

**TWENTY-SEVENTH DAY - FEBRUARY 17, 2015****LEGISLATIVE JOURNAL****ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION****TWENTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, February 17, 2015

**PRAYER**

The prayer was offered by Senator Ebke.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., Speaker Hadley presiding.

The roll was called and all members were present except Senators McCollister and McCoy who were excused.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the twenty-sixth day was approved.

**COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 40.** Placed on Final Reading.

ST2

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

1. On page 1, the matter beginning with "23-2305.01" in line 1 through "Nebraska" in line 3 has been struck and "16-1019, 16-1038, 23-2305.01, 23-2322, 24-704.01, 79-904.01, 79-948, 79-9,104, 81-2019.01, 81-2032, 84-1305.02, 84-1324, 84-1503, and 84-1505, Reissue Revised Statutes of Nebraska, and sections 14-2111, 24-710.02, and 48-1401, Revised Statutes Cumulative Supplement, 2014; to eliminate unconstitutional provisions related to payment of benefits or annuities for civil damages" inserted.

**LEGISLATIVE BILL 43.** Placed on Final Reading.

**LEGISLATIVE BILL 109.** Placed on Final Reading.

**LEGISLATIVE BILL 118.** Placed on Final Reading.

ST3

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

1. On page 1, the matter beginning with "cigar" in line 1 through line 10 and all amendments thereto have been struck and "tobacco; to amend sections 53-103.08, 53-1,120.01, 71-5716, and 71-5717, Reissue Revised Statutes of Nebraska, and sections 28-1429.03, 53-101, 53-131, and 71-5730, Revised Statutes Cumulative Supplement, 2014; to define cigar shop; to permit certain sales as prescribed; to provide for a nonrefundable application fee; to provide and change requirements for cigar shops; to state and restate intent; to preempt county resolutions and city ordinances relating to smoking in cigar shops; to exempt tobacco retail outlets and cigar shops from the Nebraska Clean Indoor Air Act; to provide requirements for tobacco retail outlets; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency." inserted.

**LEGISLATIVE BILL 149.** Placed on Final Reading.

**LEGISLATIVE BILL 157.** Placed on Final Reading.

**LEGISLATIVE BILL 159.** Placed on Final Reading.

**LEGISLATIVE BILL 168.** Placed on Final Reading.

ST6

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

1. On page 4, line 15, "(1)" has been struck, shown as stricken, and "(a)" inserted; and in line 16 "(2)" has been struck, shown as stricken, and "(b)" inserted.

**LEGISLATIVE BILL 198.** Placed on Final Reading.

**LEGISLATIVE BILL 219.** Placed on Final Reading.

**LEGISLATIVE BILL 220.** Placed on Final Reading.

**LEGISLATIVE BILL 220A.** Placed on Final Reading.

**LEGISLATIVE BILL 247.** Placed on Final Reading.

(Signed) Matt Hansen, Chairperson

#### **COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 167.** Placed on Select File with amendment.

ER36

1 1. On page 1, line 3, strike "to" and insert "with the Clerk of".

2 2. On page 2, line 14, strike the second "and".

(Signed) Matt Hansen, Chairperson

**COMMITTEE REPORT(S)**

Judiciary

**LEGISLATIVE BILL 586.** Placed on General File with amendment.

AM289

1 1. Insert the following new section:

2 Sec. 9. Section 48-1103, Reissue Revised Statutes of Nebraska, is

3 amended to read:

4 48-1103 The Nebraska Fair Employment Practice Act shall not apply

5 to:

6 (1) A religious corporation, association, or society with respect to

7 the employment of individuals of a particular religion to perform work

8 connected with the carrying on by such corporation, association, or

9 society of its religious activities; or

10 (2) The employment of ~~an any~~ individual (a) by his or her parent,

11 grandparent, spouse, child, or grandchild or (b) in the domestic service

12 of any person.

13 2. Renumber the remaining sections and correct the repealer

14 accordingly.

