

EIGHTY-EIGHTH DAY - MAY 29, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****EIGHTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, May 29, 2007

PRAYER

The prayer was offered by Senator Pedersen.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Howard, Loudon, McDonald, and White who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the eighty-seventh day was approved.

**COMMITTEE REPORT
Enrollment and Review**

LEGISLATIVE BILL 570. Placed on Select File - ER8123.
ER8123

- 1 1. Strike original sections 1, 5, and 7 and all
- 2 amendments thereto and insert the following new sections:
- 3 Section 1. Section 60-301, Revised Statutes Cumulative
- 4 Supplement, 2006, as amended by section 20, Legislative Bill 286,
- 5 One Hundredth Legislature, First Session, 2007, and section 1,
- 6 Legislative Bill 349, One Hundredth Legislature, First Session,
- 7 2007, is amended to read:
- 8 60-301 Sections 60-301 to 60-3,220 and sections 26 and
- 9 29 of this act and section 2 of this act and sections 2 and 3
- 10 of this act shall be known and may be cited as the Motor Vehicle
- 11 Registration Act.
- 12 Sec. 5. Section 60-395, Revised Statutes Cumulative
- 13 Supplement, 2006, as amended by section 35, Legislative Bill
- 14 286, One Hundredth Legislature, First Session, 2007, is amended to
- 15 read:
- 16 60-395 (1) Except as otherwise provided in subsection (2)

17 of this section and sections 60-3,121 and 60-3,128 and section 3 of
18 this act, the registration shall expire and the registered owner or
19 lessee may, by returning the registration certificate, the license
20 plates, and, when appropriate, the validation decals and by either
21 making application on a form prescribed by the department to the
22 county treasurer or designated county official of the occurrence
23 of an event described in subdivisions (a) through (e) of this
1 subsection or, in the case of a change in situs, displaying to
2 the county treasurer or designated county official the registration
3 certificate of such other state as evidence of a change in situs,
4 receive a refund of that part of the unused fees and taxes on
5 motor vehicles or trailers based on the number of unexpired months
6 remaining in the registration period from the date of any of the
7 following events:

8 (a) Upon transfer of ownership of any motor vehicle or
9 trailer;

10 (b) In case of loss of possession because of fire, theft,
11 dismantlement, or junking;

12 (c) When a salvage branded certificate of title is
13 issued;

14 (d) Whenever a type or class of motor vehicle or trailer
15 previously registered is subsequently declared by legislative act
16 or court decision to be illegal or ineligible to be operated or
17 towed on the public roads and no longer subject to registration
18 fees, the motor vehicle tax imposed in section 60-3,185, and the
19 motor vehicle fee imposed in section 60-3,190;

20 (e) Upon a trade-in or surrender of a motor vehicle under
21 a lease; or

22 (f) In case of a change in the situs of a motor vehicle
23 or trailer to a location outside of this state.

24 (2) If the date of the event falls within the same
25 calendar month in which the motor vehicle or trailer is acquired,
26 no refund shall be allowed for such month.

27 (3) If the transferor or lessee acquires another motor
1 vehicle at the time of the transfer, trade-in, or surrender, the
2 transferor or lessee shall have the credit provided for in this
3 section applied toward payment of the motor vehicle fees and taxes
4 then owing. Otherwise, the transferor or lessee shall file a claim
5 for refund with the county treasurer or designated county official
6 upon an application form prescribed by the department.

7 (4) The registered owner or lessee shall make a claim for
8 refund or credit of the fees and taxes for the unexpired months
9 in the registration period within sixty days after the date of the
10 event or shall be deemed to have forfeited his or her right to such
11 refund or credit.

12 (5) For purposes of this section, the date of the event
13 shall be: (a) In the case of a transfer or loss, the date of
14 the transfer or loss; (b) in the case of a change in the situs,
15 the date of registration in another state; (c) in the case of

16 a trade-in or surrender under a lease, the date of trade-in or
17 surrender; (d) in the case of a legislative act, the effective date
18 of the act; and (e) in the case of a court decision, the date the
19 decision is rendered.

20 (6) Application for registration or for reassignment of
21 license plates and, when appropriate, validation decals to another
22 motor vehicle or trailer shall be made within thirty days of the
23 date of purchase.

24 (7) The county treasurer or designated county official
25 shall refund the motor vehicle fee and registration fee from
26 the fees which have not been transferred to the State Treasurer.
27 The county treasurer shall make payment to the claimant from the
1 undistributed motor vehicle taxes of the taxing unit where the
2 tax money was originally distributed. No refund of less than two
3 dollars shall be paid.

4 Sec. 7. Section 60-3,104, Revised Statutes Cumulative
5 Supplement, 2006, as amended by section 37, Legislative Bill 286,
6 One Hundredth Legislature, First Session, 2007, is amended to read:

7 60-3,104 The department shall issue the following types
8 of license plates:

9 (1) Amateur radio station license plates issued pursuant
10 to section 60-3,126;

11 (2) Apportionable vehicle license plates issued pursuant
12 to section 60-3,203;

13 (3) Boat dealer license plates issued pursuant to section
14 60-379;

15 (4) Bus license plates issued pursuant to section
16 60-3,144;

17 (5) Commercial motor vehicle license plates issued
18 pursuant to section 60-3,147;

19 (6) Dealer or manufacturer license plates issued pursuant
20 to sections 60-3,114 and 60-3,115;

21 (7) Disabled veteran license plates issued pursuant to
22 section 60-3,124;

23 (8) Farm trailer license plates issued pursuant to
24 section 60-3,151;

25 (9) Farm truck license plates issued pursuant to section
26 60-3,146;

27 (10) Farm trucks with a gross weight of over sixteen tons
1 license plates issued pursuant to section 60-3,146;

2 (11) Fertilizer trailer license plates issued pursuant to
3 section 60-3,151;

4 (12) Film vehicle license plates issued pursuant to
5 section 60-383;

6 (13) Gold Star Family license plates issued pursuant to
7 sections 2 and 3 of this act;

8 ~~(13)~~ ~~(14)~~ Handicapped or disabled person license plates
9 issued pursuant to section 60-3,113;

