

**FIFTY-NINTH DAY - APRIL 11, 2023**

**LEGISLATIVE JOURNAL**

**ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION**

**FIFTY-NINTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, April 11, 2023

**PRAYER**

The prayer was offered by Pastor Gary Bennett, Red Cloud Bible Church, Red Cloud.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was offered by Senator Lowe.

**ROLL CALL**

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

The roll was called and all members were present except Senators Bostar, Briese, Day, DeBoer, Hunt, Linehan, McKinney, Vargas, Walz, and Wayne who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

Page 1026, line 32, strike "LB910" and insert "LB183."  
The Journal for the fifty-seventh day was approved, as corrected.  
The Journal for the fifty-eighth day was approved.

**RESIGNATION**

April 5, 2023

The Honorable Jim Pillen  
State Capitol  
Lincoln, NE 68509

Dear Governor Pillen,

This letter is written to advise you that I am resigning my position as a

member of the Nebraska Legislature, effective April 6, 2023, at 11:59 pm. Serving in the Nebraska Legislature has been the honor of a lifetime. I am deeply appreciative of my constituents and the faith they had in me when they first elected me in 2017.

Sincerely,  
(Signed) Suzanne Geist

#### MESSAGE FROM THE GOVERNOR

April 7, 2023

Carolyn Bosn  
6433 Countryview Road  
Lincoln, NE 68516

Dear Senator Bosn:

It is my pleasure to appoint you as a member of the Nebraska Legislature representing District 25 effective April 7, 2023. Your knowledge and input are valuable and your willingness to serve in this important position is appreciated. Working together we can make wise decisions while keeping the best interests of our citizens in mind.

Congratulations and best wishes.

Sincerely,  
(Signed) Jim Pillen  
Governor

Enclosures

#### GUBERNATORIAL APPOINTMENT

Greetings To All Who Shall See These Presents Know Ye, that I, Jim Pillen, on behalf of the State of Nebraska and as Governor, do hereby appoint Carolyn Bosn as a member of the Nebraska Legislature representing District 25.

Reposing special trust in your ability, integrity and patriotism, I do authorize and empower you to discharge the duties of said appointment, according to law.

This appointment shall take effect on April 7, 2023, and continue until January 7, 2025, provided by law provided you shall satisfactorily perform all the duties imposed by law.

(Signed) Jim Pillen  
Governor  
  
(Signed) Robert B. Evnen  
Secretary of State



students at least once during the school year. The information would inform students about the organization and how it "furthers the educational interests and civic involvement of students in a manner consistent with good citizenship." LB 805 would also allow a youth organization representative to provide services and activities to any student who is a member of the organization.

Your opinion request raises constitutional concerns in view of *Child Evangelism Fellowship of Minnesota v. Elk River Area School District #728*, 599 F.Supp.2d 1136 (D. Minn. 2009) ["*Elk River*"]. You state that in *Elk River*, only the patriotic, Title 36 organizations were allowed "to distribute materials and have open houses," thus violating the free speech rights of nonprofit religious patriotic organizations. You are seeking our "opinion as to whether LB 805 mandates a similarly constitutionally suspect limited public forum in Nebraska schools or raises any additional legal issues under the First Amendment or criminal laws." You indicate that the Education Committee expressed concern about groups not listed in Title 36 "being able to maintain or seek access under a limited public forum designation in public schools as currently decided on a case by case basis or local policy basis by local school districts."

You have also asked us to consider the propriety of Section 2 of the bill, which amends Neb. Rev. Stat. § 79-2,103 to exempt Title 36 youth representatives from criminal penalties for accessing school buildings or grounds for the purpose of soliciting or recruiting students. However, since we understand that the introducer is proposing to outright repeal § 79-2,103, see AM711, this portion of the bill will not be addressed.

#### FEDERAL LAW BACKGROUND

On January 8, 2002, President George W. Bush signed the No Child Left Behind Act of 2001, which included the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905 ("Boy Scouts Act"). The Boy Scouts Act provides that no school, local educational district, or state educational agency that creates a "designated open forum" or "limited public forum"<sup>2</sup> and receives funds from the U.S. Department of Education ("Department")

<sup>1</sup>Title 36 U.S.C. Subtitle II, Part B—Patriotic and National Organizations.

<sup>2</sup> For purposes of the Boy Scouts Act, a "[d]esignated open forum means that an elementary school or secondary school designates a time and place for one or more outside youth or community groups to meet on school premises or in school facilities, including during the hours in which attendance at the school is compulsory, for reasons other than to provide the school's educational program." A "[l]imited public forum means that an elementary school or secondary school grants an offering to, or opportunity for, one or more outside youth or community groups to meet on school premises or in school facilities before or after the hours during which attendance at the school is compulsory." 34 C.F.R. § 108.3(e) and (i), respectively.

shall deny equal access or a fair opportunity to meet to, or discriminate against, any group officially affiliated with the Boy Scouts of America, or any other youth group listed in Title 36 (as a patriotic society), that wishes to conduct a meeting within that designated open forum or limited public forum, including denying such access or opportunity or discriminating for reasons based on the membership or leadership criteria or oath of allegiance to God and country of the Boy Scouts of America or of the youth group listed in Title 36 (as a patriotic society).

