

Session Review

**102nd Legislature
First Regular Session**

July 2011



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INTRODUCTION

The following review provides a summary of significant legislative issues addressed during the 102nd Legislature of Nebraska, First Regular Session. The review briefly describes many, but by no means all, of the issues discussed by the Legislature during the 2011 session. Information gathered from committee counsels and other legislative staff, legislative records, and the *Unicameral Update* is used to produce the review.

Bill summaries and summaries of legislative resolutions proposing constitutional amendments are found under the heading of the legislative committee to which each bill or resolution was referred. Because the subject matter of some legislation relates to more than one committee, cross-referencing notes are included as needed. Bill- and resolution-number indexes are included for ease of reference.

The Legislative Research Office staff acknowledges and thanks the legislative staff who assisted in preparation of this review.

A word about effective and operative dates—

Article III, section 27, of the Nebraska Constitution provides in part that, unless an emergency is declared, any bill passed by the Legislature takes effect three calendar months after the Legislature adjourns sine die. This year, the effective date for all enacted legislation that does not have (1) a specific operative date or (2) the emergency clause is August 27, 2011.

Enacted legislation with a specific operative date takes effect on that date.

If enacted legislation has no specific operative date but passes with the emergency clause, the legislation takes effect the day after the Governor signs it. For example, if a bill passes with the emergency clause and the Governor signs it on May 27, the bill becomes effective May 28.

AGRICULTURE COMMITTEE

Senator Tom Carlson, Chairperson

ENACTED LEGISLATIVE BILLS

LB 305—Change Permitted Uses of the Commercial Feed Administration Cash Fund and Require the Director of Agriculture to Report Regarding Implementation of a State Meat and Poultry Inspection Program (Larson, Avery, Bloomfield, Brasch, Carlson, Christensen, Dubas, Hansen, Loudon, Schilz, Schumacher, and Wallman)

As originally introduced, LB 305 directed the Nebraska Department of Agriculture (department) to implement a state meat and poultry inspection program for meat and meat products processed for human consumption. However, the bill was amended and scaled back to direct the department to report to the Legislature by November 15, 2011 on the feasibility of implementing such a state inspection program.

The report must: (1) identify necessary changes to current law to establish an inspection program; (2) detail resources required for a program; and (3) outline a fee schedule, including a fee-for-service plan for inspections that provides sufficient revenue from licenses and inspections to fund the program.

LB 305A appropriates \$65,000 for fiscal year 2011-2012 and \$30,000 for fiscal year 2012-2013 from the Commercial Feed Administration Cash Fund to the department to aid in carrying out the provisions of LB 305.

Proponents believe an inspection program will benefit Nebraska economically, as similar programs have in other states. They cited benefits, such as creating opportunities for small meat-processing plants and opening markets for Nebraska agriculture, especially for niche products like buffalo, grass-fed cattle, elk, and ostrich. Opponents cautioned that the measure could lead to legalizing horse slaughter in the state.

LB 305 passed 43-1 and was approved by the Governor on May 11, 2011.

LEGISLATIVE BILLS NOT ENACTED

LB 200—Adopt the Nebraska Healthy Food Financing Initiative Act (Council, Ashford, Avery, Carlson, Conrad, Cook, Dubas, Haar, Harr, Lathrop, McGill, Mello, Nordquist, Schilz, and Wallman)

LB 200 would have adopted the Nebraska Healthy Food Financing Initiative Act, a measure intended to fight so-called “food deserts” by expanding access to healthy, nutritious foods in poorer areas of the state.

A food desert is a rural or urban area where residents cannot buy affordable, healthy food, mostly because grocery stores do not sell fresh fruits or vegetables. The problem is compounded because groceries and other food retailers in food deserts tend to sell more unhealthy processed food, high in calories, sugar, salt, fat, and artificial ingredients. And, rural Nebraskans must often drive long distances to find a fully stocked grocery store with fresh produce.

Studies suggest a link between the lack of access to healthy foods and bad health outcomes, such as obesity and other diet-related diseases that can increase health care costs.

To counter food deserts, a movement has grown to make nutritious food available to low-income populations. LB 200 reflects this movement.

The act would have established a system of competitive, one-time grants to fund projects, such as: (1) new grocery stores or expansion or renovation of existing ones; (2) farmers markets; (3) community gardens; (4) mobile markets; and (5) other ventures that provide affordable healthy produce to underserved communities.

Under the act, grant applications would have been evaluated on: (1) an applicant’s ability to implement the project and to repay debt; (2) a project’s chance of success; (3) the prospect that the project would have provided markets for Nebraska-grown produce and other products; and (4) a proposal’s economic impact on a food desert. The key requirement to earn a grant would have been that a project benefits an underserved community.

The Rural Development Commission (commission) of the Nebraska Department of Agriculture would have administered the grants. The commission would have contracted with a community development group for activities, such as raising matching funds, acquiring private capital, marketing, and awarding the grants.

The act would have created the Nebraska Healthy Food Financing Initiative Cash Fund and appropriated \$150,000 annually to carry out the purposes of the act.

LB 200 failed on Final Reading 22-18, but the vote was reconsidered and the bill passed 30-16. Governor Heineman vetoed the measure, and a motion to override the veto failed 20-19.

LB 459—Limit the Adoption of any Law by a Political Subdivision Regarding the Ownership of an Animal (*Schilz, Bloomfield, Brasch, Larson, and Wallman*)

LB 459 was a measure intended to check the advance of the animal rights movement, which embraces the view that animals should be more than property. Animal rights advocates argue that humans do not own animals, but are their guardians.

However, farmers and ranchers are concerned the growth of such ideas is an attack on their livelihoods and way of life. Farmers fear the ultimate goal of the animal rights movement is to outlaw animal production for food.

LB 459 would have obstructed the animal rights agenda by prescribing that a political subdivision, such as a city or county, cannot adopt a law or issue a guideline or proclamation that describes the relationship between a person and an animal as anything other than that a person may own an animal.

LB 459 advanced to General File, with committee amendments pending.

LB 698—Change Labeling Requirements for Alcohol-Blended Fuel (*Christensen*)

LB 698 would have changed the labeling requirement for ethanol-blended and methanol-blended fuel (ethanol fuel) for sellers and distributors of gasoline. Today, 80 percent or more of motor fuels sold in Nebraska are ethanol blends, typically gasoline containing 10 percent ethanol.

As introduced, LB 698 would have eliminated the ethanol-fuel labeling requirement. As amended by the committee, the bill would have prescribed that ethanol fuel need not be labeled if it contained less than 11 percent ethanol. (Under current law, labeling is required if the ethanol content is above one percent.)

Proponents hoped the measure would increase ethanol fuel sales in Nebraska, as similar legislation has increased sales in other states in the region. Proponents noted that increased support for the ethanol industry increases demand for Nebraska corn, supporting state coffers in a time of declining revenue. Nebraska consistently ranks in the top two states in ethanol production.

Opponents contended the change would have withheld information from consumers and pointed to opposition from constituents and the public.

LB 698 advanced to Select File, where it faces a motion to indefinitely postpone it.

Appropriations Committee

Senator Lavon Heidemann, Chairperson

ENACTED LEGISLATIVE BILLS

Biennial Budget Package—LB 373, LB 374, LB 375, LB 376, LB 377, LB 378, LB 379, LB 380, and LB 585

An ominous budget picture greeted Nebraska legislators as they returned to the State Capitol in January. Based on spending projections and revenue forecasts, lawmakers faced a budget shortfall totaling \$986 million. But, fortunately, this bleak picture also has a silver lining.

Legislators were alerted to this session's budget challenges in 2009, and in 2010, with the passage of LR 542, they took affirmative steps to meet those challenges head on. Introduced by Senator Heidemann on behalf of the Appropriations Committee, the resolution asked the Governor and the Legislature's other standing committees for help in fashioning budget cuts. The cuts were necessary to deal with the projected deficit caused by the recession and the need to replace one-time federal funds received by the state pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA) and used to plug budget holes in fiscal year 2010-2011.

Specifically, the resolution authorized the Speaker of the Legislature to establish an ad hoc committee, composed of chairpersons of the Executive Board and standing committees, to review programs and services under their jurisdiction for possible reduction during the 2011 session, focusing on those functions that would require legislation to eliminate the expenditures incurred. The resolution also directed the ad hoc committee to work with the Governor and state agencies when making program cuts and budget recommendations for fiscal years 2011-2012 and 2012-2013.

What was the result of this cooperative, in-depth look at state agencies and programs? A balanced budget with no tax increases and a modest overall General Fund budget increase of 1.9 percent in fiscal year 2011-2012 and 3.5 percent in fiscal year 2012-2013. Plus, the budget has an ending balance of \$215.4 million, which is \$3.2 million greater than the required 3 percent minimum reserve projected for June 30, 2013.

According to the *General Fund Biennial Budget 2011 Post Session Summary* (May 31, 2011), published by the Legislative Fiscal Office, the ability to produce a balanced budget was achieved with a combination of higher revenue forecasts of nearly \$278 million, cash

fund transfers totaling \$68 million, transfers of \$22 million from the Cash Reserve Fund, lower-than-expected increases in the budget, and outright cuts in operations and state aid programs of nearly \$153 million.

Cuts in agency operations are specific items; there is no generally applied “across-the-board” cut. The strategic cuts resulted in a reduction of General Fund dollars for operations of approximately 2.7 percent, excluding constitutional officers’ salaries, and are in addition to the “across-the-board” cuts of 7 percent adopted in the fiscal year 2010-2011 budget.

The biennial budget package was not all about cuts. Proposed budget increases include:

- An increase in Medicaid appropriations from 2010-2011 funding levels of \$110.5 million in fiscal year 2011-2012 and \$140.8 million in fiscal year 2012-2013. Of these amounts, almost 90 percent of increased state funds are attributed to lower federal match rates, including expiration of one-time ARRA funds. It is also important to note that the rate of growth is tempered by a 2.5 percent cut in non-primary care provider rates.
- An increase in state funds appropriated pursuant to the Tax Equity and Educational Opportunities Support Act (TEEOSA). The amount appropriated for state aid to schools totals \$7.9 million in fiscal year 2011-2012 and \$67.9 million in fiscal year 2012-2013 above the amount appropriated for fiscal year 2010-2011. The total appropriation is still less than the combined state and federal funds used to fund TEEOSA in fiscal year 2010-2011, thanks in part to the formula changes prescribed in LB 235, which is summarized beginning on page 22.
- A one-time appropriation of \$25 million from the Nebraska Capital Construction Fund to the University of Nebraska to finance renovation projects, which are part of the Nebraska Innovation Campus.
- An appropriation of \$18.5 million to fund a 1.5 percent salary increase in fiscal year 2011-2012 for those employees who did not receive a salary increase in fiscal year 2010-2011, and a two percent salary increase for state employees in fiscal year 2012-2013. State salaries are not increased in fiscal year 2011-2012.

The following nine bills comprise the biennial budget package:

- **LB 373**, which provides deficit appropriations, and includes \$27 million in savings through a reduction in the fiscal year 2010-2011 appropriations;

- **LB 374**, which is the mainline appropriations bill and includes the bulk of the budget package. As enacted, LB 374 contains provisions of **LB 213** and **LB 282**;
- **LB 375**, which appropriates funds for state senators' salaries;
- **LB 376**, which appropriates funds for constitutional officers' salaries and includes funding for an additional district court judge in Lancaster County;
- **LB 377**, which appropriates funds for capital construction. In addition to the appropriation for the university's Innovation Campus, the bill also includes funds totaling \$28.6 million for projects, such as security upgrades for the Department of Correctional Services and radio tower and network equipment costs for the Nebraska Public Safety Communication System;
- **LB 378**, which provides a number of fund transfers, including \$220 million from the General Fund to the Property Tax Credit Cash Fund, \$25 million from the General Fund to the Nebraska Capital Construction Fund, \$6.3 million from the General Fund to the Ethanol Production Incentive Cash Fund, and \$5.4 million from the General Fund to the Water Resources Cash Fund. Plus, the bill includes provisions originally prescribed in **LB 120**, **LB 414**, **LB 450**, and **LB 485**;
- **LB 379**, which provides for transfers totaling \$105 million from the Cash Reserve Fund to the General Fund. Originally, LB 379 called for transfers totaling nearly \$260 million. The amount was reduced to \$105 million by virtue of an amendment adopted on General File, leaving the state's Cash Reserve Fund with a healthy balance. The provisions of **LB 131** are also included in LB 379;
- **LB 380**, which permanently eliminates the depreciation surcharge previously assessed to state agencies based on a percentage of their capital construction costs; and
- **LB 585**, which approves certain claims against the state. LB 585 was introduced and heard by the Business and Labor Committee.

All of the bills passed with the emergency clause on May 11, 2011, and were approved by the Governor on May 17, 2011. For the third consecutive year, the Governor approved the budget package with no line-item vetoes.

LB 464—Change Provisions Relating to Child Care Reimbursement (*Campbell, at the request of the Governor*)

In order to determine the rate of reimbursement for child care, the Department of Health and Human Services conducts a market rate survey of the state's child care providers. Based on the results of the survey, the department adjusts the reimbursement rate for child care every odd-number year.

With the adoption of LB 484, for the next two fiscal years, the minimum child care reimbursement rate paid by the department cannot be less than the 50th percentile of the current market rate survey or the rate for the immediately preceding fiscal year. After the biennium ending June 30, 2013, the minimum reimbursement rate cannot be less than the 60th percentile of the current market rate survey.

The change is expected to save approximately \$3.6 million over the biennium.

LB 464 passed with the emergency clause 42-2 and was approved by the Governor on May 4, 2011.

BANKING, COMMERCE AND INSURANCE COMMITTEE

Senator Rich Pahls, Chairperson

ENACTED LEGISLATIVE BILLS

LB 22—Adopt the Mandate Opt-Out and Insurance Coverage Clarification Act (*McCoy and Bloomfield*)

LB 22 effectively provides that the only insurance coverage available to a woman in Nebraska who is seeking an elective abortion is to pay for that coverage as a separate rider on a private policy.

The bill does this in two ways. First, it prohibits any qualified health insurance plan offered through a health insurance exchange created pursuant to the federal Patient Protection and Affordable Care Act from offering coverage for elective abortions.

State health exchanges, required under federal health reform to be operative by 2014, essentially function as marketplaces for buyers of insurance, such as small businesses, individuals, and the self-employed. Theoretically, health insurance exchanges allow individual consumers to get better rates than they would buy individually in the broader insurance market.

LB 22 finds that Nebraskans do not support using public funds to subsidize abortions; that federal tax dollars are used to support the qualified health plans offered through the exchanges; and that section 1303 of the federal act explicitly permits states to pass laws prohibiting elective abortion coverage by plans offered through the exchanges.

Secondly, LB 22 prohibits any health insurance plan, contract, or policy delivered or issued for delivery in Nebraska from providing coverage for elective abortion, except through an optional rider to the policy for which an additional premium is paid solely by the insured. This applies to any plan, contract, or policy delivered by any health insurer; any nonprofit hospital, medical, surgical, dental, or health service corporation; any group health insurer; any health maintenance organization subject to the laws of insurance in Nebraska; and any employer providing self-funded health insurance. The bill also prohibits health insurers from providing incentives or discounts for buying abortion coverage.

The prohibition against abortion coverage in plans offered through the health insurance exchange or private coverage make an exception for abortions performed to save the life of the woman.

LB 22 passed 37-7 and was approved by the Governor on May 18, 2011.

LB 70—Change the Surplus Lines Insurance Act (*Pahls*)

LB 70 makes changes to the state’s Surplus Lines Insurance Act in response to federal “Wall Street reform” legislation and permits the state to join the Nonadmitted Insurance Multi-State Agreement (NIMA) developed by the National Association of Insurance Carriers in response to the federal act.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 included a Nonadmitted and Reinsurance Reform Act which largely preempted Nebraska’s basis for imposing a tax on surplus lines insurance.

Surplus lines insurance is generally insurance purchased by commercial entities with a need for specialized insurance coverage, often with risk exceeding what standard carriers will cover. Surplus line insurers – also called nonadmitted insurers – unless domiciled in Nebraska are not licensed by the state, but they are regulated.

Previously, Nebraska imposed a 3 percent tax on surplus lines policies written on the basis of risks located in Nebraska. However, Dodd-Frank provides that states can only collect the tax on insured entities in their home state, no matter where the insured risks are located.

LB 70 allows the state Director of Insurance to enter NIMA, which allows signatory states to collect surplus lines taxes based on the location of the risk, rather than on the basis of the home state of the insured, and provides for allocation of revenues between member states. This allows Nebraska to continue collecting surplus lines taxes on the existing basis to the fullest extent possible. Since NIMA requires participating states to adopt a single tax rate, LB 70 discontinues a small additional tax the state levied on surplus lines policies covering fire risks.

LB 70 passed with the emergency clause 46-0 and was approved by the Governor on April 26, 2011.

LB 73—Change the Comprehensive Health Insurance Pool Act (*Pahls*)

LB 73 broadens the pool of entities allowed to administer the state’s Comprehensive Health Insurance Pool (CHIP). CHIP is Nebraska’s arrangement to provide health insurance for Nebraskans who cannot get health insurance in the private market, often because they have pre-existing conditions. This population tends to be more ill

and poorer than the general population and very expensive to insure.

The CHIP board of directors selects an administrator for the plan via a competitive bidding process. Prior law required the administrator to be an insurer. LB 73 allows third-party administrators. The language change in statute is from “administering insurer,” to a “pool administrator.” The bill also adds an applicant’s ability to “negotiate reduced health care provider reimbursement rates for benefits payable under pool coverage for covered services” to the list of criteria the CHIP board must consider in evaluating bids.

The CHIP administrator processes claims, collects premiums, submits reports to the board, and performs other duties associated with CHIP’s operation.

As originally introduced, LB 73 would have required the board to establish provider reimbursement rates at rates equivalent to 125 percent of the Medicare reimbursement rate. However, this proposed cost-saving measure was seen as risking the loss of providers who agree to accept CHIP patients and was deleted via the standing committee amendment.

LB 73 passed with the emergency clause 44-0 and was approved by the Governor on May 17, 2011.

LB 90—Change Provisions Relating to Secured Transactions under Article 9 of the Uniform Commercial Code (*Harr*)

LB 90 enacts 2010 revisions to the Uniform Commercial Code (UCC), Article 9, adopted and recommended by the Joint Review Committee of the Uniform Law Commissioners and the American Law Institute. Article 9 pertains to transactions in which personal property is used as security for a loan or extension of credit.

Article 9 was last substantially revised in 1998; Nebraska adopted these changes and they became operative in 1999. The Committee Statement indicates that the changes adopted via LB 90 respond to filing issues and address other matters that arose in practice after a decade of experience.

The most important changes provide guidance as to the name of a debtor to be provided on a financing statement. According to the Uniform Law Commission, at least a dozen court decisions have arisen since the changes made in 1998 dealing with the question of what name needs to be provided on a financing statement for an individual debtor. In its recommendations, the commissioners gave states two options.

LB 90 adopts the “only-if” rule for Nebraska. This rule requires a lender to provide on the financing statement the name on the debtor’s current driver’s license. If the debtor does not have a driver’s license, the lender must use either the “individual name” of the debtor (that is, whatever the debtor’s name is under current law) or the debtor’s surname and first personal name. The rule is called the only-if rule because the financing statement sufficiently provides the name of the debtor *only if* it provides the name of the individual as shown on the license.

The bill also makes significant changes to the manner in which the debtor’s name is determined for purposes of perfecting a security interest when the debtors are registered organizations; decedents and their estates; or hold collateral in trust.

LB 90 makes several changes pertaining to definitions. Among them, the term “authenticate” is clarified to include the use of electronic signatures and “certificate of title” is broadened to accommodate electronic lien notation systems and to clarify that a security interest in a titled vehicle is perfected upon delivery of the application and fee. LB 90 creates a new definition for “public organic record” to clarify which records should be used to verify the name of a debtor that is a registered organization.

LB 90 also makes numerous technical changes and provides for transition rules governing transactions in the five-year period following the bill’s operative date. In an effort to have a uniform date in all enacting jurisdictions, the bill’s operative date is July 1, 2013.

LB 90 passed 44-0 and was approved by the Governor on April 14, 2011.

LB 387—Adopt the Business Innovation Act and Eliminate Economic Development Programs (*Hadley, Conrad, and Mello, at the request of the Governor*)

Nebraska has not done a good job encouraging business innovation and entrepreneurial activity in its economic development programs, independent and legislative studies have found. LB 387 seeks to reverse that.

The bill enacts the Business Innovation Act and repeals the Agriculture and Value-Added Partnerships Act, the Microenterprise Development Act, and the Building Entrepreneurial Communities Act.

LB 387 states the purpose of the Business Innovation Act is to encourage and support the transfer of Nebraska-based technology

and innovation in rural and urban areas of the state in order to create high-growth, high-technological companies, small businesses, and microenterprises, and to enhance wealth creation and quality jobs.

The Department of Economic Development (DED) is given explicit duties under the terms of LB 387. They are to:

- Provide technical assistance planning grants to facilitate phase one applications for firms seeking Small Business Innovation Research (SBIR) grants;
- Provide financial assistance to companies receiving phase one and phase two SBIR grants;
- Provide financial assistance to companies or individuals creating prototypes;
- Establish a financial assistance program for innovation in value-added agriculture;
- Establish a financial assistance program to identify commercial products and processes;
- Provide financial assistance to companies using Nebraska public or private college and university researchers and facilities for applied research projects; and
- Provide support and funding for microlending and microenterprise entities, which are for-profit businesses with no more than 10 full-time employees.

In selecting projects to fund, DED must develop a qualified action plan by January 1 of each even-numbered year to be approved by the Governor. The plan must contain selection criteria to be used to determine priorities appropriate to local conditions and the state's economy, including the state's immediate need for innovation development, proposed increases in jobs and investment, private dollars leveraged, industry support and participation, and repayment plans.

The funds committed by DED for the purposes of the Business Innovation Act are capped and must be matched by nonstate sources. DED can contract with a Nebraska-based nonprofit entity to fulfill any or all of the provisions of the act.

At least 40 percent of the funding available under the act must be used for projects that best alleviate chronic economic distress. The bill defines a distressed area to mean a municipality, a county with a population of fewer than 100,000 inhabitants, an unincorporated area within a county, or a census tract that (1) has an unemployment rate which exceeds the statewide average unemployment rate; (2) has a per capita income below the statewide average per capita income; or (3) had a population decrease between the two most recent federal decennial censuses.

LB 387A appropriates \$7,110,000 from the General Fund to the Innovate Nebraska Cash Fund for each of the fiscal years 2011-2012 and 2012-2013. The appropriation bill redirects funding previously going to the economic development programs repealed by LB 387. The bill actually calls for about \$5.5 million of new state spending.

Finally, the bill contains a termination date of October 1, 2016.

LB 387 passed 49-0 and was approved by the Governor on May 24, 2011.

LB 388—Adopt the Site and Building Development Act and Change Provisions Relating to the Affordable Housing Trust Fund (*Wightman, at the request of the Governor*)

LB 388 addresses an identified need in Nebraska for industrial-ready building sites by providing financial aid to public and nonprofit developers for land and infrastructure costs.

According to testimony by the Director of Economic Development at the bill's public hearing, Nebraska has lost business to Kansas and other states because it lacked building-ready sites for businesses to locate and expand. The need was identified in a report by a private consultant, the Battelle Technology Partnership Practice, which conducted competitive advantage assessments at the behest of the Department of Economic Development (DED) and the Department of Labor.

LB 388 creates the Site and Building Development Fund to provide loans, grants, subsidies, credit enhancements, and other financial assistance to public and nonprofit developers. The financial aid is intended to pay for land and infrastructure costs associated with development. The types of activities the money can be used for include:

- Grants or zero-interest loans to villages, cities, or counties to acquire land, improve infrastructure, or otherwise make large sites and buildings ready for industrial development;
- Matching funds for new construction, rehabilitation, or acquisition of land and buildings to assist villages, cities, and counties;
- Technical assistance, design and finance services, and consultation for villages, cities, and counties for the creation of industrial-ready sites and buildings;
- Loan guarantees for eligible projects;
- Projects making industrial-ready sites and buildings more accessible to business and industry; and

- Infrastructure projects necessary for the development of industrial-ready sites and buildings.

Funding recipients must provide matching funds of at least 100 percent of the amount of assistance received through the fund. The bill does not permit individuals or businesses to receive direct loans.

At least 40 percent of the funds available for disbursement in any given year must be for projects in nonmetropolitan areas. The bill defines nonmetropolitan areas as counties with fewer than 100,000 inhabitants according to the most recent federal decennial census. LB 388 requires DED to develop a qualified action plan by January 1 of each even-numbered year, detailing projects to be funded, and submit the plan for gubernatorial approval.

To pay for the program, LB 388 authorizes a transfer of \$1 million from the Affordable Housing Trust Fund in January 2012, and a second million-dollar transfer from the housing trust in January 2013. The Affordable Housing Trust Fund is funded by a portion of the documentary stamp tax on real estate transactions and is primarily used for activities to provide housing for low-income Nebraskans. Additionally, the bill directs that 25 cents of every \$1.75 remitted to the housing trust fund from the documentary stamp tax be deposited into the Site and Building Development Fund.

Finally, as amended on Select File, LB 388 creates the Industrial Recovery Fund to help political subdivisions hurt by a “sudden and significant” private-sector business closure or down-sizing. The Industrial Recovery Fund will use funds awarded to projects via the housing trust fund, but which went unused for the authorized project and were returned to the state. About \$275,000 is returned every year, according to the bill’s Fiscal Note. The bill caps the Industrial Recovery Fund at \$1 million.

The bill directs DED to use the Industrial Recovery Fund to upgrade or replace vacant manufacturing facilities so they are ready to be reoccupied.

LB 388 passed 46-0 and was approved by the Governor on April 26, 2011.

BUSINESS AND LABOR COMMITTEE

Senator Steve Lathrop, Chairperson

ENACTED LEGISLATIVE BILLS

LB 151—Provide, Change, and Eliminate Powers and Duties of the Nebraska Workers' Compensation Court (*Lathrop*)

LB 151 changes several provisions relating to the powers and duties of the Nebraska Workers' Compensation Court. In addition to its original provisions, as enacted LB 151 includes provisions of **LB 238**.

Specifically, LB 151:

- Removes a requirement that the court maintain offices in the State Capitol;
- Authorizes the court to hold nonevidentiary hearings, and any evidentiary hearings approved by the court and by stipulation of the parties, by telephone or videoconference at any location within the state as ordered by the court;
- Eliminates three-judge panel reviews by the court and provides that final awards, findings, or judgments can be appealed to the Nebraska Court of Appeals or Supreme Court;
- Allows the court 14 days (rather than 10) to modify or change a finding, order, award, or judgment; and
- Changes the time allowed for filing an appeal of a final order from 14 days to 30 days.

LB 151 passed with the emergency clause 45-0 and was approved by the Governor on May 24, 2011.

LB 152—Provide a Trauma Services Fee Schedule for Workers' Compensation Claim Reimbursement (*Lathrop, Nordquist, Lautenbaugh, Smith, Wallman, and Larson*)

LB 152 establishes a trauma services inpatient hospital fee schedule for purposes of workers' compensation claim reimbursement. The fee schedule applies only to reimbursement for trauma services provided by hospitals located in or within 15 miles of a city of the metropolitan or primary class (Omaha and Lincoln, respectively) and by hospitals with more than 50 licensed beds.

The bill defines “trauma” to mean a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

Under the bill, a hospital providing trauma care will be reimbursed at 160 percent of its Medicare rate.

For those difficult cases that require unusual or “extra” care or treatment and result in additional expense, LB 152 provides additional compensation. For these cases, the bill prescribes a stop-loss threshold in an amount equal to 1.25 times the basic reimbursement amount. When the billed charges are greater than the stop-loss threshold, hospitals will be reimbursed the basic reimbursement plus 65 percent of the amount above the threshold.

LB 152 passed 46-0 and was approved by the Governor on May 26, 2011.

LB 386—Provide Grants for Internships (*Heidemann, at the request of the Governor, Mello, and Cook*)

By enacting LB 386, it is the intent of the Legislature to connect Nebraska students pursuing postsecondary degrees with certain targeted industries in an effort to keep Nebraska’s students in Nebraska and to attract workers to Nebraska by helping companies willing to offer paid internships.

Specifically, LB 386 authorizes the Department of Economic Development to award job training grants to eligible companies to assist those companies in the hiring of paid interns.

To be eligible, a company must certify to the department that:

- (1) The internship did not exist before June 1, 2011;
- (2) The internship pays at least federal minimum wage;
- (3) The intern will work a minimum of 200 hours in a 12-week period but not more than 1,000 hours in a 50-week period; and
- (4) The intern applies for the internship before graduation, even though the internship can be completed after graduation.

Each job training grant will be in an amount equal to the lesser of: 40 percent of the cost of the internship or \$3,500. However, if the internship is located in a distressed area, the award amount increases to 60 percent of the internship’s cost or \$5,000, whichever is less. LB 386 defines “distressed area” to mean a municipality, county with fewer than 100,000 inhabitants, unincorporated area within a county, or census tract that has an unemployment rate that exceeds the statewide average, has a per capita income below the

statewide average, or had a population decrease between the two most recent federal decennial censuses.

LB 386 authorizes a qualifying company to be eligible for a maximum of 10 internships in a 12-month period; five at any one location.

The bill directs the department to allocate a maximum of \$1.5 million in each of the next two fiscal years from the Job Training Cash Fund for purposes of awarding job training grants.

LB 386 passed with the emergency clause 43-0 and was approved by the Governor on May 17, 2011.

LB 397—Change Provisions Relating to the Industrial Relations Act and the State Employees Collective Bargaining Act (*Lathrop, Ashford, McGill, and Utter*)

People camping out in the capitol, protests on the capitol steps, legislators crossing state lines to avoid a vote—these scenes were chronicled on nightly newscasts throughout the country as state legislatures wrestled with issues surrounding public employees and collective bargaining. In Wisconsin and Ohio, enacted legislation resulted in lawsuits and recall efforts.

Nebraska has a different story to tell. Like other states, several legislative proposals dealing with public employees and collective bargaining were introduced. One proposal substantially changed the jurisdiction of the Commission on Industrial Relations (CIR), the quasi-judicial agency charged with resolving public sector labor controversies, by eliminating its power to order adjustments in rates of pay and conditions of employment (**LB 564**); another measure removed employees of school districts, educational service units, and learning communities from the CIR's jurisdiction (**LB 619**); another bill repealed the Industrial Relations Act and the State Employees Collective Bargaining Act (**LB 664**); and another measure proposed a constitutional amendment prohibiting the State of Nebraska from engaging in collective bargaining (**LR 29CA**).

In recognition of the different philosophies and points of view on the issue, a group of legislators, legislative staffers, representatives of the League of Nebraska Municipalities and State Chamber of Commerce, and others rolled up their sleeves and crafted a compromise. LB 397 is the result of those efforts. As enacted, the bill contains portions or provisions originally found in **LB 482** and **LB 555**.

Generally, LB 397 changes provisions of the Industrial Relations Act and the State Employees Collective Bargaining Act. The bill

prescribes specific criteria for the CIR to consider when resolving wage disputes and implements changes to process and procedure designed to balance the rights of all parties involved in the negotiation.

Supporters of the measure hope the changes bring some consistency and predictability in the resolution of wage disputes, assist public employers in their efforts to contain costs, and ensure public employees retain a voice in the process.

Arguably, one of the most significant changes prescribed in LB 397 is a formula for determining whether wage rates need to be adjusted. The CIR determines whether the hourly rate value of the bargaining unit's members or classification falls within a 98 percent to 102 percent range of the array's midpoint. (An array is a group of employers to which a collective bargaining unit or classification is compared.) If the hourly rate value falls within the range, no change in rates is ordered. If the hourly rate value is less than 98 percent of the midpoint, the CIR orders a wage rate increase to 98 percent. On the other hand, if the hourly rate value is more than 102 percent of the midpoint, the wage rate is decreased to 102 percent.

Additionally, if the hourly rate value is more than 107 percent of the midpoint, the wage rate is decreased to 102 percent in three equal annual reductions; and if the hourly rate value is less than 93 percent of the midpoint, the wage rate is increased to 98 percent in three equal annual increases.

Finally, if a wage dispute occurs during a recession, the applicable hourly-rate-value range used to resolve the dispute is 95 percent to 102 percent. LB 397 defines recession as two consecutive quarters in which the sum of the net state sales and use tax, individual income tax, and corporate income tax receipts are less than the same quarters for the prior year.

Among its many other provisions, LB 397:

- Requires three CIR commissioners to be involved in wage disputes;
- Relaxes the rule-of-evidence requirement and authorizes the use of phone calls, e-mail, and other means to gather evidence if necessary;
- In the State Employees Collective Bargaining Act, eliminates the Special Master process and authorizes appeals from the CIR directly to the Supreme Court;
- In addition to wages, requires the CIR to consider pension and health care benefits, by using an hourly rate value calculation, when determining adequate compensation;
- Establishes a negotiation timeline for school districts, educational services units, and community colleges and

their certificated and instructional employees and mandates mediation, unless both parties agree not to mediate;

- Requires a public vote on the last, best offer of a public employer before a dispute is taken to the CIR. Each party must show in a pleading that it rejected the other's last best offer;
- Establishes a preferred array size from between seven to nine;
- Prescribes criteria for the size of comparable out-of-state cities and metropolitan statistical areas;
- Provides a preference for geographic proximity when compiling a group of employers for comparability purposes;
- Allows wage information to be adjusted to reflect Nebraska's cost of living; and
- Specifies a 70 percent match of duties performed and time spent performing those duties.

LB 397 passed 48-0 and was approved by the Governor on May 26, 2011.

EDUCATION COMMITTEE

Senator Greg Adams, Chairperson

ENACTED LEGISLATIVE BILLS

LB 18—Provide for Distribution of Allocations from the Federal Education Jobs Fund and Change Provisions Relating to Certification Dates (*Adams*)

LB 18 allocates approximately \$59 million from the federal Education Jobs Fund to school districts.

