

**FIRST DAY - JANUARY 6, 2016****LEGISLATIVE JOURNAL****ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION****FIRST DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, January 6, 2016

**PRAYER**

The prayer was offered by Senator Williams.

**PRESENTATION OF COLORS**

Presentation of Colors by the Nebraska Army National Guard.

**ROLL CALL**

Pursuant to the provisions of Article III, Section 10 of the Constitution of Nebraska, the One Hundred Fourth Legislature, Second Session of the Legislature of Nebraska, assembled in the George W. Norris Legislative Chamber of the State Capitol at the hour of 10:00 a.m., on Wednesday, January 6, 2016, and was called to order by President Foley.

The roll was called and the following members were present:

Baker, Roy	Groene, Mike	McCollister, John S.
Bloomfield, Dave	Haar, Ken	McCoy, Beau
Bolz, Kate	Hadley, Galen	Mello, Heath
Brasch, Lydia	Hansen, Matt	Morfeld, Adam
Campbell, Kathy	Harr, Burke J.	Murante, John
Chambers, Ernie	Hilkemann, Robert	Pansing Brooks, Patty
Coash, Colby	Howard, Sara	Riepe, Merv
Cook, Tanya	Hughes, Dan	Scheer, Jim
Craighead, Joni	Johnson, Jerry	Schnoor, David
Crawford, Sue	Kintner, Bill	Schumacher, Paul
Davis, Al	Kolowski, Rick	Seiler, Les
Ebke, Laura	Kolterman, Mark A.	Smith, Jim
Fox, Nicole	Krist, Bob	Stinner, John P.
Friesen, Curt	Kuehn, John L.	Sullivan, Kate
Garrett, Tommy L.	Larson, Tyson	Watermeier, Dan
Gloor, Mike	Lindstrom, Brett	Williams, Matt

The following member was excused:

Schilz, Ken

**MOTION - Adopt Temporary Rules**

Senator Garrett moved that the rules, as now in our possession, be adopted until such time as the permanent rules are adopted pursuant to Rule 2, Section 1; provided that the temporary rules shall not continue after the tenth legislative day.

The motion prevailed.

**RESIGNATION**

June 30, 2015

Governor Pete Ricketts  
Office of the Governor  
P.O. Box 94848  
Lincoln, NE 68509-4848

Dear Governor Ricketts,

I am resigning from the Nebraska Legislature effective at midnight tonight, Tuesday, June 30, 2015.

It has been an honor representing the people of downtown and South Omaha in the Nebraska Legislature for the past seven years. The Unicameral is a truly unique institution that facilitates thoughtful discussion and debate about critical issues facing our state. I feel blessed to have been a part of it.

As you begin the process to find a qualified candidate to fill the remainder of my legislative term, I encourage you to think about the people of District 7 and the values they hold.

The residents of downtown and South Omaha work hard and deserve a representative that will work hard for them and stand up for families living paycheck to paycheck. They believe in a tax system that does not favor the wealthy or special interests. They know that strong public schools create unlimited opportunity for their children. The South Omaha community has welcomed immigrants for generations and the community wants our state to be just as welcoming.

The citizens of District 7 deserve to have their values and their voices heard next session in the Unicameral. Appointing a candidate that does not share their values and does not work in their best interest would certainly be unfortunate; it would also be an affront to our democracy.

God bless you, and God bless the state of Nebraska.

Sincerely,  
(Signed) Senator Jeremy Nordquist  
District 7





DISTRICT/NAME	ELECTED
1 Dan Watermeier	November 6, 2012
2 Bill Kintner	November 4, 2014
3 Tommy Garrett	November 4, 2014
4 Robert Bob Hilkemann	November 4, 2014
5 Heath Mello	November 6, 2012
6 Joni Craighead	November 4, 2014
7 Nicole Fox - Appointed	August 18, 2015
8 Burke J. Harr	November 4, 2014
9 Sara Howard	November 6, 2012
10 Bob Krist	November 4, 2014
11 Ernie Chambers	November 6, 2012
12 Merv Riepe	November 4, 2014
13 Tanya Cook	November 6, 2012
14 Jim Smith	November 4, 2014
15 David Schnoor - Appointed	December 12, 2014
16 Lydia Brasch	November 4, 2014
17 Dave Bloomfield	November 6, 2012
18 Brett Lindstrom	November 4, 2014
19 Jim Scheer	November 6, 2012
20 John S. McCollister	November 4, 2014
21 Ken Haar	November 6, 2012
22 Paul Schumacher	November 4, 2014
23 Jerry Johnson	November 6, 2012
24 Mark A. Kolterman	November 4, 2014
25 Kathy Campbell	November 6, 2012
26 Matt Hansen	November 4, 2014
27 Colby Coash	November 6, 2012
28 Patty Pansing Brooks	November 4, 2014
29 Kate Bolz	November 6, 2012
30 Roy Baker	November 4, 2014
31 Rick Kolowski	November 6, 2012
32 Laura Ebke	November 4, 2014
33 Les Seiler	November 6, 2012
34 Curt Friesen	November 4, 2014
35 Mike Gloor	November 6, 2012
36 Matt Williams	November 4, 2014
37 Galen Hadley	November 6, 2012
38 John L. Kuehn	November 4, 2014
39 Beau McCoy	November 6, 2012
40 Tyson Larson	November 4, 2014
41 Kate Sullivan	November 6, 2012
42 Michael Groene	November 4, 2014
43 Al Davis	November 6, 2012
44 Dan Hughes	November 4, 2014
45 Sue Crawford	November 6, 2012
46 Adam Morfeld	November 4, 2014
47 Ken Schilz	November 6, 2012
48 John P. Stinner Sr.	November 4, 2014
49 John Murante	November 6, 2012

**MESSAGE(S) FROM THE GOVERNOR**

June 3, 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 appointed as the Director of the Nebraska Department of Roads:

Kyle Schneweis, Department of Roads, 1500 Highway 2, Lincoln, NE 68509

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

June 24, 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 individuals are being reappointed to the Nebraska Exchange Stakeholder Commission:

Shari Flowers, 15822 Emline Street, Omaha, NE 68136  
Patrick Booth, 1120 Timberwood Drive, Ames, NE 68621

Contingent upon your approval, the following individual is being appointed to the Nebraska Exchange Stakeholder Commission:

Edward (Ed) Rieker, 915 North Emory Avenue, North Platte, NE 69101

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

June 24, 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 Environmental Quality Council:

Hilary K. Maricle, 2985 State Hwy 39, Albion, NE 68620

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

June 24, 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:

Stan H. Carpenter, 6731 Crooked Creek Dr., Lincoln, NE 68516

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

July 6, 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 Accountability and Disclosure Commission:

James J. Ziebarth, 2402 Hwy 44, Wilcox, NE 68982

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

July 23, 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 appointed as the Director of the Nebraska Department of Health and Human Services - Division of Children and Family Services:

Douglas J. Weinberg, MBA/CPA, 301 Centennial Mall South, Lincoln, NE 68509

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



July 23, 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 appointed as the Director of the Nebraska Department of Natural Resources:

Jeff Fassett, P.E., 100 N. 12 Street, #802, Lincoln, NE 68508

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

July 26, 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 Environmental Quality Council:

James W. Hawks, 3121 West Phillip, North Platte, NE 69101

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

July 30, 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 reappointed to the Crime Victim's Reparation Committee:

Brian Wachman, 6340 Glass Ridge Drive, Lincoln, NE 68526

Contingent upon your approval, the following individual is being appointed to the Crime Victim's Reparation Committee:

JoAnna Briggs, Lincoln Police Department, 575 S. 10th Street, Lincoln, NE 68508

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

(Signed) Sincerely,  
Pete Ricketts  
Governor

Enclosures

August 12, 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 appointed as the Director of the Nebraska Department of Health and Human Services - Division of Behavioral Health:

Sheri Dawson, R.N., 2929 Whitlock Road, Lincoln, NE 68516

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

(Signed) Sincerely,  
Pete Ricketts

Governor

Enclosures

August 26, 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 individuals are being reappointed to the Beginning Farmer Board:

Bradley Lubben, 20508 Maple Circle, Eagle, NE 68347  
Todd Reed, 8730 Colby Street, Lincoln, NE 68505  
Donald Anthony, 43970 Road 758, Lexington, NE 68850

Contingent upon your approval, the following individuals are being appointed to the Beginning Farmer Board:

Nadine Hagedorn, 1815 F Road, West Point, NE 68788  
Ryan Ueberrhein, 19107 Ohio Street, Elkhorn, NE 68022

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

August 26, 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 reappointed to the State Electrical Board:

Edwin Bergstraesser, 1300 SW 24th Street, Lincoln, NE 68522

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

August 26, 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 appointed as the Director of the Nebraska Department of Health and Human Services - Division of Developmental Disabilities:

Yolanda Webb, 301 Centennial Mall South, Lincoln, NE 68508

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

August 26, 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 reappointed 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

Enclosures

September 3, 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 individuals are being reappointed to the Nebraska Arts Council:

Kathryn LeBaron, 6130 The Knolls, Lincoln, NE 68512  
Sherry McClymont, 1909 Wedgewood Drive, Holdrege, NE 68949  
Patrick Drickey, 1510 Leavenworth Street, Omaha, NE 68102

Contingent upon your approval, the following individual is being appointed to the Nebraska Arts Council:

Harvey Varenhorst, P.O. Box 165, Nebraska City, NE 68410-0165

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

September 3, 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 reappointed to the Nebraska Ethanol Board:

Timothy L. Else, 6171 Road U, Belvidere, NE 68315

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

September 3, 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 reappointed to the State Electrical Board:

Cory L. Mueller, 238 S. 2nd Street, Seward, NE 68434

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

September 3, 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 reappointed to the Nebraska Oil and Gas Conservation Commission:

John Arley Rundel, 416 East C Street, Trenton, NE 69044

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

October 13, 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 individuals are being reappointed to the State Emergency Response Commission:

Kimberly Plouzek, 1417 County Road D, Dorchester, NE 68343  
Keith Deiml, 905 Crest Road, Papillion, NE 68046

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

October 13, 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 Ethanol Board:

Jan Tenbense, 703 Nasby, Cambridge, NE 69022

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

October 13, 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  
reappointed to the Board of Educational Lands and Funds:

Charles Ward, 90235 Nollett Road, Valentine, NE 69201

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

November 5, 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 individuals are being  
reappointed to the Nebraska Rural Health Advisory Commission:

John A. E. Craig, M.D., 5737 S. 190 Terrace, Omaha, NE 68135  
Roger Wells, PA-C, 1518 Jay Street, St. Paul, NE 68873  
Michael A. Sitorius, M.D., 8115 Jackson Street, Omaha, NE 68144  
Rebecca Schroeder, Ph.D., 212 W. 9th Street, Curtis, NE 69025  
Mary J. Kent, 71565 625 Avenue, Table Rock, NE 68447

Contingent upon your approval, the following individual is being appointed  
to the Nebraska Rural Health Advisory Commission:



Laeth Nasir, MBBS (MD), 1865 South 110 Street, Omaha, NE 68144

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 5, 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 Foster Care Advisory Committee:

Kristin Huber, 10306 Washington Drive, Omaha, NE 68127

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

November 5, 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 reappointed to the State Personnel Board:

Brian Tessman, 12929 Jessie Avenue, Omaha, NE 68164

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

November 5, 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 reappointed to the Commission for the Blind and Visually Impaired:

Michael D. Hansen, 5635 Lenox Avenue, Lincoln, NE 68510

Contingent upon your approval, the following individual is being appointed to the Commission for the Blind and Visually Impaired:

Mark M. Bulger, 7520 S. 135 Street, Omaha, NE 68138

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 5, 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 reappointed to the Nebraska State Fair Board:

Lowell Minert, P.O. Box 68, Dunning, NE 68833

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

November 5, 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 State Emergency Response Commission:

Polly Jordening, 1432 Buckingham Drive, Grand Island, NE 68830

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

November 5, 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:

Please withdraw the following individual from consideration for confirmation of appointment as the Director of the Department of Health and Human Services - Division on Developmental Disabilities:

Yolanda Webb, Lincoln, NE

Sincerely,

(Signed) Pete Ricketts  
Governor

December 1, 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 State Highway Commission:

Mary K. Gerdes, 511 First Street, Johnson, NE 68378

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

December 3, 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 Tax Equalization and Review Commission:

Steven Keetle, 14812 Berry Circle, Omaha, NE 68137

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

December 8, 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 individuals are being  
reappointed to the Board of Public Roads Classifications and Standards:

Roger Figard, 5411 Glade Street, Lincoln, NE 68506  
LeRoy Gerrard, 814 E. 7th St., Box 108, Stromsburg, NE 68666  
John F. Krager III, 15205 Bauman Avenue, Omaha, NE 68116  
Lisa Kramer, 13263 County Road 38, Kennard, NE 68034  
Darold Tagge, 204 West 15 Avenue, Holdrege, NE 68949  
David Wacker, 907 N. Webster Avenue, Hastings, NE 68901  
Timothy W. Weander, 17734 Castellar Circle, Omaha, NE 68130

The aforementioned appointees are respectfully submitted for your  
consideration. Copies of the certificates and background information are  
included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

December 8, 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  
reappointed to the Nebraska State Fair Board:

Christopher P. Kircher, 15715 California Street, Omaha, NE 68118

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

December 8, 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 Commission for the Blind and Visually Impaired:

Chad Bell, 2416 Rainbow Acres, Alliance, NE 69301

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

December 8, 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 Child Abuse Prevention Fund Board:

Shelly K. McQuillan, 1106 East G Street, Ogallala, NE 69153

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

December 14, 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 appointed as the Director of the Nebraska Department of Health and Human Services - Division of Developmental Disabilities:

Courtney L. Miller, 5520 NW 3rd Street, Lincoln, NE 68521

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

December 15, 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 appointed as the Director of the Nebraska Department of Economic Development:

Courtney Dentlinger, 1309 N. 30 Street, Norfolk, NE 68701

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

December 21, 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 appointed as the Tax Commissioner of the Nebraska Department of Revenue:

Tony Fulton, P.E. Ameritus, 6100 S. 31 Street, Lincoln, NE 68516

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

December 30, 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 reappointed to the Game and Parks Commission:

Richard R. Bell, 9960 Bloomfield Drive, Omaha, NE 68114

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

Dan C. Kreitman, 1689 County Road E, Wahoo, NE 68056

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor



Enclosures

December 30, 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 reappointed to the Tax Equalization and Review Commission:

Robert W. Hotz, 8117 Imperial Circle, Lincoln, NE 68506

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 15-011

SUBJECT:           Constitutionality of Legislation Requiring Nonresident Drivers of Motor Vehicles to Carry Proof of Insurance or Financial Responsibility

REQUESTED BY:   Senator Al Davis  
                          Nebraska State Legislature

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

You have asked, "whether it would be lawful for the State to require that non-resident drivers provide proof of financial responsibility if stopped by a law enforcement officer on a public Nebraska highway, and provide for civil penalties for non-compliance." You state that the current requirement to carry proof of insurance applies only to Nebraska residents and that a police chief in your district has expressed concern for public safety. Your proposal is to amend Neb. Rev. Stat. § 60-3,167(1) by deleting the words "in this state" as follows:

(1) It shall be unlawful for any owner of a motor vehicle or trailer which

is being operated or towed with In Transit stickers pursuant to section 60-376, which is being operated or towed pursuant to section 60-365 or 60-369, or which is required to be registered ~~in this state~~ and which is operated or towed on a public highway of this state to allow the operation or towing of the motor vehicle or trailer on a public highway of this state without having a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility.

That statutory provision further provides that the owner who operates or allows the operation of the motor vehicle in violation of this section shall be guilty of a Class II misdemeanor. The owner is allowed ten days after the date of the law enforcement officer's request to produce proof to the appropriate prosecutor or county attorney that the owner had automobile insurance or proof of financial responsibility and the citation will then be dismissed.