(Signed) Les Seiler, Chairperson

**RESOLUTION(S)****LEGISLATIVE RESOLUTION 56.** Introduced by Krist, 10.

WHEREAS, Maxwell Kaye, Montgomery Wylie, and Nicholas Harpster, members of Troop 31, have completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest rank in scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks of Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle Scout. Throughout their scouting experience, Maxwell, Montgomery, and Nicholas have learned, been tested on, and been recognized for various scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council; and

WHEREAS, for Maxwell's Eagle Scout community service project, he installed a new flag and flag pole at Bohemian Cemetery in Omaha. Maxwell also planted flowers and painted a bench at a memorial for those who have given their lives for their country; and

WHEREAS, for Montgomery's Eagle Scout community service project, he built and mended picnic tables for Two Rivers State Park in Wahoo. Because of Montgomery's project, 36 picnic tables were placed around the park for visitors to enjoy. Montgomery, with the help of Troop 31, built 24

picnic tables and restored 12 of the older picnic tables used by visitors in the park; and

WHEREAS, for Nicholas's Eagle Scout community service project, he built a dozen bat houses with the help of his troop and delivered them to Two Rivers State Park in Wahoo where they were installed throughout the park at different camp sites. Nicholas's project is helping to benefit visitors to the park by reducing the mosquito population; and

WHEREAS, only a small percentage of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, Maxwell, Montgomery, and Nicholas, through hard work and perseverance, have joined other high achievers who are Eagle Scouts, such as astronauts, political and industry leaders, artists, scientists, and athletes.

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

1. That the Legislature congratulates Maxwell Kaye, Montgomery Wylie, and Nicholas Harpster from Troop 31 on achieving the rank of Eagle Scout.

2. That a copy of this resolution be sent to Maxwell Kaye, Montgomery Wylie, and Nicholas Harpster.

Laid over.

**LEGISLATIVE RESOLUTION 57.** Introduced by Krist, 10.

WHEREAS, engineers plan, design, and implement engineering works that propel the nation's economy, enhance our quality of life, and safeguard America's infrastructure; and

WHEREAS, engineers face the major technological challenges of our time, from rebuilding towns devastated by natural disasters to designing an information superhighway that will speed our country into the twenty-first century, and have used their scientific and technical knowledge and skills in creative and innovative ways to fulfill society's needs; and

WHEREAS, engineers are encouraging our young math and science students to realize the practical power of their knowledge; and

WHEREAS, we will look more than ever to engineers and their knowledge and skill to bridge the gap between science, theory, and practical application to meet the challenges of the future; and

WHEREAS, National Engineers Week was founded in 1951 and is celebrated at the time of George Washington's birthday, who himself was a military engineer and surveyor; and

WHEREAS, February 22-28, 2015, is recognized as Engineers Week in Nebraska.

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

1. That the Legislature recognizes the contributions and achievements of Nebraska's engineers and recognizes February 22-28, 2015, as Engineers Week in Nebraska.

2. That a copy of this resolution be sent to the American Council of Engineering Companies of Nebraska.

Laid over.

**MESSAGE(S) FROM THE GOVERNOR**

February 11, 2015

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

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

Contingent upon your approval, the following individual is being appointed to the Nebraska Educational Telecommunications Commission:

Marilyn Hadley, 3112 Country Club Lane, Kearney, NE 68845

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

Enclosure

February 10, 2015

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

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

Contingent upon your approval, the following individual is being appointed to the Board of Parole:

Virgil J. Patlan Sr., 3305 E Street, Omaha, NE 68107

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

Enclosure

### ANNOUNCEMENT

Pursuant to Neb. Rev. Stat. 43-4202(3)(b), Senator Seiler announced as Chairperson of the Judiciary Committee, that Senator Patty Pansing Brooks has been designated as a member of the Nebraska Children's Commission.

### GENERAL FILE

**LEGISLATIVE BILL 155.** Title read. Considered.

Committee AM180, found on page 413, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 439.** Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 7 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 179.** Title read. Considered.

