introduced and prioritized by Omaha Senator John McCollister, **LB284** would require such internet retailers 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 in the previous or current year.

During first-round floor debate, the full Legislature voted 43-0 to adopt an amendment (**AM392**) Revenue Committee amendment that replaced the original bill. The amended bill would still require remote sellers and “multi-vendor marketplace platforms” to collect and remit state sales tax if they exceed the thresholds in the previous or current calendar year. In addition, the amended version of LB284 would require a retailer to obtain a permit from the state Department of Revenue and begin collecting sales tax on or before the first day of the second calendar month after it exceeds the threshold for the first time.

Under the amended version of LB284, the bill’s effective date would be April 1, 2019.

During Select File consideration, the Legislature adopted an amendment (**AM643**) from Elkhorn Senator Lou Ann Linehan to address concerns with the bill language that addresses the Local Option Revenue Act, as well as the obligations of “multi-vendor marketplace platform.”

The legislation comes after last summer’s U.S. Supreme Court ruling in *South Dakota v. Wayfair* in which the court said a state can require collection of sales tax by out-of-state internet retailers, as long as the law does not discriminate against or place excessive burdens on those engaging in interstate commerce. Nebraskans making online purchases are already required by law to submit sales taxes to the state, but few are doing so.

It is estimated that the State of Nebraska could collect an additional \$30 million to \$50 million annually once online sales taxes are required to be collected by out-of-state retailers.

During this week’s floor debate, Revenue Committee Chair and Elkhorn Senator Lou Ann Linehan spoke in support of LB284, saying the bill’s passage is “critically important for the state.” While several rural lawmakers have said they want to “ earmark” the new revenue from LB284 and send it to the state’s property tax credit fund – which subsidizes property owners who owe local property taxes – Senator Linehan noted that the Department of Revenue has said it cannot precisely track tax revenue from internet sales.

Supporters of the bill also say LB284 would “level the playing field” for brick-and-mortar retailers that must collect and remit sales tax.

The State Chamber supports the concept of LB284, which now awaits Final Reading consideration.

## **Revenue Committee Hears More Proposals To Shift Nebraska's Tax Burden**

On March 1, the Revenue Committee held hearings on additional proposals that seek to shift Nebraska's tax burden from local property taxes to state-imposed sales and income taxes.

One such bill is **LB614**, introduced by Bellevue Senator Sue Crawford. LB614 would impose new sales and income taxes, and use the revenue to provide more state aid to schools in hopes of reducing property taxes. Similar approaches have been tried over the decades, but with no long-term success.

Specifically, LB614 would do the following:

- Raise the excise tax on cigarettes from \$0.64 cents per pack to \$2.15 per pack, as well as the tax on alcohol and spirits from \$3.75 per gallon to \$8.02 per gallon. LB614 also would impose sales and use tax on candy, soft drinks and bottled water.
- Repeal Nebraska's current exemption for the first \$10,000 of valuation of tangible personal property.
- Raise income taxes by eliminating itemized deductions (except medical).
- Repeal the S-corp/LLC exclusion on out-of-state earnings, and repeal the special capital gains election.

Not only would LB614 direct additional revenue to K-12 school aid, it would also increase the state's credit on the federal earned income tax credit from 10% to 15%.

Russ Smith, a CPA and tax and consulting director at Lutz, testified in opposition to LB614 on behalf of the Nebraska Chamber. Smith spoke specifically to the S-corp and LLC exclusion proposed by the bill, noting that LB614 would give one business tax structure (C-corps) a large advantage over others (pass-through businesses). Under the state's current tax code – due to a provision established by LB773 in 1987 – there is currently parity between Nebraska's taxation of multi-state operations of C-corps, S-corps and LLCs. This parity was created to halt the outmigration of taxpayers and make Nebraska more competitive with neighboring states that offer either no income tax or lower income tax rates.

By doing away with the S-corp/LLC exclusion, LB614 would raise Nebraska's already high income tax burden for certain taxpayers, while hindering efforts to attract startups, high-growth businesses, entrepreneurs and new investment. It would also effectively create a new income tax on shareholders and likely would lead to an exodus of wealth from the state.

Bruce Grewcock, chairman and CEO of Kiewit, told the committee that Kiewit employees are required to sell any company stock back to the business when they leave their job or retire. Without the capital gains exclusion, many employees would leave Nebraska before retiring to avoid paying taxes when they sell their stock, Grewcock said.

Two other bills this session – **LB314** by Albion Senator Tom Briebe and **LB276** by Omaha Senator John McCollister – have S-corp/LLC provisions similar to those in LB614.

The committee also heard testimony on **LB507** and **LB508**, both introduced by Albion Senator Tom Briebe. LB507 would impose new sales taxes on certain services and eliminate numerous sales tax exemptions, including those for laundromats, school lunches, flat-rate institutional meals, lease-to-purchase agreements, admission to school events, non-profit events, prepaid calling arrangements, motor vehicle repair or maintenance, legal services, accounting services, and several others. The bill is similar to Senator Briebe’s **LB314** in its attempt to raise taxes and generate new state revenue to fund the Property Tax Credit Fund. If enacted, LB507 would impose an estimated \$239 million in new sales taxes by Fiscal 2020-21.

LB508 is similar to LB507, as Senator Briebe called LB508 a “pared back” version of LB507. The bill would impose an estimated \$119 million in new sales taxes by Fiscal 2020-21.

The State Chamber sent letters of opposition to both LB507 and LB508. While the Chamber believes property tax reform is important, doing so at the expense of other Nebraskans who are already paying high income taxes and sales taxes is not sustainable. The Nebraska Chamber has repeatedly noted that similar tax-shift plans have repeatedly failed over the past 50 years.

No immediate committee action was taken on LB614, LB507 or LB508.

