

**SECOND DAY - JANUARY 4, 2007****LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE  
FIRST SESSION****SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, January 4, 2007

**PRAYER**

The prayer was offered by Senator Engel.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Sheehy presiding.

The roll was called and all members were present.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the first day was approved.

**MOTION - Adopt Temporary Rules**

Senator Hudkins moved that the rules, as now in our possession, be adopted until such time as the permanent rules are adopted pursuant to Rule 2, Section 1; provided that the temporary rules shall not continue after the tenth legislative day.

The motion prevailed.

**MESSAGES FROM THE GOVERNOR**

April 11, 2006

President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals were appointed to the Nebraska Information Technology Commission.

## APPOINTEES:

\*Linda Aerni, 1000-53 Street, Columbus NE 68601

Patrick Flanagan, 7710 S 45th Avenue, Omaha NE 68157

Lance Hedquist, 905 E 29th Street, South Sioux City NE 68776

Daniel Hoelsing, 101 7th Street, Laurel NE 68745

Harold "Mike" Huggenberger, 3281 County Road P 43, Fort Calhoun NE 68023

\*Doug Kristensen, 219 North Brown, Minden NE 68959

The aforementioned names are respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/

Enclosure

\*Reappointment

May 15, 2006

President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals were appointed to the Nebraska Motor Vehicle Industry Licensing Board.

## APPOINTEES:

Jack Henry, 1207 Birch Court, Aurora NE 68818

Toby Miller, 538 Eleanora Drive, Valentine NE 69201

Kelly Smith, 120 Mill Park Drive, North Platte NE 69101

The aforementioned names are respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/

Enclosure

May 15, 2006

President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was appointed to the Commission for the Deaf and Hard of Hearing.

APPOINTEE:

Joseph J. Caruso, 6800 A Street, Apt 126, Gramercy Apartments, Lincoln  
NE 68510

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/  
Enclosure

May 17, 2006

President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals were appointed to the Crime Victim's Reparations Committee.

APPOINTEES:

\*Scott Arnold, 412 N Custer Avenue, Grand Island NE 68803  
\*James Riskowski, 9966 Devonshire Road, Omaha NE 68114

The aforementioned names are respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/  
Enclosure

\*Reappointment

May 22, 2006

President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was appointed to the Board of Trustees of the Nebraska State Colleges.

APPOINTEE:

Gary Bieganski, 513 Elizabeth Lane, McCook NE 69001

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/  
Enclosure

July 24, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was appointed to the Environmental Quality Council.

APPOINTEE:

John C. Turnbull, 711 Main Avenue, York NE 68467

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosure

July 24, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was appointed to the Nebraska Investment Council.

APPOINTEE:

John M. Dinkel, 2206 Koenigstein Avenue, Norfolk NE 68701

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosure

August 11, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was reappointed to the Board of Parole.

APPOINTEE:

Robert L. Boozer, 1258 South 163rd Avenue, Omaha NE 68130

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosure

September 12, 2006

Mr. President, Speaker Brashear

and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was reappointed to the Nebraska Ethanol Board:

Mark McColley, 13505 B Street, Omaha NE 68144

The following individual is a new appointee to the Nebraska Ethanol Board:

Michael S. Thede, 327 R Street, Palmer NE 68864

The aforementioned names are respectfully submitted for your consideration. Copies of their appointment certificates and applications are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

September 14, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the Coordinating Commission for Postsecondary Education:

Richard B. Uhing, 1500 North 43 Street, Norfolk NE 68701

The aforementioned name is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

September 15, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the State Personnel Board:

Lucinda Glen, 1324 Regency Drive, Hastings NE 68901

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

September 21, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the Rural Health Advisory Commission:

Dr. Kate Hesser, 5438 Charles, Omaha NE 68132

The following individuals are being reappointed, contingent upon your approval.

Dr. Donald Frey, 22412 Schram Road, Gretna NE 68028  
Dr. Rebecca Schroeder, PO Box 4, Curtis NE 69025  
Dr. Michael Sitorius, 8115 Jackson St, Omaha NE 68114  
Roger Wells, 1518 Jay St, St. Paul NE 68873

The aforementioned names are respectfully submitted for your consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,  
(Signed) Dave Heineman

Governor

Enclosures

October 5, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the Nebraska Educational Telecommunications Commission:

J. Richard Shoemaker, 611 Patterson, Cambridge NE 69022

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

October 31, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the Community Corrections Council:

Jeffrey Davis, 1104 Crest Road, Papillion NE

The following individuals are being reappointed to the Council:

Scot Adams, 3116 S 58, Omaha NE  
Catherine Cook, 2733 Fontenelle Blvd, Omaha NE  
Julie Hippen, 722 N 13, Beatrice NE  
Joe Kelly, 5822 Fieldcrest Way, Lincoln NE  
Robert Lindemeier, 219 N Bryan, North Platte NE

The aforementioned appointees are respectfully submitted for your

consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

October 31, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed to the Rural Health Advisory Commission:

Crystal Johnson, 421 East O'Neill Avenue, Greeley NE 68842

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

November 6, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals are appointed to the State Emergency Response Commission:

Keith Deiml, 905 Crest Road, Papillion NE 68046  
Keith Hansen, 10700 Dawn Ave, Lincoln NE 68516  
Larry Johnson, 1729 North 160, Omaha NE 68118

The following individuals are being reappointed to the Commission:

Tim Hofbauer, 2328 34th St, Columbus NE 68601  
Dana Miller, 110 21st St, Gering NE 69341

The aforementioned appointees are respectfully submitted for your consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

November 20, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals are being appointed to the Nebraska Arts Council:

David E. Gardels, 110 North 54 Street, Omaha NE 68132  
Sandra J. Schroeder, 201 Bridge Road, Norfolk NE 68701  
Joanne F. Shephard, HC 14, Box 100, Valentine NE 69201

The following individual is being reappointed to the Council:

Steven Bloch, 9966 Hascall, Omaha NE 68124

The aforementioned appointees are respectfully submitted for your consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

November 27, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is appointed as State Tax Commissioner:

Doug Ewald, 16337 Page Street, Omaha NE 68118-2515

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

November 28, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual is reappointed as a member of the Nebraska Investment Council:

Richard DeFusco, 6111 South 41st Street, Lincoln NE 68516

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application are attached for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

December 11, 2006

Mr. President, Speaker Brashear  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individuals are being appointed to the Board of Emergency Medical Services:

Linda L. Jensen, 16181 Co Rd 21, Herman NE  
 Dr. James E. Smith, 701 Eagle Circle, North Platte NE  
 Jeffrey Strawn, 409 Corral St, Papillion NE  
 Dr. Leon Sykes, 16236 Wright Cr, Omaha NE  
 Scott C. Wiebe, 4301 Antelope Cr Rd, Lincoln NE

The following individuals are being reappointed to the Board:

Joel E. Cerny, 2411 Road 45, Linwood NE 68036  
 Robert K. Olson, 16810 S 87th St, Papillion NE 68046

The aforementioned appointees are respectfully submitted for your consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,  
 (Signed) Dave Heineman  
 Governor

Enclosures

## ATTORNEY GENERAL'S OPINIONS

### Opinion 06007

DATE: May 25, 2006

SUBJECT: Whether the original bill of sale must be filed with the Brand Committee, in order to satisfy the requirements of Neb. Rev. Stat. § 54-1,111 of the Nebraska Brand Act and whether the Brand Committee should accept copies or facsimiles in satisfaction of Neb. Rev. Stat. § 54-1,111.

REQUESTED BY: Senator Arnie Stuthman

WRITTEN BY: Jon Bruning, Attorney General  
 Katherine J. Spohn, Assistant Attorney General

On March 7, 2006, you requested an opinion from the Attorney General's Office stating, "Are 'original' documents required to satisfy the requirements of the Nebraska Brand Act, when it comes to the sale of cattle inside the inspection area? Would copies or facsimiles satisfy the requirements? Should the commission accept copies or facsimiles?" Please find our response below.

You have requested an opinion from this office regarding whether the original bill of sale must be provided pursuant to the requirements of Neb. Rev. Stat. § 54-1,111 of the Nebraska Brand Act and whether the Nebraska

Brand Committee ("Brand Committee") should accept copies or facsimiles of the bill of sale in satisfaction of the requirements of Neb. Rev. Stat. § 54-1,111. For the reasons set forth below, we conclude that the original bill of sale is not necessary and that the Brand Committee should accept a copy or facsimile of a properly executed bill of sale in satisfaction of Neb. Rev. Stat. § 54-1,111, provided said copy or facsimile is sufficient to establish ownership to the brand inspector.

An Original Bill of Sale Is Not Required Pursuant to Neb. Rev. Stat. § 54-1,111.

In your request for an opinion, you raise the issue of whether an original bill of sale is required pursuant to Neb. Rev. Stat. § 54-1,111, which requires in relevant part,

...[N]o person shall sell or trade any cattle located within the brand inspection area, nor shall any person buy or purchase any such cattle unless the cattle have been inspected for brands and ownership and a certificate of inspection or brand clearance has been issued by the Nebraska Brand Committee. Any person selling such cattle shall present to the brand inspector a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership which shall be filed with the original certificate of inspection in the records of the brand committee....  
(emphasis added)

The question being raised is whether the person selling the cattle must present the original bill of sale to the brand inspector in order to satisfy the requirements of Neb. Rev. Stat. § 54-1,111(1). A bill of sale is defined by Neb. Rev. Stat. § 54-172 as,

a formal instrument for the conveyance or transfer of title to livestock or other goods and chattels. The bill of sale shall state the buyer's name and address, the date of transfer, the guarantee of title, the number of livestock transferred, the sex of such livestock, the brand or brands, the location of the brand or brands or a statement to the effect that the animal is unbranded, and the name and address of the seller. The signature of the seller shall be attested by at least one witness or acknowledged by a notary public or by some other officer authorized by state law to take acknowledgements. A properly executed bill of sale means a bill of sale that is provided by the seller and received by the buyer.

(emphasis added)

From the language of the above-cited statutes, it is clear that the Livestock Brand Act does not require the original bill of sale to be filed pursuant to the requirements of Neb. Rev. Stat. § 54-1,111. Nothing in the language of the definition of bill of sale requires that the original bill of sale be used, nor

does Neb. Rev. Stat. § 54-1,111 expressly require that the original bill of sale be provided.

The Nebraska Legislature, in adopting Neb. Rev. Stat. § 54-1,111(1), only required that the original certificate of inspection be filed in the records of the Brand Committee. The Legislature's failure to expressly require that the original bill of sale also be filed in the records of the Brand Committee cannot be construed as a mere omission on the part of the Legislature because when the Legislature deemed the original document was necessary, as was the case with the certificate of inspection, they expressly provided so in the statute. For these reasons, it is apparent from a plain reading of Neb. Rev. Stat. § 54-1,111 and the definition of a bill of sale, that the original bill of sale is not required to satisfy the requirements of Neb. Rev. Stat. § 54-1,111.

Your opinion request further inquires as to whether the Nebraska Brand Committee should accept copies or facsimiles of properly executed bills of sale in meeting the requirements of Neb. Rev. Stat. § 54-1,111. As the original bill of sale is not required by statute, as discussed at length above, and because the original bill of sale is generally not necessary to establish ownership of cattle, the Brand Committee should accept copies or facsimiles of the properly executed bill of sale, provided such copies or facsimiles were sufficient for the brand inspector to determine ownership of the cattle.

The brand inspector is charged with the duty to "attempt to establish correct and true ownership of...livestock". Neb. Rev. Stat. § 54-176. In furtherance of this duty, any person selling cattle is required to present to the brand inspector "a properly executed bill of sale, brand clearance, or other satisfactory evidence of ownership" in order to enable the brand inspector to establish ownership of the cattle. Neb. Rev. Stat. § 54 1,111. Upon presentation of sufficient evidence of ownership, the brand inspector is required to issue a certificate of inspection, which serves as "documentary evidence of ownership on all livestock covered by such document." Neb. Rev. Stat. § 54-179. The original certificate of inspection is then required to be filed with the evidence of ownership, in the records of the Brand Committee. Neb. Rev. Stat. § 54-1,111

The documentation required to be filed with the Brand Committee under Neb. Rev. Stat. § 54-1,111 is only that evidence which is needed by the brand inspector to establish ownership of the cattle. The statutory definition of satisfactory evidence of ownership, found at Neb. Rev. Stat. § 54-187, provides a wide array of documentation and identifying characteristics, which evidence which can be used to establish ownership, including physical descriptions and documentary evidence.

