FORTY-FOURTH DAY - MARCH 17, 2016

LEGISLATIVE JOURNAL

ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

FORTY-FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, March 17, 2016

PRAYER

The prayer was offered by Pastor Mike Wing, Grace Community Bible Church, North Platte.

ROLL CALL

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

The roll was called and all members were present except Senator Campbell who was excused; and Senators Craighead, Friesen, Hansen, B. Harr, Krist, Larson, McCollister, McCoy, Mello, Morfeld, Pansing Brooks, Schilz, and Sullivan who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-third day was approved.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 492. Introduced by Harr, B., 8.

WHEREAS, Father George Sullivan is a native son of Nebraska and has been active in the Omaha community for many years; and

WHEREAS, Father Sullivan graduated from Creighton Preparatory School in 1962. He received his juris doctorate degree from Creighton Law School in 1981 and became a member of the Nebraska Bar Association. The following year, Father Sullivan became the President of Creighton Preparatory School and served until 1988; and

WHEREAS, in 2015, Father Sullivan celebrated his 40th year as an ordained priest in the Society of Jesus. He has been active with Irish Charities of Nebraska and has served on the Priests' Council of the Archdiocese of Nebraska; and

WHEREAS, Father Sullivan received the Thomas F. Cavanaugh Lifetime Achievement Award from the Omaha-Douglas County Irish American Public Officials Association; and

WHEREAS, Father Sullivan is recognized as the Grand Marshal for the 2016 Omaha St. Patrick's Day Celebration.

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

1. That the Legislature congratulates Father George Sullivan for his achievements and contributions.

2. That the Legislature designates March 17, 2016, as Father George Sullivan Day in the State of Nebraska.

3. That a copy of this resolution be sent to Father George Sullivan.

Laid over.

ATTORNEY GENERAL'S OPINION

Opinion 16-006

SUBJECT: Whether the Child Welfare Services Protection Act Proposed Under LB 975, as Amended, Violates State or Federal Law

REQUESTED BY: Senator Mark Kolterman
Nebraska Legislature

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

INTRODUCTION

LB 975, as amended by AM2308, proposes adoption of the Child Placement Services Preservation Act [the "Act"]. The Act seeks to provide faith-based child placement agencies (FBCPAs) with the ability to perform the child placement services of recruitment, training and supporting of foster family homes, while maintaining their sincerely held religious beliefs, without the threat of adverse action against them. AM2308, § 2(4). Specifically, § 5 of the proposed legislation states:

> To the fullest extent permitted by state and federal law, the state shall not take an adverse action against a child-placing agency because the agency declines to provide or facilitate a child placement service that conflicts with the child-placing agency's sincerely held religious beliefs.

You have presented a series of legal questions about whether such language complies with both constitutional and federal regulatory guidelines. In order to properly analyze the legal questions presented, it is necessary to understand how the Nebraska Department of Health and Human Services (HHS) utilizes child-placing agencies (CPAs). Accordingly, we begin our discussion with background information pertaining to the manner in which HHS contracts with CPAs to provide

foster care services for children and families.

BACKGROUND

CPAs are utilized by HHS for the primary purposes of recruiting, retaining, and supporting foster care families. In providing these services, HHS contracts with both secular and faith-based CPAs. As part of that contract, the CPAs understand that the purpose of their service is to provide Agency Supported Foster Care (ASFC) services for children and families of the State of Nebraska.[1]

The Subawards are normally entered into on a yearly basis and can be terminated at any time based upon mutual consent or by either party for any reason upon submission of a 90-day notice. The Subaward provides that HHS has final authority in all decisions pertaining to child welfare services, and further provides that HHS may immediately terminate the agreement if the CPA fails to perform its obligations under the subaward. The Subaward does have an antidiscrimination provision found in paragraph IV(c), but that provision relates only to employment practices by the CPAs under federal and state employment law.

The Subaward specifically notes in IV(v), titled "Independent Entity," that CPAs serve as an independent entity and that neither the CPA nor its employees shall, for any purpose, be deemed employees of HHS. A CPA shall employ and direct such personnel as it requires to perform its obligations under the Subaward, exercising full authority over its personnel in complying with all laws recognized in the employment relationship, both federal, state, county, and municipal.

The Subaward contains a "Service Attachment" which sets forth both definitions and expectations for performance by CPAs. It also includes details about reporting requirements, staff credentials, established payment rates and other details regarding the day to day services that are provided by foster care families associated with a CPA. The Service Attachment specifically defines three important terms regarding the duties performed by CPAs. Those duties are recruitment, retention, and support of foster families or prospective foster families.

With respect to recruitment, the Service Attachment provides, in pertinent part:

> Recruitment of agency supported foster families is defined as active and ongoing efforts to solicit families who are invested in meeting the unique needs of children and youth served by DHHS. Recruitment includes undertaking targeted and diligent efforts to locate foster families for specific children upon request by DHHS. Recruitment efforts will include engaging communities across the state through outreach and education activities to increase awareness of the need for foster parents who reflect the ethnic and racial diversity of the children

served by DHHS. Recruitment activities may include: organizing special events, speaking engagements, advertising, and networking, etc.

The Service Attachment defines "retention" as

keeping both prospective and current foster, adoptive, and kinship families interested and invested in accepting placement of foster children by treating people well, meeting their needs, and providing encouragement and individualized support beginning with pre-service training continuing through post-placement services.

In providing recruitment and retention services, the CPAs are to develop, in collaboration with local HHS staff, a Foster Care Recruitment and Retention Plan that is reflective of the types of foster care homes needed, as well as the ethnic and racial diversity of children served in the service area. The plan must identify specific strategies designed to support and improve the retention of foster care families. The plan must also include time lines for strategy, implementation, and a specific measurable goal for increasing the number of newly licensed foster care families provided by the CPA.

Finally, the Service Attachment defines "support" as

being readily accessible and responsive to foster families in meeting their needs and intervening as necessary to stabilize crisis episodes and prevent placement disruptions. Support includes providing face-to-face visits to the foster parent's home a minimum of one time per month, and more frequently as needed based on the needs of the foster parent and or the child as determined by the Child and Adolescent Needs and Strengths (CANS) Tool or the Family Strength and Needs Assessment (FSNA) Tool. More frequent phone calls may be necessary to maintain communication and develop ongoing rapport.

Although the Subaward and Service Attachment describe the relationship between HHS and CPAs, ultimately, Neb. Rev. Stat. § 43-285 (Supp. 2015) provides that the care of the juvenile and all placement responsibilities ultimately stay with HHS in determining issues such as care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to HHS.

ANALYSIS

Your request letter presents several questions as to whether LB 975, and AM 2308, properly contain language protecting a faith-based CPA from any adverse action if, in recruiting, selecting, training, and support of foster care families, it incorporates its sincerely held religious beliefs. Furthermore, you ask whether providing such protection from adverse action exposes HHS to significant loss of federal funding that is utilized by HHS in making payment to its CPAs and its overall foster care system.

A. Whether child-placing agencies, in providing services related to the placement of children, would be considered state actors.

You have inquired whether CPAs, in providing services for developing foster homes for the placement of children, would be considered state actors. As noted previously, HHS enters into Subawards with numerous CPAs to recruit, train and retain foster home families and services to children in need. The question raised is whether, in contracting with the State to provide these services and homes, CPAs are performing a "public function" to the extent that they should be treated as state actors. This question is important because if the CPAs are state actors, then they must comply with all the "state shall" mandates found in the U.S. Constitution. This would include the equal protection and due process obligations found in the Fourteenth Amendment. Conversely, if CPAs are private, rather than state actors, they are not subject to constitutional mandates.

The Fourteenth Amendment protections are triggered only in the presence of state action and a private entity acting on its own cannot deprive a citizen of Fourteenth Amendment rights. *See, e.g., Flagg Brothers Inc. v. Brooks*, 436 U.S. 149, 156 (1978) ("[M]ost rights secured by the Constitution are protected only against infringement by governments"). The Supreme Court stated in *United States v. Morrison,* 529 U.S. 598, 621 (2000), that the Fourteenth Amendment "erects no shield against merely private conduct, however discriminatory or wrongful." (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)). The Constitution protects against government action, not action by a private corporation or citizens. *See Rendell-Baker v. Kohn*, 457 U.S. 830, 837 (1982) (stating "the Fourteenth amendment, which prohibits the state from denying federal constitutional rights and guarantees due process, applies to acts of the states, not to acts of private parties or entities").

The U.S. Supreme Court has developed a "close nexus test" to determine whether actions taken by otherwise private entities are state action. In applying this test, the Supreme Court looks at a broad spectrum of information. The close nexus analysis is inherently fact specific. The Supreme Court has consistently emphasized that the state actor analysis focuses on the precise activity at issue. *See Brentwood Academy v. Tennessee Secondary School Athletic Association*, 531 U.S. 288, 295 (2001) (noting a private entity can be said to have engaged in state action only "when it can be said that the State is responsible for the specific conduct of which the plaintiff complains"); *see also Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 51 (1991) (noting that the "state actor" inquiry "begins by identifying the specific conduct of which the plaintiff complains") (internal citations omitted); *Blum v. Yaretsky*, 457 U.S. 991, 1003-04 (1982) ("Faithful adherence to the 'state action' requirement . . . requires careful attention to the gravamen of the plaintiff's complaint . . . . [C]onstitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which plaintiff complains"); *Jackson v. Metro.*

Edison Co., 419 U.S. 345, 351 (1974) ("the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity *so that the action of the latter may be fairly treated as that of the State itself*.") (emphasis added).

A close nexus between the state and a private actor exists if the state has exercised a coercive power or has provided encouragement for the aggrieved action. Specifically, the Court has held that

> state action requires *both* an alleged constitutional deprivation "caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible," *and* that "the party charged with the deprivation must be a person who may fairly be said to be a state actor."

Am. Mfrs. Mut. Ins. Co, 526 U.S. 40, 50 (1999) (emphasis in original).

While AM2308 involves the area of foster care, the state actor versus private actor analysis has arisen in a broad range of cases where government and private spheres have intertwined. Case law reveals that the mere presence of a state-funded contract and regulatory scheme is not dispositive of the state action issue. For example, in *Rendell-Baker*, the Supreme Court held that the decisions of a private nonprofit school to discharge employees could not be attributed to the State even though the school received public funds, was subject to public regulation, served a function the State was legislatively obligated to provide, and contracted with the State to provide such services. The Court in *Rendell-Baker* did not attribute the school's decisions to fire the employees to the State even though public funds accounted for as much as 99% of the school's operating budget. The Court reasoned that despite such pervasive regulation, it was "not sufficient to make a decision to discharge, made by private management, state action." 457 U.S. at 842. The Court further held that even though the school was performing a public function, that fact alone did not end the state actor analysis. Rather, the relevant question "is not simply whether a private group is serving a 'public function'…[T]he question is whether the function performed has been 'traditionally the *exclusive* prerogative of the State.'" *Id*. (emphasis in original) (quoting *Jackson*, 419 U.S. at 353).

In *Jackson v. Metro. Edison Co.*, a customer brought suit against a privately owned and operated utility corporation. The company had a state license to do business in Pennsylvania and was highly regulated. The customer contended the company was a state actor and had violated her civil rights by shutting off her electric service without due process. The Supreme Court found the actions of the private utility company, though subject to "extensive and detailed" regulation, were not imputable to the State. "The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment." 419 U.S. at 350. There was no coercive imposition by the

state that led the company to shut off the electricity, and thus, no state action.

An instructive case in state actor analysis involving social services is *Lown v. Salvation Army*, 393 F. Supp. 2d 223 (S.D.N.Y 2005). In *Lown*, the court held that the Salvation Army, a religious corporation, did not waive its Title VII ministerial exemption when it accepted government-funded contracts to perform secular social services in the area of government-mandated custodial care for children, including foster care and adoption services. Alluding to *Rendell-Baker*, *Brentwood Academy* and several of the other cases cited above, the court held that the plaintiffs failed to prove that the state had any role in the development of the Salvation Army's personnel policies. 393 F. Supp. 2d at 243. Instructive in the court's analysis was the fact that employees delivering social services did not act under the control of the government. There was no evidence "that any government agents held positions of authority within the hierarchy of the Salvation Army," or that the employees received public employee benefits for their services. The court held the Salvation Army was thus not a state actor. *Id*. at 244.

Another case involving the state actor issue in the context of foster care is *Leshko v. Servis*, 423 F.3d 337 (3rd Cir. 2005). In this case, the foster child, Karen Leshko, was severely burned while living with her foster parents after having been removed from the custody of her natural mother. Upon reaching the age of majority, Leshko sued the foster parents and the governmental entities for depriving her of her Fourteenth Amendment right to be free from physical harm. In discussing whether the administration of foster care services has been traditionally the *exclusive* prerogative of the State, the court stated:

> No aspect of providing care to foster children in Pennsylvania has ever been the exclusive province of the government. Even today, while removing children from their homes and placing them with other caregivers arguably are exclusively governmental functions in Pennsylvania, the hands-on care may be tendered by families, private organizations, or public agencies. 423 F.3d at 343.

In dismissing the plaintiff's case, the court noted that the traditionally exclusive public function requirement is a "rigorous standard" that is "rarely satisfied." Subsequently, there was not a close nexus between the State and the challenged action such that the private behavior could be attributed to the State itself. 423 F.3d at 346.

Numerous courts have adopted the reasoning proffered in *Lown* and *Leshko. See Johnson v. Rodrigues,* 293 F.3d 1196 (10th Cir. 2002) (private adoption care center did not perform functions traditionally reserved exclusively to the state and, as there was "no close union" between Utah and the private adoption center, there could be no action under color of state law). *Milburn by Milburn v. Anne Arundel Cnty. Dep't of Soc. Servs.*, 871 F.2d 474, 479 (4th Cir. 1989) ("The care of foster children is not traditionally

the exclusive prerogative of the State...."); *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001) (affirming district court finding that public function test was not met because "the [S]tate exercised no encouragement of the Hogues' actions, nor is foster care traditionally an exclusive [S]tate prerogative.") (alterations in original); *Phelan ex rel. Phelan v. Torres*, 843 F. Supp. 2d 259, 271 (E.D.N.Y. 2011) ("[F]oster care agencies do not perform a function that has been 'traditionally *exclusively* reserved to the State.'") (emphasis in original, citing *Jackson*, 419 U.S. at 352).

