

SEVENTY-FIRST DAY - MAY 4, 2021**LEGISLATIVE JOURNAL****ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION****SEVENTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, May 4, 2021

PRAYER

The prayer was offered by Senator Dorn.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was offered by Senator Lowe.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Speaker Hilgers presiding.

The roll was called and all members were present except Senator Brewer who was excused; and Senators Bostar, Briese, Groene, Pansing Brooks, Vargas, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the seventieth day was approved.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 388A. Placed on Select File with amendment.

[ER78](#)

1 1. On page 1, line 3, after "2021" insert "; and to declare an
2 emergency".

LEGISLATIVE BILL 336. Placed on Select File with amendment.

[ER80](#)

1 1. On page 1, strike beginning with "game" in line 1 through line 8
2 and insert "the Game Law; to amend section 37-438, Revised Statutes
3 Cumulative Supplement, 2020; to change certain fees; and to repeal the
4 original section".

(Signed) Terrell McKinney, Chairperson

COMMITTEE REPORT(S)
Enrollment and Review

LEGISLATIVE BILL 2. Placed on Final Reading.
LEGISLATIVE BILL 108. Placed on Final Reading.
LEGISLATIVE BILL 108A. Placed on Final Reading.
LEGISLATIVE BILL 247A. Placed on Final Reading

LEGISLATIVE BILL 273. Placed on Final Reading.

ST18

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

1. On page 1, lines 5 through 8 and all amendments thereto have been struck and "change provisions relating to youth rehabilitation and treatment centers; to provide for motions for immediate change in placement; to harmonize provisions; and to repeal the original sections." inserted.

LEGISLATIVE BILL 307. Placed on Final Reading.

ST17

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

1. In the Lathrop amendment, AM1081, amendment 2 has been struck.
2. In the Geist amendment, AM1108:
 - a. Sections 1, 2, and 3 have been renumbered as sections 2, 3, and 4, respectively; and
 - b. On page 4, line 2, "juveniles" has been struck and "a juvenile" inserted; and in line 18 "and section 29-1816, Revised Statutes Cumulative Supplement, 2020," has been inserted after the comma.
3. On page 1, line 1, "section" has been struck and "sections 43-272 and" inserted; in line 2 ", and section 29-1816, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to transfer of a case to juvenile court" has been inserted after "Nebraska"; and in line 5 "section" has been struck and "sections" inserted.

LEGISLATIVE BILL 485. Placed on Final Reading.

LEGISLATIVE BILL 644. Placed on Final Reading.

ST19

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

1. In the E and R amendments, ER54, on page 38, line 11, "and property tax requests" has been inserted after "refunds".

(Signed) Terrell McKinney, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 116. Introduced by Williams, 36.

PURPOSE: The purpose of this resolution is to review the credentialing requirements in the Public Accountancy Act in furtherance of the purposes of the Occupational Board Reform Act.

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

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

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

Referred to the Executive Board.

BILLS ON FIRST READING

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

LEGISLATIVE BILL 306A. Introduced by Brandt, 32.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 306, One Hundred Seventh Legislature, First Session, 2021; and to declare an emergency.

LEGISLATIVE BILL 485A. Introduced by DeBoer, 10.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 485, One Hundred Seventh Legislature, First Session, 2021; and to declare an emergency.

GENERAL FILE

LEGISLATIVE BILL 407. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 9 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 90. Title read. Considered.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 4 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 166. Title read. Considered.

Committee [AM389](#), found on page 511, was adopted with 39 ayes, 0 nays, 2 present and not voting, and 8 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 2 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 166A. Title read. Considered.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 2 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 317. Title read. Considered.

Committee [AM398](#), found on page 512, was adopted with 38 ayes, 0 nays, 3 present and not voting, and 8 excused and not voting.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 4 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 317A. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 5 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 256. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 5 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 479. Title read. Considered.

Committee [AM372](#), found on page 642, was adopted with 38 ayes, 0 nays, 5 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 6 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 628. Title read. Considered.

Senator Morfeld withdrew his amendments, [AM997](#) and [AM1129](#), found on pages 1059 and 1131.

Committee [AM1185](#), found on page 1181, was adopted with 39 ayes, 0 nays, 5 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 3 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 454. Title read. Considered.

Committee [AM789](#), found on page 784, was offered.

Senator Friesen offered the following amendment to the committee amendment:

[AM1231](#)

(Amendments to Standing Committee amendments, AM789)

1 1. On page 2, line 25, strike "ten" and insert "nine"; and in line
2 28 strike "June" and insert "May".

SENATOR WILLIAMS PRESIDING

Pending.

COMMITTEE REPORT(S)
Enrollment and Review

LEGISLATIVE BILL 406. Placed on Select File with amendment.

[ER81](#)

1 1. On page 1, strike beginning with "amend" in line 1 through line 6
2 and insert "state legislative findings; to create the Statewide Tourism
3 And Recreational Water Access and Resource Sustainability Special
4 Committee of the Legislature; to provide powers and duties; and to
5 declare an emergency."

LEGISLATIVE BILL 406A. Placed on Select File.

LEGISLATIVE BILL 103. Placed on Select File.

(Signed) Terrell McKinney, Chairperson

AMENDMENT(S) - Print in Journal

Senator Wayne filed the following amendment to [LB454](#):

[FA43](#)

On page 2, strike subsection 1 and 2 of section 2.

BILL ON FIRST READING

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

LEGISLATIVE BILL 566A. Introduced by McDonnell, 5; Stinner, 48.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 566, One Hundred Seventh Legislature, First Session, 2021; to provide for a transfer of funds; and to declare an emergency.

UNANIMOUS CONSENT - Add Cointroducer(s)

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

Senator McCollister name added to LB496.