10 ~~(14)~~ ~~(15)~~ Historical vehicle license plates issued

- 11 pursuant to sections 60-3,130 to 60-3,134;
12 ~~(15)~~(16) Local truck license plates issued pursuant to
13 section 60-3,145;
14 ~~(16)~~(17) Motor vehicle license plates for motor vehicles
15 owned or operated by the state, counties, municipalities, or school
16 districts issued pursuant to section 60-3,105;
17 ~~(17)~~(18) Motor vehicles exempt pursuant to section
18 60-3,107;
19 ~~(18)~~(19) Motorcycle license plates issued pursuant to
20 section 60-3,100;
21 ~~(19)~~(20) Nebraska Cornhusker Spirit Plates issued
22 pursuant to sections 60-3,127 to 60-3,129;
23 ~~(20)~~(21) Nonresident owner thirty-day license plates
24 issued pursuant to section 60-382;
25 ~~(21)~~(22) Passenger car having a seating capacity of ten
26 persons or less and not used for hire issued pursuant to section
27 60-3,143;
1 ~~(22)~~(23) Passenger car having a seating capacity of
2 ten persons or less and used for hire issued pursuant to section
3 60-3,143;
4 ~~(23)~~(24) Pearl Harbor license plates issued pursuant to
5 section 60-3,122;
6 ~~(24)~~(25) Personal-use dealer license plates issued
7 pursuant to section 60-3,116;
8 ~~(25)~~(26) Personalized message license plates for motor
9 vehicles and cabin trailers, except commercial motor vehicles
10 registered for over ten tons gross weight, issued pursuant to
11 sections 60-3,118 to 60-3,121;
12 ~~(26)~~(27) Prisoner-of-war license plates issued pursuant
13 to section 60-3,123;
14 ~~(27)~~(28) Purple Heart license plates issued pursuant to
15 section 60-3,125;
16 ~~(28)~~(29) Recreational vehicle license plates issued
17 pursuant to section 60-3,151;
18 ~~(29)~~(30) Repossession license plates issued pursuant to
19 section 60-375;
20 ~~(30)~~(31) Trailer license plates issued for trailers
21 owned or operated by the state, counties, municipalities, or school
22 districts issued pursuant to section 60-3,106;
23 ~~(31)~~(32) Trailer license plates issued pursuant to
24 section 60-3,100;
25 ~~(32)~~(33) Trailers exempt pursuant to section 60-3,108;
26 ~~(33)~~(34) Transporter license plates issued pursuant to
27 section 60-378;
1 ~~(34)~~(35) Trucks or combinations of trucks,
2 truck-tractors, or trailers which are not for hire and
3 engaged in soil and water conservation work and used for the
4 purpose of transporting pipe and equipment exclusively used by such
5 contractors for soil and water conservation construction license

6 plates issued pursuant to section 60-3,149;
7 ~~(35)~~(36) Utility trailer license plates issued pursuant
8 to section 60-3,151; and
9 ~~(36)~~(37) Well-boring apparatus and well-servicing
10 equipment license plates issued pursuant to section 60-3,109.
11 2. On page 1, lines 1 and 2; and page 13, lines 15
12 and 16, strike "60-301, 60-393, 60-395, 60-396, and 60-3,104" and
13 insert "60-393 and 60-396".
14 3. On page 1, line 3; and page 13, line 16, after
15 "2006" insert "; sections 60-395 and 60-3,104, Revised Statutes
16 Cumulative Supplement, 2006, as amended by sections 35 and 37,
17 Legislative Bill 286, One Hundredth Legislature, First Session,
18 2007; and section 60-301, Revised Statutes Cumulative Supplement,
19 2006, as amended by section 20, Legislative Bill 286, One Hundredth
20 Legislature, First Session, 2007, and section 1, Legislative Bill
21 349, One Hundredth Legislature, First Session, 2007".
22 4. On page 1, line 3, after "Star" insert "Family license
23 plates; to"; and strike line 4.

(Signed) Amanda McGill, Chairperson

MESSAGE FROM THE GOVERNOR

May 24, 2007

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 641 and 641A were received in my office on May 24, 2007.

I signed these bills and delivered them to the Secretary of State on May 24, 2007.

Sincerely,
(Signed) Dave Heineman
Governor

SELECT FILE

LEGISLATIVE BILL 395A. Senator Johnson renewed his amendment, AM878, found on page 969.

The Johnson amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 646. ER8120, printed separately and referred to on page 1764, was adopted.

Senator Dierks offered the following motion:

Suspend the rules, Rule 7, Section 3(d), to permit consideration of AM1493, to LB 646. (Amendment is on file and available in the Clerk's Office, Room 2014.)

Senator Pedersen moved the previous question. The question is, "Shall the debate now close?"

Senator Erdman requested a ruling of the Chair on whether there had been a full and fair debate, pursuant to Rule 7, Sec. 4, on the Dierks motion to suspend the rules.

The Chair ruled there had not been a full and fair debate on the Dierks motion to suspend the rules.

SENATOR LANGEMEIER PRESIDING

SPEAKER FLOOD PRESIDING

Senator Harms moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 4 nays, and 19 not voting.

Senator Erdman requested a record vote on the Dierks motion to suspend the rules.

Voting in the affirmative, 15:

Christensen	Erdman	Heidemann	Kopplin	Nelson
Dierks	Fischer	Hudkins	Langemeier	Stuthman
Dubas	Gay	Karpisek	Louden	White

Voting in the negative, 22:

Adams	Carlson	Kruse	Pedersen	Synowiecki
Aguilar	Engel	Lathrop	Preister	Wightman
Ashford	Hansen	McGill	Raikes	
Avery	Janssen	Mines	Rogert	
Burling	Johnson	Pankonin	Schimek	

Present and not voting, 11:

Chambers	Friend	Howard	Pirsch
Cornett	Fulton	Nantkes	Wallman
Flood	Harms	Pahls	

Excused and not voting, 1:

McDonald

The Dierks motion to suspend the rules failed with 15 ayes, 22 nays, 11 present and not voting, and 1 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 530. Senator Erdman withdrew his amendment, FA90, found on page 1288.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 351. ER8122, printed separately and referred to on page 1771, was adopted.

Senator Harms withdrew his amendment, AM1060, found on page 1649.

Senator Harms offered the following amendment:
AM1487

(Amendments to E & R amendments, ER8122)

- 1 1. On page 4, line 25, strike "amended" through "100-485"
- 2 and insert "such act existed on the effective date of this act".
- 3 2. On page 16, line 7, after the first "education"
- 4 insert "leading to a baccalaureate degree or an associate degree,
- 5 vocational education,"; and in line 8 after "contract" insert "and
- 6 work activities directly related to such education".

PRESIDENT SHEEHY PRESIDING

Senator Harms withdrew his amendment.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 351A. ER8121, found on page 1771, was adopted.

Advanced to E & R for engrossment.

BILL ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 658 with 34 ayes, 4 nays, 10 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 658. With Emergency.

