

SIXTY-FIFTH DAY - APRIL 25, 2019
LEGISLATIVE JOURNAL
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

SIXTY-FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, April 25, 2019

PRAYER

The prayer was offered by Pastor Michael Wolfe, Plattsmouth Bible Church, Plattsmouth.

ROLL CALL

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

The roll was called and all members were present except Senator Brewer who was excused; and Senators Cavanaugh, DeBoer, Friesen, Linehan, McCollister, Morfeld, Stinner, Vargas, and Wayne who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-fourth day was approved.

ATTORNEY GENERAL'S OPINION

Opinion 19-006

SUBJECT: Constitutionality of LB 512 as Amended - Valuation
 of Destroyed Property for Taxation

REQUESTED BY: Senator Ernie Chambers
 Nebraska State Legislature

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

INTRODUCTION

You have requested an opinion from this office on the constitutionality of AM1217 to LB 512 and, in particular, §§ 10-13 of AM1217. In general terms, these provisions would provide property tax relief to those with

destroyed real property by requiring the county board of equalization to adjust the assessed value of the property. You have requested our opinion whether these provisions of AM1217 would violate Neb. Const. art. VIII, § 1, the "uniformity clause."

AM1217, §§ 10 and 11 provide that, for purposes of Chapter 77 of the Nebraska statutes, the term "destroyed real property means real property that is destroyed by fire or other natural disaster on or after January 1 and before October 1 of any year."¹ Section 12 provides that the county assessor must report to the county board of equalization all real property in the county that becomes destroyed real property and that the county board of equalization must then adjust the value of that property. Section 13 then provides that the adjusted value will be the sum of the following three factors:

- (a) The assessed value of the real property before it became destroyed real property multiplied by a percentage representing the portion of the year during which the property was intact and had not yet been destroyed;
- (b) The assessed value of the destroyed real property, as of the date of its destruction, multiplied by a percentage representing the portion of the year during which the property was destroyed and no replacement property had yet been completed; and
- (c) The assessed value of any replacement property, as of the date of completion of construction of such replacement property, multiplied by a percentage representing the portion of the year during which construction of such replacement property was complete.

Section 13 goes on to provide that the county board of equalization will give notice of the new assessed value to the property owner who may file a protest with the board and may appeal the decision of the county board of equalization to the Tax Equalization and Review Commission.

¹ Because the language of AM1217 refers to destroyed property and construction of replacement property, we understand the bill would not apply to damage to the land itself. This interpretation is consistent with comments made by the amendment's introducer. [Floor Debate on LB 512](#), 106th Neb. Leg., 1st Sess. 8, 15 (April 5, 2019) ("The valuation will never to go zero because...the land is still going to be there...and the taxation will continue on that parcel....") (Statement of Sen. Erdman).

ANALYSIS

I. Uniformity Clause

Your question is whether these provisions would violate Neb. Const. art. VIII, § 1. The "uniformity clause" of our state Constitution provides that "[T]axes shall be levied by valuation uniformly and proportionately upon all real property and franchises . . . except as otherwise provided in or permitted by this Constitution." In addition, "the Legislature may prescribe standards and methods for the determination of the value of real property at uniform and proportionate values." Neb. Const. art. VIII, § 1(6).

Also pertinent to our discussion is Neb. Rev. Stat. § 77-201(1) (2018), which requires that all real property, except for agricultural land and horticultural land, agricultural land and horticultural land subject to special valuation, and historically significant real property, be valued at its actual value. "Actual value" is defined at Neb. Rev. Stat. § 77-112 (2018), for purposes of taxation, as "the market value of real property in the ordinary course of trade." And, with respect to assessment of real property taxes, Neb. Rev. Stat. § 77-1301(1) (2018) provides: "All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis for taxation until the next assessment."

This office recently discussed the Nebraska case law concerning the uniformity clause in Op. Att'y Gen. No. 16007 (March 16, 2016). We will summarize that discussion here. "The object of the uniformity clause is accomplished 'if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.'" *Constructors, Inc. v. Cass County Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000) ["*Constructors*"] (quoting *County of Gage v. State Bd. of Equal.*, 185 Neb. 749, 755, 178 N.W.2d 759, 764 (1970)). "The Legislature may prescribe standards and methods for the determination of the value of real . . . property at uniform and proportionate values." *Carpenter v. State Bd. of Equal.*, 178 Neb. 611, 615, 134 N.W.2d 272, 276 (1965). "The uniform method for valuing property which the Legislature has provided is to tax property at its 'actual value.'" *Xerox Corp. v. Karnes*, 217 Neb. 728, 732, 350 N.W.2d 566, 569 (1984). ["*Xerox*"] (quoting Neb. Rev. Stat. § 77-201). "While absolute uniformity of approach may not be possible, there must be a reasonable attempt at uniformity." *County of Sarpy v. State Bd. of Equal.*, 185 Neb. 760, 765, 178 N.W.2d 765, 769 (1970).

In analyzing the constitutionality of AM1217, we first note that "[s]tatutes are afforded a presumption of constitutionality, and the unconstitutionality of a statute must be clearly established before it will be declared void." *Gourley v. Nebraska Methodist Health System, Inc.*, 265 Neb. 918, 942, 663 N.W.2d 43, 68 (2003). If LB 512 with AM1217 is enacted, anyone seeking to have its provisions declared unconstitutional will bear the burden of overcoming the presumption of constitutionality.