We first note that § 60-3,167 is found within the Motor Vehicle Registration Act, Neb. Rev. Stat. §§ 60-301 to 60-3,222 (2010 and Cum. Supp. 2014). As a general rule, no motor vehicle may be operated on Nebraska highways unless it is registered in compliance with the Motor Vehicle Registration Act, Neb. Rev. Stat. § 60-362. In order to apply for registration of a motor vehicle, an owner must show proof of financial responsibility or evidence of insurance coverage, Neb. Rev. Stat. § 60-387. And, by paying the required registration fees, the owner certifies that he or she will maintain insurance or proof of financial responsibility and provide evidence of insurance or proof of financial responsibility upon demand, Neb. Rev. Stat. § 60-390. In other words, the provisions concerning proof of insurance currently found within this Act are tied to registration of a motor vehicle in Nebraska.<sup>1</sup>

The Motor Vehicle Registration Act includes certain provisions pertaining specifically to nonresidents. The right of a nonresident owner of a motor vehicle to operate that vehicle in Nebraska under a registration issued in another state is recognized in some circumstances. Neb. Rev. Stat. § 60-366(2) provides generally that a nonresident owner of a vehicle, which is properly registered in the place of which the owner is a resident and which displays the appropriate license plates, may operate the motor vehicle within Nebraska without registering the vehicle in Nebraska or paying any fees in this state. Section 60-366(3) requires that a nonresident owner "shall register such motor vehicle or trailer in the same manner as a Nebraska resident, after thirty days of continuous employment or presence in this state, unless the state of his or her legal residence grants immunity from such requirements to residents of this state operating a motor vehicle or towing a trailer in that state." Further, § 30-367 states that Nebraska statutes "relative to registration and display of registration numbers do not apply to a motor vehicle or trailer owned by a nonresident...if the owner thereof has complied with the provisions of the law of the foreign country, state, territory, or federal district of his or her residence relative to registration of

motor vehicles..." There are also separate provisions concerning particular nonresident vehicles such as trucks, truck-tractors, trailers and buses.

You have proposed to amend § 60-3,167(1) by deleting the words "in this state" in the first sentence which refers to motor vehicles required to be registered in this state. We note that the last sentence of subsection (1) states "[T]his subsection shall not apply to motor vehicles or trailers registered in another state." It seems to us that this language would also need to be amended. Depending on the language of your proposed amendment, it may also be appropriate or necessary to amend other provisions of the Act pertaining to nonresidents to eliminate any conflict or inconsistency within the Act. Also, for purposes of this opinion, we will presume that the intent of your proposed amendment is that nonresidents carry proof of insurance that is adequate under the laws of their state of residence and not necessarily adequate under Nebraska laws.

You have requested an opinion whether it would be "lawful" for the State to require nonresident drivers to also provide proof of insurance or financial responsibility as required by § 60-3,167 and to impose civil penalties for non-compliance. You did not set out any specific constitutional concerns regarding your proposal. We have previously indicated that a general question on the constitutionality of proposed legislation will necessarily result in a general response from this office. Op. Att'y Gen. No. 94012 (March 8, 1994). As a result, our response to your opinion request must be in general terms.

It seems to us that one area which might present potential constitutional issues with respect to your proposal involves the Equal Protection provisions of the state and federal constitutions. The Nebraska Supreme Court has stated "The Nebraska Constitution and U.S. Constitution have identical requirements for equal protection challenges." *DeCoste v. City of Wahoo*, 255 Neb. 266, 274, 583 N.W.2d 595, 601 (1998). Those constitutional provisions prohibit improper disparate treatment or improper classifications of people who are otherwise similarly situated. With regard to your proposed amendment of Neb. Rev. Stat. § 60-3,167, the classification at issue would presumably involve nonresident owners of motor vehicles who operate or allow the operation of that vehicle on Nebraska highways as distinguished from motor vehicle owners who are Nebraska residents. Treating nonresident and resident motor vehicle owners alike, and requiring both to provide proof of insurance on demand, would seem to eliminate possible equal protection concerns. For example, in *Bookbinder v. Hults*, 19 Misc. 2d 1062, 192 N.Y.S.2d 331 (1959), a New York court upheld the validity of an act similar to Nebraska's Motor Vehicle Safety Responsibility Act, noting that a section of that Act "makes the safeguards which are applicable to resident operators applicable to the non-resident operators. This is not a discrimination against non-residents, denying them the equal protection of the law. On the contrary, it puts non-resident owners upon an equality with resident owners." *Id.* at 1064, 192 N.Y.S. 2d at 334.

However, your request letter also mentions civil penalties for nonresident motor vehicle owners. If you intend to impose civil penalties for nonresidents that are not also imposed on Nebraska residents, or to otherwise amend the Motor Vehicle Registration Act to treat nonresidents differently than residents, such a proposal may require analysis under the Equal Protection provisions.

Without specific legislation to review, other than the deletion of "in this state" in § 60-3,167, we are unable to fully address that potential challenge. We do note that, generally, the equal protection clause allows government to make distinctions among groups and to treat different groups differently so long as there is a "rational basis" serving a legitimate governmental purpose for such differing treatment. *Le v. Lautrup*, 271 Neb. 931, 716 N.W.2d 713 (2006). However, if a "fundamental right" or "suspect classification" is involved, then the classification and differing treatment in the legislation will be subject to strict judicial scrutiny and will be upheld only if there is a compelling governmental interest.

The right to travel has been identified as a fundamental right. *State v. Michalski*, 221 Neb. 380, 391, 377 N.W.2d 510, 518 (1985), *abrogated on other grounds*, *State v. Mata*, 275 Neb. 1, 745 N.W.2d 229 (2008). The Nebraska Supreme Court therein held that a statute providing for permanent revocation of an operator's license upon that individual's drunken driving conviction did not impair the defendant's right to travel and was constitutional. "While the revocation of Michalski's driver's license limits his options as to method of transportation, it does not impair his right to travel or his right to reach a given destination." *Id.* at 392, 377 N.W.2d at 518. *Michalski* involved action taken against a driver's operator's license after a conviction. It is possible that the Court's analysis might differ when applied to a statutory requirement of carrying proof of insurance or financial responsibility prior to an accident or violation of law.

In *City of Beatrice v. Meints*, 20 Neb. App. 776, 830 N.W.2d 524 (Ct. App. 2013), the Nebraska Court of Appeals considered an equal protection challenge to a Beatrice city ordinance that requires operators of motor vehicles registered in Nebraska to carry proof of insurance and noted that the ordinance is virtually identical to Neb. Rev. Stat. § 60-3,167. Meints, when asked for his proof of insurance after a motorcycle accident, challenged the ordinance because it applies only to vehicles registered in Nebraska and, arguably, treats residents less favorably than nonresidents. The Court of Appeals did not refer to the right to travel and instead stated, "[A] classification based on the location of motor vehicle registration is not the type of suspect classification that warrants strict judicial scrutiny." *Id.* at 784, 830 N.W.2d at 532. The Court found that the Beatrice city ordinance at issue and Neb. Rev. Stat. § 60-3,167 serve the same purpose as the Motor Vehicle Safety Responsibility Act, which was upheld by the Nebraska Supreme Court in *Russell v. State*, 247 Neb. 885, 531 N.W.2d 212 (1995) (protecting the public against the operation of motor vehicles by financially irresponsible persons). It also quoted with approval a decision of the

Massachusetts Supreme Court regarding a similar law. "Moreover, a classification including only motor vehicles registered under our statutes cannot be pronounced unreasonable. Nonresident owners of motor vehicles or motor vehicles not registered under our laws doubtless might be included within the law." *Opinion of the Justices*, 251 Mass. 569, 602, 147 N.E. 681, 696 (1925). In *Meints*, the Court then applied a rational basis level of scrutiny and found the Beatrice city ordinance to be constitutional.

Finally, while your opinion request refers generally to imposing civil penalties on nonresidents who fail to carry the proof of insurance required in their states of residence, we note that imposing such penalties may raise issues of due process, lack of notice to nonresidents or other concerns. It is our understanding that most states, but perhaps not all, require insurance coverage as a requirement of registering a motor vehicle. Also, it appears that not all states require that the proof of insurance or financial responsibility be carried in the motor vehicle. For these reasons, while we lack specific language to review, we suggest that imposing civil penalties may be problematic.

In summary, to the extent your proposed legislation is limited to deleting the words "in this state" from § 60-3,167, we conclude that the legislation would most likely be upheld as the result would seem to be equal treatment of residents and nonresidents. If other amendments to the Motor Vehicle Registration Act are also proposed, such as civil penalties for nonresidents, those specific amendments would need to be addressed separately.

<sup>1</sup>Nebraska also has a Motor Vehicle Safety Responsibility Act, codified at Neb. Rev. Stat. §§ 60-501 to 60-569, that pertains to proof of financial responsibility subsequent to a motor vehicle accident or conviction in Nebraska. That Act contains various provisions applying to residents and nonresidents. However, as you propose to amend a statute that falls within the Motor Vehicle Registration Act, we will limit our discussion to that Act.

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

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
09-525-29

Opinion 15-012

SUBJECT:            Constitutionality of LB 232 – the Nebraska College  
                          Choice Grant Program

REQUESTED BY:    Senator Mark Kolterman  
                          Nebraska State Legislature

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

You have requested our opinion concerning the constitutionality of LB 232, which would create the Nebraska College Choice Grant Program Act. Your letter explains that this bill "would provide state funds to resident students with financial need who attend Nebraska privately-controlled, nonprofit colleges and universities."

Noting that the language of the proposed College Choice Grant Program is quite similar to the Postsecondary Education Award Program (or "PEAP"), which was in effect from 1991 to 2003, you have asked us to revisit our prior opinion concerning the PEAP Act in which this office opined that the Act was constitutional. Op. Att'y Gen. No. 91037 (May 5, 1991). As our review of Nebraska law reveals that the law in this area has not changed significantly since our 1991 opinion, we conclude that LB 232 would also likely be held constitutional.

As drafted, LB 232 would provide "for awards made directly to eligible students demonstrating substantial financial need and shall be administered by the commission [the Coordinating Commission for Postsecondary Education] in conjunction with eligible postsecondary educational institutions." LB 232, §13. An "eligible" institution is a "nonprofit institution not controlled or administered by any state agency or any political subdivision of the state" which is located in Nebraska and meets other statutory criteria. LB 232, § 7. An "eligible student" is a Nebraska resident who is enrolled as an undergraduate student at an eligible institution and who is eligible to receive student financial assistance as provided for in the Act. LB 232, § 8. Sections 13 and 14 of the proposed Act provide that the award is made directly to the eligible student, although section 13(2) also states that "[I]n order to reduce the costs of administering the act, the commission shall allocate the funds to be distributed pursuant to the act to the eligible postsecondary educational institutions which shall act as the agents of the commission in the distribution of funds to eligible students." Section 13 also sets forth the formula for the determination of the allocation amount for each institution.

The PEAP Act, which we discussed in Op. Att'y Gen. No. 91037, was enacted by the Legislature in 1991 Neb. Laws LB 647. Comparing the PEAP Act to LB 232, we agree that the pertinent provisions of each are quite similar. The definitions of "eligible student" and "eligible

postsecondary educational institution" are very close in their wording. Further, the language of LB 232, § 13, provides that, in order to reduce administration costs, the awards are to be administered by the commission in conjunction with the educational institutions, which is nearly identical to § 12 of the PEAP Act. Both acts provide for an allocation formula by which the funds to be distributed are allocated to the eligible institutions and both provide that the institutions participate in the distribution of funds to eligible students. Finally, both acts state that the awards are made directly to eligible students.

In Op. Att'y Gen. No. 91037, we discussed three constitutional provisions, of which Neb. Const. art. VII, § 11 seems the most pertinent to our current discussion. Article VII, § 11 provides, in part, that "appropriation of public funds shall not be made to any school or institution of learning not owned or exclusively controlled by the state or a political subdivision thereof. . ." In our analysis of the PEAP Act we stated at page 3 of the opinion that:

The Act does not provide for appropriation of funds to any school or institution. The Act authorizes scholarship awards directly to eligible students. This distinction is constitutionally significant. . . . In *Lenstrom v. Thone*, 209 Neb. 783, 311 N.W.2d 884 (1981), the Nebraska Supreme Court upheld the constitutionality of the Scholarship Award Program. This statute is very similar to the present Act, but covers students attending both public and private educational institutions. The court expressly rejected the contention that the statute violated Article VII, § 11. *Id.* at 788. Article VII, § 11 prohibits appropriations to a nonpublic school. It does not prohibit such aid to individual students attending nonpublic schools.

For those reasons we concluded that the PEAP Act was constitutional. We note that the Scholarship Award Program discussed in *Lenstrom* differed from the PEAP Act and LB 232 in that it did not include specific language stating that, for administrative purposes, the educational institutions would act as agents of the commission to assist in distribution of the funds to eligible students. However, the Scholarship Award Program, the PEAP Act and the proposed Nebraska College Choice Grant Program all state that the funds will be provided directly to eligible students and such aid to individual students is not prohibited by the Nebraska Constitution.

The only pertinent Nebraska case decided subsequent to the 1991 opinion is *Father Flanagan's Boys Home v. Department of Social Services*, 255 Neb. 303, 583 N.W.2d 774 (1998). The issue in *Father Flanagan's* was whether a state agency was required to reimburse Father Flanagan's (or "FFBH"), a private educational institution, for the cost of regular education services which that institution provided to state wards. The state agency contended that the trial court's interpretation of Neb. Rev. Stat. § 79-445(2) so as to require payment to the private institution resulted in a violation of article VII, § 11. However, the Court held that a contract between the state agency and FFBH to provide educational services for state wards was

distinguishable from a direct appropriation to a nonpublic school and upheld the constitutionality of the statute. In reaching its decision, the Court discussed the meaning of the term "appropriation" as follows:

In the context of appropriation of public funds, 'to appropriate means to set apart, or assign to a particular person or use in exclusion of others, to use or employ for a particular purpose, or in a particular case.' *State ex rel. Creighton Univ. v. Smith*, 217 Neb. 682, 688, 353 N.W.2d 267, 271 (1984). Here, there has been no appropriation of public funds to FFBH. Instead, a state agency has exercised its discretionary authority to contract for services necessary to fulfill a governmental duty and further a public purpose, namely, the state's duty to obtain a nonsectarian education for its wards.

*Father Flanagan's* at 315-16, 583 N.W.2d at 782.

Since our 1991 opinion was issued, this office has discussed art. VII, § 11 in several other opinions. For example, in Op. Att'y Gen. No. 95018 (March 9, 1995), we answered questions concerning grants awarded from the Education Innovation Fund. While we determined that certain direct grants to nonpublic schools would be constitutionally prohibited, we did not address grant awards to individual students in that opinion. In Op. Att'y Gen. No. 03020 (July 30, 2003), we concluded that payments from the Nebraska Soil and Water Conservation Fund to eligible landowners, including nonpublic schools and churches, were not "appropriations" as that term is used in art. VII, § 11. More recently, in Op. Att'y Gen. No. 15007 (May 6, 2015), we opined that payments for services pursuant to a contract with a nonpublic educational institution under the Oral Health Training and Services Fund would not violate that constitutional provision.

For the reasons above, we find no reason to change the opinions expressed in Op. Att'y Gen. No. 91037. Therefore, in our view, LB 232 would likely not be found to violate art. VII, § 11.

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

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
09-528-29



Opinion 15-013

SUBJECT: Whether enactment of LB 176, which proposes to exempt pork packers from the prohibition against vertical integration of livestock production and packing in Neb. Rev. Stat. § 54-2604 (2010), is necessary to prevent a violation of the dormant Commerce Clause created by the current statute.

REQUESTED BY: Senator Ken Schilz  
Nebraska State Legislature

WRITTEN BY: Doug J. Peterson, Attorney General  
Emily K. Rose, Assistant Attorney General

You have requested our opinion regarding whether Neb. Rev. Stat. § 54-2604 (2010), which prohibits the vertical integration of livestock production and packing, is vulnerable to a constitutional challenge under the dormant Commerce Clause similar to that which occurred in *Smithfield Foods, Inc. v. Miller*, 241 F.Supp.2d 978 (S.D. Iowa 2003). You also ask whether enactment of Legislative Bill 176 ("LB176"), which primarily seeks to exempt pork packers from the vertical integration prohibition in § 54-2604, is necessary to prevent a violation of the dormant Commerce Clause under the existing statute.

