

**FIFTY-FOURTH DAY - APRIL 4, 2016**  
**LEGISLATIVE JOURNAL**  
**ONE HUNDRED FOURTH LEGISLATURE**  
**SECOND SESSION**

**FIFTY-FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Monday, April 4, 2016

**PRAYER**

The prayer was offered by Pastor Jean Vargo, Grace Lutheran Church, West Point.

**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 Senators Bolz, Coash, Cook, Davis, Garrett, Groene, Krist, Kuehn, Larson, Mello, Murante, Pansing Brooks, and Sullivan who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-third day was approved.

**COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 686.** Placed on Final Reading.  
**LEGISLATIVE BILL 744.** Placed on Final Reading.  
**LEGISLATIVE BILL 746A.** Placed on Final Reading Second.  
**LEGISLATIVE BILL 774.** Placed on Final Reading.  
**LEGISLATIVE BILL 774A.** Placed on Final Reading.

**LEGISLATIVE BILL 835.** Placed on Final Reading.  
ST83

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

1. In the E & R amendments, ER235, on page 26, line 9, "or she" has been inserted after "he".

**LEGISLATIVE BILL 843.** Placed on Final Reading Second.  
**LEGISLATIVE BILL 874.** Placed on Final Reading.  
**LEGISLATIVE BILL 886.** Placed on Final Reading.

**LEGISLATIVE BILL 886A.** Placed on Final Reading.  
**LEGISLATIVE BILL 889.** Placed on Final Reading.  
**LEGISLATIVE BILL 935.** Placed on Final Reading.

**LEGISLATIVE BILL 938.** Placed on Final Reading.  
ST82

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

1. In the E & R amendments, ER225, on page 1, line 5, "and" has been struck and "; and to declare an emergency" inserted after "sections".

**LEGISLATIVE BILL 938A.** Placed on Final Reading.  
ST81

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

1. On page 1, line 1, "to amend Laws 2015, LB657, section 63;" has been inserted after the semicolon; and in line 3 "; to change an appropriation; to repeal the original section; and to declare an emergency" has been inserted after "2016".

**LEGISLATIVE BILL 1000.** Placed on Final Reading.  
**LEGISLATIVE BILL 1012.** Placed on Final Reading.  
**LEGISLATIVE BILL 1038.** Placed on Final Reading.  
**LEGISLATIVE BILL 1038A.** Placed on Final Reading.  
**LEGISLATIVE BILL 1066.** Placed on Final Reading.  
**LEGISLATIVE BILL 1098.** Placed on Final Reading.  
**LEGISLATIVE BILL 1098A.** Placed on Final Reading.  
**LEGISLATIVE BILL 1110.** Placed on Final Reading.  
**LEGISLATIVE BILL 1110A.** Placed on Final Reading.

(Signed) Matt Hansen, Chairperson

**COMMITTEE REPORT(S)**  
Enrollment and Review

**LEGISLATIVE BILL 1067.** Placed on Select File with amendment.  
ER241 is available in the Bill Room.

**LEGISLATIVE BILL 1067A.** Placed on Select File.

**LEGISLATIVE BILL 821.** Placed on Select File with amendment.  
ER239

1 1. Strike the original sections and all amendments thereto and

2 insert the following new sections:

3 Section 1. Sections 1 to 11 of this act shall be known and may be

4 cited as the Workplace Privacy Act.

5 Sec. 2. For purposes of the Workplace Privacy Act:

6 (1) Adverse action means the discharge of an employee, a threat

7 against an employee, or any other act against an employee that negatively

8 affects the employee's employment;

9 (2) Applicant means a prospective employee applying for employment;

10 (3) Electronic communication device means a cellular telephone,

11 personal digital assistant, electronic device with mobile data access,

12 laptop computer, pager, broadband personal communication device, two-way

13 messaging device, electronic game, or portable computing device;

14 (4) Employee means an individual employed by an employer;

15 (5) Employer means a public or nonpublic entity or an individual

16 engaged in a business, an industry, a profession, a trade, or other

17 enterprise in the state, including any agent, representative, or designee

18 acting directly or indirectly in the interest of such an employer; and

19 (6)(a) Personal Internet account means an individual's online

20 account that requires login information in order to access or control the

21 account.

22 (b) Personal Internet account does not include:

23 (i) An online account that an employer or educational institution

24 supplies or pays for, except when the employer or educational institution

25 pays only for additional features or enhancements to the online account;

26 or

27 (ii) An online account that is used exclusively for a business

1 purpose of the employer.

2 Sec. 3. No employer shall:

3 (1) Require or request that an employee or applicant provide or

4 disclose any user name or password or any other related account

5 information in order to gain access to the employee's or applicant's

6 personal Internet account by way of an electronic communication device;

7 (2) Require or request that an employee or applicant log into a

8 personal Internet account by way of an electronic communication device in

9 the presence of the employer in a manner that enables the employer to

10 observe the contents of the employee's or applicant's personal Internet

11 account or provides the employer access to the employee's or applicant's

12 personal Internet account;

13 (3) Require an employee or applicant to add anyone, including the

14 employer, to the list of contacts associated with the employee's or

15 applicant's personal Internet account or require or otherwise coerce an

16 employee or applicant to change the settings on the employee's or

17 applicant's personal Internet account which affects the ability of others

18 to view the content of such account; or

19 (4) Take adverse action against, fail to hire, or otherwise penalize

20 an employee or applicant for failure to provide or disclose any of the

21 information or to take any of the actions specified in subdivisions (1)

22 through (3) of this section.

23 Sec. 4. An employer shall not require an employee or applicant to

24 waive or limit any protection granted under the Workplace Privacy Act as

25 a condition of continued employment or of applying for or receiving an

26 offer of employment. Any agreement to waive any right or protection under

27 the act is against the public policy of this state and is void and

28 unenforceable.