The Nebraska Supreme Court has adopted a strict construction of our state's uniformity clause, which raises a question as to the constitutionality of AM1217. The taxation of property "must be uniform, not only as to the rate of taxation, but to the valuation of the property as well." *State ex rel. Meyer v. McNeil*, 185 Neb. 586, 588, 177 N.W.2d 596, 598 (1970) ["*McNeil*"]. The Court held in *McNeil* that legislation attempting to provide a different method of valuing certain farm machinery and equipment violated the uniformity clause. "The establishment of two methods of valuation of property in the same class for taxation purposes results in a want of uniformity within the constitutional prohibition of Article VIII, section 1." *Id.* at 588, 177 N.W.2d at 598. "There can be no difference in the method of determining valuation or the rate of tax to be imposed unless the separate classification rests on some reason of public policy, some substantial difference of situation or circumstances that would naturally suggest the justice or expediency of diverse legislation" *Id.* at 588-89, 177 N.W.2d at 598.

In *Xerox*, the Court considered the effect of an amendment to Neb. Rev. Stat. § 77-1301(1), and its interpretation by the Tax Commissioner, which resulted in *Xerox* being required to pay personal property taxes on leased equipment based on actual value determined only in odd-numbered years. No changes could be made to account for actual depreciation in even-numbered years. The Court held that the amended statute violated the uniformity clause "in that it directs that taxes be levied upon personal property in even-numbered years without regard to the uniform method of valuing property at actual value as provided in § 77-201" *Id.* at 733, 350 N.W.2d at 569.

More recently, in *Constructors*, the Court again stated that the uniformity clause requires that all property within a taxing jurisdiction be assessed and taxed at a uniform standard of value. A valuation scheme which created two subclasses of land, farmland controlled by mining companies and similar farmland not controlled by mining companies, and provided differential tax treatment of each subclass was found to violate the uniformity clause.

Here, with the enactment of AM1217, most real property would continue to be valued at its actual value on January 1, pursuant to Neb. Rev. Stat. § 77-1301(1), without taking into account any fluctuations in value. Other "destroyed real property" would be valued on a different date with use of a statutory prorated formula. The Nebraska Supreme Court has not yet addressed legislation such as that proposed in AM1217. It is possible that the Court could find that AM1217 establishes a second, non-uniform standard of value for destroyed real property. However, in our view, it is also possible that the Court could determine that the creation of a different assessment date and adjustment of assessed value of the destroyed property on that date does not violate our state constitution's uniformity clause.

Outside of the plain language of a statute, a legislative body's purpose in enacting legislation can be determined by examining the legislative history of the bill. *Sarpy County Farm Bureau v. Learning Community of Douglas*, 283 Neb. 212, 808 N.W.2d 598 (2012) (in which the Court considered both the language of a statutory scheme and its legislative history in determining whether a statute violated art. VIII, § 1A). The Court could, therefore, consider any relevant committee hearing testimony and floor debate with regard to AM1217, and for LB 482, which was amended into LB 512 as AM1217. While the committee hearing transcripts are not yet available, we note that, in the floor debate on AM1217, senators expressed a need for differential tax treatment based on a public policy of fairness and the sudden, unforeseen and calamitous nature of a natural disaster. Floor Debate on LB 512, 106th Neb. Leg., 1st Sess. 8-9 (April 5, 2019) (Statement of Sen. Erdman). Introducer's Statement of Intent on LB 482, 106th Neb. Leg., 1st Sess.

Thus, even if the Court should find that AM1217 creates a separate classification for taxation purposes, an argument could be made that the separate classification for real property destroyed by a natural disaster rests on a "substantial difference of situation or circumstances" so as to justify the separate classification.²

II. Implementation of LB 512 with AM1217

If the Legislature decides to pursue property tax relief through LB 512, as amended by AM1217, there are several issues to be considered and corrected. First, while AM1217 adds a definition of "destroyed real property" to the definitions currently found at Neb. Rev. Stat. §§ 77-102 to 77-132, and which are to be used for purposes of Chapter 77, it fails to amend Neb. Rev. Stat. § 77-1301. Therefore, it would leave in place the requirement that all real property be assessed as of January 1. Language should be added to § 77-1301(1) which would exclude "destroyed real property" from the January 1 assessment date.

Second, the definition of "destroyed real property" at § 11 of AM1217, as "real property that is destroyed by fire or other natural disaster," may be unclear and, perhaps, insufficient to accomplish the intended purpose of the

² A number of other states have enacted legislation to provide tax relief to certain property owners whose property has been damaged or destroyed. These statutes vary greatly. *See*, for example, Tenn. Code Ann. § 67-5-603; Cal. Rev. and Tax Code § 170; N.D. Cent. Code. Ann. §§ 57-02-11 and 57-23-04.7; Tex. Tax Code Ann. § 23.02; Ind. Code § 6-1.1-4-11; 35 Ill. Comp. Stat. 200/ 9-190; and Or. Rev. Stat. § 308.425. We note that at least two of these states, Oregon and California, have constitutional provisions which specifically authorize the differential tax treatment. The constitutions of other states, however, may not have uniformity clauses, or may have clauses which differ from Neb. Const. art. VIII, § 1.

amendment. It is not clear whether real property destroyed by all fires would be included in the definition or only those due to a natural disaster. And, it is not entirely clear what would be encompassed by the term "natural disaster." In addition, the term "destroyed" would likely be read to mean completely uninhabitable or unfit for customary use. If that is not the intent, the language should be modified.