Ordinarily, the original bill of sale is not necessary to establish ownership of cattle and a copy or facsimile of the properly executed bill of sale is sufficient to satisfy the requirements of Neb. Rev. Stat. § 54-1,111. If, however, the ownership of cattle is brought into question, the brand

inspector could certainly require that the original bill of sale, or any other evidence of ownership of the cattle, be produced, in order to ascertain the true owner of the cattle. In such an instance, all evidence necessary to establish ownership would need to be filed in the records of the Brand Committee in order to satisfy the requirements of Neb. Rev. Stat. § 54-1,111.

Clearly, nothing in the plain language of Neb. Rev. Stat. §§ 54-1,111 and 54-172 requires that the original bill of sale be provided for compliance with Neb. Rev. Stat. § 54-1,111. Only in those rare instances when the ownership of cattle is called into question and the original bill of sale is necessary to establish proof of ownership should the brand inspector require that the original bill of sale be produced and, even in those instances, a copy of the bill of sale may be filed in the Brand Committee records in order to satisfy the requirements of Neb. Rev. Stat. § 54-1,111.

For the foregoing reasons, the plain language of Neb. Rev. Stat. §§ 54-1,111 and 54-172 make it clear that the original bill of sale is not necessary for compliance with Neb. Rev. Stat. §54-1,111 and the Brand Committee should accept a photocopy or other reproduction of the bill of sale if such documents were sufficient for the brand inspector to establish ownership of the cattle.

Sincerely,  
JON BRUNING  
Attorney General  
(Signed) Katherine J. Spohn  
Assistant Attorney General  
Agriculture, Environment &  
Natural Resources Section

pc: Patrick O'Donnell  
Clerk of the Legislature

Opinion 06011

DATE: July 20, 2006

SUBJECT: Whether the statutory change sought by LB 563, 99th Legislature, is necessary to put the State of Nebraska in conformity with the Alcohol and Tobacco Tax and Trade Bureau's final regulations, 27 CFR Parts 7 and 25, related to flavored malt beverages (FMBs).

REQUESTED BY: Senator Raymond "Ray" Janssen

WRITTEN BY: Milissa Johnson-Wiles, Assistant Attorney General

Senator Raymond "Ray" Janssen

District 15 Representative  
Nebraska State Legislature  
P.O. Box 94604  
Lincoln, NE 68509-4604

Dear Senator Janssen:

You have asked five questions related to flavored malt beverages (FMBs), which we have renumbered in the manner addressed in this opinion:

1. Is Neb. Rev. Stat. § 53-103 clear on its face as to how to classify flavored malt beverages?
2. If Neb. Rev. Stat. § 53-103 is not clear on its face, then does the Liquor Control Commission have authority under Neb. Rev. Stat. § 53-116 to determine the classification of FMBs?
3. Is the Liquor Control Commission preempted by the federal regulation and federal law from deciding what manufacturing standards and methods for beer production are in Nebraska, due to Neb. Rev. Stat. § 53-117(2), and therefore must the commission follow the federal regulation with respect to the manufacturing of flavored malt beverages?
4. May the State of Nebraska enact or enforce laws that substantially differ from federal code and regulations which are adopted and followed as the industry standard laws relating to alcohol?
5. Is the statutory change sought in LB 563, 99th Legislature, necessary to put the State of Nebraska in conformity with the Alcohol and Tobacco Tax and Trade Bureau's (TTB) final regulations related to FMBs?

Although the 99th session of the legislature has ended, it is our understanding based on a conversation with your staff that you intend to re-introduce a version of LB 563 in the next legislative session, in the event that it is necessary. Therefore, we will respond to your questions in the order enumerated above.

1. The first question is whether Neb. Rev. Stat. § 53-103 is clear on its face as to how to classify FMBs. As you are aware, FMBs are a mixture of a fermented base of beer with added flavors that usually contain distilled spirits. Neb. Rev. Stat. § 53-103(2) and (3)(Reissue 2004), the definitional section of the Nebraska Liquor Control Act, provides that:

(2) "Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances;"

(3) "Beer means a beverage obtained by alcoholic fermentation of an

infusion or concoction of barley or other grain, malt, and hops in water and includes, but is not limited to, beer, ale, stout, lager beer, porter, and near beer."

Flavored malt beverages could be considered beer because under Nebraska's statutory definition, they are "a beverage obtained by alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water . . ." Likewise, flavored malt beverages could be considered distilled spirits because they are "any beverage which contains alcohol obtained by distillation."

An ambiguity exists in a statute when "reasonable persons can find different meanings and good arguments can be made for either of the two contrary positions as to the meaning of the statute." (Black's Law Dictionary, 6th Ed. 1991). A latent ambiguity exists when "the language employed is clear and intelligible, but some extrinsic fact creates a necessity for a choice among two or more possible meanings." *Id.* Flavored malt beverages create that necessity for a choice among two different meanings and § 53-103 is, therefore, ambiguous.

2. You have further asked whether, if Neb. Rev. Stat. § 53-103 is not clear on its face, the Liquor Control Commission has the authority under Neb. Rev. Stat. § 53-116 to determine the classification of flavored malt beverages. The answer to this question is yes. The Liquor Control Commission has broad authority under Neb. Rev. Stat. § 53-116 to regulate the manufacture, distribution and sale of alcohol. As that statute provides: "The power to regulate all phases of the control, manufacture, distribution, sale and traffic of alcoholic liquor, except as specifically delegated in the Nebraska Liquor Control Act, is vested exclusively with the Commission." Since § 53-103 is capable of more than one interpretation, the Commission would have the authority to determine the classification of flavored malt beverages.

3. You have further asked whether, due to Neb. Rev. Stat. § 53-117(2), the Commission is preempted by federal regulation or law from deciding what manufacturing standards and methods for beer production are in Nebraska. The answer to this question is yes. That section states that the Commission shall have the power:

(2) To fix by rules and regulations the standards of manufacture of alcoholic liquor *not inconsistent with federal laws* in order to insure the use of proper ingredients and methods in the manufacture and distribution thereof and to adopt and promulgate rules and regulations *not inconsistent with federal laws* for the proper labeling of containers, barrels, casks, or other bulk containers or of bottles of alcoholic liquor manufactured or sold in this state (Emphasis supplied).

This provision of the statute appears to evidence a legislative intent to submit to federal law on issues related to manufacture and labeling of

alcohol. Therefore, while the Commission may have the authority to determine the classification of flavored malt beverages, such standards as to manufacture and labeling must be consistent with federal law.

4. You have further asked whether "the State of Nebraska may enforce or enact laws which substantially differ from federal code and regulations which are adopted and followed as the industry standard laws relating to alcohol." This question raises the issue of federal preemption of state law. As set forth below, the answer to this question is "yes." However, a legislative change to § 53-117(2) would be necessary if the State of Nebraska desires to depart from federal guidelines relating to the standards of manufacture and labeling of flavored malt beverages.

The Supremacy Clause of the U.S. Constitution, Article IV, Cl. 2, provides that the laws enacted by the federal government shall be the "supreme law of the land." The Supremacy Clause controls over any state laws which "interfere with or are contrary to" federal law. *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712 (1985)(quoting *Gibbons v. Ogden*, 9 Wheat 1, 211 (1824)). In addition to acts of Congress, federal regulations can preempt state law. *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986). In order to determine whether federal law preempts state law on an issue, however, it must be determined whether Congress intended such preemption. *Zannini et al., v. Ameritrade Holding Corp.*, 266 Neb. 492, 667 N.W.2d 222 (2003). Congressional intent is the "touchstone" of preemption. *Retail Clerks Int'l Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1975). The Supreme Court has held that a preemption analysis "start[s] with the assumption that the....powers of the States...were not to be superseded.....unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

The TTB's federal regulations related to FMBs, 27 CFR Parts 7 and 25, were adopted and went into effect January 3, 2006. The TTB adopted these regulations defining FMBs based on its authority under the labeling provisions of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), and the Internal Revenue Code (IRC). *Flavored Malt Beverages and Related Regulatory Amendments*, 70 Fed. Reg. 1, 214 (Jan. 3, 2005)(to be codified at 27 CFR Parts 7 and 25).

The FAA Act provides that the standards of labeling and advertising set forth in the Act apply to malt beverages sold and shipped into any state only to the extent that similar requirements are imposed by the states. 27 U.S.C. § 205. Further, in adopting the regulations for FMBs pursuant to the Act, the TTB expressly stated that it did not intend to preempt the States on the issues of classification and taxation of FMBs:

"Pursuant to the 21st Amendment, States have significant authority to regulate the sale and distribution of alcohol beverages within their borders. Under the..... FAA Act, Federal labeling and advertising regulations apply to malt beverages only to the extent that the State has

adopted similar requirements for malt beverages sold within the State....We do not believe that the adoption of a different standard by some states will cause major problems to the beer industry; in any case, it is beyond TTB's authority to control what the States choose to do on this issue." Flavored Malt Beverages and Related Regulatory Amendments, 70 Fed. Reg. 1, 219 (Jan. 3, 2005)(to be codified at 27 CFR Parts 7 and 25).

Additionally, TTB stated:

"As already noted in this preamble, while most States look to Federal guidance in this area and rely on Federal classification of alcohol beverages, there is certainly no requirement for them to do so. Thus, individual States may take a different view of the classification and taxable status of these products, and may reclassify FMBs as distilled spirits products, perhaps even before the effective date of this final rule." Flavored Malt Beverages and Related Regulatory Amendments, 70 Fed. Reg. 1, 230 (Jan. 3, 2005)(to be codified at 27 CFR Parts 7 and 25).

Therefore, under federal preemption standards, the State is not precluded from enacting or enforcing laws that substantially differ from federal laws relating to the classification of flavored malt beverages. However, as discussed earlier in this opinion, § 53-117(2) appears to evidence a legislative intent to submit to federal law on issues of manufacture and labeling, and such statutory provision would need to be amended if the State intends to depart from federal law.

5. Finally, you have asked whether the statutory change sought by LB 563, 99th Legislature, is necessary to put the State of Nebraska in conformity with the Alcohol and Tobacco Trade Bureau's (TTB) final regulations related to FMBs. Because it is our opinion that § 53-103 is ambiguous and the Commission has the authority to implement the TTB regulations, the statutory change sought by LB 563, while helpful in clarifying the legislature's intent related to FMBs, would not be necessary.

Sincerely,  
JON BRUNING  
Attorney General  
(Signed) Milissa Johnson-Wiles  
Assistant Attorney General

pc: Patrick J. O'Donnell  
Clerk of the Legislature  
16-535-13

Opinion 06012

DATE: August 28, 2006

**SUBJECT:** Whether In Light of Equal Protection Concerns, It Would Be "Prudent" to Delete the "Notice Of Risks" Requirement Added To Neb. Rev. Stat. § 44 3522 (2004) By LB 875 In 2006.

**REQUESTED BY:** Senator Mick Mines  
Nebraska State Legislature

**WRITTEN BY:** Jon Bruning, Attorney General  
Charles E. Lowe, Assistant Attorney General

### INTRODUCTION

LB 875 was enacted during the 2006 session of the Nebraska Legislature. That bill, among other things, amends Neb. Rev. Stat. § 44-3522 (2004) by adding a subsection (4) requiring that a purchaser of a motor vehicle service contract must be given a "notice of risks." Unless the motor vehicle service contract reimbursement insurance policy is issued by an insurer domiciled in Nebraska, that notice must include the following statement: "The issuer of the motor vehicle service contract reimbursement insurance policy is not a domestic entity and the Department of Insurance can give no assurance that the issuer has adequate reserves to cover potential losses." The notice of risks is also to contain a statement regarding the fact that neither the motor vehicle service contract nor the motor vehicle service contract reimbursement insurance policy are covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

You are concerned that the notice language requirement referring to the possibility of inadequate reserves to cover losses quoted above may violate the equal protection clause of the Fourteenth Amendment to the United States Constitution and Nebraska's equal protection clause, Neb. Const. art. I, § 3, in that it appears to discriminate against insurers who are not domiciled in Nebraska by requiring the cautionary language concerning reserves be put in the notice only for them and not for insurers domiciled in Nebraska. You have indicated that you are contemplating introducing legislation to eliminate the "notice of risks" requirement because of this concern. You have asked for this office's "opinion as to whether this would be a prudent change to the existing statute."

