

**FORTY-EIGHTH DAY - MARCH 25, 2022****LEGISLATIVE JOURNAL****ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION****FORTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Friday, March 25, 2022

**PRAYER**

The prayer was offered by Senator Geist.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was offered by Senator Gragert.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Hughes presiding.

The roll was called and all members were present except Senators Day, Pahls, and Walz who were excused; and Senators Blood, Bostar, Bostelman, B. Hansen, M. Hansen, Hunt, McCollister, Morfeld, Pansing Brooks, Stinner, Wayne, and Wishart who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the forty-seventh day was approved.

**ATTORNEY GENERAL'S OPINION**Opinion 22-003

SUBJECT:           Constitutionality of LB 543 – The Agricultural  
Equipment Right-to-Repair Act

REQUESTED BY:   Senator Julie Slama  
Nebraska State Legislature

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

## INTRODUCTION

LB 543, as amended by AM1800, proposes to create the Agricultural Equipment Right-to-Repair Act ["Act"]. The Act would require an original equipment manufacturer ["OEM"] of electronics-enabled agricultural equipment to "make available, for purposes of diagnosis, maintenance, or repair of such equipment, to any independent repair provider, or to the owner of electronics-enabled agricultural equipment manufactured by or on behalf of, or sold or otherwise supplied by, the [OEM], on fair and reasonable terms, documentation, parts, and tools, inclusive of any updates to information or embedded software." LB 543, § 3. OEMs would not be required "to divulge a trade secret to an owner or an independent service provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms." LB 543, § 5(1). Arrangements between OEMs and authorized repair providers, including warranty and recall provisions, would not be altered by the Act. LB 543, § 5(2). The Act would apply "to equipment sold or in use on or after" its effective date. LB 543, § 6. Violations of the Act would be enforceable by the Attorney General under the Uniform Deceptive Trade Practices Act. LB 543, § 4.

You have requested our opinion whether the Act would conflict with the prohibition against the impairment of contracts in the Nebraska Constitution. You have not identified any specific contracts which may be impaired by the Act. We assume your concern is directed to the Act's potential impact on End User License Agreements ["EULAs"] governing the use of embedded software in electronics-enabled agricultural equipment. "An EULA is a type of 'contract[ ] between software publishers and end users, which govern[s] the end user's right to use software,' and are thus extremely important as they prescribe what consumers may and may not do with the product."<sup>1</sup> While our analysis considers an EULA utilized by a major manufacturer of agricultural equipment widely discussed in available literature, it would be inappropriate for us to opine on whether the Act may impair any specific EULA, as this would require consideration of myriad facts not before us.

## ANALYSIS

Article I, § 16 of the Nebraska Constitution provides that

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<sup>1</sup> Mirr, Nicholas A., *Defending the Right to Repair: An Argument for Federal Legislation Guaranteeing the Right to Repair*, 105 Iowa L. Rev. 2393, 2397 (2020) ["Mirr"] (quoting Michael L. Rustad, *Software Licensing: Principles and Practical Strategies* 35 (2010)).

"[n]o...law impairing the obligation of contracts...shall be passed." "A three-part test is applied to determine whether a contract has been unconstitutionally interfered with." *Big John's Billiards, Inc. v. State*, 288 Neb. 938, 953, 852 N.W.2d 727, 740 (2014). "Pursuant to that test, a court must examine (1) whether there has been an impairment of the contract; (2) whether the governmental action, in fact, operated as a substantial impairment of the contractual relationship; and (3) whether the impairment was nonetheless a permissible, legitimate exercise of the government's sovereign powers." *Id.* "Impair" means "to make worse." *Miller v. City of Omaha*, 253 Neb. 798, 806, 573 N.W.2d 121, 127 (1998) (quoting *Caruso v. City of Omaha*, 222 Neb. 257, 260, 383 N.W.2d 41, 44 (1986)). "[I]n order for there to be an impairment, the change must take away something and not work to the party's benefit." *Id.*