The federal funds are to be distributed to school districts through the Tax Equity and Educational Opportunities Support Act. Specifically, the formula needs calculation is increased by 2.23 percent for the 2010-2011 school fiscal year. State aid is then recalculated using the increased amount, and the recalculated aid amount is distributed to qualifying schools as equalization aid. The distribution of federal funds necessitates the recertification of state aid by March 1, 2011. (The certification date is the date by which the State Department of Education determines the amount of state aid distributed to each local school system and district. The department “certifies” the amount to the Department of Administrative Services.) School districts that do not receive equalization aid will not receive an allocation of federal funds.

In order to receive the federal funds, school districts must meet certain federal requirements, including spending the funds during the 2010-2011 and 2011-2012 school fiscal years, using the funds solely for personnel-related expenses, and reporting how the funds are spent.

Finally, LB 18 changes the date for certification of state aid and budget authority for the 2011-2012 school fiscal year to July 1, 2011.

LB 18 passed with the emergency clause 48-0 and was approved by the Governor on February 10, 2011.

LB 59—Change State Aid to Community Colleges (*Adams*)

LB 59 provides a mechanism for determining the amount of state aid distributed to each community college for fiscal years 2011-2012 and 2012-2013.

In 2010, the Legislature passed LB 1072. LB 1072 represented an agreement reached by all six community colleges to work together to craft a mutually beneficial and agreed-to funding formula and to

establish a new structure for their oversight body. The bill also terminated the Community College Foundation and Equalization Aid Act and the Nebraska Community College Association (the oversight body) on June 30, 2011.

After the passage of LB 1072, the community colleges began working on a funding formula and oversight structure. During the course of their work, it became apparent that a new formula and oversight structure would not be in place by July 1, 2011.

LB 59 was introduced as a stop-gap measure. The bill provides a funding mechanism for community colleges for the next two fiscal years. During this time, the community colleges will continue to collaborate to hammer out a formula and oversight structure.

Under LB 59, state aid for each community college equals the amount of aid appropriated by the Legislature each fiscal year multiplied by a percentage for each community college area as follows:

- (1) For the Central Community College Area, 8.86 percent;
- (2) For the Metropolitan Community College Area, 26.51 percent;
- (3) For the Mid-Plains Community College Area, 9.05 percent;
- (4) For the Northeast Community College Area, 14.04 percent. Of that amount, one-tenth of one percent will be provided for Nebraska Indian Community College and two-tenths of one percent for Little Priest Tribal College;
- (5) For the Southeast Community College Area, 28.27 percent; and
- (6) For the Western Community College Area, 13.27 percent.

Additionally, LB 59 provides that for fiscal years 2011-2012 and 2012-2013, each area governing board can certify a general fund tax levy not to exceed 10.25 cents on each \$100 of taxable valuation of all property subject to the levy within the community college area.

LB 59 passed with the emergency clause 49-0 and was approved by the Governor on February 22, 2011.

LB 235—Change Provisions Relating to State Aid to Schools (Adams)

Needs-Resources = Equalization Aid. With the adoption of Laws 1990, LB 1059, the Tax Equity and Educational Opportunities Support Act (TEEOSA), that general equation has served as the state aid formula for Nebraska's public school districts. While the basic formula established by LB 1059 remains the basic formula today, the formula has been regularly modified to reflect changing school district needs and state budget demands.

As repeatedly referenced throughout this review, a dire budget picture greeted the Nebraska Legislature as it began the 2011 session. Lawmakers faced the Herculean task of closing an estimated budget gap of \$986 million. Since state aid to schools accounts for almost 25 percent of the state budget, the Education Committee and the rest of the Legislature knew they would be faced with some tough decisions as they tried to mesh the needs of Nebraska's public school districts with available budget dollars. The passage of LB 235 reflects the Legislature's tough decisions.

This year, Nebraska public school districts received approximately \$950 million (\$810 million in state money and \$140 million in one-time federal stimulus money). Absent any TEEOSA formula changes and federal stimulus money, the 2011-2012 state aid amount would total over \$1 billion.

As enacted, the state aid formula changes prescribed in LB 235 result in \$822 million in state aid to schools in 2011-2012 and an estimated \$880 million in 2012-2013.

LB 235 changes provisions relating to the budget authority of school districts.

For fiscal year 2011-2012, a school district's budget authority is the *greater of*: (1) the general fund budget of expenditures for fiscal year 2010-2011 (less exclusions) plus 1.115 percent of the formula need for 2010-2011; (2) the general fund budget of expenditures for fiscal year 2010-2011 (less exclusions) plus any student growth adjustment; or (3) 110 percent of formula need for fiscal year 2011-2012 minus special education expenditures for fiscal year 2010-2011.

For fiscal year 2012-2013 and thereafter, a district's budget authority is the *greater of*: (1) the prior fiscal year's budget of expenditures (less exclusions) increased by the basic allowable growth rate; (2) the prior fiscal year's budget of expenditures (less exclusions) increased by any student growth adjustment; or (3) 110 percent of formula need for the school year for which the calculation is made minus special education expenditures for the prior year increased by the basic allowable growth rate for the school year being calculated.

The bill also excludes from spending lids and general fund operating expenditures the amount of expenditures for voluntary terminations between July 1, 2011 and July 1, 2013, and extends an exclusion allowed for employer retirement contributions to fiscal year 2016-2017. (Prior law excluded retirement contributions through fiscal year 2013-2014.)

Other key formula changes prescribed in LB 235 include:

- Limiting school districts access to unused budget authority to amounts up to 2 percent of their prior year's expenditures;
- Reducing the basic allowable growth rate from 1.5 percent to 0 percent for fiscal year 2011-2012 and to 0.5 percent for fiscal year 2012-2013. The cost growth factor, which is used to adjust two-year-old expenditures for inflation, is also decreased by 1 percent. The decrease in the cost growth factor decreases the amount of state aid that is provided as basic funding;
- Increasing the local effort rate from \$1.00 to \$1.0395 per \$100 of valuation for the next two fiscal years;
- Reducing the averaging adjustment and needs stabilization thresholds by 5 percent for fiscal year 2011-2012. The averaging adjustment allows school districts with below average basic funding to increase their basic funding, and needs stabilization provides parameters on the calculation of needs for each school district;
- Reducing the allocated income tax by \$21 million each year for the next two fiscal years;
- Modifying the comparison group used to calculate state aid for each school district. The new group is to include the 10 immediately larger districts and 10 immediately smaller districts than the district for which aid is being calculated, and when calculating basic funding, the two highest spending and two lowest spending districts in the group are excluded. (Prior law used comparison groups, which included 5 larger and 5 smaller districts and excluded only the highest and lowest spending districts); and
- Beginning in fiscal year 2012-2013, subtracting property tax refunds from the calculation of formula resources.

LB 235 also excludes lobbying fees and expenses from a school district's general fund operating expenditures for the calculation of state aid. Excluding those fees and expenses reduces the needs calculation in the state aid formula. These provisions were derived from **LB 148**.

LB 235 further provides that converted contract students are to be treated as option students immediately after the expiration of the converted contract, and tuition receipts from districts where nonresident students have been converted to option students will not be included as a local formula resource. The converted contract must have been in effect at least 15 years. These provisions were originally prescribed in **LB 273**.

Finally, LB 235 allows qualified early childhood summer programs to be included in the TEEOSA summer school allowance and reinstates the elementary class size allowance scheduled to be eliminated in fiscal year 2013-2014. These provisions represent a modified version of **LB 287**.

LB 235 passed with the emergency clause 41-2 and was approved by the Governor on April 26, 2011.

LB 333—Change Provisions Relating to the Education Innovation Fund, Multicultural Education, the Attracting Excellence to Teaching Program, and the Enhancing Excellence in Teaching Program (*Education Committee*)

In 2010, in recognition of the bleak budget picture facing the State of Nebraska, the Legislature adopted LR 542. The resolution was a “call for help” from the Appropriations Committee. The resolution called on the Governor and the Legislature’s standing committees to take an in-depth look at state government and identify programs and services that could be cut for purposes of leading Nebraska out of the budget crisis.

LB 333 is one of several bills introduced as a result of “the LR 542 process.”

LB 333 moves funding for some new and existing programs from the General Fund to the Education Innovation Fund. Since 2003, a portion of the proceeds received from the operation of lottery games pursuant to the State Lottery Act has been credited to the Education Innovation Fund, which is disbursed according to statute.

Under LB 333, in fiscal years 2011-2012 and 2012-2013, the Education Innovation Fund will be allocated in specified amounts:

- (1) To the Excellence in Teaching Cash Fund to fund the Attracting Excellence to Teaching Program;
- (2) To school districts as grants pursuant to the Early Childhood Education Grant Program;
- (3) To local school systems as grants for programs for high ability learners;
- (4) To the State Department of Education to develop an integrated student information system;
- (5) To fund the Center for Student Leadership and Extended Learning Act;
- (6) To fund the multicultural education program. (As originally introduced, LB 333 eliminated the multicultural education program; however, the standing committee amendments reinstated the program and authorized funding via the Education Innovation Fund.);

- (7) To the department for investigations of potential teaching and administrator certificate violations; and
- (8) For distance education equipment and incentives.

In fiscal years 2013-2014 and 2014-2015, the Education Innovation Fund will continue to be used to fund the above-listed items except for early childhood education grants.

Current law requires the department to evaluate and assess each district's multicultural education program every five years. LB 333 clarifies that the department must report the results of each evaluation to the Clerk of the Legislature, the Legislature's Education Committee, and the State Board of Education on or before November 1, 2013 and on or before November 1 every five years thereafter.

LB 333 also eliminates the position of student achievement coordinator.

Finally, the provisions of **LB 445**, which made technical changes to language pertaining to the apportionment of federal forest reserve funds, public grazing funds, and flood control funds, respectively, were amended into LB 333.

Specifically, the bill requires distributions from each of the funds to be based on information provided by the U.S. Department of Interior. Language was eliminated, which required the Board of Educational Lands and Funds to annually certify to the Commissioner of Education the counties entitled to receive forest reserve funds and public grazing funds, along with the number of forest reserve and grazing acres in each county. Language requiring the commissioner to ascertain the counties in which flood control lease rentals were situated was also struck.

LB 333 passed with the emergency clause 44-0 and was approved by the Governor on March 15, 2011.

LB 544—Change Provisions Relating to Civics Education (*Pahls*)

With the passage of LB 544, high school civics courses are required to include instruction in the duties of citizenship, including active participation in the improvement of a citizen's community, state, country, and world and the value and practice of civil discourse between opposing interests.

As civics education is already statutorily required, supporters of LB 544 believe it is time to reemphasize civics education and encourage high school students to become involved and engaged in the political process.

LB 544 passed 42-0 and was approved by the Governor on April 26, 2011.

LB 558—Change Provisions Relating to Focus Schools, Focus Programs, and Magnet Schools (*Nordquist, Ashford, Council, and Howard*)

Nebraska’s learning community law authorizes member school districts to establish focus schools, focus programs, and magnet schools with approval of the learning community coordinating council. With the passage of LB 558, a focus school or program established by a consortium and included in a learning community’s diversity plan is eligible for a focus school and program allowance. Prior to LB 588, only schools and programs established with a primary district could be designated as a focus school or program. (The State Department of Education determines the allowance each year for each school district within a learning community.)

In addition, LB 558 requires multiple member school districts that collaborate on a focus school, focus program, or magnet school to establish a joint entity pursuant to the Interlocal Cooperation Act for purposes of creating, implementing, and operating the school or program. The interlocal cooperation agreement must include provisions regarding legal, financial, and academic responsibilities and the assignment of students enrolled in the school or program to participating school districts.

LB 558 passed 42-0 and was approved by the Governor on April 26, 2011.

LB 575—Adopt the Interstate Compact on Educational Opportunity for Military Children (*Price, McCoy, Mello, Krist, Pirsch, and Cook*)

As originally introduced, LB 575 established the Military Children Education Opportunity Act. However, adopted standing committee amendments replaced the bill’s original provisions with the provisions of **LB 63**, which ratifies the Interstate Compact on Educational Opportunity for Military Children. The general purpose of both measures is to remove barriers to educational success for children of military families.

Frequent relocation and deployment of their parents take their toll on children of military families. Compact supporters hope that by establishing uniformity, coordination, and flexibility between member states, schools, and military families, these children will have a positive, successful school experience.

The compact specifically addresses such things as educational records and enrollment; immunization requirements; kindergarten and first grade entrance age; placement in courses, ranging from

gifted and talented programs to assistance for special needs; eligibility and participation in extracurricular activities; and high school graduation requirements.

The compact creates the Interstate Commission on Educational Opportunity for Military Children to administer the compact. The commission is directed to: provide dispute resolution among member states; promulgate necessary rules and guidelines to implement the compact; enforce compliance; issue advisory opinions; establish a budget and make expenditures; report annually to the legislatures, governors, judiciary, and state councils of the member states; and perform any other powers and duties necessary to carry out the goals of the compact. Each member state will have a voting member on the commission. LB 575 specifically provides that the deputy commissioner of education will serve as Nebraska's compact commissioner.

The compact also directs each member state to create a State Council on Educational Opportunity for Military Children. The state council's primary responsibilities are to advise the department regarding the state's participation in and compliance with the compact and to appoint a military family education liaison to assist families and the state in implementation of the compact.

LB 575 creates Nebraska's state council within the State Department of Education. The council is composed of the following ex officio members: the Commissioner of Education, the chairperson of the Legislature's Education Committee, the deputy commissioner of education, and the military family education liaison. In addition to the ex officio members, the State Board of Education is to appoint a superintendent of a school district with a high concentration of military families and a representative of a military installation located in the state to serve on the council.

Finally, LB 575 allocates \$27,200 from the Education Innovation Fund to be used to fund the state's participation in the compact in fiscal year 2012-2013. The bill takes effect on July 1, 2012.

LB 575 passed 43-0 and was approved by the Governor on May 16, 2011.

LB 637—Adopt the Postsecondary Institution Act and Change Other Provisions Relating to Postsecondary Education (*Adams*)

LB 637 adopts the Postsecondary Institution Act. The goals of the act are to ensure minimum standards for private or out-of-state postsecondary institutions operating in Nebraska and to provide consumer protection for students attending such institutions.

The Coordinating Commission for Postsecondary Education (coordinating commission) is to administer the act and must:

- (1) Establish levels of authorization to operate based on institutional offerings;
- (2) Receive applications, investigate, and determine whether to issue an authorization to operate in Nebraska;
- (3) Establish reporting requirements;
- (4) Maintain a public list of postsecondary institutions authorized to operate in Nebraska;
- (5) Establish a notification process when an authorized institution changes its address or adds instructional sites in the state;
- (6) Conduct site visits;
- (7) Establish application fees for authorizations to operate and their renewal;
- (8) Investigate any violations of the act; and
- (9) Adopt rules, regulations, and procedures necessary to carry out the act.

A private or out-of-state postsecondary institution must make application to the commission and receive an authorization to operate in Nebraska. An authorization is valid for five-year periods, until the institution has been operating in Nebraska for 20 years under the same ownership.

To receive an authorization to operate, the institution must meet operating standards as prescribed by the coordinating commission. Failure to operate pursuant to standards can result in suspension or revocation of a school's authorization to operate. Minimum standards adopted by the coordinating commission must include: (a) the financial soundness of the institution; (b) the quality and adequacy of teaching faculty, library services, and support services; (c) specific and adequate locations for programs; (d) assurances of transfers of credits to the main campus of the institution and a clear and accurate representation regarding the ability to transfer credits to other institutions located in Nebraska and elsewhere; (f) whether the institution or program is fully accredited or seeking accreditation; (g) policies and procedures relating to students, including recruiting and admission practices; (h) the tuition refund policy for an institution that does not participate in federal financial aid programs; and (i) any other standards the coordinating commission considers necessary to insure a quality institution or program.

Any institution denied an authorization to operate, or renewal thereof, has a right to a public hearing. The act prescribes the process and procedure for the conduct of the hearing. Any commission decision is deemed final and subject to judicial review.

Pursuant to the act, the coordinating commission must also conduct a public hearing for any private or out-of-state postsecondary institution seeking to establish a new campus in the state.

The act also prescribes a grievance procedure for any person claiming loss or damage by virtue of any act or practice of an institution.

As enacted, LB 637 includes provisions originally introduced in **LB 58**, which direct the coordinating commission, together with the State Department of Education, public and private postsecondary institutions, public and private secondary schools, and educational service units, to evaluate the need for uniform policies and practices regarding dual-enrollment courses, career academies, and advanced placement programs. Particular attention will be paid to the issues of transferability of dual-enrollment courses, consistency of administration of career academies, and the need for uniform practices and policies regarding advanced placement courses.

LB 637 also expands eligibility to participate in the Nebraska Optometry Student Contract Program to include students who were accepted into the program during the 2010-2011 academic year, in addition to students who actually participated in the program during the academic year. (These provisions were introduced in **LB 334** as a result of the LR 542 process.)

LB 637 changes provisions relating to the authority of the University of Nebraska and community colleges to offer associate degrees, diplomas, and certificates. This concept was originally introduced in **LB 372**.

Upon approval by the coordinating commission, the university can award certificates within additional fields, if the majority of the courses required to earn the certificate are above the associate-degree level. Correspondingly, community colleges can award associate degrees, diplomas, and certificates in those fields requiring course-work at the associate-degree level or below.

Finally, beginning with the 2011-2012 school year, the State Department of Education is authorized to implement a three-year pilot project for the district-wide administration of a standard college admission test to be given to students in the eleventh grade attending a public school in the participating district. The purposes of the project are to determine whether the test improves the college-going rate and career readiness of Nebraska students and can be used as the high-school grade assessment tool required by Nebraska law. During the three-year life of the project, the department must annually report to the Legislature and the chairperson of the Legislature's Education Committee.

LB 637 passed 48-0 and was approved by the Governor on May 4, 2011.

LEGISLATIVE BILLS NOT ENACTED

LB 123—Provide for Disciplinary Actions Against Students and Policies for Cyber-bullying (*Heidemann, Adams, Avery, Cornett, Council, Dubas, Fischer, Haar, Hansen, Howard, Krist, Mello, Schilz, Sullivan, Wightman, and Nordquist*)

In 2008, the Legislature enacted LB 205, which required school districts to adopt a bullying policy. Recognizing that bullying threatens public safety, creates a negative atmosphere, and disrupts a school's ability to teach its students, school districts were required to have a bullying prevention and education policy in place by July 1, 2009.

With the introduction of LB 123 in 2011, the Legislature would have required school districts to adopt a prevention and education policy aimed at preventing cyber-bullying. Cyber-bullying would have been defined as "any ongoing use of electronic mail, text messaging, social networking web sites, or any other form of electronic communication, on or off of school grounds, with the intention of causing harm or serious emotional distress to students or school personnel."

In addition, the bill would have included cyber-bullying as grounds for long-term suspension, expulsion, or mandatory reassignment pursuant to the Student Discipline Act.

LB 123 did not advance from committee.

LB 204—Require Blood-Lead Testing Prior to School Enrollment and Parental Notification Regarding Elevated Blood-Lead Levels (*Council, Cook, and Nordquist*)

Beginning on and after July 1, 2012, LB 204 would have required each student entering kindergarten to have undergone blood-lead testing. Any student who did not comply with the blood-testing requirement would have been prohibited from attending school. (The bill would have included a mechanism for provisional enrollment upon a showing that the student was intending to undergo the required testing.)

Parents and guardians would have been responsible for the costs of blood-lead testing, except that the Department of Health and Human Services would have paid for testing for those students participating in Medicaid or the CHIP program.

A student would have been exempt from the blood-lead testing requirement if he or she submitted:

- (1) A statement signed by a health care provider stating that the required test would be harmful to the child's health and well-being;
- (2) An affidavit indicating that the required testing conflicts with the tenets and practice of a recognized religious denomination to which the student adheres or belongs; or
- (3) A statement signed by a health care provider indicating that the student is at very low risk for elevated blood-lead levels.

If a child's blood-lead level exceeded the normal range, the Department of Health and Human Services would have been required to notify the child's parent or guardian of available services and resources.

The Legislature passed LB 204 on a 30-12 vote. However, Governor Heineman vetoed the measure, and the motion to override the Governor's veto failed.

LB 283—Provide School Boards with Tax Levy and Bond Authority Relating to Energy Efficiency Projects (*Haar*)

LB 283 would have authorized school districts to levy property taxes and issue bonds for energy efficiency projects.

The bill would have defined energy efficiency project to include "any inspection and testing regarding energy usage, any maintenance to reduce, lessen, diminish, moderate, decrease, or control energy usage, any restoration or replacement of material or related architectural and engineering services, and any other action to reduce energy usage in new or existing school buildings or on school grounds under the control of a school board."

The Legislature passed LB 283 on a 27-19 vote. However, Governor Heineman vetoed the measure, and the motion to override the Governor's veto failed.

LB 657—Change and Eliminate Postsecondary Education Student Residency Provisions (*Janssen, Gloor, and Karpisek*)

LB 657 would have repealed the provision authorizing a student who is illegally in the United States to qualify as a resident for purposes of tuition at a Nebraska college, university, or other postsecondary institution. A similar measure—LB 1001—was introduced in 2010.

LB 657 was indefinitely postponed on February 17, 2011

EXECUTIVE BOARD

Senator John Wightman, Chairperson

ENACTED LEGISLATIVE BILLS

LB 617—Provide Requirements and Duties Relating to Adoption of Rules and Regulations (*Mello*)

LB 617's purpose is to ensure the timely implementation by executive branch agencies of rules and regulations (regulations) required in bills passed by the Legislature.

To accomplish this, LB 617 mandates that the required public hearing on proposed regulations be held within 12 months of the bill's effective date. (If the bill has more than one effective date, the later date applies.) Agencies then have one year after the hearing to adopt regulations. This requirement excludes the time for regulation review by the Attorney General and approval by the Governor, as required under current law.

If regulations are not implemented within a year of the hearing, the agency must submit a written explanation to the Executive Board of the Legislative Council and the standing committee that has jurisdiction over the issue detailing: (1) why the agency has not adopted regulations; (2) when regulations will be implemented; and (3) any statutory changes necessary to enable the agency to adopt regulations.

Additionally, LB 617 requires state agencies to submit an annual status report by July 1 to the Legislative Performance Audit Committee regarding any pending regulations that have not yet been adopted. The report must include an accounting of funds for programs that the unadopted regulations are intended to implement.

Finally, the bill clarifies that none of its provisions affect the validity of regulations adopted prior to LB 617's effective date.

LB 617 passed with the emergency clause 45-0 and was approved by the Governor on May 24, 2011.

LEGISLATIVE BILLS NOT ENACTED

LR 5CA—Constitutional Amendment to Reduce the Maximum Number of Days for Regular Legislative Sessions (*Krist*)

LR 5CA would have proposed an amendment to Article III, section 10, of the Nebraska Constitution that, if passed by the voters, would

have reduced the maximum number of legislative meeting days. Under the measure, regular legislative sessions in odd-numbered years (long sessions) would have been limited to a maximum of 60 days instead of the currently prescribed 90, and the limit on regular sessions in even-numbered years (short sessions) would have been reduced from 60 to 45.

Proponents of LR 5CA argued that the Legislature's current sessions are too long, and that the reduced number of days proposed by the measure would produce better, more-focused legislation. They also pointed to the budget savings from shorter sessions.

Others expressed concern that shortened legislative sessions would make it difficult to craft the biennial budget and complete redistricting required every 10 years.

LR 5CA was indefinitely postponed by the committee.

LR 44CA—Constitutional Amendment Changing Regular Legislative Sessions to Odd-Numbered Years (*Pirsch*)

LR 44CA would have proposed an amendment to Article III, sections 6 and 10, of the Nebraska Constitution that, if passed by the voters, would have prescribed that the Nebraska Legislature meet in regular session only in odd-numbered years. The measure also would have changed the first day of the legislative session to the first Wednesday in February. Under the current constitutional provision, the opening day of the legislative session is the first Wednesday after the first Monday in January.

Before 1970, the Legislature met in regular session every other year in odd-numbered years. However, a constitutional amendment passed in 1970 required the Legislature to meet annually.

Proponents of LR 44CA argued that biennial legislative sessions would save money and increase the number of candidates for the Legislature. Proponents also contended that changing the legislative opening date to February would lessen disruption to the Legislature's schedule caused by harsh January weather.

LR 44CA was indefinitely postponed by the committee.

GENERAL AFFAIRS COMMITTEE

Senator Russ Karpisek, Chairperson

ENACTED LEGISLATIVE BILLS

LB 281—Allow Consumption of Alcohol in Chartered Limousines and Buses (*Karpisek*)

LB 281 allows passengers in chartered limousines and buses to consume alcohol.

The vehicles must be in public parking areas or on a state highway. If on a state highway, the driver is prohibited from drinking and alcohol being consumed by the passengers cannot be within reach of the driver. The bill is aimed at activities such as groups going to football games or wedding parties, and is intended to encourage the use of designated drivers.

The limousine or bus service cannot sell the alcohol. LB 281 is not a liquor licensing bill. Instead the bill amends the Rules of the Road by allowing an exception to the statutory prohibitions against having open containers and drinking alcohol in vehicles.

LB 281 passed 42-6 and was approved by the Governor on March 16, 2011.

LB 286—Change Provisions Relating to a Direct Sales Shipping License Fee under the Nebraska Liquor Control Act (*Krist, Wallman, Karpisek, and Coash*)

Nebraska's grape and winery industry will continue to benefit from funds raised by a \$500 fee charged out-of-state shippers who want to deliver alcoholic liquor directly to consumers in Nebraska. LB 286 removes the sunset date on deposit of the fee into the Winery and Grape Producers Promotional Fund.

The \$500 fee has been credited to the promotion fund since the passage of Laws 2007, LB 441. It was intended to increase the money available for activities that enhance growing, selling, marketing, and promoting Nebraska grown and produced agricultural products for use in the wine industry. The diversion from the General Fund was slated to expire on April 30, 2012.

The Fiscal Note for LB 286 states that revenue from the direct shipping license fee is anticipated to be \$132,000 in fiscal year 2012-2013. The Nebraska Grape and Winery Board indicates that the

direct shipping license fee has increased revenue in the promotion fund and allowed the board to undertake several new projects.

LB 286 passed 45-0 and was approved by the Governor on May 18, 2011.

LB 407—Change Employment Provisions, Notice Requirements, and License Restrictions under the Nebraska Liquor Control Act (*Karpisek*)

LB 407 makes three changes to the state’s Liquor Control Act and includes provisions from two other bills.

The original provisions of LB 407 permit the Liquor Control Commission to correspond with municipalities by regular mail or electronically. Prior law required such correspondence to be by certified mail. The bill also allows the commission to communicate with other entities via regular mail or electronically if prior consent is given. The measure was requested by the commission to save money.

The provisions of **LB 249** were amended into LB 407 via the standing committee amendment. These provisions allow the commission to grant a waiver to the restriction allowing only beer to be sold by an establishment located within 300 feet of a college or university campus. The waiver allows establishments to be licensed within the campus “buffer zone” to sell wine and liquor for consumption on the premises. LB 407 requires the commission to consider several factors in deciding whether to grant a waiver. They include:

- The impact on the academic mission of the college or university of retail sales of alcoholic liquor for consumption on the premises;
- The impact on students and prospective students if such sales were permitted on or near the campus;
- The impact on economic development opportunities located within or in proximity to the campus; and
- Whether the waiver would reduce the number of applications for special designated licenses (SDLs) requested by the college or university or its designee.

The waiver provisions address a concern of the liquor commission that establishments are using SDLs in lieu of getting an actual liquor license. SDLs are issued for one-time events to serve liquor. SDLs do not have to meet all the requirements of a regular liquor license nor can the commission act on liquor violations with all the sanctions possible for a regular liquor license. Under commission rules and regulations, any location that uses 12 or more SDLs in a calendar

year is reviewed by the commission to see whether the location should have a different type of license.

Until passage of LB 407, establishments within the campus buffer zone could not qualify for a liquor license that allows them to serve wine or hard liquor, and so the commission had no option but to issue SDLs in those cases.

LB 407 requires the commission to notify the governing body of a college or university when it receives a request for a waiver. The commission cannot grant a waiver without written approval of the college or university if the establishment seeking the waiver is surrounded by property owned by the college or university or is adjacent to property on two or more sides that is owned by the college or university.

Finally, LB 407 allows an employee of the commission to work part-time or on a seasonal basis at a business licensed or regulated by the commission, as long as the business does not get more than 50 percent of its gross revenue from the sale or dispensing of alcohol. The employment exception does not apply to the commission's executive director or division manager. This provision was originally introduced in **LB 336**.

LB 407 passed 46-0 and was approved by the Governor on April 26, 2011.

LB 490—Change Restrictions on Keno (*Karpisek*)

As introduced, LB 490 contained a provision intended to boost keno revenue by decreasing the time allowed between plays from five minutes to one minute, and a provision changing how players receive keno tickets. As enacted, LB 490 allows keno players to get their tickets from an automated kiosk.

LB 490 amends the Nebraska County and City Lottery Act to provide that "activation," with regard to lottery equipment, means initiating the selection of winning numbers. The practical effect of this change is to eliminate the requirement that an attendant must provide the keno tickets given to players.

The standing committee amendment struck the plan to reduce the time between keno games, but did include the provisions of **LB 681**. These provisions created the Live Horseracing Endowment Fund. The fund would have been financed with a portion of keno revenue and used to increase purses for winning horses at Nebraska tracks, in a plan designed to bolster Nebraska's thoroughbred horseracing industry.

However, the plan to support the horseracing industry with keno funds met stiff opposition, and the provisions were stricken from LB 490 on General File.

LB 490 passed 44-0 and was approved by the Governor on May 26, 2011.

LB 524—Authorize Credit Unions to Conduct Savings Promotion Raffles (McGill, Dubas, Hadley, Mello, Nordquist, Schilz, and Pirsch)

LB 524 allows credit unions to operate savings promotion raffles, which have been shown in other states to encourage savings by persons who have never before opened a savings account and who are often low income.

The bill defines a savings promotion raffle as a contest conducted by a federally or state-chartered credit union in which depositing a specified amount of money in a savings account or program qualifies the depositor for a chance at winning a prize. Each entry must have an equal chance at winning the prize. LB 524 allows credit unions to limit the number of times a depositor can enter, but cannot limit the number of deposits.

LB 524 passed 45-0 and was approved by the Governor on April 26, 2011.

LEGISLATIVE BILLS NOT ENACTED

LB 256—Change State Racing Commission Members' Terms and Permit Horseracing Licensees to Contract to Conduct Live Horseracing for Other Licensees (Karpisek)

LB 256 would have provided an accommodation for the Lincoln horseracing track, which is losing its home as State Fair Park transitions to Innovation Campus. The bill's provisions also would have financially helped Nebraska's other race tracks and would have made a technical change to statutes affected by legislation in 2010 that added two members to the State Racing Commission.

The bill would have allowed a racetrack licensee to contract with another licensee to conduct all but one day of live race meetings on its behalf. Further, a racetrack licensee in a county with a city of the primary class could have contracted with another licensee to conduct all of its live race meetings on its behalf. Lincoln is the state's only primary-class city. The latter provisions would have been effective until January 1, 2027, presumably giving Lincoln's horseracing industry time to finance and build a new live

horseracing facility. State Fair Park is set to close at the end of the 2012 racing season.

LB 256 also would have harmonized provisions regarding the length of racing commissioners' terms and when the terms begin and end, in order that no district goes without representation as the State Racing Commission transitions from a three-member to a five-member commission. The membership was increased in Laws 2010, LB 861. The Racing Commission is responsible for prescribing and enforcing horseracing rules and regulations.

LB 256 failed with the emergency clause 27-18, but passed without the emergency clause, 26-17. The bill was subsequently vetoed by the Governor, who cited an Attorney General's opinion that LB 256 was unconstitutional because the Nebraska Constitution authorizes parimutuel wagering on horseraces "within a licensed racetrack enclosure," which Lincoln arguably will not have after the end of the 2012 racing season.

In speaking to override the veto, the bill's sponsor said LB 256 would not authorize wagering on horseraces at a location other than at a licensed racetrack enclosure, assuming the Lincoln horseracing organization secured a new location, and sought and received licensure from the Racing Commission. However, the veto override failed 21-23.

GOVERNMENT, MILITARY AND VETERANS AFFAIRS COMMITTEE

Senator Bill Avery, Chairperson

ENACTED LEGISLATIVE BILLS

LB 62—Change Provisions Regarding County Officers and Prohibit Elimination or Undue Hindrance of a County Officer by a County Board (Heidemann)

LB 62 addresses the balance of power between county boards and county officers, such as county treasurers and county clerks.

LB 62 requires a county officer, when hiring staff, to receive approval of the hire from the county board, effectively establishing that the county board has final budget authority in county government. While the county board has final budget authority, the bill prohibits the county board from eliminating a county office or unduly hindering a county officer in the performance of his or her duties.

The bill essentially nullifies *Wetovick v. County of Nance*, 279 Neb. 773, a 2010 Nebraska Supreme Court ruling that placed the burden of proof on a county board to prove that a salary set by a county official was unreasonable. LB 62 shifts the burden back to county officers and establishes that county boards have the power to set the budgets of county officials, subject to certain parameters, such as: (1) clarifying that a board's budget-making power does not include eliminating a county office; and (2) prescribing that a board cannot interfere with an officer's performance of his or her statutory duties.

Proponents argued the bill was necessary to help county boards control their budgets, while opponents contended that officers, such as sheriffs and county attorneys, are elected officials with statutory duties, and therefore should be allowed to determine their budget and personnel needs.

LB 62 passed 40-5 and was approved by the Governor on March 10, 2011.

LB 142—Change a Contribution Limitation Under the Campaign Finance Limitation Act (Lautenbaugh)

LB 142 reopened a long battle over the Campaign Finance Limitation Act (CFLA). The CFLA has been controversial since its inception and has survived numerous attempts to repeal it.

The CFLA establishes voluntary spending limits for campaigns for state offices except the Governor. Under the CFLA, candidates can receive funds from the Campaign Finance Limitation Cash Fund for their campaigns if: (1) they agree to campaign spending limits and if their opponents refuse to agree to the same limits; or (2) their opponents agree to spending limits but do not honor them. Only 11 candidates have qualified for campaign funds under the CFLA since the law's passage in 1996.

