

**STAFF MEETING MINUTES  
LANCASTER COUNTY BOARD OF COMMISSIONERS  
COUNTY-CITY BUILDING, ROOM 113  
THURSDAY, OCTOBER 28, 2010  
8:30 A.M.**

Commissioners Present: Bernie Heier, Chair  
Ray Stevens, Vice Chair  
Larry Hudkins  
Bob Workman  
Deb Schorr

Others Present: Kerry Eagan, Chief Administrative Officer  
Gwen Thorpe, Deputy Chief Administrative Officer  
Dan Nolte, County Clerk  
Cori Beattie, Deputy County Clerk  
Ann Taylor, County Clerk's Office

The Chair opened the meeting at 8:30 a.m.

**AGENDA ITEM**

**1 APPROVAL OF THE MINUTES OF THE THURSDAY, OCTOBER 14, 2010 STAFF MEETING**

**MOTION:** Stevens moved and Workman seconded approval of the October 14, 2010 Staff Meeting minutes. Stevens, Workman and Heier voted aye. Schorr abstained from voting. Hudkins was absent from voting. Motion carried 3-0.

**2 ADDITIONS TO THE AGENDA**

Item was held until later in the meeting.

Hudkins arrived at 8:33 a.m.

**3 GRANT AWARD FROM BUREAU OF JUSTICE ASSISTANCE/CENTER FOR SUBSTANCE ABUSE TREATMENT - Kim Etherton, Community Corrections Director**

Kim Etherton, Community Corrections Director, said the County has received a Bureau of Justice Assistance (BJA)/Substance Abuse and Mental Health Services Administration (SAMHSA) grant for expansion and enhancement of the Adult Drug Court. She said

the intent is to increase capacity by 70%. The BJA award is \$300,000 (\$100,000 a year for three years) and the SAMHSA award is \$325,000 annually, up to three years. The County's match will be in-kind services. She said she needs approval from the Board to accept the BJA grant award.

Stevens asked what the grant will cover.

Etherton said she will be adding mental health case management (in partnership with the Community Mental Health Center); substance abuse treatment (the grant will pay for a full-time therapist through St. Monica's); one full-time Supervision Officer; and one part-time Drug Technician. She said the grant will also pay for drug testing supplies and equipment, training, computers and office furniture. Etherton said there are also funds for indirect costs which can be applied towards relocation to the 9<sup>th</sup> & J Street Building.

**MOTION:** Schorr moved and Stevens seconded to authorize the Chair to sign for acceptance of the Bureau of Justice Assistance (BJA) grant award.

Kerry Eagan, Chief Administrative Officer, suggested it would be more appropriate to take action at a regular County Board of Commissioners Meeting.

The maker of the motion and the seconder withdrew their motion.

#### **ADDITIONS TO THE AGENDA**

A. Home Builders Association of Lincoln's Toys for Santa Cops Program

**MOTION:** Stevens moved and Hudkins seconded approval of the addition to the agenda. Schorr, Stevens, Workman, Hudkins and Heier voted aye. Motion carried 5-0.

#### **4 BUDGET UPDATE PLAN - Dennis Meyer, Budget and Fiscal Officer**

Dennis Meyer, Budget and Fiscal Officer, noted the Board had discussed having departments give budget updates throughout the fiscal year and said he has scheduled the following departments on the November 18<sup>th</sup> Staff Meeting agenda: Corrections, Community Mental Health Center (CMHC) and County Sheriff.

Heier said Mike Thurber, Corrections Director, recently informed him that he anticipates the new jail will probably open the last quarter of 2013. He said a population of 550 is projected.

## **ACTION ITEMS**

- A. Authorize Continuation of GoalMaker Portfolio Changes for Retirement/Deferred Compensation Plan

**MOTION:** Stevens moved and Workman seconded approval.

Stevens asked how many employees utilize GoalMaker.

Kerry Eagan, Chief Administrative Officer, said he will check with Prudential.

**ROLL CALL:** Schorr, Stevens, Workman, Hudkins and Heier voted aye. Motion carried.

## **ADMINISTRATIVE OFFICER REPORT**

- A. TRIM (Electronic Recordkeeping System) Contract for Custom Applications and Training

Gwen Thorpe, Deputy Chief Administrative Officer, said a consultant will build custom applications for Community Corrections and Veterans Service/General Assistance (GA) to place client records in TRIM and will provide training to Information Services (IS) so they can build future applications in the future. She said the consultant has agreed to provide the service for \$6,500 and said the contract will be scheduled on a regular County Board of Commissioners Meeting agenda for action.

