

FORTY-FOURTH DAY - JULY 20, 2020

LEGISLATIVE JOURNAL

**ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION**

FORTY-FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Monday, July 20, 2020

PRAYER

The prayer was offered by Senator Kolterman.

ROLL CALL

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

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

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-third day was approved.

COMMITTEE REPORT(S)

Executive Board

LEGISLATIVE BILL 1157. Placed on General File.

(Signed) Mike Hilgers, Chairperson

NOTICE OF COMMITTEE HEARING(S)

Transportation and Telecommunications
Room 1525

Tuesday, July 28, 2020 12:15 p.m.

Roger Figard - Board of Public Roads Classifications and Standards
John F. Krager III - Board of Public Roads Classifications and Standards
Lisa Kramer - Board of Public Roads Classifications and Standards
Steven D. Rames - Board of Public Roads Classifications and Standards
Darold E. Tagge - Board of Public Roads Classifications and Standards
Timothy W. Weander - Board of Public Roads Classifications and Standards

(Signed) Curt Friesen, Chairperson

Education
Room 1525

Thursday, July 30, 2020 8:30 a.m.
Marjean C. Terrell - Board of Trustees of the Nebraska State Colleges

(Signed) Mike Groene, Chairperson

Health and Human Services
Video Conference Hearing

Wednesday, May 27, 2020 9:00 a.m.
Martin L. Fattig - Nebraska Rural Health Advisory Commission
Lynette Kramer - Nebraska Rural Health Advisory Commission
Jessye A. Goertz - Nebraska Rural Health Advisory Commission
April J. Dexter - Nebraska Rural Health Advisory Commission
Note: These appointments were previously heard via video conference on
May 27, 2020

Friday, May 29, 2020 2:00 p.m.
Benjamin R. Iske - Nebraska Rural Health Advisory Commission
Sandra Torres - Nebraska Rural Health Advisory Commission
Note: These appointments were previously heard via video conference on
May 29, 2020

Friday, May 29, 2020 2:30 p.m.
Rui Yi - Stem Cell Research Advisory Committee
Daniel J. Rosenthal - State Board of Health
Carolyn Petersen - Board of Emergency Medical Services
Note: These appointments were previously heard via video conference on
May 29, 2020

(Signed) Sara Howard, Chairperson

MESSAGE(S) FROM THE GOVERNOR

May 7, 2020

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

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed
to the Game and Parks Commission:

Donna Kush, 4001 S. 173 Circle, Omaha, NE 68130

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

ATTORNEY GENERAL'S OPINIONS

Opinion 20-005

SUBJECT: LB 45 – Constitutionality of the Notice and Payment Provisions of the Black-Tailed Prairie Dog Management Act

REQUESTED BY: Senator Ernie Chambers
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Joshua E. Dethlefsen, Assistant Attorney General

INTRODUCTION

You have requested an opinion from this office about the constitutionality of several provisions of the Black-Tailed Prairie Dog Management Act ("Act"), specifically (1) whether the Act violates the Due Process Clause of the Nebraska Constitution where it specifically states that failure to provide notice does not relieve landowners of the necessity of full compliance under the Act, and (2) whether the Act violates Article VII of the Nebraska Constitution when fines or penalties are directed to a fund other than for use in the common schools. Although we typically do not address the constitutionality of currently existing statutes, we will construe your question to relate to currently-pending LB 45, which calls for the repeal of the Black-Tailed Prairie Dog Management Act. Our conclusions are as follows:

- 1) The notice provisions do not violate the Due Process Clause of the Nebraska Constitution because the Act appears to require individual notice before enforcement or management actions can be taken by the county; and
- 2) The deposit of funds to a black-tailed prairie dog management fund or the county general fund if the county takes management actions does not violate the Nebraska Constitution because it is not penal in nature and, thus, is not a "fine, penalty, or license money" which must be used for

support of the common schools. However, funds from an enforcement action do appear to be penal in nature and could not be deposited in the black-tail prairie dog management fund or the county general fund and, therefore, does likely violate Article VII of the Nebraska Constitution. That provision appears to be severable from the remainder of the Act.

Our analysis supporting these conclusions is set forth below.

THE BLACK-TAILED PRAIRIE DOG MANAGEMENT ACT AND LB 45

The Black-Tailed Prairie Dog Management Act, Neb. Rev. Stat. § 23-3801 *et seq.*, was passed as LB 473 in 2012. The Act provides counties with the power to adopt "a coordinated program for the management of black-tailed prairie dogs on property within the county." Neb. Rev. Stat. § 23-3803. The Act also imposes an obligation on landowners in such counties to "effectively manage colonies present upon his, her, or its property to prevent the expansion of colonies to adjacent properties if the owner of the adjacent property objects to such expansion." Neb. Rev. Stat. § 23-3804.

If a county has adopted a coordinated management program, it is required to publish general notice in one or more newspapers of general circulation in the county on or before May 1 of each year or at other such times as the county board may determine. Neb. Rev. Stat. § 23-3806. If a county board of a county that has adopted a coordinated management program "has reason to believe, based upon information or through its own investigation," that a prairie dog colony "has expanded onto adjacent property and the owner of the adjacent property objects to such expansion" and the county board determines that management of the colony is necessary, then the county board shall serve individual notice upon the owner of record of recommended methods of when and how black-tailed prairie dogs are to be managed. *Id.* A landowner may request an informal hearing within fifteen days of the notice. *Id.*

If a landowner fails to comply with the notice and has not requested a hearing, after sixty days the county board may either "cause proper management methods to be used on such property," ("management") or shall notify the county attorney and the landowner, "shall, upon conviction, be guilty of an infraction" and shall be subject to a penalty of one hundred dollars per day for each day of violation, up to a total of one thousand five hundred dollars ("enforcement"). *Id.* If a county board elects to cause proper management methods to be used on such property, entry onto the land is authorized after forty-eight hours written notice and the cost is borne by the landowner. In such case, "the county board shall immediately cause notice to be filed of possible unpaid black-tailed prairie dog management assessments against the property upon which the management measures were used in the register of deeds office," and if the amount is unpaid for two months, "the county board shall certify to the county treasurer the

amount of such expense and such expense shall become a lien on the property upon which the management measures were taken as a special assessment levied on the date of management." *Id.* Such expenses become a part of the taxes on the land and bear interest at the same rate as delinquent taxes. *Id.*

If a landowner is dissatisfied with the amount of any costs charged to him under the Act, such landowner may file a written protest within fifteen days after being advised of the amount and the county board shall hold a hearing to determine whether the charges were appropriate. Neb. Rev. Stat. § 23-3807.

Any amounts collected under the Act "shall be deposited to the black-tailed prairie dog management fund of the county board if such fund has been created by the county board or, if no such fund has been created, then to the county general fund." Neb. Rev. Stat. § 23-3806.

LB 45, introduced by you in 2019 and carried over to 2020, proposes the complete repeal of the Black-Tailed Prairie Dog Management Act.

DISCUSSION

I. Notice Provisions.

You have asked whether the Due Process Clause of the Nebraska Constitution is violated if a person can be subjected to civil and criminal punishment under a law that explicitly disavows the requirement of notice before subjecting such person to a civil and criminal punishment. You refer specifically to Neb. Rev. Stat. § 23-3806, which provides that, "[f]ailure to publish general notice or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act."

Under Article I, section 3 of the Nebraska Constitution, "[n]o person shall be deprived of life, liberty, or property, without due process of law, nor be denied the equal protection of the laws." The Supreme Court has held that, "[i]f a significant property interest is shown, due process requires notice and an opportunity to be heard that is appropriate to the case." *Am. Cent. City, Inc. v. Joint Antelope Valley Auth.*, 281 Neb. 742, 758, 807 N.W.2d 170, 183 (2011).

When interpreting a statute, "[c]omponents of a series or collection of statutes pertaining to a certain subject matter are in *pari materia* and should be conjunctively considered and construed to determine the intent of the Legislature, so that different provisions are consistent, harmonious, and sensible." *Davio v. Neb. Dept. of Health and Human Servs.*, 280 Neb. 263, 274, 786 N.W.2d 655, 665 (2010). It is our opinion, reading the statute in *pari materia*, that notice is required before any management or enforcement actions can be taken under the Act.

Although your question presumes that individual notice is not necessary for the county to act, we do not read the Act that way. To the contrary, it appears that individual notice is required for the county to institute management or enforcement activities. All of the timelines for the management or enforcement options under the Act are predicated on a date contained in the notice given to the landowner. Neb. Rev. Stat. § 23-3806(3)(a), which provides for management methods to be used on the property, states that:

If, upon expiration of the sixty-day period specified on the notice required by subdivision (1)(d)(i) of this section, the landowner has not complied with the notice and has not requested a hearing pursuant to subsection (2) of this section, the county board may cause proper management methods to be used on such property and shall advise the record landowner of the cost incurred in connection with such operation. (emphasis added).

The subdivision referenced by that provision, (1)(d)(i), describes the individual notice to be given to the landowner. So in order for the sixty-day period to begin, after which the county board may authorize management methods to be used on the property, individual notice has to be provided to the landowner specifying when that sixty-day period starts. In addition, Neb. Rev. Stat. § 23-3803, which authorizes entry onto land for purposes of the Act, states:

The county board of a county that has adopted a coordinated program for the management of black-tailed prairie dogs under section 23-3803, or anyone authorized by the county board, may enter upon property in the county for purposes of performing the duties and exercising the powers under the Black-Tailed Prairie Dog Management Act without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised and forty-eight hours' written advance notice of entrance is provided to the property owner or occupant. (emphasis added).

Thus, in addition to the individual notice, the county board is required to provide additional written notice forty-eight hours in advance of entry to an owner or occupant of such land.

Similarly, Neb. Rev. Stat. § 23-3806(3)(b), which provides for enforcement of the Act, states that:

If, upon expiration of the sixty-day period specified in the notice required by subdivision (1)(d)(ii) of this section, the landowner has not complied with the notice and has not requested a hearing pursuant to subsection (2) of this section, the county board shall notify the county attorney who shall proceed against such landowner as prescribed in this subdivision. A person who is responsible for an unmanaged colony shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per

day for each day of violation, up to a total of one thousand five hundred dollars for fifteen days of noncompliance. (emphasis added).

The subdivision referenced by that provision, (1)(d)(ii), also describes individual notice to be given to a landowner. So for the sixty-day period to begin, after which the matter may be referred to the county attorney, notice must be provided to the landowner of when that sixty-day period starts. In addition, if the county attorney proceeds with an action against the landowner, the county attorney would be required to serve the landowner with notice of that action.

Our reading of the statute is supported by a similar statute, the Noxious Weed Control Act, Neb. Rev. Stat. § 2-945.01 *et seq.* That act contains very similar notice requirements and contains a similar disclaimer regarding failure to provide notice: "Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act." Neb. Rev. Stat. § 2-955. There are at least two instances in which the Nebraska Supreme Court overturned enforcement actions under the Noxious Weed Control Act because notice was insufficient despite that language. *See State v. Beethe*, 249 Neb. 743, 545 N.W.2d 108 (1996) and *State v. Brozovsky*, 249 Neb. 723, 545 N.W.2d 98 (1996). In those cases, the Supreme Court addressed the sufficiency of notice when given by a deputy weed superintendent to whom the county board had not delegated authority. Although the Court did not address the language of § 2-955 directly, that provision was present in the Noxious Weed Control Act at that time and did not prevent the Court from finding that notice was insufficient.

Given that individual notice appears to be required before any management or enforcement action can proceed, we are left with how to interpret the language you cite from Neb. Rev. Stat. § 23-3806(1)(a) that states, "[f]ailure to publish general notice or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Black-Tailed Prairie Dog Management Act." We acknowledge that this language is not entirely clear. However, reading the statutes in *pari materia*, we think the best reading of this language is that the obligations of the individual under the Act, rather than those of a county with a coordinated management plan—namely, to "effectively manage colonies present upon his, her, or its property to prevent the expansion of colonies to adjacent property if the owner of the adjacent property objects to such expansion,"—remain in effect whether notices were given or not. This does not mean that the county could institute management or enforcement actions without those notices because, as we have seen, the county's actions are all predicated upon timelines contained in such notices.

This conclusion is supported by the fact that a court, when facing a statute that can be read more than one way, will typically afford the statute a presumption of constitutionality. *See Thompson v. Heineman*, 289 Neb. 798,

831, 857 N.W.2d 731, 756 (2015) ("We presume that statutes are constitutional and will not strike down a statute unless its unconstitutionality is clearly established."); *Clark v. Martinez*, 543 U.S. 371, 380-81, 125 S. Ct. 716, 724 (2005) ("In other words, when deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail. . ."). So to the extent the language you have quoted can be read more than one way, the court is likely to construe such language in a manner that does not cause constitutional concerns.

From the language of the Act, it would appear that a county board would not be authorized to institute either the management or enforcement options against a landowner until the required sixty-day period had expired. For the sixty-day period to begin, individual notice must be provided to the landowner notifying them of that date. Therefore, we do not believe the notice provisions violate the Due Process Clause of the Nebraska Constitution.

II. Disposition of Funds.

You have also asked whether Article VII of the Nebraska Constitution is violated when fines or penalties are diverted from exclusive use for support of the common schools and, instead, are "deposited to" a management fund or to the county general fund. You reference specifically Neb. Rev. Stat. § 23-3806(4), which provides that, "[a]mounts collected under this section shall be deposited to the black-tailed prairie dog management fund of the county board if such fund has been created by the county board or, if no such fund has been created, then to the county general fund."

Article VII, § 5(1) of the Nebraska Constitution states that:

Except as provided in subsections (2) and (3) of this section, all fines, penalties, and license money arising under the general laws of this state, except fines and penalties for violation of laws prohibiting the overloading of vehicles used upon the public roads and highways of this state, shall belong and be paid over to the counties respectively where the same may be levied or imposed, and all such fines, penalties, and license money arising under the rules, bylaws, or ordinances of cities, villages, precincts, or other municipal subdivision less than a county shall belong and be paid over to the same respectively. All such fines, penalties, and license money shall be appropriated exclusively to the use and support of the common schools in the respective subdivisions where the same may accrue, except that all fines and penalties for violation of laws prohibiting the overloading of vehicles used upon the public roads and highways shall be placed as follows: Seventy-five per cent in a fund for state highways and twenty-five per cent to the county general fund where the fine or penalty is paid. (emphasis added).

The Nebraska Supreme Court has stated that, "[i]t must be conceded that this provision is self-executing and if the moneys involved are penalties within the meaning of this constitutional provision, a judgment awarding them to the [school district] would be required." *School Dist. of Omaha v. Adams*, 147 Neb. 1060, 1063, 26 N.W.2d 24, 26 (1947). The Court further stated that, "[t]he distinction between a remedial and penal statute necessarily lies in the fact that the latter is prosecuted for the sole purpose of punishment, and to deter others from offending in like manner. A remedial statute, of course, is for the purpose of adjusting the rights of the parties as between themselves in respect to the wrong alleged." *Id.*

The question, then, is whether the amounts exacted under the Act are remedial or penal within the meaning of the constitutional provision.

The Act provides for two separate monetary exactions. If the county board chooses to cause management methods to be used on the property, "the cost of any such management shall be at the expense of the landowner." Neb. Rev. Stat. § 23-3806(3)(a). The Act gives the county board the ability to collect those funds through the county treasurer. If the county board chooses to refer the matter to the county attorney, however, the landowner can be found guilty of an infraction and "the penalty shall be a fine of one hundred dollars per day for each day of violation, up to a total of one thousand five hundred dollars for fifteen days of noncompliance." Neb. Rev. Stat. § 23-3806(3)(b).

It would appear that the cost of management methods used on the property of a landowner would not be penal in nature because the amount is specifically meant to make the county whole with regard to funds expended on that landowner's property. In effect, the county board is taking action that the landowner should have taken and the county is not expected to bear the cost of that action. So those funds would not fall within the constitutional provision and could legitimately be directed to the black-tail prairie dog management fund or to the county general fund.

However, if an action is brought by the county attorney and the landowner is fined as provided under the Act, that would more clearly be a penal exaction. The amount charged is not related to any amount expended by the county and looks more like a punishment for the landowner for noncompliance with the Act. Those funds would likely fall within the constitutional provision and must be used for support of the common schools.

The Noxious Weed Control Act again provides a useful parallel because it directs only funds collected for management activities to the noxious weed control fund or the county general fund, but not amounts collected if an infraction is charged. Under Neb. Rev. Stat. § 2-955(3), "[a]mounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund." The referenced subdivision,

(3)(b), is the subdivision providing for weed control on the landowner's property. Funds generated under subdivision (3)(a), which establishes an infraction and penalty for failing to control noxious weeds, are not included in that provision. We believe this is an example of a proper fund distribution under a very similar statutory framework.

Although the disposition of funds from an enforcement action appears to be unconstitutional, that provision is likely severable from the rest of the Act. "The general rule is that when part of an act is held unconstitutional, the remainder must likewise fail, unless the unconstitutional portion is severable from the remaining portions." *Big John's Billiards, Inc. v. State*, 288 Neb. 938, 951, 852 N.W.2d 727, 739 (2014). "To determine whether an unconstitutional portion of a statute may be severed, an appellate court considers (1) whether a workable statutory scheme remains without the unconstitutional portion, (2) whether valid portions of the statute can be enforced independently, (3) whether the invalid portion was the inducement to passage of the statute, (4) whether severing the invalid portion will do violence to the intent of the Legislature, and (5) whether the statute contains a declaration of severability indicating that the Legislature would have enacted the bill without the invalid portion." *Id.* A court weighs these factors in determining severability of an unconstitutional provision. *Id.* at 952, 740. The statute does not contain a severability clause, but it appears clear that the other four factors of the test would cut in favor of severability. *Duggan v. Beermann*, 249 Neb. 411, 432, 544 N.W.2d 68, 81 (1996) ("Although the presence of a severability clause is a factor to be considered, it is not, in itself, determinative."). As to factors 1 and 2, it is clear that the remainder of the statute does not depend on where funds are directed from an enforcement action. In fact, because we have a clear constitutional provision dictating where those funds are to be directed that is superior to the statute, the workable remedy is clear: funds from those enforcement actions would simply be used for support of the common schools rather than being deposited in the black-tail prairie dog management fund or the county general fund. As to factors 3 and 4, there is no indication from a review of the legislative history that the Legislature was focused on disposition of those funds, as the vast majority of discussion was about the need to manage prairie dogs. As such, a court's consideration of the five factors would likely weigh in favor of severing the unconstitutional provision from the remainder of the Act.