RECESS

At 12:02 p.m., on a motion by Senator Halloran, the Legislature recessed until 1:30 p.m.

AFTER RECESS

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

ROLL CALL

The roll was called and all members were present except Senators Albrecht, Bostar, Bostelman, Day, DeBoer, Flood, Morfeld, Pansing Brooks, and Vargas who were excused until they arrive.

GENERAL FILE

LEGISLATIVE BILL 454. Senator Friesen renewed his amendment, [AM1231](#), found in this day's Journal, to the committee amendment.

SENATOR WILLIAMS PRESIDING

Senator Friesen withdrew his amendment.

Senator Wayne offered the following amendment to the committee amendment:

[AM1234](#)

(Amendments to Standing Committee amendments, AM789)

- 1 1. Strike the original sections and all amendments thereto and
- 2 insert the following new sections:
- 3 Section 1. Section 79-236, Reissue Revised Statutes of Nebraska, is
- 4 amended to read:
- 5 79-236 Beginning with the 1993-94 school year and ending with the
- 6 2021-22 school year, the enrollment option program shall be implemented
- 7 by all public school districts. The enrollment option program shall
- 8 terminate on July 1, 2022.
- 9 Sec. 2. Section 79-1001, Revised Statutes Cumulative Supplement,
- 10 2020, is amended to read:
- 11 79-1001 Sections 79-1001 to 79-1033 shall be known and may be cited
- 12 as the Tax Equity and Educational Opportunities Support Act. The Tax
- 13 Equity and Educational Opportunities Support Act shall be applicable for
- 14 state aid calculated and distributed pursuant to the act for school
- 15 fiscal years through school fiscal year 2021-22. The Tax Equity and
- 16 Educational Opportunities Support Act shall terminate on July 1, 2022.
- 17 Sec. 3. Original section 79-236, Reissue Revised Statutes of
- 18 Nebraska, and section 79-1001, Revised Statutes Cumulative Supplement,
- 19 2020, are repealed.

SENATOR HUGHES PRESIDING

Senator Wayne withdrew his amendment.

Committee [AM789](#), found on page 784 and considered in this day's Journal, was renewed.

SENATOR WILLIAMS PRESIDING

Senator Wayne reoffered his amendment, [AM1234](#), found in this day's Journal, to the committee amendment.

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

Senator Wayne requested a roll call vote on his amendment.

Voting in the affirmative, 21:

Aguilar	Dorn	Hughes	McDonnell	Wayne
Albrecht	Erdman	Kolterman	McKinney	
Bostelman	Geist	Lindstrom	Murman	
Brandt	Halloran	Linehan	Pahls	
Brewer	Hansen, B.	Lowe	Slama	

Voting in the negative, 14:

Bostar	Clements	Gragert	Hunt	Moser
Briese	Day	Groene	Lathrop	Williams
Cavanaugh, J.	DeBoer	Hilkemann	McCollister	

Present and not voting, 8:

Arch	Cavanaugh, M.	Hansen, M.	Walz
Blood	Friesen	Stinner	Wishart

Excused and not voting, 6:

Flood	Morfeld	Sanders
Hilgers	Pansing Brooks	Vargas

The Wayne amendment lost with 21 ayes, 14 nays, 8 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Friesen moved for a call of the house. The motion prevailed with 26 ayes, 2 nays, and 21 not voting.

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

Voting in the affirmative, 28:

Aguilar	Briese	Friesen	Kolterman	Pahls
Albrecht	Day	Gragert	Lindstrom	Slama
Bostar	DeBoer	Halloran	McCollister	Williams
Bostelman	Dorn	Hansen, B.	McDonnell	Wishart
Brandt	Erdman	Hansen, M.	Moser	
Brewer	Flood	Hughes	Murman	

Voting in the negative, 6:

Blood	Geist	Hilkemann
Clements	Groene	Lathrop

Present and not voting, 11:

Arch	Hunt	McKinney	Walz
Cavanaugh, J.	Linehan	Morfeld	Wayne
Cavanaugh, M.	Lowe	Stinner	

Excused and not voting, 4:

Hilgers	Pansing Brooks	Sanders	Vargas
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The committee amendment was adopted with 28 ayes, 6 nays, 11 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Senator Friesen moved for a call of the house. The motion prevailed with 29 ayes, 5 nays, and 15 not voting.

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

Voting in the affirmative, 23:

Albrecht	Briese	Gragert	Kolterman	Pahls
Bostar	Dorn	Halloran	Lindstrom	Slama
Bostelman	Erdman	Hansen, B.	Lowe	Williams
Brandt	Flood	Hansen, M.	McCollister	
Brewer	Friesen	Hughes	Murman	

Voting in the negative, 12:

Aguilar	Geist	Lathrop	McKinney
Blood	Hilkemann	Linehan	Moser
Day	Hunt	McDonnell	Stinner

Present and not voting, 10:

Arch Cavanaugh, M. DeBoer Morfeld Wayne
Cavanaugh, J. Clements Groene Walz Wishart

Excused and not voting, 4:

Hilgers Pansing Brooks Sanders Vargas

Failed to advance to Enrollment and Review Initial with 23 ayes, 12 nays, 10 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

AMENDMENT(S) - Print in Journal

Senator Albrecht filed the following amendment to LB595:
[AM1227](#)

(Amendments to E & R amendments, ER75)

1 1. On page 7, strike beginning with "enzymes" in line 19 through
2 "alcohol" in line 20 and insert "all catalysts, chemicals, and materials
3 used in the process of manufacturing ethyl alcohol and the production of
4 coproducts".

