

SEVENTY-FIFTH DAY - MAY 10, 2021

LEGISLATIVE JOURNAL

ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

SEVENTY-FIFTH DAY

Legislative Chamber, Lincoln, Nebraska  
Monday, May 10, 2021

PRAYER

The prayer was offered by Senator Blood.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was offered by Senator Arch.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Hughes presiding.

The roll was called and all members were present except Senators Bostar, M. Hansen, Morfeld, Stinner, Wayne, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the seventy-fourth day was approved.

COMMITTEE REPORT(S)  
Judiciary

**LEGISLATIVE BILL 54.** Placed on General File with amendment.

[AM1268](#)

- 1 1. On page 3, strike lines 14 through 17 and insert the following
- 2 new subdivisions:
- 3 "(b) When the harm caused by an intentional tort is a proximate
- 4 result of the failure of a political subdivision to exercise reasonable
- 5 care to either:
- 6 (i) Control a person over whom it has taken charge; or
- 7 (ii) Protect a person who is in the political subdivision's care,
- 8 custody, or control from harm caused by a non-employee actor;".
- 9 2. On page 6, strike lines 22 through 24 and insert the following
- 10 new subdivisions:
- 11 "(b) When the harm caused by an intentional tort is a proximate

12 result of the failure of a state agency to exercise reasonable care to  
 13 either:  
 14 (i) Control a person over whom it has taken charge; or  
 15 (ii) Protect a person who is in the state agency's care, custody, or  
 16 control from harm caused by a non-employee actor;".

**LEGISLATIVE BILL 139.** Placed on General File with amendment.

AM1293

1 1. Strike the original sections and insert the following new  
 2 sections:  
 3 Section 1. Sections 1 to 4 of this act shall be known and may be  
 4 cited as the COVID-19 Liability Act.  
 5 Sec. 2. For purposes of the COVID-19 Liability Act:  
 6 (1) COVID-19 means the novel coronavirus identified as SARS-CoV-2,  
 7 the disease caused by the novel coronavirus SARS-CoV-2 or a virus  
 8 mutating therefrom, and the health conditions or threats associated with  
 9 the disease caused by the novel coronavirus SARS-CoV-2 or a virus  
 10 mutating therefrom;  
 11 (2) Federal public health guidance means and includes written or  
 12 oral guidance related to COVID-19 issued by any of the following:  
 13 (a) The Centers for Disease Control and Prevention of the United  
 14 States Department of Health and Human Services;  
 15 (b) The Centers for Medicare and Medicaid Services of the United  
 16 States Department of Health and Human Services; or  
 17 (c) The federal Occupational Safety and Health Administration; and  
 18 (3)(a) Person means:  
 19 (i) Any natural person;  
 20 (ii) Any sole proprietorship, partnership, limited liability  
 21 partnership, corporation, limited liability company, business trust,  
 22 estate, trust, unincorporated association, or joint venture;  
 23 (iii) The State of Nebraska and any political subdivision of the  
 24 state;  
 25 (iv) Any school, college, university, institution of higher  
 26 education, religious organization, or charitable organization; or  
 27 (v) Any other legal or commercial entity.  
 1 (b) Person includes an employee, director, governing board, officer,  
 2 agent, independent contractor, or volunteer of a person listed in  
 3 subdivision (3)(a) of this section.  
 4 Sec. 3. A person may not bring or maintain a civil action seeking  
 5 recovery for any injuries or damages sustained from exposure or potential  
 6 exposure to COVID-19 on or after the effective date of this act if the  
 7 act or omission alleged to violate a duty of care was in substantial  
 8 compliance with any federal public health guidance that was applicable to  
 9 the person, place, or activity at issue at the time of the alleged  
 10 exposure or potential exposure.  
 11 Sec. 4. The COVID-19 Liability Act shall not be construed to:  
 12 (1) Create, recognize, or ratify a claim or cause of action of any  
 13 kind;  
 14 (2) Eliminate or satisfy a required element of a claim or cause of  
 15 action of any kind;  
 16 (3) Affect rights or coverage limits under the Nebraska Workers'  
 17 Compensation Act;  
 18 (4) Abrogate, amend, repeal, alter, or affect any statutory or  
 19 common law immunity or limitation of liability; or  
 20 (5) Constitute a waiver of the sovereign immunity of the State of  
 21 Nebraska or any political subdivision of the state.  
 22 Sec. 5. Sections 5 to 9 of this act shall be known and may be cited  
 23 as the Health Care Crisis Protocol Act.  
 24 Sec. 6. For purposes of the Health Care Crisis Protocol Act:  
 25 (1) Chief executive officer means the chief executive officer of the

26 Department of Health and Human Services;

27 (2) Chief medical officer means the chief medical officer

28 established under section 81-3115;

29 (3) Critical access hospital has the same meaning as in section

30 71-409;

31 (4) Emergency care provider has the same meaning as in section  
1 38-1206.04;

2 (5) Health care crisis protocol means plans and protocols for triage  
3 and the application of medical services and resources for critically ill  
4 patients in the event that the demand for medical services and resources  
5 exceeds supply as a result of a pervasive or catastrophic disaster; and

6 (6) Health care provider has the same meaning as in section 44-2803.

7 Sec. 7. (1) On or before July 1, 2022, the chief executive officer  
8 and chief medical officer shall adopt and promulgate rules and  
9 regulations establishing a health care crisis protocol. The health care  
10 crisis protocol shall be updated from time to time thereafter as such  
11 officers deem appropriate.

12 (2) The health care crisis protocol shall establish criteria for  
13 triage and the application of medical services and resources for  
14 critically ill patients. Such criteria shall:

15 (a) Ensure that every patient has equitable access to any medical  
16 services or resources from which such patient may benefit;

17 (b) Be clear and transparent and as objective as possible;

18 (c) Minimize inequitable outcomes; and

19 (d) Be based upon biological factors related only to the likelihood  
20 or magnitude of benefit likely to be received from the provision of  
21 medical services and resources. Factors that have no bearing on the  
22 likelihood or magnitude of such benefit shall not be considered. Such  
23 factors that shall not be considered include, but are not limited to,  
24 race, disability, gender, sexual orientation, gender identity, ethnicity,  
25 ability to pay, socioeconomic status, English language proficiency,  
26 perceived social worth, perceived quality of life, immigration status,  
27 incarceration status, homelessness, the past use of medical services or  
28 resources, or the predicted future use of such resources.

29 (3) The health care crisis protocol shall establish the  
30 extraordinary circumstances in which the health care crisis protocol may  
31 be employed.

1 Sec. 8. The health care crisis protocol does not change or alter  
2 the standard for malpractice or professional negligence for health care  
3 providers set forth in section 44-2810.

4 Sec. 9. (1)(a) On or before January 1, 2022, the chief executive  
5 officer shall establish an advisory committee that will provide  
6 recommendations for developing and implementing the health care crisis  
7 protocol. The advisory committee shall consist of ten to fifteen members  
8 appointed by the chief executive officer. The members shall be chosen  
9 from among persons that represent emergency management agencies, health  
10 care providers, health care consumers, the aging community, the  
11 disability community, public health experts, academic medical centers,  
12 critical access hospitals, and emergency care providers and persons with  
13 expertise in law and ethics.

14 (b) The members shall represent diverse geographic regions of the  
15 state, including urban and rural areas, and represent, to the extent  
16 possible, the racial and ethnic diversity of the state.

17 (c) The chief executive officer shall stagger the terms of the  
18 initial appointments by appointing four of the initial appointments for a  
19 term of one year, four for a term of two years, and the remainder for a  
20 term of three years. Thereafter members shall serve for terms of four  
21 years. Members may be reappointed.

22 (d) Members of the advisory committee shall serve without  
23 compensation and shall not be reimbursed for expenses associated with

24 their service on the advisory committee.

25 (2) On or before April 30, 2022, the advisory committee shall make  
26 its recommendations to the chief executive officer and chief medical  
27 officer regarding development and implementation of the health care  
28 crisis protocol.

29 (3) On or before April 30, 2024, and on or before April 30 of each  
30 even-numbered year thereafter, the advisory committee shall review the  
31 health care crisis protocol and make recommendations to the chief  
1 executive officer and chief medical officer regarding any changes that  
2 are needed. Such officers may seek recommendations from the advisory  
3 committee at other times as needed.

4 Sec. 10. Since an emergency exists, this act takes effect when  
5 passed and approved according to law.

(Signed) Steve Lathrop, Chairperson

### AMENDMENT(S) - Print in Journal

Senator Wayne filed the following amendment to LB496:  
AM1309

1 1. Insert the following new sections:

2 Section 1. Section 29-2101, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 29-2101 A new trial, after a verdict of conviction, may be granted,  
5 on the application of the defendant, for any of the following grounds  
6 affecting materially his or her substantial rights:

7 (1) Irregularity in the proceedings of the court, of the prosecuting  
8 attorney, or of the witnesses for the state or in any order of the court  
9 or abuse of discretion by which the defendant was prevented from having a  
10 fair trial;

11 (2) ~~Misconduct~~ ~~misconduct~~ of the jury, of the prosecuting attorney,  
12 or of the witnesses for the state;

13 (3) ~~Accident~~ ~~accident~~ or surprise which ordinary prudence could not  
14 have guarded against;

15 (4) ~~The~~ ~~the~~ verdict is not sustained by sufficient evidence or is  
16 contrary to law;

17 (5) ~~Newly~~ ~~newly~~ discovered evidence material for the defendant which  
18 he or she could not with reasonable diligence have discovered ~~or~~ ~~and~~  
19 produced at the trial. For purposes of this subdivision, testimony or  
20 evidence from a witness who previously had a testimonial or  
21 constitutional privilege and who, because of such privilege, refused to  
22 testify or produce evidence in a prior proceeding, shall be considered  
23 newly discovered evidence;

24 (6) ~~Newly~~ ~~newly~~ discovered exculpatory DNA or similar forensic  
25 testing evidence obtained under the DNA Testing Act; or

26 (7) ~~Error~~ ~~error~~ of law occurring at the trial.

27 The changes made to this section by this legislative bill shall  
1 apply to all persons, otherwise eligible in accordance with the  
2 provisions of this section, whether convicted prior to, on, or subsequent  
3 to the operative date of this section.

4 Sec. 2. Section 29-2103, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 29-2103 (1) A motion for new trial shall be made by written  
7 application and may be filed either during or after the term of the court  
8 at which the verdict was rendered.

9 (2) A motion for a new trial shall state the grounds under section  
10 29-2101 which are the basis for the motion and shall be supported by  
11 evidence as provided in section 29-2102.

12 (3) A motion for new trial based on the grounds set forth in

13 subdivision (1), (2), (3), (4), or (7) of section 29-2101 shall be filed  
 14 within ten days after the verdict was rendered unless such filing is  
 15 unavoidably prevented, and the grounds for such motion may be stated by  
 16 directly incorporating the appropriate language of section 29-2101  
 17 without further particularity.

18 (4)(a) Except as provided in subdivision (4)(b) of this section, a

19 (4)-A motion for new trial based on the grounds set forth in subdivision  
 20 (5) of section 29-2101 shall be filed within a reasonable time after the  
 21 discovery of the new evidence and cannot be filed more than five years  
 22 after the date of the verdict, unless the motion and supporting documents  
 23 show the new evidence could not with reasonable diligence have been  
 24 discovered or and produced at trial and such evidence is so substantial  
 25 that a different result may have occurred.

26 (b) The time limitation in this subsection does not apply if the  
 27 motion for a new trial involves a conviction for a Class I, IA, or IB  
 28 felony.

29 (5) A motion for new trial based on the grounds set forth in  
 30 subdivision (6) of section 29-2101 shall be filed within ninety days  
 31 after a final order is issued under section 29-4123 or within ninety days  
 1 after the hearing if no final order is entered, whichever occurs first.

2 (6) The changes made to this section by this legislative bill shall  
 3 apply to all persons, otherwise eligible in accordance with the  
 4 provisions of this section, whether convicted prior to, on, or subsequent  
 5 to the operative date of this section.

6 2. Renumber the remaining sections and correct the repealer  
 7 accordingly.

8 3. Correct the operative date section so that the sections added by  
 9 this amendment become operative three calendar months after adjournment  
 10 of this legislative session.

Senator Blood filed the following amendment to LR107:

AM1276

- 1 1. Insert the following new RESOLVED paragraph:
- 2 3. We are also outraged by the seditious attacks on the United
- 3 States Capitol Building that occurred on January 6, 2021, and the acts of
- 4 nefarious aggression carried out against the United States and especially
- 5 against the brave law enforcement officers who defended the United States
- 6 Capitol Building and those sheltering inside it.
- 7 2. Renumber the remaining RESOLVED paragraphs accordingly.

## ATTORNEY GENERAL'S OPINION

### Opinion 21-010

SUBJECT:                   Constitutionality of Adjusting the Value of  
 "Damaged" Property for Tax Purposes

REQUESTED BY:       Senator Steve Erdman  
 Nebraska State Legislature

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

## INTRODUCTION

You have requested an opinion of the Attorney General concerning LB 165 which would amend Neb. Rev. Stat. §§ 77-1301, 77-1307, 77-1308, 77-1309 and 77-1725.01 (Cum. Supp. 2020) to provide tax relief to those with "damaged" real property. With the enactment of LB 512, Laws 2019, the Legislature provided 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 now ask whether replacing the word "destroyed" with the word "damaged" in these statutes would violate the Nebraska Constitution in any way and whether striking the definition of a calamity in § 77-1307(2) would make LB 165 unconstitutional in any way. You have asked that we provide our opinion as soon as possible as you are considering an attempt at an amendment of another bill.

Your opinion request does not articulate a specific constitutional provision which LB 165 may contravene. We have frequently explained in the past that a general question on the constitutionality of proposed legislation will necessarily result in a general response from this office. Op. Att'y Gen. No. 09008 (April 16, 2008); Op. Att'y Gen. No. 04015 (April 7, 2004). However, in a recent opinion, we discussed whether LB 512, Laws 2019, would violate Neb. Const. art. VIII, § 1, the "uniformity clause." Op. Att'y Gen. No. 19006 (April 24, 2019). LB 165 would amend many of the same statutes amended by or created by LB 512 and it appears that your question may relate to our prior opinion. Given the short time frame in which to provide our opinion and the fact that LB 165 would amend the statutory provisions created by LB 512, Laws 2019, our analysis will discuss the uniformity clause.

## ANALYSIS

### I. Uniformity Clause

Neb. Const. art. VIII, § 1(1) provides: "[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).

This office has discussed the Nebraska case law concerning the uniformity clause in a number of opinions, including Op. Att'y Gen. No. 16007 (March 16, 2016); Op. Att'y Gen. No. 19013 (November 20, 2019); and Op. Att'y Gen. No. 19006 (April 24, 2019). "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 our prior analysis of AM1217 to LB 512, Laws 2019, we noted that the Nebraska Supreme Court has adopted a strict construction of our state's uniformity clause, which raised some 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.

\* \* \*

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.

Op. Att'y Gen. No. 19006 at 3-4.

In that opinion, we expressed our concern that, 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), while certain "destroyed real property" would be valued on a different date with use of a statutory prorated formula.

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 to reflect the actual value of the destroyed property on that date does not violate our state constitution's uniformity clause.

Op. Att'y Gen. No. 19006 at 4.

Based, in part, on the legislative history of AM1217 to LB 512, we opined that "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." (footnote omitted). We concluded, in that opinion, that the provisions of AM1217 did not clearly contravene the uniformity clause.

## **II. Constitutionality of LB 165**

You now ask us to address the constitutionality of certain provisions of LB 165. Currently, Neb. Rev. Stat. § 77-1307(1) states the legislative finding that "fires, earthquakes, floods and tornadoes occur with enough frequency" that property tax relief to owners of affected real property should be granted. In § 77-1307(2), the term "calamity" is defined as a "disastrous event, including, but not limited to, a fire, an earthquake, a flood, a tornado, or other natural event" and the term "destroyed real property" is defined as "real property that suffers significant property damage as a result of a calamity."

With LB 165 you propose to amend §§ 77-1301, 77-1307, 77-1308, 77-1309, and 77-1725.01 by replacing the word "destroyed" with the word "damaged." LB 165 would also omit the definition of "calamity" now found at § 77-1307(2)(a) and the reference to "result of a calamity" in the definition of damaged (currently destroyed) real property now found at § 77-1307(2)(b). Damaged real property, under LB 165, § 2, would be defined as real property that suffers significant property damage. And, the term significant property damage would be described as damage to an improvement exceeding twenty percent of the improvement's assessed value in the current tax year or damage to land exceeding twenty percent of the land's assessed value in the current tax year. If LB 165 is enacted, 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. Any real property with "significant property damage" from whatever cause, other than damage caused by the owner of the property, would receive an adjusted value based on the assessed value on the date it suffered the significant property damage. LB 165, § 4.

