
Common Cause Nebraska

NEWSLETTER / MARCH 2011

The Good, the Bad and the Unnecessary CCNE takes a stand on this session's legislative fare

Wading through the hundreds of bills proposed in the legislature is not a task for the faint-hearted. Every session Jack Gould, our intrepid issues chair, rolls up his sleeves and goes to work examining the new docket's offerings for items that pertain to the good-government mission of Common Cause.

This year, Jack identified 26 bills, constitutional amendments and resolutions for the CCNE board to consider actively supporting, opposing or monitoring. While we will work to some degree on almost all of them, those in the following list seem of particular importance to us.

We encourage you to make your views on these issues known to your state senator, local media, friends and neighbors. Phone or write an email or old-fashioned letter—you may be surprised how many senators are receptive to the views of their constituents and fellow citizens, even if they don't agree with you.

LB 48: Immigration *CCNE opposes*

Introduced by Fremont's Charlie Janssen, this bill is modeled on Arizona's recent immigration legislation and, from our perspective, suffers from the same well publicized problems. In a nutshell, it would require local and state police and other officials to enforce federal immigration law, tasks for which these officers and officials are neither trained, staffed nor budgeted. We feel the law would lead inevitably to intrusion into the lives of legal immigrants and others.

LB 142: Campaign finance *CCNE opposes*

No recent legislative session would be complete without at least one attempt to repeal the Campaign Finance Limitations Act. It's Sen. Scott Lautenbaugh's turn this year and, once again, we are hard at work in opposition.

LB143: Foundation accountability *CCNE supports*

School districts, like all levels of government, are strapped for cash. Over the years, most have established non-profit, separately run foundations to augment taxpayer funding. CCNE applauds citizen attempts to improve schools, but we feel that all foundation funds disbursed to schools should be publicly disclosed, as this bill introduced by Senator Ken

Haar would require. Citizens cannot adequately monitor the performance of their schools unless they know where all their funding comes from and how it is spent.

LB148: School district lobbying *CCNE supports*

Over the past three years, sixteen of Nebraska's districts have spent \$1,366,782.14 lobbying the state legislature. It doesn't take a conspiracy theorist to note these districts have an advantage in the legislature over the 237 districts without lobbyists. We don't challenge a school board's right to hire whomever they want to plead their case to legislators. But we don't think this lobbying advantage should be bought with taxpayer money, so we support Senator Bill Avery's bill, which prohibits school districts from doing so.

LB239: Voter ID *CCNE opposes*

Senator Janssen's bill would require a "government-issued photographic identification" to register to vote in Nebraska. At present, a prospective voter is required to present either "a photo identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows

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the name and address of the applicant as they appear on the application.” We don’t believe there is evidence of any significant voter fraud involving registration of citizens or immigrants, legal or otherwise, so we see no reason to make the process of voting even more complicated for a public that already votes in unacceptably low numbers.

LB271: Legislative research *CCNE opposes*

Among the unsung heroes at the Unicameral are the staff and director of the Office of Legislative Research. Founded in 1937, the OLR delves into a wide variety of topics for senators and committees, preparing research and reports vital to producing legislation and conducting governmental functions. The reference library it maintains serves as the legislature’s memory—of particular importance now that term limits has ensured there will be little human institutional memory. However, in the current atmosphere of budget-cutting zeal, the Executive Committee proposes, in this legislation, to do away with the OLR. We think this is a very bad idea.

LB 340: Pipeline regulation *CCNE supports*

The proposed Keystone pipeline and its route over the Ogallala aquifer has created a great stir in the state. This

bill, introduced by Senator Annette Dubas, would give Nebraska the means (which it currently lacks) to regulate pipelines carrying hazardous liquids. The process would include permits issued upon proof that the pipeline serves the public interest, meets environmental and economic standards and complies with state regulations. It also would require a permit to exercise eminent-domain purchases. We think this is sound policy.