Third, the time frame set forth in AM1217 may allow insufficient time for the county assessor and county board of equalization to act prior to the statutory deadline for the county tax levy. Neb. Rev. Stat. § 77-1601(1) (2018) provides that the county board of equalization shall levy the necessary taxes on or before October 15. AM1217 defines "destroyed real property" as real property that is destroyed "on or after January 1 and before October 1 of any year." Depending on the date of destruction, there will simply be insufficient time prior to October 15 for the entire process set forth in AM1217 to occur. The county assessor must learn of and report the destroyed real property. The county board of equalization must meet to adjust the assessed value, and give the notice of assessed value to the record owner as provided by AM1217. There must also be time for the protest provided by § 13(3).³

CONCLUSION

The Nebraska Supreme Court has not yet addressed an enactment similar to AM1217 with regard to the uniformity clause and the Court's past strict construction of Neb. Const. art. VIII, § 1 raises some concerns regarding the constitutionality of the legislation. However, it is our opinion that the provisions of AM1217 do not clearly contravene the uniformity clause of our state Constitution.

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

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

09-623-29

³ Any change in assessed value after the statutory tax levy deadline would violate Nebraska's "commutation clause," which is found at Neb. Const., art. VIII, § 4. Once the tax is levied, "the legislature cannot reduce the amount of the tax, extend the time for payment, or in any manner change the method of payment." *Steinacher v. Swanson*, 131 Neb. 439, 446, 268 N.W. 317, 321 (1936).

GENERAL FILE

LEGISLATIVE BILL 44. Title read. Considered.

SPEAKER SCHEER PRESIDING

Senator Morfeld offered the following amendment:

AM1495

- 1 1. Insert the following new section:
- 2 Sec. 41. The Department of Health and Human Services shall notify
- 3 the chairperson and members of the Health and Human Services Committee of
- 4 the Legislature prior to submitting any request or application to the
- 5 Centers for Medicare and Medicaid Services of the United States
- 6 Department of Health and Human Services for a demonstration waiver under
- 7 section 1115 of the federal Social Security Act. Such notification shall
- 8 be made electronically and shall include a copy of the application for
- 9 the federal waiver. The Health and Human Services Committee of the
- 10 Legislature shall hold a public hearing on such waiver application. The
- 11 Nebraska Department of Health and Human Services shall not submit any
- 12 such request or application to the Centers for Medicare and Medicaid
- 13 Services until the department receives notification that the Legislature
- 14 has approved the request or application for the waiver under section
- 15 1115.
- 16 2. Renumber the remaining sections accordingly.

Pending.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 93. Introduced by Howard, 9; Cavanaugh, 6; DeBoer, 10; Hilkemann, 4; Hunt, 8; Kolowski, 31; Lathrop, 12; Lindstrom, 18; Linehan, 39; McCollister, 20; McDonnell, 5; Vargas, 7; Wayne, 13.

WHEREAS, Share Omaha is providing nonprofit organizations in the Omaha area the opportunity to connect with volunteers and donors; and

WHEREAS, Share Omaha has become a one-stop shop for people who give back to their community through volunteerism and financial support; and

WHEREAS, Share Omaha provides online connections to approximately one hundred and seventy nonprofit organizations; and

WHEREAS, volunteers and donors can use Share Omaha to filter through and find organizations for a specific cause or interest; and

WHEREAS, Share Omaha provides an open and inclusive platform for the entire nonprofit community giving all organizations the chance to be seen regardless of their size or budget; and

WHEREAS, Share Omaha is increasing collaboration between hundreds of nonprofit organizations.

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

1. That the Legislature appreciates the hard work of Share Omaha and their commitment to helping nonprofit organizations.
2. That the Legislature encourages Nebraskans to use Share Omaha to access information on the nonprofit organizations working in the Omaha area.
3. That a copy of this resolution be sent to the Board of Directors of Share Omaha.

Laid over.

AMENDMENT(S) - Print in Journal

Senator Friesen filed the following amendment to LB149:

AM1478

(Amendments to Standing Committee amendments, AM901)

- 1 1. On page 1, line 5; page 3, line 23; page 4, line 13; page 5, line 2 9; page 6, line 26; and page 7, lines 2, 4, 20, and 24, strike "nineteen" 3 and insert "twenty-one".

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 6. Placed on Final Reading.
LEGISLATIVE BILL 356. Placed on Final Reading.
LEGISLATIVE BILL 405. Placed on Final Reading.
LEGISLATIVE BILL 524. Placed on Final Reading.

(Signed) Julie Slama, Chairperson

VISITOR(S)

Visitors to the Chamber were Dr. Kenneth Wasmund II from Omaha; Amelia Buhlke from Central City; and students from Norfolk Catholic School.

RECESS

At 11:46 a.m., on a motion by Senator Williams, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Speaker Scheer presiding.

ROLL CALL

The roll was called and all members were present except Senator Brewer who was excused; and Senators Friesen, Geist, Groene, La Grone, Murman, Quick, and Walz who were excused until they arrive.

GENERAL FILE

LEGISLATIVE BILL 44. Senator Slama offered the following motion:

MO67

Bracket until June 6, 2019.

Senator Slama withdrew her motion to bracket.

Senator Morfeld withdrew his amendment, AM1495, found in this day's Journal.

Senator Chambers moved for a call of the house. The motion prevailed with 31 ayes, 3 nays, and 15 not voting.