Your question is whether replacing the word "destroyed" with "damaged" in these statutes and deleting the definition of calamity would make the statutes unconstitutional. We previously concluded that these statutes did

not appear to clearly contravene the uniformity clause in Op. Att'y Gen. No. 19006. In light of our 2019 opinion, the question is perhaps whether these proposed changes in terminology would lead us to a different conclusion. We note that, while certain terms and definitions would change, the concept remains the same. LB 165, like LB 512, would afford tax relief to those property owners with damaged property by requiring the county board of equalization to adjust the assessed value of the property. As with LB 512, a court could find that LB 165 creates a second, non-uniform standard of value for damaged property. While LB 165 would change the terminology so as to perhaps provide tax relief to a broader group of property owners, an argument can still be made that the statutes are constitutional with regard to the uniformity clause.

The Nebraska Supreme Court has not yet addressed the requirements of the uniformity clause with regard to legislation similar to LB 165 or with regard to the statutory provisions which your bill would amend. As discussed above in section I. of this opinion, if a constitutional challenge was made to the legislation you propose, the court would determine, as stated by the Supreme Court in *McNeil*, whether "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.

A court would first look at the language of LB 165 itself to determine whether the differential tax treatment for damaged property rests on "some substantial difference of situation or circumstances." In our prior opinion discussing LB 512, we stated that a court could also consider the legislative history of that bill in order to determine the Legislature's purpose in enacting the legislation and that the floor debate on LB 512 included some statements concerning the sudden, unforeseen and calamitous nature of natural disasters that might be used to justify the separate classification of destroyed property for tax purposes. Op. Att'y Gen. No. 19006 at 4. The committee hearing transcript and floor debate relating to LB 165 are not yet available, but we note that the reasons articulated in support of the bill may also become important in a court's analysis.

### CONCLUSION

In our prior opinion concerning LB 512, we concluded that, while Neb. Const. art. VIII, § 1 raised some concerns regarding the constitutionality of that bill, the bill did not clearly contravene the uniformity clause. For the reasons discussed above, it is our view that the changes in terminology found in LB 165 would not alter that conclusion. In other words, we cannot say that the statutory amendments proposed by LB 165 plainly violate Neb. Const. art. VIII, § 1.

Sincerely,  
DOUGLAS J. PETERSON  
Attorney General

(Signed) Lynn A. Melson  
Assistant Attorney General

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

Opinion 21-009

SUBJECT: LB 228 – Whether the Property Assessed Clean Energy Act authorizes retroactive financing of eligible energy projects which have been completed.

REQUESTED BY: Senator Adam Morfeld  
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
Joshua E. Dethlefsen, Assistant Attorney General

**INTRODUCTION**

You have requested an opinion from this office about whether the current language of the Property Assessed Clean Energy ("PACE") Act prohibits a property owner from receiving PACE financing after an otherwise eligible energy project has been completed. This relates to LB 228, which you introduced to specifically authorize PACE financing for projects that have already been completed. After a review of the current language of the PACE Act, it appears that PACE financing is not available for projects that have already been completed because the current language of the PACE Act provides for financing costs before the project begins. Our analysis supporting this conclusion is set forth below.

**THE PROPERTY ASSESSED CLEAN ENERGY ACT AND LB 228**

The PACE Act, Neb. Rev. Stat. § 13-3201 *et seq.*, was enacted as LB 1012 in 2016. The Act provides a mechanism by which municipalities can encourage property owners to install energy efficient projects or improvements on their property through financing that is repaid as an assessment that runs with the land. Under the PACE Act, a municipality may, after public hearing, pass a resolution or ordinance to create a clean energy assessment district. Neb. Rev. Stat. § 13-3204. After a clean energy assessment district has been formed, the municipality may enter into an assessment contract with the owner of qualifying property within that district, as well as with a third-party lender, to finance energy projects. Neb. Rev. Stat. § 13-3205. The costs financed may include "the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees incurred by the owner pursuant to the installation." Neb. Rev. Stat. § 13-3205(1). The financing is repaid through annual assessments on the property benefited by the energy

project. *Id.* The annual assessments cannot exceed the weighted average useful life of the project. Neb. Rev. Stat. § 13-3204(3)(i).

Once a project has received PACE financing, a PACE lien against the qualifying property may be established. For qualifying property that is a single-family residential property, a PACE lien is automatically established. For qualifying property that is not a single-family residential property, a PACE lien may be filed once an annual assessment becomes delinquent. The owner of qualifying property must obtain "an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien." Neb. Rev. Stat. § 13-3205(2)(a).

The PACE Act was subsequently amended in 2017 by LB 625 and LB 23 in 2019. Notably, LB 23 originally sought to make retroactive financing available for PACE projects but those provisions were removed by a committee amendment.

LB 228, introduced by you, would make explicit that PACE financing is authorized for projects that have already been completed.

## DISCUSSION

### *Statutory Analysis*

You have asked whether the current language of the PACE Act allows for retroactive financing of otherwise eligible projects. "In discerning the meaning of a statute, a court determines and gives effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." *Farmers Coop. v. State*, 296 Neb. 347, 354, 893 N.W.2d 728, 735 *opinion modified on denial of reh'g*, 297 Neb. 132, 898 N.W.2d 674 (2017).

There is no specific language in the PACE Act authorizing retroactive financing for eligible projects. There are, however, indications from the text that the purpose of the Act is to provide an incentive for property owners to use energy efficient options in situations where the cost might otherwise be prohibitive. Neb. Rev. Stat. § 13-3202, which contains the legislative findings for the PACE Act, provides that "[t]he upfront costs for energy efficiency improvements and renewable energy systems prohibit many property owners from making improvements. Therefore, it is necessary to authorize municipalities to implement an alternative financing method through the creation of clean energy assessment districts." *Id.* at (3). If the PACE Act is meant to address these prohibitive upfront costs, PACE financing would necessarily have to be made available prior to the project beginning. Making PACE financing available for projects that have already

been completed would not further the purpose of the Act because those upfront costs were presumably already financed in some other way.

Further, the process to obtain PACE financing seems to envision the process taking place prior to the project beginning. One part of this process is the assessment contract between the municipality and the property owner. The statutory requirements for the assessment contract indicate that the assessment contract was meant to be in place prior to the project beginning. Neb. Rev. Stat. § 13-3205(3)(a) provides that an assessment contract must include, "[a] description of the energy project, including the estimated cost of the energy project and a description of the estimated savings in accordance with standards acceptable to the municipality." (emphasis added). In addition, the assessment contract must include "[a] mechanism for . . . [v]erifying the final costs of the energy project upon its completion." *Id.* at (b)(1). Because the statute requires that the assessment contract include "estimated costs" and "estimated savings," as well as a mechanism for future verification of the costs of the project, the assessment contract is clearly meant to be entered into before the costs and savings are known and before verification of final costs is possible.

A municipality that creates a clean energy assessment district is also required to report to the Urban Affairs Committee of the Legislature "[t]he total dollar amount of energy projects undertaken pursuant to the act." Neb. Rev. Stat. § 13-3211(1)(b). The language "undertaken pursuant to the act" seems to refer to projects that were entered into because of the act, rather than projects that were already completed but retroactively financed by the act. Given the legislative findings, as well as the phrasing in various parts of the act, it appears that PACE financing was meant to be used before the project was completed.

It is also important to consider what is not found in the statute. "The intent of the Legislature may be found through its omission of words from a statute as well as its inclusion of words in a statute." *Stewart v. Nebraska Dept. of Revenue*, 294 Neb. 1010, 1019-20, 885 N.W.2d 723, 730 (2016). If retroactive financing were envisioned by the PACE Act, it would be reasonable to expect that the provisions would specifically provide for retroactive financing of projects. As stated, there is no specific authorization for retroactive financing of PACE eligible projects. There are also no broader provisions regarding how financing would work if the project were already completed, particularly with regard to how the financing would be adjusted to account for the shorter life span of the project. Although not in itself determinative, the PACE Act's silence on these questions is indicative that retroactive financing was not intended by the PACE Act.

For these reasons, we do not believe PACE financing is currently authorized for projects that have already been completed.

*Legislative History*

Based on the foregoing analysis, we do not believe the plain language of the PACE Act is ambiguous. However, if a court were to determine it was ambiguous, a court may look to legislative history to ascertain its meaning. *See State v. McColery*, 301 Neb. 516, 522, 919 N.W.2d 153, 158 (2018) ("An appellate court can examine an act's legislative history if a statute is ambiguous or requires interpretation."). An examination of the legislative history supports our opinion that retroactive financing is not authorized by the PACE Act.

As stated, the PACE Act was originally enacted by LB 1012 in 2016 and was subsequently amended in 2017 and 2019. The legislative history of LB 1012 appears to support the idea that the PACE program was originally meant as an upfront incentive.

The Urban Affairs Committee Statement provides, in relevant part:

LB 1012 would adopt the Property Assessed Clean Energy (PACE) Act. PACE is a financing mechanism that allows municipalities to finance the up-front costs of energy efficiency and renewable energy improvements on commercial, industrial, and residential properties.

Committee Records on LB 1012, 104<sup>th</sup> Neb. Leg., 2<sup>nd</sup> Sess. (Committee Statement) (February 9, 2016). In introducing the bill at the committee hearing, Senator Mello stated that:

While energy efficient improvements can significantly decrease a property's energy use, and therefore the owner's utility bills, they often require high upfront costs to install. This is a significant hurdle for many families and many business owners in Omaha but across cities across the state [sic].

Committee Records on LB 1012, 104<sup>th</sup> Neb. Leg., 2<sup>nd</sup> Sess. 18 (Transcript of the Urban Affairs Committee Hearing) (February 9, 2016). During the hearing, Senator Mello offered similar comments in response to a question from Senator Ebke:

SENATOR EBKE: I have a question. Let's say that this goes into place and somebody wants to put \$10,000 of new windows into their home. Where does the money come from, because I would think that the contractors would want the money up front. So where does that money come from?

SENATOR MELLO: The concept, Senator Ebke, is that municipalities have to create essentially a special district. And the municipality helps facilitate the financing for these projects through bond financing with the banking industry. So to some extent, the city is going to help secure the

up-front funding for property owners who wish to enter into this program, to pay for those upgrades to the property.

*Id.* at 19. These statements are consistent with the Legislative Findings that the PACE Act was meant to provide financing before a project began, not after it had been completed.

The legislative history for LB 23 in 2019 is clearer that retroactive financing is not authorized by the PACE Act. LB 23, as introduced by Senator Kolterman, specifically sought to make retroactive PACE financing available. *See* LB 23, 106<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. (2016) (Introduced Bill). However, all of the language relating to retroactivity was removed by a committee amendment. *See* AM 795 to LB 23, 106<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. (2016); Floor Debate on LB 23, 106<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. 33-34 (April 8, 2019) (Statement of Sen. Wayne). ("First, the bill originally would have authorized the use of PACE financing to retroactively finance energy improvements and renewable energy systems that were already in place. . . . AM795 makes two primary changes. First, the amendment eliminates the retroactivity of financing provisions of the – from the green copy."). Before advancing the bill to Enrollment and Review, Senator Kolterman sought clarification of why the provisions relating to retroactive financing were removed.

KOLTERMAN: Senator, this bill is very clean, except I have – I need your opinion just so we get something on the record. Under the PACE Act as we amended it in LB23, when would a developer have to apply for PACE financing on a particular project? And are there specific application deadlines in statute? Are they set by the local government? And how does all that work? I ask this because we're clarifying that and I want to make sure people understand it.

WAYNE: Thank you, Senator Kolterman. The green copy of LB23 contained provisions that would have authorized the use of PACE to retroactively finance energy efficiency improvements and renewable energy systems that were already in place. Because that provision was specifically removed from LB23 with the adoption of AM795 on General File, I believe the intent of the Legislature is abundantly clear that we do not – or we did not intend to authorize retroactive PACE financing.

Floor Debate on LB 23, 106<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. 24-25 (April 23, 2019) (emphasis added). The Legislature voted to adopt the committee amendment after Senator Wayne's initial comments and voted to advance the bill after the exchange between Senator Kolterman and Senator Wayne.

We recognize that legislative history is not always a clear indicator of legislative intent and that the statements of one senator, even the introducing senator, are not necessarily indicative of the intent of the body. In that light, the legislative history of LB 1012 is helpful but not necessarily definitive. The legislative history of LB 23, however, is much stronger – the committee

introduced an amendment that specifically removed provisions related to retroactive financing and the Legislature as a whole adopted that amendment after being specifically apprised of the change, ultimately passing the amended bill to change other aspects of the PACE Act. We think this is a clear indication of legislative intent.

### CONCLUSION

The PACE Act does not directly address the question of whether retroactive financing is available for otherwise eligible projects that have already been completed. However, the Act indicates that PACE financing is meant to be used as an incentive to choose energy efficient options and the statutory procedure seems to envision the financing taking place before a project begins, rather than after completion. We do not believe the statute is ambiguous. If it were found to be ambiguous, we believe the legislative history is sufficiently clear to conclude that retroactive financing was not authorized by the Legislature.

Very truly yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Joshua E. Dethlefsen  
Assistant Attorney General

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

### MOTION(S) - Return LB100 to Select File

Senator Blood moved to return LB100 to Select File for her specific amendment, [AM817](#), found on page 834.

The Blood motion to return prevailed with 33 ayes, 1 nay, 9 present and not voting, and 6 excused and not voting.

### SELECT FILE

**LEGISLATIVE BILL 100.** The Blood specific amendment, [AM817](#), found on page 834, was adopted with 34 ayes, 0 nays, 9 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review for Reengrossment.

### MOTION(S) - Return LB561 to Select File

Senator Hilgers moved to return LB561 to Select File for his specific amendment, [AM1256](#), found on page 1280.

The Hilgers motion to return prevailed with 27 ayes, 11 nays, 7 present and not voting, and 4 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 561.** The Hilgers specific amendment, [AM1256](#), found on page 1280, was adopted with 27 ayes, 11 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Reengrossment.

**LEGISLATIVE BILL 540.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 296.** Considered.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 313.** [ER70](#), found on page 1152, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 521.** Considered.

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

Voting in the affirmative, 27:

Aguilar	Day	Hilgers	McCollister	Slama
Blood	DeBoer	Hilkemann	McDonnell	Williams
Bostelman	Flood	Hughes	McKinney	Wishart
Brandt	Friesen	Hunt	Morfeld	
Briese	Geist	Kolterman	Pahls	
Cavanaugh, M.	Hansen, B.	Lathrop	Pansing Brooks	

Voting in the negative, 13:

Albrecht	Clements	Gragert	Lowe	Sanders
Arch	Dorn	Groene	Moser	
Brewer	Erdman	Halloran	Murman	

Present and not voting, 6:

Bostar	Lindstrom	Vargas
Cavanaugh, J.	Linehan	Walz

Excused and not voting, 3:

Hansen, M.	Stinner	Wayne
------------	---------	-------

Advanced to Enrollment and Review for Engrossment with 27 ayes, 13 nays, 6 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 209.** [ER71](#), found on page 1154, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 407.** [ER82](#), found on page 1256, was adopted.

Senator McDonnell offered his amendment, [AM1282](#), found on page 1288.

The McDonnell amendment was adopted with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 90.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 166.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 166A.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 317.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 317A.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 256.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 479.** [ER83](#), found on page 1256, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 628.** [ER84](#), found on page 1256, was adopted.

Advanced to Enrollment and Review for Engrossment.

#### **GENERAL FILE**

**LEGISLATIVE BILL 568.** Title read. Considered.

Committee [AM264](#), found on page 621, was offered.

Senator Pansing Brooks offered her amendment, [AM1209](#), found on page 1235, to the committee amendment.

Pending.