A BILL FOR AN ACT relating to schools; to amend sections 32-570, 79-234, 79-498, 79-4,100, 79-4,103, 79-501, 79-502, 79-524, 79-525, 79-526, 79-559, 79-569, 79-570, 79-572, 79-576, 79-577, 79-578, 79-579, 79-580, 79-581, 79-587, 79-588, 79-594, 79-5,107, 79-716, 79-828, 79-1023, 79-1029, 79-1036, 79-1072, 79-1077, 79-10,103, 79-10,110, 79-10,114, 79-10,117, 79-10,118, 79-1217, and 79-1504, Reissue Revised Statutes of Nebraska, sections 23-3302, 72-2304, 79-528, 79-554, 79-586, 79-1001, 79-1007.02, 79-1030, 79-1065.02, and 79-10,120, Revised Statutes Cumulative Supplement, 2006, and sections 79-102, 79-401, 79-402, 79-403, 79-413, 79-415, 79-416, 79-418, 79-419, 79-423, 79-431, 79-433, 79-434, 79-443, 79-447, 79-452, 79-454, 79-455, 79-470, 79-472, 79-473, 79-479, 79-494, 79-495, 79-4,101, 79-611, 79-850, 79-1003, 79-1026, 79-1028, 79-1083.02, and 79-1083.03, Revised Statutes Cumulative Supplement, 2006, as affected by Referendum 2006, No. 422; to provide for creation and affiliation of Class I school districts as prescribed; to eliminate provisions relating to Class VI school districts; to change provisions relating to the Tax Equity and Educational Opportunities Support Act; to provide a duty for the Revisor of Statutes; to harmonize provisions; to repeal the original sections; to outright repeal sections 32-546, 79-523, 79-553, 79-563, 79-568, 79-585, 79-5,108, 79-717, and 79-1078, Reissue Revised Statutes of Nebraska, and sections 79-404, 79-410, 79-411, 79-417, 79-424, 79-425, 79-426, 79-477, 79-478, 79-4,109, 79-4,110, and 79-4,111, Revised Statutes Cumulative Supplement, 2006, as affected by Referendum 2006, No. 422; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 36:

Adams	Engel	Johnson	Pahls	Synowiecki
Aguilar	Flood	Kopplin	Pankonin	Wallman
Ashford	Friend	Kruse	Pedersen	White
Avery	Hansen	Lathrop	Pirsch	Wightman
Burling	Harms	McGill	Preister	
Carlson	Heidemann	Mines	Raikes	
Chambers	Howard	Nantkes	Rogert	
Cornett	Janssen	Nelson	Schimek	

Voting in the negative, 12:

Christensen	Erdman	Gay	Langemeier
Dierks	Fischer	Hudkins	Louden
Dubas	Fulton	Karpisek	Stuthman

Excused and not voting, 1:

McDonald

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Bracket LB 395

Senator Mines renewed his motion, found on page 1102, to bracket LB 395 until May 30, 2007.

Senator Mines withdrew his motion to bracket.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LB 658.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 209, 211, and 212 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 209, 211, and 212.

MOTION - Bracket LB 395

Senator Johnson offered the following motion:
Bracket LB 395 until January 9, 2008.

The Speaker ordered the removal of LB 395 from the agenda.

MOTION - Return LB 265 to Select File

Senator Nantkes moved to return LB 265 to Select File for the following specific amendment:

AM1495

- 1 1. Insert the following sections:
- 2 Section 1. Section 48-1203, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 48-1203 (1) Except as otherwise provided in this section
- 5 and section 48-1203.01, every employer shall pay to each of his
- 6 or her employees ~~wages at the minimum rate of four dollars and~~
- 7 ~~twenty five cents per hour through August 31, 1997, and five~~
- 8 ~~dollars and fifteen cents per hour on and after September 1, 1997.~~

9 a minimum wage of:

10 (a) Five dollars and fifteen cents per hour through July
11 23, 2007;

12 (b) Five dollars and eighty-five cents per hour on and
13 after July 24, 2007, through July 23, 2008;

14 (c) Six dollars and fifty-five cents per hour on and
15 after July 24, 2008, through July 23, 2009; and

16 (d) Seven dollars and twenty-five cents per hour on and
17 after July 24, 2009.

18 (2) For persons compensated by way of gratuities such
19 as waitresses, waiters, hotel bellhops, porters, and shoeshine
20 persons, the employer shall pay wages at the minimum rate of two
21 dollars and thirteen cents per hour, plus all gratuities given
22 to them for services rendered. The sum of wages and gratuities
23 received by each person compensated by way of gratuities shall
1 equal or exceed the minimum wage rate provided in subsection (1)
2 of this section. In determining whether or not the individual is
3 compensated by way of gratuities, the burden of proof shall be upon
4 the employer.

5 (3) Any employer employing student-learners as part
6 of a bona fide vocational training program shall pay such
7 student-learners' wages at a rate of at least seventy-five percent
8 of the minimum wage rate which would otherwise be applicable.

9 Sec. 2. Section 48-1203.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 48-1203.01 An employer may pay a new employee who is
12 younger than twenty years of age and is not a seasonal or migrant
13 worker a training wage ~~at a rate of four dollars and twenty five~~
14 ~~cents per hour of at least seventy-five percent of the federal~~
15 minimum wage for ninety days from the date the new employee was
16 hired. An employer may pay such new employee the training wage
17 rate for an additional ninety-day period while the new employee is
18 participating in on-the-job training which (1) requires technical,
19 personal, or other skills which are necessary for his or her
20 employment and (2) is approved by the Commissioner of Labor. No
21 more than one-fourth of the total hours paid by the employer shall
22 be at the training wage rate.

23 An employer shall not pay the training wage rate if the
24 hours of any other employee are reduced or if any other employee is
25 laid off and the hours or position to be filled by the new employee
26 is substantially similar to the hours or position of such other
employee. An employer shall not dismiss or reduce the hours of any
1 employee with the intention of replacing such employee or his or
2 her hours with a new employee receiving the training wage rate.

3 Sec. 3. Original sections 48-1203 and 48-1203.01, Reissue
4 Revised Statutes of Nebraska, are repealed.

5 Sec. 4. Since an emergency exists, this act takes effect
6 when passed and approved according to law.

7 2. Renumber the remaining sections and correct internal
8 references accordingly.

The Nantkes motion to return prevailed with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 265. The Nantkes specific amendment, AM1495, found in this day's Journal, was adopted with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

Advanced to E & R for reengrossment.

PRESENTED TO THE GOVERNOR

Presented to the Governor on May 29, 2007, at 11:15 a.m. was the following: LB 658e.