CONCLUSION

In summary, we do not believe the Act violates the Due Process Clause of the Nebraska Constitution because individual notice is required before the county board can proceed with either the management or enforcement options provided under the Act. With regard to the disposition of money generated under the Act, to the extent the amounts help the county recoup money spent bringing the landowner into compliance, we do not believe it violates Article VII, Section 5 of the Nebraska Constitution. To the extent the Act directs money from penalties to a use other than the common

schools in the county, it would violate the Nebraska Constitution. However, that provision can likely be severed from the remainder of the Act.

Very truly yours,
DOUGLAS J. PETERSON
Attorney General
(Signed) Joshua E. Dethlefsen
Assistant Attorney General

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

Opinion 20-006

SUBJECT: Constitutionality of LB 1207 – The Redistricting Act

REQUESTED BY: Senator John McCollister
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 1207. You describe the bill as establishing "statutory standards governing substance and procedures for redistricting legislation based on the decennial census performed by the U.S. Census Bureau." Your four questions are as follows:

1. Does LB 1207, either explicitly or by implication, restrict or limit the power or authority of a subsequent Legislature to enact or repeal legislation concerning the establishment of the boundaries of districts represented by elected officials in Nebraska?
2. Does LB 1207 conflict with provisions of the Constitution of the State of Nebraska that specify characteristics of the district boundaries for members of the Nebraska Supreme Court (Article V, Section 5); the Nebraska Legislature (Article III, Section 5); the Board of Regents of the University of Nebraska (Article VII, Section 10); the Public Service Commission (Article IV, Section 20); or the State Board of Education (Article VII, Section 3)?
3. Does LB 1207, either explicitly or by implication, restrict or limit the power or authority of a subsequent Legislature to adopt rules of its proceedings pursuant to Article III, Section 10 of the Constitution of the State of Nebraska?

4. Does LB 1207 conflict with any provision of the Constitution of the State of Nebraska or with any provisions of the Constitution of the United States or the Voting Rights Act of 1965 (Public Law 89-110)?

PROPOSED LEGISLATION

While we will address each of your questions in turn, our description of LB 1207 will be common to all questions.

LB 1207 creates the "Redistricting Act." LB 1207, § 3 states that the purpose of the Act is to "establish procedures" and designate "boundary lines based on population" for the election or appointment of various officials, including those listed in your second question. Section 4(2) provides that the maps shall be drawn using politically neutral criteria, which are more specifically set forth in subsections (2), (3) and (4).

LB 1207, § 5 provides that "legislative bills incorporating the initial version of the maps shall not be placed on the agenda for General File consideration until fourteen calendar days after the last public hearing held pursuant to section 6 of this act." Section 6 provides that the redistricting committee shall make maps available to the public and conduct at least one public hearing in each congressional district.

Section 7 provides that no changes other than corrective amendments shall be allowed to the initial version of the maps or the legislative bills which incorporate the maps. Section 2(2) defines a corrective amendment as "an amendment which corrects a technical error but does not substantially alter the boundary lines. . . ."

Finally, LB 1207, § 8 states that if "the Legislature fails to enact legislation to provide for district boundaries for any entity listed in section 3 of this act prior to adjournment of the legislative session, the Governor shall call a special session within thirty days after the adjournment. . . ."

ANALYSIS

I. Whether LB 1207 Would Restrict the Authority of Subsequent Legislatures to Enact or Repeal Redistricting Legislation

Our analysis begins with the fundamental principle that the Legislature has plenary legislative authority except as limited by the state and federal constitutions. *Pony Lake School District 30 v. State Committee for the Reorganization of School Districts*, 271 Neb. Neb. 173, 710 N.W.2d 609 (2006); *Lenstrom v. Thone*, 209 Neb. 783, 311 N.W.2d 884 (1981); *Dwyer v. Omaha-Douglas Public Building Commission*, 188 Neb. 30, 195 N.W.2d 236 (1972). The Nebraska Constitution is not a grant of power, but instead, a limitation of power and the Legislature may legislate upon any subject not inhibited by the Constitution. *State ex rel. Creighton University v. Smith*, 217 Neb. 682, 353 N.W.2d 267 (1984).

Neb. Const. art. I, § 1 provides that "[t]he legislative authority of the state shall be vested in a Legislature consisting of one chamber." Your first question implicates another principle derived from this constitutional power of the Legislature to legislate. One legislature cannot generally bind or restrict a succeeding legislature. *State ex rel. Stenberg v. Moore*, 249 Neb. 589, 544 N.W.2d 344 (1996) ["*Stenberg*"]. In *Stenberg*, the Legislature had enacted LB 507, which required future legislation projected to increase the total inmate population in state correctional facilities to include estimates of the operating costs resulting from the increased population. The Court held that LB 507 was an unconstitutional attempt by one legislature to restrict a future legislature from exercising its constitutional power to legislate. "The authority of a legislature is limited to the period of its own existence. One general assembly cannot bind a future one." *Stenberg*, 249 Neb. at 594, 544 N.W.2d at 348 (citing *Frost v. State.*, 172 N.W.2d 575, 583 (Iowa 1969)). In other words, one legislature cannot restrict the constitutional power of subsequent legislatures to revise, amend, or repeal an act.

In our review of LB 1207, we have found no provision which would restrict a future legislature from acting to amend or repeal the bill. A subsequent legislature could amend the statutes created by LB 1207 to set different parameters for redistricting or could determine to repeal the provisions of LB 1207 altogether.

II. Whether LB 1207 Conflicts With State Constitutional Provisions Pertaining to District Boundaries

The Nebraska Constitution sets forth requirements for the district boundaries of several elected state officials. As you point out in your second question, certain requirements for apportionment and redistricting are found in state constitutional provisions concerning districts for members of the Legislature, districts for State Board of Education members, districts for the Board of Regents members, districts for members of the Supreme Court, and districts for members of the Public Service Commission. You ask whether LB 1207 conflicts with any of these constitutional provisions.

We explained in response to your first question that the authority of the Legislature is extensive. However, while that legislative authority is very broad, it is subject to any limitations contained in the Nebraska Constitution. The question is whether any provision of LB 1207 impermissibly contradicts the constitutional provisions on apportionment and redistricting or merely supplements them.

We first note that each of the constitutional provisions which you list contains similar language concerning the population of each district created by the Legislature. For Supreme Court judicial districts and Board of Regents districts, the Legislature must divide the state into districts of "approximately equal population." Neb. Const. art. V, § 5 and Neb. Const. art. VII, § 10. For State Board of Education districts and Public Service Commission districts, the Legislature must divide the state into districts of

"substantially equal population." Neb. Const. art. VII, § 3 and Neb. Const. art. IV, § 20. Legislative districts must also be apportioned based on population and, if any county contains the population sufficient to entitle it to two or more members of the Legislature, that county shall be divided into separate districts "as nearly equal in population as may be." Neb. Const. art. III, § 5.

This principle of equal representation, or the one person-one vote rule, which underlies these population requirements is derived from the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, which requires "equal representation for equal numbers of people." *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964). There are a series of federal district court cases concerning the Nebraska legislature's multiple attempts to reapportion legislative districts following the 1960 census. The court discussed the one person-one vote doctrine in *League of Nebraska Municipalities v. Marsh*, 242 F. Supp. 357 (D. Neb. 1965) and held that a bill which reapportioned the Nebraska Legislature into 50 districts so that one vote in the smallest district created was equivalent to 1.6 votes in another district was unconstitutional. Following the enactment of a subsequent reapportionment plan, in *League of Nebraska Municipalities v. Marsh*, 253 F. Supp. 27 (D. Neb. 1966), the court pointed out that the Nebraska Constitution also required following county lines when practicable and stated that "[t]he law does not require that counties be massacred to achieve mathematical exactness." *Id.* at 30. Further, the court held that some margin of variance was acceptable and approved the redistricting plan created by LB 925, the redistricting bill at issue, in which five districts had a variance of more than 7.0 percent above the mathematical average.

Following the 1990 census, a legislative committee formulated redistricting guidelines, including a requirement that no redistricting plan would be considered in which districts deviated more than 2 percent from the ideal population. When this guideline was challenged, the Nebraska Supreme Court noted that, while several United States Supreme Court cases permitted a greater variation in district populations, such deviation was not required. "Certainly, the Legislature may adhere to a more stringent standard in order to best achieve proportional representation for the citizens of Nebraska. Indeed, such a strict standard is consistent with the requirement of article III, § 5, that any reapportionment of legislative districts be based solely on population." *Hlava v. Nelson*, 247 Neb. 482, 486, 528 N.W.2d 306, 309 (1995).

Section 3 of LB 1207 states that its purpose is to designate "boundary lines based on population" and section 4(2)(a) provides that maps and districts are to be drawn with "a population deviation of plus or minus one percent or less." This language appears consistent with the specific constitutional provisions you have listed, as interpreted by Nebraska courts.

Three of the constitutional provisions about which you inquire also require that county lines "shall be followed whenever practicable, but other established lines may be followed at the discretion of the Legislature." Neb. Const. art. III, § 5 (legislative districts); Neb. Const. art. V, § 5 (Supreme Court judicial districts); Neb. Const. art. VII, § 10 (Board of Regents districts). The Nebraska Supreme Court interpreted this language in a case concerning the proposed division of Madison County after the 1990 census. *Day v. Nelson*, 240 Neb. 997, 485 N.W.2d 583 (1992). The 1990 population of Madison County closely approximated the ideal size of a legislative district at that time. The Court held that the division of Madison County violated art. III, § 5. "It is obvious that according to the plain language of article III, § 5, Madison County must constitute a single district unless not 'practicable.' It is also obvious that the presence of a number of proposed plans that apportion the state leaving District 21 substantially intact makes following that county's boundaries 'practicable.'" *Id.* at 1000-01, 485 N.W.2d at 586.

Section 4(3)(d) of LB 1207 provides that maps and districts are to be drawn with "deference to county and municipal boundary lines when appropriate." While this provision does not directly contradict the three constitutional provisions listed in the preceding paragraph, we note that the Nebraska Supreme Court, based on its holding in *Day*, could find the language of LB 1207 on following county boundaries to be less stringent than the constitutional requirements.

III. Whether LB 1207 Would Restrict the Authority of Subsequent Legislatures to Adopt Their Own Rules Pursuant to Article III, § 10

Neb. Const. art. III, § 10 provides, in pertinent part, that "the Legislature shall determine the rules of its proceedings. . . ." In interpreting this constitutional provision, the Nebraska Supreme Court stated in *State ex rel. Johnson v. Hagemeister*, 161 Neb. 475, 73 N.W.2d 625 (1955), that this power "extends to the transaction of any [legislative] business, or in the performance of any duty conferred upon it by the constitution." *Id.* at 481, 73 N.W.2d at 629 (citations omitted).

"The typical understanding of state legislative bodies is that, with the limited exception of valid contractual obligations with third parties, pending matters die at the expiration of the legislative body's 2-year term." *State ex rel. Peterson v. Ebke*, 303 Neb. 637, 654, 930 N.W.2d 551, 564 (2019). "In any event, no state legislative body has been similarly described as a 'continuing body.' We hold that the Nebraska Unicameral Legislature, while unique because it is not a bicameral system, is likewise not a 'continuing body.'" *Id.* at 657, 930 N.W.2d at 566. "Finally, unlike in the Senate, all procedural rules of the Nebraska Unicameral Legislature are adopted by a majority vote at the 'commencement of each regular session in odd-numbered years,' and the adopted rules 'govern the Legislature for a period of two years.'" *Id.* at 658, 930 N.W.2d at 566.

Currently, Rule 3, § 6 of the Rules of the 106th Nebraska Legislature establishes a Redistricting Committee of the Legislature and sets out several rules to guide the Legislature's redistricting process. This rule provides that the Redistricting Committee will adopt substantive and procedural guidelines which will then be presented to the Legislature for approval. It is our understanding, based on past practice, that new substantive and procedural rules will be adopted by the 107th Legislature when that body commences its regular session in January of 2021 and that redistricting criteria will be adopted by the full legislature's approval of a legislative resolution.

LB 1207 includes provisions as to the officers of the Redistricting Committee, the holding of public hearings by the Committee, the drawing of maps and districts, the timing of placing legislative bills on the agenda and a limitation on amendments to the initial version of the maps which are drawn. It appears that LB 1207 would put into statute procedural rules for the Redistricting Committee as well as some substantive guidelines for redistricting rather than leaving those rules to be adopted by a future legislature as it commences its session. If LB 1207 were enacted, a subsequent legislature and its redistricting committee could still adopt additional rules on redistricting as long as they exercised that power in conformity with LB 1207. However, while Neb. Const. art. II, § 10 provides broad authority for the legislature to "determine the rules of its proceedings," it may not adopt rules which contradict the Constitution or attempt to modify or alter state statutes. Therefore, if a future legislature wanted to adopt redistricting rules which were not consistent with LB 1207, it would be necessary to first amend or repeal the provisions of LB 1207.

IV. Whether LB 1207 Raises Other Constitutional Concerns

Your final question asks whether LB 1207 conflicts with any provision of the state or federal constitutions or with any provision of the federal Voting Rights Act. This question is so broad that it is not possible for us to answer it within the scope of this opinion. We have discussed in section I of our opinion whether LB 1207 violates Neb. Const. art. I, § 1, and in section II whether it violates specific provisions of our state constitution which pertain to redistricting. Our response to your second question also included a brief discussion of the Equal Protection Clause of the United States Constitution. We do not believe that a general discussion of the Equal Protection Clause or the Voting Rights Act would be beneficial as cases decided under those provisions are very fact specific, depending on the details of each particular redistricting plan.

CONCLUSION

For the reasons discussed above, it is our opinion that LB 1207 does not limit the authority of a subsequent Legislature to enact legislation concerning district boundaries. Also, we conclude that LB 1207 does not

contradict the specific state constitutional provisions that you list in your second question, although a court could find the language on following county lines when establishing boundaries to be less stringent than those constitutional provisions. Finally, we conclude that, if LB 1207 were enacted, each subsequent legislature could continue to determine the rules of its proceedings. However, the rules pertaining to the redistricting committee and drawing of maps and district boundaries would need to be consistent with LB 1207 as well as pertinent constitutional provisions.

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

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

09-691-29

Opinion 20-007

SUBJECT: Authority of the Governor to Distribute Payments
from the Coronavirus Relief Fund Allocated to the
State of Nebraska Under the Federal CARES Act

REQUESTED BY: Senator Steve Lathrop
Nebraska State Legislature

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

You have requested an opinion from this office regarding the "appropriate roles" of the Nebraska Legislature and the executive branch with respect to the distribution of federal funds received by the State of Nebraska pursuant to the Coronavirus Aid, Relief, and Economic Security Act of 2020 ("CARES Act"), Pub. L. No. 116-136 (March 27, 2020). You indicated that the Legislature is scheduled to reconvene on July 20, and that during this time the Legislature would be in the best position to appropriate the funds at issue in the event we conclude the Legislature can or must do so. Consequently, you have requested our expedited review since "time is of the essence."

BACKGROUND

On March 13, 2020, President Trump declared a national emergency due to the global pandemic caused by the novel coronavirus disease 2019 ("COVID-19").¹ Also on March 13, Governor Ricketts declared a state of emergency in Nebraska,² invoking his emergency management authority

under the Nebraska Emergency Management Act, Neb. Rev. Stat. §§ 81-829.36 to 81-829.75 (2014, Cum. Supp. 2018, Supp. 2019). Both proclamations remain in effect. According to the Nebraska Department of Health and Human Services COVID-19 Dashboard, to date there have been 22,134 confirmed cases of COVID-19 in Nebraska, including 299 fatalities.³

On March 27, 2020, the United States Congress enacted the CARES Act, which provides emergency assistance in response to COVID-19. Title V of the CARES Act created the Coronavirus Relief Fund ("CRF"), which "provides for payments to State, Local and Tribal governments navigating the impact of the COVID-19 outbreak."⁴ Under the CARES Act, the funds must only be used to cover expenses that

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
- (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

42 U.S.C. § 801(d). Additional provisions establish monitoring and oversight duties by the U.S. Department of the Treasury Inspector General with respect to "the receipt, disbursement, and use of funds made available under [42 U.S.C. § 801]." 42 U.S.C. § 801(f)(1). Recoupment of funds is authorized in the event an entity fails to comply with subsection (d). 42 U.S.C. § 801(f)(2).

On March 16, 2020, Speaker Jim Scheer announced that, due to COVID-19, the Legislature would not meet beginning March 17, and would remain adjourned until reconvened by his office. The Legislature reconvened on March 23, and on March 25, passed Legislative Bill 1198, which provided emergency funding to battle COVID-19. Section 1 of the bill states, in pertinent part:

There is hereby appropriated \$83,619,600 from the Governor's Emergency Cash Fund for FY2019-20 to the Military Department, for Program 191 - Governor's Emergency Program - COVID-19, to aid in carrying out the goals of the Governor's Emergency Program.

2020 Neb. Laws LB 1198, § 1. Following the passage of LB 1198 on March 25, "the Legislature adjourned until the call of the Speaker."⁵

In April, the State received approximately \$1.084 billion in CRF payments. Those funds were placed in an administratively created federal fund under Program 191, Governor's Emergency Program - COVID-19, referenced in LB 1198 above. On May 27, Governor Ricketts held a press conference during which he unveiled the State's plans to expend the CRF

funds.⁶ The State began expending CRF funds in May. Payments are ongoing.

ISSUES PRESENTED

Your request letter raises several issues for our consideration, which we have summarized below:

I. Whether certain language in 2019 Neb. Laws LB 294 (the 2019 mainline budget bill), which provides for the administrative appropriation of federal funds, constitutes a "specific appropriation" as required by Neb. Const. art. III, § 25.

II. You question the propriety of allowing the language in LB 294 to appropriate over one billion dollars in federal funds, and suggest there are "serious questions about the constitutionality of such a broad delegation of appropriations power by the Legislature to the Executive."

III. In light of the broad discretion given to the State as to how to distribute the funds, you assert that the funds are in fact "undesignated" for government purposes, which would require them to be deposited in the Cash Reserve Fund in accordance with Neb. Rev. Stat. § 84-612(3).

IV. Alternatively, if the funds are considered federal funds for emergency management purposes, you ask whether they should be deposited in a "separate and distinct fund" and appropriated by the Legislature pursuant to Neb. Rev. Stat. § 81-829.58.

V. You indicate that the Legislature appropriated federal funds received by the State under the American Recovery and Reinvestment Act ("ARRA") in 2009. However, unlike CRF funds, ARRA funding could be used to offset loss of State revenue. You question "whether this is an important distinction in determining whether the Legislature can or must appropriate the CRF dollars."