### AMENDMENT(S) - Print in Journal

Senator Flood filed the following amendment to [LB131](#):  
[AM1275](#)

(Amendments to E & R amendments, ER89)

- 1 1. Strike section 24 and insert the following new sections:
- 2 Sec. 12. Section 16-6,100, Revised Statutes Cumulative Supplement,
- 3 2020, is amended to read:
- 4 16-6,100 The mayor and city council of a city of the first class
- 5 shall have the power to borrow money and pledge the property and credit
- 6 of the city upon its negotiable bonds or otherwise for the purpose of
- 7 acquiring, by purchasing or constructing, including site acquisition, or
- 8 aiding in the acquiring of a city hall, jail, auditorium, buildings for
- 9 the fire department, and other public buildings, including the
- 10 acquisition of buildings authorized to be acquired by Chapter 72, article
- 11 14, and including acquisition of buildings to be leased in whole or in
- 12 part by the city to any other political or governmental subdivision of
- 13 the State of Nebraska authorized by law to lease such buildings. No such
- 14 bonds shall be issued until after the same have been authorized by a
- 15 majority vote of the electors of the city voting on the proposition of
- 16 their issuance at an election called for the submission of such
- 17 proposition and of which election notice of the time and place thereof
- 18 shall have been given by publication in a legal newspaper in or of
- 19 general circulation in the city three successive weeks prior thereto. If
- 20 the ~~buildings building~~ to be acquired ~~are is~~ to be used by the State of
- 21 Nebraska or its agency or agencies under a lease authorized by Chapter
- 22 72, article 14, or the ~~buildings are building~~ is to be leased by any
- 23 other political or governmental subdivision of the State of Nebraska or
- 24 other governmental agencies and if the combined area of the ~~buildings~~
- 25 ~~building~~ to be leased by the state or its agency or agencies and the
- 26 political or governmental subdivision of the State of Nebraska is more
- 1 than fifty percent of the area of the ~~buildings building~~ and if the cost
- 2 of acquisition does not exceed ~~five two~~ million dollars, no such vote of
- 3 the electors will be required.
- 4 Sec. 25. Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
- 5 21, 22, 23, 26, and 27 become operative three calendar months after the
- 6 adjournment of this legislative session. The other sections of this act
- 7 become operative on their effective date.
- 8 2. Renumber the remaining sections, correct internal references, and
- 9 correct the repealer accordingly.

### COMMITTEE REPORT(S) Health and Human Services

**LEGISLATIVE BILL 376.** Placed on General File with amendment.

[AM1307](#)

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. The Legislature finds and declares that:
- 4 (1) The family is vital to the fundamental development of each
- 5 person in the State of Nebraska;
- 6 (2) A growing number of families are searching for ways to provide

7 supports for disabled family members in the home rather than placing them  
8 in state or private institutional or residential facilities;  
9 (3) The informal support of family caregivers is the backbone of the  
10 system of long-term care services, and the assistance provided to a  
11 person with a disability is critical to the financial well-being of the  
12 state, particularly when such assistance helps to defer a more costly  
13 institutional or residential placement;  
14 (4) Necessary services should be available to families caring for a  
15 disabled family member so that disabled persons may remain in the home;  
16 (5) The State of Nebraska should make every effort to preserve each  
17 family unit having a child with disabilities, to ensure that decisions  
18 regarding a child with disabilities are based on the best interests of  
19 the child and the family, and to ensure that services are provided that  
20 promote independent living, family-centered care, and individual choices;  
21 (6) The State of Nebraska should promote cost-effective health care  
22 alternatives for disabled persons and should maximize state, federal, and  
23 private funding to ensure adequate health care supports and services are  
24 available for children with disabilities and their families;  
25 (7) Early intervention (a) has been shown to help a child with a  
26 developmental delay, or at risk of a developmental delay, to acquire  
27 skills during the most critical period of growth, (b) is a recognized  
1 public health approach that helps to ensure that a child has access to  
2 services and supports to help the child acquire living skills and  
3 increase the likelihood that the child will be self-sufficient or have  
4 less dependency on state services, and (c) is a less costly approach for  
5 the use of limited state and federal resources;  
6 (8) A child with disabilities often needs support after school and  
7 during the evening, weekend, and summertime or other school breaks in  
8 order to maximize the opportunities for socialization and community  
9 integration and to allow family caregivers the ability to work, focus on  
10 self-care, socialize, and participate in community integration;  
11 (9) A family support waiver as proposed under section 2 of this act  
12 will supplement the continuum of developmental disability services and  
13 other state programming for children with disabilities, remediate current  
14 program gaps, and offer a pathway for children with disabilities to gain  
15 access to the medical assistance program and capped long-term services  
16 and supports; and  
17 (10) Providing support to family caregivers allows them to remain in  
18 the workforce which in turn allows the state to benefit from the family  
19 caregivers' private health insurance as a first payer.  
20 Sec. 2. (1) The Department of Health and Human Services shall apply  
21 for a three-year medicaid waiver under section 1915(c) of the Social  
22 Security Act to administer a family support program which is a home and  
23 community-based services program as provided in this section.  
24 (2)(a) The Advisory Committee on Developmental Disabilities created  
25 in section 83-1212.01 shall assist in the development and guide the  
26 implementation of the family support program. The family support program  
27 shall be administered by the Division of Developmental Disabilities of  
28 the Department of Health and Human Services.  
29 (b) It is the intent of the Legislature that any funds distributed  
30 to Nebraska pursuant to section 9817 of the American Rescue Plan Act of  
31 2021, Public Law 117-2, be used to eliminate unmet needs relating to home  
1 and community-based services for persons with developmental disabilities  
2 as much as is possible.  
3 (c) If funds are distributed to Nebraska pursuant to section 9817 of  
4 the American Rescue Plan Act of 2021, it is the intent of the Legislature  
5 that such funds distributed to Nebraska should at least partially fund  
6 the family support program if doing so is in accordance with federal law,  
7 rules, regulations, or guidance.  
8 (3) The family support program shall:

9 (a) Offer an annual capped budget for long-term services and  
10 supports of ten thousand dollars for each eligible applicant;  
11 (b) Offer a pathway for medicaid eligibility for disabled children  
12 by disregarding parental income and establishing eligibility based on a  
13 child's income and assets;  
14 (c) Allow a family to self-direct services, including contracting  
15 for services and supports approved by the division; and  
16 (d) Not exceed eight hundred fifty participants.  
17 (4) The department, in consultation with the advisory committee,  
18 shall adopt and promulgate rules and regulations for the implementation  
19 of the family support program to be set at an intermediate care facility  
20 institutional level of care to support children with intellectual and  
21 developmental disabilities and their families. Such rules and regulations  
22 shall include, but not be limited to:  
23 (a) Criteria for and types of long-term services and supports to be  
24 provided by the family support program;  
25 (b) The method for allocating resources to family units  
26 participating in the family support program;  
27 (c) Eligibility determination, including, but not limited to, a  
28 child's maximum income and assets;  
29 (d) The enrollment process;  
30 (e) Limits on benefits; and  
31 (f) Processes to establish quality assurance, including, but not  
1 limited to, measures of family satisfaction.  
2 (5) The division shall administer the family support program within  
3 the limits of the appropriations by the Legislature for such program.  
4 (6) The division shall submit an annual report electronically to the  
5 Legislature on the family support program. The report shall include:  
6 (a) The distribution of available funds, the total number of  
7 children and families served, and the status of the waiting list for the  
8 comprehensive waiver and other applicable waivers;  
9 (b) A summary of any grievances filed by family units pertaining to  
10 the family support program, including any appeals and a description of  
11 how such grievances were resolved;  
12 (c) The number and demographics of children with disabilities and  
13 their families who applied under the family support program but who were  
14 not found eligible and the reason such children and their families were  
15 not found eligible;  
16 (d) Quality assurance activities and the results of annual measures  
17 of family satisfaction; and  
18 (e) Recommendations to innovate the family support program, improve  
19 current programming, and maximize limited funding, including, but not  
20 limited to, the potential utilization of other medicaid pathways or  
21 medicaid waivers that could help increase access to medicaid and long-  
22 term services and supports for children with disabilities or special  
23 health care needs.  
24 Sec. 3. In order to be eligible for services and support under  
25 section 2 of this act:  
26 (1) The child shall reside in the State of Nebraska;  
27 (2) The income and assets of the child shall not exceed the maximum  
28 established under subsection (4) of section 2 of this act;  
29 (3) The child shall have a medically determinable physical or mental  
30 impairment or combination of impairments that (a) causes marked and  
31 severe functional limitations and (b) can be expected to cause death or  
1 has lasted or can be expected to last for a continuous period of not less  
2 than twelve months; and  
3 (4) The child shall be determined to meet the intermediate care  
4 facility institutional level of care criteria as set forth in subsection  
5 (4) of section 2 of this act.  
6 Sec. 4. The Department of Health and Human Services shall allocate

7 medicaid waiver benefits under section 2 of this act based on  
8 appropriations by the Legislature for such waiver and give priority  
9 status in the following order:  
10 (1) First, to disabled children and family units in crisis  
11 situations in which the disabled child tends to self-injure or injure  
12 siblings and other family members;  
13 (2) Second, to disabled children who are at risk for placement in  
14 juvenile detention centers, other institutional settings, or out-of-home  
15 placements;  
16 (3) Third, to disabled children whose primary caretakers are  
17 grandparents because no other family caregivers are available to provide  
18 care;  
19 (4) Fourth, to families who have more than one disabled child  
20 residing in the family home; and  
21 (5) Fifth, based on the date of application under the family support  
22 program.

23 Sec. 5. The Department of Health and Human Services shall  
24 collaborate with a private, nonprofit organization with expertise in  
25 developmental disabilities for an independent evaluation of the family  
26 support program set forth in section 2 of this act if private funding is  
27 made available for such purpose. The evaluation shall be completed by  
28 December 15, 2023, and shall be submitted electronically to the  
29 department and to the Health and Human Services Committee of the  
30 Legislature.

31 Sec. 6. Section 83-1212.01, Revised Statutes Cumulative Supplement,  
1 2020, is amended to read:

2 83-1212.01 (1) There is hereby created the Advisory Committee on  
3 Developmental Disabilities. The advisory committee shall consist of a  
4 representative of a statewide advocacy organization for persons with  
5 developmental disabilities and their families, a representative of  
6 Nebraska's designated protection and advocacy organization, a  
7 representative of the Nebraska Planning Council on Developmental  
8 Disabilities, a representative of the University Center for Excellence in  
9 Developmental Disability Education, Research and Service as defined in  
10 section 68-1114, and not more than fifteen additional members. At least  
11 fifty-one percent of the members shall be persons with developmental  
12 disabilities and family members of persons with developmental  
13 disabilities.

14 (2) The members shall be appointed by the Governor for staggered  
15 terms of three years. Any vacancy shall be filled by the Governor for the  
16 remainder of the term. One of the members shall be designated as  
17 chairperson by the Governor. Members shall be reimbursed for expenses as  
18 provided in sections 81-1174 to 81-1177.

19 (3) The advisory committee shall advise the department regarding all  
20 aspects of the funding and delivery of services to persons with  
21 developmental disabilities.

22 (4) The advisory committee shall (a) provide sufficient oversight to  
23 ensure that persons placed in the custody of the department under the  
24 Developmental Disabilities Court-Ordered Custody Act are receiving the  
25 least restrictive treatment and services necessary, and (b) oversee the  
26 design and implementation of the quality management and improvement plan  
27 described in section 83-1216.01, and (c) assist, provide feedback, and  
28 guide the implementation of the family support program under section 2 of  
29 this act.

30 (5) The department shall inform the advisory committee of proposed  
31 systemic changes to services for persons with developmental disabilities  
1 at least thirty days prior to implementation of the changes so that the  
2 advisory committee may provide for a response to the proposed changes. If  
3 the director determines that circumstances require implementation of the  
4 changes prior to such notice, the department shall inform the advisory

5 committee as soon as possible. The advisory committee, in partnership  
6 with the director, shall establish criteria for the process of providing  
7 the information and receiving the response.  
8 Sec. 7. Original section 83-1212.01, Revised Statutes Cumulative  
9 Supplement, 2020, is repealed.

(Signed) John Arch, Chairperson

### **BILL ON FIRST READING**

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

**LEGISLATIVE BILL 258A.** Introduced by Vargas, 7.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 258, One Hundred Seventh Legislature, First Session, 2021.

### **RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 130.** Introduced by Hunt, 8.

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

1. That we hereby reaffirm our solemn oaths of office by expressing a firm resolution to maintain and defend the viability of our planet and its natural resources from the urgent existential threat of climate change and to support legislation that will move Nebraska toward a clean energy economy.

2. That we are greatly alarmed that a faction of state and federal legislative leaders have failed to acknowledge the established science of climate change, higher frequency of extreme weather events, and growing effects of climate change on the economy of the United States. Further, this failure by state and federal legislative leaders is a betrayal of the United States Declaration of Independence, which declares a right to "life, liberty and the pursuit of happiness", which is contingent upon a habitable planet and a natural environment capable of sustaining human, animal, and plant life.

3. That we express distress at the Donald J. Trump presidential administration's actions to abandon protections for public lands and roll back Environmental Protection Agency rules.

4. That we are grateful for President Joseph R. Biden's leadership in swiftly and decisively taking action to revoke the permit for the dangerous proposed Keystone XL Pipeline construction project, which would threaten to wreak environmental havoc on its path through Nebraska and his directives issued to protect air and water quality and public lands across the nation.

5. That the Legislature requests cooperation from the Governor of Nebraska, the Nebraska Attorney General, the President of the United States, the President pro tempore of the United States Senate, the Secretary

of the United States Senate, the Speaker of the United States House of Representatives, the Clerk of the United States House of Representatives, and the presiding officers of each of the legislative houses in the several states in taking decisive action to minimize the impacts of climate change we are already facing and to prevent further damage to our planet and ecosystems.

6. That the Clerk of the Legislature shall transmit copies of this resolution to the Governor of Nebraska, the Nebraska Attorney General, the President of the United States, the President pro tempore of the Senate, the Secretary of the United States Senate, the Speaker of the United States House of Representatives, the Clerk of the United States House of Representatives, and to the presiding officers of each of the legislative houses in the several states.

Laid over.

#### **SPEAKER'S ANNOUNCEMENT**

Pursuant to Rule 4, Section 8, LR130 was referred to the Reference Committee.

#### **NOTICE OF COMMITTEE HEARING(S)**

Health and Human Services  
Room 1510

Tuesday, May 18, 2021 12:15 p.m.  
Valerie Hitz - Commission for the Deaf and Hard of Hearing  
Colton Palmer - State Board of Health

(Signed) John Arch, Chairperson

#### **RECESS**

At 11:59 a.m., on a motion by Senator Sanders, 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 Senator Linehan who was excused; and Senators Briese, Day, Hilkemann, Kolterman, Morfeld, Stinner, Vargas, and Walz who were excused until they arrive.

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

Senator Linehan filed the following amendment to [LB595](#):  
[AM1250](#)

(Amendments to E&R amendments, ER75)

1 1. On page 4, strike line 13 and insert "(A) Internet access  
2 services, (B) agricultural global positioning system locating services,  
3 or (C) over-the-air radio and television broadcasting licensed by the  
4 Federal Communications Commission, including antennas and studio  
5 transmitter link systems. For purposes of this subdivision, studio  
6 transmitter link system means a system which serves as a conduit to  
7 deliver audio from its origin in a studio to a broadcast transmitter.".

**GENERAL FILE**

**LEGISLATIVE BILL 568.** Senator Pansing Brooks renewed her amendment, [AM1209](#), found on page 621 and considered in this day's Journal, to the committee amendment.

**SENATOR WILLIAMS PRESIDING****SPEAKER HILGERS PRESIDING**

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

Senator Pansing Brooks requested a roll call vote, in reverse order, on her amendment.