A common theme in cases that have otherwise found private entities to be state actors is an extremely direct relationship between the state and the challenged action of the entity. For example, in *Brentwood Academy*, the Supreme Court held that an interscholastic high school athletic association's regulatory activity was state action because of the entwinement of public officials within the association. The factors which drove the Court's decision included: public school representatives comprised 84% of the voting membership of the governing council; employees of the association were given state pensions; and Tennessee Board of Education Members were ex officio members of the governing council of the organization. 531 U.S. at 291.

In *Americans United for the Separation of Church and State v. Prison Fellowship Ministries Inc.*, 509 F.3d 406 (8th Cir. 2007), the Eighth Circuit addressed a challenge to the State's funding of a religious rehabilitation program run within the State of Iowa's prison system. The court concluded that Iowa had provided financial aid to the program, but also had given Prison Fellowship access to state corrections facilities; allowed the organization 24-hour power to incarcerate, treat, and discipline inmates; and provided "privileges in contracts with the organization." This led the court to conclude that Prison Fellowship was a state actor. 509 F.3d at 423.[2]

To undertake a "close nexus" analysis on AM2308 and its application to FBCPAs, it is necessary to determine, with particularity, the specific conduct which allegedly violates the Constitution, and scrutinize whether that conduct can be attributed to the State. We have reviewed the materials you provided to our office, as well as the transcript of the legislative hearing, contracts between the state and CPAs, and all pertinent statutes and regulations.

First, we are aware of concerns that LB 975 may possibly violate the Constitution by allowing FBCPAs to refuse to provide services to a child in need of foster care based on the child's religion or religious beliefs. We note that the plain language of AM2308 would clearly prohibit such action, as it would be in contravention of state and federal law for FBCPAs to discriminate against a beneficiary (the foster child).[3] Also, as several FBCPAs testified at the hearing that they would not refuse to provide services to a foster child based on the child's religion or religious beliefs, it would appear to us that such a concern is not well-founded, at least based on

the material we have reviewed. Committee Records on LB 975, 104th Leg., 2d Sess. 66, 76 (February 17, 2016).

Second, we understand that concerns have been raised that FBCPAs will refuse to recruit prospective foster parents based on the religion or religious beliefs of those prospective foster parents (i.e., they will not assent to the FBCPA's statement of faith or religious mission). A corollary concern is that FBCPAs will not align with LGBT foster parents, or individuals living outside of traditional marital arrangements. The question, then, is whether a refusal to recruit based on the aforementioned reasons can reasonably be attributed to the State. As noted in the Background section, the Service Attachment to the Subaward between HHS and the CPA provides that recruitment "is defined as active and ongoing efforts to solicit families who are invested in meeting the unique needs of children and youth served by DHHS." Recruitment involves a variety of activities, including "organizing special events, speaking engagements, advertising, and networking." The particulars of how these recruiting goals are accomplished appears to remain largely in control of the respective CPAs. There is no indication that the State of Nebraska intrudes to any substantial degree in that process.

Moreover, a review of the materials reveals no particular facts from which to conclude a close nexus exists between CPAs and the recruitment of foster families. For example, there are no facts showing that the State has any representation on the boards of CPAs, or that CPA employees are treated as state employees. Likewise, there is nothing to suggest that CPAs utilize state property in furtherance of recruiting efforts. We think it is significant that HHS has no responsibility to monitor and regulate the foster parents until after a placement is made. And, as for placement, there is no mandate whereby a CPA is required to place any particular child in need of a foster home. "An action taken by a private entity with the mere approval or acquiescence of the state is not a state action." *American Mfrs.*, 526 U.S. at 52. In our view, the fact that the State of Nebraska allows CPAs to recruit prospective foster care families who affirm the religiously motivated mission of those organizations does not rise to the level of making CPAs state actors.

B. Whether AM2308 violates Executive Orders No. 13279 or No. 13559.

During the legislative hearing before the Judiciary Committee, some committee members expressed concern that FBCPAs were "violating federal law." These concerns involved Executive Order 13279, signed in 2002 by President Bush and affirmed later by President Obama in Executive Order 13559. As Executive Order 13279 was substantively left unchanged by Executive Order 13559, references in the remainder of this opinion will be to Executive Order 13279 (hereinafter "EO 13279").

On January 29, 2001, President Bush created the White House Office of Faith-Based and Community Initiatives (FBCI) within the Executive Office

of the President. Later that year, he signed EO 13279, which expounded upon the principles outlined in the FBCI. These policies have since been replicated in all regulations and guidance materials relating to the FBCI, and the FBCI's regulations now affect nearly all federal funding streams for social services.

EO 13279 is entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," and it declared that the government should provide a level playing field in federally funded grant programs by allowing religious and secular groups to compete for grants. Specifically, the preamble of the order indicates that it is intended to provide guidance to Federal agencies and to ensure "equal protection of the laws for faith-based and community organizations…so that they may better meet social needs in America's communities…" (EO 13279, § 2). The overarching theme of the order is thus one of equality, or even-handedness, between secular and faith-based organizations (hereinafter "FBOs") which utilize federal funding to address social welfare concerns.

Section 2 sets forth the "Fundamental Principles and Policymaking Criteria" which are to guide Federal agencies. In pertinent part, this section provides:

- FBOs must be able to compete on an equal footing for financial assistance;
- No FBO should be discriminated against because of its religion/religious belief;
- Consistent with the Free Exercise Clause and the Free Speech Clause of the Constitution, FBOs should be eligible to compete for and fully participate in such programs "without impairing their independence, autonomy, expression, or religious character."
- An FBO "may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs."
- A participating FBO "may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other chartering or governing documents."

In addition to the accommodation of the religious nature and mission of the FBOs prescribed in the EO, Section 2 subjects FBOs to certain prohibitions. For example:

- The order prohibits FBOs from discriminating against program *beneficiaries or potential beneficiaries* on the basis of religion or religious belief.
- FBOs that receive direct government funding cannot use those funds on "inherently religious activities, such as worship, religious instruction, and proselytization," which need to be separated by time or space from the government-funded activities.

- Participation by a *beneficiary* in an inherently religious activity must be voluntary and cannot be supported by Federal financial assistance. (emphasis added).

Foster care and adoption services are intended to provide needed assistance to children. Prospective foster parents stand in the position of *cooperators* in the provision of that assistance, not as *beneficiaries*. Given the breadth of the relevant EO (i.e., its application to nearly every social service program administered by the Federal Government), "beneficiaries" is most properly understood as taking on the plain meaning of those intended to be assisted by the particular program or service at issue. With respect to foster care and adoption, Title IV-E's statement of purpose is to assist states in providing foster care and adoption services "*for children*" (42 U.S.C. § 670) (emphasis added). This is naturally consistent with AM2308's expressed intent, which is to preserve the work of FBOs "[i]n order to serve the best interests of *the children* of this state[.]" (AM2308, § 2(2)) (emphasis added).

The Subaward agreement between CPAs and HHS provides that it is "designed to meet the complex needs of the children who have experienced trauma, abuse, neglect and other serious issues which require out of home placement." (Agreement p.16). In other words, the benefits of these contracts are designed to serve the foster children.

This plain meaning is confirmed by the source language of the Charitable Choice provisions found in the EO. The content of the EOs promulgated by Presidents Bush and Obama is nearly identical to that contained in the original Charitable Choice provisions adopted by President Clinton in 1996, 1998, and 2000, and applied only to three specific programs (TANF, Community Block Grants, and SAMHSA, respectively). This includes the statutory language expressed in 42 U.S.C. § 604a, where we find practical guidance for determining the scope of the meaning of "beneficiary."

42 U.S.C. § 604a(e)(1) provides the right of an "individual" who objects to the religious character of an FBO social service program to be referred to an alternative provider. The subsequent presidential orders contained a substantially similar protection for a "beneficiary[.]" (*See*, ***e.g.***, EO No. 13559, Sec. 2(h)(i)). But the older statute – again, the basis of the language in the subsequent orders – includes additional clarification of the meaning of "individual." First, the heading of 42 U.S.C. § 604a(e) confirms that an "individual" is indeed a "beneficiary" (even though only the latter term was carried over in the presidential orders). More specifically, the heading states: "Rights of *beneficiaries* of assistance[.]" (42 U.S.C. § 604a(e)) (emphasis added). The section further proceeds to provide for the rights of "*individuals*." (emphasis added) Then in 42 U.S.C. § 604(a)(e)(2), the statute provides that "[a]n *individual* described in this paragraph is an individual who receives, applies for, or requests to apply for, *assistance*" under the programs provided for in the statute (i.e., Titles I, II, and IV-A of the Social Security Act). (42 U.S.C. § 604(a)(e)(2)) (emphasis added). In

other words, the source language for the Charitable Choice provisions now at issue (i.e., the meaning of "beneficiary" in the later EOs) effectively defines "beneficiary" to be the one receiving or seeking *assistance – not* the one seeking *to assist*. This is consistent with the plain meaning of "beneficiary" with respect to foster care and adoption services, where it is the children who are most plainly said to receive *assistance*, and the foster parents who are mostly plainly said *to assist*.

Application of Executive Order 13279 to AM2308.

The language of AM2308 is consistent with the language and intent of EO 13279. It allows FBCPAs to compete with other CPAs without requiring them to compromise their sincerely held religious beliefs. Specifically, it allows FBCPAs to decide how to recruit and train prospective foster care families who affirm the FBCPAs' religious beliefs. The prohibitions contained in EO 13279 address delivery of needed services to the beneficiaries or potential beneficiaries, which, pursuant to AM2308, are the foster children. Therefore, the FBCPAs could not force children to attend any "inherently religious" activity.

However, a FBCPA would be allowed to recruit and train foster families that satisfy the FBCPAs' religious requirements. Once the child is placed in that family, EO 13279 would prohibit the FBCPA or the foster family from forcing the foster child, as the beneficiary, from participating in religious activities. Our review of AM2308 shows it to be consistent with the stated purpose of EO 13279.

EO 13279 has the force of law only to the extent it requires agencies of the Federal Government to allocate financial assistance for a broad range of social service programs to FBOs on an equal basis as non-faith-based organizations.[4] It is evident that President Bush promulgated the order with the explicit purpose of applying it to nearly *all* social service programs. The order is nearly identical to the "Charitable Choice" protections for faith-based organizations that had previously been enacted under President Clinton and codified in statute with respect to the administration of TANF funds, Community Service Block Grants, and the Substance Abuse and Mental Health Services Act. (*See, e.g.*, 42 U.S.C. § 604a).

Furthermore, EO 13279 called for and was implemented by a series of administrative regulations, including 45 C.F.R. § 87.2, which governs the formula and block grant administration of "any . . . program" administered by the Federal Department of Health and Human Services, including federal payments for adoption and foster care services pursuant to Title IV-E of the Social Security Act. Consistent with the directive of the Executive Order, however, the regulatory provisions do not create any substantive or procedural right of judicial review, but provide only for the "internal management" of said social service funds. (*See* EO 13279, § 7).

The "Fundamental Principles" contained in both EOs state that "[t]he Nation's social service capacity will benefit if all eligible organizations, including faith-based . . . organizations, are able to compete on an equal footing for Federal financial assistance used to support social service programs." (EO 13559, § 2(b)). The express purpose is to encourage FBOs to receive federal financial services in the administration of social service programs while maintaining their "religious character" and "carry[ing] out" their "mission, including the definition, practice, and expression of [their] religious beliefs . . ." (*Id.*, § 87.2(d)).

To read "beneficiary" to include foster parents would likely lead to an absurd result, given the purposes of the EOs. That is, the orders are intended to *increase* the number of FBOs that participate in the provision of social service programs with the help of federal financial assistance. To read "beneficiary" to include prospective *parents* in the context of adoption and foster care services would likely lead to a *decrease* in the aid provided by FBOs in that field, given the salience of family structure to various systems of religious belief. In other words, it strains credulity to assume that reading "beneficiary" to include "prospective parents" in the adoption and foster care context would not place a significant burden on a number of FBOs and effectively force them to close operations. We believe this result would be irrational in light of the express purposes of the EOs, and thus counsels against such a broad meaning of the term "beneficiary."

C. Whether AM2308 violates 42 U.S.C. § 1996b, § 2000d, 45 C.F.R. § 80.3(b), or 45 C.F.R. § 260.34.

You have asked whether AM2308 violates 42 U.S.C. § 1996d, 45 C.F.R. § 80.3(b), or 45 C.F.R. § 260.34. For the reasons set forth below, the answer to this question is no.

42 U.S.C. § 1996b.

This federal statutory provision states that a "person or government that is involved in adoption and foster care placements" may not discriminate against prospective adoption and foster care parents on the basis of the parents' or the child's race, color, or national origin. *See* 42 U.S.C. § 1996b(1)(A)-(B). However, AM2308 expressly applies only "to the . . . extent permitted by state and federal law,"[5] and thus it incorporates by reference all federal restrictions on the otherwise broad discretion of FBCPAs. Therefore, by its own terms, AM2308 is inoperable with respect to any matter on which there is a valid law to the contrary. This would include the prohibition on CPAs discriminating in "child placement services" on the basis of race, color, or national origin, even if said limitation violated a sincerely held religious belief.[6]

42 U.S.C. § 2000d.

Similarly, this provision states that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *See* 42 U.S.C. § 2000d. As a provision of federal statute, it is incorporated by reference into AM2308, which therefore cannot be understood to authorize any CPA to discriminate against any person on the basis of race, color, or national origin, even if such limitation violated a sincerely held religious belief.