20 U.S.C. § 7905(b)(1). Rules implementing the Boy Scouts Act were adopted by the Department in March 2006. 34 C.F.R. §§ 108.1 to 108.9. A Title 36 youth group is defined as "a group or organization listed in title 36 of the United States Code (as a patriotic society) that is intended to serve young people under the age of 21." 34 C.F.R. § 108.3(p). The Boy Scouts Act is enforced by the Department's Office of Civil Rights. No Department funds shall be made available to any school or agency that fails to comply with the Boy Scouts Act. 20 U.S.C. § 7905(c).

### DISCUSSION

As introduced,<sup>3</sup> LB 805 provides that

[e]ach school shall, upon request, allow a representative of any youth organization to provide (i) oral or written information to the students of such school regarding the youth organization and how such youth organization furthers the educational interests and civic involvement of students in a manner consistent with good citizenship and (ii) services and activities to any student of such school who is a member of such youth organization.

Sec. 1(2)(a). Access shall be given at least once during the school year. Sec. 1(2)(b). Schools must make a good faith effort to schedule a time and place for the youth organization representative to provide the information, services or activities that is mutually agreeable to the parties. Sec. 1(3). Background checks shall be conducted on youth organization representatives prior to allowing access to any school. Sec. 1(4). The parameters of any background check shall be determined by the school district except as provided in Section 1 of the bill or Nebraska State Patrol rules and regulations. *Id.* A school district may prohibit access to any youth organization representative convicted of a felony. *Id.* Any costs of a background check shall be borne by the youth organization representative. *Id.*

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<sup>3</sup> Pending AM677 would change "school" to "school district" in certain instances in the bill.

Your opinion request raises concerns about the potential for discrimination against other groups not listed in Title 36. You question whether LB 805 impairs school districts' ability to determine access "currently decided on a case by case basis or local policy basis . . ." We begin with a discussion of the *Elk River* decision.

The school district's policy in *Elk River* limited distribution of nonschool-sponsored materials to the "'designated patriotic youth organizations' as defined by the No Child Left Behind Act . . ." *Id.* at 1138. The policy also allowed these organizations, including the Boy Scouts of America, to distribute literature at school open houses and on school bulletin boards. In August 2007, the Child Evangelism Fellowship of Minnesota ("CEF")<sup>4</sup> requested to be allowed to participate in the open houses. A school official informed CEF that it would not be allowed to participate unless it could prove that it was a patriotic organization under the No Child Left Behind Act. Because CEF was not a patriotic organization listed in Title 36, it was not allowed to participate. CEF's request in 2008 was also denied by the district. Consequently, CEF sought to enjoin the district's policy, alleging that its inability to distribute literature and attend open houses caused a significant decline in club membership.

The court first considered whether the district excluded CEF on the basis of its religious viewpoint in contravention of the holding in *Good News Club v. Milford Central School*, 533 U.S. 98 (2001) ["*Milford*"]. In *Milford*, the United States Supreme Court considered whether a school district's denial of a club's application to hold weekly afterschool meetings at the school discriminated against the club based on its religious viewpoint in violation of the Free Speech Clause. The school district's policy allowed afterschool use of the facilities by district residents for "'instruction in any branch of education, learning or the arts'" and "for 'social, civic and recreational meetings and entertainment events, and other uses pertaining to the welfare of the community, provided that such uses shall be nonexclusive and shall be opened to the general public.'" *Id.* at 102. Two residents and sponsors of the club sought to hold weekly afterschool meetings in the school cafeteria. The request was denied on the basis that the club's proposed use "was 'the equivalent of religious worship'" and because the policy prohibited use of the facilities "'for religious purposes.'" *Id.* at 103.

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<sup>4</sup> The CEF sponsors the Good News Club, organizations for children between the ages of five and twelve. These organizations "encourage[ ] learning, spiritual growth, and service to others by providing religious and moral education through lessons from the Bible. . . . Meetings . . . are held on elementary school campuses, and the children are taught biblical principles, moral values, character qualities, respect for authority, relationships, character development, and important community issues." *Elk River* at 1138.

The Court noted that the nature of the forum dictates what standards to apply when determining whether a private speaker has been unconstitutionally excluded from the use of a public forum. It assumed that the district had created a limited public forum because it had opened up its facilities to members of the community in accordance with its policy. With respect to this forum, the Court explained that

[w]hen the State establishes a limited public forum, the State is not required to and does not allow persons to engage in every type of speech. The State may be justified "in reserving [its forum] for certain groups or for the discussion of certain topics." . . . The State's power to restrict speech, however, is not without limits. The restriction must not discriminate against speech on the basis of viewpoint, . . . and the restriction must be "reasonable in light of the purpose served by the forum[.]"

*Id.* at 106-07 (internal citations omitted).

Relying on *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993) (Free Speech Clause was violated by excluding a private group from presenting films at school facilities that discussed family values from a religious perspective), and *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (University violated the Free Speech Clause by refusing to fund a student publication which addressed issues from a religious perspective), the Court concluded that the school had discriminated against the club in violation of the Free Speech Clause. The Court noted that teaching morals and character development to children was a permissible purpose under the policy, and it was clear that the club taught these subjects but from a religious viewpoint. "What matters for purposes of the Free Speech Clause is that we can see no logical difference in kind between the invocation of Christianity by the Club and the invocation of teamwork, loyalty, or patriotism by other associations to provide a foundation for their lessons." *Id.* at 111. The Court reaffirmed its precedent "that speech discussing otherwise permissible subjects cannot be excluded from a limited public forum on the ground that the subject is discussed from a religious viewpoint." *Id.* at 111-12.

