

**FIFTH DAY - NOVEMBER 2, 2001**  
**LEGISLATIVE JOURNAL**  
**NINETY-SEVENTH LEGISLATURE**  
**FIRST SPECIAL SESSION**

**FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Friday, November 2, 2001

**PRAYER**

The prayer was offered by Senator Vrtiska.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senator D. Pederson who was excused; and Senators Kruse, Landis, Raikes, and Wickersham who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

Page 52, strike lines 13 and 14.

The Journal for the fourth day was approved as corrected.

**STANDING COMMITTEE REPORTS**  
**Health and Human Services**

**LEGISLATIVE BILL 10.** Placed on General File.

**LEGISLATIVE BILL 11.** Placed on General File.

(Signed) Jim Jensen, Chairperson

**ATTORNEY GENERAL'S OPINION**

Opinion #01034

DATE: October 31, 2001

SUBJECT: Scope of Governor's Special Session Call; LB 6, LB 7  
and LB 19

REQUESTED BY: Senator Mark Quandahl  
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion as to whether LB 6, LB 7 and LB 19, 97<sup>th</sup> Legislature, First Special Session, are within the scope of the Governor's call dated October 23, 2001. You also ask "what would be the likely outcome or effect if the Legislature attempted to consider or enact" the bills if they are found by a court to be outside the scope of the call.

Our analysis must begin with the Nebraska Constitution. Article IV, Section 8 of the Nebraska Constitution provides: "The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together." (emphasis added).

In construing this provision, the Nebraska Supreme Court described its terms as follows:

Neb. Const. art. IV, § 8, as part of the power of the executive branch of government, permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature. The subject matter restriction envisioned in Neb. Const. art. IV, § 8, empowers the Governor to set the boundaries of legislative action permissible at a special session of the Nebraska Legislature.

*Jaksha v. State*, 222 Neb. 690, 698, 385 N.W. 2d 922 (1986). Therefore, as was discussed in Op. Att'y Gen. No. 89069 (Nov. 9, 1989), the last portion of Article IV, Section 8 places an express limitation on the power of the Legislature to act during a special session. In *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court discussed the nature of this limitation:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. *Chicago, B. & Q. R.R. Co. v. Wolfe*, 61 Neb. 502, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

(emphasis added).

The court in *Arrow Club*, quoting at length from the Pennsylvania Supreme Court's decision in *Commonwealth ex rel. Schnader v. Liveright*, 306 Pa. 35, 161 A. 697 (1932), continued as follows:

This constitutional provision contemplates that there shall first exist in the executive mind a definite conception of the public emergency which demands an extraordinary session. His mental attitude or intention is expressed in his proclamation, the purpose of which is to inform the members of the legislature of subjects for legislation, and to advise the public generally that objections may be presented if desired. It is not only a guide or chart with respect to which the legislature may act, but also a check restricting its actions so that rights may not be affected without notice. The proclamation may contain many or few subjects according to the governor's conception of the public need. While the subjects may be stated broadly or in general terms, the special business, as related to the general subject on which legislation is desired, should be designated by imposing qualifying matter to reduce or restrict. Although the subjects should be sufficient to evoke intelligent and responsive action from the legislature, it is not necessary that they include all the methods of accomplishment. The guiding principle in sustaining legislation of a special session is that it be germane to, or within, the apparent scope of the subjects which have been designated as proper fields for legislation. In construing a call the words of any portion thereof must be interpreted not only as commonly and universally understood, but also as applicable to the subject intended to be affected by legislation.

While the legislature must confine itself to the matters submitted, it need not follow the views of the governor or legislate in any particular way. Within the special business or designated subjects submitted, the legislature cannot be restricted or dictated to by the governor. It is a free agent, and the governor, under the guise of definition, cannot direct or control its action. The Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened. . . . The presumption is always in favor of the constitutionality of legislation, and an act should be held to be within the call if it can be done by any reasonable construction.

*Arrow Club*, 177 Neb. at 689-90, 131 N.W.2d at 137.

As was stated in Op. Att'y Gen. No. 86028 (Nov. 14, 1986), "the decision in *Arrow Club*, reflects certain general principles regarding the limitations imposed on legislative action by virtue of the scope of the executive's call for a special legislative session. First, courts uniformly agree that, for a legislative enactment to be valid under the call, the legislation must be 'germane' or 'related to' the subjects stated in the call. Second, it is universally held that the Governor's call cannot be used to inhibit legislative discretion, and that . . . 'the Governor may not, under the guise of naming a subject, limit its scope so drastically that he in effect imposes upon the

Legislature his own view of what policy should be adopted.' Comment, Scope of Governor's Call as Constitutional Limitation on Business of Special Session of the Legislature, 43 Neb. L. Rev. 605, 608-09 (1964)."