BILLS ON FIRST READING

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

LEGISLATIVE BILL 39A. Introduced by Lindstrom, 18.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 39, One Hundred Seventh Legislature, First Session, 2021; and to declare an emergency.

LEGISLATIVE BILL 529A. Introduced by Walz, 15.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 529, One Hundred Seventh Legislature, First Session, 2021; to outright repeal section 49, Legislative Bill 380, One Hundred Seventh Legislature, First Session, 2021; and to declare an emergency.

GENERAL FILE

LEGISLATIVE BILL 566. Title read. Considered.

Committee [AM606](#), found on page 652, was offered.

Senator McDonnell moved for a call of the house. The motion prevailed with 18 ayes, 4 nays, and 27 not voting.

Senator McDonnell requested a roll call vote, in reverse order, on the

committee amendment.

Voting in the affirmative, 36:

Aguilar	DeBoer	Hilkemann	McCollister	Walz
Arch	Dorn	Hughes	McDonnell	Wayne
Blood	Erdman	Hunt	McKinney	Williams
Bostar	Flood	Kolterman	Morfeld	Wishart
Brandt	Gragert	Lathrop	Murman	
Brewer	Groene	Lindstrom	Pahls	
Cavanaugh, J.	Halloran	Linehan	Pansing Brooks	
Day	Hansen, M.	Low	Stinner	

Voting in the negative, 5:

Albrecht	Clements	Friesen	Moser	Slama
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Present and not voting, 4:

Bostelman	Cavanaugh, M.	Geist	Hansen, B.
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Excused and not voting, 4:

Briese	Hilgers	Sanders	Vargas
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The committee amendment was adopted with 36 ayes, 5 nays, 4 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Senator McDonnell offered his amendment, [AM344](#), found on page 811.

Senator McDonnell moved for a call of the house. The motion prevailed with 26 ayes, 3 nays, and 20 not voting.

Senator McDonnell requested a roll call vote, in reverse order, on his amendment.

Voting in the affirmative, 29:

Aguilar	Dorn	Hilkemann	McCollister	Stinner
Blood	Erdman	Kolterman	McDonnell	Walz
Bostar	Flood	Lathrop	McKinney	Wayne
Cavanaugh, J.	Gragert	Lindstrom	Morfeld	Williams
Day	Halloran	Linehan	Pahls	Wishart
DeBoer	Hansen, M.	Low	Pansing Brooks	

Voting in the negative, 9:

Albrecht	Brewer	Friesen	Groene	Slama
Bostelman	Clements	Geist	Moser	

Present and not voting, 7:

Arch	Cavanaugh, M.	Hughes	Murman
Brandt	Hansen, B.	Hunt	

Excused and not voting, 4:

Briese	Hilgers	Sanders	Vargas
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The McDonnell amendment was adopted with 29 ayes, 9 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 26 ayes, 11 nays, 8 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

AMENDMENT(S) - Print in Journal

Senator Pansing Brooks filed the following amendment to [LB568](#):
[AM1209](#)

(Amendments to Standing Committee amendments, AM264)

1 1. Strike amendment 1 and insert the following new amendments:
 2 1. Strike sections 16 and 17 and insert the following new sections:
 3 Sec. 16. Section 43-2404.02, Revised Statutes Cumulative Supplement,
 4 2020, is amended to read:
 5 43-2404.02 (1) There is created a separate and distinct budgetary
 6 program within the commission to be known as the Community-based Juvenile
 7 Services Aid Program. Funding acquired from participation in the federal
 8 act, state General Funds, and funding acquired from other sources which
 9 may be used for purposes consistent with the Juvenile Services Act and
 10 the federal act shall be used to aid in the establishment and provision
 11 of community-based services for juveniles and families who have had, who
 12 are at risk of, or who come in contact with the juvenile justice system,
 13 and to reduce the risk for juveniles to come in contact with the juvenile
 14 justice system.
 15 (2)(a) Ten percent of the annual General Fund appropriation to the
 16 Community-based Juvenile Services Aid Program, excluding administrative
 17 budget funds, shall be set aside for the development of a common data set
 18 and evaluation of the effectiveness of the Community-based Juvenile
 19 Services Aid Program. The intent in creating this common data set is to
 20 allow for evaluation of the use of the funds and the effectiveness of the
 21 programs or outcomes in the Community-based Juvenile Services Aid
 22 Program.
 23 (b) The common data set shall be developed and maintained by the
 24 commission and shall serve as a primary data collection site for any
 25 intervention funded by the Community-based Juvenile Services Aid Program
 26 designed to serve juveniles and deter involvement in the formal juvenile
 1 justice system. The commission shall work with agencies and programs to
 2 enhance existing data sets. To ensure that the data set permits
 3 evaluation of recidivism and other measures, the commission shall work
 4 with the Office of Probation Administration, juvenile diversion programs,

5 law enforcement, the courts, and others to compile data that demonstrates
6 whether a youth has moved deeper into the juvenile justice system. The
7 University of Nebraska at Omaha, Juvenile Justice Institute, shall assist
8 with the development of common definitions, variables, and training
9 required for data collection and reporting into the common data set by
10 juvenile justice programs. The common data set maintained by the
11 commission shall be provided to the University of Nebraska at Omaha,
12 Juvenile Justice Institute, to assess the effectiveness of the Community-
13 based Juvenile Services Aid Program.

14 (c) Providing the commission access to records and information for,
15 as well as the commission granting access to records and information
16 from, the common data set is not a violation of confidentiality
17 provisions under any law, rule, or regulation if done in good faith for
18 purposes of evaluation. Records and documents, regardless of physical
19 form, that are obtained or produced or presented to the commission for
20 the common data set are not public records for purposes of sections
21 84-712 to 84-712.09.

