

Nebraska Association of County Officials Legislative Report



April 6, 2007

Recreational Liability Bill Advanced Following a Cloture Vote

Counties, other political subdivisions and the state would be exempted from some liability for injuries that occur on public property under amendments adopted to **LB 564**, which was advanced from General File on Wednesday. Senators debated the bill during a filibuster by Sen. Ernie Chambers on Tuesday and Wednesday before invoking cloture to end debate. Lengthy debate is expected during Select File as well. Much of the debate focused on skateboard parks and the inherent risk involved in certain activities, as well as the appropriate standard of negligence for governmental entities that provide opportunities for recreation.

The bill was introduced by a coalition of governmental entities, including NACO, in response to a September 2006 Nebraska Supreme Court holding in *Bronsen v. Dawes County* that overturned more than 25 years of limited immunity for political subdivision land used for public recreational purposes. Until *Bronsen*, political subdivisions were treated in the same manner

as private landowners who make their property available at no charge for public recreation and are protected from all but intentional or recklessly indifferent acts.

As advanced, the bill amends the Political Subdivisions Tort Claims Act to provide protection from claims resulting from the inherent risk of a recreational activity or arising from a localized defect that is not corrected by the governmental entity within a reasonable time after receiving actual or constructive notice of the defect. A county could be charged with constructive notice when the failure to discover the defect is the result of gross negligence. If a skatepark or motorcross park is designed in good faith in accordance with generally recognized engineering or safety standards, the same exemption would apply. All of these protections would apply when no fee is charged for access to the recreational property.

Clarification of Pay for Vacation Leave Signed by Governor

Unused paid leave, other than earned but unused vacation leave, will be considered a fringe benefit that is not payable when employment ends under legislation adopted in response to a Nebraska Supreme Court case, *Roseland v. Strategic Staff Management, Inc.* **LB 255** was signed by Governor Heineman and took effect on April 2.

LB 255 was part of a group of bills passed by the Legislature on March 30. Other bills signed by the governor include **LB 67**, a NACO bill to allow the service of jury summonses by first class mail, and **LB 497**, a bill to require employers to provide unpaid

family military leave. **LB 286** is a clean up of motor vehicle titling and registration laws that includes more substantive language from **LB 287** addressing low-speed and sports utility vehicles. **LB 349** clarifies the types of vehicles that can tow different types of trailers. **LB 568** extends a scrap tire grant program to 2009, but requires a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas of the state. **LB 661** requires providers of voice over internet protocol (VoIP) to remit 911 landline surcharges.

Inheritance Tax Bill Advances from Second Round

LB 502, a bill to revise the inheritance tax formula while intending to remaining revenue-neutral, was advanced from Select File on a voice vote on Thursday. The true impact of the bill will not be seen for several years due to the cyclical nature of

inheritance tax collections. The bill would increase the exempt amount for lineal descendants from \$10,000 to \$40,000 and alter tax rates for other beneficiaries. The bill would take effect on Jan. 1, 2008.

Merger of Property Tax and Revenue Departments Amended on First Round

All parcels of real property would be subject to a “systematic inspection and review” every six years under amendments to a bill that would merge the Department of Property Assessment and Taxation into the Department of Revenue. The inspection concept was originally introduced in **LB 519**, which would have required assessors to address 25 percent of parcels each year. A Revenue Committee amendment to LB 519 would have set a four-year time frame, and a floor amendment introduced by Sen. Greg Adams at NACO’s request extended the deadline to six years. The elements of inspection and review were discussed and will be specifically outlined in rules and regulations promulgated by the Property Tax Administrator.

The same amendment contained language from **LB 484** which

would eliminate some warrant procedures and require county treasurers to distribute tax collections twice each month to county ag societies and fire districts.

The main bill, **LB 334**, is a Revenue Committee priority bill that was introduced by Sen. Cap Dierks at the request of the governor. The bill would establish a Property Assessment Division, headed by the Property Tax Administrator, within the Department of Revenue.