(Signed) Jamie Kruse
Clerk of the Legislature's Office

COMMITTEE REPORT Enrollment and Review

Correctly Engrossed

The following bill was correctly engrossed: LB 395A.

(Signed) Amanda McGill, Chairperson

COMMITTEE REPORT Health and Human Services

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Clifford Carlson - Commission for the Deaf and Hard of Hearing

VOTE: Aye: Senators Johnson, Erdman, Gay, Hansen, Howard, Pankonin, and Stuthman. Nay: None. Absent: None.

(Signed) Joel Johnson, Chairperson

ATTORNEY GENERAL'S OPINIONOpinion 07012

DATE: May 29, 2007

SUBJECT: Final Reading Version Of LB 395; Legal Issues
Involving A Statewide Smoking Ban.

REQUESTED BY: Senator Joel Johnson
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

Your opinion request pertains to the Final Reading version of LB 395 (hereinafter "LB 395") which we understand incorporates that bill as amended by AM 585 and AM 852. You state that LB 395 adopts a statewide smoking ban, including a local "opt-out" to the state ban, a "grandfather" of existing nonsmoking ordinances in cities of the metropolitan class, and a "preemption" of other local smoking-related ordinances or resolutions. The "opt-out" provisions of LB 395 would permit the adoption of local ordinances and resolutions that are either less stringent or more stringent than the state ban, and such "opt-outs" could be accomplished in one of three ways: 1. the governing body of the local governmental subdivision in question could put the smoking issue directly on the ballot for the voters, 2. the voters themselves could put the smoking issue on the ballot, or 3. the governing body of the local governmental subdivision could adopt a smoking ordinance or resolution which would be subject to repeal by the voters of that subdivision. After setting out a description of the basic provisions of the bill, you pose seven questions to us regarding LB 395, the Legislature's authority and various constitutional issues. We will discuss each of your questions in turn.

Question No. 1. Is the Legislature permitted to authorize a county board, or the voters of the unincorporated area of any county, to place a resolution on the ballot for the voters of the unincorporated area of such county?

In Nebraska, the Legislature has plenary legislative authority except as limited by the state and federal constitutions. *Pony Lake School District 30 v. State Committee for the Reorganization of School Districts*, 271 Neb. 173, 710 N.W.2d 609 (2006); *State ex rel. Stenberg v. Moore*, 249 Neb. 589, 544 N.W.2d 344 (1996). The Nebraska Constitution is not a grant of power like the federal constitution, but instead, a limitation of power. *State ex rel. Creighton University v. Smith*, 217 Neb. 682, 353 N.W.2d 267 (1984). As stated in *Consumers Coal Co. v. City of Lincoln*, 109 Neb. 51, 64, 65, 189 N.W. 643, 648 (1922):

We look . . . in the Constitution of the state to ascertain if any

limitations have been imposed upon the complete powers with which the legislative department of the state is vested in its creation. . . . The lawmaking power of the state recognizes no restraints, and is bound by none, except such as are imposed by the Constitution.

As a result, the Legislature may legislate upon any subject not inhibited by the constitution; and restrictions upon this power will not be inferred unless the restriction is clearly implied. *Pony Lake School District 30 v. State Committee for the Reorganization of School Districts*, 271 Neb. 173, 710 N.W.2d 609 (2006); *State ex rel. Creighton University v. Smith*, 217 Neb. 682, 353 N.W.2d 267 (1984).

With respect to your first very general question concerning LB 395, we are aware of no provisions of either the state or the federal constitution which prohibit, specifically or by clear implication, the Legislature from authorizing a county board to place a resolution before the voters of the unincorporated areas of a county. Absent any such clear restrictions, we believe the Legislature's broad, plenary authority controls, and our response to your first question is "yes."

Question No. 2. If the answer to question #1 is yes, are the county initiative provisions of LB 395, as amended by AM 852, sufficient to adequately prescribe the initiative process to be utilized in counties under the bill, or are such provisions impermissibly vague and violative of substantive due process requirements?

We assume that your reference to the "county initiative provisions of LB 395" is a reference to subsection (2) of Section 17 of the Final Reading version of the bill. That subsection provides:

(2) A proposed ordinance or resolution may be placed on the ballot for the voters of the city, village, or unincorporated area of the county (a) by a majority vote of the governing body of such city, village, or county, (b) by initiative under sections 18-2501 to 18-2538, or (c) by petition meeting the requirements of and subject to sections 32-628 to 32-630 and signed by at least five percent of the registered voters residing in the unincorporated area of such county on the day such petitions are filed for verification. The election shall be conducted as provided in sections 32-556 to 32-559.

The void for vagueness doctrine, which involves issues of substantive due process, is based on the due process requirements contained in the Fifth and Fourteenth Amendments to the United States Constitution. *U.S. v. Articles of Drug*, 825 F.2d 1238 (8th Cir. 1987). Similar requirements are contained in art I, § 3 of the Nebraska Constitution. In order to pass constitutional muster with respect to vagueness, a statute must be sufficiently specific so that persons of ordinary intelligence do not have to guess at its meaning, and the statute must contain ascertainable standards by which it may be applied. *Id.* The void for vagueness doctrine applies to both criminal and civil

statutes. *Id.* However, greater vagueness is tolerated in civil statutes than in criminal statutes. *Id.* In the context of civil statutes, the United States Supreme Court has indicated that a statute will not be deemed to be impermissibly vague unless it is so "vague and indefinite as to really be no rule or standard at all." *Boutilier v. Immigration Service*, 387 U.S. 118, 123 (1967). The Nebraska Supreme Court has also indicated that a civil statute which is otherwise valid will not be held void for vagueness unless it is so deficient in its terms as to render it impossible to enforce. *Neeman v. Nebraska Natural Resources Comm'n*, 191 Neb. 672, 217 N.W.2d 166 (1974). In *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980), the court said that the established test for vagueness in a statute is whether it either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

The county initiative provisions at issue in your second question provide that a proposed smoking resolution may be placed on the ballot by initiative under Neb. Rev. Stat. §§ 18-2501 to 18-2538 (1997, Cum. Supp. 2006). Those latter statutes apply generally to initiative and referendum efforts in municipal subdivisions in the state. The county initiative provisions also provide that a proposed smoking resolution may be placed on the ballot by a petition meeting the requirements of Neb. Rev. Stat. §§ 32-628 to 32-630 (2004). Those statutes deal with petitions under the Nebraska Election Act. Finally, the county initiative provisions at issue provide that elections dealing with smoking resolutions shall be conducted as provided in Neb. Rev. Stat. §§ 32-556 to 32-559 (2004, Cum. Supp. 2006), another portion of the Nebraska Election Act.