Thus, the primary case which guides our analysis contains language narrowly construing the constitutional provision, *Arrow Club*, 177 Neb. at 689 ("The proclamation . . . may limit the consideration to a specified phase of a general subject."), but also contains language indicating the provision is to be liberally construed to uphold legislative acts. *Id.* at 690 ("an act should be held to be within the call if it can be done by any reasonable construction."). In light of this somewhat confusing language, it is useful in understanding the case to examine what the court in *Arrow Club* actually did, as well as what it said.

In *Arrow Club* the court considered the validity of a bill enacted during a special session that related to "the regulation and operation of bottle clubs." *Arrow Club*, 177 Neb. at 690. The special session had been convened "to consider amendments to the Liquor Control Act relating to the licensing of nonprofit corporations." *Id.* Thus, the question before the court was "whether the regulation and operation of bottle clubs relates to, is germane to, or has a natural connection with the definition of nonprofit corporations." *Id.* The court concluded,

There is a fundamental difference between a nonprofit corporation license and a bottle club license under the Liquor Control Act. A bottle club license authorizes the storage and consumption of liquor upon the premises of the licensee by persons who have made their own purchase of liquor. . . . A nonprofit corporation license is a retail license for the sale of alcoholic liquors, including beer. \* \* \* In view of this difference, we think the regulation and operation of bottle clubs does not relate to, is not germane to, and has no natural connection with the definition of nonprofit corporations.

*Id.* at 691.

The court, therefore, struck down the provisions as violating Neb. Const. art. IV, § 8. *Id.* at 692. Thus, despite the fact the bill and the Governor's call both pertained to issuance of licenses under the Liquor Control Act, the court adopted a narrow view of germaneness, limiting it to "a specified phase of a general subject." *Id.* at 689. Since bottle club licenses did not cover retail sales of alcoholic beverages, the two were not considered to have a "natural connection" with each other.

In light of the *Arrow Club* decision, it appears the Nebraska Supreme Court would take a restrictive view of what legislation is considered germane to a Governor's special session call. As one Supreme Court judge stated some fifteen years after *Arrow Club*,

It is clear that the drafters of our Constitution only meant to allow the

Legislature to transact that business for which it was called into special session and no other. This is made obvious by the remarks of Delegate Robinson during the debate on this particular provision of the Constitution at the 1871 Constitutional Convention. He stated: "It is well known that a Constitutional provision of this kind acts as an indication of the powers of the Legislature; and if the Constitution provides that no business of a certain character shall be transacted, it means what it says; and if business is transacted, it is treated as no business, whatever."

*State ex rel. Douglas v. State Board of Equalization and Assm't*, 205 Neb. 130, 144, 286 N.W.2d 729 (1979) (Brodkey, J., concurring) (quoting 1 Nebraska Constitutional Conventions 190 (1906)). *See also* Op. Att'y Gen. No. 89072 (Nov. 14, 1989) ("It should be noted that our Supreme Court, as evidenced by the decision in *Arrow Club* . . . has adopted a rather restrictive view in assessing whether legislation enacted in a special session falls within the scope of the Governor's call."); Op. Att'y Gen. No. 86080 (Dec. 8, 1986) ("given the restrictive view which our Supreme Court has taken in interpreting the scope of the Governor's call during special sessions. . .").

### The Call

With this background, we must next examine the actual language of the Governor's call. The call issued by the Governor on October 23, 2001, states as follows:

#### PROCLAMATION

BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, Mike Johanns, as Governor of the State of Nebraska, believing that an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene in extraordinary session at the State Capitol on October 25, 2001, at 3 p.m. for the purpose of considering and enacting legislation on only the following subjects:

1. To reduce or eliminate appropriations and reappropriations approved by the 97th Legislature;
2. To lapse cash funds to the State General Fund;
3. To eliminate or reduce certain transfers from the State General Fund;
4. To increase or make certain transfers to the State General Fund;
5. To appropriate funds for the necessary expenses of the extraordinary session herein called;
6. To adopt statutory modifications to change the designation of certain portions of the Documentary Stamp Tax from the Affordable Housing Trust Fund to the State General Fund;
7. To adopt statutory modifications to expand the use of the Probation Cash Fund;