Committee AM237, found on page 434, was adopted with 32 ayes, 0 nays, 15 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 164.** Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 7 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 207.** Title read. Considered.

Committee AM194, found on page 438, was adopted with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 111.** Title read. Considered.

Committee AM233, found on page 442, was offered.

Senator Chambers offered the following motion:

MO30

Bracket until April 15, 2015.

Pending.

### **BILLS ON FIRST READING**

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

**LEGISLATIVE BILL 139A.** Introduced by Johnson, 23.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 139, One Hundred Fourth Legislature, First Session, 2015.

**LEGISLATIVE BILL 504A.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 504, One Hundred Fourth Legislature, First Session, 2015.

### **ATTORNEY GENERAL'S OPINION**

#### Opinion 15-002

**SUBJECT:** LB 280 - Constitutionality of Reducing the Percentage of the Actual Value of Agricultural and Horticultural Land Used in Calculating State Aid Value Under the Tax Equity and Educational Opportunities Support Act.

**REQUESTED BY:** Senator Al Davis  
Nebraska Legislature

**WRITTEN BY:** Doug Peterson, Attorney General  
L. Jay Bartel, Assistant Attorney General

LB 280 contains several provisions relating to school funding. The bill proposes creation of a school-funding surtax on individuals with an income tax liability. LB 280, § 1. The maximum levy rate for school districts would be reduced in incremental steps over a period of years from the current rate of \$1.05 per one hundred dollars of taxable value to \$.805 per one hundred dollars of value by fiscal year 2020-2021. LB 280, § 2. The maximum levy rate for learning communities would also be reduced over the same period

from the current rate of \$.95 per one hundred dollars of taxable value to \$.705 per one hundred dollars of value. *Id.* The bill also includes several changes to the Tax Equity and Educational Opportunities Support Act [“TEEOSA”]. Section 8 would amend Neb. Rev. Stat. § 79-1015.01 (2014), which establishes the local effort rate for inclusion in local system formula aid resources, by reducing the rate to \$.755 for school fiscal year 2017-18 and subsequent years. LB 280, § 8. The bill would also lower the percentage of agricultural and horticultural land used in determining state aid value from 72 percent to 62.4 percent of actual value. LB 280, § 9. Beginning in school fiscal year 2017-19, a foundation aid amount of \$500 would be provided for each student in all school districts. LB 280, § 12.

Your original request referenced prior legislative proposals to “reduce the valuation of agricultural and horticultural land for the purposes of calculating state aid to schools....” Subsequent to receipt of your request, you introduced LB 280. It is our understanding that you seek our opinion on the constitutionality of that portion of the bill which would lower the percentage of agricultural and horticultural land used in determining state aid value from 72 percent to 62.4 percent of actual value.

Your request does not articulate a specific constitutional issue to be addressed, or identify any particular constitutional provision this portion of the bill may contravene. To the extent that the bill proposes only to reduce the portion of state aid value for agricultural and horticultural land from 72 percent to 62.4 percent of actual value, while retaining the state aid value for real property other than agricultural and horticultural land at 96 percent of actual value, there may be a question whether this establishes an unreasonable classification in violation of the prohibition against special legislation in Neb. Const. art. III, § 18.

Agricultural land and horticultural land is “a separate and distinct class of property for purposes of taxation...”, and is “valued for taxation at seventy-five percent of its actual value.” Neb. Rev. Stat. § 77-201(2) (2009). Agricultural land and horticultural land that “meets the qualifications for special valuation...” is also a “separate and distinct class of property for purposes of taxation...” and is “valued for taxation at seventy-five percent of its special value....” Neb. Rev. Stat. § 77-202(3) (2009). All other real property that is not expressly exempt from taxation “shall be subject to taxation and shall be valued at its actual value.” Neb. Rev. Stat. § 77-202(1) (2009). “Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade.” Neb. Rev. Stat. § 77-112 (2009).

