

THIRTEENTH DAY - JANUARY 26, 2010**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION****THIRTEENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, January 26, 2010

PRAYER

The prayer was offered by Senator Sullivan.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Cook and Mello who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the twelfth day was approved.

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

LB/LR	Committee
LB961	Business and Labor
LB1074	Banking, Commerce and Insurance

(Signed) John Wightman, Chairperson
Executive Board

COMMITTEE REPORTS

Banking, Commerce and Insurance

LEGISLATIVE BILL 738. Placed on General File.

LEGISLATIVE BILL 762. Placed on General File.

LEGISLATIVE BILL 814. Placed on General File.

(Signed) Rich Pahls, Chairperson

NOTICE OF COMMITTEE HEARINGS

Revenue

Room 1524

Wednesday, February 3, 2010 1:30 p.m.

LB983
LB1002
LB1073
LB1081

Thursday, February 4, 2010 1:30 p.m.

LB972
LB976
LB1008
LB1078
LB1097

Friday, February 5, 2010 1:30 p.m.

LB837
LB1079
LR271CA

Wednesday, February 10, 2010 1:30 p.m.

LB704
LB774
LB1049
LB1080

Thursday, February 11, 2010 1:30 p.m.

LB952
LB975
LB1018

Wednesday, February 17, 2010 1:30 p.m.

LB779
LB789
LB851

Thursday, February 18, 2010 1:30 p.m.

LB1031
LB1032
LB1077
LB1107

Friday, February 19, 2010 1:30 p.m.

LB775
LB796
LB1052
LB1108

Wednesday, February 24, 2010 1:30 p.m.

LB954
LB967
LB981
LB1053

Thursday, February 25, 2010 1:30 p.m.

LB802
LB917
LB1066

(Signed) Abbie Cornett, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 10003

DATE: January 25, 2010

SUBJECT: LB 691; Exercise of Personal Jurisdiction Over
Unlicensed Persons Who Engage in Activities
Described in Neb. Rev. Stat. § 81-885.01(2).

REQUESTED BY: Senator Chris Langemeier
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested our opinion regarding the State of Nebraska's authority to exercise personal jurisdiction over unlicensed persons who engage in those activities described in Neb. Rev. Stat. § 81-885.01(2). You have introduced LB 691 which would authorize the State Real Estate

Commission to issue cease and desist orders and impose civil fines on violators of Neb. Rev. Stat. § 81-885.03. That statute provides that committing any single act described in Neb. Rev. Stat. § 81-885.01(2) without being licensed under the Nebraska Real Estate License Act constitutes a violation of the Act. LB 691 would also provide that "any such action shall constitute sufficient contact with the state for the exercise of personal jurisdiction over such person. . . ." Your specific question for our office is whether committing an act described in § 81-885.01(2) is "sufficient contact or activity in the state for the State of Nebraska to exercise personal jurisdiction over unlicensed persons", particularly if that unlicensed person is a nonresident.

A Nebraska court resolving issues of personal jurisdiction would engage in a two-part analysis. First, the court would determine if, under the Nebraska long-arm statute, there is jurisdiction over the nonresident defendant. Second, if Nebraska law provides a basis for such jurisdiction, the court would then decide whether the exercise of personal jurisdiction over the defendant comports with the federal constitutional due process requirements. *Williams v. Gould, Inc.*, 232 Neb. 862, 443 N.W.2d 577 (1989).

Nebraska's long-arm statute appears at Neb. Rev. Stat. § 25-536 (2008) and provides as follows:

A court may exercise personal jurisdiction over a person:

(1) Who acts directly or by an agent, as to a cause of action arising from the person:

- (a) Transacting any business in this state;
- (b) Contracting to supply services or things in this state;
- (c) Causing tortious injury by an act or omission in this state;
- (d) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state;
- (e) Having an interest in, using, or possessing real property in this state; or
- (f) Contracting to insure any person, property, or risk located within this state at the time of contracting; or

(2) Who has any other contact with or maintains any other relation to this state to afford a basis for the exercise of personal jurisdiction consistent with the Constitution of the United States.