29 Sec. 5. An employer shall not retaliate or discriminate against an

30 employee or applicant because the employee or applicant:  
31 (1) Files a complaint under the Workplace Privacy Act; or  
1 (2) Testifies, assists, or participates in an investigation,  
2 proceeding, or action concerning a violation of the act.  
3 Sec. 6. An employee shall not download or transfer an employer's  
4 private proprietary information or private financial data to a personal  
5 Internet account without authorization from the employer. This section  
6 shall not apply if the proprietary information or the financial data is  
7 otherwise disclosed by the employer to the public pursuant to other  
8 provisions of law or practice.  
9 Sec. 7. Nothing in the Workplace Privacy Act limits an employer's  
10 right to:  
11 (1) Promulgate and maintain lawful workplace policies governing the  
12 use of the employer's electronic equipment, including policies regarding  
13 Internet use and personal Internet account use;  
14 (2) Request or require an employee or applicant to disclose access  
15 information to the employer to gain access to or operate:  
16 (a) An electronic communication device supplied by or paid for in  
17 whole or in part by the employer; or  
18 (b) An account or service provided by the employer, obtained by  
19 virtue of the employee's employment relationship with the employer, or  
20 used for the employer's business purposes;  
21 (3) Restrict or prohibit an employee's access to certain web sites  
22 while using an electronic communication device supplied by or paid for in  
23 whole or in part by the employer or while using an employer's network or  
24 resources, to the extent permissible under applicable laws;  
25 (4) Monitor, review, access, or block electronic data stored on an  
26 electronic communication device supplied by or paid for in whole or in  
27 part by the employer or stored on an employer's network, to the extent  
28 permissible under applicable laws;  
29 (5) Access information about an employee or applicant that is in the  
30 public domain or is otherwise obtained in compliance with the Workplace  
31 Privacy Act;  
1 (6) Conduct an investigation or require an employee to cooperate in  
2 an investigation under any of the following circumstances:  
3 (a) If the employer has specific information about potentially  
4 wrongful activity taking place on the employee's personal Internet  
5 account, for the purpose of ensuring compliance with applicable laws,  
6 regulatory requirements, or prohibitions against work-related employee  
7 misconduct; or  
8 (b) If the employer has specific information about an unauthorized  
9 download or transfer of the employer's private proprietary information,  
10 private financial data, or other confidential information to an  
11 employee's personal Internet account;  
12 (7) Take adverse action against an employee for downloading or  
13 transferring an employer's private proprietary information or private  
14 financial data to a personal Internet account without the employer's  
15 authorization;  
16 (8) Comply with requirements to screen employees or applicants

17 before hiring or to monitor or retain employee communications that are  
 18 established by state or federal law or by a self-regulatory organization  
 19 as defined in 15 U.S.C. 78c(a)(26), as such section existed on January 1,  
 20 2016; or  
 21 (9) Comply with a law enforcement investigation conducted by a law  
 22 enforcement agency.  
 23 Sec. 8. Nothing in the Workplace Privacy Act limits a law  
 24 enforcement agency's right to screen employees or applicants in  
 25 connection with a law enforcement employment application or a law  
 26 enforcement officer conduct investigation.  
 27 Sec. 9. (1) The Workplace Privacy Act does not create a duty for an  
 28 employer to search or monitor the activity of a personal Internet  
 29 account.  
 30 (2) An employer is not liable under the act for failure to request  
 31 or require that an employee or applicant grant access to, allow  
 1 observation of, or disclose information that allows access to or  
 2 observation of the employee's or applicant's personal Internet account.  
 3 Sec. 10. If an employer inadvertently learns the user name,  
 4 password, or other means of access to an employee's or applicant's  
 5 personal Internet account through the use of otherwise lawful technology  
 6 that monitors the employer's computer network or employer-provided  
 7 electronic communication devices for service quality or security  
 8 purposes, the employer is not liable for obtaining the information, but  
 9 the employer shall not use the information to access the employee's or  
 10 applicant's personal Internet account or share the information with  
 11 anyone. The employer shall delete such information as soon as  
 12 practicable.  
 13 Sec. 11. Upon violation of the Workplace Privacy Act, an aggrieved  
 14 employee or applicant may, in addition to any other available remedy,  
 15 institute a civil action within one year after the date of the alleged  
 16 violation or the discovery of the alleged violation, whichever is later.  
 17 The employee or applicant shall file an action directly in the district  
 18 court of the county where such alleged violation occurred. The district  
 19 court shall docket and try such case as any other civil action, and any  
 20 successful complainant shall be entitled to appropriate relief, including  
 21 temporary or permanent injunctive relief, general and special damages,  
 22 reasonable attorney's fees, and costs.  
 23 Sec. 12. If any section in this act or any part of any section is  
 24 declared invalid or unconstitutional, the declaration shall not affect  
 25 the validity or constitutionality of the remaining portions.  
 26 2. On page 1, line 2, after "Act" insert "; and to provide  
 27 severability".

**LEGISLATIVE BILL 958.** Placed on Select File with amendment.  
 ER240

1 1. Strike the original sections and all amendments thereto and  
 2 insert the following new 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  
24 not paid by liability insurance coverage of a governmental unit or a pool  
25 of funds maintained by the governmental unit to self-insure against such  
26 liabilities, or (7) the dollar amount by which restricted funds budgeted  
27 by a natural resources district to administer and implement ground water  
1 management activities and integrated management activities under the  
2 Nebraska Ground Water Management and Protection Act exceed its restricted  
3 funds budgeted to administer and implement ground water management  
4 activities and integrated management activities for FY2003-04.

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

7 13-521 (1) A governmental unit may choose not to increase its total  
8 of restricted funds by the full amount allowed by law in a particular  
9 year. In such cases, the governmental unit may carry forward to future  
10 budget years the amount of unused restricted funds authority. The  
11 governmental unit shall calculate its unused restricted funds authority  
12 and submit an accounting of such amount with the budget documents for  
13 that year. Such unused restricted funds authority may then be used in  
14 later years for increases in the total of restricted funds allowed by  
15 law. This subsection shall not apply to community colleges for fiscal  
16 years beginning on or after July 1, 2017. Any unused budget authority  
17 existing on April 8, 1998, by reason of any prior law may be used for  
18 increases in restricted funds authority.

19 (2) For any fiscal year beginning on or after July 1, 2017, a  
20 community college may choose not to increase its total of restricted  
21 funds by the full amount allowed by law in a particular year. In such  
22 cases, the community college may carry forward to future budget years the  
23 amount of unused restricted funds authority. The community college shall  
24 calculate its unused restricted funds authority and submit an accounting  
25 of such amount with the budget documents for that year. The amount of  
26 unused restricted funds authority that may be used by a community college

27 in a single fiscal year to increase its total of restricted funds above  
28 the restricted funds authority as calculated pursuant to section 13-519  
29 shall be limited to three percent of the difference of the total of  
30 restricted funds minus the exclusions in section 13-520 for the  
31 immediately preceding fiscal year.

1 Sec. 3. Section 77-4212, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3 77-4212 (1) For tax year 2007, the amount of relief granted under  
4 the Property Tax Credit Act shall be one hundred five million dollars.  
5 For tax year 2008, the amount of relief granted under the act shall be  
6 one hundred fifteen million dollars. It is the intent of the Legislature  
7 to fund the Property Tax Credit Act for tax years after tax year 2008  
8 using available revenue. For tax year 2017, the amount of relief granted  
9 under the act shall be two hundred twenty-four million dollars. The  
10 relief shall be in the form of a property tax credit which appears on the  
11 property tax statement.

12 (2)(a) For tax years prior to tax year 2017, to ~~To~~ determine the  
13 amount of the property tax credit, the county treasurer shall multiply  
14 the amount disbursed to the county under ~~subdivision subsection~~ (4)(a) of  
15 this section by the ratio of the real property valuation of the parcel to  
16 the total real property valuation in the county. The amount determined  
17 shall be the property tax credit for the property.

18 (b) Beginning with tax year 2017, to determine the amount of the  
19 property tax credit, the county treasurer shall multiply the amount  
20 disbursed to the county under subdivision (4)(b) of this section by the  
21 ratio of the credit allocation valuation of the parcel to the total  
22 credit allocation valuation in the county. The amount determined shall be  
23 the property tax credit for the property.