The dormant Commerce Clause of the United States Constitution prohibits states from "enacting laws that discriminate against or unduly burden interstate commerce" and it is well-settled that courts apply a two-tiered analysis in determining whether a statute violates the dormant Commerce Clause. *Smithfield Foods, Inc. v. Miller*, 367 F.3d 1061, 1064-65 (8<sup>th</sup> Cir. 2004) (quoting *S.D. Farm Bureau, Inc. v. Hazeltine*, 340 F.3d 583, 592 (8<sup>th</sup> Cir. 2003)); *See also Jones v. Gale*, 470 F.3d 1261, 1267-1270 (8<sup>th</sup> Cir. 2006). First, courts must consider whether the statute discriminates against interstate commerce. *Id.* Such discrimination has been defined as "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* (quoting *Hazeltine*, 340 F.3d at 593). Courts also recognize that a statute discriminates against interstate commerce if it is discriminatory on its face, if it was adopted with a discriminatory purpose, or if it has a discriminatory effect. *Id.* If a statute is found to be discriminatory, it is subject to strict scrutiny, and is only upheld if there are "no other means to advance a legitimate local interest." *Id.* (quoting *Hazeltine*, 340 F.3d at 593). Furthermore, courts apply the second-tier of the dormant Commerce Clause analysis only if the statute is not discriminatory and merely incidentally affects interstate commerce. *Id.* Under this inquiry, a statute will be upheld "unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." *Id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)).

In *Smithfield*, a group of pork packers challenged the constitutionality pursuant to the dormant Commerce Clause of Iowa Code § 9H.2 (hereinafter, "9H.2"). *Id.* 9H.2 prohibited beef and pork packers from directly or indirectly owning, operating, or controlling livestock production, **but provided an express exemption for Iowa cooperatives**, foreign cooperatives that contracted with Iowa cooperatives, and foreign cooperatives that had an Iowa cooperative in its membership. *Id.* at 987. The District Court found that 9H.2's exemption facially discriminated against interstate commerce and stated that "[w]hen, as here, a statute clearly prohibits out-of-state entities from conducting business in a certain way, and then expressly exempts in-state entities from the very same prohibitions, there can be no mistake that such a regulatory scheme treats in-state and out-of-state interests differently." *Id.* at 990-91. Following the dormant Commerce Clause framework, the District Court determined that 9H.2 could not withstand strict scrutiny.<sup>1</sup>

Nebraska's general prohibition against the vertical integration of livestock production and packing under Neb. Rev. Stat. § 54-2604 can be distinguished from Iowa's 9H.2. Neb. Rev. Stat. § 54-2604 is part of the Competitive Livestock Markets Act ("Act"), Neb. Rev. Stat. §§ 54-2601 *et. seq.*, and provides that it is unlawful "...for a packer to directly or indirectly be engaged in the ownership, keeping, or feeding of livestock for the production of livestock or livestock products...." The term "packer" is defined as "... a person, or agent of such person, engaged in the business of slaughtering livestock in Nebraska in excess of one hundred fifty thousand animal units per year." Neb. Rev. Stat. § 54-2602 (5).

The prohibition against vertical integration under Neb. Rev. Stat. § 54-2604 does not discriminate against or unduly burden interstate commerce. Currently, the law prohibits *Nebraska* packers who process more than 150,000 animal units per year from practicing vertical integration. Out-of-state packers are not included in the definition of "packer" and are thus not precluded from practicing the vertical integration business model. As Neb. Rev. Stat. § 54-2604 does not prohibit out-of-state-entities from conducting business in a certain way, there is no burden on interstate commerce.

However, it should be noted that LB 176 would not fix any apparent or alleged liability under the dormant Commerce Clause due to Neb. Rev. Stat. § 54-2604's ban on vertical integration because LB 176 does not get rid of the ban altogether. LB 176 only carves out an exception to the ban, leaving cattle packers still subject to the ban.

We conclude that LB 176 is not necessary to prevent liability under the dormant Commerce Clause because Neb. Rev. Stat. § 54-2604, as written, does not prohibit out-of-state-entities from conducting business in a certain way, and therefore, there is no burden on interstate commerce.

<sup>1</sup> *Smithfield* was appealed to the Eighth Circuit Court of Appeals. *Smithfield Foods, Inc., v. Miller*, 367 F.3d 1061 (8<sup>th</sup> Cir. 2004). During the appeal, 9H.2 was amended to remove the cooperative exemption that was found to be facially discriminatory. *Id.* at 1064. As a result, the Eighth Circuit found that based on the record before it, the Court could not determine whether the newly-amended 9.H2 discriminated against interstate commerce. *Id.* at 1065-66. The Court vacated that District Court's judgment and remanded for discovery to determine whether the newly-amended 9H.2 violated the dormant Commerce Clause. Subsequently, the parties reached settlement.

Very truly yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Emily K. Rose  
Assistant Attorney General

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
07-954-29

Opinion 15-014

SUBJECT: Authority of the Department of Correctional Services to Adopt Administrative Regulations Without Complying With Rulemaking Procedures Required Under the Administrative Procedure Act

REQUESTED BY: Senator Dan Watermeier  
Senator Heath Mello  
Nebraska State Legislature

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

As members of the Legislative Performance Audit Committee you requested an Attorney General's Opinion regarding the interpretation of Neb. Rev. Stat. § 84-901 of the Administrative Procedure Act and its application to the Department of Correctional Services ("DCS"). You informed us that the Research Office or Performance Audit Committee planned to conduct "an assessment to determine whether any of the Department of Correctional Services Administrative Regulations were promulgated in violation of the Administrative Procedure Act." In that context, you requested our opinion on this question.<sup>1</sup>

It has been our general practice to issue opinions to members of the Legislature only with respect to pending or proposed legislation and not with respect to construction of existing statutes. Op. Att'y Gen. No. 157 (December 24, 1985). Also, it is our understanding that there are 225 DCS

"Administrative Regulations", or ARs, such that a detailed review of each would not be practical. Further, we might be called upon to defend particular ARs if their validity was challenged in litigation. Therefore, based upon our longstanding policy and these considerations, we originally deemed it inappropriate to issue an opinion. We have now received the Committee's audit report which was released on September 3, 2015. One focus of this report is the exception for "internal management" rules and regulations found in the definition of "rule or regulation" at Neb. Rev. Stat. § 84-901(2), and it appears from the report that legislation may be proposed to modify or further define this exception. In this context, we will issue an opinion, limiting our response to a general discussion of § 84-901(2) and the Nebraska case law on this topic.

Our review reveals that DCS has issued numerous ARs to govern the agency and set forth general standards. In addition, each correctional institution has issued operational memoranda (OMs) designed to implement DCS policies. DCS also promulgates rules and regulations through the process outlined in the Administrative Procedure Act when directed to do so by statute. To the extent the ARs and OMs concern the internal management of the agency or otherwise fall within the exceptions listed in Neb. Rev. Stat. § 84-901(2), DCS need not comply with the formal rulemaking requirements of the Administrative Procedure Act.

You originally requested our opinion whether any of the ARs issued by DCS were promulgated in violation of the Administrative Procedure Act and directed our attention, in particular, to the "Temporary Alternative Placement" program and the "Re-entry Furlough Program." The Committee's audit report states that the "Temporary Alternative Placement" (TAP) program was developed through a memo by the former DCS Director and was not an AR. Audit Report at 10. Further, the DCS response, dated July 30, 2015, which is attached to the audit report, states that this program was eliminated in October of 2014. We will, therefore, not address the TAP program. With regard to the Re-entry Furlough Program, it appears to have been created in 2008 as AR number 201.12. You state that the program was suspended by the current DCS director on February 9, 2015. Audit Report at 9. The attached DCS response states that no new individuals have since entered the program and that there are five individuals who remain in the program as of July 27, 2015. Our discussion of the "internal management" exception may be relevant to the Re-Entry Furlough Program.

#### **Discussion of § 84-901(2) and Nebraska Case Law**

Neb. Rev. Stat. § 84-901(2) (2014) provides, in pertinent part, that a "[R]ule or regulation shall mean any rule, regulation, or standard issued by an agency, . . . designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure. Rule or regulation shall not include (a) rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public . . . every rule and regulation

which prescribes a penalty shall be presumed to have general applicability or to affect private rights and interests." If a rule or regulation fits within this statutory definition it must be promulgated pursuant to the rulemaking requirements of the Administrative Procedure Act, including the provision of notice and the holding of a public hearing. See e.g., Neb. Rev. Stat. § 84-907. Agency regulations properly adopted and filed with the Secretary of State then have the effect of statutory law. *Swift and Co. v. Nebraska Dept. of Revenue*, 278 Neb. 763, 767, 773 N.W.2d 3831, 385 (2009).

One of the purposes of an Administrative Procedure Act is to give the public notice of the existence of rules that could affect their rights and to allow members of the public to have input into those rules. However, as explained in a comment to the Model State Administrative Procedure Act upon which the Nebraska Act is patterned, in part, subjecting all agency statements or rules to the formal rulemaking requirements would be unnecessary and unduly burdensome. Section 3-116(1) of the 1981 version of the model act provided that the rulemaking requirements were inapplicable to a rule concerning only the internal management of an agency. "The exemptions from usual rule-making procedures and publication requirements for [certain] rules . . . represent an effort to strike a fair balance between the need for public participation in, and adequate publicity for, agency policymaking on the one hand, and the conflicting need for efficient, economical and effective government on the other hand." 1981 Model State Admin. Procedure Act § 3-116, comment, 15 U.L.A. 56. See, *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998) (recognizing this comment to the model act). The same internal management exception is found in the definition of "rule" in the Revised Model State Administrative Procedure Act of 2010.

Section 84-901(2) provides that the term "rule or regulation" includes any rule, regulation or standard designed to interpret the law. Nebraska courts have considered this portion of the statutory definition when determining whether a court had subject matter jurisdiction under Neb. Rev. Stat. § 84-911, which provides a limited waiver of sovereign immunity for the purpose of reviewing the validity of a rule or regulation. For example, the Nebraska Court of Appeals examined the issue of jurisdiction under § 84-911 in a case involving good time credit. The Court of Appeals held that the decision of the state defendants as to awarding good time credit could be reviewed by filing a declaratory judgment action pursuant to § 84-911. "When Clarke and the Department decided to determine the length of these sentences pursuant to § 83-1,107 . . . the decision was a 'standard issued by an agency . . . designed to implement, interpret, or make specific the law' administered by it." *Richardson v. Clarke*, 2 Neb. App. 575, 577-78, 512 N.W.2d 653, 655 (1994), quoting the definition of rule or regulation at § 84-901(2).

On the other hand, in a subsequent case, *Perryman v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 66, 568 N.W.2d 241 (1997), *disapproved on other grounds*, *Johnson v. Clarke*, 258 Neb. 316, 603 N.W.2d 373 (1999), an

inmate sought a determination whether DCS could revoke his good time credit based on a letter by the Nebraska Attorney General interpreting relevant statutes. The director of DCS then sent a memorandum to the DCS records administrator regarding that interpretation. In determining whether the district court had jurisdiction under Neb. Rev. Stat. § 84-911, the Nebraska Supreme Court concluded that the director's memorandum concerning the interpretation of good time credit statutes was *not* a rule, regulation or standard as defined in § 84-901. The Supreme Court in *Perryman* found that "*Richardson* is distinguishable from the instant case because it involved the judicial interpretation of a standard, not a statute." *Perryman* at 70, 568 N.W.2d at 245.

The Nebraska Supreme Court has discussed the internal management exception of § 84-901(2) in a personnel case involving DCS in *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998). A DCS employee was charged with violating an AR, or administrative regulation, and appealed the decision in a disciplinary proceeding. While the AR at issue might be characterized as a personnel policy, and DCS asserted that it fell within the internal management exception of § 84-901, the Court disagreed. The Court found that violation of the AR could result in pecuniary punishment such as suspension without pay or demotion. Section 84-901 excludes those rules and regulations concerning the internal management of the agency and not affecting private rights and interests. However, the statute further provides that "every rule and regulation which prescribes a penalty shall be presumed to have general applicability or to affect private rights and interests." Because the AR at issue prescribed a penalty, it was presumed to affect private rights and interests and did not fit within the internal management exception.

The issue of whether an AR or OM should have been promulgated in compliance with the Administrative Procedure Act arose in two other cases filed by inmates against DCS, but the appellate courts did not directly address the issue. In *Randolph v. Dept. of Corr. Servs.*, 205 Neb. 672, 289 N.W.2d 529 (1980), DCS had issued certain OMs concerning the acquisition and disposition of hobby materials by inmates. Randolph claimed that the OM in question was invalid because the provisions of the Administrative Procedure Act had not been met. The trial court found that the OM fell within the internal management exception and need not meet the requirements of the Act. The Supreme Court, however, based its decision on a statute and did not address the validity of the OM. In *Meis v. Houston*, 19 Neb. App. 504, 808 N.W.2d 897 (2012), the Court of Appeals reviewed an AR and an OM in which DCS limited the amount of personal property that can be possessed by an inmate. While the trial court found that the property limitation was not required to be formally promulgated as it fell within the internal management exception, the Court of Appeals held that it need not address the validity of the property limitation because it did not interfere with any legally recognized rights of the inmate.

In an unpublished opinion, *Abdullah v. Gunter*, 1 Neb. C.A. 2442, 1992 WL 359093, the Court of Appeals concluded that two OMs pertaining to processing of grievances and the provision of inmate clothing need not be promulgated under the Administrative Procedure Act as they were regulations concerning the internal management of DCS.

Nebraska courts have also addressed the statutory definition of rule or regulation in cases involving other state agencies. For example, in *Capitol City Telephone, Inc. v. Dept. of Revenue*, 264 Neb. 515, 650 N.W.2d 467 (2002), the Supreme Court held that, just as the DCS director's memorandum in *Perryman* was not a rule or regulation, a letter written by the deputy Tax Commissioner stating the department's position on the taxation of telephone companies was not a rule or regulation.

In a civil contempt case concerning the Department of Health and Human Services, the Court held that two policies which the Department was ordered to prepare and distribute to departmental employees and those of the Nebraska Families Collaborative were not rules or regulations as defined by § 84-901(2). In *Re Interest of Zachary D. and Alexander D.*, 289 Neb. 763, 857 N.W.2d 323 (2015) found that the policies fell within the internal management exception as the policies were intended to provide notice to employees of certain requirements of state law. "The two policies at issue here are akin to those that concern 'the internal management of the agency.' Moreover, while these policies certainly relate to statutes governing the juvenile court process, they 'are not designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure.' Rather, these policies are intended to provide notice to all departmental and NFC employees of certain requirements of state law relating to notice of changes in placement and records review and retention policies." *Id.* at 771, 857 N.W.2d at 330.

These Nebraska cases provide some indication as to how our courts might interpret § 84-901(2). While the answer would differ on a case by case basis, it appears that at least some of the ARs and OMs issued by DCS need not be formally promulgated in compliance with the Administrative Procedure Act. In our view, the courts have not construed the "internal management" exception so narrowly as to include only agency personnel rules. And, *McAllister*, discussed above, indicates that at least certain personnel policies or rules may need to be formally promulgated if they are found to prescribe a penalty.

With regard to the Re-Entry Furlough Program, AR 201.12, which you mentioned in your request letter, the cases discussed above provide little guidance. Our review of AR 201.12 reveals that portions of the AR may fall within the internal management exception to the extent they describe the program, set up responsibilities for various categories of staff members, provide limitations on inmates participating in the program and include attachments such as checklists and interview forms. We recognize that Nebraska courts might disagree and that it could be argued that provisions

of the AR pertaining to violations of the furlough agreement or termination of the inmate from the Re-Entry Furlough Program, for example, might be viewed as rules which prescribe a penalty and, therefore, presumed to affect private rights and interests. In its response to the Legislative Performance Audit Committee's findings, DCS has stated that it "is currently in the process of reviewing all of its internal policies to determine which of those policies should be promulgated under the APA." If DCS decides to reinstate this suspended program, it may wish to review this AR to determine whether the AR, or any portion of it, should be formally adopted in compliance with statutory requirements.

