

February 5, 2021

Committee hearings continue to be conducted at rapid-fire pace, with the first half-day of floor debate still over a week away (February 16). Each of the bills on the NBA Affirmative Legislative Agenda have received public hearings with two of the bills (LB 66 and LB 503) already having been advanced to General File.

With 151 bills having been referred to the Judiciary Committee resulting in the need to schedule almost 10 bills for hearing each day, Judiciary Committee hearings are extending well into the evening. The NBA presented testimony before the Judiciary Committee late Thursday evening in opposition to LB 394 (Foreclosure Moratorium).

## HEARING ACTIVITY

The NBA presented testimony on each of the following bills that were heard before various committees during the past week:

### ***Banking, Commerce and Insurance Committee:***

**LB 503 – Trust Deeds/Trustee Interpleader Action:** Senator Mike Flood (Norfolk) has introduced LB 503 on behalf of the NBA, which would authorize a junior lienholder, in an interpleader action relating to the payment of proceeds of a trustee's sale, to recover attorney fees from any party objecting, without a good faith reason, to the proposed distribution of funds by the trustee. If a judgment is entered in favor of the junior lienholder in an amount equal to or greater than the portion of funds paid into the court by the trustee to which the holder claims to be entitled, it is a rebuttable presumption that the objecting party did not do so in good faith. The bill has been advanced to General File by the Committee.

**LB 535 – Notice of Lapse or Termination of Life Insurance Policy:** LB 535, introduced by Senator Mark Kolterman (Seward), on behalf of the NBA, would prohibit a policy of life insurance subject to an assignment to be terminated or lapsed by reason of default in payment of any premium unless a notice of pending lapse and termination of the policy has been provided by the insurer to any known assignee at least 30 days prior to the effective date of the lapse and termination. The bill would allow the notice of lapse and termination to be provided electronically by the insurer to any assignee who has requested notice. Kevin Postier (Henderson State Bank, Henderson) presented testimony on behalf of the NBA regarding the experience of his bank in a case in which the bank had taken a collateral assignment of a life insurance policy and was not provided notice in advance of the policy lapsing for non-payment of premium.

**LB 509 – State Treasurer Duties:** Senator Brett Lindstrom (Omaha) has introduced LB 509 which would include among the duties of the State Treasurer to promote financial literacy. LB 509 has been advanced to General File. **(NBA Position – Support)**

*Education Committee:*

**LB 327 – Financial Literacy:** Senator Julie Slama (Peru) has introduced legislation that would require, commencing in school year 2022-23, for at least one-half credit hour of the minimum credit hours required for graduation to be a personal finance or financial literacy course. **(NBA Position – Support)**

**LB 452 – Financial Literacy Act:** LB 452, introduced by Senator Terrell McKinney (Omaha), is a measure that would, beginning with school year 2022-23, require each school district, in consultation with the state Department of Education, to develop for incorporation into all phases of the curriculum of grades K-12, a financial literacy program (knowledge and skills regarding budgeting, credit, checking and savings accounts, loans, stocks, and insurance). The bill would require each school district to present evidence annually to the state Department of Education, that financial literacy is being taught to students in accordance with the requirements of the Act. **(NBA Position – Support)**

NBA President and CEO Richard Baier testified on behalf of the NBA, highlighting the need for financial literacy for students and the extensive efforts of member banks in promoting financial literacy in their communities. Kristi Thornton (West Gate Bank, Omaha) also testified on behalf of the NBA regarding financial literacy activities of the bank.

*Revenue Committee:*

**LB 422 – Sales Tax on Services:** Senator Tom Briese (Albion) has introduced a measure (LB 442), which would, commencing October 1, 2022, reduce the state sales tax rate from 5.5 percent to 5 percent with adjustments in each of the next four calendar quarters to provide approximately the same amount of sales and use tax revenue for the state as would have been generated without the expansion of sales tax on services provided under the bill. The measure would apply the state sales tax to all services (all activities engaged in for other persons for a consideration and that involve predominantly the performance of a service as distinguished from selling or leasing tangible personal property, excluding services rendered by an employee to his or her employer) which shall be presumed taxable unless a specific sales tax exemption applies. **(NBA Position – Oppose)**

