

THIRTY-SECOND DAY - FEBRUARY 27, 2020**LEGISLATIVE JOURNAL****ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION****THIRTY-SECOND DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, February 27, 2020

PRAYER

The prayer was offered by Pastor Jim Haack, Beautiful Savior Lutheran Church, La Vista.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Lindstrom presiding.

The roll was called and all members were present except Senators Albrecht, DeBoer, Friesen, M. Hansen, Linchan, McCollister, Morfeld, Pansing Brooks, Scheer, and Vargas who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-first day was approved.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of February 26, 2020, 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

Baker, Cassi
Greenwich Biosciences, Inc.
Radcliffe, Walter H. of Radcliffe Gilbertson & Brady
Norfolk Area Chamber of Commerce

REPORTS

Agency reports electronically filed with the Legislature can be found on the [Nebraska Legislature's website](#).

ATTORNEY GENERAL'S OPINIONSOpinion 20-002

SUBJECT: Responsibility for Maintenance of the Part of a County Road Located on State Highway Right of Way

REQUESTED BY: Senator Julie Slama

WRITTEN BY: Douglas J. Peterson, Attorney General
Jeffery T. Schroeder, Assistant Attorney General

INTRODUCTION

You indicate you are considering introducing legislation to make the State of Nebraska, Department of Transportation ("State") responsible for the maintenance of the State highway "right of way." Based on prior discussions with you about this subject, we understand you are asking about the maintenance responsibility for any County road where it intersects with a State highway. Specifically, those discussions have been about whether the State or the County ("County") has the responsibility to maintain the part of any County road located on State highway right of way. You note there has been some disagreement and confusion about this issue between the State and certain County officials.

Your question does not pertain to the State's responsibility to maintain the traveled lanes of the State highway. As discussed below, the State is responsible for the traveled lanes, including the area of the "intersection." By statute, the intersection is the area within "the lateral boundary lines of the roadways of two or more highways which join one another at, or approximately at, right angles" or otherwise expressed as "the area within which vehicles traveling upon different highways joining at any other angle may come in conflict." Neb. Rev. Stat. § 39-101(4) (2016). The "roadway" is the part of a highway used for vehicular travel. Neb. Rev. Stat. § 39-101(11) (2016). The State is also responsible for maintaining any paved shoulder of the State highway since the shoulder is used in conjunction with the highway traveled lanes.

Although you have asked only about the **maintenance** responsibility for these segments of County roads, maintenance is only one of several duties applying to an entity assigned jurisdictional responsibility over a public road. The other duties, according to Neb. Rev. Stat. § 39-2105 (Cum. Supp. 2018), are design, construction, reconstruction, and operation. While this

opinion focuses on "maintenance," our conclusion also applies to these other duties. Further, when we refer to "maintenance" we mean "the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any highway, including surface, shoulders, roadsides, traffic control devices, structures, waterways, and drainage facilities, for the purpose of keeping it at or near or improving upon its original standard of usefulness and safety." Neb. Rev. Stat. § 39-101(6) (2016).

You ask in your letter about the application of the provisions of Neb. Rev. Stat. § 39-1339 (2016) to this issue. Section 39-1339 does not apply because it deals expressly with the allocation of maintenance duties on the portions of State highways located within the corporate limits of a City. Similarly, Neb. Rev. Stat. § 39-1372 (2016) does not apply to your question because it relates solely to the assignment of maintenance responsibilities between the County and the State at County road intersections with State freeways, including the Interstate highway system. Thus, these sections do not assist in resolving the issue raised in your letter.

BACKGROUND

It may not be apparent to a casual observer where an intersecting County road first enters the State highway right of way. This is, in part, because the State typically blended the two roads together in the area of the intersection when the State reconstructed the State highway. To enhance the smoothness of the roadway transition when the County road was unpaved, the State usually paved a short transition from the highway pavement, called a paved return, to improve the connection between the roads. Further, roadway ditches and other topographic features were typically reconstructed to the extent necessary to create a relatively seamless intersection. The vast majority of State highways have been hard surfaced, and the majority of intersecting County roads are not hard surfaced. The State's long-standing interpretation and practice has been for the County, not the State, to be responsible for operating and maintaining the short County road segment discussed in this opinion. We understand some of your constituent Counties have argued the State should be responsible for "maintaining" all of the 50 to 75 feet of the County road located on State "right of way".

We are not aware of case law or an Attorney General's Opinion addressing this issue. There are a few Attorney General's Opinions that cite or discuss some of the statutory provisions set out below.¹ There is an Attorney General's Opinion that concluded that a County does not have authority to expend County funds to construct a street within the corporate limits of a City under a statute that expressly states the County has jurisdiction only over roads outside the corporate limits. 1977-78 Rep. Att'y Gen. 310 (Opinion No. 200, dated Feb. 24, 2978). Unlike that Opinion, there is no statute expressly limiting a County's jurisdiction in the area of a State highway intersection with a County road.

STATUTORY FRAMEWORK

In 1969, the Nebraska Legislature sought to reorganize the various roadway systems into "an integrated system of public roads." *See generally* Neb. Rev. Stat. §§ 39-2101 to 39-2125 (2016, Cum. Supp. 2018 and Supp. 2019). The 1969 legislation, as amended, still applies today. In it, the Legislature declared:

Fundamental to the development of an integrated system of public roads is a determination of the function each road segment serves. Through adoption by law of a functional classification system, it is the intent of the Legislature that each segment of public road shall be identified according to the function it serves. Identification of roads according to function then will permit the establishment of uniform standards of design, construction, operation, and maintenance for each classification of road. Such standards will promote the general safety of the traveling public, enhance the free flow of traffic, and provide improved utilization of highway financing.

Responsibility for the various functional classifications of public roads shall be assigned by law to the state, the counties, and the municipalities, as appropriate, such assignments reflecting the general responsibilities of each entity.

Neb. Rev. Stat. § 39-2101, ¶¶ 6 and 7 (2016). Neb. Rev. Stat. § 39-2102 (2016) divides public highways, roads and streets into the following two broad categories: rural highways and municipal streets. Rural highways are defined as "all public highways and roads outside the limits of any incorporated municipality." *Id.* Neb. Rev. Stat. § 39-2103 (Cum. Supp. 2018) provides nine functional classifications for all rural highways, and identifies the main characteristics of each functional classification.

Under Neb. Rev. Stat. § 39-2105(1) (Cum. Supp. 2018), the State has been assigned jurisdictional responsibility for the "design, construction, reconstruction, maintenance, and operation" of "all roads" that are functionally classified as "interstate, expressway, and major arterial." Major arterials, according to § 39-2103(3), are highways used for "high-speed, relatively long-distance travel patterns." Section 39-2105(2) states the various counties have jurisdictional responsibility for "all roads" functionally classified as "other arterial, collector, local, minimum maintenance, and remote residential." Section 39-2103(5) describes "other arterial" roads as "highways of less importance as through travel routes which would serve places of smaller population . . . not served by the higher systems." According to these provisions, jurisdictional responsibility for rural roads is assigned based on the function served by each classification, not the ownership status of the property on which the rural road is located.

The Legislature provided each functional classification of rural road should have its own unique standards. In the 1960s and 1970s, the

legislature created the Nebraska Board of Public Roads Classifications and Standards ("Board") and required the Board to "develop minimum standards of design, construction, and maintenance for each functional classification set forth in section 39-2103." Neb. Rev. Stat. § 39-2113(1) (Supp. 2019). The Legislature directed "such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear." *Id.* The design and maintenance standards were developed and continue to apply today to the through traffic "major arterials" (State Highways) and are more stringent than the standards applying to the functional classifications for which the Counties are responsible. *See* 428 Neb. Admin. Code, ch. 2.

ANALYSIS

Although no single statute provides the answer to your question, we believe the collection of statutes on this subject create a framework from which the issue can be resolved. The Nebraska Supreme Court has stated:

In discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the legislature as ascertained from the entire language of the statute considered in its plain, ordinary and popular sense, it being the court's duty to discover, if possible, the Legislature's intent from the language of the statute itself. *Curry v. State, ex rel. Stenberg*, 242 Neb. 695, 496 N.W.2d 512 (1993). The components of a series or collection of statutes pertaining to a certain subject matter may be conjunctively considered and construed to determine the intent of the Legislature so that different provisions of an act are consistent, harmonious, and sensible. *Maack v. School Dist. of Lincoln*, 241 Neb. 847, 491 N.W.2d 341 (1992).

Becker v. Nebraska Acct. & Disclosure Comm., 249 Neb. 28, 33, 541 N.W.2d 36, 40 (1995). As explained below, we conclude this statutory framework should be construed to place responsibility for maintaining the part of the County road located on State right of way on the County.

The integrated system the Legislature created in 1969 requires that every public road be evaluated to determine what function it serves for the public. All public roads serving the same function are grouped in the same functional classification. The Legislature determined the State would be assigned the jurisdictional responsibility for "public roads" in functional classifications serving **statewide interests**. Those functional classifications are "interstate, expressway and major arterial." Neb. Rev. Stat. § 39-2105(1) (Cum. Supp. 2018). These classifications are the through traffic routes providing high speed direct connections between the various communities in Nebraska and connecting Nebraska to surrounding States. *See also* Neb. Rev. Stat. § 39-2105(3) (Cum. Supp. 2018). Further, the applicable design and maintenance standards reflect the interests of the high speed, long distance traveling public.