In *Elk River*, the district argued that it did not consider CEF's viewpoint and merely limited access to groups in accordance with the Boy Scouts Act. It represented "that its goal . . . was to avoid discrimination," and in order to receive federal funds, it closed its forum "except to organizations to whom No Child Left Behind says it must grant access." *Elk River*, 599 F.Supp.2d at 1140. The court noted that the district had created a "limited public forum" and that the standards delineated in *Milford* applied.

The court concluded that the district discriminated against CEF on the basis of viewpoint. While the court acknowledged the district's attempt to comply with the Boy Scouts Act in a viewpoint neutral way, it found that

the nature of the Act itself classifies organizations as either "patriotic" or not. Accordingly, the inclusion on or exclusion from the list constitutes discrimination based on whether an organization is appropriately "patriotic." The difficulty for Elk River is that even though it has not discriminated on the basis of viewpoint, Congress has done so by classifying certain organizations as patriotic. This classification endorses a certain patriotic viewpoint while leaving other viewpoints, that may be equally patriotic, off the list. And as the Supreme Court has found, The Good News Club and the Boy Scouts promote the same values and ideas, but they do so from different viewpoints. . . . Although Elk River asserts the Boy Scout Act compels its course of action, the holding in *Milford* dictates that if Elk River allows the Boy Scouts, or any other listed "patriotic youth group," access to its limited public fora but does not allow the Good News Club access, it has violated the Free Speech Clause of the First Amendment.

*Id.* at 1140-141 (internal citations omitted). The court further determined that even if the policy were viewpoint neutral, it was not reasonable in light of the purpose served. The court noted that the receipt of federal funds requires the district to allow access to the Boy Scouts only when a limited public forum has been created. Federal funding would still be available if the district chose to close the open houses to nonschool groups, and limit distribution of literature to only school programs.

The circumstances in *Elk River* are distinguishable from the access mandated in LB 805. Under the Boy Scouts Act, school districts have the discretion to close school buildings and grounds to outside groups. The school district in *Elk River* chose to allow access to only Title 36 youth organizations, and denied access to another youth organization not listed in Title 36 but which shared a similar message. LB 805, on the other hand, *requires* school districts to allow Title 36 youth organization representatives access to schools, thus creating a limited public forum. LB 805 removes any discretion to deny access to a representative from a Title 36 youth organization or to any other youth organization with a similar message to those organizations listed in Title 36.

LB 805 creates a limited public forum at public schools to allow Title 36 youth organizations to provide information about the organizations and the services and activities they provide relating to education and good citizenship. The forum is not restricted to Title 36 youth organizations, however. School districts retain some discretion to allow other groups and organizations to access schools so long as they do not discriminate based on viewpoint. School districts must be cognizant that if they apply the same standard as the school district in *Elk River*, such action would likely violate the First Amendment rights of other youth organizations not listed in Title 36 but which share a similar viewpoint.

Moreover, the mandate proposed in LB 805 is not unique. Several other states have enacted similar legislation requiring school districts to provide



access to the Title 36 youth organizations. *See* Ark. Code Ann. § 6-10-132 (2017), "Patriotic Access to Students in Schools Act"; Ind. Code §§ 20-26-20-1 through 20-26-20-5 (2020), "Patriotic Youth Membership Organizations"; La. Stat. Ann. § 17:2120 (2022), "Patriotic organizations; use of school facilities; student recruitment"; N.C. Gen. Stat. Ann. § 115C-206 (2015), "State Board of Education; duties; responsibilities"; N.D. Cent. Code § 15.1-06-14.1 (2021), "Patriotic society—Permission to speak to students at public schools"; Okla. Stat. Ann. tit. 70, §§ 5-129.3 and 5-130 (2017), "Patriotic Access to Students in Schools Act"; S.D. Codified Laws § 13-24-22 (2018), "Representatives of patriotic societies permitted to speak to students at public schools"; Tenn. Code Ann. § 49-6-305 (2016), "Patriotic society"; Tex. Education Code Ann. § 25.0822 (2017), "Patriotic Society Access to Students"; and Va. Code Ann. § 22.1-132.01 (2016), "Youth-oriented, community organizations on school property." Our research has identified no constitutional challenges to any of these statutes.

### CONCLUSION

Under the federal Boy Scouts Act, any school district or other educational entity that receives federal funding and allows one or more outside youth or community groups to meet on school premises or in school facilities is prohibited from denying equal access to any group associated with the Boys Scout of America or any other youth group listed in Title 36. *Milford and Elk River* informs us that when a school district creates a limited public forum, it may reserve the forum for certain groups or for certain discussions, but must not restrict speech on the basis of viewpoint. The restriction must also be "reasonable in light of the purpose served by the forum . . . ." *Milford*, 533 U.S. at 107. LB 805 creates limited public fora for the public schools in Nebraska, and mandates that access be given to Title 36 youth organizations under certain conditions. However, access is not restricted to the Title 36 groups, and school districts may continue to use their discretion to allow or deny access to other groups so long as they do not discriminate on the basis of viewpoint and the restriction is reasonable in light of the purpose served by the forum.

Sincerely,  
 MIKE HILGERS  
 Attorney General  
 (Signed) Leslie S. Donley  
 Assistant Attorney General

pc: Brandon Metzler  
 Clerk of the Legislature

49-3184-30

### RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 79, 80, 81, 82, 83, and 85 were adopted.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 79, 80, 81, 82, 83, and 85.