**LB 133 – The Nebraska Consumption Tax Act:** Senator Steve Erdman (Bayard) is the sponsor of LB 133, which would eliminate all property, income and corporate taxes and replace it with a tax on the use or consumption in the state of Nebraska of taxable property or services (excludes intangible property and services, including financial intermediation services) at a rate of 10.64 percent. The legislation would impose the consumption tax on financial intermediation services, including explicitly and implicitly charged fees for financial intermediation services to be collected with the same frequency that statements are rendered by the financial institution, but not less frequently than quarterly. The principal and interest component of financing leases would also be subject to the consumption tax. **(NBA Position – Oppose)**

**LB 194 – Nebraska Job Creation and Main Street Revitalization Act:** LB 194, introduced by Senator Tony Vargas (Omaha) would expand the eligibility for applications to Nebraska’s Historic Building Tax Credit Program and increase the tax credit for historically significant real property located in a county that includes a city of the metropolitan class or a city of the primary class from 20 percent to 25 percent and for historically significant real property located in any other county increases the credit from 20 percent to 30 percent, with the maximum credit allocated to any one project in the amount of \$2 million. **(NBA Position – Support)**

**LB 682 – New Markets Job Growth Investment Act:** Introduced by Senator Lou Ann Linehan (Omaha), LB 682 would provide additional utilization of federal dollars being appropriated to the United States Treasury Federal Program; provide additional transparency and extend the “sunset” date on new applications from December 31, 2022 to December 31, 2029. **(NBA Position – Support)**

*Judiciary Committee:*

**LB 403 – Medicaid Estate Recovery:** Senator Slama has also introduced a measure that would establish a five-year statute of limitations for recovery of Medicaid benefits by the Department of Health and Human Services with respect to a retained life estate by the recipient of medical assistance. **(NBA Position – Support)**

**LB 394 – Eviction/Foreclosure Moratorium:** Senator Adam Morfeld (Lincoln), has introduced a measure that would authorize municipalities to impose moratoriums on evictions and mortgage foreclosures during “public health emergencies.” **(NBA Position – Oppose)**

A “background paper” setting forth additional information and “talking points” accompanies this NBA Legislative Update for your assistance in contacting members of the Judiciary Committee to encourage opposition to LB 394.

## UPCOMING HEARINGS

The NBA will testimony in the upcoming week on each of the following bills:

**LB 455 – Broadband Pole Attachment Act:** Senator Curt Friesen (Henderson) has introduced LB 455 which would require electric utilities to a) charge rates and fees for attachments to utility poles by communications service providers that are just, reasonable, and nondiscriminatory regardless of the services furnished; b) make the electric utility’s easements available to a communications suit service provider and, where necessary, obtain expansions of such easements to accommodate the communications service providers attachments on a nondiscriminatory and competitively neutral basis; c) established terms and conditions for attachments to utility poles by any communication service provider that are nondiscriminatory, competitively neutral, commercially reasonable, and consistent with federal laws and regulations; and d) if consistent with the National Capital and Electrical Safety Code, rearrange, expand, replace, or otherwise reengineer any utility pole upon the request of the communications service provider if necessary to accommodate the communications service provider's new attachment. The bill would prohibit an electric utility, in cases in which replacement of the utility pole is necessary, to require reimbursement of costs associated with the pole replacement from a communications service provider beyond recovery of the electric utility's actual and reasonable costs of advancing the retirement of the existing utility pole. (Cost would be measured by the net book value of the existing utility pole plus the incremental cost, if any, of installing a utility pole with greater capacity than the utility pole that would have been installed in the normal course of operations and any other incremental costs proved by the electric utility, with the incremental cost in no event including any costs associated with the installation of a utility pole that would have been installed at the same location.)

**LB 258 – The Healthy and Safe Families and Workplaces Act:** Introduced by Senator Tony Vargas (Omaha), LB 258 would allow employees to accrue a minimum of one hour of paid sick time for every 30 hours worked, with a maximum of 40 hours of paid sick time accrued in a calendar year. Under the measure, employees would be entitled to use accrued paid sick time beginning on the 60th calendar day following commencement of employment. Paid sick leave would be authorized for (a) an employee's mental or physical illness, injury, or health condition; (b) an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; (c) an employee's need for preventative medical care; (d) care of a family member with a mental or physical illness, injury, or health condition; (e) care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; (f) care of a family member who needs preventative medical care; or (g) absence necessary due to domestic abuse, domestic assault, sexual assault, or stalking.