For statewide equalization purposes, the “acceptable range” for agricultural land and horticultural land is “sixty-nine to seventy-five percent of actual value.” Neb. Rev. Stat. § 77-5023(2)(a) (2009). The acceptable range for agricultural and horticultural land receiving special valuation is “sixty-nine to seventy-five percent of special valuation....” Neb. Rev. Stat. § 77-5023(2)(b) (2009). For all other real property, the acceptable range is



“ninety-two to one hundred percent of actual value.” Neb. Rev. Stat. § 77-5023(2)(c) (2009).

TEEOSA requires the Property Tax Administrator to “compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system.” Neb. Rev. Stat. § 79-1016(2) (2014). “The adjusted valuation of property of each school district and each local school system, for purposes of determining state aid pursuant to the Tax Equity and Education Opportunities Support Act, shall reflect as nearly as possible the state aid value....” *Id.* Neb. Rev. Stat. § 79-1016(3) (2014) provides that “state aid value” means

(a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

“State aid value” for agricultural and horticultural land, including agricultural and horticultural land receiving special valuation, is thus currently set at 72 percent of actual or special value, the midpoint of the acceptable range of value for these classes of property. Similarly, “state aid value” for all other taxable real property is 96 percent of actual value, the midpoint of the range for real property other than agricultural and horticultural land or land subject to special valuation. Thus, adjusted valuation of property for state aid purposes is currently determined using the midpoint of the acceptable range for each class of property as the measure of state aid value. Section 9 of LB 280 would lower the measure of state aid value from 72 percent, the midpoint of the acceptable range for agricultural and horticultural land and agricultural and horticultural land receiving special valuation, to 62.4 percent. Adjusted valuation for state aid purposes for all other real property would remain at 96 percent, the midpoint of the acceptable range.

Article III, § 18, provides:

The Legislature shall not pass local or special laws in any of the following cases, that is to say:

\* \* \*

Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever.... In all other cases where a general law can be made applicable, no special law shall be enacted.

The Nebraska Supreme Court has stated that a legislative act can violate art. III, § 18, as special legislation in “one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification, or (2) by creating a permanently closed class.” *Haman v. Marsh*, 237 Neb. 699, 709, 467 N.W.2d 836, 845 (1991). “A special legislation analysis focuses on a legislative body’s purpose in creating a challenged class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation.” *J. M. v. Hobbs*, 288 Neb. 546, 557, 849 N.W.2d 480, 489 (2014). “The prohibition aims to prevent legislation that arbitrarily benefits a special class.” *Id.* “Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference.” *Big John’s Billards, Inc. v. State*, 288 Neb. 938, 945, 852 N.W.2d 727, 735 (2014). “A legislative body’s distinctive treatment of a class is proper if the class has some reasonable distinction from other subjects of a like general character.” *Id.* “[T]hat distinction must bear some reasonable relation to the legitimate objective and purposes of the legislative act.” *Id.* As no closed classification is implicated, the question is whether the distinction between the percentages of agricultural and horticultural lands and other real property, utilizing a percentage below the midpoint of the range for agricultural and horticultural lands and land subject to special valuation while retaining the midpoint of the range for other real property, establishes an arbitrary and unreasonable classification.

In 2011, legislation was introduced which proposed to incrementally reduce the percentage of the actual value of agricultural and horticultural land used to calculate state aid from 72 percent to 62 percent over a ten year period. The legislative history of the bill (LB 440) noted this proposal would “decrease formula resources in the calculation of state aid for school districts that have agricultural and horticultural land...”, which would “in turn trigger an increase in equalization aid to those school districts.” Committee Records on LB 440, 102<sup>nd</sup> Leg., 1<sup>st</sup> Sess. 1 (Feb. 1, 2011). The bill’s principal introducer stated the bill was intended to provide school districts the benefit of additional state aid, and that school districts would then “possibly lower the levy of the property taxes.” *Id.* (Statement of Sen. Heidemann). The introducer further stated “the bill [was] mainly to get more state aid to...more rural school districts...”, and “would help neutralize the effect of soaring agricultural land values and resulting decrease in state aid that burdens our rural communities in supporting K-12 school districts.” *Id.* at 1-2 (Statement of Sen. Heidemann). The introducer noted that the number of unequalized school districts (districts not receiving equalization aid under TEEOSA) had risen from 23.5 percent in 2001 to around 30 percent of all districts in 2011. *Id.* at 2 (Statement of Sen. Heidemann). Supporting testimony noted that, “[s]ince 2005, property tax increases statewide on agricultural real estate had increased nearly 46 percent, almost twice the