45 C.F.R. § 80.3(b).

Section 80.3 of the Code of Federal Regulations essentially implements 42 U.S.C. § 2000d by prohibiting discrimination on the basis of race, color, or national origin against any person under nearly any program administered by the Federal Department of Health and Human Services. *See* 45 C.F.R. § 80.3(a). Section 80.3(b) specifically prohibits any "recipient under any program" from "directly *or through contractual or other arrangements*" discriminating on the basis of race, color, or national origin, *see* 45 C.F.R. § 80.3(b) (emphasis added), making clear that such restrictions apply to FBCPAs that contract with the state.

But again, AM2308 is subject to any contravening federal law. Thus, any right framed by AM2308 in absolute terms is at the same time, by the very terms of AM2308, limited by federal restrictions, including the provisions of 45 C.F.R. § 80.3 prohibiting discrimination on the basis of race, color, or national origin.

45 C.F.R. § 260.34.

45 C.F.R. § 260.34 applies to the Charitable Choice provisions in the application of TANF. TANF funding is utilized by the Nebraska DHHS-Division of Children and Family Services to pay for some child welfare services that are provided by CPAs (both secular and faith-based CPAs). CPAs do not receive TANF funding directly.

This funding is thus subject to 45 C.F.R. § 260.34. Section 260.34(f) prohibits discrimination against a "TANF applicant or recipient on the basis of religion" – in lieu of discrimination against "a beneficiary" as described by EO 13279. Insofar as TANF applies to *foster care and adoption services*, the beneficiary of these funds remains the child. Thus, AM2308 does not violate this provision because it is only directed towards the religious beliefs of the CPAs as it selects foster families, and not the foster children as beneficiaries.

D. Whether AM2308 puts Nebraska at risk of losing federal funding under 45 C.F.R. § 80.8(a).

You have asked whether AM2308 puts Nebraska at risk of losing federal funds under 45 C.F.R. § 80.8(a). For the reasons outlined below, the answer to this question is no.

45 C.F.R. § 80.8(a) provides for possible suspension or termination of federal financial assistance only for violations of "this regulation." The nondiscrimination provisions of the regulation are contained in 45 C.F.R. § 80.3(b) and pertain to race-based discrimination. AM2308 makes a religious exception for FBCPAs consistent with EO 13279 and in all other purposes is subject to these limitations and thus does not put the state at any risk of losing federal funds under 45 C.F.R. § 80.8(a).

E. Whether AM2308 is consistent with the Free Exercise Clause of the U.S. Constitution and art. 1, § 4 of the Nebraska Constitution.

In our response to question B., we noted that one of the fundamental principles underlying the EO is that, "[c]onsistent with the Free Exercise Clause and the Free Speech Clause of the Constitution, FBOs should be eligible to compete for and fully participate in [federally funded] programs 'without impairing their independence, autonomy, expression, or religious character.'" (EO 13279, § 2). AM2308 is also consistent with the Free Exercise Clause because it helps ensure, like the EO, that FBCPAs are positioned on equal footing with non-religious agencies in Nebraska. This position is supported by significant precedent.

The Supreme Court has held that there is nothing constitutionally suspect about government accommodation of religious organizations in their dealing and interactions with the government. Making such accommodations "follows the best of our traditions." *Zorach v. Clausen*, 343 U.S. 306, 314 (1952). Courts "have long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, 483 U.S. 327, 334 (1987).

Neb. Const. art. I, § 4 adopts the same standard as the Federal Free Exercise Clause. *In re Interest of Anaya*, 276 Neb. 825, 758 N.W.2d 10 (2008). The Nebraska Constitution also contains a "conscience clause" which is consistent with the intent of AM2308. It provides:

> All persons have a natural and indefeasible right *to worship Almighty God according to the dictates of their own consciences*. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, *nor shall any interference with the rights of conscience be permitted*. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious beliefs; but nothing herein shall be construed to

> dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction. (emphasis added).

Based on our review, AM2308 is consistent with these provisions of the Federal and State Constitutions.

F. Whether AM2308 violates the Establishment Clause of the U.S. Constitution or art. I, § 4 of the Nebraska Constitution.

At the outset, we note that AM2308 does not create a new scheme under which, for the first time, FBCPAs are able to compete for foster care and adoption recruitment and placement services. FBCPAs presently compete for government funding to provide such services. Assuming for the sake of argument that an Establishment Clause action was commenced against the State of Nebraska for simply allowing FBCPAs to compete with secular, non-religiously motivated CPAs, the chance of succeeding under such a legal theory would be, in our view, remote.

Pursuant to such a theory, the Establishment Clause would presumably prohibit the State from working with any religious state actor. Indeed, the logical conclusion of such a determination could have the result of precluding any religiously motivated CPA from contracting with the State as foster or adoption agencies. This outcome has no basis in our constitutional traditions. Indeed, across the nation, governmental entities regularly contract with faith-based child-welfare agencies, and that is the express contemplation of federal law and the Bush/Obama Charitable Choice Executive Orders.

Moreover, Establishment Clause claims would theoretically need to be aimed at specific actions having the effect of impermissible government advancement of religion. For example, such claims would need to allege that services provided with public funds were in and of themselves religious (i.e., inherently religious); that FBCPAs were discriminating against beneficiaries based on religion; or that a particular FBCPA was chosen because of its religious nature.

Alleged government establishments of religion are evaluated under the general framework set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), as later modified in *Agostini v. Felton*, 521 U.S. 203 (1997). Under *Agostini*, a law does not violate the Establishment Clause if: (1) it has a secular purpose; and (2) its principal or primary effect neither advances nor inhibits religion. 521 U.S. at 233-34. The factors considered in evaluating the "effects" prong are whether the law results in government indoctrination, whether the law defines recipients with respect to religion, and whether the government is excessively entangled with religion. *Id*.

Secular purpose

Nebraska's policy of funding foster care and adoptive placements and services is clearly not motivated by a wholly religious purpose. In fact, in reviewing the "Agency Supported Foster Care Subaward" agreements between the State of Nebraska and Nebraska CPAs, the stated purpose of such funding is "[t]o provide Agency Supported Foster Care (ASFC) services for children and families of the State of Nebraska." (Subaward at 1). This stated policy has no religious consideration.

As for AM2308, its stated purpose is "to secure safe and loving foster and adoptive homes for children in need by protecting child-placing agencies against adverse action by the state." Committee Records on LB 975, 104th Leg., 2d Sess. 18 (Introducer's Statement of Intent) (Feb. 17, 2016). The bill allows and will encourage HHS to continue its practice of contracting with a diverse array of CPAs, some of which are guided by their religious faith, to serve children in need. This stated purpose is consistent with the EOs issued by Presidents Bush and Obama, a policy which fosters accommodation of religiously oriented social service providers.

Principal or primary effect which neither advances nor inhibits religion

Once again, a perusal of the Subaward agreements reveals no design to advance religious objectives. Likewise, AM2308 portrays no intent to advance religious tenets in the administration of services to foster care and adoptive social service organizations. In fact, by the plain wording of the amendment, these organizations are constrained from proselytizing or utilizing funding for any inherently religious purpose, and may not discriminate against the beneficiaries of such services based on religion or religious belief.

Excessive entanglement

Finally, allowing FBCPAs to compete on an equal footing with secular CPAs does not create an excessive entanglement. Such a policy arguably alleviates this tension because it strikes a balance between the countervailing principles of the Free Exercise and the Establishment Clauses of the Constitution. Just as governments are prohibited from making any law establishing religion, they are likewise prevented from prohibiting the free exercise of religion. In turn, AM2308 alleviates, to the extent permitted by state and federal law, government interference with the ability of Nebraska FBCPAs to carry out their religious missions in the process of recruiting and training potential foster parents.

Under the facts and information presented to us at this time, we conclude that AM2308 does not invoke Establishment Clause concerns.

G. Whether AM2308 violates the Equal Protection Clause of the

U.S. Constitution or art. 1, § 3 of the Nebraska Constitution.

Our determination that CPAs are not state actors is dispositive of the question of whether AM2308 violates equal protection considerations. We concur with a North Dakota Attorney General Opinion regarding the constitutionality of a North Dakota bill providing similar protections to those included in AM2308. The opinion states:

> A child placing agency's decision not to perform or participate in a particular placement would be a decision made by the agency and not the state. Under SB 2188 the state would remain completely neutral regarding that decision. Accordingly, a child-placing agency would not be a state actor when deciding whether to perform or participate in a placement. (2003 ND Op Atty Gen L-18 (NDAG), 2003 WL 1829244 *7).

Such state neutrality would alleviate any equal protection concerns. Pursuant to the information provided to our office and our review of AM2308, we cannot say that AM2308 violates equal protection.

CONCLUSION

Based on the foregoing, we conclude that: (1) child-placing agencies are likely not state actors; (2) AM2308 does not violate Executive Orders 13279 or 13559; (3) AM2308 does not violate 42 U.S.C. §§ 1996b and 2000d, 45 C.F.R. § 80.3(b), or 45 C.F.R. § 260.34; (4) Nebraska is not likely to lose federal funding under 45 C.F.R. § 80.8(a) if AM2308 is enacted; (5) AM 2308 is consistent with the Free Exercise Clause of the U.S. Constitution and Article 1, § 4 of the Nebraska Constitution; and (6) AM2308 does not violate the Establishment Clause or the Equal Protection Clause of the U.S. Constitution.

[1] http://dhhs.ne.gov/children_family_services/SubGrants/Forms/AllItems.aspx (Link to copies of Subawards with attachments for the years 2014-2015 and 2015-2016 under the category Agency Supported Foster Care).

[2] We have reviewed the Pennsylvania federal district court cases referenced during the Committee hearing on LB 975 addressing the state actor issue. *Harris ex rel. Litz v. Lehigh Cnty. Office of Children & Youth Servs.,* 418 F. Supp. 2d 643 (E.D. Pa. 2005); *Donlan v. Ridge,* 58 F. Supp. 2d 604, 609 (E.D. Pa. 1999). In both cases, the court rejected claims that private foster care agencies were not state actors on the ground that the agencies were authorized to remove children from their homes, which is traditionally a function within the exclusive prerogative of the State. 418 F. Supp. 2d at 651, 58 F. Supp. 2d at 609. These cases are inapposite because, as shown in the Subaward and attachments, CPAs in Nebraska do not maintain the exclusive prerogative of the state to remove children from homes.

[3] We deal at length with the question of the meaning of beneficiary below in our response to your second question.

[4] An Executive Order, in and of itself, does not have the force of law. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Supreme Court announced, with regard to Presidential Executive Orders, that "[t]he President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." 343 U.S. at 585. When such orders are issued pursuant to "an express or implied authorization from Congress, [the President] exercises not only his powers but also those delegated by Congress." *Dames & Moore v. Regan*, 453 U.S. 654, 668 (1981). "In such a case the executive action 'would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.' " *Id.* (*quoting Youngstown Sheet & Tube Co.,* 343 U.S. at 637). The authority of Executive Order 13279 is derived from the Free Exercise Clause of the U.S. Constitution.

[5] This qualifier effectively means: "Unless otherwise prohibited by state and federal law . . ."

[6] Even if AM2308 did not expressly cede to supervening federal restrictions, the Supremacy Clause of the U.S. Constitution would automatically apply the federal restrictions against otherwise conflicting state-law rights. *See* U.S. Const. art. VI, para. 2. But AM2308's express language stating the same effectively incorporates by reference *into the meaning of the state statute itself* any conflicting-and thus limiting-restrictions of federal law.

Very truly yours,
DOUGLAS J. PETERSON
Attorney General
(Signed) Dave Bydalek
Chief Deputy Attorney General

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

07-1021-29

MOTION(S) - Confirmation Report(s)

Senator Murante moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 983:
State Emergency Response Commission
Keith Deiml
Polly Jordening

Voting in the affirmative, 27:

Baker	Davis	Hilkemann	Kuehn	Smith
Bloomfield	Ebke	Howard	Lindstrom	Stinner
Bolz	Fox	Hughes	Murante	Watermeier
Brasch	Garrett	Johnson	Riepe	
Chambers	Gloor	Kolowski	Schumacher	
Crawford	Groene	Kolterman	Seiler	

Voting in the negative, 0.

Present and not voting, 9:

Coash	Haar, K.	Kintner	Scheer	Williams
Cook	Hadley	Morfeld	Schnoor	

Excused and not voting, 13:

Campbell	Hansen	Larson	Mello	Sullivan
Craighead	Harr, B.	McCollister	Pansing Brooks	
Friesen	Krist	McCoy	Schilz	

The appointments were confirmed with 27 ayes, 0 nays, 9 present and not voting, and 13 excused and not voting.

Senator Murante moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 983:
State Personnel Board
Brian Tessman

Voting in the affirmative, 29:

Baker	Davis	Hadley	Kolterman	Schilz
Bloomfield	Ebke	Hilkemann	Kuehn	Seiler
Bolz	Fox	Howard	Lindstrom	Smith
Brasch	Garrett	Johnson	Murante	Stinner
Cook	Gloor	Kintner	Riepe	Watermeier
Crawford	Groene	Kolowski	Scheer	

Voting in the negative, 0.

Present and not voting, 9:

Chambers	Haar, K.	Morfeld	Schnoor	Williams
Coash	Hughes	Pansing Brooks	Schumacher	

Excused and not voting, 11:

Campbell	Hansen	Larson	Mello
Craighead	Harr, B.	McCollister	Sullivan
Friesen	Krist	McCoy	

The appointment was confirmed with 29 ayes, 0 nays, 9 present and not voting, and 11 excused and not voting.