22 (d) The ten percent of the annual General Fund appropriation to the
23 Community-based Juvenile Services Aid Program, excluding administrative
24 budget funds, shall be appropriated as follows: In fiscal year 2015-16,
25 seven percent shall go to the commission for development of the common
26 data set and three percent shall go to the University of Nebraska at
27 Omaha, Juvenile Justice Institute, for evaluation. In fiscal year
28 2016-17, six percent shall go to the commission for development and
29 maintenance of the common data set and four percent shall go to the
30 University of Nebraska at Omaha, Juvenile Justice Institute, for
31 evaluation. Every fiscal year thereafter, beginning in fiscal year
1 2017-18, five percent shall go to the commission for development and
2 maintenance of the common data set and five percent shall go to the
3 University of Nebraska at Omaha, Juvenile Justice Institute, for
4 evaluation.

5 (e) The remaining funds in the annual General Fund appropriation to
6 the Community-based Juvenile Services Aid Program shall be apportioned as
7 aid to counties and federally recognized or state recognized Indian
8 tribes in accordance with a formula established in rules and regulations
9 adopted and promulgated by the commission that consider the difference
10 among counties and Indian tribes in population, geography, and the
11 availability of local resources with a goal of distribution across the
12 state. The formula shall be based on the total number of residents per
13 county and federally recognized or state recognized Indian tribe who are
14 twelve years of age through eighteen years of age and other relevant
15 factors as determined by the commission. The commission may require a
16 local match of up to forty percent from the county, multiple counties,
17 federally recognized or state-recognized Indian tribe or tribes, or any
18 combination of the three which is receiving aid under such program. Any
19 local expenditures for community-based programs for juveniles may be
20 applied toward such match requirement.

21 (3)(a) In distributing funds provided under the Community-based
22 Juvenile Services Aid Program, aid recipients shall prioritize programs
23 and services that will divert juveniles from the juvenile justice system,
24 address issues of excessive absenteeism, reduce the population of
25 juveniles in juvenile detention and secure confinement, and provide
26 prevention, intervention, and re-entry services to youth and families at
27 risk of, involved in, and transitioning out of juvenile justice system
28 involvement assist in transitioning juveniles from out-of-home
29 placements.

30 (b) Funds received under the Community-based Juvenile Services Aid
31 Program shall be used exclusively to assist the aid recipient in the
1 implementation and operation of programs or the provision of services
2 identified in the aid recipient's comprehensive juvenile services plan,

3 including programs for local planning and service coordination;
4 screening, assessment, and evaluation; juvenile diversion; family
5 diversion; excessive absenteeism diversion; alternatives to detention;
6 family support services; treatment services; excessive absenteeism
7 truancy prevention and intervention programs for all school-aged youth;
8 pilot projects approved by the commission; payment of transportation
9 costs to and from placements, evaluations, or services; personnel when
10 the personnel are aligned with evidence-based treatment principles,
11 programs, or practices; contracting with other state agencies or private
12 organizations that provide evidence-based treatment or programs;
13 preexisting programs that are aligned with evidence-based practices or
14 best practices; and other services that will positively impact juveniles
15 and families in or at risk of entering the juvenile justice system.
16 (c) Funds received under the Community-based Juvenile Services Aid
17 Program may be used one time by an aid recipient:
18 (i) To convert an existing juvenile detention facility or other
19 existing structure for use as an alternative to detention as defined in
20 section 43-245;
21 (ii) To invest in capital construction, including both new
22 construction and renovations, for a facility for use as an alternative to
23 detention; or
24 (iii) For the initial lease of a facility for use as an alternative
25 to detention.
26 (d) Funds received under the Community-based Juvenile Services Aid
27 Program shall not be used for the following:
28 (i) Construction of secure detention facilities, secure youth
29 treatment facilities, or secure youth confinement facilities;
30 (ii) Capital construction or the lease or acquisition of facilities
31 beyond the one-time use described in subdivision (3)(c) of this section;
1 (iii) Programs, services, treatments, evaluations, or other
2 preadjudication services that are not based on or grounded in evidence-
3 based practices, principles, and research, except that the commission may
4 approve pilot projects that authorize the use of such aid; or
5 (iv) Office equipment, office supplies, or office space.
6 (e) Any aid not distributed to counties or tribes under this
7 subsection may shall be retained by the commission to implement pilot
8 projects, program development trainings, or other statewide initiatives
9 for the statewide benefit of counties and Indian tribes. The commission
10 may also award any funds that are unspent, returned, de-obligated, or not
11 distributed under this subsection to any new or existing grant recipient
12 under the Community-based Juvenile Services Aid Program with an exhibited
13 need for additional funds be distributed on a competitive basis under the
14 Community-based Juvenile Services Aid Program for a county, multiple
15 counties, federally recognized or state-recognized Indian tribe or
16 tribes, or any combination of the three demonstrating additional need in
17 the funding areas identified in this subsection.
18 (f) If a county, multiple counties, or a federally recognized or
19 state-recognized Indian tribe or tribes is denied aid under this section
20 or receives no aid under this section, the entity may request an appeal
21 pursuant to the appeal process in rules and regulations adopted and
22 promulgated by the commission. The commission shall establish appeal and
23 hearing procedures by December 15, 2014. The commission shall make appeal
24 and hearing procedures available on its web site.
25 (4)(a) Any recipient of aid under the Community-based Juvenile
26 Services Aid Program shall electronically file an annual report as
27 required by rules and regulations adopted and promulgated by the
28 commission. Any program funded through the Community-based Juvenile
29 Services Aid Program that served juveniles shall report data on the
30 individual youth served. Any program that is not directly serving youth
31 shall include program-level data. In either case, data collected shall

1 include, but not be limited to, the following: The type of juvenile
2 service, how the service met the goals of the comprehensive juvenile
3 services plan, demographic information on the juveniles served, program
4 outcomes, the total number of juveniles served, and the number of
5 juveniles who completed the program or intervention.