The United States Constitution also prohibits state laws which impair the obligation of contracts. Article I, § 10 of the United States Constitution provides that "[n]o State...shall...pass any ...Law impairing the Obligation of Contracts." While the Contract Clause is "facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 410 (1983) ["*Energy Reserves*"] (quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434 (1934)). "The threshold inquiry" in assessing if a state law violates the Contract Clause "is 'whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.'" *Energy Reserves*, 459 U.S. at 411. "If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation,...such as the remedying of a broad and general social or economic problem." *Id.* at 411-412. "Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Id.* at 412 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977) ["*United States Trust*"]). "Unless the State itself is a contracting party,...[a]s is customary in reviewing economic and social regulation,...courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves*, 459 U.S. at 412-413 (quoting *United States Trust*, 431 U.S. at 22-23).

Given the overlap between the standards applied to judging Contract Clause claims under both the Nebraska and U.S. Constitutions, we will combine our analysis of these factors in discussing whether the Act impairs the obligation of existing contracts.

**A. Does the Act Substantially Impair Existing Contracts?**

In considering whether a state law operates to substantially impair a contractual relationship, a court will "consider[ ] the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018). "Total destruction of contractual expectations is not necessary for a finding of substantial impairment." *Energy Reserves*, 459 U.S. at 411. "[T]he governing rule is akin to a question of reasonable foreseeability: 'if the party to the contract who is complaining could have seen it coming, it cannot claim that its expectations were disappointed.'" *Association of Equipment Manufacturers v. Burgum*, 932 F.3d 727, 730 (8<sup>th</sup> Cir. 2019) ["*Association of Equipment Manufacturers*"] (quoting *Holiday Inns Franchising, Inc. v. Branstad*, 29 F.3d 383, 385 (8<sup>th</sup> Cir. 1994)). "[W]hether the industry the complaining party has entered has been regulated in the past" is also considered "[i]n determining the extent of the impairment." *Energy Reserves*, 459 U.S. at 411.

Because assessing the validity of a Contract Clause claim "begin[s] by identifying the precise contractual right that has been impaired..." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 504 (1987), assessing the substantial impairment element is impossible absent reference to the terms of a specific contract. As noted previously, we are not able to draw conclusions based on any specific EULA or other contractual relationship which may be impacted by the Act. To the extent such an agreement includes prohibitions or limitations on access to or use of embedded software by an owner of electronics-enabled agricultural equipment for purposes of diagnosis, maintenance, or repair, or access to or use of such software by any independent repair provider, the Act would appear to alter those contractual terms. Such a change could be a substantial impairment of the parties' contractual relationship which would undermine the OEM's ability to safeguard its contractual rights.

On the other hand, the Act requires that owners or independent repair providers be given access to "documentation, parts, and tools, inclusive of any updates to information or embedded software" only "for purposes of diagnosis, maintenance, or repair" of electronics-enabled agricultural equipment. LB 543, § 3. The definition of "repair" specifically excludes "performing any activities that result in the machine being modified outside of the original equipment manufacturers specifications." LB 543, § 2(12). Further, "repair does not include the ability to: (a) Reset security-related electronic modules; (b) Reprogram any electronic processing units or engine control units and parameters; (c) Change any

equipment or engine settings that negatively affect emissions or safety compliance; and (d) Download or access the source code of any proprietary embedded software or code...." *Id.* The Act also provides an OEM is not required "to divulge a trade secret to an owner or independent service provider except as necessary to provide documentation, parts, and tools on fair and reasonable terms." LB 543, § 5.

A commonly referenced EULA utilized by a large agricultural equipment manufacturer has been said to "prevent[ ] consumers from accessing the software embedded in the equipment and prohibits any repairs other than those made by authorized repair providers."<sup>2</sup> This EULA identifies the licensor's right to protect its proprietary licensed materials under copyright and trade secret law, and restricts the licensee from attempting to "modify" licensed material, or to "reverse engineer" or "attempt to create the source code from the object code for the Software."<sup>3</sup> The Act's limitation to access only for purposes of diagnosis, maintenance, and repair, and preservation of trade secret rights, appear to be consistent with these contractual terms protecting trade secrets and prohibiting modification or recreation of source codes. These considerations could be construed to lessen any impairment of such agreements created by the Act.

