

FORTY-SIXTH DAY - MARCH 21, 2018**LEGISLATIVE JOURNAL****ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION****FORTY-SIXTH DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, March 21, 2018

PRAYER

The prayer was offered by Pastor Neil Wheeler, Peace Lutheran Church, Waverly.

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 Bostelman, Groene, Hansen, McCollister, Morfeld, Murante, Pansing Brooks, Walz, Watermeier, Wayne, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-fifth day was approved.

COMMITTEE REPORT(S)

Agriculture

LEGISLATIVE BILL 477. Placed on General File with amendment.
AM2409

- 1 1. On page 3, strike beginning with "Advertise" in line 29 through
- 2 line 31 and insert "Sell an advertised blend of automotive spark ignition
- 3 engine fuel containing a ten percent ethanol blend or less at a price
- 4 other than the price advertised to the consumer on a manual, digital,
- 5 electronic, or any other form of advertising medium. Any location
- 6 utilizing multi-product fuel dispensers with six or more fueling
- 7 positions shall make such advertised automotive spark ignition engine
- 8 fuel available at every fueling position. This subdivision does not apply
- 9 to the sale of any fuel blends containing an ethanol content of greater
- 10 than ten percent; or".
- 11 2. On page 4, strike lines 1 through 4; and strike beginning with
- 12 "for" in line 10 through "retail" in line 12 and insert ", on any basis
- 13 except octane, for cash payment, self-service, customer loyalty, or other
- 14 similar discounts to the base price at each".

(Signed) Lydia Brasch, Chairperson

AMENDMENT(S) - Print in Journal

Senator Quick filed the following amendment to LB295:
AM1853

(Amendments to Standing Committee amendments, AM1418)

1 1. On page 11, after line 4 insert the following new subsection:

2 "(4) Each qualified school that admits and enrolls students who
3 receive education scholarships shall submit an annual financial report to
4 the Commissioner of Education by the date given in subdivision (3)(a) of
5 section 79-528 showing the amount of money received by the qualified
6 school from all sources during the year and the amount of money expended
7 by the qualified school during the year.".

GENERAL FILE

LEGISLATIVE BILL 993A. Title read. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 4 present and not voting, and 11 excused and not voting.

LEGISLATIVE BILL 1090A. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 7 present and not voting, and 6 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 946. ER127, found on page 956, was adopted.

SPEAKER SCHEER PRESIDING

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 945. ER128, found on page 975, was adopted.

Senator Stinner offered his amendment, AM2463, found on page 1032.

The Stinner amendment was adopted with 33 ayes, 4 nays, 11 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 944. ER129, found on page 984, was adopted.

Senator Stinner offered his amendment, AM2464, found on page 1031.

The Stinner amendment was adopted with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

Senator Krist offered his amendment, AM2289, found on page 912.

Senator Krist moved for a call of the house. The motion prevailed with 29 ayes, 2 nays, and 18 not voting.

Senator Krist requested a roll call vote on his amendment.

Voting in the affirmative, 28:

Albrecht	Hansen	Krist	Quick	Walz
Baker	Harr	Lindstrom	Scheer	Wayne
Bolz	Hilkemann	McCollister	Schumacher	Williams
Chambers	Howard	McDonnell	Stinner	Wishart
Crawford	Kolowski	Morfeld	Thibodeau	
Ebke	Kolterman	Pansing Brooks	Vargas	

Voting in the negative, 15:

Blood	Briese	Geist	Hilgers	Murante
Brasch	Erdman	Groene	Larson	Riepe
Brewer	Friesen	Halloran	Lowe	Watermeier

Present and not voting, 6:

Bostelman	Hughes	Linehan
Clements	Kuehn	Smith

The Krist amendment was adopted with 28 ayes, 15 nays, and 6 present and not voting.

The Chair declared the call raised.

Senator Erdman offered his amendment, AM2405, found on page 962.

SENATOR LINDSTROM PRESIDING

SPEAKER SCHEER PRESIDING

Pending.

CEREMONIES

The Speaker introduced a group from the Nebraska Association of Former State Legislators.

UNANIMOUS CONSENT - Add Cointroducer(s)

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

Senator Quick name added to LB1040.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 596. Placed on Select File with amendment.
ER136

1 1. On page 1, strike beginning with "Veterinary" in line 1 through
2 "regulation" in line 5 and insert "Uniform Credentialing Act; to amend
3 sections 38-3314 and 38-3321, Reissue Revised Statutes of Nebraska, and
4 sections 38-101 and 38-121, Revised Statutes Supplement, 2017; to require
5 a credential for an equine massage practitioner; to define and redefine
6 terms; to create the Equine Massage Practitioner Registry as prescribed;
7 to provide an exception under the Veterinary Medicine and Surgery
8 Practice Act".

(Signed) Anna Wishart, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 357. Introduced by Kolowski, 31.

PURPOSE: The purpose of this resolution is to study the current status of early childhood education in this state and potential methods and policies to ensure universal access to high-quality early childhood education. The primary focus of the study shall be on access to programs for children who are three or four years of age, but the study may also examine access issues for all young children, from birth onward.

The study committee shall work in conjunction with interested entities, including, but not limited to, school districts, the State Department of Education, any institute at the University of Nebraska formed for the purpose of promoting quality early childhood experiences, and any nonprofit groups interested in expanding access to high-quality early childhood education in this state.

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

1. That the Education 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.

ATTORNEY GENERAL'S OPINIONOpinion 18-001

SUBJECT: Constitutionality of the Refundable Income Tax Credits in LB 829 and LB 947.

REQUESTED BY: Senator John Kuehn
 Nebraska Legislature

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

INTRODUCTION

You have requested our opinion regarding the constitutionality of two bills which would provide a refundable income tax credit based on a percentage of property taxes paid during the taxable year. The first bill (LB 829) provides "each taxpayer a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 in the amount of fifty percent of the school district taxes levied on the taxpayer's property and paid by the taxpayer during such taxable year." LB 829, § 3. The second bill (LB 947) provides "each resident individual who is an owner of a homestead shall be allowed a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to a percentage of the property taxes paid during the taxable year on such homestead" LB 947, § 3(1). "For taxable year 2018, the refundable credit shall be ten percent of the property taxes paid during the taxable year." *Id.* The amount of the credit is capped at \$230 for 2018. LB 947, § 3(2). The bill provides a mechanism for the credit to increase in subsequent years by a percentage not to exceed 30 percent, and for the cap to increase by a maximum of \$50 per year, not to exceed \$730. LB 947, §§ 3, 5. LB 947 also provides that "each resident individual shall be allowed a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to a percentage of the property taxes paid during the taxable year on agricultural land and horticultural land, farm sites, and improvements on farm sites that are agricultural or horticultural in nature." LB 947, § 4. "For taxable year 2018, the refundable credit shall be ten percent of the property taxes paid during the taxable year." *Id.* A mechanism is provided for the credit to increase in subsequent years by two percentage points a year, not to exceed thirty percent. LB 947, § 5.

You have asked us to address "two issues [raised by these bills] regarding foregoing a state income tax obligation based on property taxes paid." You phrase these questions as follows:

First, does the payment of property taxes to a local government as a means of foregoing a state income tax liability represent a commutation of taxes, which is prohibited by Article VIII Section 4 of the Nebraska Constitution?

Second, the receipt of a refundable income tax credit based on a proportion of property taxes paid favors only those who file a Nebraska income tax return, not all property tax payers. Is this preferential treatment for Nebraska income tax filers over non-resident property tax payers facially discriminatory on the basis of the Commerce Clause and/or Dormant Commerce Clause of the U.S. Constitution?

ANALYSIS

A. Commutation of Taxes.

Neb. Const. art. VIII, § 4, provides, in pertinent part:

Except as to tax and assessment charges against real property remaining delinquent and unpaid for a period of fifteen years or longer, the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever

"The proscription against commuting a tax prevents the Legislature from releasing either persons or property from contributing a proportionate share of the tax." *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Ctys.*, 283 Neb. 212, 244, 808 N.W.2d 598, 621 (2012). In *Steinacher v. Swanson*, 131 Neb. 439, 268 N.W. 317 (1936), the Nebraska Supreme Court held an act which allowed delinquent property taxes to be paid in installments violated the prohibition against the commutation of taxes in art. VIII, § 4. The *Steinacher* court noted the definition of "commutation" expressed in *Woodrough v. Douglas County*, 71 Neb. 354, 361, 98 N.W. 1092, 1095 (1904):

Commutation is a passing from one state to another; an alteration, a change; the act of substituting one thing for another; a substitution of one sort of payment for another, or of a money payment in lieu of a performance of a compulsory duty or labor or of a single payment in lieu of a number of successive payments, usually at a reduced rate. 131 Neb. at 445-46, 268 N.W. at 321.