24 (3) If the real property owner qualifies for a homestead exemption  
25 under sections 77-3501 to 77-3529, the owner shall also be qualified for  
26 the relief provided in the act to the extent of any remaining liability  
27 after calculation of the relief provided by the homestead exemption. If  
28 the credit results in a property tax liability on the homestead that is  
29 less than zero, the amount of the credit which cannot be used by the  
30 taxpayer shall be returned to the State Treasurer by July 1 of the year  
31 the amount disbursed to the county was disbursed. The State Treasurer  
1 shall immediately credit any funds returned under this section to the  
2 Property Tax Credit Cash Fund.

3 (4)(a) For tax years prior to tax year 2017, the ~~The~~ amount  
4 disbursed to each county shall be equal to the amount available for  
5 disbursement determined under subsection (1) of this section multiplied  
6 by the ratio of the real property valuation in the county to the real  
7 property valuation in the state. By September 15, the Property Tax  
8 Administrator shall determine the amount to be disbursed under this  
9 subdivision ~~subsection~~ to each county and certify such amounts to the  
10 State Treasurer and to each county. The disbursements to the counties  
11 shall occur in two equal payments, the first on or before January 31 and  
12 the second on or before April 1. After retaining one percent of the  
13 receipts for costs, the county treasurer shall allocate the remaining

14 receipts to each taxing unit levying taxes on taxable property in the tax  
 15 district in which the real property is located in the same proportion  
 16 that the levy of such taxing unit bears to the total levy on taxable  
 17 property of all the taxing units in the tax district in which the real  
 18 property is located.

19 (b) Beginning with tax year 2017, the amount disbursed to each  
 20 county shall be equal to the amount available for disbursement determined  
 21 under subsection (1) of this section multiplied by the ratio of the  
 22 credit allocation valuation in the county to the credit allocation  
 23 valuation in the state. By September 15, the Property Tax Administrator  
 24 shall determine the amount to be disbursed under this subdivision to each  
 25 county and certify such amounts to the State Treasurer and to each  
 26 county. The disbursements to the counties shall occur in two equal  
 27 payments, the first on or before January 31 and the second on or before  
 28 April 1. After retaining one percent of the receipts for costs, the  
 29 county treasurer shall allocate the remaining receipts to each taxing  
 30 unit based on its share of the credits granted to all taxpayers in the  
 31 taxing unit.

1 (5) For purposes of this section, credit allocation valuation means  
 2 the taxable value for all real property except agricultural land and  
 3 horticultural land, one hundred twenty percent of taxable value for  
 4 agricultural land and horticultural land that is not subject to special  
 5 valuation, and one hundred twenty percent of taxable value for  
 6 agricultural land and horticultural land that is subject to special  
 7 valuation.

8 ~~(6)~~ The State Treasurer shall transfer from the General Fund to  
 9 the Property Tax Credit Cash Fund one hundred five million dollars by  
 10 August 1, 2007, and one hundred fifteen million dollars by August 1,  
 11 2008.

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

14 Sec. 4. Original section 13-521, Reissue Revised Statutes of  
 15 Nebraska, section 77-4212, Revised Statutes Cumulative Supplement, 2014,  
 16 and section 13-520, Revised Statutes Supplement, 2015, are repealed.  
 17 2. On page 1, strike beginning with "sections" in line 1 through  
 18 line 8 and insert "section 13-521, Reissue Revised Statutes of Nebraska,  
 19 section 77-4212, Revised Statutes Cumulative Supplement, 2014, and  
 20 section 13-520, Revised Statutes Supplement, 2015; to change provisions  
 21 relating to budget limitation exceptions, use of unused restricted funds  
 22 by community colleges, and property tax credits; and to repeal the  
 23 original sections."

**LEGISLATIVE BILL 889A.** Placed on Select File.

**LEGISLATIVE BILL 959A.** Placed on Select File.

(Signed) Matt Hansen, Chairperson



**ATTORNEY GENERAL'S OPINION**Opinion 16-008

SUBJECT:           Constitutionality of LB 830—Requiring Cash Payouts  
                  of Accrued Vacation Leave Which Exceeds Maximum  
                  Limits in Lieu of Forfeiture

REQUESTED BY:   Senator Jim Scheer  
                      Nebraska State Legislature

WRITTEN BY:      Douglas J. Peterson, Attorney General  
                      Leslie S. Donley, Assistant Attorney General

You have requested an opinion from this office regarding the constitutionality of legislation "that would provide state employees with additional compensation in the form of payment for unused vacation leave that exceeds statutory limits in certain circumstances." You indicate that the current version of Legislative Bill 830<sup>1</sup> requires a payout in those instances where an employee has made a "reasonable written request" to use the leave prior to December 31, but was denied the ability to do so by the employing agency. You further state that LB 830 would apply to all state employees except those employed in the legislative and judicial branches.

**QUESTIONS PRESENTED**

Your first question deals with the applicability of LB 830 to "employees of other constitutional officers." You indicate that the Department of Administrative Services has the authority to adopt and promulgate rules and regulations governing the pay and hours of state employees within the State Personnel System. However, you point out that Neb. Rev. Stat. § 81-1316 (2014) exempts from the State Personnel System the personnel of constitutional offices and other at-will, discretionary agency heads.<sup>2</sup>

Your second question relates to LB 830 in the context of the State Employees Collective Bargaining Act, Neb. Rev. Stat. §§ 81-1369 to 81-1388 (2014) ("Act"). You indicate that under the Act, the executive branch is authorized to negotiate terms and conditions of employment, including compensation and vacation leave, with union contract-covered employees. However, you note that "the Legislature did not retain a right to approve or an ability to modify the resulting collectively bargained contracts." You state that you have been advised that the proposed legislation would conflict with the state employee bargaining agreements currently in place.

You have posed the following questions:

1. May the Legislature constitutionally mandate payout of unused vacation leave for the discretionary employees of these constitutional or elected officers or employees?
2. Whether LB 830 would violate or conflict with portions of the State Employees Collective Bargaining Act?

### **LB 830**

The proposed language in LB 830 would add a new subsection to Neb. Rev. Stat. § 81-1328 (2014), as follows:

(7) It is the responsibility of the head of an employing agency to provide reasonable opportunity for a state employee to use rather than forfeit accumulated vacation leave. If a state employee makes a reasonable written request to use vacation leave before the leave must be forfeited under this section and the employing agency denies the request, the employing agency shall pay the state employee the cash equivalent of the amount of forfeited vacation leave that was requested and denied. Such cash payment shall be made within thirty days after the requested and denied vacation leave is forfeited under this section. Such cash payment shall be considered compensation for purposes of a state employee's retirement benefit in a defined contribution or cash balance benefit plan administered by the Public Employees Retirement Board but shall not be considered compensation for purposes of a state employee's retirement benefit in any other defined benefit plan administered by the Public Employees Retirement Board. In determining whether a state employee's request to use vacation leave is reasonable, the employing agency shall consider the amount of vacation leave requested, the number of days remaining prior to forfeiture during which the state employee may take vacation leave, the amount of notice given to the employing agency prior to the requested vacation leave, any effects on public safety, and other relevant factors. This subsection shall not apply to state employees who are exempt from the State Personnel System pursuant to subdivisions (1)(g) and (h) of section 81-1316.