As you know, this office, in performing its duties and responsibilities, might be called upon in the future to defend the statutory "notice of risks" requirement should an action be brought in court attacking its constitutionality. Therefore, we are not in a position to give any opinion as to whether or not the language of the notice, as applied to insurers that are not domiciled in Nebraska, violates constitutional equal protection provisions, and we do not do so. We will, however, provide an overview of the legal principles and precedents we believe would be applicable in any equal protection challenge to the "notice of risks" requirements based upon

the language that is required when the issuer of the motor vehicle service contract reimbursement insurance policy is not domiciled in Nebraska; and we will offer our thoughts on a "prudent" course of action.

### Presumption of Constitutionality

Initially, when analyzing whether or not a statute is unconstitutional, it is important to bear in mind that "[s]tatutes are afforded a presumption of constitutionality, and the unconstitutionality of a statute must be clearly established before it will be declared void." *Gourley v. Nebraska Methodist Health System, Inc.*, 265 Neb. 918, 942, 663 N.W.2d 43, 68 (2003). Additionally, "[t]he party attacking a statute as violative of equal protection has the burden to prove that the classification violates the Equal Protection Clause." *Id.*, 265 Neb. at 945, 663 N.W.2d at 70. Thus, any insurer seeking to have the notice of risks requirement declared unconstitutional as violative of equal protection will bear the burden of overcoming the presumption of constitutionality and establishing that the statute violates equal protection principles.

### Equal Protection – "Strict Judicial Scrutiny" and "Rational Basis" Tests

Equal protection challenges to legislation are analyzed under two somewhat different approaches. If a "fundamental right" or "suspect classification" is involved, then the classification and differing treatment in the legislation will be subject to "strict judicial scrutiny" and will be upheld only if there is a compelling governmental interest. In such circumstances the classification and differing treatment must be narrowly tailored to meet the specific compelling interest involved. *Gourley*, 265 Neb. at 946, 663 N.W.2d at 70. "Fundamental rights" include only those basic liberties that are explicit or implicit in the Constitution, such as free speech, the right of assembly, the right to interstate travel and freedom of religion. 16B Am. Jur. 2d Constitutional Law § 816 (2006). "Suspect classifications" are classifications based on such things as race, national origin or religion. *Id.*, § 817.

Where a "fundamental right" or "suspect classification" is not at issue, the equal protection clause allows government to make distinctions among groups and to treat different groups differently so long as there is a "rational basis" serving a legitimate governmental purpose for such differing treatment. "In an equal protection challenge, when a fundamental right or suspect classification is not involved, the act is a valid exercise of police power if the act is rationally related to a legitimate governmental purpose." *Le v. Lautrup*, 271 Neb. 931, 936, 716 N.W.2d 713, 719 (2006). The United States Supreme Court has said: "Unless a statute provokes 'strict judicial scrutiny' because it interferes with a 'fundamental right' or discriminates against a 'suspect class,' it will ordinarily survive an equal protection attack so long as the challenged classification is rationally related to a legitimate governmental purpose." *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1988).

Under the rational basis test, the Equal Protection Clause is satisfied as long as there is (1) a plausible policy reason for the classification, (2) the legislative facts on which the classification is apparently based may rationally have been considered to be true by the governmental decisionmaker, and (3) the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational. . . . The rational relationship standard, as the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause, is offended only if a classification rests on grounds which are wholly irrelevant to the achievement of the government's objectives. . . . When determining whether a rational basis exists for a legislative classification, courts look to see if any state of facts can be conceived to reasonably justify the disparate treatment which results.

Le, 271 Neb. at 936-37, 716 N.W.2d at 719-20.

#### Application of "Rational Basis" Test in These Circumstances

There is no "fundamental right" to conduct the business of insurance or to sell motor vehicle service contract reimbursement insurance policies in this state and no "fundamental right" to be free of regulation in carrying on an insurance business. Likewise, distinguishing between domiciled and non-domiciled insurers does not create a "suspect classification" as that term has been applied by the courts. Accordingly, if it is attacked under the equal protection clause, the notice of risk requirement would be measured by the rational basis test – i.e., whether or not there is a rational basis related to a legitimate state purpose for the differing treatment of insurers selling service contract reimbursement insurance policies who are not domiciled in Nebraska.

The United States Supreme Court has applied the rational basis test, rather than the "strict judicial scrutiny" test, in cases involving equal protection challenges to differing treatment of insurers not domiciled in a state. In *Metropolitan Casualty Ins. Co. of New York v. Brownell*, 294 U.S. 580, 583 (1935), the Court set forth the proper analysis as follows:

The equal protection clause does not prohibit legislative classification and the imposition of statutory restraints on one class which are not imposed on another. But this Court has said that not every legislative discrimination between foreign and domestic corporations is permissible merely because they differ, and that with respect to some subjects of legislation the differences between them may afford no reasonable basis for imposition of a statutory restriction upon foreign corporations, not applied to domestic corporations. The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the subject with respect to which the classification is made. . . . If those differences have any rational relationship to the legislative command, the discrimination

is not forbidden. (Citation omitted.)

In *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 875 (1985), the Court, quoting favorably from *Western & Southern Life Ins. Co. v. State Board of Equalization of California*, 451 U.S. 648 (1981), reiterated:

We held that "[w]e consider it now established that, whatever the extent of a State's authority to exclude foreign corporations from doing business within its boundaries, that authority does not justify imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations, unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose." (Emphasis supplied.)

#### Possible Arguments as to "Rational Basis"

In your letter you note the competitive disadvantage that non-domiciled insurers might suffer as a result of the notice of risks requirement regarding notice of possible inadequate reserves<sup>1</sup>, and you posit some arguments that could be made to show that treating insurers not domiciled in Nebraska differently in the notice of risk requirements bears no rational relationship to a legitimate state purpose. Principally, the argument could be made that, because the Department of Insurance cannot and does not give assurance that any insurer has adequate reserves to cover potential losses, there is no rational basis for singling out insurers not domiciled in Nebraska and requiring that the warning regarding possible insufficient reserves to cover losses apply only to them. In other words, assuming that there is a legitimate governmental purpose for giving any such warning to consumers, there is no reasonable basis for giving it only when the insurer is not domiciled in this state. This is certainly a colorable argument tending to support the position that there is no rational basis for the differing treatment and, therefore, a denial of equal protection of the law.

There are, however, arguments that could be made in support of the position that there is a rational basis for the differing treatment of non-domiciled insurers in connection with the notice of risk requirement. Clearly the State has a legitimate interest in seeing that its citizens are given fair warning regarding the risks they are taking when deciding whether or not to purchase a motor vehicle service contract. Moreover, from the state's perspective, the risk of insufficient reserves to cover losses might be somewhat greater for non-domiciled insurers simply because Nebraska state insurance regulators perform less oversight over such insurers and have somewhat fewer controls over them. For example, according to the Department of Insurance, with some exceptions, Nebraska's regulators normally defer to insurance regulators in the jurisdiction where an insurer is domiciled to perform financial reviews and audits of that company. On the other hand, Nebraska's insurance regulators perform their own such financial reviews and audits of insurers domiciled in this state. Also, the Nebraska Department of Insurance has authority to approve or disapprove mergers and acquisitions of insurers

domiciled in the state. Neb. Rev. Stat. §§ 44-2126 and 44-2127 (2004). The department has no such authority with regard to insurers domiciled elsewhere. Additionally, the Director of Insurance has broader authority to initiate various proceedings and enter orders against an insurer domiciled in Nebraska that is having financial difficulties than he or she has with regard to an insurer not domiciled in this state. Neb. Rev. Stat. § 44-4809(1) and (2) (2004). Based on these factors it can be argued that there is a rational basis for treating non-domiciled insurers differently in the language of the notice of risks requirement.

Ultimately, it is difficult, if not impossible, to predict how these differing arguments would "play out" and which position would prevail in the context of litigation challenging, on equal protection grounds, the notice of risks requirement. Again, however, it is important to remember that any party seeking to challenge the notice of risks requirement will have the burden of overcoming the presumption of statutory constitutionality and of establishing that there is no reasonable relationship between the notice of risks requirement concerning possible insufficient reserves of non-domiciled insurers and any legitimate state purpose.

#### Conclusion With Regard to Possible Changes in Existing Statute

In your letter you ask for our view as to whether removing the notice of risks requirement "would be a prudent change to the existing statute." Obviously, if one sought to eliminate any possibility that a successful challenge to the notice of risks requirement could be brought in court, then eliminating the requirement would alleviate any such concern; so, in that sense, eliminating the requirement would be "prudent."

On the other hand, if the policy of giving notice of risks to purchasers of motor vehicle service contracts is of such importance as to override whatever risk there might be of an unfavorable court ruling on the constitutionality of the statute, then it might not be the most "prudent" course to eliminate the notice of risks requirement altogether. This is so for two reasons. First, as discussed above, it is not at all certain that a court would find that the notice regarding possible inadequate reserves of non-domiciled insurers is violative of constitutional equal protection requirements. Second, even if this differing treatment of non-domiciled insurers concerning notice of possible inadequate reserves were determined to be unconstitutional, there is a good chance that that provision could be severed from the remainder of the notice of risks requirement dealing with losses not being covered by the Nebraska Property and Liability Insurance Guaranty Association Act so that the latter could remain in effect.<sup>2</sup>

One other "prudent" possibility for statutory amendment to deal with your concerns comes to mind: Leave the notice of risks requirement in the law but make the notice regarding possible inadequate reserves equally applicable to all insurers, whether or not domiciled in Nebraska. The second paragraph of the notice of risks called for by the statute could be amended to

read simply: "The Nebraska Department of Insurance can give no assurance that the issuer of the motor vehicle service contract reimbursement insurance policy has adequate reserves to cover potential losses;" and the last paragraph of subsection (4) of Neb. Rev. Stat. § 44-3522 would be deleted. These changes would comport with the statement in your letter that the Department of Insurance "does not give assurances that any insurer, whether foreign or domestic, has adequate reserves to meet its losses" and would result in equal treatment of all insurers, whether or not domiciled in Nebraska, eliminating any possible equal protection concerns. Purchasers, however, would still be alerted to the fact that the state regulatory agency cannot and does not assure that the insurer will have sufficient reserves to cover potential losses – something it might be beneficial for them to know.

We hope the foregoing provides you with the information you seek.

<sup>1</sup> We are informed by the Department of Insurance that, in fact, no company domiciled in Nebraska offers motor vehicle service contract reimbursement insurance policies in this state. Therefore, the language of the notice of risks requirement does not give any competitive advantage to any insurer domiciled in Nebraska. Rather, that language might discourage some individuals from purchasing such policies altogether, thus causing the non-domiciled insurers who do offer such policies to lose some business.

<sup>2</sup> An unconstitutional portion of a statute may be severed if (1) absent the unconstitutional portion, a workable statutory scheme remains; (2) the valid portions of the statute can be enforced independently; (3) the invalid portion was not an inducement to the passage of the statute; and (4) severing the invalid portion will not do violence to the intent of the Legislature.

State ex rel. Stenberg v. Murphy, 247 Neb. 358, 368-69, 527 N.W.2d 185, 194 (1995). Elements (1), (2) and (4) would clearly apply in this situation. The only question concerns element (3).

Sincerely yours,  
JON BRUNING  
Attorney General  
(Signed) Charles E. Lowe  
Assistant Attorney General

cc: Patrick O'Donnell  
Clerk of the Legislature  
17-188-21

Opinion 06015

DATE: November 21, 2006

SUBJECT: "Notice of Risks" Requirement Contained in Neb. Rev. Stat. § 44-3522, as amended by 2006 Neb. Laws LB

875.

REQUESTED BY: Senator Mick Mines  
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General  
Charles E. Lowe, Assistant Attorney General

### BACKGROUND

In a letter to the Attorney General dated July 20, 2006, you expressed some concern about the constitutionality of an amendment to Neb. Rev. Stat. § 44-3522 made by the Legislature in 2006 Neb. Laws LB 875. You referred to possible equal protection problems with a "Notice of Risks" requirement which is required by the amendment to be given to all potential purchasers of motor vehicle service contracts. You were particularly concerned about the requirement that, if the insurer of a motor vehicle service contract reimbursement insurance policy is not a Nebraska domesticated entity, a written warning be given stating: "The issuer of the motor vehicle service contract reimbursement insurance policy is not a domestic entity and the Department of Insurance can give no assurance that the issuer has adequate reserves to cover potential losses." You thought that this disparate treatment of non-domesticated insurers would likely run afoul of the equal protection clauses of the United States and Nebraska Constitutions.