8. To adopt statutory modifications to eliminate a transfer from Fund 2262 - Nebraska Nursing Facility Conversion Cash Fund, and to authorize the State Treasurer to transfer the unobligated balance in Fund 2262 - Nebraska Nursing Facility Conversion Cash Fund to Fund 2260 - Department of Health and Human Services - Finance & Support Cash Fund;
9. To increase certain cash fund, revolving fund, and federal fund appropriations;
10. To modify intent language and earmarks accompanying appropriations approved by the 97th Legislature;
11. To adopt statutory modifications to eliminate a requirement that reorganization incentive payments be paid to school districts or systems that are the result of a consolidation or unification with an effective date after August 1, 2001;
12. To adopt statutory modifications to authorize the State Treasurer to transfer the balance of Fund 2133 - Attracting Excellence to Teaching Program Cash Fund to Fund 1000 - General Fund and to adopt statutory modifications to annually transfer \$2,700,000 from Fund 2149 - Education Innovation Fund to Fund 2133 - Attracting Excellence to Teaching Program Cash Fund;
13. To postpone the operative date for LB 433 of the 2001 Legislative Session from the tax year beginning January 1, 2001, to the tax year beginning January 1, 2003; and,
14. To adopt statutory modifications to authorize the State Treasurer to transfer \$5,846,593 from Fund 6264 - Nebraska Medicaid Intergovernmental Trust Fund to Fund 2130 - State Department of Education Cash Fund.

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by presenting to each of them a copy of this Proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the Great Seal of the State of Nebraska to be affixed this 23rd day of October in the year of the Lord Two Thousand One.

(Signed) Mike Johanns  
Governor

Analysis of LB 6, LB 7 and LB 19

We now turn to the analysis of LB 6, LB 7 and LB 19 in light of the Governor's call and the legal principles discussed above. The Attorney General's Office has been called upon to issue opinions concerning the scope of the call for special legislative sessions on twenty-one previous occasions. Consequently, we are able to draw upon a considerable body of existing analysis. As was stated in Op. Att'y Gen. No. 136 (Oct. 23, 1985),

Initially, we believe it is appropriate to make some general

observations regarding the scope of the Governor's call. The proclamation calling the Legislature into Special Session does not deal with the state budget in general terms, but, rather, only with specific aspects of the budget, such as reductions in appropriations, a fund transfer, and certain specified means of revenue enhancement. In general, the scope of the call precludes the Legislature from expanding the session to consider and enact legislation concerning budgetary or taxing measures other than those specifically addressed in the call.

With these basic parameters in mind we must next examine the three legislative bills in question.

### LB 6

LB 6 was introduced on October 25, 2001. It is "An Act relating to revenue and taxation; to amend section 77-27,188.01 . . . § 77-5408 . . . and sections 77-4106, 77-5531, and 77-5533. . . ; to change provisions dealing with funding for credits and refunds under certain incentive provisions. . ." (emphasis added). The bill changes provisions dealing with funding for credits for sales and use taxes paid under section 77-27,188.01 by providing that, "Credits used under this section shall be reimbursed to the General Fund from the Employment Expansion and Investment Incentive Fund." A similar amendment is made regarding the credits under section 77-4106.

The bill amends section 77-5408 by providing that the "Credits used under this section shall be reimbursed to the General Fund from the Rural Economic Opportunities Fund." It amends section 77-5531 by providing that "Wage benefit credits used under this section shall be reimbursed to the General Fund from the Invest Nebraska Fund." Likewise, it amends section 77-5533 to provide, "Investment tax credits used under this section shall be reimbursed to the General Fund from the Invest Nebraska Fund."

The bill requires the Legislative Fiscal Analyst, together with the Department of Revenue, to develop an estimate of the amount of credits and refunds expected to be claimed under the Employment and Investment Incentive Act, the Invest Nebraska Act, and the Rural Economic Opportunities Act during each biennium. It then provides for an appropriation to the Funds related to such acts, and calls for a deficit appropriation to be made based on actual credits and refunds made for each program during the biennium, if sufficient funds were not appropriated. Thus, the bill appears to be designed to quantify the amount of credits and refunds generated under the various business incentive laws.

None of the 14 items in the Governor's call pertain to the funding of credits and refunds under existing incentive provisions or to the quantification of the cost of credits and refunds under the various business incentive laws. It is true that item number four in the call is written in very broad terms ("To increase or make certain transfers to the State General Fund."), and that LB 6 does involve reimbursement to the General Fund

from various incentive funds. However, the bill goes well beyond transfers to the General Fund. Given the restrictive view expressed by the court in *Arrow Club*, we conclude LB 6 is not within the scope of the call. As was stated in Op. Att'y Gen. No. 135 (Oct. 24, 1985), "The Governor's call for the current special session does not deal with the budget in general, but only with specific facets of that budget. . . ."

