



LEGISLATIVE REPORT

Nebraska Chamber of Commerce & Industry

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February 15, 2019
(Sixth Week)

Legislative Session Nearly 30 Percent Complete

Nebraska lawmakers have completed their 26th legislative day of the Unicameral's current 90-day session. The Legislature is not in session either Friday, February 15, or Monday, February 18, in observance of Presidents Day.

Senators continue to conduct morning floor debate and afternoon public hearings to examine new legislation. Over the next four weeks, lawmakers and legislative committees will designate their priority bills, which are generally given preference for debate by the full Legislature. Priority bills must be named no later than March 19, while Speaker priority bills must be requested by March 14. Bill hearings will be finished by March 28 and full-day floor debate will begin April 2.

On the floor this week, senators advanced several noteworthy bills, including the following:

- **LB160** by Grand Island Senator Dan Quick to allow local LB840 revenue to be used for early childhood development infrastructure. By expanding Nebraska's Local Option Municipal Economic Development Act, which authorizes cities and villages to use local tax dollars for economic development projects through voter-approved grants and loans, early childhood development infrastructure would be added to low-income housing and workforce relocation incentives as an authorized use. The State Chamber supports LB160, which now awaits second-round consideration on Select File.
- **LB306** by Bellevue Senator Sue Crawford to create a new class of beneficiaries under Nebraska's unemployment insurance (U.I.) trust fund, which is funded solely by businesses. The bill would add family caregiving as a "good cause" for quitting employment. In fiscal 2018, Nebraska employers contributed nearly \$80 million in U.I. taxes or payments, according to the Nebraska Department of Labor. The State Chamber opposes LB306 since it would draw additional resources from the U.I. trust fund to make unemployment payments to individuals who voluntarily quit their job. The bill awaits consideration on Final Reading, the third stage of debate in the Legislature.
- **LB122** by Bellevue Senator Sue Crawford to allow veterans receiving vocational rehabilitation as permitted by federal law to be considered Nebraska residents for the purposes of in-state tuition and fees charged by public college or universities. The State Chamber supports LB122, which awaits consideration on Final Reading.

Wage-Related Bills Heard This Week

On February 11, the Legislature's Business and Labor Committee heard testimony regarding five bills that would address Nebraska's wage laws and could negatively affect Nebraska employers. The following are summaries of each bill that went before the committee this week.

- **Exchange of Employee Compensation Information – LB217** by Lincoln Senator Patty Pansing Brooks would change provisions of the Nebraska Wage and Payment and Collection Act. The bill would prohibit 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.” During her testimony, Senator Pansing-Brooks said the pay gap between men and women continues to exist and that LB217 would help alleviate the problem. However, opponents of the bill testified that existing law under the federal National Labor Relations Act already provides adequate protections. The Nebraska Chamber wrote the committee in opposition to LB217. In its letter, the State Chamber said the bill presents several issues of concern around privacy, decreased morale between new and senior employees, benefits based on longevity, and other potential litigation exposure. The Chamber also noted that some employers consider pay data to be proprietary information, which constitutes a trade secret.
- **Minimum Wage Increase by Indexing – LB383** by Grand Island Senator Dan Quick would require an annual adjustment to the state minimum wage, which is currently \$9 per hour. Under the bill, the state treasurer would need to annually adjust Nebraska's minimum wage to reflect the average percentage change in the Consumer Price Index for the most recent five-year period. Critics note that Nebraska is already one of just 19 states with a minimum wage of \$9.00 or more, and that only 1.3% of Nebraska workers received minimum wage or less in 2017. Four of Nebraska's six surrounding states have lower minimum wages. Moreover, LB383 comes just four years after Nebraska voters approved a minimum wage increase that is nearly 25% above the current federal minimum wage. The State Chamber opposes LB383 and any other proposed expansion that would exceed federal law.
- **Minimum Wage Increase for Tipped Employees – LB400** by Omaha Senator Megan Hunt would require an increase in the “tipped wage” for employees such as restaurant waiters to 50% of the state minimum wage. The proposal would increase the wage to \$3.60 per hour in 2020 and then to \$4.50 an hour in 2021. Current law already requires businesses to compensate any difference between tipped wages earned and the state's minimum wage of \$9 an hour. The Nebraska Chamber opposes LB400 and any other proposed expansion of the minimum wage that would exceed federal law.
- **Expansion of Wage & Hour Act Liabilities – LB361** by Lincoln Senator Matt Hansen would provide that an employer shall not retaliate or discriminate against an employee or applicant for employment because the employee or applicant files a complaint under the Wage and Hour Act; or testifies, assists, or participates in an investigation, proceeding or action concerning a violation of the act. Critics of the bill note that similar protections already exist under current equal opportunity laws, although LB361 would apply those protections to applicants, thereby increasing employer liability. The State Chamber wrote the committee in opposition to LB361 as drafted. The Chamber