Voting in the affirmative, 25:

Blood	Day	Hunt	McDonnell	Vargas
Bostar	DeBoer	Kolterman	McKinney	Walz
Brandt	Flood	Lathrop	Morfeld	Wayne
Cavanaugh, J.	Hansen, M.	Lindstrom	Pahls	Williams
Cavanaugh, M.	Hilkemann	McCollister	Pansing Brooks	Wishart

Voting in the negative, 12:

Aguilar	Clements	Hughes	Murman
Albrecht	Erdman	Lowe	Sanders
Bostelman	Groene	Moser	Slama

Present and not voting, 10:

Arch	Briese	Friesen	Gragert	Hansen, B.
Brewer	Dorn	Geist	Halloran	Hilgers

Excused and not voting, 2:

Linehan Stinner

The Pansing Brooks amendment was adopted with 25 ayes, 12 nays, 10 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Senator Groene offered the following amendment to the committee amendment:

[AM1324](#)

(Amendments to Standing Committee amendments, AM264)

- 1 1. Strike amendment 1 and insert the following new amendment:
- 2 1. Strike the original sections and all amendments thereto and
- 3 insert the following new sections:
- 4 Section 1. Section 43-245, Revised Statutes Cumulative Supplement,
- 5 2020, is amended to read:
- 6 43-245 For purposes of the Nebraska Juvenile Code, unless the
- 7 context otherwise requires:
- 8 (1) Abandonment means a parent's intentionally withholding from a
- 9 child, without just cause or excuse, the parent's presence, care, love,
- 10 protection, and maintenance and the opportunity for the display of
- 11 parental affection for the child;
- 12 (2) Age of majority means nineteen years of age;
- 13 (3) Alternative to detention means a program or directive that
- 14 increases supervision of a youth in the community in an effort to ensure
- 15 the youth attends court and refrains from committing a new law violation.
- 16 Alternative to detention includes, but is not limited to, electronic
- 17 monitoring, day and evening reporting centers, house arrest, tracking,
- 18 family crisis response, ~~and temporary shelter placement, and restricting~~
- 19 ~~driving privileges to school, school activities, and work.~~ Except for the
- 20 use of manually controlled delayed egress of not more than thirty
- 21 seconds, placements that utilize physical construction or hardware to
- 22 restrain a youth's freedom of movement and ingress and egress from
- 23 placement are not considered alternatives to detention;
- 24 (4) Approved center means a center that has applied for and received
- 25 approval from the Director of the Office of Dispute Resolution under
- 26 section 25-2909;
- 1 (5) Civil citation means a noncriminal notice which cannot result in
- 2 a criminal record and is described in section 43-248.02;
- 3 (6) Cost or costs means (a) the sum or equivalent expended, paid, or
- 4 charged for goods or services, or expenses incurred, or (b) the
- 5 contracted or negotiated price;
- 6 (7) Criminal street gang means a group of three or more people with
- 7 a common identifying name, sign, or symbol whose group identity or
- 8 purposes include engaging in illegal activities;
- 9 (8) Criminal street gang member means a person who willingly or
- 10 voluntarily becomes and remains a member of a criminal street gang;
- 11 (9) Custodian means a nonparental caretaker having physical custody
- 12 of the juvenile and includes an appointee described in section 43-294;
- 13 (10) Guardian means a person, other than a parent, who has qualified
- 14 by law as the guardian of a juvenile pursuant to testamentary or court
- 15 appointment, but excludes a person who is merely a guardian ad litem;
- 16 (11) Juvenile means any person under the age of eighteen;
- 17 (12) Juvenile court means the separate juvenile court where it has
- 18 been established pursuant to sections 43-2,111 to 43-2,127 and the county
- 19 court sitting as a juvenile court in all other counties. Nothing in the
- 20 Nebraska Juvenile Code shall be construed to deprive the district courts
- 21 of their habeas corpus, common-law, or chancery jurisdiction or the

22 county courts and district courts of jurisdiction of domestic relations  
23 matters as defined in section 25-2740;  
24 (13) Juvenile detention facility has the same meaning as in section  
25 83-4,125;  
26 (14) Legal custody has the same meaning as in section 43-2922;  
27 (15) Mental health facility means a treatment facility as defined in  
28 section 71-914 or a government, private, or state hospital which treats  
29 mental illness;  
30 (16) Nonoffender means a juvenile who is subject to the jurisdiction  
31 of the juvenile court for reasons other than legally prohibited conduct,  
1 including, but not limited to, juveniles described in subdivision (3)(a)  
2 of section 43-247;  
3 (17) Parent means one or both parents or stepparents when the  
4 stepparent is married to a parent who has physical custody of the  
5 juvenile as of the filing of the petition;  
6 (18) Parties means the juvenile as described in section 43-247 and  
7 his or her parent, guardian, or custodian;  
8 (19) Physical custody has the same meaning as in section 43-2922;  
9 (20) Except in proceedings under the Nebraska Indian Child Welfare  
10 Act, relative means father, mother, grandfather, grandmother, brother,  
11 sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,  
12 first cousin, nephew, or niece;  
13 (21) Restorative justice means practices, programs, or services that  
14 emphasize repairing the harm caused to victims and the community by  
15 persons who have caused the harm or committed an offense. Restorative  
16 justice practices may include, but are not limited to, victim youth  
17 conferencing, victim-offender mediation, youth or community dialogue,  
18 panels, circles, and truancy mediation;  
19 (22) Restorative justice facilitator means a qualified individual  
20 who has been trained to facilitate restorative justice practices. A  
21 qualified individual shall be approved by the referring county attorney,  
22 city attorney, or juvenile or county court judge. Factors for approval  
23 may include, but are not limited to, an individual's education and  
24 training in restorative justice principles and practices; experience in  
25 facilitating restorative justice sessions; understanding of the necessity  
26 to do no harm to either the victim or the person who harmed the victim;  
27 and proven commitment to ethical practices;  
28 (23) Seal a record means that a record shall not be available to the  
29 public except upon the order of a court upon good cause shown;  
30 (24) Secure detention means detention in a highly structured,  
31 residential, hardware-secured facility designed to restrict a juvenile's  
1 movement;  
2 (25) Staff secure juvenile facility means a juvenile residential  
3 facility operated by a political subdivision (a) which does not include  
4 construction designed to physically restrict the movements and activities  
5 of juveniles who are in custody in the facility, (b) in which physical  
6 restriction of movement or activity of juveniles is provided solely  
7 through staff, (c) which may establish reasonable rules restricting  
8 ingress to and egress from the facility, and (d) in which the movements  
9 and activities of individual juvenile residents may, for treatment  
10 purposes, be restricted or subject to control through the use of  
11 intensive staff supervision. Staff secure juvenile facility does not  
12 include any institution operated by the Department of Correctional  
13 Services;  
14 (26) Status offender means a juvenile who has been charged with or  
15 adjudicated for conduct which would not be a crime if committed by an  
16 adult, including, but not limited to, juveniles charged under subdivision  
17 (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;  
18 (27) Traffic offense means any nonfelonious act in violation of a  
19 law or ordinance regulating vehicular or pedestrian travel, whether

20 designated a misdemeanor or a traffic infraction; and  
 21 (28) Young adult means an individual older than eighteen years of  
 22 age but under twenty-one years of age.  
 23 Sec. 2. Section 43-260.05, Reissue Revised Statutes of Nebraska, is  
 24 amended to read:  
 25 43-260.05 A juvenile pretrial diversion program may:  
 26 (1) Provide screening services to the court and county attorney or  
 27 city attorney to help identify likely candidates for the program;  
 28 (2) Establish goals for diverted juvenile offenders and monitor  
 29 performance of the goals;  
 30 (3) Coordinate chemical dependency assessments of diverted juvenile  
 31 offenders when indicated, require drug testing, make appropriate  
 1 referrals for treatment, and monitor treatment and aftercare;  
 2 (4) Use electronic tracking and monitoring;  
 3 (5) Restrict driving privileges to school, school activities, and  
 4 work;  
 5 (6) (4) Coordinate individual, group, and family counseling  
 6 services;  
 7 (7) (5) Oversee the payment of victim restitution by diverted  
 8 juvenile offenders;  
 9 (8) (6) Assist diverted juvenile offenders in identifying and  
 10 contacting appropriate community resources;  
 11 (9) (7) Coordinate educational services to diverted juvenile  
 12 offenders to enable them to earn a high school diploma or general  
 13 education development diploma; and  
 14 (10) (8) Provide accurate information on how diverted juvenile  
 15 offenders perform in the program to the juvenile courts, county  
 16 attorneys, city attorneys, defense attorneys, and probation officers.  
 17 Sec. 3. Original section 43-260.05, Reissue Revised Statutes of  
 18 Nebraska, and section 43-245, Revised Statutes Cumulative Supplement,  
 19 2020, are repealed.

The Groene amendment lost with 18 ayes, 14 nays, 14 present and not voting, and 3 excused and not voting.

Committee [AM264](#), found on page 621 and considered in this day's Journal, was renewed.

### SENATOR HUGHES PRESIDING

Senator Lathrop moved for a call of the house. The motion prevailed with 29 ayes, 3 nays, and 17 not voting.

Senator Lathrop requested a roll call vote, in reverse order, on the committee amendment.

Voting in the affirmative, 25:

Blood	Day	Hunt	McDonnell	Vargas
Bostar	DeBoer	Kolterman	McKinney	Walz
Brandt	Flood	Lathrop	Morfeld	Wayne
Cavanaugh, J.	Hansen, M.	Lindstrom	Pahls	Williams
Cavanaugh, M.	Hilkemann	McCollister	Pansing Brooks	Wishart

Voting in the negative, 11:

Albrecht	Geist	Lowe	Sanders
Clements	Groene	Moser	Slama
Erdman	Hughes	Murman	

Present and not voting, 10:

Arch	Brewer	Dorn	Gragert	Hansen, B.
Bostelman	Briese	Friesen	Halloran	Hilgers

Excused and not voting, 3:

Aguilar	Linehan	Stinner
---------	---------	---------

The committee amendment was adopted with 25 ayes, 11 nays, 10 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

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

Senator Pansing Brooks requested a roll call vote, in reverse order, on the advancement of the bill.

Voting in the affirmative, 25:

Blood	Day	Hunt	McDonnell	Vargas
Bostar	DeBoer	Kolterman	McKinney	Walz
Brandt	Flood	Lathrop	Morfeld	Wayne
Cavanaugh, J.	Hansen, M.	Lindstrom	Pahls	Williams
Cavanaugh, M.	Hilkemann	McCollister	Pansing Brooks	Wishart

Voting in the negative, 19:

Albrecht	Clements	Gragert	Hilgers	Murman
Arch	Dorn	Groene	Hughes	Sanders
Bostelman	Erdman	Halloran	Lowe	Slama
Briese	Geist	Hansen, B.	Moser	

Present and not voting, 2:

Brewer	Friesen
--------	---------

Excused and not voting, 3:

Aguilar	Linehan	Stinner
---------	---------	---------

Advanced to Enrollment and Review Initial with 25 ayes, 19 nays, 2 present

and not voting, and 3 excused and not voting.

The Chair declared the call raised.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 131.** Introduced by Hansen, M., 26.

**PURPOSE:** The purpose of this interim study is to examine the lack of affordable housing in Nebraska, identify barriers to affordable housing, and explore statutory changes necessary to encourage the development of affordable housing across the state. The 2019 Blueprint Nebraska report, which includes contributions from housing experts across the state, indicates that the state's economic development has slowed as a result of a shortage of affordable housing units and states a goal of building an additional thirty thousand to fifty thousand housing units in the coming years. The report suggests that stimulating construction through increased funding and collaboration are key steps to addressing the shortage.

This interim study shall assess the affordable housing situation in this state and explore ways to support the housing industry and other stakeholders in providing an appropriate level of affordable housing.

This study shall include, but not be limited to:

(1) A collection of existing data on the number of affordable housing units still needed to address the statewide housing shortage;

(2) An examination of existing federal, state, and local funding sources and the entities and processes through which such funds are disseminated, including, but not limited to, (a) an overview of federal and state funding opportunities available through the Department of Economic Development, the Nebraska Investment Finance Authority, and the Department of Health and Human Services and (b) an examination of how those entities coordinate to boost efforts to increase affordable housing in Nebraska communities;

(3) A review of potential statutory changes that would consolidate entities, create new entities, or provide for new duties to state agencies related to affordable housing, and whether those changes would increase efficiency in community efforts to rehabilitate and build affordable housing units; and

(4) A determination of whether additional state funding is needed to increase development and access to affordable housing.

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

1. That the Urban Affairs 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.

**LEGISLATIVE RESOLUTION 132.** Introduced by Dorn, 30; Aguilar, 35; Albrecht, 17; Arch, 14; Blood, 3; Bostar, 29; Bostelman, 23; Brandt, 32; Brewer, 43; Briese, 41; Cavanaugh, J., 9; Cavanaugh, M., 6; Clements, 2; Day, 49; DeBoer, 10; Erdman, 47; Flood, 19; Friesen, 34; Geist, 25; Gragert, 40; Groene, 42; Hansen, B., 16; Hansen, M., 26; Hilgers, 21; Hilkemann, 4; Hughes, 44; Hunt, 8; Kolterman, 24; Lathrop, 12; Lindstrom, 18; Linehan, 39; Lowe, 37; McCollister, 20; McDonnell, 5; McKinney, 11; Morfeld, 46; Moser, 22; Murman, 38; Pahls, 31; Pansing Brooks, 28; Sanders, 45; Slama, 1; Stinner, 48; Vargas, 7; Walz, 15; Wayne, 13; Williams, 36; Wishart, 27.

WHEREAS, Larry J. Dix of Lincoln, Nebraska, has displayed outstanding public service and leadership during his life; and

WHEREAS, Larry is a native Nebraskan and a graduate of Kearney State College; and

WHEREAS, after receiving his bachelor's degree, Larry spent five years in the Buffalo County Assessor's office; and

WHEREAS, Larry began his service as the executive director of the Nebraska Association of County Officials "NACO" in January 2002; and

WHEREAS, as NACO's executive director, Larry was responsible for coordinating and administering all association activities, and he dedicated himself to the improvement of county government; and

WHEREAS, Larry's duties included serving as the principal state lobbyist for NACO, during which time he forged enduring relationships with many past and present members of this Legislature; and

WHEREAS, Larry has worked with the Legislature for the past nineteen years to formulate state statutes, which have resulted in efficient and effective local government; and

WHEREAS, Larry has served the citizens of Nebraska as a steward for their best interests in both his professional and private life; and

WHEREAS, Larry retired as NACO's executive director on January 31, 2021.

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

1. That the Legislature recognizes Larry J. Dix for his many years of public service and thanks Larry for his lifelong contributions to the State of Nebraska.
2. That the Legislature congratulates Larry J. Dix on his retirement.
3. That a copy of this resolution be sent to Larry J. Dix.

Laid over.

**BILLS ON FIRST READING**

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

**LEGISLATIVE BILL 649A.** Introduced by Flood, 19.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 649, One Hundred Seventh Legislature, First Session, 2021.

**LEGISLATIVE BILL 147A.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 147, One Hundred Seventh Legislature, First Session, 2021; and to declare an emergency.

**COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 147.** Placed on Select File with amendment. [ER91](#) is available in the Bill Room.

**LEGISLATIVE BILL 496.** Placed on Select File with amendment. [ER90](#)

1 1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:  
3 Section 1. Section 29-3001, Reissue Revised Statutes of Nebraska, is  
4 amended to read:  
5 29-3001 (1) A prisoner in custody under sentence and claiming a  
6 right to be released on the ground that there was such a denial or  
7 infringement of the rights of the prisoner as to render the judgment void  
8 or voidable under the Constitution of this state or the Constitution of  
9 the United States, may file a verified motion, in the court which imposed  
10 such sentence, stating the grounds relied upon and asking the court to  
11 vacate or set aside the sentence.  
12 (2) Unless the motion and the files and records of the case show to  
13 the satisfaction of the court that the prisoner is entitled to no relief,  
14 the court shall cause notice thereof to be served on the county attorney,  
15 grant a prompt hearing thereon, and determine the issues and make  
16 findings of fact and conclusions of law with respect thereto. If the  
17 court finds that there was such a denial or infringement of the rights of  
18 the prisoner as to render the judgment void or voidable under the  
19 Constitution of this state or the Constitution of the United States, the  
20 court shall vacate and set aside the judgment and shall discharge the  
21 prisoner or resentence the prisoner or grant a new trial as may appear  
22 appropriate. Proceedings under the provisions of sections 29-3001 to  
23 29-3004 shall be civil in nature. Costs shall be taxed as in habeas  
24 corpus cases.  
25 (3) A court may entertain and determine such motion without  
26 requiring the production of the prisoner, whether or not a hearing is  
27 held. Testimony of the prisoner or other witnesses may be offered by  
1 deposition. The court need not entertain a second motion or successive  
2 motions for similar relief on behalf of the same prisoner.  
3 (4) A one-year period of limitation shall apply to the filing of a  
4 verified motion for postconviction relief. The one-year limitation period

5 shall run from the later of:

6 (a) The date the judgment of conviction became final by the  
7 conclusion of a direct appeal or the expiration of the time for filing a  
8 direct appeal;

9 (b) The date on which the factual predicate of the constitutional  
10 claim or claims alleged could have been discovered through the exercise  
11 of due diligence;

12 (c) The date on which an impediment created by state action, in  
13 violation of the Constitution of the United States or the Constitution of  
14 Nebraska or any law of this state, is removed, if the prisoner was  
15 prevented from filing a verified motion by such state action;

16 (d) The date on which a constitutional claim asserted was initially  
17 recognized by the Supreme Court of the United States or the Nebraska  
18 Supreme Court, if the newly recognized right has been made applicable  
19 retroactively to cases on postconviction collateral review; or

20 (e) The date on which the Supreme Court of the United States denies  
21 a writ of certiorari or affirms a conviction appealed from the Nebraska  
22 Supreme Court August 27, 2011. This subdivision only applies if, within  
23 thirty days after petitioning the Supreme Court of the United States for  
24 a writ of certiorari, the prisoner files a notice in the district court  
25 of conviction stating that the prisoner has filed such petition.