### LB 7

LB 7 was also introduced on October 25, 2001. It is an "Act relating to revenue and taxation; to amend sections 77-2101 to 77-2105, 772108, and 77-2113 . . . ; to change calculations relating to estate taxes and generation-skipping transfer taxes. . . ." (emphasis added). The bill partially decouples the Nebraska estate tax and generation-skipping transfer tax from the federal Internal Revenue Code.

None of the 14 items in the Governor's call pertain to estate taxes or generation-skipping transfer taxes. LB 7 is not germane to any item in the call under the *Arrow Club* standard, and the bill is, therefore, clearly outside the scope of the Governor's call.

### LB 19

LB 19 was introduced on October 26, 2001. It is an "Act relating to cigarette tax; to amend § 77-2602 . . . to change distribution of tax proceeds. . . ." (emphasis added). The bill increases the amount of cigarette tax going to the Building Renewal Allocation Fund, and it decreases the amounts going to the Primary Class Development Fund and the City of Metropolitan Class Development Fund.

LB 19 bears some similarity to legislation considered in the most recent prior Attorney General's Opinion concerning the scope of a special session call. In Op. Att'y Gen. No. 92114 (Sept. 14, 1992) this office concluded that a bill which reduced the amount of cigarette tax revenues placed in the Municipal Infrastructure Redevelopment Fund (and placed the funds in the State's General Fund) was within the scope of Governor Nelson's call, as it fell within the scope of item number one of the call: "to reduce appropriations approved by the 92<sup>nd</sup> Legislature. . . ."

LB 19 reduces appropriations to two funds and increases an appropriation to the Building Renewal Allocation Fund (which we understand is a cash fund). Item number one of Governor Johann's call is to "reduce . . . appropriations approved by the 97<sup>th</sup> Legislature." Item number nine is to "Increase certain cash fund, revolving fund, and federal fund appropriations." It is arguable legislation such as LB 19 was not contemplated by the Governor's call, as the intended purpose of the special session is apparently to reduce a budget shortfall, rather than to change the distribution of tax proceeds. *See Arrow Club*, 177 Neb. at 689 ("In construing a call the words of any portion thereof must be interpreted not only as commonly and universally understood, but also as applicable to the

subject intended to be affected by legislation."). Nonetheless, given the broad language of the call (specifically, item numbers one and nine), the lack of general intent language, as well as the analysis set forth in Op. Att'y Gen. No. 92114, we cannot say LB 19 is outside the scope of the call.

Effect of Consideration or Enactment of Legislation Outside the Call

Finally, you have asked "what would be the likely outcome or effect if the Legislature attempted to consider or enact" the bills if they are found by a court to be outside the scope of the call. Although the Constitution states that "the Legislature shall enter upon no business except that for which they were called together," Neb. Const. art. IV, § 8, we believe only the Legislature, through its internal rules or the rulings of its presiding officers, has the ability to enforce this provision in terms of regulating the Legislature's agenda. Once legislation has been adopted, the Governor may veto it or refuse to sign it. If enacted into law, the matter then becomes one for judicial determination. This aspect of your question was previously addressed in Op. Att'y Gen. No. 136 (Oct. 23, 1985) as follows:

In *Arrow Club* . . . certain portions of a bill enacted by the 1963 Special Session, which the court concluded did not relate to a subject included in the proclamation calling the Legislature into Special Session, were held void as being in violation of Article IV, Section 8. Thus, legislation would be declared void by the court as being in violation of the Nebraska Constitution.

*Id.* at 6 (emphasis added).

Sincerely,  
DON STENBERG  
Attorney General  
(Signed) Steve Gras  
Deputy Attorney General

cc: Clerk of the Legislature  
3-125-14

**REPORT OF REGISTERED LOBBYISTS**

Following is a list of all lobbyists who have registered as of November 2, 2001, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

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

American Communications Group, Inc.  
Teamsters Local Union 554

Intermill, Mark  
AARP

**STANDING COMMITTEE REPORT**  
**Health and Human Services/Appropriations**

**LEGISLATIVE BILL 8.** Indefinitely postponed.

(Signed) Jim Jensen, Chairperson

(Signed) Roger R. Wehrbein, Chairperson

**NOTICE OF COMMITTEE HEARING**  
**General Affairs**  
 Room 1510

Monday, November 5, 2001

1:00 PM

Kam-Ching Leung - Nebraska Arts Council

Sharon Marvin - Nebraska Arts Council

Sharee Newman - Nebraska Arts Council

Cinda Orr - Nebraska Arts Council

Donna Woods - Nebraska Arts Council

Richard Coyne - Nebraska Liquor Control Commission

(Signed) Ray Janssen, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 2.** Title read. Considered.

Advanced to E & R for review with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 4.** Title read. Considered.

