

Jim's Perspective...

2023 Legislative Session Review

During the first ten days of the legislative session, when senators can introduce legislative bills, the 2023 Legislature introduced 820 bills. This is more than what is typically introduced but it falls a little short of the record of 885 bills introduced in the 1997 legislative session. I monitored 41 bills this session. In the last 90-day session of 2021, I monitored 34 bills. Senator Ben Hansen of Blair introduced a proposed legislative rule change that would limit each of the 49 senators to introduce no more than 12 bills in a legislative session. He argued that with so many bills introduced there was not enough time for full debate on each introduced bill. The Rules Committee declined to advance this proposal to the floor of the Legislature for debate.

During the first couple of months of the session, which began January 4, I provided the PIA Legislative Committee a “legislative update” about every week or two. As the session progressed and the filibuster action intensified, there was simply less legislative activity taking place on the floor and consequently I did not report as often to the Legislative Committee. Needless to say, the 2023 legislative session process was something I have never seen since I was initially registered as a lobbyist in the Nebraska Legislature in 1981. I am very concerned about how the Unicameral will function in 2024.

Senator Slama introduced LB92 which was advanced to the floor by the Banking, Commerce and Insurance Committee. This bill eliminated the requirement that an annual review of title insurance agents must be conducted on site, at the agent’s office. This bill became an omnibus bill (Also called a “Christmas tree” bill) when more than twelve additional Committee bills were amended into LB92. The bill became 122 pages long. It passed June 1. As introduced, it was only four pages. This is the problem with Christmas tree bills. They are loaded with other bills and are often over one hundred pages long. It is difficult to keep track of what bills are moving through the legislative process. Another example of the size of Christmas tree bills is an omnibus criminal justice bill, LB50, which ultimately contained 14 criminal justice bills. From a lobbyist’s perspective, it is just not easy to keep track of what legislative proposals end up getting amended into another legislative bill.

The other insurance-related bills amended into LB92, none of which had any opposition, include:

LB68. Increase the funding of the Nebraska Hospital, Medical Liability Act.

LB93. Insurance company security deposits held by the Nebraska Department of Insurance would now be available for creditors in addition to policyholders.

LB437. A “business entity agency license” would now be renewed every other year rather than yearly. Cathy Klasi testified in support of this bill. Note: The PIA will take an official position on a bill only upon unanimous consent of all members of the PIA Legislative Committee.

LB536. Removes restriction of insurers investing in a company with less than \$1 million in retained earnings.

LB587. Adopts the Regulatory Sandbox Act. This allows the Nebraska Department of Insurance to authorize a person or entity to temporarily test innovative insurance products or

services under the supervision of the Department without otherwise being licensed or authorized to act under the laws of Nebraska.

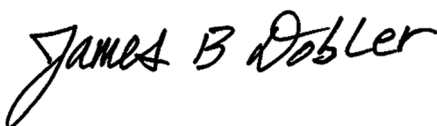
Besides the enacted insurance laws noted above, there is one change in Nebraska tax law adopted by the Legislature this session which may have a significant impact on you and your business. The Nebraska Legislature passed LB754 which, among other things, adopts a “pass-through entity tax law” (PTET), which allows pass-through entities such as partnerships and Subchapter S corporations to elect to pay state income taxes on behalf of their individual owners. This law may prompt you to change how you and your business will manage your income tax obligations.

The primary purpose of the PTET law is to provide a means for individual owners to circumvent the \$10,000 state and local tax (SALT) federal itemized deduction limit. By shifting the tax liability from the individual owner to the business entity, this change in payment of state taxes, allows business owners to avoid the limitations imposed by the SALT deduction cap.

Twenty nine states have already enacted PTET laws. These PTET laws have been approved by the Internal Revenue Service. The Nebraska PTET law is retroactive to 2018. The potential benefit of participating in the PTET program, as I understand it, is that if your state and local taxes exceed the \$10,000 federal itemized deduction limit, your business entity (by paying all the tax) can reduce income by the full amount of state and local taxes paid, and this lower income means lower federal taxes. I assume whoever does your income tax work will know about this change in the state’s tax law.

As you may have read, a lawsuit has been filed against a bill alleging that it violates Article III, section 14 of the Nebraska State Constitution which says: “No bill shall contain more than one subject, and the subject shall be clearly expressed in the title.” The single subject rule dates back to Nebraska’s earliest days as a state, when the framers of the 1875 state constitution included it to promote transparency and accountability for lawmakers. This lawsuit and the single subject requirement could potentially affect all of the Christmas tree bills passed this session. What a mess if they are all found to be unconstitutional! Also, in past years, occasionally, the Legislature might pass a Christmas tree bill, but it did not happen very often.

With the Legislature adjourned until January, 2024, the next activity of the 2023 Legislature will be to conduct interim studies on issues described in legislative resolutions introduced by senators during the 90-day legislative session. There were 190 interim study resolutions introduced. I will be monitoring seven resolutions. The Legislature will conduct hearings on these interim study resolutions usually beginning in September. Three of the interim study resolutions only provide a legislative committee the opportunity to conduct a hearing on a topic within their jurisdiction, so the committee can study some issue that arises during the interim, but there may not be any hearing on these three resolutions. Overall, there is not much involving insurance during the interim.



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