In your letter of July 20, 2006, you indicated that you were considering introducing legislation to remove the notice of risks requirement from the law due to your "concerns regarding its constitutionality." You specifically asked this office for its opinion "as to whether this [proposed legislation] would be a prudent change to the existing statute."

### OPINION 06012

In response to your inquiry this office issued Op. Att'y Gen. No. 06012 (Aug. 28, 2006). In Opinion 06012 we discussed the legal standards for equal protection challenges to duly enacted laws and the arguments which could be made on both sides in the context of the notice of risks requirement. We concluded that it was not clear how a court would rule. We then proceeded to address your question about whether we thought your proposed elimination of the notice of risks requirement "would be a prudent change to the existing statute." We concluded that such elimination would be "prudent" in the sense that it would remove the equal protection issue altogether since the notice of risks requirement would no longer exist at all.

We went on in Opinion 06012 to suggest one other "prudent" possibility for statutory amendment that we thought would alleviate the equal protection concern without eliminating the notice of risks requirement completely. We noted that the notice of risks requirement could be amended to "make the notice regarding possible inadequate reserves equally applicable to all

insurers, whether or not domiciled in Nebraska."

#### SUPPLEMENTAL REQUEST AND RESPONSE

You have now sent a letter to this office providing some additional information and confirming that there are no insurers domiciled in Nebraska who are currently offering motor vehicle service contract reimbursement insurance policies. You ask if this supplemental information would alter our earlier opinion in any sense.

Considering the information you provided, and upon further reflection, we would alter Opinion 06012 to note that merely amending the notice of risks requirement to "make the notice regarding possible inadequate reserves equally applicable to all insurers, whether or not domiciled in Nebraska" would not necessarily alleviate the equal protection issues raised by the notice of risks requirement in its present form. This is so because, since there are no Nebraska domiciled insurers offering motor vehicle service contract reimbursement insurance policies, an insurer not domiciled in Nebraska could argue that, while neutral on its face, the notice of risks requirement still unconstitutionally discriminates against insurers not domiciled in this state in its application. While we offer no opinion as to whether or not a court would agree with any such argument, we do conclude that our original alternative suggestion for amendment to the notice of risks requirement to alleviate equal protection concerns might not be as "prudent" as we had earlier thought and may not resolve the issue.

In all other particulars, we adhere to the opinions and views expressed in Opinion 06012.

Sincerely,  
JON BRUNING  
Attorney General  
(Signed) Charles E. Lowe  
Assistant Attorney General

17-036-24

#### REPORTS

The following reports were received by the Legislature:

**Administrative Services, Department of**

Annual Budgetary Report for year ended June 30, 2006

Notification of proposed adjustment to the system of charges that cover basic rental, maintenance, renovations, and operation of leased and owned properties managed by the DAS State Building Division

**Agriculture, Department of**

Beginning Farmer Tax Credit Act Annual Report

Commercial Dog and Cat Operator Inspection Act Fiscal Report for 2005/2006

**Arts Council**

Arts and Humanities Cash Fund Report

**Auditor of Public Accounts**

Attestation reports for the following:

Revenue, Department of - Charitable Gaming Investigation Petty Cash Fund

Revenue, Department of - Cigarette Tax Receipts

Revenue, Department of - Motor Fuel Tax Enforcement and Collection Division

Audit reports for the following:

Lottery, Nebraska

Retirement Systems, Public Employees Retirement Systems - Deferred Compensation Plan

Retirement Systems, Public Employees Retirement Systems - School Employees, Judges, and State Patrol Retirement Plans

Retirement Systems, Public Employees Retirement Systems - State and County Employees Retirement Plans

**Broadband Services Task Force**

Final Report as submitted by a majority of the Task Force

Minority Report of the Task Force

**Coordinating Commission for Postsecondary Education**

2005-06 Biennial Report

**Correctional Services**

Work Ethic Camp Annual Report

**Economic Development, Department of**

2005 Nebraska Affordable Housing Trust Fund Annual Report

2005 Annual Performance Report (APR) for Nebraska's Housing and Community Development Program's Consolidated Plan

2006 Annual Report on Grants conditionally approved for funding by the Legislature

Proposed 2007 Annual Action Plan, Housing and Community Development Programs

**Education, Department of**

Attracting Excellence to Teaching Program (AETP) Report

**Environmental Quality, Department of**

2005 Nebraska Surface Water Quality Monitoring Report

2006 Nebraska Groundwater Quality Monitoring Report Annual Report

**Ethanol Board**

EPIC Report

**Fire Marshal**

Volunteer Emergency Responders Recruitment and Retention Act Information

**Fiscal, Legislative**

Certification of General Fund net receipts for fiscal year beginning July 1, 2006. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced

February 24, 2006

**Game and Parks Commission**

2006 Recreation Road Report  
Game Law Investigation Cash Fund Annual Report

**Greenbelt Advisory Committee**

Report and Meeting Minutes

**Health and Human Services System**

2006 LB 692 Report - Use of funds Appropriated Under Health Care  
Funding Act and Outcomes Achieved

Medicaid Report Biennial Report

Proposal for a Change in Scope of Practice by Dental Hygienists  
Corrected Report

Sex Offender Treatment and Management Services Report

State Disbursement Unit Report for 2005

System Advocate, Office of, Fiscal Year 2006 Report regarding contacts  
made

Women's Health, Office of, Annual Report

**Information Technology Commission**

Progress Report

Recommendations on Technology Investments for the FY2007-2009  
Biennium Report

**Investment Council**

Cash Flow Projection for the Health Care Endowment Fund (Tobacco  
Settlement Plus Medicaid IGT)

Northern Ireland Investment Requirements Report

**Investment Finance Authority**

2002 Series A, B, C, D, E and F Community Development Loan Notes  
(City of Lincoln Program-2002)

2006 Series A, B, C, D, E and F Community Development Loan Notes  
(City of Lincoln Program-2006) Notices

2006 Series A, B, C, D, E and F Community Development Loan Notes  
(City of Lincoln Program-2006) Reports

2006 Series C Single Family Housing Revenue Bonds Notice

2006 Series E Single Family Housing Revenue Bonds Notice

2006 Series FG Single Family Housing Revenue Bonds Notice

2006 Series G.O.-21 General Obligation Bonds Notice

2006 Series D Single Family Housing Revenue Bonds Notice

2006 Series G.O.-22 General Obligation Bonds Notice

Agricultural Loans Report Fiscal Year ending 6-30-06

Clean Water State Revolving Fund Revenue Bonds Series 2006B Notice

Clean Water State Revolving Fund Revenue Bonds Series 2006B  
Quarterly Report

Drinking Water State Revolving Fund Revenue Bonds Series 2005 A,  
Quarterly Reports

Drinking Water State Revolving Fund Revenue Bonds Series 2006A,  
Notices

General Obligation Bonds 2006 Series G.O.-21

Review of the Issuance of Single Family Bonds

Single Family Housing General Obligation Bonds Notices (consisting of

one or more Series of Bonds)

Single Family Housing Revenue Bonds Series 2006 AB and General  
Obligation Bonds Series 2006 G.O.-20 Quarterly Reports

Single Family Housing Revenue Bonds Series 2006 C and General  
Obligation Bonds Series 2006 G.O.-21 Quarterly Reports

Single Family Housing Revenue Bonds Series 2006 D and General  
Obligation Bonds Series 2006 G.O.-22 Quarterly Reports

Single Family Housing Revenue Bonds Series 2006 E Quarterly Report

**Labor, Department of**

Modification to Nebraska's Strategic State Plan for Title I of the  
Workforce Investment Act of 1998 and the Wagner-Peyser Act for the  
period of July 1, 2005, through June 30, 2007

Workforce Development Investment Board, 2005 Annual Report

**Legislative Research Division (See Research Division, Legislative)**

**Motor Vehicles, Department of**

2005 Annual Report

**Natural Resources, Department of**

Nebraska State Water Planning and Review Process Annual Report and  
Plan of Work

Resources Development Fund 2006 Biennial Report

**Performance Audit, Legislative**

Lincoln Regional Center's Sex Offender Services Program

Public Employees Retirement Board and the Nebraska Public Employees  
Retirement Systems: An Examination of Compliance, PIONEER, and

Management Report

**Power Review Board**

"Conditions Certain" Issues Annual Report

Fourteenth Biennial Report

**Public Service Commission**

2006 Annual Report on Telecommunications

**Research Division, Legislative**

Boards and Commissions in Nebraska, 2006

**Retirement Systems, Public Employees**

County Employees' Retirement System Cash Balance Benefit Fund

Actuarial Valuation Results as of January 1, 2005 for State Fiscal Year  
Ending June 30, 2007

Actuarial Valuation Results as of January 1, 2006 for State Fiscal Year  
Ending June 30, 2008

Judges Retirement System, Forty-first Actuarial Report for State Fiscal  
Year Ending June 30, 2008 and System Plan Year Beginning July 1,  
2006

School Retirement System, Fifty-fourth Actuarial Report for State Fiscal  
Year Ending June 30, 2008 and System Plan Year Beginning July 1,  
2006

State Employees' Retirement System Cash Balance Benefit Fund

Actuarial Valuation Results as of January 1, 2005 for State Fiscal Year  
Ending June 30, 2007

Actuarial Valuation Results as of January 1, 2006 for State Fiscal Year  
Ending June 30, 2008

State of Nebraska DCP, Investment Review

State of Nebraska Deferred Compensation Plan, Plan & Investment Review for December 31, 2004 - December 31, 2005

State Patrol Retirement System, Fifty-first Actuarial Report for State Fiscal Year Ending June 30, 2008 and System Plan Year Beginning July 1, 2006

**Revenue, Department of**

Charitable Gaming Division's 2006 Annual Report

Certification of General Fund net receipts for fiscal year beginning July 1, 2006. Monthly receipt estimates derived from the annual net receipt estimate of the Economic Forecasting Advisory Board produced February 24, 2006

EPIC Report

Lottery Annual Report and Resource Guide, July 1, 2005 through June 30, 2006

Report of Examination of State of Nebraska Auditor of Public Accounts for Fiscal Year Ended June 30, 2005

Tax Expenditure Report and Summary for 2006

**Roads, Department of**

2005 State Highway Inventory Report, Supplemental Report for the 2005 State Highway Needs Assessment

2006 State Highway Needs Assessment Report

Board of Examiners for County Highway and City Street Superintendents Thirty-Sixth Annual Report for the period January 1, 2005 to December 31, 2005

Board of Public Roads Classifications and Standards Minutes for March, April, May, June, July, and September 2006

Long-Range Transportation Plan

State Highway Commission Quarterly Reports

**Secretary of State**

Certification of the Learning Community of Douglas and Sarpy County pursuant to LB 1024, 2006

Initiative 300 Reports Summary of Activity 2006

**State Fair Board**

State Fair Park Expenditures Made in the Fiscal Year Ending June 30, 2006

**Supreme Court**

Judicial Workload Assessment, Nebraska District, County and Juvenile Courts, Final Report 2006

**Treasurer, State**

2006 LB 1175 Report of Expenditures and Distributions by Mutual Finance Organizations

**University of Nebraska**

Minority and Women Faculty Progress Report

## COMMUNICATIONS

December 18, 2006

Senator L. Patrick Engel  
Chairman  
Executive Board of the Legislative Council  
State Capitol Building  
Lincoln, Nebraska 68509

Dear Senator Engel:

Pursuant to the Provisions of Section 85-408, R.R.S. of Nebraska, 1943 Legislative approval is required for the following University of Nebraska project:

**University of Nebraska-Lincoln - Abel / Sandoz Window Replacement.** The University of Nebraska-Lincoln proposes to expend \$2,241,300 from the 1986 Replacement Fund. The funds would be used to replace aging windows and energy conservation in Abel Hall - Floors 2 - 13 and Sandoz Hall - Floors 2 - 9.

The expenditure relates to the Bond Resolution dated December 1, 1964, authorizing the issuance of Revenue Bonds by the Board of Regents. The Board has heretofore issued revenue bonds payable from the revenues and fees derived from the ownership and operation of the dormitories and other facilities for the housing and boarding of students, student unions, student health facilities and other facilities for the activities of students located on the campus of the University of Nebraska-Lincoln, under which a 1986 Surplus Fund was created.