Final Reading Version of LB 830, section 2, pp. 16-17.

### **DISCUSSION**

You have inquired as to whether the Legislature can impose the proposed legislation on the "employees of other constitutional officers." Although not expressly articulated in your opinion request letter, we believe your first question relates to whether the proposed legislation violates the separation of powers provision in Neb. Const. art. II, § 1. That provision states, in pertinent part:

The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial, and no person or collection of persons being one of these departments shall exercise any power properly belonging to either of the others except as expressly directed or permitted in this Constitution.

"In other words, the Nebraska Constitution prohibits one branch of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives." *State ex rel. Shepherd v. Nebraska Equal Opportunity Com'n*, 251 Neb. 517, 524, 557 N.W.2d 684, 690 (1997). "This aspect of the separation of powers clause serves as the beam from which our system of checks and balances is suspended." *Id.*; *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991). "The federal separation of powers principle is inferred from the overall structure of the U.S. Constitution. In contrast, Neb. Const. art. II, § 1, prohibits one department of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives, except as the Constitution itself otherwise directs or permits." *State v. Phillips*, 246 Neb. 610, 614, 521 N.W.2d 913, 916 (1994). "The people of the state, by adopting a Constitution, have put it beyond the power of the Legislature to pass laws in violation thereof." *State ex rel. Randall v. Hall*, 125 Neb. 236, 242-243, 249 N.W. 756, 759 (1933).

The question presented by LB 830 is whether mandating a payout to state employees for vacation leave which would otherwise be forfeited would unduly encroach on the duties and prerogatives of the constitutional officers exempted from the State Personnel System by § 81-1316. Our analysis begins with the fundamental proposition that the Nebraska Legislature has plenary legislative authority except as limited by the state and federal Constitutions. *Lenstrom v. Thone*, 209 Neb. 783, 789, 311 N.W.2d 884, 888 (1981). "The Nebraska Constitution is not a grant but, rather, a restriction on legislative power, and the Legislature may legislate on any subject not inhibited by the Constitution." *Id.*; *State ex rel. Stenberg v. Moore*, 249 Neb. 589, 595, 544 N.W.2d 344, 349 (1996).

With those principles in mind, we have examined the executive branch provisions in article IV of the Nebraska Constitution to ascertain those duties and prerogatives of the constitutional bodies at issue which may be affected by LB 830. Section 1 of article IV expressly provides:

The executive officers of the state shall be the Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, and the heads of such other executive departments as set forth herein or as may be established by law. . . . The heads of all executive departments established by law, other than those to be elected as provided herein, shall be appointed by the Governor, with the consent of a majority of all members elected to the Legislature, but officers so appointed may be removed by the Governor. Subject to the provisions of this Constitution, the heads of

the various executive or civil departments shall have power to appoint and remove all subordinate employees in their respective departments.

While the Governor is authorized to present a "complete itemized budget of the financial requirements of all departments, institutions and agencies of the state" (Neb. Const. art. IV, § 7), we have identified no other constitutional provision which sets out the salaries and other fringe benefits to be provided to the *employees* of the executive officers enumerated above.<sup>3</sup>

However, we did identify a limited number of statutes involving the constitutional executive officers and their duties relating to salaries and fringe benefits for employees under their control. For example, Neb. Rev. Stat. § 81-107 (2014) authorizes the Governor to appoint "deputies, assistants, employees, and clerical help, . . . fix the salaries of such appointees and prescribe their duties." The Attorney General shall determine the salary of the deputy attorney general, whose salary, as well as the salaries of the assistant attorneys general, shall not be less than twenty thousand dollars. Neb. Rev. Stat. § 84-206 (2014). The Auditor of Public Accounts, the Secretary of State and the State Treasurer all have the power to appoint a deputy, and determine his or her salary. *See* Neb. Rev. Stat. §§ 84-314, 84-509, and 84-608 (2014). There are no specific provisions relating to the salaries for the other employees in the offices, or for fringe benefits, like sick or vacation leave.

In *State ex rel. Beck v. Young*, 154 Neb. 588, 48 N.W.2d 677 (1951), the Nebraska Supreme Court decided an action in *quo warranto* involving a member of the Liquor Control Commission. The governor, after notice and hearing, had determined that the commissioner should be removed from office for accepting commissions on insurance policies issued to liquor licensees, which violated the statute prohibiting members of the commission from soliciting or accepting gifts or gratuities from any person subject to the provisions of the liquor control act. The commissioner refused to surrender the office. In its analysis, the court stated:

The power of the Legislature in the creation of an office, admittedly a legislative function, is limited to those matters which are defined as ingredients of the office. The general rule is that the power to appoint carries with it the power to remove, and even if the occupant may be subject to impeachment, the power of the Governor to remove remains wholly unaffected by such fact. *It is within the power of the Legislature to create an office, define its powers, limit its duration, and provide for the compensation of the occupant.* The power of appointment and removal is in the Governor except as limited by Article IV, section 12, of the Constitution, and the legislative or judicial branches may not properly trench upon the executive power thus granted.

*Id.* at 593-594, 48 N.W.2d at 680-681 (emphasis added). In entering its judgment of ouster, the court concluded that since the commissioner had received notice and a hearing, and that the specification of charges were supported by the evidence, the Governor's order to remove the commissioner was appropriate. *Id.* at 595, 48 N.W.2d at 681.

In *State ex rel. Meyer v. State Board of Equalization and Assessment*, 185 Neb. 490, 176 N.W.2d 920 (1970), the court considered whether the Legislature could impose annual limits on personal services expenditures on a biennial appropriation. At that time, the Legislature only convened biennially. The court indicated that

[t]he Legislature has plenary or absolute power over appropriations. It may make them upon such conditions and with such restrictions as it pleases within constitutional limits. There is one thing, however, which it cannot do, and this is inherent in Article II, section 1, Constitution of Nebraska. It cannot through the power of appropriation exercise or invade the constitutional rights and powers of the executive branch of the government. It cannot administer the appropriation once it has been made. When the appropriation is made, its work is complete and the executive authority takes over to administer the appropriation to accomplish its purpose, subject to the limitations imposed. Is the condition imposed an attempt to administer the appropriation?