We have reviewed the various civil election statutes which create the standards at issue in subsection (2) of Section 17 of LB 395. Those statutes are detailed and specific, and are not, in our view, so vague that persons of common intelligence must necessarily guess at their meaning or differ as to their application. Consequently, we do not believe that the county initiative provisions in LB 395 are impermissibly vague so as to create substantive due process concerns.

Question No. 3. Is the Legislature permitted to authorize the voters of the unincorporated area of a county, by referendum, to repeal a resolution adopted by the governing board of such county?

Our answer to your Question No. 3 is guided by the legal principles discussed in our answer to your Question No. 1. That is, the Nebraska Legislature may legislate upon any subject not inhibited by the constitution; and restrictions upon this power will not be inferred unless the restriction is clearly implied. As was the case with your first question, we are not aware of any specific provisions of either the state or the federal constitution which prohibit the Legislature from authorizing the voters of the unincorporated area of a county to repeal a resolution adopted by the governing board of

such county by referendum. Therefore, our answer to your third question is "yes."

Question No. 4. If the answer to question #3 is yes, are the county referendum provisions of LB 395, as amended by AM 852, sufficient to adequately prescribe the referendum process to be utilized in counties under the bill, or are such provisions impermissibly vague and violative of substantive due process requirements?

With respect to your Question No. 4, we assume that the "county referendum provisions of LB 395" referenced in that question are the provisions contained in subsection (3) of Section 17 of the Final Reading version of LB 395 which state:

(3) Any ordinance or resolution adopted by the governing body of any city, village, or county under subsection (1) of this section without being submitted to the voters under subsection (2) of this section shall take effect ninety days after its adoption unless, within such ninety-day period, such governing body receives a petition signed by at least five percent of the registered voters residing in such city, village, or unincorporated area of such county on the date the ordinance or resolution was adopted requesting that such ordinance or resolution be repealed. Upon verification of the signatures on such petition, the ordinance or resolution shall be repealed.

We also understand from your opinion request letter that you wish us to consider a change in subsection (3) of Section 17 in responding to your third question. You state:

A key legislative proponent of this third option [involving the repeal of a smoking ordinance by a referendum of the voters] intends that the issue of repeal go directly to the voters of the city, village or unincorporated area of the county, upon the filing of a petition for such repeal signed by at least five percent of the registered voters of such city, village or unincorporated area of such county, instead of providing that the ordinance or resolution be automatically repealed upon the filing of such petition, as the bill now provides. For purposes of this request, please assume that this intended change has been made.

Again, the legal principles regarding the void for vagueness doctrine and substantive due process are set out previously in our discussion of your Question No. 2. However, the "referendum" process established by subsection (3) of Section 17 of LB 395 is somewhat different than the "initiative" process established by subsection (2) of Section 17, in that there is no reference in the "referendum" process to existing procedures under Nebraska election law. Instead, subsection (3) simply provides that a smoking ordinance or resolution adopted by the governing body of a political subdivision shall take effect within ninety days after its adoption unless the governing body "receives a petition signed by at least five percent

of the registered voters" residing in the subdivision "requesting that such ordinance or resolution be repealed." You apparently contemplate that such a petition will trigger a vote by the people of the governmental subdivision, but we do not have the particulars of that statutory language before us.

While the election language in subsection (3) of Section 17 of LB 395 is not as specific or as precise as the language in subsection (2) referencing particular election statutes, we do not believe that it is so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application. And, as was the case with subsection (2), this language involves a civil rather than a criminal statute. As a result, we do not believe that the county referendum provisions in LB 395 are impermissibly vague. Nor do they create substantive due process concerns. Nonetheless, to the extent that there are procedural questions with respect to implementation of the referendum process created by subsection (3), you may wish to consider incorporating some of the specific election statutes included in subsection (2) to clarify the mechanics of the referendum process.

Question No. 5. Will a resolution passed by the governing body of a county to regulate smoking in the unincorporated area of such county have the same force of law as an ordinance or regulation and be enforceable as such?

We assume that this inquiry is based, at least to some extent, on Nebraska case law which indicates that a municipal resolution is generally not the equivalent of a municipal ordinance. *Smith v. City of Papillion*, 270 Neb. 607, 705 N.W.2d 584 (2005); *Sommerfeld v. City of Seward*, 221 Neb. 76, 375 N.W.2d 129 (1985). However, that legal rule appears to apply when both the ordinance and resolution are passed by a municipality. In contrast, the present case involves a situation where LB 395 would specifically allow cities and counties to adopt nonsmoking bans by "ordinance or resolution." As a result, we assume that cities would adopt such bans by ordinance, and counties by resolution, since our general review of the Nebraska statutes pertaining to actions by county boards indicates that in most instances, such boards are authorized to act by resolution rather than by ordinance. Under those circumstances, the question presented is whether a resolution adopted by a county board under LB 395 has the same force of law as an ordinance adopted by a city under LB 395. We believe that it does.

We have found no Nebraska cases which speak directly to the question presented. However, the law from other jurisdictions appears to be that a resolution or ordinance passed by a county board pursuant to its authority has the same force as a statute. *Gale v. Board of Supervisors of Oakland County*, 260 Mich. 399, 245 N.W. 363 (1932); 20 C.J.S. Counties § 151 (2007). In addition, unless the legislative body of a state specifies that a certain act must be done by ordinance or in some other specified manner, that act is just as valid when accomplished by a resolution as by an ordinance. *Gale v. Board of Supervisors of Oakland County*, 260 Mich. 399, 245 N.W. 363 (1932); 20 C.J.S. Counties § 145 (2007). In the present case, the provisions of LB 395 repeatedly specify that actions by cities, villages or

counties under that bill may be accomplished by "ordinance or resolution." As a result, given the fact that LB 395 specifically authorizes county board action by resolution, we conclude that a resolution passed by the governing board of a county under that legislation would have the same force of law as an ordinance or a regulation, and be enforceable as such.

Question No. 6. Is it an unlawful delegation of legislative authority and a violation of the separation of powers provision of Article II, Section 1 of the Nebraska Constitution for the Legislature to permit the governing body of a city, village, or county, or the voters of a city, village, or the unincorporated area of a county to adopt an ordinance or resolution that is less stringent than state law?

Section 17 of LB 395 provides that:

On or after September 1, 2007, the governing body of any city, village, or county, or the voters of any city, village, or unincorporated area of any county as provided in subsection (2) of this section, may adopt a nonsmoking ordinance or resolution that is less stringent than or more stringent than the Nebraska Clean Indoor Air Act enacted by this legislative bill, except that such ordinance shall not be less stringent than sections 71-5707 to 71-5709 as such sections existed prior to September 1, 2007.