Senator Murante moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 983:

Chief Information Officer

Edward A. Toner

Voting in the affirmative, 27:

Baker	Davis	Hadley	Lindstrom	Seiler
Bloomfield	Ebke	Hilkemann	Murante	Smith
Bolz	Fox	Howard	Pansing Brooks	Watermeier
Brasch	Garrett	Kintner	Scheer	
Cook	Gloor	Kolterman	Schnoor	
Crawford	Groene	Kuehn	Schumacher	

Voting in the negative, 0.

Present and not voting, 12:

Chambers	Hughes	McCoy	Schilz
Coash	Johnson	Morfeld	Stinner
Haar, K.	Kolowski	Riepe	Williams

Excused and not voting, 10:

Campbell	Friesen	Harr, B.	Larson	Mello
Craighead	Hansen	Krist	McCollister	Sullivan

The appointment was confirmed with 27 ayes, 0 nays, 12 present and not voting, and 10 excused and not voting.

Senator Murante moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 983:

Nebraska Accountability and Disclosure Commission

Jeffery T. Peetz

Voting in the affirmative, 30:

Baker	Crawford	Groene	Lindstrom	Schilz
Bloomfield	Davis	Hadley	McCoy	Schnoor
Bolz	Ebke	Hilkemann	Murante	Schumacher
Brasch	Fox	Howard	Pansing Brooks	Seiler
Cook	Garrett	Kolterman	Riepe	Stinner
Craighead	Gloor	Kuehn	Scheer	Watermeier

Voting in the negative, 0.

Present and not voting, 10:

Chambers	Haar, K.	Johnson	Kolowski	Smith
Coash	Hughes	Kintner	Morfeld	Williams

Excused and not voting, 9:

Campbell	Hansen	Krist	McCollister	Sullivan
Friesen	Harr, B.	Larson	Mello	

The appointment was confirmed with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 722A. Advanced to Enrollment and Review for Engrossment.

GENERAL FILE

LEGISLATIVE BILL 900. The Morfeld amendment, AM2343, found on page 933 and considered on pages 1001, 1002, 1004, and 1012, to the committee amendment, was renewed.

SPEAKER HADLEY PRESIDING

Senator Bloomfield offered the following motion:
MO209
Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Bloomfield moved for a call of the house. The motion prevailed with 39 ayes, 0 nays, and 10 not voting.

Senator Bloomfield requested a roll call vote, in reverse order, on the motion to invoke cloture.

Voting in the affirmative, 30:

Baker	Ebke	Hughes	Lindstrom	Schilz
Bloomfield	Fox	Kintner	McCoy	Schnoor
Brasch	Friesen	Kolterman	Mello	Schumacher
Chambers	Garrett	Krist	Morfeld	Smith
Coash	Groene	Kuehn	Murante	Stinner
Davis	Harr, B.	Larson	Scheer	Sullivan

Voting in the negative, 17:

Bolz	Gloor	Hilkemann	McCollister	Williams
Cook	Haar, K.	Howard	Riepe	
Craighead	Hadley	Johnson	Seiler	
Crawford	Hansen	Kolowski	Watermeier	

Excused and not voting, 2:

Campbell Pansing Brooks

The Bloomfield motion to invoke cloture failed with 30 ayes, 17 nays, and 2 excused and not voting.

The Chair declared the call raised.

SELECT FILE

LEGISLATIVE BILL 803. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1033. ER183, found on page 956, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 83. ER176, found on page 805, was adopted.

Senator Kintner requested a machine vote on the advancement of the bill.

Senator Cook moved for a call of the house. The motion prevailed with 39 ayes, 1 nay, and 9 not voting.

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

Voting in the affirmative, 25:

Baker	Crawford	Hansen	Krist	Pansing Brooks
Bolz	Davis	Harr, B.	Larson	Seiler
Chambers	Gloor	Howard	McCollister	Stinner
Cook	Haar, K.	Kolowski	Mello	Sullivan
Craighead	Hadley	Kolterman	Morfeld	Williams

Voting in the negative, 13:

Bloomfield	Friesen	Johnson	McCoy	Schumacher
Brasch	Groene	Kintner	Riepe	
Fox	Hughes	Kuehn	Schnoor	

Present and not voting, 10:

Coash	Garrett	Lindstrom	Scheer	Smith
Ebke	Hilkemann	Murante	Schilz	Watermeier

Excused and not voting, 1:

Campbell

Advanced to Enrollment and Review for Engrossment with 25 ayes, 13 nays, 10 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 1009. ER179, found on page 953, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 934. ER178, found on page 953, was adopted.

Senator Coash offered his amendment, AM2544, found on page 989.

The Coash amendment was adopted with 32 ayes, 0 nays, 16 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 934A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 817. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1109. Senator Chambers withdrew his amendment, FA93, found on page 899.

Senator Chambers offered the following motion:
MO210
Bracket until April 20, 2016.

Senator Chambers moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

Senator Chambers requested a roll call vote on the motion to bracket.

Voting in the affirmative, 3:

Cook	Davis	McCoy

Voting in the negative, 32:

Baker	Garrett	Johnson	Mello	Smith
Bloomfield	Gloor	Kintner	Murante	Stinner
Bolz	Haar, K.	Kolterman	Riepe	Watermeier
Coash	Hadley	Kuehn	Scheer	Williams
Craighead	Hansen	Larson	Schnoor	
Fox	Hilkemann	Lindstrom	Schumacher	
Friesen	Hughes	McCollister	Seiler	

Present and not voting, 7:

Brasch	Crawford	Howard	Schilz
Chambers	Ebke	Krist	

Excused and not voting, 7:

Campbell	Harr, B.	Morfeld	Sullivan
Groene	Kolowski	Pansing Brooks	

The Chambers motion to bracket failed with 3 ayes, 32 nays, 7 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Pending.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 843. Placed on Select File with amendment.
ER195
1 1. On page 1, strike beginning with "sections" in line 1 through
2 line 5 and insert "section 81-2010.03, Reissue Revised Statutes of
3 Nebraska, section 28-801, Revised Statutes Cumulative Supplement, 2014,
4 and sections 81-1415, 81-1416, and 81-1423, Revised Statutes Supplement,
5 2015; to provide immunity from prosecution for prostitution; to transfer,
6 change, and eliminate provisions relating to payment for sexual assault
7 forensic medical examinations; to create a fund and a program; to provide
8 for an administrator; to harmonize provisions; to provide operative
9 dates; to repeal the original sections; and to outright repeal sections
10 13-607 and 13-608, Reissue Revised Statutes of Nebraska.".

LEGISLATIVE BILL 1081. Placed on Select File with amendment.
ER194
1 1. On page 7, line 16, after "to" insert "section".

(Signed) Matt Hansen, Chairperson

BILLS ON FIRST READING

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

LEGISLATIVE BILL 1098A. Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 1098, One Hundred Fourth Legislature, Second Session, 2016.

LEGISLATIVE BILL 1105A. Introduced by Larson, 40.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 1105, One Hundred Fourth Legislature, Second Session, 2016; and to declare an emergency.

AMENDMENT(S) - Print in Journal

Senator Gloor filed the following amendment to LB958:
AM2617
1 1. Strike the original sections and insert the following new
2 sections:
3 Section 1. Section 13-520, Revised Statutes Supplement, 2015, is
4 amended to read:
5 13-520 The limitations in section 13-519 shall not apply to (1)
6 restricted funds budgeted for capital improvements, (2) restricted funds
7 expended from a qualified sinking fund for acquisition or replacement of
8 tangible personal property with a useful life of five years or more, (3)
9 restricted funds pledged to retire bonded indebtedness, used by a public
10 airport to retire interest-free loans from the Department of Aeronautics
11 in lieu of bonded indebtedness at a lower cost to the public airport, or
12 used to pay other financial instruments that are approved and agreed to
13 before July 1, 1999, in the same manner as bonds by a governing body
14 created under section 35-501, (4) restricted funds budgeted in support of
15 a service which is the subject of an agreement or a modification of an
16 existing agreement whether operated by one of the parties to the
17 agreement or by an independent joint entity or joint public agency, (5)
18 restricted funds budgeted to pay for repairs to infrastructure damaged by
19 a natural disaster which is declared a disaster emergency pursuant to the
20 Emergency Management Act, (6) restricted funds budgeted to pay for
21 judgments, except judgments or orders from the Commission of Industrial
22 Relations, obtained against a governmental unit which require or obligate
23 a governmental unit to pay such judgment, to the extent such judgment is

not paid by liability insurance coverage of a governmental unit or a pool of funds maintained by the governmental unit to self-insure against such liabilities, or (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04.

Sec. 2. Section 13-521, Reissue Revised Statutes of Nebraska, is amended to read:

13-521 (1) A governmental unit may choose not to increase its total of restricted funds by the full amount allowed by law in a particular year. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority as limited by subsection (2) of this section. The governmental unit shall calculate its unused restricted funds authority and submit an accounting of such amount with the budget documents for that year. Such unused restricted funds authority may then be used in later years for increases in the total of restricted funds allowed by law. ~~Any unused budget authority existing on April 8, 1998, by reason of any prior law may be used for increases in restricted funds authority.~~

(2) For any budget adopted by a community college for a fiscal year beginning on or after July 1, 2016, the governing body may use such unused restricted funds authority in an amount that does not exceed three percent of the budget of restricted funds minus the exclusions in section 13-520 for the immediately prior fiscal year.

Sec. 3. Section 77-4212, Revised Statutes Cumulative Supplement, 2014, is amended to read:

77-4212 (1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. For tax year 2016 and each tax year thereafter, it is the intent of the Legislature to sufficiently fund the Property Tax Credit Act so as to increase the total amount of credits for agricultural land and horticultural land above the 2015 credit level and to maintain the total amount of credits for all other real property at the 2015 credit level. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2) To determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subsection (4) of this section by the ratio of the credit allocation ~~real property~~ valuation of the parcel to the total credit allocation ~~real property~~ valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability

after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the State Treasurer by July 1 of the year the amount disbursed to the county was disbursed. The State Treasurer shall immediately credit any funds returned under this section to the Property Tax Credit Cash Fund.

(4) The amount disbursed to each county shall be equal to the amount available for disbursement ~~determined under subsection (1) of this section~~ multiplied by the ratio of the credit allocation ~~real property~~ valuation in the county to the credit allocation ~~real property~~ valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subsection to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit based on its share of the credits granted to all taxpayers in the taxing unit ~~levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located~~.

(5) For purposes of this section, credit allocation valuation means the taxable value for all real property except agricultural land and horticultural land, one hundred thirty-three percent of taxable value for agricultural land and horticultural land that is not subject to special valuation, and one hundred thirty-three percent of taxable value for agricultural land and horticultural land that is subject to special valuation.

(6 ~~5~~) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(7 ~~6~~) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Sec. 4. Original section 13-521, Reissue Revised Statutes of Nebraska, section 77-4212, Revised Statutes Cumulative Supplement, 2014, and section 13-520, Revised Statutes Supplement, 2015, are repealed.

Sec. 5. Since an emergency exists, this act takes effect when passed and approved according to law.

Senator B. Harr filed the following amendment to LB465:
AM2628

(Amendments to Standing Committee amendments, AM802)

1. On page 1, line 7, strike "2016" and insert "2017".

Senator Johnson filed the following amendment to LR378CA:
AM2562

(Amendments to Standing Committee amendments, AM2251)

1. Strike amendment 1 and insert the following new amendment:
1. On page 1, strike lines 7 through 18 and insert:
XV-26 (1) The citizens and lawful residents of Nebraska shall have the right to engage in farming and ranching practices in Nebraska, including the right to employ agricultural technologies and animal husbandry and livestock production practices.
(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 right. This section shall not be construed to modify, limit, or preclude legislation, regulation, or administration of laws, rules, and regulations by the appropriate state or local authorities for water quality or quantity purposes, for resource conservation and management, for implementation or maintenance of federally delegated environmental protection programs, for air or land pollution controls, or for land use regulation.

NOTICE OF COMMITTEE HEARING(S)
Revenue

Room 1524

Thursday, March 24, 2016 2:00 p.m.

AM2617 to LB958

(Signed) Mike Gloor, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 16-007

SUBJECT: Constitutionality of LB 717 – Use of 2015 Assessed Values of Real Property for the 2016 Tax Year, Amendment of the Definition of "Actual Value", and the Establishment of Statutory Criteria for the Measure of Central Tendency Used to Determine Acceptable Levels of Assessment for Real Property.

REQUESTED BY: Senator Mike Groene
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

INTRODUCTION

LB 717 contains several provisions relating to property taxation. Section 1 of the bill amends the definition of "actual value" of real property for tax purposes by eliminating specific reference to this term meaning the "market value of real property in the ordinary course of trade." LB 717, § 1. Section 2, as amended by AM1842, would provide that, for the real property "assessment occurring as of January 1, 2016, the assessed value shall be based on the physical characteristics of the property, to include land use, as of January 1, 2016, and reflect the value the property had, or would have had, on January 1, 2015." LB 717, § 2. Section 3 amends Neb. Rev. Stat. § 77-1327 (Cum. Supp. 2014), the statute providing for the development of a sales file by the Property Tax Administrator ["PTA"] and development of assessment ratio studies by the PTA based on the sales file by removing reference to those studies being used to analyze the level "of value" for purposes of §§ 77-5017 and 79-1016, leaving their use only to analyze the "level and quality of assessment" for those purposes. LB 717, § 3. Section 4 of LB 717 amends Neb. Rev. Stat. § 77-5023, the statute providing for adjustments by the Tax Equalization and Review Commission ["TERC"] increasing or decreasing the value of a class or subclass of property so all property falls within the acceptable range for statewide equalization purposes. Specifically, § 4 proposes to amend § 77-5023(2), under which "[a]n acceptable range is the percentage of variation from a standard of valuation as measured by an established indicator of central tendency." This subsection would be amended by adding that "[t]he measure of central tendency shall be determined using sales under subsection (2) of section 77-1327 occurring five years preceding the assessment date, excluding the sales which constitute the lowest twenty percent of assessment ratios, for all classes or subclasses of real property." LB 717, § 4. The language establishing the acceptable ranges of value for agricultural and horticultural land, land receiving special valuation, or all other real property, would be altered to refer to ranges for the "level of assessment", eliminating current language referring to the percentage "of actual value" or "special valuation". *Id.* Subsections (3) through (5) of § 77-5023 would be amended to eliminate references to increases or decreases to the "level of value" to the midpoint of an acceptable range, replacing the term "value" with "assessment." *Id.* Sections 5 and 6, which amend § 77-5026 concerning TERC's notice of proposed adjustments and § 77-5027 relating to annual reports prepared by the PTA and provided to the TERC, similarly replace references to the level of "value" with the term "level of assessment". LB 717, §§ 5, 6.