Similarly, the Legislature assigned to the Counties jurisdictional responsibility for the public roads in functional classifications serving more **local interests**. The Counties are responsible for the roads classified as "other arterial, collector, and local." Neb. Rev. Stat. § 39-2105(2) (Cum. Supp. 2018). These roads serve many important local functions such as (a) providing access to all rural parcels of land, (b) serving as a route for rural mail delivery, and (c) providing rural connections to local schools, markets and communities. The applicable design and maintenance standards are unique to these roads and reflect the type of traffic expected to travel along such roads.

The Legislature did not focus on which public entity owned the rights of way on which the various classifications of roads exist. Instead, the Legislature assigned jurisdictional responsibility between the State and the Counties based on the transportation function served by each classification of road. We understand it is somewhat common for a road of the State, County or City to be located on public property owned by one of the other governmental entities. For example, some State highways have been constructed on County road easements along a government section line. Similarly, when the State completes a major reconstruction of a highway, it sometimes needs to realign an intersecting County road to connect into the State highway at a safer location. In those instances, the realigned County road is located on property acquired by the State. Finally, in some communities, the State highway passing through town today occupies a dedicated City street right of way. Responsibility for maintenance in these instances is not related to who "owns" the right of way.

Construing the statutes establishing Nebraska's integrated system of public roads as a whole, we conclude that the State is responsible for maintenance of the major arterial rural highways regardless of which entity owns the property rights on which those highways are located. Counties, in turn, are responsible for the operation and maintenance of all parts of the County road right up to the paved highway or paved highway shoulder.

CONCLUSION

Nebraska's statutes do not expressly state who is responsible for the maintenance of the part of a County road located on State highway property because jurisdictional responsibility is not based on who owns the land under the highway or road. For the reasons stated above, we concluded that the **State** is responsible for maintenance of the major arterial rural highways regardless of which entity owns the property rights on which those highways are located. The **County** is responsible for the maintenance, and other duties, of all of a County road, even the portion located on State highway property, regardless of which entity owns the underlying property rights. This conclusion is consistent with the Legislature's intent to create an integrated system of public roads.

Sincerely yours,
DOUGLAS J. PETERSON
Attorney General
(Signed) Jeffery T. Schroeder
Assistant Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

¹ See 1971-72 Rep. Att'y Gen. 311 (Opinion No. 136, dated July 28, 1972) (Township Roads-Highway Allocation Funds); Op. Att'y Gen. No. 176 (January 8, 1982) (County's duty to maintain County Roads – Insufficient Funds); Op. Att'y Gen. No. 224 (March 23, 1982) (Maintenance of Township Roads); Op. Att'y Gen. No. 87021 (February 11, 1987) (Township Roads – Highway Allocation Funds); Op. Att'y Gen. No. 94040 (May 23, 1994) (Placement of a sign along a State highway within corporate limits of a City).

Opinion 20-003

SUBJECT: LB 992 – Constitutionality of Authorizing the Use of Electric Utility Easements to Furnish Commercial Broadband Service

REQUESTED BY: Senator Curt Friesen
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Lynn A. Melson, Assistant Attorney General

INTRODUCTION

You have requested an opinion from this office concerning the constitutionality of LB 992. Sections 1 to 5 of LB 992 would be known as the Broadband Internet Service Infrastructure Act ["BISIA" or the "Act"]. You describe the bill as allowing an electric utility that holds an electric utility easement, or a commercial broadband supplier designated by the electric utility, to take certain actions without the consent of an interest holder in the real property subject to the easement. The Act would require that notice be provided thirty days prior to taking action with regard to broadband service to the real property owner or other interest holders that have requested notice. It would also establish a two year statute of limitations for claims against an electric utility or commercial broadband supplier and set forth the measure of damages for such claims.

Your specific question is "are the notice provisions relating to due process and the limitation of damages that could be awarded to a property owner constitutional in light of Article 1, Section 3 of the Nebraska constitution"

ANALYSIS

I. Provisions of LB 992

You have introduced LB 992 to implement the recommendations of the Rural Broadband Task Force. Section 1 of LB 992 states that sections 1 to 5 of the act constitute the Broadband Internet Service Infrastructure Act. Section 6 of the act, while not part of the BISIA, expresses the intent of the Legislature "to encourage local and regional broadband planning, and to encourage public-private partnerships to enhance broadband services in unserved and underserved areas of the state." It appears that the general intent of the BISIA is to facilitate the use of existing electric utility easements to provide commercial broadband service.

Specifically, subsection (1) of section 3 provides that, if certain notice and filing requirements are met, an electric utility holding an electric utility easement may:

- (a) Install, maintain, or own, or permit any commercial broadband supplier to install, maintain, or own, an attached facility for operation by a commercial broadband supplier in providing commercial broadband service; and
- (b) Lease or otherwise provide to a commercial broadband supplier any excess capacity of attached facilities for purposes of providing commercial broadband service.

An "attached facility" is defined at section 2 of LB 992 to mean a broadband facility located substantially "aboveground and attached to an electric utility's electric service infrastructure" or "underground in an electric utility easement and existing before the delivery of notice pursuant to section 3"

The electric utility may take the actions described above without the consent of an interest holder in the real property subject to the electric utility easement. However, in order to do so, subsection (2) of section 3 requires that the electric utility or its designated commercial broadband supplier must first send notice to each property owner and to any other interest holder that has recorded a request for notice with the county clerk. That notice must be sent by certified mail at least thirty days before taking the actions described in subsection (1) of section 3. In addition, the electric utility or its designated commercial broadband supplier must record a memorandum in the office of the county clerk.

Section 4 provides a two year statute of limitations for claims brought by an interest holder against an electric utility or commercial broadband supplier concerning the exercise of an action under section 3 of the act. That statute of limitations does not apply to claims based on physical

damage to property, injury to natural persons or breach of the terms and conditions of a written electric easement.

Section 4 also contains provisions relevant to your inquiry about damages. As will be discussed below, subsection (3) pertains to the measure of damages for all trespass claims, inverse condemnations claims or other claims brought by interest holders and sets out some limitations on damages which may be recovered.

II. Article I, § 3 And Article I, § 21

You have inquired about Neb. Const. art. I, § 3 which provides: "No person shall be deprived of life, liberty, or property, without due process of law, nor be denied equal protection of the law." The answer to your questions also concerns Neb. Const. art. I, § 21 which provides: "The property of no person shall be taken or damaged for public use without just compensation therefor." This provision is often referred to as the "takings" clause. A like guarantee is found at U.S. Const. amend. XIV which provides, as is relevant: "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." We note that the protection afforded a property owner under the Nebraska Constitution is broader than that provided in the United States Constitution as it protects against state action taking *or damaging* private property. For purposes of this opinion, we will discuss these constitutional provisions together.

We begin with a general discussion of eminent domain. The Nebraska Supreme Court, referring to *Thompson v. Heineman*, 289 Neb. 798, 857 N.W.2d 731 (2015), described eminent domain as follows:

Eminent domain is the State's inherent power to take private property for a public use. The State's eminent domain power resides in the Legislature and exists independently of the Nebraska Constitution. But the constitution has limited the power of eminent domain, and the Legislature can limit its use further through statutory enactments. Under Neb. Const. art. I, § 21, the State can take private property only for a public use and only if it pays just compensation. Only the Legislature can authorize a private or public entity to exercise the State's power of eminent domain. *Estermann v. Bose*, 296 Neb. 228, 240, 892 N.W.2d 857, 867 (2017) (citations omitted).

The state's power of eminent domain may be delegated by the Legislature. Eminent domain power "belongs to the state and may be exercised either directly by the Legislature or through the medium of corporate bodies, which includes municipalities, or of individual enterprises to whom it sees fit to delegate such power in the public's interest." *In re Condemnation of Blocks 13, 14, 15, Koehler's Subdivision, City of Grand Island*, 144 Neb. 67, 69, 12 N.W.2d 540, 541 (1943). As noted by the Nebraska Supreme Court in *Estermann*, the Legislature has delegated the power of eminent domain to

natural resource districts, which are political subdivisions of the state. *Id.* at 240, 892 N.W.2d at 867. Private entities, such as railroads, have also been delegated the statutory authority to acquire land through eminent domain. *Burlington Northern and Santa Fe Ry. Co. v. Chaulk*, 262 Neb. 235, 631 N.W.2d 131 (2001) ["*Burlington Northern*"].

LB 992 concerns existing electrical utility easements held by an electric utility. LB 992, § 2(4). The takings clause applies to takings of real property, including easements. *In re Petition of Omaha Public Power District*, 268 Neb. 43, 680 N.W.2d 128 (2004) (public power district filed a petition for condemnation to condemn a permanent right-of-way easement to construct an electric powerline); *Liberty Development Corp. v. Metropolitan Utilities Dist. Of Omaha*, 276 Neb. 23, 751 N.W. 2d 608 (2008).

Finally, under art. I, § 21, any private property which is taken must be taken for a public use. "It is essential that property taken under the power of eminent domain be for a public use and not a private one." *Burlington Northern*, 262 Neb. at 242, 631 N.W.2d at 137. However, the definition of public use is a broad one. The use of the power of eminent domain to build public highways, to acquire land for public buildings or to install electrical and telephone lines are examples of public uses. It has long been held that the generation and transmission of electricity for the purpose of furnishing electrical power to the public is a public use for which the power of eminent domain may be exercised. *Lucas v. Ashland Light, Mill & Power Co.*, 92 Neb. 550, 138 N.W. 761 (1912). In our view, broadband service has become as essential a part of the infrastructure as electrical and telephone service and the provision of broadband service to the public would be found to constitute a public use.