VI. Lastly, if the funds have been appropriated by LB 294 or some other mechanism, you ask whether the Legislature may change the language in LB 294 to appropriate some or all of the CRF funds.

ANALYSIS

I. Neb. Const. art. III, § 25, states:

No allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation and upon an account specifying each item. No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the Legislature may

direct, and no money shall be diverted from any appropriation made for any purpose or taken from any fund whatever by resolution.

The Nebraska Supreme Court has on several occasions construed the "specific appropriation" clause in art. III, § 25. In *State v. Wallich*, 12 Neb. 407, 11 N.W. 860 (1882), the court considered the propriety of an appropriation for services described as "[f]ugitives from justice, rewards for escaped convicts, sheriffs' fees for conveying convicts to penitentiary, etc., \$18,000." *Id.* at 408, 11 N.W. at 860 (1882) (quoting general appropriation act, approved March 1, 1881). However, the actual services involved transporting juvenile offenders to the state reform school. The court stated that "[b]y this rule the term 'specific appropriation' means a particular, a definite, a limited, a precise appropriation, which as to the services in question we do not think this appropriation is." *Id.* at 409, 11 N.W. at 861. See also *State v. Babcock*, 24 Neb. 787, 40 N.W. 316 (1888) (An appropriation of funds from the sale of lots belonging to the State in the City of Lincoln was an absolute appropriation in the amount \$78,878, even though the full proceeds from the sales had not been paid into the treasury.); *State ex rel. Norfolk Beet-Sugar Co. v. Moore*, 50 Neb. 88, 99, 69 N.W. 373, 377 (1896) ("An appropriation may be specific . . . when its amount is to be ascertained in the future from the collection of the revenue. It cannot be specific when it is to be ascertained only by the requisitions which may be made by the recipients."); *Bollen v. Price*, 129 Neb. 342, 348, 261 N.W. 689, 692 (1935) (While the court indicated that "the designation of the return of \$1.20 out of each \$5 that had been paid into [the grain warehouse] fund . . . is sufficiently definite to meet all constitutional requirements," further legislative amendment with the emergency clause allowed the court to dismiss the question of constitutional adequacy "without further consideration."); *State ex rel. Meyer v. Duxbury*, 183 Neb. 302, 307, 160 N.W.2d 88, 92 (1968) ("A fair construction of the [Clean Waters Commission Act] indicates that the Legislature intended that the fees and charges received by the commission would constitute a fund in the nature of a cash fund which the commission is authorized to use to carry on the work of the commission. The act itself is a sufficient appropriation, at least for this biennium. The proceeds received from the issuing of bonds and notes, and from municipal bonds, are not revenue requiring a specific appropriation.").

However, in *State v. Searle*, 77 Neb. 155, 109 N.W. 770 (1906), the court considered whether *federal* money designated by Congress to the University of Nebraska to conduct experimental work in agriculture could be expended by the University without a specific appropriation. The court stated that

[i]t is contended by the respondent that the fund having been paid to the State Treasurer it cannot be expended by the board without a specific appropriation thereof by the Legislature; and to sustain that contention our attention is directed to *Regents v. McConnell*, 5 Neb. 428; *State v. Liedke*, 9 Neb. 467, 4 N.W. 68; *State v. Babcock*, 17 Neb. 610, 24 N.W. 202; *State v. Moore*, 46 Neb. 373, 64 N.W. 975.

From an examination of those cases we find that in each of them the fund in question was money paid into the state treasury as taxes, and therefore it belonged to the state until specifically appropriated by the Legislature to the use of the University; while in the case at bar the fund never belonged to the state. It was donated by the United States to the experimental station of the University for a specific purpose, and was paid to the State Treasurer as the agent of the Board of Regents and custodian of the funds of the University. It never was and is not now any part of the funds of the state.

Id. at 157-158, 109 N.W. at 771. The court noted that the 1899 Legislature enacted a bill that clarified that the federal funds are to be used exclusively for the federal act "and the same shall at all times be subject to the orders of the Board of Regents for expenditure for said purposes only." *Id.* at 158, 109 N.W. at 771. Consequently, based on the fund in question, constitutional provisions pertaining to the University, and the 1899 general law, it was "clear that in general terms the expenditure of said fund by the Board of Regents [was] clearly authorized, and no other or more specific appropriation [was] necessary." *Id.* at 158-159, 109 N.W. at 771.

In *Board of Regents v. Exon*, 199 Neb. 146, 256 N.W.2d 330 (1977), the court determined whether certain legislative acts were in violation of Neb. Const. art VII, § 10, which provides that the general government of the University of Nebraska is vested in the Board of Regents, whose "duties and powers shall be prescribed by law" The court found that "[i]t is the duty of the Legislature to implement the constitutional provision by enacting legislation which vests the general government of the University in the Board of Regents." *Id.* at 148, 256 N.W.2d at 332-333. The court also found that while the Legislature may add to or subtract from the powers and duties of the regents, the general government of the University must remain with the board. *Id.* at 149, 256 N.W.2d at 333.

While the University conceded that the Legislature has complete control over appropriations to the University derived from the general revenue of the State, the controversy in *Board of Regents* involved "funds derived from the operation of the University or received from the federal government or private donors." *Id.* at 150, 256 N.W.2d at 333. The trial court found that the Legislature could not control the Board of Regent's use of these funds by requiring specific annual appropriations. In response to Defendants' challenge that the finding was erroneous under art. III, § 25, the Nebraska Supreme Court stated:

The expenditure of the general funds of the state is under the control of the Legislature and it is the duty and responsibility of the Legislature to make the appropriations necessary for the operation of state government. The restriction upon money to be drawn from the treasury has reference generally to funds of the state that may be used to defray the general expenses of government.

The funds of the University, which are not derived from taxation, have a different status. In *State ex rel. Spencer Lens Co. v. Searle*, 77 Neb. 155, 108 N.W. 1119, 109 N.W. 770, this court held that the Board of Regents could expend funds donated by the federal government to the University without a specific appropriation by the Legislature. In *State ex rel. Ledwith v. Brian*, 84 Neb. 30, 120 N.W. 916, this court granted mandamus to compel the State Treasurer to countersign a warrant drawn on the University temporary fund although there had been no biennial appropriation from the fund. This court said: "We can see no reason for a biennial appropriation of these funds. It was the pledged duty of the state to apply them to the use of the University and Agricultural College, and the motives which prompted the makers of the Constitution to hold the purse strings in the hands of the people cannot apply to the situation presented. The regents of the University under the law are the proper persons and the only persons who may expend this money, and it can be used for no other purpose."

"We are further of the opinion that, when once set apart and appropriated to the proper custodian and beneficiary, subsequent biennial appropriations are not required."

Id. at 150-151, 256 N.W.2d at 333-334.

The crux of your question is whether certain language in LB 294, § 257 is sufficient to appropriate the CRF payment—language we understand State officials relied on to accept and expend the funds. Section 257 states:

FEDERAL FUNDS. The receipts for FY2019-20 and FY2020-21 inuring to the several Federal Funds, together with any amounts held in account by the State Treasurer on June 30, 2019, are hereby credited to each of the funds respectively. Expenditure of Federal Funds appropriated in this act shall not be limited to the amount shown.

Any Federal Funds, not otherwise appropriated, any additional Federal Funds made available to the credit of the State Treasurer, and any amounts on hand in any such Federal Funds on June 30, 2019, are hereby appropriated to the expending agency designated by the federal government or, if none is designated, to such expending agency as may be designated by the Governor.

2019 Neb. Laws LB 294, § 257 (emphasis added).

Our research indicates that the Legislature treats federal funds differently than other fund sources. In the "State of Nebraska Biennial Budget (2019 Session)," federal funds are described as follows:

Federal funds account for monies received from the federal government either as grants, contracts, or matching funds. Unlike other fund

sources, federal fund appropriations are an estimate and agencies are not limited to the amount shown in the appropriation bills though receipts must meet expenditures. Similar to cash funds, there are numerous individual federal funds contained in the accounting system and they are generally limited to specific uses as authorized by the federal program from which the funds came from. Of the 77 state agencies, 34 receive some level of federal funds.⁷ (Emphasis added.)

The language in § 257 allows for the administrative appropriation, presumably while the Legislature is not in session, of any amount of federal funds received by the State above the estimated items contained in the budget bill or any other federal funds made available to the State. This is a longstanding practice. Moreover, we have identified language nearly identical to § 257 in mainline budget bills dating back as far as 1943.⁸

In Nebraska, "[s]tatutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous." *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). "In construing 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." *Aksamit Resource Mgmt.*, 299 Neb. at 123, 907 N.W.2d at 808; *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 793, 943 N.W.2d 231, 243 (2020). "It is not within the province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute." *BH Media Group*, 305 Neb. at 793, 907 N.W.2d at 808.

The plain language in § 257 allows for the administrative appropriation of federal funds. In this context, the CRF funds represent "additional Federal Funds made available to the credit of the State Treasurer." The plain language gives the governor the authority to designate the expending agency if the federal government has not done so. Since Congress did not specify the expending agency in the CARES Act, that responsibility fell to the governor who designated the Military Department/Nebraska Emergency Management Agency as the expending agency.

While Nebraska case law relating to the specific appropriation of federal funds is limited, and pertains only to the University of Nebraska, *Searle* and *Board of Regents* support the idea that federal funds should be treated differently for purposes of State government budgeting and appropriation. Federal funds are not derived from the general revenue of the State, and are allocated to the State for a designated purpose, e.g., Medicaid, education. Federal funds are also not generally used to defray the general expenses of government. In the present case, the notion that an administrative appropriation of federal funds is novel or unprecedented is simply not supported by the longstanding history of the § 257 language, and the practice which has been employed by the Legislature and relied on by the

executive branch since the 1940s. Moreover, this practice has never been challenged as violating the specific appropriation clause in the art. III, § 25. In light of the statutory language, and the Legislature's longstanding practice, it is our opinion that the funds received by the State of Nebraska from the CRF were legally appropriated.⁹

II. Since we have concluded that the language in LB 294 provides a sufficient basis to appropriate the CRF funds, the amount of the federal funds appropriated is immaterial. With respect to the idea that the Legislature has "delegated" its appropriations authority to the Executive Branch, no such delegation took place. 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).

To be clear, Governor Ricketts did not appropriate the CRF money. The Legislature appropriated the funds by operation of § 257. While the appropriation was administrative in nature, it was ultimately the result of legislative action.

III. Neb. Rev. Stat. § 84-612 (Supp. 2019) provides, in pertinent part, as follows:

(1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

* * *

(3) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state. (Emphasis added.)

While we agree the federal guidance gives the State broad discretion in expending CRF funds, there is no question that the CARES Act in general, and the funds at issue here, are for the purpose of COVID-19 assistance and relief. The CARES Act specifically sets out the restrictions on the use of funds. *See* 42 U.S.C. § 801(d). Since the funds have a special designated purpose, there is no legal basis to transfer the funds to the Cash Reserve Fund.

IV. According to State accounting and budget officials, the CRF funds were administratively appropriated under § 257. Pursuant to Neb. Rev. Stat. § 81-829.58 (2014), the funds were credited to a separate and distinct fund, i.e., the Governor's Emergency Federal Fund—COVID 19, specifically created for receipt of these funds.

We would also point out that under the Emergency Management Act,

[s]uch funds as may be made available by the government of the United States for the purpose of alleviating distress from disasters, emergencies, and civil defense emergencies may be accepted by the State Treasurer and shall be credited to a separate and distinct fund unless otherwise specifically provided in the act of Congress making such funds available or as otherwise allowed and provided by state law.

Neb. Rev. Stat. § 81-829.42(10) (Cum. Supp. 2019). In addition, the provisions in § 81-829.42 establishing the Governor's Emergency Program "shall be liberally construed in order to accomplish the purposes of the Emergency Management Act and to permit the Governor to adequately cope with any disaster, emergency, or civil defense emergency which may arise . . ." Neb. Rev. Stat. § 81-829.42(9).

V. With respect to the money received from the federal government pursuant to ARRA, it is our understanding that ARRA funds were in fact appropriated by the Legislature. See 2009 Neb. Laws LB 315, §§ 48, 49, 99, 114, 115, 174, 211, 214, 261. However, other ARRA funds were appropriated using the same process set out in § 257:

Sec. 277. FEDERAL FUNDS.

The receipts for FY2009-10 and FY2010-11 inuring to the several Federal Funds, together with any amounts held in account by the State Treasurer on June 30, 2009, are hereby credited to each of the funds respectively. Expenditure of Federal Funds appropriated in this act shall not be limited to the amount shown.

Any Federal Funds, including funds received pursuant to the American Recovery and Reinvestment Act of 2009, not otherwise appropriated, any additional Federal Funds made available to the credit of the State Treasurer, and any amounts on hand in any such Federal Funds on June 30, 2009, are hereby appropriated to the expending agency designated by the federal government or, if none is designated, to such expending agency as may be designated by the Governor.

2009 Neb. Laws LB 315, § 277 (emphasis added). We understand that in Fiscal Year 2010, LB 315, § 277 provided the ability to administratively appropriate approximately \$130 million of ARRA funding in the Education Aid Program alone.

VI. Finally, you have inquired, in the event we conclude that § 257 or some other mechanism appropriated the funds, whether the Legislature may "change the language in LB 294 to appropriate some or all of the CRF dollars?" Since § 257 gave the Governor the administrative ability to appropriate the CRF funds, the Legislature may appropriate only funds which have not already been obligated or appropriated.

CONCLUSION

Based on the foregoing, it is our opinion that 2019 Neb. Laws § 257 provided a sufficient legal basis to appropriate the payments received from the Coronavirus Relief Fund established under the CARES Act. Those funds have been credited to the Governor's Emergency Federal Fund—COVID 19, a separate and distinct fund created specifically for receipt of the funds. The CRF funds are expressly limited to the uses set out in 42 U.S.C. § 801(d). Thus, transfer to the Cash Reserve Fund is not required.

Finally, the Legislature may choose to appropriate CRF funds not otherwise obligated or appropriated.

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

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

49-2499-29

¹ Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05794.pdf>.

² Press Release, Office of Governor Pete Ricketts, Gov. Ricketts Issues Emergency Declaration for COVID-19 (Mar. 13, 2020), <https://governor.nebraska.gov/press/gov-ricketts-issues-emergency-declaration-covid-19>.

³ COVID-19 Nebraska Data Dashboard, Neb. Dep't of Health & Hum. Servs., <https://experience.arcgis.com/experience/ece0db09da4d4ca68252c3967aa1e9dd> (last visited July 17, 2020).

⁴ *The CARES Act Provides Assistance for State, Local, and Tribal Governments*, U.S. Dep't of the Treasury, <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> (last visited July 15, 2020); *see also* CARES Act "5001 (codified at 42 U.S.C. "801).

⁵ Nebraska Legislative Journal, March 25, 2020, at 976, <https://nebraskalegislature.gov/FloorDocs/Current/PDF/Journal/r2day43.pdf>.

⁶ Press Release, Office of Governor Pete Ricketts, *Gov. Ricketts Unveils Plan to Use Federal Funds to Get Nebraska Growing* (May 27, 2020), <https://governor.nebraska.gov/press/gov-ricketts-unveils-plan-use-federal-funds-get-nebraska-growing>. Douglas County, with a population of over 500,000, was eligible to receive direct CRF payments. The county's allocation was approximately \$166 million. *Id.*

⁷ Neb. Leg. Rep. Biennial Budget, FY2019-20/FY 2020-21, at 83 (2019) (emphasis added), <https://nebraskalegislature.gov/pdf/reports/fiscal/2019budget.pdf>; *see also* Neb. Leg. Fiscal Off., *Legislature's Guide to Neb. State Agencies*, at vi (2018) (stating, "[u]nlike other fund sources, federal fund appropriations are not limited to the amount shown in the appropriation bill"), <https://nebraskalegislature.gov/pdf/reports/fiscal/2019legguide.pdf>.

⁸ "Any additional federal funds made available to the credit of the State Treasurer during the biennium ending June 30, 1945 shall be allocated to the expending agency designated by the federal government or if none be designated, by such expending agency as may be designated by the Governor." 1943 Neb. Laws Ch. 220, LB 96, §53.

⁹ Authority in other states is split on the question of whether federal funds are required to be appropriated. In *Colorado General Assembly v. Lamm*, 738 P.2d 1156 (Colo. 1987), the Colorado Supreme Court held that it was within the governor's authority to veto portions of the Colorado budget in which the general assembly had purported to appropriate all federal block grant funds. The court reasoned that although the general assembly had plenary power over appropriation of state money, not all federal funds are state money. The court also reasoned that the governor has executive power to make certain resource allocation decisions. The executive power, the court stated, "includes 'the determination of which specific purpose among several options should be benefited' and is consistent with 'the role of the state in administering a fund that is essentially custodial in nature.'" *Id.* at 1173. *But see Cooper v. Berger*, 837 S.E.2d 7, 22 (N.C. Ct. App. 2019), review allowed 373 N.C. 584, 837 S.E.2d 886 (mem. Feb. 26, 2020) ("Though some states, applying their own respective constitutions and statutes, may proscribe state legislative appropriation of federal block grant funds, our Constitution and law does not permit us to be counted amongst them, and the Governor has neither rebutted the presumption that acts of the General Assembly are constitutional nor identified a 'plain and clear' constitutional violation."); *Shapp v. Sloan*, 480 Pa. 449, 465, 391 A.2d 595, 602 (Pa. 1978) ("Appellants have failed to prove their basic premise that funds not raised under general state law are constitutionally differentiated from other funds in the State Treasury, and thus constitutionally beyond the scope of the General Assembly's authority."). As noted above, the

Legislature has provided for the appropriation of federal funds for many years.

AMENDMENT(S) - Print in Journal

Senator Arch filed the following amendment to LB1158:

AM2980

(Amendments to Standing Committee amendments, AM2851)

- 1 1. On page 3, line 1, strike "2021" and insert "2020"; in lines 12,
- 2 13, and 19 strike "2022" and insert "2021"; and in lines 14 and 19 strike
- 3 "2023" and insert "2022".

Senator Linehan filed the following amendment to LB1106:

AM3065

(Amendments to Standing Committee amendments, AM2870)

- 1 1. On page 1, line 10, strike "its".