In your request letter, you state that "LB 717 puts in statute that all classes of property would be assessed uniformly over a five year history of comparable sales allowing for a larger statistically accurate sample size, replacing the present method, found in Department of Revenue rules, based on a three year history for agricultural and commercial properties and two years for residential sales." You further state that "the bill trims the 20% sales with the lowest valuation to sale price ratio (present assessment over sale price) to proportionally reflect the definition of value as 'assessment' as

defined in LB 717." You state "[t]his trim also balances the currently ongoing trimming of high valuation to sales price ratio, occurring when county assessors trim certain transactions not considered at arm's length such as between family members or neighbors." Noting the requirement of uniform and proportionate taxation of real property in Neb. Const. art. VIII, §1(1), and the authorization for the Legislature to "prescribe standards and methods for the determination of the value of real property at uniform and proportionate values" in Neb. Const. art. VIII, § 1(6), you assert that "LB 717 redefines in statute the legislative definition of value by striking 'market value' which at present cannot accurately be determined by the present system…", and that "LB 717 gives an accurate definition of value as a product of an assessment." You ask for our opinion as to whether LB 717 complies with the requirement of uniform and proportionate taxation of property in art. VIII, § 1.

ANALYSIS

I. Constitutional and Statutory Provisions.

Neb. Const. art. VIII, § 1(1) provides: "Taxes shall be levied by valuation uniformly and proportionately upon all real property and franchise as defined by the Legislature except as otherwise provided in or permitted by this Constitution;…."[1] Subsection (4) of art. VIII, § 1, provides:

> [T]he Legislature may provide that agricultural land and horticultural land, as defined by the Legislature, shall constitute a separate and distinct class of property for purposes of taxation and may provide for a different method of taxing agricultural and horticultural land which results in values that are not uniform and proportionate with all other real property and franchises but which results in values that are uniform and proportionate upon all property within the class of agricultural land and horticultural land;…. Neb. Const. art. VIII, § 1(4).[2]

In addition, "the Legislature may prescribe standards and methods for the determination of the value of real property at uniform and proportionate values." Neb. Const. art. VIII, § 1(6).

Neb. Rev. Stat. § 77-201(1) (2009) provides that, except for agricultural land and horticultural land, agricultural land and horticultural land subject to special valuation, and historically significant real property, "all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value." Agricultural land and horticultural land, as well as agricultural land and horticultural land qualifying for special valuation, is "subject to taxation, and shall be valued at seventy-five percent" of its actual or special value. Neb. Rev. Stat. § 77-202(2) and (3) (2009). "Actual value" is defined in Neb. Rev. Stat. § 77-112 (2009), which provides:

> Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property, the analysis shall include a consideration of the full description of the physical characteristics of the real property and an identification of the property rights being valued.

With respect to assessment of real property taxes, Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2014) provides: "All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment."

II. Nebraska Case Law Discussing the Constitutional Requirement of Uniform and Proportionate Taxation.

"The object of the uniformity clause is accomplished 'if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.'" *Constructors, Inc. v. Cass County Bd. of Equal.,* 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000) (*quoting County of Gage v. State Bd. of Equal.,* 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970)). "The Legislature may prescribe standards and methods for the determination of the value of real…property at uniform and proportionate values." *Carpenter v. State Bd. of Equal.,* 178 Neb. 611, 615, 134 N.W.2d 272, 276 (1965) ["*Carpenter*"]. "The uniform method for valuing property which the Legislature has provided is to tax property at its 'actual value.'" *Xerox Corp. v. Karnes,* 217 Neb. 728, 732, 350 N.W.2d 566, 569 (1984) (*citing* Neb. Rev. Stat. §§ 77-201 and 77-112)). "There is no longer a constitutional requirement for the value of agricultural and horticultural land to be uniform and proportionate with the value of other real property." *Krings v. Garfield Cty. Bd. of Equal.,* 286 Neb. 352, 362, 835 N.W.2d 750, 757 (2013). The constitution, however, "still requires uniformity within" the class of agricultural and horticultural land. *Id.* at 361, 835 N.W.2d at 756.

"While absolute uniformity of approach may not be possible, there must be a reasonable attempt at uniformity." *County of Sarpy v. State Bd. of Equal.,* 185 Neb. 760, 765, 178 N.W.2d 765, 769 (1970). "[I]n dealing with the intangible concepts of valuation and uniformity", a "mathematically precise result" can never be reached. *Carpenter,* 178 Neb. at 619, 134 N.W.2d at 278. "Approximation, both as to value and uniformity, is all that can be accomplished." *Id.* "[S]ubstantial compliance with the requirements of equality and uniformity in taxation laid down by the federal and State

Constitutions is all that is required and…*such provisions are satisfied when designed and manifest departures from the rule are avoided.*" *Id.* (emphasis in original).

III. Potential Uniformity Clause Violations Created by LB 717.

In analyzing whether LB 717 contains provisions which may violate the uniformity clause, three principal areas of concern arise. The first is the "freezing" of 2016 assessed values at the level of assessed value for 2015. The second is the apparent attempt to redefine "actual value" to mean something different than "market value". The third is establishment of statutory criteria for determining if classes of property fall within the acceptable range of value by requiring use of a measure of central tendency based on five years of sales data with exclusion of the lowest twenty percent of assessment ratios.

A. "Freeze" of 2016 Assessed Values at the 2015 Level.

Section 2, as amended by AM1842, would provide that, for the real property "assessment occurring as of January 1, 2016, the assessed value shall be based on the physical characteristics of the property, to include land use, as of January 1, 2016, and reflect the value the property had, or would have had, on January 1, 2015." LB 717, § 2. The bill originally proposed using the assessed value of real property on January 1, 2015, as the assessed value for January 1, 2016. AM1842, by providing that assessed value as of January 1, 2016, is to be based on the physical characteristics of the property, including land use, as of that date, while reflecting the value the property had or would have had on January 1, 2015, is intended to address the issue of non-uniform valuation created by the original subsection 2, which precluded the ability to change assessed values based on changes occurring to property subsequent to January 1, 2015, such as the addition of improvements.

Another uniformity issue, however, remains. If assessed values for 2016 are held to the assessed values used for 2015, no increase or decrease can be made which would reflect any changes in the actual value of real property during 2015 (other than those resulting from physical changes). Property within the same class or subclass may increase or decrease in value during the year, to varying degrees. Other property in the same class may remain at relatively the same value. By holding values, similar property in the same class may end up being under-valued or over-valued relative to other property. While the limited one-year period may reduce this effect, a lack of uniform and proportionate treatment of similar properties in the same class may result from holding values for 2016 at the 2015 level. Limiting the period to a single year may not be facially unconstitutional, but could, as applied, lead to non-uniform taxation as to particular classes or subclasses of property. *See Clifton v. Allegheny County*, 600 Pa. 662, 969 A.2d 1197 (Pa. Sup. Ct. 2009) (Statutes permitting indefinite use of a base year method of valuation for property tax purposes did not facially violate Uniformity

Clause of the State Constitution, but statutes violated Uniformity Clause as applied in county).

B. Amendment to the Definition of "Actual Value".

In addition, it appears the bill, by striking the language "market value of real property in the ordinary course of trade" from the definition of "actual value" in § 77-112, somehow intends to remove consideration of "market value" as the standard of value for real property assessment. Even with this language stricken from § 77-112, the definition of "actual value" retains "market value" as the standard. The definition continues to define actual value as the "value determined using professional accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach." LB 717, § 2. Further, it retains the language in § 77-112 providing that "[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used." *Id.* This language is the quintessential definition of "market" or "fair market" value. *See, e.g., Tech One Associates v. Board of Property Assessment, Appeals and Review,* 617 Pa. 439, 465, 53 A.2d 685, 700 (Pa. 2012) ("Market value is 'a price which a purchaser, willing but not obliged to buy, would pay an owner willing, but not obligated to sell, taking into consideration all use[s] to which the property is adapted and might in reason be applied.'" (*quoting Deitch Co. v. Board of Property Assessment, Appeals and Review,* 417 Pa. 213, 217-18, 209 A.2d 397, 400 (1965)); *Cascade Court Ltd. Partnership v. Noble,* 105 Wash. App. 563, 567, 20 P.3d 997, 1000 (Wash. Ct. App. 2001) (" 'Market value means the amount of money which a purchaser willing, but not obliged, to buy would pay an owner willing, but not obligated, to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.' " (*quoting Mason Cty. Overtaxed, Inc. v. Mason Cty.,* 62 Wash.2d 677, 683-84, 384 P.2d 352 (Wash. 1963)).

The Nebraska Supreme Court has consistently recognized that "[f]or purposes of taxation, the terms actual value, market value, and fair market value mean the same thing." *Richards v. Thayer Cty. Bd. of Equal.,* 178 Neb. 537, 540, 134 N.W.2d 56, 58 (1965). *Accord Xerox Corp. v. Karnes*, 217 Neb. 728, 732-33, 350 N.W.2d 566, 569 (1984); *Gage Cty. v. State Bd. of Equal.,* 185 Neb. 749, 751, 178 N.W.2d 759, 762 (1970). This is consistent with the generally recognized rule that "[t]rue or actual value of property has been defined as its market value." 84 C.J.S. *Taxation* § 571 (2015). An earlier version of § 77-112 defining "actual value" listed "market value in the ordinary course of trade" as an element of a "formula" for determining actual value, which Justice McCown noted was "not an element but essentially the same as the 'actual value' which is to be determined." *Carpenter,* 178 Neb. at 631, 134 N.W.2d at 284 (McCown, J., dissenting).

Accordingly, in our view, LB 717 does not change the standard of value in § 77-112, and the standard still equates to "market value". The Constitution does permit the Legislature to "prescribe standards and methods for the determination of the value of real property at uniform and proportionate values." Neb. Const. art. VIII, § 1(6). This language authorizes the establishment of standards and methods to determine value, which historically has been interpreted to be actual value, which means the same as market value or fair market value. The Legislature may certainly adopt methods to achieve that standard, and has done so in § 77-112. The statement of intent for LB 717 indicates the bill "would strike confusing language defining valuation as Market value and thus allow the legislature to define valuations over a period of time instead of a single date in time." Committee Records on LB 717, 104th Leg., 2nd Sess., Introducer's Statement of Intent 2 (Feb. 4, 2016). Enforcement of the uniform and proportionate requirement depends on adherence to an ascertainable standard of value. Historically, actual value has been understood to be the equivalent of market value or fair market value, and has served as the standard to judge compliance with the uniformity clause. To the extent § 2 of LB 717 represents an attempt to undo that understanding, we question if it can be squared with the constitutional mandate that real property be taxed "by valuation uniformly and proportionately."[3]

C. Requiring Use of Five Years of Sales Data and Exclusion of the Twenty Percent of Sales With the Lowest Assessment Ratio in Calculating the Measure of Central Tendency Used to Determine Whether Values Fall Within the Acceptable Range.

Section 4 of LB 717 amends § 77-5023, the statute providing for adjustments by the TERC increasing or decreasing the value of a class or subclass of property so all property falls within the acceptable range for statewide equalization purposes. Section 4 proposes to amend § 77-5023(2), under which "[a]n acceptable range is the percentage of variation from a standard of valuation as measured by an established indicator of central tendency." This subsection would be amended by adding that "[t]he measure of central tendency shall be determined using sales under subsection (2) of section 77-1327 occurring five years preceding the assessment date, excluding the sales which constitute the lowest twenty percent of assessment ratios, for all classes or subclasses of real property." LB 717, § 4.

As noted in your request letter, the Department of Revenue ["Department"] has adopted regulations regarding calculation of "the measures of central tendency and other statistical indicators of the quality of assessment, such as the coefficient of dispersion and price related differential, of all or a class or subclass of property." 350 N.A.C. § 12.003.07. The regulations establish a study period of two years for residential property, and three years for commercial property and agricultural and horticultural land. 350 N.A.C. § 12.003.07A(1)-(3). A longer or shorter study period may be used when the data developed for

these periods does not "accurately reflect the value for a county and where the change in the length of the study period will enhance the Department's ability to determine a county's level of value." 350 N.A.C. § 12.003.07A(4). "To the extent possible, sales outside the established time period will be adjusted to the mid-point of the established time period." 350 N.A.C. § 12.003.08.

The Department's regulations are consistent with recognized standards for ratio studies. The standards generally recognize that the period from which sales are drawn "should be as short as possible, no more than one year." International Association of Assessing Officers, Standard on Ratio Studies at 10 ¶ 4.4 (April 2013) ["IAAO Standard"]. The IAAO Standard recognizes, however, that "[a] longer period may be required to produce a representative sample…." *Id.* "To develop an adequate sample size, the sales used in a ratio can span a period of as long as five years provided there have been no significant economic shifts or changes to property characteristics and sales prices have been adjusted for time as necessary." *Id.* The two and three year periods adopted in the Department's regulations are consistent with the IAAO Standard, and are no doubt based on a determination that these time periods are appropriate to provide a representative sample of sales for the various property classes throughout the state.