Section 6.2 of the Resolution requires the Board to operate the facilities in an efficient, sound and economical manner and to keep all facilities and betterments thereto in good repair, working order and condition and to make all necessary and proper repairs, renewals, replacements, additions, extension and betterments thereto, so that at all times the business carried on in connection therewith shall be properly and advantageously conducted.

**Request.** The University requests approval of the Abel Halls 2-13 and Sandoz Hall - Floors 2-9 window replacement project in the amount of \$2,241,300 to be financed from the University of Nebraska-Lincoln Student Fees and Facilities Revenue Bond Surplus Fund.

The Board of Regents authorized these expenditures at its November 3, 2006, meeting. The Nebraska Coordinating Commission for Postsecondary Education approved the expenditure on December 7, 2006.

Thank you for your consideration of this project.

Respectfully submitted,  
(Signed) Donal J. Burns  
Corporation Secretary

C: Patrick O'Donnell

January 4, 2007

Senator Pat Engel  
Chairperson, Executive Board  
Room 2010  
State Capitol  
Lincoln, NE 68509

Dear Senator Engel,

Enclosed is correspondence from Donal Burns, Corporation Secretary for the Office of the President of the University of Nebraska and correspondence from the Coordinating Commission for Postsecondary Education. The correspondence relates to expenditure of bond surplus funds for the following:

University of Nebraska at Lincoln: Abel/Sandoz Window Replacement.

I am forwarding this correspondence to you for Executive Board action.

Sincerely,  
(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

PJO:ck

## COMMUNICATION

June 22, 2006

Patrick O'Donnell  
Clerk of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. O'Donnell:

The purpose of this letter is to forward to you a communication from Governor Heineman regarding the certification of inmate population pursuant to the Correctional System Overcrowding Act.

Sincerely,  
(Signed) Senator Pat Engel  
Chairman, Executive Board

Enclosure

**COMMUNICATION**

Pursuant to the adoption of the impeachment resolution LR 449, Ninety-Ninth Legislature, Second Session, 2006, please note the Nebraska Supreme Court decision: Nebraska Legislature on Behalf of the State of Nebraska, Plaintiff, v. C. David Hergert, Regent, University of Nebraska, Defendant, 271 Nebraska Report, page 976, 2006.

**COMMUNICATIONS**

Received a copy of Senate Concurrent Resolution No. 65 from the state of Louisiana relating to encouraging the adoption of an amendment to the Constitution of the United States to define marriage in the United States as the union between one man and one woman.

Received a copy of Senate Joint Resolution Number 30 from the state of California relating to alcoholic beverages.

Received a copy of House Concurrent Resolution No. 33 of the 2006 Second Extraordinary Session from the state of Louisiana relating to encouraging adoption of federal legislation to limit the jurisdiction of the federal courts and preserve the right to acknowledge God to the states and to the people and resolve the issue of improper judicial intervention in matters relating to the acknowledgment of God.

**COMMITTEE ON COMMITTEES PRELIMINARY REPORT**

Senator Pedersen offered the following Committee on Committees report:

## Agriculture - Erdman (C)

Chambers	Dierks	Dubas	Karpisek
McDonald	Preister	Wallman	

## Appropriations - Heidemann (C)

Engel	Fulton	Harms	Kruse
Nantkes	Nelson	Synowiecki	Wightman

## Banking, Commerce and Insurance - Pahls (C)

Carlson	Christensen	Gay	Hansen
Langemeier	Pankonin	Pirsch	

## Business and Labor - Cornett (C)

Chambers	Lathrop	McGill	Rogert
Wallman	White		

## Education - Raikes (C)

Adams Howard	Ashford Johnson	Avery Kopplin	Burling
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## General Affairs - McDonald (C)

Dierks Janssen	Dubas Karpisek	Erdman Preister	Friend
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## Government, Military and Veterans Affairs - Aguilar (C)

Adams Mines	Avery Pahls	Friend Rogert	Karpisek
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## Health and Human Services - Johnson (C)

Erdman Pankonin	Gay Stuthman	Hansen	Howard
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## Judiciary - Ashford (C)

Chambers Pedersen	Lathrop Pirsch	McDonald Schimek	McGill
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## Natural Resources - Louden (C)

Carlson Hudkins	Christensen Kopplin	Dubas Wallman	Fischer
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## Nebraska Retirement Systems - Synowiecki (C)

Erdman White	Heidemann	Karpisek	Louden
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## Revenue - Janssen (C)

Burling Preister	Cornett Raikes	Dierks White	Langemeier
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## Transportation and Telecommunications - Fischer (C)

Aguilar Pedersen	Hudkins Schimek	Louden Stuthman	Mines
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## LEGISLATIVE JOURNAL

## Urban Affairs - Friend (C)

Cornett Rogert	Janssen White	Lathrop	McGill
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## Committee on Committees - Pedersen (C)

Adams Cornett Preister	Aguilar Dierks Raikes	Ashford Engel Schimek	Burling Karpisek White
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## Enrollment and Review - McGill (C)

## Reference - Engel (C)

Chambers Janssen Stuthman	Erdman Kopplin	Flood McDonald	Heidemann Preister
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## Rules - Hudkins (C)

Adams White	Erdman	Flood	Lathrop
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## Executive Board - Engel (C)

Chambers Janssen Stuthman	Erdman Kopplin	Flood McDonald	Heidemann Preister
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## Intergovernmental Cooperation - Kruse (C)

Aguilar Rogert	Flood Lt. Gov. Sheehy	Langemeier	Pirsch
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**ANNOUNCEMENT**

The Committee on Committees elected Senator Preister as Vice Chairperson.

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 1.** Introduced by Executive Board: Engel, 17, Chairperson.

A BILL FOR AN ACT relating to picketing; to amend sections 28-1317 and 28-1318, Reissue Revised Statutes of Nebraska; to remove language held unconstitutional in United Food and Commercial Workers International Union, AFL-CIO, CLC v. IBP, Inc., 857 F.2d 422; and to repeal the original sections.

**LEGISLATIVE BILL 2.** Introduced by Executive Board: Engel, 17,

Chairperson.

A BILL FOR AN ACT relating to appropriations; to repeal sections that are obsolete; and to outright repeal sections 90-528, 90-529, and 90-530, Revised Statutes Cumulative Supplement, 2006.

**LEGISLATIVE BILL 3.** Introduced by Pahls, 31.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2701 and 77-2701.04, Revised Statutes Cumulative Supplement, 2006; to exempt sales of clothing, school supplies, computer software, and computer equipment from sales and use tax as prescribed; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 4.** Introduced by Pahls, 31.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.07 and 77-2716, Revised Statutes Cumulative Supplement, 2006; to provide an income tax credit and income tax adjustment for long-term care insurance premiums; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 5.** Introduced by Pahls, 31.

A BILL FOR AN ACT relating to state personnel; to amend sections 81-1346, 81-1350, and 81-1351, Reissue Revised Statutes of Nebraska; to change provisions relating to the employee suggestion system as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 6.** Introduced by Pahls, 31.

A BILL FOR AN ACT relating to children; to adopt the Nebraska Safe Haven Act.

**LEGISLATIVE BILL 7.** Introduced by Preister, 5.

A BILL FOR AN ACT relating to the Open Meetings Act; to amend sections 84-1409 and 84-1412, Revised Statutes Cumulative Supplement, 2006; to change the rights of the public with regard to agenda items as prescribed; to define a term; and to repeal the original sections.

**LEGISLATIVE BILL 8.** Introduced by Preister, 5.

A BILL FOR AN ACT relating to environmental protection; to amend section 81-1525, Reissue Revised Statutes of Nebraska; to increase the penalty for an accumulation of junk; and to repeal the original section.

**LEGISLATIVE BILL 9.** Introduced by Preister, 5.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-3806, Reissue Revised Statutes of Nebraska, and sections 77-908, 77-2701, 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative Supplement, 2006; to provide an income tax credit for energy conservation and renewable energy generation expenditures as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 10.** Introduced by Mines, 18; Fulton, 29.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2101.02, Reissue Revised Statutes of Nebraska, and sections 77-2101.01 and 77-2101.03, Revised Statutes Cumulative Supplement, 2006; to terminate estate and generation-skipping taxes; and to repeal the original sections.

**LEGISLATIVE BILL 11.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to cities of the first class; to amend section 16-117, Reissue Revised Statutes of Nebraska; to change provisions relating to annexation; to provide powers and duties; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 12.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to the Commercial Dog and Cat Operator Inspection Act; to amend sections 54-628, 54-629, 54-630, 54-631, and 54-632, Reissue Revised Statutes of Nebraska, and sections 54-625, 54-627, and 54-633, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to license requirements, inspections, rules and regulations, applications, disciplinary actions, and enforcement powers; to provide for administrative fines; to provide powers and duties; to state intent; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 13.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to the Interlocal Cooperation Act; to amend sections 13-801, 13-803, 13-806, and 13-820, Reissue Revised Statutes of Nebraska, and section 13-804, Revised Statutes Cumulative Supplement, 2006; to provide a procedure for the creation and certification of joint entities and the corresponding governing bodies; to provide powers and duties for joint entities and the Secretary of State; to define terms; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 14.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-501, 60-1903, and 60-1908, Reissue Revised Statutes of Nebraska, and sections 18-1736, 18-1737, 60-163, 60-180, 60-308, 60-366, 60-373,

60-376, 60-378, 60-380, 60-383, 60-392, 60-395, 60-396, 60-397, 60-398, 60-399, 60-3,100, 60-3,101, 60-3,102, 60-3,105, 60-3,106, 60-3,107, 60-3,108, 60-3,109, 60-3,113, 60-3,114, 60-3,119, 60-3,120, 60-3,121, 60-3,122, 60-3,123, 60-3,124, 60-3,125, 60-3,126, 60-3,128, 60-3,130, 60-3,130.01, 60-3,130.02, 60-3,130.05, 60-3,134, 60-3,135, 60-3,146, 60-3,147, 60-3,149, 60-3,150, 60-3,151, 60-3,157, 60-3,167, 60-3,175, 60-3,183, 60-3,205, 60-653, 60-683, 60-6,197.01, 60-1306, 60-1901, 60-1902, and 66-1406.02, Revised Statutes Cumulative Supplement, 2006; to provide for one license plate and In Transit decal per vehicle; to change provisions relating to license plates; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 15.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to amend section 28-416, Revised Statutes Cumulative Supplement, 2006; to include public parks as a prohibited area for controlled substances as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 16.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to airport zoning; to amend sections 3-303 and 3-304, Reissue Revised Statutes of Nebraska; to change provisions relating to the regulation of airport hazards; to prescribe duties; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 17.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to elections; to amend sections 32-603 and 32-604, Reissue Revised Statutes of Nebraska; to change provisions relating to multiple office holding; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 18.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to the Election Act; to amend sections 32-1301, 32-1302, 32-1303, and 32-1304, Reissue Revised Statutes of Nebraska, and section 32-101, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to recall; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 19.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to the Mobile Home Landlord and Tenant Act; to amend section 76-14,109, Reissue Revised Statutes of Nebraska; to authorize disposition of an abandoned mobile home as personal property as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 20.** Introduced by Mines, 18.

A BILL FOR AN ACT relating to public access to public lands; to amend sections 2-3290.01 and 18-1755, Revised Statutes Cumulative Supplement, 2006; to change provisions related to public access for recreational use at water projects; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 21.** Introduced by Raikes, 25.

A BILL FOR AN ACT relating to the Tax Equity and Educational Opportunities Support Act; to amend sections 79-1007.02 and 79-1007.10, Revised Statutes Cumulative Supplement, 2006, and sections 79-1022, 79-1026, 79-1027, and 79-1031.01, Revised Statutes Cumulative Supplement, 2006, as affected by Referendum 2006, No. 422; to change provisions relating to cost growth factor; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 22.** Introduced by Wightman, 36.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2004, 77-2005, and 77-2006, Reissue Revised Statutes of Nebraska; to change provisions relating to inheritance tax; to provide for applicability; and to repeal the original sections.

**LEGISLATIVE BILL 23.** Introduced by Wightman, 36.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2716, Revised Statutes Cumulative Supplement, 2006; to exclude capital gains from income taxation as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 24.** Introduced by Pahls, 31.