Another factor which may favor finding lack of substantial impairment is the foreseeability of legislation such as the Act impacting EULAs for electronics-enabled agricultural equipment. "In 2012, Massachusetts became the first state to take action preserving right to repair" by enacting a bill which covered only automotive repairs.<sup>4</sup> "In 2014, the Automotive Aftermarket Industry Association, the Coalition for Auto Repair Equality, the Alliance of Automobile Manufacturers, and the Association of Global Automakers entered into a memorandum of understanding concerning the automotive Right to Repair movement. This memorandum of understanding effectively made the Massachusetts automotive right to repair legislation apply nationwide...."<sup>5</sup> Since 2015, numerous states have introduced legislation to enact right-to-repair laws in

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<sup>2</sup> Chan Grinvald, Leah, and Tur-Sinai, Ofer, *Smart Cars, Telematics and Repair*, 54 U. Mich. J. L. Reform 283, 321 (2021) ["Chan Grinvald and Tur-Sinai"] (citing Jason Bloomberg, *John Deere's Digital Transformation Runs Afoul of Right-to-Repair Movement*, Forbes (Apr. 30, 2017)), <https://www.forbes.com/sites/jasonbloomberg/2017/04/30/john-deeres-digital-transformation-runs-afoul-of-right-to-repair-movement/?sh=72ba41fe5ab9>

<sup>3</sup> [https://www.deere.com/assets/pdfs/common/privacy-and-data/docs/agreement\\_pdfs/english/2016-10-28-Embedded-Software-EULA.pdf](https://www.deere.com/assets/pdfs/common/privacy-and-data/docs/agreement_pdfs/english/2016-10-28-Embedded-Software-EULA.pdf)

<sup>4</sup> Mirr, *supra* note 1 at 2399.

<sup>5</sup> *Id.*

various forms.<sup>6</sup> "During the legislative sessions following the 2016 elections, almost half of the country's state legislatures considered right-to-repair laws."<sup>7</sup> Right-to-Repair bills have taken several forms, including legislation addressing repair of: (1) Farm equipment (Wyoming); (2) Farm equipment and consumer electronics, but not motor vehicles (California); and (3) "Digital electronic products" (Iowa).<sup>8</sup> In 2017, right-to-repair legislation was introduced in Nebraska to adopt the Fair Repair Act which would have applied to all equipment other than motor vehicles. 2017 Neb. Laws LB 67.

The Act under review would affect existing agreements as it applies to agricultural equipment "in use" after its effective date. LB 543, § 6. As right-to-repair legislation dates back to 2012, and has been introduced and considered in many states since 2015, OEMs of electronics-enabled agricultural equipment should have recognized that their EULAs or similar agreements could be impacted by such legislation. While legislative action was certainly foreseeable, it is less evident that OEMS could reasonably expect that right-to-repair laws would be applied retroactively to alter existing agreements. The widespread consideration of right-to-repair legislation in several states may play a role in evaluating the question of substantial impairment, but it is unclear whether OEMS "can[ ] reasonably be said to have had a fair and appreciable warning of an impending intervention into their agreements." *Association of Equipment Manufacturers*, 932 F.3d at 730 (quoting *Holiday Inns Franchising, Inc. v. Branstad*, 29 F.3d 383, 385 (8<sup>th</sup> Cir. 1994)).

Testimony at the committee hearing on LB 543 from representatives of agricultural equipment manufacturers and dealers in opposition to the bill may also be relevant to the impairment issue. Several of these testifiers represented that the legislation was unnecessary because the information and tools required to allow repairs by equipment owners or independent repair providers is already readily available. Grant Suhre, manager of customer support for John Deere in the U.S. and Canada, stated "we support customers' ability to repair their machines...[a]nd we certainly provide all the tools that are required." Committee Records on LB 543, 107<sup>th</sup> Neb. Leg., 2<sup>nd</sup> Sess. 51 (Feb. 25, 2021) ["Committee Records"]. He further stated "we don't believe we need legislation to enable customers to repair their machines. We've already enabled that." *Id.* at 52. Kevin Clark,

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<sup>6</sup> Moore, Daniel, *You Gotta Fight for Your Right to Repair: The Digital Millennium Copyright Act's Effect on Right-to-Repair Legislation*, 6 Texas A&M L. Rev. 509, 515 (2019).