- 5 NORTH 70<sup>TH</sup> STREET BRIDGE OVER INTERSTATE 80** - Joe Kuehn and Terry Gibson, Nebraska Department of Roads (NDOR); Doug Pillard, Design Division Head, County Engineering

Doug Pillard, Design Division Head, County Engineering, said the State's project to widen Interstate 80 to six lanes between Omaha and Lincoln involves the removal and replacement of several county roads that cross I-80 and said the intent was to avoid having two adjacent bridges (section line roads) closed at the same time. He said the North 84<sup>th</sup> Street bridge is closed and was scheduled to be completed in October. Weather has delayed its construction and the bridge is now scheduled to open on November 15<sup>th</sup>. Pillard said the North 70<sup>th</sup> Street bridge is scheduled to be closed on November 1<sup>st</sup>, which will leave only the North 98<sup>th</sup> Street bridge and U.S. 77 as options for crossing the interstate in that area (see Exhibit A).

Terry Gibson, NDOR, explained that his department failed to include provisions in the construction contract that would have prevented removal of the North 70<sup>th</sup> Street bridge until the North 84<sup>th</sup> Street bridge was completed.

Joe Kuehn, NDOR, said the contractor is willing to hold off on closing the North 70<sup>th</sup> Street bridge until November 8<sup>th</sup>, which would leave a one week closure overlap. He said further delays could impact the construction end date. Kuehn proposed that the North 70<sup>th</sup> Street traffic be detoured to North 56<sup>th</sup> Street/Highway 77, north to Waverly Road, which would keep it on paved roads and said NDOR is willing to post electronic message boards on North 70<sup>th</sup> Street alerting drivers of the impending bridge closure. He said area fire and rescue departments will also be notified.

Hudkins asked whether the contractor can be penalized if the project is not completed on schedule.

Kuehn said no, they are strictly on a working day job.

Hudkins encouraged the NDOR to include penalty provisions in future contracts.

**MOTION:** Schorr moved and Workman seconded to allow the one week overlap in closure of the North 70<sup>th</sup> Street and North 84<sup>th</sup> Street bridges.

Stevens asked whether NDOR can provide incentives to the contractor to meet the target date.

Gibson said it is very difficult to modify the contract after the project has been let.

**ROLL CALL:** Schorr, Stevens, Workman, Hudkins and Heier voted aye. Motion carried 5-0.

**6 CLAIM FOR REVIEW, PAYMENT VOUCHER (PV)#28721, \$4,404.00 FROM EMERGENCY MANAGEMENT FOR TELVENT DTN METEORLOGIX (NO CONTRACT) - Doug Ahlberg, Emergency Management Director**

Doug Ahlberg, Emergency Management Director, gave a brief explanation of the claim which involves a subscription to a weather radar service.

**MOTION:** Stevens moved and Hudkins seconded to handle the claim through the regular claims process and asked that a contract for the service be scheduled on a regular County Board of Commissioners Meeting agenda for action. Hudkins, Workman, Stevens, Schorr and Heier voted aye. Motion carried 5-0.

## **ADMINISTRATIVE OFFICER REPORT**

### **B. Nebraska Association of County Officials (NACO) Jail Tour (December 8-10, 2010)**

Heier said Larry Dix, Nebraska Association of County Officials (NACO) Executive Director, has asked that a tour be scheduled at a later date.

### **C. District Energy Corporation (DEC) Appointment (Workman)**

Board consensus was to schedule the appointment after the November election.

### **D. County Board of Commissioners Webpages**

Thorpe said Information Services (IS) has asked whether the Board would like to move to the new format for webpage design. She offered to provide Board members with a demonstration. Thorpe said she will also work with the City to coordinate press releases when offices will be closed for a holiday.

### **E. Nebraska Association of County Officials (NACO) Registration Fees**

Hudkins noted a prior discussion of registration fees for conferences (see September 30, 2010 Staff Meeting minutes). He had indicated at that time that he had pre-registered for the NACO Fall Meeting and was unable to attend, due to a family medical emergency. Hudkins said pre-registration was required and said there was no option for a refund.

### **F. Tri-County Meeting Topics and Attendance**

Discussion of legislative issues was suggested. It was also suggested that Larry Dix, Nebraska Association of County Officials (NACO) Executive Director, be asked to attend and give an overview of NACO's legislative priorities.

## **DISCUSSION OF BOARD MEMBER MEETINGS**

### **A. Lincoln Independent Business Association (LIBA) Quadrant Lunch - Schorr**

Schorr said the discussion primarily focused on legislation, the Commission of Industrial Relations (CIR) and property tax levies.

**7 DEPARTMENT OF ENERGY GRANT FOR ENERGY EFFICIENCY EQUIPMENT FOR NEW JAIL** - Don Killeen, County Property Manager; Tom Fox, Deputy County Attorney; Vince Mejer, Purchasing Agent; Bob Walla, Assistant Purchasing Agent

Tom Fox, Deputy County Attorney, expressed concern that the County will be required to comply with the Davis-Bacon Act for construction of the new jail if it accepts the grant. **NOTE:** The Davis-Bacon Act requires paying the locally prevailing wages and benefits, usually the union rate, for any construction contract over \$2,000 funded in whole, or in part, by the federal government. Fox added that the federal government is still writing the implementing instructions for the American Recovery and Reinvestment Act of 2009 (ARRA) (stimulus funds), particularly concerning specific procedural requirements for the new reporting requirements.