A committee amendment contains language from **LB 627**, which defines trade fixtures as personal property. The bill was advanced to Select File.

Open Meetings Training Fails to Advance

A bill that would have required public officials who conduct open meetings or maintain public records to take an Attorney-General approved training course failed to advance by one vote during the initial round of debate this week. **LB 622**, which was introduced at the request of the Attorney General, would have required the training to be available at no cost and authorized use of the Internet to provide the training. During debate, some senators questioned whether volunteer members of public bodies should be required to attend training, even though the bill contained no penalty for failing to do so. It was suggested that mandatory training might discourage volunteers from serving on boards that are often hard to fill.

One open meetings bill remains on General File. **LB 391** would

create a process for members of the public to place items on the meeting agenda for public bodies. The bill has not been designated as a priority.

LB 389, which would protect certain job application materials from disclosure as public records, was signed by the governor and took effect on April 2.

Two other bills dealing with open meetings and records, **LB 7** and **LB 135**, have been killed. **LB 7** would have prohibited public bodies from requiring a member of the public to be placed on the agenda in order to speak on an agenda item or new business. **LB 135** would have prohibited the disclosure of security records by public bodies.

NRD Occupation Tax and Levy Increase Proposed

Natural resource districts (NRDs) in the Republican River basin would be allowed to increase their levy by 10 cents and impose a \$10 per acre occupation tax under a bill that will be debated on Tuesday. In addition, the state would contribute \$8 million in the first year of a plan to help Nebraska fulfill multistate agreements governing water usage from the Republican River. A second public hearing on **LB 701** was held on Wednesday to address new concepts that now make up the committee amendment. NACO helped draft technical language regarding county responsibilities to help determine irrigated acres and collect the occupation tax. For purposes of collection and distribution, the tax would be treated in a manner similar to a special assessment.

Actions taken on several other water bills may become part of

the discussion on **LB 701**. **LB 272**, a bill to allow the Pappio-Missouri NRD to issue bonds to help pay for dams in the Omaha area, was killed by the Natural Resources Committee. **LB 420** was reported on General File with an Appropriations Committee amendment to increase cigarette taxes to 70 cents per pack to help fund stormwater management and agricultural research. **LB 33**, which was introduced to provide funding to counties through the County Property Tax Relief Program, was gutted and replaced with an Appropriations Committee amendment to appropriate \$3 million to the Department of Natural Resources to purchase surface water rights in the Republican River basin. The bill was reported to the floor for debate but has not been prioritized.

Revenue Committee Package Includes Property Tax Credit

A \$100 million appropriation would be distributed to property tax payers in FY07-08 as a credit on their tax bill under a proposal advanced by the Revenue Committee and prioritized by its chairman, Sen. Ray Janssen. The credit is estimated to result in an 8-cent reduction in property taxes or approximately \$80 on a \$100,000 house. **LB 367** would distribute another \$50 million through this process in FY08-09. School levy limits would be decreased from \$1.05 to \$1.00 per one hundred dollars of valuation and the amount exempt from state estate tax would

increase. The sales tax on labor for commercial construction projects would be eliminated. Some income tax rates would be lowered and the standard deduction would be increased. The total package would reduce taxes by approximately \$418 million over the next two years.

Several amendments have been offered, including proposals to decrease the \$100 million tax credit to \$80 million and to strike the proposed changes to the estate tax, among other things.

Registration Available for County Legislative Day

County officials can still register for NACO's County Legislative Day on April 12. The day begins with registration at the NACO office at 8:30 a.m. and moves to the Warner Chamber of the Capitol at 9:15 for opening remarks and an address by Governor Dave Heineman at 9:30. Speaker Mike Flood will welcome officials and several committee chairs will discuss

significant legislative issues. Senators have been invited to join county officials for lunch. During the afternoon, county officials can watch the session, visit senators' offices or state agencies, or tour the Capitol or Governor's Mansion. Please contact your county clerk for registration information or call the NACO office.