As introduced, LB 142 would have repealed the CFLA; however, the bill also would have expanded reporting requirements for campaign donations under the Nebraska Political Accountability and Disclosure Act. Ultimately, a compromise was reached between the opposing forces on the CFLA issue, and the measure's original provisions were dropped in favor of a revision that gives new life to the CFLA in exchange for a more generous donation limit for "special interests."

The bill raises—from 50 percent to 75 percent—the amount of contributions allowable by special interest groups, such as independent committees, corporations, unions, trade associations, and political parties (as opposed to contributions by individual donors) in campaigns that are covered by CFLA limits.

LB 142 passed 44-0 and was approved by the Governor on May 26, 2011.

LB 176—Authorize the Nebraska Accountability and Disclosure Commission to Order Violators to Pay Hearing Costs (Avery)

LB 176 authorizes the Nebraska Accountability and Disclosure Commission (commission) to charge violators of the Nebraska Political Accountability and Disclosure Act (act) hearing costs in a contested case. As amended by the committee, the bill prescribes that a violator can be required to pay hearing costs if he or she does not appear at the hearing personally or by counsel.

The commission was created by the Legislature in 1976 as an independent agency to administer and enforce campaign finance, ethics, and lobbying laws. The commission has authority to: (1) issue advisory opinions; (2) adopt rules and regulations; and (3) conduct investigations into possible violations of the act and assess civil penalties.

LB 176 passed 43-0 and was approved by the Governor on May 16, 2011.

LB 230—Change Access to Public Records (*Sullivan, Campbell, Fulton, Hansen, Heidemann, Karpisek, Krist, Price, and Schumacher*)

LB 230 amends public records law to permit public power utilities to withhold certain information from the public to protect the utility and the public, particularly from terrorism. (All Nebraska utilities are publicly or member owned and operated.) Utilities are considered possible terror targets, especially since the attacks of September 11, 2001.

The bill allows public utilities to withhold design drawings and information regarding utility infrastructure, if there is a substantial likelihood that disclosure would result in danger to public property or safety. The measure also permits a utility to withhold customer-use information by non-business customers.

Preventing access to this vital information is necessary according to proponents of the bill because, if disclosed, it is impossible to know how the information would be used. Plus, the source of a request may not be known because of the anonymous nature of some communication, such as e-mail.

LB 230 passed 43-0 and was approved by the Governor on April 14, 2011.

LEGISLATIVE BILLS NOT ENACTED

LR 2CA—Constitutional Amendment to Authorize County Manager Form of County Government (*Harms*)

LR 2CA would have proposed an amendment to Article IX, section 4, of the Nebraska Constitution that, if passed by the voters, would have prescribed the county manager form of government. With passage of the amendment and adoption by Nebraska voters, a county could have adopted county-manager government with a majority vote of the county's voters.

County-management government is used by counties throughout the United States. Under this method, the county's legislative body (such as a county board) is elected; however, the board appoints a county manager or county administrator to implement the board's policies and administer the county.

Currently, there are two types of county government in Nebraska, the township system and the closely related commissioner form.

LR 2CA did not advance from committee.

LR 19CA—Constitutional Amendment to Provide that Misdemeanors Related to Election to Office are Grounds for Impeachment (Avery)

LR 19CA would have proposed an amendment to Article IV, section 5, of the Nebraska Constitution that, if passed by the voters, would have established that election-related misdemeanors can serve as the basis for impeaching an elected official.

The Constitution currently provides that an official can be impeached for a misdemeanor committed while in office. LR 19CA would have added language establishing that misdemeanors related to the election of an official also would be an impeachable offense.

Proponents of the measure argued that the amendment is needed to hold persons running for office accountable for criminal activity in their pursuit of office.

LR 19CA advanced to General File.

LR 45CA—Constitutional Amendment Authorizing Recall of State Elective Officers (Pirsch)

LR 45CA would have added a new section 12 to Article XVII of the Nebraska Constitution that, if passed by the voters, would have provided for the recall of various elected state officers, such as the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, legislators, and certain members of constitutional boards and commissions.

Nebraska law currently allows the recall of local elected officials but not state officials. Proponents argued that state elected officials are too insulated from the people they represent.

LR 45CA was indefinitely postponed by the committee.

LB 21—Change Provisions Relating to Ballots Cast by Presidential Electors (McCoy)

LB 21 would have returned Nebraska to a “winner-take-all” system of electing its Electoral College electors, by providing that the presidential candidate who wins the most popular votes in Nebraska also wins all the state’s electoral votes.

Under current law, in effect since 1991, candidates receiving the highest number of votes statewide win the two electoral votes representing Nebraska’s United States Senate seats, and the remaining three electoral votes are determined by the presidential

vote winner in each of the state's three congressional districts. Under this arrangement, more than one presidential candidate can win electoral votes, as occurred in the 2008 election. (Maine is the only other state that sanctions a split of its electoral votes.)

Proponents of LB 21 argued that the measure's winner-take-all method maximizes Nebraska's limited power as a small state in presidential elections and that the current method of allowing a split of its electoral votes dilutes Nebraska's unity and influence.

Opponents countered that the split method brings excitement, attention, and money to a competitive district, as they believe happened in Nebraska's second congressional district in the 2008 race.

LB 21 did not advance from committee.

LB 606—Require Reporting of Electioneering Communication Under the Nebraska Political Accountability and Disclosure Act (Avery and Lathrop)

The goal of LB 606 was to shine a regulatory light on last-minute campaign attack ads. The bill would have closed a legal loophole some contend a group used in the 2010 election to avoid filing independent expenditure reports with the Nebraska Accountability and Disclosure Commission (commission). The group claimed its spending late in the election was not campaign spending because it did not advocate a vote for or against a candidate. Others countered that the group actually engaged in political communication directed at specific candidates under the guise of providing educational material.

LB 606 would have designated last-minute election attack ads as electioneering communications and would have required that they be reported to the commission. The bill would have defined an electioneering communication as one that is: (1) directed at a clearly identified candidate; (2) publicly communicated within 30 days of that candidate's election date; and (3) directed to the voters in the candidate's district. The bill would have specified that an electioneering communication was *not* a contribution or expenditure, media communication, candidate debate, or communication by a fee-based membership organization to its members.

The bill would have prescribed that electioneering communications costing more than \$250 be reported to the commission within 10 days of their dissemination. The report would have detailed: (1) information about the communication, including its cost; (2)

information about the person filing the report; and (3) the names of persons who paid for the communication and to whom the money was paid.

Finally, LB 606 would have required any communication of more than \$250 made by a corporation, labor organization, or business association be reported within 10 days after the end of the calendar month in which it was made. The report would have included information about the nature, date, and cost of the communication, as well as the name of the candidate toward whom it was directed.

The bill's progress was slowed when some senators charged that the bill cast a wider net than first appeared, requiring a variety of groups, including advocacy groups, to disclose communications.

LB 606 failed to advance from Select File.

HEALTH AND HUMAN SERVICES COMMITTEE

Senator Kathy Campbell, Chairperson

ENACTED LEGISLATIVE BILLS

LB 177—Change Foster Care Provisions (*Campbell, Hansen, and Pirsch*)

LB 177 makes several changes to Nebraska's foster care system to bring it into compliance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.

Specifically, LB 177 requires the Department of Health and Human Services (HHS) to:

- Use due diligence to notify adult relatives when a child is removed from parental custody;
- Make efforts to place siblings together or provide for sibling time if placement together is not possible; and
- Create transition plans for children aging out of foster care.

HHS must identify, locate, and provide written notification within 30 days to any noncustodial parent and to all grandparents, adult siblings, aunts, uncles, cousins, and other adult relatives suggested by the child or the child's parents, except when that relative's history of family or domestic violence makes notification inappropriate.

HHS must explain the options the relatives have under law to participate in the care and placement of the child, including any options that might be lost by failing to respond to the notice. The notification must also include a description of the requirements for relatives to serve as foster care or other type of care providers, the additional services, training, and support available for children receiving such care, and how to apply for guardianship assistance payments.

Within 30 calendar days after removing a child from his or her home, HHS must provide to the court the names and relationship to the child of all relatives contacted, how they were contacted, and the responses received.

In regard to sibling placement, LB 177 requires reasonable efforts be made to place siblings in the same foster or adoptive placement, unless it is contrary to the safety or well-being of any of the siblings. The court and the children must be informed as to the reasons why sibling placement was not made. HHS must make reasonable efforts to provide for frequent sibling visitation or ongoing interaction, unless it is contrary to the safety or well-being of any of the siblings. However, the court determines the type and frequency of sibling visitation or ongoing interaction.

When parental rights are terminated, HHS must try to place the siblings together or take prescribed steps to facilitate sibling contact. These steps include: (1) providing information about the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships when training prospective adoptive parents; (2) providing prospective adoptive parents information about the child's siblings; and (3) encouraging prospective adoptive parents to plan for post-adoption contact between the child and his or her siblings.

Finally, LB 177 addresses how to help foster children transition to independent living as adults. The bill requires that a written independent living transition proposal be developed by HHS for every foster child upon that child's turning 16.

The transition proposal must be personalized, based on the individual child's needs, with input from the child. Transition proposals must at least include needs pertaining to: (1) education; (2) employment services and other workforce support; (3) health and health care coverage; (4) financial assistance, including education on credit cards and banking; (5) housing; (6) relationship development; and (7) adult services if the needs assessment determines the child is likely to need or be eligible for such services.

A transition team is assigned to each child. The team includes the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals with knowledge of services available to the child. The transition proposal is to be a working document, updated for and reviewed at every permanency or review hearing by the court.

Prior to leaving foster care, the final transition proposal must specify how the child's housing needs will be addressed. On or before the child turns 19, HHS must provide the child a certified copy of his or her birth certificate and help the child secure a social security card.

LB 177 passed 47-0 and was approved by the Governor on May 4, 2011.

LB 237—Provide for Creation of a Prescription Drug Monitoring Program (Howard and Pirsch)

LB 237 addresses what its sponsor termed "the fastest growing drug problem in the country" – that of prescription drug abuse. The bill requires the Department of Health and Human Services (HHS), in collaboration with the Nebraska Health Information Initiative (or any successor public-private statewide health information exchange)

to set up a system enabling doctors and pharmacists to track prescriptions.

Representatives of the Nebraska Health Information Initiative (NHII) spoke at the bill's hearing. The initiative, begun in 2009, allows physicians and pharmacists to share patient information. LB 237 allows the state to build on NHII's technological infrastructure to develop a real-time drug tracking system so prescribers are able to detect and intervene in the drug abuse cycle.

LB 237 does not authorize any state funding to implement or operate the system. HHS is given rule-making authority to authorize use of electronic health information to carry out the purposes of the bill

LB 237 passed 42-0 and was approved by the Governor on April 14, 2011.

LB 260—Adopt the Concussion Awareness Act (*Lathrop*)

LB 260 establishes a state policy on concussions for student athletes.

Attention has increasingly focused on youth sports as medical science gains new understanding of how dangerous, yet common, concussions are among youth. The bill contains legislative findings that continuing or returning prematurely to play with a concussion or symptoms of brain injury leaves young athletes especially vulnerable to greater injury and even death.

The requirements of LB 260 are applicable to all approved or accredited schools – whether public, private, denominational, or parochial – and to cities, villages, businesses, or nonprofit organizations that sponsor athletic activities for which a youth pays to participate or for which a fee is paid for them.

LB 260 requires the coach to pull a student athlete from a practice or a game when the coach or a licensed health care professional affiliated with the school or other sponsoring entity reasonably suspects, based on his or her observations, the youth has suffered a concussion or brain injury. The youth's parents or guardian must be notified.

Licensed health care practitioner is defined to mean a physician or a licensed practitioner under the direct supervision of a physician; a certified athletic trainer; a neurophysiologist; or another qualified individual who (1) is registered, licensed, certified, or otherwise statutorily recognized by the state to provide health care services and (2) is trained in the evaluation and management of traumatic brain injuries among a pediatric population.

The bill does not require schools or other sponsoring entities to keep a licensed health care professional at practices or games.

LB 260 requires the youth to refrain from participating in any team athletic activities involving physical exertion until he or she: (1) has been evaluated by a licensed health care professional; (2) has received written and signed clearance to resume athletic activities from the licensed health care professional; and (3) has submitted the written and signed clearance to the school or other sponsoring entity, accompanied by written permission to resume participating from the student's parent or guardian.

The bill requires all schools or other sponsoring entities to make training approved by the chief medical officer of the Department of Health and Human Services available to every athletic-team coach. The training must include how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment.

LB 260 also requires that information on concussion and brain injury be provided annually to youth and their parents or guardians.

LB 260 passed 43-0 and was approved by the Governor on April 14, 2011.

LB 431—Adopt the Health Care Quality Improvement Act (*Hadley*)

LB 431 updates and revises the laws governing the peer review process for hospitals and outpatient facilities by combining them into one comprehensive law governing medical peer review, the Health Care Quality Improvement Act. LB 431 states the act's purpose as protecting individuals participating in peer review and maintaining the confidentiality of peer review records.

Nebraska's peer review law for hospitals was enacted in 1971 and has not been significantly changed since. A separate law governing peer review in outpatient facilities, such as health clinics, was enacted in 1997. And a law relating to patient safety was enacted in 2005. LB 431 broadens and consolidates the two peer review laws and harmonizes them with the Patient Safety Improvement Act.

LB 431 provides that health care providers or other individuals participating in or acting on behalf of a peer review committee, who act without malice, cannot be held liable for damages to any person for any acts, omissions, decisions, or other conduct within the scope of the peer review. Further, a person who makes a report or provides information to a peer review committee cannot be sued so long as he or she acts without malice.

The bill also protects the proceedings, records, minutes, and reports of peer review committees from being subject to discovery or introduction into evidence in any civil action. Persons privy to the protected proceedings of a peer review are not permitted and cannot be forced to testify in any civil actions as to the content of the peer review proceedings.

Incident or risk management reports are not subject to discovery or admissible as evidence in a civil action for damages for injury, death, or loss to a patient. However, LB 431 does not limit discovery of any otherwise available sources and original documents.

LB 431 passed with the emergency clause 46-0 and was approved by the Governor on April 26, 2011.

LB 465—Eliminate Provisions Relating to Eligibility of Immigrants for Public Assistance (*Campbell, at the request of the Governor*)

Federal law mandates that legal permanent residents must be in the country for at least five years before becoming eligible for any public assistance, with some exceptions. However, the federal government allows states the option of covering this population using state-only dollars.

Prior to the passage of LB 465, lawful immigrants, who met income and other qualifications, could receive benefits under the Supplemental Nutrition Assistance Program (formerly, food stamps), Temporary Assistance to Needy Families (TANF), Medicaid, and aid to the aged, blind, and disabled. Nebraska had covered these programs for this population using General Fund dollars.

As enacted, LB 465 eliminates state aid benefits provided to most lawful immigrants who have been in the United States less than five years. The state will continue to cover legal permanent residents who are exceptions to the federal waiting period. Included in this group are pregnant women (under Medicaid) and children (under Medicaid or the state's Children's Health Insurance Program).

The proposal is one of several introduced in the Health and Human Services Committee as part of the Governor's biennial budget recommendation and is expected to save the state \$3.9 million.

LB 465 passed with the emergency clause 33-8 and was approved by the Governor on April 14, 2011.

LB 468—Change Reporting Provisions Relating to the Medical Assistance Program (*Campbell, at the request of the Governor*)

LB 468 exempts the Department of Health and Human Services (HHS) from a requirement that it notify the Governor, the Legislature, and the Medicaid Reform Council prior to implementing increases for Medicaid services. LB 468 pushes the notification requirement's effective date to after December 1, 2011, and each December 1 thereafter.

The practical effect of LB 468 is to allow HHS to increase or institute copayments for Medicaid services in 2011. The measure is part of the Governor's biennial budget package, which includes a savings of \$609,000 over two years by allowing additional copayments and increasing existing copayments for Medicaid services. Medicaid provides health care coverage for qualifying low-income children, their adult caregivers, pregnant women, the elderly, and disabled individuals.

LB 468 passed 34-10 and was approved by the Governor on April 8, 2011.

LB 525—Provide for a Medicaid Plan Amendment or Waiver and Transfer of Funds Relating to the Nebraska Regional Poison Center (*Lathrop*)

LB 525 recognizes the valuable role the Nebraska Regional Poison Center plays in providing medical assistance to children, particularly poor children.

One of 60 certified regional poison centers in the U.S., the Nebraska Regional Poison Center serves Nebraska, Wyoming, American Samoa, and the Federated States of Micronesia. It receives funding from the Nebraska Medical Center, the University of Nebraska Medical Center (UNMC), Nebraska, Wyoming, and the federal Health Resources and Services Administration.

According to legislative findings in the bill, the center receives more than 17,000 calls annually. A majority of the calls involve children, many of whom are in families whose annual household income is at or below 200 percent of the federal poverty level. The center was able to divert more than 90 percent of the calls involving a child less than six years of age from using more costly medical emergency services.

LB 525 proposes a way to maximize funding for the center using federal dollars leveraged with the unused portion of Nebraska's State Children's Health Insurance Program (SCHIP) administrative

allowance. The federal government allows states to spend 10 percent of their SCHIP funding on administrative costs, which the federal government matches at 30 percent. This is called the administrative cap.

The bill requires the Department of Health and Human Services to submit an application by January 1, 2012 to the Centers for Medicare and Medicaid Services (CMS) to amend the Medicaid state plan or to seek a waiver to allow use of the administrative cap money by the Poison Control Center.

If CMS approves the amendment or waiver, LB 525 directs UNMC to deposit \$250,000 into the Health and Human Services Cash Fund as the state match to draw the federal funds. The state match and the federal dollars would then be transferred to the UNMC cash fund for use by the poison center to help offset the cost of treating children who are eligible for assistance under Medicaid or SCHIP.

If the amendment or waiver is not approved, or if less than \$250,000 is needed for the match, then the bill provides that UNMC can use its remaining state appropriation for the operation of the poison center.

LB 525 passed 47-0 and was approved by the Governor on May 18, 2011.

LB 543—Provide for a State Outreach Plan and Change Asset Limits Relating to the Supplemental Nutrition Assistance Program (Cook)

Encouraging eligible persons to apply for food assistance, but doing so at no cost to the state, is the aim of LB 543, which also eliminates most eligibility asset tests for the Supplemental Nutrition Assistance Program (SNAP).

The bill directs the Department of Health and Human Services (HHS) to develop a state outreach plan that meets criteria established by the federal government for such plans, which seek to inform low-income households about the availability, eligibility requirements, application procedures, and benefits from the program formerly known as food stamps. It allows HHS to partner with one or more counties or nonprofit organizations and to leverage funding from those entities to gain federal matching funds.

If HHS partners with a nonprofit organization, LB 543 provides that the nonprofit is responsible for seeking funding for the development and implementation of the outreach plan. The bill exempts HHS from administering the outreach plan – but not from developing a plan – should sufficient federal or private funds not be available to cover HHS's costs.

To further conserve costs, LB 543 states legislative intent that HHS use any additional public or private funds to offset costs associated with the increased caseload resulting from the plan's implementation.

The bill also requires HHS to create a TANF-funded program or policy that establishes categorical eligibility for SNAP benefits with a goal of maximizing the number of Nebraskans served by the program, but in a manner that does not increase the current gross income eligibility limit.

TANF, or the Temporary Assistance for Needy Families program, is a federal block-grant program that allows states to develop and implement their own welfare programs.

Under the TANF-funded program, all eligibility asset tests are removed except for one pertaining to cash. Applicants can have no more than \$25,000 in liquid assets, which includes cash on hand and bank accounts. Removing asset limits was originally proposed in **LB 663**.

LB 543 passed with the emergency clause 42-0 and was approved by the Governor on April 14, 2011.

**LB 600—Adopt the Nursing Facility Quality Assurance Assessment Act
(Campbell, Hadley, Carlson, Hansen, Gloor, Krist, Wallman, Karpisek,
Cook, Coash, Janssen, Harms, Pankonin, Sullivan, Avery, Harr, and Dubas)**

LB 600 is intended to help nursing homes, who generally serve a large Medicaid population, weather a 2.5 percent cut to their Medicaid provider rates. The cut was part of the state's biennium budget.

LB 600 establishes a provider assessment program for nursing facilities and skilled nursing facilities. Under the program, the state charges the facilities a quality assurance assessment fee of \$3.50 for each day of service provided to a Medicaid or a private-pay patient. The fee includes bed-hold days, which are days that a resident is not in the facility but for which a bed is reserved for him or her (an example would be because a resident is in the hospital), but excludes days that are paid by Medicare.

The bill directs the state to collect the fees quarterly, which it then repays to the nursing homes. Under federal law, the returned fee constitutes a state payment to Medicaid providers and thus qualifies for federal matching funds of 57 percent. The bill requires the state Department of Health and Human Services (HHS) to submit a Medicaid state plan amendment to the federal Centers for Medicare

and Medicaid Services, along with a waiver to exempt certain nursing facilities from the quality assurance assessment.

LB 600 exempts three types of nursing facilities from the assessment program: (1) state-operated veterans homes; (2) nursing facilities and skilled nursing facilities with 26 or fewer licensed beds; and (3) continuing care retirement communities.

The rate of assessment set in LB600 will result in about \$14 million in payments by nursing homes in fiscal years 2011-2012 and 2012-2013, which would leverage about \$20 million in federal funds. LB 600 allows HHS to keep an administrative fee. The Fiscal Note states the assessment program will alleviate the provider rate reduction imposed in the state budget and actually provide the nursing homes an increase to cover the costs of inflation.

Nursing facilities that do not pay the quality assurance assessment fee within 30 days of its due date are charged a penalty of 1.5 percent on the amount of their assessment owed for each month or part of a month that the assessment remains unpaid.

LB 600 passed with the emergency clause 44-1, but was vetoed by the Governor on April 26, 2011. The Governor called the plan a “shell game” in his letter to the Legislature, stating that it was only a matter of time before the federal government disallows such plans.

The motion to override the Governor’s veto passed 44-0.

LR 37—Provide the Health and Human Services Committee be Designated to Review, Investigate, and Assess the Effect of the Child Welfare Reform Initiative Implemented by the Department of Health and Human Services (*Health and Human Services Committee, Avery, Coash, Conrad, Dubas, Hadley, Hansen, McGill, Mello, and Council*)

LR 37 designates the Health and Human Services Committee to review the effect of the privatization of the state’s child welfare system under the child welfare reform initiative, known as Families Matter, initiated by the Department of Health and Human Services (HHS) in July 2009.

The stated goal of child welfare reform is for more children to receive services in their own homes, while meeting federal benchmarks for safety, permanency, and well-being. Nebraska has consistently ranked high nationally for the number of children in out-of-home care.

HHS picked six private agencies as lead agencies to implement its reform initiative. After selection, HHS increased the oversight duties

of the agencies and changed their reimbursement method from fee-for-service to a new risk-based method. By November 2010, all but two agencies had ended their contracts with the state; one agency filed for bankruptcy.

Other concerns relating to a lack of long-term planning and documentation surfaced during an interim hearing in 2010. Senators were told that foster parents and service providers were not getting paid in a timely manner, that there was confusion over work responsibilities, and agency and HHS employees were not being properly trained. Critics were especially concerned by an HHS decision to hand over more case management decisions to the private agencies and the plan to lay off more state case workers, shredding what was seen as a significant safety net should another lead agency withdraw from its contract.

The resolution gives the committee authority to consult with the primary authorities and interested parties in the child welfare system and to hold hearings. The resolution identifies five areas for the committee to study:

- The goal formation, delineation of outcome measurements, coordination, and long-term planning of HHS's child welfare initiative;
- The effectiveness of the public-private partnership in providing services, including the number of children attaining permanency through adoption;
- The system of accountability, funding, and financial sustainability of the initiative;
- The effect of the initiative on meeting the federal Child and Family Service Reviews of outcomes and indicators, permanency and well-being; and
- The option of requesting a performance and/or a fiscal audit of the initiative.

The committee is to provide its final report to the Legislature by December 15, 2011.

LR 37 was adopted by the Legislature and signed by the Speaker on February 10, 2010.

LEGISLATIVE BILLS NOT ENACTED

LB 95—Require Accreditation by Lead Agencies and a Moratorium on Agencies Contracting with the Department of Health and Human Services (Howard, Cook, Cornett, McGill, and Wallman)

Concerns with the implementation of the state's child welfare and juvenile services reform, which partially privatized services, led to the introduction of LB 95.

The bill would have required that any lead agency contracting with the Department of Health and Human Services (HHS) to provide oversight of child welfare and juvenile services be accredited by a national accrediting entity. As amended on General File, the bill also would have imposed a moratorium on HHS contracting with any other lead agencies in an area of the state where it had previously contracted with Boys and Girls Home.

The moratorium was intended to bring stability to children and families involved in the child welfare system and the juvenile justice system.

Boys and Girls Home was one of six agencies HHS contracted with to provide child welfare services and service coordination. The agency withdrew from its contract to provide services in central, western, and northern Nebraska in October 2010, less than a year after being awarded the contract. It was the third agency to withdraw from its contract and it did so amid allegations that it was not paying subcontracting service providers.

However, as the bill was being debated, the Legislature received a letter from the Governor asking that the bill be held. Instead, HHS would voluntarily implement a year moratorium on hiring a new lead agency in areas previously served by Boys and Girls Home and would fully cooperate with a legislative review of its child welfare reform efforts. (The parameters for this review are contained in LR 37, which is discussed beginning on page 55.) During the moratorium, HHS staff would again provide services in the affected regions.

LB 95 was bracketed until January 4, 2012.

LB 433—Provide Requirements for Contracts for Child Welfare Services Between Private Agencies and the Department of Health and Human Services (Campbell)

Concerns about the way in which the Nebraska Department of Health and Human Services (HHS) was handling the privatization of

the state's child welfare services also led to the introduction of LB 433. As stated in the Introducer's Statement of Intent, the bill was intended to "set parameters" for HHS as the privatization initiative called Family Matters continues.

LB 433 would have required any contracts between HHS and private agencies for the provision of child welfare and other related services and programs to be based on the reasonable cost of services, including responsibilities necessary to execute the contract. One criticism leveled at HHS was that the contracts it let with the original six child welfare reform lead agencies did not include costs for administrative duties, including case management.

HHS selected six private entities in July 2009 as lead agencies who would be responsible for providing service coordination, all recommended and ordered services for children, and 12 months' of aftercare services. By the end of the 2011 session, only two agencies remained. One agency withdrew when HHS announced it was reducing the funding as the contracts were being finalized. One agency filed for bankruptcy. Another withdrew after announcing it would lose \$5.5 million over the next fiscal year. The last agency to withdraw did so after news reports saying it was not timely paying subcontractors and foster parents. The withdrawals required HHS to resume control of child welfare cases in the central, western, and northern regions of the state.

LB 433 also would have prohibited HHS from contracting certain services, including the child abuse and neglect hotline, abuse and neglect investigations, initial family assessments, and final determinations regarding case closure. HHS also would have retained responsibility for the quality of contracted services and programs by guaranteeing they complied with federal law and did not result in the loss of federal funding.

Further, LB433 would have required HHS to adopt rules and regulations for oversight and monitoring of private child welfare agency contracts and to provide a biannual financial report to the Legislature regarding the contracts.

LB 433 was held in committee.

LB 541—Provide for Third-Party Contracts to Promote Medicaid Integrity and Cost Containment (*Health and Human Services Committee*)

LB 541 would have enacted a proposal identified in the Legislature's LR 542 process by ensuring the state's Medicaid program does not overpay for services. LR 542 was adopted by the Legislature in 2010. This resolution called on the Governor and the Legislature's

standing committees to take an in-depth look at state government and identify programs and services that could be cut.

Specifically, LB 541 would have required the Department of Health and Human Services (HHS) to contract with one or more private recovery audit contractors to audit claims for medical assistance to identify improper payments and recoup overpayments.

Audit contracts would have included services for: (1) cost-avoidance through identifying third-party liability; (2) cost recovery of third-party liability through post payment reimbursement; (3) identifying and recovering costs for claims that resulted from an accident or through neglect and payable by a casualty insurer; and (4) review of claims submitted by service providers to determine whether providers have been paid correctly and recover any identified overpayments.

The bill would have allowed contracts to be on a contingent fee basis, but payments would have been based on amounts recovered, not on amounts identified. A pending floor amendment to the bill would have required a limit on contingent fees of no more than 12.5 percent of the amounts recovered. The amendment also would have required that savings found through audit contracts be returned to the Medicaid program.

LB 541 is on Final Reading.

JUDICIARY COMMITTEE

Senator Brad Ashford, Chairperson

ENACTED LEGISLATIVE BILLS

LB 19—Prohibit the Use of Certain Drug Substances as Prescribed (McCoy)

With the adoption of LB 19, Nebraska joined a growing number of states outlawing a group of synthetic substances used to coat herbs and spices that, when smoked, mimic a marijuana high. Common names for the mixtures are “K2” and “Spice.”

The U.S. Drug Enforcement Administration, which also issued a year-long ban on some of the substances in early March 2011, said that smoking the chemicals can cause convulsions, anxiety attacks, dangerously elevated heart rates, vomiting, and disorientation.

Youth and drug counselors who testified before the committee concurred, but noted another danger. K2 is not generally viewed as harmful because stores legally sell it.

LB 19 expands the list of Schedule I drugs in the state’s Uniform Controlled Substances Act to include the entire class of synthetic cannabinoids used to make K2, Spice, and similar derivatives. One of the problems states are finding in banning particular substances associated with K2 is that manufacturers use chemically similar, but legal, substitutes. LB 19 bans eight chemical classes and 700 chemical compounds, making dodging the laws more difficult, supporters hope.

Penalties for possessing any quantifiable amount of K2-like chemicals mirror those for possession of less than an ounce of marijuana. The bill makes it an infraction for a first-offense conviction, which is punishable by a fine of \$300 and attending a drug course at the judge’s discretion. A second-offense conviction is a Class IV misdemeanor, punishable by a \$400 fine and up to five days in jail. Third and all subsequent convictions are Class IIIA misdemeanors, punishable by a \$500 fine and up to a week imprisonment.

LB 19 passed with the emergency clause 49-0 and was approved by the Governor on February 22, 2011.

LB 61—Change Provisions and Penalties Relating to Unlawful Intrusion (Heidemann)

LB 61 increases penalties for unlawful intrusion. Unlawful intrusion is viewing or recording another person in a state of undress, without their consent, in a place of solitude or seclusion where one would normally have an expectation of privacy. Such places include public restrooms, store dressing rooms, and gym locker rooms.

The bill raises the crime of unlawful intrusion from a Class III misdemeanor to a Class I misdemeanor, punishable by up to one year imprisonment, a fine or \$1,000, or both.

LB 61 also increases the penalty to a Class IV felony if the intrusion is by some form of electronic recording. If the recorded intrusion is then distributed or made public in some manner, the crime becomes a Class III felony. (A Class IV felony is punishable by up to five years' imprisonment, while a Class III felony is punishable by up to 20 years' imprisonment.) Further, if the perpetrator is 19 or older at the time the intrusion was committed and the victim was younger than 18, then a conviction requires registration under the Sex Offender Registration Act.

Finally, LB 61 sets a three-year statute of limitations for prosecutions for unlawful intrusion to begin on the later of (1) the commission of the crime, (2) notice to law enforcement or the victim of the existence of an electronic recording or the distribution of a recording of an unlawful intrusion, or (3) the youngest victim of the unlawful intrusion turns 21 years of age.

LB 61 passed 47-0 and was approved by the Governor on March 10, 2011.

LB 157—Change Guardianship and Conservatorship Provisions and Adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Coash, Ashford, Council, Nelson, and Wightman)

Responding to several publicized cases detailing financial and physical abuse of vulnerable adults by their court-appointed caretakers, the Chief Justice of the Nebraska Supreme Court convened a task force to study strengthening Nebraska's laws to prevent future abuses. LB 157 carries some of the task force recommendations.

The task force was composed of judges, lawyers, senators, clerk magistrates, an accountant, and a police officer, most of whom had experience with issues of conservatorship and guardianship.

Generally, conservators manage financial affairs of persons deemed to be “protected,” while guardians make decisions regarding personal matters for their wards.

LB 157 adds a definition for an “interested person” in the Nebraska Probate Code pertaining to appointment of guardians and conservators and allows judges to receive ex parte communication with an interested person who, by affidavit, shows to the court that a ward or protected person’s safety, health, or financial welfare is in jeopardy. The judge can issue ex parte orders, in effect for 10 days or until a hearing can be held on the claims. Anyone found to have brought such allegations in bad faith or whose affidavit is found by the court to lack factual basis is charged the reasonable attorney’s fees and costs of the opposing party.

The bill imposes new requirements on guardians and conservators. Persons, except for financial institutions or trust companies, who are nominated as guardians or conservators must complete a criminal history check through a process approved by the State Court Administrator prior to appointment. This requirement can be waived in cases of an emergency appointment, for good cause shown, or when the protected person requests an expedited hearing.

Further, LB 157 requires conservators and guardians to file letters of appointment with the register of deeds in every county in which the ward owns or has an interest in real property. Another provision requires conservators or guardians to file an inventory of the ward’s assets with the court within 30 days of an appointment. The inventory of assets must also be mailed annually to all interested persons. In cases in which a ward has both a conservator and a guardian, only the conservator must provide an inventory of assets. If assets exceed \$10,000, the conservator or guardian must furnish a bond.

The bill prohibits conservators or guardians from moving a ward’s residence out of state without court permission and allows courts to refer contested guardianship or conservatorship cases to mediation.

The provisions of **LB 85**, which enact the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, were amended into LB 157. The intent of the act is to harmonize laws among states to accommodate a mobile and aging population. The act establishes a priority order for determining jurisdiction, provides for the recognition of guardianships across state lines, and provides for transfers of guardianship from one state to another.

Twenty states have adopted the act. It is needed because guardianship and protective proceedings are an exception to the full faith and credit doctrine of the U.S. Constitution, requiring that court orders in one state be honored in another.

The act assigns primary jurisdiction to an individual's home state, which is where an individual has lived or is physically present for six consecutive months prior to the filing of a guardianship, conservatorship, or other protective proceeding. If an individual does not have a home state or the home state declines to act, then the state with which an individual has a significant connection is next in order. A significant connection could mean family living there, physical presence of the individual, or property ownership.