III. Due Process In The Context of Eminent Domain

You have inquired whether the notice provisions of LB 992 are constitutional in light of Neb. Const. art. I, § 3, which mandates that no person shall be deprived of property without due process of law. Because you have referred to the notice provisions, we assume you are referring to the principle of procedural due process which generally entails notice and an opportunity for a hearing. However, due process does not guarantee any particular form or method of procedure in the context of eminent domain, and, in some situations, it may be sufficient that the landowner has an opportunity for a hearing on the issue of just compensation.

Specifically, if eminent domain authority is exercised without first instituting condemnation proceedings, a landowner may file a claim for inverse condemnation. "Inverse condemnation is a shorthand description for a landowner suit to recover just compensation for a governmental taking of the landowner's property without the benefit of condemnation proceedings." *Cappel v. State Department of Natural Resources*, 298 Neb. 445, 452, 905 N.W.2d 38, 46 (2017). "While the property owner cannot

compel the return of the property taken, because of the eminent domain power of the condemner, he has a constitutional right, as a substitute, to just compensation for what was taken." *Krambeck v City of Gretna*, 198 Neb. 608, 614, 254 N.W.2d 691, 695 (1977). And, the Nebraska statutes which set forth the procedures applicable to eminent domain actions recognize that a landowner may initiate the proceedings. "If any condemner shall have taken or damaged property for public use without instituting condemnation proceedings, the condemnee, in addition to any other available remedy, may file a petition with the county judge of the county where the property or some part thereof is situated to have the damages ascertained and determined." Neb. Rev. Stat. § 76-705 (2018).

The Court did find a violation of due process in an inverse condemnation case brought by the owner of an unoccupied home which had been demolished by the city. *Blanchard v. City of Ralston*, 251 Neb. 706, 559 N.W.2d 735 (1997). There, a notice posted on the house which gave Blanchard three days to remedy the unsafe home and ten days to appeal the decision to demolish was insufficient. The Court noted that three days was not a reasonable time to take necessary steps to make the house safe and that the notice failed to adequately notify Blanchard of the City's safety concerns. In addition, although a notice of appeal was filed by the property owner, demolition of the home began prior to the time of the hearing. However, in general, when there has been a deprivation of a significant property interest, "due process requires notice and an opportunity to be heard *that is appropriate to the nature of the case.*" *Prime Realty Development, Inc. v. City of Omaha*, 258 Neb. 72, 76, 602 N.W.2d 13, 16 (1999) (emphasis added). And, in *May v. City of Kearney*, 145 Neb. 475, 17 N.W.2d 448 (1945), the Court upheld a statutory scheme which provided for limited hearings on the issue of just compensation.

Here, LB 992 provides that an electric utility with an existing electric utility easement may install, maintain, or own an attached facility, or lease excess capacity of attached facilities for purposes of providing commercial broadband service only if, at least thirty days before taking action, it mails notice to each property owner and to any other interest holder that has recorded a request for notice in the office of the county clerk. LB 992 § 3(2). This notice provision appears adequate under the Nebraska cases discussed above. The bill also recognizes that an interest holder may bring a claim against an electric utility or a commercial broadband supplier after that entity has taken action pursuant to section 3. Section 4 refers to a statute of limitations for claims against the electric utility or commercial broadband supplier, specifies the measure of damages which may be awarded to an interest holder, and refers to that interest holder bringing "a trespass claim, inverse condemnation claim, or any other claim or cause of action." Therefore, although there is no requirement under LB 992 that the electric utility first institute condemnation proceedings, a landowner or other interest holder retains the right to initiate proceedings and to be heard.¹

IV. Damages Pursuant to LB 992

You also inquire about the constitutionality of LB 992's limitation of damages that a landowner may request. LB 992, § 4(3) contains several provisions which would govern the damages which may be awarded to a landowner or other interest holder. The measure of damages is defined at § 4(3)(a) as "the fair market value of the reduction in value of the interest holder's interest in the real property." This compares to the Nebraska Supreme Court's holding that "the measure of damages for the taking of an easement is the difference in the reasonable market value of the property before and after the taking of the easement." *In re Petition of Omaha Public Power District*, 268 Neb. 43, 51, 680 N.W.2d 128, 136 (2004) (citing *Ward v. Nebraska Electric G. & T. Co-op, Inc.*, 195 Neb. 641, 240 N.W.2d 18 (1976)).

However, § 4(3)(a)(i) then provides that neither evidence of profits or revenue derived from the attached facilities nor evidence of the rental value of the real property interest or electric easement are admissible in a judicial proceeding. Section 4(3)(a)(ii) requires that "[c]onsideration must be given to any increase in value to the real property interest resulting from the availability of commercial broadband service to the real property" Section 4(3)(c) provides further restrictions on damages, including the provision that "an interest holder is not entitled to reimbursement ... for the cost of any appraisal, attorney fees, or award for special, consequential, indirect, or punitive damages." Also, currently, a landowner who prevails in an inverse condemnation action would generally be entitled to an award of costs and expenses, which may include reasonable attorney's, appraisal, and engineering fees. Neb. Rev. Stat. § 76-726 (2018).

To the extent that LB 992 places these restrictions on damages that may be recovered, it creates some uncertainty whether the bill is consistent with the constitutional requirement of just compensation.² We cannot say that the damages limitations are facially invalid. However, as applied in a particular case, the limitations may not satisfy the just compensation requirement of art. I, § 21.

CONCLUSION

In summary, we do not believe that the proposed legislation would contravene the procedural due process requirements required by Neb. Const. art. I, § 3. LB 992 does require notice to landowners and interest holders and provides an opportunity for a hearing. While the constitutionality of the bill's limitations on damages is less clear, we cannot say those provisions plainly violate Neb. Const. art. I, § 3 or art. I, § 21.

Sincerely,
DOUGLAS J. PETERSON
Attorney General
(Signed) Lynn A. Melson
Assistant Attorney General

pc. Patrick J. O'Donnell
Clerk of the Nebraska Legislature

09-665-30

¹ LB 992, § 4(1)(a) provides a two year period for bringing a claim against an electric utility or commercial broadband supplier under the Act. Section 4(1)(b) provides that this two year statute of limitations does not apply to claims based on physical damage to property, injury to natural persons or breach of the terms of a written electric easement. While you have not inquired about the statute of limitations, we note that the Nebraska Supreme Court has held that actions commenced under art. I, § 21 are governed by the ten year statute of limitations in Neb. Rev. Stat. § 25-502 (2016). *Krambeck v. City of Gretna*, 198 Neb. 608, 254 N.W.2d 691 (1977). An exception is an inverse condemnation claim against the State for which the two year statute of limitations in Neb. Rev. Stat. § 25-218 applies. LB 992 would provide another exception.

² LB 992 is based on a bill enacted by Colorado in 2019 and codified at Colo. Rev. Stat. §§ 40-15-601 to 40-15-604. The Colorado statutes include notice and damages provisions substantially similar to those in LB 992. Indiana adopted similar changes in its laws in 2017. Ind. Code §§ 32-30-16-1 to 32-30-16-17. Other states which adopted laws in 2019 to facilitate the use of existing electric easements for broadband purposes include Georgia and Maryland. Ga. Code Ann. § 46-3-205; Md. Code Ann. Corp. & Ass'ns § 5-607 and § 5-641.1. Because these statutes were enacted so recently, we have not found any reported decisions pertaining to the constitutionality of their notice and damages provisions.

Opinion 20-004

SUBJECT: LB 720 — Constitutionality of Delegating Authority to Approve a Request to Exceed the Base Authority for Tax Refunds and Credits Under the ImagiNE Nebraska Act to the Executive Board of the Legislative Council

REQUESTED BY: Senator Tom Brandt
Senator Mark Kolterman
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Leslie S. Donley, Assistant Attorney General

Legislative Bill 720 creates the "ImagiNE Nebraska Act" ("Act"), the proposed successor to the Nebraska Advantage Act.¹ The new Act would provide, among other things, tax incentives to certain qualified businesses. The Department of Economic Development ("DED") would administer the

Act. You have each requested an opinion from this office with respect to the constitutionality of certain provisions in LB 720 that confer on the Executive Board of the Legislative Council the authority to approve an increase to the "base authority" for sales and use tax refunds and tax credits. Senator Kolterman seeks our opinion as to whether the language in the bill violates the separation of powers clause in Neb. Const. art. II, § 1. Senator Brandt has asked this office to consider whether this statutory scheme constitutes an unlawful delegation of legislative power to the Executive Board. Our conclusions on these questions are set forth below.

PROPOSED LEGISLATION

The provisions at issue are currently found in section 4 of AM1975, adopted by the Legislature on select file on May 24, 2019. Almost identical language appears in section 39 of pending AM2207. The proposed language requires the DED to prepare an estimate of the amount of sales and use tax refunds to be paid and tax credits to be used under the Act for the upcoming three calendar years. DED must prepare the estimate on or before the fifteenth day of February and October of each year, and transmit the estimate to the Legislature. In preparing the estimate, DED shall use the most recent data available, including pending and approved applications, and updates required under section 28, subdivision (1)(f).² Sec. 39(2)(a).