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

<sup>8</sup> Mirr, *supra* note 1 at 2401-402.

CEO of AKRS Equipment Solutions, a large agricultural equipment dealer with twenty-six John Deere stores in Nebraska, noting that customers have online availability through a subscription service to diagnostic tools, software codes, and parts, stated: "[I]f it's a matter of right to repair, that already exists." *Id.* at 59. Scott Raber of Titan Machinery, a Case IH, New Holland, and Case Construction dealer representing dealerships across Nebraska, testified a "service tool is available from Case IH or New Holland...for consumers to purchase, whether that be a farmer or an independent repair shop." *Id.* at 62. Mark Hennessey, President and CEO of the Iowa Nebraska Equipment Dealers Association, referring to this earlier testimony regarding the availability of information needed for producers and independent repair providers to repair equipment, stated:

[Y]ou heard about the products that are currently available in the market today, producers can buy diagnostic tools, equipment software subscriptions, much the same as an independent repair or a dealer themselves procure. This is available for them to be able to do themselves if they so wish. The question becomes, why aren't they doing it? Well, they can if they desire. It really boils down to an awareness issue. Are they aware that these tools exist? Why are we needing to have legislation for something that's currently on the market today?...We don't believe we need to have legislation to accomplish the ability to right to repair because the products are available on the market today. *Id.* at 65-66.

The testimony on behalf of manufacturers and dealers representing that the information and tools needed for owners or independent repair providers to repair agricultural equipment is already widely available seems incongruous to any claim that providing access to that information impairs current contracts. Those entities' primary objection to the Act was not to users' ability to repair equipment but to their ability to modify equipment. Committee Records at 51 ("The challenge comes when we talk about right to repair versus right to modify.") (Statement of Grant Suhre); 58 ("[W]hile we support the ability of customers to repair their own equipment, we do not support the ability for them to be able to modify the equipment...") (Statement of Kevin Clark). The Act's definition of "repair" is consistent with this concern, as it excludes "any activities that result in the machine being modified outside of the original equipment manufacturer specifications." LB 543, § 2(12). Ready access to necessary information and tools required to perform repairs, and the Act's prohibition of modification of equipment, appears to lessen any claim of impairment of existing contracts.<sup>9</sup>

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<sup>9</sup> In 2018, the Association of Equipment Manufacturers, a trade and

In sum, it is not clear that the Act would substantially impair existing contracts. If agreements between OEMs and equipment owners include prohibitions or limitations on access to or use of embedded software for purposes of diagnosis, maintenance, or repair, or access to or use of such software by any independent repair provider, the Act would alter those contractual terms. Such a change could operate as a substantial impairment of the parties' contractual relationship which would undermine an OEM's ability to safeguard its contractual rights. The question of impairment, however, may be impacted by consideration of other factors, including the reasonable foreseeability of legislation impacting those agreements, and the access to information and tools required to provide repairs to electronics-enabled agricultural equipment currently made available by manufacturers and dealers. These factors may support finding that any impairment of current agreements is not substantial.

**B. Does the Act Have a Significant and Legitimate Public Purpose?**

"If there is no substantial impairment on contractual relationships, the law does not violate the Contract Clause." *Equipment Manufacturers Inst. v. Janklow*, 300 F.3d 842, 850 (8<sup>th</sup> Cir. 2002) [*"Equipment*

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lobbying group representing John Deere and other manufacturers, and the Equipment Dealers Association, committed that manufacturers would make repair tools, software, and diagnostics available beginning January 1, 2021. Jason Koebler and Matthew Gault, *John Deere Promised Farmers It Would Make Tractors Easy to Repair. It Lied*, Vice Motherboard (Feb. 18, 2021), <https://www.vice.com/en/article/v7m8mx/john-deere-promised-farmers-it-would-make-tractors-easy-to-repair-it-lied>. Proponents of LB 543 noted this commitment and claimed it had not been fulfilled. Committee Records at 30-31 ("Three years ago, OEMs said that by January 2021 farmers would have access to everything they need for equipment repairs. OEM[s] staved off right to repair legislation around the country by promising to deliver access. And here we are three years later and the farmers are still struggling to get the tools promised in the agreement.") (Statement of Sen. Brandt); *id.* at 40 ("In late 2018, John Deere and other manufacturers did promise to provide these tools by January 1, 2021, and they have not held up their end of this bargain.") (Statement of Jacob Bish). While opponents of the bill testified that such information and tools were in fact available, this further demonstrates that OEMs may be hard pressed to challenge the Act's requirement that they provide access to software solely for diagnosis, maintenance, or repair of equipment impairs any contractual rights.