To speed cases where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes it is a more appropriate forum than a court in another state. A court in a state where an individual is physically present has jurisdiction to appoint a guardian in an emergency. Additionally, a court not otherwise having jurisdiction has jurisdiction to consider a petition to accept transfer of an already existing guardianship or conservatorship from another state.

LB 157 passed 49-0 and was approved by the Governor on February 22, 2011.

LB 191—Change Provisions Relating to Sentence Reductions (*Council and Ashford*)

Committed offenders have a new incentive to behave behind bars under the provisions of LB 191, which rewards them with additional "good time" for not getting into trouble.

"Good time" is slang terminology for getting the term of a prison sentence reduced for good behavior.

LB 191 instructs the Department of Correctional Services to reduce the term of a committed offender by three days on the first day of each month after an inmate has served a full year of his or her sentence, provided that the inmate has not been found guilty of a Class I or Class II offense or more than three Class III offenses under the department's disciplinary code.

The earned sentence reductions under LB 191 are in addition to other good time an inmate receives and are not subject to forfeiture or withholding by the department. Inmates currently have their sentences reduced six months for each year served and pro rata for any part less than a year. But this reduction can be rescinded for misconduct.

LB 191 also allows the Parole Board to reduce a parolee's term by 10 days for each month of his or her parole to reward good conduct. Prior law allowed the Parole Board to cut a parolee's term by two days each month.

LB 191 passed with the emergency clause 45-0 and was approved by the Governor on March 16, 2011.

LB 197—Allow Breast Feeding as Prescribed (*Dubas, Campbell, Christensen, Conrad, Gloor, Haar, Harms, McGill, Sullivan, and Fulton*)

LB 197 allows mothers to breast feed their children in any public or private location where the woman is otherwise authorized to be. Prior to the passage of LB 197, Nebraska was one of only two states without a statute allowing women to nurse their children in public.

The measure contains no enforcement or penalty provisions. The bill's introducer stated during the committee hearing that she would expect an educational undertaking by breast-feeding proponents to inform the public and business owners about a mother's right to nurse her child and the health benefits it bestows on infants.

LB 197 passed 46-0 and was approved by the Governor on March 10, 2011.

LB 284—Change Provisions Relating to Unlawful Picketing of a Funeral (*Krist, Fulton, Howard, Loudon, Mello, Pankonin, Schilz, McCoy, Coash, Bloomfield, Fischer, and Cook*)

Persons wanting to picket a funeral must stand at least 500 feet from a cemetery, mortuary, church, or other place of worship during the funeral, upon passage of LB 284. Prior law allowed picketers no closer than 300 feet.

LB 284 is a further response to picketing by members of a small church in Kansas who have taken to picketing the funerals of members of the armed services and public officials to share their message that the deaths are God's punishment on a country that tolerates homosexuality. Signs with messages such as "Thank God for Dead Soldiers" have outraged public sentiment. Nebraska first enacted a law to push protesters back from funerals in 2006. Nearly every state and the federal government have also enacted laws creating buffer zones around funerals in response to the church's activities.

However, the U.S. Supreme Court recently upheld the church's right to protest at the funerals (*Snyder v. Phelps et al.*, 562 U.S. ___ (2011)),

and the church has vowed to challenge state laws restricting where they can stand. So, LB 284 might not be the last word on the issue.

LB 284 passed 48-0 and was approved by the Governor on March 16, 2011.

LB 463—Change Juvenile Penalty, Records, Service Plan, Probation Sanctions, and Truancy Provisions (*Ashford and Howard, at the request of the Governor*)

LB 463 makes changes to statutory provisions enacted in 2010 that addressed juvenile truancy and delinquency prevention. As amended by the committee and enacted, LB 463 also includes a grant program for Court Appointed Special Advocates (CASAs) that was originally proposed in **LB 79**, and provisions from **LB 301** and **LB 669** revising the process for sealing juvenile records.

LB 463 requires superintendents of school districts who are members of a learning community to develop and participate, by August 1, 2011, in a plan to reduce excessive absenteeism. The plan must include a process to share information about at-risk youth with the goals of improving educational outcomes, providing effective interventions to reduce risk factors, and reducing involvement with the juvenile justice system.

The bill defines at-risk youth as children who (1) are under the supervision of the Office of Probation Administration; (2) are committed to the care, custody, or supervision of the Department of Health and Human Services; (3) are otherwise involved in the juvenile justice system; or (4) have been absent from school for more than five days per quarter because of unexcused absences.

LB 463 authorizes the State Court Administrator and learning communities to provide funding to entities involved in the juvenile justice system that provide pre-filing and diversion programming, which is designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system.

Additionally, LB 463 mandates that each school district include in its written policy on excessive absenteeism a provision indicating how the school district and the county attorney will handle cases in which excessive absences are due to documented illness that makes attendance impossible or impracticable.

In regards to CASAs, LB 463 contains findings that CASAs provide a unique and vital service to the children they represent, while giving judges essential information and saving the state thousands of dollars. CASAs are trained volunteers who have been appointed by

the court to advocate for children who have been removed from their homes due to abuse or neglect.

LB 463 establishes a grant program to train more CASAs. The bill creates the Court Appointed Special Advocate Fund under the control of the state Supreme Court and administered by the State Court Administrator. To pay for the program, the bill authorizes two transfers from the Commission on Public Advocacy Operations Cash Fund to the Court Appointed Special Advocate Fund. The bill authorizes a transfer of \$100,000 on or soon after July 1, 2011, and a second transfer of \$200,000 on or soon after July 1, 2012.

To qualify for a CASA grant, programs must (1) be 501(c)(3) nonprofit organizations, (2) have the ability to operate statewide, and (3) have an affiliation agreement with local programs that meet the requirements of Nebraska's Court Appointed Special Advocate Act.

The bill details how the court is to award grants. The court is allowed to use \$10,000 for administrative costs. Of the remainder, 80 percent – but no more than \$300,000 – is to be awarded as grants to recruit new CASA volunteers and to defray their training costs and 10 percent – but no more than \$50,000 – is to be awarded as grants to expand CASA programs into counties that have no or limited CASA programs. Grant recipients must annually report to the court, Legislature, and Governor on how the grants have been used.

Finally, LB 463 makes changes to the laws governing the sealing of juvenile records. Among these changes, LB 463 allows the inspection of sealed records by: (1) the court, a city attorney, or the county attorney for purposes of collecting parental support or obligations; (2) a law enforcement agency, if a person who is the subject of a sealed juvenile record applies for a job with the agency; and (3) the state Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, or a criminal or juvenile detention facility where a person who is the subject of a sealed record has been committed.

The bill also clarifies the manner in which a juvenile is told what a sealed record means and plainly states that having a record sealed allows the person whose record has been sealed to respond to any public inquiry as if the offense never occurred.

LB 463 passed with the emergency clause 46-2 and was signed by the Governor on May 11, 2011.

LB 479—Authorize a Minor to Give Consent to Evidence Collection and Examination and Treatment in Cases of Sexual Assault (*Lathrop*)

Eighteen-year-olds who are the victims of sexual assault or domestic violence can receive medical treatment without having to tell their parents under the provisions of LB 479. Supporters of the measure hope it will encourage more victims to seek help who might not otherwise because they are too embarrassed or traumatized to tell a parent.

The bill allows health care professionals and mental health practitioners to examine a patient who is 18, with the consent of the patient, for injuries associated with sexual assault or domestic violence, to treat them and prescribe medication for them, all without notifying or getting the consent of a parent, guardian, or any other person having custody of the minor.

LB 479 also adds the collection of forensic evidence of domestic violence to the statute authorizing health care practitioners to gather evidence upon consent of the victim and without separate authorization by a law enforcement officer.

LB 479 passed 46-0 and was approved by the Governor on April 26, 2011.

LB 512—Change Provisions Relating to Unlawful Possession of a Firearm at a School and Mental Health Determinations and Residency Requirements Regarding Handgun Purchase and Possession (*Christensen*)

LB 512 makes changes to several laws pertaining to the possession of firearms.

One of the changes brings Nebraska into conformance with the federal NICS Improvement Amendment Act of 2007, which was a response to the Virginia Tech shootings in April of that year. Thirty-three people died after being shot by a student who had legally purchased handguns despite a long history of mental illness. The information about the shooter's mental illness was not transmitted to the National Instant Criminal Background Check System (NICS), where it might have prevented the sale. Federal and state law prohibits the sale of handguns to individuals who are mentally ill.

LB 512 removes a requirement that the state Department of Health and Human Services (HHS) keep mental health records for five years after an individual's mental health commitment or other court-ordered treatment. The short timeframe proved a barrier to access for the Nebraska State Patrol regarding individuals' mental health

status. The bill also requires courts to notify the State Patrol as soon as practicable, but within 30 days, after an order of commitment or discharge from a mental health proceeding is issued. Prior law required the courts to notify HHS, which was to then notify the patrol.

The bill provides a definition for firearm-related disability. A person with a firearm-related disability cannot: (1) purchase, possess, ship, transport, or receive a firearm under state or federal law; (2) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under Neb. Rev. Stat. sec. 69-2404; or (3) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act.

To ensure accuracy, the bill requires information on mental health issues to be updated, corrected, modified, or removed – as appropriate and as soon as practicable – from any data base maintained by the state or federal government that is made available to the NICS.

LB 512 also recognizes that persons can recover from mental illness and, therefore, provides a statutory process for the restoration of Second Amendment rights. Persons released from commitment or treatment can petition the mental health board to remove their firearm-related disability. The mental health board must hold a hearing in such cases and, if it determines the individual is not likely to act in a manner dangerous to public safety and the request is not contrary to the public interest, then the board must grant the request to remove a firearm-related disability from the individual's record.

Two other gun-related measures were amended into LB 512. New residents to Nebraska do not have to wait 180 days to apply for a concealed-carry permit if they have a valid concealed-carry permit from the state where they lived previously, under provisions originally introduced in **LB 138**. And, in provisions originally introduced in **LB 618**, an exemption to the ban on possessing a firearm in a school or at a school event is provided for duly authorized law enforcement officers under contract to a school for school security or school-event control services.

LB 512 passed 43-0 and was approved by the Governor on April 26, 2011.

LB 521—Require the Physical Presence of a Physician who Performs, Induces, or Attempts an Abortion (*Fulton, McCoy, Bloomfield, Brasch, and Pirsch*)

LB 521 prohibits telemedicine abortions. The bill requires a physician who uses or prescribes any instrument, device, medicine,

drug, or other substance in the performance of an abortion to be physically present in the same room with the patient during an abortion.

The bill makes performing, inducing, or attempting to perform an abortion without being physically present with a patient a Class IV felony, which is punishable by up to five years in prison and a \$10,000 fine.

The bill is preventive, since abortions using the abortifacient drug, mifepristone (formerly, RU-486), via telemedicine had not occurred in Nebraska prior to enactment of LB 521. But, as noted by the Introducer's Statement of Intent, the practice is permitted in Iowa. There, the doctor is able to remotely open a drawer to release the drug to a patient after consulting with the patient by a live video link. According to an article in the *New York Times*, Iowa is the first and only state in the nation to provide abortions this way.

LB 521 passed 38-9 and was approved by the Governor on May 26, 2011.

LB 667—Change Provisions Governing Motor Vehicle Homicide, Alcohol Violations involving Minors, Operating Watercraft or Motor Vehicles Under the Influence of Alcohol or Drugs, Administrative License Revocation, and Ignition Interlock (Flood)

LB 667 makes several significant changes to Nebraska's drunk-driving laws, including putting an ignition interlock device between more first-time, driving-while-intoxicated (DUI) offenders and the driving public. As originally proposed, LB 667 would have replaced the state's administrative license revocation (ALR) procedure and instead would have required installation of an ignition interlock device as a condition of bond. Nebraska's ALR is a civil procedure, apart from any criminal court conviction and punishment for DUI. As amended, LB 667 does not significantly change this.

LB667 provides an option to persons subject to ALR. They can either contest the administrative revocation by requesting a hearing or waive that right and instead request to have an ignition interlock device installed on their vehicle. Ignition interlock devices prevent a vehicle from being started until the driver breathes into the device and will not allow a vehicle to be started if the device registers alcohol on the driver's breath.

LB 667 increases the ALR period from 90 to 180 days for first-time DUI offenders and requires that all persons subject to an ALR, who have waived their right to a hearing and have requested an ignition interlock device, cannot operate a vehicle without an ignition

interlock device for the duration of the ALR. The bill also prescribes limitations on where a person with an ignition interlock device can drive. This information is printed on the ignition interlock driving permit.

LB 667 shortens the time between license confiscation and revocation to 15 days. Drivers still have 10 days to file a petition for a hearing to protest the administrative revocation. Drivers who waive their right to a hearing and instead petition to install an ignition interlock device receive credit for the time they use the device against the license revocation period imposed by the court as part of the criminal sanction. However, persons who request an ALR hearing are ineligible for an ignition interlock device and cannot, therefore, drive during the ALR period.

Persons who tamper with an interlock device or drive without one, in addition to any possible criminal charges, face an additional six-month ALR period. The bill imposes additional revocation time on persons who had a previous ALR or who refuse the chemical test. LB 667 also increases the time period, from 12 to 15 years, during which prior convictions can be used to enhance a criminal sanction for subsequent DUI convictions.

LB 667 creates several new crimes. Driving drunk with a child who is 16 years of age or younger in the vehicle becomes a separate and distinct crime, punishable as a Class I misdemeanor. The bill also makes motor vehicle homicide and motor vehicle homicide of an unborn child separate and distinct offenses from any other crime alleged to have been committed by the act of driving under the influence.

The bill enhances the penalty for procuring alcohol for a minor if someone suffers serious bodily injury or death, and the proximate cause of the accident was the minor's alcohol consumption or impaired condition. In this situation, the penalty increases from a Class I misdemeanor to a Class IIIA felony, with a mandatory minimum of at least 30 days' imprisonment.

LB 667 clarifies and amends the State Boat Act pertaining to operating a boat while under the influence of alcohol to include being under the influence of drugs, and adds a provision prohibiting a person from being under the influence of alcohol or drugs while in the control of a personal watercraft.

The bill creates a new penalty of operating a motorboat or personal watercraft during a court-ordered suspension received from a prior conviction. Prior convictions include convictions in another state or under a city or village ordinance enacted in conformance with the State Boat Act.

LB 667 passed 46-0 and was approved by the Governor on May 26, 2011.

**LB 690—Change Consent and Parental Notification Provisions
Regarding Abortion (*Brasch, Bloomfield, Carlson, Christensen, Fulton,
Hansen, Heidemann, Janssen, Krist, Langemeier, Larson, Lautenbaugh,
McCoy, Schilz, Schumacher, Smith, and Wallman*)**

LB 690 requires that physicians must have the written, notarized consent of the parents of a woman younger than 18 before an abortion can be performed. Prior law required that parents be notified.

If a pregnant minor declares in a signed written statement that she is the victim of abuse, sexual abuse, or child abuse or neglect by either of her parents or legal guardians, then the attending physician can get consent from a grandparent. Physicians who rely on the woman's signed written statement as evidence of abuse cannot be held civilly or criminally liable for failing to get consent. A physician also must inform the woman of his or her duty to notify the proper authorities of the abuse allegations.

The bill allows the consent requirements to be waived if the attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to obtain the required consent.

LB 690 prohibits parents, guardians, or any other person from coercing a pregnant minor into an abortion. A pregnant minor who is denied financial support by her parents, guardians, or custodians due to her refusal to get an abortion, is deemed emancipated for purposes of eligibility for public assistance benefits. However, public assistance benefits cannot be used for an abortion.

The bill also gives the pregnant minor the option of seeking court permission for an abortion and avoiding parental consent. The court can authorize an abortion if, by clear and convincing evidence, it finds the pregnant minor is both sufficiently mature and well-informed to decide whether to have an abortion, if there is evidence of abuse by a parent or guardian, or if it is in the best interest of the minor to get an abortion without parental or guardian consent. To protect the minor's identity, proceedings are confidential and the minor can use a pseudonym or her initials.

LB 690 makes it a Class III misdemeanor to knowingly and intentionally, with reckless disregard, provide an abortion without gaining the required parental consent; providing consent when not authorized to do so; or coercing a pregnant woman to have an

abortion. The bill also provides a cause for civil action for persons denied the right and opportunity to provide consent.

LB 690 passed 41-6 and was approved by the Governor on May 26, 2011.

LEGISLATIVE BILLS NOT ENACTED

Illegal Immigration—LB 48, LB 569, LR 28, and LR 39

Reflecting the national mood, illegal immigration was again on the minds of state senators in 2011. The Judiciary Committee heard two bills and two resolutions on the topic. All were held by the committee in anticipation of an interim study on illegal immigration. An interim study on immigration was previously conducted by the committee in 2008.

The bills heard in 2011 were **LB 48**, introduced by *Senators Janssen, Brasch, Hansen, Karpisek, McCoy, Schilz, and Bloomfield*, which was styled after a law in Arizona giving broad-based immigration enforcement powers usually reserved for federal authorities to state and local law enforcement officers, and **LB 569**, introduced by *Senators Coash, Gloor, and Howard*, which would have required employers to use the federal e-verify system to check the status of new employees.

Under LB 48, Nebraska law enforcement officers would have been required to check the immigration status of persons whom they had lawfully stopped, detained, or arrested if the officer had “reasonable suspicion” to believe the person was in the country illegally.

Such persons would have to provide proof of lawful presence: a driver’s license; a state or tribal identification card; or any state, tribal, or federal identification card that requires proof of legal immigration status prior to issuance. However, LB 48 would have prohibited police from basing their reasonable suspicion solely on a person’s race, color, religion, sex, or national origin.

LB 569 would have required all public and private employers to determine the work eligibility of their new hires using a database system established by federal law and currently required to be used by the state, the federal government, and public contractors. Many private employers voluntarily use the system. Employers who violated the requirement would have been guilty of a Class III misdemeanor.

LR 28, introduced by *Senator Fulton*, would have expressed the Legislature’s desire that all municipal, county, and state law enforcement agencies in Nebraska participate in the Secure Communities program by 2012. Run by the U.S. Immigration and

Customs Enforcement (ICE), the Secure Communities program provides an enhanced fingerprint system for checking immigration status and criminal history at the time an arrestee is booked into custody. ICE is notified when the fingerprints of someone run through the system match Homeland Security records. The program is aimed at removing the most dangerous and violent criminal aliens. Currently, 11 Nebraska counties participate in the program, according to the Introducer's Statement of Intent.

Finally, **LR 39**, introduced by *Senators Council, Ashford, Avery, Campbell, Coash, Conrad, Cook, McGill, Nordquist, and Wightman*, would have expressed legislative intent to urge Nebraska's congressional delegation to enact "thorough, commonsense, workable, and humane reforms that reflect the realities of the country's workforce needs and represent America at its best."

NATURAL RESOURCES COMMITTEE

Senator Chris Langemeier, Chairperson

ENACTED LEGISLATIVE BILLS

LB 229—Change and Eliminate Provisions Relating to the Water Resources Cash Fund and the Nebraska Environmental Trust Fund and Provide an Additional Consideration for Grants from the Nebraska Environmental Trust Fund (*Fischer, Carlson, Dubas, Langemeier, McCoy, Schilz, and Larson*)

As originally proposed, LB 229 would have transferred \$7 million annually from the Nebraska Environmental Trust Fund to the Water Resources Cash Fund from July 1, 2011 to July 1, 2021. As enacted, LB 229 provides a mechanism to fund some of the state's pressing water commitments using money from the Nebraska Environmental Trust Fund, but in a manner that preserves the grant-approval process of the state's unique Environmental Trust Act.

The trust is funded with a constitutionally guaranteed percentage of the revenue from the state lottery. This has amounted to between \$13 million and \$14 million over the past several years. The trust fund board uses a competitive grant process to award this money for approved environmental projects to state agencies, private groups, nonprofit entities, political subdivisions, and individuals.

LB 229 requires the Department of Natural Resources (DNR) to apply for a three-year environmental trust grant totaling \$9.9 million prior to the application deadline for fiscal year 2011-2012. The grant will be paid out in three annual installments of \$3.3 million.

The purposes of the grant must be consistent with the purposes of the Water Resources Cash Fund. DNR uses the cash fund to pay for water conservation projects in river basins, subbasins, or reaches deemed overappropriated or designated as fully appropriated or which are bound by an interstate compact or decree or a formal state agreement or contract. DNR can also use unobligated cash fund money for a statewide assessment of water management activities and funding needs to meet statutory requirements. LB 229 adds language that the cash fund can also be used for projects and proposals for which Environmental Trust grant funding is sought.

The bill requires the state to match the Environmental Trust grant with money pledged from the General Fund. Environmental Trust grant applicants who pledge matching funds gain points on the scale the Environmental Trust board uses to rank applicants. Under LB 229, the DNR application gains 50 points if its application contains

documentation that the Legislature has authorized a transfer of \$3.3 million from the General Fund into the Water Resources Cash Fund for fiscal years 2011-2012 and 2012-2013 and has stated its intent to transfer \$3.3 million in fiscal year 2013-2014.

LB 229 also expresses legislative intent that DNR apply for another three-year grant in 2014-2015 if criteria established in the bill are met during the first three-year grant period. Meeting the criteria also gains the grant application 50 bonus points in the trust board's decision-making. The bill sets forth three criteria. They are:

- (1) The Legislature's Natural Resources Committee must examine options for water funding and submit a report to the Clerk of the Legislature by December 1, 2012. The report must include an outline and priority list of water management and funding needs in Nebraska; an outline of statewide funding options that create a dedicated, sustainable funding source; and recommendations for legislation.
- (2) Evidence that the projects and activities funded by DNR with the trust grant have resulted in enhanced stream flows, reduced consumptive uses of water, recharged ground water, supported wildlife habitat, or otherwise contributed toward conserving, enhancing, and restoring Nebraska's ground and surface water resources. DNR must submit a report to the committee, by July 1, 2014, providing demonstrable evidence of the benefits accrued via the grant.
- (3) In addition to the grant reporting requirements, DNR must submit a report to the trust board, by July 1, 2014, documenting that expenditures from the Water Resources Cash Fund made to natural resources districts have met the local matching fund requirements of 40 percent; that 10 percent or less of the matching fund requirements were provided by in-kind contributions; and that all other projects and activities funded by DNR through trust fund grants were also matched at not less than 40 percent of the project or activity cost by other funding sources.

LB 229 authorizes an appropriation of \$600,000 from the state's General Fund to the Water Resources Cash Fund on or before June 30, 2012, and another transfer of \$600,000 to the cash fund on or before June 30, 2013. Since the Legislature already provides \$2.7 million annually to the Water Resources Cash Fund, an additional \$600,000 is needed each year to make the state's annual match of \$3.3 million.

Finally, in an attempt to preserve the Water Resources Cash Fund for water conservation projects, LB 229 removes statutory language authorizing transfers as directed by the Legislature from the cash fund to the General Fund.

LB 229 passed with the emergency clause 39-5 and was approved by the Governor on May 17, 2011.

LB 421—Change Fees and Display Requirements for Motor Vehicle Park Entry Permits (*Pankonin*)

Beginning January 1, 2012, persons entering Nebraska state parks will pay more for the privilege under the terms of LB 421.

LB 421 increases the upper limit on the annual resident park entry permit from \$20 to \$25 and increases the top amount the Game and Parks Commission can charge for a nonresident annual permit to \$30. The bill sets the upper rate for the daily permit for residents at \$5 (previously, \$4), and \$6 for nonresidents (up from \$5).

In a nod to convenience for park personnel, the bill also requires park entry permits to be displayed on windshields on the driver's side, since the park entry booths sit on the left side of vehicles.

The bill's supporters said the increase was necessary to maintain the state's parks. Insufficient park fees have resulted in \$34 million of deferred maintenance costs, according to the bill's sponsor, who added that continuing to inadequately fund the parks could result in reduced hours of availability or park closures.

LB 421 passed 41-5, but was vetoed by the Governor. In his veto message, Governor Heineman said raising fees in tough economic times was inappropriate. Higher fuel costs will keep more Nebraskans closer to home, where higher park entry fees could discourage them from taking advantage of local park attractions, he said.

A motion to override the Governor's veto passed 42-5 on May 17, 2011.

LB 549—Create the Nebraska Youth Conservation Program and Provide Duties for the Game and Parks Commission (*Council*)

The Nebraska Youth Conservation Program, which would provide temporary work on environmental projects to at-risk youth, is enacted via LB 549.

The program must combine academic, environmental, and job skills training with personal growth opportunities. Participants must be at-risk youth between 16-21 years of age, unemployed, and residents of Nebraska. LB 549 requires special effort be made to choose applicants living in rural and urban high-poverty areas.

Participants must be paid at least the minimum wage for a six-week commitment. The program cannot result in displacing or reducing the work hours of current employees.

LB 549 assigns administration of the program to the Game and Parks Commission, which is allowed to contract with experienced service providers or the Department of Labor. Initial funding for the program comes from a one-time transfer of \$994,000 from the State Settlement Cash Fund to the newly created Nebraska Youth Conservation Program Fund.

The bill also eliminates legislative authority to review and make future expenditures from the State Settlement Cash Fund. Instead, LB 549 allows the fund, which consists of recoveries under the Consumer Protection Act, to be used for any allowable legal purpose as determined by the Attorney General.

LB 549 passed with the emergency clause 44-0 and was signed by the Governor on May 17, 2011.

LB 629—Adopt the Hazardous Liquid Pipeline Reclamation and Recovery Act (*Sullivan, Dubas, Haar, Fulton, and Coash*)

LB 629 makes oil pipeline carriers financially responsible for reclamation costs for the lifetime of the pipeline. The bill is one of three heard by the committee in response to TransCanada's Keystone XL pipeline, whose proposed route would ship crude oil from Alberta, Canada, across Nebraska's ecologically sensitive Sandhills, on its way to Gulf Coast refineries.

Nebraska landowners along the proposed route and environmental groups have become increasingly vocal opponents as the state awaits a ye or nay from the U.S. Department of State on whether it will grant the Canadian firm a permit to construct the pipeline. Meanwhile, TransCanada has approached Nebraska landowners to acquire land for the pipeline, in some cases threatening eminent domain if the landowners do not oblige. The proposed route transverses the counties of Boone, Fillmore, Garfield, Greeley, Hamilton, Holt, Jefferson, Keya Paha, Merrick, Nance, Rock, Saline, Wheeler, and York.

LB 629 makes pipeline carriers that own, construct, operate, or manage an oil pipeline through Nebraska financially responsible for reclamation costs relating to the construction, operation, and management of the pipeline. The bill defines a pipeline carrier to be an entity which engages in owning, operating, or managing a pipeline or part of a pipeline for the transportation of oil, excluding entities under the jurisdiction of the Nebraska Oil and Gas Conservation Commission for in-field flow-lines and gathering lines.

The bill defines reclamation to mean restoration of the areas through which a pipeline is constructed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction. Reclamation costs include, but are not limited to, the costs of restoration of real and personal property, the costs of restoration of natural resources, the costs of rehabilitation of habitat or wildlife, and the costs of revegetation.

Under the terms of LB 629, pipeline carriers must commence reclamation of the area through which a pipeline is constructed as soon as reasonably practicable after backfill. The pipeline carrier's obligation for reclamation and maintenance of the pipeline right-of-way continues until the pipeline is permanently decommissioned or removed.

The bill states that it provides the minimum standards to be met by a pipeline carrier and is not meant to affect the obligations of a pipeline carrier provided for in a negotiated agreement with a landowner nor the duties of a pipeline carrier under applicable federal law or permits.

The other pipeline bills heard by the committee were **LB 340** introduced by *Senators Dubas, Fischer, Fulton, Haar, and Sullivan*, and **LB 578** introduced by *Senator Haar*. Both bills would have ascribed duties to the Public Service Commission in relation to regulating pipelines.

LB 629 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2011.

LEGISLATIVE BILLS NOT ENACTED

LR 40CA—Constitutional Amendment to Declare Fishing, Trapping, and Hunting to be Rights Forever Preserved Subject to Reasonable Restrictions (*Pirsch, McCoy, Krist, Price, Coash, Fulton, Bloomfield, and Wallman*)

Should hunting, fishing, and trapping be constitutional rights for Nebraskans? Voters would have answered that question in the general election of November 2012 under the provisions of LR 40CA.

If adopted by voters, LR 40CA would have added a new provision to Article XV, sec. 25 of the Nebraska Constitution.

The measure would have read: "The citizens of Nebraska have the right to hunt, to fish, and to harvest wildlife, including by the use of traditional methods, subject only to laws, rules, and regulations that promote wildlife conservation and management and that preserve the future of hunting and fishing. Public hunting and fishing shall be

a preferred means of managing and controlling wildlife. This section shall not be construed to modify any provision of law relating to trespass or property rights.”

Proponents of the measure fear hunting and fishing are in the bull’s eye of the Humane Society of the United States, which would seek to ban those activities if they were not accorded constitutional protection. Fourteen other states have placed hunting and fishing rights into their states’ constitutions.

LR 40CA is on Select File with amendments pending.

LR 51CA—Constitutional Amendment to Change Allocation of State Lottery Proceeds (*Heidemann*)

The Environmental Trust would have been cut out of lottery funding if LR 51CA had passed the Legislature and was subsequently adopted by voters. The proposed constitutional amendment would have split the money going to the Nebraska Environmental Trust Fund between the Water Resources Cash Fund and the University Of Nebraska Board Of Regents for Innovation Campus. The transfers would have continued through 2038, at which time the money would have gone to the General Fund.

As guaranteed by the Nebraska Constitution, the Nebraska Environmental Trust Fund receives 44.5 percent of the lottery revenue remaining after the payment of prizes, operating expenses, and an initial transfer to the Compulsive Gamblers Assistance Fund.

LR 51CA failed to advance from committee.

NEBRASKA RETIREMENT SYSTEMS COMMITTEE

Senator Jeremy Nordquist, Chairperson

ENACTED LEGISLATIVE BILLS

LB 382—Change Deposit and Contribution Rates for Certain Retirement Systems and Calculation of State Aid for Schools (*Nordquist, at the request of the Governor*)

Underfunded defined benefit retirement plans of state and local governments across the nation have made news in recent years. Fortunately, Nebraska's defined benefit plans—the school employees, Class V (Omaha schools), judges, and State Patrol retirement systems—are generally in better fiscal condition than similar plans in other states. Even so, the Legislature has had to bolster the plans because they have suffered financial setbacks caused by the severe economic recession and precipitous stock market decline.

Because the billion dollars in losses suffered in 2008 and 2009 will impact future funding obligations, keeping the plans in good financial order is a work in progress. In 2009, the Legislature raised contribution rates and court fees and appropriated general funds to buoy the plans' funds.

LB 382 is the latest effort to support pension obligations. By adjusting the contribution rates of the school, Omaha schools, and State Patrol retirement plans, LB 382 is another step in assuring the long-term sustainability of the funds.

The bill raises the employee contribution rate in the school plan from 8.28 percent to 8.88 percent, beginning September 1, 2011, and increases the rate again to 9.78 percent on September 1, 2012. However, the employee contribution rate will drop to 7.28 percent, beginning on September 1, 2017. The employer match continues at 101 percent.

LB 382 also raises the employee contribution for members of the Omaha schools plan from 8.3 percent to 9.3 percent on September 1, 2011. The employer match remains 101 percent.

Additionally, the bill extends the one percent (of total annual compensation) state contribution to the Omaha schools plan through July 1, 2017, at which time the rate declines to 0.7 percent. However,

the bill terminates state funding for the purchasing power cost-of-living allowance on June 30, 2014.

The measure also raises the contribution rate for State Patrol plan members and the employer contribution rate for the State of Nebraska from 16 percent to 19 percent, effective July 1, 2011. On July 1, 2013, the rate will return to 16 percent for both contributors.

LB 382 passed with the emergency clause 43-0 and was approved by the Governor on May 4, 2011.

LB 509—Change Provisions Relating to Retirement (*Nebraska Retirement Systems Committee*)

As introduced, LB 509 was the annual retirement cleanup bill, encompassing mostly technical changes to different portions of Nebraska retirement systems law. As enacted, LB 509 includes provisions of **LB 246**, **LB 486**, and **LB 532**.

LB 509 includes provisions to counter a practice—sometimes used in the School Employees Retirement System—of increasing a member’s earnings to inflate his or her pension, a benefit that the state is obligated to pay, in some cases, for many years.

A school member’s pension is calculated based on his or her final five years of earnings before retirement. LB 509 raises the salary cap for year-to-year salary increases during the five-year period used for calculating the pension benefit from 7 percent to 9 percent, effective July 1, 2012 until July 1, 2013. The result is that the portion of a salary increase over 9 percent will be excluded from the calculation of a member’s retirement annuity. Beginning July 1, 2013, salary increases over 8 percent will be excluded from the annuity calculation.

However, LB 509 also eliminates exemptions to the salary cap, which have increased over the years. Eliminating exemptions and raising the salary cap is a formula intended to improve the school plan’s financial status in the current difficult economic times and to help assure its viability over the long term.

The bill also provides for the transfer of members of the independent retirement plan of the Nebraska Department of Labor (department) to the state employees retirement system, if the independent plan is ever terminated. If the transfer occurs, independent plan members will be fully vested in the state employees retirement system and credited for their years of service under the independent plan.

Decades ago at the encouragement of the federal government, the department established the independent retirement plan for

employees in its unemployment insurance and job service programs. In 1961, the Legislature authorized the independent plan for employees in the two programs.

Unlike other state retirement plans, the independent plan is not managed by the Public Employees Retirement Board. Instead, it is managed by the Commissioner of Labor, administered by a private company, and primarily funded by the United States Department of Labor.

The Legislature closed the independent plan to new members in 1984. Since then all new department employees have been enrolled in the state employees retirement plan.

By 2009, the fund supporting the independent plan experienced a severe shortfall, creating concern that the fund would be unable to pay retirement annuities to its members over the long term. The commissioner alerted the Legislature to the existence and condition of the independent plan and reinstated employee contributions to the plan in January 2010.

LB 509 merges and vests members of the independent plan who are still employed by the department into the state employees plan, if the independent plan is terminated for active, working members. If the merger occurs, retired members of the plan will continue to receive their annuities.