26 Sec. 2. Section 29-4102, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 29-4102 The Legislature finds that DNA data banks are an important  
29 tool in criminal investigations, in the exclusion of individuals who are  
30 the subject of criminal investigations or prosecutions, in deterring and  
31 detecting recidivist acts, and in locating and identifying missing  
1 persons and human remains. Several states have enacted laws requiring  
2 persons convicted of certain crimes to provide genetic samples for DNA  
3 typing tests. Moreover, it is the policy of this state to assist federal,  
4 state, and local criminal justice and law enforcement agencies in the  
5 identification and detection of individuals in criminal investigations  
6 and in locating and identifying missing persons and human remains. It is  
7 in the best interest of this state to establish a State DNA Data Base for  
8 DNA records and a State DNA Sample Bank as a repository for DNA samples  
9 from individuals convicted of felony offenses and other specified  
10 offenses, from individuals nineteen years of age or older charged with  
11 crimes of violence or burglary, and from individuals for purposes of  
12 assisting in locating and identifying missing persons and human remains.

13 Sec. 3. Section 29-4103, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 29-4103 For purposes of the DNA Identification Information Act:

16 (1) Burglary means burglary with intent to commit a felony pursuant  
17 to section 28-507;

18 (2) (4) Combined DNA Index System means the Federal Bureau of  
19 Investigation's national DNA identification index system that allows the  
20 storage and exchange of DNA records submitted by state and local forensic  
21 DNA laboratories;

22 (3) Crime of violence means any of the following offenses when  
23 charged as a felony:

24 (a) Arson in the first degree pursuant to section 28-502;

25 (b) Assault in the first degree pursuant to section 28-308;

26 (c) Assault in the second degree pursuant to section 28-309;

27 (d) Kidnapping pursuant to section 28-313;

28 (e) Manslaughter pursuant to section 28-305;

29 (f) Murder in the first degree pursuant to section 28-303;

30 (g) Murder in the second degree pursuant to section 28-304;

31 (h) Sexual assault in the first degree pursuant to section 28-319;

1 (i) Sexual assault of a child in the first degree pursuant to  
2 section 28-319.01;

3 (j) Sexual assault in the second degree pursuant to section 28-320;  
4 (k) Sexual assault of a child in the second or third degree pursuant  
5 to section 28-320.01;  
6 (l) Child enticement by means of an electronic communication device  
7 pursuant to section 28-320.02;  
8 (m) Sexual abuse of an inmate or parolee in the first degree  
9 pursuant to section 28-322.02;  
10 (n) Sexual abuse of an inmate or parolee in the second degree  
11 pursuant to section 28-322.03;  
12 (o) Sexual abuse of a protected individual pursuant to section  
13 28-322.04;  
14 (p) Robbery pursuant to section 28-324;  
15 (q) Violation of the Homicide of the Unborn Child Act pursuant to  
16 sections 28-388 through 28-393;  
17 (r) Incest with a person who is under eighteen years of age pursuant  
18 to section 28-703; or  
19 (s) Any attempt or conspiracy to commit an offense listed in  
20 subdivision (3)(a) through (r) of this section;  
21 (4) (2) DNA means deoxyribonucleic acid which is located in the  
22 cells and provides an individual's personal genetic blueprint. DNA  
23 encodes genetic information that is the basis of human heredity and  
24 forensic identification;  
25 (5) (3) DNA record means the DNA identification information stored  
26 in the State DNA Data Base or the Combined DNA Index System which is  
27 derived from DNA typing test results;  
28 (6) (4) DNA sample means a blood, tissue, or bodily fluid sample  
29 provided by any person covered by the DNA Identification Information Act  
30 for analysis or storage, or both;  
31 (7) (5) DNA typing tests means the laboratory procedures which  
1 evaluate the characteristics of a DNA sample which are of value in  
2 establishing the identity of an individual;  
3 (8) (6) Law enforcement agency includes a police department, a town  
4 marshal, a county sheriff, and the Nebraska State Patrol;  
5 (9) (7) Other specified offense means misdemeanor stalking pursuant  
6 to sections 28-311.02 to 28-311.05 or false imprisonment in the second  
7 degree pursuant to section 28-315 or an attempt, conspiracy, or  
8 solicitation to commit stalking pursuant to sections 28-311.02 to  
9 28-311.05, false imprisonment in the first degree pursuant to section  
10 28-314, false imprisonment in the second degree pursuant to section  
11 28-315, knowing and intentional sexual abuse of a vulnerable adult or  
12 senior adult pursuant to subdivision (1)(c) of section 28-386, or a  
13 violation of the Sex Offender Registration Act pursuant to section  
14 29-4011; and  
15 (10) (8) Released means any release, parole, furlough, work release,  
16 prerelease, or release in any other manner from a prison, a jail, or any  
17 other detention facility or institution.  
18 Sec. 4. Section 29-4104, Reissue Revised Statutes of Nebraska, is  
19 amended to read:  
20 29-4104 The State DNA Data Base is established. The Nebraska State  
21 Patrol shall administer the State DNA Data Base and shall provide DNA  
22 records to the Federal Bureau of Investigation for storage and  
23 maintenance in the Combined DNA Index System. The patrol shall provide  
24 for liaison with the Federal Bureau of Investigation and other law  
25 enforcement agencies in regard to the state's participation in the  
26 Combined DNA Index System. The State DNA Data Base shall store and  
27 maintain DNA records related to:  
28 (1) Forensic casework, including, but not limited to, forensic  
29 casework relating to missing persons, relatives of missing persons, and  
30 unidentified human remains;  
31 (2) Convicted or charged offenders required to provide a DNA sample

1 under the DNA Identification Information Act;

2 (3) Anonymous DNA records used for research or quality control; and

3 (4) Missing persons, relatives of missing persons, and unidentified

4 human remains.

5 Sec. 5. Section 29-4106, Reissue Revised Statutes of Nebraska, is

6 amended to read:

7 29-4106 (1) A person who is convicted of a felony offense or other

8 specified offense on or after July 15, 2010, who does not have a DNA

9 sample available for use in the State DNA Sample Bank, shall, at his or

10 her own expense, have a DNA sample collected:

11 (a) Upon intake to a prison, jail, or other detention facility or

12 institution to which such person is sentenced. If the person is already

13 confined at the time of sentencing, the person shall have a DNA sample

14 collected immediately after the sentencing. Such DNA sample shall be

15 collected at the place of incarceration or confinement. Such person shall

16 not be released unless and until a DNA sample has been collected; or

17 (b) As a condition for any sentence which will not involve an intake

18 into a prison, jail, or other detention facility or institution. Such DNA

19 samples shall be collected as follows:

20 (i) In any county containing a city of the metropolitan class, a

21 person placed on probation or who received a penalty of a fine or time

22 served shall have such DNA sample collected by a probation officer at a

23 probation office. Such person shall not be released unless and until a

24 DNA sample has been collected; and

25 (ii) In all other counties, a person placed on probation shall have

26 such DNA sample collected by a probation officer at a probation office,

27 and a person not placed on probation who receives a penalty of a fine or

28 time served shall have such DNA sample collected by the county sheriff.

29 Such person shall not be released unless and until a DNA sample has been

30 collected.

31 (2) A person who has been convicted of a felony offense or other

1 specified offense before July 15, 2010, who does not have a DNA sample

2 available for use in the State DNA Sample Bank, and who is still serving

3 a term of confinement or probation for such felony offense or other

4 specified offense on July 15, 2010, shall not be released prior to the

5 expiration of his or her maximum term of confinement or revocation or

6 discharge from his or her probation unless and until a DNA sample has

7 been collected.

8 (3)(a) A person nineteen years of age or older who is charged with a

9 crime of violence or burglary on or after the operative date of this

10 section, who does not have a DNA sample available for use in the State

11 DNA Sample Bank, shall have a DNA sample collected by a law enforcement

12 official at the receiving criminal detention facility during the booking

13 process. If the first appearance of such person in court for the alleged

14 crime of violence or burglary is not due to arrest but by citation or

15 summons, the court shall order collection of a DNA sample.

16 (b) A DNA sample collected under this subsection shall not be tested

17 or placed in the State DNA Data Base until after a judicial determination

18 of probable cause pursuant to section 29-506 or 29-1607 on the crime of

19 violence or burglary has been made or a hearing to determine probable

20 cause has been waived, unless requested or consented to by the person

21 whose DNA sample is to be collected. If the charges for the crime of

22 violence or burglary are determined to be unsupported by probable cause,

23 the DNA sample shall be immediately destroyed and notice that the sample

24 was destroyed shall be sent to the person whose DNA sample was collected

25 and counsel of record for such person.

26 (c) Nothing in this subsection shall be construed to authorize the

27 collection of DNA samples from persons who are younger than nineteen

28 years of age.

29 (4) (3) A person who is serving a term of probation and has a DNA

30 sample collected pursuant to this section shall pay all costs associated  
31 with the collection of the DNA sample.

1 ~~(5)~~ (4) If the court waives the cost of taking a DNA sample for any  
2 reason, a county jail or other county detention facility or institution  
3 collecting the DNA sample shall not be held financially responsible for  
4 the cost of the DNA sample kit.

5 Sec. 6. Section 29-4106.01, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 29-4106.01 (1) A person required to submit a DNA sample pursuant to  
8 subsection (1) or (2) of section 29-4106 shall be given the choice of  
9 having the sample collected by a blood draw or a buccal cell collection  
10 kit. Any person who collects a DNA sample pursuant to section 29-4106  
11 shall honor the choice of collection method made by the person providing  
12 the DNA sample. If the person required to submit the DNA sample does not  
13 indicate a preference as to the method of collection, either method may  
14 be used to collect the sample.

15 (2) A person required to submit a DNA sample pursuant to subsection  
16 (3) of section 29-4106 shall have the sample collected by buccal cell  
17 collection kit.

18 Sec. 7. Section 29-4109, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 29-4109 (1) A person whose DNA record has been included in the  
21 State DNA Data Base pursuant to the DNA Identification Information Act  
22 may request expungement on the grounds that: the

23 (a) The conviction on which the authority for including such  
24 person's DNA record was based has been reversed and the case dismissed;  
25 or -

26 (b) The charge on which the authority for including such person's  
27 DNA record was based has been dismissed.

28 (2) The Nebraska State Patrol shall purge all DNA records and  
29 identifiable information in the data base pertaining to the person and  
30 destroy all DNA samples from the person upon receipt of a written request  
31 for expungement pursuant to this section and a certified copy of the  
1 final court order reversing and dismissing the conviction or dismissing  
2 the charge.

3 (3) Within ten calendar days of granting expungement, the Nebraska  
4 State Patrol shall provide written notice of such expungement pursuant to  
5 subsection (4) of section 29-4108, to any person to whom DNA records and  
6 samples have been made available. The Nebraska State Patrol shall  
7 establish procedures for providing notice of certification of expungement  
8 to the person who was granted expungement.

9 Sec. 8. Sections 2, 3, 4, 5, 6, 7, and 10 of this act become  
10 operative on January 1, 2022. The other sections of this act become  
11 operative on their effective date.

12 Sec. 9. Original section 29-3001, Reissue Revised Statutes of  
13 Nebraska, is repealed.

14 Sec. 10. Original sections 29-4102, 29-4103, 29-4104, 29-4106,  
15 29-4106.01, and 29-4109, Reissue Revised Statutes of Nebraska, are  
16 repealed.

17 2. On page 1, strike beginning with "the" in line 1 through line 6  
18 and insert "criminal procedure; to amend sections 29-3001, 29-4102,  
19 29-4103, 29-4104, 29-4106, 29-4106.01, and 29-4109, Reissue Revised  
20 Statutes of Nebraska; to change a motion for postconviction limitation;  
21 to require collection of DNA samples under the DNA Identification  
22 Information Act from persons arrested for burglary or crimes of violence;  
23 to define terms; to provide for expungement; to harmonize provisions; to  
24 provide operative dates; and to repeal the original sections."

(Signed) Terrell McKinney, Chairperson

**REFERENCE COMMITTEE REPORT**

The Legislative Council Executive Board submits the following report:

<b>LB/LR</b>	<b>Committee</b>
LR118	Executive Board
LR121	Executive Board
LR128	Government, Military and Veterans Affairs

(Signed) Dan Hughes, Chairperson  
Executive Board

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

Senator Wayne filed the following amendment to LB131:  
AM1303

(Amendments to E & R amendments, ER89)

1 1. On page 1, strike beginning with the second "the" in line 13  
2 through the first comma in line 15; and in line 26 strike "ninety" and  
3 insert "eighty".

**GENERAL FILE**

**LEGISLATIVE BILL 649.** Title read. Considered.

Committee AM1018, found on page 1240, was offered.

Senator Flood offered the following amendment to the committee amendment:

AM1278

(Amendments to Standing Committee amendments, AM1018)

1 1. Insert the following new section:  
2 Sec. 47. Section 8-1120, Revised Statutes Cumulative Supplement,  
3 2020, is amended to read:  
4 8-1120 (1) Except as otherwise provided in this section, the  
5 Securities Act of Nebraska shall be administered by the Director of  
6 Banking and Finance who may employ such deputies, examiners, assistants,  
7 or counsel as may be reasonably necessary for the purpose thereof. The  
8 employment of any person for the administration of the act is subject to  
9 section 49-1499.07. The director may delegate to a deputy director or  
10 counsel any powers, authority, and duties imposed upon or granted to the  
11 director under the act, such as may be lawfully delegated under the  
12 common law or the statutes of this state. The director may also employ  
13 special counsel with respect to any investigation conducted by him or her  
14 under the act or with respect to any litigation to which the director is  
15 a party under the act.  
16 (2) A security issued by and representing an interest in or a debt  
17 of, or guaranteed by, any insurance company shall be registered, pursuant  
18 to the provisions of sections 8-1104 to 8-1109, with the Director of  
19 Insurance who shall as to such registrations administer and enforce the  
20 act, and as pertains to the administration and enforcement of such  
21 registration of such securities all references in the act to director  
22 shall mean the Director of Insurance.  
23 (3)(a) It shall be unlawful for the director or any of his or her

24 employees to use for personal benefit any information which is filed with  
25 or obtained by the director and which is not made public. Neither the  
26 director nor any of his or her employees shall disclose any confidential  
1 information except among themselves, when necessary or appropriate in a  
2 proceeding, examination, or investigation under the act, or as authorized  
3 in subdivision (3)(b) of this subsection. No provision of the act shall  
4 either create or derogate from any privilege which exists at common law  
5 or otherwise when documentary or other evidence is sought under a  
6 subpoena directed to the director or any of his or her employees.

7 (b)(i) In administering the act, the director may also:

8 (A) Enter into agreements or relationships with other government  
9 officials, including, but not limited to, the securities administrator of  
10 a foreign state and the Securities and Exchange Commission, or self-  
11 regulatory organizations, to share resources, standardized or uniform  
12 methods or procedures, and documents, records, and information; or  
13 (B) Accept and rely on examination or investigation reports made by  
14 other government officials, including, but not limited to, the securities  
15 administrator of a foreign state and the Securities and Exchange  
16 Commission, or self-regulatory organizations.

17 (ii) For purposes of this subdivision, foreign state means any state  
18 of the United States, other than the State of Nebraska, any territory of  
19 the United States, including Puerto Rico, Guam, American Samoa, the Trust  
20 Territory of the Pacific Islands, or the Virgin Islands, and the District  
21 of Columbia.

22 (4) The director may adopt and promulgate rules and regulations and  
23 prescribe forms to carry out the act. No rule and regulation may be  
24 adopted and promulgated or form may be prescribed unless the director  
25 finds that the action is necessary or appropriate in the public interest  
26 or for the protection of investors and consistent with the purposes  
27 fairly intended by the policy and provisions of the act. In adopting and  
28 promulgating rules and regulations and prescribing forms the director may  
29 cooperate with the securities administrators of the other states and the  
30 Securities and Exchange Commission with a view to effectuating the policy  
31 of the Securities Act of Nebraska to achieve maximum uniformity in the  
1 form and content of registration statements, applications, and reports  
2 wherever practicable. All rules and regulations and forms of the director  
3 shall be published and made available to any person upon request.