*Manufacturers Inst.*"]. Thus, a court "may stop after step one" if a "statute does not substantially impair pre-existing contractual arrangements." *Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018). As it is unclear if the Act would substantially impair existing contractual obligations, we will proceed to address the second step of the Contract Clause analysis, i.e., whether the Act has a significant and legitimate public purpose.

To demonstrate a significant and legitimate public purpose, "[t]he State must show that the regulation protects a 'broad societal interest rather than a narrow class.'" *Equipment Manufacturers Inst.*, 300 F.3d at 859 (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 249 (1978)). "The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests." *Energy Reserves*, 459 U.S. at 412. "[T]he public purpose need not be addressed to an emergency or temporary situation." *Id.*

Two Eighth Circuit decisions involving Contract Clause challenges to South Dakota's and North Dakota's statutes regulating relationships between agricultural equipment manufacturers and dealers inform the public purpose analysis. The first case, decided in 2002, held the South Dakota statutes substantially impaired existing contracts between manufacturers and dealers, and rejected the claim that the regulation served a significant and legitimate public purpose. *Equipment Manufacturers Inst.*, 300 F.3d at 859-862. The state argued the act "benefit[ed] a broad social interest: serving the farmer and rural communities in South Dakota." *Id.* at 860. The court noted "[s]uch an interest is unquestionably significant and legitimate," and it "would be compelled to uphold the Act if [it] credited the State's rationale for the Act." *Id.* The statutes, however, included "no statement of legislative intent or any other legislative history from which to directly ascertain the purpose of the Act." *Id.* In fact, "[t]he State's evidence contradict[ed] this asserted broad societal interest...in several respects." *Id.* It was conceded that the statutory purpose was "to level the playing field between manufacturers and dealers," which "is expressly prohibited as a significant and legitimate public purpose." *Id.* at 860-861. The "sparse legislative history" also showed that "only implement dealers and manufacturers attended committee hearings on the Act," and there was "no evidence of farmers' participation." *Id.* at 861. Because "the only real beneficiaries under the Act [were] the narrow class of dealers of agricultural machinery," the court found "such special interest legislation [ran] afoul of the Contract Clause when it impair[ed] pre-existing contracts." *Id.*

In 2019, the Eighth Circuit found that a similar North Dakota statutory scheme violated the Contract Clause. Initially, the court concluded that manufacturers could not have reasonably foreseen the statutory

alteration of their contract rights. *Association of Equipment Manufacturers*, 932 F.3d at 730-31. Noting it had "previously held that a similar retroactive law governing agreements between farm equipment dealers and manufacturers in South Dakota violated the Contract Clause," the court proceeded to consider North Dakota's claim that the statute "further[ed] a significant public interest in serving farmers and rural communities." *Id.* at 731. Because "[t]he state legislature declined to...include[ ] well-supported findings or purposes within their...laws...any significant and legitimate public purpose" had to "be discerned from the design and operation of the legislation itself." *Id.* at 733. "[T]he Contract Clause prohibits special-interest redistributive laws, even if the legislation might have a conceivable or incidental public purpose." *Id.* at 732. The court found the statutes had "a narrow focus: restricting the contractual rights of farm equipment manufacturers," and "primarily benefit[ed] a particular economic actor in the farm economy—farm equipment dealers." *Id.* at 733. The court reasoned that "[e]ven if the law indirectly might benefit farmers and rural communities, the Contract Clause demands more than incidental public benefits." *Id.*