*Id.* at 499-500, 176 N.W.2d at 926. The court noted that it was "impossible" to define exact limits when dealing with issues involving separation of powers, and that all states consider the problem on a "case-by-case basis." *Id.* at 500, 176 N.W.2d at 926. However, the court "realize[d] that the Legislature cannot be permitted to hamper the necessary operation of constitutional officers by unreasonable appropriation restraints." *Id.* Ultimately, the court found that since most governments operate on a fiscal year basis, and that public officials' salaries are determined on an annual basis, the Legislature's imposition of an annual personal services limitation was not unreasonable. "It is within the power of the Legislature to fix the amount it will appropriate for personal services in any state department or agency. . . . It has seen fit to divide that portion of the appropriation allocated for personal services by imposing an annual ceiling. This is within the legislative prerogative and is not an unlawful attempt to control the operation of the executive department or to administer the appropriation." *Id.*

In the present case, the proposed language would require a cash payout for earned vacation leave which would otherwise be forfeited or lost due to management's denial of an employee's request to use the vacation leave. The proposed legislation requires that the request for leave be "reasonable." As discussed above, there are no duties enumerated in the Nebraska Constitution which relate to salary or fringe benefits for the employees of the constitutional officers and few statutes address these items. It appears to

us that the proposed language in LB 830 is not unlike other current provisions in § 81-1328, where cash payouts for earned vacation leave are mandated upon termination of state employment,<sup>4</sup> and upon death of the employee while employed by the state. We believe that these cases, together with the dearth of constitutional provisions relating to salary and vacation leave, lend support to conclude that the proposed language in LB 830 does not unduly impinge on the duties and prerogatives of the constitutional officers at issue here.

We find additional reasons to support this conclusion. First, the vacation leave statute—§ 81-1328—broadly defines "state employee" as any "person or officer employed by the state including the head of any department or agency, except when such a head is a board or commission, and who works a full-time or part-time schedule on an ongoing basis." "In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous. *Swift and Company v. Nebraska Department of Revenue*, 278 Neb. 763, 773 N.W.2d 381 (2009). The plain and unambiguous language defining state employee establishes that all full or part-time persons employed by the state, including agency heads, shall be eligible to receive vacation leave. The only individuals expressly excluded are members of Nebraska boards and commissions. Beyond that one exclusion, the definition does not differentiate between personnel in the State Personnel System, constitutional agencies, branches of government, or any other category of employee.

A fundamental principle of statutory construction is to attempt to ascertain legislative intent and to give effect to that intent. *Spence v. Terry*, 215 Neb. 810, 814, 340 N.W.2d 884, 886 (1983). "To ascertain the intent of the Legislature, a court may examine the legislative history of the act in question." *Goolsby v. Anderson*, 250 Neb. 306, 309, 549 N.W.2d 153, 156 (1996). The statute governing vacation time for state employees was enacted by 1973 Neb. Laws LB 469. When asked about the extent of the proposed legislation during the committee hearing on LB 469, the then director of State Personnel, William C. Peters, testified that it would encompass "approximately 22,000 employees. We're talking about all the employees of the state government. . . . Both the constitutional bodies, the Universities, state and so forth." Committee Records on LB 469, 83<sup>rd</sup> Neb. Leg., 1<sup>st</sup> Sess. 17 (March 1, 1973).

While our review of the legislative history of the vacation leave statute for state employees indicates a legislative intent to apply its provisions to all state employees, including all "constitutional" bodies, subsequent case law addressing the Legislature's power to enact legislation affecting the governance of the University of Nebraska precludes applying the statute to the University. In *Board of Regents v. Exon*, 199 Neb. 146, 149, 256 N.W.2d 330, 333 (1977), the Nebraska Supreme Court held that "the general government of the University must remain vested in the Board of Regents

and the powers or duties that should remain in the Regents cannot be delegated to other officers or agencies." Application of § 81-1328 to the University is foreclosed by specific language set out in *Exon*, where the court stated: "We believe the finding by the trial court that the Legislature may fix and determine the manner in which raises are to be given to employees of the Board of Regents was erroneous. The determination of salary schedules and the compensation to be paid to the employees of the Board of Regents is an integral part of the general government of the University." *Id.* at 153, 256 N.W.2d at 335. Accordingly, § 81-1328 does not apply to University employees.<sup>5</sup>

In Op. Att'y Gen. No. 89015 (March 20, 1989), we noted that the language creating the Board of Trustees of the State Colleges in Neb. Const. art. VII, § 13 was virtually identical to the language creating the Board of Regents in Neb. Const. art. VII, § 10. *Id.* at 6. We indicated that, by analogy, it would seem that "the court's language in the *Exon* case would apply equally to section 13 of Article VII." *Id.* Accordingly, the Board of Trustees would likely be in the same position as the University with respect to the ability to determine salary and other compensation for its personnel. However, unlike the Board of Regents, we have identified no decision from any Nebraska court which has conclusively applied *Exon* to the Board of Trustees. As a result, whether an exemption applies to the Board of Trustees in this instance is not clear. Apart from the University and, potentially, the state colleges, we see no impediment to applying § 81-1328 to employees of other constitutional bodies or officers, subject, of course, to the right of those bodies or entities to negotiate terms and conditions of employment through collective bargaining or, alternatively, to adjust terms and conditions of employment under the authority in § 81-1317.01.

We now turn to your second question which seeks our opinion as to whether LB 830 would violate or conflict with the State Employees Collective Bargaining Act. Your question arises out of concern that LB 830, which mandates a new process relating to vacation leave "buyouts," would conflict with the current labor contracts, which do not contain such a provision. You indicate that the Legislature has retained no right to approve or modify current contracts.

Under Neb. Rev. Stat. § 81-1376 (2014), the Chief Negotiator of the Division of Employee Relations within the Department of Administrative Services "shall be responsible for negotiating and administering all labor contracts entered into by the State of Nebraska," except for the contracts entered into by the constitutional offices, the Board of Regents of the University of Nebraska, and the Board of Trustees of the Nebraska State Colleges. The Chief Negotiator is charged with negotiating or supervising the negotiation of labor contracts on a statewide basis for those agencies within the division's jurisdiction. § 81-1376(1). As defined in Neb. Rev. Stat. § 81-1371(9) (2014), "[m]andatory topic or topics of bargaining shall mean those subjects of negotiation on which employers must negotiate pursuant to the Industrial Relations Act, *including terms and conditions of*

*employment which may otherwise be provided by law for state employees, except when specifically prohibited by law from being a subject of bargaining . . . ."* (Emphasis added.) Vacation leave is a mandatory subject of bargaining under Neb. Rev. Stat. § 48-824(1) of the Industrial Relations Act. *Service Employees International Union (AFL-CIO) Local 226 v. Douglas County School District 001*, 286 Neb. 755, 839 N.W.2d 290 (2013).