We first note that, in § 25-536(2), the Legislature has explicitly extended Nebraska's jurisdiction over nonresident defendants as far as the U.S. Constitution permits. Second, a nonresident who commits an act described in § 81-885.01(2), such as advertising or listing Nebraska real estate owned by another for some form of compensation, may fall within Neb. Rev. Stat. § 25-536(1)(a) or (b) depending upon the factual circumstances. Finally, the proposed language of LB 691, which would amend § 81-885.03 to provide

that "such action shall constitute sufficient contact with the state for the exercise of personal jurisdiction over such person" appears to add a statutory standard for the exercise of long-arm jurisdiction to those standards found in § 25-536. For these reasons it appears likely that, if LB 691 were enacted, the State would be able to establish the first prong of the two-step analysis described above.

Once a court has concluded that statutory long-arm provisions have been satisfied, it would then determine whether the exercise of jurisdiction over a nonresident defendant would comport with federal due process. The due process clause limits the exercise of personal jurisdiction to persons having certain "minimum contacts" with the forum state so that maintenance of the action does not offend notions of fair play and substantial justice. *Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 316, 66 S. Ct. 154 (1945); *Best Van Lines v. Walker*, 490 F.3d 239, 242 (2d Cir. 2007). Essential to the exercise of personal jurisdiction in each case is "some act by which the defendant purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S. Ct. 1228 (1958)). To establish personal jurisdiction, plaintiffs must demonstrate either specific jurisdiction, if the suit arises from the defendant's contacts with the forum, or general jurisdiction – that is, jurisdiction irrespective of whether the claim arises from or relates to the defendant's forum contacts – based on the defendant's "continuous and systematic" contacts with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16, 104 S. Ct. 1868 (1984).

You acknowledge in your opinion request that the exercise of personal jurisdiction over a nonresident who commits an act described in § 81-885.01(2) will "be contingent upon the extent of the activities or contacts the person. . .has with the State of Nebraska" and that "this would differ on a case by case basis. . . ." We agree. With your reference to an unlicensed person who offers Nebraska real estate for sale through advertising or listings on print or electronic media, including the internet, we assume you have some concern with exercising jurisdiction over a nonresident who has no physical ties to Nebraska and whose contacts may not be considered substantial and continuous. In that regard, we note that the U.S. Supreme Court in *Burger King Corp. v. Rudzewicz* stated that the "purposeful availment" requirement "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random', 'fortuitous,' or 'attenuated' contacts. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a 'substantial connection' with the forum state. . . ." 471 U.S. at 475-76 (citations omitted) (emphasis in original). The court further stated that "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines" so that the focus of a court's inquiry is whether "a commercial actor's

efforts are 'purposefully directed' toward residents of another State." 471 U.S. at 476.

The Burger King Corp. decision is discussed at some length by the Nebraska Supreme Court in *Quality Pork International v. Rupari Food Services, Inc.*, 267 Neb. 474, 675 N.W.2d 642 (2004). In both *Burger King Corp.* and *Quality Pork International*, the defendant had no physical presence in the forum state. Yet, both defendants were found to have the necessary minimum contacts with the forum state by purposefully directing their activities toward the forum state's residents.

Although the exercise of personal jurisdiction over an unlicensed nonresident who violates Neb. Rev. Stat. § 81-885.03 would differ on a case by case basis, a Nebraska court would likely find that those nonresidents have the necessary minimum contacts with Nebraska in some circumstances. Based upon our general discussion of long-arm jurisdiction above, we believe that the proposed language of LB 691 would aid the State Real Estate Commission in establishing the first prong of the analysis and that sufficient contacts would exist in certain factual situations to meet the second prong of the analysis and justify the exercise of personal jurisdiction.

Sincerely,
 JON BRUNING
 Attorney General
 (Signed) Lynn A. Melson
 Assistant Attorney General

cc: Patrick J. O'Donnell
 Clerk of the Legislature
 09-122-20

Opinion 10005

DATE: January 25, 2010

SUBJECT: Sale or transfer of carbon sequestration rights on land owned and managed by the Board of Educational Lands and Funds

REQUESTED BY: Senator Ken Haar
 Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
 Charles E. Lowe, Assistant Attorney General

Section 2 of LB 235, currently pending on general file in the 101st Legislature, would allow the Board of Educational Lands and Funds ("BELF") to "enter into contracts for the sale of carbon sequestration rights, also referred to as exchange soil offsets, under such terms and conditions as

the board shall deem appropriate for durations not exceeding ten years." In this context you have asked this office for its opinion as to whether or not carbon sequestration rights on land owned and managed by BELF are minerals or natural resources within the meaning of Neb. Const. art. III, § 20 and, if so, whether or not that constitutional provision "prohibit[s] BELF from transferring carbon sequestration rights to its lessees."