Further addressing the meaning of the prohibition against the commutation of taxes in art. VIII, § 4, the Court in *Steinacher* stated:

It is quite apparent that the framers of the Constitution of 1875, the one first containing this provision, and the members of all subsequent constitutional conventions, have been imbued with the idea that all taxpayers are entitled to the same treatment by the government they support. For this reason they have expressly written into our

Constitution that the legislature not only shall have no power to release or discharge any one from the payment of his share of taxes, but a commutation for taxes in any form whatever is prohibited. From an examination of the definitions of the word "commutation" hereinbefore set out, and the use of the words "in any form whatever," contained in our constitutional provision, it is quite apparent that the legislature is prohibited by the Constitution from changing the method of payment of any tax once levied. Clearly, under this constitutional provision, the legislature cannot reduce the amount of the tax, extend the time for payment, or in any manner change the method of payment. 131 Neb. at 446, 268 N.W. at 321 (emphasis in original).

Thus, the prohibition against "commutation" means that the "legislature is prohibited by the Constitution from changing the method of payment of any tax once levied." *Steinacher v. Swanson*, 131 Neb. at 446, 268 N.W. at 321. See also *Woodrough v. Douglas County* (Act which allowed delinquent taxpayers to pay in installments violated the prohibition against commutation for taxes).

In *Banks v. Heineman*, 286 Neb. 390, 837 N.W.2d 70 (2013), the Court addressed for the first time the issue of whether the prohibition against the "commutation" of taxes applied to taxes other than property taxes. At issue was whether the "nameplate capacity tax," an excise tax measured by the production capacity of wind generation facilities, operated to commute taxes in violation of art. VIII, § 4. The Court noted that "[t]he language of article VIII, § 4, does not prohibit the release, discharge, or commutation of 'taxes,' but, rather, a taxpayer's 'proportionate share' of taxes" This language "correlates with the requirement of Neb. Const. Art. VIII, § 1, that taxes be levied by valuation uniformly and proportionately"—a provision it previously held "does not apply to an excise tax." *Id.* at 398-99, 837 N.W.2d at 78. "Based on the semantic and historical linkage between the prohibition against commutation of a taxpayer's 'proportionate share' of taxes in article VIII, § 4, and the uniform and proportionate requirements of article VIII, § 1, [the Court] conclude[d] that the scope of the two provisions is the same." *Id.* at 399, 837 N.W.2d at 78. It thus held "that the constitutional prohibition against commutation of taxes set forth in article VIII, § 4, does not apply to an excise tax." *Id.*

"An excise tax, using the term in its broad meaning as opposed to a property tax, includes taxes sometimes designated by statute or referred to as privilege taxes, license taxes, occupation taxes, and business taxes." *State v. Galyen*, 221 Neb. 497, 500-01, 378 N.W.2d 182, 185 (1985) (quoting *Licking v. Hays Lumber Co.*, 146 Neb. 240, 243, 19 N.W.2d 148, 150 (1945)); see also *Anderson v. Tiemann*, 182 Neb. 393, 403-04, 155 N.W.2d 322, 329 (1967) ("Franchise tax" imposed under Nebraska Revenue Act of 1967 based on or measured by income of corporation was "an excise tax or privilege tax and not a property tax" and thus could not violate the requirement of uniform and proportionate valuation of tangible property in art. VIII, § 1).

The income tax credits allowed under LB 829 and LB 947 do not, at least directly, fall within the meaning of "commutation" as defined by the Nebraska Supreme Court. The income tax credits, while determined on the basis of a percentage of property taxes paid, do not alter or change the amount of property taxes paid, nor do they substitute one form of payment of property taxes for another. Further, while the income tax is not an "excise" tax, a form of taxation the Court has specifically recognized is not subject to the commutation restriction,¹ it is not a property tax within the meaning of art. VIII, § 1, and thus is not a tax subject to the prohibition against the "commutation" of taxes in art. VIII, § 4.²

B. Commerce Clause.

The Commerce Clause authorizes Congress to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Oregon Waste Systems, Inc. v. Dep't of Environmental Quality*, 511 U.S. 93,

¹ Taxes measured by income have been recognized as falling within two categories: "(1) excise taxes on the privilege of doing, or the license to do, business in the state, owning property, or engaging in other activities within the state; and (2) taxes on net income derived from or attributable to the state." Hellerstein & Hellerstein, *State Taxation* ¶ 7.01 (3d ed.). "The excise tax is commonly referred to as a 'franchise tax' and the tax on net income is commonly referred to as a 'direct net income' tax." *Id.*

² In the past, we have questioned whether the provision of income tax credits based on property taxes paid would be an indirect means to improperly exempt property from taxation or violate the constitutional requirement of uniform taxation. Op. Att'y Gen. No. 90007 at 6 (Feb. 14, 1990) (Credit against income tax liability based on real property taxes paid by only certain taxpayers could "be viewed as an unconstitutional attempt to indirectly grant an exemption for real property not authorized by the Constitution."); Report of Attorney General 1971-72, Opinions No. 102 (Feb. 16, 1972), 104 (Feb. 17, 1972), 106 (Feb. 18, 1972), and 108 (Feb. 24, 1972) (Credit against sales and income taxes based on personal property taxes paid may violate uniformity clause). The Legislature "cannot circumvent an express provision of the Constitution by doing indirectly what the Constitution prohibits it from doing directly." *Rock County v. Spire*, 235 Neb. 434, 447, 455 N.W.2d 763, 770 (1990). While it is possible a court could view the allowance of an income tax credit based on property taxes paid as an indirect attempt to impermissibly commute property taxes in contravention of art. VIII, § 4, we believe it is unlikely the credit would be found unconstitutional on this ground.

98 (1994) [*Oregon Waste Systems*"]. This "negative command, known as the dormant Commerce Clause, prohibit[s] certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 513 U.S. 175, 179 (1995). Under the four-part test adopted by the Court to govern the validity of state taxes under the Commerce Clause, a tax will be sustained against Commerce Clause challenge "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

"[T]he first step in analyzing any law subject to judicial scrutiny under the negative Commerce Clause is to determine whether it 'regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce.'" *Oregon Waste Systems*, 511 U.S. at 99 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)). "[D]iscrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems*, 511 U.S. at 99. "[A] state tax that favors in-state business over out-of-state business for no other reason than the location of the business is prohibited by the Commerce Clause." *American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 286 (1987). "[T]he degree of a differential burden or charge on interstate commerce 'measures only the extent of the discrimination' and 'is of no relevance to the determination whether a State has discriminated against interstate commerce.'" *Oregon Waste Systems*, 511 U.S. at 100 n.4 (quoting *Wyoming v. Oklahoma*, 502 U.S. 437, 455 (1992) (emphasis in original)).

In assessing if a state tax impermissibly discriminates against interstate commerce, a court must consider not only the tax, but also any credits, exemptions, or exclusions. See *Maryland v. Louisiana*, 451 U.S. 725, 756 (1981) (Invalidating Louisiana tax on use of natural gas in the state in part because allowing credits only to those engaged in in-state economic activity effectively immunized local interests from the tax); see also *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 211 (1994) (Scalia, J., concurring) ("'[E]xemption' from or 'credit' against a 'neutral tax' . . . no different in principle" than tax that directly discriminates against out-of-state interests). Various tax exemptions or credits have been held to violate the Commerce Clause. See, e.g., *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564 (1997) (Invalidating property tax exemption for charitable institutions that was limited to institutions serving principally state residents); *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988) (Invalidating Ohio statute that provided tax credit for sales of ethanol produced in-state, but not ethanol produced in certain other states).

"[A] tax may violate the Commerce Clause if it is facially discriminatory, has a discriminatory intent, or has the effect of unduly burdening interstate commerce." *Amerada Hess Corp. v. Director, Div. of Taxation*, 490 U.S. 66, 75 (1989). "If a restriction on commerce is discriminatory, it is virtually *per*

se invalid." *Oregon Waste Systems*, 511 U.S. at 99. A discriminatory law will be invalidated unless "it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Id.* at 101 (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988)). "By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless 'the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Oregon Waste Systems*, 511 U.S. at 99 (quoting *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970)).

You have asked us to address if limiting the refundable income tax credits provided under LB 829 and LB 947 to persons subject to Nebraska income tax creates "preferential treatment for Nebraska income tax filers over non-resident property tax payers [which is] facially discriminatory" in violation of the Commerce Clause. In order to address this issue, it is first necessary to summarize the scope of Nebraska's income tax, and the nature of the refundable credits allowed under each bill.

1. Nebraska's Income Tax.

Both resident and nonresident individuals are subject to Nebraska income tax. *See* Neb. Rev. Stat. § 77-2715(1) (Cum. Supp. 2016). Resident individuals are taxed on their "entire net income," while nonresident individuals are taxed on income "derived from sources within" Nebraska. *Id.* Both resident and nonresident estates and trusts, and their beneficiaries, are subject to Nebraska income tax. Neb. Rev. Stat. § 77-2717(1)(b), (4)-(6) (Cum. Supp. 2016). Corporations are also subject to income tax. Neb. Rev. Stat. § 77-2734.02(1) (Cum. Supp. 2016).³ Nebraska income tax also applies to resident and nonresident partners of partnerships, as well as resident and nonresident shareholders of Subchapter S corporations or members of limited liability companies. Neb. Rev. Stat. §§ 77-2727 (Cum. Supp. 2016) and 77-2734.01 (Cum. Supp. 2016).