The Act expressly provides that bargained-for terms and conditions of employment can supersede state statute. A comparison of the vacation leave provisions in § 81-1328 with the current labor contract between the State of Nebraska and the Nebraska Association of Public Employees Local 61 of the American Federation of State, County and Municipal Employees (NAPE/AFSCME) (July 1, 2015 through June 30, 2017) ("Agreement") indicates substantive differences. For example, the statute provides that the amount of leave an employee may accumulate as of December 31 of each year shall be "the number of hours of vacation leave which he or she earned during that calendar year." Any vacation hours over that amount shall be lost when the account is balanced. Under § 81-1328, the maximum amount of hours that could be earned by a state employee in a calendar year is two hundred hours. In contrast, the Agreement provides that "[a]n employee's accumulated vacation time in excess of *thirty-five days* [280 hours] shall be forfeited as of the end of business on December 31<sup>st</sup> of each calendar year." Agreement, § 14.7 (emphasis added). In addition, the statute allows an employee to carry over vacation leave in "special and meritorious cases," in instances where forfeiture "would work a peculiar hardship," and the carryover is approved by the Governor or the Executive Board of the Legislative Council, as applicable. There is no such corresponding provision in the Agreement.

Upon review, we do not believe that LB 830 violates the State Employees Collective Bargaining Act. Since there are collective bargaining contracts currently in place, LB 830 would likely impact only those state employees not covered under a labor agreement. In the course of our research, we learned that based on the principle of past practice, employees under the Agreement have been allowed to carry over vacation leave in the manner described in the statute. Generally, "[a] past practice that does not derive from the parties' collective bargaining agreement may become a 'term or condition of employment' which is binding on the parties. Such practices must be mutually accepted by both parties . . . ." 51 C.J.S. Labor Relations § 217 (2010). It is unclear to what extent LB 830 may be applied to employees covered under current collective bargaining agreements based on past practice. Going forward, the impact of LB 830 would depend on whether its provisions are agreed to in the course of future collective bargaining. And as noted above, the Act does not require that the process contemplated by LB 830 shall be made a part of any collective bargaining agreement unless negotiated and agreed to by the parties.



## CONCLUSION

In conclusion, we believe that LB 830, which seeks to amend the general statute relating to vacation leave for state employees, does not unduly encroach on the duties and prerogatives of the constitutional officers exempted from the State Personnel System by § 81-1316. However, our conclusion in this regard does not apply to the University of Nebraska and, potentially, the state colleges, based on express language set out in *Board of Regents v. Exon*. Legislative Bill 830, if enacted, would conflict with collective bargaining agreements currently in place. The bill, however, would not apply to employees covered under current collective bargaining agreements. Finally, LB 830 does not violate the State Employees Collective Bargaining Act, which authorizes that mandatory terms and conditions of employment may be negotiated in a manner which may be otherwise provided by statute.

<sup>1</sup> We note that LB 830 is on Final Reading. Nebraska Legislative Journal at 941 (March 10, 2016).

<sup>2</sup> Pursuant to Neb. Rev. Stat. § 81-1316(1) (2014), "[a]ll agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System . . . ." Section 81-1316 specifically excludes from the system the personnel of the constitutional officers (i.e., Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, and Auditor of Public Accounts); the personnel of the Legislature and the "court systems"; the personnel from other agencies created by the Nebraska Constitution (e.g., the University of Nebraska, State Department of Education); the personnel of other state agencies (e.g., Brand Committee); agency heads; and certain enumerated officers and personnel from the Departments of Banking and Finance, Correctional Services, Health and Human Services, and Insurance. Section 81-1316(2) also excludes a certain number of discretionary, nonclassified employees who serve at the pleasure of the agency head.

<sup>3</sup> Neb. Const. art. IV does address, however, the salaries of the executive officers enumerated in § 1, who "shall receive such salaries as may be provided by law." Neb. Const. art. IV, § 25. Members of the Public Service Commission shall receive compensation as fixed by the Legislature. Neb. Const. art. IV, § 20. With respect to the members of the Tax Equalization and Review Commission, "[t]he terms of office and compensation of members of the commission shall be as provided by law." Neb. Const. art. IV, § 28.

<sup>4</sup> See Neb. Rev. Stat. § 48-1229(6) (Cum. Supp. 2014)

<sup>5</sup> In Op. Att'y Gen. No. 98006 (January 21, 1998), we discussed whether the University was subject to legislation which authorized state agencies and other governmental entities "to accept credit card payments as cash payments in certain instances." *Id.* at 1. We concluded that the credit card

legislation applied to the University, stating in part "that statutes which pertain generally to state agencies and which do not purport to direct the Board of Regents as to matters which are central to the University's educational function or its 'government,' can have application to the University, even under *Exon*." *Id.* at 3. While the vacation leave statute could be viewed as one which pertains generally to state agencies, and is not, therefore, precluded by *Exon*, the specific language in *Exon* stating the determination of compensation paid to employees of the Board of Regents is an "integral part of the general government of the University" forecloses application of the vacation leave statute to University employees.

Sincerely,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Leslie S. Donley  
Assistant Attorney General

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

49-1544-29

**MOTION - Place LB1056 on General File**

Senator Chambers offered his motion, MO233, found on page 1248, to place LB1056 on General File pursuant to Rule 3, Section 20(b).

Senator Chambers moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 3 nays, and 19 not voting.

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

Senator Chambers requested a roll call vote on the motion to place on General File.

Voting in the affirmative, 9:

Bloomfield	Cook	Howard	Morfeld	Schumacher
Chambers	Haar, K.	Kolowski	Pansing Brooks	

Voting in the negative, 28:

Bolz	Gloor	Kolterman	Riepe	Stinner
Brasch	Hadley	Larson	Scheer	Sullivan
Crawford	Hilkemann	Lindstrom	Schilz	Watermeier
Ebke	Hughes	McCoy	Schnoor	Williams
Friesen	Johnson	Mello	Seiler	
Garrett	Kintner	Murante	Smith	

Present and not voting, 6:

Baker	Craighead	Hansen
Campbell	Fox	McCollister

Excused and not voting, 6:

Coash	Groene	Krist
Davis	Harr, B.	Kuehn

The Chambers motion to place on General File failed with 9 ayes, 28 nays, 6 present and not voting, and 6 excused and not voting.

LB1056 stands indefinitely postponed.

The Chair declared the call raised.

### **GENERAL FILE**

**LEGISLATIVE BILL 756.** Title read. Considered.

Committee AM2375, found on page 855, was adopted with 26 ayes, 0 nays, 16 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review Initial with 29 ayes, 0 nays, 14 present and not voting, and 6 excused and not voting.

**LEGISLATIVE BILL 829.** Title read. Considered.

### **SPEAKER HADLEY PRESIDING**

Committee AM2056, found on page 716, was adopted with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 29 ayes, 0 nays, 14 present and not voting, and 6 excused and not voting.

**LEGISLATIVE BILL 851.** Title read. Considered.

Committee AM2149, found on page 690, was adopted with 30 ayes, 0 nays, 12 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 9 present and not voting, and 7 excused and not voting.

**LEGISLATIVE BILL 851A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 8 present and not voting, and 6 excused and not voting.

**LEGISLATIVE BILL 930.** Title read. Considered.

Committee AM2280, found on page 708, was offered.

Senator Sullivan withdrew her amendment, AM2551, found on page 988.

