

**LANCASTER COUNTY BOARD OF COUNTY COMMISSIONERS  
LEGISLATIVE RETREAT  
THURSDAY, AUGUST 18, 2022  
LANCASTER COUNTY SHERIFF'S TRAINING CLASSROOMS B & C  
8:30 A.M.**

**LEGISLATIVE PROPOSALS FOR 2023 SESSION**

**I. NEW PROPOSALS**

1. **Funding for East Beltway.** Transportation issues are vital to keeping Nebraska economically competitive, and physical transportation infrastructure is an integral component of the supply chain that supports our continued local, region, and statewide growth in a competitive global economy. Now that the City of Lincoln's South Beltway is nearly complete in record time due to State of Nebraska leadership combined with significant local support, the East Beltway remains the final uncompleted portion of the expressway system around the City of Lincoln. In anticipation of completing this project, the City of Lincoln and the County of Lancaster have invested millions of dollars in securing the East Beltway corridor for future development. To ensure the State of Nebraska's continued economic growth, state investment is critical to realize the completion of the expressway system serving the City of Lincoln and Lancaster County.
  
2. **County Bridge Match Program.** The 2016 Transportation Innovation Act created the County Bridge Match Program. Pursuant to Section 39-2805:
  - a. The Program was authorized to expend up to \$40 million to promote innovative solutions and provide additional funding to accelerate the repair and replacement of deficient bridges on the county road system.
  
  - b. The Program will sunset on June 30, 2023.
  
  - c. The Department of Transportation was charged with developing the Program, including participation criteria and matching fund requirements for counties. The Department included a \$200,000 maximum Program contribution in the participation criteria.

In order to continue to meet today's infrastructure needs, this successful Program should be refunded, extended beyond 2023, and updated to reflect the current inflationary environment that is taking a toll on the ability of local funding to meet soaring construction costs.

3. **Office of Conflict Counsel.** The fundamental right to representation in criminal proceedings is a hallmark of constitutional due process. Typically, pursuant to Neb. Rev. Stat. § 23-3402 and Neb. Rev. Stat. §§ 29-3901 through 29-3904, the County Public Defender is appointed to provide representation, except in cases of conflict. When a conflict arises, courts appoint private attorneys.

Pursuant to Neb. Rev. Stat. §§ 29-3905 and 43-273, counties statutorily are required to pay for fees arising from these appointments. Although these fees are funded by property taxes, the county, district, and juvenile courts independently set the fees for court-appointed attorneys. Consequently, counties are powerless to manage the impact of these fees on property taxes.

Authorizing counties to create an Office of Conflict Counsel would allow counties to continue to provide competent, constitutionally-required representation in criminal matters in which the Public Defender has a conflict, while also ensuring fiscal responsibility for taxpayers.

## II. PRIOR PROPOSALS

1. **Require the Nebraska Commission on Law Enforcement and Criminal Justice to create a mental health indicator in a criminal justice information system to alert emergency dispatch operators. (Previously introduced as LB663 (2021) (Geist)).** This legislation is our version of sharing of mental health information. Senator Geist made some changes to the draft in the last hours before introduction that limited the scope of the bill.
2. **Provide for county bridges under the Political Subdivisions Construction Alternatives Act. (Previously introduced as LB242 (2021) (Brandt)).** This bill would allow for a longer payment period and for design-build for bridges. As noted in reports throughout last session, a re-worked version of the amendment incorporated some of the language from LB414 (2021) (Wishart).
3. **Direct a portion of the proceeds from the Nebraska Racetrack Gaming Act to county agricultural societies. (Previously introduced as LB73**

**(2021) (Geist)).** For the Nebraska Racetrack Gaming Act, 25% of the tax is already remitted to the county treasurer of the county in which the licensed racetrack enclosure is located. 10% of the distribution remitted would be distributed to the county agricultural society in the county in which the licensed racetrack enclosure is located if such county agricultural society has been formed in the county under the County Agricultural Society Act. Following any distribution to a county agricultural society, the remaining funds would be distributed by the county treasurer.

**4. Appropriations Bill to Cover Costs of State Public Assistance Programs (Medicaid).**

Pursuant to Neb. Rev. Stat. § 68-130, counties currently pay the cost of maintaining office and service facilities for the Department of Health and Human Service (“DHHS”) to administer Medicaid. A bill is sought to appropriate adequate funds to pay the cost of maintaining DHHS’ Medicaid office and service facilities.