You are concerned that this provision constitutes an impermissible delegation of legislative authority in violation of art. II, § 1 of the Nebraska Constitution.

We are not entirely sure that the exercise of the police power contemplated by Section 17 of LB 395 even involves a delegation of legislative authority requiring an analysis under art. II, §1 of the Nebraska Constitution. Nevertheless, assuming for purposes of this opinion that it does, it is fundamental that the Legislature may not delegate legislative power to an administrative or executive authority. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988). That rule is based upon art. II, § 1 of the Nebraska Constitution dealing with separation of powers. *Kwik Shop, Inc. v. City of Lincoln*, 243 Neb. 178, 498 N.W.2d 102 (1993). That rule also applies to legislative delegations to local governing bodies such as city councils and county boards. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988). On the other hand, the Legislature does have the power to authorize an administrative or executive body to make rules and regulations to carry out an expressed legislative purpose or for the complete operation and enforcement of a law within designated limitations. *Kwik Shop, Inc. v. City of Lincoln*, 243 Neb. 178, 498 N.W.2d 102 (1993). The limitations of the power granted and the standards by which the granted powers are to be administered must be clearly and definitely stated in the authorizing act. *Id.* Such standards may not rest on indefinite, obscure or vague generalities, or upon extrinsic evidence not readily available. *Id.* The modern tendency is to be more liberal in permitting grants of discretion to

an administrative agency so as to facilitate the administration of laws as the complexity of economic and governmental conditions increases. *Id.*

Section 17 of LB 395 authorizes local governmental bodies in Nebraska to adopt a nonsmoking ordinance or resolution that is less stringent than the Nebraska Clean Indoor Air Act enacted by LB 395. If that were the end of the statutory authorization, we might have some concerns regarding improper delegation of legislative authority. However, the bill also establishes limits as to how less stringent a particular ordinance or resolution may be, i.e., it provides that the ordinance or resolution cannot be less stringent than the Sections 71-5707 to 71-5709 as they existed prior to September 1, 2007. Those sections, in turn, contain detailed provisions regarding where individuals may smoke, how smoking areas may be designated and how persons in charge of public places should make efforts to prevent smoking and minimize the presence of environmental tobacco smoke. We believe that those sections provide clear standards which establish the limits for nonsmoking bans by local government, and by which the powers granted to local government under LB 395 can be administered. On that basis, we do not believe that the fact that LB 395 allows local governmental subdivisions to adopt nonsmoking bans less stringent than that set out in LB 395 constitutes an improper delegation of legislative authority.

Question No. 7. Do the "opt-out" provisions of LB 395, as amended by AM 852, preempt or infringe upon the ability of home rule charter cities to adopt smoking-related ordinances?

As noted at the beginning of this opinion, the provisions of LB 395 which you consider to be the "opt-out" provisions of that bill are those portions of the bill which allow local governmental subdivisions to adopt local ordinances or resolutions which are either less stringent than or more stringent than the statewide smoking ban created under LB 395. You ask if those "opt-out" provisions "preempt or infringe" upon the ability of home rule charter cities to adopt smoking-related ordinances.

It is well established in Nebraska that, under a home rule charter, exercise of a city's power must be consistent with and subject to the constitution and laws of this state, except as to local matters of strictly municipal concern. *Home Builders Association of Lincoln v. City of Lincoln*, 271 Neb. 353, 711 N.W.2d 871 (2006). The limitation that a home rule charter must be consistent with and subject to the laws of the state means that on matters of general concern to the people of the state, the charter must yield to state legislation. *Id.* Consequently,

. . . a provision of a home rule charter takes precedence over a conflicting state statute in instances of local municipal concern, but when the Legislature enacts a law effecting municipal affairs which is of state-wide concern, the state law takes precedence over any municipal action taken under the home rule charter.

Omaha Parking Authority v. City of Omaha, 163 Neb. 97, 104, 77 N.W.2d 862, 868 (1956). Based upon such cases from our supreme court, we have indicated previously that a determination as to whether a local or a state law takes precedence in any given situation requires a two-step process. Op. Att'y Gen. No. 97018 (March 10, 1997). First, it is necessary to determine if there is a conflict between the local law and the state statute at issue. *Id.* If there is, then it is necessary to determine if the subject matter of the two laws involves a matter of statewide or local concern. *Id.* That process is helpful in the present instance.

Section 17 of LB 395 specifically allows a city in Nebraska to adopt an ordinance which is "less stringent than or more stringent than" the statewide smoking ban otherwise established by LB 395, except that, as noted previously, that section also provides that any local ordinance or resolution regulating smoking may not be less stringent than Sections 71-5705 to 71-5709 as they existed prior to September 1, 2007 (the current Nebraska Clean Indoor Air Act). As a result, it does not appear that a city ordinance pertaining to smoking adopted by a home rule charter city would conflict with LB 395 in any way unless it established standards below those created by the current Sections 71-5707 to 71-5709. We believe that outcome is improbable. However, in the event that a proposed local smoking ordinance or resolution fell below the current Indoor Air Act standards, then we believe that LB 395 involves matters of statewide concern. As a result, the state statute would control over the local ordinance or resolution. In light of all those factors, we find it highly unlikely that the opt-out provisions of LB 395 would preempt or infringe upon the ability of home rule charter cities to adopt smoking related ordinances, given the considerable flexibility created by Section 17 of that bill.

SUMMARY

Based upon the lengthy discussion above, we believe that the Legislature may permit a resolution on smoking to be placed on the ballot by the county board or by the voters through initiative or referendum procedures. Moreover, the provisions of LB 395 pertaining to initiative and referendum procedures are not unconstitutionally vague in violation of substantive due process. It also appears to us that resolutions passed by a county board which regulate smoking under LB 395 have the same force and effect as ordinances or regulations. Finally, we conclude that LB 395 does not involve an unconstitutional delegation of legislative authority, and will likely not impinge upon or preempt any smoking regulations adopted by home rule charter cities.

Sincerely,
JON BRUNNG
Attorney General

(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell
Clerk of the Legislature

05-512-21

VISITORS

Visitors to the Chamber were Mason Holmes from Imperial and Charles Linkugel from Lincoln.

RECESS

At 11:50 a.m., on a motion by Senator White, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., President Sheehy presiding.

ROLL CALL

The roll was called and all members were present except Senators Dierks and Synowiecki who were excused until they arrive.

COMMITTEE REPORTS Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: LBs 530 and 646.