The bill also mandates that a pension benefit continues for a surviving spouse of a deceased state patrol member after the spouse remarries. Under prior law, a surviving spouse who remarried lost the pension.

Finally, LB 509 provides that a terminated member of the state or county employees retirement system who has filed a grievance can receive a distribution of the balance of his or her account or \$25,000, whichever is less. If the terminated member is reinstated, he or she must repay the money.

LB 509 passed with the emergency clause 44-0 and was approved by the Governor on April 14, 2011.

REDISTRICTING COMMITTEE

Senator Chris Langemeier, Chairperson

Introduction

Redistricting is a process undertaken by the Legislature every 10 years following the federal decennial census conducted by the federal Bureau of the Census. This year the Legislature was responsible for drawing district boundaries for the U.S. House of Representatives, Legislature, Nebraska Supreme Court, Public Service Commission, Board of Regents of the University of Nebraska, and State Board of Education.

The *Rules of the Nebraska Unicameral Legislature* provide for the creation of a special Redistricting Committee to guide the Legislature through the process. The Redistricting Committee is composed of nine members, three from each congressional district, appointed by the Executive Board. No more than five members can be from the same political party.

The committee met regularly throughout the session. It presented substantive guidelines, in the form of Legislative Resolution 102, for the Legislature to discuss and approve. The substantive guidelines detailed criteria the Legislature must consider when proposing a redistricting plan in order to ensure the plan is constitutionally acceptable. Finally, the committee drafted and introduced six redistricting proposals as a starting point for the redistricting process.

This year, in a nod to the improvement and capabilities of map-making technology, redistricting legislation adopted, by reference, specific detailed maps of each district. Following the brief summaries of the enacted redistricting legislation are maps of the redistricting plans adopted by the Legislature.

ENACTED LEGISLATIVE BILLS

LB 699—Change Boundaries of Supreme Court Judicial Districts (Redistricting Committee)

LB 699 redraws district boundaries for the six Supreme Court judicial districts.

The ideal population for each judicial district is 304,390. The districts adopted via LB 699 have an overall range of deviation of 2.52 percent; District 3 is the smallest district, with a population of

300,347, while District 2 is the largest district, with a population of 308,020.

LB 699 passed with the emergency clause 45-0 and was approved by the Governor on May 26, 2011.

LB 700—Change District Boundaries for Members of the Public Service Commission (*Redistricting Committee*)

LB 700 establishes new boundaries for the five districts of the Public Service Commission (PSC).

The ideal population for each PSC district is 365,000. The new districts created in LB 700 have an overall range of deviation of 3.79 percent; Districts 2 and 3 are the smallest districts, with populations of 358,486, and District 1 is the largest district, with a population of 372,300.

LB 700 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2011.

LB 701—Change District Boundaries for Members of the Board of Regents of the University of Nebraska (*Redistricting Committee*)

LB 701 prescribes new district boundaries for members of the Board of Regents of the University of Nebraska. There are eight regent districts.

Interestingly, the regent district boundaries and the district boundaries for the State Board of Education, included in LB 702, are identical. While there is no constitutional or statutory requirement that the districts be identical, the district boundaries of both boards have been identical since 1971, following the recommendations of a legislative interim education committee.

The ideal population for each regent district is 228,293. The overall range of deviation is 4.02 percent; District 8 is the smallest district, with a population of 223,997, and District 6 is the largest district, with a population of 233,189.

LB 701 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2011.

LB 702—Change District Boundaries for Members of the State Board of Education (*Redistricting Committee*)

LB 702 draws new district boundaries for members of the State Board of Education.

As stated in the LB 701 summary, these district boundaries are identical to the boundaries of the Board of Regents.

LB 702 passed with the emergency clause 47-0 and was approved by the Governor on May 26, 2011.

LB 703—Change District Boundaries for Members of the Legislature (Redistricting Committee)

LB 703 proposes new legislative district boundaries.

According to the 2010 census, the ideal population for each of Nebraska's 49 legislative districts is 37,272. The new legislative districts adopted in LB 703 have an overall range of deviation of 7.39 percent. The plan only divides eight counties. (Article III, section 5, of the Nebraska Constitution requires legislative district boundaries to follow county lines "whenever practicable".)

One of the most significant changes prescribed in LB 703 is moving Legislative District 49 from the Nebraska panhandle to Sarpy County. Population shifts dictated the change. This is the third decade in a row that a traditional rural district has been moved to eastern Nebraska. The panhandle area is now part of Districts 43, 47, and 48.

Additionally, Scotts Bluff County joins Lincoln and Dodge counties as single legislative districts because the population of each county meets ideal population parameters. Madison County, which had stood alone as a district for the past 20 years, is no longer a single legislative district; a small portion of Stanton County is added to District 19.

Other significant changes include: dividing Box Butte County, making the city of Alliance part of District 43, while the rest of the county is included in District 47; moving Custer County from District 43 to District 36; and creating 14 districts wholly within the boundaries of Douglas County.

LB 703 passed with the emergency clause 37-9 and was approved by the Governor on May 26, 2011.

LB 704—Change Congressional District Boundaries (Redistricting Committee)

The most hotly contested redistricting bill, LB 704 changes boundaries of Nebraska's three congressional districts.

The U.S. Constitution, as interpreted by the U.S. Supreme Court, requires the population of congressional districts to be as nearly

equal in population as practicable, which means absolute mathematical equality.

The district boundaries drawn in LB 704 meet the equal-population standard. The 2010 federal census determined that the population of the State of Nebraska is 1,826,341. Based on that population, two congressional districts each need a population of 608,780 and one district needs a population of 608,781. Pursuant to LB 704, Congressional Districts 1 and 3 each have populations of 608,780, while Congressional District 2 has a population of 608,781.

Where to draw the boundary in Sarpy County between Districts 1 and 2 sparked the most discussion. Under the new boundaries prescribed in LB 704, the city of Bellevue and Offutt Air Force Base are now included in District 1, while the communities of Papillion and LaVista are part of District 2.

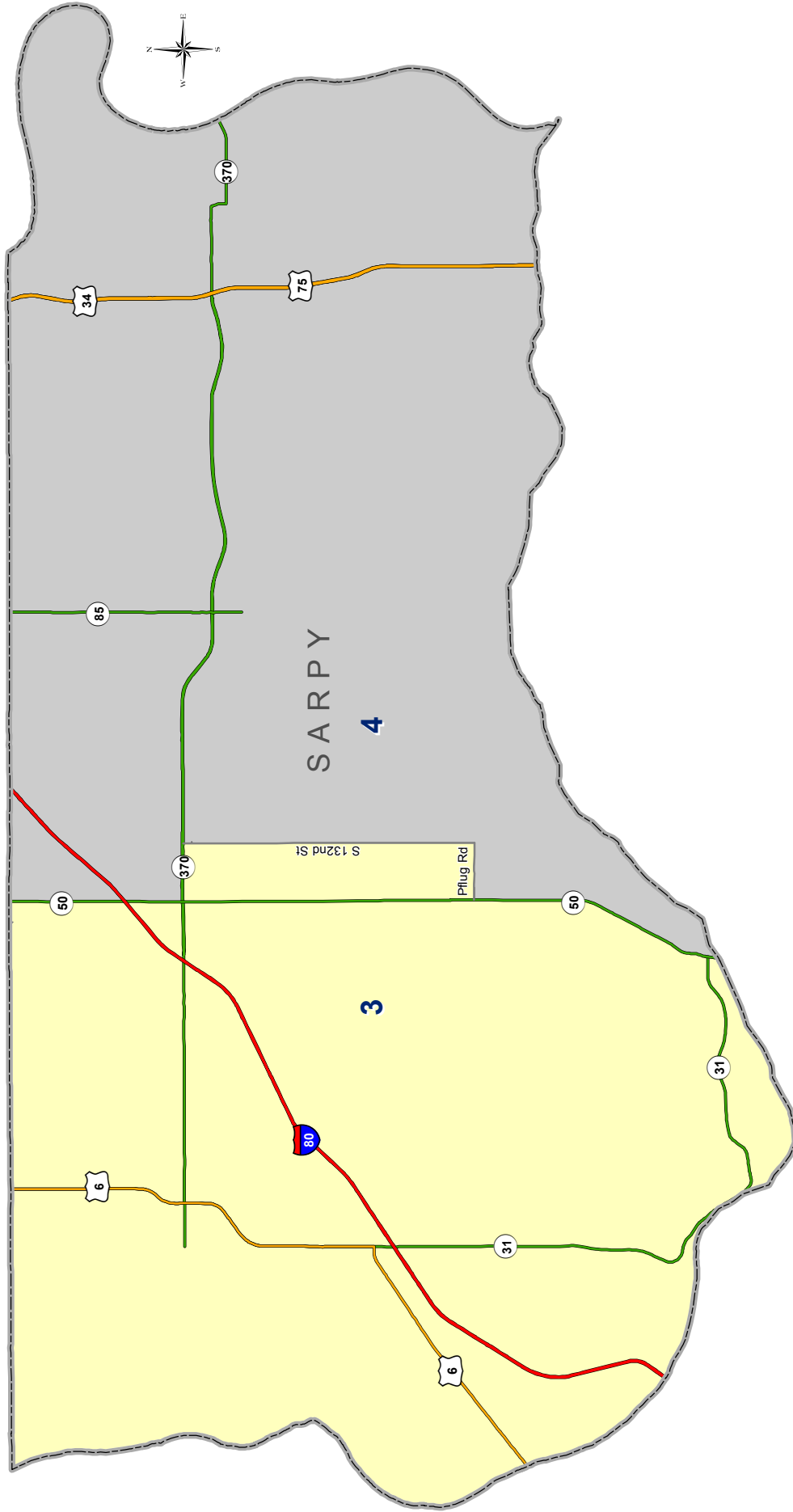
The second discussion point centered on which other county to divide to meet the equal-population standard. Ultimately, a sliver of Dixon County is included in District 1, while the rest of Dixon County is in District 3.

LB 704 passed with the emergency clause 35-11 and was approved by the Governor on May 26, 2011

Nebraska Supreme Court Judicial Districts - LB 699 (2011)

Sarpy County

(Districts took effect May 27, 2011)

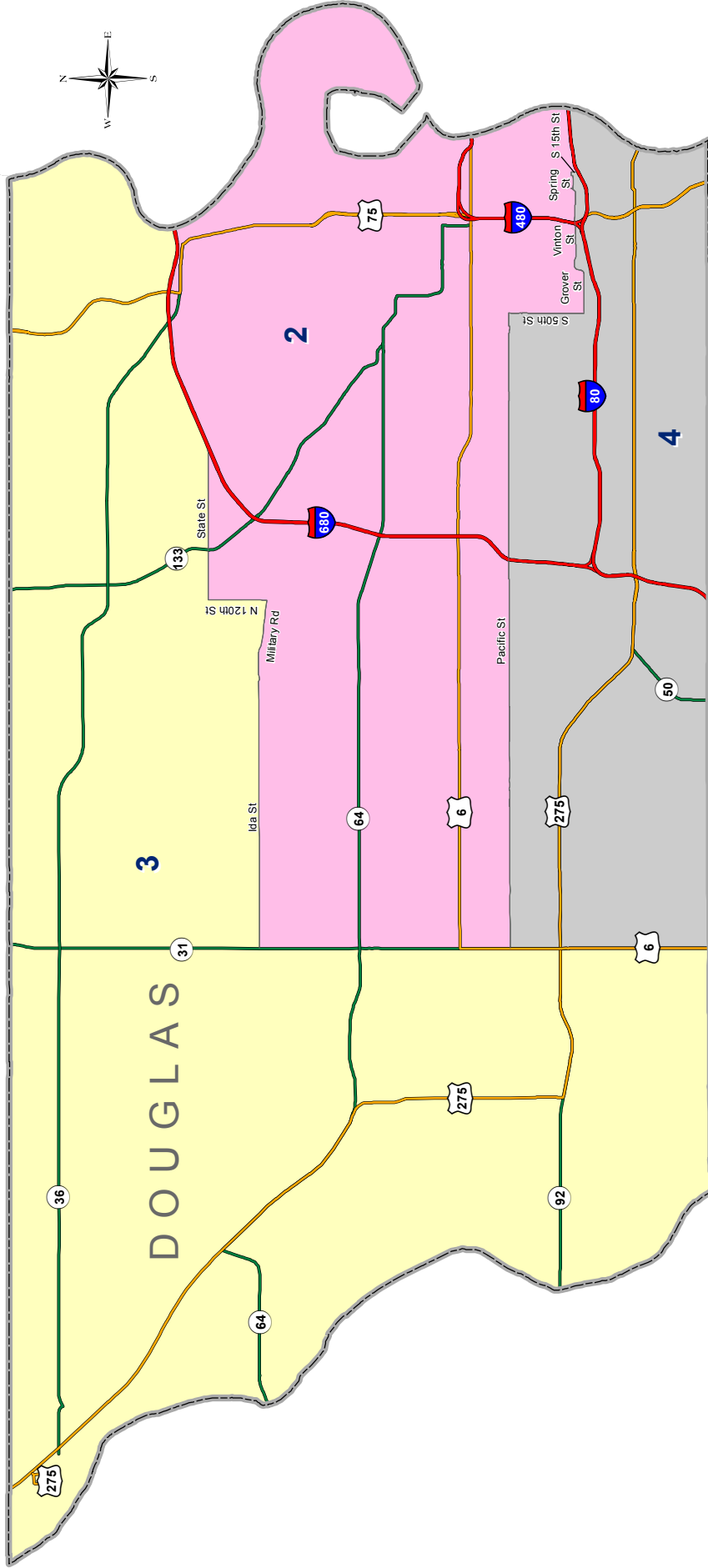


Geographic Information Systems
Map Created by: Trieha Schlake, GIS Specialist
Sources: U.S. Census Bureau
Date Created: 6-27-2011

Nebraska Supreme Court Judicial Districts - LB 699 (2011)

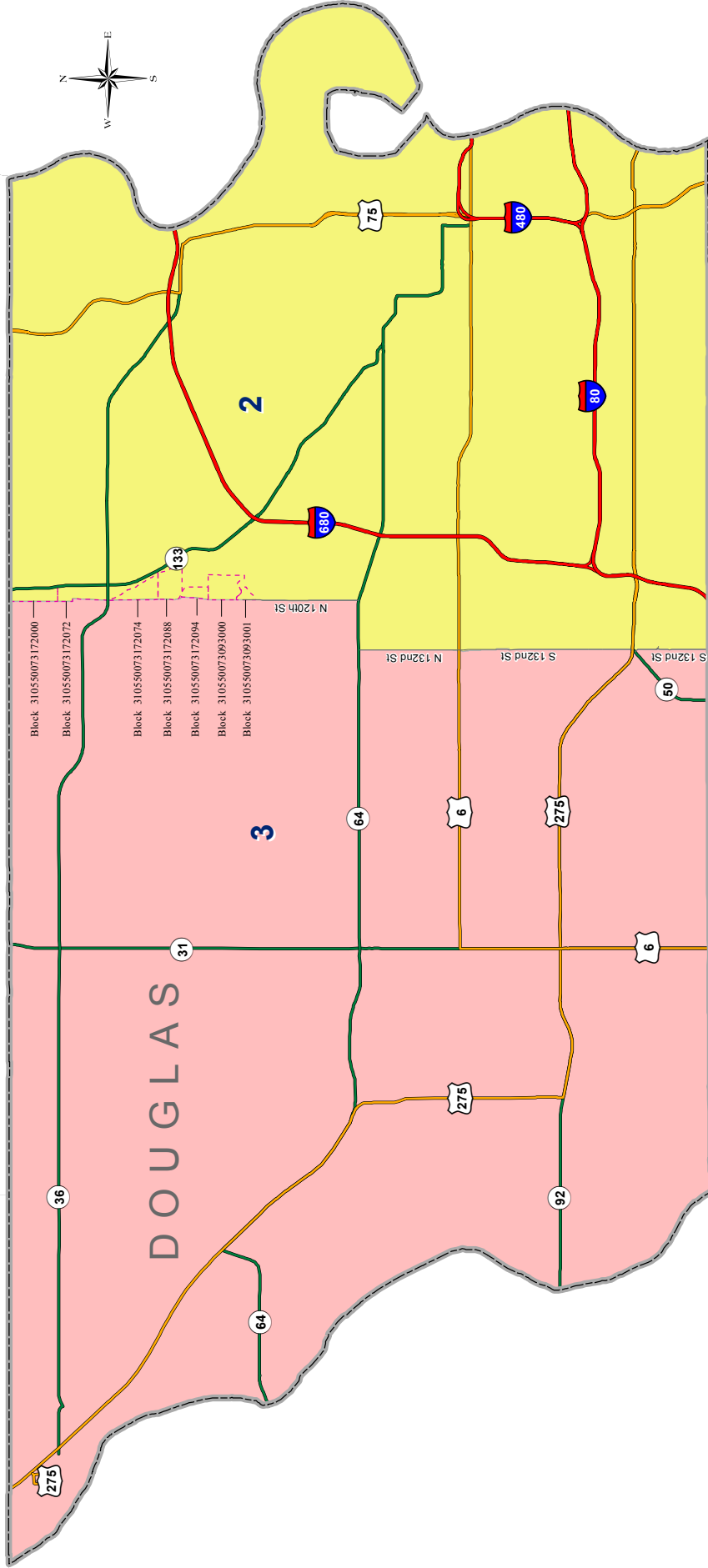
Douglas County

(Districts took effect May 27, 2011)

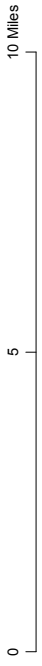


Public Service Commission - LB 700 (2011) Douglas County

(Districts took effect May 27, 2011)

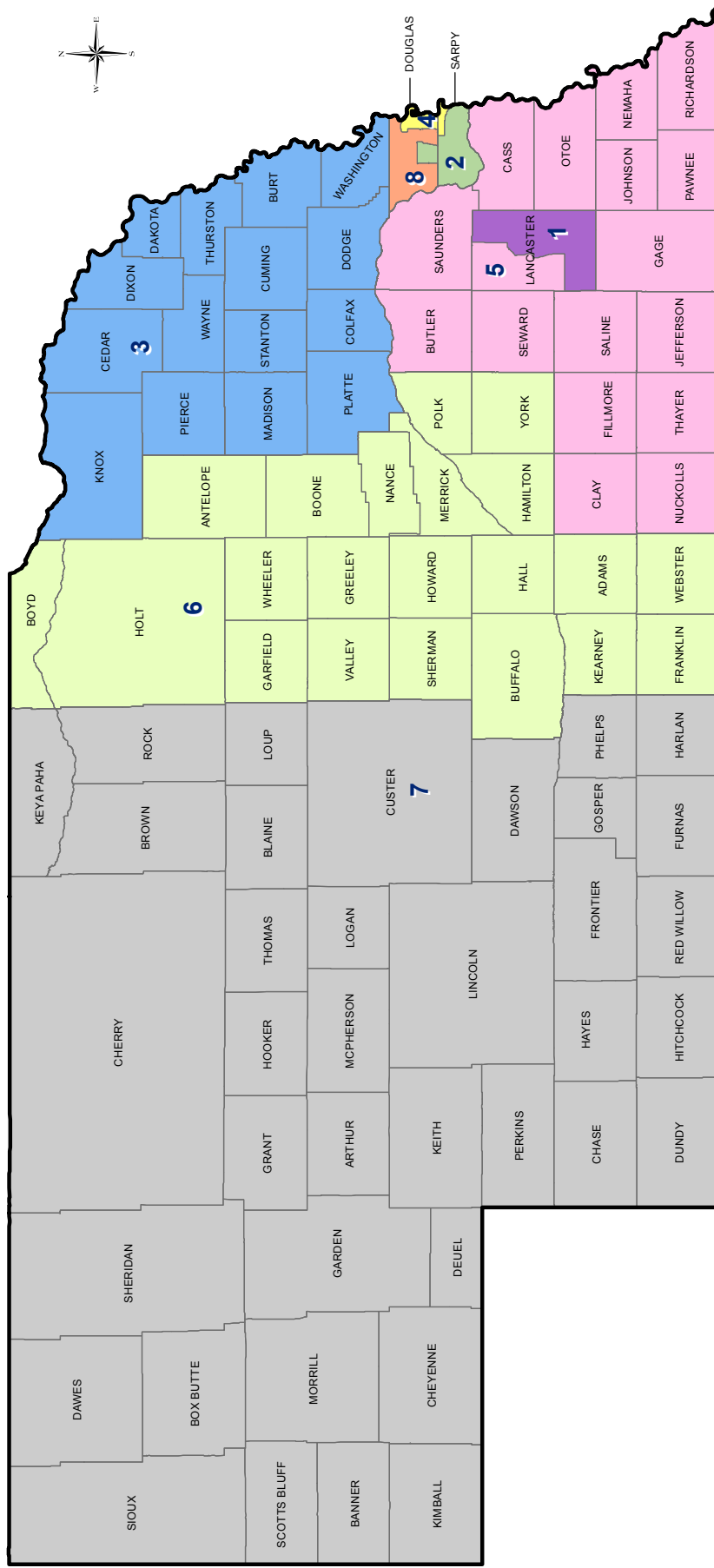


Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011



University of Nebraska Board of Regents - LB 701 (2011)

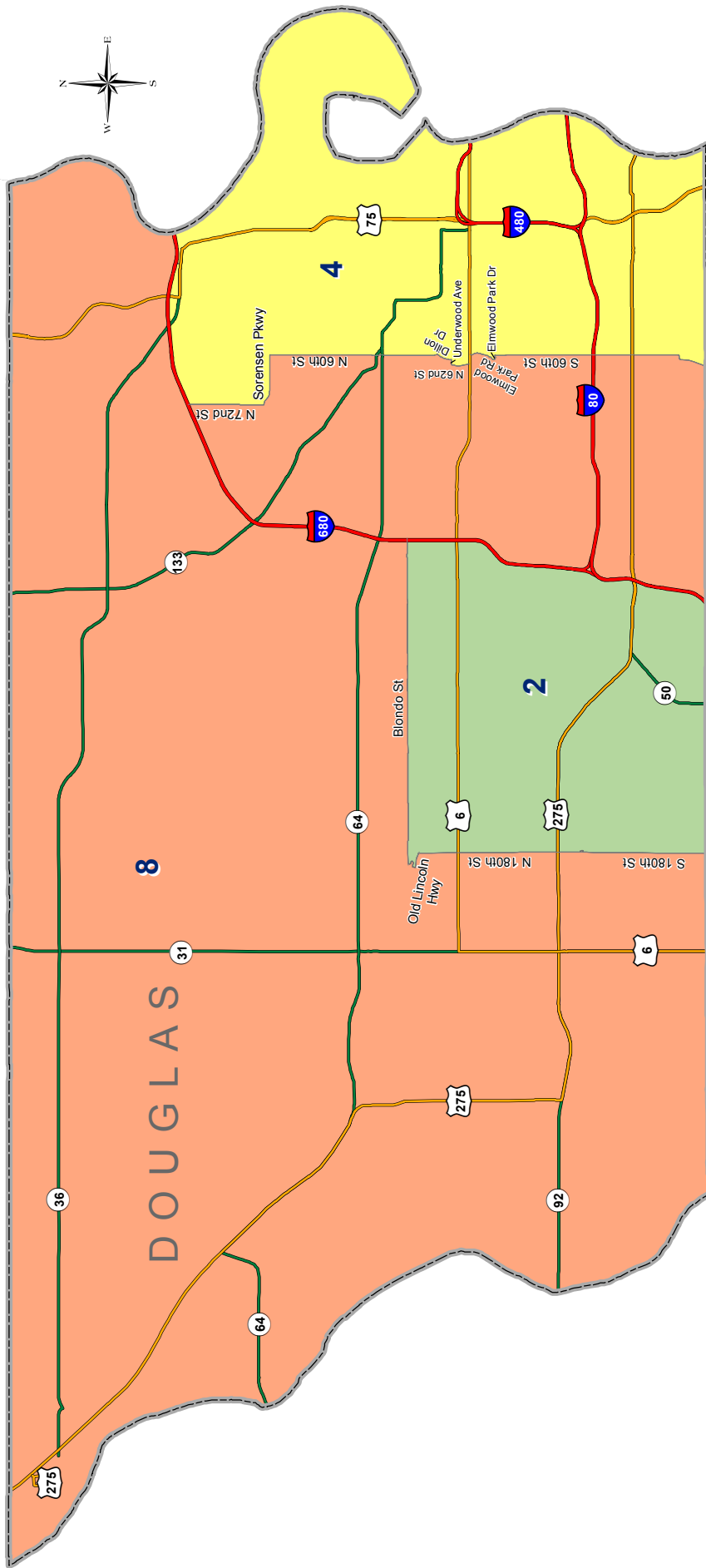
(Districts took effect May 27, 2011)



University of Nebraska Board of Regents - LB 701 (2011)

Douglas County

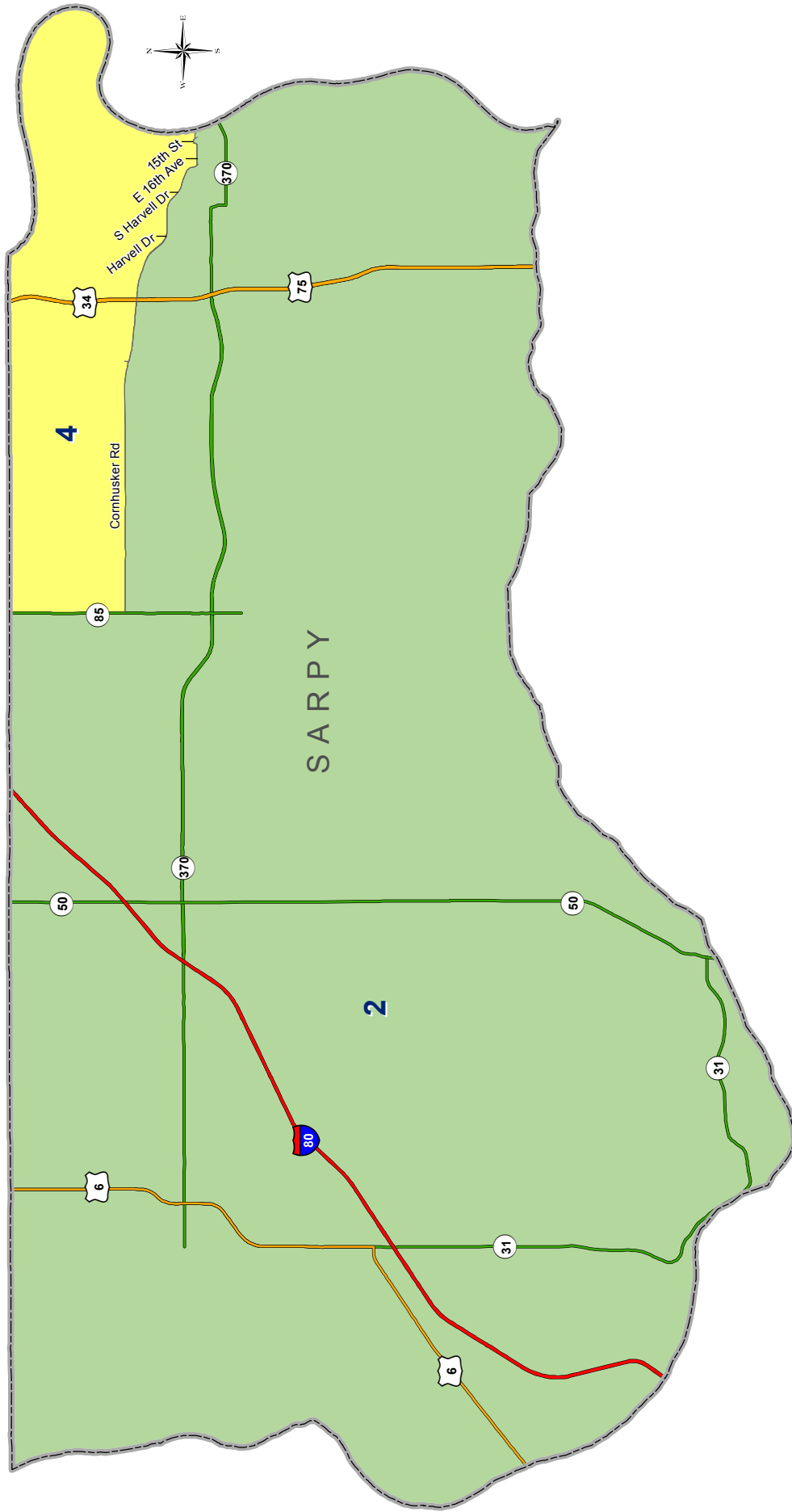
(Districts took effect May 27, 2011)



University of Nebraska Board of Regents - LB 701 (2011)

Sarpy County

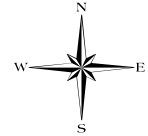
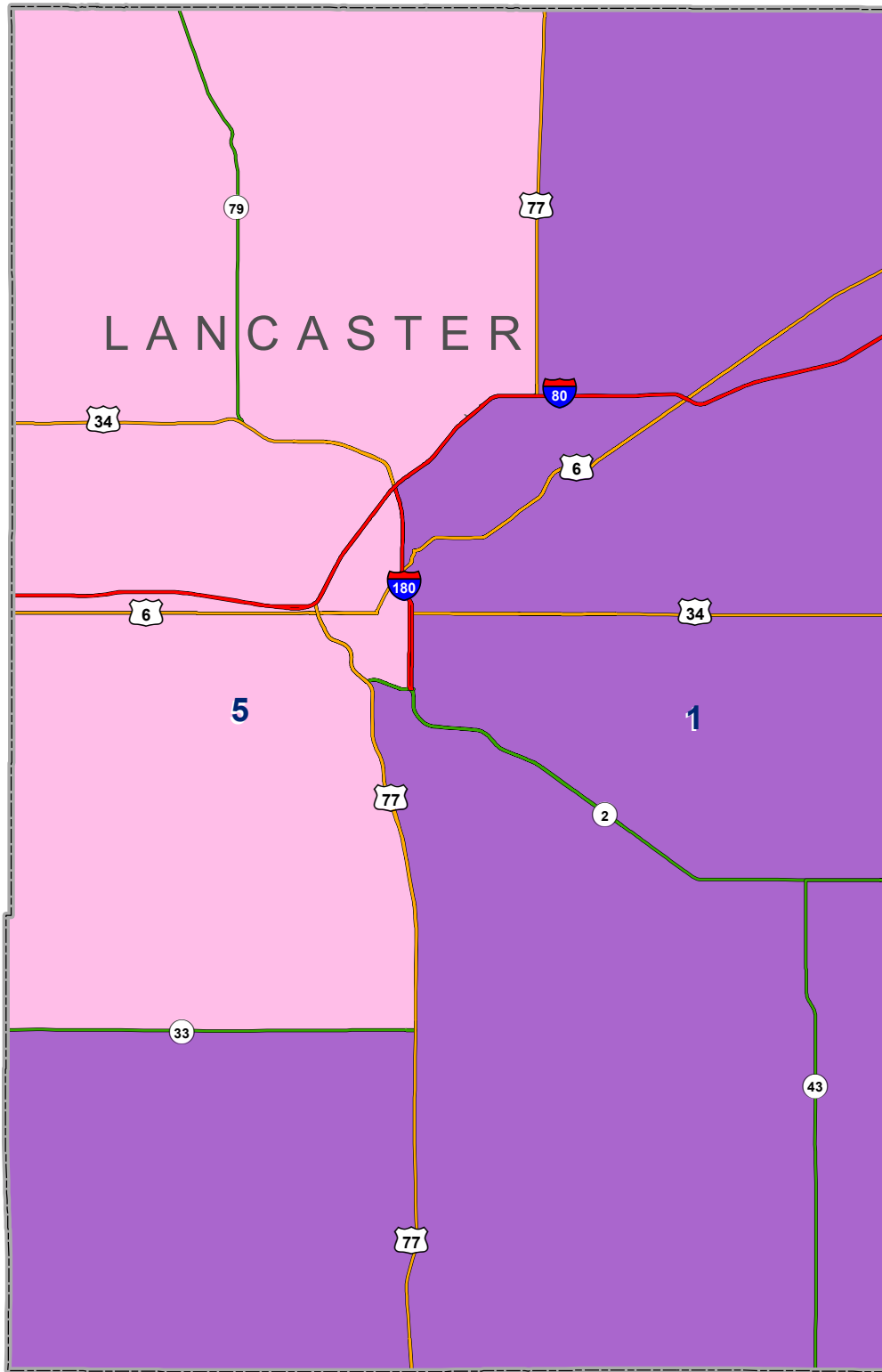
(Districts took effect May 27, 2011)



Geographic Information Systems
Map Created by: Trieha Schilke, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

University of Nebraska Board of Regents - LB 701 (2011) Lancaster County

(Districts took effect May 27, 2011)