Senator Briese filed the following amendment to LB1074:

AM3093

1 1. Insert the following new section:

2 Sec. 2. Section 77-2716, Revised Statutes Supplement, 2019, is

3 amended to read:

4 77-2716 (1) The following adjustments to federal adjusted gross
5 income or, for corporations and fiduciaries, federal taxable income shall
6 be made for interest or dividends received:

7 (a)(i) There shall be subtracted interest or dividends received by
8 the owner of obligations of the United States and its territories and
9 possessions or of any authority, commission, or instrumentality of the
10 United States to the extent includable in gross income for federal income
11 tax purposes but exempt from state income taxes under the laws of the
12 United States; and

13 (ii) There shall be subtracted interest received by the owner of
14 obligations of the State of Nebraska or its political subdivisions or
15 authorities which are Build America Bonds to the extent includable in
16 gross income for federal income tax purposes;

17 (b) There shall be subtracted that portion of the total dividends
18 and other income received from a regulated investment company which is
19 attributable to obligations described in subdivision (a) of this
20 subsection as reported to the recipient by the regulated investment
21 company;

22 (c) There shall be added interest or dividends received by the owner
23 of obligations of the District of Columbia, other states of the United
24 States, or their political subdivisions, authorities, commissions, or
25 instrumentalities to the extent excluded in the computation of gross
26 income for federal income tax purposes except that such interest or
27 dividends shall not be added if received by a corporation which is a
1 regulated investment company;

2 (d) There shall be added that portion of the total dividends and
3 other income received from a regulated investment company which is
4 attributable to obligations described in subdivision (c) of this
5 subsection and excluded for federal income tax purposes as reported to
6 the recipient by the regulated investment company; and

7 (e)(i) Any amount subtracted under this subsection shall be reduced
8 by any interest on indebtedness incurred to carry the obligations or
9 securities described in this subsection or the investment in the
10 regulated investment company and by any expenses incurred in the

11 production of interest or dividend income described in this subsection to
12 the extent that such expenses, including amortizable bond premiums, are
13 deductible in determining federal taxable income.

14 (ii) Any amount added under this subsection shall be reduced by any
15 expenses incurred in the production of such income to the extent
16 disallowed in the computation of federal taxable income.

17 (2) There shall be allowed a net operating loss derived from or
18 connected with Nebraska sources computed under rules and regulations
19 adopted and promulgated by the Tax Commissioner consistent, to the extent
20 possible under the Nebraska Revenue Act of 1967, with the laws of the
21 United States. For a resident individual, estate, or trust, the net
22 operating loss computed on the federal income tax return shall be
23 adjusted by the modifications contained in this section. For a
24 nonresident individual, estate, or trust or for a partial-year resident
25 individual, the net operating loss computed on the federal return shall
26 be adjusted by the modifications contained in this section and any
27 carryovers or carrybacks shall be limited to the portion of the loss
28 derived from or connected with Nebraska sources.

29 (3) There shall be subtracted from federal adjusted gross income for
30 all taxable years beginning on or after January 1, 1987, the amount of
31 any state income tax refund to the extent such refund was deducted under
1 the Internal Revenue Code, was not allowed in the computation of the tax
2 due under the Nebraska Revenue Act of 1967, and is included in federal
3 adjusted gross income.

4 (4) Federal adjusted gross income, or, for a fiduciary, federal
5 taxable income shall be modified to exclude the portion of the income or
6 loss received from a small business corporation with an election in
7 effect under subchapter S of the Internal Revenue Code or from a limited
8 liability company organized pursuant to the Nebraska Uniform Limited
9 Liability Company Act that is not derived from or connected with Nebraska
10 sources as determined in section 77-2734.01.

11 (5) There shall be subtracted from federal adjusted gross income or,
12 for corporations and fiduciaries, federal taxable income dividends
13 received or deemed to be received from corporations which are not subject
14 to the Internal Revenue Code.

15 (6) There shall be subtracted from federal taxable income a portion
16 of the income earned by a corporation subject to the Internal Revenue
17 Code of 1986 that is actually taxed by a foreign country or one of its
18 political subdivisions at a rate in excess of the maximum federal tax
19 rate for corporations. The taxpayer may make the computation for each
20 foreign country or for groups of foreign countries. The portion of the
21 taxes that may be deducted shall be computed in the following manner:

22 (a) The amount of federal taxable income from operations within a
23 foreign taxing jurisdiction shall be reduced by the amount of taxes
24 actually paid to the foreign jurisdiction that are not deductible solely
25 because the foreign tax credit was elected on the federal income tax
26 return;

27 (b) The amount of after-tax income shall be divided by one minus the
28 maximum tax rate for corporations in the Internal Revenue Code; and

29 (c) The result of the calculation in subdivision (b) of this
30 subsection shall be subtracted from the amount of federal taxable income
31 used in subdivision (a) of this subsection. The result of such
1 calculation, if greater than zero, shall be subtracted from federal
2 taxable income.

3 (7) Federal adjusted gross income shall be modified to exclude any
4 amount repaid by the taxpayer for which a reduction in federal tax is
5 allowed under section 1341(a)(5) of the Internal Revenue Code.

6 (8)(a) Federal adjusted gross income or, for corporations and
7 fiduciaries, federal taxable income shall be reduced, to the extent
8 included, by income from interest, earnings, and state contributions

9 received from the Nebraska educational savings plan trust created in
10 sections 85-1801 to 85-1817 and any account established under the
11 achieving a better life experience program as provided in sections
12 77-1401 to 77-1409.

13 (b) Federal adjusted gross income or, for corporations and
14 fiduciaries, federal taxable income shall be reduced by any contributions
15 as a participant in the Nebraska educational savings plan trust or
16 contributions to an account established under the achieving a better life
17 experience program made for the benefit of a beneficiary as provided in
18 sections 77-1401 to 77-1409, to the extent not deducted for federal
19 income tax purposes, but not to exceed five thousand dollars per married
20 filing separate return or ten thousand dollars for any other return. With
21 respect to a qualified rollover within the meaning of section 529 of the
22 Internal Revenue Code from another state's plan, any interest, earnings,
23 and state contributions received from the other state's educational
24 savings plan which is qualified under section 529 of the code shall
25 qualify for the reduction provided in this subdivision. For contributions
26 by a custodian of a custodial account including rollovers from another
27 custodial account, the reduction shall only apply to funds added to the
28 custodial account after January 1, 2014.

29 (c) Federal adjusted gross income or, for corporations and
30 fiduciaries, federal taxable income shall be increased by:

31 (i) The amount resulting from the cancellation of a participation
1 agreement refunded to the taxpayer as a participant in the Nebraska
2 educational savings plan trust to the extent previously deducted under
3 subdivision (8)(b) of this section; and

4 (ii) The amount of any withdrawals by the owner of an account
5 established under the achieving a better life experience program as
6 provided in sections 77-1401 to 77-1409 for nonqualified expenses to the
7 extent previously deducted under subdivision (8)(b) of this section.

8 (9)(a) For income tax returns filed after September 10, 2001, for
9 taxable years beginning or deemed to begin before January 1, 2006, under
10 the Internal Revenue Code of 1986, as amended, federal adjusted gross
11 income or, for corporations and fiduciaries, federal taxable income shall
12 be increased by eighty-five percent of any amount of any federal bonus
13 depreciation received under the federal Job Creation and Worker
14 Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003,
15 under section 168(k) or section 1400L of the Internal Revenue Code of
16 1986, as amended, for assets placed in service after September 10, 2001,
17 and before December 31, 2005.

18 (b) For a partnership, limited liability company, cooperative,
19 including any cooperative exempt from income taxes under section 521 of
20 the Internal Revenue Code of 1986, as amended, limited cooperative
21 association, subchapter S corporation, or joint venture, the increase
22 shall be distributed to the partners, members, shareholders, patrons, or
23 beneficiaries in the same manner as income is distributed for use against
24 their income tax liabilities.

25 (c) For a corporation with a unitary business having activity both
26 inside and outside the state, the increase shall be apportioned to
27 Nebraska in the same manner as income is apportioned to the state by
28 section 77-2734.05.

29 (d) The amount of bonus depreciation added to federal adjusted gross
30 income or, for corporations and fiduciaries, federal taxable income by
31 this subsection shall be subtracted in a later taxable year. Twenty
1 percent of the total amount of bonus depreciation added back by this
2 subsection for tax years beginning or deemed to begin before January 1,
3 2003, under the Internal Revenue Code of 1986, as amended, may be
4 subtracted in the first taxable year beginning or deemed to begin on or
5 after January 1, 2005, under the Internal Revenue Code of 1986, as
6 amended, and twenty percent in each of the next four following taxable

7 years. Twenty percent of the total amount of bonus depreciation added
8 back by this subsection for tax years beginning or deemed to begin on or
9 after January 1, 2003, may be subtracted in the first taxable year
10 beginning or deemed to begin on or after January 1, 2006, under the
11 Internal Revenue Code of 1986, as amended, and twenty percent in each of
12 the next four following taxable years.

13 (10) For taxable years beginning or deemed to begin on or after
14 January 1, 2003, and before January 1, 2006, under the Internal Revenue
15 Code of 1986, as amended, federal adjusted gross income or, for
16 corporations and fiduciaries, federal taxable income shall be increased
17 by the amount of any capital investment that is expensed under section
18 179 of the Internal Revenue Code of 1986, as amended, that is in excess
19 of twenty-five thousand dollars that is allowed under the federal Jobs
20 and Growth Tax Act of 2003. Twenty percent of the total amount of
21 expensing added back by this subsection for tax years beginning or deemed
22 to begin on or after January 1, 2003, may be subtracted in the first
23 taxable year beginning or deemed to begin on or after January 1, 2006,
24 under the Internal Revenue Code of 1986, as amended, and twenty percent
25 in each of the next four following tax years.

26 (11)(a) For taxable years beginning or deemed to begin before
27 January 1, 2018, under the Internal Revenue Code of 1986, as amended,
28 federal adjusted gross income shall be reduced by contributions, up to
29 two thousand dollars per married filing jointly return or one thousand
30 dollars for any other return, and any investment earnings made as a
31 participant in the Nebraska long-term care savings plan under the Long-
1 Term Care Savings Plan Act, to the extent not deducted for federal income
2 tax purposes.

3 (b) For taxable years beginning or deemed to begin before January 1,
4 2018, under the Internal Revenue Code of 1986, as amended, federal
5 adjusted gross income shall be increased by the withdrawals made as a
6 participant in the Nebraska long-term care savings plan under the act by
7 a person who is not a qualified individual or for any reason other than
8 transfer of funds to a spouse, long-term care expenses, long-term care
9 insurance premiums, or death of the participant, including withdrawals
10 made by reason of cancellation of the participation agreement, to the
11 extent previously deducted as a contribution or as investment earnings.

12 (12) There shall be added to federal adjusted gross income for
13 individuals, estates, and trusts any amount taken as a credit for
14 franchise tax paid by a financial institution under sections 77-3801 to
15 77-3807 as allowed by subsection (5) of section 77-2715.07.

16 (13)(a) For taxable years beginning or deemed to begin on or after
17 January 1, 2015, under the Internal Revenue Code of 1986, as amended,
18 federal adjusted gross income shall be reduced by the amount received as
19 benefits under the federal Social Security Act which are included in the
20 federal adjusted gross income if:

21 (i) For taxpayers filing a married filing joint return, federal
22 adjusted gross income is fifty-eight thousand dollars or less; or
23 (ii) For taxpayers filing any other return, federal adjusted gross
24 income is forty-three thousand dollars or less.

25 (b) For taxable years beginning or deemed to begin on or after
26 January 1, 2020, under the Internal Revenue Code of 1986, as amended, the
27 Tax Commissioner shall adjust the dollar amounts provided in subdivisions
28 (13)(a)(i) and (ii) of this section by the same percentage used to adjust
29 individual income tax brackets under subsection (3) of section
30 77-2715.03.

31 (14) For taxable years beginning or deemed to begin on or after
1 January 1, 2015, under the Internal Revenue Code of 1986, as amended, an
2 individual may make a one-time election within two calendar years after
3 the date of his or her retirement from the military to exclude income
4 received as a military retirement benefit by the individual to the extent

5 included in federal adjusted gross income and as provided in this
6 subsection. The individual may elect to exclude forty percent of his or
7 her military retirement benefit income for seven consecutive taxable
8 years beginning with the year in which the election is made or may elect
9 to exclude fifteen percent of his or her military retirement benefit
10 income for all taxable years beginning with the year in which he or she
11 turns sixty-seven years of age. For purposes of this subsection, military
12 retirement benefit means retirement benefits that are periodic payments
13 attributable to service in the uniformed services of the United States
14 for personal services performed by an individual prior to his or her
15 retirement.
16 (15) For taxable years beginning or deemed to begin prior to January
17 1, 2021, under the Internal Revenue Code of 1986, as amended, federal
18 adjusted gross income or, for corporations and fiduciaries, federal
19 taxable income shall be adjusted to the amount of federal adjusted gross
20 income or federal taxable income that would have been reported on the
21 taxpayer's federal income tax return had the changes in sections 2204,
22 2205, 2206, 2301, 2303, 2304, and 2306 of the federal Coronavirus Aid,
23 Relief, and Economic Security Act, Public Law 116-136, not gone into
24 effect.
25 2. Renumber the remaining sections and correct the repealer
26 accordingly.

GENERAL FILE

LEGISLATIVE BILL 944A. Title read. Considered.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 4 present
and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 1140. [ER214](#), found on page 963, was adopted.

Senator Howard offered the following amendment:

[AM3035](#)

(Amendments to Standing Committee amendments, AM2663)

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:
3 Section 1. (1) Youth rehabilitation and treatment centers shall be
4 operated to provide programming and services to rehabilitate and treat
5 juveniles committed under the Nebraska Juvenile Code. Each youth
6 rehabilitation and treatment center shall be considered a separate
7 placement. Each youth rehabilitation and treatment center shall provide:
8 (a) Safe and sanitary space for sleeping, hygiene, education,
9 programming, treatment, recreation, and visitation for each juvenile;
10 (b) Health care and medical services;
11 (c) Appropriate physical separation and segregation of juveniles
12 based on gender;
13 (d) Sufficient staffing to comply with state and federal law and
14 protect the safety and security of each juvenile;
15 (e) Training that is specific to the population being served at the
16 youth rehabilitation and treatment center;
17 (f) A facility administrator for each youth rehabilitation and
18 treatment center who has the sole responsibility for administration of a
19 single youth rehabilitation and treatment center;
20 (g) An evaluation process for the development of an individualized

21 treatment plan within fourteen days after admission to the youth
22 rehabilitation and treatment center;
23 (h) An age-appropriate and developmentally appropriate education
24 program for each juvenile that can award relevant and necessary credits
25 toward high school graduation that will be accepted by the juvenile's
26 home school district;
1 (i) A case management and coordination process, designed to assure
2 appropriate reintegration of the juvenile with his or her family, school,
3 and community;
4 (j) Compliance with the requirements stated in Title XIX and Title
5 IV-E of the federal Social Security Act, as such act existed on January
6 1, 2020, the Special Education Act, or other funding guidelines as
7 appropriate;
8 (k) Research-based or evidence-based programming for all juveniles
9 that includes a strong academic program and classes in health education,
10 living skills, vocational training, behavior management and modification,
11 money management, family and parent responsibilities, substance use
12 awareness, physical education, job skills training, and job placement
13 assistance; and
14 (l) Research-based or evidence-based treatment service for
15 behavioral impairment, severe emotional disturbance, sex offender
16 behavior, other mental health or psychiatric disorder, drug and alcohol
17 addiction, physical or sexual abuse, and any other treatment indicated by
18 a juvenile's individualized treatment plan.
19 (2) Each youth rehabilitation and treatment center shall be
20 accredited by a nationally recognized entity that provides accreditation
21 for juvenile facilities.
22 (3) Each youth rehabilitation and treatment center shall
23 electronically submit a report of its activities for the preceding fiscal
24 year to the Clerk of the Legislature on or before July 15 of each year
25 beginning on July 15, 2021. The annual report shall include, but not be
26 limited to, the following information:
27 (a) Data on the population served, including, but not be limited to,
28 admissions, average daily census, average length of stay, race, and
29 ethnicity;
30 (b) An overview of programming and services; and
31 (c) An overview of any facility issues or facility improvements.
1 Sec. 2. (1) The Department of Health and Human Services shall
2 develop a five-year operations plan for the youth rehabilitation and
3 treatment centers and submit such operations plans electronically to the
4 Health and Human Services Committee of the Legislature on or before March
5 15, 2021.
6 (2) The operations plan shall be developed with input from key
7 stakeholders and shall include, but not be limited to:
8 (a) A description of the population served at each youth
9 rehabilitation and treatment center;
10 (b) An organizational chart of supervisors and operations staff. The
11 operations plan shall not allow for administrative staff to have
12 oversight over more than one youth rehabilitation and treatment center
13 and shall not allow for clinical staff to have responsibility over more
14 than one youth rehabilitation and treatment center;
15 (c) Staff who shall be centralized offsite or managed onsite,
16 including facility and maintenance staff;
17 (d) A facility plan that considers taxpayer investments already made
18 in the facility and the community support and acceptance of the juveniles
19 in the community surrounding the youth rehabilitation and treatment
20 center;
21 (e) A description of each rehabilitation program offered at the
22 youth rehabilitation and treatment center;
23 (f) A description of each mental health treatment plan offered at