Senator Sullivan offered the following amendment to the committee amendment:

AM2836

(Amendments to Standing Committee amendments, AM2280)

- 1 1. On page 7, line 24, strike "Beginning" through "year", show the 2 old matter as stricken, and insert "No later than the 2017-18 school 3 year".
- 4 2. On page 8, line 2, strike "tests" and insert "test".

The Sullivan amendment was adopted with 29 ayes, 0 nays, 16 present and not voting, and 4 excused and not voting.

The committee amendment, as amended, was adopted with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 580.** Title read. Considered.

Committee AM1961, found on page 637, was offered.

Senator Murante offered his amendment, AM2800, found on page 1380, to the committee amendment.

The Murante amendment was adopted with 28 ayes, 1 nay, 17 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 26 ayes, 1 nay, 19 present and not voting, and 3 excused and not voting.

Senator Kintner moved for a call of the house. The motion prevailed with 33 ayes, 0 nays, and 16 not voting.

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

Voting in the affirmative, 30:

Baker	Crawford	Hansen	Mello	Schumacher
Bolz	Davis	Harr, B.	Morfeld	Seiler
Campbell	Fox	Howard	Murante	Stinner
Chambers	Gloor	Kolowski	Pansing Brooks	Sullivan
Coash	Haar, K.	Krist	Riepe	Watermeier
Cook	Hadley	McCollister	Scheer	Williams

Voting in the negative, 5:

Bloomfield	Brasch	Craighead	Groene	Kintner
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Present and not voting, 11:

Ebke	Hilkemann	Larson	Schnoor
Friesen	Hughes	Lindstrom	Smith
Garrett	Johnson	McCoy	

Absent and not voting, 1:

Kolterman

Excused and not voting, 2:

Kuehn	Schilz
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Advanced to Enrollment and Review Initial with 30 ayes, 5 nays, 11 present and not voting, 1 absent and not voting, and 2 excused and not voting.

The Chair declared the call raised.

#### **AMENDMENT(S) - Print in Journal**

Senator Scheer filed the following amendment to LB884:  
AM2828 is available in the Bill Room.

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

Health and Human Services

**LEGISLATIVE BILL 804.** Placed on General File with amendment.

AM2791

1 1. On page 2, line 8, after "would" insert "soon"; and in line 30

2 strike "and".

3 2. On page 3, line 1, after "act" insert ": and

4 (6) Not be a patient receiving inpatient treatment in a hospital

5 licensed pursuant to the Health Care Facility Licensure Act"; and in line

6 14 after "outcomes" insert ", if known".

7 3. On page 4, lines 17 and 18, strike "medicare"; in line 17 after

8 "certification" insert "under the medical assistance program established

9 pursuant to the Medical Assistance Act"; and strike beginning with "who"

10 in line 21 through "of" in line 22 and insert "while acting in good faith

11 in the course of his or her professional practice as authorized by".

12 4. On page 5, strike beginning with "and" in line 5 through "care"

13 in line 6.

(Signed) Kathy Campbell, Chairperson

### EASE

The Legislature was at ease from 12:27 p.m. until 12:55 p.m.

### PRESIDENT FOLEY PRESIDING

#### GENERAL FILE

**LEGISLATIVE BILL 1106.** Title read. Considered.

Committee AM2389, found on page 933, was offered.

Senator Pansing Brooks moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 2 nays, and 21 not voting.

Senator Seiler moved for a call of the house. The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

Senator Seiler requested a roll call vote on the committee amendment.

Voting in the affirmative, 27:

Baker	Cook	Garrett	Johnson	Schumacher
Bloomfield	Craighead	Gloor	Krist	Seiler
Bolz	Crawford	Haar, K.	Lindstrom	Sullivan
Brasch	Davis	Hadley	Morfeld	
Campbell	Ebke	Hansen	Pansing Brooks	
Chambers	Fox	Howard	Scheer	

Voting in the negative, 9:

Friesen	Hilkemann	Kintner	Riepe	Watermeier
Groene	Hughes	Larson	Stinner	

Present and not voting, 12:

Coash	Kolterman	Mello	Schnoor
Harr, B.	McCollister	Murante	Smith
Kolowski	McCoy	Schilz	Williams

Excused and not voting, 1:

Kuehn

The committee amendment was adopted with 27 ayes, 9 nays, 12 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

Senator Morfeld moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 28 ayes, 3 nays, and 18 not voting.

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

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

Voting in the affirmative, 36:

Baker	Ebke	Howard	Mello	Seiler
Bloomfield	Fox	Hughes	Morfeld	Stinner
Bolz	Garrett	Johnson	Murante	Sullivan
Brasch	Gloor	Kintner	Pansing Brooks	Williams
Campbell	Groene	Kolowski	Scheer	
Chambers	Haar, K.	Kolterman	Schilz	
Cook	Hadley	Krist	Schnoor	
Crawford	Hansen	Lindstrom	Schumacher	

Voting in the negative, 0.

Present and not voting, 9:

Coash	Harr, B.	McCollister	Riepe	Watermeier
Friesen	Hilkemann	McCoy	Smith	

Excused and not voting, 4:

Craighead	Davis	Kuehn	Larson
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Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

**RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 616.** Introduced by Johnson, 23.

WHEREAS, the David City High School speech team won the 2016 Class C-1 State Speech Championship; and

WHEREAS, the David City Scouts earned their first place finish with a score of 156 points; and

WHEREAS, this is the Scouts' third state speech championship in the last five years; and

WHEREAS, this victory is a testament to the dedication and hard work of the Scouts and the leadership of Coach Jarod Ockander; 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 David City High School speech team on winning the 2016 Class C-1 State Speech Championship.
2. That a copy of this resolution be sent to the David City High School speech team and Coach Jarod Ockander.

Laid over.

**COMMITTEE REPORT(S)**

## General Affairs

The General Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Mark Canada - Nebraska Commission on Problem Gambling  
Susan Lutz - Nebraska Commission on Problem Gambling  
James D. Patterson - Nebraska Commission on Problem Gambling

Aye: 7 Coash, Hansen, Kolterman, Larson, McCollister, Riepe, Schilz. Nay: 0. Absent: 1 Hughes. Present and not voting: 0.

(Signed) Tyson Larson, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 721.** Title read. Considered.

Committee AM2057, found on page 600, was adopted with 29 ayes, 0 nays, 16 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.



**LEGISLATIVE BILL 235.** Title read. Considered.

Committee AM751, found on page 883, First Session, 2015, was offered.

Senator Howard offered her amendment, AM2577, found on page 1007, to the committee amendment.

The Howard amendment was adopted with 31 ayes, 0 nays, 13 present and not voting, and 5 excused and not voting.

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

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

**LEGISLATIVE BILL 768.** Title read. Considered.

Senator Garrett offered the following motion:

MO257

Unanimous consent to bracket until April 20, 2016.

No objections. So ordered.

**LEGISLATIVE BILL 716.** Title read. Considered.

Committee AM2134, found on page 731, was offered.

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

Senator Hansen moved for a call of the house. The motion prevailed with 22 ayes, 0 nays, and 27 not voting.