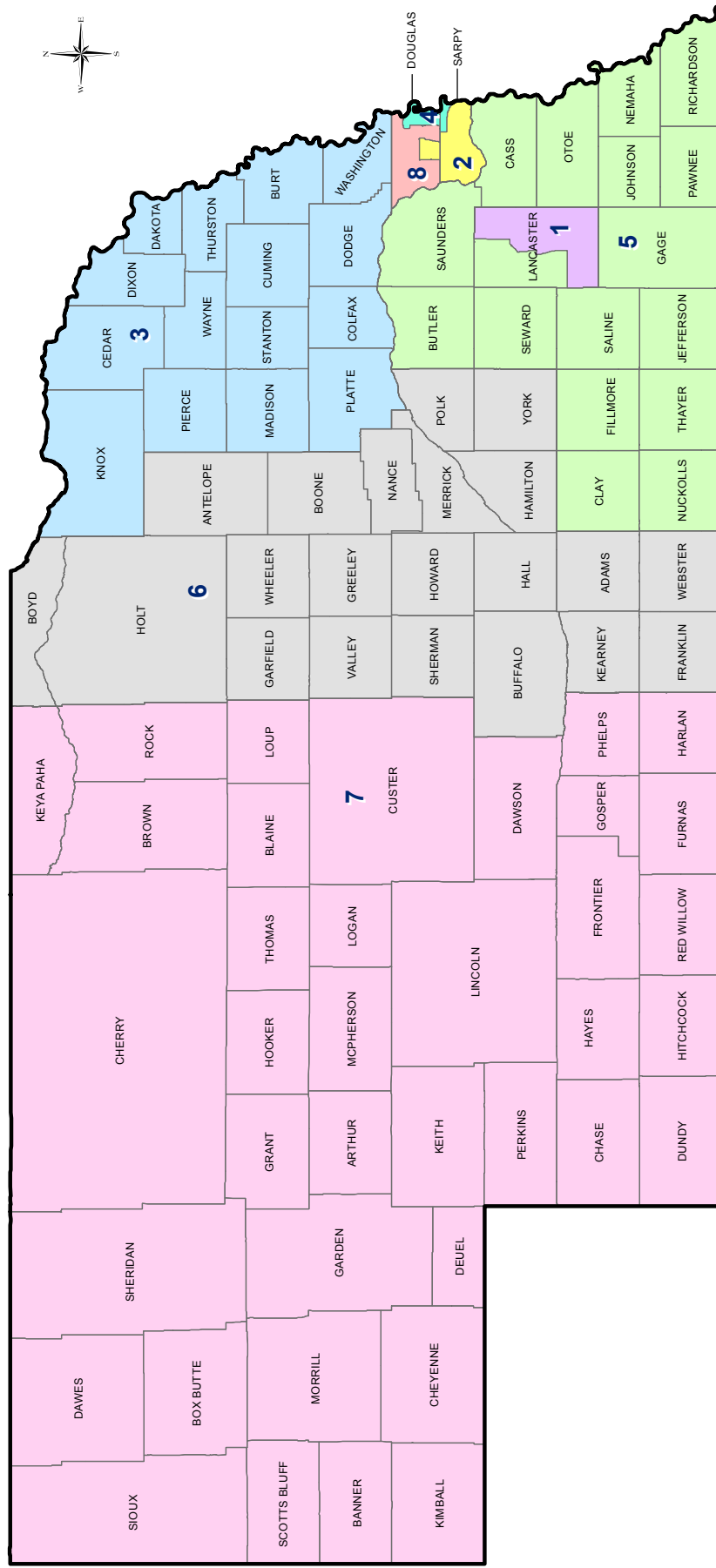
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Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

Nebraska State Board of Education - LB 702 (2011)

(Districts took effect May 27, 2011)

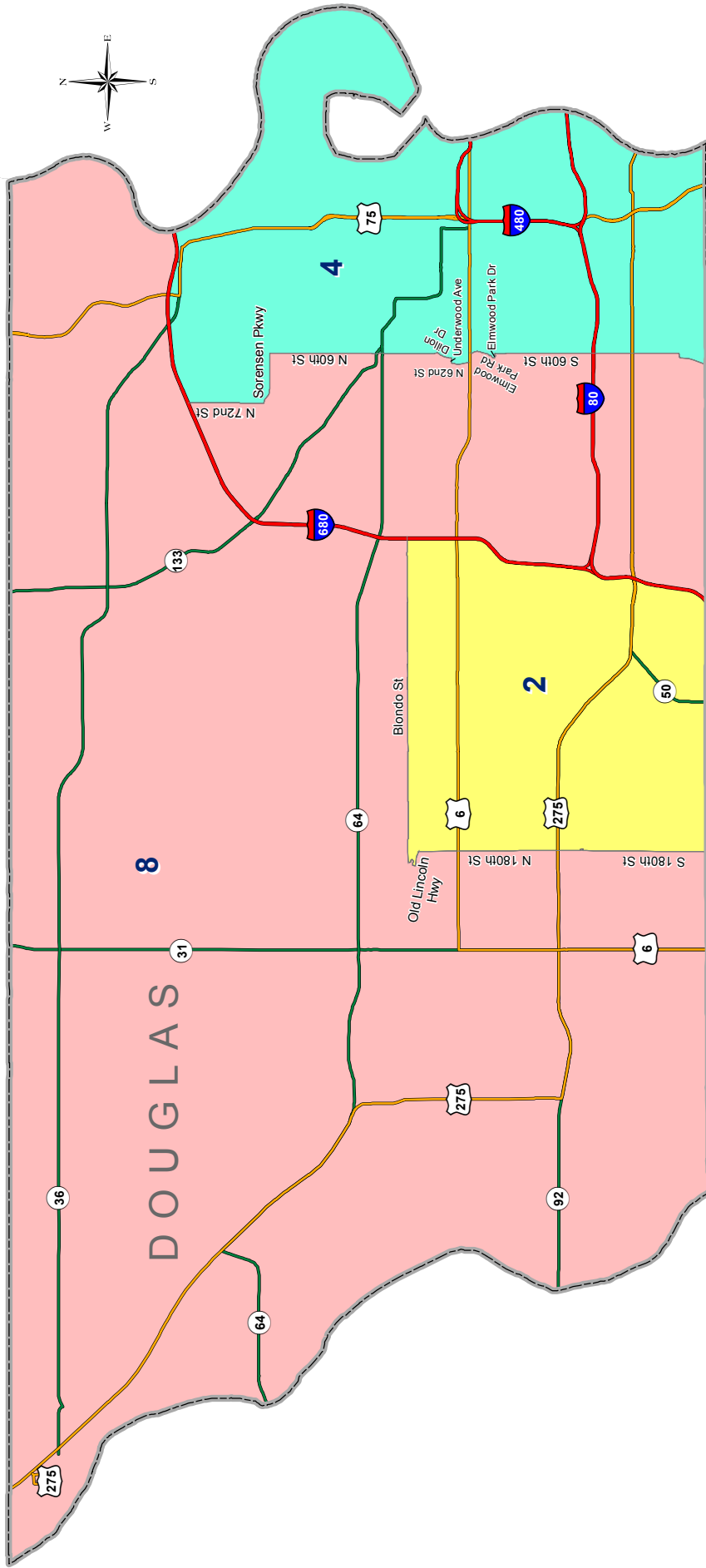


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 Source: U.S. Census Bureau
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Nebraska State Board of Education - LB 702 (2011) Douglas County

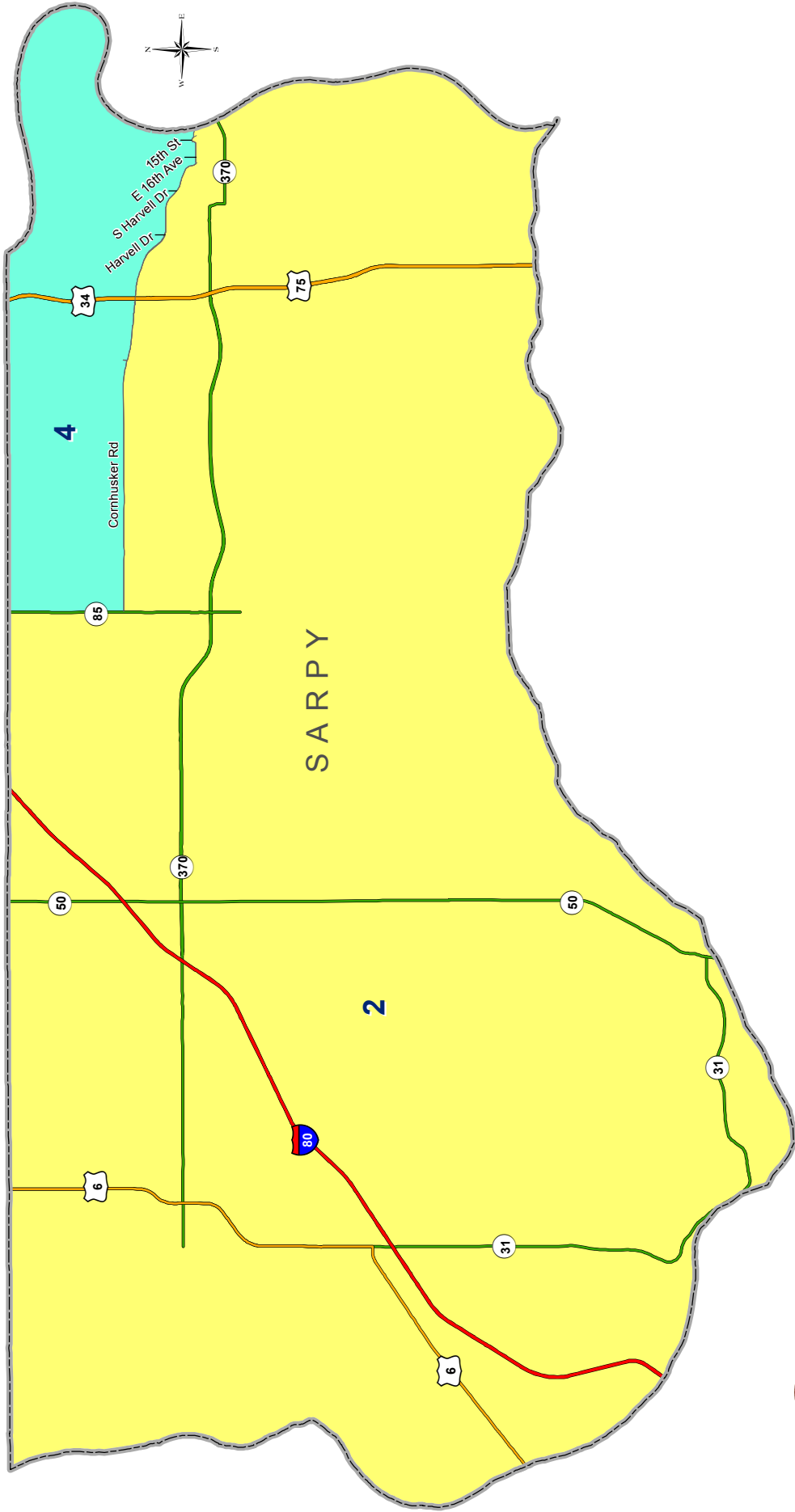
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Nebraska State Board of Education - LB 702 (2011)

Sarpy County

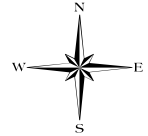
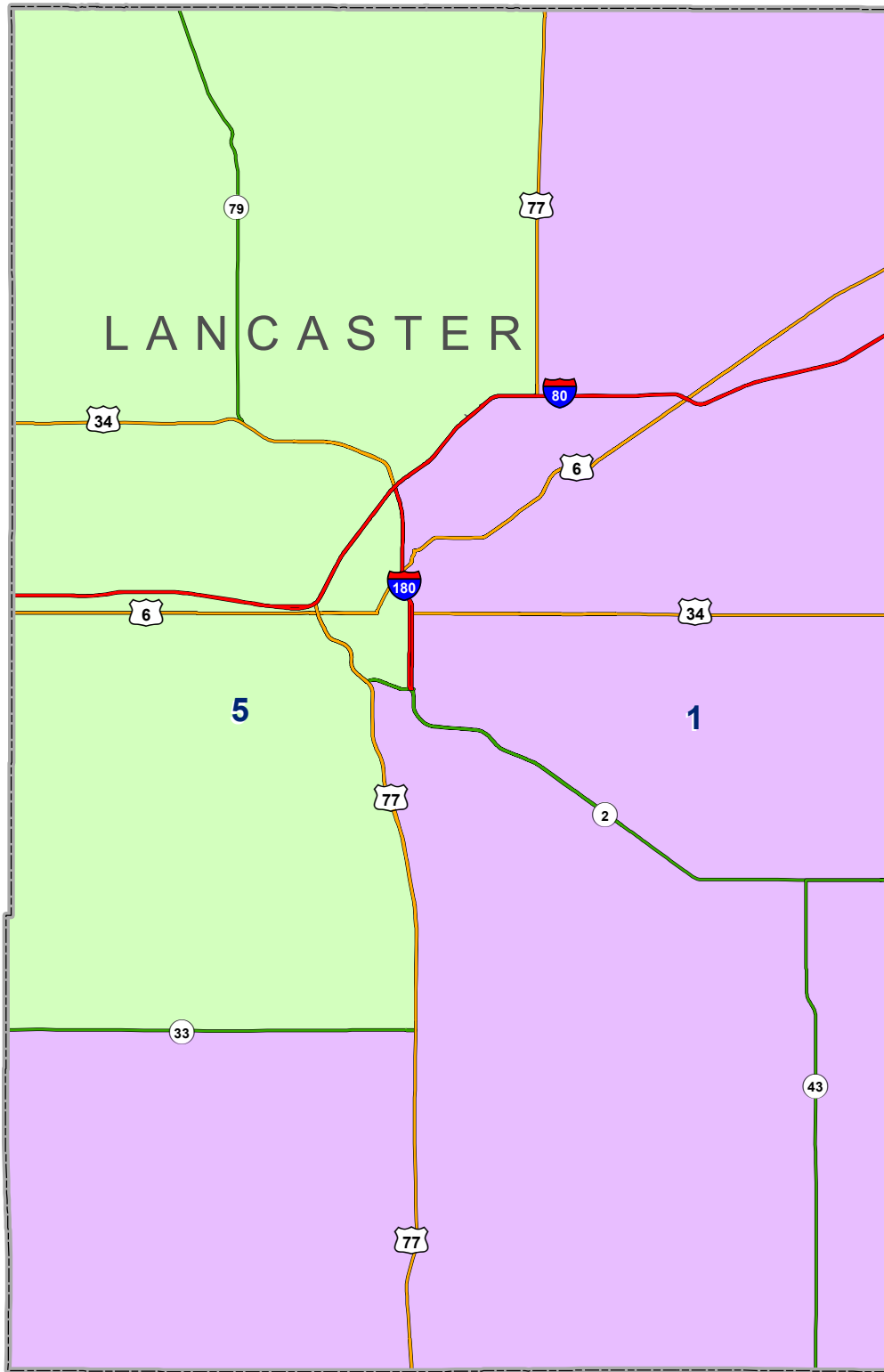
(Districts took effect May 27, 2011)



Geographic Information Systems
Map Created by: Trisha Schliake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

Nebraska State Board of Education - LB 702 (2011) Lancaster County

(Districts took effect May 27, 2011)



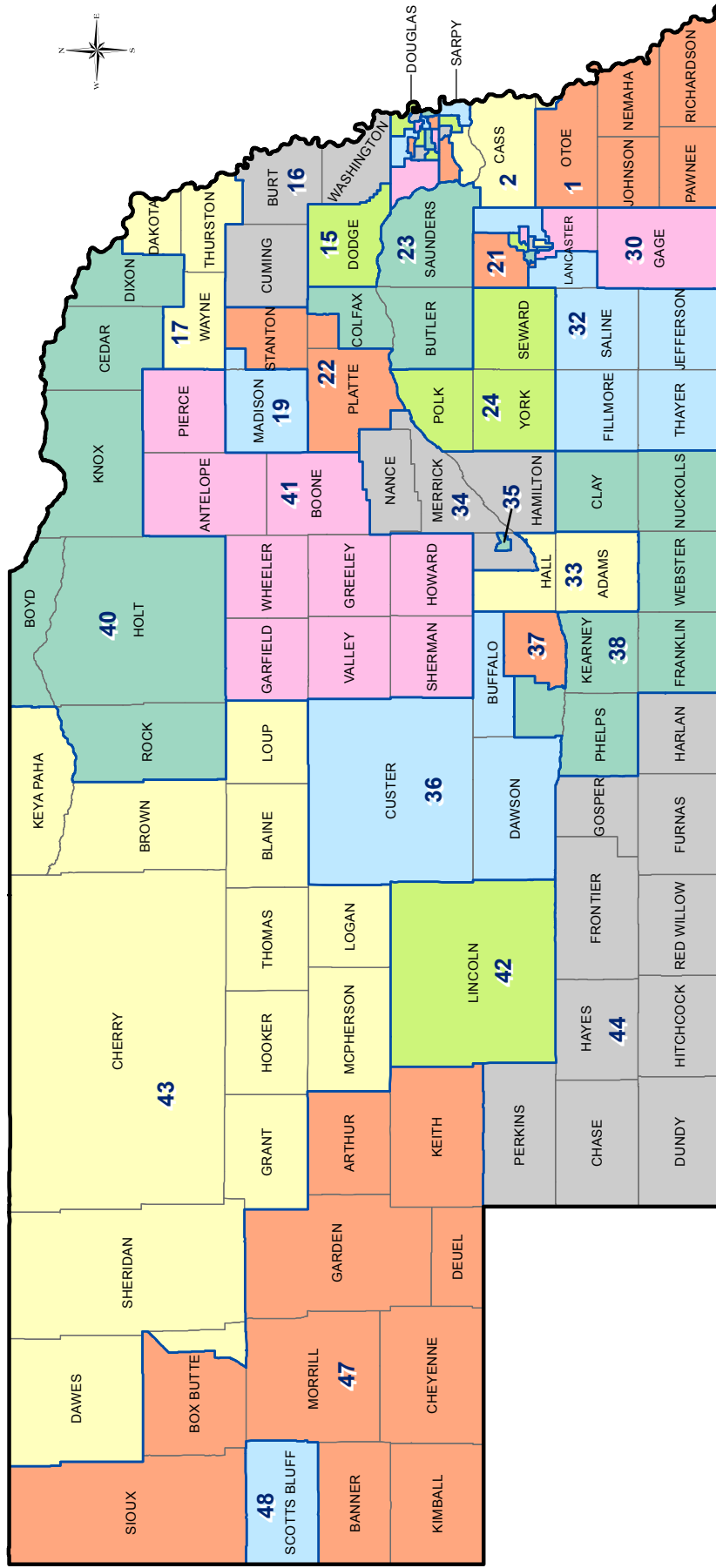
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Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

Nebraska Legislative Districts - LB 703 (2011)

Effective as of May 27, 2011

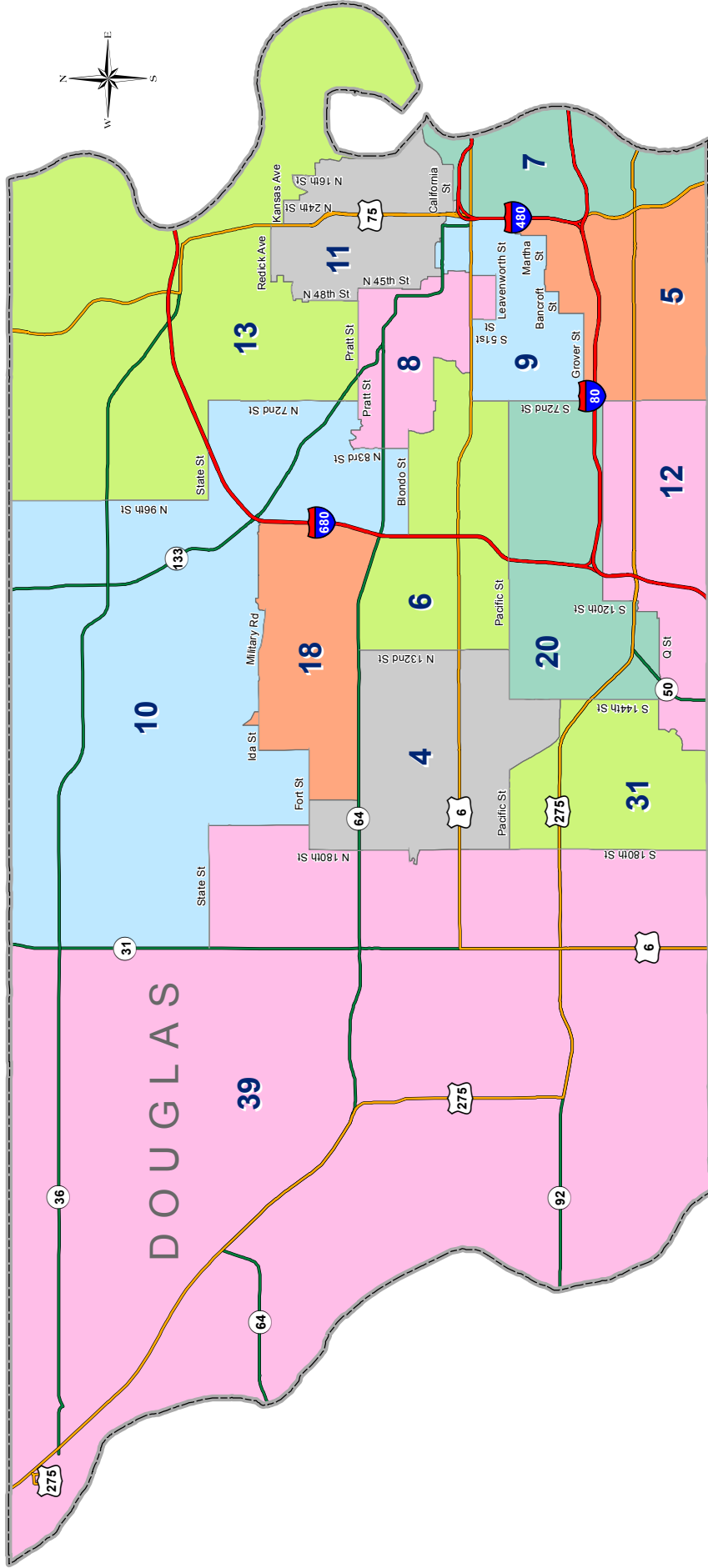


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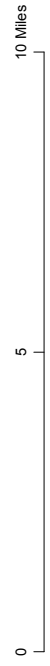
Nebraska Legislative Districts - LB 703 (2011)

Douglas County

(Districts took effect May 27, 2011)



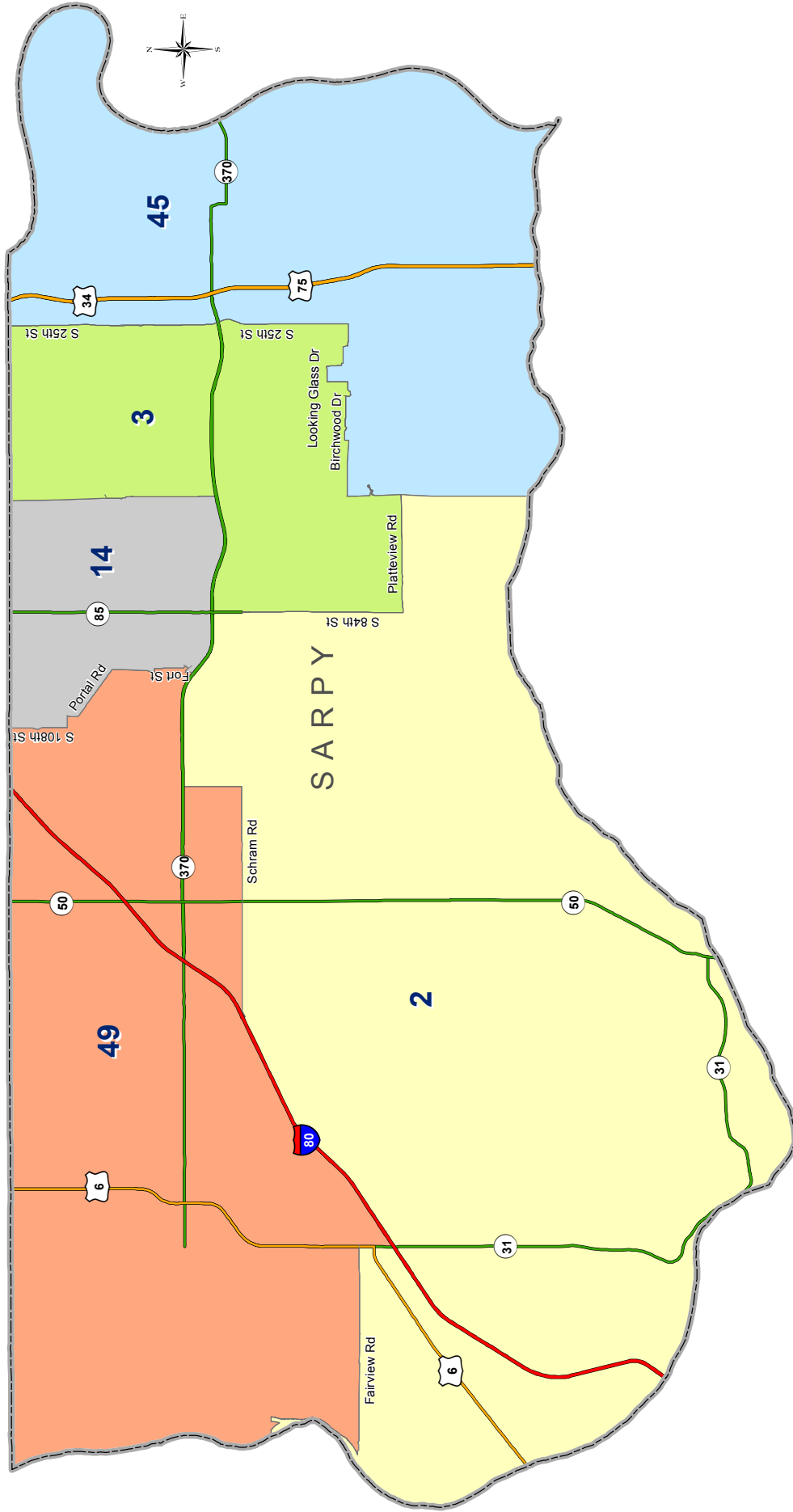
Geographic Information Systems
 Map Created by: Trisha Schlake, GIS Specialist
 Source: U.S. Census Bureau
 Date Created: 6-27-2011



Nebraska Legislative Districts - LB 703 (2011)

Sarpy County

(Districts took effect May 27, 2011)

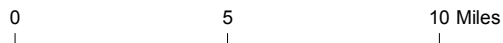
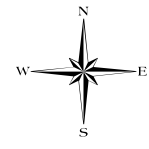
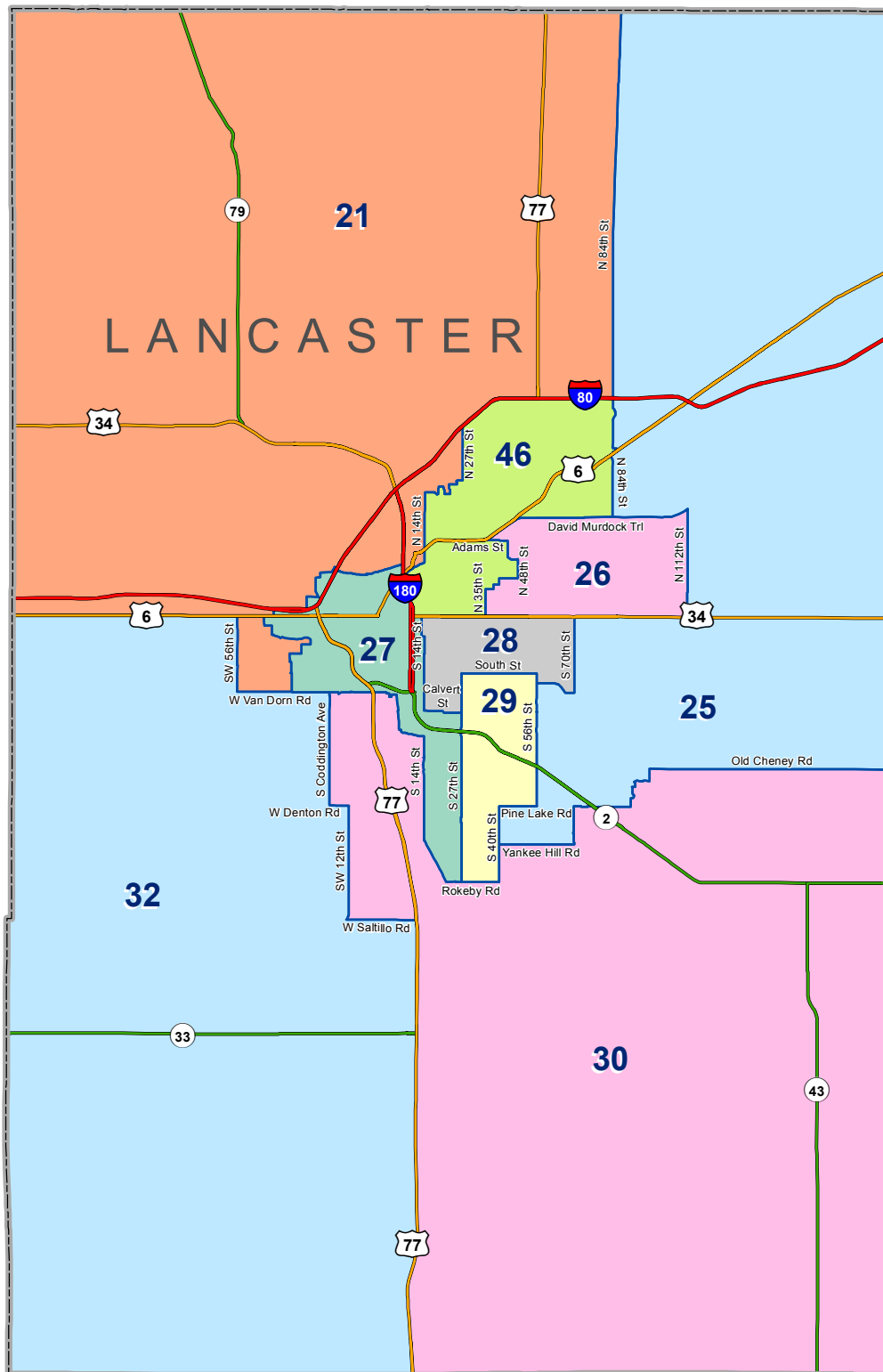


Geographic Information Systems
Map Created by: Trieha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011)

Lancaster County

(Districts took effect May 27, 2011)

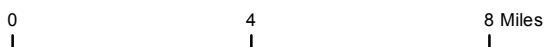
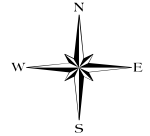
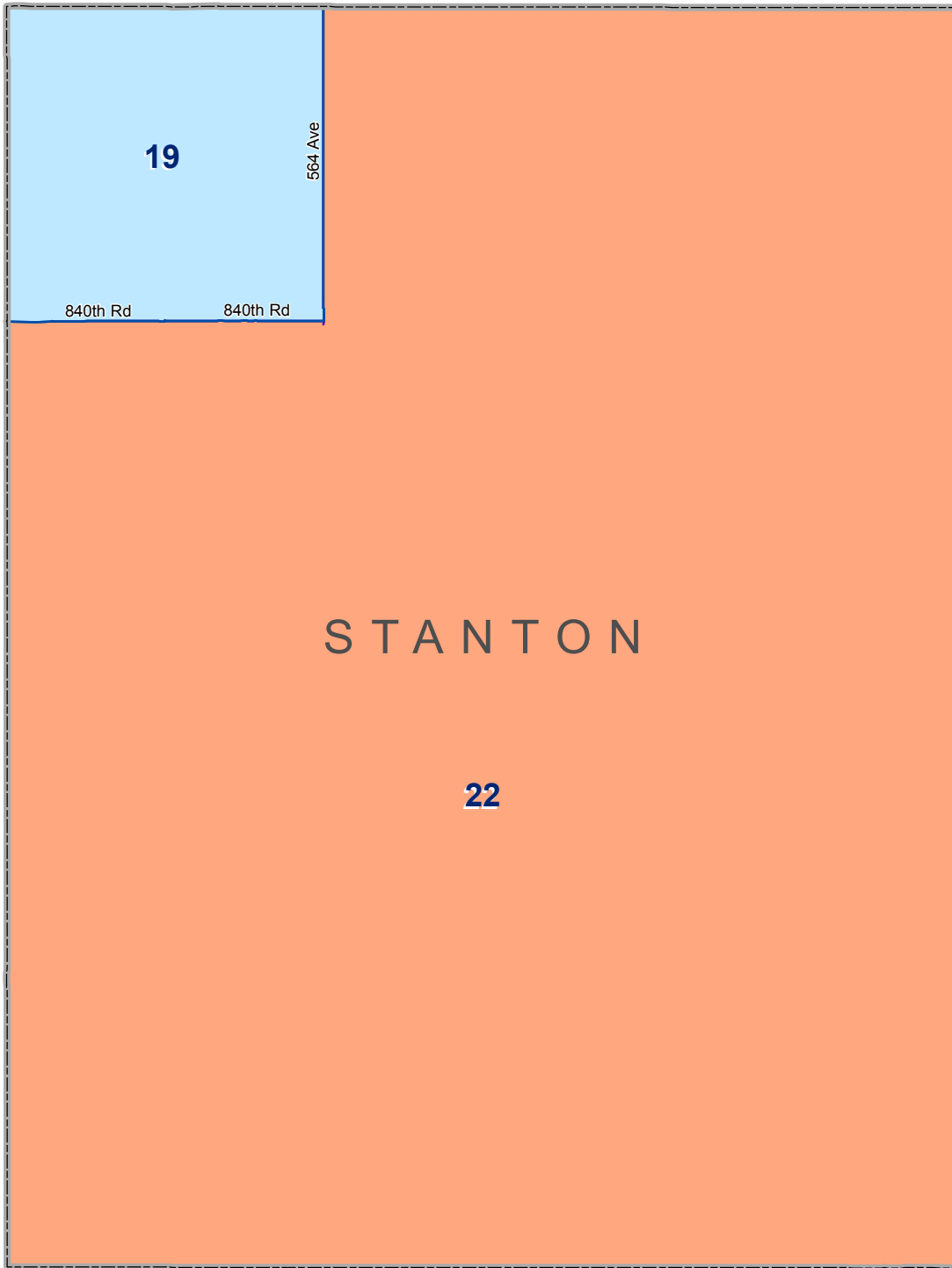


Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

Nebraska Legislative Districts - LB 703 (2011)