**GENERAL FILE**

**LEGISLATIVE BILL 815.** Senator Clements withdrew [MO920](#), found on page 1053, to indefinitely postpone, prior to the bill being read, pursuant to Rule 6, Sec. 3(f).

Title Read. Considered.

Senator Clements withdrew [MO918](#), found on page 1053, to bracket.

Senator Clements withdrew [MO919](#), found on page 1053, to recommit to committee.

Senator M. Cavanaugh offered the following amendment:

[AM1266](#)

1 1. On page 2, lines 1 and 2, strike "[\\$632,982](#)" and insert  
2 "[\\$630,000](#)".

Senator M. Cavanaugh moved for a call of the house. The motion prevailed with 14 ayes, 6 nays, and 29 not voting.

Senator M. Cavanaugh requested a roll call vote on her amendment.

Voting in the affirmative, 1:

Lowe

Voting in the negative, 41:

Aguilar	Brewer	Dungan	Jacobson	Sanders
Albrecht	Briese	Erdman	Kauth	Slama
Arch	Cavanaugh, J.	Fredrickson	Linehan	von Gillern
Armendariz	Clements	Halloran	Lippincott	Walz
Ballard	Conrad	Hansen	McDonnell	Wishart
Blood	DeBoer	Hardin	Moser	
Bosn	DeKay	Holdcroft	Murman	
Bostelman	Dorn	Hughes	Raybould	
Brandt	Dover	Ibach	Riepe	

Present and not voting, 1:

Cavanaugh, M.

Excused and not voting, 6:

Bostar            Hunt            Vargas  
Day                McKinney      Wayne

The M. Cavanaugh amendment lost with 1 aye, 41 nays, 1 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator M. Cavanaugh offered the following motion:

[MO933](#)

Reconsider vote on AM1266.

Senator M. Cavanaugh moved for a call of the house. The motion failed with 14 ayes, 16 nays, and 19 not voting.

Senator M. Cavanaugh requested a roll call vote on the motion to reconsider.

The M. Cavanaugh motion to reconsider failed with 1 aye, 37 nays, 1 present and not voting, 5 absent and not voting, and 5 excused and not voting.

Senator M. Cavanaugh offered the following amendment:

[AM1267](#)

1 1. On page 2, lines 1 and 2, strike "\$632,982" and insert  
2 "\$642,982".

Senator M. Cavanaugh requested a roll call vote on her amendment.

The M. Cavanaugh amendment lost with 0 ayes, 36 nays, 1 present and not voting, 7 absent and not voting, and 5 excused and not voting.

Pending.

## COMMITTEE REPORT

Revenue

**LEGISLATIVE BILL 606.** Placed on General File.

(Signed) Lou Ann Linehan, Chairperson

## GENERAL FILE

**LEGISLATIVE BILL 815.** Senator M. Cavanaugh offered the following motion:

[MO934](#)

Reconsider the vote on AM1267.

**SPEAKER ARCH PRESIDING**

Pending.

**AMENDMENT - Print in Journal**

Senator Linehan filed the following amendment to [LB753](#):  
[AM1253](#)

(Amendments to Standing Committee amendments, AM338)

1 1. Strike sections 10 and 11 and insert the following new sections:

2 Sec. 10. (1) For purposes of this section:

3 (a) Net revenue means the total amount of revenue received by a  
 4 scholarship-granting organization during a state fiscal year minus the  
 5 amount of such revenue that is used or reserved for the administrative  
 6 costs of such organization for the same state fiscal year;

7 (b) Revenue means all grants, donations, and contributions received  
 8 by a scholarship-granting organization for the purpose of providing  
 9 education scholarships; and

10 (c) State fiscal year means the period of time commencing on July 1  
 11 and ending on June 30 of the following year.

12 (2) In order for a scholarship-granting organization to remain  
 13 certified under the Opportunity Scholarships Act, the scholarship-  
 14 granting organization shall allocate its revenue as follows:

15 (a) If the annual limit on tax credits under section 9 of this act  
 16 is less than thirty-five million dollars, the scholarship-granting  
 17 organization shall allocate at least ninety percent of its revenue for  
 18 education scholarships and no more than ten percent of its revenue shall  
 19 be used or reserved for administrative costs; or

20 (b) If the annual limit on tax credits under section 9 of this act  
 21 is thirty-five million dollars or more, the scholarship-granting  
 22 organization shall allocate at least ninety-five percent of its revenue  
 23 for education scholarships, and no more than five percent of its revenue  
 24 shall be used or reserved for administrative costs.

25 (3) For purposes of subsection (2) of this section, revenue is  
 26 allocated when it is expended or otherwise irrevocably encumbered for  
 1 expenditure. The percentage of revenue allocated for education  
 2 scholarships shall be measured as a monthly average over the most recent  
 3 twenty-four-month period or, for a scholarship-granting organization that  
 4 has been certified for less than twenty-four months, over the period of  
 5 time that the scholarship-granting organization has been certified.