The IAAO Standard also address the "trimming" of "outlier ratios." IAAO Standard at 12 ¶ 5.2. "Outlier ratios are very low or very high ratios as compared with other ratios in the sample." *Id.* If outlier ratios are identified, they should be removed or "trimmed" in developing the sample. IAAO Standard Appendix B. Outlier Trimming Guidelines at 53 ¶ B.3. "However, trimming of outliers using arbitrary limits, for example, eliminating all ratios less than 50 percent or greater than 150 percent, tends to distort results and should not be employed." *Id.*

The use of five years of sales data under § 4 of LB 717 may be questionable, as it is not apparent that use of data for this length of time is necessary to provide a representative sample of sales. The IAAO Standard, however, indicates a five year sales period can be appropriate, which may depend on the type or class of property to which it is applied. The Department's regulations currently permit deviation from the two and three year sales data periods when necessary to accurately determine the level of value. If five years of sales data is used, however, the IAAO Standard provides time adjustments of the sales data may be necessary.

While the five year sales period alone may not be unreasonable, requiring that the lowest twenty percent of ratios be excluded is more problematic. The IAAO Standard provides that "outlier" ratios should be trimmed, but the lowest ratios are not necessarily "outliers".[4] There appears to be no sound basis to automatically remove the lowest twenty percent of ratios.

It thus appears that the use of five years of sales, when combined with elimination of the lowest twenty percent of ratios, will create a lack of uniformity among property in the various classes in relation to market value. The values of residential, commercial, and agricultural property will necessarily increase or decrease at different rates, and ultimately the use of the extended period of sales and removal of low ratio sales will create disparities in the valuation and assessment of property in the same class relative to market value.

This disparity can be illustrated using the data provided by the Department attached to your opinion request. For example, the data related to dryland shows a 2016 projected change increasing the statewide average by 4.12 percent to bring the average to 75 percent, the level of value for the agricultural land class. Utilizing the 2016 five year sales data and twenty percent trim for 2016, however, results in a 25.42 percent decrease in the statewide average. This would effectively reduce the statewide average level of value for this subclass to approximately 54 percent. The data related to grassland shows a 2016 projected change increasing the statewide average by 18.43 percent to bring the average to 75 percent. Utilizing the 2016 five year sales data and twenty percent trim, however, results in a 31.61 percent decrease in the statewide average, effectively reducing the statewide average level of value for this subclass to approximately 42 percent. The resulting disparity in average values between these subclasses of agricultural land indicates a lack of uniformity relative to actual or market value between these subclasses, when all agricultural land must be valued uniformly and proportionately.

"Real property taxes may not be equalized by merely classifying property and then arbitrarily applying a given value to all properties of that classification." *Warner v. Bd. of Equal.,* 214 Neb. 730, 733, 335 N.W.2d 556, 577-58 (1983). "The mere fact that a formula is devised, by which property is nonuniformly and disproportionately assessed, does not satisfy the constitutional requirements." *Id.*, 335 N.W.2d at 558. *See also Carpenter,* 178 Neb. at 632, 134 N.W.2d at 284 ("[T]he Legislature cannot set an arbitrary formula or standard which does not reasonably reflect 'actual value' or 'fair market value.' " (McCown, J., dissenting). The formula prescribed in LB 717 would appear to arbitrarily value property and would likely result in nonuniform and disproportionate taxation of property in the same class, in violation of art. VIII, § 1.

CONCLUSION

We conclude that the "freeze" of 2016 assessed values of real property at 2015 levels may result in a lack of uniformity among property in the same class in violation of Neb. Const. art. VIII, § 1. Further, the bill does not alter the definition of "actual value" in § 77-112 as "market value", and we question whether, if that is the intent, an ascertainable standard or method of value is established consistent with Neb. Const. art. VIII, § 1(6), given the historic understanding that "actual value" and "market value" are

synonymous. Finally, establishment of a five year sales period, when combined with exclusion of the lowest twenty percent of ratios for purposes of determining the measure of central tendency under § 77-5023(2), would appear to result in property within the same class being assessed at values that are not uniform and proportionate relative to their market value. Accordingly, it is our opinion that these provisions of LB 717 are likely unconstitutional.

[1] Prior to 1992, art. VIII, § 1, required uniform taxation of "all tangible property and franchises." A constitutional amendment approved by the voters in 1992 replaced this requirement with the current language requiring taxes to be "levied by valuation uniformly and proportionately upon all real property and franchise…." Neb. Const. art. VIII, § 1 (1), *as amended by* 1992 Neb. Laws, LR 219 CA, § 1.

[2] The Legislature also is authorized to "enact laws to provide that the value of land actively devoted to agricultural or horticultural use shall for property tax purposes be that value which such land has for agricultural or horticultural use without regard to any value which such land might have for other purposes or uses." Neb. Const. art. VIII, § 1(5). Pursuant to this so-called "Greenbelt amendment", the Legislature has exercised this power by providing for the special valuation of certain lands used for agricultural or horticultural purposes. Neb. Rev. Stat. §§ 77-1344 to 77-1347.01 (2009 and Cum. Supp. 2014).

[3] That is not to suggest that the Legislature may not establish a particular method to value a class of property other than market value which may be appropriate for that classification. For example, we have concluded the Legislature could provide that the value of agricultural land and horticultural land be determined on the basis of its earning capacity rather than as a percentage of market value. Op. Att'y Gen. No. 01013 (April 5, 2001). Our conclusion was based on the separate classification of agricultural land and horticultural land authorized under Neb. Const. art. VIII, § 1(4), and the rational basis to employ an earning capacity method of value for the taxation of agricultural land and horticultural land, provided it resulted in uniform and proportionate valuation within the class of agricultural land and horticultural land. LB 717, however, proposes no such alternative valuation for the class of agricultural land and horticultural land.

[4] Section 77-1327, which provides for development of the sales file by the PTA, provides a county assessor's determination regarding the qualification of a sales will not be overturned unless, after Department review, it is determined by county assessor's decision is incorrect. Neb. Rev. Stat. § 77-1327(2) (Cum. Supp. 2014). The Department has adopted regulations regarding the inclusion of sales in the sales file, including review of a county assessor's determination "whether the sale is qualified or non-qualified for inclusion in the sales file as an arm's length transaction." 350

N.A.C. § 12.003.03C. Sales that are not based on arms-length transactions are to be excluded from the sales file.

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

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

07-1010-29

VISITOR(S)

Visitors to the Chamber were Senator Groene's wife, Barb, and Donna Tryon from North Platte; Senator Hadley's wife, Marilyn, from Kearney, Radim Krupala and Jaroslav Magnovsky from Opava, Czech Republic, and Jerry Fox from Kearney; 25 eighth-grade students from Logan Fontenelle School, Bellevue; 43 fourth-grade students and teachers from Avery Elementary, Bellevue; 19 twelfth-grade students and teacher from Southwest High School, Bartley; members of the Delta Kappa Gamma Society International Key Women Educators organization from across the state; 85 fourth-grade students from Gretna Elementary; and Joni Albrecht from Thurston.

EASE

The Legislature was at ease from 12:13 p.m. until 12:35 p.m.

SENATOR SCHEER PRESIDING

SELECT FILE

LEGISLATIVE BILL 1109. Senator Chambers offered the following motion:
MO211
Reconsider the vote taken to bracket.

Senator Chambers moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

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

Voting in the affirmative, 5:

Chambers	Cook	Crawford	Davis	Ebke

Voting in the negative, 31:

Baker	Hansen	Krist	Pansing Brooks	Smith
Bolz	Hilkemann	Kuehn	Riepe	Stinner
Craighead	Hughes	Lindstrom	Scheer	Williams
Fox	Johnson	McCollister	Schilz	
Friesen	Kintner	Mello	Schnoor	
Gloor	Kolowski	Morfeld	Schumacher	
Haar, K.	Kolterman	Murante	Seiler	

Present and not voting, 4:

Bloomfield	Brasch	Howard	Sullivan

Excused and not voting, 9:

Campbell	Garrett	Hadley	Larson	Watermeier
Coash	Groene	Harr, B.	McCoy	

The Chambers motion to reconsider failed with 5 ayes, 31 nays, 4 present and not voting, and 9 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following amendment:
FA94
Strike section 1.

SENATOR LINDSTROM PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 19 ayes, 0 nays, and 30 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Cook

Voting in the negative, 33:

Baker	Fox	Johnson	Mello	Schumacher
Bloomfield	Friesen	Kintner	Morfeld	Seiler
Bolz	Gloor	Kolowski	Murante	Smith
Brasch	Haar, K.	Kolterman	Pansing Brooks	Stinner
Coash	Hadley	Kuehn	Riepe	Williams
Craighead	Harr, B.	Lindstrom	Scheer	
Crawford	Hilkemann	McCollister	Schnoor	

Present and not voting, 7:

Chambers	Ebke	Hansen	Krist
Davis	Groene	Howard	

Excused and not voting, 8:

Campbell	Hughes	McCoy	Sullivan
Garrett	Larson	Schilz	Watermeier

The Chambers amendment lost with 1 aye, 33 nays, 7 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
MO212
Reconsider the vote taken on FA94.

Senator Chambers moved for a call of the house. The motion prevailed with 23 ayes, 0 nays, and 26 not voting.

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

Voting in the affirmative, 4:

Chambers	Cook	Davis	Groene

Voting in the negative, 34:

Baker	Friesen	Johnson	Mello	Schnoor
Bolz	Gloor	Kolowski	Morfeld	Schumacher
Brasch	Haar, K.	Kolterman	Murante	Seiler
Coash	Hadley	Krist	Pansing Brooks	Smith
Craighead	Harr, B.	Kuehn	Riepe	Stinner
Crawford	Hilkemann	Lindstrom	Scheer	Williams
Fox	Hughes	McCollister	Schilz	

Present and not voting, 5:

Bloomfield	Ebke	Hansen	Howard	Sullivan

Excused and not voting, 6:

Campbell	Kintner	McCoy
Garrett	Larson	Watermeier

The Chambers motion to reconsider failed with 4 ayes, 34 nays, 5 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Pending.

COMMITTEE REPORT(S)
Enrollment and Review

LEGISLATIVE BILL 722A. Placed on Final Reading.

(Signed) Matt Hansen, Chairperson

AMENDMENT(S) - Print in Journal

Senator Morfeld filed the following amendment to LB586:
AM2639
(Amendments to Standing Committee amendments, AM289)
1 1. On page 1, line 12, strike "any", show as stricken, and insert
2 "a".

SELECT FILE

LEGISLATIVE BILL 1109. Senator Chambers offered the following amendment:
FA95
Page 2, lines 23-26, strike and show as stricken; renumber.

SPEAKER HADLEY PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 2:

Cook	Groene

Voting in the negative, 32:

Baker	Gloor	Johnson	Pansing Brooks	Smith
Bolz	Haar, K.	Kolterman	Riepe	Stinner
Brasch	Hadley	Kuehn	Scheer	Watermeier
Coash	Hansen	Lindstrom	Schilz	Williams
Crawford	Harr, B.	McCollister	Schnoor	
Fox	Hilkemann	Morfeld	Schumacher	
Friesen	Hughes	Murante	Seiler	

Present and not voting, 6:

Chambers	Howard	Krist
Davis	Kolowski	Sullivan

Excused and not voting, 9:

Bloomfield	Craighead	Garrett	Larson	Mello
Campbell	Ebke	Kintner	McCoy	

The Chambers amendment lost with 2 ayes, 32 nays, 6 present and not voting, and 9 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
MO213
Reconsider the vote taken on FA95.

Senator Murante offered the following motion:
MO214
Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Murante moved for a call of the house. The motion prevailed with 34 ayes, 0 nays, and 15 not voting.

Senator Murante requested a roll call vote, in reverse order, on the motion to invoke cloture.

Voting in the affirmative, 37:

Baker	Haar, K.	Kintner	Morfeld	Seiler
Bolz	Hadley	Kolowski	Murante	Smith
Coash	Hansen	Kolterman	Pansing Brooks	Stinner
Craighead	Harr, B.	Krist	Riepe	Watermeier
Fox	Hilkemann	Kuehn	Scheer	Williams
Friesen	Howard	Lindstrom	Schilz	
Garrett	Hughes	McCollister	Schnoor	
Gloor	Johnson	Mello	Schumacher	

Voting in the negative, 8:

Brasch	Cook	Davis	Groene
Chambers	Crawford	Ebke	Sullivan

Present and not voting, 1:

Bloomfield

Excused and not voting, 3:

Campbell Larson McCoy

The Murante motion to invoke cloture prevailed with 37 ayes, 8 nays, 1 present and not voting, and 3 excused and not voting.

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

Voting in the affirmative, 4:

Chambers Cook Davis Groene

Voting in the negative, 40:

Baker	Friesen	Howard	Lindstrom	Schilz
Bloomfield	Garrett	Hughes	McCollister	Schnoor
Bolz	Gloor	Johnson	Mello	Schumacher
Brasch	Haar, K.	Kintner	Morfeld	Seiler
Coash	Hadley	Kolowski	Murante	Smith
Craighead	Hansen	Kolterman	Pansing Brooks	Stinner
Crawford	Harr, B.	Krist	Riepe	Watermeier
Fox	Hilkemann	Kuehn	Scheer	Williams

Present and not voting, 2:

Ebke Sullivan

Excused and not voting, 3:

Campbell Larson McCoy

The Chambers motion to reconsider failed with 4 ayes, 40 nays, 2 present and not voting, and 3 excused and not voting.