Stanton County

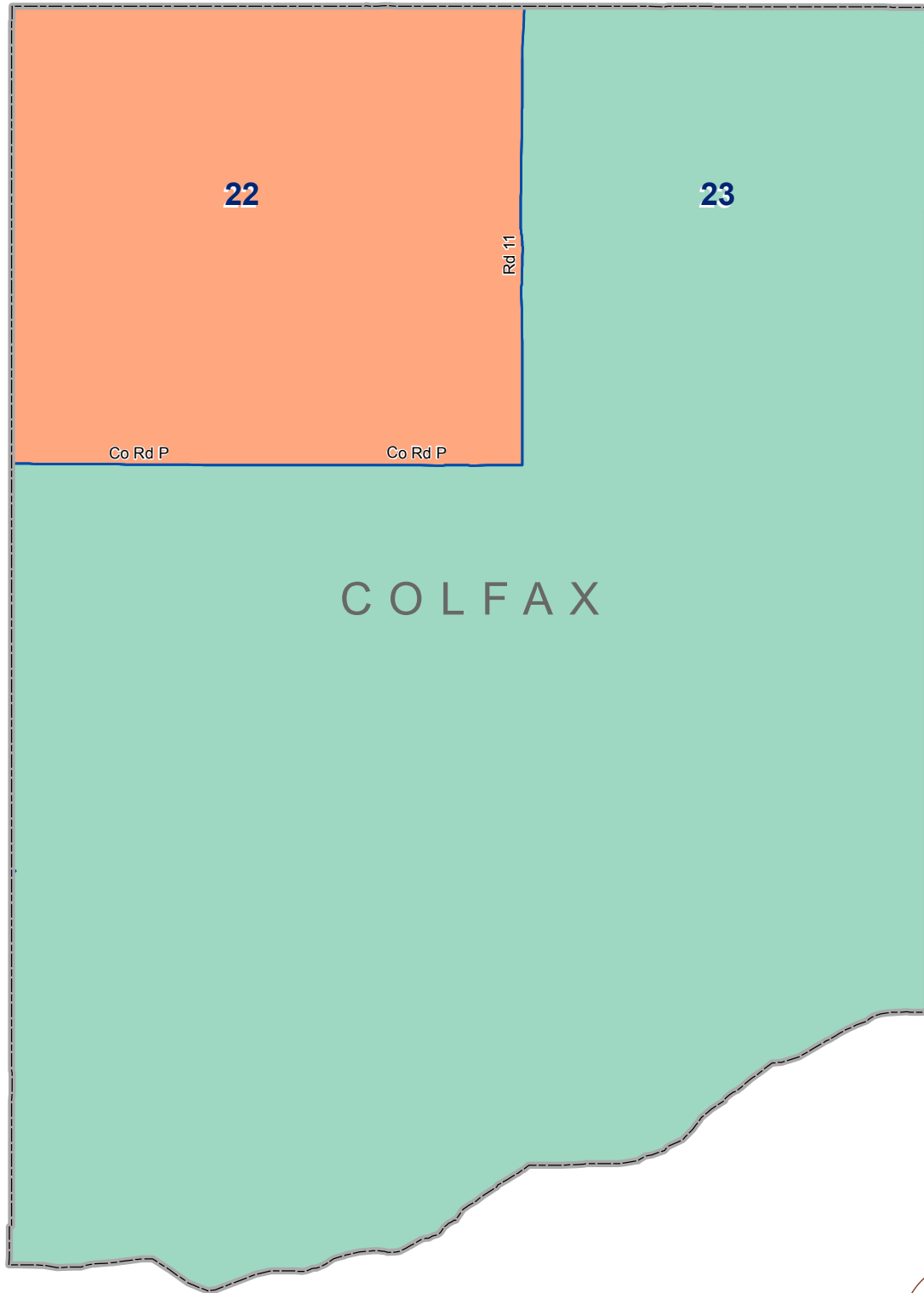
(Districts took effect May 27, 2011)



Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011) Colfax County

(Districts took effect May 27, 2011)



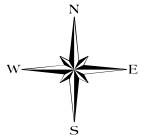
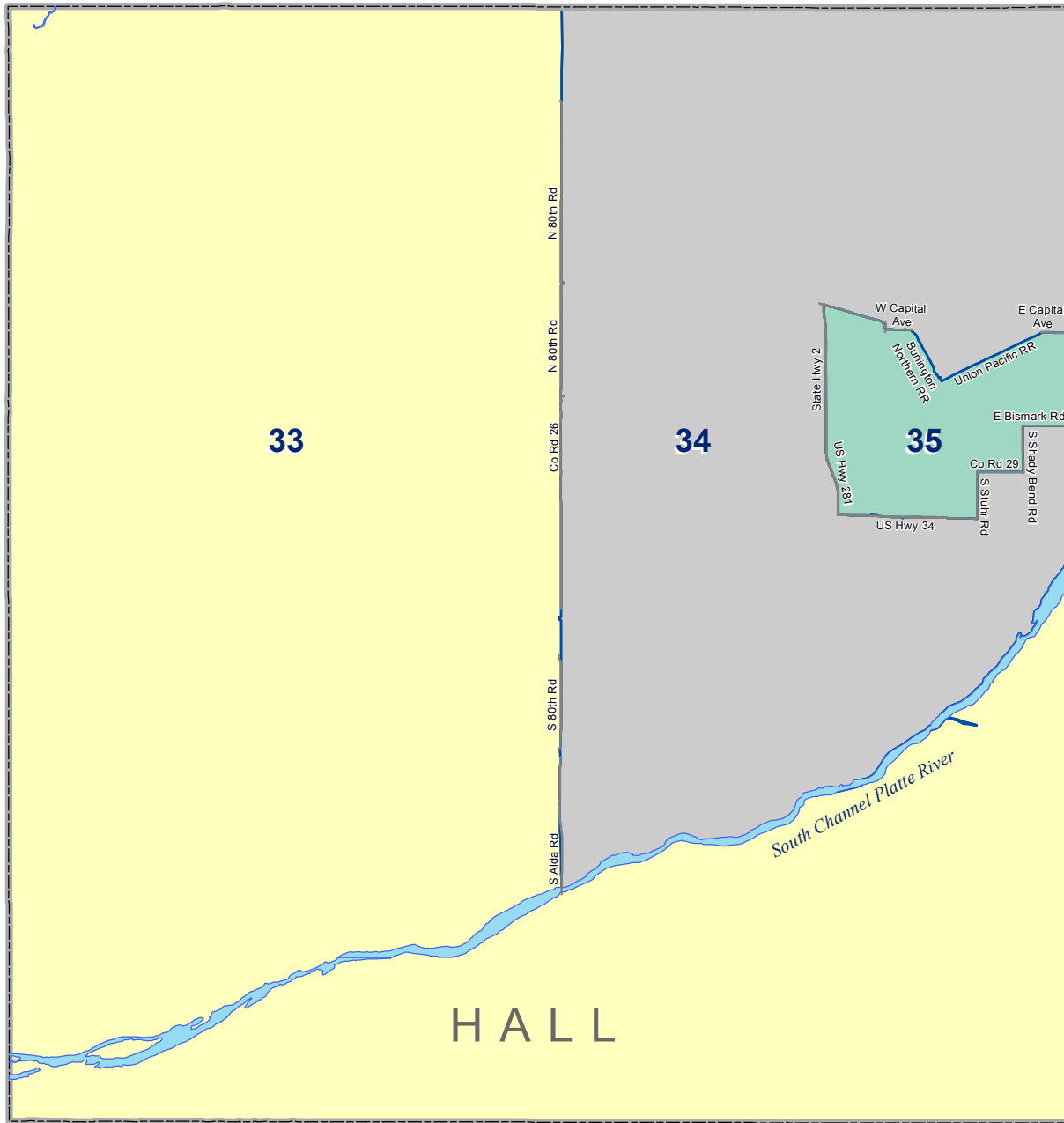
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Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011) Hall County

(Districts took effect May 27, 2011)



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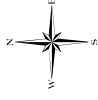
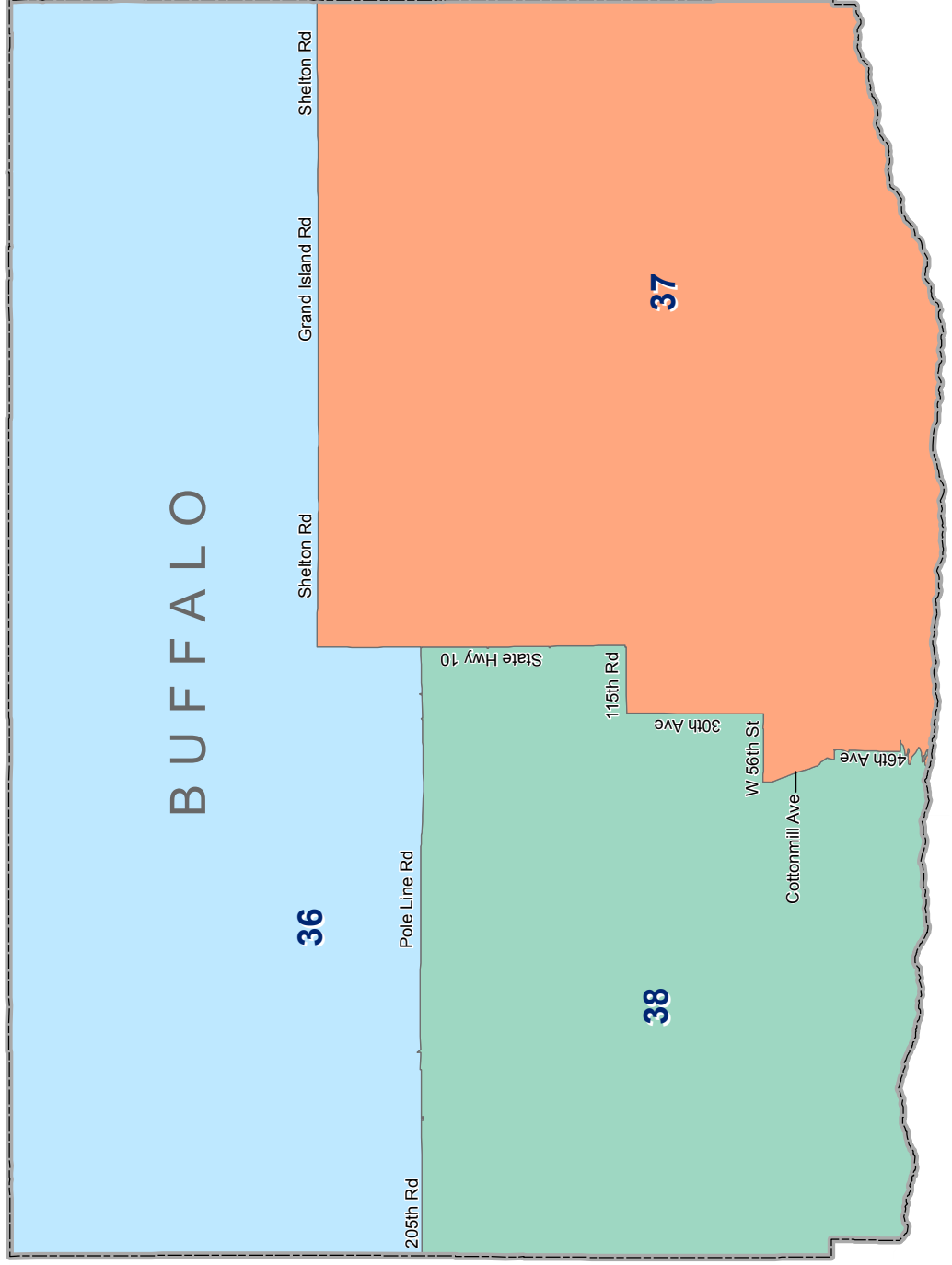


Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011)

Buffalo County

(Districts took effect May 27, 2011)

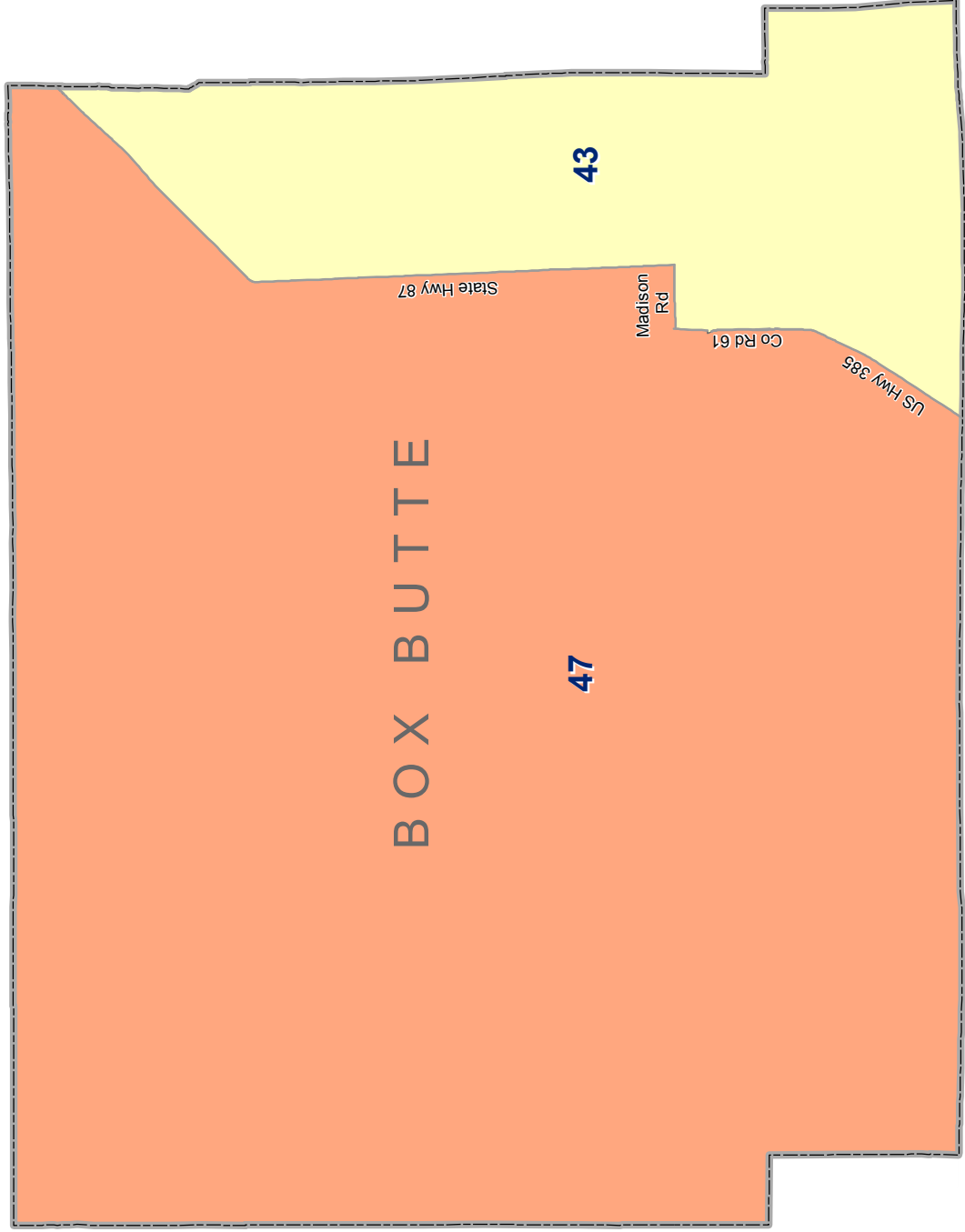


Geographic Information Systems
Map Created by: Trieha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011)

Box Butte County

(Districts took effect May 27, 2011)

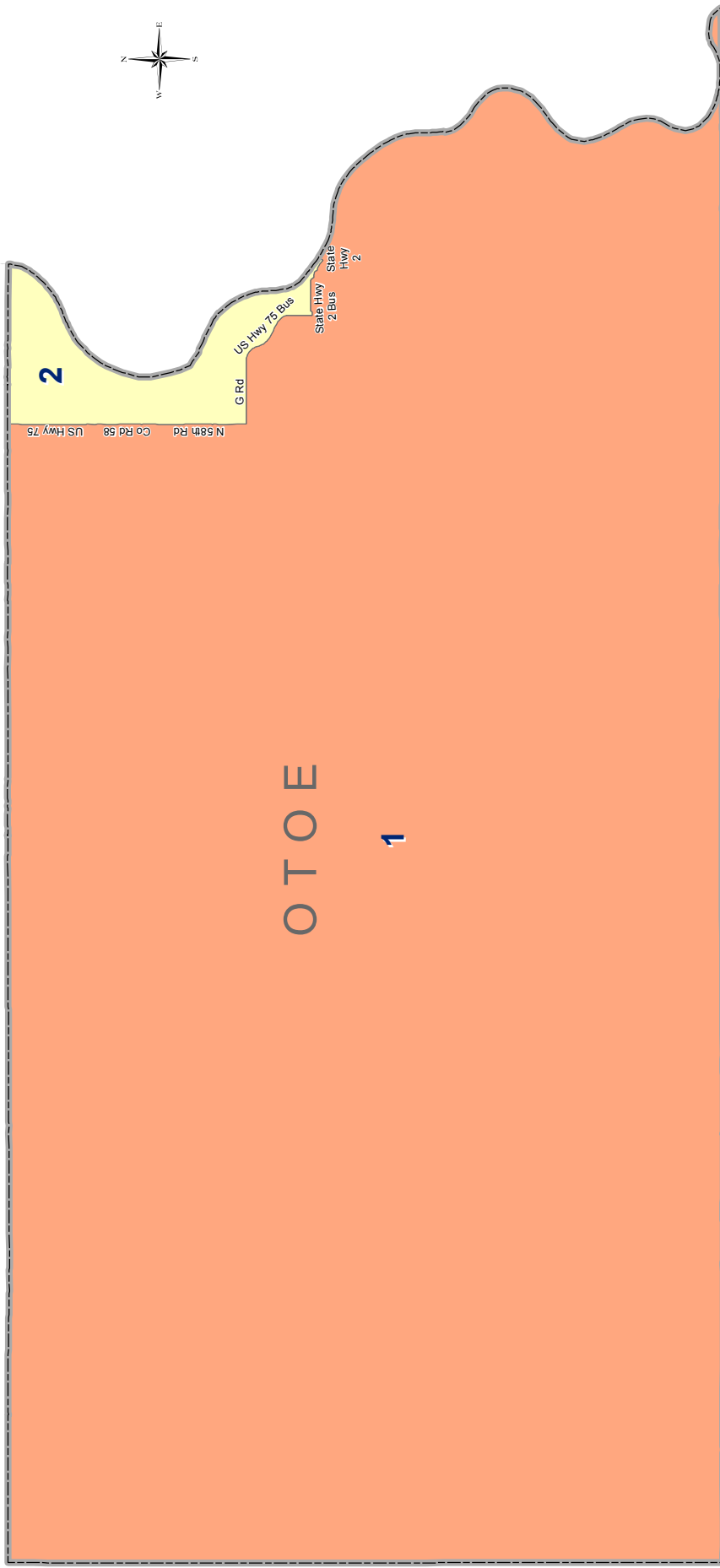


Geographic Information Systems
Map Created by: Trieha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

Nebraska Legislative Districts - LB 703 (2011)

Otoe County

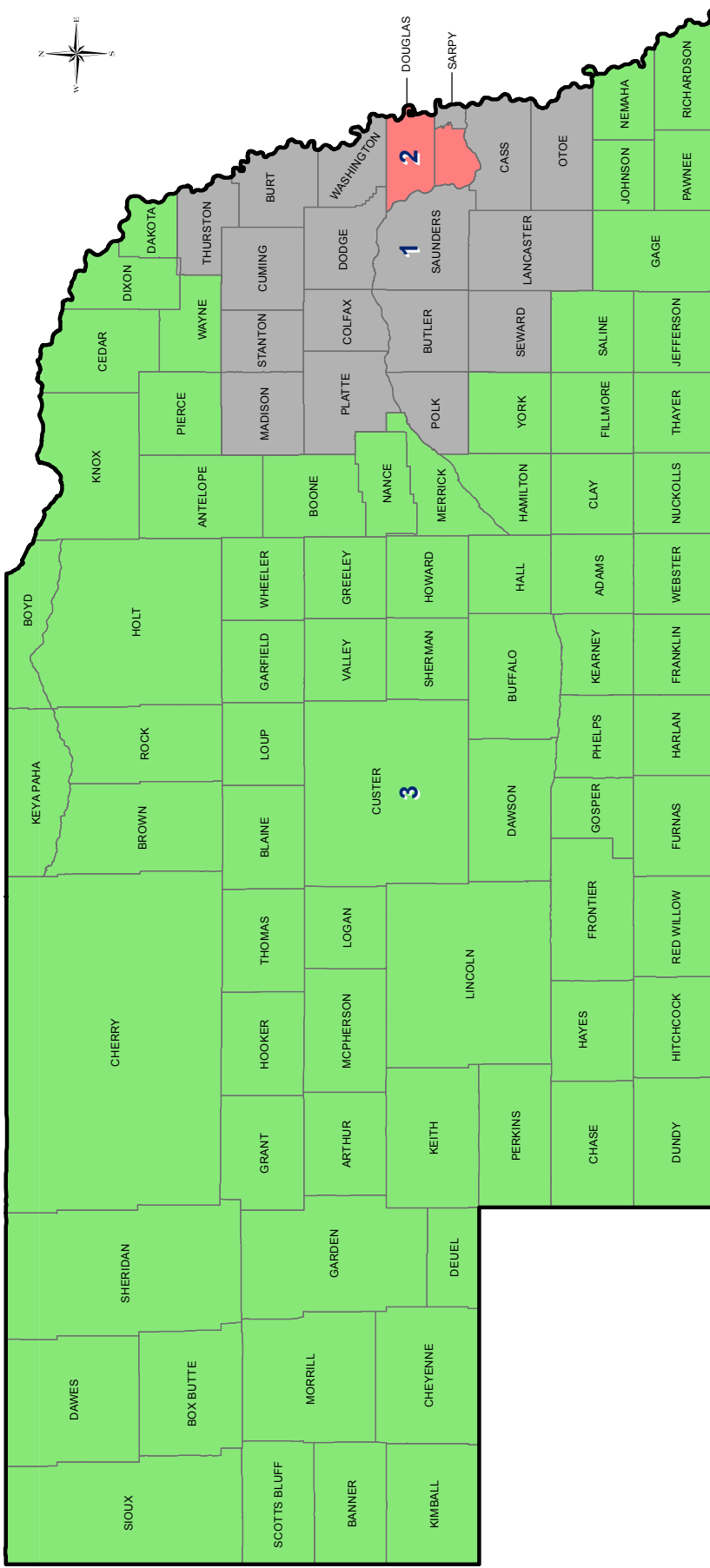
(Districts took effect May 27, 2011)



Geographic Information Systems
Map Created by: Trieha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-28-2011

U.S. House of Representatives - LB 704 (2011)

(Districts took effect May 27, 2011)



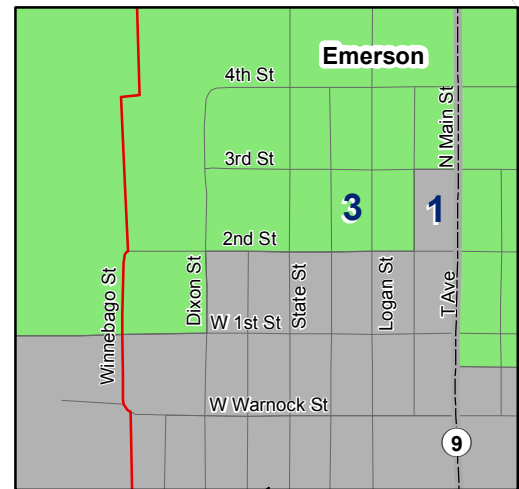
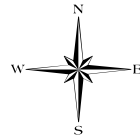
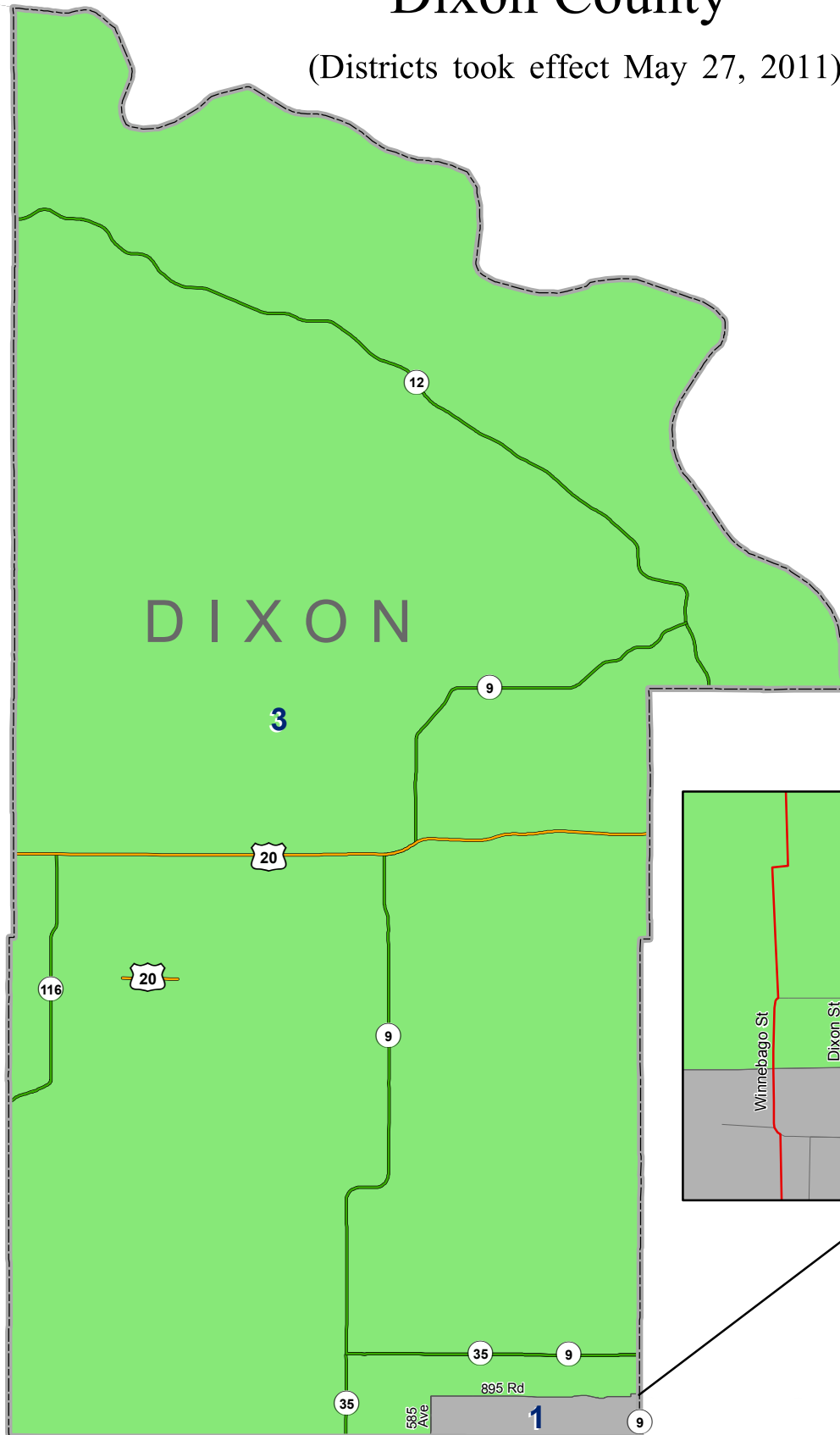
Geographic Information Systems
 Map Created by: Trisha Schlake, GIS Specialist
 Source: U.S. Census Bureau
 Date Created: 6-27-2011



U.S. House of Representatives - LB 704 (2011)

Dixon County

(Districts took effect May 27, 2011)

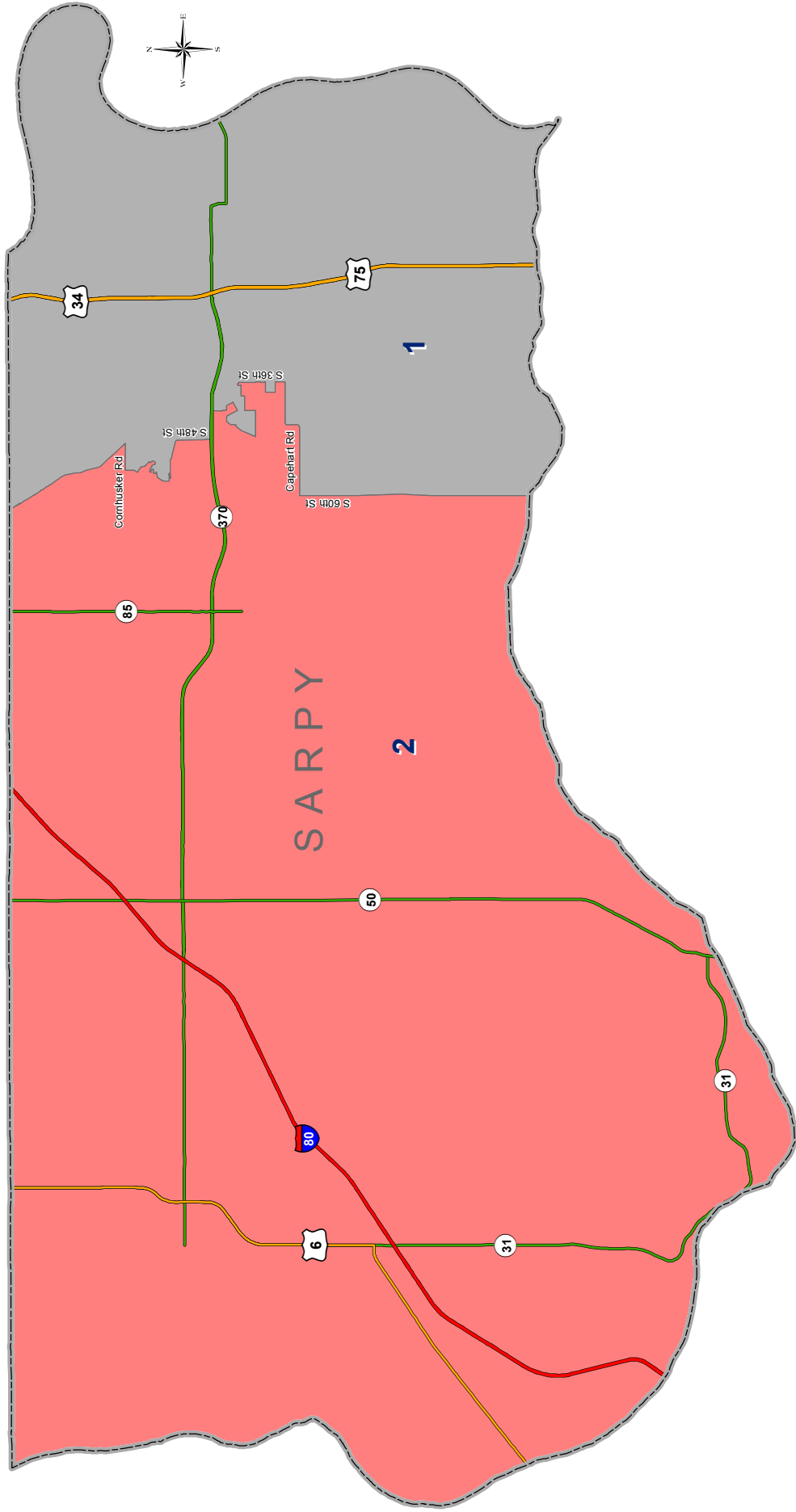


Geographic Information Systems
Map Created by: Trisha Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011

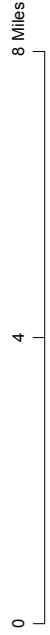
U.S. House of Representatives - LB 704 (2011)

Sarpy County

(Districts took effect May 27, 2011)



Geographic Information Systems
Map Created by: Tracy Schlake, GIS Specialist
Source: U.S. Census Bureau
Date Created: 6-27-2011



LEGISLATIVE BILLS NOT ENACTED

Proposals to Change the Size of the Nebraska Legislature—LB 195 and LB 233

Two proposals changing the size of the Nebraska Legislature were introduced in 2011 and heard by the Redistricting Committee. State population changes served as the impetus for both measures.

LB 195, introduced by *Senators Sullivan and Dubas*, would have increased the number of legislators to 50, while **LB 233**, introduced by *Senator Krist*, would have reduced the number of legislators to 45.

Neither proposal advanced from committee.

REVENUE COMMITTEE

Senator Abbie Cornett, Chairperson

ENACTED LEGISLATIVE BILLS

LB 81—Change City and Village Powers Relating to Occupation Taxes and Motor Vehicle Registration (*Cornett, Fischer, Fulton, Heidemann, Janssen, Langemeier, McCoy, Pankonin, Price, and Smith*)

LB 81 eliminates the City of Omaha's wheel tax on nonresidents. The bill was prompted by an ordinance enacted by Omaha in 2010, which required nonresidents who drive their vehicles to Omaha more than 30 days a year to pay an annual motor vehicle fee (also known as the wheel tax). The wheel tax varies by vehicle type; the charge for passenger cars is \$50. The ordinance required the commuter to pay the wheel tax no matter the distance traveled. Nonresident workers in Omaha's three-mile extraterritorial zoning jurisdiction had already begun paying the tax in 2006.

Although LB 81 preempts Omaha's new wheel tax ordinance, it also creates an exception that allows the River City to continue to impose the tax on persons within its three-mile zoning jurisdiction until January 1, 2013. That exception allows Omaha to save nearly half the \$6 million annually it had planned to collect from the tax from nonresidents who reside within the city's zoning jurisdiction.

LB 81 passed with the emergency clause 37-4 and was approved by the Governor on March 10, 2011.

LB 84—Adopt the Build Nebraska Act and Provide for Distribution of Sales and Use Tax Revenue for Road Construction (*Fischer, Campbell, Hadley, Loudon, Pahls, and Pankonin*)

Substantial policy change occurs with the passage of LB 84. As enacted, the bill adopts the Build Nebraska Act, a proposal to earmark one-quarter percent of the state sales and use tax for financing the construction and maintenance of state and local roads. (The state sales tax rate is currently 5.5 percent; cities can levy an additional 1.5 percent.)

Under the act, the earmark does not take effect until July 1, 2013, and will last 20 years. Initially, the allocation will raise about \$70 million a year, presumably the allocation will increase over the years with inflation.

The act apportions 15 percent of the quarter-percent earmark to the Highway Allocation Fund for cities and counties for their streets and roads. The measure also creates the State Highway Capital Improvement Fund and allocates the remaining 85 percent to the fund for high-priority state road projects and 25 percent of this portion is designated for completion of the state expressway system and for federally designated high-priority corridors.