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

Voting in the affirmative, 17:

Bolz	DeBoer	Kolowski	Morfeld	Wishart
Cavanaugh	Hansen, M.	Lathrop	Pansing Brooks	
Chambers	Howard	McCollister	Vargas	
Crawford	Hunt	McDonnell	Wayne	

Voting in the negative, 25:

Albrecht	Clements	Gragert	Hughes	Murman
Arch	Dorn	Groene	La Grone	Scheer
Bostelman	Erdman	Halloran	Linehan	Slama
Brandt	Friesen	Hansen, B.	Lowe	Stinner
Briese	Geist	Hilgers	Moser	Williams

Present and not voting, 3:

Hilkemann	Kolterman	Lindstrom
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Excused and not voting, 4:

Blood	Brewer	Quick	Walz
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Failed to advance to Enrollment and Review Initial with 17 ayes, 25 nays, 3 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

SELECT FILE

LEGISLATIVE BILL 177. Senator Erdman renewed his amendment, FA50, found on page 1238 and considered on page 1254.

Pending.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 130. Placed on Final Reading.

ST16

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

1. On page 1, line 6, "to provide reporting requirements for the Department of Health and Human Services;" has been inserted after the last semicolon.

LEGISLATIVE BILL 130A. Placed on Final Reading.

(Signed) Julie Slama, Chairperson

MOTION(S) - Print in Journal

Senator Dorn filed the following motion to LB472:

MO68

Becomes law notwithstanding the objections of the Governor.

SELECT FILE

LEGISLATIVE BILL 177. The Erdman amendment, FA50, found on page 1238 and considered on page 1254 and in this day's Journal, was renewed.

Senator Erdman offered the following motion:

MO69

Bracket until June 6, 2019.

SENATOR WAYNE PRESIDING

Senator Lindstrom offered the following motion:

MO70

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Lindstrom moved for a call of the house. The motion prevailed with 24 ayes, 5 nays, and 20 not voting.

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

Voting in the affirmative, 36:

Arch	Dorn	Hunt	McDonnell	Walz
Blood	Friesen	Kolowski	Morfeld	Wayne
Bolz	Geist	Kolterman	Moser	Williams
Brandt	Gragert	La Grone	Pansing Brooks	Wishart
Briese	Hansen, M.	Lathrop	Quick	
Cavanaugh	Hilkemann	Lindstrom	Scheer	
Crawford	Howard	Linehan	Stinner	
DeBoer	Hughes	McCollister	Vargas	

Voting in the negative, 9:

Albrecht	Clements	Groene	Hansen, B.	Murman
Bostelman	Erdman	Halloran	Hilgers	

Present and not voting, 1:

Chambers

Excused and not voting, 3:

Brewer	Low	Slama
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The Lindstrom motion to invoke cloture prevailed with 36 ayes, 9 nays, 1 present and not voting, and 3 excused and not voting.

The Erdman motion to bracket failed with 7 ayes, 33 nays, 6 present and not voting, and 3 excused and not voting.

The Erdman amendment, FA50, lost with 8 ayes, 33 nays, 5 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment with 34 ayes, 9 nays, 3 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

COMMITTEE REPORT(S)

Health and Human Services

LEGISLATIVE BILL 205. Placed on General File with amendment.
AM1436

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 Surgical Technologist Registration Act.

5 Sec. 2. For purposes of the Surgical Technologist Registration Act,

6 the definitions found in sections 3 to 6 of this act apply.
7 Sec. 3. Board means the Board of Medicine and Surgery.
8 Sec. 4. Department means the Department of Health and Human
9 Services.
10 Sec. 5. Registered surgical technologist means a person registered
11 as a surgical technologist pursuant to the Surgical Technologist
12 Registration Act.
13 Sec. 6. Surgical Technologist Registry means the registry created
14 pursuant to section 10 of this act.
15 Sec. 7. Beginning January 1, 2020, any surgical technologist
16 contracted with or employed as a surgical technologist by (1) a facility
17 licensed under the Health Care Facility Licensure Act or (2) a physician
18 engaged in the practice of medicine and surgery in Nebraska, shall
19 register with the Surgical Technologist Registry no later than one
20 hundred eighty days after the commencement of the contract period or the
21 date of employment or July 1, 2020, whichever is later.
22 Sec. 8. (1) To be eligible to register as a surgical technologist,
23 an individual shall:
24 (a) Be at least nineteen years of age;
25 (b) Be a high school graduate or be officially recognized by the
26 State Department of Education as possessing the equivalent of a high
27 school education; and
1 (c) Be of good moral character.
2 (2) An eligible individual shall:
3 (a) File an application with the Department of Health and Human
4 Services. The application shall include:
5 (i) The applicant's name, address, date of birth, and social
6 security number;
7 (ii) Evidence of eligibility under subsection (1) of this section as
8 determined necessary by the department;
9 (iii) Documentation of any felony or misdemeanor conviction, along
10 with the date of occurrence and the county and state in which the
11 conviction occurred; and
12 (iv) One of the following:
13 (A) Documentation of certification as a surgical technologist by the
14 State of Nebraska or a national certifying body approved by the board if
15 the applicant is certified at the time of application;
16 (B) Documentation of completion of an accredited program in surgical
17 technology accredited by the Commission on Accreditation of Allied Health
18 Education Programs or the Accrediting Bureau of Health Education Schools
19 if the applicant is a graduate of such a program; or
20 (C) Certification of the applicant's competency assessment completed
21 by a licensed health care professional. The assessment shall include an
22 assessment of the components listed in section 9 of this act; and
23 (b) Pay the required nonrefundable fee as determined by the
24 department.
25 (3) An applicant who is a military spouse may apply for temporary
26 registration as provided in section 38-129.01.
27 Sec. 9. A registered surgical technologist may, under the authority