24 the youth rehabilitation and treatment center;
25 (g) A description of reentry and discharge planning;
26 (h) A staffing plan that ensures adequate staffing;
27 (i) An education plan developed in collaboration with the State
28 Department of Education;
29 (j) A capital improvements budget;
30 (k) An operating budget;
31 (l) A disaster recovery plan;
1 (m) A plan to segregate the juveniles by gender on separate
2 campuses;
3 (n) A parenting plan for juveniles placed in a youth rehabilitation
4 and treatment center who are parenting;
5 (o) A statement of the rights of juveniles placed at the youth
6 rehabilitation and treatment centers, including a right to privacy, and
7 the rights of parents or guardians;
8 (p) Quality and outcome measurements for tracking outcomes for
9 juveniles when they are discharged from the youth rehabilitation and
10 treatment center, including an exit survey of such juveniles;
11 (q) Key performance indicators to be included in the annual report
12 required under this section;
13 (r) A requirement for trauma-informed training provided to staff;
14 (s) Methods and procedures for investigations at the youth
15 rehabilitation and treatment center; and
16 (t) A grievance process for juveniles placed at the youth
17 rehabilitation and treatment centers.
18 (3) The department shall submit a report electronically to the Clerk
19 of the Legislature on or before December 15, 2021, and each December 15
20 thereafter regarding such operations plan and key performance indicators.
21 Sec. 3. Section 43-251.01, Revised Statutes Cumulative Supplement,
22 2018, is amended to read:
23 43-251.01 All placements and commitments of juveniles for
24 evaluations or as temporary or final dispositions are subject to the
25 following:
26 (1) No juvenile shall be confined in an adult correctional facility
27 as a disposition of the court;
28 (2) A juvenile who is found to be a juvenile as described in
29 subdivision (3) of section 43-247 shall not be placed in an adult
30 correctional facility, the secure youth confinement facility operated by
31 the Department of Correctional Services, or a youth rehabilitation and
1 treatment center or committed to the Office of Juvenile Services;
2 (3) A juvenile who is found to be a juvenile as described in
3 subdivision (1), (2), or (4) of section 43-247 shall not be assigned or
4 transferred to an adult correctional facility or the secure youth
5 confinement facility operated by the Department of Correctional Services;
6 (4) A juvenile under the age of fourteen years shall not be placed
7 with or committed to a youth rehabilitation and treatment center;
8 (5)(a) Before July 1, 2019, a juvenile shall not be detained in
9 secure detention or placed at a youth rehabilitation and treatment center
10 unless detention or placement of such juvenile is a matter of immediate
11 and urgent necessity for the protection of such juvenile or the person or
12 property of another or if it appears that such juvenile is likely to flee
13 the jurisdiction of the court; and
14 (b) On and after July 1, 2019:
15 (i) A juvenile shall not be detained unless the physical safety of
16 persons in the community would be seriously threatened or detention is
17 necessary to secure the presence of the juvenile at the next hearing, as
18 evidenced by a demonstrable record of willful failure to appear at a
19 scheduled court hearing within the last twelve months;
20 (ii) A child twelve years of age or younger shall not be placed in
21 detention under any circumstances; and

22 (iii) A juvenile shall not be placed into detention:
23 (A) To allow a parent or guardian to avoid his or her legal
24 responsibility;
25 (B) To punish, treat, or rehabilitate such juvenile;
26 (C) To permit more convenient administrative access to such
27 juvenile;
28 (D) To facilitate further interrogation or investigation; or
29 (E) Due to a lack of more appropriate facilities except in case of
30 an emergency as provided in section 8 of this act;
31 (6) A juvenile alleged to be a juvenile as described in subdivision
1 (3) of section 43-247 shall not be placed in a juvenile detention
2 facility, including a wing labeled as staff secure at such facility,
3 unless the designated staff secure portion of the facility fully complies
4 with subdivision (5) of section 83-4,125 and the ingress and egress to
5 the facility are restricted solely through staff supervision; and
6 (7) A juvenile alleged to be a juvenile as described in subdivision
7 (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his
8 or her home as a dispositional order of the court unless:
9 (a) All available community-based resources have been exhausted to
10 assist the juvenile and his or her family; and
11 (b) Maintaining the juvenile in the home presents a significant risk
12 of harm to the juvenile or community.
13 Sec. 4. Section 43-401, Reissue Revised Statutes of Nebraska, is
14 amended to read:
15 43-401 Sections 43-401 to 43-424 and sections 2, 6 to 8, and 10 of
16 this act shall be known and may be cited as the Health and Human
17 Services, Office of Juvenile Services Act.
18 Sec. 5. Section 43-403, Reissue Revised Statutes of Nebraska, is
19 amended to read:
20 43-403 For purposes of the Health and Human Services, Office of
21 Juvenile Services Act:
22 (1) Aftercare means the control, supervision, and care exercised
23 over juveniles who have been paroled;
24 (2) Committed means an order by a court committing a juvenile to the
25 care and custody of the Office of Juvenile Services for treatment;
26 (3) Community supervision means the control, supervision, and care
27 exercised over juveniles committed to the Office of Juvenile Services
28 when a commitment to the level of treatment of a youth rehabilitation and
29 treatment center has not been ordered by the court;
30 (4) Emergency means a public health emergency or a situation,
31 including fire, flood, tornado, natural disaster, or damage to a youth
1 rehabilitation and treatment center, that renders the youth
2 rehabilitation and treatment center uninhabitable. Emergency does not
3 include inadequate staffing;
4 (5) (4) Evaluation means assessment of the juvenile's social,
5 physical, psychological, and educational development and needs, including
6 a recommendation as to an appropriate treatment plan;
7 (6) (5) Parole means a conditional release of a juvenile from a
8 youth rehabilitation and treatment center to aftercare or transferred to
9 Nebraska for parole supervision by way of interstate compact;
10 (7) (6) Placed for evaluation means a placement with the Office of
11 Juvenile Services or the Department of Health and Human Services for
12 purposes of an evaluation of the juvenile; and
13 (8) (7) Treatment means type of supervision, care, confinement, and
14 rehabilitative services for the juvenile.
15 Sec. 6. (1) The Department of Health and Human Services shall
16 develop an emergency plan for the Youth Rehabilitation and Treatment
17 Center-Geneva, the Youth Rehabilitation and Treatment Center-Kearney, and
18 any other facility operated and utilized as a youth rehabilitation and
19 treatment center in compliance with state law.

20 (2) Each emergency plan shall:

21 (a) Identify and designate temporary placement facilities for the
22 placement of juveniles in the event a youth rehabilitation and treatment
23 center must be evacuated due to an emergency as defined in section
24 43-403. The administrator of a proposed temporary placement facility
25 shall consent to be designated as a temporary placement facility in the
26 emergency plan. A criminal detention facility or a juvenile detention
27 facility shall only be designated as a temporary placement facility
28 pursuant to section 8 of this act;

29 (b) Identify barriers to implementation of an effective emergency
30 plan, including necessary administrative or legislative changes;

31 (c) Include procedures for the Office of Juvenile Services to
1 provide reliable, effective, and timely notification that an emergency
2 plan is to be implemented to:

3 (i) Staff at the youth rehabilitation and treatment center where the
4 emergency plan is implemented and the administrator and staff at the
5 temporary placement facility;

6 (ii) Juveniles placed at the youth rehabilitation and treatment
7 center;

8 (iii) Families and legal guardians of juveniles placed at the youth
9 rehabilitation and treatment center;

10 (iv) The State Court Administrator, in a form and manner prescribed
11 by the State Court Administrator;

12 (v) The committing court of each juvenile placed at the youth
13 rehabilitation and treatment center;

14 (vi) The chairperson of the Health and Human Services Committee of
15 the Legislature; and

16 (vii) The office of Public Counsel and the office of Inspector
17 General of Nebraska Child Welfare;

18 (d) Detail the plan for transportation of juveniles to a temporary
19 placement facility; and

20 (e) Include methods and schedules for implementing the emergency
21 plan.

22 (3) Each emergency plan shall be developed on or before December 15,
23 2020.

24 Sec. 7. (1) The Department of Health and Human Services shall
25 ensure that the administrator of each temporary placement facility
26 described in an emergency plan required under section 6 of this act
27 consents to the temporary placement of juveniles placed in such facility
28 pursuant to the emergency plan. Prior to inclusion in an emergency plan
29 as a temporary placement facility, the department and the administrator
30 of the temporary placement facility shall agree on a cost-reimbursement
31 plan for the temporary placement of juveniles at such facility.

1 (2) If an emergency plan required under section 6 of this act is
2 implemented, the Office of Juvenile Services shall, at least twenty-four
3 hours prior to implementation, if practical, and otherwise within twenty-
4 four hours after implementation of such emergency plan, notify the
5 persons and entities listed in subdivision (2)(c) of section 6 of this
6 act.

7 Sec. 8. In the event of an emergency and only after all other
8 temporary placement options have been exhausted, the Office of Juvenile
9 Services may provide for the placement of a juvenile for a period not to
10 exceed seven days at a criminal detention facility, if allowed by law, or
11 a juvenile detention facility, as such terms are defined in section
12 83-4,125.

13 Sec. 9. (1) The Department of Health and Human Services may conduct
14 a needs assessment and cost analysis for the establishment of an
15 inpatient adolescent psychiatric unit housed within the Lincoln Regional
16 Center. If the department chooses to conduct such needs assessment and
17 cost analysis, the department shall contract with an outside consultant

18 with expertise in needs assessment and cost analysis of health care
 19 facilities for the purpose of conducting such assessment and analysis.
 20 (2) If a needs assessment and cost analysis is conducted by the
 21 department, the department shall submit a report electronically to the
 22 Health and Human Service Committee of the Legislature and the Clerk of
 23 the Legislature ninety days after the completion of such needs assessment
 24 and cost analysis. Such report shall contain the following information:
 25 (a) A needs assessment, including the number of adolescents expected
 26 to use such inpatient adolescent psychiatric unit;
 27 (b) The cost of opening an existing facility at the Lincoln Regional
 28 Center for use as an inpatient adolescent psychiatric unit;
 29 (c) The cost of reopening the facility at the Lincoln Regional
 30 Center, including the costs for necessary construction, upgrades, or
 31 repairs;
 1 (d) Annual operating costs of such unit, including, but not limited
 2 to, any federal funds available to operate the unit in addition to
 3 General Fund appropriations; and
 4 (e) Cost savings realized by moving adolescents from out-of-state
 5 institutions back to Nebraska for treatment at such unit.
 6 (3) For purposes of this section, adolescent means a person under
 7 the jurisdiction of the juvenile court.
 8 Sec. 10. Policies and procedures of the Department of Health and
 9 Human Services regarding the transportation of juveniles placed at the
 10 youth rehabilitation and treatment centers shall apply to any private
 11 contractor utilized by the Office of Juvenile Services to transport
 12 juveniles placed at the youth rehabilitation and treatment centers.
 13 Sec. 11. The Revisor of Statutes shall assign sections 1 and 9 of
 14 this act to Chapter 83, article 1.
 15 Sec. 12. Sections 1, 2, 9, and 10 of this act become operative
 16 three calendar months after the adjournment of this legislative session.
 17 The other sections of this act become operative on their effective date.
 18 Sec. 13. Original sections 43-401 and 43-403, Reissue Revised
 19 Statutes of Nebraska, and section 43-251.01, Revised Statutes Cumulative
 20 Supplement, 2018, are repealed.
 21 Sec. 14. Since an emergency exists, this act takes effect when
 22 passed and approved according to law.

Senator Howard offered the following amendment to her amendment:

[AM3088](#)

(Amendments to AM3035)

1 1. On page 4, after line 20, insert the following new subsection:
 2 "(4) The department shall not establish a new youth rehabilitation
 3 and treatment center or establish or move a youth rehabilitation and
 4 treatment center to a new or existing state or private facility until
 5 March 30, 2021, after the completion of the planning process required
 6 under this section. Youth committed to the Office of Juvenile Services
 7 and residing at a youth rehabilitation and treatment center may be moved
 8 to an existing state or private facility on a temporary basis in the
 9 event of an emergency, pursuant to the emergency plans created under
 10 section 6 of this act, and in compliance with the requirements and
 11 restrictions in sections 7 and 8 of this act."

Senator Howard moved for a call of the house. The motion prevailed with 32 ayes, 1 nay, and 16 not voting.

Senator Howard requested a roll call vote, in reverse order, on her amendment.

Voting in the affirmative, 32:

Blood	DeBoer	Hunt	Morfeld	Vargas
Bolz	Dorn	Kolowski	Moser	Walz
Brandt	Friesen	Kolterman	Murman	Williams
Briese	Gragert	Lathrop	Pansing Brooks	Wishart
Cavanaugh	Halloran	Lindstrom	Quick	
Chambers	Hansen, M.	McCollister	Scheer	
Crawford	Howard	McDonnell	Stinner	

Voting in the negative, 3:

Bostelman Geist Lowe

Present and not voting, 12:

Albrecht	Clements	Hansen, B.	La Grone
Arch	Erdman	Hilgers	Linehan
Brewer	Groene	Hughes	Slama

Excused and not voting, 2:

Hilkemann Wayne

The Howard amendment was adopted with 32 ayes, 3 nays, 12 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

The Howard amendment, [AM3035](#), as amended, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1144. [ER209](#), found on page 963, was adopted.

Senator Howard offered the following amendment:

[AM3074](#)

(Amendments to Standing Committee amendments, AM2785)

- 1 1. On page 4, line 24, strike "October 1, 2020" and insert "January 2 1, 2021".
- 3 2. On page 11, strike beginning with "on" in line 18 through the 4 period in line 20 and insert "on the condition of such state 5 institutions. The report shall be due on or before March 15, 2021, for 6 the 2020 calendar year, and on or before December 15 of each year 7 beginning in 2021, for the period beginning with December 1 of the prior 8 year through November 30 of the then current year.".

The Howard amendment was adopted with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1188. [ER212](#), found on page 964, was adopted.

Senator Howard offered the following amendment:
[AM3069](#) is available in the Bill Room.

The Howard amendment was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Senator Brandt offered the following amendment:
[AM3087](#)

(Amendments to E & R amendments, ER212)

- 1 1. On page 20, strike lines 29 through 31, and insert the following
- 2 new subdivisions:
- 3 "~~(b) Except as provided in subdivision (2)(c) of this section, the~~
- 4 ~~department shall operate the Youth Rehabilitation and Treatment Center-~~
- 5 ~~Kearney and such institution shall be used for the treatment of boys~~
- 6 ~~only.~~
- 7 (c) ~~Except as provided in subdivision (2)(c) of this section, the~~
- 8 ~~department shall operate the Youth Rehabilitation and Treatment Center-~~
- 9 ~~Geneva and such institution shall be used for the treatment of girls~~
- 10 ~~only."~~
- 11 2. On page 21, strike lines 1 through 5.

Senator Brandt withdrew his amendment.

Senator Howard offered the following amendment:
[AM3099](#)

(Amendments to AM3069)

- 1 1. On page 21, line 6, after "means" insert "a public health
- 2 emergency or".

The Howard amendment was adopted with 46 ayes, 0 nays, 1 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1148. [ER215](#), found on page 964, was adopted.

Senator Vargas offered the following amendment:
[AM3075](#) is available in the Bill Room.

The Vargas amendment was adopted with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1152. [ER192](#), found on page 872, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1055. [ER195](#), found on page 880, was adopted.

Senator Williams withdrew his amendments, [AM2741](#) and [AM2856](#), found on pages 863 and 899.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 774. [ER200](#), found on page 953, was adopted.

Senator Arch offered the following amendment:

[AM2978](#)

(Amendments to Standing Committee amendments, AM2558)

1 1. On page 22, line 24, after the period insert "A facility that
2 advertises itself as a network provider of a health insurer shall provide
3 a clarifying statement if the facility is not a network provider for all
4 insurance products offered by the health insurer."; in lines 25 through
5 29 strike the new matter; and in line 30 strike "(6)" and insert "(4)".

The Arch amendment was adopted with 43 ayes, 0 nays, 5 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 780. [ER213](#), found on page 964, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 780A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1003. [ER217](#), found on page 966, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 840. [ER180](#), found on page 798, was adopted.

Senator Quick withdrew his amendments, [AM2770](#) and [AM2877](#), found on pages 840 and 909.

Senator Quick offered his amendment, [AM2925](#), found on page 948.

The Quick amendment was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Bakenhus, Shelby - State Racing Commission - General Affairs
Kush, Donna - Game and Parks Commission - Natural Resources

(Signed) Mike Hilgers, Chairperson
Executive Board

NOTICE OF COMMITTEE HEARING(S)

Health and Human Services
Room 1525

Tuesday, July 28, 2020 8:00 a.m.

Stephanie Beasley - Division of Children and Family Services

Martin L. Fattig - Nebraska Rural Health Advisory Commission
Lynette Kramer - Nebraska Rural Health Advisory Commission
Jessye A. Goertz - Nebraska Rural Health Advisory Commission
April J. Dexter - Nebraska Rural Health Advisory Commission
Benjamin R. Iske - Nebraska Rural Health Advisory Commission
Sandra Torres - Nebraska Rural Health Advisory Commission
Rui Yi - Stem Cell Research Advisory Committee
Daniel J. Rosenthal - State Board of Health
Carolyn Petersen - Board of Emergency Medical Services

Note: Hearing is for Stephanie Beasley. Other gubernatorial appointments listed had confirmation hearings on 5/27/20 and 5/29/20 by video conference. Public testimony for these appointments is welcome after Stephanie Beasley's hearing.

(Signed) Sara Howard, Chairperson

Revenue
Room 1525

Monday, July 27, 2020 12:00 p.m.

AM3093 Note: Amendment to LB1074

(Signed) Lou Ann Linehan, Chairperson

Natural Resources
Room 1525

Tuesday, August 4, 2020 1:00 p.m.

Donna Kush - Game and Parks Commission

(Signed) Dan Hughes, Chairperson

AMENDMENT(S) - Print in Journal

Senator Hughes filed the following amendment to LB858:
[AM2997](#)

(Amendments to Final Reading copy)

- 1 1. Strike section 21 and insert the following new section:
- 2 Sec. 21. Sections 14, 15, 16, 17, and 22 of this act become
- 3 operative on June 30, 2020. The other sections of this act become
- 4 operative on their effective date.
- 5 2. On page 16, line 22, strike "Notwithstanding any other provision
- 6 of law, there", show as stricken, and insert "There".

MOTION(S) - Print in Journal

Senator Erdman filed the following motion to LB720:

[MO178](#)

Bracket until August 13, 2020.

Senator Lathrop filed the following motion to LB720:

[MO179](#)

Bracket until August 13, 2020.

AMENDMENT(S) - Print in Journal

Senator Chambers filed the following amendment to LB924:

[AM3000](#)

(Amendments to Final Reading copy)

- 1 1. Insert the following new section:
- 2 Sec. 5. Since an emergency exists, this act takes effect when passed
- 3 and approved according to law.
- 4 2. On page 1, line 9, strike "and"; and in line 10 after "sections"
- 5 insert "; and to declare an emergency".

Senator Hunt filed the following amendment to LB814:

[AM2938](#)

- 1 1. On page 4, lines 23 and 24 and 28 strike "due to a medical
- 2 emergency" and insert "based on such person's reasonable medical
- 3 judgment".

Senator Hunt filed the following amendment to LB814:

[AM2956](#)

- 1 1. On page 5, line 20, after "performed" insert "and such parent or
- 2 guardian did not authorize or consent to the procedure".
- 3 2. On page 6, line 5, after "child" insert "if no parent or guardian
- 4 authorized or consented to the procedure".

Senator Hunt filed the following amendment to LB814:

[AM2941](#)

- 1 1. On page 7, line 16, strike "a right to abortion or".