Don Killeen, County Property Manager, presented copies of an email from the contracting officer indicating the Davis-Bacon Act would not apply because the Department of Energy only authorized using the grant to purchase equipment (Exhibit B).

Fox explained that the grant is part of the Energy Efficiency Conservation Block Grant Program, which is part of ARRA, and said the grant documents and Department of Energy documents reference the Davis-Bacon Act. He added that Section 1606 of ARRA specifically requires that all laborers and mechanics employed by the contractor and subcontractor on any project funded directly by, or assisted in whole or in part by, the ARRA be paid prevailing wages.

Bob Walla, Assistant Purchasing Agent, said the bidding documents for the jail did not include the documentation that the federal government requires for stimulus grants.

Fox said he believes the Davis-Bacon Act will apply to the project if the County accepts the grant.

Vince Mejer, Purchasing Agent, said he concurs with that assessment.

In response to a question from Stevens, Walla said there does not appear to be anyone willing to provide assurances to the County.

Stevens suggested the County ask one of Nebraska's U.S. Senators to intervene.

Rhonda Ryan, County Grants Manager, appeared and said she is due to submit a report on whether there has been any use of the grant funds.

Walla noted a representative of the Department of Energy will be in Lincoln next week to discuss a grant the City has received and said perhaps the County could seek to discuss this matter with them, as well.

Schorr asked whether there are similar concerns regarding the larger grant the District Energy Corporation (DEC) received for the project.

Killeen said no, DEC is in compliance.

**MOTION:** Hudkins moved and Stevens seconded to direct Rhonda Ryan, County Grants Manager, to file the report with a footnote requesting clarification on use of the grant funds. Hudkins, Workman, Stevens, Schorr and Heier voted aye. Motion carried 5-0.

### **RETURNING TO ITEM 10F**

The Board reviewed the following documents (Exhibits C & D):

- 2010 Lancaster County Legislative Priorities
- Lancaster County Legislative Priorities, 2011 Session

The Board tentatively identified the following as its legislative priorities for 2011:

1. Support Legislation Updating and Clarifying the Authority of the Commission on Industrial Relations (CIR)
2. Property Tax Relief
3. Provide Counties with Statutory Authority to Mandate Direct Deposit of Paychecks
4. Mandate Payment of Medical Expenses for Inmates and Emergency Protective Custody Patients at Medicaid Rate
5. Modify Strict Liability Provisions of Nebraska Revised Statutes §13-911 When a Vehicular Pursuit is Terminated by a Law Enforcement Officer
6. Reduce County Employee Pension Match for New Employees

The Chair asked Eagan to submit the list to Douglas and Sarpy County in advance of the meeting.

Stevens suggested more direct involvement on the part of Commissioners in lobbying the Lancaster State Senators on priority issues.

## **ADDITIONS TO THE AGENDA**

- A. Home Builders Association of Lincoln's Toys for Santa Cops Program

Schorr suggested the Board volunteer, as a group, to assist with the program.

The other members of the Board concurred with the suggestion.

### **8 ACTION ITEMS**

- A. Authorize Continuation of GoalMaker Portfolio Changes for Retirement/Deferred Compensation Plan

Item was moved forward on the agenda.

### **9 CONSENT ITEMS**

There were no consent items.

### **10 ADMINISTRATIVE OFFICER REPORT**

- A. TRIM (Electronic Recordkeeping System) Contract for Custom Applications and Training
- B. Nebraska Association of County Officials (NACO) Jail Tour (December 8-10, 2010)
- C. District Energy Corporation (DEC) Appointment (Workman)
- D. County Board of Commissioners Webpages
- E. Nebraska Association of County Officials (NACO) Registration Fees
- F. Tri-County Meeting Topics and Attendance

Items A-F were moved forward on the agenda.

- G. 2010 County Government Day (Wednesday, November 17<sup>th</sup>)

Minette Genuchi, who is serving as coordinator of the event, appeared and gave an overview of the event. She asked that a member of the Board meet with participants and give a welcome at the luncheon. Workman agreed to do so.

### **11 PENDING**

There were no pending items.

## 12 DISCUSSION OF BOARD MEMBER MEETINGS

- A. Lincoln Independent Business Association (LIBA) Quadrant Lunch - Schorr

Item was moved forward on the agenda.

- B. Nebraska Association of County Officials (NACO) Legislative Conference - Heier, Schorr

Schorr said they prioritized legislative issues. She said she suggested the Commission of Industrial Relations (CIR) and Nebraska's "pursuit statute" (Nebraska Revised Statutes §13-911).

- C. Information Services Policy Committee (ISPC) - Stevens

Stevens said they discussed the Voice over Internet Protocol (VoIP) and archiving of emails.

- D. Parks & Recreation Advisory Board - Stevens

The meeting was cancelled.

- E. Lincoln Independent Business Association (LIBA) Budget Monitoring Committee - Stevens

Stevens said the Committee voted to recommend that the LIBA Board of Directors oppose the City's acquisition of the Experian Building. He said they also discussed possible reuse of Pershing Auditorium and the current jail facility and decided to ask the City, County and Public Building Commission (PBC) to develop a 10-year facilities plan.