**5. Medication Assisted Treatment (MAT) in Problem-Solving Courts.**

Medication-assisted treatment (MAT) is the use of medications approved by the Food and Drug Administration, in combination with counseling and behavioral therapies, to provide a “whole-patient” approach to the treatment of substance use disorders. Research shows that a combination of medication and therapy successfully can treat these disorders, and for some people struggling with addiction, MAT can help sustain recovery. MAT is used primarily for the treatment of addiction to opioids.

The intent of this legislation is to utilize Nebraska’s Opioid Settlement dollars to ensure participants in, and graduates of, Problem-Solving Courts have access to a diagnostic interview, and when indicated by the diagnostic interview, MAT, including on-going medication management with the prescribing medical provider. Any Problem-Solving Court Coordinator may file an affidavit with the Department of Health and Human Services (Department) requesting payment for a diagnostic interview for MAT for any program participant who presents with a history of opioid use. When a recommendation for MAT is made by the medical provider, the Problem-Solving Court Coordinator may file an affidavit with the Department requesting payment for the MAT prescribed by the medical provider.

To ensure sustained recovery, graduates of a Problem-Solving Court who successfully have completed all program requirements may file with the Department an affidavit (i) requesting that MAT necessary for

the graduate's opioid addiction treatment be provided and (ii) affirming that such MAT has been prescribed by the graduate's medical provider as necessary for the graduate's opioid maintenance treatment. The Department shall provide the graduate MAT so long as the graduate's treating physician continues to prescribe and certify that MAT is necessary for the graduate's opioid maintenance treatment.

**6. Change provisions regarding appeals of certain zoning decisions by county planning commissions and county boards. (Previously introduced as LB1057 (2020) (Lowe)).**

The Nebraska Supreme Court has ruled there are two procedures under which an appeal can be made to the district court from a decision rendered by a county board on a zoning request for a special or conditional permit: 1) a petition in error under Neb. Rev. Stat. § 25-1901; or 2) an appeal pursuant to Neb. Rev. Stat. § 25-1937. *See Olmer v. Madison County Bd. of Comm'rs*, 275 Neb. 852, 752 N.W. 2d 124. When reviewing a decision under a petition in error the district court determines whether the county board acted within its jurisdiction and whether the decision rendered is supported by sufficient relevant evidence. Under Neb. Rev. Stat. § 25-1937, the district court decides the appeal de novo, which requires the district court to conduct a trial to produce a new record on the appeal, and then rule independently based on that record. Under this procedure the district court may be required to conduct a new public hearing to create a record. The Supreme Court noted the potential burden that could be placed on the district court for appeals conducted under Neb. Rev. Stat. § 25-1937. The simple solution is to amend Neb. Rev. Stat. § 23-114.01(5) to provide that all appeals are made pursuant to the petition in error process under Neb. Rev. Stat. § 25-1901.

**7. Authorize a Reasonable Fee for the Filing of a Petition to Vacate or Abandon a County Public Road under Neb. Rev. Stat. § 39-1723.**

Counties are not authorized to charge a fee for a petition filed under Neb. Rev. Stat. § 39-1723 requesting the vacation or abandonment of a county road. When a petition is filed the county is obligated to perform a study as defined under Neb. Rev. Stat. § 39-1722. The vacation study required to be conducted can be costly, and counties should be allowed to charge a reasonable filing fee for the petition to help cover the cost of the study.

**8. Broaden Enforcement Remedies for Special Permit Violations to Include Financial Sanctions to Cover Damages Caused by the Violation.**

Neb. Rev. Stat. § 23-114.05 sets forth a county's enforcement authority when the terms, conditions and requirements of a special permit have

been violated by the permit holder. Sanctions may include criminal charges, injunctive relief, or termination of the special permit. Special permit violations could be enforced more effectively and economically if counties are given the authority to impose financial sanctions for damages caused by the violation and to help cover the cost of enforcement.

**9. Reasonable Fees for Services Provided by the County Engineer for Issuance of Driveway Permits, Right-of-Way Utility Permits, Subdivision Reviews, and Load Permits.**

The Lancaster County Engineer's Office spends a significant amount of time issuing driveway permits, right-of-way permits for utilities, vehicle load permits, and reviewing proposed land subdivisions. These services primarily benefit individual companies or persons. Enabling legislation is necessary to give counties the authority to charge a reasonable fee for these services.

**10. Infrastructure Funding Mechanisms. (Previously introduced as LB267 (2019) (Bolz)).**

The number of structurally deficient county bridges in Nebraska is increasing at an alarming rate. Amending Neb. Rev. Stat. § 23-120(3)(b) to include county bridges could provide a steady source of revenue to address this public safety issue.