6 (4) Beginning January 1, 2028:

7 (a) A scholarship-granting organization shall carry forward no more  
 8 than twenty-five percent of its net revenue from one state fiscal year to  
 9 the following state fiscal year. Any amount carried forward shall be  
 10 expended for annual or partial-year education scholarships in the  
 11 following state fiscal year; and

12 (b) Any amount of net revenue remaining on June 30 of any state  
 13 fiscal year that is in excess of the amount that may be carried forward  
 14 under subdivision (a) of this subsection shall be used to provide  
 15 education scholarships to eligible students or transferred to one or more  
 16 other scholarship-granting organizations to provide education  
 17 scholarships to eligible students by no later than the following  
 18 September 30. Any amount of such net revenue that is not used or  
 19 transferred by the following September 30 shall be remitted to the State  
 20 Treasurer for credit to the General Fund. Any scholarship-granting  
 21 organization receiving a transfer pursuant to this subdivision shall  
 22 place the transferred funds into its scholarship account and shall  
 23 separately disclose the transfer in its annual financial audit.

24 Sec. 11. (1) Each scholarship-granting organization shall annually  
 25 submit to the department no later than December 1 of each year an audited  
 26 financial information report for its most recent fiscal year certified by  
 27 an independent public accountant.

28 (2) Each scholarship-granting organization shall include with the  
 29 report submitted under subsection (1) of this section a summary  
 30 description of (a) its policies and procedures for awarding education  
 31 scholarships, (b) the number of eligible students receiving education  
 1 scholarships in the most recent fiscal year, (c) the total amount of  
 2 contributions received for education scholarships in the most recent  
 3 fiscal year, and (d) the total amount of education scholarships awarded  
 4 in the most recent fiscal year.  
 5 (3) The department shall electronically forward such reports and  
 6 summary descriptions to the Governor and the Legislature no later than  
 7 December 31 of each year.  
 8 (4) By June 30, 2027, and by June 30 of each odd-numbered year  
 9 thereafter, the department shall electronically submit a report to the  
 10 chairperson of the Appropriations Committee of the Legislature, the  
 11 chairperson of the Education Committee of the Legislature, and the  
 12 chairperson of the Revenue Committee of the Legislature. The report shall  
 13 include, but not be limited to, the following:  
 14 (a) A review of the progress of the Opportunity Scholarships Act;  
 15 (b) The number of students currently wait-listed or denied from  
 16 receiving an education scholarship and the reason for the wait-listing or  
 17 denial;  
 18 (c) The dollar amount of education scholarships given by  
 19 scholarship-granting organizations; and  
 20 (d) The demographic information of students receiving education  
 21 scholarships, including, but not limited to:  
 22 (i) Income level;  
 23 (ii) Grade level; and  
 24 (iii) Geographic location.

### VISITORS

Visitors to the Chamber were Brenda Bennett, Red Cloud; students from Lincoln Christian School, Lincoln; Pepe Herrero, Lincoln, Clara Herrero, Paloma and Leni Goldman, Hawthorne, CA; Three Chapters of Alpha Kappa Alpha Sorority, Lincoln and Omaha; members of Leadership Sarpy County; students from Peter Sarpy Elementary, Bellevue; students from Elkhorn High School, Elkhorn; representatives of Rural Public Power Districts and Electric Cooperatives.

### RECESS

At 11:58 a.m., on a motion by Senator Erdman, the Legislature recessed until 1:00 p.m.

### AFTER RECESS

The Legislature reconvened at 1:00 p.m., President Kelly presiding.

### ROLL CALL

The roll was called and all members were present except Senators Arch, Blood, Bostar, Day, Dorn, Dover, Dungan, Hughes, Linehan, Walz, and Wayne who were excused until they arrive.

**GENERAL FILE**

**LEGISLATIVE BILL 815.** Senator M. Cavanaugh renewed [MO934](#), found and considered in this day's Journal, to reconsider the vote on AM1267.

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

Senator M. Cavanaugh requested a roll call vote on the motion to cease debate.

The motion to cease debate failed with 24 ayes, 9 nays, 2 present and not voting, 10 absent and not voting, and 4 excused and not voting.

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

Senator M. Cavanaugh requested a roll call vote on the motion to cease debate.

Senator Lowe moved for a call of the house. The motion prevailed with 7 ayes, 1 nay, and 41 not voting.

Senator Lowe requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 34:

Aguilar	Bostelman	Erdman	Jacobson	Murman
Albrecht	Brandt	Halloran	Kauth	Riepe
Arch	Brewer	Hansen	Linehan	Sanders
Armendariz	Briese	Hardin	Lippincott	Slama
Ballard	Clements	Holdcroft	Lowe	von Gillern
Blood	DeKay	Hughes	McDonnell	Wayne
Bosn	Dorn	Ibach	Moser	

Voting in the negative, 10:

Cavanaugh, J.	Conrad	DeBoer	Fredrickson	McKinney
Cavanaugh, M.	Day	Dungan	Hunt	Vargas

Present and not voting, 4:

Bostar	Raybould	Walz	Wishart
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Excused and not voting, 1:

Dover

The motion to cease debate prevailed with 34 ayes, 10 nays, 4 present and not voting, and 1 excused and not voting.

The M. Cavanaugh motion to reconsider failed with 3 ayes, 41 nays, 4 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

Pending.

#### **AMENDMENTS - Print in Journal**

Senator Hunt filed the following amendment to [LB254](#):

[AM1259](#)

(Amendments to Standing Committee amendments, AM698)

- 1 1. On page 1, line 11, after the period insert "Closed-captioned
- 2 video coverage shall include closed captioning in both English and
- 3 Spanish.".
- 4 2. On page 7, line 28, after the period insert "Closed-captioned
- 5 video coverage shall include closed captioning in both English and
- 6 Spanish.".