LB 543 contains no legislative findings or statement of purpose. The bill's introducer described the bill as "narrowly tailored, commonsense legislation meant to address repairs that farmers can do themselves and will save our farmers time and money and break the monopoly that manufacturers have over repairs." Committee Records at 32 (Statement of Sen. Brandt). He further noted that the significant reliance on software to operate agricultural equipment "allow[ed] manufacturers to take increasing control of the repair process by restricting access to authorized dealers." *Id.* at 30. Further, "[w]hen breakdowns happen during the narrow window of planting or harvest, they have a detrimental effect on the ag operation. Dealership mechanics can be swamped with work, and it can sometimes take days to make it out to the farm for what in many situations is a simple repair that could be performed by the customer, while precious time is lost." *Id.* The adverse impact of time lost waiting for dealer repairs was also noted by testifying producers. *Id.* at 37 ("We work in an unforgiving industry where weather rules our lives. A crop that's ready to harvest today may not be there tomorrow. Farmers and ranchers need the ability to have local mechanics help them with their equipment repairs.") (Statement of Tom Schwarz); at 49 ("[D]owntime is money lost during planting and harvesting operations.") (Statement of Vern Jantzen). While it would be preferable for the Act to contain findings and a declaration of purpose, this history is some evidence to establish the significant and legitimate legislative purposes served by the Act.

The Act is also broader than the narrow, special interest legislation

struck down in *Equipment Manufacturers Inst. and Association of Equipment Manufacturers*. Beyond the Act's impact on agreements between OEMs and owners of electronics-enabled agricultural equipment, as well as dealers currently performing repairs and prospective independent repair providers, it also serves broader significant and legitimate public purposes. Agriculture is of vital importance to Nebraska's economy. Ensuring the ability of agricultural producers to repair their equipment in a timely manner facilitates the broader purpose of strengthening our farms and businesses in rural communities. It would also address concerns regarding monopolistic practices in the market for repair of agricultural machinery.<sup>10</sup> At least one commentator has noted that limiting right-to-repair legislation to agricultural equipment is "appropriate considering the large size and difficulty of transporting farming equipment to repair facilities, the expertise farmers possess with regards to the equipment they operate daily, and the reliance farmers have on their equipment to earn a living."<sup>11</sup> On balance, it

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<sup>10</sup> “[C]ertain contractual restrictions that seek to inhibit competition in markets for diagnostic tools and repairs could run afoul of federal antitrust law as agreements in unlawful restraint of trade.” Chan Grinvald and Tur-Sinai, *supra* note 2 at 321-22. “The collective purpose of [right-to-repair] legislation is to prevent a monopoly by compelling manufacturers to make parts, diagnostic software, and repair tools freely available to individuals and independent repair shops.” Daniel Cadia, *Fix Me: Copyright, Antitrust, and the Restriction on Independent Repairs*, 52 U.C. Davis L. Rev. 1701, 1704 (2019). Two recently filed federal lawsuits claim John Deere’s repair service practices violate the anti-monopoly provisions of the Sherman Act. *Forest River Farms v. Deere & Co.*, No. 1:22CV188 (N.D. Ill. 2022) [“*Forest Farms*”]; *Underwood v. Deere & Co.*, No. 4:22CV00005 (E.D. Tenn. 2022). The *Forest Farms* complaint alleges Deere has violated the Sherman Act by “monopolization of the repair service market for [its] agricultural equipment with onboard central computers known as engine control units, or ‘ECUs.’” *Forest Farms* Complaint at 1 ¶ 1. The Complaint alleges that, “in newer generations of agricultural equipment, Deere has deliberately monopolized the market for repair and maintenance services of its agricultural equipment with ECUs...by making crucial software and repair tools inaccessible to farmers and independent repair shops.” *Id.* While we express no view on the merits of these allegations, legislation intended to curb anticompetitive and monopoly practices plainly furthers a significant and legitimate public purpose.

<sup>11</sup> MacAneney, Marissa, *If It is Broken, You Should Not Fix It: The Threat Fair Repair Legislation Poses to the Manufacturer and the Consumer*, 92 St. John’s L. Rev. 2, 331, 353 (2018)).

appears the Act serves a significant and legitimate public purpose.