The "base authority" for the estimated amount of tax refunds and credits is defined as an amount

equal to one hundred twenty-five million dollars for calendar years 2021 through 2024. Beginning with calendar year 2025 and every three years thereafter, the director shall adjust the base authority to an amount equal to three percent of the actual General Fund net receipts for the most recent fiscal year for which such information is available.

Sec. 39(2)(b). In the event the estimate in any given calendar year exceeds the base authority, DED must prepare an analysis explaining why the estimate exceeds the base authority and submit it to the Legislature. The DED director is prohibited from approving any additional applications which include refunds or credits for the particular calendar year in which the base authority is projected to be exceeded unless the DED director requests additional authority and the Executive Board approves the request. Sec. 39(2)(a)(i) and (ii).

Sec. 39(2)(c) sets out a process to be used by the Executive Board in making its determination, including holding a public meeting on the request. If the Executive Board fails to make a determination within forty-five days after receipt of the request, the request will be deemed approved. The Executive Board must also consider whether approval of the requested increase would achieve certain criteria contained in the bill, e.g., "[p]romot[ing] economic development in line with the state's economic development strategy" and "investment in distressed and rural areas[.]"

DISCUSSION

I. *Executive Board of the Legislative Council*

Since the delegation in question is directed to the Executive Board of the Legislative Council, we will begin by examining the organization and duties of these entities.

A. Legislative Council

Neb. Rev. Stat. § 50-401 (2010) establishes

a Legislative Council, hereinafter referred to as council, which shall consist of all of the members of the Legislature. It shall be the function of the Legislative Council to consider legislative policies between sessions of the Legislature and carry out the duties imposed by section 50-402.

Neb. Rev. Stat. § 50-402 (2010) authorizes the Legislative Council to collect information about state government and the state's general welfare; examine the effect of statutes and recommend amendments; address important issues of public policy; prepare a program of legislative bills deemed necessary for the welfare of the state; study and advise the Legislature on federal aid to state and local governmental entities; establish and maintain a bill drafting service; provide for the publication of Nebraska statutes; and set up subcommittees within the Executive Board to carry out certain functions, including investigations, determined to be in the public interest.

B. Executive Board

Neb. Rev. Stat. § 50-401.01 (Cum. Supp. 2018) establishes the Executive Board of the Legislative Council, comprised of a chairperson, a vice-chairperson, six members of the Legislature and the Speaker of the Legislature. The members serve a two-year term, and are selected at the beginning of each regular session of the Legislature when the speaker is chosen. The chairperson of the Appropriations Committee serves as an ex officio member when the Executive Board considers fiscal matters. The duties of the Executive Board include supervising all services and personnel of the Legislature, and appointing the Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. Section 50-401.01(3) authorizes the Executive Board—notwithstanding any other provision of law—to contract for "legal, auditing, accounting, actuarial, or other professional services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature." Members of the Executive Board also serve as the Reference Committee. *Rules of the Nebraska Unicameral Legislature*, Rule 3, Sec. 4(e) (adopted January 23, 2019).

This office has previously indicated that the Legislative Council and the Executive Board are not separate entities. "[They] are creatures of the Legislature. Members serve in those capacities by virtue of the fact that they are members of the Legislature. These bodies are standing committees of the Legislature, created by law. As such they are not distinct and separate from the Legislature but merely a part of the Legislature itself." Op. Att'y Gen. No. 50 (March 13, 1981) at 2; *see also* Op. Att'y Gen. No. 49 (March 16, 1981); Op. Att'y Gen. No. 92054 (April 1, 1992). Thus, the Executive Board "can perform investigatory and other functions for the Legislature so long as [it does] not perform duties specifically required of the Legislature itself in the Nebraska Constitution." Op. Att'y Gen. No. 92054 at 3; Op. Att'y Gen. No. 96027 (April 1, 1996).

II. *Separation of Powers Clause*

Neb. Const. art. II, § 1(1) provides that

[t]he powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.

"The purpose of the clause is to establish the permanent framework of our system of government and to assign to the three departments their respective powers and duties, and to establish certain fixed principles upon which our government is to be conducted." *State v. Phillips*, 246 Neb. 610, 614, 521 N.W.2d 913, 916 (1994). "The powers of the three departments of government are derived from express grants in the Constitution and from the inherent right to accomplish all objects naturally within the orbit of each department, not expressly limited by the existence of a similar power elsewhere or express limitations in the Constitution." *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 597, 894 N.W.2d 788, 799-800 (2017). "The language of article II prohibits one branch of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives." *State ex rel. Spire v. Conway*, 238 Neb. 766, 773, 472 N.W.2d 403, 408 (1991). "Our constitution, unlike the federal Constitution and those of several other states, contains an express separation of powers clause. So we have been less willing to find overlapping responsibilities among the three branches of government." *In re Nebraska Community Corr. Council*, 274 Neb. 225, 229, 738 N.W.2d 850, 854 (2007); *Polikov v. Neth*, 270 Neb. 29, 699 N.W.2d 802 (2005).

This office has previously considered the propriety of legislation that purports to extend executive power to the legislative branch. In Opinion No. 22 (February 26, 1963),³ the Attorney General assessed the constitutionality of legislation that would require state agencies to obtain legislative approval and authorization prior to any construction, building and land purchases or expenditures from the State Institutional and Military Department Building

Fund. Also at issue was legislation that would require the consent of the Legislature, rather than the governor, for the acquisition of real property by the Game, Forestation and Parks Commission. We stated that

[w]hile the Legislature has the power and authority to decide all of these matters **before** making any appropriation, or **before** granting any authority, yet if it seeks to retain control by inserting in its laws and bills the requirement that no action be taken or money spent until subsequent approval of the Legislature be granted, then it is in effect, both making the law and administering it, appropriating the money and spending it, and the constitutional system of separation of powers would be destroyed.

What would be the situation if amendment to the bills were made to allow the Legislative Council or a committee of the Legislature to exercise this power of approval when the Legislature is not in session? Such bodies would not have any authority to pass laws or to make resolutions as does the Legislature. Any exercise of this attempted delegated authority would clearly be executive in its nature, substituting the discretion of the council or a committee for that of the executive. That this may not be done is self-evident. If the Legislature may not do it, certainly any group or committee of the Legislature may not do it. . . .

Id. at 38 (emphasis in original).

In Op. Att'y Gen. No. 53 (March 24, 1977),⁴ we considered legislation that would require the Game and Parks Commission to obtain the approval of the Legislature's Appropriations Committee for any planned expenditures from the Nebraska Outdoor Recreation Development Cash Fund. In finding the proposal to be constitutionally suspect to the extent it gave the Appropriations Committee veto power over executive decisions, we concluded:

If the [statutory] construction suggested above were adopted, it would be an attempt to administer an executive function by a committee of the Legislature. The committee would be empowered to review and reject executive decisions regarding particular expenditures. While the Legislature is fully authorized to limit executive choices by appropriate restrictions through enactment of statutes, once a statute is enacted or an appropriation made the Legislature has no further authority.

Id. at 1. In response to whether the proposed approval required the acquiescence of the entire Legislature, we indicated that it was irrelevant to the question of whether the separation of powers provision has been violated. "[I]f the bill is construed to reflect an intention by the Legislature to pass on each item of expenditure, either by the body as a whole or by a committee of the Legislature, Article II, Section 1 . . . is violated and the act would be unconstitutional." *Id.* at 2.

In Op. Att'y Gen. No. 87114 (December 9, 1987), the Attorney General considered the propriety of a proposed plan for the disbursement of money from the Nebraska Energy Settlement Fund. The legislation required the governor to develop a plan in accordance with the court order awarding the funds, applicable federal guidelines, and legislative guidelines contained in the bill, and submit the plan to the Legislature. The Appropriations Committee was then required to hold a public hearing and consider appropriations based on the plan. No money could be disbursed or expended from the fund without a legislative appropriation and only when in compliance with the legislative guidelines.

We concluded that the proposed disbursement procedure violated art. II, § 1. We stated that

[t]he Legislature is, in essence, requiring legislative approval before expenditure of the funds. The fact that the bill is written in terms of legislative approval for the appropriation does not alter the clear intent of the act requiring legislative approval for the expenditure. The Legislature is in effect attempting to both make the law and administer it; appropriate money, and spend it. This is a violation of the separation of powers article of the Constitution of the State of Nebraska.

In short, LB 683 is unconstitutional because it impinges on the executive power of the Governor to administer the funds involved.

Id. at 3.

In Op. Att'y Gen. No. 92054 (April 1, 1992), we considered proposed legislation that would require the state building administrator to submit a detailed report to the Executive Board analyzing the estimated costs to renovate an office building at the Norfolk Regional Center. The language required the Executive Board to determine whether the project should be completed in the event the estimated costs exceeded the appropriation provided in the bill. Relying on previous opinions of this office, including Opinion No. 22 and Opinion No. 87114 discussed above, we concluded that the proposed amendment was constitutionally suspect. We stated:

AM3692 would appropriate money for renovation of the Stone Office Building. However, after the appropriation, the Executive Board of the Legislative Council would still retain some control over completion of the project. In our view, this continued control impermissibly involves the Legislature in functions of the Executive branch of government. Any decision as to whether the renovation project should be completed if its costs overrun the appropriation should be left to the executive agency involved, since the determination if other funds are available or if there are other means to complete the project is really an executive function.