Senator J. Cavanaugh filed the following amendment to [LB184](#):

[AM1284](#)

- 1 1. On page 7, line 22, strike "the county attorney or city", show as
- 2 stricken, and insert "prosecuting".

#### **GENERAL FILE**

**LEGISLATIVE BILL 815.** Senator M. Cavanaugh offered the following amendment:

[AM1268](#)

- 1 1. On page 2, lines 1 and 2, strike "\$632,982" and insert
- 2 "\$641,000".

The M. Cavanaugh amendment lost with 1 aye, 28 nays, 16 present and not voting, and 4 excused and not voting.

Senator M. Cavanaugh offered the following motion:

[MO935](#)

Reconsider the vote on AM1268.

#### **SPEAKER ARCH PRESIDING**

Senator M. Cavanaugh moved for a call of the house. The motion prevailed with 13 ayes, 2 nays, and 34 not voting.

Senator Hunt requested a roll call vote on the M. Cavanaugh motion to reconsider.

Voting in the affirmative, 3:

Cavanaugh, J. Cavanaugh, M. Hunt

Voting in the negative, 33:

Aguilar	Brandt	Fredrickson	Jacobson	Riepe
Albrecht	Brewer	Halloran	Kauth	Sanders
Arch	Briese	Hansen	Linehan	Slama
Ballard	Conrad	Hardin	Lippincott	von Gillern
Bosn	DeBoer	Holdcroft	Lowe	Walz
Bostar	DeKay	Hughes	Moser	
Bostelman	Dungan	Ibach	Murman	

Present and not voting, 5:

Blood	Day	McKinney	Raybould	Wayne
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Absent and not voting, 5:

Armendariz	Clements	McDonnell	Vargas	Wishart
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Excused and not voting, 3:

Dorn	Dover	Erdman
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The M. Cavanaugh motion to reconsider failed with 3 ayes, 33 nays, 5 present and not voting, 5 absent and not voting, and 3 excused and not voting.

The Chair declared the call raised.

Pending.

#### **COMMITTEE REPORT** Urban Affairs

**LEGISLATIVE BILL 329.** Placed on General File.

**LEGISLATIVE BILL 462.** Placed on General File with amendment.

[AM1017](#)

1 1. On page 3, line 4, after "Within" insert "or adjacent to".

(Signed) Terrell McKinney, Chairperson

#### **AMENDMENTS - Print in Journal**

Senator Hunt filed the following amendment to [LB282](#):

[AM1286](#)

(Amendments to Standing Committee amendments, AM687)



- 1 1. Insert the following new section:  
 2 Sec. 8. The Children's Death in the Line of Education Fund is  
 3 created. The State Treasurer shall transfer five million dollars from the  
 4 General Fund to the Children's Death in the Line of Education Fund as  
 5 soon as administratively possible after the effective date of this act.  
 6 The Children's Death in the Line of Education Fund shall only be used to  
 7 pay claims relating to wrongful death, injury, mental trauma, or physical  
 8 trauma resulting from school shooting events. Any money in the fund  
 9 available for investment shall be invested by the state investment  
 10 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
 11 State Funds Investment Act.  
 12 2. Insert the following new amendment:  
 13 "2. Renumber the remaining section accordingly."

Senator Hunt filed the following amendment to [LB282](#):  
[AM1285](#)

(Amendments to Standing Committee amendments, AM687)

- 1 1. Insert the following new section:  
 2 Sec. 8. The Compulsory Pregnancy Claims Fund is created. The State  
 3 Treasurer shall transfer five million dollars from the General Fund to  
 4 the Compulsory Pregnancy Claims Fund as soon as administratively possible  
 5 after the effective date of this act. The Compulsory Pregnancy Claims  
 6 Fund shall only be used to pay claims relating to wrongful death, injury,  
 7 mental trauma, or physical trauma resulting from any Nebraska statute or  
 8 rule or regulation restricting bodily autonomy. Any money in the fund  
 9 available for investment shall be invested by the state investment  
 10 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
 11 State Funds Investment Act.  
 12 2. Insert the following new amendment:  
 13 "2. Renumber the remaining section accordingly."

Senator Hunt filed the following amendment to [LB282](#):  
[AM1287](#)

(Amendments to Standing Committee amendments, AM687)

- 1 1. On page 1, line 1, strike "and 7" and insert "7, and 8".

## GENERAL FILE

**LEGISLATIVE BILL 815.** Senator M. Cavanaugh offered the following amendment:

[AM1263](#)

- 1 1. Strike the enacting clause.

The M. Cavanaugh amendment was withdrawn.

Senator Clements moved for a call of the house. The motion prevailed with 22 ayes, 4 nays, and 23 not voting.

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

Voting in the affirmative, 45:

Aguilar	Brewer	Dungan	Jacobson	Raybould
Albrecht	Briese	Erdman	Kauth	Riepe
Arch	Cavanaugh, J.	Fredrickson	Linehan	Sanders
Armendariz	Cavanaugh, M.	Halloran	Lippincott	Slama
Blood	Clements	Hansen	Lowe	Vargas
Bosn	Conrad	Hardin	McDonnell	von Gillern
Bostar	DeBoer	Holdcroft	McKinney	Walz
Bostelman	DeKay	Hughes	Moser	Wayne
Brandt	Dorn	Ibach	Murman	Wishart

Voting in the negative, 1:

Hunt

Present and not voting, 1:

Day

Excused and not voting, 2:

Ballard          Dover

Advanced to Enrollment and Review Initial with 45 ayes, 1 nay, 1 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

#### AMENDMENTS - Print in Journal

Senator M. Cavanaugh filed the following amendment to LB815:

[AM1264](#)

1 1. On page 2, lines 7 and 8, strike "\$588,000" and insert  
2 "\$600,000".