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

Voting in the affirmative, 36:

Baker	Haar, K.	Kintner	Morfeld	Smith
Bolz	Hadley	Kolowski	Murante	Stinner
Coash	Hansen	Kolterman	Pansing Brooks	Watermeier
Craighead	Harr, B.	Krist	Scheer	Williams
Fox	Hilkemann	Kuehn	Schilz	
Friesen	Howard	Lindstrom	Schnoor	
Garrett	Hughes	McCollister	Schumacher	
Gloor	Johnson	Mello	Seiler	

Voting in the negative, 8:

Bloomfield	Chambers	Davis	Groene
Brasch	Cook	Ebke	Sullivan

Present and not voting, 2:

Crawford Riepe

Excused and not voting, 3:

Campbell Larson McCoy

Advanced to Enrollment and Review for Engrossment with 36 ayes, 8 nays, 2 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

AMENDMENT(S) - Print in Journal

Senator Smith filed the following amendment to LB977:
AM2623
(Amendments to Standing Committee amendments, AM2318)
1. Insert the following new sections:
Sec. 4. Section 23-187, Revised Statutes Supplement, 2015, is amended to read:
23-187 (1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:
(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;
(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;
(c) Low-speed vehicles as described and operated pursuant to section 60-6,380;
(d) Golf car vehicles as described and operated pursuant to section 60-6,381;
(e) Graffiti on public or private property;
(f) False alarms from electronic security systems that result in

requests for emergency response from law enforcement or other emergency responders;

(g) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity; ~~and~~

(h) Peddlers, hawkers, or solicitors operating for commercial purposes. If a county adopts an ordinance under this subdivision, the ordinance shall provide for registration of any such peddler, hawker, or solicitor without any fee and allow the operation or conduct of any registered peddler, hawker, or solicitor in all areas of the county where the county has jurisdiction and where a city or village has not otherwise regulated such operation or conduct; and ~~.~~

(i) Operation of vehicles on any highway or restrictions on the weight of vehicles pursuant to section 60-681.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Sec. 21. Section 60-681, Reissue Revised Statutes of Nebraska, is amended to read:

60-681 Local authorities may by ordinance or resolution prohibit the operation of vehicles upon any highway or impose restrictions as to the weight of vehicles, for a total period not to exceed one hundred eighty ~~ninety~~ days in any one calendar year, when operated upon any highway under the jurisdiction of and for the maintenance of which such local authorities are responsible whenever any such highway by reason of deterioration, rain, snow, or other climatic condition will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weight thereof reduced. Such local authorities enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective until such signs are erected and maintained.

Local authorities may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles or impose limitations as to the weight thereof on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

2. On page 27, line 14, after "60-6,294" insert "but shall be subject to any ordinances or resolutions enacted by local authorities pursuant to section 60-681".

3. Renumber the remaining sections and correct internal references accordingly.

4. Correct the operative date and repealer sections so the sections added by this legislative bill become operative three calendar months after the adjournment of this legislative session.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 493. Introduced by Scheer, 19.

PURPOSE: The purpose of this resolution is to study whether the Nebraska Appraisal Management Company Registration Act should be updated. In order to carry out the purpose of this resolution, the study committee should seek the assistance of the Real Property Appraiser Board and should consider the input of interested persons as the committee deems necessary or appropriate.

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

1. That the Banking, Commerce and Insurance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

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

Referred to the Executive Board.

SELECT FILE

LEGISLATIVE BILL 754. Senator Garrett offered the following amendment:

AM2625

(Amendments to Standing Committee amendments, AM2103)

1. Insert the following new sections:

Sec. 7. Section 55-401, Reissue Revised Statutes of Nebraska, is amended to read:

55-401 Sections 55-401 to 55-480 and section 10 of this act shall be known and may be cited as the Nebraska Code of Military Justice.

Sec. 8. Section 55-402, Reissue Revised Statutes of Nebraska, is amended to read:

55-402 As used in the Nebraska Code of Military Justice ~~sections 55-401 to 55-480~~, unless the context otherwise requires:

(1) Military forces shall mean the National Guard, also called the Nebraska National Guard and also hereinafter referred to as the Army National Guard and Air National Guard, and in addition thereto, the militia when called into active service of this state;

(2) Officer shall mean a commissioned officer including a commissioned warrant officer;

(3) Superior officer shall mean an officer superior in rank or command;

(4) Enlisted person shall mean any person who is serving in an enlisted grade in any military force;

(5) Accuser shall mean a person who signs and swears to charges, to any person who directs that charges nominally be signed and sworn by

another, and to any other person who has an interest other than an official interest in prosecution of the accused;

(6) Military judge shall mean an official of court-martial detailed in accordance with section 55-422; and

(7) Code shall mean the Nebraska Code of Military Justice ~~provisions of sections 55-401 to 55-480~~.

Sec. 9. Section 55-416, Reissue Revised Statutes of Nebraska, is amended to read:

55-416 (1) Under such regulations as the Governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of the code ~~sections 55-401 to 55-480~~ to an accused who demands trial by court-martial, but punishment may not be imposed upon any member of the military forces under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days; or

(ii) If imposed by a general officer in command, arrest in quarters for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months; and

(b) Upon other personnel of his or her command:

(i) Correctional custody for not more than seven consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties, for not more than ten consecutive days;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than ten consecutive days;

(vi) Detention of not more than fourteen days' pay; or

(vii) If imposed by an officer of the grade of major or above, correctional custody for not more than fourteen consecutive days; forfeiture of not more than one-half of one month's pay per month for two months; reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer

imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades; extra duties, including fatigue or other duties, for not more than fourteen consecutive days; restrictions to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days; or detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period, but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, correctional custody is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which he or she is in charge such of the punishments authorized under subsection (2)(b) of this section as the Governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or his or her successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (2) of this section, whether or not executed. In addition, he or she may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He or she may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating:

(a) Arrest in quarters to restriction;

(b) Confinement on bread and water or diminished rations to correctional custody;

(c) Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(d) Extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers his or her

punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(a) Arrest in quarters for more than seven days;

(b) Correctional custody for more than seven days;

(c) Forfeiture of more than seven days' pay;

(d) Reduction of one or more pay grades from the fourth or a higher pay grade;

(e) Extra duties for more than ten days;

(f) Restriction for more than ten days; or

(g) Detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

(8) Any punishment authorized by this section which is measured in terms of days shall, when served in a status other than annual field training, be construed to mean consecutive active service days.

Sec. 10. (1) Any commanding officer, with regard to enlisted members, and any general officer, with regard to officers, may issue summarized administrative discipline for minor offenses. A minor offense shall be any offense which, under the Uniform Code of Military Justice of the United States, 10 U.S.C. chapter 47, or other military or civilian law or military custom, has a maximum penalty of confinement for one year or less.

(2) In accordance with subsection (1) of this section, any commanding officer or general officer, after consultation with a duly appointed judge advocate in the Nebraska National Guard, may impose one or more of the following disciplinary actions for minor offenses without the intervention of a court-martial:

(a) Upon officers:

(i) Restriction to certain specified limits, with or without suspension from duty, for up to seven days; or

(ii) Forfeiture of pay for up to one day; and

(b) Upon enlisted personnel:
(i) Restriction to certain specified limits, with or without suspension from duty, for not more than seven consecutive days;
(ii) Forfeiture of pay for up to one day; or
(iii) Extra duty not to exceed ten days.
(3) Consecutive summarized administrative discipline for the same offense or incident is not authorized.
(4) The officer who imposes the summarized administrative discipline as provided in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted discipline imposed. In addition, the officer or successor in command may, at any time, remit or mitigate any part or amount of the unexecuted discipline imposed and may set aside in whole or in part the discipline, whether executed or unexecuted, and restore all rights, privileges, and property affected.
(5) A person disciplined under this section who considers his or her discipline unjust or disproportionate to the offense may, within twenty-four hours of the announcement of findings and through the proper channel, appeal to the next superior authority or general officer. The appeal and record of the hearing shall be promptly forwarded and decided, but the person disciplined may in the meantime be required to undergo the discipline adjudged. The superior authority or general officer may exercise the same powers with respect to the discipline imposed as may be exercised under subsection (4) of this section by the officer who imposed the discipline. No appeal may be taken beyond the Adjutant General, and if the Adjutant General proposed the discipline under this section, the person may request reconsideration by the Adjutant General. Only one appeal or request for reconsideration shall be permitted.
(6) The imposition and enforcement of summarized administrative discipline under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this section. The fact that summarized administrative discipline has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.
(7) Any summarized administrative discipline authorized by this section shall be executed within one year of the imposition of the discipline during any one or more periods of military duty.
(8) The enlisted member or officer shall be given twenty-four hours written notice of the intent to impose summarized administrative discipline under this section. Such notice shall include:
(a) The offense committed;
(b) A brief, written summary of the information upon which the allegations are based and notice that the enlisted member or officer may examine the statements and evidence;
(c) The possible disciplinary actions;
(d) An explanation that the rules of evidence do not apply at the hearing and that any testimony or evidence deemed relevant may be

considered;
(e) The date, time, and location of the hearing; and
(f) The enlisted member's or officer's rights, which shall include:
(i) Twenty-four hour notice of the hearing and twenty-four hours to prepare for the hearing, which time shall run concurrently;
(ii) The right to appear personally before the officer proposing the summarized administrative discipline or the officer's delegate if the officer proposing the discipline is unavailable. The officer proposing such discipline must render findings based upon the record prepared by the delegate;
(iii) To be advised that he or she shall not be compelled to give evidence against himself or herself;
(iv) Notice as prescribed in this subsection;
(v) Examining the evidence presented or considered by the officer proposing the discipline;
(vi) Presenting matters in defense, extenuation, and mitigation orally, in writing, or both;
(vii) Presenting witnesses that are reasonably available. A witness is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government, or military duty precludes a military member's participation in the opinion of such military member's commander;
(viii) Consultation prior to the hearing with a trial defense attorney appointed in the Nebraska National Guard, if he or she is reasonably available. A trial defense attorney is not reasonably available if his or her presence would unreasonably delay the hearing, there is a cost to the government to make him or her available, or other military duties or civilian employment precludes such trial defense attorney's participation, in the opinion of such trial defense attorney. Consultation with the trial defense attorney may be through personal contact, telephonic communication, or other electronic means available at no cost to the government;
(ix) To have an open hearing; and
(x) To waive in writing or at the hearing any or all of the enlisted member's or officer's rights.
(9) After considering the evidence, the officer proposing the discipline shall (a) announce the findings in writing with regard to each allegation, (b) inform the enlisted member or officer of the discipline imposed, if any, and (c) advise the enlisted member or officer of his or her right to appeal.
(10) The Adjutant General may adopt and promulgate regulations or policies to implement this section.

Sec. 11. Section 55-418, Reissue Revised Statutes of Nebraska, is amended to read:

55-418 A court-martial as defined in the code ~~sections 55-401 to 55-480~~ shall have jurisdiction to try persons subject to the ~~this~~ code for any offense defined and made punishable by the code ~~sections 55-401 to 55-480~~ and may, under such limitations and regulations as the Governor may prescribe, adjudge any of the following penalties:

(1) Confinement at hard labor for not more than six months;
(2) Hard labor without confinement for not more than three months;
(3) Forfeitures or detentions of pay not exceeding two-thirds pay per month for six months;
(4) Bad conduct discharge;
(5) Dishonorable discharge;
(6) Reprimand; or
(7) Reduction of noncommissioned officers to the ranks, and to combine any two or more of such punishments in the sentence imposed.

Sec. 12. Section 55-419, Reissue Revised Statutes of Nebraska, is amended to read:

55-419 The jurisdiction of a court-martial is limited to the trial of persons accused of military offenses as described in the code ~~sections 55-401 to 55-480~~. Persons subject to the code ~~sections 55-401 to 55-480~~ who are accused of offenses cognizable by the civil courts of this state or any other state where the military forces are present in that state may, upon accusation, be promptly surrendered to civil authorities for disposition, urgencies of the service considered. If the person subject to the code ~~sections 55-401 to 55-480~~ is accused of both a military offense under the code ~~sections 55-401 to 55-480~~ and a civil offense by the civil authorities, he or she shall be released to the civil authorities if the crime for which he or she is accused by the civil authorities carries a penalty in excess of the maximum penalty provided by the code ~~sections 55-401 to 55-480~~.

Sec. 13. Section 55-427, Reissue Revised Statutes of Nebraska, is amended to read:

55-427 A person charged with any offense is not liable to be tried by court-martial or punished under section 55-416 or section 10 of this act if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction as set forth in the code ~~sections 55-401 to 55-480~~.

Sec. 14. Section 55-428, Reissue Revised Statutes of Nebraska, is amended to read:

55-428 (1) Any person not subject to the code ~~sections 55-401 to 55-480~~ who:
(a) Has been duly subpoenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;
(b) Has been duly paid or tendered the fees of a witness at the rates allowed to witnesses attending the district courts of the State of Nebraska and mileage at the rate provided in section 81-1176 for state employees; and
(c) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce, is guilty of a Class II misdemeanor.

(2) The Attorney General of Nebraska, upon the certification of the

facts to him or her by the military court, commission, or board shall file an information against and prosecute any person violating this section.

(3) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

Sec. 15. Section 55-452, Reissue Revised Statutes of Nebraska, is amended to read:

55-452 (1) An act done with specific intent to commit an offense under the code ~~sections 55-401 to 55-480~~, amounting to more than mere preparation and tending, even though failing, to effect its commission is an attempt to commit that offense.

(2) Any person subject to the ~~this~~ code who attempts to commit any offense punishable by the ~~this~~ code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to the ~~this~~ code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

Sec. 16. Original sections 55-401, 55-402, 55-416, 55-418, 55-419, 55-427, 55-428, and 55-452, Reissue Revised Statutes of Nebraska, are repealed.

The Garrett amendment was adopted with 30 ayes, 1 nay, 14 present and not voting, and 4 excused and not voting.