6 (b) Any recipient of aid under the Community-based Juvenile Services
7 Aid Program shall be assisted by the University of Nebraska at Omaha,
8 Juvenile Justice Institute, in reporting in the common data set, as set
9 forth in the rules and regulations adopted and promulgated by the
10 commission. Community-based aid utilization and evaluation data shall be
11 stored and maintained by the commission.

12 (c) Evaluation of the use of funds and the evidence of the
13 effectiveness of the programs shall be completed by the University of
14 Nebraska at Omaha, Juvenile Justice Institute, specifically:

15 (i) The varying rates of recidivism, as defined by rules and
16 regulations adopted and promulgated by the commission, and other measures
17 for juveniles participating in community-based programs; and
18 (ii) Whether juveniles are sent to staff secure or secure juvenile
19 detention after participating in a program funded by the Community-based
20 Juvenile Services Aid Program.

21 (5) The commission shall report annually to the Governor and the
22 Legislature on the distribution and use of funds for aid appropriated
23 under the Community-based Juvenile Services Aid Program. The report shall
24 include, but not be limited to, an aggregate report of the use of the
25 Community-based Juvenile Services Aid Program funds, including the types
26 of juvenile services and programs that were funded, whether any
27 recipients used the funds for a purpose described in subdivision (3)(c)
28 of this section, demographic information on the total number of juveniles
29 served, program success rates, the total number of juveniles sent to
30 secure juvenile detention or residential treatment and secure
31 confinement, and a listing of the expenditures of all counties and
1 federally recognized or state-recognized Indian tribes for detention,
2 residential treatment, and secure confinement. The report submitted to
3 the Legislature shall be submitted electronically.

4 (6) The commission shall adopt and promulgate rules and regulations
5 for the Community-based Juvenile Services Aid Program in consultation
6 with the Director of the Community-based Juvenile Services Aid Program,
7 the Director of Juvenile Diversion Programs, the Office of Probation
8 Administration, the Nebraska Association of County Officials, and the
9 University of Nebraska at Omaha, Juvenile Justice Institute. The rules
10 and regulations shall include, but not be limited to:

11 (a) The required elements of a comprehensive juvenile services plan
12 and planning process;

13 (b) The Community-based Juvenile Services Aid Program ~~formula~~,
14 review process, match requirements, and fund distribution. The
15 distribution process shall ensure a conflict of interest policy;

16 (c) A distribution process for funds retained under subsection (3)
17 of this section;

18 (d) A plan for evaluating the effectiveness of plans and programs
19 receiving funding;

20 (e) A reporting process for aid recipients;

21 (f) A reporting process for the commission to the Governor and
22 Legislature. The report shall be made electronically to the Governor and
23 the Legislature; and

24 (g) Requirements regarding the use of the common data set.

25 Sec. 17. Section 43-2404.03, Reissue Revised Statutes of Nebraska,
26 is amended to read:
27 43-2404.03 It is the intent of the Legislature to appropriate five
28 million dollars each fiscal year through fiscal year 2022-23 and eight
29 million five hundred thousand dollars for fiscal year 2023-24 and each

30 fiscal year thereafter to the Community-based Juvenile Services Aid
31 Program.

1 Sec. 19. Section 43-2409, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 43-2409 (1) The coalition shall review periodically the performance
4 of eligible applicants participating under the Commission Grant Program
5 and the federal act to determine if substantial compliance criteria are
6 being met. The commission shall establish criteria for defining
7 substantial compliance.

8 ~~(2) Grants received by an eligible applicant under the Commission
9 Grant Program shall not be used to replace or supplant any funds
10 currently being used to support existing programs for juveniles.~~

11 ~~(2) (3) Grants received under the Commission Grant Program shall not
12 be used for capital construction or the lease or acquisition of
13 facilities except as provided in subdivision (3)(c) of section
14 43-2404.02.~~

15 Sec. 29. (1) On and after July 1, 2023, there is established within
16 the Nebraska Commission on Law Enforcement and Criminal Justice the
17 position of Director of Absenteeism Prevention and Intervention Programs
18 to be appointed by the executive director of the commission. The Director
19 of Absenteeism Prevention and Intervention Programs shall be supervised
20 by the Director of the Community-based Juvenile Services Aid Program.

21 (2) The Director of Absenteeism Prevention and Intervention Programs
22 shall be responsible for developing, fostering, promoting, researching,
23 and assessing new and existing excessive absenteeism prevention and
24 intervention programs in collaboration with cities and counties. The
25 director shall:

26 (a) In collaboration with the State Department of Education, provide
27 technical assistance and guidance to excessive absenteeism prevention and
28 intervention programs, school districts, and county attorneys for
29 implementing evidence-based strategies or standardized, replicable
30 practices that have been researched and have demonstrated positive
31 outcomes;

1 (b) Establish baseline program guidelines based on evidence-based
2 practices, principles, programs, and research; develop data collection
3 and evaluation protocols; oversee statewide data collection; and generate
4 an annual report on excessive absenteeism prevention and intervention
5 programs;

6 (c) Develop relationships and collaborate with juvenile justice
7 stakeholders; provide education and training as necessary; and serve on
8 boards and committees when approved by the commission;

9 (d) Facilitate consistent communication and information-sharing
10 among excessive absenteeism prevention and intervention programs;

11 (e) Assist program directors, county attorneys, school districts,
12 and county boards in developing policies and practices that achieve the
13 goals of quality excessive absenteeism prevention and intervention
14 programs;

15 (f) Assist in comprehensive community planning efforts as they
16 relate to the development of excessive absenteeism prevention and
17 intervention programs;

18 (g) Develop and coordinate a statewide working group as a
19 subcommittee of the Nebraska Coalition for Juvenile Justice to assist in
20 regular strategic planning related to supporting, funding, monitoring,
21 and evaluating the effectiveness of plans and programs receiving funds
22 from the Community-based Juvenile Services Aid Program; and

23 (h) Assist the Director of the Community-based Juvenile Services Aid
24 Program in the review of Community-based Juvenile Services Aid Program
25 applications as provided in section 43-2404.02.