A BILL FOR AN ACT relating to accountants; to amend section 1-136.02, Reissue Revised Statutes of Nebraska, and section 1-124, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to a reciprocal certificate as a certified public accountant and an experience requirement; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 25.** Introduced by Langemeier, 23.

A BILL FOR AN ACT relating to rabies; to amend sections 71-4401, 71-4402, 71-4403, 71-4404, 71-4405, 71-4407, 71-4408, 71-4409, 71-4410, and 71-4412, Reissue Revised Statutes of Nebraska; to prohibit ownership of hybrid animals as prescribed; to change penalties; and to repeal the original sections.

**MOTION - Escort Committees**

Senator Johnson moved that a series of committees be appointed to escort the various state and constitutional officers for the purpose of administering their oaths of office.

The motion prevailed.

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 26.** Introduced by Langemeier, 23.

A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to amend section 81-885.01, Reissue Revised Statutes of Nebraska; to redefine a term; and to repeal the original section.

**LEGISLATIVE BILL 27.** Introduced by Adams, 24.

A BILL FOR AN ACT relating to cities and villages; to amend section 18-2721, Reissue Revised Statutes of Nebraska, and section 84-304, Revised Statutes Cumulative Supplement, 2006; to authorize the Auditor of Public Accounts to conduct audits as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 28.** Introduced by Adams, 24.

A BILL FOR AN ACT relating to cities of the second class and villages; to amend section 17-503.02, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to the conveyance of personal property; and to repeal the original section.

**LEGISLATIVE BILL 29.** Introduced by Friend, 10.

A BILL FOR AN ACT relating to juveniles; to amend section 43-290, Reissue Revised Statutes of Nebraska, and section 43-3342.05, Revised Statutes Cumulative Supplement, 2006; to provide for court orders to direct financially able parents to pay for costs of care for wards of the state; to provide powers and duties; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 30.** Introduced by Hudkins, 21; Fischer, 43.

A BILL FOR AN ACT relating to schools; to amend section 32-1206, Reissue Revised Statutes of Nebraska, and sections 79-403, 79-415, and 79-479, Revised Statutes Cumulative Supplement, 2006, as affected by Referendum 2006, No. 422; to provide for reorganization of certain school districts as prescribed; to provide for operating councils; to prohibit closing

elementary attendance centers as prescribed; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide severability; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 31.** Introduced by Nantkes, 46.

A BILL FOR AN ACT relating to labor; to amend sections 48-1203, 48-1203.01, and 48-1206, Reissue Revised Statutes of Nebraska; to change minimum wage and training wage provisions; to change penalty provisions; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 32.** Introduced by Nantkes, 46.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2701 and 77-2701.04, Revised Statutes Cumulative Supplement, 2006; to exempt college textbooks from sales and use taxes; to define a term; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 33.** Introduced by Fischer, 43.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to fund the County Property Tax Relief Program; and to declare an emergency.

**LEGISLATIVE BILL 34.** Introduced by Schimek, 27.

A BILL FOR AN ACT relating to the Legislature; to create the State-Tribal Relations Committee.

**LEGISLATIVE BILL 35.** Introduced by Janssen, 15.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,186, Reissue Revised Statutes of Nebraska, and section 60-4,182, Revised Statutes Cumulative Supplement, 2006; to clarify speed limits on certain freeways; to harmonize provisions; to delete obsolete provisions; and to repeal the original sections.

**LEGISLATIVE BILL 36.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to county courts; to amend section 24-503, Revised Statutes Cumulative Supplement, 2006; to change the number of judges in specified districts; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 37.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to district courts; to amend section 24-301.02, Revised Statutes Cumulative Supplement, 2006; to change the number of judges in specified districts; to provide an operative date; to

repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 38.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to separate juvenile courts; to amend section 43-2,119, Reissue Revised Statutes of Nebraska; to change the number of judges; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 39.** Introduced by Schimek, 27; Friend, 10; Mines, 18; Pahls, 31.

A BILL FOR AN ACT relating to petition circulators; to amend sections 32-629, 32-630, 32-1303, 32-1404, 49-1455, and 49-1478, Reissue Revised Statutes of Nebraska; to require circulators of certain petitions to be electors; to prohibit paying petition circulators based on the number of signatures gathered; to change campaign reporting requirements related to petition circulators; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 40.** Introduced by Schimek, 27; Friend, 10; Mines, 18; Pahls, 31.

A BILL FOR AN ACT relating to elections; to amend sections 32-1404, 32-1406, and 32-1546, Reissue Revised Statutes of Nebraska; to require an initiative and referendum petition circulator to wear an identification badge; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 41.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to streets and roads; to amend sections 66-4,148 and 66-6,109, Reissue Revised Statutes of Nebraska, and sections 66-489, 66-4,105, 66-4,145, 66-4,146, 66-6,107, and 77-27,132, Revised Statutes Cumulative Supplement, 2006; to increase motor fuel taxes; to allocate revenue as prescribed; to change distribution of certain sales and use tax proceeds; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 42.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 39-2401 and 77-2602, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to distribution of the cigarette tax; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**SENATOR JANSSEN PRESIDING**

### **BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 43.** Introduced by Heidemann, 1; Christensen, 44; Erdman, 47; Fischer, 43; Flood, 19; Langemeier, 23; Pahls, 31; Stuthman, 22.

A BILL FOR AN ACT relating to highways; to provide for mowing and hay harvesting permits for right-of-ways; to provide fees; and to provide duties for the Department of Roads.

**LEGISLATIVE BILL 44.** Introduced by Gay, 14.

A BILL FOR AN ACT relating to elections; to amend sections 32-913 and 32-1026, Reissue Revised Statutes of Nebraska, and section 32-914, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to the precinct list of registered voters and sign-in register; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 45.** Introduced by Gay, 14.

A BILL FOR AN ACT relating to courts; to amend section 33-106, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to district court fees; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 46.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to alcoholic liquor; to amend section 53-304, Reissue Revised Statutes of Nebraska; to require payments by grape producers as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 47.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Cumulative Supplement, 2006; to create the offense of interference with child visitation; to provide penalties; to harmonize provisions; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 48.** Introduced by Dierks, 40.

A BILL FOR AN ACT relating to radiation; to amend sections 71-1734 and 71-3508, Reissue Revised Statutes of Nebraska; to exempt certified registered nurse anesthetists from certain radiation-use qualifications; and to repeal the original sections.

**LEGISLATIVE BILL 49.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to public health; to adopt the Mercury Vaccine and Drug Act; to provide a penalty; and to declare an emergency.

**LEGISLATIVE BILL 50.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to state government; to prohibit certain actions relating to use of vacation leave by state employees.

**LEGISLATIVE BILL 51.** Introduced by Hudkins, 21.

A BILL FOR AN ACT relating to the Nebraska Industrial Development Corporation Act; to amend sections 21-2301 and 21-2308, Reissue Revised Statutes of Nebraska; to include cities of the primary, first, and second class and villages under the act; and to repeal the original sections.

**LEGISLATIVE BILL 52.** Introduced by Howard, 9; Dierks, 40; Hudkins, 21; Johnson, 37; Nantkes, 46; Pedersen, 39.

A BILL FOR AN ACT relating to public health and welfare; to create a task force; to provide for a review and recommendations regarding the use of certain drugs by wards of the state; to provide a termination date; and to declare an emergency.

**LEGISLATIVE BILL 53.** Introduced by Howard, 9; Aguilar, 35; Burling, 22; Dierks, 40; Hudkins, 21; Johnson, 37; Kruse, 13; Nantkes, 46; Pedersen, 39; Preister, 5; Schimek, 27.

A BILL FOR AN ACT relating to health; to amend section 71-5707, Revised Statutes Cumulative Supplement, 2006; to prohibit smoking in certain foster care homes; to harmonize provisions; and to repeal the original section.

## RESOLUTIONS

**LEGISLATIVE RESOLUTION 1CA.** Introduced by Preister, 5.

THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2008 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, section 7:

III-7 At the general election to be held in November 1964, one-half the members of the Legislature, or as nearly thereto as may be practicable, shall be elected for a term of four years and the remainder for a term of two years, and thereafter all members shall be elected for a term of four years, with the manner of such election to be determined by the Legislature. When the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term. Each member shall be nominated and

elected in a nonpartisan manner and without any indication on the ballot that he or she is affiliated with or by any political party or organization. ~~Each~~ Until January 7, 2009, each member of the Legislature shall receive a salary of not to exceed one thousand dollars per month during the term of his or her office. Beginning January 7, 2009, each member of the Legislature shall receive an annual salary during his or her term of office equal to twenty-two thousand dollars. In addition to his or her salary, each member shall receive an amount equal to his or her actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than his or her salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to change the salary of the members of the Legislature to twenty-two thousand dollars per year.

For

Against.

Referred to the Reference Committee.

#### **LEGISLATIVE RESOLUTION 2CA.** Introduced by Rogert, 16.

THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2008 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article VIII, section 12:

VIII-12 (1) ~~For the purpose of developing, rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project as determined by law, property, the Legislature may by law authorize any city or village of the state may, notwithstanding any other provision in the Constitution, and without regard to charter limitations and restrictions, within its corporate boundaries or within the area in which it exercises planning, zoning, and code enforcement authority or any county to incur indebtedness, whether by bond, loans, notes, advance of money, or otherwise, notwithstanding any other provision in this Constitution and without regard to charter limitations and restrictions. Notwithstanding~~

(2) ~~Except as provided in subsection (3) of this section and notwithstanding any other provision in the this Constitution or a local charter, such cities, or villages, or counties may also pledge for and apply to the payment of the principal, interest, and any premium on such indebtedness all taxes levied by all taxing bodies, which taxes shall be at such rate for a period not to exceed fifteen years, on the assessed valuation of the property in the project area portion of a designated blighted and substandard area that is in excess of the assessed valuation of such property~~

for the year prior to such development, rehabilitation, acquisition, or redevelopment.

(3) Notwithstanding any other provision in this Constitution, the Legislature may provide that the limitation to a period of fifteen years on the collection of all taxes levied on the excess value of property collected for the payment of the indebtedness incurred for the purpose of developing, rehabilitating, acquiring, or redeveloping such property may be extended to a period not to exceed thirty years if more than one-half of the property by area within the project area is owned by the State of Nebraska and if the indebtedness to be incurred for the development, rehabilitation, acquisition, or redevelopment of such property cannot be reasonably financed within fifteen years.

(4) When such indebtedness and the interest thereon have been paid in full, such property thereafter shall be taxed as is other property in the respective taxing jurisdictions and such taxes applied as all other taxes of the respective taxing bodies.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to remove a requirement that property be substandard and blighted for purposes of rehabilitating, acquiring, or redeveloping such property through use of public debt or special property tax treatment, to add development as a purpose for use of the constitutional provision authorizing public debt and special property tax treatment, to permit counties and cities and villages outside their corporate boundaries to use such constitutional provision, and to authorize the Legislature to extend the term of such special tax treatment from fifteen to thirty years.

For

Against.

Referred to the Reference Committee.

### **LEGISLATIVE RESOLUTION 3CA.** Introduced by Friend, 10.

THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2008 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, sections 1, 5, 6, 7, 10, 11, 12, 13, 14, 17, 22, and 27, Article IV, sections 1, 4, 7, 10, 12, 16, and 28, and Article VII, sections 6, 13, and 14:

III-1 The legislative authority of the state shall be vested in a Legislature consisting of ~~one chamber.~~ a Senate and a House of Representatives as provided in this article. The people reserve for themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature, which power shall be called the power of initiative. The people also reserve power at their own

option to approve or reject at the polls any act, item, section, or part of any act passed by the Legislature, which power shall be called the power of referendum.

III-5 The Legislature shall by law determine the number of members to be elected and divide the state into legislative districts. In the creation of such districts, any county that contains population sufficient to entitle it to two or more ~~members of the Legislature~~ senators shall be divided into separate and distinct legislative districts, as nearly equal in population as may be and composed of contiguous and compact territory. One member of the ~~Legislature~~ Senate shall be elected from each ~~such~~ district, and two members of the House of Representatives shall be elected from each district. The basis of apportionment shall be the population excluding aliens, as shown by the next preceding federal census. The Legislature shall redistrict the state after each federal decennial census. In any such redistricting, county lines shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature.