Discussion

Carbon Sequestration and Carbon Sequestration Rights

In order to respond to your inquiries it is first necessary to have an understanding of what "carbon sequestration" and "carbon sequestration rights" are. These are both terms that have come into some prominence because of efforts to reduce or limit the amount of greenhouse gases, primarily carbon dioxide, that are released into the atmosphere by human activities.

We have found nothing in the Nebraska statutes or Nebraska case law that defines or describes in any detail "carbon sequestration." Neb. Rev. Stat. § 2-5301 (2007), in stating the legislative intent for enactment of a scheme to assess agricultural lands in the state for past carbon sequestration and future carbon sequestration potential and to set up an advisory committee on the subject, provides only the following very general description: "Improved agricultural production methods, soil conservation practices, and other methods of stewardship of soil resources have great potential to increase carbon sequestration on agricultural lands and help offset carbon dioxide emissions from other sectors of the economy."

Other sources have more specific definitions of "carbon sequestration." For example, the Pennsylvania Climate Change Act states that, for purposes of that act, carbon sequestration is: "The long-term storage of carbon or carbon dioxide in forests, forest products, soils, oceans or underground in depleted oil and gas reservoirs, coal seams and saline aquifers." 71 Pa. Cons. Stat. § 1361.2 (2009). A private company involved in carbon sequestration projects in Australia has provided a similar definition: "Carbon sequestration means the long-term storage of carbon or CO₂ in the forests, soils, oceans or underground in depleted oil and gas reservoirs, coal seams and saline aquifers." www.greeningthedesert.com/glossary.htm (last visited on 12/14/09).

Assuming that underground storage of carbon and carbon dioxide is not what is contemplated by LB 235 and your inquiries, we believe that the following definition set forth by the government of the state of Western Australia in a pamphlet called "Carbon rights in WA – a new interest in the land" (2005) is most apt: "Carbon sequestration in this instance means the absorption from the atmosphere of carbon dioxide by vegetation and soils; and the storage of carbon in vegetation and soils." *Id.* at 1 (found at http://www.agric.wa.gov.au/objtwr/imported_assets (lasted visited on

12/28/09)). Another, similar definition of "carbon sequestration" is: "The uptake and storage of atmospheric carbon in, for example, soil and vegetation." McGraw-Hill Dictionary of Scientific and Technical Terms (6th ed.), found at <http://www.answers.com/topic/carbon-sequestration> (last visited on 12/16/09).

A "carbon sequestration right" in relation to land means a right conferred on a person, by agreement, statute or otherwise, to the legal, commercial or other benefit of carbon sequestration (present or future) on any given parcel of land. See, Tasmanian Forestry Rights Registration Act of 1990, § 3 (found at <http://www.thelaw.tas.gov.au/print/index.w3p> (last visited on 12/11/09)); www.greeningthedesert.com/glossary.htm (last visited on 12/14/09). In other words, a "carbon sequestration right" is the right to the benefit of the absorption and storage of carbon dioxide and carbon by the vegetation and soils on any given parcel of land. Carbon sequestration rights may have financial value where a market exists for greenhouse gas emission offsets.

A Guide called "Soil Carbon Sequestration Contracts" published by University of Missouri Extension in September, 2009 (found at <http://extension.missouri.edu/publications/DisplayPub.aspx?> (last visited on 12/14/09)) sets forth the following discussion which is helpful in understanding what LB 235 seeks to achieve and the questions you have posed in that context:

Agriculture has become a player in world greenhouse gas markets by providing carbon credits in the form of soil sequestration (crop and rangeland), methane capture and forest sequestration. In order to provide these carbon credits, agricultural producers enter into a contractual arrangement with the market. Within the framework of the carbon credit market, soil sequestered carbon credits are referred to as exchange soil offsets.