Senator M. Cavanaugh filed the following amendment to LB815:

[AM1265](#)

1 1. On page 2, lines 7 and 8, strike "\$588,000" and insert  
2 "\$599,000".

Senator M. Cavanaugh filed the following amendment to LB815:

[AM1269](#)

1 1. On page 2, lines 1 and 2, strike "\$632,982" and insert  
2 "\$652,980".

Senator M. Cavanaugh filed the following amendment to LB815:

[AM1270](#)

1 1. Strike original section 3.

Senator M. Cavanaugh filed the following amendment to LB815:

[AM1272](#)

1 1. On page 2, line 9, strike "July 1" and insert "July 4".

Senator M. Cavanaugh filed the following amendment to [LB815](#):

[AM1271](#)

1 1. On page 2, line 9, strike "[July 1](#)" and insert "[July 2](#)".

### COMMITTEE ON COMMITTEES SECOND PRELIMINARY REPORT

The Committee on Committees recommended the following committee assignments due to the resignation of Senator Geist:

Senator Bosn would serve on the Judiciary Committee and Transportation and Telecommunications Committee.

### GENERAL FILE

**LEGISLATIVE BILL 816.** Senator Clements withdrew [MO926](#), found on page 1054, to indefinitely postpone, prior to the bill being read, pursuant to Rule 6, Sec. 3(f).

Title Read. Considered.

Senator Clements withdrew [MO925](#), found on page 1054, to bracket.

Senator Clements withdrew [MO927](#), found on page 1054, to recommit to committee.

Committee [AM1136](#), found on page 1026, was offered.

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

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

### AMENDMENT - Print in Journal

Senator M. Cavanaugh filed the following amendment to [LB816](#):

[AM1273](#)

1 1. Strike the enacting clause.

### PRESIDENT KELLY PRESIDING

### GENERAL FILE

**LEGISLATIVE BILL 282.** Senator Riepe withdrew [MO902](#), found on page 1026, to indefinitely postpone, prior to the bill being read, pursuant to Rule 6, Sec. 3(f).

Title Read. Considered.

Senator Riepe withdrew [MO904](#), found on page 1026, to bracket.

Senator Riepe withdrew [MO903](#), found on page 1026, to recommit to committee.

Committee [AM687](#), found on page 673, was offered.

The committee amendment was adopted with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

Senator Riepe withdrew [AM89](#), found on page 527.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 799.** Title read. Considered.

Committee [AM671](#), found on page 745, was offered.

Senator DeBoer offered the following amendment to the committee amendment:

[AM1255](#) is available in the Bill Room.

The DeBoer amendment, to the committee amendment, was adopted with 43 ayes, 0 nays, 3 present and not voting, and 3 excused and not voting.

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

Senator M. Cavanaugh withdrew [MO866](#), found on page 975, to bracket.

Senator M. Cavanaugh withdrew [MO865](#), found on page 975, to recommit to committee.

Senator M. Cavanaugh withdrew [MO864](#), found on page 975, to indefinitely postpone, prior to the bill being read, pursuant to Rule 6, Sec. 3(f).

Advanced to Enrollment and Review Initial with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 799A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 3 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 531.** Senator Hunt withdrew [MO142](#), found on page 907, to indefinitely postpone, prior to the bill being read, pursuant to Rule 6, Sec. 3(f).

Title Read. Considered.

Senator Hunt withdrew [MO144](#), found on page 907, to bracket.

Senator Hunt withdrew [MO143](#), found on page 907, to recommit to committee.

Committee [AM1128](#), found on page 1004, was offered.

Senator McKinney offered [AM1222](#), to the committee amendment, found on page 1053.

The McKinney amendment, to the committee amendment, was adopted with 32 ayes, 0 nays, 14 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 26 ayes, 0 nays, 20 present and not voting, and 3 excused and not voting.

Senator McKinney withdrew [AM864](#), found on page 791.

Advanced to Enrollment and Review Initial with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

### EASE

The Legislature was at ease from 5:28 p.m. until 6:09 p.m.

### GENERAL FILE

**LEGISLATIVE BILL 565.** The first committee amendment [AM1240](#), found on page 1057 and considered on page 1062, was renewed.

Senator Hunt renewed [MO650](#), found and considered on page 1062, to bracket until June 1, 2023.

The Hunt motion to bracket failed with 0 ayes, 27 nays, 18 present and not voting, and 4 excused and not voting.

The first committee amendment was adopted with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

Pending.