28 of a practitioner who is licensed under the Uniform Credentialing Act and
29 consistent with any rules and regulations adopted pursuant to section 19
30 of this act, and who directs surgical tasks and functions based on the
31 surgical technologist's education, knowledge, training, and skill,

1 perform tasks and functions, including, but not limited to:

2 (1) Preparing the operating suite for the planned surgical
3 procedure, including gathering and opening all equipment, supplies, and
4 instrumentation, including, but not limited to, sterile dressings and
5 instruments, scrubs, gowns, gloves, medications, and solutions;

6 (2) Creating and maintaining the sterile field through organization
7 and preparation of instruments and supplies, including performance of
8 necessary surgical counts;

9 (3) Gowning and gloving the surgeon and assistants;

10 (4) Providing visualization of the surgical site;

11 (5) Preparing and draping the patient for the surgical procedure;

12 (6) Positioning the patient;

13 (7) Passing instruments, supplies, and equipment to the surgeon and
14 assistants during the procedure while anticipating the needs of the
15 surgical team;

16 (8) Assisting the surgeon as directed in accordance with applicable
17 law and rules and regulations;

18 (9) Assisting the circulating nurse as directed in the care of the
19 surgical patient, including conducting appropriate counts prior to the
20 surgical procedure and before the incision is closed;

21 (10) Maintaining sterile technique during the surgical procedure;

22 (11) Assisting other members of the surgical team with cleaning the
23 operating suite, including decontamination of instruments, supplies, and
24 equipment utilized during the surgical procedure; and

25 (12) Assisting in preparing the surgical suite for the next surgical
26 procedure.

27 Sec. 10. (1) The Surgical Technologist Registry is created. The
28 registry shall be used to register surgical technologists beginning
29 January 1, 2020.

30 (2) A listing in the registry shall be valid for the term of
31 registration as provided in section 38-142 subject to sections 13 and 14
1 of this act.

2 Sec. 11. The board shall provide supervision and oversight of the
3 Surgical Technologist Registry.

4 Sec. 12. The department shall establish and collect fees for
5 registration under the Surgical Technologist Registration Act as provided
6 in sections 38-151 to 38-157.

7 Sec. 13. (1) The department may deny or refuse renewal of
8 registration or remove a registrant from the Surgical Technologist
9 Registry for failure to meet the standards or for violation of the
10 Surgical Technologist Registration Act or any rules and regulations
11 adopted and promulgated pursuant to the act.

12 (2) If the department proposes to deny, refuse renewal of, or remove
13 a registration, it shall send the applicant or registrant a notice
14 setting forth the action to be taken and the reasons for the

15 determination. The denial, refusal to renew, or removal shall become
16 final thirty days after mailing the notice unless the applicant or
17 registrant gives written notice to the department of his or her desire
18 for an informal conference or for a formal hearing.
19 (3) If an informal conference is requested, the department shall
20 assign a representative of the department to hold an informal conference
21 with the applicant or registrant within fifteen working days after
22 receipt of a request. Within seven working days after the conclusion of
23 such conference, the representative shall affirm, modify, or dismiss the
24 action. The representative shall state in writing the specific reasons
25 for affirming, modifying, or dismissing the action and shall immediately
26 transmit copies of the statement to the department and to the applicant
27 or the registrant. If the representative affirms or modifies the action,
28 such action shall become final unless the applicant or registrant, within
29 ten working days after the statement of reasons is sent, requests in
30 writing a formal hearing to contest the action.
31 (4) Except as provided by subsection (3) of this section, an
1 applicant or registrant who desires to contest an action or to further
2 contest an affirmed or modified action shall do so in the manner provided
3 by the Administrative Procedure Act for contested cases. The chief
4 medical officer as designated in section 81-3115 shall be the
5 decisionmaker in a contested case under this section. The petition for
6 judicial review of any final decision regarding an alleged violation
7 shall be set for hearing at the earliest possible date. The times for
8 pleadings and hearings shall be set by the court with the object of
9 securing a decision at the earliest possible time.
10 (5) Notice under this section or delivery of the statement of
11 reasons under subsection (3) of this section may be served by any method
12 specified in section 25-505.01, or the department may permit substitute
13 or constructive service as provided in section 25-517.02 when service
14 cannot be made with reasonable diligence by any of the methods specified
15 in section 25-505.01.
16 Sec. 14. A person whose registration has been denied, refused
17 renewal, or removed from the Surgical Technologist Registry may reapply
18 for registration or apply for lifting the disciplinary sanction at any
19 time after one year has elapsed since the date such registration was
20 denied, refused renewal, or removed from the registry. The application
21 shall be made in accordance with the Surgical Technologist Registration
22 Act and any rules and regulations adopted and promulgated pursuant to the
23 act.
24 Sec. 15. (1) Any facility or person using the services of a
25 surgical technologist that takes action adversely affecting a surgical
26 technologist due to alleged incompetence shall report to the department,
27 in the manner specified by the department by rule and regulation, any
28 facts relating to such alleged incompetence known to such facility or
29 person, including, but not limited to, the identity of the surgical
30 technologist and the patient. The report shall be made within thirty days
31 after the date of the action or event.
1 (2) Any person or facility may report to the department any facts

2 known to such person or facility concerning any alleged incompetence of a
3 surgical technologist.