Id. at 3. *See also* Op. Att'y Gen. No. 96027 (April 1, 1996) (Proposed amendment that would require the Executive Board to approve any state contract relating to the sale of public records for a fee, when the fee contemplated is greater than allowed under state law or otherwise free, determined to violate the separation of powers provision).⁵

"[T]he Legislature exercises a power constitutionally committed to it by enacting statutes to declare what is the law and public policy." *State ex rel. Veskrna*, 296 Neb. at 598, 894 N.W.2d at 800. "The supreme executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed and the affairs of the state efficiently and economically administered." Neb. Const. art. IV, § 6. AM2207 currently sets the base authority at one hundred twenty-five million dollars for calendar years 2021 through 2024, and "three percent of the actual General Fund net receipts for the most recent fiscal year for which such information is available" beginning in 2025, and every three years thereafter. The DED director is expressly prohibited from approving any applications involving refunds and credits when the estimate for a particular year exceeds the base authority unless the director requests and receives approval from the Executive Board to increase the authority. It seems to us that the continued presence and control of the Legislature in the administration of the Act constitutes an impermissible encroachment into executive power. While the Legislature is empowered to declare what the law is, it cannot reserve to itself the authority to administer the law as well.⁶ Consequently, we conclude that the proposed legislation violates the separation of powers provision in art. II, § 1.

III. *Delegation of Legislative Authority*

As a general rule, the Legislature cannot delegate legislative authority to an administrative body. *State v. Sprague*, 213 Neb. 581, 330 N.W.2d 739 (1983). The Legislature may, however, grant general powers to an official or agency and delegate the power to enact rules and regulations concerning the details of the legislative purpose. *Gillette Dairy, Inc. v. Nebraska Dairy Products Board*, 192 Neb. 89, 219 N.W.2d 214 (1974). A delegation of legislative authority is not unconstitutional where the Legislature has provided reasonable limitations and standards for carrying out delegated duties. *Bosselman, Inc. v. State*, 230 Neb. 471, 432 N.W.2d 226 (1988).

We are unaware of any Nebraska Supreme Court cases that consider the nondelegation doctrine in conjunction with the Executive Board. However, courts in other jurisdictions have addressed the constitutionality of statutes where the delegation in question was made to legislative committees. For example, in *New York Public Interest Research Group, Inc. v. Carey*, 86 Misc.2d 329, 383 N.Y.S.2d 197 (N.Y. Sup. Ct. 1976), a taxpayers' group sought to restrain the governor and comptroller from retaining and paying certain officeholders on the grounds that legislative committees had recommended that such positions and programs be abolished. The court noted that "the Constitutional function of legislating which belongs

exclusively to the Legislature cannot be delegated even to its own committees or committee chairmen." *Id.* at 332, 383 N.Y.S.2d at 199. Since the appropriations bill funding the positions and programs was passed in lump sum form, and because the full Legislature had not specifically designated that the positions and programs be deleted in the bill, the court found that the recommendations of the legislative committees to abolish the positions and programs was ineffectual. *Id.* at 333-334, 383 N.Y.S.2d at 200.

In *Opinion of the Justices*, 121 N.H. 552, 431 A.2d 783 (N.H. 1981), the New Hampshire Supreme Court considered legislation that would authorize the Legislature to review and accept or reject administrative rules proposed by state agencies. The legislation required that the proposed rules be presented to standing committees of both houses for approval. However, the senate president and house speaker could agree to waive the committee approval requirement. The court found the statutory scheme unconstitutional, stating:

This wholesale shifting of legislative power to such small groups in either house cannot fairly be said to represent the "legislative will." . . . Left unstated, yet implicit in this constitutional scheme, is the requirement that the legislative authority of the government may be exercised only by a quorum of the two bodies of the General Court. Although the legislature may delegate a portion of the legislative authority to an administrative agency which is not subject to this requirement, it may not delegate its lawmaking authority to a smaller legislative body and thereby evade the requirement for action by a majority of a quorum of both legislative bodies.

Id. at 559-560, 431 A.2d at 788.

In *Advisory Opinion In re Separation of Powers*, 305 N.C. 767, 295 S.E.2d 589 (N.C. 1982), the North Carolina Supreme Court considered the constitutionality of legislation establishing two joint legislative committees—one committee to control budget transfers and another to oversee all aspects of the acceptance and use of federal block grant funds, specifically when the General Assembly was not in session. Noting that the North Carolina Constitution vested the legislative power of the state in the General Assembly, the court found that the purported power given to the budget committee, comprised of twelve members of the house and senate, plus the senate president, "exceeds that given to the legislative branch by Article II of the Constitution." *Id.* at 775, 295 S.E.2d at 594. The court further found the statute creating the budget committee violated the separation of powers clause by encroaching on the constitutional duties and responsibilities imposed on the governor. *Id.* at 775-776, 295 S.E.2d at 594. While the court declined to address whether the General Assembly had the authority to determine whether the state would accept certain block grants and, if received, how to spend the funds, it made it clear that the committee had no power to do so:

[I]t is our considered opinion that the General Assembly may not delegate to a legislative committee the power to make those decisions.

In several of the instances set forth in G.S. 120-84.5 the committee would be exercising legislative functions. In those instances there would be an unlawful delegation of legislative power. In the other instances the committee would be exercising authority that is executive or administrative in character. In those instances there would be a violation of the separation of powers provisions of the Constitution and an encroachment upon the constitutional power of the Governor.

Id. at 779, 295 S.E.2d at 596.

Finally, in *Legislative Research Comm'n v. Brown*, 664 S.W.2d 907 (Ky. 1984), the Kentucky Supreme Court considered the constitutionality of statutes conferring powers on the Legislation Research Commission ("LRC"), a group comprised of six members of the Kentucky General Assembly. The court noted the provisions in the Kentucky Constitution vesting and restricting legislative power solely to the General Assembly. It further noted that "[i]n *Bloemer v. Turner*, . . . we declared that the Kentucky Constitution ' . . . made sure that the legislature may not in any degree abdicate its power.'" *Id.* at 915. Moreover, "[i]t is an accepted principle that 'the legislative department has no right to deputize to others the power to perform its governing functions.'" *Id.*, quoting *Bloemer*, 137 S.W.2d at 391. In finding that the General Assembly could not delegate its authority to legislate to the LRC, the court stated:

It is clear from the aforementioned cases that delegation, of legislative power, to be lawful, must not include the exercise of discretion as to what the law shall be. In addition, such delegation must have standards controlling the exercise of administrative discretion. Finally, the delegating authority must have the right to withdraw the delegation.

Therefore, we conclude that the General Assembly, which constitutionally holds legislative power, cannot delegate that power to the LRC.

664 S.W.2d at 915.

In Nebraska, "[t]he legislative authority of the state shall be vested in a Legislature consisting of one chamber." Neb. Const. art. III, § 1. "[N]o law shall be enacted except by bill. No bill shall be passed by the Legislature unless by the assent of a majority of all members elected and the yeas and nays on the question of final passage of any bill shall be entered upon the journal." Neb. Const. art. III, § 13. As currently drafted, AM2207 requires the approval of the Executive Board to exceed the amount of the base authority otherwise prescribed in the Act. In light of the constitutional provisions and the authority discussed above, we believe this legislation constitutes an unconstitutional attempt by the Legislature to delegate

legislative authority to the Executive Board. If the Legislature believes the base authority should be increased annually to accommodate the tax refunds and credits allowed under the Act, it may do so by appropriate legislation. Alternatively, the Legislature may delegate the power to adjust the base authority to executive officials, provided that reasonable limitations and standards for carrying out the delegated duties are stated in the authorizing act.

CONCLUSION

Based on the foregoing analysis, it is our opinion that any proposed legislation that would require the DED director to obtain approval of the Executive Board to increase the base authority necessary to administer certain provisions of the ImagiNE Nebraska Act would constitute an impermissible encroachment on executive power in violation of the separation of powers provision in Neb. Const. art. II, § 1. We also conclude that any attempts by the Legislature to delegate its legislative function to a subset of the full Legislature would be an unlawful delegation of the authority vested in the Legislature under Neb. Const. art. III, § 1.

Sincerely,
DOUGLAS J. PETERSON
Attorney General
(Signed) Leslie S. Donley
Assistant Attorney General

pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

49-2402

¹ Neb. Rev. Stat. §§ 77-5701 to 77-5735 (2018, Supp. 2019).

² Subdivision (1)(f) requires the taxpayer to provide an updated timetable each year "showing the expected sales and use tax refunds and what year they are expected to be claimed"

³ 1963-64 Rep. Att'y Gen. No. 22 at 37.

⁴ 1977-78 Rep. Att'y Gen. No. 53 at 77.

⁵ Contrary to the opinions discussed herein, in the course of our research we identified three statutes where the Executive Board has been improperly delegated authority to approve, if the Legislature is not in session, certain construction projects, financing plans, and expenditures in excess of five hundred thousand dollars pertaining to the University of Nebraska and the Nebraska State Colleges. *See* Neb. Rev. Stat. § 85-404 (2014); Neb. Rev. Stat. § 85-408 (2014); and Neb. Rev. Stat. § 85-426 (2014).