### Conclusion

In summary, there is currently no clear definition of the term "internal management" within § 84-901 or in Nebraska case law. Nebraska courts have provided some guidance on this issue, but there are not a great number of cases which discuss the internal management exception or other exceptions to the statutory definition of rule or regulation. For these reasons, enactment of clarifying legislation may be helpful.

<sup>1</sup> As a preliminary matter, the memorandum attached to your request letter states that Attorney General Bruning previously referred to a 1991 Attorney General opinion, which may pertain to this question. We were unable to find a formal opinion on this subject. We note that Op. Att'y Gen. No. 91001 (January 3, 1991) discusses the statutory authority for a work furlough program, but does not address the question of promulgating rules or regulations.

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

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
09-526-529

### Opinion 15-016

SUBJECT: Status of Omaha Metropolitan Entertainment & Convention Authority as a Public, Private or "Hybrid" Entity

REQUESTED BY: Senator Ernie Chambers  
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
David Bydalek, Deputy Attorney General



You have requested an opinion from this office regarding the status of the Metropolitan Entertainment & Convention Authority ("MECA") as a public, private or "hybrid" entity. Your request letter refers to legislation which you introduced in 2014 pertaining to MECA. In part, L.B. 778 would have required certain entities, including MECA, to comply with state law provisions on open meetings and public records. You state that you intend to introduce legislation pertaining to MECA again in 2016, but have not made reference to any specific legislation. We presume the focus of the 2016 legislation would again be to clarify whether entities such as MECA are subject to the Nebraska Open Meetings Act and Nebraska Public Records Statutes, and we will address your question in that context.

#### **RELEVANT ORDINANCE, STATUTORY PROVISIONS AND GENERAL PROPOSITIONS OF LAW**

It is our understanding that MECA was initially registered as a nonprofit public benefit corporation with the Nebraska Secretary of State by two private individuals in 1997. However, in 1999, the Omaha City Council ("City Council") established MECA in the Omaha Municipal Code with the enactment of Ordinance No. 35043, which was subsequently approved by voters in May 2000. Pursuant to Section 4.07, MECA is managed and controlled by a five-member board ("Board") appointed by the City Council or the mayor of Omaha ("Mayor") on a rotating basis, subject to confirmation by the City Council. Board members serve without compensation, but are entitled to reimbursement for reasonable expenses incurred. They may be removed by the City Council for malfeasance in office. Section 4.07(a).

Section 4.07(b) sets out the powers and duties of MECA. It is given express management and control over city public events facilities, which includes "the power to enter into any contracts, [and] have control and management of property, personnel, equipment, facilities and finances." Section 4.07(b)(i) and (ii). Under Section 4.07(b)(iii), the City Council may provide by ordinance additional powers, duties, and administrative and procedural requirements and authorizations for MECA. Section 4.07(c) relates generally to MECA's governance, and provides that MECA shall have no taxing authority or power of eminent domain, may incorporate as a Nebraska nonprofit corporation, and may create committees, subcommittees, etc., as it deems necessary.

Section 4.07(d), (e), (f) and (g) relate to MECA's fiscal matters and operations. Subsection (d) gives MECA the authority "to charge fees, rentals and other charges for the use of the facilities within its jurisdiction," such charges to be applied to MECA's operating, administration and other necessary expenses, subject to bondholder contracts. Subsection (e) requires MECA to prepare an annual budget and request that the Mayor include in the city's annual budget an amount for MECA's "operating, administration, and other such payments to or for the benefit of [MECA]."

Subsection (f) requires MECA to pay to the city treasurer, who shall serve as MECA's *ex officio* treasurer, "[a]ll income, revenue, receipts, donations, retained earnings and money of [MECA] from whatever source derived . . . ." This money shall not be commingled with any other funds under the treasurer's control, and can only be disbursed upon requisition by designated individuals authorized by the Board. MECA, the city, or an outside entity must conduct an annual audit of MECA's funds and accounts, independent of the general city audit. A copy of the audit shall be submitted to the City Council.

Finally, subsection (g) authorizes the city or an entity on behalf of the city to issue and sell "[g]eneral obligation bonds, redevelopment bonds, lease-purchase bonds, revenue bonds and refunding bonds" or notes, or any combination thereof, "to finance or refinance the acquisition, construction, improving and equipping of such facilities, and public improvements and acquisitions pursuant to a redevelopment plan containing such facilities."<sup>1</sup>

The Open Meetings Act is codified at Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014) ("Act"). Under those statutes, a "public body" subject to the meetings provisions includes the governing bodies of political subdivisions and state agencies as well as "all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law" and "instrumentalities exercising essentially public functions." Neb. Rev. Stat. § 84-1409(1)(a). While the term "public body" is not defined within the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014) ("NPRS"), § 84-712.01 defines "public records" as records of or belonging to "this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit or committee of any of the foregoing."

The purpose of this statute is "to guarantee that public government records are public." Introducer's Statement of Purpose for L.B. 505, 72<sup>nd</sup> Nebraska Legislature (1961). Under this statute, it was intended that all public records of the state, its counties, and its other political subdivisions should be open to inspection, except where the Legislature has otherwise provided that the record shall be confidential. Judiciary Committee Statement on L.B. 505, 72<sup>nd</sup> Nebraska Legislature (1961). Thus, public records are broadly defined, and a wide scope of bodies is covered.

With regard to the Nebraska Open Meetings laws, the Nebraska Supreme Court has held that they are a statutory commitment to openness in government. *Wasikowski v. The Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 515 N.W.2d 128 (1994). Their purpose is to ensure that public policy is formulated at open meetings of the bodies to which the law is applicable. *Dossett v. First State Bank, Loomis, NE*, 261 Neb. 959, 627

N.W.2d 131 (2001). In Nebraska, the formation of public policy is public business, which may not be conducted in secret. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).

Finally, the open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public. *Schauer*. The beneficiaries of the openness sought by the Open Meetings Act include citizens, members of the general public, and reporters or other representatives of the news media. *State ex rel. Newman v. Columbus Township Board*, 15 Neb. App. 656, 735 N.W.2d 399 (Neb. Ct. App. 2007).

### ANALYSIS

This office has previously examined the status of MECA as a private or a governmental entity in response to a public records petition in 2001 and an open meetings inquiry in 2010. In the 2001 disposition letter to *The Omaha Weekly* dated December 28, 2001, we concluded that MECA was not a unit of government, but rather a private organization which was not subject to the Nebraska Public Records Statutes. In our disposition letter dated March 11, 2010, we responded to an open meetings inquiry by Common Cause Nebraska concerning MECA. We pointed out that MECA is a Nebraska nonprofit corporation, its Board is appointed by the Mayor and City Council, and that it develops, manages and operates various public facilities in Omaha, including the Qwest Center, now known as the CenturyLink Center. We noted that we had previously concluded that MECA was not subject to the NPRS, and that a similar result with respect to the Open Meetings Act was "entirely possible." However, we stated that there was no need to engage in an extensive analysis regarding the application of the Act to nonprofit corporations such as MECA because MECA had voluntarily chosen to follow the Open Meetings Act, through its bylaws. It is our understanding that MECA still adheres to this policy.

Both of those disposition letters, however, were issued prior to the Nebraska Supreme Court's recent opinion in *Frederick v. City of Falls City*, 289 Neb. 864, 857 N.W.2d 569 (2015). In *Frederick*, the court discussed whether certain documents in the possession of a nonprofit corporation, the Falls City Economic Development and Growth Enterprise, Inc., or EDGE, were public records for purposes of the Nebraska Public Records Statutes.

In reviewing the relevant facts in *Frederick*, the court noted that EDGE was a mutual benefit corporation incorporated under the Nebraska Nonprofit Corporation Act by eight private individuals for the purpose of encouraging economic development in Falls City and the surrounding area. The EDGE board was governed by a 21-member board of directors, which included the mayor of Falls City and one city council member. The Falls City administrator was an *ex officio* member of the board of directors.

With regard to the finances of EDGE, it received both public and private funding and performed services for Falls City and Richardson County, as well as its private investors. It had an ongoing contractual relationship with Falls City, reflected in part by a memorandum of understanding in which the parties desired "to work together to implement an aggressive, targeted approach to creating a positive image of Falls City and marketing the community as a preferred business location that will generate new wealth and create quality employment opportunities." *Id.* at 867, 857 N.W.2d at 572.

The court then noted that in a prior opinion, *Evertson v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009), it "recognized that many courts have adopted functional equivalency tests which focus on whether the documents are in the possession of a 'hybrid public/private entity: an entity created by, funded by, and regulated by the public body.' We noted that such tests 'appear appropriate when a private entity performs an ongoing government function.'" *Frederick* at 872, 857 N.W.2d at 575 (quoting *Evertson*, 278 Neb. at 11, 767 N.W.2d at 761).

However, the court in *Evertson* declined to employ a functional equivalency test, as the record at issue was a lone document prepared in the course of an isolated incident. The court instead devised a test which focused on the requested document. In contrast, the requested records in *Frederick* consisted of "multiple documents prepared over a period of time by an entity which had an ongoing relationship with Falls City." *Id.* at 873, 857 N.W.2d at 576. Under these factual circumstances, the court concluded that the functional equivalency test was appropriate to determine whether a private entity which has an ongoing relationship with a governmental entity should be considered an agency, branch, or department of the governmental entity within the meaning of § 84-712.01(1). *Id.* at 874, 857 N.W.2d at 576.

The functional equivalency test, as borrowed from the Supreme Court of Connecticut, considers the following factors:

- (1) whether the private entity performs a governmental function,
- (2) the level of government funding,
- (3) the extent of government involvement or regulation, and
- (4) whether the private entity was created by the government. This test is applied on a case-by-case basis, with no single factor being dispositive.

*Id.* at 874, 857 N.W.2d at 576 (internal citations omitted).

The court then applied the functional equivalency test to the facts pertinent to EDGE. As for the first prong of the test, the court found that

EDGE, in promoting economic development, performed a governmental function. The court did specify that promoting economic development was a permissive, rather than a mandatory, government function, noting that Falls City was not required by statute to engage in the promotion of economic development. The court stressed that "unlike essential governmental functions such as building and maintaining streets and highways and providing for public health and safety, private entities are free to engage in economic development activities without any involvement of public bodies." *Id.* at 878, 857 N.W.2d at 579.

With regard to the second factor, level of government funding, the court found that EDGE received approximately 63 percent of its revenue from public sources. As to the public funding, the court stated:

In *Dow v. CCCI*, the Maine Supreme Court held that receipt by a private development corporation of at least 60 percent of its annual revenue from a city did not support a conclusion that it was the functional equivalent of a city agency. But in *State v. Beaver Dam Area Development Corp.*, the Wisconsin Supreme Court considered the fact that a development corporation was "almost entirely taxpayer funded" to be a significant factor in its determination that the entity was a "quasi-governmental corporation" subject to state open meetings and public records statutes.

*Id.* at 876, 857 N.W.2d at 578.

Looking at the third and fourth factors, the extent of government involvement and the creation of the entity, the court pointed out that "the city has representation on EDGE's board of directors, but not control." *Id.* at 877, 857 N.W.2d at 578. EDGE's employees were not city employees; it maintained separate financial records and did not occupy city offices. The court further found that EDGE was incorporated by several private individuals, none of whom were employed by Falls City.

After weighing all factors, the *Frederick* court concluded that EDGE was not the functional equivalent of an agency, branch, or department of Falls City and its records are not "public records" as that term is defined in the Nebraska Public Records Statutes. *Id.* at 878, 857 N.W.2d at 579. While EDGE performed a governmental function, the fact that economic development was not a mandatory governmental function was significant in its ruling. Likewise, the fact that EDGE received 63 percent of its funding from government was, in light of the totality of the circumstances, not enough to render it a government agency. Despite the presence of factors one and two of the functional equivalency test (to at least some extent), the nearly complete absence of factors three and four appeared to be important in the court's analysis.

## FUNCTIONAL EQUIVALENCY TEST AS APPLIED TO MECA

Whether a nonprofit corporation which has an ongoing relationship with a state agency or a political subdivision or which performs services for a governmental entity is a public body for purposes of the Nebraska Public Records Statutes involves a case-by-case analysis. This analysis necessarily involves a consideration of the factors enumerated above.

**Performance of a governmental function:** As noted above, the Omaha City Council has given MECA control over the management and operations of two of Omaha's public events facilities – the CenturyLink Center and T.D. Ameritrade Park. The court in *Frederick* held that the general encouragement of growth and industry (economic development) are public purposes. Public funds may be expended through private entities to achieve these public purposes. A study commissioned by MECA in 2014 revealed that the CenturyLink Center has had a \$4.8 billion economic impact to the Omaha economy.<sup>2</sup> As such, MECA's management of city-owned public events facilities has had a substantial impact on Omaha's economic development and, as such, constitutes the performance of a governmental function.

However, at issue is whether the management of city-owned public events facilities constitutes an essential function which governmental entities have a duty or responsibility to perform, as opposed to the simple authority to do so if it chooses. In *Frederick*, the court stressed that EDGE's promotion of economic development was not an essential governmental function, reasoning that "private entities [such as the Chamber of Commerce] are free to engage in economic development activities without any involvement of public bodies."

There are key differences, however, between MECA's operation of Omaha's public events facilities, and the economic development undertaken by EDGE. The public nature of EDGE was much less evident than that of MECA. EDGE was primarily directed by private interests (only two of the 21 members of the EDGE board were public officials), did not occupy any public buildings in Falls City, and its agreement with Falls City was revocable upon 60 days written notice.

By contrast, we understand that, pursuant to a 99 year agreement, MECA operates Omaha's public events facilities - facilities which have a substantial economic impact on the city.<sup>3</sup> Moreover, the people of Omaha voted to establish the public-private partnership between MECA and the City of Omaha in the Omaha Municipal Code – affirmatively expressing a desire to yield a governmental function to MECA.

**The level of government funding:** After a city-wide vote, Omaha funded approximately 75% of the cost to build CenturyLink Center (\$216 public funds, \$75 million private funds). And, as previously noted, a study released in March of 2014 (commissioned by MECA) found that CenturyLink Center

Omaha generated \$4.8 billion of overall economic impact to the local economy between 2002 and 2013. The study further found that the convention center and arena have contributed \$86.4 million in indirect and direct tax collections to the City of Omaha during this same time, including sales tax, parking tax and property taxes paid by new developments near the facility.<sup>4</sup> The governmental function assumed by MECA has a considerable effect on Omaha's economy.

Pursuant to Section 4.07(e) of the Omaha Municipal Code, MECA's operations and administration expenses may be funded by the City of Omaha. MECA is also authorized to use facility fees, rentals, and other charges to pay for operating, administrative and necessary expenses, with certain limitations.

A review of Omaha City budgets over the past several years reveals that MECA has received public funding - \$880,000 in 2012, \$424,887 in 2013, \$1,100,000 in 2014, and a recommended appropriation of \$450,000 in 2015.<sup>5</sup>

**Extent of government involvement or regulation:** We note that MECA is created by city ordinance and that its members are appointed on a rotating basis by the City Council or the Mayor and thereafter confirmed by the City Council. MECA board members are subject to removal by the City Council for malfeasance. Thus, while MECA board members are not public officials nor employees, city officials have direct control over the composition of the board.

In addition to control of MECA board appointments by city officials, other factors reveal a significant amount of governmental involvement in MECA:

- (1) The powers and duties of MECA are set forth in the Omaha Municipal Code;
- (2) The Omaha City Treasurer is ex officio treasurer of MECA and all income, revenue, receipts, etc., are paid to and under the control of the city treasurer;
- (3) MECA's funds and accounts must be audited annually, and the audit report must be submitted to the City Council;
- (4) MECA's offices are located in the CenturyLink Center – obviously a city-owned facility;
- (5) The City Council has expressly reserved the opportunity to enact by ordinance additional powers and duties and administrative and procedural requirements for MECA

The extent of government involvement with respect to MECA is quite different from the circumstances presented in the *Frederick* case. There, the court noted that only two of the 21 voting members of EDGE's board were city officials that Falls City had no control over the composition of the EDGE board, and that EDGE and Falls City maintained separate financial records.