4 (5) No provision of the act imposing any liability shall apply to  
5 any act done or omitted in good faith in conformity with any rule and  
6 regulation, form, or order of the director, notwithstanding that the rule  
7 and regulation or form may later be amended or rescinded or be determined  
8 by judicial or other authority to be invalid for any reason.

9 (6) Every hearing in an administrative proceeding shall be public  
10 unless the director in his or her discretion grants a request joined in  
11 by all the respondents that the hearing be conducted privately.

12 ~~(7)(a) (7)~~ The Securities Act Cash Fund is created. All filing fees,  
13 registration fees, and all other fees and all money collected by or paid  
14 to the director under any of the provisions of the act shall be remitted  
15 to the State Treasurer for credit to the fund, except that registration  
16 fees collected by or paid to the Director of Insurance pursuant to the  
17 provisions of the act shall be credited to the Department of Insurance  
18 Cash Fund. The Securities Act Cash Fund shall be used for the purpose of  
19 administering and enforcing the provisions of the act, except that  
20 transfers may be made to the General Fund at the direction of the  
21 Legislature. Any money in the Securities Act Cash Fund available for  
22 investment shall be invested by the state investment officer pursuant to  
23 the Nebraska Capital Expansion Act and the Nebraska State Funds  
24 Investment Act.

25 (b) The State Treasurer shall transfer seven hundred twelve thousand  
26 four hundred eighty-nine dollars from the Securities Act Cash Fund to the

27 Financial Institution Assessment Fund on or before October 30, 2021, on  
 28 such date as directed by the budget administrator of the budget division  
 29 of the Department of Administrative Services.

30 (c) The State Treasurer shall transfer three hundred ninety-seven  
 31 thousand eighty-nine dollars from the Securities Act Cash Fund to the  
 1 Financial Institution Assessment Fund on or before October 30, 2022, on  
 2 such date as directed by the budget administrator of the budget division  
 3 of the Department of Administrative Services.

4 (8) A document is filed when it is received by the director. The  
 5 director shall keep a register of all applications for registration and  
 6 registration statements which are or have ever been effective under the  
 7 Securities Act of Nebraska and all denial, suspension, or revocation  
 8 orders which have ever been entered under the act. The register shall be  
 9 open for public inspection. The information contained in or filed with  
 10 any registration statement, application, or report may be made available  
 11 to the public under such conditions as the director may prescribe.

12 (9) The director may, by rule and regulation or order, authorize or  
 13 require the filing of any document required to be filed under the act by  
 14 electronic or other means, processes, or systems.

15 (10) Upon request and at such reasonable charges as he or she shall  
 16 prescribe, the director shall furnish to any person photostatic or other  
 17 copies, certified under his or her seal of office if requested, of any  
 18 entry in the register or any document which is a matter of public record.  
 19 In any proceeding or prosecution under the act, any copy so certified  
 20 shall be prima facie evidence of the contents of the entry or document  
 21 certified.

22 (11) The director in his or her discretion may honor requests from  
 23 interested persons for interpretative opinions.

24 2. On page 81, line 30, strike "and 68" and insert "48, and 69"; and  
 25 in line 31 strike "48, 49, 50, 51," and insert "49, 50, 51, 52,".

26 3. On page 82, strike line 1 and insert "53, 54, 55, 56, 57, 58, 59,  
 27 60, 61, 62, 63, 64, 65, 66, 67, and 70 of"; and in line 6 after "8-702,"  
 28 insert "8-1120,".

29 4. Renumber the remaining sections accordingly.

The Flood amendment was adopted with 32 ayes, 1 nay, 10 present and not voting, and 6 excused and not voting.

Senator Morfeld offered the following amendment to the committee amendment:

AM1338

(Amendments to Standing Committee amendments, AM1018)

1 1. On page 4, line 20, after the last comma insert "credit union".

2 2. On page 8, line 28, after "Corporation" insert "or National  
 3 Credit Union Share Insurance Fund insurance".

4 3. On page 10, lines 14 and 26, after "Corporation" insert "or  
 5 National Credit Union Administration"; and in line 21 after "FDIC" insert  
 6 "or NCUA".

7 4. On page 11, line 26; and page 13, line 4, after "company" insert  
 8 "or credit union service organization".

9 5. On page 18, line 14, after the comma insert "state or federally  
 10 chartered credit union".

11 6. On page 41, line 31, after "insurance" insert "or National Credit  
 12 Union Share Insurance Fund insurance".

Senator Morfeld withdrew and refiled his amendment, AM1338.

The committee amendment, as amended, was adopted with 39 ayes, 1 nay, 3

present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 1 nay, 3 present and not voting, and 6 excused and not voting.

### EASE

The Legislature was at ease from 5:50 p.m. until 6:19 p.m.

### AMENDMENT(S) - Print in Journal

Senator Slama filed the following amendment to LB241:

[AM1330](#)

(Amendments to AM1163)

1 1. On page 4, strike lines 4 through 12; in line 13, strike "(8)"  
2 and insert "(7)"; and in line 20 strike "(9)" and insert "(8)".

Senator Slama filed the following amendment to LB241:

[AM1331](#)

(Amendments to AM1163)

1 1. On page 4, strike line 16.

### ATTORNEY GENERAL'S OPINION

#### Opinion 21-011

SUBJECT:           Constitutionality of Legislation Delegating to  
                          Counties the Power to Authorize by Ordinance the  
                          Permitless Concealed Carry of Weapons (LB236).

REQUESTED BY:    Senator Tom Brewer  
                          Nebraska Legislature

WRITTEN BY:       Douglas J. Peterson, Attorney General  
                          Joshua R. Shasserre, Assistant Attorney General

### INTRODUCTION

You have requested an opinion from this office regarding the constitutionality of LB236, which would give counties the power to adopt ordinances authorizing the permitless carry of concealed weapons. Introducer's Statement of Intent for LB236, 107<sup>th</sup> Leg., 1<sup>st</sup> Sess. (February 24, 2021). Presently, the Government, Military and Veterans Affairs Committee has filed a General File amendment, AM438, to LB236 that replaces the bill. As modified by AM438, LB236 amends three statutes: (1) Neb. Rev. Stat. § 23-187, which grants counties discretionary authority to regulate enumerated subjects by ordinance; (2) Neb. Rev. Stat. § 28-1202, which defines the criminal offense of carrying a concealed weapon; and (3) Neb. Rev. Stat. § 69-2428, which provides that an individual may obtain a permit to carry a concealed handgun in accordance with the Concealed

Handgun Permit Act, Neb. Rev. Stat. §§ 69-2427 through 69-2449 (2018). You have specifically asked whether "the Nebraska Legislature [has] authority under the Nebraska Constitution to delegate to counties the power to authorize by ordinance the permitless concealed carry of weapons as contemplated by Legislative Bill 236." The scope of our analysis is therefore limited to the question of delegation of legislative authority.

### ANALYSIS

"The Legislature has plenary legislative authority except as limited by the state and federal Constitutions." *State ex rel. Stenberg v. Moore*, 249 Neb. 589, 595, 544 N.W.2d 344, 349 (1996) (citing *Lenstrom v. Thone*, 209 Neb. 783, 311 N.W.2d 884 (1981)); *Dwyer v. Omaha–Douglas Public Building Commission*, 188 Neb. 30, 195 N.W.2d 236 (1972). "The Nebraska Constitution is not a grant, but, rather is a restriction on legislative power, and the Legislature may legislate upon any subject not inhibited by the Constitution." *Id.* (citing *State ex rel. Meyer v. County of Lancaster*, 173 Neb. 195, 113 N.W.2d 63 (1962)). "The legislative authority of the Nebraska Unicameral is, therefore, extensive. However, it is not limitless." Op. Att'y Gen. No. 02012 (April 5, 2002) at 5.

The provisions of the Nebraska Constitution that may inhibit the Legislature from enacting legislation that delegates its authority are Article II, § 1 and Article III, § 1. The latter provision, which assigns the State's legislative power, states, in relevant part, "[t]he legislative authority of the state shall be vested in a Legislature consisting of one chamber." Neb. Const. art. III, § 1. Article II, § 1, which establishes the separation of governmental power, provides that

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

Neb. Const. art. II § 1(1). Article II, § 1 "prohibits one department of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives, except as the Constitution itself otherwise directs or permits." *State v. Philipps*, 246 Neb. 610, 614, 521 N.W.2d 913, 916 (1994); *Davio v. Nebraska Dep't of Health and Human Services*, 280 Neb. 263, 274, 786 N.W.2d 655, 665 (2010) ["*Davio*"]. With respect to a delegation of authority by the Nebraska Unicameral, the Nebraska Supreme Court has held that "[i]t is fundamental that the Legislature may not delegate legislative power to an administrative or executive authority." *Bosselman, Inc. v. State*, 230 Neb. 471, 476, 432 N.W.2d 226, 229 (1988) ["*Bosselman*"] (citing *Lincoln Dairy Co. v. Finigan*, 170 Neb. 777, 780, 104 N.W.2d 227, 230 (1960) ["*Lincoln Dairy*"]; *Smithberger v. Banning*, 129 Neb. 651, 262 N.W. 492 (1935)).

As this office has previously explained, the Nebraska Supreme Court in *Bosselman* found that the constitutional prohibition against horizontal delegation of legislative power to the executive branch also prohibits a vertical delegation of power from the Nebraska Unicameral to "local governing bodies such as city councils and county boards." Op. Att'y Gen. No. 07012 (May 29, 2007) at 7. Citing the decision in *Lennox v. Housing Authority of Omaha*, which observed "that the Legislature could not delegate its powers to make law to the housing authority and council of the city of Omaha without imposing adequate standards to guide the discretion of those local bodies," the *Bosselman* court rejected the argument that the non-delegation rule expressed in *Lincoln Dairy* did not apply to delegations by the Legislature to local governing bodies. *Bosselman*, 230 Neb. at 476, 432 N.W.2d at 230 (citing *Lennox v. Housing Authority of City of Omaha*, 137 Neb. 582, 290 N.W. 451 (1940)).

Various legal authorities have analyzed these local delegation issues under two rubrics. The first asks whether the power delegated to the county is a matter of local or statewide concern. The second asks whether the Legislature has provided sufficiently definite standards to guide the county in exercising the power delegated. The following sections consider both of these lines of analysis.

### **I. The Power Delegated To County Boards In LB236 Pertains To A Matter Of Statewide Concern.**

This office has previously recognized that the Legislature can delegate to "political subdivisions the power to govern matters which are local in scope." Op. Att'y Gen. No. 89024 (March 24, 1989) at 1 (referencing *Peterson v. Cook*, 175 Neb. 296, 121 N.W.2d 399 (1963)) (emphasis added). The distinction between permissible delegation on matters of local concern and impermissible delegation on matters of statewide concern is recognized in multiple jurisdictions. As one leading treatise states: "[T]he legislature may expressly or implicitly delegate to appropriate local governmental entities such as municipal corporations, counties, and towns, as well as their proper officers and boards, all powers, whether legislative or otherwise, which are incident to municipal government and of purely local concern. . . . [M]atters which must be dealt with at the state level are not delegable[.]" 16 C.J.S. *Constitutional Law* § 366 (March 2021).

The delegation proposed in LB236, as amended b Section 1 of AM438, is for a county board to authorize by ordinance the "carrying of concealed weapons for all persons not otherwise prohibited from possessing or carrying such weapons under state or federal law." Sec. 1(2). The proposed grant of legislative authority to a county board is limited to counties that do not contain a city of the metropolitan class or primary class.<sup>1</sup> *Id.* Section 2 of AM438 creates an additional exemption to the criminal offense of carrying a concealed weapon in counties where the county board has authorized permitless concealed carry pursuant to Section 1. Sec. 2(3).

The authority of a county board necessarily involves a delegation of power from the Legislature, for "a county, like all political subdivisions, has only that power delegated to it by the Legislature[.]" *DLH, Inc. v. Lancaster County Bd. of Com'rs*, 264 Neb. 358, 362, 648 N.W.2d 277, 280 (2002) ["*DLH, Inc.*"] (citing *Enterprise Partners v. County of Perkins*, 260 Neb. 650, 619 N.W.2d 464 (2000)). "Nebraska statutes vest the powers of a county in a 'county board[.]'" *Butler County Dairy, L.L.C. v. Butler County*, 285 Neb. 408, 417, 827 N.W.2d 267, 278 (2013) (citing Neb. Rev. Stat. § 23-103 (2012)). A county, even though a body politic and corporate, is a creature of statute and has only such authority as conferred by the Legislature or necessarily implied to carry out its expressed powers. *Wetovick v. County of Nance*, 279 Neb. 773, 787, 782 N.W.2d 298, 311 (2010) ["*Wetovick*"]; *Lindburg v. Bennett*, 117 Neb. 66, 219 N.W.2d 851 (1928). Counties "are subdivisions of the state government upon which, for convenience, certain powers have been conferred, strictly limited, however, to the exercise of certain functions more easily carried out by subdivision." *Wilson v. Ulysses Twp. of Butler Cty.*, 72 Neb. 807, 812, 101 N.W. 986, 988 (1904) ["*Wilson*"] (emphasis added). "A grant of power to a county is strictly construed, and reasonable doubts regarding the existence of its power are resolved against it." *Wetovick*, 279 Neb. at 787, 782 N.W.2d at 311.

The relatively recent grant of legislative authority for county boards to enact ordinances, now codified in Neb. Rev. Stat. § 23-187 (Cum. Supp. 2020), exemplifies the type of limited, localized authority to which *Wilson* refers. Section 23-187 permits counties to enact ordinances addressing certain enumerated subjects: the operation of vehicles on a highway; parking and abandonment of motor vehicles; the operation of low-speed vehicles and golf carts; false alarms from security systems; registration of peddlers; graffiti; and disturbance of the peace specifically by disorderly conduct, lewd or lascivious behavior, or public nudity. "The principal objective of construing a statute is to determine and give effect to the legislative intent of the enactment." *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 445, 771 N.W.2d 103, 118 (2009). "[T]o ascertain the intent of the Legislature, a court may examine the legislative history of the act in question." *Goolsby v. Anderson*, 250 Neb. 306, 309, 549 N.W.2d 153, 156 (1996). The legislative history of the first statute providing this authority, 2009 Neb. Laws LB532, indicates that an impetus for giving counties this authority was the Nebraska Supreme Court's decision in *DLH, Inc.*. Committee Records on LB532, 101<sup>st</sup> Leg., 1<sup>st</sup> Sess. 49 (February 20, 2009). In *DLH, Inc.*, the court found that the Lancaster County board lacked authority to revoke the liquor license of an establishment that permitted nude performances in violation of a county resolution, reasoning that a "resolution" is distinguishable from and of less force and effect than a "regulation." *DLH, Inc.*, 264 Neb. at 362-363, 648 N.W.2d at 280. The legislative history also indicates that questions were posed regarding the constitutionality of the Legislature delegating the authority to enact ordinances to county boards. That concern was apparently assuaged by testimony of the Sarpy County Attorney referring to the limited authority of

counties on matters such as zoning, animal control, and traffic. Committee Records on LB532, 101<sup>st</sup> Leg., 1<sup>st</sup> Sess. 52-53 (February 20, 2009). It is reasonable to conclude from both the text and the legislative history of this statute that the subject matter for which county boards are permitted to enact ordinances is intended to be local in scope and strictly limited to certain functions more easily carried out by a county board. The question is whether the authority conferred by LB236 is consistent with this statutory scheme in that it is likewise local in scope.

The Nebraska Supreme Court has previously addressed whether a particular matter is of statewide or localized concern when assessing conflicts between state statute and local ordinance as part of preemption analysis. So far, the court has not established a bright-line rule. As it has explained, "[t]here is no sure test which will enable us to distinguish between matters of strictly municipal concern and those of state concern. The court must consider each case as it arises and draw the line of demarcation." *Jacobberger v. Terry*, 211 Neb. 878, 883, 320 N.W.2d 903, 906 (1982) (quoting *Carlberg v. Metcalf*, 120 Neb. 481, 487, 234 N.W. 87, 90 (1930)).

This office has previously considered whether the carrying of concealed weapons is a matter of local or statewide concern when analyzing whether the Concealed Handgun Permit Act preempted certain local ordinances that could impede the otherwise lawful carrying of concealed weapons. In Op. Att'y Gen. No. 09001 (January 13, 2009), we stated:

[T]he Legislature appears to have occupied the entire field with regard to the carrying of concealed handguns. On that subject, the Concealed Handgun Permit Act has set forth the overall policy of the state when it comes to the carrying of concealed handguns and the licensing of persons to do so and has set forth a comprehensive regulatory scheme for implementing that policy. Therefore, cities and villages lack authority to legislate for themselves with respect to this subject. This is true even for cities operating under a home rule charter.