- F. Lincoln Independent Business Association (LIBA) Monthly Meeting - Workman, Stevens

Workman said they discussed the new jail.

- G. Downtown Lincoln Association (DLA) Board of Directors - Stevens

Stevens said he did not attend the meeting.

H. Lancaster County Correctional Facility Joint Public Agency (JPA) -  
Heier, Stevens

Stevens said the JPA paid claims totaling \$1,457,526.44. The claims reflected payments to Wells Fargo for bank fees, Sampson Construction Company, the contractor, and The Clark Enersen Partners, the architect.

I. Community Mental Health Center (CMHC) Advisory Committee -  
Stevens

Stevens said they discussed the strategic plan and a draft policy for psychiatric advanced directives.

### **13 EMERGENCY ITEMS AND OTHER BUSINESS**

Schorr reported on the Board of Health Meeting. She said Dr. Stephen Joel, Lincoln Public Schools (LPS) Superintendent of Schools, was present and said the division managers discussed how their departments interrelate with LPS.

Heier reported on the City of Hickman's new master plan for a regional recreational and event complex.

### **14 ADJOURNMENT**

**MOTION:** Schorr moved and Stevens seconded to adjourn the meeting at 10:34 a.m. Hudkins, Workman, Stevens, Schorr and Heier voted aye. Motion carried 5-0.

/s/ Dan Nolte

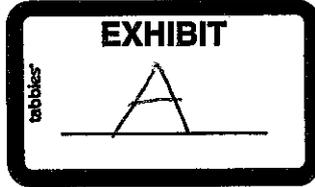
Dan Nolte  
Lancaster County Clerk

& ORIENTATION  
 & DETOUR LOCATION MAP  
 I.S., & DRAINAGE

# 70TH STREET BRIDGE LINCOLN LANCASTER COUNTY



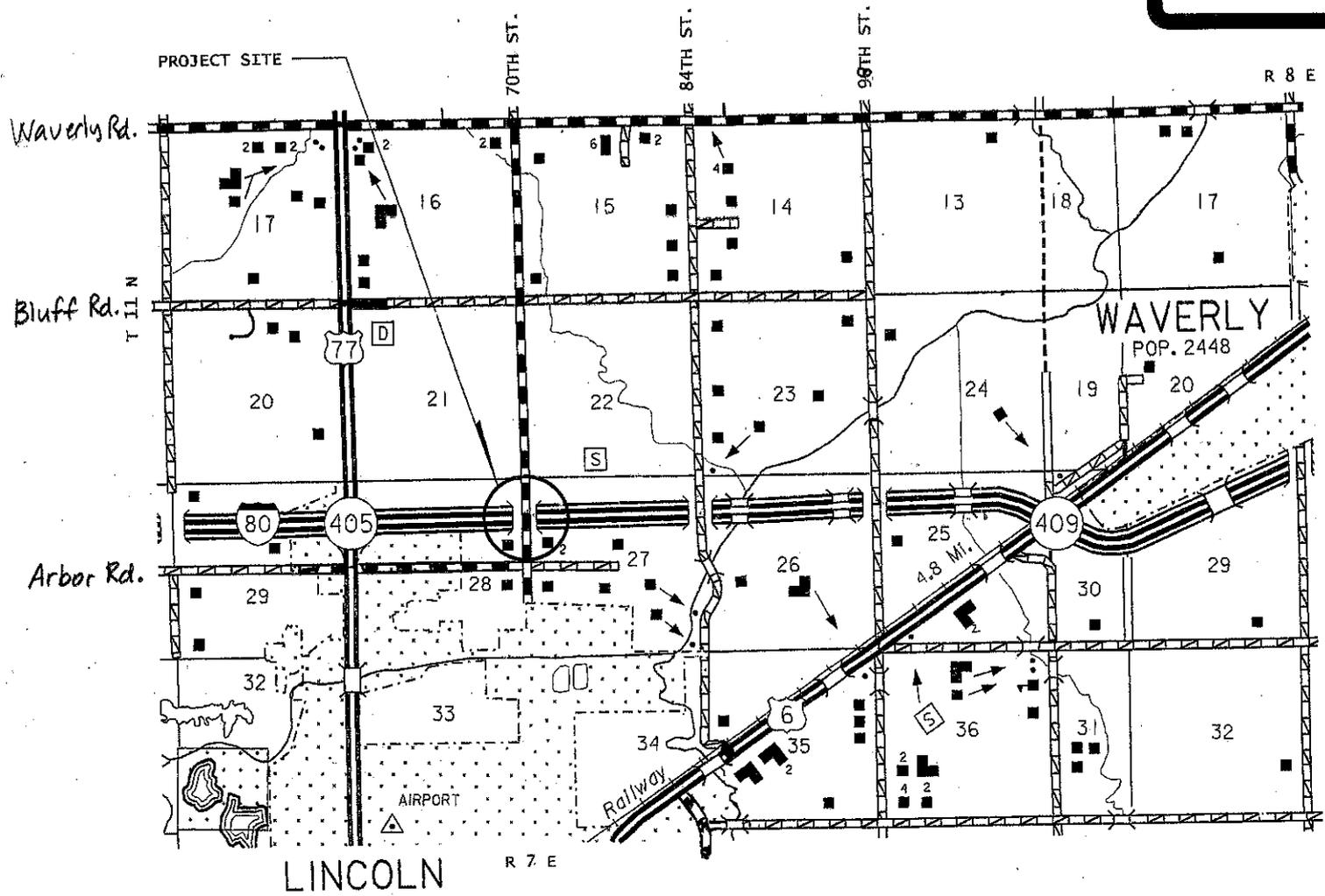
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 MARKING PLAN  
 MARKING PLAN--5" PAVEMENT MARKING  
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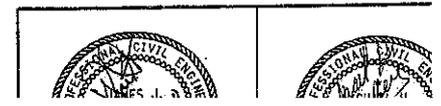
SECTIONS FOR CULVERT PIPES  
 AND BACKFILL REQUIREMENTS