⁶ See *State ex rel. Shepherd v. Nebraska Equal Opportunity Comm'n*, 251 Neb 517, 557 N.W.2d 684 (1997) (Provision in the Whistleblower Act, which required the State Personnel Board to stay or reverse personnel action taken against state employee based on Ombudsman's finding that a violation of the act has occurred, violated art. II, § 1.).

RESOLUTION(S)

LEGISLATIVE RESOLUTION 328. Introduced by Stinner, 48.

WHEREAS, Fred Lockwood has served eight four-year terms on the Nebraska Economic Forecasting Advisory Board, beginning with the creation of the board in 1984; and

WHEREAS, Fred Lockwood served eight two-year terms as Chairman of the Nebraska Economic Forecasting Advisory Board from 1986 to 2004; and

WHEREAS, the Nebraska Economic Forecasting Advisory Board is responsible for providing advisory forecasts of General Fund tax receipts to the Governor and the Legislature; and

WHEREAS, Fred Lockwood served as Director of the Nebraska Community Foundation from 2000 to 2009; and

WHEREAS, Fred Lockwood served as Director of the Nebraska Chamber of Commerce and Industry from 1990 to 1999; and

WHEREAS, Fred Lockwood served three four-year terms as a member of the county board of Scotts Bluff County from 1967 to 1979; and

WHEREAS, Fred Lockwood served as Chairman of the Scotts Bluff County Board in 1968, 1970, 1973, 1976, and 1978.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes and thanks Fred Lockwood for his lifetime of public service, including his thirty-two years of service on the Nebraska Economic Forecasting Advisory Board.

2. That a copy of this resolution be sent to Fred Lockwood.

Laid over.

ANNOUNCEMENT

The Chair announced the birthday of Senator Bolz.

GENERAL FILE

LEGISLATIVE BILL 840. Senator Wayne withdrew his amendment, [AM2598](#), found on page 750.

Senator Wayne offered the following amendment:

[AM2677](#)

(Amendments to Standing Committee amendments, AM2512)

- 1 1. Strike section 5 and insert the following new section:
- 2 Sec. 5. Electronic smoking device retail outlet means a store that
- 3 is licensed as provided under sections 28-1421 and 28-1422 and that sells
- 4 electronic smoking devices and products directly related to electronic
- 5 smoking devices.
- 6 2. On page 3, strike lines 13 and 14 and insert the following new
- 7 subsection:
- 8 "(2) An electronic smoking device retail outlet that does not allow
- 9 persons under the age of twenty-one years to enter the outlet is exempt
- 10 from section 71-5729 as it relates to the use of electronic smoking
- 11 devices only."

Senator Wayne withdrew his amendment.

Senator Quick offered the following amendment:

[FA103](#)

Amend AM2512

On page 2 line 3, strike after the word device through line 6 at the period and insert "means an electronic nicotine delivery system as defined in Section 28-1418.01".

The Quick amendment was adopted with 34 ayes, 1 nay, 12 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 31 ayes, 2 nays, 14 present and not voting, and 2 excused and not voting.

COMMITTEE REPORT(S)

Appropriations

LEGISLATIVE BILL 1198. Placed on General File.

(Signed) John Stinner, Chairperson

Judiciary

LEGISLATIVE BILL 1028. Placed on General File with amendment.

[AM2525](#)

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. Section 24-1004, Reissue Revised Statutes of Nebraska, is
- 4 amended to read:
- 5 24-1004 The Supreme Court shall provide by rule for the preservation
- 6 of all records and of all exhibits offered or received in evidence in the
- 7 trial of any action. When the records of the district court do not show
- 8 any unfinished matter pending in the action, a judge of the district
- 9 court if satisfied they are no longer valuable for any purpose may, upon
- 10 such notice as the judge may direct, order the destruction, return, or
- 11 other disposition of such exhibits as the judge ~~he~~ deems appropriate when
- 12 approval is given by the State Records Administrator pursuant to the
- 13 Records Management Act sections 84-1201 to 84-1220.
- 14 Sec. 2. Section 24-1005, Reissue Revised Statutes of Nebraska, is

15 amended to read:

16 24-1005 The clerk of any district court or of any other court of
17 record may ~~maintain microfilm~~ any court record as a preservation
18 duplicate in the manner provided in section 84-1208. The original record
19 may be destroyed only with the approval of the State Records
20 Administrator pursuant to ~~the Records Management Act sections 84-1201 to~~
21 ~~84-1220~~. The reproduction of the preservation duplicate microfilm shall
22 be admissible as evidence in any court of record in the State of
23 Nebraska.

24 Sec. 3. Section 25-1301, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 25-1301 (1) A judgment is the final determination of the rights of
27 the parties in an action.

1 (2) Rendition of a judgment is the act of the court, or a judge
2 thereof, in signing a single written document stating all an order of the
3 relief granted or denied in an action.

4 (3) The entry of a judgment, decree, or final order occurs when the
5 clerk of the court places the file stamp and date upon the judgment,
6 decree, or final order. For purposes of determining the time for appeal,
7 the date stamped on the judgment, decree, or final order shall be the
8 date of entry.

9 (4) The clerk shall prepare and maintain the records of judgments,
10 decrees, and final orders that are required by statute and rule of the
11 Supreme Court. Whenever any judgment is paid and discharged or when a
12 satisfaction of judgment is filed, the clerk shall enter such fact upon
13 the judgment index.

14 Sec. 4. Section 25-1301.01, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 25-1301.01 Within three working days after the entry of any civil
17 judgment or final order, except judgments by default when service has
18 been obtained by publication or interlocutory orders styled as judgments,
19 the clerk of the court shall send the judgment or final order by United
20 States mail or by service through the court's electronic case management
21 system to each party whose address appears in the records of the action
22 or to the party's attorney or attorneys of record.

23 Sec. 5. Section 25-2804, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 25-2804 (1) Actions in the Small Claims Court shall be commenced by
26 the plaintiff by filing of a claim, personally, or by mail, or by another
27 method established by Supreme Court rules the plaintiff on a form
28 provided by the clerk of a county court. The claim form shall be executed
29 by the plaintiff in the presence of a judge, a clerk or deputy or
30 assistant clerk of a county court, or a notary public or other person
31 authorized by law to take acknowledgments. If not filed in person, the
1 claim form and appropriate fees shall be mailed by the plaintiff to the
2 court of proper jurisdiction.

3 (2) At the time of the filing of the claim, the plaintiff shall pay
4 a fee of six dollars and twenty-five cents to the clerk. One dollar and
5 twenty-five cents of such fee shall be remitted to the State Treasurer
6 for credit to the Nebraska Retirement Fund for Judges.

7 (3) Upon filing of a claim in the Small Claims Court, the court
8 shall set a time for hearing and shall cause notice to be served upon the
9 defendant. Notice shall be served not less than five days before the time
10 set for hearing. Notice shall consist of a copy of the complaint and a
11 summons directing the defendant to appear at the time set for hearing and
12 informing the defendant that if he or she fails to appear, judgment will
13 be entered against him or her. Notice shall be served in the manner
14 provided for service of a summons in a civil action. If the notice is to
15 be served by certified mail, the clerk shall provide the plaintiff with
16 written instructions, prepared and provided by the State Court

17 Administrator, regarding the proper procedure for service by certified
 18 mail. The cost of service shall be paid by the plaintiff, but such cost
 19 and filing fee shall be added to any judgment given the plaintiff.
 20 (4) The defendant may file a setoff or counterclaim. Any setoff or
 21 counterclaim shall be filed and a copy delivered to the plaintiff at
 22 least two days prior to the time of trial. If the setoff or counterclaim
 23 exceeds the jurisdictional limits of the Small Claims Court as
 24 established pursuant to section 25-2802, the court shall cause the entire
 25 matter to be transferred to the regular county court docket and set for
 26 trial.

27 (5) No prejudgment actions for attachment, garnishment, replevin, or
 28 other provisional remedy may be filed in the Small Claims Court.
 29 (6) All forms required by this section shall be prescribed by the
 30 Supreme Court. The claim form shall provide for the names and addresses
 31 of the plaintiff and defendant, a concise statement of the nature,
 1 amount, and time and place of accruing of the claim, and an
 2 acknowledgment for use by the person in whose presence the claim form is
 3 executed and shall also contain a brief explanation of the Small Claims
 4 Court procedure and methods of appeal therefrom.

5 (7) For a default judgment rendered by a Small Claims Court (a) the
 6 default judgment may be appealed as provided in section 25-2807, (b) if a
 7 motion for a new trial, by the procedure provided in sections 25-1142,
 8 25-1144, and 25-1144.01, is filed ten days or less after entry of the
 9 default judgment, the court may act upon the motion without a hearing, or
 10 (c) if more than ten days have passed since the entry of the default
 11 judgment, the court may set aside, vacate, or modify the default judgment
 12 as provided in section 25-2720.01. Parties may be represented by
 13 attorneys for the purpose of filing a motion for a new trial or to set
 14 aside, vacate, or modify a default judgment.