The parties involved in soil carbon sequestration contracts are the farmer [or non-farming landowner], the aggregator and the market. . . . [T]he term "farmer" . . . refer[s] to the person actually providing the carbon offset to the market. A nonfarming landowner can also enter into a contract to supply carbon offsets as long as he ensures that the one farming his land complies with the specifications of the contract. Aggregators are businesses that assemble many small providers of soil carbon offsets, then register and sell those offsets on the market. Currently the major, but not sole, market in the United States is the Chicago Climate Exchange. . . .

The contracts offered by aggregators to farmers must follow the rules of the Chicago Climate Exchange (CCX) for exchange soil offsets (XSO's).

Id. at 1 (emphasis in original).

Carbon Sequestration and Neb. Const. art. III, § 20

With the foregoing understanding of the terms "carbon sequestration" and "carbon sequestration right" and of the marketing of carbon offsets, we turn to your question as to whether or not carbon sequestration rights fall within Neb. Const. art. III, § 20.

In full, Neb. Const. art. III, § 20 reads as follows: "The salt springs, coal, oil, minerals, or other natural resources on or contained in the land belonging to the state shall never be alienated; but provision may be made by law for the leasing or development of the same." There are but a handful of Nebraska cases dealing with this constitutional provision; and none of them provide any useful guidance in determining whether rights to the benefit of carbon sequestration occurring in soil and vegetation on state-owned lands fall within its parameters. The drafters of the amendment which became art. III, § 20 simply stated that the purpose of the provision was "to preserve to the people of the state the benefit of the remaining natural resources belonging to the state." Proceedings of the Constitutional Convention 1919-20, vol. II, p. 2842. There is no further explanation.

Nevertheless, it is readily apparent that carbon sequestered in soil and vegetation on state lands is neither "salt springs," "coal" nor "oil" as those terms are commonly understood. Therefore, carbon sequestration rights are not implicated by those items listed in art. III, § 20.

Likewise, we do not believe that atmospheric carbon stored in soil and vegetation as described above could fairly be understood to be a "mineral" on state land. The word "mineral" is generally defined as "an inorganic substance occurring naturally in the earth and having a consistent and distinctive set of physical properties (e.g., color, hardness, and crystalline structure) and a composition that can be expressed by a chemical formula." Webster's New Universal Unabridged Dictionary (2d ed. 1983) at 1145. Atmospheric carbon sequestered in soil and vegetation would not, we think, fall within this definition and would not have been thought of as a "mineral" by the Nebraska voters who approved the inclusion of art. III, § 20 in the state constitution. Accordingly, the "alienation" of carbon sequestration rights on state-owned lands is not prohibited by the "minerals" provision of art. III, § 20.

The question of whether carbon sequestration rights are "other natural resources on or contained in the land belonging to the state" is more difficult, especially since we have found no case law precedent addressing this or any similar issue. We have, however, concluded that it is most likely that carbon sequestration rights would not be deemed by a court to be "natural resources," as that term is used in Neb. Const. art. III, § 20.

Initially, from an overall reading of art. III, § 20 it seems to us that the drafters and ratifiers of that provision would not have been contemplating that the rights to the retention of atmospheric carbon on a parcel of land

owned by the state would themselves be natural resources. Rather, by specifically referring to salt springs, coal, oil and minerals and by referring to leasing and development in the second clause of art. III, § 20, it appears that that section is addressed to natural resources that can be extracted from the land (and which are irreplaceable on the land) and/or used on the land in a commercially viable manner. See, *State ex rel. Central Realty & Investment Co. v. McMullen*, 119 Neb. 739, 742, 230 N.W. 677, 678 (1930) (stating that the purpose of art. III, § 20 "was to prevent the alienation by the state of salt springs of commercial value").

Additionally, while the term "natural resources" can certainly have a broad meaning as "those actual and potential forms of wealth supplied by nature," Webster's New Universal Unabridged Dictionary (2d ed. 1983) at 1197, we think the structure of art. III, § 20 limits that definition in that context. There is a familiar rule of statutory and constitutional construction that is referred to by the courts as "ejusdem generis." This rule is described as follows:

Under the "ejusdem generis" canon of construction, when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed. *Dykes v. Scotts Bluff Cty. Ag. Socy.*, 260 Neb. 375, 617 N.W.2d 817 (2000). Thus, under the "ejusdem generis" rule, specific words or terms modify and restrict the interpretation of general words or terms where both are used in sequence. *Id.*

Nebraska Liquor Distributors, Inc. v. Nebraska Liquor Control Commission, 269 Neb. 401, 410, 693 N.W.2d 539, 547 (2005). *Accord, Kuhn v. Wells Fargo Bank of Nebraska, N.A.*, 278 Neb. 428,445-46, 771 N.W.2d 103, 118-19 (2009).

