

LEGISLATIVE REPORT

Nebraska Chamber of Commerce & Industry

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March 15, 2019
(Tenth Week)

Priority Bill Deadline Is Tuesday; Revenue Committee Looks At Income Tax Relief

After adjourning for the week, state lawmakers have completed the 42nd day of the 90-day session. As senators prepare for the second half of the legislative session, their focus will be on priority bills and the new biennial budget.

Yesterday, March 14, was the deadline for senators to submit their requests for speaker priority bills. This Wednesday, March 20, Speaker Jim Scheer will announce up to 25 speaker priorities. Tuesday, March 19, is the deadline for senators and committees to name their priorities, which have a much greater likelihood of being debated by the full Legislature. A listing of senator priority bills that have been designated so far appears at the end of this *Legislative Report*.

By March 28, all committees will have concluded their hearings on bills. Full-day floor debate will start April 2, which will be the 51st legislative day of the 90-day session.

Meanwhile, according to media reports, the Legislature's Revenue Committee is starting to shape a property tax package that could include income tax relief. Members of the committee floated the ideas late Thursday during an executive session. These sessions are closed to the public except for members of the press. According to early press reports, the committee's draft plan would provide more than \$509 million in state funds during the first year to further subsidize the local property tax bills of home- and landowners. (Currently, about one-third of the state budget already goes to aid local government and school districts.)

As reported in the State Chamber's News Update, Nebraska has the 16th highest individual income tax collections per capita at \$1,177, according to the Tax Foundation – plus the 15th highest corporate income tax collections at \$161 per capita. Nebraska has the 12th highest property tax collections per capita at \$1,909, and the 22nd highest state sales tax collections at \$956 per capita (not including local sales taxes).

Legislature Debates Minimum Wage Hike For Tipped Employees

This week, the full Legislature held first-round debate on **LB400**, introduced by Omaha Senator Megan Hunt to increase the minimum wage for tipped employees – primarily restaurant waiters/waitresses or servers – to 50% of the state's general minimum wage. Assuming Nebraska's standard minimum wage remains at \$9 an hour, LB400 would increase the tipped minimum wage to \$3.60 an hour in 2020, and \$4.50 in 2021.

The Nebraska Chamber opposes LB400 and any other minimum wage expansions that would exceed federal law. Earlier in the session, LB400 was advanced by the Business and Labor Committee on a 4-0 vote. Voting to advance the bill were Senators Ernie Chambers, Sue Crawford, Steve Lathrop and Matt Hansen. Present but not voting were Senators Ben Hansen, Steve Halloran and Julie Slama.

During this week's floor debate, it was noted that current state law already requires businesses to compensate tipped employees any difference between the gratuities they earn and Nebraska's current minimum wage of \$9 an hour. Employers failing to comply with this provision would be in violation of state law. The Nebraska Department of Labor is responsible for investigating complaints of such infractions. Supporters of the bill said many restaurants were failing to pay the \$9-an-hour requirement, while opponents said the bill was unnecessary and would be particularly harmful to rural establishments.

After two mornings of debate, supporters of LB400 were unable to gather sufficient support for a cloture motion, and Speaker Jim Scheer announced that the Legislature would move on to the next bill on the Unicameral's agenda.

LB400 remains on General File and is unlikely to return to the floor for debate this session.

Unicameral Advances Bill To Address Exchange Of Employee Compensation Information

On March 14, senators debated legislation addressing the exchange of compensation information by employees. Offered by Lincoln Senator Patty Pansing Brooks, **LB217**, as introduced, would change provisions of the Nebraska Wage and Payment and Collection Act by prohibiting an employer from discharging or in any other way retaliating against any employee because he/she inquired about, discussed, or disclosed comparative compensation information for the purpose of determining whether the employer is compensating any employee in a manner that provides "equal pay for equal work."

Senator Pansing-Brooks said the bill is needed to address the pay gap between men and women. However, opponents have said LB217 presents several issues of concern regarding privacy, decreased morale between new and senior employees, benefits based on longevity, and other potential litigation exposure. Also, some employers consider pay data to be proprietary information, which constitutes a trade secret. Due to the concerns surrounding the bill, the State Chamber opposes LB217.

On the floor this week, lawmakers adopted a Business and Labor Committee amendment (**AM387**) that clarified that LB217 would not apply to instances "in which an employee who has authorized access to information regarding compensation of other employees as a part of such employee's job functions."