15 Sec. 6. Section 29-2702, Reissue Revised Statutes of Nebraska, is
 16 amended to read:

17 29-2702 Every judge or clerk of court, upon receiving any money on
 18 account of forfeited recognizances, fines, or costs accruing or due to
 19 the county or state, shall pay the same to the treasurer of the proper
 20 county, except as may be otherwise expressly provided, within ~~thirty ten~~
 21 days from the time of receiving the same. When any money is paid to a
 22 judge or clerk of court on account of costs due to individual persons,
 23 the same shall be paid to the persons to whom the same are due upon
 24 demand ~~therefor~~.

25 Sec. 7. Original sections 24-1004, 24-1005, 25-2804, and 29-2702,
 26 Reissue Revised Statutes of Nebraska, and sections 25-1301 and
 27 25-1301.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

(Signed) Steve Lathrop, Chairperson

Natural Resources

LEGISLATIVE BILL 933. Placed on General File with amendment.

[AM2394](#)

1 1. On page 3, line 16, strike "sixty" and reinstate the stricken
 2 matter.

(Signed) Dan Hughes, Chairperson

COMMITTEE REPORT(S)

Judiciary

The Judiciary 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.

Mark T. Langan - Board of Parole

Aye: 7. Brandt, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama, Wayne.
Nay: 0. Absent: 0. Present and not voting: 1. Chambers.

The Judiciary 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.

Anne C. Boatright - Crime Victim's Reparations Committee

Aye: 8. Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks, Slama, Wayne. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Steve Lathrop, Chairperson

AMENDMENT(S) - Print in Journal

Senator Lindstrom filed the following amendment to LB808:

[AM2675](#)

(Amendments to Standing Committee amendments, AM2559)

1 1. Strike section 82 and insert the following new sections:
2 Sec. 82. Section 81-885.04, Reissue Revised Statutes of Nebraska, is
3 amended to read:
4 81-885.04 Except as to the requirements with respect to the
5 subdivision of land, the Nebraska Real Estate License Act shall not apply
6 to:
7 (1) Any person, partnership, limited liability company, or
8 corporation who as owner or lessor shall perform any of the acts
9 described in subdivision (2) of section 81-885.01 with reference to
10 property owned or leased by him, her, or it or to the regular employees
11 thereof, with respect to the property so owned or leased, when such acts
12 are performed in the regular course of or as an incident to the
13 management, sale, or other disposition of such property and the
14 investment therein, except that such regular employees shall not perform
15 any of the acts described in such subdivision in connection with a
16 vocation of selling or leasing any real estate or the improvements
17 thereon;
18 (2) An attorney in fact under a duly executed power of attorney to
19 convey real estate from the owner or lessor or the services rendered by
20 any attorney at law in the performance of his or her duty as such
21 attorney at law;
22 (3) Any person acting as receiver, trustee in bankruptcy, personal
23 representative, conservator, or guardian or while acting under a court
24 order or under the authority of a will or of a trust instrument or as a
25 witness in any judicial proceeding or other proceeding conducted by the
26 state or any governmental subdivision or agency;

1 (4) Any person acting as the resident manager of an apartment
 2 building, duplex, apartment complex, or court, when such resident manager
 3 resides on the premises and is engaged in the leasing of property in
 4 connection with his or her employment, or any employee, parent, child,
 5 brother, or sister of the owner or any employee of a licensed broker who
 6 manages rental property for the owner of such property;

7 (5) Any officer or employee of a federal agency in the conduct of
 8 his or her official duties;

9 (6) Any officer or employee of the state government or any political
 10 subdivision thereof performing his or her official duties for real estate
 11 tax purposes or performing his or her official duties related to the
 12 acquisition of any interest in real property when the interest is being
 13 acquired for a public purpose;

14 (7) Any person or any employee thereof who renders an estimate or
 15 opinion of value of real estate or any interest therein when such
 16 estimate or opinion of value is for the purpose of real estate taxation;

17 ~~or~~

18 (8) Any person who, for himself or herself or for others, purchases
 19 or sells oil, gas, or mineral leases or performs any activities related
 20 to the purchase or sale of such leases; ~~or~~ -

21 (9) Any person not required to be licensed under the act who
 22 provides a list or lists of potential purchasers to a broker or
 23 salesperson or who makes calls or facilitates the initial contact between
 24 a potential client or customer as defined in sections 76-2407 and
 25 76-2409, respectively, and a broker or salesperson. The unlicensed person
 26 may only provide information regarding the broker or salesperson and the
 27 broker's or salesperson's services in written information created by the
 28 broker or salesperson that identifies the broker or salesperson and the
 29 broker's or salesperson's place of business and which is sent by email,
 30 United States mail, or by link to a web site created by the broker or
 31 salesperson. The unlicensed person is not permitted to discuss with such
 1 potential client or customer the services offered or to be offered by the
 2 broker or salesperson. The unlicensed person acting under this exemption
 3 may not discuss with such potential client or customer the client's or
 4 customer's motivation, motivating factors, or price such potential client
 5 or customer is willing to offer or accept. The unlicensed person does not
 6 have the authority and shall not purport to have the authority to
 7 obligate any such potential client or customer to work with a particular
 8 broker or salesperson or particular broker's or salesperson's place of
 9 business. The unlicensed person shall, at the beginning of any contact
 10 with such potential client or customer, identify who the unlicensed
 11 person is, the name of the entity that employs the unlicensed person, the
 12 name of the broker or salesperson, and the name of the broker's or
 13 salesperson's real estate business on whose behalf the contact is being
 14 made. The unlicensed person shall not perform any other activity of a
 15 broker or salesperson described in section 81-885.01, except those acts
 16 specifically provided for in this subdivision.

17 Sec. 83. Section 81-885.24, Revised Statutes Cumulative Supplement,
 18 2018, is amended to read:

19 81-885.24 The commission may, upon its own motion, and shall, upon
 20 the sworn complaint in writing of any person, investigate the actions of
 21 any broker, associate broker, salesperson, or subdivider, may censure the
 22 licensee or certificate holder, revoke or suspend any license or
 23 certificate issued under the Nebraska Real Estate License Act, or enter
 24 into consent orders, and, alone or in combination with such disciplinary
 25 actions, may impose a civil fine on a licensee pursuant to section
 26 81-885.10, whenever the license or certificate has been obtained by false
 27 or fraudulent representation or the licensee or certificate holder has
 28 been found guilty of any of the following unfair trade practices:

29 (1) Refusing because of religion, race, color, national origin,

30 ethnic group, sex, familial status, or disability to show, sell, or rent
31 any real estate for sale or rent to prospective purchasers or renters;
1 (2) Intentionally using advertising which is misleading or
2 inaccurate in any material particular or in any way misrepresents any
3 property, terms, values, policies, or services of the business conducted;
4 (3) Failing to account for and remit any money coming into his or
5 her possession belonging to others;
6 (4) Commingling the money or other property of his or her principals
7 with his or her own;
8 (5) Failing to maintain and deposit in a separate trust account all
9 money received by a broker acting in such capacity, or as escrow agent or
10 the temporary custodian of the funds of others, in a real estate
11 transaction unless all parties having an interest in the funds have
12 agreed otherwise in writing;
13 (6) Accepting, giving, or charging any form of undisclosed
14 compensation, consideration, rebate, or direct profit on expenditures
15 made for a principal;
16 (7) Representing or attempting to represent a real estate broker,
17 other than the employer, without the express knowledge and consent of the
18 employer;
19 (8) Accepting any form of compensation or consideration by an
20 associate broker or salesperson from anyone other than his or her
21 employing broker without the consent of his or her employing broker;
22 (9) Acting in the dual capacity of agent and undisclosed principal
23 in any transaction;
24 (10) Guaranteeing or authorizing any person to guarantee future
25 profits which may result from the resale of real property;
26 (11) Placing a sign on any property offering it for sale or rent
27 without the written consent of the owner or his or her authorized agent;
28 (12) Offering real estate for sale or lease without the knowledge
29 and consent of the owner or his or her authorized agent or on terms other
30 than those authorized by the owner or his or her authorized agent;
31 (13) Inducing any party to a contract of sale or lease to break such
1 contract for the purpose of substituting, in lieu thereof, a new contract
2 with another principal;
3 (14) Negotiating a sale, exchange, listing, or lease of real estate
4 directly with an owner or lessor if he or she knows that such owner has a
5 written outstanding listing contract in connection with such property
6 granting an exclusive agency or an exclusive right to sell to another
7 broker or negotiating directly with an owner to withdraw from or break
8 such a listing contract for the purpose of substituting, in lieu thereof,
9 a new listing contract;
10 (15) Discussing or soliciting a discussion of, with an owner of a
11 property which is exclusively listed with another broker, the terms upon
12 which the broker would accept a future listing upon the expiration of the
13 present listing unless the owner initiates the discussion;
14 (16) Violating any provision of sections 76-2401 to 76-2430;
15 (17) Soliciting, selling, or offering for sale real estate by
16 offering free lots or conducting lotteries for the purpose of influencing
17 a purchaser or prospective purchaser of real estate;
18 (18) Providing any form of compensation or consideration to any
19 person for performing the services of a broker, associate broker, or
20 salesperson who has not first secured his or her license under the
21 Nebraska Real Estate License Act unless such person is (a) a nonresident
22 who is licensed in his or her resident regulatory jurisdiction or (b) a
23 citizen and resident of a foreign country which does not license persons
24 conducting the activities of a broker and such person provides reasonable
25 written evidence to the Nebraska broker that he or she is a resident
26 citizen of that foreign country, is not a resident of this country, and
27 conducts the activities of a broker in that foreign country;