26 2. Renumber the remaining sections and correct the repealer
27 accordingly.

COMMITTEE REPORT(S)
Banking, Commerce and Insurance

LEGISLATIVE BILL 649. Placed on General File with amendment.
[AM1018](#) is available in the Bill Room.

(Signed) Matt Williams, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 21-008

SUBJECT: Whether LR11CA Violates the Separate-Vote Requirement in Neb. Const. art. XVI, § 1.

REQUESTED BY: Senator Steve Erdman
Nebraska Legislature

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

INTRODUCTION

LR11CA proposes to amend the Nebraska Constitution to prohibit the State and its political subdivisions from imposing taxes on income, property, inheritances, estates, and the retail sale of goods, and requires the Legislature to enact a consumption tax on purchases of services and new goods, except for fuel. The amendment would allow the Legislature to authorize political subdivisions to enact their own consumption taxes.

You ask us to address whether LR11CA violates the provision in Neb. Const. art. III, § 2, requiring that "[i]nitiative measures shall contain only one subject." Article III, § 2, reserves power to the people to adopt laws and constitutional amendments by initiative petition "independently of the Legislature." Neb. Const. art. III, § 2. As this constitutional provision applies only to exercise of the initiative power by the people, it has no application to a resolution of the Legislature proposing to amend the Constitution. Thus, the "single subject" requirement in art. III, § 2, has no application to LR11CA.

Amendments to the Nebraska Constitution proposed by the Legislature are instead governed by Neb. Const. art. XVI, § 1. This provision requires that, "[w]hen two or more amendments are submitted at the same election, they shall so be submitted as to enable the electors to vote on each amendment separately." Neb. Const. art XVI, § 1. The Nebraska Supreme Court has held that this "separate-vote" provision "imposes the same requirements as the single subject provision under article III, § 2." *State ex*

rel. Loontjer v. Gale, 288 Neb. 973, 993, 853 N.W.2d 494, 509 (2014) ["*Loontjer*"]. Thus, the proper question presented is whether LR11CA violates the "separate-vote" requirement in Neb. Const. art. XVI, § 1.

ANALYSIS

A. The Natural and Necessary Connection Test Applies to the Separate-Vote Provision.

Loontjer involved a challenge to a legislative resolution to amend the Nebraska Constitution to "permit wagering on 'replayed' horseraces in addition to wagering on live horseraces." 288 Neb. at 975, 853 N.W.2d at 496. The resolution also "specif[ied] how the Legislature must appropriate the proceeds from a tax placed on wagering for both live and replayed horseraces." *Id.* Loontjer's counsel asked the Secretary of State not to place the proposed amendment on the ballot, contending it was legally insufficient because it violated the separate-vote provision in article XVI, § 1. He argued the resolution "presented at least two amendments: one that authorizes a new type of gambling on replayed horseraces, and one that directs tax revenues from new and currently authorized wagering to be used for property tax relief and education funding." *Id.* at 983, 853 N.W.2d at 503. He contended "that the Legislature was unconstitutionally presenting two separate and independent changes to the constitution for voters to approve or reject in a single vote." *Id.* When the Secretary of State declined to remove the proposed amendment from the ballot, Loontjer petitioned the Supreme Court for a writ of mandamus directing the Secretary not to certify the proposed amendment for placement on the ballot.

After finding the challenge was justiciable prior to the election, the Court considered the meaning of the separate-vote requirement in art. XVI, § 1. The Court "agree[d] with the parties that the separate-vote provision in article XVI, § 1, imposes the same requirements as the single subject provision under article III, § 2." *Id.* at 993, 853 N.W.2d at 509. "Like single subject rules [for constitutional amendments], a separate-vote provision is often said to be aimed at the practice of logrolling." *Id.* at 995, 853 N.W.2d at 510. "[L]ogrolling is the practice of combining dissimilar propositions into one proposed amendment so that voters must vote for or against the whole package even though they would have voted differently had the propositions been submitted separately." *Id.* "It is sometimes described as including favored but unrelated propositions in a proposed amendment to ensure passage of a provision that might otherwise fail." *Id.* The Court concluded "that the single subject rule for voter initiatives and the separate-vote provision for the Legislature's proposed amendments should be construed as imposing the same ballot requirements: A voter initiative or a legislatively proposed constitutional amendment may not contain two or more distinct subjects for voter approval in a single vote." *Id.* at 998-99, 853 N.W.2d at 512.

Turning to the test to be applied, the Court adopted the "natural and necessary connection test" formulated in prior cases dealing with proposed amendments for city charters and municipal ballot measures. *Id.* at Neb. at 1001, 853 N.W.2d at 513-14. Under that test, "[w]here the limits of a proposed law, having natural and necessary connection with each other, and, together, are part of one general subject, the proposal is a single and not a dual proposition." *Id.* at 999, 853 N.W.2d at 513 (quoting *Munch v. Tusa*, 140 Neb. 457, 463, 300 N.W. 385, 389 (1941)).