**11. Automatic Expungement of Criminal Records.**

A criminal conviction for even a minor offense can have a devastating impact on a person's life by affecting opportunities for education, employment, housing, etc. For this reason, most states have procedures for the expungement or sealing of criminal records, including convictions for most misdemeanors. However, petitioning for a clean record can be confusing and expensive. Research shows that most people who could expunge their criminal record never do so. Two states, Pennsylvania and Utah, have addressed this issue by adopting legislation for the automatic expungement of criminal records. In Nebraska expungement is available on a limited basis under Neb. Rev. Stat. § 29-3523. Automatic expungement could be an important component of criminal justice reform in Nebraska.

**12. House Arrest for Work Release and Child Support Inmates.**

Administering work release for inmates is time consuming and costly. If these inmates qualify for work release then perhaps they are trust worthy enough for house arrest rather than serving their time at the jail. Also, inmates serving time for nonsupport of their children should

also be placed on house arrest to give them the opportunity to maintain or find employment in order to support their children.

**13. Make Texting/Emailing a Primary Criminal Offense.**

Under Neb. Rev. Stat. § 60-6,179.01(4) the criminal offense of reading, writing or sending a written communication while operating a motor vehicle which is motion can only be enforced "...as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense." Nebraska is one of only a few states which don't enforce this conduct as a primary offense. Texting or emailing while operating a moving motor vehicle is a serious problem which jeopardizes the safety of the traveling public, and should be enforceable as a primary offense

### **III. STANDING PRIORITIES**

**1. Property Tax Relief**

Property tax relief continues to be the top legislative priority for Lancaster County. It is of utmost importance that Lancaster County preserve its ability to utilize Inheritance Tax revenue to provide significant property tax relief to Lancaster County residents.

In addition, pressure on the property tax can be reduced by eliminating unfunded mandates that primarily benefit the State, including the obligation of counties to pay rent for certain Health and Human Services facilities under Neb. Rev. Stat. § 68-130.

Finally, decreasing reliance on the property tax can be achieved by diversifying county revenue sources. Potential new revenue sources for counties could include:

- Tobacco tax increase
- Occupation tax on wineries
- Remove sales tax exemption on soda, energy drinks, and candy, and earmark the proceeds for property tax relief
- Increase statutory fees to keep pace with the cost of the service being provided
- Establish reasonable fees for services provided by the county engineers for issuance of driveway permits, right-of-way permits, subdivision reviews, load permits, and for petitions to vacate or abandon a county public road

**2. Funding for Adult Criminal Justice System Reform**

Lancaster County's jail population and probation housing costs have increased as a direct result of 2015 Neb. Laws LB 605. Funding for the County Justice Reinvestment Grant Program created under LB 605 should be maintained or increased to help offset these additional costs. Additional property tax savings could be realized through criminal justice reforms such as no cash bail, and mandating home arrest for inmates who qualify for work release and for persons convicted for nonsupport of their children.

**3. Funding for Juvenile Justice Reform**

Juvenile justice reform under 2013 Neb. Laws LB 561 is not being adequately funded. With the passage of 2018 Neb. Laws LB 1112, adequate funding becomes even more critical. Additional funding should be appropriated for community-based post adjudication services, and existing funding levels for the Juvenile Justice Community Based Aid Program should be maintained or increased.

**4. Public Building Commissions, Joint Public Agencies, and Interlocal Cooperation**

Public building commissions, joint public agencies, and interlocal cooperation are vital to Lancaster County's ability to provide sustainable services to a safe, healthy, and diverse community. The power to cooperate with other governmental entities to benefit our citizens through these joint entities and agreements must be preserved. Neb. Rev. Stat. §§ 13-1301 through 13-1312 allow Lancaster County and the City of Lincoln to utilize the Public Building Commission to jointly acquire, construct, remodel, renovate, and finance buildings, structures, and facilities for their joint use. Without this mechanism, our citizens would lose the benefits of economies of operation that add to the effectiveness of the City of Lincoln and Lancaster County and would have to suffer the inconvenience of separate City of Lincoln and Lancaster County buildings, structures, and facilities.

Similarly, the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827, and the Joint Public Agency Act, Neb. Rev. Stat. §§ 13-2501 to 13-2550, allow Lancaster County to make the most efficient use of its taxing authority and other powers by enabling it to cooperate with other governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that accord best with geographic, economic,

population, and other factors influencing the needs and development of the local community. The sum of the cooperation between Lancaster County and other governmental units provides a greater benefit to all of our citizens than each partner could provide in isolation.