LB419: Campaign finance *CCNE opposes*

Proposed by Senator John Nelson, this is another attempt to weaken our campaign finance oversight. It would eliminate obligations to report third-party expenditures on behalf of a candidate or petition drive. As it now stands, candidates and petitioners must report all individual expenditures, regardless of the method of payment—cash, check, credit card or so on. LB 419 would permit the reporting of expenditures gathered under an umbrella, such as a credit card payment, without breaking down those expenditures down individually. Currently, a candidate who, for example, buys an ad on a local TV station, 1000 yard signs and ten radio spots, and charges them all on a credit card, has to report each separate expenditure. LB 419 would require that only the credit card total be reported, with no indication of what individual expenditures comprise that total. We believe this reduces the public’s right to know what candidates do and how they do it.

LB606: Campaign finance *CCNE supports*

This bill, proposed by Senator Bill Avery, responds to fallout from the recent Supreme Court Citizen’s United decision, which held that corporations may not be restricted

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to the bills discussed here, or any bill,
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in contributions to political campaigns. Last election, Americans for Prosperity, a political organization registered as a corporation and based in Virginia, funded attack ads in four Nebraska legislative races. These ads generally come out of the blue in the final weeks of the campaign and are very difficult for candidates to respond to, in part because they are not sanctioned by an opponent, political party or other traditional political organization subject to campaign-disclosure laws. Because of the Citizens United ruling, there is little that can be done to regulate this kind of thing when done by a corporation. This bill would shine a little light into the shadows by requiring such corporate political organizations to report their intended campaign expenditures in Nebraska 30 days prior to the disbursement of any of the funds. A small step, but one we feel is worth supporting.

LR22: States' rights *CCNE opposes*

Senator Tony Fulton has joined similarly minded legislators in a number of states in offering this legislative resolution, which calls on the US Congress to call an amendment convention

to propose that the US Constitution be amended to require the repeal of any federal law or regulation if two-thirds of state legislatures vote to do so. CCNE recalls that we fought a nasty war about 140 years ago to settle the question of states rights. We see no reason to undo the verdict of that war.

LR19CA: Impeachment rules *CCNE supports*

Several years ago, CCNE played a pivotal role in the removal of David Hergert from the University of Nebraska Board of Regents. During the campaign, Hergert had violated campaign finance rules and we felt this should disqualify him from the office he had won as a consequence (at least in part) of his violations. Hergert was removed, but not for campaign-finance violations, because only acts committed while in office are allowed as grounds for impeachment and removal. This constitutional amendment, proposed by Senator Bill Avery, would allow for impeachment on charges of violating campaign laws during a campaign.



School Lobbying

CCNE has been working on this issue for some time; here is a summary for those catching up:

In the last three years, sixteen Nebraska School Districts and the Omaha Learning Community have spent nearly \$1.4 million in tax money—on lobbying. So if anything has changed since our last report on this, it is that the figures have gone up.

Because the money becomes available when the state calculates the funds that will be allocated for budgets, Senator Bill Avery wonders if perhaps the schools are receiving too much school aid. “Why do they have extra money to hire lobbyists...while so many of the schools are left out in the cold?”

Sen. Avery’s LB148 says districts could hire lobbyists but could not factor lobbying costs into the state aid formula as part of their needs. In other words, if you want lobbyists, pay out of your own pocket.

Lincoln Public Schools is once again the top spender: \$83,000 in 2008; \$95,000 in 2009; \$96,000 in 2010. Total: \$275,000. LPS Superintendent Steve Joel said having a lobbyist at the legislature is critical for a district of Lincoln’s size.

Omaha came in second with \$212,000. But in an Omaha World Herald article, Omaha Senator Brad Ashford said that the Omaha delegation in the Nebraska Legislature has its “nose out of joint” over the district hiring yet another

lobbying firm. The lobbying proposal came just days after Mayor Suttle met with the Omaha delegation in Lincoln.

“I think we need to build on what we have. We came out with a sense to work together. We think we can get this done.”

Senator Avery said, “I think a school district’s best advocate is its own superintendent and its own principals. These are the people who know the district better than anyone else. They are professionals. They have years of experience in education and administration.” He added that LPS headquarters is about 10 minutes away from the Capitol.