**C. Is the Act a Reasonable and Appropriate Measure to Serve a Legitimate Public Purpose?**

The final step in the Contract Clause analysis is "[o]nce a legitimate public purpose has been identified,...whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Energy Reserves*, 459 U.S. at 412 (quoting *United States Trust*, 431 U.S. at 22). Because the state is not a contracting party, deference is due the legislative judgment of the reasonableness and necessity of the Act.

A state's "economic interests...may justify the exercising of its continuing and dominant protective power notwithstanding interference with contracts.' ... Once we are in this domain of the reserve power of a State we must respect the 'wide discretion on the part of the legislature in determining what is and what is not necessary.'" *City of El Paso v. Simmons*, 379 U.S. 497, 508-09 (1965) (quoting *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 398, 437 (1934)). As noted above, the Act serves the substantial and legitimate public purposes of: (1) Ensuring agricultural producers and independent repair providers have the right to repair agricultural equipment in a timely manner, which will benefit farmers and businesses in rural communities; and (2) Promoting competition and removing monopolistic practices in the market for repair of agricultural machinery. Given the substantial deference due the Legislature to establish "the means chosen to implement these purposes," *Energy Reserves*, 459 U.S. at 418, the Act is a reasonable and appropriate measure to serve those legitimate public purposes.

**CONCLUSION**

A state law does not violate the constitutional prohibition against the impairment of contracts under the Nebraska and United States Constitutions unless the impairment is substantial. Even if a law substantially impairs contractual rights, it is permissible if it has a significant and legitimate public purpose and is a reasonable and appropriate measure to serve that purpose. The Act requires that OEMs of electronics-enabled agricultural equipment make available to owners and independent repair providers, on fair and reasonable terms, access to information and tools, including embedded software, for purposes of diagnosis, maintenance, and repair of such equipment. This requirement may well impact existing EULAs or other contractual arrangements. The

Act, however, defines "repair" to exclude modifications, including changes affecting equipment or engine settings, and prohibits accessing any proprietary software code. These limitations on access and use of repair information would lessen any impairment of such agreements. Other factors, including the foreseeability of the enactment of right-to-repair legislation impacting those agreements, and representations made on behalf of manufacturers and dealers that such information is already readily available, further reduce any claim of impairment to existing contracts. Accordingly, we cannot definitively say the Act substantially impairs existing contractual obligations. Even if substantial impairment exists, the Act serves significant and legitimate public purposes, including: (1) ensuring the ability of agricultural producers to repair their equipment in a timely manner, which facilitates the broader purpose of strengthening farms and businesses in rural communities; and (2) reducing monopolistic practices in the market for repair of agricultural machinery. Finally, the Act is a reasonable and appropriate means to serve these purposes. We therefore conclude that the Act likely does not violate the Contract Clause.

Very truly yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) L. Jay Bartel  
Assistant Attorney General

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

07-1437-30

## REPORTS

Agency reports electronically filed with the Legislature can be found on the [Nebraska Legislature's website](#).

## REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of March 24, 2022, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell  
Clerk of the Legislature

White, Tom  
 Alter Trading Corporation  
 Institute of Scrap Recycling Industries, Upper Mid-West Chapter

**SELECT FILE**

**LEGISLATIVE BILL 825.** Senator Wayne withdrew his amendment, [AM1649](#), found on page 424.

Senator Wayne withdrew his amendment, [AM1648](#), found on page 423.

Senator Wayne withdrew his amendment, [AM1647](#), found on page 423.

Senator Briese offered the following amendment:  
[AM2514](#) is available in the Bill Room.

Senator DeBoer requested a division of the question on the Briese amendment.

The Chair sustained the division of the question.

The first Briese amendment is as follows:  
[AM2588](#) is available in the Bill Room.