2. LB 829.

Under LB 829, a refundable income tax credit is allowed "to each taxpayer...in the amount of fifty percent of the school district taxes levied on the taxpayer's property and paid by the taxpayer during [the] taxable year." LB 829, § 3. While "taxpayer" is not defined, it presumably refers to all taxpayers subject to Nebraska income tax. As noted, "taxpayers" subject to Nebraska income tax can include both resident and nonresident individuals and entities. LB 829 specifically extends the refundable income tax credit to "resident individuals," "resident estates and trusts,"

³ Corporations operating as a unitary business both within and outside Nebraska determine taxable income by use of an apportionment formula. Neb. Rev. Stat. §§ 77-2734.05 and 77-2734.06 (2009).

"nonresident estates and trusts," resident or nonresident "beneficiaries" of estates and trusts, and "corporate taxpayers." LB 829, §§ 5, 6, and 7. Nevertheless, by stating "each taxpayer" is entitled to the credit, we interpret the bill to extend the credit to any taxpayer subject to the Nebraska income tax, resident or nonresident.

3. LB 947.

The refundable income tax credit provided under LB 947 is limited to two classes of resident taxpayers: (1) Resident individual homestead owners; and (2) Resident individuals paying property taxes on agricultural land and horticultural land, farm sites, and improvements that are agricultural or horticultural in nature. LB 947, §§ 3, 4. If property taxes are paid by pass-through entities (S-Corps, partnerships, LLCs, trusts, or estates), property taxes paid are allocated to shareholders, partners, members, or beneficiaries in the same proportion that income is distributed. *Id.* On its face, LB 947 would thus not provide an income tax credit to nonresident owners of either of these two classes of property.

C. Do the Limitations on Availability of the Income Tax Credits Allowed Under LB 829 and LB 947 Result in Discrimination Prohibited by the Commerce Clause?

LB 829, on its face, provides "each taxpayer" a refundable income tax credit of a percentage of school district property taxes levied and paid by the taxpayer. Both residents and nonresidents can be subject to Nebraska income tax. To the extent the credit is extended to any person or entity subject to Nebraska income tax, the bill does not discriminate between resident and nonresident taxpayers. Availability of the credit is based on whether the person or entity is subject to Nebraska income tax and pays property tax in Nebraska, not residency. Thus, the bill does not discriminate on its face against nonresidents subject to Nebraska income tax.

Limiting the credit to taxpayers, however, results in different treatment of some nonresidents. In this regard, nonresidents who do not have income sourced to Nebraska and are thus not subject to income tax, but own property on which taxes are paid, would receive no income tax credit. While this may not impact a significant number of nonresidents, there is no "de minimis" defense to a charge of discriminatory taxation under the Commerce Clause." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 334 n.3 (1996). The income tax credit is intended to provide tax relief to property taxpayers. By allowing the credit only to those subject to income tax, some property taxpayers (nonresidents that pay property taxes but are not subject to income tax) are denied relief. This discrimination against certain nonresidents would disfavor primarily out-of-state interests, which the Commerce Clause prohibits absent a showing that limiting the credit advances a legitimate local interest that cannot adequately be served by nondiscriminatory alternatives. Accordingly, to remove any potential impermissible discrimination, the credit should be extended to all property taxpayers,

resident and nonresident, whether or not they are subject to Nebraska income tax. As the credit is refundable, a mechanism should be created to allow the credit to be claimed by those not otherwise subject to Nebraska income tax.

LB 947, in contrast to LB 829, specifically limits the income tax credits to two classes of residents subject to Nebraska individual income tax, either as owners of a homestead or agricultural and horticultural land, farm sites, and improvements. The Commerce Clause implications of each classification are addressed separately below.

1. Homestead Credit.

LB 947 allows an income tax credit to "each resident individual who is an owner of a homestead...." LB 947, § 3(1). "Homestead has the same meaning as in § 77-3502." LB 947, § 2(4). The definition of "homestead" in § 77-3502, utilized for determining qualification for the homestead property tax exemption, generally means a residence occupied by an owner from January 1 through August 15 in each year. Neb. Rev. Stat. § 77-3502 (2009).

In *Reinish v. Clark*, 765 So. 2d 197 (Fla. Dist. Ct. App. 2000), nonresident taxpayers challenged Florida's homestead tax exemption on several grounds, including a claim that the exemption violated the Commerce Clause. The taxpayers argued that they were "engaged in direct economic competition with Florida residents for the purchase of real estate," and that "the challenged exemption afford[ed] those persons who establish a Florida permanent residence a clear and continuing economic advantage over non-residents." *Id.* at 213. The court found that the exemption was not "*per se* discriminatory against interstate commerce," and that it could "discern neither a discriminatory purpose underlying the exemption nor an improper discriminatory effect on non-residents." *Id.* at 214. It concluded:

[T]he Florida homestead tax exemption neither distinguishes between Florida residents and non-residents nor disparately treats identically situated persons. The focus of the exemption is on the use of the property itself, and not on the user. Entitlement to the exemption hinges upon whether the property is used as the "permanent residence." We cannot find any reasonable basis to support the [taxpayers'] claim that the exemption discriminates against interstate commerce. The historical justification of the homestead tax exemption is the protection of the home, a legitimate governmental purpose. *Id.*

Determining there was "no facial discrimination against interstate commerce," the *Reinish* court "look[ed] to the second stage of the analysis under the [Commerce] Clause to determine whether the Florida homestead tax exemption impose[d] a burden on interstate commerce that clearly outweigh[ed] its potential benefits." *Id.* at 215. The court conclude[d] that the Florida exemption [was] an even-handed regulation that promotes the

legitimate, strong public interest in promoting the stability and continuity of the primary permanent home. The [taxpayers] have not shown either that the effects of the exemption on interstate commerce are anything more than incidental, or that the burden imposed on such commerce is clearly excessive when compared to the asserted local benefits. Under these circumstances, the Court's criteria in *Pike* for upholding the regulation are met. *Id.*

Relying on *Reinisch*, a Florida District Court of Appeal found that a cap on increases in the assessment of homestead property did not violate the Commerce Clause. *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. Dist. Ct. App. 2009), *rev. denied*, 37 So. 3d 847 (Fla. 2010), *cert. denied*, 562 U.S. 1062 (2010). The court again reasoned that "the tax is based on the way the property is used, not on the status of the landowner as a resident or nonresident." 16 So. 3d at 297. *See also Stahl v. Village of Hoffman Estates*, 296 Ill. App. 3d 550, 230 Ill. Dec. 824, 694 N.E.2d 1102 (Ill. 1998) (Transfer tax exemption granted only sellers of property who purchased another residence in village did not violate the Commerce Clause).

These authorities demonstrate that a homestead exemption based on ownership and use of the property as a permanent or primary residence, as opposed to the status of the owner as a resident or nonresident, does not violate the Commerce Clause. LB 947 incorporates the definition of "homestead" in § 77-3502, which means a residence actually occupied by the owner for a specified period during the year. Like an exemption, an income tax credit based on status as an owner of a homestead, as opposed to resident or nonresident status, would not result in discriminatory treatment which would violate the Commerce Clause. The concern is that LB 947 also limits availability of the credit to "each resident individual" homestead owner. This language thus conditions eligibility to claim the credit on residency, evincing an intent to discriminate against nonresidents. Facial discrimination of this type is prohibited by the Commerce Clause. If, however, the bill is amended to provide the credit is based on ownership and occupancy of property as a homestead regardless of residency, it will satisfy any objection that it discriminates against interstate commerce.

2. Agricultural and Horticultural Land Credit.

LB 947 allows an income tax credit to "each resident individual" based on a percentage of property taxes paid "on agricultural land and horticultural land, farm sites, and improvements on farm sites that are agricultural or horticultural in nature." LB 947, § 4. The credit is thus limited to "resident individuals" that pay property taxes on agricultural and horticultural land, farm sites, and improvements. Nonresidents, of course, can also be subject to Nebraska income tax on income sourced to Nebraska. By limiting the income tax credit to "resident individuals," the credit is necessarily denied to nonresidents paying taxes on agricultural and horticultural land, including nonresidents that are subject to Nebraska income tax.

In *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564 (1997), the Supreme Court considered whether a statute that provided a general exemption for property owned by charitable institutions violated the Commerce Clause because it provided a lesser exemption to institutions "conducted or operated principally for the benefit of persons who are not residents of Maine" *Id.* at 568. In striking down the limitation on the exemption for institutions serving primarily nonresidents, the Court noted it had "held that special fees assessed on nonresidents directly by the State when they attempt to use local services impose an impermissible burden on interstate commerce." *Id.* at 578 (citing *Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 342 (1992)). While the Maine statute involved a tax exemption statute, not a tax imposition statute, the Court found the fact "[t]hat the tax discrimination comes in the form of a deprivation of a generally available tax benefit, rather than a specific penalty on the activity itself, is of no moment." *Id.* at 578-79. The Court found that "[g]iven the fact that the burden of Maine's facially discriminatory tax scheme falls by design in a predictably disproportionate way on out-of-staters, the pernicious effect on interstate commerce is the same as in our cases targeting out-of-staters alone." *Id.* at 579. Because the statute "facially discriminate[d] against interstate commerce," it was "all but *per se* invalid." *Id.* at 581. Invalidating the statute, the Court noted the Town "made no effort to defend the statute under the *per se* rule" by advancing a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory alternatives. *Id.* at 581-82.