CONCRETE PIPES  
 CONTROL  
 CONTROL, CONSTRUCTION AND MAINTENANCE



### R.O.W. LEGEND

NEW CONTROLLED ACCESS  
 PREVIOUS CONTROLLED ACCESS



**Don Killeen**

**From:** Don Killeen  
**Sent:** Monday, October 11, 2010 3:21 PM  
**To:** 'Krishna Amancherla'; Rhonda G. Ryan; Tom W. Fox  
**Subject:** FW: Question on Davis-Bacon applicability: Lancaster Co. NE RW0000061

-----Original Message-----

**From:** Jones, Susan [mailto: Susan.Jones@nv.doe.gov]  
**Sent:** Wednesday, October 06, 2010 10:24 AM  
**To:** Don Killeen  
**Subject:** FW: Question on Davis-Bacon applicability: Lancaster Co. NE RW0000061

Billy Thomas, the contracting officer for your grant, provided the attached response. Davis-Bacon does not apply to your scope of work because DOE only authorized using the grant to purchase equipment.

As I mentioned on the phone, the report for the quarter in which the equipment is purchased and the final closeout report should both clearly explain that grant funds were used only to purchase equipment and that none of the funds were used for installation/construction.

If you have additional questions, you may reach Billy at 702-295-2223.

-----Original Message-----

**From:** Thomas, Billy  
**Sent:** Wednesday, October 06, 2010 7:58 AM  
**To:** Jones, Susan  
**Subject:** RE: Question on Davis-Bacon applicability: Lancaster Co. NE RW0000061

Susan,

In response to your question, no, the purchase of equipment for the County Adult Detention Facility is not subject to the Davis-Bacon Act.

Billy

-----Original Message-----

**From:** Jones, Susan  
**Sent:** Tuesday, October 05, 2010 3:30 PM  
**To:** Thomas, Billy  
**Subject:** Question on Davis-Bacon applicability: Lancaster Co. NE RW0000061

This question was raised by Lancaster County:

They received a grant for \$100,300 to assist with the purchase of some energy efficient equipment for their County Adult Detention Facility. Given that ARRA funds will be used only for equipment purchase, not for its installation, do the terms of this grant impose Davis-Bacon Act on the entire \$60 million detention facility construction project?.

Susan Jones  
Project Officer  
U.S. Department of Energy

## 2010 LANCASTER COUNTY LEGISLATIVE PRIORITIES

1. **Mandate Payment of Medical Expenses for Inmates and Emergency Protective Custody Patients at Medicaid Rate**

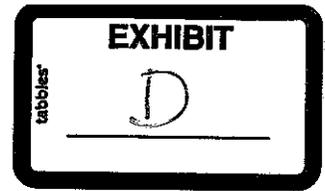
Counties are obligated to pay the un-reimbursed medical expenses of county inmates and emergency protective custody (EPC) patients. See Neb. Rev. Stat. §47-703, §71-919, and other related statutes. Medical expenses for inmates and EPC patients are unpredictable and can be financially devastating to counties. These statutes should be amended to provide counties will pay mandated medical expenses at the Medicaid rate.
2. **Reduce County Employee Pension Match for New Employees**

Under the County Employees Retirement Act (Neb. Rev. Stat. §§23-2301 et seq.) and Neb. Rev. Stat. §23-1118 the employer (county) contributes an amount equal to 150% of the employee's contribution. Reducing the county match to 100% for new employees would be more comparable to the private sector and would help counties stay within budget lids by controlling future personnel costs.
3. **Transfer of Residential Development Rights**

Enabling legislation is needed to give Lancaster County authority to allow the voluntary transfer of noncontiguous residential development rights. This planning tool would allow the County to maximize the use of existing infrastructure, preserve natural resources, and prevent development in flood plains.
4. **Authorize Appeal to County Board on Planning Commission Decisions on Special Permits**