4 (3) A report made to the department under this section shall be
5 confidential. The facility or person making such report shall be immune
6 from criminal or civil liability of any nature, whether direct or
7 derivative, for filing a report with or for disclosure of documents,
8 records, or other information to the department under this section. The
9 reports and information shall be subject to the investigatory and
10 enforcement provisions in the Surgical Technologist Registration Act.
11 This subsection does not require production of records protected by the
12 Health Care Quality Improvement Act or section 25-12,123 or patient
13 safety work product under the Patient Safety Improvement Act except as
14 otherwise provided in either of such acts or such section.

15 Sec. 16. Complaints, investigational records, reports, and
16 investigational files of any kind of the department under the Surgical
17 Technologist Registration Act shall not be public records, shall not be
18 subject to subpoena or discovery, and shall be inadmissible as evidence
19 in any legal proceeding of any kind or character except an informal
20 conference or formal hearing before the department or a judicial appeal
21 of such hearing. Such complaints, investigational records, reports, and
22 investigational files shall be public records if made part of the record
23 of a formal hearing before the department. No person, including, but not
24 limited to, department employees, having access to such complaints,
25 investigational records, reports, or investigational files, shall
26 disclose such records or information except as required for investigation
27 of the alleged violation or for purposes of a hearing before the
28 department. Such information, files, and records may be disclosed to law
29 enforcement agencies by the department and such disclosure shall not make
30 the information, files, or records public records.

31 Sec. 17. The department may maintain an action for an injunction in
1 the name of the state for violation of the Surgical Technologist
2 Registration Act or any rules and regulations adopted and promulgated
3 under the act.

4 Sec. 18. Surgical technologists are eligible to participate in the
5 Licensee Assistance Program as prescribed by section 38-175.

6 Sec. 19. The department may adopt and promulgate rules and
7 regulations as necessary to carry out the Surgical Technologist
8 Registration Act, including, but not limited to, rules and regulations
9 setting minimum standards for competencies listed in section 9 of this
10 act and methods for competency assessment of surgical technologists.

11 Sec. 20. Section 38-2025, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 38-2025 The following classes of persons shall not be construed to
14 be engaged in the unauthorized practice of medicine:

15 (1) Persons rendering gratuitous services in cases of emergency;

16 (2) Persons administering ordinary household remedies;

17 (3) The members of any church practicing its religious tenets,

18 except that they shall not prescribe or administer drugs or medicines,

19 perform surgical or physical operations, nor assume the title of or hold

20 themselves out to be physicians, and such members shall not be exempt
21 from the quarantine laws of this state;
22 (4) Students of medicine who are studying in an accredited school or
23 college of medicine and who gratuitously prescribe for and treat disease
24 under the supervision of a licensed physician;
25 (5) Physicians who serve in the armed forces of the United States or
26 the United States Public Health Service or who are employed by the United
27 States Department of Veterans Affairs or other federal agencies, if their
28 practice is limited to that service or employment;
29 (6) Physicians who are licensed in good standing to practice
30 medicine under the laws of another state when incidentally called into
31 this state or contacted via electronic or other medium for consultation
1 with a physician licensed in this state. For purposes of this
2 subdivision, consultation means evaluating the medical data of the
3 patient as provided by the treating physician and rendering a
4 recommendation to such treating physician as to the method of treatment
5 or analysis of the data. The interpretation of a radiological image by a
6 physician who specializes in radiology is not a consultation;
7 (7) Physicians who are licensed in good standing to practice
8 medicine in another state but who, from such other state, order
9 diagnostic or therapeutic services on an irregular or occasional basis,
10 to be provided to an individual in this state, if such physicians do not
11 maintain and are not furnished for regular use within this state any
12 office or other place for the rendering of professional services or the
13 receipt of calls;
14 (8) Physicians who are licensed in good standing to practice
15 medicine in another state and who, on an irregular and occasional basis,
16 are granted temporary hospital privileges to practice medicine and
17 surgery at a hospital or other medical facility licensed in this state;
18 (9) Persons providing or instructing as to use of braces, prosthetic
19 appliances, crutches, contact lenses, and other lenses and devices
20 prescribed by a physician licensed to practice medicine while working
21 under the direction of such physician;
22 (10) Dentists practicing their profession when licensed and
23 practicing in accordance with the Dentistry Practice Act;
24 (11) Optometrists practicing their profession when licensed and
25 practicing under and in accordance with the Optometry Practice Act;
26 (12) Osteopathic physicians practicing their profession if licensed
27 and practicing under and in accordance with sections 38-2029 to 38-2033;
28 (13) Chiropractors practicing their profession if licensed and
29 practicing under the Chiropractic Practice Act;
30 (14) Podiatrists practicing their profession when licensed to
31 practice in this state and practicing under and in accordance with the
1 Podiatry Practice Act;
2 (15) Psychologists practicing their profession when licensed to
3 practice in this state and practicing under and in accordance with the
4 Psychology Interjurisdictional Compact or the Psychology Practice Act;
5 (16) Advanced practice registered nurses practicing in their
6 clinical specialty areas when licensed under the Advanced Practice