*Id.* at 5. We noted that our analysis "would apply equally to any counties that might seek to bar the carrying of concealed handguns by permitholders under the act." *Id.* at 2. Similarly, in Op. Att'y Gen. No. 10008 (March 26, 2010), we observed that the Legislature had enacted legislation, 2009 Neb. Laws LB430, which contained a provision that "was clearly designed to remove any authority cities and villages might otherwise have to regulate the ownership or possession of concealed handguns by permitholders under the act." *Id.* at 2; *see* Neb. Rev. Stat. § 18-1703 (2012). The Nebraska Supreme Court has not established whether carrying concealed handguns is a matter of statewide or local concern. However, we think that a court would likely conclude that the regulation of concealed handguns under the Concealed Handgun Permit Act's shall issue statutory scheme is a matter of statewide concern. Such conclusion has been made more likely through the

enactment of additional legislation intended to both cement the state's field preemption and remove regulatory authority of political subdivisions.

## **II. The Power Delegated By LB236 Is Likely Impermissible Under The Nebraska Constitution.**

As stated above, this office has previously explained that the Nebraska Supreme Court in *Bosselman* applies the non-delegation rule expressed in *Lincoln Dairy* to delegations of power from the Nebraska Unicameral to "local governing bodies such as city councils and county boards." Op. Att'y Gen. No. 07012 (May 29, 2007). In *Lincoln Dairy*, the Nebraska Supreme Court stated that "[t]he Legislature does have power to authorize an administrative or executive department to make rules and regulations to carry out an expressed legislative purpose, or for the complete operation and enforcement of a law within designated limitations," so long as the power granted is "limited to the expressed legislative purpose and administered in accordance with standards prescribed in the legislative act." *Lincoln Dairy*, 170 Neb. at 780, 104 N.W.2d at 230 (citing *Board of Regents of University of Nebraska v. Lancaster County*, 154 Neb. 398, 403, 48 N.W.2d 221, 224 (1951)). "[C]learly and definitively stated" standards in the enabling legislative act must "provide[ ] the local governing bodies with adequate, sufficient, and definite standards within which they are to exercise their discretion"; "standards may not rest on indefinite, obscure, or vague generalities, or upon extrinsic evidence not readily available." *Bosselman*, 230 Neb. at 476-77, 432 N.W.2d at 229-30; *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 951, 554 N.W.2d 151, 157 (1996); *Yant v. City of Grand Island*, 279 Neb. 935, 945, 784 N.W.2d 101, 109 (2010); *Davio*, 280 Neb. at 274, 786 N.W.2d at 665. Thus, "[w]here the Legislature has provided reasonable limitations and standards for carrying out the delegated duties, there is no unconstitutional delegation of legislative authority." *Bosselman*, 230 Neb. at 476-77, 432 N.W.2d at 230 (quoting *Ewing v. Scotts Bluff Cty. Bd. of Equal.*, 227 Neb. 798, 805, 420 N.W.2d 685, 690 (1988)); *In re Application U-2*, 226 Neb. 594, 413 N.W.2d 290 (1987)). However, where the violation of an administrative rule constitutes a criminal act, the Legislature's delegation of authority to an administrative body may still be impermissible as "[i]t is axiomatic that the power to define crimes and criminal offenses is in the Legislature and it may not delegate such power to an administrative agency." *Lincoln Dairy*, 170 Neb. at 783, 104 N.W.2d at 231.

In Op. Att'y Gen. No. 07012 (May 29, 2007), this office analyzed the then Final Reading version of 2007 Neb. Laws LB395, which provided for a statewide smoking ban that included a local "opt out" provision authorizing local governmental bodies, including counties, to adopt a nonsmoking ordinance that was less stringent than the state standard included in the bill. We stated:

[T]he bill . . . establishes limits as to how less stringent a particular ordinance or resolution may be, i.e., it provides that the ordinance or

resolution cannot be less stringent than the Sections 71-5707 to 71-5709 as they existed prior to September 1, 2007. Those sections, in turn, contain detailed provisions regarding where individuals may smoke, how smoking areas may be designated and how persons in charge of public places should make efforts to prevent smoking and minimize the presence of environmental tobacco smoke. We believe that those sections provide clear standards which establish the limits for nonsmoking bans by local government, and by which the powers granted to local government under LB 395 can be administered. On that basis, we do not believe that the fact that LB 395 allows local governmental subdivisions to adopt nonsmoking bans less stringent than that set out in LB 395 constitutes an improper delegation of legislative authority.

*Id.* at 7.<sup>2</sup>

Applying the same analysis to LB236, we are concerned that the grant of authority to county boards to effectively "opt out" of the Concealed Handgun Permit Act's statewide licensing scheme might constitute an improper delegation of legislative authority. The statutory scheme proposed in 2007 Neb. Laws LB395 provided detailed standards for local ordinances, thus providing local governing bodies "with adequate, sufficient, and definite standards within which they are to exercise their discretion." *Bosselman*, 230 Neb. at 477, 432 N.W.2d at 230. LB236, in contrast, appears to lack adequate, sufficient, and definite statutory standards necessary for a county board to consider before enacting such an ordinance. The standards defining the exercise of county boards' discretion in LB236 are limited to the existing statutory requirements found in §§ 23-187 to 23-193 for enacting any county ordinance. These sections pertain solely to procedural requirements for notice, public hearing, and formal adoption of a properly formatted ordinance; they provide no relevant standard for the subject matter at issue. Sec. 1(2). The only additional standard found in AM438 is that a county board must first receive "advice and counsel from the county sheriff" before enacting an opt-out ordinance. Sec. 1(2). This advice-and-counsel requirement is vague and provides no uniform standard from which any county sheriff may base his or her input. Moreover, because LB236 authorizes county boards to create exemptions to the criminal offense of carrying a concealed weapon, the bill raises the additional concern that the Legislature is impermissibly delegating its exclusive power to define criminal offenses. *Lincoln Dairy*, 170 Neb. at 783, 104 N.W.2d at 231.

In light of precedent in other jurisdictions regarding delegation of legislative authority to counties, it is unclear whether further amendment to LB236 providing more definite standards would necessarily cure the delegation concerns explained above. For example, the Supreme Court of Michigan, when construing a provision of the Michigan state constitution that is substantially equivalent to art. III § 1, concluded that its legislature improperly delegated its power to counties over a matter of statewide

concern by enacting legislation that allowed counties to permit conduct otherwise prohibited by the act. *Arlan's Dept. Stores, Inc. v. Kelley*, 374 Mich. 70, 130 N.W.2d 892 (1964). Unlike Nebraska law, which requires that the powers conferred to counties be strictly construed, the Michigan Constitution expressly provided that laws concerning the delegation of powers are to be liberally construed in favor of counties. *Id.* at 76-77, 130 N.W.2d at 895. Even so, the court determined that the constitution did "not permit counties to determine legislative policies of *Statewide* concern, nor does it permit the State legislature to delegate such power." *Id.* at 77, 130 N.W.2d at 895 (emphasis in original). The court ultimately reasoned that the legislative act violated "the principle of legislative delegation of power because, while purporting to be a State law, it permit[ted] each county to change the State law to suit its own purposes. This is not delegation of authority to a county to enact a local county ordinance. . . . A county cannot, by action which affects only that county, be permitted to alter the *Statewide* policy." *Id.* This case thus suggests that even if LB236 included more definite standards, the bill might still be unconstitutional if a court concludes that it addresses a matter of statewide (rather than local) concern.

Rather than amending LB236 to include concrete standards, we note an alternative means of alleviating concern regarding impermissible legislative delegation. That is for the Legislature to amend LB236 to allow permitless concealed carry of handguns statewide, even while retaining the state's existing permit structure for purposes of state reciprocity or conformity with federal law, as has been enacted in at least eighteen states as of the date of this opinion.<sup>3</sup>

### CONCLUSION

LB236's delegation of authority to certain county boards to enact ordinances that allow the permitless concealed carry of weapons presents significant constitutional concerns under art. II, § 1 and art. III, § 1 of the Nebraska Constitution. LB236 addresses a topic—the carrying of concealed weapons—that is a matter of statewide (rather than local) concern not delegable to counties. LB236 also does not provide adequate, significant, and definite standards to guide county boards in exercising their discretion to enact ordinances that would effectively alter this statewide policy.

Very truly yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Joshua R. Shasserre  
Assistant Attorney General

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

<sup>1</sup>This provision is presently subject to amendment by AM874, which would limit this grant of authority to counties that do "not contain more than one hundred thousand inhabitants."

<sup>2</sup>LB395 was carried over into the second session of the 100<sup>th</sup> Legislature and was approved by the Governor on February 26, 2008. The Nebraska Clean Indoor Air Act then became operable on June 1, 2009, after the bill was amended and the local governmental body "opt out" provision was removed.

<sup>3</sup>See, e.g., Alaska Stat. § 11.61.220(a); Ariz. Rev. Stat. § 13-3102; Idaho Code § 18-3302; 2021 IA HB 756, amending Iowa Code § 724.5; Kan. Stat. Ann. § 21-6302(4); 2019 KY SB 150. Ky. Rev. Stat. Ann. §§ 237.110, 527.020; Me. Rev. Stat. tit. 25, § 2001-A et seq.; Miss. Code Ann. § 97-37-7(24); Mo. Rev. Stat. § 571.030; Mont. Code Ann. § 45-8-316; 2017 NH SB 12; N.D. Cent. Code §§ 62.1-02-04 – 62.1-02-05, 62.1-04-01 – 62.1-04-05; Okla. Stat. tit. 21, §§ 1277, 1290.1 – 1290.26; S.D. Codified Laws §§ 23-7-7 – 23-7-8.6, 22-14-23, 13-32-7; Tenn. Code Ann. § 39-17-1307; Utah Code Ann. § 76-10-523; W. Va. Code § 61-7-3; Wyo. Stat. Ann. § 6-8-104.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 133.** Introduced by Murman, 38; Arch, 14; Cavanaugh, M., 6; Day, 49; Gragert, 40; Hansen, B., 16; Lowe, 37; Walz, 15; Williams, 36.

WHEREAS, Tim Kolb, an advocate for disability rights, began his activism in 1989 after being denied twenty-four-hour, home-based care while being threatened with life in a nursing home. He lost his appeal and took his case to the district court. In 1991, District Court Judge Bernard Sprague directed the state to provide that care which enabled him to live in his own home in Franklin with his wife Karen; and

WHEREAS, in 1995, Tim was instrumental in passing the "Tim Kolb Amendment" to the Nurse Practice Act by the Nebraska Legislature to allow people with disabilities to get care at home; and

WHEREAS, Tim worked for years to improve the Medical Insurance for Workers with Disabilities Program. The new and improved version was passed into law and will take effect October 1, 2021; and

WHEREAS, Tim was a council member of the Nebraska Statewide Independent Living Council "SILC", the liaison of the SILC to the State Rehabilitation Council, the President of the Board of Directors for Independence Rising and the Center for Independent Living, and the founder and Chief Executive Officer of the Kolb Foundation for Disability Education. In addition, Tim represented the Kolb Foundation for Disability Education on the Nebraska Consortium for Citizens with Disabilities and served on the Nebraska Council on Developmental Disabilities and the Community Advisory board for Munroe-Meyer; and

WHEREAS, Tim Kolb passed away on May 1, 2021.

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

1. That the Legislature recognizes Tim Kolb for his service to Nebraskans with disabilities and the State of Nebraska and expresses its condolences to his family.

2. That a copy of this resolution be sent to his wife, Karen Kolb.

Laid over.

#### SELECT FILE

**LEGISLATIVE BILL 51.** [ER67](#), found on page 1126, was adopted.

Senator Brewer offered his amendment, [AM1249](#), found on page 1271.

The Brewer amendment was adopted with 27 ayes, 0 nays, 15 present and not voting, and 7 excused and not voting.

Senator Brewer offered his amendment, [AM1292](#), found on page 1288.

The Brewer amendment was adopted with 32 ayes, 0 nays, 10 present and not voting, and 7 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 51A.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 572.** [ER29](#), found on page 769, was adopted.

Senator Halloran offered his amendment, [AM813](#), found on page 801.

The Halloran amendment was adopted with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

Senator Williams offered the Stinner amendment, [AM875](#), found on page 1071.

The Stinner amendment was withdrawn.

Senator Brandt withdrew his amendment, [FA30](#), found on page 1129.

Senator Erdman withdrew his amendment, [AM1154](#), found on page 1167.

Advanced to Enrollment and Review for Engrossment.

**GENERAL FILE**

**LEGISLATIVE BILL 258.** Title read. Considered.

Senator Vargas offered the following amendment:

[AM966](#)

1 1. On page 2, line 24, strike "four or more" and insert "more than  
2 fifty".

**SPEAKER HILGERS PRESIDING**

Senator Vargas moved for a call of the house. The motion prevailed with 18 ayes, 1 nay, and 30 not voting.

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

Voting in the affirmative, 19:

Blood	DeBoer	Lathrop	Morfeld	Wayne
Bostar	Flood	McCollister	Pansing Brooks	Williams
Cavanaugh, J.	Hansen, M.	McDonnell	Vargas	Wishart
Cavanaugh, M.	Hunt	McKinney	Walz	

Voting in the negative, 16:

Albrecht	Clements	Geist	Moser
Arch	Dorn	Halloran	Murman
Brandt	Erdman	Hansen, B.	Sanders
Brewer	Friesen	Lowe	Slama

Present and not voting, 5:

Gragert	Hilgers	Hilkemann	Hughes	Lindstrom
---------	---------	-----------	--------	-----------

Excused and not voting, 9:

Aguilar	Briese	Groene	Linehan	Stinner
Bostelman	Day	Kolterman	Pahls	

The Vargas amendment lost with 19 ayes, 16 nays, 5 present and not voting, and 9 excused and not voting.

The Chair declared the call raised.

Senator Vargas offered the following amendment:

[AM1348](#)

1 1. Strike the original sections and insert the following new  
2 sections:  
3 Section 1. Sections 1 to 9 of this act shall be known and may be

4 cited as the Healthy and Safe Families and Workplaces Act.

5 Sec. 2. For purposes of the Healthy and Safe Families and

6 Workplaces Act:

7 (1) Commissioner means the Commissioner of Labor;

8 (2) Department means the Department of Labor;

9 (3) Domestic abuse means any behavior within an intimate

10 relationship that causes physical, psychological, or emotional harm to

11 those in the relationship, including behavior that causes the employee

12 fear or concern for the employee's own safety or the safety of someone

13 close to the employee or behavior done with the intent to harm or exert

14 control over the employee;

15 (4) Domestic assault means domestic assault in the first, second, or

16 third degree under section 28-323 or any similar crime committed in

17 another state;

18 (5) Employee means any individual employed full-time by an employer

19 who receives compensation from such employer and includes recipients of

20 public benefits who are engaged in work activity as a condition of

21 receiving public assistance. Employee does not include a minor child

22 employed by a parent.

23 (6) Employer includes any individual, partnership, limited liability

24 company, association, corporation, business trust, legal representative,

25 or any organized group of persons employing more than fifty employees at

26 any one time, excluding any employees who work no more than twenty weeks

27 in any calendar year, but does not include the United States, the State

28 of Nebraska, or any political subdivision thereof;

29 (7) Family member means:

30 (a) A biological, adopted, or foster child, a stepchild, or a legal

31 ward of an employee or the employee's spouse or domestic partner

32 regardless of the age or dependency status of such child, stepchild, or

33 legal ward;

34 (b) A person to whom the employee or the employee's spouse or

35 domestic partner stood in loco parentis when such person was a minor

36 child, regardless of the age or dependency status of person;

37 (c) A biological, adoptive, or foster parent, a stepparent, or a

38 legal guardian of an employee or the employee's spouse or domestic

39 partner

40 (d) A person who stood in loco parentis to the employee or the

41 employee's spouse or domestic partner when the employee or the employee's

42 spouse or domestic partner was a minor child;

43 (e) An employee's spouse or domestic partner; or

44 (f) A grandparent, grandchild, or sibling, whether of a biological,

45 foster, adoptive, or step relationship, of the employee or the employee's

46 spouse or domestic partner;

47 (8) Health care professional means any person licensed under federal

48 or state law to provide medical or emergency services, including, but not

49 limited to, doctors, nurses, and emergency room personnel;

50 (9) Sexual assault means sexual assault under section 28-319 or

51 28-320, sexual assault of a child under section 28-319.01 or 28-320.01,

52 sexual assault by use of an electronic communication device under section

53 28-320.02, or any similar crime committed in another state;

54 (10) Sick and safe time means leave time that is uncompensated and

55 available to an employee for the purposes described in section 4 of this

56 act; and

57 (11) Stalking means stalking under section 28-311.03 or any similar

58 crime committed in another state.