percentage increase as on residential properties...”, and that “LB 440 attempt[ed] to help with this issue by reducing the value of agricultural land in the state aid to schools formula, which would translate into greater aid for school districts that have come to rely so heavily upon agricultural land for funding...”, and “aid in alleviating some of the pressure on agricultural land as the funding sources for some schools.” *Id.* at 12 (Statement of Jessica Kolterman on behalf of the Nebraska Farm Bureau).

While LB 440 was not advanced from the Education Committee, we believe the purposes articulated in support of that bill provide a reasonable basis for the proposed reduction to the percentage of agricultural and horticultural land to be used to calculate state aid to schools contained in LB 280. The effect of a decrease in the percentage of actual value of agricultural and horticultural land would be to decrease formula resources in determining state aid, which in turn would increase the amount of state aid allocated to schools as equalization aid. Equalized school districts may receive increased equalization aid, and the number of unequalized districts would be reduced. Given the substantial increase in the valuation of agricultural and horticultural lands statewide in recent years, which has outpaced increases in the valuation of other real property, utilizing a different, lower percentage of agricultural land value in the calculation of state aid is not arbitrary or unreasonable, as it is based on real substantial differences between such lands and other real property. Thus, reducing the value of agricultural and horticultural land, including land subject to special valuation, from the midpoint of the acceptable range for such property (72 percent) to 62.4 percent, while continuing to use the midpoint of the range for other real property (96 percent), in calculating state aid to schools, is not an improper classification in violation of the special legislation clause.

### CONCLUSION

The Nebraska Constitution provides that “[t]he Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.” Neb. Const. art. VII, § 1. “What methods and what means should be adopted in order to furnish free instruction to the children of the state has been left by the constitution to the legislature.” *Affholder v. State*, 51 Neb. 91, 93, 70 N.W. 544, 545 (1897). “Nebraska’s constitutional history shows that the people of Nebraska have repeatedly left school funding decisions to the Legislature’s discretion.” *Nebraska Coalition for Educational Equity and Adequacy v. Heineman*, 273 Neb. 531, 550, 731 N.W.2d 164, 179 (2007). Given the broad discretion afforded the Legislature in determining the proper means to fund our schools, we conclude that, for purposes of calculating state aid to schools, LB 280’s proposed reduction to the value of agricultural and horticultural land, including land subject to special valuation, from the midpoint of the acceptable range for such property (72 percent) to 62.4 percent, while continuing to use the midpoint of the range for other real property (96 percent), does not result in an improper classification in violation of the special legislation clause.

Very truly yours,  
DOUG PETERSON  
Attorney General  
(Signed) L. Jay Bartel  
Assistant Attorney General

pc Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
07-918-29

#### **UNANIMOUS CONSENT - Add Cointroducer(s)**

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

Kintner - LB350

#### **WITHDRAW - Cointroducer**

Senator Krist withdrew his name as cointroducer to LB114 and LB614.

#### **VISITORS**

Visitors to the Chamber were Brian Schlote from Plainview; 50 members of Hall County Leadership UNLIMITED; delegates and facilitators of Open World Leadership Center from Ukraine; and 15 members of a leadership group from Fillmore County.

The Doctor of the Day was Dr. Elizabeth Dayton from Omaha.

#### **ADJOURNMENT**

At 11:57 a.m., on a motion by Senator B. Harr, the Legislature adjourned until 9:00 a.m., Wednesday, February 18, 2015.

Patrick J. O'Donnell  
Clerk of the Legislature