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

Advanced to Enrollment and Review for Engrossment with 40 ayes, 1 nay, 4 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 754A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1082. ER185, found on page 970, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1082A. Senator Schilz offered the following amendment:

AM2620

1. Strike the original section and insert the following new section:

Section 1. There is hereby appropriated (1) $250 from the Oil and Gas Conservation Fund and $750 from federal funds for FY2016-17 and (2) $250 from the Oil and Gas Conservation Fund and $750 from federal funds for FY2017-18 to the Nebraska Oil and Gas Conservation Commission, for Program 335, to aid in carrying out the provisions of Legislative Bill 1082, One Hundred Fourth Legislature, Second Session, 2016.

Total expenditures for permanent and temporary salaries and per diems from funds appropriated in this section shall not exceed $1,000 for FY2016-17 or $1,000 for FY2017-18.

The Schilz amendment was adopted with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 906. ER186, found on page 971, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 794. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 867. ER180, found on page 955, was adopted.

Senator Watermeier offered his amendment, AM2548, found on page 1008.

The Watermeier amendment was adopted with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 867A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 894. ER181, found on page 955, was adopted.

Senator Howard offered her amendment, AM2600, found on page 1009.

The Howard amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Krist offered his amendment, AM2610, found on page 1009.

Senator Chambers offered the following amendment to the Krist amendment:
AM2630

(Amendments to AM2610)

1. On page 1, line 10, after "exists" insert "or the court determines that an appointment outside of the guardian ad litem division would be more appropriate to serve the child's best interests".
2. On page 3, line 28, strike "and if" and insert "unless"; and strike beginning with the underscored comma in line 28 through "division" in line 29 and insert "or the court determines that an appointment outside of the guardian ad litem division would be more appropriate to serve the child's best interests".
3. On page 4, line 31, after "experience" insert "as a guardian ad litem for children, including both trial and appellate practice experience,".

4. On page 5, lines 18, after "appointed" insert "outside of the guardian ad litem division"; and in lines 20 through 26 strike the new matter and reinstate the stricken matter.

The Chambers amendment was adopted with 36 ayes, 0 nays, 8 present and not voting, and 5 excused and not voting.

The Krist amendment, as amended, was adopted with 35 ayes, 0 nays, 9 present and not voting, and 5 excused and not voting.

Senator Coash withdrew his amendment, AM2556, found on page 1014.

Senator Coash offered his amendment, AM2616, found on page 1015.

The Coash amendment was adopted with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

Senator Coash offered the following amendment:
AM2621

(Amendments to E and R amendments, ER181)

1. Insert the following new sections:
Sec. 16. Section 43-2,119, Reissue Revised Statutes of Nebraska, is amended to read:
43-2,119 (1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:
(a) Two judges in counties having seventy-five thousand inhabitants but less than two hundred thousand inhabitants;
(b) Four judges in counties having at least two hundred thousand inhabitants but less than four hundred thousand inhabitants; and
(c) Six ~~Five~~ judges in counties having four hundred thousand inhabitants or more.
(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.
Sec. 24. Sections 24 and 26 become operative on July 1, 2017. The other sections of this act become operative on their effective date.
Sec. 26. Original section 43-2,119, Reissue Revised Statutes of Nebraska, is repealed.
2. Renumber the remaining sections accordingly.

Senator Chambers offered the following motion:
MO215
Recommit to the Judiciary Committee.

Senator Chambers withdrew his motion.

Senator Coash withdrew his amendment, AM2621.

Pending.

COMMITTEE REPORT(S)
Education

LEGISLATIVE BILL 959. Placed on General File with amendment.
AM2622 is available in the Bill Room.

(Signed) Kate Sullivan, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 494. Introduced by Murante, 49.

WHEREAS, the Gretna High School boys' basketball team won the 2016 Class B Boys' State Basketball Championship; and

WHEREAS, the Gretna Dragons defeated the Scottsbluff Bearcats in the championship game by a score of 52-33; and

WHEREAS, this is the Dragons' first state title in boys' basketball since 1982; 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 Gretna High School boys' basketball team on winning the 2016 Class B Boys' State Basketball Championship.

2. That a copy of this resolution be sent to the Gretna High School boys' basketball team and Coach Brad Feeken.

Laid over.

AMENDMENT(S) - Print in Journal

Senator Groene filed the following amendment to LB910:
AM2624

(Amendments to E & R amendments, ER182)

1. On page 6, line 8, strike the new matter and reinstate the stricken matter; and after line 27 insert the following new subdivision:

"(b) A person with one or more felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of his or her most recent conviction or (ii) voluntarily submits to a drug test, verified by a laboratory approved by the Department of Health and Human Services, the results of which test are negative with respect to any illegal substances prior to receiving Supplemental Nutrition

Assistance Program benefits and continues to agree to drug tests at random intervals thereafter, no less than every six months. The determination of participation or completion of such a substance abuse treatment program or negative drug test results shall be certified by the treatment provider administering the program or the laboratory verifying the drug test to the department.

(c) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she has been convicted of a felony involving the sale or distribution of a controlled substance.".

Senator Schumacher filed the following amendment to LB894:
AM2629

(Amendments to E and R amendments, ER181)

1. Strike section 1.
2. On page 15, line 13, after the period insert "Whether such counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of section 43-272.".
3. On page 18, lines 8 through 29, strike the new matter and reinstate the stricken matter.
4. On page 19, lines 19 and 20, strike the new matter and reinstate the stricken matter.
5. On page 20, strike lines 6 and 7; in line 8 strike "(4)" and insert "(3)"; and in line 10 strike "(5)" and insert "(4)".
6. Renumber the remaining sections, correct internal references, and correct the repealer accordingly.

Senator Morfeld filed the following amendment to LB1093:
AM2632

(Amendments to Standing Committee amendments, AM2391)

1. Insert the following new sections:
Section 1. Section 50-501, Reissue Revised Statutes of Nebraska, is amended to read:
50-501 ~~(1) The Legislature recognizes the importance of biotechnology and the role that biotechnology plays in the economic well-being of the State of Nebraska. The Natural Resources Committee of the Legislature shall be responsible for the development of a statewide strategic plan for biotechnology in Nebraska. The plan shall include a baseline review and assessment of the potential in the biotechnology economy in Nebraska and a strategic plan for the state's efforts in creating wealth and jobs in the biotechnology economy. The plan shall address strategies for developing the biotechnology economy and shall include, but not be limited to, research, testing, agricultural feedstock and chemicals, drugs and other pharmaceuticals, medical materials, medical laboratories, and advanced biofuels. The plan shall estimate the wealth and the number of jobs that may be generated from expanding the biotechnology economy.~~
~~(2) The Natural Resources Committee of the Legislature, in consultation with the Executive Board of the Legislature, shall~~

~~commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged in activities to facilitate and promote the growth of life sciences within Nebraska, shall be dedicated to the development and growth of the biotechnology economy, and shall agree to remit one hundred thousand dollars to the State Treasurer for credit to the Biotechnology Development Cash Fund for the research required by this section. The nonprofit corporation shall retain such consultation services as required for assistance in providing research, analysis, and recommendations. The nonprofit corporation shall present its research, analysis, and recommendations to the committee by September 30, 2010.~~

~~(3) The Natural Resources Committee shall prepare and present to the Legislature a statewide strategic plan for biotechnology during the One Hundred Second Legislature, First Session, for consideration by the Legislature. The committee shall prepare annual updates to the plan for consideration by the Legislature.~~

(1) The Bioscience Steering Committee is created. The committee shall consist of the chairperson of the Revenue Committee of the Legislature or his or her designee, the chairperson of the Appropriations Committee or his or her designee, and three members of the Legislature selected by the Executive Board of the Legislative Council. The executive board shall appoint a chairperson and vice-chairperson of the committee.

(2) The committee shall conduct a study to measure the impact of the bioscience economy in Nebraska and prepare a strategic plan for growing the bioscience economy in Nebraska. The strategic plan shall report on any progress or remaining work since the last study conducted on the bioscience industry. The strategic plan shall further propose strategies for developing the bioscience economy and shall include, but not be limited to, strategies to (a) stimulate job growth in the fields of science, technology, and engineering throughout Nebraska, (b) encourage individuals and organizations engaged in the biotechnology businesses to locate and expand in Nebraska, (c) capture and commercialize technology that is discovered and developed in Nebraska, (d) grow Nebraska's investment capital market and incentivize investment in life science start-up companies, and (e) develop Nebraska's biotechnology workforce in cooperation with higher education institutions. The strategic plan shall estimate the wealth and number of jobs generated from expanding the bioscience economy.

(3) The committee, in consultation with the executive board, shall commission a nonprofit corporation to provide research, analysis, and recommendations to the committee for the development of the study and strategic plan. The nonprofit corporation shall be incorporated pursuant to the Nebraska Nonprofit Corporation Act, shall be organized exclusively for nonprofit purposes within the meaning of section 501(c)(6) of the Internal Revenue Code as defined in section 49-801.01, shall be engaged

in activities to facilitate and promote the growth of life sciences within Nebraska, and shall be dedicated to the development and growth of the bioscience economy.

(4) The committee shall prepare and present electronically to the Legislature a statewide strategic plan for the bioscience economy during the One Hundred Fifth Legislature, First Session, for consideration by the Legislature.

(5)(a) ~~(4)~~ The Biotechnology Development Cash Fund is created. The ~~Natural Resources Committee shall use~~ money in the fund shall be used to commission the nonprofit corporation and provide access to resources necessary for developing the study and strategic plan.

(b) The fund may receive gifts, bequests, grants, or other contributions or donations from public or private entities. ~~Within five days after the State Treasurer receives one hundred thousand dollars from the nonprofit corporation for credit to the fund, the State Treasurer shall transfer one hundred thousand dollars from the General Fund to the Biotechnology Development Cash Fund. It is the intent of the Legislature to appropriate two hundred thousand dollars to the fund for fiscal year 2009-10.~~ Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

~~(5) For purposes of this section:~~

~~(a) Biotechnology means the technological application that uses biological systems, living organisms, or derivatives of biological systems or living organisms to make or modify products or processes for specific use; and~~

~~(b) Biotechnology economy means economic activity derived from scientific and research activity focused on understanding mechanisms and processes at the genetic and molecular levels and the application of the mechanisms and processes to industrial processes.~~

Sec. 6. Sections 1 and 8 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 8. Original section 50-501, Reissue Revised Statutes of Nebraska, is repealed.

2. Renumber the remaining sections and correct internal references accordingly.

Senator Mello filed the following amendment to LB835:
AM2605

(Amendments to Standing Committee amendments, AM2138)

1. Renumber sections 15, 16, 17, 18, and 19 as sections 19, 15, 16, 17, and 18, respectively.

2. On page 1, line 5, strike "15," and insert "19 of this act"; in lines 12 and 13 strike the new matter; after line 15 insert the following new subdivision:

"(2) Credit report has the same meaning as consumer report as defined in 15 U.S.C. 1681a(d);"; in line 16 strike "(2)", show as stricken, and insert "(3)"; in line 19 after "stored" insert ". File does

not include a record"; in line 20 strike "(3)", show as stricken, and insert "(4)"; and in line 25 strike "(4)" and insert "(5)".
3. On page 2, line 4, strike "(5)" and insert "(6)"; in line 7 strike "(6)" and insert "(7)"; in line 18 strike "section 8-2617" and insert "the Credit Report Protection Act"; in lines 21, 24, and 25 strike "file" and insert "credit report"; and in line 26 strike "(7)" and insert "(8)".
4. On page 3, line 4, strike "(8)" and insert "(9)"; in line 11 strike "(9)" and insert "(10)"; in line 23 strike "on his or her file"; and in line 30 strike "and".
5. On page 4, line 2, after the semicolon insert "and"; in line 5 strike "(C)" and insert "(iii)"; in line 9 strike "subsection" and insert "subdivision"; in line 12 strike "subsection (1) of"; in line 13 strike "on the file of" and insert "for"; and in line 31 after "request" insert "under section 8-2603".
6. On page 5, line 7, after "request" insert "under section 8-2603"; in line 15 after "freeze" insert "under section 8-2603"; and in lines 21 and 22 strike the new matter and reinstate the stricken matter.
7. On page 5, line 23; page 6, line 5; page 7, line 14; and page 8, line 25, after "freeze" insert "placed under section 8-2603".
8. On page 7, lines 23 and 24, strike "file" and insert "credit report"; and in line 27 after "freeze" insert "placed under section 4 of this act".
9. On page 8, line 2, after "(a)" insert "(i)"; in lines 3 and 9 strike "(i)" and insert "(A)"; in lines 6 and 11 strike "(ii)" and insert "(B)"; in line 8 strike "(b)" and insert "(ii)"; in line 13 strike "(c)" and insert "(b)"; in line 15 strike "subdivision (1) of"; and in line 18 strike "on his or her file".
10. On page 9, strike beginning with "Except" in line 5 through line 7; strike beginning with "in" in line 8 through the comma in line 9 and insert "of three dollars"; and in line 20 strike "file" and insert "credit report".
11. On page 12, line 11, strike "on a file" and show as stricken and after "8-2603" insert "or section 4 of this act".
12. On page 13, line 21, strike the first comma and insert "or" and strike ", or representative"; in line 24 strike the comma and insert "or"; and in line 25 strike ", or representative".
13. On page 13, line 31, strike "1 to 21" and insert "1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,".

UNANIMOUS CONSENT - Add Cointroducer(s)

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

Kintner - LB817
Hansen - LB516
Brasch, Cook, Craighead, Crawford, Ebke, Howard, Sullivan - LB843

VISITOR(S)

Visitors to the Chamber were 40 fourth-grade students from Franklin Elementary, Omaha; Emily Muth of OPPD from Omaha; and 9 students and teacher from the University of Nebraska Lincoln Power Leadership Influence Class.

The Doctor of the Day was Dr. Dawn Ommen from Papillion.

ADJOURNMENT

At 5:07 p.m., on a motion by Senator B. Harr, the Legislature adjourned until 9:00 a.m., Friday, March 18, 2016.

Patrick J. O'Donnell
Clerk of the Legislature