wrote, “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.”

- **Due Process for Wage Disputes – LB362** by Lincoln Senator Matt Hansen would require payment of unpaid wages for violations of the Nebraska Wage Payment and Collection Act if a citation is issued. Critics say the bill would remove the litigation process and create a lack of due process for employers. The State Chamber wrote the committee in opposition to LB362 as drafted. The Chamber told the committee that “in cases of legitimate wage disputes – such as employee theft or commissions that are not earned – employers should retain the right of further due process and ability to present credible defenses of a wage dispute.” The Chamber suggested amending the bill to require employee notification that the Nebraska Department of Labor has issued such citation for wages owed to the employee. That employee would then have the right to sue civilly for collection, and if he/she prevails, be awarded attorney fees. “Such a provision would grant further due process to both sides of the wage dispute,” the Chamber noted.

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

Revenue Committee Examines Bill To Impose New Tax On Pass-Through Income

On Wednesday, February 13, the Legislature’s Revenue Committee received testimony on a bill that 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.

LB276 by Omaha Senator John McCollister would repeal the resident apportionment of multi-state, pass-through income from S-corporations and LLCs, thereby requiring Nebraska residents who own pass-through entities to pay state income tax on business income earned in other states. This would effectively create a new income tax on such shareholders and, according to several who testified, could lead to an exodus of wealth from the state.

Two other bills this session – **LB314** by Albion Senator Tom Briese and **LB614** by Bellevue Senator Sue Crawford – have provisions similar to LB276.

Under the state’s current tax code – due to a provision established by LB773 in 1987 – there is parity between Nebraska’s taxation of multi-state operations of C-corps, S-corps and LLCs. This parity was created 32 years ago 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. At least seven other states have similar provisions, while several other states offer no income tax at all.

LB276 would eliminate Nebraska’s exclusion for income or loss from out-of-state sources for S-corps and LLCs, and require Nebraska residents who are S-corp or LLC shareholders to include the proportionate share of the business’ income in their Nebraska taxable income.

Opponents told the Revenue Committee that if LB276 were enacted, C-corps would be taxed differently than pass-through entities, placing pass-throughs at a competitive disadvantage. One business owner said the bill would create an “incalculable impediment to growing Nebraska’s economy,” and that the measure would discriminate against family businesses because of their structure.

Another opponent said LB276 would serve as a “recruiting tool” for other states if passed. Others testified that while the goal of the bill was to raise revenue, it would have the opposite effect over the long-term as business owners would likely move, expand or relocate to a no-tax state or lower tax state that uses the current apportionment method.

Bryan Sloane, president of the Nebraska Chamber, testified in opposition to LB276. Sloane told the committee the bill would discourage business development, adding that if LB276 were enacted, surrounding states would have a larger advantage in attracting the type of high-growth businesses Nebraska needs to diversify its economy and grow its population.

The Revenue Committee took no immediate action on LB276.

Bill Would Allow Local Income Tax In Nebraska

On February 13, the Revenue Committee heard testimony on LB182, a bill by Lincoln Senator Kate Bolz to allow local public school officials to tax income in a bid to lower local property taxes.

If LB182 were enacted, local school boards could impose a local option income tax surtax rate of up to 20% for up to five years in duration. The surtax would be equal to an individual’s state income tax liability, minus non-refundable credits, multiplied by the rate chosen by the school board.

Under the bill, any proposed surtax would need to be placed on the local ballot and approved by voters of a school district. The tax revenue could be used to reduce property taxes or for building construction, remodeling and site acquisition.

Due to its longstanding policy against the imposition of a local income tax, the Nebraska Chamber wrote the Revenue Committee in opposition to LB182.