MECA is much more akin to the economic development corporation at issue in *Meri-Weather v. Freedom of Info. Com'n*, 47 Conn. Supp. 113, 778 A.2d 1038 (Conn. Super. 2000) discussed by the court in *Frederick*. The court in *Meri-Weather* held that the economic development corporation at issue in that case appointed a majority of that corporation's board of directors, the executive director of the city agency served as the executive officer of the nonprofit corporation, and the city agency maintained the nonprofit corporation's financial records in the office of the city agency. The corporation was found to be subject to the Connecticut Freedom of Information Act.

**Creation of the entity:** While MECA was originally created as a private, nonprofit corporation, it was subsequently created in the Omaha Municipal Code with the enactment of Ordinance No. 35043, which was approved by voters in 2000 (*see* Section 4.07, which reads, "There is hereby **created** a Metropolitan Entertainment and Convention Authority..." emphasis supplied). MECA and the City of Omaha signed a 99-year Lease and Development Agreement in August of 2000. As it now exists, MECA is a "creation" of a city ordinance. Interestingly, in MECA's audited financial statements for 2013 and 2014, MECA is referred to as "a component unit of the City of Omaha."<sup>6</sup>

## CONCLUSION

We conclude that the Metropolitan Entertainment & Convention Authority is a hybrid public/private entity as it is created by ordinance, though it is also authorized to incorporate as a Nebraska nonprofit corporation. Utilizing the functional equivalency test set forth in *Frederick*, we conclude that MECA should be subject to the Nebraska Public Records Act. All four of the factors set forth in that test are applicable to MECA such that it should be considered an agency, branch, or department of the City of Omaha.

We likewise conclude that MECA is subject to the dictates of the Nebraska Open Meetings Act. MECA, as it now exists, is a creation of an Omaha City Ordinance. It serves the public function of managing and controlling the public events facilities of the City of Omaha.

<sup>1</sup>According to MECA's website at <http://www.omahameca.com/About/WhoWeAre.aspx>:



The Metropolitan Entertainment & Convention Authority (MECA) is a 501©(3) non-profit organization that builds and manages public event venues in Omaha, Nebraska. The formal operations of MECA commenced on August 25, 2000 with the signing of a 99-year Lease and Development Agreement with the City of Omaha. The cost to build CenturyLink Center Omaha was \$291 million, funded through a public-private arrangement. The private sector contributed \$75 million and the public sector contributed \$216 million. CenturyLink Center Omaha opened in 2003.

<sup>2</sup>See

[http://www.omahameca.com/Libraries/MECA\\_PDFs/Goss\\_Study\\_Press\\_Release\\_FINAL.sflb.ashx](http://www.omahameca.com/Libraries/MECA_PDFs/Goss_Study_Press_Release_FINAL.sflb.ashx)

<sup>3</sup>While the agreement is referenced on MECA's website, we do not have a copy of the agreement.

<sup>4</sup>See

[http://www.omahameca.com/Libraries/MECA\\_PDFs/Goss\\_Study\\_Press\\_Release\\_FINAL.sflb.ashx](http://www.omahameca.com/Libraries/MECA_PDFs/Goss_Study_Press_Release_FINAL.sflb.ashx)

<sup>5</sup>See

<http://www.cityofomaha.org/finance/images/stories/2015%20Recommended%20Budget.pft> and  
<http://www.cityofomaha.org/finance/images/stories/Budgets/budget2013recommended/2013%20Recommended%20Budget.pdf>

<sup>6</sup>See

[http://cityclerk.cityofomaha.org/images/stories/agenda/ID%2015\\_03\\_31/City%20Clerk/402.pdf](http://cityclerk.cityofomaha.org/images/stories/agenda/ID%2015_03_31/City%20Clerk/402.pdf)

Sincerely,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) David Bydalek  
Chief Deputy Attorney General

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
07-993-29

Opinion 15-017

SUBJECT: Whether Legislation Requiring Fifty Percent of the Revenues Generated From School Lands, That Are Placed In the Temporary School Fund, Be Kept For the Benefit of the School District in Which It Was Produced Would Be Constitutional

REQUESTED BY: Senator Dan Hughes, Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
John L. Jelkin, Assistant Attorney General

In your opinion request letter, you make the following comments:

"My office has been doing research on educational lands and funds in Nebraska. I would like to know if the following idea would be constitutional. I would like to have 50% of the revenue generated on school lands, that is placed in the temporary school fund, be kept for the benefit of the school district in which it is produced."

**ANALYSIS**

On April 19, 1864, the U.S. Congress passed and President Abraham Lincoln signed the Enabling Act. (U.S. Stat. at Large, Vol. 13, p. 47.) The Enabling Act enabled the people of Nebraska to form a Constitution and State Government, and allowed the State of Nebraska admission into the Union on an equal footing with the original States. Section 7 of the Act provides:

"And be it further enacted, that sections number sixteen and thirty-six in every township., shall be, and are hereby granted to said State for the support of the common schools." (U.S. Stat. at Large, Vol. 13, p. 47).

Thereafter, the people of Nebraska did form a Constitution and State Government and by proclamation of then President Andrew Johnson, the State of Nebraska was admitted to the Union on March 1, 1867.

It appears to us that the threshold question is, "May the State provide more support to those school districts in which school lands are located, or must all of the funds be used for the benefit of all school districts, regardless of the location of the school lands?"

"In some parts of the State of Nebraska, most of the school's land have been sold." Op. Att'y Gen. No. 93035 (May 4, 1993). Currently, Colfax County, Dodge County, Fillmore County, Hamilton County, Nance County, Saunders County, Thurston County and Wayne County, Nebraska have no school lands. Douglas County has only 142.84 acres of school lands and Lancaster County, Nebraska has only 534.27 acres of school lands. On the

other hand, Perkins County, Nebraska has 28,519.26 acres of school lands. Source: Nebraska Board of Educational Lands and Funds website at <http://belf.nebraska.gov>. Accordingly, under your proposal, some Nebraska school districts would receive more income from the school lands than other Nebraska school districts.

In 1989, we were asked if the legislature could abolish the in lieu of tax payment to schools in counties wherein school lands are located and substitute a formula diverting the income and interest on school funds and lands into the equalization portion of the School Foundation and Equalization Act. In response, we stated:

The law is well settled. A grant by Congress of land to a state for the benefit of the common schools is an absolute grant, vesting title for a specific purpose. *Alabama v. Schmidt*, 232 U.S. 168, 34 S.Ct. 301, 58 L.Ed.2d 555 (1914). Hence, section 7 of the Enabling Act and section 9 of Article VII of the Constitution of Nebraska mandate that income from the unsold school lands "be exclusively used for the support and maintenance of the common schools in each school district in the state." As noted in your inquiry, some school districts do not receive funds pursuant to the equalization portion of the School Foundation and Equalization Act, and, therefore, your above described amendment to L.B. 807 would, in our opinion, be unconstitutional.

Op. Att'y Gen. No. 89022 (March 24, 1989).

Further, in a subsequent opinion, we stated:

The fact that these lands are held in trust pursuant to the Nebraska Constitution and Enabling Act has the effect of incorporating the rules of law regulating the administration of trusts and the conduct and duties of trustees. Consequently, the State as trustee of these lands, and of the income therefrom, is required to administer the trust estate under the rules of law applicable to trustees acting in a fiduciary capacity. *State ex. Rel. Ebke v. Board of Educational Lands and Funds*, 159 Neb. 79, 65 N.W.2d 392 (1954). This means, among other things, that the State in its capacity as trustee has duties to **all** beneficiaries of the school trust and cannot lawfully confer special benefits on some to the detriment of others, nor can it lawfully impose special detriments on some to the benefit of others.

Op. Att'y Gen. No. 89030 (April 5, 1989) (Emphasis added).

### CONCLUSION

The answer to your question then, as to whether it would be constitutional to have 50% of the revenue generated on school lands be kept for the benefit of the school district in which it was produced, is clear. The State cannot discriminate against school districts in which little or no school lands are located, in favor of school districts in which more school lands are located.

To do so would violate the sacred trust that was placed on the State to use the school lands for the support and maintenance of the common schools in each school district in the State.

Sincerely yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) John L. Jelkin  
Assistant Attorney General

pc: Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
25-093-29

Opinion 15-018

SUBJECT: L.B. 338 – Imposition of a Docket Fee for Original Actions and Modifications for Child Support and Custody Filed by Never- Married Parents

REQUESTED BY: Senator Lydia Brasch  
Nebraska State Legislature

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

You have requested an opinion from this office regarding the interpretation of Neb. Rev. Stat. § 33-107.02 and the need to enact L.B. 338 which you introduced last year. You state that "L.B. 338 would mandate that never-married parents who are seeking 'a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922' also be charged the \$65 docket fee, of which \$50 is credited to the Parenting Act Fund." As you explain, the Legislature enacted this fee in 2007 in order to subsidize the costs of mediation in custody and parenting time disputes.

**Background**

The Parenting Act, now found at Neb. Rev. Stat. §§ 43-2920 to 43-2943 (2008 and Cum. Supp. 2014), was substantially revised by L.B. 554, Laws 2007. Under the Act as revised, mediation on the issues of custody and parenting time is mandatory in some instances. Parents may also participate in mediation on a voluntary basis. Neb. Rev. Stat. §§ 43-2936 and 43-2937. Section 43-2942 provides that the parties are responsible for the costs of mediation, which costs are charged according to a sliding fee scale if the court orders the parties to mediation. You point out that the Parenting Act fee imposed by § 33-107.02 subsidizes the costs incurred by mediation centers in providing mediation to indigent and low-income parents involved in custody and parenting disputes.

L.B. 554 amended certain statutes found in Chapter 33 in regard to docket fees. Section 33-107.02(1) (2008) provides as follows:

A docket fee of sixty-five dollars shall be collected by the clerk of the county court or the clerk of the district court for each proceeding to modify a decree of dissolution or annulment of marriage, a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access as defined in section 43-2922. . . . Fifteen dollars shall be credited to the Legal Aid and Services Fund, and fifty dollars shall be credited to the Parenting Act Fund.

There is a separate docket fee imposed by Neb. Rev. Stat. § 33-106.03 that pertains only to actions for dissolution of marriages. Your questions concerning the imposition of docket fees for filings made by unmarried parents would clearly not be governed by that statute.

### **Discussion**

We first note that the statement of intent for L.B. 338 states that L.B. 338 "provides a docket fee for original actions and modifications for custody, parent time, visitation, and other parental access filed by unmarried parents." Introducer's Statement of Intent for L.B. 338, 104<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. (January 29, 2015). In your request letter, you inquire about the applicability of the docket fee to never-married parents who seek a modification. You also inquire about the applicability of the docket fee when never-married parents file a cross complaint or motion to intervene in an action initiated by a county attorney.

It seems to us that there are several categories of pleadings or actions that might be filed by never-married parents. One of the parents could file an action for paternity or parental support under Neb. Rev. Stat. §§ 43-1401 to 43-1418. The initial filing in such an action would involve neither an action for dissolution subject to § 33-106.03 nor an action seeking modification subject to § 33-107.02 and neither docket fee would apply.

An unmarried parent could subsequently file an application for modification of a prior decree of child support or child custody, parenting time, or visitation. In our view, such a filing with regard to a decree entered in a private action brought by the parent would require the \$65 docket fee called for by § 33-107.02(1). Statutory language should generally be given its plain and ordinary meaning and where the words of the statute are plain, direct and unambiguous, no interpretation is necessary to ascertain their meaning. *State v. Mena-Rivers*, 280 Neb. 948, 791 N.W.2d 613 (2010); *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985). When construing a statute, courts will attempt to discover legislative intent from the language of the act. A court will also "construe statutes relating to the same subject matter together to maintain a sensible and consistent scheme, so that effect is given to every provision." *Tracfone Wireless, Inc. v.*

*Nebraska Public Service Comm'n*, 279 Neb. 426, 433, 778 N.W.2d 452, 459 (2010). In our view, the language of § 33-107.02(1) which imposes a \$65 docket fee for "a modification of an award of child support, or a modification of child custody, parenting time, visitation, or other access", on its face, applies to applications for modifications of prior awards, whether filed by previously married parents or never married parents.

The answer is less clear if the original proceeding to determine paternity or parental support pursuant to §§ 43-1401 to 43-1418 was filed by a county attorney and one of the parents later files an application for modification of an award entered in that proceeding. Subsection (2) of § 33-107.02, the statute imposing the additional docket fee, provides that a "proceeding filed by a county attorney or authorized attorney, as defined in section 43-1704, . . . shall not be subject to the provisions of this section." It is clear that the county attorney need not pay the \$65 docket fee if he or she files a petition to determine paternity or parental support or a subsequent application for modification. However, if one of the parents later seeks to modify the decree entered in a proceeding initiated by the county attorney, one could argue that the parent would be subject to the docket fee applicable to modifications. Yet, the statutory language provides that the "proceeding" is not subject to the docket fee provision and use of the term "proceeding" may indicate that none of the pleadings filed in a proceeding initiated by the county attorney would trigger the docket fee. "Proceeding" has been defined in a general sense as "[T]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment." Black's Law Dictionary 1324 (9<sup>th</sup> ed. 2009). For this reason, you may wish to proceed with legislation to clarify the applicability of the docket fee in this situation.

Finally, your request letter also refers to a situation in which never-married parents file a cross complaint or motion to intervene in a paternity or parental support action brought by the county attorney. If we understand your reference correctly, it seems to us that those pleadings would likely be filed prior to the entry of a decree and may, thus, not be considered "modifications" of a prior award so as to fall under the current docket fee requirement. However, you state that such pleadings are filed subsequent to an order of child support. If you intend for these pleadings to trigger the docket fee, clarifying legislation may be necessary.

### **Conclusion**

In your request letter, you explain that the docket fee provided for at § 33-107.02 is not currently imposed on never-married parents in certain situations. For the reasons stated above, we agree that the applicability of the docket fee is not entirely clear and that, if you wish to ensure that the docket fee is assessed, amendment of the statute would be appropriate.

Sincerely,  
DOUGLAS J. PETERSON

Attorney General  
(Signed) Lynn A. Melson  
Assistant Attorney General

pc. Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
09-531-29

### **REPORTS**

Agency reports electronically filed with the Legislature can be found on the Nebraska Legislature's website at:  
<http://www.nebraskalegislature.gov/agencies/view.php>

### **COMMUNICATION(S)**

Received petition from the Village Board of Dodge, Nebraska, adopted on October 5, 2015.

Received petition from the Village of Decatur, Nebraska, adopted on October 8, 2015.

Received petition from the Village of Bancroft, Nebraska, adopted on November 2, 2015.

Received petition from the Village of Rosalie, Nebraska, adopted on November 16, 2015.

### **EXECUTIVE BOARD REPORT**

The Executive Board reported the following committee assignments made over the interim:

Senator Lindstrom has been appointed to the Nebraska Retirement Systems Committee. Senator Mello has been appointed to the Rules Committee. Senator Cook has been appointed to the Appropriations Committee and no longer serves on the Education Committee and the Health and Human Services Committee. Senator Krist has been appointed to the Education Committee and no longer serves on the General Affairs Committee and the Urban Affairs Committee. Senator McCollister has been appointed to the General Affairs Committee and no longer serves on the Business and Labor Committee. Senator Howard has been appointed to the Business and Labor Committee and the Urban Affairs Committee and no longer serves on the Banking, Commerce and Insurance Committee. Senator Fox has been appointed to the Banking, Commerce and Insurance Committee and the Health and Human Services Committee.

**EXECUTIVE BOARD REPORT**

The Executive Board has appointed the following members of the Legislature to the Committee on Justice Reinvestment Oversight (LB605):

Senator Seiler (chairperson)  
 Senator Mello  
 Senator Krist  
 Senator Hadley  
 Senator Campbell

**MOTION - Chairperson of Nebraska Retirement Systems**

Senator Watermeier moved to proceed to the election of the Nebraska Retirement Systems Committee chairperson, by secret ballot, in accordance with Rule 3, Sec. 8(a).