Applying the ejusdem generis principle to art. III, § 20 it appears to us that the term "natural resources" in that provision is to be limited so as to include only "things of the same type" as salt springs, coal, oil and minerals. These all appear to be resources that obtain their value from the fact that they can be extracted from the land and sold in a commercially viable manner or used on the land in such manner. The items specifically listed in art. III, § 20 are all such that once they are removed from a tract of land, they no longer exist on the land, nor can they be replaced. This interpretation of the term "natural resources" in art. III, § 20 is supported by the fact that that section specifically permits the "leasing or development" of those items which cannot be "alienated."

It seems to us that carbon sequestered on a parcel of land does not fit within those parameters. The value of carbon sequestration rights lies not in the fact that atmospheric carbon stored in the soil and vegetation can be released through certain human activities but, rather, from the fact that atmospheric carbon can be, and is, absorbed and retained in the soil and vegetation. Carbon sequestration, therefore, does not appear to be a "thing"

of the "same type" as salt springs, coal, oil and minerals and is not a "natural resource" contained in the land as that term is used in the constitutional provision. In our view carbon sequestration rights do not appear to come within the purview of Neb. Const. art. III, § 20.

"Alienation" of Natural Resources under Neb. Const. art. III, § 20

In your letter to this office you ask whether, if carbon sequestration rights are covered by Neb. Const. art. III, § 20, that constitutional provision "prohibits BELF from transferring carbon sequestration rights to its lessees." While it is our opinion that carbon sequestration rights are not encompassed within the prohibitions of art. III, § 20, we will address this question assuming, for the sake of discussion, that a court disagrees with our conclusion and determines that carbon sequestration rights are "natural resources" within the meaning of the constitutional provision.

It is somewhat difficult to reply to your second question because you do not define what you mean by "transferring" the carbon sequestration rights to BELF's lessees. Since "lessees" are, by definition, possessors of the land pursuant to term-limited lease agreements, we will assume that you mean any transfer of rights to lessees would last only as long as the leases themselves and would not be an outright sale of the carbon sequestration rights for all time. We also note that pending LB 235 would allow the "sale" of carbon sequestration rights by BELF "for durations not exceeding ten years."

The key issue here is whether the term-limited "transfer" or "sale" of carbon sequestration rights on BELF lands amounts to an "alienation" of such rights under Neb. Const. art. III, § 20. As discussed above, there is little case law involving that constitutional provision and none that directly addresses the meaning of the word "alienated" as used therein. The Nebraska Supreme Court has, however, said that when the constitution was amended in 1920 and art. III, § 20 was added it made it illegal "to deed away" mineral rights on school lands. *Reavis v. State*, 140 Neb. 442, 447-48, 300 N.W. 344, 346 (1941).

In *Butler v. Fitzgerald*, 43 Neb. 192, 204, 61 N.W. 640 (1895), the supreme court discussed the word "alienate" as used in connection with property generally.

The word "alienate" means: "To transfer property to another; to make a thing another man's. In common law to alienate realty is voluntarily to part with ownership in it, by bargain and sale, conveyance, gift or will." "Alienation" means: "An act whereby one man transfers the property and possession of lands, tenements, or other things to another." (Quoting from *Anderson's Law Dictionary*.)

See also, *Hiles v. Benton*, 111 Neb. 557, 561-62, 196 N.W. 903, 904 (1924) (quoting 2 C.J. 1035 as saying that the definition of "alienation" includes

"the voluntary and complete transfer of property from one person to another").

When the foregoing common law definitions of "alienate" are considered in light of the court's declaration that art. III, § 20 is meant to prevent the state from "deed[ing] away" the items listed in the constitutional provision, it must be concluded that what is prohibited is the permanent sale and transfer of those particular natural resources. This conclusion is reinforced by the language of art. III, § 20 that specifically permits the "leasing or development" of these resources.