The amendment also removed language limiting the purpose for discussing wages to equal pay for equal work, while taking the bill out of the jurisdiction of the Wage Payment and Collection Act and into that of the Nebraska Fair Employment Practices Act. The latter applies to employers with 15 or more employees. The Nebraska Equal Opportunity Commission would be charged with enforcing LB217.

After successful adoption of the committee amendment, senators voted 27-3 to advance LB217 to Select File, the second round of consideration at the Unicameral.

Nebraska's Business Innovation Act Would Be Enhanced By LB334

On March 13, the Legislature's budget-writing Appropriations Committee received testimony on legislation that would shift funding from one state program to another in an attempt to more effectively assist Nebraska startup businesses with high growth potential.

Introduced by Gering Senator John Stinner, **LB334** would sunset the Angel Investment Tax Credit Act (AIRC) and end the \$4 million in annual refundable tax credits awarded under the program. The bill would use the savings to increase funding for the Business Innovation Act (BIA) by \$4 million.

The measure would also repeal the sunset date of the BIA, which was created in 2011 under Governor Dave Heineman's four-part Talent and Innovation Initiative. The BIA aims to promote high-tech, high-growth firms by providing access to capital in a business' early stages of product development. It provides matching seed money for startup companies, as well as funds for production of product prototypes, research and microenterprises.

In CNBC's 2018 "Top States for Business" study, Nebraska was No. 33 of 50 (or 18th worst) in the category of "access to capital" – an improvement from the state's standing earlier in the decade.

A recent NU study found Nebraska businesses have attracted considerable investment by using BIA programs, receiving \$6.91 in capital for every \$1 of state funding. The study found that state funds appropriated to the BIA have been successful in attracting next-generation technology, business and workforce to Nebraska.

According to the Nebraska Bureau of Business Research, the support provided by BIA programs has helped foster the creation of 1,436 jobs statewide and \$77 million in wages in areas such as software, bio-sciences, agriculture and manufacturing – with an overall annual economic impact of \$284 million.

The State Chamber supports the concept of LB334. Testifying on behalf of the Nebraska Chamber was Erica Wassinger, the senior director of entrepreneurship and innovation for the Greater Omaha Chamber.

In her comments to the committee, Wassinger noted that one startup founder called the state's prototyping grant under the BIA "the single most helpful program to our company." Other supporters testified that the BIA "leveled the playing field" for Nebraska startups in the area of access to capital.

Also testifying in support of LB334 was Nebraska Department of Economic Development Director Dave Rippe. He told the committee that in his review of state programs administered by DED, the data made for "a compelling case for sun-setting the AIRC and increasing funding for the BIA programs."

Rippe said, "Our research shows that compared with the BIA, the AIRC creates fewer jobs at lower pay – 79 jobs averaging \$32,011 per year for the AIRC, versus 100 jobs averaging \$53,677 per year for the BIA, or 120% of the state average wage."

The committee took no immediate action on LB334.

Legislature Passes Chamber-Supported Bills This Week

On March 15, the Legislature passed several bills on Final Reading – the third and final stage of consideration at the Nebraska Legislature.

All bills passed by the Legislature have been sent to Governor Pete Ricketts for his signature or veto.

Among the bills receiving final approval this week were the following Chamber-supported bills:

- **Internet Sales Tax Collection:** Senators voted 43-0 to pass **LB284**, which would formally authorize the State of Nebraska to collect sales taxes owed from out-of-state internet vendors selling to Nebraska residents. 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. 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. Nebraskans making online purchases are already required by law to submit sales taxes to the state, but few are doing so. The State Chamber supports the concept of LB284, which carries the emergency clause to allow the bill to take effect immediately after the governor signs it or after the Legislature overrides the governor’s veto.
- **Section 404 Permits:** Senators voted 45-0 to pass **LB302**, a bill by Venango Senator Dan Hughes to merge the State Energy Office into the Department of Environmental Quality, renaming the combined agencies the Nebraska Department of Environment and Energy (DEQE). A key provision of LB302 would allow the new DEQE to issue Section 404 permits, which relate to the discharge of dredged or fill material into waters of the United States consistent with the federal Clean Water Act. These permits are currently administered jointly at the federal level by the U.S. Army Corps of Engineers and the Environmental Protection Agency. Before construction can begin on almost anything – including highways, housing developments or commercial properties – businesses and states must receive a 404 permit. Lengthy delays in the issuance of these permits are common under the current system. The State Chamber supports LB302, which carries the emergency clause, meaning the bill will take effect immediately after the governor signs it or after the Legislature overrides the governor’s veto.
- **Early Childhood Development:** Senators voted 36-7 to pass **LB160**, a bill by Grand Island Senator Dan Quick to amend the Local Option Municipal Economic Development Act (Nebraska’s LB840 program) by redefining it to include early childhood infrastructure development. The Nebraska Chamber supports LB160 as another way to help develop future skilled workforce.