Advanced to E & R for review with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

**EASE**

The Legislature was at ease from 9:26 a.m. until 9:38 a.m.

**STANDING COMMITTEE REPORTS**  
**Government, Military and Veterans Affairs**

The Government, Military and Veterans 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.

Accountability and Disclosure Commission  
 John Bergmeyer

State Emergency Response Commission  
Allen Grell  
Mark Reimers

VOTE: Aye: Senators Aguilar, Burling, McDonald, Schimek, and Smith.  
Nay: None. Absent: Senators Brown, Quandahl, and Vrtiska.

(Signed) DiAnna R. Schimek, Chairperson

### **Transportation and Telecommunications**

The Transportation and Telecommunications 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.

State Highway Commission  
Ronald W. Books  
Jerome A. Fagerland  
Richard S. Reiser

VOTE: Aye: Senators Baker, Dw. Pedersen, Byars, Brown, and Bromm.  
Nay: None. Absent: Senators Jones, Robak, and Hudkins.

(Signed) Curt Bromm, Chairperson

### **EASE**

The Legislature was at ease from 9:41 a.m. until 9:48 a.m.

## **STANDING COMMITTEE REPORTS**

### **Judiciary**

**LEGISLATIVE BILL 15.** Placed on General File.

(Signed) Kermit A. Brashear, Chairperson

### **Appropriations**

**LEGISLATIVE BILL 19.** Indefinitely postponed.  
**LEGISLATIVE BILL 20.** Indefinitely postponed.

(Signed) Roger R. Wehrbein, Chairperson

### **Education**

**LEGISLATIVE BILL 16.** Indefinitely postponed.  
**LEGISLATIVE BILL 18.** Indefinitely postponed.

(Signed) Ron Raikes, Chairperson

**EASE**

The Legislature was at ease from 9:54 a.m. until 11:19 a.m.

**SENATOR CUDABACK PRESIDING**

**STANDING COMMITTEE REPORTS**  
**Appropriations**

**LEGISLATIVE BILL 1.** Placed on General File as amended.  
(Standing Committee amendment, AM9018, may be found in the Bill Books. The amendment has been printed separately and is on file in the Bill Room - Room 1102.)

**LEGISLATIVE BILL 3.** Placed on General File as amended.  
(Standing Committee amendment, AM9019, may be found in the Bill Books. The amendment has been printed separately and is on file in the Bill Room - Room 1102.)

(Signed) Roger R. Wehrbein, Chairperson

**Education**

**LEGISLATIVE BILL 14.** Placed on General File as amended.  
Standing Committee amendment to LB 14:  
AM9011

- 1 1. Strike original section 3.
- 2 2. On page 7, line 7, after "base" insert "fiscal"; in
- 3 line 24 strike the new matter and reinstate the stricken "and" and
- 4 after the stricken "million" insert "one million six hundred
- 5 sixteen thousand three hundred fifty-four"; and reinstate the
- 6 stricken matter beginning with "dollars" in line 24 through "year"
- 7 in line 25.
- 8 3. On page 8, strike beginning with "payments" in line 6
- 9 through the comma in line 13 and show as stricken; in line 13
- 10 strike "for the base fiscal year" and show as stricken; in lines
- 11 22, 24, 25, and 27 before "incentive" insert "base fiscal year"; in
- 12 lines 22 and 25 and 26 strike "to school districts" and show as
- 13 stricken; in line 24 strike "under this subsection" and show as
- 14 stricken; in line 27 after "year" insert "pursuant to subsection
- 15 (5) of this section"; and in line 28 after "No" insert "base fiscal
- 16 year".
- 17 4. On page 9, line 27, after "If" insert "before August
- 18 2, 2001".
- 19 5. On page 10, line 3, after "base" insert "fiscal".