It appears from both the language of LB 235 and your letter that what is contemplated is not a permanent sale or transfer of the right to benefit from carbon sequestration occurring in the soil and vegetation on BELF-managed property. Rather, as noted above, the carbon sequestration rights (or exchange soil credits) would simply be "transferred" or "sold" for a limited period of time. Ultimately, such rights would come back to the "owner" of the land – the people of the state through BELF. If our understanding in this regard is correct, it is unlikely that the "alienation" prohibited by art. III, § 20 would take place. Thus, such arrangements would not be in violation of that constitutional provision.

Conclusion

In response to the two questions you have posed it is our opinion that: (1) carbon sequestration rights (or exchange carbon offsets) are not minerals or natural resources for purposes of Neb. Const. art. III, § 20 and (2) even if carbon sequestration rights were deemed to be "natural resources" within the meaning of art. III, § 20, the time-limited "sale" or "transfer" of such rights, as contemplated by LB 235 and your inquiry, would not be considered an "alienation" of those rights prohibited by the constitutional provision.

Sincerely yours,
JON BRUNING
Attorney General
(Signed) Charles E. Lowe
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature
17-079-20

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 290, 291, and 293 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 290, 291, and 293.

GENERAL FILE

LEGISLATIVE BILL 579. Title read. Considered.

Committee AM1323, found on page 1771, First Session, 2009, was considered.

Senator Cornett renewed her amendment, AM1566, found on page 347, to the committee amendment.

The Cornett amendment was adopted with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 43 ayes, 0 nays, 3 present and not voting, and 3 excused and not voting.

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

LEGISLATIVE BILL 690. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 691. Title read. Considered.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 9 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 736. Title read. Considered.

SENATOR ROBERT PRESIDING

Advanced to Enrollment and Review Initial with 31 ayes, 1 nay, 13 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 751. Title read. Considered.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 650. Title read. Considered.

Committee AM1582, found on page 275, was considered.

Senator Christensen renewed his amendment, AM1593, found on page 347, to the committee amendment.

The Christensen amendment was adopted with 37 ayes, 0 nays, 9 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 37 ayes, 0 nays, 9 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 9 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 698. Title read. Considered.

SENATOR STUTHMAN PRESIDING

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 226. Title read. Considered.

Committee AM1590, found on page 309, was considered.

Senator Rogert offered the following amendment to the committee amendment:

AM1633

(Amendments to Standing Committee amendments, AM1590)

- 1 1. On page 1, line 11, after "age" insert "and who is not
- 2 a ward of the state"; and in line 22 after "older" insert "and who
- 3 is not a ward of the state".

Pending.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 183. Placed on Final Reading.

LEGISLATIVE BILL 254. Placed on Final Reading.

LEGISLATIVE BILL 261. Placed on Final Reading.

LEGISLATIVE BILL 325. Placed on Final Reading.

ST9066

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

1. In the E & R amendments, ER8138, on page 9, line 17, the first "and" has been struck and "and 32-1002," has been inserted after the second comma; in line 20 the second "and" has been struck; and in line 21 "and 32-1002," has been inserted after the first comma.

LEGISLATIVE BILL 522. Placed on Final Reading.

(Signed) Jeremy Nordquist, Chairperson

COMMITTEE REPORTS

Government, Military and Veterans Affairs

LEGISLATIVE BILL 721. Placed on General File.

LEGISLATIVE BILL 722. Placed on General File with amendment.
AM1616

- 1 1. On page 5, line 23; and page 6, lines 2 and 4, after
- 2 "building" insert "or land".