The Chamber noted that the organization opposes the creation of a local income tax by any political subdivision, and that LB182 would make Nebraska even less competitive nationally on tax policy.

Even without a local income tax, Nebraska already claims the nation’s 16th highest rate for personal income tax, imposing 6.84% on single filers and those filing separately with earnings over \$30,420.

Recently, the non-partisan Tax Foundation wrote, “Income taxes tend to be more harmful to economic growth than consumption taxes and property taxes,” since “income taxes affect labor participation, saving and investment.”

No immediate committee action was taken on LB911.

Massive Tax-Shift Bills Heard By Revenue Committee

On February 14, the Revenue Committee held hearings on two measures that would impose massive tax shifts by raising state taxes and then redistributing the revenue to property owners in a bid to offset locally imposed property taxes.

The first bill heard was **LB314** by Albion Senator Tom Briese, legislation that is similar to LB1084 offered last year by the senator. As introduced, LB314 would impose a \$783 million tax shift to provide nearly \$470 million in additional state spending on Nebraska's 10-year-old property tax credit program. (This would be in addition to the \$224 million already being allocated annually to the program, which has failed to slow the growth of property taxes.) At the same time, the bill would create \$273 million in new spending on additional K-12 education aid, renter subsidies, and the state's Earned Income Tax Credit. The bill contains no local spending controls.

In total, LB314 would raise various state taxes by an estimated \$782.6 million. Among the tax hikes would be an increase in the state sales tax rate from 5.5% to 6% – amounting to a \$137 million tax increase. The bill also would impose roughly \$150 million in new income taxes via the following:

- Ending Nebraska's S-corp/LLC exclusion on out-of-state earnings – an \$83 million tax increase;
- Creating a 7.84% surcharge on income over \$250,000 for individuals or \$500,000 for couples;
- Repealing the state's special capital gains and extraordinary dividends exclusion; and
- Re-instating the alternative minimum tax on higher income earners.

In addition, LB314 would end the tangible personal property tax exemption, while terminating the New Markets Job Growth Investment Act. Among other things, the bill would eliminate itemized deductions, increase alcohol taxes, and repeal property tax exemptions for fraternal benefits societies. New sales tax revenue from online retail sales would be earmarked only for property tax relief. The bill would end several sales tax exemptions, including for tangible personal property repair (motor vehicles); real property remodeling, painting and repair and interior design for residential housing; storage and moving services; clothing cleaning and repair; transportation services; lawn care, landscaping and gardening; and music, dance, golf and other recreational services.

Bryan Sloane, president of the Nebraska Chamber, testified in opposition to LB314. He said that while property taxes are hindering economic growth, so are Nebraska's other forms of taxation. Sloane noted that the last 50 years have demonstrated that providing more state aid to local taxing entities – without any cost controls – has failed to solve Nebraska's property tax dilemma. In the mid-1970s, Nebraska's state government was providing approximately \$50 million in K-12 aid. Today, the state spends more than \$1.2 billion in direct school aid – and nearly one-third of the state budget in total state aid to local governments.

The Nebraska Chamber has traditionally opposed tax shift bills that raise taxes on one group of Nebraskans to provide relief for another. Moreover, the State Chamber has longstanding policy against any increase in state income tax; any further expansion of the state's sales and use taxes to include more services; any imposition of property taxes on intangibles; and any further earmarking of state tax revenue.

The other comprehensive tax shift bill heard by the Revenue Committee this week was **LB497** by Henderson Senator Curt Friesen. Among other things, the bill would drop agriculture land valuations for purposes of taxes from 75% to 40% over three years, while eliminating several sales tax exemptions, increasing the state's cigarette and alcohol taxes, and repealing the personal property tax exemption. Like LB314, LB497 would earmark new revenue from state sales taxes from online purchases for property tax relief.

LB497 seeks to reform the state's K-12 funding formula, while redistributing additional amounts of state money to property owners to further subsidize their payment of local property taxes. Supporters of the bill say that currently, only 69 of Nebraska's 244 K-12 school districts receive state funding for what is described in the school aid formula as state equalization aid, and they are primarily in urban areas – a situation that leaves rural districts more dependent on local property tax revenue.