The motion prevailed.

CHAIRPERSON - Nebraska Retirement Systems

Senator Kolterman placed his name in nomination.

Senator Davis placed his name in nomination.

The Chair declared the nominations closed.

The Chair appointed Senators Crawford, Friesen, and Mello as tellers.

Senator Kolterman	30
Senator Davis	<u>18</u>
	48

Senator Kolterman was duly elected Chairperson of the Nebraska Retirement Systems Committee.

**BILLS ON FIRST READING**

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

**LEGISLATIVE BILL 665.** Introduced by Executive Board: Krist, 10, Chairperson.

A BILL FOR AN ACT relating to the Water Resources Cash Fund; to eliminate obsolete transfer provisions; and to outright repeal sections 61-220 and 61-221, Revised Statutes Cumulative Supplement, 2014.



**LEGISLATIVE BILL 666.** Introduced by Executive Board: Krist, 10, Chairperson.

A BILL FOR AN ACT relating to the Department of Motor Vehicles; to amend sections 60-3,136 and 60-4,147.03, Reissue Revised Statutes of Nebraska, and sections 60-3,198, 60-487, 60-4,131, 60-4,144.01, 60-4,144.02, 60-4,168, and 60-4,181, Revised Statutes Cumulative Supplement, 2014; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 667.** Introduced by Executive Board: Krist, 10, Chairperson.

A BILL FOR AN ACT relating to the International Fuel Tax Agreement Act; to amend section 66-1418, Revised Statutes Cumulative Supplement, 2014; to eliminate obsolete provisions relating to trip permits; and to repeal the original section.

**LEGISLATIVE BILL 668.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-4,120.01 and 79-609, Reissue Revised Statutes of Nebraska, sections 60-6,179.01 and 60-6,268, Revised Statutes Cumulative Supplement, 2014, and sections 60-4,123, 60-4,124, 60-6,265, 60-6,267, and 60-6,270, Revised Statutes Supplement, 2015; to change provisional operator's permit restrictions from secondary offenses to primary offenses; to change certain uses of interactive wireless communication devices from secondary offenses to primary offenses as prescribed; to update references to certain federal provisions; to eliminate as a secondary action certain occupant protection system enforcement requirements; to repeal the original sections; and to outright repeal section 60-6,271, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 669.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,268, Revised Statutes Cumulative Supplement, 2014, sections 60-6,265, 60-6,267, and 60-6,270, Revised Statutes Supplement, 2015; to update federal references; to change and eliminate provisions relating to the use and enforcement of occupant protection systems; to repeal the original sections; and to outright repeal section 60-6,271, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 670.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to mental health evaluations; to amend section 71-919, Reissue Revised Statutes of Nebraska, and section 43-254.01, Revised Statutes Cumulative Supplement, 2014; to require a hearing prior to release for persons taken into custody for mental health reasons; and to repeal the original sections.

**LEGISLATIVE BILL 671.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to roads; to amend section 39-2703, Revised Statutes Cumulative Supplement, 2014, and sections 77-27,132 and 77-27,237, Revised Statutes Supplement, 2015; to repeal the Build Nebraska Act; to terminate a fund; to change the distribution of sales and use tax revenue; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal sections 39-2701, 39-2702, 39-2704, and 39-2705, Revised Statutes Cumulative Supplement, 2014; and to declare an emergency.

**LEGISLATIVE BILL 672.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Waste Reduction and Recycling Incentive Act; to amend sections 81-15,159.02, 81-15,162, and 81-15,164, Reissue Revised Statutes of Nebraska; to eliminate fees on tires as prescribed; to eliminate a definition; to harmonize provisions; to provide a termination date; and to repeal the original sections.

**LEGISLATIVE BILL 673.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend section 43-273, Reissue Revised Statutes of Nebraska, and section 43-272.01, Revised Statutes Supplement, 2015; to change provisions relating to guardians ad litem and determination of fees; and to repeal the original sections.

**LEGISLATIVE BILL 674.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Disabled Persons and Family Support Act; to amend sections 68-1502, 68-1504, 68-1505, 68-1506, 68-1508, 68-1509, 68-1510, 68-1511, 68-1512, 68-1513, 68-1515, 68-1516, and 68-1519, Reissue Revised Statutes of Nebraska, and section 68-1518, Revised Statutes Cumulative Supplement, 2014; to provide financial compensation for care given by families at home as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 675.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to juveniles; to amend section 43-251.01, Revised Statutes Supplement, 2015; to change provisions relating to placement and detention; and to repeal the original section.

**LEGISLATIVE BILL 676.** Introduced by Craighead, 6.

A BILL FOR AN ACT relating to banks and banking; to amend sections 8-1,140, 8-355, and 21-17,115, Revised Statutes Supplement, 2015; to revise powers of state-chartered banks, building and loan associations, and credit unions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 677.** Introduced by Craighead, 6.

A BILL FOR AN ACT relating to veterans; to amend section 80-410, Reissue Revised Statutes of Nebraska; to change a state residency qualification for state veterans service officers; to change a military service requirement for certain officers and personnel; and to repeal the original section.

**LEGISLATIVE BILL 678.** Introduced by Craighead, 6.

A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to amend sections 81-885 and 81-885.07, Reissue Revised Statutes of Nebraska, and section 81-885.01, Revised Statutes Supplement, 2015; to define terms; to provide duties for a team leader as prescribed; to require the adoption and promulgation of rules and regulations; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 679.** Introduced by Krist, 10.

A BILL FOR AN ACT relating to the Community Corrections Act; to amend section 47-624, Revised Statutes Cumulative Supplement, 2014; to change reporting requirements; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 680.** Introduced by Riepe, 12.

A BILL FOR AN ACT relating to pharmacy technicians; to amend section 38-2890, Revised Statutes Supplement, 2015; to change requirements for pharmacy technicians; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 681.** Introduced by Schnoor, 15.

A BILL FOR AN ACT relating to the Concealed Handgun Permit Act; to amend section 69-2441, Reissue Revised Statutes of Nebraska, and sections 69-2435, 69-2436, 69-2439, and 69-2443, Revised Statutes Cumulative Supplement, 2014; to change certain violation and penalty provisions; to eliminate obsolete provisions; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 682.** Introduced by Craighead, 6.

A BILL FOR AN ACT relating to elections; to amend section 32-949.01, Revised Statutes Cumulative Supplement, 2014, and sections 32-941, 32-947, and 32-953, Revised Statutes Supplement, 2015; to change deadlines for ballots for early voting and special elections by mail; to provide an operative date; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 683.** Introduced by Craighead, 6.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-3506, Revised Statutes Cumulative Supplement, 2014, and section 77-3509, Revised Statutes Supplement, 2015; to change provisions relating to homestead exemptions for certain surviving spouses as prescribed; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 684.** Introduced by Bolz, 29.

A BILL FOR AN ACT relating to adoption; to amend section 43-107, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to adoptive home studies as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 685.** Introduced by Bolz, 29.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2717 and 77-2734.03, Revised Statutes Cumulative Supplement, 2014, and section 77-2715.07, Revised Statutes Supplement, 2015; to adopt the Student Loan Repayment Tax Credit Act; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 686.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to law; to amend section 49-501.01, Reissue Revised Statutes of Nebraska; to provide for the publication and distribution of the Constitution of Nebraska; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 687.** Introduced by Bloomfield, 17.

A BILL FOR AN ACT relating to recall; to amend sections 32-1205, 32-1301, 32-1302, 32-1304, 32-1305, and 32-1309, Reissue Revised Statutes of Nebraska, sections 32-628, 32-1303, and 32-1306, Revised Statutes Cumulative Supplement, 2014, and section 32-1308, Revised Statutes Supplement, 2015; to provide for recall of an official elected or appointed to a state elective office; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 688.** Introduced by Bloomfield, 17.

A BILL FOR AN ACT relating to the Motor Vehicle Operator's License Act; to amend section 60-479, Revised Statutes Cumulative Supplement, 2014, and section 60-462, Revised Statutes Supplement, 2015; to require all examinations and tests of applicants to be in the English language; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 689.** Introduced by Bloomfield, 17.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2704.10, Revised Statutes Cumulative Supplement, 2014; to eliminate a sales and use tax exemption relating to political events; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 690.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to public assistance; to amend section 68-1017.02, Revised Statutes Cumulative Supplement, 2014; to eliminate a provision relating to eligibility for Supplemental Nutrition Assistance Program benefits as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 691.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to universities and colleges; to amend section 85-1412, Revised Statutes Supplement, 2015; to adopt the Teacher Education and Health Care Professions Student Grant Program Act; to provide duties for the Coordinating Commission for Postsecondary Education; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 692.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to students; to adopt the Student Online Personal Protection Act.

**LEGISLATIVE BILL 693.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to the Political Subdivisions Tort Claims Act; to amend sections 13-919 and 13-920, Reissue Revised Statutes of Nebraska; to change limitation of action provisions; and to repeal the original sections.

**LEGISLATIVE BILL 694.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to the Taxpayer Transparency Act; to amend section 84-602.02, Revised Statutes Supplement, 2015; to change provisions relating to exempt contracts; and to repeal the original section.

**LEGISLATIVE BILL 695.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to sanitary and improvement districts; to amend section 31-735, Revised Statutes Supplement, 2015; to provide for the counting of ballots; and to repeal the original section.

**LEGISLATIVE BILL 696.** Introduced by Howard, 9; Morfeld, 46.

A BILL FOR AN ACT relating to the Medical Assistance Act; to amend section 68-911, Revised Statutes Cumulative Supplement, 2014; to provide for a waiver for coverage of opioid abuse as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 697.** Introduced by Howard, 9.

A BILL FOR AN ACT relating to the Medical Assistance Act; to amend section 68-901, Revised Statutes Supplement, 2015; to require application for a medicaid state plan amendment for functional family therapy; to harmonize provisions; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 698.** Introduced by Mello, 5; Bolz, 29; Campbell, 25; Cook, 13; Davis, 43.

A BILL FOR AN ACT relating to health; to adopt the Home Care Consumer Bill of Rights Act; and to provide a penalty.

**LEGISLATIVE BILL 699.** Introduced by Mello, 5.

A BILL FOR AN ACT relating to the Nebraska Municipal Land Bank Act; to amend sections 19-5205, 19-5210, and 19-5213, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to board members, priorities for use of land, and reporting; and to repeal the original sections.

**LEGISLATIVE BILL 700.** Introduced by Mello, 5.

A BILL FOR AN ACT relating to cities; to amend section 14-407, Reissue Revised Statutes of Nebraska, and section 19-4029.01, Revised Statutes Supplement, 2015; to require notice to neighborhood associations for actions relating to zoning and business improvement districts; and to repeal the original sections.

**LEGISLATIVE BILL 701.** Introduced by Mello, 5; Campbell, 25.

A BILL FOR AN ACT relating to public assistance; to amend section 68-1721, Revised Statutes Cumulative Supplement, 2014; to eliminate a termination date relating to a self-sufficiency contract; and to repeal the original section.

**LEGISLATIVE BILL 702.** Introduced by Urban Affairs Committee: Crawford, 45, Chairperson; Coash, 27; Ebke, 32; Hansen, 26; Howard, 9; Hughes, 44; McCollister, 20.

A BILL FOR AN ACT relating to cities of the second class; to amend

sections 17-102 and 17-104, Reissue Revised Statutes of Nebraska; to harmonize provisions relating to the election of city council members; and to repeal the original sections.

**LEGISLATIVE BILL 703.** Introduced by Urban Affairs Committee: Crawford, 45, Chairperson; Coash, 27; Ebke, 32; Hansen, 26; Howard, 9; Hughes, 44; McCollister, 20.

A BILL FOR AN ACT relating to cities and villages; to amend sections 16-207 and 17-555, Revised Statutes Supplement, 2015; to change provisions relating to nuisances; and to repeal the original sections.

**LEGISLATIVE BILL 704.** Introduced by Urban Affairs Committee: Crawford, 45, Chairperson; Coash, 27; Ebke, 32; Hansen, 26; Howard, 9; Hughes, 44; McCollister, 20.

A BILL FOR AN ACT relating to building codes and regulations; to amend sections 14-419 and 18-132, Reissue Revised Statutes of Nebraska, sections 15-905, 19-922, 23-172, and 71-6404, Revised Statutes Cumulative Supplement, 2014, and section 71-6406, Revised Statutes Supplement, 2015; to define terms; to change provisions relating to adoption and applicability of building codes by political subdivisions; and to repeal the original sections.

**LEGISLATIVE BILL 705.** Introduced by Urban Affairs Committee: Crawford, 45, Chairperson; Coash, 27; Ebke, 32; Hansen, 26; Howard, 9; Hughes, 44; McCollister, 20.

A BILL FOR AN ACT relating to cities of the first class; to amend sections 16-102, 16-103, 16-104, 16-105, 16-117, 16-119, 16-120, 16-122, 16-124, 16-125, 16-126, 16-127, 16-128, 16-129, 16-202, 16-206, 16-212, 16-213, 16-214, 16-217, 16-218, 16-219, 16-220, 16-221, 16-222, 16-225, 16-226, 16-227, 16-229, 16-231, 16-232, 16-233, 16-236, 16-238, 16-239, 16-241, 16-246, 16-247, 16-249, 16-251, 16-253, 16-302.01, 16-304, 16-305, 16-306, 16-308, 16-309, 16-310, 16-312, 16-314, 16-319, 16-320, 16-321, 16-322, 16-323, 16-324, 16-325, 16-326, 16-327, 16-401, 16-402, 16-403, 16-404, 16-405, 16-406, 16-501, 16-502, 16-503, 16-606, 16-607, 16-609, 16-613, 16-617, 16-618, 16-619, 16-620, 16-621, 16-622, 16-623, 16-624, 16-625, 16-626, 16-627, 16-628, 16-632, 16-633, 16-634, 16-635, 16-636, 16-637, 16-646, 16-647, 16-649, 16-650, 16-651, 16-653, 16-654, 16-655, 16-661, 16-662, 16-665, 16-666, 16-667, 16-667.01, 16-667.02, 16-667.03, 16-670, 16-671, 16-672.01, 16-672.02, 16-672.03, 16-672.04, 16-672.05, 16-672.06, 16-672.07, 16-672.08, 16-672.11, 16-676, 16-677, 16-678, 16-679, 16-680, 16-681, 16-682, 16-683, 16-684, 16-684.01, 16-686, 16-686.01, 16-687, 16-688, 16-691, 16-691.01, 16-691.02, 16-692, 16-693, 16-694, 16-695, 16-696, 16-697, 16-697.01, 16-697.02, 16-698, 16-699, 16-6,100, 16-6,100.03, 16-6,100.05, 16-6,101, 16-6,102, 16-6,103, 16-6,104, 16-6,105, 16-6,107, 16-6,108, 16-6,109, 16-701, 16-702, 16-704, 16-706, 16-707, 16-709, 16-711, 16-712, 16-713, 16-714, 16-716, 16-717,

16-718, 16-719, 16-720, 16-721, 16-722, 16-723, 16-727, 16-728, 16-729, 16-801, 16-802, 16-803, 16-804, 16-805, 16-806, 16-807, 16-809, 16-810, 16-901, 16-902, 16-905, 16-1014, 16-1034, 16-1035, and 19-2402, Reissue Revised Statutes of Nebraska, and sections 16-313, 16-317, and 16-318, Revised Statutes Cumulative Supplement, 2014, and sections 16-207, 16-230, 16-240, 16-243, 16-250, 16-615, 16-630, 16-631, 16-664, 16-669, 16-672, and 16-708, Revised Statutes Supplement, 2015; to change provisions relating to cities of the first class; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 706.** Introduced by Coash, 27; Campbell, 25; Howard, 9.

A BILL FOR AN ACT relating to insurance; to define habilitative services.