**LEGISLATIVE BILL 17.** Placed on General File as amended.  
Standing Committee amendment to LB 17:

AM9010

1 1. Strike original sections 1, 2, and 4 and insert the  
2 following new sections:  
3 "Section 1. Section 9-812, Revised Statutes Supplement,  
4 2001, is amended to read:  
5 9-812. (1) All money received from the operation of  
6 lottery games conducted pursuant to the State Lottery Act in  
7 Nebraska shall be credited to the State Lottery Operation Trust  
8 Fund, which fund is hereby created. All payments of expenses of  
9 the operation of the lottery games shall be made from the State  
10 Lottery Operation Cash Fund. In accordance with legislative  
11 appropriations, money for payments for expenses of the division  
12 shall be transferred from the State Lottery Operation Trust Fund to  
13 the State Lottery Operation Cash Fund, which fund is hereby  
14 created. All money necessary for the payment of lottery prizes  
15 shall be transferred from the State Lottery Operation Trust Fund to  
16 the State Lottery Prize Trust Fund, which fund is hereby created.  
17 The amount used for the payment of lottery prizes shall not be less  
18 than forty percent of the dollar amount of the lottery tickets  
19 which have been sold. At least twenty-five percent of the dollar  
20 amount of the lottery tickets which have been sold on an annualized  
21 basis shall be transferred from the State Lottery Operation Trust  
22 Fund to the Education Innovation Fund, the Nebraska Environmental  
23 Trust Fund, and the Compulsive Gamblers Assistance Fund. Of the  
24 money available to be transferred to the Education Innovation Fund,  
1 the Nebraska Environmental Trust Fund, and the Compulsive Gamblers  
2 Assistance Fund, the first five hundred thousand dollars shall be  
3 transferred to the Compulsive Gamblers Assistance Fund to be used  
4 as provided in sections 83-162.01 to 83-162.04. Thereafter,  
5 forty-nine and one-half percent of the money remaining after the  
6 payment of prizes and operating expenses and the initial transfer  
7 to the Compulsive Gamblers Assistance Fund shall be transferred to  
8 the Education Innovation Fund. Forty-nine and one-half percent of  
9 the money remaining after the payment of prizes and operating  
10 expenses and the initial transfer to the Compulsive Gamblers  
11 Assistance Fund shall be transferred to the Nebraska Environmental  
12 Trust Fund to be used as provided in the Nebraska Environmental  
13 Trust Act. One percent of the money remaining after the payment of  
14 prizes and operating expenses and the initial transfer to the  
15 Compulsive Gamblers Assistance Fund shall be transferred to the  
16 Compulsive Gamblers Assistance Fund to be used as provided in  
17 sections 83-162.01 to 83-162.04.  
18 (2) The Education Innovation Fund is hereby created. At  
19 least seventy-five percent of the lottery proceeds allocated to the  
20 Education Innovation Fund shall be available for disbursement. For  
21 each fiscal year except fiscal years 2001-02 and 2002-03, the  
22 Education Innovation Fund shall be allocated in the following  
23 manner: Up to ten percent to fund the mentor teacher program  
24 pursuant to the Quality Education Accountability Act; up to seventy

25 percent as quality education incentives pursuant to the act; and up  
26 to twenty percent of the fund shall be allocated by the Governor.  
27 For fiscal years 2001-02 and 2002-03, the Education Innovation Fund  
1 shall be allocated in the following manner by the Excellence in  
2 Education Council: Up to ~~ten percent to fund the mentor teacher~~  
3 ~~program pursuant to the Quality Education Accountability Act; up to~~  
4 ~~seventy percent as quality education incentives pursuant to the~~  
5 ~~act; up to twenty percent; but not to exceed one million five~~  
6 ~~hundred thousand dollars per fiscal year, as a distance education~~  
7 ~~network completion grant pursuant to section 79-1328; and any~~  
8 ~~amount of the twenty percent that would have been allocated to~~  
9 ~~distance education network completion grants that is in excess of~~  
10 ~~the one million five hundred thousand dollar maximum that is~~  
11 ~~authorized for distance education network completion grants shall~~  
12 ~~be allocated by the Governor~~ the remainder to the General Fund.  
13 Allocations by the Governor shall be through incentive grants to  
14 encourage the development of strategic school improvement plans by  
15 school districts for accomplishing high performance learning and to  
16 encourage schools to establish innovations in programs or practices  
17 that result in restructuring of school organization, school  
18 management, and instructional programs which bring about  
19 improvement in the quality of education. Such incentive grants  
20 allocated by the Governor are intended to provide selected school  
21 districts, teachers or groups of teachers, nonprofit educational  
22 organizations, educational service units, or cooperatives funding  
23 for the allowable costs of implementing pilot projects and model  
24 programs.  
25 From the funds allocated by the Governor, minigrants  
26 shall be available to school districts to support the development  
27 of strategic school improvement plans which shall include  
1 statements of purposes and goals for the districts. The plans  
2 shall also include the specific statements of improvement or  
3 strategic initiatives designed to improve quality learning for  
4 every student.  
5 In addition to the minigrants granted for the development  
6 of strategic school improvement plans, school districts with annual  
7 budget expenditures of three hundred fifty thousand dollars or less  
8 are eligible for minigrants from the funds allocated by the  
9 Governor for the purposes allowed in subdivisions (2)(a) through  
10 (q) of this section. The amount of this type of minigrant shall  
11 not exceed five thousand dollars. The school district shall  
12 present a curriculum support plan with its application for the  
13 grant. The curriculum support plan must show how the district is  
14 working to achieve one or more of the allowed purposes and how the  
15 grant will be used to directly advance the plan to achieve one or  
16 more of these purposes. The plan must be signed by the school  
17 administrator and a school board representative. The application  
18 for the grant shall be brief. The Excellence in Education Council  
19 shall select the recipients of this type of minigrant and shall