MOTION(S) - Print in Journal

Senator Linehan filed the following motion to [LB720](#):

[MO180](#)

Recommit to the Revenue Committee.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 346. Introduced by Lindstrom, 18.

WHEREAS, Shelby M. Johnson demonstrated selfless bravery by traveling from Nebraska to New York City in April of 2020 to assist in treating COVID-19 patients at overwhelmed hospitals; and

WHEREAS, Nebraskans are known for their hard work and dedication, particularly while acting in the spirit of community service; and

WHEREAS, Shelby Johnson, BSN-RN, graduated from the nursing program at Clarkson College in 2017; and

WHEREAS, Shelby Johnson also graduated from Marian High School in Omaha and the University of Nebraska-Lincoln, where she worked as a resident assistant in the dormitories and was active in the Iron N, the official student section of Husker Athletics; and

WHEREAS, Shelby Johnson works as a registered nurse for Bryan Medical Center in Lincoln in the cardiac intensive care unit; and

WHEREAS, front-line health care workers have earned gratitude and respect, especially for their service during a global pandemic.

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

1. That the Legislature honors Shelby M. Johnson and the countless other medical professionals who have risked their own safety and comfort to save lives during the coronavirus pandemic.

2. That copies of this resolution be sent to Shelby M. Johnson and Bryan Medical Center.

Laid over.

LEGISLATIVE RESOLUTION 347. Introduced by Lindstrom, 18.

PURPOSE: The purpose of this interim study is to examine the use of heat-applied tax stamps on individual cigarette packages in Nebraska. New technologies enable manufacturers to apply a bar code, hologram, or quick response code or use another data embedding technique that is easily read and counterfeit resistant, and have been utilized in several other states.

The interim study shall:

(1) Examine the efficiency of the current method of heat-applied tax stamps for the State of Nebraska, manufacturers, and retailers;

(2) Examine the potential of bar coding, holograms, quick response codes, and other embedding techniques to aid in collection of state excise taxes on cigarettes and other tobacco products;

(3) Identify barriers within federal, state, and local laws to using such technologies; and

(4) Examine legislation in other states allowing bar codes and holograms to be used as tax stamps on cigarette packages and how such legislation has affected tax collection and deterred counterfeit and illegal cigarette sales.

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

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

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

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 348. Introduced by Lindstrom, 18.

PURPOSE: The purpose of this interim study is to examine service animal fraud and emotional support animal fraud.

The issues addressed by this interim study shall include, but not be limited to:

- (1) The process for obtaining a service or emotional support animal;
- (2) Federal and state laws, local ordinances, policies, or other controls regarding service and emotional support animals;
- (3) Efforts to increase public awareness on the federal and state laws, local ordinances, policies, or other controls regarding service or emotional support animals; and
- (4) The design, implementation, and enforcement of legislation, ordinances, policies, or other controls used in other states to address and regulate the process by which people obtain and use service and emotional support animals appropriately.

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

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

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

Referred to the Executive Board.

COMMITTEE REPORT(S)
Enrollment and Review

LEGISLATIVE BILL 944A. Placed on Select File.

(Signed) Julie Slama, Chairperson

WITHDRAW - Cointroducer(s)

Senator Groene name withdrawn from LB1084.

RECESS

At 11:54 a.m., on a motion by Senator Halloran, the Legislature recessed until 1:30 p.m.

AFTER RECESS

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

ROLL CALL

The roll was called and all members were present except Senators Howard, Morfeld, and Vargas who were excused until they arrive.

COMMITTEE REPORT(S)

Transportation and Telecommunications

LEGISLATIVE BILL 992. Placed on General File with amendment. [AM3055](#) is available in the Bill Room.

(Signed) Curt Friesen, Chairperson

AMENDMENT(S) - Print in Journal

Senator Brewer filed the following amendment to [LB153](#):

[AM3003](#)

(Amendments to Final Reading copy)

1 1. On page 8, line 27; and page 9, line 9, strike "2021" and insert
2 "2022".

NOTICE OF COMMITTEE HEARING(S)

Government, Military and Veterans Affairs
Room 1525

Monday, July 27, 2020 8:00 a.m.
AM3104 to LB1167

(Signed) Tom Brewer, Chairperson

ANNOUNCEMENT

The Chair announced the birthday of Senator Bostelman.

SELECT FILE

LEGISLATIVE BILL 931. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 461. [ER183](#), found on page 823, was adopted.

Senator Friesen offered the following amendment:
[AM3054](#) is available in the Bill Room.

The Friesen amendment was adopted with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1042. [ER184](#), found on page 823, was adopted.

Senator La Grone offered the following amendment:
[AM3083](#)

(Amendments to E&R amendments, ER184)

- 1 1. On page 1, line 9, strike "[July 15](#)" and insert "[September 1](#)".
- 2 2. On page 11, line 6, strike "[July 15](#)" and insert "[September 1](#)".

The La Grone amendment was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1042A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 43. [ER185](#), found on page 824, was adopted.

Senator Chambers offered his amendment, [AM2748](#), found on page 824.

Senator Chambers withdrew his amendment.

Senator Bolz offered her amendment, [AM2864](#), found on page 905.

The Bolz amendment was adopted with 46 ayes, 0 nays, 2 present and not voting, and 1 excused and not voting.

Senator Bolz offered the following amendment:
[FA117](#)

Amend AM2037

Strike pg. 3 line 8 starting with or and ending on line 9 with the period after the word organizations.

The Bolz amendment was adopted with 46 ayes, 0 nays, 2 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 755. [ER193](#), found on page 865, was adopted.

Senator Hilkemann offered his amendment, [AM2829](#), found on page 917.

The Hilkemann amendment was adopted with 42 ayes, 0 nays, 6 present and not voting, and 1 excused and not voting.

Senator Blood offered the following amendment:

[AM2991](#)

(Amendments to Standing Committee amendments, AM2480)

1 1. Insert the following new section:

2 Sec. 47. The Department of Health and Human Services and Department
3 of Veterans' Affairs shall work jointly to encourage service providers in
4 their respective departments and in other state and local agencies and
5 departments to ask the question "Have you or a family member ever served
6 in the military?". The question should be included in intake forms and
7 interviews where appropriate, including, but not limited to, at
8 hospitals, mental health care centers, senior centers, employment
9 offices, courts, and schools and in encounters with law enforcement.
10 2. Renumber the remaining section accordingly.

The Blood amendment was adopted with 42 ayes, 0 nays, 6 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 899. [ER190](#), found on page 866, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 808. [ER196](#), found on page 880, was adopted.

Senator Lindstrom offered the Lindstrom-Pansing Brooks amendment, [AM2875](#), found on page 919.

Senator La Grone offered the following amendment to the Lindstrom-Pansing Brooks amendment:

[AM2944](#)

(Amendments to AM2875)

1 1. Insert the following new section:

2 Sec. 99. Original section 21-201, Revised Statutes Cumulative
3 Supplement, 2018, is repealed.
4 2. On page 110, line 23, strike beginning with "2" through "10,";
5 and in line 27 after the period insert "Sections 2, 3, 4, 5, 6, 7, 8, 9,
6 10, and 99 of this act become operative on July 1, 2021."
7 3. On page 111, line 3, strike "21-201,".
8 4. Renumber the remaining sections accordingly.

The La Grone amendment was adopted with 44 ayes, 0 nays, 4 present and

not voting, and 1 excused and not voting.

The Lindstrom-Pansing Brooks amendment, as amended, was adopted with 45 ayes, 0 nays, 3 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1186. Senator Wayne offered his amendment, [AM2869](#), found on page 907.

Senator Wayne withdrew his amendment.

Senator Hilgers offered his amendment, [AM2887](#), found on page 949.

The Hilgers amendment was adopted with 45 ayes, 0 nays, 3 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 881. [ER197](#), found on page 880, was adopted.

Senator Lathrop offered the following amendment:
[AM3066](#) is available in the Bill Room.

The Lathrop amendment was adopted with 46 ayes, 0 nays, 2 present and not voting, and 1 excused and not voting.

Senator Wayne offered the following amendment:
[AM3013](#)

(Amendments to Standing Committee amendments, AM2628)

1 1. On page 13, line 8, strike "Alternate" and insert "Unless a party
2 objects, alternate"; and in lines 28 and 31 strike "must" and insert
3 "shall".

The Wayne amendment was adopted with 45 ayes, 0 nays, 3 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1060. [ER208](#), found on page 963, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1183. [ER205](#), found on page 963, was adopted.

Senator Arch offered the following amendment:
[AM3058](#)

(Amendments to Standing Committee amendments, AM2607)

1 1. On page 3, line 9, strike "October 1, 2020" and insert "February
2 1, 2021".

3 2. On page 3, line 10; page 4, lines 29 and 30; and page 5, line 1,
 4 strike "December 1, 2020" and insert "April 1, 2021".
 5 3. On page 14, lines 21 through 30, strike the new matter and insert
 6 "The department shall contract with the statewide health information
 7 exchange for the administration of the Health Information Technology
 8 Board, and such contract shall specify that the health information
 9 exchange is responsible for the administration of the Health Information
 10 Technology Board, including, but not limited to, providing meeting
 11 notices, recording and distributing meeting minutes, administrative tasks
 12 related to the same, and funding such activities. The contract shall also
 13 include provisions for the statewide health information exchange to
 14 reimburse the expenses of the members of the board pursuant to subsection
 15 (5) of section 5 of this act. Such reimbursement shall be paid using a
 16 process essentially similar to sections 81-1174 to 81-1177. No state
 17 funds, including General Funds, cash funds, and federal funds, shall be
 18 used to carry out the administrative duties of the Health Information
 19 Technology Board nor for reimbursement of the expenses of the board
 20 members."

The Arch amendment was adopted with 44 ayes, 0 nays, 4 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 912. [ER206](#), found on page 963, was adopted.

Senator Lathrop offered the following amendment:

[AM3041](#)

(Amendments to E & R amendments, ER206)

1 1. Strike sections 1 to 7 and insert the following new sections:
 2 Section 1. Sections 1 to 9 of this act shall be known and may be
 3 cited as the County Court Expedited Civil Actions Act.
 4 Sec. 2. (1) The County Court Expedited Civil Actions Act applies to
 5 civil actions in county court in which the sole relief sought is a money
 6 judgment and in which the claim of each plaintiff is less than or equal
 7 to the county court jurisdictional amount set forth in subdivision (5) of
 8 section 24-517, including damages of any kind, penalties, interest
 9 accrued before the filing date, and attorney's fees, but excluding
 10 prejudgment interest accrued after the filing date, postjudgment
 11 interest, and costs.
 12 (2) The act does not apply to Small Claims Court actions or domestic
 13 relations matters or paternity or custody determinations as defined in
 14 section 25-2740.
 15 (3) For the purposes of the act, side means all litigants with
 16 generally common interests in the litigation.
 17 Sec. 3. (1) Eligible plaintiffs may elect to proceed under the
 18 County Court Expedited Civil Actions Act by certifying that the relief
 19 sought meets the requirements of section 2 of this act. The certification
 20 must be on a form approved by the Supreme Court, signed by all plaintiffs
 21 and their attorneys, if represented, and filed with the complaint. The
 22 certification is not admissible to prove a plaintiff's damages in any
 23 proceeding.
 24 (2) Except as otherwise specifically provided, the Nebraska laws and
 25 court rules that are applicable to civil actions are applicable to
 26 actions under the act.
 1 (3) A party proceeding under the act may not recover a judgment in
 2 excess of the county court jurisdictional amount set forth in subdivision
 3 (5) of section 24-517, nor may a judgment be entered against a party in

4 excess of such amount, excluding prejudgment interest that accrues after
5 the filing date, postjudgment interest, and costs. The jury, if any, must
6 not be informed of the county court jurisdictional amount. If the jury
7 returns a verdict for damages in excess of the county court
8 jurisdictional amount for or against a party, the court shall not enter
9 judgment on that verdict in excess of such amount, exclusive of the
10 prejudgment interest that accrues after the filing date, postjudgment
11 interest, and costs.
12 (4) Upon timely application of any party, the county court may
13 terminate application of the act and enter such orders as are appropriate
14 under the circumstances if:
15 (a) The moving party makes a specific showing of substantially
16 changed circumstances sufficient to render the application of the act
17 unfair; or
18 (b) A party has in good faith filed a counterclaim that seeks relief
19 other than that allowed under the act.
20 (5) A party may assert a counterclaim only if the counterclaim
21 arises out of the same transaction or occurrence as the opposing party's
22 claim. Any such counterclaim is subject to the county court
23 jurisdictional limit on damages under the act, unless the court severs
24 the counterclaim or certifies the action to district court pursuant to
25 section 25-2706 on the grounds that the amount in controversy exceeds the
26 county court jurisdictional limit.
27 Sec. 4. (1) Except upon agreement of the parties or leave of court
28 granted upon a showing of good cause, all discovery under the County
29 Court Expedited Civil Actions Act must be completed no later than sixty
30 days before trial.
31 (2) Except upon agreement of the parties or leave of court granted
1 upon a showing of good cause, discovery under the act is subject to the
2 following additional limitations:
3 (a) Each side shall serve no more than ten interrogatories on any
4 other side;
5 (b) Each side shall serve no more than ten requests for production
6 on any other side;
7 (c) Each side shall serve no more than ten requests for admission on
8 any other side. This limit does not apply to requests for admission of
9 the genuineness of documents that a party intends to offer into evidence
10 at trial;
11 (d) One deposition of each party may be taken. With regard to
12 corporations, partnerships, voluntary associations, or any other groups
13 or entities named as a party, the entity or one officer, member, or
14 employee of such entity may be deposed; and
15 (e) Each side may take the deposition of up to two nonparties.
16 (3) Each side is entitled to one expert, except upon agreement of
17 the parties or leave of court granted upon a showing of good cause. A
18 treating health care provider is counted as an expert for purposes of
19 this subsection.
20 (4) A motion for leave of court to modify the limitations set forth
21 in this section must be in writing and must set forth the proposed
22 additional discovery or expert and the reasons establishing good cause.
23 Sec. 5. (1) Any party may file any motion permitted under rules
24 adopted by the Supreme Court for pre-answer motions.
25 (2) A motion for summary judgment must be filed no later than ninety
26 days before trial.
27 Sec. 6. An action under the County Court Expedited Civil Actions
28 Act should ordinarily be submitted to the jury or the court within two
29 business days from the commencement of trial. Unless the court allows
30 additional time for good cause shown, each side shall be allowed no more
31 than six hours to complete jury selection, opening statements,
1 presentation of evidence, examination and cross-examination of witnesses,

2 and closing arguments. Time spent on objections, bench conferences, and
3 challenges for cause to a juror are not included in the time limit.
4 Sec. 7. (1) Parties to an action under the County Court Expedited
5 Civil Actions Act should stipulate to factual and evidentiary matters to
6 the greatest extent possible.
7 (2) For purposes of the act, the court may overrule objections based
8 on authenticity and hearsay to the admission of a document,
9 notwithstanding the absence of testimony or certification from a
10 custodian or other qualified witness, if:
11 (a) The party offering the document gives notice to all other
12 parties of the party's intention to offer the document into evidence at
13 least ninety days in advance of trial. The notice must be given to all
14 parties together with a copy of any document intended to be offered;
15 (b) The document on its face appears to be what the proponent claims
16 it is;
17 (c) The document on its face appears not to be hearsay or appears to
18 fall within a hearsay exception set forth in Nebraska law; and
19 (d) The objecting party has not raised a substantial question as to
20 the authenticity or trustworthiness of the document.
21 (3) Except as otherwise specifically provided by the act, the
22 Nebraska Evidence Rules are applicable to actions under the act.
23 (4) Nothing in subsection (2) of this section authorizes admission
24 of a document that contains hearsay within hearsay, unless the court
25 determines from the face of the document that each part of the combined
26 statements conforms with a hearsay exception set forth in Nebraska law.
27 (5) Any authenticity or hearsay objections to a document as to which
28 notice has been provided under subdivision (2)(a) of this section must be
29 made within thirty days after receipt of the notice.
30 (6)(a) The report of any treating health care provider concerning
31 the plaintiff may be used in lieu of deposition or in-court testimony of
1 the health care provider, so long as the report offered into evidence is
2 on a form adopted for such purpose by the Supreme Court and is signed by
3 the health care provider making the report.
4 (b) The Supreme Court shall adopt a form for the purposes of
5 subdivision (6)(a) of this section.
6 (c) Unless otherwise stipulated or ordered by the court, a copy of
7 any completed health care provider report under subdivision (6)(a) of
8 this section must be served on all parties at least ninety days in
9 advance of trial. Any objections to the health care provider statement,
10 including an objection that the statement is incomplete or does not
11 otherwise comply with this subsection, must be made within thirty days
12 after receipt of the statement. For good cause shown, the court may issue
13 such orders regarding the health care provider report as justice may
14 require, including an order permitting a health care provider to
15 supplement the report.
16 (d) Any party against whom a health care provider report may be used
17 has the right, at the party's own initial expense, to cross-examine by
18 deposition the health care provider signing the report, and the
19 deposition may be used at trial.
20 (e) The deposition of the health care provider and the discovery of
21 facts or opinions held by an expert are not counted for purposes of the
22 numerical limits of section 4 of this act.
23 Sec. 8. The Supreme Court may promulgate rules and forms for actions
24 governed by the County Court Expedited Civil Actions Act, and such rules
25 and forms shall not be in conflict with the act.
26 Sec. 9. The County Court Expedited Civil Actions Act applies to
27 civil actions filed on or after January 1, 2022.
28 2. On page 15, line 13, strike "9" and insert "11".
29 3. Renumber the remaining sections accordingly.

The Lathrop amendment was adopted with 43 ayes, 0 nays, and 6 present and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 803. [ER186](#), found on page 824, was adopted.

Senator Hughes withdrew his amendment, [AM2772](#), found on page 876.

Senator Hughes offered the following amendment:
[AM2999](#) is available in the Bill Room.

The Hughes amendment was adopted with 42 ayes, 0 nays, and 7 present and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 803A. Senator Hughes offered the following amendment:

[AM3105](#)

1 1. Strike the original sections and insert the following new
2 sections:
3 Section 1. There is hereby appropriated (1) \$140,000 from the Dry
4 Pea and Lentil Fund for FY2020-21 and (2) \$140,000 from the Dry Pea and
5 Lentil Fund for FY2021-22 to Agency 95 — Dry Pea and Lentil Commission,
6 for Program 862, to aid in carrying out the provisions of Legislative
7 Bill 803, One Hundred Sixth Legislature, Second Session, 2020.
8 Total expenditures for permanent and temporary salaries and per
9 diems from funds appropriated in this section shall not exceed \$35,000
10 for FY2020-21 or \$35,000 for FY2021-22.
11 Sec. 2. Since an emergency exists, this act takes effect when
12 passed and approved according to law.