### COMMITTEE REPORTS

#### Enrollment and Review

**LEGISLATIVE BILL 243.** Placed on Select File with amendment. [ER21](#) is available in the Bill Room.

**LEGISLATIVE BILL 583.** Placed on Select File with amendment.ER20

1 1. On page 1, strike beginning with "sections" in line 1 through  
 2 line 7 and insert "sections 79-1001, 79-1003, 79-1007.11, 79-1009,  
 3 79-1017.01, 79-1022, 79-1022.02, 79-1023, 79-1027, and 79-1031.01,  
 4 Revised Statutes Cumulative Supplement, 2022; to redefine a term; to  
 5 provide for foundation aid and special education supplemental aid under  
 6 the Tax Equity and Educational Opportunities Support Act; to change  
 7 provisions relating to net option funding and certain certification dates  
 8 under the act; to provide duties for school districts and the State  
 9 Department of Education; to harmonize provisions; to repeal the original  
 10 sections; and to declare an emergency."

(Signed) Beau Ballard, Chairperson

## Appropriations

**LEGISLATIVE BILL 130.** Placed on General File with amendment.AM899

1 1. Strike the original section and insert the following new  
 2 sections:  
 3 Section 1. Section 68-949, Reissue Revised Statutes of Nebraska, is  
 4 amended to read:  
 5 68-949 (1) It is the intent of the Legislature that the department  
 6 implement reforms to the medical assistance program such as those  
 7 contained in the Medicaid Reform Plan, including (a) an incremental  
 8 expansion of home and community-based services for aged persons and  
 9 persons with disabilities consistent with such plan, (b) an increase in  
 10 care coordination or disease management initiatives to better manage  
 11 medical assistance expenditures on behalf of high-cost recipients with  
 12 multiple or chronic medical conditions, and (c) other reforms as deemed  
 13 necessary and appropriate by the department, in consultation with the  
 14 committee.  
 15 (2) The department shall develop recommendations based on a  
 16 comprehensive analysis of various options available to the state under  
 17 applicable federal law for the provision of medical assistance to persons  
 18 with disabilities who are employed, including persons with a medically  
 19 improved disability, to enhance and replace current eligibility  
 20 provisions contained in subdivision (8) of section 68-915.  
 21 (3) The department shall develop recommendations for further  
 22 modification or replacement of the defined benefit structure of the  
 23 medical assistance program. Such recommendations shall be consistent with  
 24 the public policy in section 68-905 and shall consider the needs and  
 25 resources of low-income Nebraska residents who are eligible or may become  
 26 eligible for medical assistance, the experience and outcomes of other  
 27 states that have developed and implemented such changes, and other  
 1 relevant factors as determined by the department.  
 2 (4)(a) It is the intent of the Legislature that the total amount  
 3 appropriated to the department for medicaid nursing facility rates be  
 4 used in the medicaid nursing facility rate calculation, including the  
 5 calculation of the annual inflation factor. The total amount appropriated  
 6 for medicaid nursing facility rates shall include amounts for rate  
 7 enhancement and any other purpose related to medicaid nursing facility  
 8 services and shall be used as the base for funding for the following  
 9 fiscal year.  
 10 (b) The department shall file a report electronically with the  
 11 Legislative Fiscal Analyst and the Clerk of the Legislature no later than  
 12 August 1 of each year identifying how the inflation factor was calculated

13 for that year's medicaid nursing facility rates.  
14 (c) The department shall file a report electronically with the  
15 Legislative Fiscal Analyst and the Clerk of the Legislature between  
16 December 15 and December 31 of each year identifying the amount of any  
17 remaining unobligated appropriation from the prior appropriations  
18 earmarked for medicaid nursing facility payments. The report shall  
19 include an identification of encumbrances and retroactive payments.  
20 Sec. 2. Original section 68-949, Reissue Revised Statutes of  
21 Nebraska, is repealed.

(Signed) Robert Clements, Chairperson

### GENERAL FILE

**LEGISLATIVE BILL 565.** The second committee amendment [AM1242](#), found on page 1057, was offered.

The second committee amendment was adopted with 31 ayes, 2 nays, 10 present and not voting, and 6 excused and not voting.

The third committee amendment [AM1244](#), found on page 1059, was offered.

Senator M. Cavanaugh offered the following motion:

[MO938](#)

Recommit to the Natural Resources Committee.

The M. Cavanaugh motion to recommit to committee failed with 2 ayes, 32 nays, 7 present and not voting, and 8 excused and not voting.

The third committee amendment was adopted with 35 ayes, 0 nays, 6 present and not voting, and 8 excused and not voting.

The fourth committee amendment [AM1241](#), found on page 1060, was offered.

Senator Hunt withdrew [AM1227](#), found on page 1063, to the fourth committee amendment.

Senator Hunt withdrew [AM1228](#), found on page 1063, to the fourth committee amendment.

### SPEAKER ARCH PRESIDING

#### PRESIDENT KELLY PRESIDING

The fourth committee amendment was adopted with 35 ayes, 0 nays, 7 present and not voting, and 7 excused and not voting.

Senator M. Cavanaugh offered the following motion:

[MO937](#)

Indefinitely postpone.

Senator M. Cavanaugh withdrew her motion to indefinitely postpone.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 7 present and not voting, and 7 excused and not voting.

**LEGISLATIVE BILL 565A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 8 present and not voting, and 7 excused and not voting.

**UNANIMOUS CONSENT - Add Cointroducer**

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

Senator Bosn name added to LB626.

**VISITORS**

Visitors to the Chamber were members of the Nebraska Insurance Federation.

The Doctor of the Day was Dr. Christi Keim of Lincoln.

**ADJOURNMENT**

At 8:57 p.m., on a motion by Senator Raybould, the Legislature adjourned until 9:00 a.m., Wednesday, April 12, 2023.

Brandon Metzler  
Clerk of the Legislature