Jack Gould, Common Cause Nebraska, who supports the bill, said the lobbying money could have been used for curriculum development, improvement of facilities, or hiring teachers.

“It is obvious that the 16 districts believe they are gaining advantage over the other 237 districts that do not have lobbyists and probably cannot afford them,” said Gould. “Are they being left out of the debate and do they need lobbyists in order to be heard in the legislature? If the answer is no — and I hope it is — then why do the 16 districts need lobbyist in the first place?”

School districts have argued before that such a bill impinges on First Amendment rights to have lobbyists speak for them. Not so, said Gould.

“The bill simply says you cannot use state dollars for lobbying purposes. It is sending a clear message that state tax dollars are to be spent strictly on education.”

DON’T LET THE OGALALLA AQUIFER BECOME ANOTHER OIL DISASTER!

We know our members have been keeping up with this important issue. Here is a review and update of CCNE’s thoughts and efforts:

Few Americans are aware that under the soil of the high plains of the central United States — Nebraska, Kansas, Oklahoma, Arkansas and Texas — lies one of our greatest treasures. The Ogallala, or High Plains Aquifer, ten million years old, is the largest aquifer in the United States and one of the largest in the world, with about the same amount of water as Lake Erie. This is pure, potable water. Yet today TransCanada Keystone XL pipeline plans to bring oil from tar sands in Alberta, Canada, to the Gulf Coast through the fragile ecosystem of the Nebraska Sandhills that lie above the Ogallala Aquifer. TransCanada has chosen the shortest and most direct route from Alberta to the Gulf — above the High Plains Aquifer. Of course, a route can be found that will not endanger the aquifer. Keystone XL chose the cheapest way — for them, but to what future cost for the aquifer?

In Nebraska, the route runs directly through the fragile grass-stabilized dunes of the Nebraska Sandhills that sit atop the Ogallala Aquifer. Here the topsoil is so shallow that most of the area has never been plowed. In the spring, the meadows between the hills are dotted with shallow lakes formed by the groundwater that is never far from the surface.

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TransCanada claims that pipelines over land are safe — and that leaks are easily remedied. What these comparisons do not take into account is that the aquifer would quickly absorb any leaks like a sponge, contaminating drinking and agricultural irrigation waters. The newer tar sands pipelines are all high-pressure pipelines meant to transport corrosive and dirty bitumen.

Under pressure from an increasingly sceptical public, informed by a coalition of concerned organizations led by Bold Nebraska and the Sierra Club, TransCanada recently withdrew their request for waivers of safety standards that allow them to use thinner-gauge steel pipe to save costs.

Scientists estimate that by 2060 the world will not have enough freshwater to meet needs. The largest water need is for food production — more than 75 percent of all freshwater use is for agriculture. By 2050, the world population is expected to increase 40 percent and the need for food will double. The highly productive agricultural lands of the plains, irrigated with water from the High Plains Aquifer and the many rivers that flow from it are critical to feeding the world. Protecting the aquifer from potential contamination is of concern not to the Great Plains alone, but to all of us, everywhere.

Teri J. Taylor and her family are Sandhill ranchers. In a fine article in the Lincoln Journal Star, she closed saying, “I can no longer be complacent...or silenced. I firmly believe that this pipeline through the Sandhills and the Ogallala Aquifer is wrong at any price. In the words of the Cree Prophecy:

Only after the last tree has been cut down... Only after the last river has been poisoned... Only after the last fish has been caught... Only then will you find that money cannot be eaten.

Finally, Bills to Protect the Land and the People of Nebraska

When landowners learned two years ago—from a newspaper—that a crude-oil pipeline might be located near their land, they also found that there was nowhere to turn for information on details of the project or how it might affect the land. They found that state and local agencies have no role in sites or oversight of such pipelines. Now three senators have introduced bills to fill in these gaps.