(Signed) Amanda McGill, Chairperson

SELECT FILE

LEGISLATIVE BILL 570. ER8123, found on page 1821, was adopted.

Senator Chambers offered the following amendment:
FA139

P. 3, line 10, put a period after "truck" and strike remaining language through the period in line 11. In lines 13 and 14 strike "or for a commercial truck or truck-tractor registered for a gross weight of five tons or over".

The Chambers amendment was adopted with 32 ayes, 1 nay, 14 present and not voting, and 2 excused and not voting.

Senator Louden renewed his amendment, FA140, found on page 1819.

Senator Chambers offered the following amendment to the Louden amendment:

FA141

Amend FA140 Strike "2010" and insert "2025"

Senator Chambers moved for a call of the house. The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

The Chambers amendment lost with 1 aye, 35 nays, and 13 present and not voting.

The Chair declared the call raised.

The Louden amendment was adopted with 31 ayes, 0 nays, 14 present and not voting, and 4 excused and not voting.

Senator Carlson renewed his amendment, AM1470, found on page 1819.

The Carlson amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following motion:

Bracket LB 570 until May 31, 2007.

SENATOR AGUILAR PRESIDING

PRESIDENT SHEEHY PRESIDING

The Chambers motion to bracket failed with 0 ayes, 17 nays, 28 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following motion:

Reconsider the vote to bracket LB 570.

Senator Chambers asked unanimous consent to withdraw his motion to reconsider. No objections. So ordered.

Senator Louden offered the following amendment:

FA142

P. 3, line 20, strike the second "a" and insert "an ancestor, including a step-parent, a descendant, including a step-child, a foster parent or a person in loco parentis, or a sibling" and strike "parent, grandparent, sibling, or child" in line 21.

The Louden amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Chambers offered the following amendment:

AM1501

- 1 1. Insert the following new section:
 2 Sec. 2. (1) The department shall design license plates to
 3 be known as KKK Flaming Cross plates. The department shall create a
 4 design reflecting recognition of the Ku Klux Klan, an inspirational
 5 social association of patriotic Americans dedicated to freedom and
 6 Americanism. The design shall be created in consultation with a
 7 certified Grand Dragon of the Ku Klux Klan, a certified Imperial
 8 Wizard of the Ku Klux Klan, the head of a local Klavern in good
 9 standing with the Ku Klux Klan or any branch thereof, or former
 10 Nebraska State Patrol Trooper Robert Henderson.
 11 (2) The design shall be selected on the basis of:
 12 (a) Featuring a flaming cross and the letters K K K;
 13 (b) Enhancing the marketability of the plates to members
 14 and supporters of the Ku Klux Klan; and
 15 (c) Limiting the manufacturing cost of each plate to an
 16 amount less than or equal to the amount of license plates pursuant
 17 to section 60-3,102.
 18 (3) The department shall make applications available for
 19 this type of plate when it is designed.
 20 (4) The department may adopt and promulgate rules and
 21 regulations to carry out this section.
 22 2. Renumber the remaining sections and correct internal
 23 references accordingly.

Senator Chambers moved for a call of the house. The motion prevailed with 29 ayes, 0 nays, and 20 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 43:

Adams	Erdman	Howard	McGill	Rogert
Aguilar	Fischer	Hudkins	Mines	Schimek
Ashford	Flood	Johnson	Nantkes	Stuthman
Avery	Friend	Karpisek	Nelson	Synowiecki
Carlson	Fulton	Kopplin	Pankonin	Wallman
Christensen	Gay	Langemeier	Pedersen	White
Dierks	Hansen	Lathrop	Pirsch	Wightman
Dubas	Harms	Louden	Preister	
Engel	Heidemann	McDonald	Raikes	

Present and not voting, 1:

Burling

Excused and not voting, 4:

Cornett Janssen Kruse Pahls

The Chambers amendment lost with 1 aye, 43 nays, 1 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Senator Flood moved for a call of the house. The motion prevailed with 40 ayes, 0 nays, and 9 not voting.

Senator Chambers requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 45:

Adams	Engel	Heidemann	Louden	Preister
Aguilar	Erdman	Howard	McDonald	Raikes
Ashford	Fischer	Hudkins	McGill	Rogert
Avery	Flood	Johnson	Mines	Schimek
Burling	Friend	Karpisek	Nantkes	Stuthman
Carlson	Fulton	Kopplin	Nelson	Synowiecki
Christensen	Gay	Kruse	Pahls	Wallman
Dierks	Hansen	Langemeier	Pankonin	White
Dubas	Harms	Lathrop	Pirsch	Wightman

Voting in the negative, 1:

Chambers

Excused and not voting, 3:

Cornett Janssen Pedersen

Advanced to E & R for engrossment with 45 ayes, 1 nay, and 3 excused and not voting.

The Chair declared the call raised.

GENERAL FILE

LEGISLATIVE BILL 570A. Title read. Considered.

Senator Loudon offered the following motion:
Indefinitely postpone LB 570A.

Pending.

RESOLUTIONS**LEGISLATIVE RESOLUTION 217.** Introduced by Pahls, 31.

WHEREAS, Lindsey Fridrich, a first-grader at Grace Abbott Elementary School in Millard, won a national essay contest sponsored by the Olive Garden; and

WHEREAS, the essay contest asked students from kindergarten through twelfth grade to create a new holiday and explain how to celebrate it; and

WHEREAS, Lindsey's essay, chosen from 10,600 entries, advocated the holiday of Teaching Day, to be celebrated on August 27, Mother Teresa's birthday; and

WHEREAS, Lindsey explained the holiday in her essay, writing, "I think this day is important because it will make you feel good when you help other people."

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Lindsey Fridrich for her winning essay and declares August 27, 2007, as Teaching Day.

2. That a copy of this resolution be sent to Lindsey Fridrich.

Laid over.

LEGISLATIVE RESOLUTION 218. Introduced by Pahls, 31.

WHEREAS, the Millard West Wildcats defeated Omaha Westside to win the 2007 Class A State Girls' Soccer Tournament; and

WHEREAS, Millard West defeated Omaha Westside in a 4-3 shootout, producing a 2-1 victory; and

WHEREAS, the championship win is the first state title for any girls sport at Millard West; and

WHEREAS, the Legislature should recognize the academic, athletic, and artistic achievements of the youth of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the Millard West Wildcats on winning the 2007 Class A State Girls' Soccer Tournament.

2. That a copy of this resolution be sent to the team and Coach Jacque Tevis-Butler.

Laid over.