Limiting the income tax credit to resident individuals paying property taxes on agricultural and horticultural land, farm sites, and improvements in Nebraska necessarily places nonresidents subject to Nebraska income tax that pay property taxes on the same type of property at an economic disadvantage. The credit is facially discriminatory—it is only allowed to resident individuals subject to Nebraska income tax. Nonresidents (presumably primarily persons from out-of-state) that pay property taxes on agricultural property and are subject to Nebraska income tax do not receive the credit. A facially discriminatory statute favoring in-state actors over out-of-state actors is *per se* invalid, and can be defended only by demonstrating "that it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Oregon Waste Systems*, 511 U.S. at 101 (quoting *New Energy Co. v. Limbach*, 486 U.S. 269, 278 (1988)). We are unaware of any purpose for allowing only residents to claim the income tax credit other than to limit tax relief based on taxes paid on agricultural property to Nebraska residents. This is precisely the type of discrimination favoring in-state economic interests over out-of-state interests that the dormant Commerce Clause forbids. Accordingly, restricting the credit to "resident individuals" is not permissible under the Commerce Clause. The improper discrimination can, of course, be eliminated by extending the credit to all persons, both resident and nonresident, based on their payment of property taxes on agricultural property. Further, like LB 829, to remove any potential impermissible

discrimination against all nonresidents, the credit should be extended to all property taxpayers, resident and nonresident, whether or not they are subject to Nebraska income tax. As the credit is refundable, a mechanism can be created to allow the credit to be claimed by those not otherwise subject to Nebraska income tax in order to provide property tax relief to all persons paying taxes on agricultural property.

CONCLUSION

In sum, we conclude that the refundable income tax credits provided under LB 829 and LB 947 would not, if enacted, impermissibly commute taxes in violation of Neb. Const. art. VIII, § 4. The income tax credits, while determined on the basis of a percentage of property taxes paid, do not alter or change the amount of property taxes paid, nor do they substitute one form of payment of property taxes for another. Further, the prohibition against "commutation" applies only to property taxes. As the income tax is not a property tax, the prohibition against the "commutation" of taxes in art. VIII, § 4 does not apply. Further, while the income tax credits allowed under both LB 829 and LB 947 are limited in such a manner as to raise questions as to their constitutionality under the Commerce Clause, both bills can be amended to remedy the discriminatory treatment against nonresidents contained in the bills as currently proposed. This can be done by allowing the credit to all taxpayers paying taxes on qualifying property, resident and nonresident, regardless of whether they are subject to Nebraska income tax.

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

07-1157-29

VISITORS

Visitors to the Chamber were Jacob Miller from Crete; 39 fourth-grade students from St. Mary's Catholic School, David City; 7 twelfth-grade students and teacher from Arcadia; students from Little Lambs Preschool and Senator Geist's daughter and granddaughters, Alexis, Rosie, and Elsa; Tom and Jane Goering from Grand Island and Roger and Julie Frandsen from Grand Island; and Coordinator of Centennial Mall Renovations, Susan Larson-Rodenburg from Lincoln.

RECESS

At 11:41 a.m., on a motion by Senator Geist, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., President Foley presiding.

ROLL CALL

The roll was called and all members were present except Senators Larson, Lindstrom, Pansing Brooks, Vargas, Watermeier, and Wayne who were excused until they arrive.

COMMITTEE REPORT(S)

Revenue

LEGISLATIVE BILL 947. Placed on General File with amendment. AM2542 is available in the Bill Room.

(Signed) Jim Smith, Chairperson

SELECT FILE

LEGISLATIVE BILL 944. The Erdman amendment, AM2405, found on page 962 and considered in this day's Journal, was renewed.

SPEAKER SCHEER PRESIDING**PRESIDENT FOLEY PRESIDING**

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

Senator Morfeld moved for a call of the house. The motion prevailed with 26 ayes, 4 nays, and 19 not voting.

Senator Morfeld requested a roll call vote, in reverse order, on the motion to cease debate.

Voting in the affirmative, 30:

Baker	Hansen	Krist	Pansing Brooks	Thibodeau
Blood	Harr	Lindstrom	Quick	Vargas
Bolz	Hilkemann	Linehan	Riepe	Walz
Chambers	Howard	McCollister	Scheer	Wayne
Crawford	Kolowski	McDonnell	Smith	Williams
Ebke	Kolterman	Morfeld	Stinner	Wishart

Voting in the negative, 1:

Larson

Present and not voting, 18:

Albrecht	Briese	Geist	Hughes	Schumacher
Bostelman	Clements	Groene	Kuehn	Watermeier
Brasch	Erdman	Halloran	Lowe	
Brewer	Friesen	Hilgers	Murante	

The motion to cease debate prevailed with 30 ayes, 1 nay, and 18 present and not voting.

The Erdman amendment lost with 10 ayes, 32 nays, and 7 present and not voting.

The Chair declared the call raised.

Pending.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 358. Introduced by Thibodeau, 6; Harr, 8; Hilgers, 21; Krist, 10.

WHEREAS, the Omaha Creighton Prep academic decathlon team won the large-school division and the overall state title at the 2018 Nebraska Academic Decathlon; and

WHEREAS, the Academic Decathlon is a national program that engages scholars throughout the country; and

WHEREAS, each year a different topic is chosen and students study that topic through the fields of literature, art, music, math, science, economics, history, speech, interview, and essay. The topic for this year was Africa; and

WHEREAS, this competition promotes academic growth, teamwork, and communication skills among students of all achievement levels; and

WHEREAS, Gabe Drew, Joe McGill, Matthew Muellner, Aidan Beuchler, Jack Mowat, Paul Martin, Aidan Weindel, Isaiah Hogue, Aidan Filipi, Marcus Steinke, and Mitch Masker displayed diligence preparing for the competition; and

WHEREAS, Coaches Barbara Hake, Elaine Ayers, and Mattie Olsen did a tremendous job of mentoring the team, with the assistance of team managers Sean Patterson, Max Lauritsen, De Vanni Tang, Joey Kaplan, and Yoobin Ha; 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 FIFTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the Omaha Creighton Prep academic decathlon team on winning the 2018 Nebraska Academic Decathlon.
2. That a copy of this resolution be sent to the Omaha Creighton Prep academic decathlon team and coaches Barbara Hake, Elaine Ayers, and Mattie Olsen.

Laid over.

LEGISLATIVE RESOLUTION 359. Introduced by Bostelman, 23.

WHEREAS, the Wahoo High School boys' basketball team won the 2018 Class C-1 Boys' State Basketball Championship; and

WHEREAS, this is the eleventh state title for the Wahoo Warriors boys' basketball team and the first state title since 2013; and

WHEREAS, the Warriors defeated Winnebago in overtime with a score of 70-66 to win the championship; and

WHEREAS, Coach Kevin Scheef provided the leadership to cap a 24-2 regular season with a state championship; and

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

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

1. That the Legislature congratulates the Wahoo High School boys' basketball team on winning the Class C-1 Boys' State Basketball Championship.
2. That a copy of this resolution be sent to the Wahoo High School boys' basketball team and Coach Kevin Scheef.

Laid over.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 946. Placed on Final Reading.

(Signed) Anna Wishart, Chairperson

SELECT FILE

LEGISLATIVE BILL 944. Senator Wishart offered her amendment, AM2514, found on page 1034.

Pending.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 360. Introduced by Harr, 8; Baker, 30; Briese, 41; Ebke, 32; Halloran, 33; Hansen, 26; Hilgers, 21; Howard, 9; Kolowski, 31; Krist, 10; Morfeld, 46; Pansing Brooks, 28; Scheer, 19; Schumacher, 22; Stinner, 48; Thibodeau, 6; Wayne, 13; Williams, 36.

WHEREAS, the Honorable John F. Wright, Nebraska Supreme Court Justice and lifelong Nebraskan, was born December 24, 1945, in Scottsbluff, Nebraska; and

WHEREAS, Justice Wright earned a Bachelor of Science degree from the University of Nebraska in 1967 and a Juris Doctor from the University of Nebraska in 1970; and

WHEREAS, Justice Wright served in the United States Army in 1970 and the Nebraska National Guard from 1970 to 1976; and

WHEREAS, Justice Wright was married to Deborah Johnson for 45 years, and together they raised four children: Jane, Charlie, John, and Ellen; and

WHEREAS, Justice Wright practiced law in Scottsbluff, Nebraska, from 1970 to 1991; and

WHEREAS, in 1991, Justice Wright was appointed by Governor E. Benjamin Nelson to serve as one of the original members of the Nebraska Court of Appeals; and

WHEREAS, Justice Wright was appointed to the Nebraska Supreme Court by Governor Nelson in 1994; and

WHEREAS, Justice Wright passed away after a long battle with cancer on March 18, 2018, surrounded by his wife and children.