Late last week, the governor signed **LB82** by Henderson Senator Curt Friesen to streamline certain Nebraska Department of Transportation processes – particularly those related to the Nebraska Board of Public Roads Classifications and Standards – while allowing more flexibility in road design. The Nebraska Chamber supports LB82.

Revenue Committee Examines Bill To Attract More Renewable Energy Development

On March 14, the Legislature’s Revenue Committee heard testimony on Omaha Senator Steve Lathrop’s **LB456**, which would provide a sales-and-use tax exemption for equipment used in the generation or storage of renewable energy. Specifically, LB456 would amend the current tax code’s definition of “manufacturing machinery and equipment.” Under current law, Nebraska’s sales and use tax is not imposed on the gross receipts from the sale, lease, or rental of manufacturing machinery or equipment. LB456 would add machinery or equipment used to produce or store renewable energy for sale. The source of renewable energy could include wind, solar, geothermal, hydroelectric, biomass, and transmutation of elements.

Similar renewable incentives already are offered under the Nebraska Advantage Act and its Tier 5, which requires an investment of at least \$20 million. However, because the 14-year-old economic development program is set to expire in 2020, Senator Lathrop said it made sense to make the incentive available directly to qualified projects. In his testimony to the committee, the senator said he would offer an amendment to clarify the bill’s intentions regarding wind projects. He also told the committee that the cost of the legislation should not vary significantly from the current renewable provisions of the Nebraska Advantage Act.

David Bracht with Kutak Rock, and former director of the Nebraska Energy Office, testified on behalf of the Nebraska Chamber in support of LB456. Bracht said the bill is needed to ensure that Nebraska remains competitive with surrounding states to attract renewable energy projects, which provide rural economic development, jobs and property tax relief. It was noted that Iowa and Kansas currently have a sales tax exemption for this type of equipment.

At the present time, wind farms generate 1,500 megawatts in Nebraska, which makes up about 15% of the state’s electricity generation – enough to power about 487,000 homes. There are more than a dozen operating solar facilities statewide, mostly in central Nebraska, with several more planned.

The committee did not take any immediate action on LB456.

At A Glance: Noteworthy Tax-Related Bills

The Nebraska Chamber is monitoring hundreds of bills introduced in the Legislature this year, including measures related to Nebraska’s state and local tax burden. Below are summaries of selected proposals offered in the 2019 legislative session that would affect Nebraska’s tax burden.

Bill	Summary	Status
<u>LB615</u>	Income & Property Tax Relief: Under LB615 by Lincoln Senator Mike Hilgers, once a strong cash reserve was established, dollar-for-dollar tax relief would be implemented for both income and property taxpayers. Both the state’s top corporate rate and individual income tax rate would fall gradually to 5.99%, while the Property Tax Credit Fund would receive \$75 million annually. <u>The Nebraska Chamber supports LB615 as a viable compromise to provide both income and property tax relief.</u>	In Revenue Committee