59 Sec. 3. (1) Employees shall accrue a minimum of one hour of sick

60 and safe time for every thirty hours worked. Employees shall not accrue

61 more than forty hours of sick and safe time in a calendar year unless the

62 employer selects a higher limit.

63 (2) Employees who are exempt from overtime requirements under 29

6 U.S.C. 213(a)(1) shall be assumed to work forty hours in each work week  
7 for purposes of sick and safe time accrual unless their normal work week  
8 is less than forty hours, in which case sick and safe time accrues based  
9 upon that normal work week.  
10 (3) Sick and safe time accrual shall begin at the commencement of  
11 employment.  
12 (4) Employees shall be entitled to use accrued sick and safe time  
13 beginning on the sixtieth calendar day following commencement of  
14 employment. After the sixtieth calendar day, employees may use sick and  
15 safe time as it is accrued.  
16 (5) Sick and safe time shall be carried over to subsequent calendar  
17 years, except that an employee's use of sick and safe time in each  
18 calendar year shall not exceed forty hours unless the employer selects a  
19 higher limit.  
20 (6) Any employer with a leave policy which makes available an amount  
21 of leave which is sufficient to meet the accrual requirements for sick  
22 and safe time under this section and which may be used for the same  
23 purposes and under the same conditions as sick and safe time under the  
24 Healthy and Safe Families and Workplaces Act is not required to provide  
25 additional sick and safe time.  
26 (7) Nothing in this section shall be construed as requiring  
27 financial or other reimbursement to an employee from an employer upon the  
28 employee's termination, resignation, retirement, or other separation from  
29 employment for accrued sick and safe time that has not been used.  
30 (8) If an employee is transferred to a separate division, entity, or  
31 location, but remains employed by the same employer, the employee shall  
1 be entitled to all sick and safe time accrued at the prior division,  
2 entity, or location and is entitled to use all sick and safe time as  
3 provided in this section. When there is a separation from employment and  
4 the employee is rehired within six months after separation by the same  
5 employer, previously accrued sick and safe time that had not been used  
6 shall be reinstated, and the employee shall be entitled to use accrued  
7 sick and safe time and accrue additional sick and safe time at the  
8 recommencement of employment.  
9 Sec. 4. (1) An employer shall allow an employee to use sick and  
10 safe time for:  
11 (a) An employee's mental or physical illness, injury, or health  
12 condition; an employee's need for medical diagnosis, care, or treatment  
13 of a mental or physical illness, injury, or health condition; or an  
14 employee's need for preventive medical care;  
15 (b) Care of a family member with a mental or physical illness,  
16 injury, or health condition; care of a family member who needs medical  
17 diagnosis, care, or treatment of a mental or physical illness, injury, or  
18 health condition; or care of a family member who needs preventive medical  
19 care; or  
20 (c) Absence necessary due to domestic abuse, domestic assault,  
21 sexual assault, or stalking, regardless of whether a charge has been  
22 filed or a conviction has been obtained, if the leave is to allow the  
23 employee to obtain any of the following for the employee or the  
24 employee's family member:  
25 (i) Medical attention needed to recover from physical or  
26 psychological injury or disability caused by such domestic abuse,  
27 domestic assault, sexual assault, or stalking;  
28 (ii) Services from a victim services organization;  
29 (iii) Psychological or other counseling;  
30 (iv) Relocation due to the domestic abuse, domestic assault, sexual  
31 assault, or stalking; or  
1 (v) Legal services, including preparing for or participating in any  
2 civil or criminal legal proceeding relating to or resulting from the  
3 domestic abuse, domestic assault, sexual assault, or stalking.

4 (2) Sick and safe time shall be provided upon the oral request of an  
5 employee as soon as practicable after the employee is aware of the need  
6 for such sick and safe time. The request shall include the expected  
7 duration of the absence, if reasonably possible.  
8 (3) An employer cannot require, as a condition of an employee's  
9 taking sick and safe time, that the employee search for or find a  
10 replacement worker to cover the hours during which the employee is on  
11 sick and safe time.  
12 (4) Accrued sick and safe time may be used in the smaller of hourly  
13 increments or the smallest increment that the employer's payroll system  
14 uses to account for absences or use of other time.  
15 (5)(a) If the use of sick and safe time exceeds more than three  
16 consecutive workdays, an employer may require reasonable documentation  
17 that the sick and safe time has been used for a purpose described in  
18 subsection (1) of this section.  
19 (b) Documentation signed by a health care professional indicating  
20 that sick time is necessary shall be considered reasonable documentation.  
21 (c) The following documentation shall be considered reasonable  
22 documentation for absences due to domestic abuse, domestic assault,  
23 sexual assault, or stalking:  
24 (i) A police report indicating that the employee or the employee's  
25 family member was a victim of domestic abuse, domestic assault, sexual  
26 assault, or stalking;  
27 (ii) A court order protecting or separating the employee or the  
28 employee's family member from the perpetrator of an act of domestic  
29 abuse, domestic assault, sexual assault, or stalking or other evidence  
30 from the court or prosecuting attorney that the employee or the  
31 employee's family member has appeared in court or is scheduled to appear  
1 in court in a proceeding related to the domestic abuse, domestic assault,  
2 sexual assault, or stalking; or  
3 (iii) Other documentation signed by an advocate as defined in  
4 section 29-4302, an attorney, a police officer, a licensed mental health  
5 professional, a medical professional, a social worker, an anti-violence  
6 counselor, or a member of the clergy affirming that the employee or the  
7 employee's family member is a victim of domestic abuse, domestic assault,  
8 sexual assault, or stalking.  
9 (d) The employee may choose the type of applicable documentation to  
10 submit and the employer shall not require more than one type of  
11 reasonable documentation for the same incident.  
12 (e) An employer shall not require that the documentation explain the  
13 nature of the illness or the details of the domestic abuse, domestic  
14 assault, sexual assault, or stalking.  
15 (f) If required by the employer, the employee shall provide such  
16 reasonable documentation to the employer no later than thirty days after  
17 the first day of the period of time for which the employee is requesting  
18 sick and safe time. The employer shall not delay the commencement of sick  
19 and safe time on the basis that the employer has not yet received the  
20 documentation.  
21 (6) Any information provided to an employer regarding sick and safe  
22 time shall be confidential except to the extent that any disclosure of  
23 such information is:  
24 (a) Requested or consented to in writing by the employee;  
25 (b) Otherwise required by federal or state law; or  
26 (c) Necessary to prevent a clear and definite danger to other  
27 employees.  
28 Sec. 5. (1) It shall be unlawful for an employer or any other  
29 person to interfere with, restrain, or deny the exercise of, or the  
30 attempt to exercise, any right protected under the Healthy and Safe  
31 Families and Workplaces Act.  
1 (2) An employer shall not take retaliatory personnel action or

2 discriminate against an employee because the employee has exercised  
3 rights protected under the act. Such rights include, but are not limited  
4 to, the right to use sick and safe time pursuant to the act, the right to  
5 file a complaint or inform any person about any employer's alleged  
6 violation of the act, the right to cooperate with the department in its  
7 investigations of alleged violations of the act, and the right to inform  
8 any person of potential rights under the act.  
9 (3) It is unlawful for an employer's absence control policy to count  
10 sick and safe time taken under the act as an absence that may lead to or  
11 result in discipline, discharge, demotion, suspension, or any other  
12 adverse action.  
13 (4) The protections of this section shall apply to any person who  
14 mistakenly but in good faith alleges violations of the act.  
15 Sec. 6. Employers shall give notice at the time of hire that  
16 employees are entitled to sick and safe time, the amount of sick and safe  
17 time, the terms of use for sick and safe time guaranteed under the  
18 Healthy and Safe Families and Workplaces Act, that retaliation against  
19 employees who request or use sick and safe time is prohibited, and that  
20 each employee has the right to file a complaint or bring a civil action  
21 if sick and safe time is denied by the employer or the employee is  
22 retaliated against for exercising rights under the act.  
23 Sec. 7. (1) An employee may report to the commissioner any  
24 suspected violation of the Healthy and Safe Families and Workplaces Act.  
25 The commissioner shall encourage reporting pursuant to this subsection by  
26 keeping confidential, to the maximum extent permitted by applicable law,  
27 the name and other identifying information of the employee reporting the  
28 suspected violation, except that with the authorization of such employee,  
29 the commissioner may disclose the employee's name and identifying  
30 information as necessary to enforce the act or for other appropriate  
31 purposes. The commissioner may summon witnesses and require the  
1 production of records, books, and documents for examination in any  
2 investigation conducted by the department pursuant to this section. The  
3 commissioner shall assess an administrative penalty against an employer  
4 when an investigation reveals that the employer violated the act. The  
5 administrative penalty shall be not more than five hundred dollars in the  
6 case of a first violation and not more than five thousand dollars in the  
7 case of a second or subsequent violation. The commissioner shall notify  
8 the employer of the proposed administrative penalty by certified mail or  
9 any other manner of delivery by which the United States Postal Service  
10 can verify delivery. The employer shall have fifteen working days after  
11 the date the commissioner sends notification of the penalty to contest  
12 such penalty. Notice of contest shall be sent to the commissioner who  
13 shall provide a hearing in accordance with the Administrative Procedure  
14 Act.  
15 (2) Any employee aggrieved by a violation of the Health and Safe  
16 Families and Workplaces Act or any entity, a member of which is an  
17 employee aggrieved by a violation of the act, may bring a civil action in  
18 a court of competent jurisdiction against an employer who violates the  
19 act. The action may be brought without first filing an administrative  
20 complaint. Upon prevailing in an action brought pursuant to this  
21 subsection, such employee or entity shall be entitled to appropriate  
22 relief, including temporary or permanent injunctive relief, general and  
23 special damages, and reasonable attorney's fees and costs.  
24 Sec. 8. (1) Nothing in the Healthy and Safe Families and Workplaces  
25 Act shall be construed to discourage or prohibit an employer from the  
26 adoption or retention of a sick and safe time policy that is more  
27 generous than the policy required by the act.  
28 (2) The act provides minimum requirements pertaining to sick and  
29 safe time and shall not be construed to preempt, limit, or otherwise  
30 affect the applicability of any other law, rule, regulation, requirement,

31 policy, contract, or standard that provides for greater accrual or use by  
 1 employees of sick and safe time, whether paid or unpaid, or that extends  
 2 other protections to employees.  
 3 Sec. 9. The department shall administer and enforce the Healthy and  
 4 Safe Families and Workplaces Act and may adopt and promulgate rules and  
 5 regulations to carry out the purposes of the act.  
 6 Sec. 10. If any section in this act or any part of any section is  
 7 declared invalid or unconstitutional, the declaration shall not affect  
 8 the validity or constitutionality of the remaining portions.

Senator Slama moved for a call of the house. The motion prevailed with 28 ayes, 2 nays, and 19 not voting.

Senator Hunt requested a roll call vote on the Vargas amendment.

Voting in the affirmative, 18:

Blood	DeBoer	Lathrop	Morfeld	Wayne
Bostar	Flood	McCollister	Pansing Brooks	Wishart
Cavanaugh, J.	Hansen, M.	McDonnell	Vargas	
Cavanaugh, M.	Hunt	McKinney	Walz	

Voting in the negative, 14:

Albrecht	Brewer	Geist	Lowe	Sanders
Arch	Clements	Halloran	Moser	Slama
Brandt	Dorn	Hansen, B.	Murman	

Present and not voting, 6:

Erdman	Hilgers	Lindstrom
Gragert	Hilkemann	Williams

Excused and not voting, 11:

Aguilar	Day	Hughes	Pahls
Bostelman	Friesen	Kolterman	Stinner
Briese	Groene	Linehan	

The Vargas amendment lost with 18 ayes, 14 nays, 6 present and not voting, and 11 excused and not voting.

The Chair declared the call raised.

Senator M. Hansen moved for a call of the house. The motion prevailed with 28 ayes, 5 nays, and 16 not voting.

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

Voting in the affirmative, 17:

Blood	DeBoer	McCollister	Pansing Brooks	Wishart
Bostar	Hansen, M.	McDonnell	Vargas	
Cavanaugh, J.	Hunt	McKinney	Walz	
Cavanaugh, M.	Lathrop	Morfeld	Wayne	

Voting in the negative, 20:

Albrecht	Clements	Geist	Hilkemann	Murman
Arch	Dorn	Gragert	Lindstrom	Sanders
Brandt	Erdman	Hansen, B.	Lowe	Slama
Brewer	Flood	Hilgers	Moser	Williams

Excused and not voting, 12:

Aguilar	Day	Halloran	Linehan
Bostelman	Friesen	Hughes	Pahls
Briese	Groene	Kolterman	Stinner

Failed to advance to Enrollment and Review Initial with 17 ayes, 20 nays, and 12 excused and not voting.

The Chair declared the call raised.

### RESOLUTION(S)

Pursuant to Rule 4, Sec. 5(b), LR114 was adopted.

### SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR114.

### AMENDMENT(S) - Print in Journal

Senator Bostar filed the following amendment to [LB630](#):

#### [AM1261](#)

1 1. Strike the original section and all amendments thereto and insert  
 2 the following new section:  
 3 Section 1. (1) The State Department of Education shall develop and  
 4 implement a pilot program to study the efficacy of commercial air filters  
 5 in classrooms to remove common pollutants and particulate matter and  
 6 their impact on academic and behavioral performance.  
 7 (2) It is the intent of the Legislature that:  
 8 (a) The pilot program development and implementation be completed in  
 9 consultation with the University of Nebraska;  
 10 (b) The study be two years in duration over school years 2021-22 and  
 11 2022-23;  
 12 (c) The pilot program include fifty participating schools with six  
 13 participating classrooms in each participating school;  
 14 (d) Participating schools voluntarily agree to participate in the  
 15 pilot program;  
 16 (e) Participating classrooms be used to educate students in any

17 grade between, and including, grades 3 through 8;  
 18 (f) No more than fifty percent of participating schools be selected  
 19 from the same school district; and  
 20 (g) Fifty percent of the participating classrooms be randomly  
 21 assigned to the control group.  
 22 (3) Upon conclusion of the pilot program, the department shall  
 23 electronically report the results to the Clerk of the Legislature and to  
 24 the Education Committee of the Legislature.  
 25 (4) The State Board of Education may adopt and promulgate rules and  
 26 regulations to carry out this section.

Senator Flood filed the following amendment to LB595:  
AM811 is available in the Bill Room.

Senator M. Cavanaugh filed the following amendment to LB432:  
AM1313

(Amendments to E&R amendments, ER76)

1 1. Strike section 10 and insert the following new section:  
 2 Sec. 12. (1) The Parents of Stillborn Children Assistance Fund is  
 3 created. The fund shall be administered by the Department of Health and  
 4 Human Services and shall be used to make grants to parents of stillborn  
 5 children to reimburse such parents for funeral expenses related to such  
 6 children. The fund shall consist of any funds appropriated by the  
 7 Legislature and revenue received from gifts, bequests, donations, or  
 8 other contributions from public or private sources. Any money in the fund  
 9 available for investment shall be invested by the state investment  
 10 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
 11 State Funds Investment Act.  
 12 (2) If a fetal death certificate has been filed for a stillborn  
 13 child pursuant to subsection (1) of section 71-606, a parent of such  
 14 child may apply for a grant under this section on a form prescribed by  
 15 the Department of Health and Human Services. The application shall  
 16 include documentation to show the funeral expenses incurred for the  
 17 stillborn child and any other related information required by the  
 18 department.  
 19 (3) If a parent qualifies for a grant under this section, the  
 20 department shall, subject to subsection (5) of this section, approve the  
 21 application and notify the parent of the approval.  
 22 (4) The grant shall be equal to the amount of funeral expenses  
 23 incurred by the parent, not to exceed ten thousand dollars.  
 24 (5) The department shall approve no more than one million five  
 25 hundred thousand dollars of grants per year under this section.  
 26 2. On page 22, line 4, strike "77-2715.07, 77-2716," and insert  
 1 "77-2716".  
 2 3. Renumber the remaining sections accordingly.

### UNANIMOUS CONSENT - Add Cointroducer(s)

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

Senator Hansen, M. name added to LR128.

**ADJOURNMENT**

At 8:09 p.m., on a motion by Senator Geist, the Legislature adjourned until 9:00 a.m., Tuesday, May 11, 2021.

Patrick J. O'Donnell  
Clerk of the Legislature