7 Registered Nurse Practice Act and practicing under and in accordance with
8 their respective practice acts;
9 (17) Surgical first assistants practicing in accordance with the
10 Surgical First Assistant Practice Act;
11 (18) Persons licensed or certified under the laws of this state to
12 practice a limited field of the healing art, not specifically named in
13 this section, when confining themselves strictly to the field for which
14 they are licensed or certified, not assuming the title of physician,
15 surgeon, or physician and surgeon, and not professing or holding
16 themselves out as qualified to prescribe drugs in any form or to perform
17 operative surgery;
18 (19) Persons obtaining blood specimens while working under an order
19 of or protocols and procedures approved by a physician, registered nurse,
20 or other independent health care practitioner licensed to practice by the
21 state if the scope of practice of that practitioner permits the
22 practitioner to obtain blood specimens;
23 (20) Physicians who are licensed in good standing to practice
24 medicine under the laws of another state or jurisdiction who accompany an
25 athletic team or organization into this state for an event from the state
26 or jurisdiction of licensure. This exemption is limited to treatment
27 provided to such athletic team or organization while present in Nebraska;
28 ~~and~~
29 (21) Surgical technologists practicing in accordance with the
30 Surgical Technologist Registration Act; and
31 (22) (~~24~~) Other trained persons employed by a licensed health care
1 facility or health care service defined in the Health Care Facility
2 Licensure Act or clinical laboratory certified pursuant to the federal
3 Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII
4 or XIX of the federal Social Security Act to withdraw human blood for
5 scientific or medical purposes.
6 Any person who has held or applied for a license to practice
7 medicine and surgery in this state, and such license or application has
8 been denied or such license has been refused renewal or disciplined by
9 order of limitation, suspension, or revocation, shall be ineligible for
10 the exceptions described in subdivisions (5) through (8) of this section
11 until such license or application is granted or such license is renewed
12 or reinstated. Every act or practice falling within the practice of
13 medicine and surgery as defined in section 38-2024 and not specially
14 excepted in this section shall constitute the practice of medicine and
15 surgery and may be performed in this state only by those licensed by law
16 to practice medicine in Nebraska.
17 Sec. 21. Original section 38-2025, Revised Statutes Cumulative
18 Supplement, 2018, is repealed.

LEGISLATIVE BILL 329. Placed on General File with amendment.
AM1183

1 1. Strike the original sections and insert the following new
2 sections:
3 Section 1. Section 68-1206, Reissue Revised Statutes of Nebraska, is

4 amended to read:

5 68-1206 (1) The Department of Health and Human Services shall
6 administer the program of social services in this state. The department
7 may contract with other social agencies for the purchase of social
8 services at rates not to exceed those prevailing in the state or the cost
9 at which the department could provide those services. The statutory
10 maximum payments for the separate program of aid to dependent children
11 shall apply only to public assistance grants and shall not apply to
12 payments for social services. As part of the provision of social services
13 authorized by section 68-1202, the department shall participate in the
14 federal child care assistance program under 42 U.S.C. 618, as such
15 section existed on January 1, 2013, and provide child care assistance to
16 families with incomes up to one hundred twenty-five percent of the
17 federal poverty level for FY2013-14 and one hundred thirty percent of the
18 federal poverty level for FY2014-15 and each fiscal year thereafter.

19 (2) As part of the provision of social services authorized by this
20 section and section 68-1202, the department shall participate in the
21 federal Child Care Subsidy program. In determining ongoing eligibility
22 for this program, ten percent of a household's gross earned income shall
23 be disregarded after twelve continuous months on the program and at each
24 subsequent redetermination. At redetermination of eligibility, if a
25 family's income exceeds one hundred thirty percent of the federal poverty
26 level, the family shall continue to receive transitional child care
27 assistance for up to twenty-four consecutive months or until the family
1 income exceeds two hundred one hundred eighty five percent of the federal
2 poverty level. If a family's income falls to one hundred thirty percent
3 of the federal poverty level or below, the twenty-four-month time limit
4 in this subsection shall cease to apply until the family becomes eligible
5 for transitional child care assistance. The amount of such child care
6 assistance shall be based on a cost-shared plan between the recipient
7 family and the state and shall be based on a sliding-scale methodology. A
8 recipient family may be required to contribute a percentage of such
9 family's gross income for child care that is no more than the cost-
10 sharing rates in the transitional child care assistance program as of
11 January 1, 2015, for those no longer eligible for cash assistance as
12 provided in section 68-1724. Initial program eligibility standards shall
13 not be impacted by the provisions of this subsection.

14 (3) In determining the rate or rates to be paid by the department
15 for child care as defined in section 43-2605, the department shall adopt
16 a fixed-rate schedule for the state or a fixed-rate schedule for an area
17 of the state applicable to each child care program category of provider
18 as defined in section 71-1910 which may claim reimbursement for services
19 provided by the federal Child Care Subsidy program, except that the
20 department shall not pay a rate higher than that charged by an individual
21 provider to that provider's private clients. The schedule may provide
22 separate rates for care for infants, for children with special needs,
23 including disabilities or technological dependence, or for other
24 individual categories of children. The schedule may also provide tiered
25 rates based upon a quality scale rating of step three or higher under the

26 Step Up to Quality Child Care Act. The schedule shall be effective on
 27 October 1 of every year and shall be revised annually by the department.
 28 Sec. 2. Original section 68-1206, Reissue Revised Statutes of
 29 Nebraska, is repealed.

LEGISLATIVE BILL 607. Placed on General File with amendment.
 AM1462

1 1. On page 7, lines 23 and 24, strike "engage in the performance of
 2 body art or".
 3 2. On page 17, line 13; page 19, lines 6 and 7, strike "or
 4 registration".

(Signed) Sara Howard, Chairperson

SELECT FILE

LEGISLATIVE BILL 227. ER80, found on page 1165, was adopted.