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

1. That the Legislature hereby recognizes and honors Justice John F. Wright, who dedicated his life to serving Nebraska, and extends its sympathy to his family and friends.

2. That a copy of this resolution be sent to the family of Justice John F. Wright.

Laid over.

AMENDMENT(S) - Print in Journal

Senator Friesen filed the following amendment to LB1103:
AM2439

1 1. On page 2, line 11, strike "2019-20" and insert "2020-21".

Senator Friesen filed the following amendment to LB1103:
AM2440

1 1. On page 2, line 14, strike "twenty-five" and insert "thirty".

Senator Friesen filed the following amendment to LB1103:
AM2574

1 1. On page 2, line 11, strike "2019-20" and insert "2020-21".

Senator Friesen filed the following amendment to LB1103:

AM2576

1 1. On page 2, line 14, strike "twenty-five" and insert "thirty".

Senator Friesen filed the following amendment to LB1103:

AM2575

(Amendments to Final Reading copy)

1 1. On page 2, line 11, strike "2019-20" and insert "2020-21".

Senator Friesen filed the following amendment to LB1103:

AM2577

(Amendments to Final Reading copy)

1 1. On page 2, line 14, strike "twenty-five" and insert "thirty".

Senator Morfeld filed the following amendment to LB948:

AM2561

(Amendments to Standing Committee amendments, AM1931)

1 1. On page 2, line 9, strike "establish and maintain", show as
2 stricken, and insert "eventually get to establishing and maintaining";
3 and in line 14 strike the period, show as stricken, and insert an
4 underscored question mark.

Senator Chambers filed the following amendment to LB596:

AM2578

(Amendments to AM2523)

1 1. On page 1, line 14, after "Equine" insert ", cat, and dog"; in
2 line 17 after "equines" insert ", cats, and dogs"; and in line 23 after
3 "equine" insert ", cat, and dog".
4 2. On page 4, line 1, after "equine" insert ", cat, and dog".

Senator Kolterman filed the following amendment to LB1005:

AM2560 is available in the Bill Room.

SELECT FILE

LEGISLATIVE BILL 944. The Wishart amendment, AM2514, found on page 1034 and considered in this day's Journal, was renewed.

Senator Stinner offered the following motion:

MO279

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Stinner moved for a call of the house. The motion prevailed with 31 ayes, 2 nays, and 16 not voting.

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

Voting in the affirmative, 30:

Albrecht	Ebke	Hilgers	Lindstrom	Scheer
Bostelman	Erdman	Hilkemann	Linehan	Smith
Brasch	Friesen	Hughes	Lowe	Stinner
Brewer	Geist	Kolterman	McDonnell	Thibodeau
Briese	Groene	Kuehn	Murante	Watermeier
Clements	Halloran	Larson	Riepe	Williams

Voting in the negative, 8:

Chambers	Howard	Krist	Pansing Brooks
Hansen	Kolowski	Morfeld	Schumacher

Present and not voting, 10:

Baker	Bolz	Harr	Vargas	Wayne
Blood	Crawford	Quick	Walz	Wishart

Excused and not voting, 1:

McCollister

The Stinner motion to invoke cloture failed with 30 ayes, 8 nays, 10 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 950. Advanced to Enrollment and Review for Engrossment.

GENERAL FILE

LEGISLATIVE BILL 1132. Title read. Considered.

Committee AM1971, found on page 761, was offered.

Senator Lindstrom withdrew his amendment, AM2159, found on page 841.

Senator Lindstrom offered his amendment, AM2361, found on page 986, to the committee amendment.

SPEAKER SCHEER PRESIDING

The Lindstrom amendment was adopted with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 986. Title read. Considered.

Committee AM1958, found on page 765, was offered.

Pending.

COMMITTEE REPORT(S)
Enrollment and Review

LEGISLATIVE BILL 945. Placed on Final Reading.

(Signed) Anna Wishart, Chairperson

VISITORS

Visitors to the Chamber were 24 grass roots coordinators of the Rural Electric Association from across the state.

RECESS

At 6:00 p.m., on a motion by Senator Linehan, the Legislature recessed until 6:30 p.m.

AFTER RECESS

The Legislature reconvened at 6:30 p.m., Speaker Scheer presiding.

ROLL CALL

The roll was called and all members were present except Senators Kuehn, McCollister, Pansing Brooks, Stinner, Vargas, Watermeier, Wayne, and Williams who were excused until they arrive.

GENERAL FILE

LEGISLATIVE BILL 986. Senator Larson offered the following motion:
MO280

Unanimous consent to bracket until April 18, 2018.

Senator Hansen objected.

Senator Larson offered the following motion:
MO281

Bracket until April 18, 2018.

SENATOR LINDSTROM PRESIDING

Senator Friesen moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 7 nays, and 16 not voting.

Senator Larson moved for a call of the house. The motion prevailed with 33 ayes, 4 nays, and 12 not voting.

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

Voting in the affirmative, 27:

Albrecht	Ebke	Hilgers	Lowe	Thibodeau
Bostelman	Erdman	Hughes	Murante	Watermeier
Brasch	Friesen	Kolterman	Riepe	Williams
Brewer	Geist	Larson	Scheer	
Briese	Groene	Lindstrom	Smith	
Clements	Halloran	Linehan	Stinner	

Voting in the negative, 18:

Blood	Harr	Krist	Quick	Wayne
Bolz	Hilkemann	McDonnell	Schumacher	Wishart
Chambers	Howard	Morfeld	Vargas	
Crawford	Kolowski	Pansing Brooks	Walz	

Present and not voting, 2:

Baker Hansen

Excused and not voting, 2:

Kuehn McCollister

The Larson motion to bracket prevailed with 27 ayes, 18 nays, 2 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

MESSAGE(S) FROM THE GOVERNOR

March 21, 2018

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 17, 256, 321, 743, 750, 775, 874, and 936 were received in my office on March 15, 2018.

These bills were signed and delivered to the Secretary of State on March 21, 2018.

Sincerely,
(Signed) Pete Ricketts
Governor

March 21, 2018

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

Dear Mr. President and Members of the Legislature:

I am returning LB350 without my signature and with my objections.

This legislation broadens a section of the Nebraska Probation Administration Act that permits specific criminal convictions to be nullified or "set aside." LB350 dramatically expands the number and nature of convictions that can be set aside.

Current law only allows a set aside petition to be made by a person with a criminal conviction whose punishment is either a fine or a sentence of probation. This bill would allow, for the first-time, felons who are convicted of dangerous crimes and who are sentenced to long prison terms to have their convictions set aside.

My primary concern with LB350 is its dramatic expansion of the set aside to serious felony convictions. Supporters of the bill tend to cite to cases involving low-level crimes; however, the final bill is not limited to low-level offenders. Criminal convictions for serious, violent, or heinous crimes like human trafficking, murder, and domestic assault could be set aside under the bill. Only felons with specific motor vehicle offenses, sex offender crimes, criminal charges pending, or who are within two years of a prior petition are barred from seeking a set aside from a court.

The bill is confusing and misleading. Originally, the bill clearly stated that a set aside would "remove all civil disabilities and disqualifications imposed as a result of the conviction except for the offender's right to possess a firearm under state or federal law." As introduced, the bill also clearly stated that the set aside "does not restore the offender's ability to possess a firearm under state or federal law." Now, LB350 tells an offender to consult an attorney regarding the effect of the bill on the offender's firearms rights. The change appears to be an attempt to restore offenders' gun rights. The resulting final bill is confusing.

There is also confusion created by the fact that, as introduced, LB350 made it clear that a set aside order would not affect a crime victim's right to prosecute or defend a civil action. As passed by the Legislature, this

provision was stricken from the bill. The intent of the Legislature and the status of the law regarding the impact of a set aside on victim's rights are unclear.

While a set aside does not have the same effect as a pardon, it still removes consequences that follow a criminal conviction. This weakens the deterrent impact of serious criminal sentences for serious felonies.

LB350 weakens confidence in the criminal justice system by dramatically liberalizing the ability of serious felonies like murder, arson, human trafficking, armed robbery, drug manufacturing, drug distribution, and assault on a police officer or emergency responder to be set aside. Anyone convicted of these crimes would likely face an extended sentence in our state prison system. It is wrong to put post-sentence remedies for these crimes on the same level as those where a judge believes a simple fine or time in the community on probation is the appropriate sanction.

This bill sends the wrong message to victims of crime and to society. It represents poor public policy.

For these reasons, I respectfully urge you to sustain my veto of LB350.

Sincerely,
(Signed) Pete Ricketts
Governor

GENERAL FILE

LEGISLATIVE BILL 1009. Title read. Considered.

Committee AM1737, found on page 790, was offered.

Senator Smith offered his amendment, AM2254, found on page 861, to the committee amendment.

The Smith amendment was adopted with 34 ayes, 1 nay, 11 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 34 ayes, 1 nay, 11 present and not voting, and 3 excused and not voting.