The Hughes amendment was adopted with 43 ayes, 0 nays, and 6 present and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 247. [ER189](#), found on page 871, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 797. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 832. [ER188](#), found on page 872, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 850. [ER194](#), found on page 880, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 751. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 760. [ER198](#), found on page 893, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 705. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1028. [ER201](#), found on page 953, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1130. Senator Groene offered the following amendment:

[AM3006](#)

1 1. Strike the original sections and insert the following new
 2 sections:
 3 Section 1. Section 35-1204, Revised Statutes Supplement, 2019, is
 4 amended to read:
 5 35-1204 (1) A mutual finance organization may be created by
 6 agreement among its members pursuant to the Interlocal Cooperation Act or
 7 the Joint Public Agency Act. The agreement shall:
 8 (a) Have a duration of ~~at least~~ three years;
 9 (b) Require that ~~each member~~ ~~all members~~ of the mutual finance
 10 organization levy the same agreed-upon property tax rate within their
 11 boundaries for one out of ~~the every~~ three tax years covered by the
 12 agreement. ~~The members need not levy such agreed-upon property tax rate~~
 13 ~~during the same year; and~~
 14 (c) Require that all members of the mutual finance organization levy
 15 no more than such agreed-upon property tax rate for the remaining tax
 16 years covered by the agreement; ~~and~~ -
 17 (d) Contain a statement of the agreed-upon maximum property tax
 18 rate.
 19 (2) The property tax rates described in subsection (1) of this
 20 section shall be levied for the purpose of jointly funding the operations
 21 of all members of the mutual finance organization. All such property tax
 22 rates shall exclude levies for bonded indebtedness and lease-purchase
 23 contracts in existence on July 1, 1998.
 24 (3) The changes made to this section by this legislative bill do not
 25 affect eligibility for funding pursuant to the Mutual Finance Assistance
 26 Act that is to be paid on or before May 1, 2021.
 27 Sec. 2. Section 35-1207, Revised Statutes Supplement, 2019, is
 1 amended to read:
 2 35-1207 (1) Any rural or suburban fire protection district or mutual
 3 finance organization seeking funds pursuant to the Mutual Finance
 4 Assistance Act shall submit an application and any forms required by the
 5 State Treasurer. Such application and forms shall be submitted to the
 6 State Treasurer by ~~September 20 July 1~~. The State Treasurer shall develop
 7 the application which requires calculations showing assumed population
 8 eligibility under section 35-1205 and the distribution amount under
 9 section 35-1206. If the applicant is a mutual finance organization, it
 10 shall attach to its first application a copy of the agreement pursuant to
 11 section 35-1204 and attach to any subsequent application a copy of an

12 amended agreement or an affidavit stating that the previously submitted
 13 agreement is still accurate and effective. Any mutual finance
 14 organization making application pursuant to this section shall include
 15 with the application additional financial information regarding the
 16 manner in which any funds received by the mutual finance organization
 17 based upon the prior year's application pursuant to the act have been
 18 expended or distributed by that mutual finance organization. The State
 19 Treasurer shall provide electronic copies of such reports on mutual
 20 finance organization expenditures and distributions to the Clerk of the
 21 Legislature by December 1 of each year in which any reports are filed.
 22 (2) The State Treasurer shall review all applications for
 23 eligibility for funds under the act and approve any application which is
 24 accurate and demonstrates that the applicant is eligible for funds. On or
 25 before ~~November 4~~ ~~August 15~~, the State Treasurer shall notify the
 26 applicant of approval or denial of the application and certify the amount
 27 of funds for which an approved applicant is eligible. The decision of the
 28 State Treasurer may be appealed as provided in the Administrative
 29 Procedure Act.
 30 (3)(a) ~~(3)~~ Except as provided in subsection (5) (4) of this section,
 31 funds shall be disbursed by the State Treasurer in two payments which are
 1 as nearly equal as possible. ~~Such payments shall be made as follows: ~~to~~~~
 2 ~~be paid~~
 3 (i) For applications received by the State Treasurer by July 1,
 4 ~~2020~~, such payments shall be made on or before November 1, ~~2020~~, and May
 5 1, ~~2021~~;
 6 (ii) For applications received by the State Treasurer after July 1,
 7 ~~2020~~, and by September 20, 2021, such payments shall be made on or before
 8 January 20, 2022, and May 20, 2022; and
 9 (iii) For applications received by the State Treasurer by September
 10 20 of any year thereafter, such payments shall be made on or before the
 11 next following January 20 and May 20.
 12 (b) If the Mutual Finance Assistance Fund is insufficient to make
 13 all payments to all applicants in the amounts provided in section
 14 35-1206, the State Treasurer shall prorate payments to approved
 15 applicants.
 16 (4) Funds remaining in the Mutual Finance Assistance Fund on June 20
 17 ~~1~~ shall be transferred to the General Fund before July 1.
 18 (5) (4) No funds shall be disbursed to an eligible mutual finance
 19 organization until it has provided to the State Treasurer the financial
 20 information regarding the manner in which it has expended or distributed
 21 prior disbursements made pursuant to the Mutual Finance Assistance Act as
 22 provided in subsection (1) of this section.
 23 Sec. 3. Original sections 35-1204 and 35-1207, Revised Statutes
 24 Supplement, 2019, are repealed.

The Groene amendment was adopted with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 911. [ER202](#), found on page 954, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 911A. Considered.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 889. Considered.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1166. [ER203](#), found on page 957, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1080. [ER207](#), found on page 957, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1185. [ER211](#), found on page 958, was adopted.

Senator Howard offered the following amendment:

[AM3080](#)

(Amendments to E & R amendments, ER211)

1 1. On page 8, lines 5, 16, and 17, strike "October 1, 2020" and

2 insert "the effective date of this act".

The Howard amendment was adopted with 36 ayes, 0 nays, 6 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1185A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 835. [ER216](#), found on page 964, was adopted.

Advanced to Enrollment and Review for Engrossment.

COMMITTEE REPORT(S)

Judiciary

LEGISLATIVE BILL 1048. Placed on General File with amendment.

[AM2972](#) is available in the Bill Room.

(Signed) Steve Lathrop, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 349. Introduced by Cavanaugh, 6.

WHEREAS, the National Education Association, as a part of their annual Human and Civil Rights Awards program, presents the Rosa Parks Memorial Award to an individual or organization that inspires others to champion the cause of human and civil rights by:

(1) Demonstrating the courage to challenge the status quo in order to achieve a just society for the disadvantaged;

(2) Exemplifying a nonviolent philosophy in pursuit of a better life for minorities;

(3) Inspiring direct action in the cause of human and civil rights; and

(4) Contributing to the establishment of laws and policies that promote equal opportunities for minorities and the disadvantaged; and

WHEREAS, the 2020 Rosa Parks Memorial Award was awarded to Inclusive Communities; and

WHEREAS, Inclusive Communities is a nonprofit organization based in Omaha with an almost 100-year, storied history of promoting justice through educating and engaging the community around racial equity, economic opportunity, and social justice; and

WHEREAS, as a recipient of this award, Inclusive Communities has consistently demonstrated service deserving of the award; and

WHEREAS, the staff and volunteers at Inclusive Communities demonstrate perseverance and skill in achieving this remarkable honor.

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

1. That the Legislature congratulates Inclusive Communities on receiving the National Education Association's 2020 Rosa Parks Memorial Award.

2. That a copy of this resolution be sent to Inclusive Communities and Executive Director Maggie Wood.

Laid over.

AMENDMENT(S) - Print in Journal

Senator M. Hansen filed the following amendment to [LB927](#): [AM3053](#)

(Amendments to Standing Committee amendments, AM2822)

1 1. Insert the following new section:

2 Sec. 2. The following sum of money, or so much thereof as may be
3 required, is hereby appropriated from the General Fund or from other
4 funds as indicated in the state treasury, not otherwise appropriated, for
5 the payment of attorney's fees and costs associated with a required
6 appearance before a tribunal for which the state agency has insufficient
7 funds to pay, which requires the approval of the Legislature for payment.
8 \$50,628.87 for Case No. CI 20-29 and Case No. CI 20-46, in Lancaster
9 County District Court, for self-insured liability attorney's fees and
10 costs for which there is insufficient agency funding, against the State
11 Racing Commission, pay to Lamson Dugan and Murray LLP, 10306 Regency
12 Parkway Drive, Omaha, NE 68114-3708, out of the General Fund.
13 The amount included in this section shall be paid through Program
14 536 in Agency 65.

15 For informational purposes only, the appropriation contained in this
16 section and fund source:

<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
18 <u>GENERAL FUND</u>	<u>\$50,628.87</u>
19 <u>CASH FUND</u>	<u>\$-0-</u>
20 <u>REVOLVING FUND</u>	<u>\$-0-</u>
21 <u>TOTAL</u>	<u>\$50,628.87</u>

22.2. Renumber the remaining sections accordingly.

Senator Linehan filed the following amendment to [LB1106](#):
[AM3063](#)

(Amendments to Standing Committee amendments, AM2870)

1 1. Strike sections 23 and 24 and insert the following new sections:

2 Sec. 23. Section 79-1022, Revised Statutes Supplement, 2019, as

3 amended by section 1, Legislative Bill 880, One Hundred Sixth

4 Legislature, Second Session, 2020, is amended to read:

5 79-1022 (1)(a) ~~(1)~~ On or before ~~August 14~~ May 1, 2020, and on or

6 before March 1 of each year thereafter, the department shall determine

7 the amounts to be distributed to each local system for the ensuing school

8 fiscal year pursuant to the Tax Equity and Educational Opportunities

9 Support Act ~~and shall certify the amounts to the Director of~~

10 ~~Administrative Services, the Auditor of Public Accounts, and each local~~

11 ~~system.~~

12 (b) For school fiscal year 2020-21 and each school fiscal year

13 thereafter, the amount to be distributed to each local system shall equal

14 the sum of the equalization aid determined pursuant to section

15 ~~79-1008.01, net option funding determined pursuant to section 79-1009,~~

16 ~~foundation aid determined pursuant to section 16 of this act, and~~

17 ~~community achievement plan aid determined pursuant to section 79-1005.~~

18 (c) The department shall certify the amounts to be distributed as

19 determined pursuant to this subsection to the Director of Administrative

20 ~~Services, the Auditor of Public Accounts, and each district.~~

21 (d) On or before ~~August 14~~ May 1, 2020, and on or before March 1 of

22 each year thereafter, the department shall report the necessary funding

23 level for the ensuing school fiscal year to the Governor, the

24 Appropriations Committee of the Legislature, and the Education Committee

25 of the Legislature. The report submitted to the committees of the

26 Legislature shall be submitted electronically.

1 (e) Except as otherwise provided in this subsection, certified state

2 aid amounts, including adjustments pursuant to section 79-1065.02, shall

3 be shown as budgeted non-property-tax receipts and deducted prior to

4 calculating the property tax request in the local system's general fund

5 budget statement as provided to the Auditor of Public Accounts pursuant

6 to section 79-1024.

7 (2) Except as provided in this subsection, subsection (8) of section

8 79-1016, and sections 79-1005, 79-1033, and 79-1065.02, the amounts

9 certified pursuant to subsection (1) of this section shall be distributed

10 in ten as nearly as possible equal payments on the last business day of

11 each month beginning in September of each ensuing school fiscal year and

12 ending in June of the following year, except that when a local system is

13 to receive a monthly payment of less than one thousand dollars, such

14 payment shall be one lump-sum payment on the last business day of

15 December during the ensuing school fiscal year.

16 (3) On or before ~~August 14, 2020~~, and on or before ~~March 1~~ of each

17 ~~year thereafter, for the purpose of calculating any levy exclusion~~

18 ~~pursuant to subdivision (2)(d)(vii) of section 77-3442, the department~~

19 ~~shall provide to each school district an estimate of aid without any~~

20 ~~short-term adjustment by the Legislature. Such estimate shall equal the~~

21 ~~amount that would have been certified pursuant to this section for the~~

22 ~~immediately following school fiscal year using the components of the Tax~~

23 ~~Equity and Educational Opportunities Support Act as such act existed on~~

24 ~~August 14, 2020. For purposes of this subsection, short-term adjustment~~

25 ~~means a change passed by the Legislature with a defined period of~~

26 ~~applicability.~~

27 Sec. 24. Section 79-1022.02, Revised Statutes Supplement, 2019, as

28 amended by section 2, Legislative Bill 880, One Hundred Sixth

29 Legislature, Second Session, 2020, is amended to read:

30 79-1022.02 Notwithstanding any other provision of law, any
31 certification of state aid pursuant to section 79-1022, certification of
1 budget authority pursuant to section 79-1023, and certification of
2 applicable allowable reserve percentages pursuant to section 79-1027
3 completed prior to the effective date of this act ~~February 13, 2020~~, for
4 school fiscal year 2020-21 are null and void.

5 Sec. 25. Section 79-1023, Revised Statutes Supplement, 2019, as
6 amended by section 3, Legislative Bill 880, One Hundred Sixth
7 Legislature, Second Session, 2020, is amended to read:

8 79-1023 (1) On or before ~~August 14~~ ~~May 1~~, 2020, and on or before
9 March 1 of each year thereafter, the department shall determine and
10 certify to each school district budget authority for the general fund
11 budget of expenditures for the ensuing school fiscal year.

12 (2) Except as provided in subsection (3) of this section for school
13 fiscal year 2020-21 and in sections 79-1028.01, 79-1029, 79-1030, and
14 81-829.51, each school district shall have budget authority for the
15 general fund budget of expenditures equal to the greater of (a) the
16 general fund budget of expenditures for the immediately preceding school
17 fiscal year minus exclusions pursuant to subsection (1) of section
18 79-1028.01 for such school fiscal year with the difference increased by
19 the basic allowable growth rate for the school fiscal year for which
20 budget authority is being calculated, (b) the general fund budget of
21 expenditures for the immediately preceding school fiscal year minus
22 exclusions pursuant to subsection (1) of section 79-1028.01 for such
23 school fiscal year with the difference increased by an amount equal to
24 any student growth adjustment calculated for the school fiscal year for
25 which budget authority is being calculated, or (c) one hundred ten
26 percent of formula need for the school fiscal year for which budget
27 authority is being calculated minus the special education budget of
28 expenditures as filed on the school district budget statement on or
29 before September 20 for the immediately preceding school fiscal year,
30 which special education budget of expenditures is increased by the basic
31 allowable growth rate for the school fiscal year for which budget
1 authority is being calculated.

2 (3) For school fiscal year 2020-21, except as provided in sections
3 79-1028.01, 79-1029, 79-1030, and 81-829.51, each school district shall
4 have budget authority for the general fund budget of expenditures equal
5 to the lesser of (a) the budget authority for the general fund budget of
6 expenditures calculated pursuant to subsection (2) of this section or (b)
7 the greater of (i) the general fund expenditures for school fiscal year
8 2018-19 minus any expenditures that qualified for an exclusion from the
9 budget authority for the general fund budget of expenditures pursuant to
10 subsection (1) of section 79-1028.01 for such school fiscal year with the
11 difference increased by ten percent for school fiscal year 2020-21, (ii)
12 the general fund expenditures for school fiscal year 2018-19 minus any
13 expenditures that qualified for an exclusion from the budget authority
14 for the general fund budget of expenditures pursuant to subsection (1) of
15 section 79-1028.01 for such school fiscal year with the difference
16 increased (A) by the basic allowable growth rate for school fiscal year
17 2019-20 pursuant to section 79-1025 and then (B) by an amount equal to
18 any student growth adjustment calculated for school fiscal year 2020-21,
19 or (iii) one hundred ten percent of formula need for school fiscal year
20 2020-21 minus the special education expenditures for school fiscal year
21 2018-19 with such special education expenditures increased by the basic
22 allowable growth rate for school fiscal year 2020-21 pursuant to section
23 79-1025.

24 (4) ~~(3)~~ For any school fiscal year for which the budget authority
25 for the general fund budget of expenditures for a school district is
26 based on a student growth adjustment, the budget authority for the
27 general fund budget of expenditures for such school district shall be

28 adjusted in future years to reflect any student growth adjustment
 29 corrections related to such student growth adjustment.
 30 Sec. 26. Section 79-1027, Revised Statutes Supplement, 2019, as
 31 amended by section 4, Legislative Bill 880, One Hundred Sixth
 1 Legislature, Second Session, 2020, is amended to read:
 2 79-1027 No district shall adopt a budget, which includes total
 3 requirements of depreciation funds, necessary employee benefit fund cash
 4 reserves, and necessary general fund cash reserves, exceeding the
 5 applicable allowable reserve percentages of total general fund budget of
 6 expenditures as specified in the schedule set forth in this section.
 7 Average daily Allowable
 8 membership of reserve
 9 district percentage
 10 0 - 471 45
 11 471.01 - 3,044 35
 12 3,044.01 - 10,000 25
 13 10,000.01 and over 20
 14 On or before ~~August 14~~ ~~May 1~~, 2020, and on or before March 1 each
 15 year thereafter, the department shall determine and certify each
 16 district's applicable allowable reserve percentage for the ensuing school
 17 fiscal year.
 18 Each district with combined necessary general fund cash reserves,
 19 total requirements of depreciation funds, and necessary employee benefit
 20 fund cash reserves less than the applicable allowable reserve percentage
 21 specified in this section may, notwithstanding the district's applicable
 22 allowable growth rate, increase its necessary general fund cash reserves
 23 such that the total necessary general fund cash reserves, total
 24 requirements of depreciation funds, and necessary employee benefit fund
 25 cash reserves do not exceed such applicable allowable reserve percentage.
 26 Sec. 28. Section 79-1031.01, Revised Statutes Supplement, 2019, as
 27 amended by section 5, Legislative Bill 880, One Hundred Sixth
 28 Legislature, Second Session, 2020, is amended to read:
 29 79-1031.01 The Appropriations Committee of the Legislature shall
 30 annually include the amount necessary to fund the state aid that will be
 1 certified to school districts on or before ~~August 14~~ ~~May 1~~, 2020, and on
 2 or before March 1 of each year thereafter for each ensuing school fiscal
 3 year in its recommendations to the Legislature to carry out the
 4 requirements of the Tax Equity and Educational Opportunities Support Act.
 5 2. On page 43, line 2, strike "~~April 15~~" and insert "August 7".
 6 3. On page 54, line 14, strike "~~April 15~~" and insert "August 7".
 7 4. On page 70, line 21, strike the last "and"; in line 22 after
 8 "79-1005.01," insert "and"; strike beginning with "79-1022" in line 22
 9 through the first comma in line 23; and in line 23 after the last comma
 10 insert "and sections 79-1022, 79-1022.02, 79-1023, 79-1027, and
 11 79-1031.01, Revised Statutes Supplement, 2019, as amended by sections 1,
 12 2, 3, 4, and 5, respectively, Legislative Bill 880, One Hundred Sixth
 13 Legislature, Second Session, 2020,".
 14 5. Renumber the remaining sections accordingly.