III-6 The Legislature shall consist of ~~not more than fifty members and not less than thirty~~ the Senate composed of not more than thirty-one members and the House of Representatives composed of not more than sixty-two members. The sessions of the Legislature shall be annual except as otherwise provided by this constitution or as may be otherwise provided by law.

III-7 At the general election to be held in November ~~1964~~, 2010, one-half the members of the ~~Legislature~~, Senate and one-half the members of the House of Representatives, or as nearly thereto as may be practicable, shall be elected for a term of four years and the remainder for a term of two years, and thereafter all members shall be elected for a term of four years, with the manner of such election to be determined by the Legislature. The Legislature as constituted as of the general election in November 2008 and the terms of the members elected at such election terminate as of the beginning of the terms of members of the Legislature elected in November 2010.

When the Legislature is redistricted, the members elected prior to the redistricting shall continue in office, and the law providing for such redistricting shall where necessary specify the newly established district which they shall represent for the balance of their term. Each member shall be nominated and elected in a nonpartisan manner and without any indication on the ballot that he or she is affiliated with or endorsed by any political party or organization.

Each member of the Legislature shall receive a salary of not to exceed one thousand dollars per month during the term of his or her office. In addition to his or her salary, each member shall receive an amount equal to his or her actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than his or her salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

III-10 ~~Beginning with the year 1975, regular~~ Regular sessions of the Legislature shall be held annually, commencing at 10 a.m. on the first

Wednesday after the first Monday in January of each year. The duration of regular sessions held shall not exceed ninety legislative days in odd-numbered years unless extended by a vote of four-fifths of all members ~~elected to the Legislature, in each house,~~ and shall not exceed sixty legislative days in even-numbered years unless extended by a vote of four-fifths of all members ~~elected to the Legislature, in each house.~~ Bills and resolutions under consideration by the Legislature upon adjournment of a regular session held in an odd-numbered year may be considered at the next regular session, as if there had been no such adjournment. Neither house shall adjourn for more than three days without the consent of the other house.

The Lieutenant Governor shall preside in the Senate, but shall vote only when the Legislature Senate is equally divided. A majority of ~~the all~~ members ~~elected to the Legislature~~ shall constitute a quorum; ~~the Legislature in each house, and the members of each house~~ shall determine the rules of its proceedings, shall and be the judge of the election, returns, and qualifications of its members, and shall choose its own officers. The Senate shall choose a President pro tempore, including a Speaker to preside when the Lieutenant Governor ~~shall be~~ is absent, incapacitated, or ~~shall act~~ acting as Governor. The Secretary of State shall call the House of Representatives to order at the opening of each new Legislature and preside until a Speaker is chosen.

No member shall be expelled by either house except by a vote of two-thirds of all members ~~elected to the Legislature, in the respective house,~~ and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who ~~shall be~~ is guilty of disrespect to the Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person ~~shall persist~~ persists in such disorderly or contemptuous behavior.

III-11 ~~The Legislature~~ Both the Senate and the House of Representatives shall keep a journal of its proceedings and publish them, except such parts as may require secrecy, and the yeas and nays of the members on any question shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislature and of the committees of the Legislature shall be open, except when the business shall be such as ought to be kept secret. The yeas and nays of each member of any committee of the Legislature shall be recorded and published on any question in committee to advance or to indefinitely postpone any bill.

III-12 (1) No person shall be eligible to serve as a member of the Legislature Senate for four years next after the expiration of two consecutive terms in the Senate regardless of the district represented. No person shall be eligible to serve as a member of the House of Representatives for four years next after the expiration of two consecutive terms in the House regardless of the district represented.

~~(2) Service prior to January 1, 2001, as a member of the Legislature shall not be counted for the purpose of calculating consecutive terms in subsection (1) of this section.~~

(3) (2) For the purpose of this section, service in office for more than one-half of a term shall be deemed service for a term.

III-13 The style of all bills shall be, Be it enacted by the people of the State of Nebraska, and no law shall be enacted except by bill. No bill shall be passed by the Legislature unless by the assent of a majority of all members ~~elected of the Senate and a majority of all members of the House of Representatives,~~ and the yeas and nays on the question of final passage of any bill shall be entered upon the journal. All bills passed by one house may be amended by the other house. No amendment to a bill by one house shall be concurred in by the other house and no conference committee report as to any bill shall be adopted by either house, except by the assent of the same number of members as is required for the passage of the original bill. Any bill may originate in either house, except that bills appropriating money shall originate only in the House of Representatives.

III-14 Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member of the Legislature. The bill and all amendments thereto shall be printed and presented before the vote is taken upon its final passage and shall be read at large in the Senate and in the House of Representatives unless three-fifths of all the members elected to the Legislature in the respective house vote not to read the bill and all amendments at large. No vote upon the final passage of any bill shall be taken until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the subject shall be clearly expressed in the title. No law shall be amended unless the new act contains the section or sections as amended and the section or sections so amended shall be repealed. The ~~Lieutenant Governor, or the Speaker if acting as~~ presiding officer, of each house shall sign, in the presence of the ~~Legislature~~ respective house while it is in session and capable of transacting business, all bills and resolutions passed by the Legislature.

III-17 The ~~Legislature~~ Senate and the House of Representatives in joint session shall have the sole power of impeachment, ~~but a majority of the members elected must concur therein.~~ Upon the introduction of a resolution to impeach by either house, the other house shall at once be notified, and the two houses shall meet in joint session for the purpose of acting upon such resolution within three days after such notification. The vote shall be tallied for each house separately, and a majority of the members of each house must concur. Proceedings may be initiated in either a regular session or a special session of the Legislature.

Upon the adoption of a resolution of impeachment, which resolution shall give reasonable notice of the acts or omissions alleged to constitute impeachable offenses but need not conform to any particular style, a notice of an impeachment of any officer, other than a Judge of the Supreme Court, shall be forthwith served upon the Chief Justice, by the Clerk of the ~~Legislature,~~ House of Representatives, who shall thereupon call a session of the Supreme Court to meet at the Capitol in an expeditious fashion after such notice to try the impeachment. A notice of an impeachment of the Chief Justice or any Judge of the Supreme Court shall be served by the

Clerk of the ~~Legislature, House of Representatives,~~ upon the clerk of the judicial district within which the Capitol is located, and he or she thereupon shall choose, at random, seven Judges of the District Court in the State to meet within thirty days at the Capitol, to sit as a Court to try such impeachment, which Court shall organize by electing one of its number to preside.

The case against the impeached civil officer shall be brought in the name of the Legislature and shall be managed by ~~two senators, one Senator and one Representative,~~ appointed by the ~~Legislature, respective house,~~ who may make technical or procedural amendments to the articles of impeachment as they deem necessary. The trial shall be conducted in the manner of a civil proceeding and the impeached civil officer shall not be allowed to invoke a privilege against self-incrimination, except as otherwise applicable in a general civil case. No person shall be convicted without the concurrence of two-thirds of the members of the Court of impeachment that clear and convincing evidence exists indicating that such person is guilty of one or more impeachable offenses, but judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, profit, or trust, in this State, but the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. No officer shall exercise his or her official duties after he or she shall have been impeached and notified thereof, until he or she shall have been acquitted.

III-22 Each Legislature shall make appropriations for the expenses of the Government. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members ~~elected to the Legislature, in each house.~~ Bills making appropriations for the pay of members and officers of the Legislature, and for the salaries of the officers of the Government, shall contain no provision on any other subject.

III-27 No act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, which is expressed in the preamble or body of the act, the ~~Legislature shall Senate and the House of Representatives shall each~~ by a vote of two-thirds of all the members ~~elected of the respective house~~ otherwise direct. All laws shall be published within sixty days after the adjournment of each session and distributed among the several counties in such manner as the Legislature may provide.

IV-1 The executive officers of the state shall be the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, and the heads of such other executive departments as set forth herein or as may be established by law. The Legislature may provide for the placing of the above named officers as heads over such departments of government as it may by law establish.

The Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor of Public Accounts, and State Treasurer shall be chosen at the general election held in November 1974, and in each alternate even-numbered year thereafter, for a term of four years and until their successors shall be elected and qualified.

Each candidate for Governor shall select a person to be the candidate for Lieutenant Governor on the general election ballot. In the general election one vote shall be cast jointly for the candidates for Governor and Lieutenant Governor. The Governor shall be ineligible to the office of Governor for four years next after the expiration of two consecutive terms for which he or she was elected.

The records, books, and papers of all executive officers shall be kept at the seat of government. Executive officers shall reside within the State of Nebraska during their respective terms of office. Officers in the executive department of the state shall perform such duties as may be provided by law.

The heads of all executive departments established by law, other than those to be elected as provided herein, shall be appointed by the Governor, with the consent of a majority of all members ~~elected to the Legislature, of the Senate,~~ but officers so appointed may be removed by the Governor. Subject to the provisions of this Constitution, the heads of the various executive or civil departments shall have power to appoint and remove all subordinate employees in their respective departments.

IV-4 The returns of every election for the officers of the executive department shall be sealed up and transmitted by the returning officers to the Secretary of State, directed to the Speaker of the ~~Legislature, House,~~ who shall immediately after the organization of the Legislature, and before proceeding to other business, open and publish the same in the presence of a majority of the members of the ~~Legislature, House.~~ The person having the highest number of votes for each of ~~said such~~ offices shall be declared duly elected; but if two or more have an equal and the highest number of votes, the Legislature shall choose one of such persons for ~~said such~~ office. The conduct of election contests for any of ~~said such~~ offices shall be in such manner as may be prescribed by law.

IV-7 The Governor may, at the commencement of each session, and at the close of his or her term of office and whenever the Legislature may require, give by message to the Legislature information of the condition of the state, and shall recommend such measures as he ~~shall deem~~ or she deems expedient. At a time fixed by law, ~~he~~ the Governor shall present, by message, a complete itemized budget of the financial requirements of all departments, institutions, and agencies of the state and a budget bill to be introduced by the Speaker of the ~~Legislature~~ House at the request of the Governor. ~~Said~~ The budget bill shall be prepared with such expert assistance and under such regulations as may be required by the Governor. No appropriations shall be made in excess of the recommendation contained in such budget including any amendment the Governor may make thereto unless by three-fifths vote of the Legislature, and such excess so approved shall be subject to veto by the Governor.

IV-10 The Governor shall appoint with the approval of a majority of the ~~Legislature, Senate,~~ all persons whose offices are established by the Constitution, or which may be created by law, and whose appointment or election is not otherwise ~~by law or herein~~ provided for; ~~and no by law or in this Constitution.~~ No such person shall be appointed or elected by the Legislature. The Governor shall have power to remove, for cause and after a public hearing, any person whom he ~~may appoint~~ or she appoints for a term

except officers provided for in Article V of ~~the~~ this Constitution, and ~~he~~ the Governor may declare ~~his~~ such office vacant; and fill the same ~~as herein provided~~ as in other cases of vacancy. The Governor shall have power to remove any other person whom he or she appoints at any time and for any reason.

IV-12 If any nonelective state office, except offices provided for in Article V of this Constitution, shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill that office by appointment. If the Legislature is in session, such appointment shall be subject to the approval of a majority of the members of the ~~Legislature.~~ Senate. If the Legislature is not in session, the Governor shall make a temporary appointment until the next session of the Legislature, at which time a majority of the members of the ~~Legislature~~ Senate shall have the right to approve or disapprove the appointment. All appointees shall hold their office until their successors shall be appointed and qualified. No person after being rejected by the ~~Legislature~~ Senate shall be again nominated for the same office at the same session, unless at request of the ~~Legislature.~~ Senate, or be appointed to the same office during the recess or adjournment of the Legislature.

IV-16 In case of the conviction of the Governor on impeachment, ~~his~~ the removal of the Governor from office, ~~his~~ or the resignation or ~~his~~ death of the Governor, the Lieutenant Governor, the Speaker of the ~~Legislature~~ House, and such other persons designated by law shall in that order be Governor for the remainder of the Governor's term.

In case of the death of the Governor-elect, the Lieutenant Governor-elect, the Speaker of the ~~Legislature~~ House, and such other persons designated by law shall become Governor in that order at the commencement of the Governor-elect's term.

If the Governor or the person in line of succession to serve as Governor is absent from the state; or suffering under an inability, the powers and duties of the office of Governor shall devolve in order of precedence until the absence or inability giving rise to the devolution of powers ceases as provided by law. ~~After January 1, 1975, the~~ The Lieutenant Governor shall serve on all boards and commissions in lieu of the Governor whenever so designated by the Governor, shall perform such duties as may be delegated ~~him~~ by the Governor, and shall devote his or her full time to the duties of ~~his~~ the office.