If a county board delegates authority to approve special land use permits to the county's planning commission, an appeal from the decision of the planning commission goes directly to the district court. Neb. Rev. Stat. §23 114.01(5) should be amended to include an appeal to the county board from planning commission decisions on special permits.
5. **Property Tax Relief through Appropriate State Funding for County Government**

Property tax growth cannot be controlled without a well-designed and reliable state aid program for counties. State funding should be directed where it is needed most, especially where it can increase the effectiveness of state and local cooperation. For Lancaster County, state funding is needed to help offset the cost of holding state prisoners, meet the increasing demand for roads, and cover the cost of new mandates in the area of juvenile court proceedings. Also, the community-based mental health system is a state responsibility which should not be funded with property tax. The County is a willing partner in providing mental health services, but adequate state funding must be provided for these programs, as well as the related function of emergency protective custody.



**LANCASTER COUNTY LEGISLATIVE PROPOSALS  
2011 SESSION**

**INTRODUCTION**

The Second Session of the 101<sup>st</sup> Nebraska Legislature in 2010 was dominated by revenue shortfalls and budget cuts. Significant budget reductions were made during the November 2009 special session as well as the regular 2010 session. Counties did not escape the budget axe. Funding reductions were made to programs for jail reimbursement, property tax relief, and state aid to counties.

However, Lancaster County did accomplish one legislative objective with the passage of LB 970, which authorizes Planning Commission decisions on special use permits to be appealed to the Lancaster County Board rather than straight to the District Court. Also, the jury commissioner will benefit from the passage of LB 915 (incorporated into LB 712 as Section 3), which requires the Department of Motor Vehicles to provide to the jury commissioner motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators nineteen years of age or older in the county.

Regarding other Lancaster County priorities:

- LB 33 (transfer of residential development rights) was killed in committee; and
- LB 953 (payment of medical expenses for inmates and emergency protective custody clients at the Medicaid rate) was indefinitely postponed but incorporated into LR 462 for further study.

Other Bills passed during this session could negatively affect the County and will need to be monitored:

- LB 780 allows first responders to recover workers compensation benefits for mental injuries unaccompanied by physical injury. LB 780 applies to sheriff deputies, but does not apply to corrections workers or direct care providers at the Community Mental Health Center or Crisis Center. As a compromise to avoid a veto by the Governor the Bill will sunset June 30, 2014.
- LB 800 enacts a number of amendments relating to juvenile justice, including the creation of additional probation requirements or administrative sanctions which can be imposed on a juvenile. These new requirements and sanctions, which include substance abuse and mental health assessment, counseling and treatment, can be expensive. If the State fails to provide sufficient funding to cover the cost, Neb. Rev. Stat. §43-286(1)(a) provides the cost will be paid by the county where the petition is filed. We will need to monitor this Bill to make sure the County does not become the primary funding source for enhanced juvenile probation under LB 800.

The 102<sup>nd</sup> Legislature is scheduled to convene January 5, 2011. Unfortunately the financial outlook for the upcoming session is not encouraging. Quoting from the Legislature's Biennial Budget Report for 2010, "...the prospects for the following biennium financial status are at best pessimistic." The Report estimated the deficit for the upcoming Biennium at just under \$679.5 million. According to the most current General Fund status report, the projected deficit for the upcoming budget cycle is now more than \$751 million. Given the State's budget crisis, an important legislative priority for the County will be the preservation of existing county funding. Other County priorities may be selected from the following proposals.

### NEW PROPOSALS

**1. Modify Strict Liability Provisions of Neb. Rev. Stat. §13-911 When a Vehicular Pursuits Is Terminated by a Law Enforcement Officer**

As interpreted by the Nebraska Supreme Court, a political subdivision can be held strictly liable under §13-911 for damages to an innocent third party caused by a fleeing motorist, even after a pursuing law enforcement officer has stopped the pursuit. §13-911 should be amended to eliminate strict liability when the damages are caused by the fleeing motorist after the pursuit has been terminated by the officer. This amendment would provide an incentive to law enforcement to stop pursuits which have become dangerous to innocent third parties.

**2. Provide Counties with Statutory Authority for Electronic Direct Deposit of Paychecks**

Many counties save money by mandating direct electronic deposit of paychecks for county employees. Although statutory authority exists for the State to pay wages by electronic transfer (See Neb. Rev. Stat. §81-117.05), no such authority exists for counties. If challenged a county may not be able to require electronic deposit of paychecks. Enabling legislation should be passed to give counties the same authority.

**3. Amend Neb. Rev. Stat. §60-6,196 to Clarify Probative Effect of Alcohol Tests in Driving Under the Influence Cases**

A common strategy in defending driving under the influence (DUI) cases is the rising blood alcohol content (BAC) defense. Alcohol testing is usually performed on DUI suspects more than an hour after their arrest. Defense counsel often argue the BAC of their client was rising at the time they were driving, and therefore the test results do not reflect the actual BAC at the time of the alleged offense. This problem can be solved by including the following language in §60-6,196, "...the person's alcohol concentration at the time, **or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle** is .08 or more..."