**LEGISLATIVE BILL 707.** Introduced by Coash, 27.

A BILL FOR AN ACT relating to courts; to amend section 43-2,119, Reissue Revised Statutes of Nebraska; to increase the number of judges of the separate juvenile court as prescribed; to provide an operative date; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 708.** Introduced by Bolz, 29; Campbell, 25; Cook, 13; Davis, 43; Mello, 5.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 71-516.01, 71-516.02, and 71-516.03, Reissue Revised Statutes of Nebraska, section 71-516.04, Revised Statutes Cumulative Supplement, 2014, and sections 71-401 and 71-403, Revised Statutes Supplement, 2015; to define and redefine terms; to provide for a memory care endorsement under the Health Care Facility Licensure Act; to provide for applicability to Alzheimer's special care units as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 709.** Introduced by Howard, 9; Pansing Brooks, 28.

A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections 43-253, 43-255, 43-256, 43-260, 43-260.01, and 43-3504, Revised Statutes Cumulative Supplement, 2014, and sections 43-245 and 43-250, Revised Statutes Supplement, 2015; to provide for an alternative to detention; to define and eliminate a term; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 710.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-311.06, Reissue Revised Statutes of Nebraska; to change provisions relating to hazing; and to repeal the original section.



**LEGISLATIVE BILL 711.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to noxious weed control; to amend sections 2-945.01 and 2-958.02, Reissue Revised Statutes of Nebraska; to change provisions relating to grants for certain vegetation management programs; to create the Riparian Vegetation Management Task Force; to provide task force duties; to require an annual report; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-967 and 2-968, Revised Statutes Cumulative Supplement, 2014.

**LEGISLATIVE BILL 712.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to environmental protection; to amend sections 25-21,255 and 81-1577.01, Reissue Revised Statutes of Nebraska; to change provisions relating to the regulation of aboveground motor vehicle fuel storage tanks; to remove an obsolete provision; to eliminate certain provisions relating to the storage of hazardous substances; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-1575, 81-1576, and 81-1577, Reissue Revised Statutes of Nebraska.

**EASE**

The Legislature was at ease from 10:43 a.m. until 11:16 a.m.

**BILLS ON FIRST READING**

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

**LEGISLATIVE BILL 713.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to appropriations; to state intent relating to appropriations for the Access College Early Scholarship Program.

**LEGISLATIVE BILL 714.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to irrigation and regulation of water; to amend section 46-229.04, Reissue Revised Statutes of Nebraska; to provide for and change a provision relating to sufficient cause for nonuse of a water appropriation; and to repeal the original section.

**LEGISLATIVE BILL 715.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to the Nebraska Cultural Preservation Endowment Fund; to amend section 82-331, Reissue Revised Statutes of Nebraska; to provide for transfers from the General Fund; and to repeal the original section.

**LEGISLATIVE BILL 716.** Introduced by Kolowski, 31; Garrett, 3; Gloor, 35; Hilkemann, 4; Lindstrom, 18; McCollister, 20.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend sections 60-6,153, 60-6,154, and 60-6,317, Reissue Revised Statutes of Nebraska; to provide for the right-of-way for pedestrians; to provide and eliminate requirements for persons operating bicycles; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 717.** Introduced by Groene, 42; Brasch, 16.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-112, 77-5023, and 77-5026, Reissue Revised Statutes of Nebraska, and sections 77-1301, 77-1327, and 77-5027, Revised Statutes Cumulative Supplement, 2014; to redefine a term; to change provisions relating to assessment of real property; to change the Tax Equalization and Review Commission Act; to provide an operative date; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 718.** Introduced by Groene, 42.

A BILL FOR AN ACT relating to veterans aid; to amend section 80-411, Reissue Revised Statutes of Nebraska; to change requirements for submitting an application for a waiver of college tuition and fees; and to repeal the original section.

**LEGISLATIVE BILL 719.** Introduced by Groene, 42.

A BILL FOR AN ACT relating to the Community Development Law; to amend section 18-2123, Reissue Revised Statutes of Nebraska; to change provisions relating to undeveloped vacant land; and to repeal the original section.

**LEGISLATIVE BILL 720.** Introduced by Kuehn, 38.

A BILL FOR AN ACT relating to rights of privacy; to amend sections 20-201, 20-205, 20-206, 20-207, and 20-208, Reissue Revised Statutes of Nebraska; to change certain invasion of privacy provisions to include unmanned aircraft or unmanned aircraft systems; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 721.** Introduced by Baker, 30.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend section 38-2025, Reissue Revised Statutes of Nebraska, section 38-121, Revised Statutes Cumulative Supplement, 2014, and section 38-101, Revised Statutes Supplement, 2015; to adopt the Surgical First Assistant Practice Act; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 722.** Introduced by Baker, 30.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 38-1217 and 38-1221, Revised Statutes Cumulative Supplement, 2014, and section 71-401, Revised Statutes Supplement, 2015; to adopt the Stroke System of Care Act; to provide for establishment of model protocols under the Emergency Medical Services Practice Act; to restrict advertising by hospitals; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 723.** Introduced by Schumacher, 22.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2703 and 77-2708, Revised Statutes Cumulative Supplement, 2014; to change the sales and use tax collection fees; and to repeal the original sections.

**LEGISLATIVE BILL 724.** Introduced by Schumacher, 22.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2703 and 77-2708, Revised Statutes Cumulative Supplement, 2014; to change the sales and use tax collection fees; and to repeal the original sections.

**LEGISLATIVE BILL 725.** Introduced by Schumacher, 22.

A BILL FOR AN ACT relating to real property; to amend section 76-214, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to a requirement to file statements regarding conveyances of real estate; and to repeal the original section.

**LEGISLATIVE BILL 726.** Introduced by Sullivan, 41; Bolz, 29; Morfeld, 46; Scheer, 19.

A BILL FOR AN ACT relating to universities and colleges; to require providing information to students relating to federal student loans.

**LEGISLATIVE BILL 727.** Introduced by Schilz, 47.

A BILL FOR AN ACT relating to cigar shops; to impose a tax on certain sales of tobacco as prescribed.

**LEGISLATIVE BILL 728.** Introduced by Johnson, 23.

A BILL FOR AN ACT relating to public meetings; to amend section 84-1413, Revised Statutes Supplement, 2015; to authorize electronic voting devices for natural resources districts; and to repeal the original section.

**LEGISLATIVE BILL 729.** Introduced by Johnson, 23.

A BILL FOR AN ACT relating to the Real Property Appraiser Act; to amend sections 76-2201 and 76-2221, Revised Statutes Supplement, 2015; to provide an exemption for persons retained by a county to assist in the assessment of real property for taxation purposes; to eliminate a moratorium on enforcement of the act by the Real Property Appraiser Board involving certain mass appraisals; to harmonize provisions; to repeal the original sections; to outright repeal section 76-2251, Revised Statutes Supplement, 2015; and to declare an emergency.

**LEGISLATIVE BILL 730.** Introduced by Johnson, 23.

A BILL FOR AN ACT relating to grain warehouses; to amend section 88-530, Reissue Revised Statutes of Nebraska; to change a provision relating to security coverage for sellers of grain stored in a warehouse closed by the Public Service Commission; and to repeal the original section.

**LEGISLATIVE BILL 731.** Introduced by Johnson, 23.

A BILL FOR AN ACT relating to real property; to amend section 76-2217.03, Revised Statutes Cumulative Supplement, 2014, and sections 76-2202, 76-2207.13, 76-2207.14, 76-2216.01, 76-2218.02, 76-2221, 76-2222, 76-2227, 76-2227.01, 76-2228.01, 76-2230, 76-2231.01, 76-2232, 76-2233, 76-2233.01, 76-2236, 76-2238, and 76-2241, Revised Statutes Supplement, 2015; to change provisions relating to the Real Property Appraiser Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 732.** Introduced by Watermeier, 1; McCollister, 20.

A BILL FOR AN ACT relating to motor vehicles; to amend section 80-414, Reissue Revised Statutes of Nebraska, and sections 60-3,122.03 and 60-3,122.04, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to Military Honor Plates; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 733.** Introduced by Watermeier, 1; Pansing Brooks, 28.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Department of Correctional Services.

**LEGISLATIVE BILL 734.** Introduced by Watermeier, 1.

A BILL FOR AN ACT relating to universities and colleges; to amend section 85-502, Reissue Revised Statutes of Nebraska; to change provisions relating to residency; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 735.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,290, Revised Statutes Cumulative Supplement, 2014; to provide a length limit exception for an articulated bus vehicle operated by a transit authority as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 736.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Rural Community-Based Energy Development Act; to amend sections 70-1905, 70-1906, and 70-1908, Reissue Revised Statutes of Nebraska, section 70-1904, Revised Statutes Cumulative Supplement, 2014, and section 70-1903, Revised Statutes Supplement, 2015; to define a term; to change powers and duties relating to electric utilities and electric suppliers; to change a notification requirement; and to repeal the original sections.

**LEGISLATIVE BILL 737.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to environmental protection; to amend sections 81-15,149, 81-15,150, 81-15,151, 81-15,154, 81-15,155, and 81-15,156, Reissue Revised Statutes of Nebraska; to change provisions of the Wastewater Treatment Facilities Construction Assistance Act; to redefine a term; to change powers of the Director of Environmental Quality; to provide additional options for paying program costs; to expand categories of loan eligibility; to change loan conditions and terms as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 738.** Introduced by Ebke, 32; Morfeld, 46; Watermeier, 1.

A BILL FOR AN ACT relating to law enforcement; to prohibit the use of cell-site simulator technology or devices by law enforcement agencies as prescribed.

**LEGISLATIVE BILL 739.** Introduced by Smith, 14.

A BILL FOR AN ACT relating to schools; to amend sections 79-528, 79-1007.18, 79-1008.02, 79-1022, 79-1036, 79-1041, 79-10,120, 79-10,126, 79-2104, 79-2111, and 79-2404, Reissue Revised Statutes of Nebraska, sections 70-651.04 and 77-1736.06, Revised Statutes Cumulative Supplement, 2014, and section 77-3442, Revised Statutes Supplement, 2015; to eliminate certain taxing authority of learning communities; to harmonize provisions; to repeal the original sections; and to outright repeal sections 79-1073, 79-1073.01, and 79-10,126.01, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 740.** Introduced by Hansen, 26.

A BILL FOR AN ACT relating to the Unfair Insurance Claims Settlement Practices Act; to amend section 44-1540, Revised Statutes Cumulative Supplement, 2014; to add an unfair claims settlement practice; and to repeal the original section.

**LEGISLATIVE BILL 741.** Introduced by Hansen, 26.

A BILL FOR AN ACT relating to elections; to amend section 32-1524, Reissue Revised Statutes of Nebraska; to change prohibitions related to yard signs; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 742.** Introduced by Hansen, 26.

A BILL FOR AN ACT relating to counties; to amend sections 2-955, 8-157, 23-150, 23-151, 23-1723, 23-1723.01, 23-1732, 23-2503, 23-2518, 23-3502, 23-3582, 29-902.01, 32-221, 32-555, 33-114.01, and 71-1631, Reissue Revised Statutes of Nebraska, section 32-554, Revised Statutes Cumulative Supplement, 2014, and sections 23-148 and 32-528, Revised Statutes Supplement, 2015; to change county population thresholds; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 743.** Introduced by Hansen, 26.

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-121, Reissue Revised Statutes of Nebraska; to clarify compensation for shoulder injuries; and to repeal the original section.

**LEGISLATIVE BILL 744.** Introduced by Watermeier, 1; Kolterman, 24.

A BILL FOR AN ACT relating to adoptions; to provide for communication and contact agreements in private and agency adoptions as prescribed; and to prohibit enforcement of agreements by civil action.

**LEGISLATIVE BILL 745.** Introduced by McCollister, 20; Johnson, 23; Kolowski, 31.

A BILL FOR AN ACT relating to game and parks; to amend section 37-406, Reissue Revised Statutes of Nebraska, and sections 37-327, 37-405, 37-407, 37-415, 37-420, 37-421, 37-421.01, 37-426, 37-438, 37-447, 37-449, 37-450, 37-451, 37-457, 37-484, 37-490, 37-497, and 37-4,111, Revised Statutes Cumulative Supplement, 2014; to change the limit for increasing fees by the Game and Parks Commission; to change provisions relating to permits and permit applications; to change license, permit, stamp, and application fees as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 746.** Introduced by Campbell, 25; Bolz, 29; Coash, 27; Howard, 9; Morfeld, 46; Pansing Brooks, 28.

A BILL FOR AN ACT relating to foster care; to amend sections 43-1311.03 and 43-1312, Revised Statutes Cumulative Supplement, 2014, and sections 43-272.01 and 43-285, Revised Statutes Supplement, 2015; to adopt the Nebraska Strengthening Families Act; to change reporting requirements for guardians ad litem; to change provisions relating to independent living transition proposals and permanency plans; to create the Normalcy Task Force; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 747.** Introduced by Kolterman, 24; Gloor, 35; Stinner, 48.

A BILL FOR AN ACT relating to the Nebraska Capital Expansion Act; to amend section 72-1263, Revised Statutes Cumulative Supplement, 2014; to increase the amount of funds offered to banks and other financial institutions as deposits; and to repeal the original section.

**LEGISLATIVE BILL 748.** Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-194.03, Reissue Revised Statutes of Nebraska; to change provisions relating to limits on bringing alcoholic liquor into the state for personal consumption; and to repeal the original section.

**LEGISLATIVE BILL 749.** Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2716, Revised Statutes Supplement, 2015; to change an income tax exemption for benefits received under the federal Social Security Act; and to repeal the original section.

**LEGISLATIVE BILL 750.** Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-175, 38-190, 38-1,105, 38-1,106, 38-1,121, 38-1,129, 38-1,130, and 38-1,134, Reissue Revised Statutes of Nebraska, sections 38-1,126 and 38-1,127, Revised Statutes Cumulative Supplement, 2014, and sections 38-101 and 71-401, Revised Statutes Supplement, 2015; to provide for confidentiality as prescribed; to provide prohibitions on retaliation as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 751.** Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to banks and banking; to amend sections 8-115.01, 8-117, 8-157, 8-234, 8-374, 8-1510, and 21-1725.01, Reissue Revised Statutes of Nebraska; to provide that payment of certain expenses is

not a condition precedent to certain approvals by the Director of Banking and Finance; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 752.** Introduced by Crawford, 45; Cook, 13; Kolowski, 31; Krist, 10; Morfeld, 46.

A BILL FOR AN ACT relating to education; to create and provide membership and duties for the Adult Career Pathways Task Force; and to provide a termination date.

**LEGISLATIVE BILL 753.** Introduced by Crawford, 45; Bloomfield, 17; Craighead, 6; Garrett, 3; Hansen, 26; Hilkemann, 4; Krist, 10; Morfeld, 46.

A BILL FOR AN ACT relating to the Military Code; to amend section 55-161, Reissue Revised Statutes of Nebraska; to change provisions relating to absence from employment for military purposes; and to repeal the original section.

**LEGISLATIVE BILL 754.** Introduced by Crawford, 45; Craighead, 6; Garrett, 3; Hansen, 26; Krist, 10; Morfeld, 46.

A BILL FOR AN ACT relating to the military; to create the Commission on Military and Veteran Affairs; to provide for membership, terms, duties, expenses, and staff; and to require a report.

**LEGISLATIVE BILL 755.** Introduced by Watermeier, 1.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Board of Trustees of the Nebraska State Colleges.

**LEGISLATIVE BILL 756.** Introduced by Legislative Performance Audit Committee: Watermeier, 1, Chairperson; Krist, 10; Kuehn, 38; Larson, 40; Mello, 5; Scheer, 19; Bolz, 29.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-6103, Reissue Revised Statutes of Nebraska, and section 77-2716, Revised Statutes Supplement, 2015; to terminate the Nebraska long-term care savings plan; to harmonize provisions; to repeal the original sections; to outright repeal sections 77-6101, 77-6102, 77-6104, and 77-6105, Reissue Revised Statutes of Nebraska; and to declare an emergency.

**LEGISLATIVE BILL 757.** Introduced by Brasch, 16.

A BILL FOR AN ACT relating to civil procedure; to amend sections 25-1552 and 25-1556, Reissue Revised Statutes of Nebraska; to change provisions relating to personal property exemptions in cases of forced sale on execution or attachment; and to repeal the original sections.