**LB 290 – Paid Family and Medical Leave Insurance Act:** Senator Machaela Cavanaugh (Omaha) introduced legislation that would establish a statewide paid family medical leave insurance program similar to Nebraska’s unemployment insurance system, managed by the state Department of Labor. The legislation would apply to all employers’ subject to the Employment Security Act (one or more employees), with self-employed individuals eligible to participate funding would be provided for the program through a payroll tax of up to 1.0 percent of payroll as determined by the Commissioner of Labor.

The bill would allow 12 weeks, or 60 workdays of paid leave if taken intermittently, and would base the paid leave upon 90 percent of an individual’s average weekly wage that is at or below 50 percent of the state average weekly wage and 50 percent of the individual’s average weekly wage that is above 50 percent of the state average weekly wage, not to exceed 66 percent of the state average weekly wage.

The bill would also require employers to pay all other benefits that are due to the employee that would have been paid in the absence of leave, as well as all other benefits offered to the employee (vacation, sick leave, etc.) and would require employers to allow employees to return to their jobs after exercising their right to family medical leave.

**LB 598 – Small Business Stabilization Grant Program Act:** Introduced by Senator Anna Wishart (Lincoln), the measure (LB 598) would provide grant funds to eligible businesses (for-profit business in the state of Nebraska that has no more than \$1 million in gross revenue in the most recently completed calendar year) that are experiencing a significant loss of revenue because of a qualifying event (any natural disaster, pandemic, or other event for which a state of emergency proclamation issued by the Governor). The bill would authorize grants for eligible businesses that have experience a significant loss of (gross revenue over a period of one month or more and has declined by at least 50 percent from the amount of gross revenue received over the same period in the prior year). Grants of up to \$12,000 would be authorized and \$20 million would be appropriated to carry out the Act.

# BACKGROUND PAPER ON 394

**ISSUE:** LB 394 – MORATORIUM ON FORECLOSURE OF LANDLORD RESIDENTIAL RENTAL PROPERTY

**NBA POSITION:** OPPOSE

## BACKGROUND:

LB 394, introduced Senator Adam Morfeld (Lincoln), would, in part, allow for a foreclosure moratorium to be enacted by a municipality, county board, or public health department to protect landlords from foreclosure of their residential rental properties. Residential rental property would not be subject to foreclosure or to payment of late fees, penalties or interest for delinquent mortgage payments or taxes during the foreclosure moratorium period and for a six-month grace period thereafter.

## ARGUMENTS IN OPPOSITION TO LB 394:

1. Banks understand the challenges facing all Nebraskans, particularly residential tenants, landlords and Nebraska businesses during the COVID-19 pandemic and are using every tool they have to assist them with the financial impact of the pandemic. Whether in the form of special emergency loan programs, payment deferrals, loan modifications, reduced loan rates, fee waivers, or other forms of debt restructuring, banks are working with their borrowers to fashion individualized solutions to their problems.
2. The last thing banks want is for their customers to go into foreclosure. Foreclosure generally means a substantial loss for both the bank and its customer. Importantly, there has been no notable uptick in foreclosures on either the residential or commercial side in Nebraska. Foreclosure is always a last resort. It takes months to get to the point of foreclosure, and even longer during the pandemic due to payment forbearance efforts employed by lenders.
3. State and federal regulators have recognized the need for bank flexibility and responsiveness and have provided support for bank efforts to work with their customers to provide payment forbearance and loan modifications.
4. A foreclosure moratorium may lead property owners to believe that they do not need to continue to make their mortgage loan payments. The moratorium can create a bigger problem than it intends to solve by providing a false sense of security.
5. Federal preemption by the Office of the Comptroller of the Currency would appear to prohibit a foreclosure moratorium from being applicable to federally chartered banks, which include most of the largest banks and several regional banks headquartered or doing business in Nebraska.
6. A state-mandated foreclosure moratorium, even if on a temporary basis, abrogates the contract rights of the parties (commonly referred to as the “Contract Clause”) and is prohibited by the Nebraska and U.S. Constitutions.

A public hearing was held on Thursday, February 4 on LB 394. Please contact the members of the Judiciary Committee set forth below to encourage them to OPPOSE LB 394.

## JUDICIARY COMMITTEE MEMBERS

Steve Lathrop (District 12), Chairperson, <a href="mailto:slathrop@leg.ne.gov">slathrop@leg.ne.gov</a>	(402) 471-2623
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