The rising BAC defense is raised in nearly every DUI case taken to trial. Valuable judicial

resources, time, and money could be saved with this amendment to §60-6,196.

**4. Clarify Inheritance Tax Rules on Treatment of Non-Children as Children for Purposes of Determining Tax Rate**

Nebraska law allows a more favorable tax rate with regard to recipients with which the decedent had a close relationship resembling that of a parent and child, even though the recipient was not the actual child of the decedent. Additional clarification should be provided in the statutes for when this favorable treatment is appropriate.

**5. Behavioral Health Funding Issues**

The Lancaster County Community Mental Health Center has identified two major funding concerns for the upcoming session, maintain current service rates and no cuts to community-based mental health care. For a more complete discussion of these issues see Attachment A.

**6. County Corrections Legislative Concerns**

The Lancaster County Corrections Department is requesting consideration of three legislative issues: 1) reconsider how DNA samples are collected and paid for under the DNA Identification Information Act; 2) eliminate the authority of the State Ombudsman to investigate complaints related to Nebraska Jail Standards; and 3) mandate the Medicaid rate for medical expenses of jail inmates. See Attachment B.

**7. Support Legislation Updating and Clarifying the Authority of the Commission on Industrial Relations (CIR)**

Several Bills were introduced during the 2010 legislative session to address the problem of unpredictability with the CIR, including LB's 1040, 1041, and 1042. The authority of the CIR under Neb. Rev. Stat. §48-818 to establish comparability for rates of pay and conditions of employment is broad and undefined. Moreover, the CIR cannot take into account the political subdivision's ability to pay when making decisions on wages and benefits. Legislation is needed to clarify how comparability decisions are made by the CIR, and to provide some accountability and control on the cost of CIR decisions for taxpayers.

**8. Reinroduce Transfer of Development Rights**

Although LB 33 was killed in committee, enabling legislation is still needed to give the County authority to allow the voluntary transfer of noncontiguous residential development rights. Such transfers could assist the County in maximizing the use of existing infrastructure, preserving natural resources, and preventing development in flood plains.

## 9. Human Services Issues

The Lancaster County Human Services Department has identified several issues for consideration during the upcoming session:

- a. Payday lending regulation;
- b. Behavioral health concerns, including prenatal services for all woman, and cuts in Medicaid funding for youth residential treatment;
- c. Monitor administration of LB 800 (enhanced juvenile probation);
- d. Criminalize K2 (synthetic marijuana); and
- e. Require Health and Human Services to develop a 3-5 page food stamp application.

See Attachment C for a more complete discussion of these issues.

## 10. Amend Neb. Rev. Stat. §32-1203(2) to Allow Recovery of Ballot Costs

Although counties can recover from political subdivisions some of the cost of producing ballots, the cost recovery formula described in §32-1203(2) does not adequately reimburse counties for their actual costs. This section should be amended to allow counties to recover all expenses, such as the cost of programing counting machines, as well as other actual costs not addressed in the existing formula.

### EXISTING PROPOSALS

#### 1. Reduce County Employee Pension Match

Under the County Employees Retirement Act (Neb. Rev. Stat. §§23-2301 et seq.) and Neb. Rev. Stat. §23-1118 the employer (county) contributes an amount equal to one hundred and fifty percent (150%) of the employee's contribution. An employer match of 150% is considerably more generous than what is offered in the private sector. Reducing the match to one hundred percent (100%) would be more equitable for the majority of tax payers who work in the private sector and would help counties stay within budget lids.

#### 2. Amend Neb. Rev. Stat. §29-2022 to Give Trial Courts Discretion with Regard to Sequestered Juries in Criminal Cases

Defendants in criminal cases have the right to keep a jury sequestered until a verdict is reached, regardless of the severity of the case or the actual risk the jury members may be influenced by improper contact or communications. Neb. Rev. Stat. §29-2022. When a jury is sequestered counties are responsible for paying all the costs of housing and feeding the jury members, as well as the costs of providing security. These expenses can be significant. Additionally, sequestration can result in a substantial hardship to the members of the jury. This statute should be amended to give the trial court discretion is deciding whether a jury in a criminal case should be sequestered until

a verdict is reached, based on the actual potential of the jury being improperly influenced and thereby undermining the fairness of the trial.

### **3. Provide Statutory Guidance on Enforcement of Insurance Subrogation Clauses**

In the case of Blue Cross and Blue Shield of Nebraska, Inc. v. Dailey, 268 Neb. 733 (2004), the Nebraska Supreme Court held a subrogation clause in the insurance contract could not be enforced against the insured under the equitable made whole doctrine. The Dailey case involved an employee covered under an insurance contract between his employer, the Nebraska Association of County Officials, and Blue Cross. The employee was injured as a result of the negligence of a third party, and subsequently recovered a one-time payment of \$1,225,000 and monthly payments of \$10,000 for life against the third party. Even though the contract clearly provided Blue Cross would be entitled to recover approximately \$794,000 it had paid on behalf of the insured for injuries caused by a third party, the Supreme Court held Blue Cross was not entitled to recover these funds because the insured had not yet been made whole for the injuries. A statutory solution is needed to provide for the enforcement of reasonable subrogation clauses to help control health insurance costs.