Senator Murante requested a record vote on the advancement of the bill.

Voting in the affirmative, 35:

Baker	Clements	Harr	Linehan	Schumacher
Bolz	Crawford	Hilkemann	Lowe	Smith
Bostelman	Ebke	Hughes	McDonnell	Stinner
Brasch	Friesen	Kolowski	Murante	Vargas
Brewer	Geist	Krist	Quick	Watermeier
Briese	Groene	Larson	Riepe	Williams
Chambers	Halloran	Lindstrom	Scheer	Wishart

Voting in the negative, 2:

Albrecht Walz

Present and not voting, 9:

Blood	Hilgers	Kolterman	Pansing Brooks	Wayne
Erdman	Howard	Morfeld	Thibodeau	

Excused and not voting, 3:

Hansen Kuehn McCollister

Advanced to Enrollment and Review Initial with 35 ayes, 2 nays, 9 present and not voting, and 3 excused and not voting.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 1005. Placed on Select File with amendment.

ER137

1 1. In the Standing Committee amendments, AM2204:

2 a. On page 4, line 20; and page 41, line 1, strike the semicolon and

3 insert an underscored period;

4 b. On page 18, line 15, strike "effective date of this act" and

5 insert "operative date of this section"; and

6 c. On page 53, line 5, strike the period and insert an underscored

7 semicolon.

8 2. On page 1, strike beginning with "retirement" in line 1 through

9 line 8 and insert "government; to amend sections 23-2302, 23-2305,

10 23-2306.02, 23-2306.03, 23-2310.05, 23-2323.02, 23-2323.03, 23-3527,

11 24-704, 24-704.01, 24-710, 24-710.05, 24-710.06, 79-904, 79-905, 79-907,

12 79-915, 79-924, 79-933.01, 79-933.02, 79-933.03, 79-933.04, 79-933.07,

13 81-2019, 81-2031.03, 81-2031.04, 84-1305, 84-1310.01, 84-1311.03,

14 84-1312, 84-1313, 85-122, and 85-123.01, Reissue Revised Statutes of

15 Nebraska, sections 23-2305.01, 23-2306, 23-2309.01, 79-9,113, 81-2019.01,

16 81-2026, and 84-1305.02, Revised Statutes Cumulative Supplement, 2016,

17 and sections 23-2323.01, 79-902, 79-904.01, 79-926, 79-978, 81-2014,

18 84-1301, 84-1325, and 84-1503, Revised Statutes Supplement, 2017; to

19 change provisions relating to employer removal or withdrawal from the

20 Retirement System for Nebraska Counties or the School Employees

21 Retirement System of the State of Nebraska; to change provisions relating
 22 to facility participation in a retirement system under the County
 23 Employees Retirement Act; to provide authority relating to the adoption
 24 of bylaws, prescription of forms, and adoption and promulgation of rules
 25 and regulations by the Public Employees Retirement Board to carry out
 26 state-administered retirement acts as prescribed; to redefine actuarial
 27 equivalent in the School Employees Retirement Act, the Nebraska State
 1 Patrol Retirement Act, and the State Employees Retirement Act; to change
 2 calculation of retirement benefits and required contributions under the
 3 Class V School Employees Retirement Act; to change provisions relating to
 4 investment and management of the University Trust Fund; to harmonize
 5 provisions; to provide operative dates; to provide severability; to
 6 repeal the original sections; and to declare an emergency."

LEGISLATIVE BILL 993A. Placed on Select File.

LEGISLATIVE BILL 1090A. Placed on Select File.

(Signed) Anna Wishart, Chairperson

AMENDMENT(S) - Print in Journal

Senator Hansen filed the following amendment to LB986:

AM2072

1 1. Strike the original sections and insert the following new
 2 sections:

3 Section 1. Sections 1 to 19 of this act shall be known and may be
 4 cited as the Neighborhood Improvement District Act.

5 Sec. 2. The Legislature finds that municipalities in the state
 6 contain many older neighborhoods in need of revitalization but lack the
 7 funds with which to provide and maintain improvements. The purpose of the
 8 Neighborhood Improvement District Act is to provide a means by which such
 9 municipalities may raise the necessary funds to be used for the purpose
 10 of providing and maintaining the improvements authorized by the act, to
 11 stimulate the development of public improvements by providing an
 12 equitable and politically expeditious method of financing such
 13 improvements, and to supplement, but not reduce, the level of government
 14 services provided.

15 Sec. 3. For purposes of the Neighborhood Improvement District Act:
 16 (1) Homeowners association means a nonprofit corporation duly
 17 incorporated under the laws of the State of Nebraska for the purpose of
 18 enforcing the restrictive covenants established upon the real property
 19 legally described in the articles of incorporation and located within the
 20 corporate limits of a municipality. Each member of such association must
 21 be an owner of a lot located within the plat or subdivision and, by
 22 virtue of membership or ownership of a lot, obligated to pay costs for
 23 the administration, maintenance, and care of the common area within the
 24 plat or subdivision. Homeowners association includes associations of
 25 residential homeowners, nonresidential property owners, or both;
 26 (2) Municipality means any city of the primary class, city of the

27 first class, or city of the second class;

1 (3) Neighborhood means a well-defined and established area of the
2 municipality zoned primarily for residential use;

3 (4) Neighborhood association means an organization that is
4 recognized or endorsed by a municipality as representing all of the
5 residents within a specifically defined geographical area, with the
6 organization representing those residents on a wide range of issues
7 through an open meeting process with elected officers and regularly
8 scheduled meetings; and

9 (5) Record owner means the fee owner of real property as shown in
10 the records of the office of the register of deeds in the county in which
11 the neighborhood area is located. A contract purchaser of real property
12 shall be considered the record owner and the only person entitled to
13 petition pursuant to section 8 or 14 of this act or protest pursuant to
14 section 9 or 15 of this act, if the contract is recorded in the office of
15 the register of deeds in the county in which the neighborhood area is
16 located.

17 Sec. 4. Any funds available under the Neighborhood Improvement
18 District Act may be used for any one or more of the following purposes:

19 (1) Improvement of any public place or facility in the neighborhood
20 improvement district area, including landscaping, physical improvements
21 for decoration or security purposes, and plantings;

22 (2) Construction or installation of pedestrian plazas, sidewalks,
23 parks, public restrooms, meeting and display facilities, bus stop
24 shelters, lighting, benches or other seating furniture, sculptures, trash
25 receptacles, shelters, fountains, pedestrian and vehicular overpasses and
26 underpasses, and any other useful or necessary public improvements or
27 projects whether capital or noncapital in nature;

28 (3) Creation and implementation of a plan for improving the general
29 architectural design of public areas in the neighborhood improvement
30 district;

31 (4) The development and promotion of any public or social activities
1 and public events within the neighborhood improvement district area;

2 (5) Maintenance, repair, and reconstruction of any improvements or
3 facilities authorized by the Neighborhood Improvement District Act;

4 (6) Establishing or assisting with neighborhood watch programs;

5 (7) Establishing or assisting with neighborhood cleanup, litter
6 cleanup, recycling, or other trash abatement programs; and

7 (8) Employing or contracting for personnel, including administrators
8 for any improvement program under the act, and providing for any service
9 as may be necessary or proper to carry out the purposes of the
10 Neighborhood Improvement District Act.

11 Sec. 5. A neighborhood improvement district may be created as
12 provided by the Neighborhood Improvement District Act and shall be within
13 the boundaries of a neighborhood.

14 Sec. 6. (1) The mayor, with the approval of the city council, shall
15 appoint a neighborhood improvement board consisting of residents and
16 property owners within the neighborhood to be improved. The boundaries of
17 the neighborhood improvement district shall be declared by resolution of

18 the city council at or prior to the time of the appointment of the
19 neighborhood improvement board. The neighborhood improvement board shall
20 make recommendations to the city council for the establishment of a plan
21 or plans for improvements in the neighborhood improvement district. The
22 neighborhood improvement board may make recommendations to the
23 municipality as to the use of any funds collected, and may administer
24 such funds if so directed by the mayor and city council. The neighborhood
25 improvement board shall also review and make recommendations to the
26 municipality regarding expansion of the boundaries of the neighborhood
27 improvement district under sections 13 to 16 of this act.
28 (2) The mayor, with approval of the city council, may designate an
29 existing neighborhood association board or homeowners association board
30 within the neighborhood as the neighborhood improvement board in lieu of
31 appointing a neighborhood improvement board under subsection (1) of this
1 section.

2 Sec. 7. Unless the mayor designates an existing neighborhood
3 association board or homeowners association board as the neighborhood
4 improvement board pursuant to subsection (2) of section 6 of this act,
5 the neighborhood improvement board shall consist of five or more members
6 to serve such terms as the city council by resolution determines. A
7 majority of the members of the board shall be residents of the
8 neighborhood. The mayor, with the approval of the city council, shall
9 fill any vacancy for the term vacated. A board member may serve more than
10 one term. The board shall select from its members a chairperson and a
11 secretary.