LEGISLATIVE BILL 791. Placed on General File with amendment.
AM1617

- 1 1. Insert the following new sections:
- 2 Sec. 2. Section 21-2003, Revised Statutes Supplement,
- 3 2009, is amended to read:
- 4 21-2003 (1) A document shall satisfy the requirements of
- 5 this section and of any other provision of law that adds to or
- 6 varies these requirements to be entitled to filing by the Secretary
- 7 of State.
- 8 (2) The Business Corporation Act shall require or permit
- 9 filing the document in the office of the Secretary of State.
- 10 (3) The document shall contain the information required
- 11 by the act. It may contain other information as well.
- 12 (4) The document shall be typewritten or printed.
- 13 (5) The document shall be in the English language. A
- 14 corporate name shall not be required to be in English if written
- 15 in English letters or Arabic or Roman numerals. The certificate of
- 16 existence required of foreign corporations shall not be required to
- 17 be in English if accompanied by a reasonably authenticated English
- 18 translation.
- 19 (6) The document shall be executed:
- 20 (a) By the chairperson of the board of directors of a
- 21 domestic or foreign corporation, by its president, or by another of
- 22 its officers;
- 23 (b) If directors have not been selected or the
- 1 corporation has not been formed, by an incorporator; or
- 2 (c) If the corporation is in the hands of a receiver,
- 3 trustee, or other court-appointed fiduciary, by that fiduciary.
- 4 (7) The person executing the document shall sign it and
- 5 state beneath or opposite his or her signature his or her name

6 and the capacity in which he or she signs. The document may, but
 7 shall not be required to, contain (a) the corporate seal, (b) an
 8 attestation by the secretary or an assistant secretary, and (c) an
 9 acknowledgment, verification, or proof.

10 (8) If the Secretary of State has prescribed a mandatory
 11 form for the document under section 21-2004, the document shall be
 12 in or on the prescribed form.

13 (9) The document shall be delivered to the Secretary of
 14 State for filing and shall be accompanied by one exact or conformed
 15 copy, except as provided in sections 21-2033 and 21-20,176, the
 16 correct filing fee, and any tax, license fee, or penalty required
 17 by law. ~~For purposes of this subsection, delivered means physical~~
 18 ~~delivery of the document by hand, mail, or commercial delivery and~~
 19 ~~does not include delivery by electronic transmission.~~

20 Sec. 3. Original section 21-2003, Revised Statutes
 21 Supplement, 2009, is repealed.

(Signed) Bill Avery, Chairperson

NOTICE OF COMMITTEE HEARINGS

Appropriations

Room 1524

Tuesday, February 2, 2010 1:30 p.m.

LB1030

LB1063

(Signed) Lavon Heidemann, Chairperson

Education

Room 1525

Tuesday, February 2, 2010 1:30 p.m.

LB937

LB974

LB1070

LB1095

LB1069

(Signed) Greg Adams, Chairperson

Agriculture

Room 1524

Tuesday, February 9, 2010 1:30 p.m.

LB910

Room 2102

Tuesday, February 16, 2010 1:30 p.m.

Sallie Atkins - Nebraska State Fair Board
Linda Lovgren - Nebraska State Fair Board

(Signed) Tom Carlson, Chairperson

Health and Human Services

Room 1510

Wednesday, February 3, 2010 1:30 p.m.

LR289CA

LB938

LB921

Thursday, February 4, 2010 1:30 p.m.

LB812

LB733

LB857

LB734

LB849

(Signed) Tim Gay, Chairperson

Executive Board

Room 2102

Tuesday, February 2, 2010 12:00 p.m.

LB685

LB717

LB770

Thursday, February 4, 2010 12:00 p.m.

LB1109

LB1101

(Signed) John Wightman, Chairperson

Banking, Commerce and Insurance

Room 1507

Monday, February 8, 2010 1:30 p.m.

LB759
LB760
LB1068
LB1074

Tuesday, February 9, 2010 1:30 p.m.

LB818
LB931
LB1051
LB959

Tuesday, February 16, 2010 1:30 p.m.

LB1083
LB813
LB1017
LB1088

(Signed) Rich Pahls, Chairperson

UNANIMOUS CONSENT - Add Cointroducers

Senator McCoy asked unanimous consent to add his name as cointroducer to LB258. No objections. So ordered.

Senator Council asked unanimous consent to add her name as cointroducer to LB872. No objections. So ordered.

Senator Janssen asked unanimous consent to add his name as cointroducer to LB996. No objections. So ordered.

Senators Avery and Carlson asked unanimous consent to add their names as cointroducers to LB1014. No objections. So ordered.

VISITOR

The Doctor of the Day was Dr. Hal Pumphrey from Lincoln.

ADJOURNMENT

At 11:42 a.m., on a motion by Speaker Flood, the Legislature adjourned until 10:00 a.m., Wednesday, January 27, 2010.

Patrick J. O'Donnell
Clerk of the Legislature