Senator Kolterman filed the following amendment to LB720:
AM3049 is available in the Bill Room.

Senator Briese filed the following amendment to LB720:
AM3097

(Amendments to AM3049)

1 1. On page 46, strike line 31 and insert "as follows:
 2 (i) For calendar year 2021, the base authority shall be equal to one
 3 hundred million dollars minus the amount of matching funds expected to be
 4 paid by the State of Nebraska during such calendar year pursuant to the

5 Nebraska Transformational Projects Act;

6 (ii) For calendar year 2022, the base authority shall be equal to
 7 one hundred million dollars minus the amount of matching funds expected
 8 to be paid by the State of Nebraska during such calendar year pursuant to
 9 the Nebraska Transformational Projects Act;

10 (iii) For calendar year 2023, the base authority shall be equal to
 11 one hundred twenty-five million dollars minus the amount of matching
 12 funds expected to be paid by the State of Nebraska during such calendar
 13 year pursuant to the Nebraska Transformational Projects Act;

14 (iv) For calendar year 2024, the base authority shall be equal to
 15 one hundred twenty-five million dollars minus the amount of matching
 16 funds expected to be paid by the State of Nebraska during such calendar
 17 year pursuant to the Nebraska Transformational Projects Act;

18 (v) For calendar year 2025, the base authority shall be equal to one
 19 hundred fifty million dollars minus the amount of matching funds expected
 20 to be paid by the State of Nebraska during such calendar year pursuant to
 21 the Nebraska Transformational Projects Act;

22 (vi) For calendar year 2026, the base authority shall be equal to
 23 one hundred fifty million dollars minus the amount of matching funds
 24 expected to be paid by the State of Nebraska during such calendar year
 25 pursuant to the Nebraska Transformational Projects Act; and

26 (vii) Beginning with calendar year 2027 and every three years
 1 thereafter, the director shall adjust the base authority to an amount
 2 equal to three percent of the actual General Fund net receipts for the
 3 most recent fiscal year for which such information is available minus the
 4 amount of matching funds expected to be paid by the State of Nebraska
 5 during the calendar year in which such adjustment occurs pursuant to the
 6 Nebraska Transformational Projects Act."

7 2. On page 47, strike lines 1 through 6.

Senator Cavanaugh filed the following amendment to LB534:
[AM2996](#)

(Amendments to Final Reading copy)

- 1 1. Insert the following new section:
- 2 Sec. 2. Since an emergency exists, this act takes effect when passed
- 3 and approved according to law.
- 4 2. On page 1, line 4, strike "and" and after "terms" insert "; and
- 5 to declare an emergency".

Senator Groene filed the following amendment to LB147:
[AM3067](#) is available in the Bill Room.

Senator Vargas filed the following amendment to LB477A:
[AM2995](#)

(Amendments to Final Reading copy)

- 1 1. Insert the following new section:
- 2 Sec. 2. The State Treasurer shall transfer \$58,192 from the
- 3 Department of Revenue Enforcement Fund to the General Fund on or before
- 4 November 30, 2020.
- 5 2. On page 1, line 3, after "2020" insert "; and to provide for a
- 6 transfer of funds".

Senator Hunt filed the following amendment to LB814:
[AM3114](#)

- 1 1. Strike original section 11 and renumber the remaining section
- 2 accordingly.

Senator Hunt filed the following amendment to LB814:

[AM3116](#)

- 1 1. Insert the following new section:
- 2 Sec. 11. This act becomes operative on June 1, 2021.
- 3 2. Renumber the remaining sections accordingly.

Senator Brewer filed the following amendment to LB1167:

[AM3104](#)

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. Section 64-401, Revised Statutes Supplement, 2019, is
- 4 amended to read:
- 5 64-401 Sections 64-401 to 64-418 and section 2 of this act shall be
- 6 known and may be cited as the Online Notary Public Act.
- 7 Sec. 2. No otherwise valid online notarial act performed on or
- 8 after April 2, 2020, and before July 1, 2020, pursuant to the Governor's
- 9 Executive Order No. 20-13, dated April 1, 2020, shall be invalidated
- 10 because it was performed prior to the operative date of Laws 2019, LB186.
- 11 Sec. 3. Section 84-1411, Revised Statutes Supplement, 2019, is
- 12 amended to read:
- 13 84-1411 (1) Each public body shall give reasonable advance
- 14 publicized notice of the time and place of each meeting by a method
- 15 designated by each public body and recorded in its minutes. Such notice
- 16 shall be transmitted to all members of the public body and to the public.
- 17 Such notice shall contain an agenda of subjects known at the time of the
- 18 publicized notice or a statement that the agenda, which shall be kept
- 19 continually current, shall be readily available for public inspection at
- 20 the principal office of the public body during normal business hours.
- 21 Agenda items shall be sufficiently descriptive to give the public
- 22 reasonable notice of the matters to be considered at the meeting. Except
- 23 for items of an emergency nature, the agenda shall not be altered later
- 24 than (a) twenty-four hours before the scheduled commencement of the
- 25 meeting or (b) forty-eight hours before the scheduled commencement of a
- 26 meeting of a city council or village board scheduled outside the
- 27 corporate limits of the municipality. The public body shall have the
- 1 right to modify the agenda to include items of an emergency nature only
- 2 at such public meeting.
- 3 (2) Except as otherwise provided in subsection (7) of this section,
- 4 a meeting of a state agency, state board, state commission, state
- 5 council, or state committee, of an advisory committee of any such state
- 6 entity, of an organization created under the Interlocal Cooperation Act,
- 7 the Joint Public Agency Act, or the Municipal Cooperative Financing Act,
- 8 of the governing body of a public power district having a chartered
- 9 territory of more than one county in this state, of the governing body of
- 10 a public power and irrigation district having a chartered territory of
- 11 more than one county in this state, of a board of an educational service
- 12 unit, of the Educational Service Unit Coordinating Council, of the
- 13 governing body of a risk management pool or its advisory committees
- 14 organized in accordance with the Intergovernmental Risk Management Act,
- 15 or of a community college board of governors may be held by means of
- 16 videoconferencing or, in the case of the Judicial Resources Commission in
- 17 those cases specified in section 24-1204, by telephone conference, if:
- 18 (a) Reasonable advance publicized notice is given;
- 19 (b) Reasonable arrangements are made to accommodate the public's
- 20 right to attend, hear, and speak at the meeting, including seating,
- 21 recordation by audio or visual recording devices, and a reasonable
- 22 opportunity for input such as public comment or questions to at least the
- 23 same extent as would be provided if videoconferencing or telephone
- 24 conferencing was not used;

25 (c) At least one copy of all documents being considered is available
26 to the public at each site of the videoconference or telephone
27 conference;

28 (d) At least one member of the state entity, advisory committee,
29 board, council, or governing body is present at each site of the
30 videoconference or telephone conference, except that a member of an
31 organization created under the Interlocal Cooperation Act that sells
1 electricity or natural gas at wholesale on a multistate basis, an
2 organization created under the Municipal Cooperative Financing Act, or a
3 governing body of a risk management pool or an advisory committee of such
4 organization or pool may designate a nonvoting designee, who shall not be
5 included as part of the quorum, to be present at any site; and

6 (e)(i) Except as provided in subdivision (2)(e)(ii) of this section,
7 no more than one-half of the state entity's, advisory committee's,
8 board's, council's, or governing body's meetings in a calendar year are
9 held by videoconference or telephone conference; or

10 (ii) In the case of an organization created under the Interlocal
11 Cooperation Act that sells electricity or natural gas at wholesale on a
12 multistate basis or an organization created under the Municipal
13 Cooperative Financing Act, such organization holds at least one meeting
14 each calendar year that is not by videoconferencing or telephone
15 conferencing.

16 Videoconferencing, telephone conferencing, or conferencing by other
17 electronic communication shall not be used to circumvent any of the
18 public government purposes established in the Open Meetings Act.

19 (3) Except as otherwise provided in subsection (7) of this section,
20 ~~a~~ meeting of a board of an educational service unit, of the Educational
21 Service Unit Coordinating Council, of the governing body of an entity
22 formed under the Interlocal Cooperation Act, the Joint Public Agency Act,
23 or the Municipal Cooperative Financing Act, of the governing body of a
24 risk management pool or its advisory committees organized in accordance
25 with the Intergovernmental Risk Management Act, of a community college
26 board of governors, of the governing body of a public power district, of
27 the governing body of a public power and irrigation district, or of the
28 Nebraska Brand Committee may be held by telephone conference call if:

29 (a) The territory represented by the educational service unit,
30 member educational service units, community college board of governors,
31 public power district, public power and irrigation district, Nebraska
1 Brand Committee, or member public agencies of the entity or pool covers
2 more than one county;

3 (b) Reasonable advance publicized notice is given which identifies
4 each telephone conference location at which there will be present: (i) A
5 member of the educational service unit board, council, community college
6 board of governors, governing body of a public power district, governing
7 body of a public power and irrigation district, Nebraska Brand Committee,
8 or entity's or pool's governing body; or (ii) A nonvoting designee
9 designated under subdivision (3)(f) of this section;

10 (c) All telephone conference meeting sites identified in the notice
11 are located within public buildings used by members of the educational
12 service unit board, council, community college board of governors,
13 governing body of the public power district, governing body of the public
14 power and irrigation district, Nebraska Brand Committee, or entity or
15 pool or at a place which will accommodate the anticipated audience;

16 (d) Reasonable arrangements are made to accommodate the public's
17 right to attend, hear, and speak at the meeting, including seating,
18 recordation by audio recording devices, and a reasonable opportunity for
19 input such as public comment or questions to at least the same extent as
20 would be provided if a telephone conference call was not used;

21 (e) At least one copy of all documents being considered is available
22 to the public at each site of the telephone conference call;

23 (f) At least one member of the educational service unit board,
24 council, community college board of governors, governing body of the
25 public power district, governing body of the public power and irrigation
26 district, Nebraska Brand Committee, or governing body of the entity or
27 pool is present at each site of the telephone conference call identified
28 in the public notice, except that a member of an organization created
29 under the Interlocal Cooperation Act that sells electricity or natural
30 gas at wholesale on a multistate basis, an organization created under the
31 Municipal Cooperative Financing Act, or a governing body of a risk
1 management pool or an advisory committee of such organization or pool may
2 designate a nonvoting designee, who shall not be included as part of the
3 quorum, to be present at any site;

4 (g) The telephone conference call lasts no more than five hours; and
5 (h) No more than one-half of the board's, council's, governing
6 body's, committee's, entity's, or pool's meetings in a calendar year are
7 held by telephone conference call, except that:

8 (i) The governing body of a risk management pool that meets at least
9 quarterly and the advisory committees of the governing body may each hold
10 more than one-half of its meetings by telephone conference call if the
11 governing body's quarterly meetings are not held by telephone conference
12 call or videoconferencing; and
13 (ii) An organization created under the Interlocal Cooperation Act
14 that sells electricity or natural gas at wholesale on a multistate basis
15 or an organization created under the Municipal Cooperative Financing Act
16 may hold more than one-half of its meetings by telephone conference call
17 if the organization holds at least one meeting each calendar year that is
18 not by videoconferencing or telephone conference call.

19 Nothing in this subsection shall prevent the participation of
20 consultants, members of the press, and other nonmembers of the governing
21 body at sites not identified in the public notice. Telephone conference
22 calls, emails, faxes, or other electronic communication shall not be used
23 to circumvent any of the public government purposes established in the
24 Open Meetings Act.

25 (4) The secretary or other designee of each public body shall
26 maintain a list of the news media requesting notification of meetings and
27 shall make reasonable efforts to provide advance notification to them of
28 the time and place of each meeting and the subjects to be discussed at
29 that meeting.

30 (5) When it is necessary to hold an emergency meeting without
31 reasonable advance public notice, the nature of the emergency shall be
1 stated in the minutes and any formal action taken in such meeting shall
2 pertain only to the emergency. Such emergency meetings may be held by
3 means of electronic or telecommunication equipment. The provisions of
4 subsection (4) of this section shall be complied with in conducting
5 emergency meetings. Complete minutes of such emergency meetings
6 specifying the nature of the emergency and any formal action taken at the
7 meeting shall be made available to the public by no later than the end of
8 the next regular business day.

9 (6) A public body may allow a member of the public or any other
10 witness other than a member of the public body to appear before the
11 public body by means of video or telecommunications equipment.

12 (7)(a) This subsection applies until July 1, 2021.

13 (b) Notwithstanding subsections (2) and (3) of this section, to hold
14 a meeting during a health crisis, a public body shall give reasonable
15 advance publicized notice as described in subsection (1) of this section.
16 The notice shall include information regarding access for the public and
17 news media. Such meeting may be held by means of videoconferencing or
18 telephone conferencing. The public body may hold such meeting for the
19 purpose of briefing, discussion of public business, formation of
20 tentative policy, or the taking of any action of the public body.

21 (c) The public body shall provide access by providing a public,
 22 toll-free, dial-in number or a free-of-charge videoconference link and a
 23 link to an electronic copy of the agenda and all documents being
 24 considered at the meeting. Reasonable arrangements shall be made to
 25 accommodate the public's right to hear and speak at the meeting and
 26 record the meeting. A public body may not be required to allow citizens
 27 to speak at each meeting held pursuant to this subsection, but it may not
 28 forbid public participation at all such meetings. Subsection (4) of this
 29 section shall be complied with in conducting such meetings.
 30 (d) The nature of the health crisis shall be stated in the minutes.
 31 Complete minutes of such meeting specifying the nature of the health
 1 crisis and any formal action taken at the meeting shall be made available
 2 for inspection as provided in subsections (5) and (6) of section 84-1413.
 3 (e) For purposes of this subsection, health crisis means a situation
 4 in which a state of emergency proclamation has been issued by the
 5 Governor as provided in section 81-829.40 or by the principal executive
 6 officer of a local government as provided in section 81-829.50 for any
 7 contagious, infectious, epidemic, or pandemic disease or illness. The
 8 health crisis shall be limited to the duration of such emergency
 9 proclamation.
 10 Sec. 4. Original sections 64-401 and 84-1411, Revised Statutes
 11 Supplement, 2019, are repealed.
 12 Sec. 5. Since an emergency exists, this act takes effect when
 13 passed and approved according to law.

Senator Quick filed the following amendment to [LB424](#):
[AM3032](#)

(Amendments to AM2122)

1 1. On page 2, after line 3 insert the following new subdivision:
 2 "(3) Immediate family has the same meaning as in section 49-1425;"
 3 in line 4 strike "(3)" and insert "(4)"; in line 6 strike "(4)" and
 4 insert "(5)"; and in line 10 strike "(5)" and insert "(6)".
 5 2. On page 7, line 8, strike "14."
 6 3. On page 8, line 26, strike "or"; in line 29 strike the new matter
 7 and reinstate the stricken matter; and after line 29 insert the following
 8 new subdivision:
 9 "(c) Acquisition of the real property by the land bank would serve
 10 the best interests of the community as determined by two-thirds of the
 11 voting members of the board. Only a land bank created by a city of the
 12 metropolitan class may use the reason provided in this subdivision. In
 13 determining whether the acquisition would serve the best interests of the
 14 community, the board shall take into consideration the hierarchical
 15 ranking of priorities for the use of real property conveyed by a land
 16 bank established pursuant to subsection (5) of section 10 of this act, if
 17 any such hierarchical ranking is established."
 18 4. On page 10, line 22, after "Act" insert ", except that a land
 19 bank shall not issue any bonds on or after the effective date of this
 20 act".
 21 5. On page 11, line 14, after "money" insert ", except that a land
 22 bank shall not invest its money in any instrument, obligation, security,
 23 or property that is owned by a member of the board or an employee of the
 24 land bank, by a board member's or an employee's immediate family, or by a
 25 business or entity in which a board member or an employee has an
 26 ownership interest".
 1 6. On page 12, line 8, after "to" insert "(a)" and after "taxes"
 2 insert "or (b) receive property tax revenue from a political subdivision
 3 pursuant to an agreement entered into under the Joint Public Agency Act".
 4 7. On page 16, line 11, strike "A", show as stricken, and insert
 5 "Subject to subsection (7) of this section, a".
 6 8. On page 17, after line 19 insert the following new subsection:

7 "(7) A land bank shall not issue any bonds on or after the effective
8 date of this act."
9 9. On page 18, strike beginning with "by" in line 8 through line 10,
10 show as stricken, and insert "in accordance with this section. For a land
11 bank created pursuant to subsection (1) of section 4 of this act, the
12 resolution of dissolution must be approved by two-thirds of the members
13 of the governing body of the municipality that created the land bank. For
14 a land bank created pursuant to subsection (2) or (3) of section 4 of
15 this act, the resolution of dissolution must be approved by a majority of
16 the members of the governing body of each municipality that created the
17 land bank. A governing body"; and in line 27 after the period insert "No
18 member of the board or employee of a land bank shall have any interest,
19 direct or indirect, in any investment of the land bank. The restrictions
20 in this subsection shall also apply to a board member's or employee's
21 immediate family and to any business or entity in which the board member
22 or employee has an ownership interest."

Senator Hunt filed the following amendment to LB814:
[AM3117](#)

- 1 1. Strike original sections 4 to 6.
- 2 2. On page 4, line 21, strike "(1)"; and strike lines 25 through 31.
- 3 3. On page 5, strike lines 1 and 2; in line 3 strike "(3)" and
4 insert "(2)".
- 5 4. Renumber the remaining sections and correct internal references
6 accordingly.

MOTION(S) - Print in Journal

Senator Wayne filed the following motion:
Suspend the rules, Rule 5, Section 4(c) to permit the introduction of a new
bill, Req. 6133, after the tenth legislative day by a member.

ADJOURNMENT

At 5:12 p.m., on a motion by Senator DeBoer, the Legislature adjourned
until 9:00 a.m., Tuesday, July 21, 2020.

Patrick J. O'Donnell
Clerk of the Legislature