The motion to cease debate prevailed with 26 ayes, 2 nays, 14 present and not voting, and 7 excused and not voting.

The committee amendment was adopted with 34 ayes, 4 nays, 4 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Senator Hilkemann moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 2 nays, and 21 not voting.

Advanced to Enrollment and Review Initial with 26 ayes, 5 nays, 11 present and not voting, and 7 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 10.** Senator Chambers renewed his amendment, AM528, found on page 639 and considered on pages 762, 864, and 885, First Session, 2015.

**SPEAKER HADLEY PRESIDING****SENATOR SCHEER PRESIDING**

Senator McCoy offered the following motion:

MO259

Unanimous consent to bracket until April 5, 2016.

Senator Hansen objected.

Senator McCoy offered the following motion:

MO260

Bracket until April 5, 2016.

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

Senator Cook moved for a call of the house. The motion prevailed with 27 ayes, 1 nay, and 21 not voting.

The motion to cease debate prevailed with 26 ayes, 1 nay, 19 present and not voting, and 3 excused and not voting.

Senator McCoy withdrew his motion to bracket.

The Chair declared the call raised.

Senator Chambers moved for a call of the house. The motion prevailed with 27 ayes, 1 nay, and 21 not voting.

Senator Chambers requested a roll call vote on his amendment, AM528.

Voting in the affirmative, 8:

Cook	Haar, K.	Harr, B.	Pansing Brooks
Crawford	Hansen	Howard	Schumacher

Voting in the negative, 31:

Baker	Fox	Hughes	McCoy	Stinner
Bloomfield	Friesen	Johnson	Murante	Watermeier
Brasch	Garrett	Kintner	Riepe	Williams
Campbell	Gloor	Kolterman	Schilz	
Coash	Groene	Kuehn	Schnoor	
Craighead	Hadley	Larson	Seiler	
Ebke	Hilkemann	Lindstrom	Smith	

Present and not voting, 8:

Bolz	Kolowski	McCollister	Morfeld
Chambers	Krist	Mello	Sullivan

Excused and not voting, 2:

Davis	Scheer
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The Chambers amendment lost with 8 ayes, 31 nays, 8 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:

MO261

Reconsider the vote taken on AM528.

Pending.

### COMMITTEE REPORT(S)

#### Enrollment and Review

**LEGISLATIVE BILL 756.** Placed on Select File with amendment.

ER242

1 1. On page 1, strike beginning with "section" in line 1 through line 2 7 and insert "sections 77-6101 and 77-6105, Reissue Revised Statutes of 3 Nebraska, and section 77-2716, Revised Statutes Supplement, 2015; to 4 terminate the Long-Term Care Savings Plan Act; to harmonize provisions; 5 and to repeal the original sections."

**LEGISLATIVE BILL 829.** Placed on Select File with amendment.

ER243 is available in the Bill Room.

**LEGISLATIVE BILL 851.** Placed on Select File with amendment.

ER246

1 1. On page 1, line 4, after the second semicolon insert "to change 2 provisions relating to exempt contracts;"

**LEGISLATIVE BILL 851A.** Placed on Select File.

**LEGISLATIVE BILL 930.** Placed on Select File with amendment.

ER244

1 1. On page 1, line 4, strike "a" through "to"; and strike beginning  
2 with the first "to" in line 5 through "districts" in line 6 and insert  
3 "to provide powers and duties for the State Board of Education".

(Signed) Matt Hansen, Chairperson

**SELECT FILE**

**LEGISLATIVE BILL 10.** The Chambers motion, MO261, found in this day's Journal, to reconsider the vote taken on AM528, was renewed.

**SPEAKER HADLEY PRESIDING**

Senator Chambers offered the following motion:

MO262

Bracket until April 20, 2016.

Senator McCoy offered the following motion:

MO258

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator McCoy moved for a call of the house. The motion prevailed with 38 ayes, 0 nays, and 11 not voting.

Senator McCoy requested a roll call vote on the motion to invoke cloture.

Voting in the affirmative, 34:

Baker	Fox	Hughes	Lindstrom	Schnoor
Bloomfield	Friesen	Johnson	McCollister	Seiler
Brasch	Garrett	Kintner	McCoy	Smith
Coash	Gloor	Kolterman	Murante	Stinner
Craighead	Groene	Krist	Riepe	Watermeier
Davis	Hadley	Kuehn	Scheer	Williams
Ebke	Hilkemann	Larson	Schilz	

Voting in the negative, 15:

Bolz	Cook	Hansen	Kolowski	Pansing Brooks
Campbell	Crawford	Harr, B.	Mello	Schumacher
Chambers	Haar, K.	Howard	Morfeld	Sullivan

The McCoy motion to invoke cloture prevailed with 34 ayes, 15 nays, and 0 not voting.

The Chambers motion to bracket failed with 14 ayes, 32 nays, and 3 present and not voting.

The Chambers motion to reconsider AM528 failed with 12 ayes, 31 nays, and 6 present and not voting.

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

Voting in the affirmative, 32:

Baker	Friesen	Johnson	McCoy	Smith
Bloomfield	Garrett	Kintner	Murante	Stinner
Brasch	Gloor	Kolterman	Riepe	Watermeier
Coash	Groene	Kuehn	Scheer	Williams
Craighead	Hadley	Larson	Schilz	
Davis	Hilkemann	Lindstrom	Schnoor	
Fox	Hughes	McCollister	Seiler	

Voting in the negative, 15:

Bolz	Cook	Hansen	Kolowski	Pansing Brooks
Campbell	Crawford	Harr, B.	Mello	Schumacher
Chambers	Haar, K.	Howard	Morfeld	Sullivan

Present and not voting, 2:

Ebke	Krist
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Advanced to Enrollment and Review for Engrossment with 32 ayes, 15 nays, and 2 present and not voting.

The Chair declared the call raised.

### VISITOR(S)

Visitors to the Chamber were 35 twelfth-grade students and teacher from Wilber-Clatonia; members of the Department of Education FCCLA from across the state; 10 eleventh- and twelfth-grade students and teachers from Papillion-La Vista High School and Papillion-La Vista South High School; Lisa Nun from Lincoln; 75 fourth-grade students from Ezra Millard Elementary, Omaha; Spencer Hartman from Champion; Yvonne Zegers, Alexander Lanza, Chelsea Hsu, Daniel Cambrono of A.S.S.E. Foreign Exchange Program; 100 fourth-grade students and sponsors from Wheeler Elementary, Omaha; Jeremy, Jennifer, and Carter Cleveland from Wisner; 57 fourth-grade students from Grant Elementary, Norfolk; 15 third-, fourth-, and fifth-grade youth ambassadors from Huntington Elementary, Lincoln; and 12 students from an American Government class at Doane College.

**ADJOURNMENT**

At 7:49 p.m., on a motion by Senator Watermeier, the Legislature adjourned until 9:00 a.m., Tuesday, April 5, 2016.

Patrick J. O'Donnell  
Clerk of the Legislature