12 Sec. 8. If the city council has not acted to call a hearing to
13 create a neighborhood improvement district as provided in section 11 of
14 this act, it shall do so when presented with a petition signed by the
15 record owners of at least thirty percent of the assessable front footage
16 in a neighborhood.

17 Sec. 9. Whenever a hearing is held pursuant to section 8 or 11 of
18 this act, the city council shall:

- 19 (1) Hear all protests and receive evidence for or against the
20 proposed action;
21 (2) Rule upon all written protests received prior to the close of
22 the hearing, which ruling shall be final; and
23 (3) Continue the hearing from time to time as the city council may
24 deem necessary.

25 Sec. 10. If the city council decides to change the boundaries of
26 the proposed neighborhood improvement district or to change the proposed
27 modifications to the boundaries of an existing neighborhood improvement
28 district or districts from those recommended by the neighborhood
29 improvement board, the hearing shall be continued to a time at least
30 fifteen days after such decision, and notice showing the boundary
31 amendments shall be given as prescribed in section 12 of this act. The
1 city council may not expand the proposed boundaries recommended by the
2 neighborhood improvement board without the city council's proposed
3 boundaries being considered by the neighborhood improvement board.

4 Sec. 11. Upon receiving a recommendation from the neighborhood

5 improvement board, the city council may create one or more neighborhood
6 improvement districts. The city council, following a hearing, may
7 establish or reject any proposed neighborhood improvement district or
8 districts. If the city council decides to establish any neighborhood
9 improvement district, it shall adopt an ordinance to that effect. Such
10 ordinance shall contain the following information:
11 (1) A statement that notice of hearing was given, including the date
12 or dates on which notice was given, in accordance with section 12 of this
13 act;
14 (2) The time and place the hearing was held concerning the formation
15 of the neighborhood improvement district;
16 (3) A statement that a neighborhood improvement district has been
17 established;
18 (4) The purposes of the neighborhood improvement district, and the
19 public improvements or facilities to be included in such district; and
20 (5) A description of the boundaries of the neighborhood improvement
21 district.
22 Sec. 12. (1) At least thirty days prior to the date of any hearing
23 under section 8, 11, 13, or 14 of this act, notice of such hearing shall
24 be given by:
25 (a) Two publications of the notice of hearing in a legal newspaper
26 in or of general circulation in the municipality with the second notice
27 published no later than ten days prior to the hearing;
28 (b) Mailing a copy of the notice of hearing to each owner of taxable
29 property in the proposed, modified, or expanded neighborhood improvement
30 district as shown on the latest tax rolls of the county treasurer for
31 such county; and
1 (c) Providing a copy of the notice of hearing to any neighborhood
2 association registered pursuant to subsection (2) of this section in the
3 manner requested by such neighborhood association unless the board of any
4 such neighborhood association has been designated as the neighborhood
5 improvement district board pursuant to subsection (2) of section 6 of
6 this act.
7 (2) The notice required by subdivision (1)(c) of this section shall
8 be provided to any neighborhood association which is registered pursuant
9 to this subsection and whose area of concern is located, in whole or in
10 part, within a one-mile radius of the existing or proposed boundaries of
11 the neighborhood improvement district. Each neighborhood association
12 desiring to receive such notice shall register with the municipality the
13 area of concern of such association and provide the name of and contact
14 information for the individual designated to receive notice on behalf of
15 such association and the requested manner of service, whether by email or
16 regular, certified, or registered mail. The registration shall be in
17 accordance with any rule or ordinance adopted by the city council.
18 (3) Any notice of hearing for any hearing required by section 8 or
19 11 of this act shall contain the following information:
20 (a) A description of the boundaries of the proposed neighborhood
21 improvement district;
22 (b) The time and place of a hearing to be held by the city council

23 to consider establishment of the neighborhood improvement district;
24 (c) The proposed public facilities or improvements to be made or
25 maintained within any such neighborhood improvement district; and
26 (d) The proposed or estimated costs for such improvements or
27 facilities within the proposed neighborhood improvement district and the
28 method by which such costs will be paid.
29 (4) Any notice of hearing for any hearing required by section 13 or
30 14 of this act shall contain the following information:
31 (a) A description of the boundaries of the area to be added to the
1 existing neighborhood improvement district and a description of the new
2 boundaries of the modified neighborhood improvement district;
3 (b) The time and place of a hearing to be held by the city council
4 to consider establishment of the modified neighborhood improvement
5 district;
6 (c) The new public facilities or improvements, if any, to be made or
7 maintained within any such neighborhood improvement district; and
8 (d) The proposed or estimated costs for new or existing improvements
9 and facilities within the proposed modified neighborhood improvement
10 district and the method by which such costs will be paid.
11 Sec. 13. Upon receiving a recommendation to expand the boundaries
12 or change the functions or provisions of an existing neighborhood
13 improvement district from the neighborhood improvement board, the city
14 council may expand the boundaries or change the functions or provisions
15 of one or more neighborhood improvement districts by adopting an
16 ordinance to expand the boundaries or change the functions or provisions
17 of such neighborhood improvement district or districts. Prior to adopting
18 the ordinance, a hearing shall be held to consider the ordinance.
19 Sec. 14. If a city council has not acted to call a hearing to
20 expand the boundaries or change the functions or provisions of an
21 existing neighborhood improvement district as provided in section 13 of
22 this act, it shall do so when presented with a petition signed by the
23 record owners of at least thirty percent of the assessable front footage
24 in a portion of a neighborhood proposed to be added to an existing
25 neighborhood improvement district.
26 Sec. 15. Whenever a hearing is held to expand the boundaries or
27 change the functions or provisions of an existing neighborhood
28 improvement district under section 13 or 14 of this act, the city council
29 shall:
30 (1) Hear all protests and receive evidence for or against the
31 proposed action;
1 (2) Rule upon all written protests received prior to the close of
2 the hearing, which ruling shall be final; and
3 (3) Continue the hearing from time to time as the city council may
4 deem necessary.
5 Sec. 16. The city council, following a hearing under section 13 or
6 14 of this act, may expand the boundaries or change the functions or
7 provisions of any neighborhood improvement district or districts. If the
8 city council decides to expand the boundaries or change the functions or
9 provisions of any district or districts, it shall adopt an ordinance to

10 that effect. The ordinance shall contain the following information:
 11 (1) The name of the neighborhood improvement district to be expanded
 12 or otherwise changed;
 13 (2) A statement that notice of hearing was given, including the date
 14 or dates on which notice was given, in accordance with section 12 of this
 15 act;
 16 (3) The time and place the hearing was held concerning the new
 17 boundaries or changed functions or provisions of such neighborhood
 18 improvement district;
 19 (4) The purposes of the boundary expansion or changed functions or
 20 provisions and any new public improvements or facilities to be included
 21 in such neighborhood improvement district; and
 22 (5) A description of the new boundaries or changed functions or
 23 provisions of such neighborhood improvement district.
 24 Sec. 17. The city council may dissolve a neighborhood improvement
 25 district by ordinance after a hearing before the city council. The city
 26 council shall adopt a resolution of intention to dissolve the area at
 27 least fifteen days prior to the hearing required by this section. The
 28 resolution shall give the time and place of the hearing.
 29 Sec. 18. Upon dissolution of a neighborhood improvement district,
 30 any assets acquired by the district shall be subject to disposition as
 31 the city council shall determine.
 1 Sec. 19. A municipality is authorized to receive, administer, and
 2 disburse donated funds or grants of federal or state funds for the
 3 purposes of, and in the manner authorized by, the Neighborhood
 4 Improvement District Act.
 5 Sec. 20. The Revisor of Statutes shall assign sections 1 to 19 of
 6 this act to a new article in Chapter 19.

GENERAL FILE

LEGISLATIVE BILL 1091. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 14 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 865. Title read. Considered.

Committee AM1549, found on page 318, was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 827. 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 906. Title read. Considered.

SPEAKER SCHEER PRESIDING

Pending.

LEGISLATIVE BILL 940. Title read. Considered.

Committee AM1585, found on page 448, was adopted with 30 ayes, 0 nays, 13 present and not voting, and 6 excused and not voting.

Senator Friesen offered his amendment, AM1743, found on page 568.

The Friesen amendment was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 31 ayes, 0 nays, 13 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 940A. Title read. Considered.

Advanced to Enrollment and Review Initial with 29 ayes, 0 nays, 15 present and not voting, and 5 excused and not voting.

AMENDMENT(S) - Print in Journal

Senator Harr filed the following amendment to LB947:

FA123
Amend AM2542
Strike Section 1.

Senator Harr filed the following amendment to LB947:

FA124
Amend AM2542
Strike Section 2.

Senator Harr filed the following amendment to LB947:

FA125
Amend AM2542
Strike Section 3.

Senator Harr filed the following amendment to LB947:

FA126
Amend AM2542
Strike Section 4.