<u>LB664</u>	Section 199 for Manufacturers & Other Producers: LB664 by Henderson Senator Curt Friesen would restore Nebraska’s favorable tax treatment of income derived from manufacturing, mining, construction and certain other production businesses. <u>The Nebraska Chamber supports LB664.</u>	In Revenue Committee
<u>LB284</u>	Collection of Sales Taxes for Online Purchases: 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. Nebraskans making online purchases are already required by law to submit sales taxes to the state, although few are doing so. <u>The Nebraska Chamber supports the concept of LB284.</u>	Passed; Sent to Governor
<u>LB50</u>	Income Tax Hike: LB50 by Omaha Senator Tony Vargas would raise Nebraska’s top personal income tax rate from 6.84% to 7.84% for individuals and businesses (pass-through entities) earning more than \$100,000 a year. In addition, those earning in excess of \$1 million would pay a 1% surtax, while those with income in excess of \$2 million would pay a 2% surtax. By 2020, this would be a \$105 million annual tax increase, according to estimates. <u>The Chamber opposes LB50.</u>	In Revenue Committee
<u>LB182</u>	Local Income Tax: <u>LB182</u> by Lincoln Senator Kate Bolz would allow public school boards statewide to impose a local option income surtax, with a rate of as high as 20% for up to five years. <u>The Chamber opposes LB182.</u>	In Revenue Committee
<u>LB276</u> <u>LB314</u> <u>LB614</u>	New Tax On Pass-Through Income: LB276 by Omaha Senator John McCollister would raise Nebraska’s already high income tax burden for certain taxpayers, while hindering the state’s efforts to attract startups, high-growth businesses, entrepreneurs and new investment. By repealing the resident apportionment of multi-state, pass-through income from S-corps and LLCs, the bill would create an impediment to efforts to grow Nebraska’s economy, and serve as a recruiting tool for other states. <u>The Chamber opposes LB276, as well as LB314 by Albion Senator Tom Briese and LB276 by Omaha Senator John McCollister – both of which have S-corp/LLC provisions similar to those in LB276.</u>	In Revenue Committee
<u>LB314</u> <u>LB507</u> <u>LB508</u> <u>LB614</u> <u>LB661</u>	Massive Tax Shift Proposal: LB314 by Albion Senator Tom Briese would impose a \$783 million tax shift – raising sales tax and income tax burdens to provide nearly \$470 million of additional state funding for Nebraska’s 10-year-old state property tax credit, in addition to the \$224 million already being allocated annually to the program. The bill would also create \$273 million in new spending for more K-12 aid, rent subsidies, and the Earned Income Tax Credit. LB314 contains no local spending controls. Among the tax hikes would be an increase in the state sales tax rate from 5.5% to 6%, and roughly \$150 million in new income taxes. <u>The Chamber opposes LB314, as well as Senator Briese’s LB507 and LB508, Bellevue Senator Sue Crawford’s</u>	In Revenue Committee

	<u>LB614, and Henderson Senator Curt Friesen’s LB661 – all which would also impose significant tax shifts.</u> While the Chamber believes there must be property tax reform, doing so at the expense of other Nebraskans who are already paying high income taxes and sales taxes is not sustainable – especially since similar approaches have failed to accomplish long-term property tax relief in Nebraska’s recent history.	
<u>LB497</u>	Tax Shift & School Aid Overhaul: LB497 by Henderson Senator Curt Friesen would increase alcohol taxes; change the valuation of ag land and horticultural land for school district taxation purposes; terminate personal property tax exemptions and numerous sales tax exemptions; increase the cigarette tax; impose sales and use taxes on certain services; transfer certain revenue to the Cash Reserve Fund; change the levy limit for school districts; and change the K-12 state aid formula. <u>The Chamber opposes the tax shifting provisions in LB497.</u>	In Revenue Committee
<u>LB529</u>	Tax Increase on Hospitals: LB529 by North Platte Senator Mike Groene would change provisions relating to a property tax exemption for hospitals, restricting the exemption to the amount of services provided gratuitously. <u>The Chamber opposes LB529.</u>	In Revenue Committee
<u>LB530</u>	Tax Increase on Non-Ag Property Owners: LB530 by North Platte Senator Mike Groene would change the valuation of agricultural land and horticultural land for property tax purposes from the current 75% of market value to 65%, thereby increasing property taxes on business and residential owners. Since 1972, ag land has been treated differently in Nebraska than other real property for tax purposes. In 2017, more than two-thirds of property taxes in Nebraska were paid by residential or business property owners, who paid \$2.75 billion in real property taxes, while ag land owners paid \$1.24 billion in real property taxes. <u>The Chamber opposes LB530.</u>	In Revenue Committee

THE WEEK AHEAD: Upcoming Hearing Dates for Key Legislation

During the week of March 18-22, hearings will be held on noteworthy bills. (Note: The Legislature will not be in session Friday, March 22.) The Legislature will conclude its legislative hearings on bills by March 28 and begin full-day floor debate starting April 2. The following are upcoming hearings on key bills of interest:

Wednesday, March 20

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

LB605 – *Adopt the Renewable Chemical Production Tax Credit Act.*

Thursday, March 21

*Judiciary Committee
Warner Chamber - 1:30 p.m.*

LB491 - *Authorize punitive damages as prescribed. (Chamber opposes).*

LB685 – *Prohibit the denial or delay of a remedy by due course of law as prescribed. (This bill would encroach on arbitration rights.) (Chamber opposes.)*

Senator Priority Bills For 2019 Session (As Of March 14)

Senator	Bill	Description
Blood	LB138	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
Cavanaugh	LB311	Adopt the Paid Family and Medical Leave Insurance Act
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
Senator Hunt	LB169	Change provisions relating to eligibility for the Supplemental Nutrition Assistance Program
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