LB340 Sen. Annette Dubas *Establish state-based agency for pipeline oversight.*

Would require crude-oil pipeline firms to apply for state permission from the Public Service Commission and go through a lengthy approval process. This is a crucial first step in protecting our natural resources and landowners. Senators Fischer, Fulton, Haar and Sullivan have signed on as co-sponsors.

LB578 Sen. Ken Haar *Ensure TransCanada pays the bills.*

Haar’s bill would require “proof of financial responsibility” from pipelines transporting hazardous material (like tar sands oil) across our state to clean up leaks and shut off the pipeline. Basically, the bill sets up a trust to protect landowners if a pipeline leaks or is abandoned which is exactly what Nebraskans have been asking for, not “mere expressions of intentions.”

LB629 Sens. Kate Sullivan and Tony Fulton, co-sponsors. *Cleanup responsibility.*

Would attach liability to pipeline companies for cleanup, economic losses and restoration of wildlife habitat. It also would allow counties to recover cost of repairing road damage.

An article in the Lincoln Journal Star reported that Fred Fuhrer of TransCanada’s Omaha office said the bills “were akin to drastic changes in the rules late in the fourth quarter.”

More fourth quarter talk from the Journal Star: The talk coming out of a TransCanada meeting to examine its fourth quarter financial status reflects a slight shift in its expectations on a State Department outcome from midyear to late year...That means that chances of construction work in 2011 is rapidly slipping away.

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Six months ago they expected to be well on their way by now. The Journal noted that the project outcome is still up in the air after three years and there's no sign of anyone throwing in the towel.

We encourage you to write or call Senators Ben Nelson and Mike Johanns, and Secretary of State Hillary Clinton. The State Department must give allowance for a business from another country to operate in the United States. It has not yet done so.

IT'S REDISTRICTING TIME *Once again, CCNE is committed to ensuring a fair and open process*

Every decade a census is taken in the United States. The following year, using those figures, Congress, the Nebraska Legislature, the Nebraska Supreme Court, the University of Nebraska Board of Regents, the Public Service Commission, and the State Board of Education—all government organizations where membership number is based on population—face redistricting. This can mean changes in numbers, in boundaries, in districts.

The 2010 census has triggered another episode in the redistricting saga. The current legislature must now act on its findings. It is early in the process, with only the committee having been chosen at this time. The nine members, three from each Congressional District, are:

First Congressional District: Sens. Bill Avery (D) and Danielle Conrad (D), both Lincoln;
Sen. Chris Langemeier (R), Schuyler.

Second Congressional District: Sens. John Nelson (R), Scott Lautenbaugh (R) and Heath Mello (D), all Omaha.

Third Congressional District: Sen. Deb Fischer (R), Valentine;
Sen. Ken Schilz (R), Ogallala;
Sen. Annette Dubas (D), Fullerton.

What's the state's recent redistricting track record?

In 1991, for the first time, the Legislature held April and May public hearings over proposed boundary changes. As we remarked then, CCNE can take some credit for this. We have long been a consistent advocate supporting maximum transparency for the entire redistricting process, including opportunities for citizens to both participate and comment. Jack Gould has been the organization's steady spokesman for years, plugging away in Senators' offices and before committees. Unfortunately, in 1991, these open meetings were about the only praiseworthy aspect of that process, which was so badly handled that the courts had to step in to sort it all out.

Ten years later, working closely with others wishing to avoid the '91 fiasco, CCNE helped establish an open, well-organized and fair process for redistricting in 2001. In a series of linked meetings across the state, citizens were allowed to comment in a timely fashion (before any decisions had been made) on the actual proposals for redistricting. For the first time, all census information and computer-drawn maps were fully available on the internet. It was an orderly, successful process and we hope to ensure the same this year.

One aspect of the process we'll be watching concerns how closely the legislature comes to realizing one of the key rules the senators set out for the 2001 process: "the creation of districts that are substantially equal in population."

Federal law requires that district lines be drawn with a "deviation at or approaching 0 percent." That is, each district must have the same population as every other district. However, in 2001, the Nebraska legislature decided on a deviation of 10%, which means that the deviation in any legislative district can be 5% above or 5% below the established population figure.