Senator Lathrop withdrew his amendments, AM1330, AM1331, and
 AM1332, found on pages 1177 and 1178.

Senator Lathrop offered the following amendment:
 AM1485

(Amendments to AM1287)

1 1. Strike amendment 1 and insert the following new amendment:
 2 1. Strike the original sections and insert the following new
 3 sections:
 4 Section 1. Section 2-4403, Reissue Revised Statutes of Nebraska, is
 5 amended to read:
 6 2-4403 (1) A farm or farm operation or a public grain warehouse or
 7 public grain warehouse operation shall not be found to be a public or
 8 private nuisance if the farm or farm operation or public grain warehouse
 9 or public grain warehouse operation existed before a change in the land
 10 use or occupancy of land in and about the locality of such farm or farm
 11 operation or public grain warehouse or public grain warehouse operation
 12 and before such change in land use or occupancy of land the farm or farm
 13 operation or public grain warehouse or public grain warehouse operation
 14 would not have been a nuisance.
 15 (2) No suit shall be maintained against a farm or farm operation or
 16 public grain warehouse or public grain warehouse operation for public or
 17 private nuisance more than two years after the condition which is the
 18 subject matter of the suit reaches a level of offense sufficient to
 19 sustain a claim of nuisance.
 20 (3) The limitation provided for in this section shall not apply to
 21 any action brought to determine compliance with or to enforce a previous
 22 order of a court related to the same claim of nuisance or to any claims
 23 for additional damages or equitable relief available when a farm or farm
 24 operation or public grain warehouse or public grain warehouse operation
 25 fails to remediate a nuisance pursuant to such court order.

26 Sec. 2. Section 2-4404, Reissue Revised Statutes of Nebraska, is
 1 amended to read:
 2 2-4404 The Nebraska Right to Farm Act Sections 2-4401 to 2-4404
 3 shall not affect the application of state and federal statutes.
 4 Sec. 3. Original sections 2-4403 and 2-4404, Reissue Revised
 5 Statutes of Nebraska, are repealed.

The Lathrop amendment was adopted with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 616. Considered.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 138. ER86, found on page 1185, was adopted.

Senator Pansing Brooks offered the following amendment:
 AM1469

(Amendments to E&R amendments, ER86)

1 1. On page 2, line 2, after "veterans" insert "Such web site shall
 2 be implemented on a date designated by the Director of Veterans' Affairs
 3 when sufficient cash funds have accumulated in the Veterans Employment
 4 Program Fund to develop such web site, but no later than June 30, 2024".
 5 2. On page 26, line 1, after "Nebraska" insert "including the
 6 development and implementation of a web site as required by section 1 of
 7 this act".

The Pansing Brooks amendment was adopted with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 693. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 237. ER88, found on page 1206, was adopted.

Senator Crawford offered her amendment, AM1476, found on page 1275.

SPEAKER SCHEER PRESIDING

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

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 237A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 496. Senator Wayne offered his amendment, AM1430, found on page 1254.

The Wayne amendment was adopted with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

BILL ON FIRST READING

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

LEGISLATIVE BILL 300A. Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 300, One Hundred Sixth Legislature, First Session, 2019; to provide an operative date; and to declare an emergency.

AMENDMENT(S) - Print in Journal

Senator Lathrop filed the following amendment to LB300:
AM1500

1 1. Strike original section 1 and insert the following new section:
2 Section 1. Section 24-201.01, Revised Statutes Cumulative
3 Supplement, 2018, is amended to read:
4 24-201.01 ~~On July 1, 2016, the salary of the Chief Justice and the~~
5 ~~judges of the Supreme Court shall be one hundred seventy-one thousand~~
6 ~~nine hundred seventy-four dollars and seventy-three cents. On July 1,~~
7 ~~2017, the salary of the Chief Justice and the judges of the Supreme Court~~
8 ~~shall be one hundred seventy-three thousand six hundred ninety-three~~
9 ~~dollars and ninety-seven cents. On January 1, 2019, the salary of the~~
10 ~~Chief Justice and the judges of the Supreme Court shall be one hundred~~
11 ~~seventy-six thousand two hundred ninety-nine dollars and thirty-eight~~
12 ~~cents. On July 1, 2019, the salary of the Chief Justice and the judges of~~
13 ~~the Supreme Court shall be one hundred eighty-one thousand five hundred~~
14 ~~eighty-eight dollars and thirty-six cents. On July 1, 2020, the salary of~~
15 ~~the Chief Justice and the judges of the Supreme Court shall be one~~
16 ~~hundred eighty-seven thousand thirty-six dollars and one cent.~~
17 The Chief Justice and the judges of the Supreme Court shall hold no
18 other public office of profit or trust during their terms of office nor
19 accept any public appointment or employment under the authority of the
20 government of the United States for which they receive compensation for
21 their services. Such salaries shall be payable in equal monthly
22 installments.

ANNOUNCEMENT

Senator Halloran announced the Agriculture Committee will hold an executive session Friday, April 26, 2019, at 9:00 a.m., in Room 2022.

VISITOR(S)

Visitors to the Chamber were students from Pierce Elementary School.

The Doctor of the Day was Dr. Brian Buhlke from Central City.

ADJOURNMENT

At 4:32 p.m., on a motion by Senator B. Hansen, the Legislature adjourned until 9:00 a.m., Friday, April 26, 2019.

Patrick J. O'Donnell
Clerk of the Legislature