LB 84 marks a significant change in Nebraska's road financing system. For years road construction and maintenance have been financed by user fees, such as the gasoline tax and motor vehicle licensing fees, and not with General Fund dollars. However, gas tax revenue has stagnated because high prices and the poor economy have decreased fuel sales.

Proponents argued that the bill is needed because of the growing backlog of roads projects, including incomplete state expressways, and reduced road maintenance. Proponents also contended that it is vital to invest in the state's \$8 billion road system because roads are the lifeblood of Nebraska, a big, sparsely populated state whose roads are the primary connector of people and commerce.

Opponents argued that it is risky, given the state's budget shortfall, to divert sales tax revenue from education, human services, public safety, and the courts. They also cautioned that the economic recovery remains tenuous, and one cannot assume a revenue rebound will occur to replace the diversion of tax money prescribed in the bill.

LB 84 passed 33-10 and was approved by the Governor on May 17, 2011.

LB 165—Change Municipal Occupation Tax Provisions Relating to Telecommunications Companies (*Fischer*)

LB 165 limits municipalities' authority to impose an occupation tax on the sale of telecommunications services. An occupation tax is a form of excise tax imposed upon persons or companies for the privilege of carrying on a business, trade, or occupation. The tax is usually levied by municipalities and is often passed on to the consumer.

Nebraska's state and local telecommunications taxes are some of the highest in the nation. LB 165 addresses this by limiting municipal communication occupation taxes to a maximum of 6.25 percent (except as otherwise provided) and prescribes that a municipality cannot raise current tax rates until 2013. At that time, a city can increase the rate in increments of 0.25 percent with approval by a majority of the city's voters at a: (1) primary or general election at

which members of the governing body of the municipality are also on the ballot; or (2) special election held within the city.

As originally introduced, LB 165 would have prohibited all local occupation taxes on telecommunications services. However, the bill was amended after cities argued that occupation taxes are a major source of their revenue and help check the growth of unpopular property taxes.

By limiting the municipal occupation tax to telecommunications services, LB 165 prohibits imposition of the tax on telecommunications equipment, effectively ending the six-percent tax the City of Lincoln levies on sales of phones and some phone services. Opponents of the Lincoln tax argued that it is actually a sales tax. Under the bill, Lincoln can levy its current telecommunications occupation tax until January 1, 2013.

LB 165 passed 42-1 and was approved by the Governor on May 18, 2011.

LB 383—Eliminate State Aid for Municipalities, Counties, and Natural Resources Districts (*Cornett, at the request of the Governor*)

LB 383 eliminates a certain state aid program for incorporated cities, counties, and natural resources districts. The General Fund budget cuts made by the bill were among the first of a number of budget-cutting proposals debated during the 2011 legislative session. The cuts were in response to the \$986 million budget shortfall projected for the two-year fiscal biennium beginning July 1, 2011.

General fund budget savings from LB 383 are expected to total about \$22 million annually, accounting for \$44 million of the two-year budget gap. The bill eliminates the aid programs; it does not simply cut the funding. An attempt to amend the bill to statutorily retain the programs but cut the funding, which would enable the aid programs to be funded again, failed.

The bill marks a change in the relationship between state government and local political subdivisions caused by declining revenues for all levels of government in the state, a consequence of the recession.

Proponents argued that the state aid program is a small portion of the budgets of local governments affected by the bill, an amount that local governments can make up by “belt tightening.” They also contended that cutting state aid to local governments preserves funding for schools, Medicaid, and retirement programs.

Opponents contended that cutting the state aid program is unfair because it was established to compensate local governments for revenue losses resulting from tax exemptions enacted by the Legislature. Opponents also argued that cutting the program is not fair at the same time the Legislature is passing legislation limiting sources of local government revenue. (See **LB 81** and **LB 165** on pages 88 and 89, respectively.)

LB 383 passed with the emergency clause 36-9 and was approved by the Governor on March 10, 2011.

LB 384—Change Property Tax Provisions and Membership, Powers, and Duties of the Tax Equalization and Review Commission (*Cornett, at the request of the Governor, and Pirsch*)

LB 384 amends provisions regarding the Tax Equalization and Review Commission (TERC). First created in 1996, TERC's duties include: (1) deciding property tax cases appealed from decisions made by county boards of equalization; and (2) equalizing real property tax assessments among counties. The Governor appoints the commissioners to six-year terms, and the appointments are confirmed by the Legislature.

Originally, TERC had three commissioners, one representing each of the state's three congressional districts. A fourth "at large" commissioner was added in 2001. LB 384 eliminates the at-large commissioner and terminates the remaining terms of current commissioners on July 1, 2011. The Governor will then appoint three commissioners (one from each of Nebraska's three congressional districts) to staggered terms, expiring on January 1, 2014, January 1, 2016, and January 1, 2018, respectively. Thereafter, each commissioner's term of office will be for six years beginning January 1 of the applicable year.

The bill also prescribes that the Governor establishes commissioners' salaries.

To help TERC manage its caseload, the bill authorizes single-commissioner hearings of real property tax appeals. Under the bill, single-commissioner hearings are: (1) permitted on properties with valuations of \$1 million or less; (2) informal (usual common-law or statutory rules of evidence do not apply); and (3) unrecorded. A party assigned a single commissioner hearing can request a hearing before the full three-member TERC. These provisions were originally prescribed in **LB 405**.

Additionally, beginning January 1, 2014, LB 384 requires that county assessors in counties with a population of at least 150,000 (Douglas

and Lancaster counties) provide real property owners: (1) a preliminary notice of valuation by January 15 annually; and (2) the right to meet in person with the county assessor (or his or her representative) and the county board of equalization to try to resolve the valuation dispute before filing any formal protests. Similar provisions were originally in **LB 457**.

LB 384 passed with the emergency clause 36-11 and was approved by the Governor on May 11, 2011.

LEGISLATIVE BILLS NOT ENACTED

LR 9CA—Constitutional Amendment to Change Agricultural and Horticultural Land Valuation (*Schilz, Brasch, Carlson, Christensen, Dubas, Fischer, Hansen, Harms, Heidemann, Loudon, and Sullivan*)

LR 9CA would have proposed an amendment to Article VIII, section 1, of the Nebraska Constitution that, if passed by the voters, would have changed the valuation of agricultural and horticultural land (agricultural land). Passage of the measure by the voters would have allowed agricultural land to be divided into a number of different classes with differing tax rates.

Proponents hoped the change would lead to property taxes on agricultural land which better reflected income derived from the land, and remedy the over-valuation of pastureland.

LR 9CA did not advance from committee.

LR 46CA—Constitutional Amendment to Require Bills that Impose a Tax or License Fee to have a Two-thirds Vote to Pass (*Pirsch*)

LR 46CA would have proposed an amendment to Article III, section 13, of the Nebraska Constitution that, if passed by the voters, would have required a two-thirds vote by the Legislature for any bill that imposes or increases a tax or license fee. A two-thirds vote requires the votes of 33 senators; a simple majority is 25 votes.

Proponents hoped that ratification of the measure into law would have created an increased bias for cutting spending, as opposed to raising taxes in legislative budget battles.

LR 46CA did not advance from committee.

LB 357—Authorize an Increase in Local Option Sales and Use Tax (Ashford and Cornett)

LB 357 was an attempt to cast a lifeline to Nebraska's revenue-stressed cities and villages (cities). Passage of the bill would have allowed cities, with voter approval, to set the local sales and use tax rates as high as 2 percent. Current law provides for rates of 0.5 percent, 1 percent, and 1.5 percent. If the ballot measure proposed an increase in the city sales tax, language would have been required to include a description of the proposed use of the revenue.

Currently, 140 Nebraska cities levy the local-option sales tax. Seventy-six of these, including Omaha and Lincoln, impose the maximum 1.5 percent tax rate, which, when added to the 5.5 percent state sales tax, results in a total state and local tax rate of 7 percent.

Ultimately, momentum for LB 357 slowed as it faced the prospect of a veto by the Governor and proponents pushed other legislation.

Proponents of LB 357 argued it was a necessary tool to help cities finance projects such as swimming pools, libraries, and infrastructure improvements, especially because the Legislature passed bills during the 2011 session that decreased revenue for cities. These include three other bills assigned to the Revenue Committee (**LB 81**, **LB 165**, and **LB 383**, summarized on pages 88, 89, and 90, respectively).

Opponents called LB 357 just another tax increase, or at least a potential tax increase, and argued cities should be reducing taxes and spending, not raising them. They also contended it was unlikely that unpopular property taxes would be lowered because a city raised its sales tax to the new 2-percent limit, as some proponents predicted would happen.

LB 357 advanced to Select File.

TRANSPORTATION AND TELECOMMUNICATIONS COMMITTEE

Senator Deb Fischer, Chairperson

ENACTED LEGISLATIVE BILLS

LB 35—Change Provisions Relating to Oversize Vehicle Permits and Towing Certain Vehicles (*Harms*)

LB 35 changes provisions relating to oversize vehicle permits.

As originally introduced, LB 35 extended the maximum renewal period for a special permit to operate a vehicle transporting sugar beets, grain, or other seasonally harvested products from 120 total days to 200 total days. Adopted standing committee amendments further extended the maximum renewal period to 210 days. Keeping the renewal period in 30-day increments helps the Department of Roads administer its electronic permit system.

In addition to its original provisions, as enacted, LB 35 includes **LB 353**, which changes provisions relating to towing oversize vehicles.

A vehicle or combination of vehicles, which otherwise exceeds the width, height, length, or weight restrictions prescribed in Nebraska's Rules of the Road, is specifically exempt from those restrictions if the vehicle is wrecked or disabled and is being safely towed to a secure location by a wrecker or tow truck.

Once safely towed, the bill requires the vehicle to be operated pursuant to the width, height, length, and weight restrictions or to acquire a special single trip permit for purposes of driving the vehicle from the secure location to its intended destination.

Additionally, LB 35 makes the wrecker or tow truck operator jointly and severally liable for any injury or damages resulting from towing the vehicle.

LB 35 passed 46-0 and was approved by the Governor on April 26, 2011.

LB 98—Provide Powers Relating to Federal-Aid Transportation Funds (*Fischer and Heidemann*)

With the passage of LB 98, the Department of Roads can enter into an agreement with a political or governmental subdivision or public

corporation to purchase the subdivision's or corporation's federal-aid transportation funds.

If the department determines it to be in its best interest, the funds can be purchased at a discount rate. Funds so purchased must be used for the cost of construction, reconstruction, maintenance, and repair of the subdivision's or corporation's public highways, streets, roads, or bridges and facilities, appurtenances, and structures.

Any political or governmental subdivision or public corporation selling federal-aid transportation funds to the department must document to the department that the proceeds of the sale were expended for the described purposes.

LB 98 passed 44-0 and was approved by the Governor on March 10, 2011.

LB 112—Exempt Certain Private Transportation Service Providers from Intrastate Carrier Regulations (*Coash and Campbell*)

Nebraska's Public Service Commission is responsible for regulating motor carriers in this state. With the enactment of LB 112, the Legislature exempts licensed care transportation services, residential care transportation services, and supported transportation services from the commission's regulations.

Generally, these exempted transportation services are provided to those in need, pursuant to a contract or subcontract with the Department of Health and Human Services. However, while the exempted transportation service providers are exempt from PSC regulations, they still must meet PSC minimum driver standards, equipment standards, and insurance requirements, as mandated by the Department of Health and Human Services.

LB 112 passed with the emergency clause 46-0 and was approved by the Governor on April 26, 2011.

LB 158—Change Driver's License Examination and Issuance Provisions (*Fischer and Hadley*)

It could be back to driver training school for some with the passage of LB 158.

Specifically, LB 158 requires any person applying for a Class O or Class M operator's license who fails his or her driving test three times in a row to be issued a learner's permit. (A Class O license is a standard driver's license and a Class M license is a motorcycle driver's license.) Before he or she can retake a driver's test, the

applicant must present proof of successful completion of a driver training school approved by the Department of Motor Vehicles or hold his or her learner's permit for at least 90 days.

Additionally, LB 158 changes the maximum age—from 65 to 72 years of age—a license holder can renew his or her license online and allows drivers younger than 21 years of age to apply online for successive licenses if he or she (1) has a digital image and signature on file; (2) has passed all the requisite examinations; (3) has a current license that is not impounded, suspended, revoked, or canceled; and (4) is determined by the department to be otherwise eligible.

LB 158 passed 49-0 and was approved by the Governor on February 10, 2011.

LB 163—Change and Provide Provisions Relating to Parking Permits and License Plates for Handicapped or Disabled Persons (*Fischer*)

In an effort to make the application process easier for those applying for handicapped and disabled parking permits, LB 163 authorizes the Department of Motor Vehicles to develop and implement an electronic system for accepting and processing applications for handicapped and disabled parking permits. The system must be up and running no later than January 1, 2013.

The system envisioned by LB 163 allows a handicapped or disabled person—whether permanently or temporarily handicapped or disabled—to use a secure, online process to apply for a parking permit.

In addition to the electronic permit system, LB 163:

- Allows a permit holder to renew his or her permit within 180 days of its expiration. (Prior law imposed a 30-day limit.)
- Increases the renewal period for a permanent handicapped or disabled parking permit from three years to six years.
- Allows a permit holder to hold up to two permits at one time.
- Authorizes the issuance of up to two duplicate permits within a six-year period.
- Requires a permit holder who requests more than two duplicate permits within a six-year period to submit additional medical certification verifying the need for the permit.

LB 163 passed 49-0 and was approved by the Governor on February 22, 2011.

LB 170—Repeal the Motorcycle Safety Education Fund and Change Provisions Relating to Motorcycle Safety Education (*Fischer*)

With the passage of LB 170, the Motorcycle Safety Education Fund ceases to exist.

Originally created in 1981, the fund was used to administer the Motorcycle Safety Education Act, reimburse approved schools, businesses, or organizations for conducting approved basic motorcycle safety courses, and promote motorcycle safety. As of January 1, 2012, there is expected to be approximately \$790,000 in the fund.

LB 170 directs that, within 60 days after January 1, 2012, 25 percent of the money in the fund will be transferred to the Department of Motor Vehicles Cash Fund, and the remaining 75 percent will be transferred to the Highway Trust Fund. Once the required transfers are made, the Motorcycle Safety Education Fund is eliminated. Supporters of the measure pointed out that no other driver education programs offered in Nebraska receive any state assistance.

The bill eliminates statutorily prescribed minimum requirements for motorcycle safety education courses and safety instructors. Instead, LB 170 directs the Department of Motor Vehicles to adopt rules and regulations establishing the necessary requirements.

Finally, prior law allowed a waiver of the examination requirement if a motorcycle-license applicant presented proof of successful completion of a motorcycle safety course within the immediately preceding 48 months. LB 170 reduces the allowable waiver time period to 24 months.

LB 170 passed 44-0 and was approved by the Governor on May 18, 2011.

LB 215—Change Provisions Relating to State Identification Cards and Motor Vehicle Operator’s Licenses (*Fischer and Janssen*)

Supporters of LB 215 believe its passage strengthens the security surrounding the issuance of state identification cards and driver’s licenses. Generally, the bill imposes stricter standards for any person involved in the process of issuing identification cards and driver’s licenses and for any card or license applicant.

Beginning on or before January 1, 2014, a criminal history record information check will be required for any person:

- (1) Involved in the recording of verified application information or identification card or driver's license information;
- (2) Involved in the manufacture or production of cards or licenses; and
- (3) Who is able to affect information on cards or licenses.

If the check reveals a conviction of any disqualifying offense, the person cannot be involved in recording information, in the manufacture or production of cards or licenses, or in any other capacity that might affect information on cards or licenses.

Current law requires any person who applies for an identification card or a driver's license to make application to the Department of Motor Vehicles. As part of the application process, the applicant must provide proof of identity, including his or her birth date and social security number. LB 215 adopts the list of documents accepted by the federal government for proof of identity. Additionally, the department must keep images of any source documents presented by an applicant and verify their authenticity.

LB 215 also requires an applicant to furnish proof of lawful status in the United States. Proof of lawful status can be verified by presenting copies of one or more of the following documents: a valid U.S. passport, a certified copy of a birth certificate filed with the appropriate state agency in the applicant's birth state, a Consular Report of Birth Abroad issued by the U.S. Department of State, a valid Permanent Resident Card, an unexpired employment authorization document, an unexpired foreign passport with a valid, unexpired U.S. visa, a U.S. Certificate of Naturalization, a Certificate of Citizenship, and a driver's license or identification card issued pursuant to the federal REAL ID Act of 2005.

If the presented documentation reveals the applicant's lawful presence is only temporary, then the validity of any identification card or driver's license is limited to the duration of the authorized stay or if there is no definite end to the stay, for one year. A temporary card or license can only be renewed upon a showing that the temporary stay has been lawfully extended by the U.S. Department of Homeland Security.

LB 215 prohibits any person from holding an identification card and a driver's license at the same time.

Finally, the bill directs any member of the military who is coming off active duty to come to the department (rather than the county treasurer) to renew his or her license.

LB 215 passed with the emergency clause 45-0 and was approved by the Governor on March 10, 2011.

LB 289—Authorize Operation of Low-Speed Vehicles on Certain Public Roads, Provide Registration Fees for Vehicles Using Alternative Fuels, and Eliminate Alternative Fuel Permits and Fees (*Mello*)

Via the enactment of LB 289, a low-speed vehicle can be operated on any highway which has a speed limit of 35 miles-per-hour or less and can cross any highway which has a speed limit of more than 35 miles-per-hour. The Department of Roads or any county, city, or village can adopt stricter regulations or ordinances governing the operation of low-speed vehicles if the governmental entity deems it necessary for public safety.

What exactly is a low-speed vehicle?

A low-speed vehicle is a four-wheeled motor vehicle, which (1) in one mile, can attain a speed of more than 20 but less than 25 miles per hour on a paved, level surface, (2) has a gross vehicle weight rating of less than 3,000 pounds, and (3) complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

LB 289 clarifies that a low-speed vehicle is considered to be a motor vehicle, and as such, must be licensed and registered and display a distinctive license plate. The bill also prescribes a process for obtaining a certificate of title on a low-speed vehicle that does not have a vehicle identification number. Additionally, the driver of a low-speed vehicle must comply with motor vehicle operator license and insurance requirements. The registration fee for a low-speed vehicle is set at \$15, the base fee for the motor vehicle tax is \$50, and the motor vehicle fee is \$10.

In addition to regulating low-speed vehicles, LB 289 repeals the Alternative Fuel Tax Act and replaces it with an alternative fuel fee. A fee of \$75 is imposed on each motor vehicle powered by an alternative fuel. The fee is in addition to any other fee required under the Motor Vehicle Registration Act and is collected by the county treasurer and credited to the Highway Trust Fund. Alternative fuel is defined to include electricity, solar power, and any other source of energy not otherwise taxed under Nebraska's motor fuel laws.

LB 289 passed 49-0 and was approved by the Governor on May 24, 2011.

LB 477—Change Regulation Provisions under the Motor Vehicle Industry Licensing Act (*Fischer*)

According to the Introducer's Statement of Intent, motor vehicle dealers and manufacturers have dramatically unequal bargaining power in the motor vehicle industry. Because of this inequity, all 50 states regulate motor vehicle franchises. LB 477 is Nebraska's response to industry changes.

LB 477 prohibits a franchisor from changing a franchisee's community without a hearing unless the franchisor (1) notifies the franchisee of the change at least 30 days prior to the change, (2) gives the franchisee an opportunity to object, and (3) enters into an agreement with the franchisee regarding the change. If an agreement is not reached, the process prescribed in the act for changing a community must be followed.

Additionally, a franchisor cannot share or sell a dealer's private customer information without permission from the originating dealer or prohibit a dealer from acquiring a different line-make of new vehicles solely because the dealer owns another dealership of the same line-make in a neighboring market.

LB 477 prohibits vehicle manufacturers from requiring new vehicle dealers to:

- Keep unordered parts or accessories, which are not sold within 12 months;
- Maintain exclusive sales and administrative facilities, personnel, service, or parts for a line-make, unless it is justified by reasonable business considerations; and
- Enter into any agreement with a manufacturer, factory branch, distributor branch, or one of its affiliates, which gives site control over the dealer's premises and does not include conditions for termination of the agreement.

The bill further directs manufacturers to pay new dealers for any warranty and recall obligations related to repair, service, and installation within 30 days. A compensation claim can be denied only if it is based on a nonwarranty repair, there is no proper claim documentation, or the dealer fails to comply with substantive evidence that the claim is intentionally false.

LB 477 passed 46-0 and was approved by the Governor on April 26, 2011.

LEGISLATIVE BILLS NOT ENACTED

LR 3CA—Allow Sales and Use Tax Revenue to be Applied to the Payment of Highway Bonds (*Fischer*)

LR 3CA would have proposed an amendment to Article XIII, section 1, of the Nebraska Constitution to irrevocably pledge sales and use tax revenue for highway construction bonds.

Originally, the change to the Constitution was deemed necessary before LB 84 could become law. As originally introduced, LB 84, through the creation of the Build Nebraska Act, would have authorized the issuance of highway bonds and dedicated a portion of the state sales tax to financing highway construction.

LB 84 was amended to remove the bonding provisions and subsequently enacted. A summary of LB 84 is on page 88.

LR 3CA was no longer needed and did not advance from committee.

LB 52—Change Motorcycle Helmet Provisions and Require Eye Protection (*Krist, Larson, Karpisek, and Bloomfield*)

LB 52 would have eliminated the requirement that a motorcycle or moped rider or passenger who is 21 years of age or older wear a helmet. The mandatory helmet requirement also would have been eliminated for any person between the ages of 15 and 21 if he or she successfully completed a motorcycle safety education course under the Motorcycle Safety Education Act. Proof of course completion was required to be available upon demand of any law enforcement officer. The mandatory helmet requirement remained in place for all other riders or passengers between the ages of 15 and 21.

Additionally, LB 52 would have required all motorcycle or moped riders or passengers to wear eye protection. The bill would have defined “eye protection” to mean “glasses that cover the orbital region of a person’s face, a protective face shield attached to a protective helmet, goggles, or a windshield on the motorcycle that protects the operator’s and passenger’s horizontal line of vision in all operating positions.”

Under LB 52, violation of the eye-protection requirement would have been a primary violation, while violation of the helmet requirement would have been a secondary violation, meaning a driver could only be cited for a helmet law violation if he or she had been cited for another vehicle violation.

LB 52 did not advance from committee.

LB 255—Eliminate Certain Duties of the Public Service Commission Relating to Railroads (*Transportation and Telecommunications Committee*)

LB 255 would have eliminated the Public Service Commission's railroad inspection program.

Currently, the Public Service Commission employs two safety inspectors. One is responsible for inspecting motive, power, and equipment, while the other is responsible for track inspections.

Supporters of eliminating the program noted that railroads would continue to be subject to federal oversight and industry inspections; opponents of the measure believed that state inspections were necessary to insure public safety.

The bill generated substantive debate throughout the legislative process as it advanced to Final Reading.

However, LB 255 failed to pass on Final Reading by a vote of 23-19.

LB 484—Exclude Soil Samplers from the One-Call Notification System Act (*Hadley, Carlson, Coash, Dubas, Hansen, Utter, and Wallman*)

LB 484 would have excluded soil samplers from the One-Call Notification System Act, by redefining the term "excavation" to exclude (1) soil sampling for agricultural nutrient and water management purposes, (2) soil sampling performed to meet local, state, or federal regulations, (3) soil sampling performed for manure management, and (4) installation of soil moisture monitoring equipment.

The One-Call Notification System Act, first enacted in 1994, generally requires anyone who excavates or disturbs the surface of the ground to first contact a "Digger's Hotline" to have all the underground utilities located. The act's intent is to protect the person digging from coming into contact with buried utility facilities and to prevent damage to the underground utility.

The legislation was deemed necessary because there is some confusion regarding whether soil samplers are exempt from the act; LB 484 would have eliminated the confusion.

The Transportation and Telecommunications Committee will study the issue over the interim.

LB 484 did not advance from committee.

Change Provisions Relating to License Plates—LB 182, LB 185, LB 216, and LB 661

Motor vehicle license plates are a perennial topic of legislation in Nebraska and 2011 was no exception. This year four license-plate measures were introduced and referenced to the Transportation and Telecommunications Committee.

LB 182, introduced by *Senator Hansen*, would have added farm trucks and commercial motor vehicles to the list of motor vehicles that are issued one license plate instead of two.

Currently, the list of vehicles that can be issued one plate includes dealers, motorcycles, minitrucks, truck-tractors, trailers, buses, and apportionable vehicles.

LB 182 did not advance from committee.

LB 185, introduced by *Senator Fulton*, would have eliminated the two-license plate requirement and required one license plate for all vehicles. According to the Introducer's Statement of Intent, the goal of LB 185 was to "reduce costs associated with the manufacture, storage, transport, and issuance of license plates by revocation of the front license plate requirement."

LB 185 did not advance from committee.

LB 216, introduced by *Senators Coash and Fulton*, would have created a special interest motor vehicle license plate.

Specifically, the bill would have required a motor vehicle with a special interest license plate to only display one license plate attached at the rear of the vehicle.

The Department of Motor Vehicles would have designed the plate. Those making application for the plate would have been required to include a description of the special interest motor vehicle, a description of all motor vehicles the applicant uses for regular transportation, proof of membership in a car club, and an affidavit stating that the special interest vehicle would not be used for transportation.

The fee for the plate would have been \$50, which would have been divided equally between the Department of Motor Vehicles Cash Fund and the Highway Trust Fund.

LB 216 advanced to General File with standing committee amendments attached.

LB 661, introduced by *Senator Karpisek*, would have reduced the fee for specialty plates from \$70 to \$50.

LB 661 did not advance from committee.

URBAN AFFAIRS COMMITTEE

Senator Amanda McGill, Chairperson

ENACTED LEGISLATIVE BILLS

LB 54—Change Provisions Relating to Tax Increment Financing (*Mello*)

Provisions relating to tax increment financing prescribed in the Community Development Law are changed with the passage of LB 54.

Generally, the Community Development Law authorizes a city to define and acquire substandard or blighted property and redevelop the property pursuant to an approved redevelopment plan. Tax increment financing (known as TIF) is a tool which allows the increased property taxes generated by the redevelopment to be used to finance the development. Once a redevelopment project is approved, the city (or Community Redevelopment Authority, if one is created) can issue TIF bonds to finance the project. TIF bonds can be repaid over a 15-year period.

Prior to the enactment of LB 54, the Community Development Law required TIF bonds to be repaid 15 years from the effective date of the redevelopment plan. LB 54 changes the commencement of the 15-year period by allowing TIF bonds to be repaid 15 years from the date specified in the project redevelopment contract or bond resolution. The change is intended to make the bond-repayment timeline more closely coincide with the actual redevelopment project.

LB 54 passed 46-0 and was approved by the Governor on May 4, 2011.

LB 146—Authorize Cities and Villages to Regulate Planned Unit Developments (*McGill*)

With the adoption of LB 146, all Nebraska cities and villages, regardless of size, can regulate planned unit developments. Specifically, LB 146 allows cities of the second class and villages to regulate planned unit developments. (Prior to the bill's passage, this land development tool was limited to metropolitan-, primary-, and first-class cities.)

What is a planned unit development?

Generally, a planned unit development provides for the multi-use development of a parcel (or parcels) of land as one project. Treating

the development as one project allows flexibility in development regulation; encourages innovation in land use and variety in design, layout, and types of structures built; promotes economy and efficiencies in land use, natural resources, and energy; and provides improved housing, employment, or shopping opportunities specifically suited to the needs of an area.

While LB 146 allows cities of the second class and villages to regulate planned unit developments, the bill requires any city of the second class or village, which is located in a county exercising zoning jurisdiction, to obtain approval from the county planning commission and county board before giving final approval to the planned unit development.

LB 146 passed 44-0 and was approved by the Governor on March 10, 2011.

LB 159—Authorize Bond Powers for Counties, Cities, and Villages for Nonprofit Enterprises (*Urban Affairs Committee*)

The passage of LB 159 effectively implements a constitutional amendment, which was passed by the Legislature and ratified by the voters in 2010.

The constitutional amendment—LR 295CA—empowered the Legislature to authorize a county, city, or village to issue revenue bonds to acquire, own, develop, and lease real and personal property for use by nonprofit enterprises. The revenue bonds are then used to defray the cost of the property's acquisition and development.

LB 159 mirrors the language of the constitutional amendment and specifically authorizes a county, city, or village to issue revenue bonds to acquire, own, develop, lease, or finance or refinance the acquisition, construction, rehabilitation, or purchase of one or more projects for use as a nonprofit enterprise. The issuance of revenue bonds for a nonprofit enterprise does not give rise to any pecuniary liability on the part of the county, city, or village.

Property acquired and developed pursuant to LB 159 must be used for a public purpose but cannot be used for sectarian instruction, devotional activities, or religious worship.

LB 159 passed with the emergency clause 48-0 and was approved by the Governor on March 16, 2011.

LB 308—Provide Terms of Office for Certain Municipal Officers (*Urban Affairs Committee*)

LB 308 clarifies terms of office for certain officers in cities of the second class and villages.

Pursuant to LB 308, the term of office of a mayor of a city of the second class begins on the date of the first regular meeting of the city council held in December following the statewide general election.

Additionally, the terms of office for all officers in a city of the second class appointed by the mayor and approved by the city council, except regular police officers, must be established by ordinance. The ordinance must provide that (1) the officers will hold office until the end of the mayor's term of office and until their successors are appointed and qualified, unless sooner removed, or (2) the terms of office will be one year, unless sooner removed.

Finally, LB 308 clarifies that the village clerk, treasurer, attorney, overseer of the streets, members of the board of health, and other appointed officers, except regular police officers, will hold office for one year, unless removed by the chair of the village board with the advice and consent of the trustees.

LB 308 passed 47-0 and was approved by the Governor on March 10, 2011.

LB 309—Provide for Reapportionment of Special Assessments Made by a City of the First or Second Class or Village (*Urban Affairs Committee*)

LB 309 prescribes a procedure to enable the governing body of any city of the first or second class or village to reapportion any unpaid special assessments when the property against which the special assessments have been levied is divided or subdivided into separate lots or tracts.

The bill requires the city or village to hold a public hearing on the reapportionment and to provide notice of the hearing to all landowners who will be impacted by the reapportionment.

When determining a new assessment, LB 309 mandates the governing body use fair and equitable terms, such as front footage or square footage. The bill also includes a grievance procedure for property owners.

Finally, LB 309: (1) exempts from reapportionment of a special assessment any tract of land upon which a tax sale certificate has

been issued; and (2) requires notice of reapportionment to be filed with the county treasurer of the county in which the land is located.

LB 309 passed with the emergency clause 41-0 and was approved by the Governor on May 17, 2011.

LB 329—Update the International Energy Conservation Code and Change Nebraska Energy Code Provisions (*Cook and Mello*)

LB 329 adopts the 2009 International Energy Conservation Code.

Adoption of the code ensures a minimum energy standard is maintained throughout Nebraska. The new minimum standard is applicable to any new: (1) state building; (2) lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building; and (3) building envelope components in a state-owned building.

LB 329 also directs the State Energy Office to establish a training program to provide technical assistance to local code officials and residential and commercial builders upon adoption and implementation of the new code.

LB 329 passed 44-0 and was approved by the Governor on April 14, 2011.

LB 335—Provide for the Waiver of Municipal Bidding Procedures (*McGill*)

In 2008, the federal government enacted the American Recovery and Reinvestment Act. One of the federal act's many components was to provide cities the opportunity to apply for federal stimulus grants. One of the grant requirements was a pledge to "Buy American." Here in Nebraska, concerns arose regarding a possible conflict between the federal "Buy American" requirement and local bidding procedures mandating the selection of the "lowest responsible bidder."

The Legislature eliminates the potential conflict by passing LB 335, which specifically allows a municipality to waive its bidding procedures if necessary to comply with a federal grant or loan program.

LB 335 passed 47-0 and was approved by the Governor on March 10, 2011.

LB 471—Expand and Change Restrictions on Appropriations from Local Sources of Revenue for Use by Economic Development Programs (Karpisek and Mello)

In 2010, the Legislature passed LR 297CA, a constitutional amendment proposing to expand the fund sources municipalities could tap for economic and industrial development. The proposal was placed on the 2010 November general election ballot and ratified by Nebraska voters.

This year the Legislature passed LB 471 implementing the directives of the approved constitutional amendment. As enacted, LB 471 also includes provisions originally prescribed in **LB 57**.

LB 471 defines local sources of revenue available to a municipality for economic or industrial development. Local sources of revenue include not only the city's property and local option sales taxes but also any other general tax levied by the city or generated from municipally owned utilities or grants, donations, or state or local funds received by the city, subject to any restrictions of the grantor, donor, or state and federal law. The bill also requires funds generated from municipally owned utilities to be used only for utility-related purposes.

Additionally, the bill changes the maximum amounts cities can annually appropriate from local sources of revenue as follows: (1) a city of the metropolitan or primary class, \$5 million; (2) a city of the first class, \$4 million; and (3) a city of the second class or village, \$3 million.

Finally, LB 471 redefines "qualifying business," which enables cities of the first and second class and villages to use funds available under the Local Option Municipal Economic Development Act for retail development.

LB 471 passed 48-0 and was approved by the Governor on March 16, 2011.

LB 546—Change Provisions Relating to the State Building Code and Local Building or Construction Codes (Gloor, Ashford, Avery, Campbell, Carlson, Christensen, Dubas, Hadley, Hansen, Harms, McCoy, Nelson, Schilz, Schumacher, Smith, and Wightman)

By enactment of LB 546, the Legislature updates the state building code by adopting the 2009 version of the International Residential Code, except section R313. Known as the IRC, the residential code is a publication of the International Code Council responsible for

research and testing of building techniques and new building materials for inclusion in the council's recommended specifications for new construction.

Section R313 of the IRC mandates the installation of fire sprinklers in all new home construction. There has been considerable discussion among construction industry professionals regarding the need for Section R313. Supporters of the requirement cite the need to make new buildings as safe as possible, while opponents note the increased cost associated with sprinkler installation and point to other codes which give guidance regarding sprinkler installation to those who choose to install such systems.

LB 546 seeks to balance these differing opinions by giving state agencies and political subdivisions the option to adopt the sprinkler mandate.

LB 546 passed 31-9 and was approved by the Governor on April 14, 2011.

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