In 2001, Dick Herman, a retired editorial-page editor of the Lincoln Star and member of the State Constitution Revision committee (also a current CCNE Board Member), remarked, "No previous redistricting in Nebraska in the past 40 years has allowed such generous state government deviation. Without a doubt one and perhaps two legislative districts now represented outside Omaha and Lincoln will be permanently lost to the great eastern population centers."

We'll keep you informed about redistricting issues as events unfold.

FIX THE FILIBUSTER

In the last session of the United States Congress, the Republican and Democratic parties were so at odds that little was accomplished. The use of the filibuster by the minority Republican Party, bringing legislation to a halt, created anger in the Legislature and disgust in the general population. It is time to fix the filibuster! Common Cause National has taken on the challenge; you can find out more at the national website www.commoncause.org. Meanwhile, here is some background.

What Is the filibuster?

Filibuster is the use of unlimited debate, usually by a single member, not to inform or persuade, but to stop a legislative body from voting on legislation. It is a rule of the Senate, not a law.

Cloture is a motion for an immediate end to a discussion, requiring a vote, again a Senate rule. The number of cloture motions required to get a vote has more than doubled since 2006, and countless “stealth filibusters,” where the minority threatens to filibuster without actually having to do anything, have been used to prevent action on scores of substantive measures.

Today, majority rule has been replaced in the Senate by minority rule. The Senate filibuster rule (Rule XXII) gives a minority of 41 Senators—who may be elected from states that contain as little as 11% of the nation’s population, the power to keep the Senate from voting on a bill, a resolution, or a presidential appointment.

The filibuster was clearly not a part of the Founding Fathers’ vision of our government. If they had intended a 60-vote super-majority requirement to pass bills, they would have included it in the Constitution, just as they explicitly required a super-majority to override a presidential veto.

The filibuster was used sparingly throughout most of the 20th century, and until the 1960s was used primarily to block civil rights legislation. But in the past five years, the Republican minority has abused the rule to the point that 60 votes — not 50 — has become the de facto threshold for any meaningful action.

The drastic increase in the frequency of filibusters is also responsible for much of the widespread anger in Congress and the belief among much of the general public that “the government no longer works.” This widespread anger has generated a loss of public confidence in government and particularly in Congress.

The filibuster rule has knocked the system off balance so that 41 senators control the outcome of the Senate legislative process and determine what measures are put to vote. This places the delicate system of checks and balances in jeopardy.

So, Will They “Fix” It?

For months, some Democrats had been working on a plan to put an end to the Republican ability to block Democratic initiatives. Furious negotiations behind the scenes by the anti-filibuster wing, led by Senator Tom Udall, tried to muster support for the effort to kill the filibuster by changing the Senate rules. He was trying—and, it turns out—failing, to convince 51 Democrats to put an end to it.

Why did Democrats give in? They believed it would be reckless to change the rule while they hold just 51 Senate seats. With elections in two years and more vulnerable Democrats than Republicans, if they change the rule with 51 votes now, there will be nothing to keep the Republicans from doing the same—with just 51 votes.

Remember Civics class in high school? A bill was introduced, it was deliberated, a vote was taken, it passed and was signed by the President. How simple!

MANY THANKS AND BEST WISHES TO CCNE TREASURER CARL ESKRIDGE.

Longtime CCNE board member and current treasurer Carl Eskridge has decided to run for a seat on the Lincoln City Council in the coming elections. Unfortunately for us, to maintain strict non-partisanship, Common Cause doesn’t allow elected government officials (or those running for office) to serve on boards. You know we’re sticklers on rules, so we have accepted Carl’s resignation.

In addition to being a board member and treasurer, Carl’s CCNE service includes a stint as our group’s executive director, a task he handled while a law-school student! As treasurer, Carl has made sure that our funds, while meager, have been exceptionally well accounted. We wish Carl well as he continues his public service and we look forward to hearing from him as an active member of Common Cause Nebraska.

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