28 (19) Failing to include a fixed date of expiration in any written
29 listing agreement and failing to leave a copy of the agreement with the
30 principal;
31 (20) Failing to deliver within a reasonable time a completed and
1 dated copy of any purchase agreement or offer to buy or sell real estate
2 to the purchaser and to the seller;
3 (21) Failing by a broker to deliver to the seller in every real
4 estate transaction, at the time the transaction is consummated, a
5 complete, detailed closing statement showing all of the receipts and
6 disbursements handled by such broker for the seller, failing to deliver
7 to the buyer a complete statement showing all money received in the
8 transaction from such buyer and how and for what the same was disbursed,
9 and failing to retain true copies of such statements in his or her files;
10 (22) Making any substantial misrepresentations;
11 (23) Acting for more than one party in a transaction without the
12 knowledge of all parties for whom he or she acts;
13 (24) Failing by an associate broker or salesperson to place, as soon
14 after receipt as practicable, in the custody of his or her employing
15 broker any deposit money or other money or funds entrusted to him or her
16 by any person dealing with him or her as the representative of his or her
17 licensed broker;
18 (25) Filing a listing contract or any document or instrument
19 purporting to create a lien based on a listing contract for the purpose
20 of casting a cloud upon the title to real estate when no valid claim
21 under the listing contract exists;
22 (26) Violating any rule or regulation adopted and promulgated by the
23 commission in the interest of the public and consistent with the Nebraska
24 Real Estate License Act;
25 (27) Failing by a subdivider, after the original certificate has
26 been issued, to comply with all of the requirements of the Nebraska Real
27 Estate License Act;
28 (28) Conviction of a felony or entering a plea of guilty or nolo
29 contendere to a felony charge by a broker or salesperson;
30 (29) Demonstrating negligence, incompetency, or unworthiness to act
31 as a broker, associate broker, or salesperson, whether of the same or of
1 a different character as otherwise specified in this section;
2 (30) Inducing or attempting to induce a person to transfer an
3 interest in real property, whether or not for monetary gain, or
4 discouraging another person from purchasing real property, by
5 representing that (a) a change has occurred or will or may occur in the
6 composition with respect to religion, race, color, national origin,
7 ethnic group, sex, familial status, or disability of the owners or
8 occupants in the block, neighborhood, or area or (b) such change will or
9 may result in the lowering of property values, an increase in criminal or
10 antisocial behavior, or a decline in the quality of schools in the block,
11 neighborhood, or area;
12 (31) Failing by a team leader to provide a current list of all team
13 members to his or her designated broker;
14 (32) Failing by a designated broker to maintain a record of all team
15 leaders and team members working under him or her;
16 (33) Utilizing advertising which does not prominently display the
17 name under which the designated broker does business as filed with the
18 commission;
19 (34) Utilizing team advertising or a team name suggesting the team
20 is an independent real estate brokerage; ~~or~~
21 (35) Charging or collecting, as part or all of his or her
22 compensation or consideration, any part of the earnest money or other
23 money paid to him or her or the entity under which he or she does
24 business in connection with any real estate transaction until the
25 transaction has been consummated or terminated. However, a payment for

26 goods or services rendered by a third party on behalf of the client shall
 27 not be considered compensation or consideration if such payment does not
 28 include any profit, compensation, or payment for services rendered by the
 29 broker and the broker retains a record of the payment to the third party
 30 for such goods or services; or -
 31 (36) Failing to provide a copy of section 81-885.04 or written
 1 instructions explaining the provisions of the exemption from licensure as
 2 set forth in subdivision (9) of section 81-885.04 to any unlicensed
 3 person who assists in procuring a potential client or customer as defined
 4 in sections 76-2407 and 76-2409, respectively, for the purpose of the
 5 listing, sale, purchase, exchange, renting, leasing, or optioning of any
 6 real estate.
 7 2. On page 93, line 5, strike "and 85" and insert "83, and 86"; and
 8 in line 12 strike "and" and insert a comma, and after the last comma
 9 insert "and 81-885.24,".
 10 3. Renumber the remaining sections accordingly.

NOTICE OF COMMITTEE HEARING(S)
 Nebraska Retirement Systems
 Room 1525

Wednesday, April 8, 2020 12:00 p.m.

Presentation of the Nebraska Investment Council Annual Report to the
 Nebraska Retirement Systems Committee pursuant to section 72-1243(2).
 Presentation of the Nebraska Public Employees Retirement Systems Annual
 Report to the Nebraska Retirement Systems Committee pursuant to
 section 84-1503(3).

(Signed) Mark Kolterman, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 329A. Introduced by Bolz, 29.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 329, One Hundred Sixth Legislature, Second Session, 2020.

RESOLUTION(S)

Pursuant to Rule 4, Sec. 5(b), LR325 was adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR325.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 288. Read. Considered.

SENATOR HUGHES PRESIDING

SPEAKER SCHEER PRESIDING

Senator Chambers offered the following motion:

[MO159](#)

Bracket until April 22, 2020.

Senator Chambers withdrew his motion to bracket.

Senator Slama moved for a call of the house. The motion prevailed with 25 ayes, 2 nays, and 22 not voting.

Senator Slama requested a roll call vote on the adoption of the resolution.

Voting in the affirmative, 43:

Albrecht	DeBoer	Hilgers	Linehan	Slama
Arch	Dorn	Hilkemann	Lowe	Stinner
Blood	Friesen	Howard	McCollister	Vargas
Bolz	Geist	Hughes	McDonnell	Walz
Bostelman	Gragert	Hunt	Moser	Wayne
Brandt	Groene	Kolterman	Murman	Williams
Brewer	Halloran	La Grone	Pansing Brooks	Wishart
Briese	Hansen, B.	Lathrop	Quick	
Crawford	Hansen, M.	Lindstrom	Scheer	

Voting in the negative, 1:

Chambers

Present and not voting, 3:

Cavanaugh Kolowski Morfeld

Excused and not voting, 2:

Clements Erdman

LR288 was adopted with 43 ayes, 1 nay, 3 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

BILLS ON FIRST READING

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

LEGISLATIVE BILL 865A. Introduced by Wayne, 13.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 865, One Hundred Sixth Legislature, Second Session, 2020.

LEGISLATIVE BILL 805A. Introduced by Wayne, 13.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 805, One Hundred Sixth Legislature, Second Session, 2020.

COMMITTEE REPORT(S)

Judiciary

LEGISLATIVE BILL 881. Placed on General File with amendment. [AM2628](#) is available in the Bill Room.

LEGISLATIVE BILL 912. Placed on General File with amendment. [AM2620](#) is available in the Bill Room.

(Signed) Steve Lathrop, Chairperson

Natural Resources

LEGISLATIVE BILL 861. Placed on General File with amendment. [AM2672](#)

1 1. Strike original section 3.

2 2. On page 2, line 3, strike "sections 3 and 4" and insert "section 3 3"; in line 9 strike "sections" and insert "section"; in line 10 strike 4 "and 4"; in line 15 after the second comma insert "can, pouch,"; and in 5 line 16 strike "either" and after "reusable" insert ", recyclable,".

6 3. On page 3, lines 12 and 30, strike "consumer merchandise and"; 7 and in line 29 after the second comma insert "prohibitions,".

8 4. On page 4, line 1, after "programs" insert ", except that in no 9 event shall such programs prohibit or have the effect of prohibiting the 10 sale, use, or marketing of any containers".

11 5. Renumber the remaining sections accordingly.

(Signed) Dan Hughes, Chairperson

Judiciary

LEGISLATIVE BILL 1148. Placed on General File with amendment. [AM2637](#) is available in the Bill Room.

(Signed) Steve Lathrop, Chairperson

AMENDMENT(S) - Print in Journal

Senator Pansing Brooks filed the following amendment to LB1042:
AM2685

(Amendments to AM2592)

- 1 1. On page 10, line 13, after "institution" insert ", but shall not
- 2 be used to pay expenses associated with attending kindergarten through
- 3 grade twelve.".
- 4 2. On page 14, line 24, after the period insert "Such contributions
- 5 shall not be used to pay expenses associated with attending kindergarten
- 6 through grade twelve.".

Senator Friesen filed the following amendment to LB944:
AM2612 is available in the Bill Room.

Senator Groene filed the following amendment to LB1131:
AM2671

(Amendments to Standing Committee amendments, AM2456)

- 1 1. On page 38, line 24, after the period insert "A provider shall
- 2 not provide paper records or charge a copying fee when a request is made
- 3 to receive records in an electronic format and the provider has access to
- 4 such records in an easily transferable electronic format at the time of
- 5 the request.".

UNANIMOUS CONSENT - Add Cointroducer(s)

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator Hunt name added to LB1155.

VISITOR(S)

Visitors to the Chamber were Senator Bolz's mom, Pam Eisenhower, from Sterling; students from Lincoln High School; a group from Americans for Prosperity from across the state; a group from the Black and Brown Youth Advocates and the Urban League of Nebraska Young Professionals; and students and teacher from Norfolk.

The Doctor of the Day was Dr. John Jacobsen from Kearney.

ADJOURNMENT

At 12:10 p.m., on a motion by Senator McCollister, the Legislature adjourned until 9:00 a.m., Tuesday, March 3, 2020.

Patrick J. O'Donnell
Clerk of the Legislature