Applying the natural and necessary connection test to the challenged legislative resolution, the Court cautioned that "whether a proposed amendment's provisions deal with a single subject matter depends on how narrowly or broadly the subject matter is defined." *Id.* at 1001, 853 N.W.2d at 514. "[T]he controlling consideration in determining the singleness of an amendment is its singleness of purpose and the relationship of the details to the general subject." *Id.* (quoting *Munch v. Tusa*, 140 Neb. at 463, 300 N.W. at 389). "[T]he general subject of a proposed measure is defined by its primary purpose[.]" *Id.* at 1002, 853 N.W.2d at 514.¹ "Without a unifying purpose, separate proposals in a ballot measure necessarily present independent and distinct proposals that require a separate vote." *Id.* at 1003, 853 N.W.2d at 515. The primary purpose of the resolution was "to legalize a new form of wagering," not "to create new funding for property tax relief and education by requiring that all tax revenues from parimutuel wagering be used for such purposes." *Id.* Because there was no "natural and necessary connection" between "the proposal to use tax revenues from parimutuel wagering for property tax relief and education" and "legalizing a new form of wagering," the Court found the proposed amendment violated the separate-vote requirement in art. XVI, § 1, and directed the Secretary of State not to certify the proposal for placement on the ballot. *Id.* at 1004, 1006, 853 N.W.2d at 515, 517.

B. Summary of LR11CA.

LR11CA proposes to amend article IV, § 28, of the Nebraska Constitution, and fourteen sections in article VIII of the Constitution. It would also create a new article VIII, § 14. The amendment to Neb. Const. art. VIII, § 28, would eliminate the Tax Equalization and Review Commission on January 1, 2025. All but one of the remaining changes would amend sections in article VIII by adding language providing that these sections would be "superseded" by new article VIII, § 14, and would "only apply with respect to taxes imposed prior to January 1, 2024." Among the sections that would be "superseded" are: (1) Article VIII, § 1 (taxation of real and personal property, and taxes other than property taxes "authorized by law"); (2) Article VIII, § 1A (prohibition against property tax for state purposes); (3) Article VIII, § 1B (legislative authorization to adopt income tax); (4) Article VIII, § 2 (property tax exemptions); (5) Article VIII, § 2A (exemption of personal property in transit in licensed warehouses or storage areas); (6) Article VIII, § 3 (redemption from sales of real estate for taxes); (7) Article VIII, § 4 (prohibition against Legislature

remitting or commuting taxes); (8) Article VIII, § 5 (limit on county taxes); (9) Article VIII, § 6 (special assessments or taxes for local improvements of cities, towns, and villages); (10) Article VIII, § 7 (no taxes on municipal corporations, inhabitants, or property for corporate purposes); (11) Article VIII, § 10 (alternative valuation for taxes upon grain and seed); (12) Article VIII, § 11 (payments in lieu of taxes by public corporations or political subdivisions providing electricity); and (13) Article VIII, § 13 (ratification and confirmation of existing revenue laws). The resolution would also amend Neb. Const. art. VIII, § 12, which allows cities or villages to incur indebtedness and to rehabilitate, acquire, or redevelop substandard and blighted property in a redevelopment project and pledge taxes on property in the project area. This section would be amended to provide that "[b]eginning January 1, 2024, cities and villages shall no longer have the power to incur indebtedness pursuant to subsection (1) of this section or to pledge taxes pursuant to subsection (2) of this section." Finally, the resolution would create a new article VIII, § 14, providing:

(1) Notwithstanding any other provision of this Constitution to the contrary, effective January 1, 2024, the State of Nebraska and all political subdivisions of the state shall be prohibited from imposing a tax on personal income, a tax on corporate income, a tax on personal property, a tax on real property, a tax on an inheritance from a deceased person, a tax on the estate of a deceased person, and a tax on the retail sale of goods except as provided in subsection (2) of this section. Any taxes described in this subsection that are imposed prior to January 1, 2024, may be collected through the end of calendar year 2024.

(2) The Legislature shall enact a consumption tax which shall apply to purchases of services and new goods, except for fuel. Such consumption tax shall begin no later than January 1, 2024. The Legislature may authorize political subdivisions of the state to enact their own consumption taxes upon such terms and conditions as the Legislature may provide.

C. Application of the Natural and Necessary Connection Test to LR11CA.

The analysis under the separate-vote provision begins with identifying LR11CA's general subject. "The general subject is defined by its primary purpose." *McNally*, 307 Neb. at 119, 948 N.W.2d at 477. The general subject "must not be considered too broadly when considering an amendment to the constitution." *Wagner*, 307 Neb. at 153, 948 N.W.2d at 254. "An overly broad general subject might allow any secondary purpose to arguably be naturally and necessarily connected to it." *Id.* "Instead, a general subject must be characterized at a level of specificity that allows for meaningful review of the natural and necessary connection between it and the [measure's] other purposes." *Id.*

The Introducer's Statement of Intent explains that the purpose of the resolution is "for a constitutional amendment for a consumption tax." Committee Records on LR11CA, 107th Leg., 1st Sess. (Feb. 3, 2021). The statement also states: "LR11CA changes the way taxes are collected, and replaces the income tax, the sales tax, the property tax, and the inheritance tax with a consumption tax, and directs the Legislature to enact a consumption tax." *Id.* The ballot language for the proposed amendment states:

A constitutional amendment to prohibit the state and all political subdivisions from imposing an income tax, a property tax, an inheritance tax, an estate tax, and a tax on retail sales of goods and services except for a consumption tax and to require the Legislature to enact a consumption tax. LR11CA, § 2.