LB497 violates several longstanding Nebraska Chamber policies, including the State Chamber's policy against the establishment of 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. Currently, ag land is assessed at 75% of actual value rather than the 100% imposed on homeowners and commercial 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 ag land owners paid \$1.24 billion in real property taxes.

Property Tax Bills See Floor Debate

This week, two tax-related measures were debated on the floor of the Nebraska Legislature.

Elkhorn Senator Lou Ann Linehan's **LB103** would make it harder for local governments to collect a property tax windfall when home and land values rise. On Monday, February 11, the bill won first-round approval on a 35-1 vote. LB103 would automatically lower property tax levies to adjust for any increase in valuations so that local governments collect the same total amount of money as the previous year. Senator Linehan has said the bill is designed to "prevent counties, school districts and other governments from misleading the public when they boast about not raising levies." The bill now awaits action on Select File, the second of three stages of consideration in the Nebraska Legislature.

Another bill debated this week by the full Legislature was **LB183**, introduced by Albion Senator Tom Briese to change the assessed value of agricultural and horticultural land used to retire school bond indebtedness to 1% of its actual value. Currently, the assessed value of ag land used to retire bonded indebtedness is 75% of its actual value. When the bill was advanced from the Revenue Committee, an amendment was proposed to raise the bill's suggested 1% figure to 30%. The amendment would clarify that the reduced value applies to bonds passed after the effective date of the bill. The Nebraska Chamber, which has longstanding policy opposed to any further separate classifications of property for tax purposes, opposes LB183.

After lengthy debate on LB183, Senator Briese asked the speaker to place a hold on the bill, which remains on General File. Supporters of LB183 have said they hope the bill's language can be included in a comprehensive tax plan this session.

Hearing Examines Measure To Limit School Funding From Property Taxes

On Tuesday, February 12, the Legislature's Education Committee received testimony on a measure that would drastically change Nebraska's school funding formula. Introduced by Gordon Senator Tom Brewer, **LR5CA** proposes to amend the Nebraska Constitution by adding a restriction that no more than 33% of a school district's total funding could be derived from property taxes.

Currently, nearly 60% of local property taxes collected, on average, go to K-12 school districts. In 2018, Nebraska's K-12 schools collected \$2.5 billion in real and personal property taxes. At the same time, state government provided another \$1.2 billion for TEEOSA aid and special education, both of which are funded with revenue almost entirely from state income and sales taxes.

The State Chamber wrote the Education Committee in opposition to LR5CA. By placing a restriction on property tax revenue as a source of school funding, state taxpayers would be forced to pay more for local spending decisions. The measure would do nothing to control local spending growth.

As of 2016, Nebraska was 17th highest in spending per K-12 pupil, according to the Census Bureau. In school year 2017-18, Nebraska's average per-pupil cost was \$12,613, although several school districts spent between \$20,000 and \$30,000 per pupil, with some districts exceeding those amounts.

The committee took no immediate action on the measure.

THE WEEK AHEAD: Upcoming Hearings for Key Legislation

During the week of February 18-22, hearings will be held on several noteworthy bills. Please note that the Legislature will not be in session Monday, February 18, in observance of Presidents Day.

The following are upcoming hearings on key bills of interest:

Wednesday, February 20, 2019

Revenue
1524 - 1:30 PM

LB615 – Reduce income tax rates and provide for certain transfers from the Cash Reserve Fund. (Chamber supports.)

LB661 – Change income tax provisions and the distribution of certain income tax revenue. (Chamber opposes.)

LB664 – Provide for certain income tax deductions. (Chamber supports.)

AM268 – Amendment to **LB288**, a bill to change both the individual and the corporate income tax rates.

Thursday, February 21, 2019

Judiciary
Warner Chamber - 1:30 PM

LB421 – Adopt the Asbestos Trust Claims Transparency Act.

LB621 – Change provisions relating to solar energy and wind energy, declare certain instruments void and unenforceable, and provide for a civil cause of action.

Revenue
Room 1524 - 1:30 PM

LB420 – Adopt the Property Tax Circuit Breaker Act. (Chamber opposes.)

LB530 – Change the valuation of agricultural land and horticultural land for property tax purposes. (Chamber opposes.)

LB663 – Change provisions relating to Nebraska adjusted basis. (Chamber supports.)