20 administer such minigrants.  
21 From the funds allocated by the Governor, major  
22 competitive grants shall be available to support innovative  
23 programs which are directly related to the strategic school  
24 improvement plans. The development of a strategic school  
25 improvement plan by a school district shall be required before a  
26 grant is awarded. Annual reports shall be made by program  
27 recipients documenting the effectiveness of the program in  
1 improving the quality of education as designed in the strategic  
2 school improvement plans. Special consideration shall be given to  
3 plans which contain public or private matching funds and  
4 cooperative agreements, including agreements for in-kind services.  
5 Purposes for which such major competitive grants would be offered  
6 shall include:  
7 (a) Professional staff development programs to provide  
8 funds for teacher and administrator training and continuing  
9 education to upgrade teaching and administrative skills;  
10 (b) The development of strategic school improvement plans  
11 by school districts;  
12 (c) Educational technology assistance to public schools  
13 for the purchase and operation of computers, telecommunications  
14 equipment and services, and other forms of technological innovation  
15 which may enhance classroom teaching, instructional management, and  
16 districtwide administration. Telecommunications equipment,  
17 services, and forms of technical innovation shall be approved only  
18 after review by the technical panel created in section 86-1511;  
19 (d) An educational accountability program to develop an  
20 educational indicators system to measure the performance and  
21 outcomes of public schools and to ensure efficiency in operations;  
22 (e) Alternative programs for students, including  
23 underrepresented groups, at-risk students, and dropouts;  
24 (f) Programs that demonstrate improvement of student  
25 performance against valid national and international achievement  
26 standards;  
27 (g) Early childhood and parent education which emphasizes  
1 child development;  
2 (h) Programs using decisionmaking models that increase  
3 involvement of parents, teachers, and students in school  
4 management;  
5 (i) Increased involvement of the community in order to  
6 achieve increased confidence in and satisfaction with its schools;  
7 (j) Development of magnet or model programs designed to  
8 facilitate desegregation;  
9 (k) Programs that address family and social issues  
10 impairing the learning productivity of students;  
11 (l) Programs enhancing critical and higher-order thinking  
12 capabilities;  
13 (m) Programs which produce the quality of education  
14 necessary to guarantee a competitive work force;

- 15 (n) Programs designed to increase productivity of staff  
16 and students through innovative use of time;
- 17 (o) Training programs designed to benefit teachers at all  
18 levels of education by increasing their ability to work with  
19 educational technology in the classroom;
- 20 (p) Approved accelerated or differentiated curriculum  
21 programs under sections 79-1106 to 79-1108.03; and
- 22 (q) Programs for children from birth to age twenty-one  
23 years with disabilities receiving special education under the  
24 Special Education Act and children from birth to age twenty-one  
25 years needing support services as defined in section 79-1125.01,  
26 which programs demonstrate improved outcomes for children from  
27 birth to age twenty-one years through emphasis on prevention and  
1 collaborative planning.
- 2 The Governor shall establish the Excellence in Education  
3 Council. The Governor shall appoint eleven members to the council  
4 including representatives of educational organizations,  
5 postsecondary educational institutions, the business community, and  
6 the general public, members of school boards and parent education  
7 associations, school administrators, and at least four teachers who  
8 are engaged in classroom teaching. The State Department of  
9 Education shall provide staff support for the council to administer  
10 the Education Innovation Fund, including the Quality Education  
11 Accountability Act. The council shall have the following powers  
12 and duties:
- 13 (i) In consultation with the department, develop and  
14 publish criteria for the awarding of incentive grants allocated by  
15 the Governor for programs pursuant to this subsection, including  
16 minigrants;
- 17 (ii) Provide recommendations to the Governor regarding  
18 the selection of projects to be funded and the distribution and  
19 duration of project funding;
- 20 (iii) Establish standards, formats, procedures, and  
21 timelines for the successful implementation of approved programs  
22 funded by incentive grants allocated by the Governor from the  
23 Education Innovation Fund;
- 24 (iv) Assist school districts in determining the  
25 effectiveness of the innovations in programs and practices and  
26 measure the subsequent degree of improvement in the quality of  
27 education;
- 1 (v) Consider the reasonable distribution of funds across  
2 the state and all classes of school districts;
- 3 (vi) Carry out its duties pursuant to the Quality  
4 Education Accountability Act; and
- 5 (vii) Provide annual reports to the Governor concerning  
6 programs funded by the fund. Each report shall include the number  
7 of applicants and approved applicants, an overview of the various  
8 programs, objectives, and anticipated outcomes, and detailed  
9 reports of the cost of each program.