At the broadest level, the general subject of LR11CA is to prohibit the imposition of income, property, inheritance, estates, and sales taxes and require the Legislature to enact a consumption tax. The primary purpose of the amendment is to replace the prohibited forms of taxation with the consumption tax. LR11CA accomplishes this purpose by amending several sections of Article VIII of the Constitution dealing with revenue by providing that those sections are superseded by new Article VIII, § 14, which prohibits imposing taxes on income, property, inheritance, estates, and sales and requires the Legislature to impose a consumption tax. The superseded provisions of Article VIII, which relate to some of the forms of taxation to be prohibited by the amendment, appear for the most part to have a natural and necessary connection to the resolution's primary purpose of replacing those taxes with the consumption tax. The proposed amendment to Article IV, § 28, i.e., eliminating the Tax Equalization and Review Commission ["TERC"], also bears a natural and necessary connection to the amendment's primary purpose as eliminating the property tax would obviate the need for the TERC to perform the statewide equalization of assessments of property for taxation and other powers granted TERC by the Legislature related to property taxation.

We have some concern, however, that the proposed amendment to Neb. Const. art. VIII, § 11, which would eliminate payments in lieu of certain taxes by public corporations or political subdivisions providing electricity, and the amendment to Neb. Const. art. VIII, § 12, which would remove the power granted to cities and villages to incur indebtedness or pledge taxes to rehabilitate, acquire, or redevelop substandard and blighted property in a redevelopment project, are not naturally and necessarily connected to the amendment's primary purpose. "The term 'necessary' means something 'on which another thing is dependent or contingent.'" *Wagner*, 307 Neb. at 158-59, 948 N.W.2d at 257 (quoting Oxford English Dictionary Online). These portions of LR11CA do not seem dependent or contingent on the primary purpose of eliminating certain forms of taxation and replacing them with a consumption tax.

Another issue is whether it is proper to adopt such a broad view of the general subject or primary purpose of LR11CA. The separate-vote requirement "is intended to prevent the practice of logrolling in amending the State's fundamental law." *Loontjer*, 258 Neb. at 997, 853 N.W.2d at 511. Logrolling "is the practice of combining dissimilar propositions into one proposed amendment so that voters must vote for or against the whole package even though they would have voted differently had the propositions been submitted separately." *McNally*, 307 Neb. at 118-19, 948 N.W.2d at 476. The general subject or primary purpose of LR11CA could more narrowly be viewed as to require the enactment of a consumption tax to replace revenues lost by elimination of other taxes. But the amendment does not provide voters a choice as to whether to eliminate only some of the taxes to be replaced. For example, while some voters may approve of a consumption tax to replace the property tax and sales tax, they may not wish to prohibit taxes on income, inheritances, and estates. But the amendment does not permit such a choice. Rather, those voters "would be presented with a take-it-or-leave-it proposition" to vote for the consumption tax and prohibit all these other forms of taxation. *Loontjer*, 288 Neb. at 1004, 853 N.W.2d at 515. "[T]his type of proposition is at the heart of the prohibition against logrolling." *Id.* The prohibition of each of these other taxes could be viewed as distinct subjects which should be separately presented to voters, and the inability of voters to select which taxes would be replaced by the consumption tax may be held to constitute impermissible logrolling which violates art. XVI, § 1.

CONCLUSION

Construed broadly, the general subject of LR11CA is to prohibit income, property, inheritance, estate, and sales taxes and require the Legislature to enact a consumption tax. The primary purpose would be to replace these taxes with the consumption tax. Apart from the proposed amendments to Neb. Const. art. VIII, §§ 11 and 12, the remaining provisions of LR11CA appear to bear a natural and necessary connection to this broad general subject and satisfy the separate-vote requirement. There is a question, however, whether the general subject of LR11CA should be construed more narrowly with the primary purpose being to enact a consumption tax to replace other taxes. Under this general subject, a question may exist as to whether the "all-or-nothing" approach in LR11CA, forcing voters who may favor a consumption tax to also choose to eliminate all of the other identified forms of taxation prohibited by the amendment, as opposed to allowing them to separately vote on which taxes to eliminate, constitutes impermissible logrolling in violation of art. XVI, § 1.

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

07-1404-29

¹The Court most recently applied the "natural and necessary connection" test to decide single subject challenges to several initiative measures. *State ex rel. McNally v. Evnen*, 307 Neb. 103, 948 N.W.2d 463 (2020) ["*McNally*"]; *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 948 N.W.2d 244 (2020) ["*Wagner*"].

GENERAL FILE

LEGISLATIVE BILL 131. Title read. Considered.

Committee [AM751](#), found on page 812, was offered.

Senator Blood withdrew her amendment, [AM1087](#), found on page 1114, to the committee amendment.

Senator Friesen offered his amendment, [AM1112](#), found on page 1118, to the committee amendment.

Pending.

COMMITTEE REPORT(S)

Education

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

William "Scott" Wilson - Coordinating Commission for Postsecondary Education

Aye: 7. Day, Linehan, Morfeld, Murman, Pansing Brooks, Sanders, Walz.
Nay: 1. McKinney. Absent: 0. Present and not voting: 0.

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

Marjean C. Terrell - Board of Trustees of the Nebraska State Colleges
Jess D. Zeiss - Board of Trustees of the Nebraska State Colleges

Aye: 7. Day, Linehan, Morfeld, Murman, Pansing Brooks, Sanders, Walz.
Nay: 1. McKinney. Absent: 0. Present and not voting: 0.

(Signed) Lynne Walz, Chairperson

ADJOURNMENT

At 6:00 p.m., on a motion by Senator Linehan, the Legislature adjourned until 9:00 a.m., Wednesday, May 5, 2021.

Patrick J. O'Donnell
Clerk of the Legislature