IV-28 By January 1, 1997, there shall be a Tax Equalization and Review Commission. The members of the commission shall be appointed by the Governor as provided by law. The commission shall have power to review and equalize assessments of property for taxation within the state and shall have such other powers and perform such other duties as the Legislature may provide. The terms of office and compensation of members of the commission shall be as provided by law.

A Tax Commissioner shall be appointed by the Governor with the approval of the ~~Legislature.~~ Senate. The Tax Commissioner may have jurisdiction over the administration of the revenue laws of the state and such other duties and powers as provided by law. The Tax Commissioner shall serve at the pleasure of the Governor.

VII-6 No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction under such conditions as the Legislature shall provide. The general management of all lands set apart for educational purposes shall be vested, under the direction of the Legislature, in a board of five members to be known as the Board of Educational Lands and Funds. The members shall be appointed by the Governor, subject to the approval of the ~~Legislature~~, Senate, with such qualifications and for such terms and compensation as the Legislature may provide.

VII-13 The general government of the state colleges as now existing, and such other state colleges as may be established by law, shall be vested, under the direction of the Legislature, in a board of seven members to be styled as designated by the Legislature, six of whom shall be appointed by the Governor, with the advice and consent of the ~~Legislature~~, Senate, two each for a term of two, four, and six years, and two each biennium thereafter for a term of six years, and the Commissioner of Education shall be a member ex officio. The duties and powers of the board shall be prescribed by law, and the members thereof shall receive no compensation for the performance of their duties, but may be reimbursed their actual expenses incurred therein.

VII-14 ~~On January 1, 1992, there~~ There shall be established the Coordinating Commission for Postsecondary Education which shall, under the direction of the Legislature, be vested with the authority for the coordination of public postsecondary educational institutions. Public postsecondary educational institutions shall include each postsecondary educational campus or institution which is governed by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any board or boards established for the community colleges, or any other governing board for any other public postsecondary educational institution which may be established by the Legislature.

Coordination shall mean:

(1) Authority to adopt, and revise as needed, a comprehensive statewide plan for postsecondary education which shall include (a) definitions of the role and mission of each public postsecondary educational institution within any general assignments of role and mission as may be prescribed by the Legislature and (b) plans for facilities which utilize tax funds designated by the Legislature;

(2) Authority to review, monitor, and approve or disapprove each public postsecondary educational institution's programs and capital construction projects which utilize tax funds designated by the Legislature in order to provide compliance and consistency with the comprehensive plan and to prevent unnecessary duplication; and

(3) Authority to review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, any board or boards established for the community colleges, or any other governing board for any other public postsecondary educational institution which may be established by the Legislature.

The Legislature may provide the commission with additional powers and duties related to postsecondary education as long as such powers and duties do not invade the governance and management authority of the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges as provided in the Constitution of Nebraska, Article VII, sections 10 and 13. The Legislature may provide that coordination of the community colleges by the commission pursuant to this section may be conducted through a board or association representing all the community colleges.

Nothing in this section providing for statewide coordination shall limit or require the use of property tax revenue by and for community colleges.

The commission shall consist of eleven members, residents of the state or the districts for which appointed, who shall be appointed by the Governor with the approval of a majority of the ~~Legislature.~~ Senate. Six of the members shall be chosen from six districts of approximately equal population and five shall be chosen on a statewide basis.

The terms of the members of the commission shall be six years or until a successor is qualified and takes office, except that of the members initially appointed, four members shall serve for terms of two years and four members shall serve for terms of four years. The members of the commission shall receive no compensation for the performance of their duties but may be reimbursed their actual and necessary expenses.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to change from a unicameral legislature to a bicameral legislature.

For

Against.

Referred to the Reference Committee.

### **BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 54.** Introduced by Howard, 9.

FOR AN ACT relating to health and human services; to require certain qualifications for new hires of child protection and safety workers, social workers, and trainees.

**LEGISLATIVE BILL 55.** Introduced by Howard, 9.

FOR AN ACT relating to social services; to change provisions governing the funding of certain services.

**LEGISLATIVE BILL 56.** Introduced by Howard, 9.

FOR AN ACT relating to appropriations; to appropriate funds to the Department of Health and Human Services for alcohol-related birth defects prevention programs.

### **ANNOUNCEMENT**

The Transportation and Telecommunications Committee elected Senator Stuthman as Vice Chairperson.

### **RECESS**

At 11:29 a.m., on a motion by Speaker Flood, the Legislature recessed until 1:30 p.m.

### **AFTER RECESS**

The Legislature reconvened at 1:30 p.m., Speaker Flood presiding.

### **ROLL CALL**

The roll was called and all members were present except Senators Chambers and Hudkins who were excused.

### **PRESENTATION OF COLORS**

Presentation of Colors by the Nebraska Army and Air National Guard.

### **INAUGURAL CEREMONIES**

Chief Justice Michael G. Heavican, administered the Oath of Office to the newly elected state officials.

Governor Dave Heineman delivered the following Inaugural Address:

### **GOVERNOR'S INAUGURAL ADDRESS**

Mister President, Mister Speaker, Mister Chief Justice, Members of the 100th Legislature, Tribal Leaders and other Distinguished Guests ... Friends and Fellow Nebraskans;

I am honored and pleased to have this opportunity to continue as the 39th Governor of this great state.

The experiences of the past year have provided me renewed energy and optimism about what lies ahead for Nebraska.

I want to first congratulate my fellow constitutional officers and the newly installed members of the Nebraska Legislature.

As I'm sure you have already experienced, it is both an awesome responsibility and an incredible opportunity to be able to serve the people of this state.

\* \* \*

A remarkable trust has been placed in our hands ... and I have great confidence in the passion and abilities of everyone in this chamber to make the best interests of Nebraska their first priority.

I have tremendous respect for the members of this body and I pledge to continue building on the good relationships we have already begun...

Whether that relationship began years ago in the halls of this historic building ... or in the hours that followed last fall's election.

\* \* \*

While we are here today to discuss some of the important issues that lie ahead for our state, I would be remiss if I did not call attention to the very serious and immediate challenges facing many Nebraskans.

The effects of the New Year's storm have left thousands of our fellow citizens without power...

I want to assure every Nebraskan that we are putting all of our available resources to work, and while there are difficult days and weeks ahead as Nebraskans work to rebuild what was lost...

I have confidence in the people of this state, and I know that we will get through this challenge.

\* \* \*

Early on as Governor, I said that I had faith that Nebraskans would reward good performance ... so I am grateful for the opportunity to stand before Nebraskans today to say thank you for the confidence that's been placed in me.

I pledge to the people of this state that I will continue to work as hard in the years to come as the first two I've spent as your Governor.

There's no doubt that there are exceptional opportunities on the horizon for Nebraska.

But we are also at a crossroads.

We are faced with a future of limited resources, as well as the

accompanying reality that state government cannot be all things to all people.

The days when state government could provide funding for every project are in the past.

Yet I will argue that we have extraordinary potential when it comes to making strategic investments that will move Nebraska forward and make our communities even stronger.

\* \* \*

I believe in the people of this state, and I believe in each of you in this chamber.

I believe we have an incredible opportunity to make changes that will make this state an even better place to live, to work and to raise a family in the years to come.

I believe strongly in education and economic development.

Our state provides an excellent education to students of all ages.

The reality, however, is that we can no longer afford to ignore that many young people are leaving our state to begin their careers in other states and other countries.

This is a reality that we must change.

Creating dynamic, 21st Century jobs for our sons and daughters must be part of our vision for the future.

More than that, it must be a priority.

That is why I believe so strongly that education and Nebraska's continued economic vitality go hand-in-hand.

My hope is that we can make these pillars of our state even stronger in the future.

To do that we need to come together as educators, as business leaders, as employees, and perhaps most importantly, as parents ... to ensure that we create opportunities for our young people to remain in Nebraska and to be part of our great future.

A sustained focus on job creation and making Nebraska a competitive place for new business development is key to turning the tide and making our state a more attractive place for young families.

\* \* \*

The need to create a 21st Century business climate is a call to action for every Nebraskan ...

However, the challenge for us as their representatives ... lies in finding ways to control the growth of government spending while providing real and broad-based tax reform in the years ahead.

In that regard, I want share with you today that I am committed to pursuing policy decisions that will help confront the challenges facing both us and the citizens of this state.

As every Nebraskan can attest, over the past two decades, Nebraska has become a high tax state.

I believe that we are at a crossroads and that there are two very clear paths.

We can act now and grow our state to meet the demands of the future ...

Or we can do nothing, change nothing, and watch the slow decline of a great state.

Nebraska can't afford the status quo.

I believe that together we have a unique opportunity to make changes that will help create the real and sustained growth that is needed to ensure that our sons and daughters can remain here in our state.

We all want them to be a part of Nebraska's future, and we are in a position to do something about it.

This opportunity is the result of a truly unique set of circumstances that brought the members of this body together.

\* \* \*

The 100th Legislature is made up of senators who have experience and a fresh perspective.

The fact that a class of 22 senators is beginning its first session together is an opportunity we should not waste.

I've had several opportunities to meet with this year's class of new lawmakers, as well as our returning senators, and I know each of you brings a wealth of talent and ideas to address the challenges before us.

From taxes and spending, to education, water and the restructuring of

government ...

We need to confront these challenges and those that await us over the next four years head-on.

\* \* \*

In one week, we will begin the discussion of Nebraska's future when I deliver the State of the State Address.

That discussion will center on providing real tax relief for our citizens and moving us toward a lower tax burden through the reform of our income tax system and providing tax relief aimed at middle-class Nebraskans.

Yet I also know that there is a need for our state to have an open, honest discussion about property taxes.

Ladies and gentlemen, our efforts at the state level to address local property taxes are a tax shift, not a tax cut ... and each one increases state spending.

We should acknowledge them for what they are ... and move forward with an honest resolve.

Toward that end, my budget will include significant investments in property tax relief ...

As well as my income tax reform proposal.

Both of these ideas will be contained in a tight-fisted budget that limits state spending growth to a far more reasonable and sustainable number over time ...

A far more reasonable number than we have historically achieved.

It is a budget that does what I told the people of Nebraska we would do ...

It makes difficult, prioritized spending decisions, and it respects the people who elected us.

\* \* \*

I have confidence in this Legislature, and in the people of this great state.

Nebraskans have an incredible ability to come together and find solutions to the challenges we face.

Our people are truly our greatest resource, and the future of Nebraska rests with each and every one of us.

We need to engage our citizens in these difficult and complex policy discussions and then we must be willing to make the tough decisions that Nebraskans expect of their leaders.

I value the opportunity to work with you, and I believe very strongly that together we have an unprecedented opportunity to make changes for the good of Nebraska.

\* \* \*

It has been an honor and privilege to serve this state these past two years, and I look forward to what we can accomplish together over the next four years.

I am excited about the opportunities in front of us, and I am enthusiastic about finding ways to resolve the challenges we face.

Together, we will chart a course toward a more vibrant and opportunistic Nebraska ...

A place that our children and grandchildren will proudly call home.

Thank you.

The Governor, Lt. Governor, Chief Justice, associate justices, newly elected state officials, and families were escorted from the Chamber.

### **PROPOSED RULES CHANGES**

Senator Schimek offered the following proposed rules change:

**Amend Rule 3, Section 4(e). Reference Committee.**

(iv) The committees to which a gubernatorial appointee has been referred for confirmation shall conduct a confirmation hearing. Each appointee shall be required to appear in person before the committee conducting the confirmation hearing. The appearance of the appointee may be waived for good cause ~~shown by a majority vote of the members assigned to the committee conducting the hearing.~~ as determined by the chair of the committee.

The committee shall prepare a report either approving or rejecting the appointment. Said report shall be filed with the Clerk of the Legislature. The Legislature shall then have the opportunity to accept or reject the report of the committee.

Referred to the Rules Committee.

### **VISITOR**

The Doctor of the Day was Dr. Brian Finley from Papillion.

**ADJOURNMENT**

At 2:47 p.m., on a motion by Senator Fischer, the Legislature adjourned until 10:00 a.m., Friday, January 5, 2007.

Patrick J. O'Donnell  
Clerk of the Legislature