LEGISLATIVE RESOLUTION 219. Introduced by Judiciary Committee; Ashford, 20, Chairperson; Lathrop, 12; McDonald, 41; Pedersen, 39; Pirsch, 4; and Christensen, 44; Engel, 17.

PURPOSE: The purpose of this study is to:

(1) Study the history of stem cell research, human reproductive cloning, and human therapeutic cloning, including the available sources of human

stem cells, research involving embryonic and nonembryonic human stem cells, and the methods and techniques used to obtain both embryonic and nonembryonic stem cells;

(2) Research the terminology utilized to describe the various techniques and technologies involved in stem cell research, human reproductive cloning, and human therapeutic cloning so that a common understanding can be established;

(3) Identify and analyze the arguments for and against stem cell research, human reproductive cloning, and human therapeutic cloning, including the techniques utilized to obtain stem cells for research and the use of tax dollars to fund such research; and

(4) To review past and present legislation involving stem cell research, human reproductive cloning, and human therapeutic cloning and efforts to study the ethical issues involved in stem cell research, human reproductive cloning, and human therapeutic cloning at both the state and national levels.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

COMMITTEE REPORT **Judiciary**

LEGISLATIVE RESOLUTION 214. Reported to the Legislature for further consideration.

(Signed) Brad Ashford, Chairperson

MESSAGE FROM THE GOVERNOR

May 29, 2007

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 338, 343, and 343A were received in my office on May 24, 2007.

I signed and delivered these bills to the Secretary of State on May 29, 2007.

Sincerely,
 (Signed) Dave Heineman
 Governor

COMMITTEE REPORTS
Enrollment and Review

Correctly Reengrossed

The following bill was correctly reengrossed: LB 265.

Correctly Engrossed

The following bills were correctly engrossed: LBs 351 and 351A.

ST9056

Enrollment and Review Change to LB 265

(Final Reading copy)

The following changes, required to be reported for publication in the Journal, have been made:

1. In the Nantkes amendment, AM1495:
 - a. Sections 1, 2, and 3 have been incorporated into the Final Reading copy as sections 22, 23, and 37, respectively; and
 - b. Section 4 has been struck.
2. In the Final Reading copy:
 - a. On page 1, line 3, "48-1203, 48-1203.01," has been inserted after the last comma; and in line 11 "to change provisions relating to minimum wage rates;" has been inserted after the semicolon.
 - b. On page 55, line 8; and page 56, line 17, "25" has been struck and "27" inserted; and
 - c. Section 31 has been struck and the following new section inserted:
 Sec. 33. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 35, and 39 of this act become operative on July 1, 2007. Sections 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, and 38 of this act become operative on January 1, 2008. Sections 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 36, and 40 of this act become operative three calendar months after the adjournment of this legislative session. Sections 22, 23, 33, 37, and 41 of this act become operative on their effective date.

ST9055

Enrollment and Review Change to LB 351

The following changes, required to be reported for publication in the Journal, have been made:

1. In the E & R amendments, ER8122, on page 10, line 1, "an" has been struck and shown as stricken and "a" has been inserted after "expeditious".

(Signed) Amanda McGill, Chairperson

COMMITTEE REPORT
General Affairs

The General Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Dennis P. Lee - Nebraska Racing Commission

VOTE: Aye: Senators McDonald, Karpisek, Dierks, Dubas, Erdman, Friend, and Janssen. Nay: None. Absent: Senator Preister.

(Signed) Vickie McDonald, Chairperson

GENERAL FILE

LEGISLATIVE BILL 570A. Senator Chambers offered the following motion:

Bracket LB 570A until May 31, 2007.

Senator Chambers withdrew his motion to bracket.

Senator Louden renewed his motion, found in this day's Journal, to indefinitely postpone LB 570A.

The Louden motion to indefinitely postpone prevailed with 29 ayes, 0 nays, 16 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 171. Title read. Considered.

Committee AM522, found on page 701, was considered.

Senator Kopplin renewed his amendment, AM1133, found on page 1694, to the committee amendment.

The Kopplin amendment was adopted with 26 ayes, 0 nays, 18 present and not voting, and 5 excused and not voting.

The committee amendment, as amended, was adopted with 34 ayes, 0 nays, 10 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 33 ayes, 0 nays, 11 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 171A. Title read. Considered.

Advanced to E & R for review with 32 ayes, 0 nays, 9 present and not voting, and 8 excused and not voting.

COMMITTEE REPORT
Enrollment and Review

Correctly Engrossed

The following bill was correctly engrossed: LB 570.

(Signed) Amanda McGill, Chairperson

COMMITTEE REPORTS
Education

LEGISLATIVE BILL 66. Indefinitely postponed.
LEGISLATIVE BILL 72. Indefinitely postponed.
LEGISLATIVE BILL 139. Indefinitely postponed.
LEGISLATIVE BILL 153. Indefinitely postponed.
LEGISLATIVE BILL 353. Indefinitely postponed.
LEGISLATIVE BILL 375. Indefinitely postponed.
LEGISLATIVE BILL 393. Indefinitely postponed.
LEGISLATIVE BILL 455. Indefinitely postponed.
LEGISLATIVE BILL 506. Indefinitely postponed.
LEGISLATIVE BILL 509. Indefinitely postponed.
LEGISLATIVE BILL 520. Indefinitely postponed.
LEGISLATIVE BILL 524. Indefinitely postponed.
LEGISLATIVE BILL 529. Indefinitely postponed.
LEGISLATIVE BILL 563. Indefinitely postponed.
LEGISLATIVE BILL 590. Indefinitely postponed.
LEGISLATIVE BILL 600. Indefinitely postponed.
LEGISLATIVE BILL 601. Indefinitely postponed.
LEGISLATIVE BILL 602. Indefinitely postponed.
LEGISLATIVE BILL 615. Indefinitely postponed.
LEGISLATIVE BILL 643. Indefinitely postponed.
LEGISLATIVE BILL 644. Indefinitely postponed.
LEGISLATIVE BILL 656. Indefinitely postponed.
LEGISLATIVE BILL 657. Indefinitely postponed.
LEGISLATIVE BILL 678. Indefinitely postponed.
LEGISLATIVE BILL 702. Indefinitely postponed.

LEGISLATIVE RESOLUTION 12CA. Indefinitely postponed.

(Signed) Ron Raikes, Chairperson

VISITOR

The Doctor of the Day was Dr. Kathy Amyot from Hastings.

ADJOURNMENT

At 5:53 p.m., on a motion by Speaker Flood, the Legislature adjourned until 10:00 a.m., Wednesday, May 30, 2007.

Patrick J. O'Donnell
Clerk of the Legislature