GENERAL FILE

LEGISLATIVE BILL 906. Senator Harr offered the following amendment:

AM2597

- 1 1. Insert the following section:
- 2 Sec. 2. Due to the absence, sickness, disability, or conflict of
- 3 interest of the Attorney General and his or her assistants, or upon
- 4 request of the Attorney General for good cause, the Supreme Court, the
- 5 Court of Appeals, or any district court, separate juvenile court, or
- 6 county court before which the cause may be heard may appoint an attorney
- 7 to act as Attorney General or as an assistant Attorney General in any
- 8 investigation, appearance, or trial by an order entered upon the minutes
- 9 of the court. An attorney appointed under this section shall be
- 10 independent of and not under the direction of the Attorney General. Such
- 11 attorney shall be allowed compensation for such services as the court
- 12 determines, to be paid by the Department of Administrative Services upon
- 13 presenting to the department the certificate of the judge before whom the
- 14 cause was tried certifying to services rendered by such attorney and the
- 15 amount of compensation.
- 16 2. Renumber the remaining section.

Senator Harr withdrew his amendment.

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

LEGISLATIVE BILL 1081. Title read. Considered.

Senator Linehan offered the following amendment:

AM2593

- 1 1. Insert the following new sections:
- 2 Sec. 20. Sections 20 to 27 of this act shall be known and may be
- 3 cited as the Nebraska Reading Improvement Act.
- 4 Sec. 21. It is the intent of the Legislature that:
- 5 (1) School boards develop policies to facilitate reading instruction
- 6 and intervention services to address student reading needs, including,
- 7 but not limited to, dyslexia;
- 8 (2) All teachers for kindergarten through grade three should be
- 9 effective reading teachers as evidenced by (a) evaluations based on
- 10 classroom observations and student improvement on reading assessments,
- 11 (b) an endorsement related to reading instruction, or (c) specialized
- 12 training in reading improvement;
- 13 (3) Each student and his or her parents or guardians be informed of
- 14 the student's reading progress; and
- 15 (4) Each student in a public school be able to read at or above
- 16 grade level by third grade.
- 17 Sec. 22. (1) For the 2019-20 school year and each school year
- 18 thereafter, each school district shall administer an approved reading

19 assessment three times during such school year to all students in
20 kindergarten through grade three, except any student receiving
21 specialized instruction for limited English proficiency who has been
22 receiving such instruction for less than two years, any student receiving
23 special education services for whom such assessment would conflict with
24 the individualized education plan, and any student receiving services
25 under a plan pursuant to the requirements of section 504 of the federal
26 Rehabilitation Act of 1973, 29 U.S.C. 794, or Title II of the federal
27 Americans with Disabilities Act of 1990, 42 U.S.C. 12131 to 12165, as
1 such acts and sections existed on January 1, 2018, for whom such
2 assessment would conflict with such section 504 or Title II plan. The
3 first administration of such assessment for each such school year shall
4 occur within the first thirty days of the school year.

5 (2) For purposes of the Nebraska Reading Improvement Act, an
6 approved reading assessment means an assessment of student reading skills
7 approved by the State Department of Education which:

8 (a) Measures progress toward proficiency in the reading skills
9 assessed pursuant to subsection (5) of section 79-760.03 on the statewide
10 assessment of reading for grade three;

11 (b) Is valid and reliable;

12 (c) Is aligned with academic content standards for reading adopted
13 by either the board pursuant to section 79-760.01 or the school district
14 administering such assessment pursuant to section 79-760.02; and

15 (d) Allows teachers access to results in a reasonable time period as
16 established by the department, not to exceed fifteen working days.

17 (3) An approved reading assessment may be either commercially
18 available or developed by a school district or educational service unit
19 if such reading assessment complies with requirements established by the
20 department.

21 (4) On or before March 1, 2019, and on or before each March 1
22 thereafter, the department shall make public the list of approved reading
23 assessments for the subsequent school year and the threshold level of
24 performance for each such assessment below which a student will be
25 identified as having a reading deficiency for purposes of the Nebraska
26 Reading Improvement Act.

27 (5) On or before March 1, 2019, and as needed thereafter, the
28 department shall make public the threshold level of performance for the
29 statewide assessment of reading administered pursuant to section
30 79-760.03 for grade three below which a student will be identified as
31 having a reading deficiency for purposes of the Nebraska Reading
1 Improvement Act.

2 (6) Diagnostic assessments used within a supplemental reading
3 intervention program do not require department approval.

4 Sec. 23. (1) Any student in kindergarten, grade one, grade two, or
5 grade three shall be identified as having a reading deficiency if such
6 student performs below the threshold level set pursuant to section 22 of
7 this act on an approved reading assessment. A student who is identified
8 as having a reading deficiency pursuant to this subsection shall remain
9 identified as having a reading deficiency until the student performs at

10 or above the threshold level on an approved reading assessment or at or
11 above the threshold level on the statewide assessment of reading
12 administered pursuant to section 79-760.03 for grade three.
13 (2) Nothing in the Nebraska Reading Improvement Act shall prohibit a
14 school district from identifying any other student as having a reading
15 deficiency.
16 Sec. 24. Each school district shall provide a supplemental reading
17 intervention program for the purpose of ensuring that students can read
18 at or above grade level at the end of third grade. School districts may
19 work collaboratively with educational service units, with learning
20 communities, or through interlocal agreements to develop and provide such
21 supplemental reading intervention programs. Each supplemental reading
22 intervention program shall:
23 (1) Be provided to any student identified as having a reading
24 deficiency;
25 (2) Be implemented during regular school hours in addition to
26 regular reading instruction unless otherwise agreed to by a parent or
27 guardian;
28 (3) Utilize reading intervention techniques that are based on
29 scientific research and best practices;
30 (4) Administer diagnostic assessments to frequently monitor student
31 progress throughout the school year and adjust instruction accordingly;
1 (5) Provide intensive intervention using strategies selected from
2 the following list to match the weaknesses identified in the diagnostic
3 assessment:
4 (a) Development in phonemic awareness, phonics, fluency, vocabulary,
5 and reading comprehension;
6 (b) Explicit and systematic instruction with detailed explanations,
7 extensive opportunities for guided practice, and opportunities for error
8 corrections and feedback; and
9 (c) Daily targeted small-group reading intervention based on student
10 needs as determined by diagnostic assessment data;
11 (6) Provide parents and guardians with strategies and resources to
12 assist with reading skills at home, including parent training workshops
13 and suggestions for parent-guided home reading;
14 (7) Encourage access to before-school or after-school supplemental
15 reading intervention with a teacher or tutor who has specialized training
16 in reading intervention; and
17 (8) Make available a summer reading program each summer for any
18 student who has been enrolled in grade one or higher and is identified as
19 continuing to have a reading deficiency at the conclusion of the school
20 year preceding such summer reading program. Such summer reading program
21 may be held in conjunction with existing summer programs in the school
22 district or in the community or may be offered online.
23 Sec. 25. (1) The school of any student who is identified as having
24 a reading deficiency shall notify such student's parents or guardians
25 either in writing or by electronic communication no later than fifteen
26 working days after the identification of the reading deficiency that the
27 student has been identified as having a reading deficiency and that an

28 individual reading improvement plan will be established and shared with
 29 parents or guardians.
 30 (2) Any student who is identified as having a reading deficiency
 31 shall receive an individual reading improvement plan no later than thirty
 1 days after the identification of such reading deficiency. The reading
 2 improvement plan may be created by the teacher, the principal, other
 3 pertinent school personnel, and the parents or guardians of the student
 4 and shall describe the reading intervention services the student will
 5 receive through the supplemental reading intervention program pursuant to
 6 section 24 of this act to remedy such reading deficiency. Each such
 7 student shall receive reading intervention services through the
 8 supplemental reading intervention program pursuant to section 24 of this
 9 act until the student is no longer identified as having a reading
 10 deficiency.
 11 Sec. 26. By September 1 of each year, each school board shall
 12 annually report to the State Department of Education the number and
 13 percentage of students by grade in kindergarten, first grade, second
 14 grade, and third grade who received reading intervention services
 15 pursuant to an individual reading improvement plan during the prior
 16 school year. Such report shall comply with any standards used by the
 17 department to protect the individual identity of a student.
 18 Sec. 27. (1) The State Department of Education shall establish a
 19 uniform format for school districts to report the information required
 20 pursuant to section 26 of this act. The format shall be developed with
 21 input from school boards and shall be provided to each school district no
 22 later than ninety days prior to the annual due date.
 23 (2) The department shall annually compile the information submitted
 24 under section 26 of this act along with state-level summary information
 25 and report such information to the public, the Governor, and
 26 electronically to the Legislature on or before October 1 of each year.
 27 (3) The department shall provide technical assistance as needed to
 28 assist school boards in carrying out the Nebraska Reading Improvement
 29 Act.
 30 (4) The department may adopt and promulgate rules and regulations to
 31 carry out the act.
 1 2. Renumber the remaining sections accordingly.

The Linehan amendment was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

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

LEGISLATIVE BILL 1081A. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

VISITORS

The Doctor of the Day was Dr. David Minnick from Broken Bow.

ADJOURNMENT

At 10:01 p.m., on a motion by Senator Bostelman, the Legislature adjourned until 9:00 a.m., Thursday, March 22, 2018.

Patrick J. O'Donnell
Clerk of the Legislature