**LEGISLATIVE BILL 758.** Introduced by Scheer, 19.

A BILL FOR AN ACT relating to insurance; to amend section 21-104, Reissue Revised Statutes of Nebraska, and section 44-8216, Revised Statutes Cumulative Supplement, 2014; to prohibit limited liability companies from operating as insurers; to change provisions relating to special purpose financial captive insurers; and to repeal the original sections.

**LEGISLATIVE BILL 759.** Introduced by Scheer, 19.

A BILL FOR AN ACT relating to bank deposits and collections; to amend section 4-403, Uniform Commercial Code, Reissue Revised Statutes of Nebraska; to change provisions relating to stop-payment orders; to repeal the original section; and to declare an emergency.

**LEGISLATIVE BILL 760.** Introduced by Scheer, 19.

A BILL FOR AN ACT relating to banks and banking; to amend sections 8-318 and 8-345.01, Reissue Revised Statutes of Nebraska, section 8-135, Revised Statutes Cumulative Supplement, 2014, and section 8-157.01, Revised Statutes Supplement, 2015; to update certain references to the federal Electronic Fund Transfer Act; to change an internal reference; and to repeal the original sections.

**LEGISLATIVE BILL 761.** Introduced by Scheer, 19.

A BILL FOR AN ACT relating to the Consumer Rental Purchase Agreement Act; to amend sections 69-2103, 69-2104, and 69-2112, Revised Statutes Cumulative Supplement, 2014; to change and update certain federal references; and to repeal the original sections.

**LEGISLATIVE BILL 762.** Introduced by Kintner, 2; Bloomfield, 17; Coash, 27.

A BILL FOR AN ACT relating to the Tobacco Products Tax Act; to amend section 77-4008, Reissue Revised Statutes of Nebraska; to change the tax on cigars, cheroots, and stogies as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 763.** Introduced by Garrett, 3; Craighead, 6; Krist, 10.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2714.01, 77-2753, and 77-2761, Reissue Revised Statutes of Nebraska, and section 77-2716, Revised Statutes Supplement, 2015; to adopt the Nebraska is Honoring Our Military Exemption Act; to provide an income tax exemption as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 764.** Introduced by Garrett, 3; Bloomfield, 17; Craighead, 6; Crawford, 45; Krist, 10; McCollister, 20.

A BILL FOR AN ACT relating to the Nebraska Code of Military Justice; to amend sections 55-401, 55-402, 55-416, 55-418, 55-419, 55-427, 55-428, and 55-452, Reissue Revised Statutes of Nebraska; to authorize summary discipline for minor offenses as prescribed; to change certain references to the code; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 765.** Introduced by Garrett, 3; Bolz, 29; Craighead, 6; Krist, 10; McCollister, 20.

A BILL FOR AN ACT relating to the Motor Vehicle Certificate of Title Act; to amend section 60-154, Revised Statutes Cumulative Supplement, 2014; to increase original certificate of title fees for vehicles transferred to Nebraska from another state; to provide for distribution of such fees; and to repeal the original section.

**LEGISLATIVE BILL 766.** Introduced by Garrett, 3; Bloomfield, 17; Craighead, 6; Krist, 10.

A BILL FOR AN ACT relating to veterans; to amend section 80-411, Reissue Revised Statutes of Nebraska; to change provisions relating to eligibility for waiver of educational tuition and fees as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 767.** Introduced by Garrett, 3; Craighead, 6; Watermeier, 1.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-332, Reissue Revised Statutes of Nebraska, sections 28-325, 28-326, 28-340, and 38-2021, Revised Statutes Cumulative Supplement, 2014, and section 28-101, Revised Statutes Supplement, 2015; to prohibit dismemberment abortion as prescribed; to define a term; to provide for a disciplinary proceeding, for civil damages, for a criminal penalty; and a savings clause; to harmonize provisions; to provide for severability; and to repeal the original sections.

**LEGISLATIVE BILL 768.** Introduced by Garrett, 3; Craighead, 6; Krist, 10.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-301, 60-393, 60-395, 60-396, 60-3,104, and 60-3,130.04, Revised Statutes Supplement, 2015; to provide for Choose Life License Plates; to create a fund; to provide for grants to certain organizations; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 769.** Introduced by Garrett, 3; Craighead, 6; Groene, 42; Watermeier, 1.

A BILL FOR AN ACT relating to firearms; to amend sections 28-1204.02, 69-2441, and 79-283, Reissue Revised Statutes of Nebraska, and section 29-820, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to forfeited or abandoned firearms; to eliminate certain state-wide restrictions and penalties on the carrying of firearms; to repeal the original sections; and to outright repeal section 79-263, Reissue Revised Statutes of Nebraska, and sections 28-1204.03 and 28-1204.04, Revised Statutes Cumulative Supplement, 2014.

**LEGISLATIVE BILL 770.** Introduced by Groene, 42; Gloor, 35.

A BILL FOR AN ACT relating to the Nebraska Exchange Transparency Act; to amend sections 44-8703 and 44-8706, Revised Statutes Cumulative Supplement, 2014; to change the termination date of the act and the terms of certain commission members; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 771.** Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to the Securities Act of Nebraska; to amend sections 8-1106 and 8-1108.02, Revised Statutes Supplement, 2015; to change provisions relating to registration by coordination and federal covered securities; and to repeal the original sections.

#### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 378CA.** Introduced by Kuehn, 38.

THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2016 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To add a new section 26 to Article XV:

XV-26 (1) To protect agriculture as a vital sector of Nebraska's economy, which provides food, energy, health benefits, and security and is the foundation and stabilizing force of Nebraska's economy, the rights of citizens and lawful residents of Nebraska to engage in farming and ranching practices shall be forever guaranteed in this state, and the Legislature shall pass no law which abridges the right of citizens and lawful residents of Nebraska to employ agricultural technology and livestock production and ranching practices without a compelling state interest.

(2) This section shall not be construed to modify any provision of law relating to trespass, eminent domain, dominance of mineral interests, easements, rights of way, or any other property rights.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to guarantee the right to engage in certain farming and ranching practices.

For

Against.

**LEGISLATIVE RESOLUTION 379CA.** Introduced by Bloomfield, 17.

THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2016 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To add a new section 12 to Article XVII:

XVII-12 (1) For purposes of this section, state elective office means the office of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, member of the Legislature, and member of a board or commission established by this Constitution with one or more election districts of more than one county.

(2) Any official elected or appointed to a state elective office may be recalled from office at any time through the procedure and in the manner provided for by law. The procedure shall be known as recall and shall be in addition to any other method of removal from office provided by this Constitution.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to provide for recall of holders of state elective office as prescribed by law.

For

Against.

**LEGISLATIVE RESOLUTION 380CA.** Introduced by Bloomfield, 17.

THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION, RESOLVE THAT:

Section 1. At the general election in November 2016 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, section 24:

III-24 (1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises

which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) ~~Twenty-six~~~~Forty-four~~ and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) ~~Sixty-five~~~~Forty-four~~ and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) ~~Seven and one-half~~~~Ten~~ percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ~~seven and one-half~~~~ten~~ percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to change the distribution of state lottery proceeds.

For

Against.

**LEGISLATIVE RESOLUTION 381.** Introduced by Ebke, 32; Craighead, 6; Fox, 7; Friesen, 34; Groene, 42; Lindstrom, 18; Scheer, 19; Schnoor, 15; Smith, 14; Watermeier, 1.

WHEREAS, The first Congress of the United States, at its first session, held in New York, New York, on the twenty-fifth day of September, in the year one thousand seven hundred and eighty-nine, passed the following resolution to amend the Constitution of the United States of America, in the following words and figures in part, to wit:

The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government will best ensure the beneficent ends of its institution;

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

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

1. That such proposed amendment to the Constitution of the United States be ratified.

2. That the Clerk of the Legislature send copies of this resolution to the Administrator of the General Services Administration, the President of the United States Senate, and the Speaker of the United States House of Representatives.

**LEGISLATIVE RESOLUTION 382.** Introduced by Gloor, 35; Friesen, 34.

WHEREAS, the Case New Holland America, LLC manufacturing facility in Grand Island has achieved 50 years of producing industry leading agricultural equipment; and

WHEREAS, the facility in Grand Island was created out of a need for locally built, highly productive, and superior quality harvesting machinery; and

WHEREAS, it first opened for operation in October, 1965, and has continued to expand to meet customer needs for 50 years; and

WHEREAS, the first product lines launched from the Grand Island facility were Sperry New Holland 980 and 990 combines; and

WHEREAS, the first combine rolled off the production line on November 22, 1965; and

WHEREAS, Case New Holland America, LLC has continually improved and expanded its world class manufacturing operations through the hard work and dedication of the employees working at the Grand Island facility.

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

1. That the Legislature congratulates Case New Holland America, LLC in Grand Island on achieving the milestone of producing industry leading agricultural equipment for 50 years and commends them on their achievements.

2. That a copy of this resolution be sent to Case New Holland America, LLC in Grand Island and Operations Manager William Baasch.

Laid over.

**LEGISLATIVE RESOLUTION 383.** Introduced by Brasch, 16.

WHEREAS, Darcey Simonsen, a senior at Lyons-Decatur Northeast High School, won third place in the discus at the 2015 Class D Girls State Track and Field Championship; and

WHEREAS, in addition to track and field, Darcey was also involved in volleyball, basketball, and dance; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Darcey Simonsen on winning third place in the discus at the 2015 Class D Girls State Track and Field Championship.

2. That a copy of this resolution be sent to Darcey Simonsen.

Laid over.

**LEGISLATIVE RESOLUTION 384.** Introduced by Brasch, 16.

WHEREAS, the 3200 meter relay team from Wisner-Pilger High School won second place at the 2015 Class C Boys State Track and Field Championship with a time of 8:11:41; and

WHEREAS, members of the relay team included Samuel Ferguson, Cooper Von Seggern, Riley Ruskamp, and Jacob Von Seggern; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates the 3200 meter relay team from Wisner-Pilger High School on winning second place at the 2015 Class C Boys State Track and Field Championship.

2. That a copy of this resolution be sent to Samuel Ferguson, Cooper Von Seggern, Riley Ruskamp, and Jacob Von Seggern.

Laid over.

**LEGISLATIVE RESOLUTION 385.** Introduced by Brasch, 16.

WHEREAS, Alexander Tietz, a senior at Fort Calhoun High School, won second place in the 3200 meter run at the 2015 Class B Boys State Track and Field Championship; and

WHEREAS, Alexander also won third place in the 1600 meter run at the state track and field championship; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Alexander Tietz on winning second place in the 3200 meter run and third place in the 1600 Meter Run at the 2015 Class B Boys State Track and Field Championship.

2. That a copy of this resolution be sent to Alexander Tietz.

Laid over.

**LEGISLATIVE RESOLUTION 386.** Introduced by Brasch, 16.

WHEREAS, Ashleigh Carr, a senior at Oakland-Craig High School, won third place in both the 200 meter dash and 400 meter dash at the 2015 Class C Girls State Track and Field Championship; and

WHEREAS, Ashleigh's performance helped lead the Oakland-Craig Knights to a fourth place team finish and earn a team score of 36 points; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Ashleigh Carr on winning third place in both the 200 meter dash and 400 meter dash at the 2015 Class C Girls State Track and Field Championship.



2. That a copy of this resolution be sent to Ashleigh Carr.

Laid over.

**LEGISLATIVE RESOLUTION 387.** Introduced by Brasch, 16.

WHEREAS, Bancroft-Rosalie Elementary School was recognized as a 2015 National Blue Ribbon School by the United States Department of Education; and

WHEREAS, the Blue Ribbon Schools Program honors public and private elementary, middle, and high schools that are exemplary, high-performing schools or that have improved student achievement to high levels, especially among disadvantaged and minority students; and

WHEREAS, Bancroft-Rosalie High School was ranked 253 out of the 500 schools on Newsweek's 2015 "Beating the Odds" list; and

WHEREAS, Newsweek's rankings aim to identify public high schools across the United States that excel at preparing students for college while overcoming the obstacles posed by socioeconomic inequality; and

WHEREAS, Bancroft-Rosalie High School ranked in the 81st percentile for college readiness and achieved 100 percent in the categories of student retention, graduation rate, and percentage of students who go to college; and

WHEREAS, Bancroft-Rosalie Public School was the only Nebraska school to achieve recognition as both a Blue Ribbon and "Beating the Odds" school; and

WHEREAS, these achievements are a testament to the dedication of the students of Bancroft-Rosalie Public School, as well as the commitment of the faculty and staff to providing the best educational opportunities for their students.

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

1. That the Legislature congratulates the students, faculty, and staff of Bancroft-Rosalie Public School on their admirable achievements and applauds their dedication to a high standard of education.

2. That the Legislature recognizes the superior administration of Superintendent and Elementary School Principal Dr. Jon Cerny and Principal Mike Sjuts and thanks them for their commitment to their students.

3. That a copy of this resolution be sent to Bancroft-Rosalie Public School, Dr. Jon Cerny, and Mike Sjuts.

Laid over.

**LEGISLATIVE RESOLUTION 388.** Introduced by Brasch, 16; Baker, 30; Bloomfield, 17; Bolz, 29; Campbell, 25; Coash, 27; Cook, 13; Craighead, 6; Crawford, 45; Davis, 43; Ebke, 32; Fox, 7; Friesen, 34; Garrett, 3; Gloor, 35; Groene, 42; Haar, K., 21; Hadley, 37; Hansen, 26; Harr, B., 8; Hilkemann, 4; Howard, 9; Hughes, 44; Johnson, 23; Kintner, 2; Kolowski, 31; Kolterman, 24; Krist, 10; Kuehn, 38; Larson, 40; Lindstrom, 18; McCollister, 20; McCoy, 39; Mello, 5; Morfeld, 46; Murante, 49; Pansing Brooks, 28; Riepe, 12; Scheer, 19; Schnoor, 15; Schumacher, 22; Seiler, 33; Smith, 14; Stinner, 48; Sullivan, 41; Watermeier, 1; Williams, 36.

WHEREAS, Joseph G. Lemm, a technical sergeant with the 105th Security Forces Squadron of the New York Air National Guard, died on December 21, 2015, from wounds he received while serving his country in Afghanistan; and

WHEREAS, Joseph served three tours of duty in both Iraq and Afghanistan. Throughout his military service, he received numerous awards and commendations including a Purple Heart. He will be posthumously awarded the Bronze Star with Valor; and

WHEREAS, Joseph was also a 16-year veteran of the New York City Police Department with over 590 arrests to his credit. After serving in the 48th Precinct and Bronx Street Crime Unit, Joseph was promoted to detective as a member of the Bronx Warrant Squad; and

WHEREAS, as a police officer, Joseph spent three weeks at Ground Zero after the terrorist attacks on September 11, 2001, working over eighteen hours a day searching for survivors; and

WHEREAS, Joseph was a 1989 graduate of Beemer High School where he excelled as an athlete in football, basketball, and track; and

WHEREAS, Joseph leaves behind his wife Christine, daughter Brooke, and son Ryan.

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

1. That the Legislature honors Joseph G. Lemm for his service to his community, country, and the world and extends its deep sympathy to his family.
2. That a copy of this resolution be sent to the family of Joseph G. Lemm.

Laid over.

#### **BILL ON FIRST READING**

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

**LEGISLATIVE BILL 772.** Introduced by Schumacher, 22.

A BILL FOR AN ACT relating to the Insurance Holding Company System Act; to amend sections 44-2120, 44-2121, 44-2138, and 44-9004, Revised Statutes Cumulative Supplement, 2014; to define terms; to provide for

group-wide supervisors and international insurance groups as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

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

Campbell, Stinner, Kolowski, Garrett, Scheer, Hansen, Mello, Morfeld, Pansing Brooks, Howard - LB166

**VISITORS**

Visitors to the Chamber were Rod Edwards; Senator Mello's parents, John and Cheri Mello from Omaha; and Gerald Sullivan and Bob Benzel from Omaha.

The Doctor of the Day was Dr. Bob Rauner from Lincoln.

**ADJOURNMENT**

At 11:57 a.m., on a motion by Senator Bloomfield, the Legislature adjourned until 10:00 a.m., Thursday, January 7, 2016.

Patrick J. O'Donnell  
Clerk of the Legislature