10 To assist the council in carrying out its duties, the  
11 State Board of Education shall, in consultation with the council,  
12 adopt and promulgate rules and regulations establishing criteria,  
13 standards, and procedures regarding the selection and  
14 administration of programs funded from the Education Innovation  
15 Fund, including the Quality Education Accountability Act.

16 (3) Recipients of incentive grants allocated by the  
17 Governor from the Education Innovation Fund shall be required to  
18 provide, upon request, such data relating to the funded programs  
19 and initiatives as the Governor deems necessary.

20 (4) Any money in the State Lottery Operation Trust Fund,  
21 the State Lottery Operation Cash Fund, the State Lottery Prize  
22 Trust Fund, or the Education Innovation Fund available for  
23 investment shall be invested by the state investment officer  
24 pursuant to the Nebraska Capital Expansion Act and the Nebraska  
25 State Funds Investment Act.

26 (5) Unclaimed prize money on a winning lottery ticket  
27 shall be retained for a period of time prescribed by rules and  
1 regulations. If no claim is made within such period, the prize  
2 money shall be used at the discretion of the Tax Commissioner for  
3 any of the purposes prescribed in this section.

4 Sec. 2. Section 79-1328, Revised Statutes Supplement,  
5 2001, is amended to read:

6 79-1328. (1) For fiscal years 2001-02 and 2002-03, the  
7 Excellence in Education Council shall grant up to ~~twenty percent of~~  
8 ~~the Education Innovation Fund, not to exceed~~ one million five  
9 hundred thousand dollars per fiscal year, to a grantee for a  
10 distance education network completion grant. The distance  
11 education network completion grant shall fund engineering,  
12 equipment, and installation charges for two-way interactive  
13 distance education capacity for public high school buildings that  
14 do not currently have such capacity. The grant application shall:

15 (a) Designate the State Department of Education as the  
16 fiscal agent for the grant;

17 (b) Specify criteria for determining the public high  
18 school buildings for which the grant will fund engineering,  
19 equipment, and installation charges;

20 (c) Specify criteria for determining the engineering,  
21 equipment, and installation charges which the grant will fund;

22 (d) Specify the technique for prorating funding and  
23 collecting funds from districts if the charges for engineering,  
24 equipment, and installation for the public high school buildings  
25 for which grant funds are used exceed the grant funds available;

26 (e) Specify the procedure for assuring that all projects  
27 meet the standards of the technical panel created in section  
1 86-1511, including periodic reviews of projects by the technical  
2 panel;

3 (f) Specify the timeline for completing a statewide  
4 two-way interactive distance education network that includes all

5 participating public high schools; and  
 6 (g) Specify that any equipment obtained through a grant  
 7 is the property of the school district and not the department.  
 8 (2) For a public high school to participate in the grant,  
 9 the school district must apply to the department as the fiscal  
 10 agent on a form prescribed by the department on or before a date  
 11 established by the department. The application shall require  
 12 evidence that the school district has made a commitment to be part  
 13 of a distance education consortium and that the distance education  
 14 consortium has accepted the district's commitment. The application  
 15 shall also require the applicant district to list the classes that  
 16 the district anticipates accessing from the consortium or a  
 17 community college and any classes that the district anticipates  
 18 that it will offer to other districts in the consortium through  
 19 distance education.  
 20 (3) The department as the fiscal agent may use up to  
 21 twenty-five thousand dollars per fiscal year of the grant funds to  
 22 fund a project manager."  
 23 2. On page 11, line 20, strike "79-1018" and insert  
 24 "79-1328".  
 25 3. Renumber the remaining sections accordingly.

(Signed) Ron Raikes, Chairperson

### **SELECT COMMITTEE REPORTS** **Enrollment and Review**

**LEGISLATIVE BILL 2.** Placed on Select File.

**LEGISLATIVE BILL 4.** Placed on Select File.

(Signed) Philip Erdman, Chairperson

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Dw. Pedersen asked unanimous consent to have his name added as cointroducer to LB 20. No objections. So ordered.

### **VISITORS**

Visitor to the Chamber was BreAnn Ferris-Rainey from Omaha.

### **ADJOURNMENT**

At 11:21 a.m., on a motion by Speaker Kristensen, the Legislature adjourned until 10:00 a.m., Monday, November 5, 2001.

Patrick J. O'Donnell  
 Clerk of the Legislature