### **Health Insurance Mandates Heard**

On March 4, the Banking, Commerce and Insurance Committee heard testimony related to two measures to impose additional coverage mandates on health care policies in Nebraska.

Government mandates expanding the number conditions that must be covered by health insurance policies are a key factor behind rising health care costs. These costs are passed onto employers and employees in the form of higher premiums and higher deductibles. Last year, annual family premiums in the United States rose 5% to an average of \$19,616 – the eighth year of increases, according to the Kaiser Family Foundation annual survey.

One of the bills heard this week, **LB501** by Omaha Senator Megan Hunt of Omaha, would require insurers of employer-provided plans to cover in vitro fertilization procedures. The bill would not apply to Nebraskans covered by Medicare or the 33% covered by self-funded plans.

Ron Sedlacek, vice president – general counsel for the Nebraska Chamber, testified in opposition to LB501. He told the committee that the Nebraska Chamber has longstanding policy opposing any legislation that mandates minimum standards for health insurance coverage exceeding federal ERISA requirements – no matter how well intentioned.

Government-mandated employee benefits threaten both the affordability and availability of insurance coverage, Sedlacek said.

Also testifying against the bill was State Chamber Board member Eric Dunning, director of government affairs of Blue Cross Blue Shield of Nebraska. Dunning said insurers could leave Nebraska to avoid mandates like the one contained in LB501.

The committee also heard testimony on **LB15**, a bill by Bellevue Senator Carol Blood to require most health insurance plans to pay for hearing aids for young Nebraskans. The measure would require most health plans to cover expenses associated with hearing aids for those under 19, including evaluation, fitting, programming, repairs and auditory rehabilitation and training. Small-business group health plans would be exempt, and insurance companies that could show that expenses associated with hearing aids would exceed 1% of premium dollars collected per year would be exempt for a plan year. LB15 also would cap covered expenses at \$3,000 over four years.

The committee took no immediate action on LB501 or LB15.

### **Bridge Repair Bill Gets Hearing**

On March 7, the Government, Military and Veterans Committee held a hearing on **LB267**, a bill by Lincoln Senator Kate Bolz to expand the allowable use of funds under counties' existing tax levy bond authority. The bill would compel county boards to keep bridges in repair and to repair or replace bridges that are deemed deficient according to the Nebraska Department of Transportation's (DOT) standards.

During the hearing, it was noted that Nebraska is sixth worst nationally for "structurally deficient" bridges, according to the American Road & Transportation Builders Association. The organization found that 15.4% of Nebraska bridges are in need of immediate attention.

Specifically, LB267 would provide counties the authority to:

- issue bonds or borrow money to fund projects that repair, retrofit, reconstruct, or replace any bridge owned by the county.
- issue a tax levy to fund projects when bridges owned by the county are deemed "scour critical" or structurally deficient by DOT standards.

Ron Sedlacek, vice president – general counsel for the Nebraska Chamber, testified in support of LB267, telling committee members that the State Chamber recognizes the urgent need repair the state's structurally deficient bridges.

At its initial meeting held this past January, the State Chamber's recently formed Transportation and Infrastructure Council recommended supporting the bill. The council's recommendation was accepted and approved by the Nebraska Chamber Board of Directors at its annual meeting on February 7.

The committee took no immediate action on LB267.



## **THE WEEK AHEAD: Upcoming Hearing Dates for Key Legislation**

During the week of March 11-15, hearings will be held on several noteworthy bills. (Note: The Legislature will not be in session Monday, March 11.) The following are upcoming hearings on key bills of interest:

### **Wednesday, March 13**

*Appropriations*  
*Room 1003 - 1:30 PM*

**LB334** – Eliminate funding for the Angel Investment Tax Credit Act and increase funding and eliminate the termination date for the Business Innovation Act. (Chamber supports concept.)

*Revenue*  
*Room 1524 - 1:30 PM*

**LB437** — Change application deadlines under the Nebraska Advantage Act.

### **Thursday, March 14**

*Revenue*  
*Room 1524 - 1:30 PM*

**LB456** – Provide a sales and use tax exemption for certain machinery and equipment used to produce electricity. (Chamber supports.)

### **Friday, March 15**

*Revenue*  
*Room 1524 - 1:30 PM*

**LB535** – Prohibit employment discrimination by qualified businesses under the Nebraska Advantage Act.

**LB714** – Adopt Nebraska Industrial New Job-training Act and authorize the transfer of certain withholding taxes.

**LB724** – Provide mandates for boards of directors to qualify for incentives under the Nebraska Advantage Act.

**LB738** – Change individual income tax brackets and rates.

### **2019 Priority Bills (As Of March 8)**

The following is a list of this session's priority bills as of March 8. The deadline for all committee and senator priority designations is March 19. The Speaker will announce as many as 25 of his priority bills on March 20.

<u>Prioritizing</u>	<u>Bill</u>	<u>Description</u>
Blood	LB138	Referral Provide for additional Military Honor Plates and Support Our Troops Plates
Brewer	LB155	Change eminent domain provisions that apply to privately developed renewable energy generation facilities
Chambers	LB44	Eliminate the death penalty and change provisions relating to murder in the first degree
Erdman	LB483	Change the valuation of agricultural land and horticultural land
Kolowski	LB619	Require coverage under insurance policies for mental health services delivered in schools
Kolterman	LB720	Adopt the ImagiNE Nebraska Act and provide tax incentives
Linehan	LB670	Adopt the Opportunity Scholarships Act and provide tax credits
McCollister	LB284	Change sales and use tax provisions relating to out-of-state retailers and multivendor marketplace platforms
Williams	LB463	Change provisions relating to treasurer's tax deeds and tax sale certificates
Wishart	LB110	Adopt the Medical Cannabis Act