### **4. Create the Position of Magistrate**

In 2009 the Legislature passed LR 183 to examine the creation of a specialized magistrate for the State's largest courts. The magistrate would have authority to issue search warrants, subpoenas, arrest warrants, summonses, and set bail. The purpose for creating this position is to help reduce jail populations, as well as reduce the need for new judges.

### **5. Provide State Funding for the Nebraska Behavioral Health Information Network**

Lancaster County is presently involved in the development and implementation of an integrated information and data management system to support behavioral health services in southeast Nebraska. The project is being developed with grant funds, but eventually county tax dollars will be required to maintain and expand the system. A comprehensive electronic behavioral health information management system would benefit the entire State, and therefore should be funded by the State. This argument is strengthened by the fact behavioral health is the responsibility of the State.

### **6. Clarify City Responsibility for Defense Costs on Violations of City Criminal Ordinances**

Pursuant to an interlocal agreement, the Lancaster County Public Defender provides criminal defense services to the City of Lincoln for violations of City ordinances which carry jail time. While the statutory responsibility of counties to provide legal representation to indigent defendants for offenses which may lead to incarceration is clear, there is no statutory guidance regarding whether this duty extends to violations of city ordinances. State law is also silent on whether cities are responsible for bearing the cost of providing representation for violations of their criminal ordinances. Clarifying these issues would help guarantee the County is being fully reimbursed for the legal services it provides to the City of Lincoln.

**7. County Input in the Approval of Tax Increment Finance Districts Which Affect the County Tax Base**

The Nebraska Redevelopment Act, Neb. Rev. Stat. §58-501 et seq. is intended to encourage economic growth through redevelopment of blighted and substandard areas within cities. The Act generates funds for redevelopment projects by creating tax increment financing (TIF) districts. Essentially, property tax increases within a TIF district attributable to valuation increases from redevelopment projects are deposited into a special fund and used to pay the cost of financing the projects for up to fifteen (15) years. Consequently, other taxing entities in the county where the TIF district is located lose the benefit of the property valuation increase for the entire district during the period the project is financed. In recent years there has been a sharp increase in the number of TIF districts created by the City of Lincoln. TIF districts often encompass a large area, regardless of the size or number of the individual projects within the TIF, and regardless of whether the entire district is blighted or substandard. Since the other taxing entities, including counties, are being denied essential tax revenue, they should have direct input into the establishment of TIF districts. This would help guarantee TIF districts are actually targeted to blighted or substandard areas and do not unnecessarily remove growth from the assessed valuation for other taxing entities.

**8. Occupation Tax on Wineries**

Neb. Rev. Stat. §53-132(4) gives authority to cities, villages and counties to charge an occupation tax on retail, craft brewery, and microdistillery licenses. However, no such authority exists for farm winery licenses. Given the growing number of farm wineries, it may be advisable to authorize an occupation tax on farm winery licenses.

**9. Amend Neb. Rev. Stat. § 83-1,103.04 to Provide for the Appointment of a Private Attorney Rather than the Public Defender**

When the Office of Parole Administration determines an amendment of the conditions of community supervision is necessary for an individual subject to lifetime supervision, if the person requests legal counsel and is indigent, an attorney from the public defender office is appointed. Since this proceeding is civil in nature, appointment of the public defender is not appropriate. Also, the cost of appointing a private attorney should be borne by the State.

**10. Clarify How the County Visitors Improvement Fund Can be Spent**

Lancaster County established the County Visitors Improvement Fund in 2005. Neb. Rev. Stat §81-1255 generally authorizes the Improvement Fund to be used to improve the visitor attractions and facilities in the county. However, if the Visitors Promotion Committee (VPC) determines visitor attractions in the county are adequate and do not require improvement the Fund can also be used to promote, encourage, and attract visitors to the county to use its travel and tourism facilities.

The implementation of this statute is cumbersome, requiring the VPC to repeatedly make

specific findings regarding the adequacy of travel and tourism facilities prior to the funds being used for such worthwhile purposes as targeted promotion for large events. The statute should be amended to streamline the procedure for using the Improvement Fund for specific promotional purposes.

Also, §81-1255 provides the VPC makes the decision of when to use Improvement Fund proceeds for promotional purposes, rather than the county board. Since the VPC is advisory to the board, this language should be clarified to indicate final authority for the use of the Fund lies with the county board.

#### **11. Eliminate Responsibility of Counties to Pay HHS Rent**

When the State assumed responsibility for welfare, a legislative provision was added requiring counties to maintain facilities for the Department of Health and Human Services (HHS) as they existed on April 1, 1983. See Neb. Rev. Stat. §68-130. The use of local property tax to pay for HHS facilities which provide state-wide services is inappropriate. Counties should be relieved of this responsibility. The fiscal impact on the State could be softened by either phasing in the change or delaying the effective date.