The second Briese amendment is as follows:  
[AM2590](#)

1 1. Insert the following new sections:  
 2 Sec. 4. Section 77-6701, Revised Statutes Cumulative Supplement,  
 3 2020, is amended to read:  
 4 77-6701 Sections 77-6701 to 77-6705 and section 7 of this act shall  
 5 be known and may be cited as the Nebraska Property Tax Incentive Act.  
 6 Sec. 5. Section 77-6702, Revised Statutes Cumulative Supplement,  
 7 2020, is amended to read:  
 8 77-6702 For purposes of the Nebraska Property Tax Incentive Act:  
 9 (1) Allowable growth percentage means the percentage increase, if  
 10 any, in the total assessed value of all real property in the state from  
 11 the prior year to the current year, as determined by the department,  
 12 except that in no case shall the allowable growth percentage exceed five  
 13 percent in any one year;  
 14 (2) Community college taxes means property taxes levied on real  
 15 property in this state by a community college area, excluding any  
 16 property taxes levied for bonded indebtedness and any property taxes  
 17 levied as a result of an override of limits on property tax levies  
 18 approved by voters pursuant to section 77-3444;  
 19 (3) (2) Department means the Department of Revenue;  
 20 (4) (3) Eligible taxpayer means any individual, corporation,  
 21 partnership, limited liability company, trust, estate, or other entity  
 22 that pays school district taxes or community college taxes during a  
 23 taxable year; and  
 24 (5) (4) School district taxes means property taxes levied on real  
 25 property in this state by a school district or multiple-district school  
 26 system, excluding any property taxes levied for bonded indebtedness and  
 27 any property taxes levied as a result of an override of limits on  
 1 property tax levies approved by voters pursuant to section 77-3444.

2 Sec. 7. (1) For taxable years beginning or deemed to begin on or  
3 after January 1, 2022, under the Internal Revenue Code of 1986, as  
4 amended, there shall be allowed to each eligible taxpayer a refundable  
5 credit against the income tax imposed by the Nebraska Revenue Act of 1967  
6 or against the franchise tax imposed by sections 77-3801 to 77-3807. The  
7 credit shall be equal to the credit percentage for the taxable year, as  
8 set by the department under subsection (2) of this section, multiplied by  
9 the amount of community college taxes paid by the eligible taxpayer  
10 during such taxable year.  
11 (2)(a) For taxable years beginning or deemed to begin during  
12 calendar year 2022, the department shall set the credit percentage so  
13 that the total amount of credits for such taxable years shall be fifty  
14 million dollars;  
15 (b) For taxable years beginning or deemed to begin during calendar  
16 year 2023, the department shall set the credit percentage so that the  
17 total amount of credits for such taxable years shall be one hundred  
18 million dollars;  
19 (c) For taxable years beginning or deemed to begin during calendar  
20 year 2024, the department shall set the credit percentage so that the  
21 total amount of credits for such taxable years shall be one hundred  
22 twenty-five million dollars;  
23 (d) For taxable years beginning or deemed to begin during calendar  
24 year 2025, the department shall set the credit percentage so that the  
25 total amount of credits for such taxable years shall be one hundred fifty  
26 million dollars;  
27 (e) For taxable years beginning or deemed to begin during calendar  
28 year 2026, the department shall set the credit percentage so that the  
29 total amount of credits for such taxable years shall be one hundred  
30 ninety-five million dollars; and  
31 (f) For taxable years beginning or deemed to begin during calendar  
1 year 2027 and each calendar year thereafter, the department shall set the  
2 credit percentage so that the total amount of credits for such taxable  
3 years shall be the maximum amount of credits allowed in the prior year  
4 increased by the allowable growth percentage.  
5 (3) If the community college taxes are paid by a corporation having  
6 an election in effect under subchapter S of the Internal Revenue Code, a  
7 partnership, a limited liability company, a trust, or an estate, the  
8 refundable credit shall be claimed by such corporation, partnership,  
9 limited liability company, trust, or estate.  
10 (4) For any fiscal year or short year taxpayer, the credit may be  
11 claimed in the first taxable year that begins following the calendar year  
12 for which the credit percentage was determined. The credit shall be taken  
13 for the community college taxes paid by the taxpayer during the  
14 immediately preceding calendar year.  
15 2. Renumber the remaining sections and correct the repealer  
16 accordingly.

The third Briese amendment is as follows:

AM2591

1 1. Insert the following new section:  
2 Sec. 6. Section 77-6703, Revised Statutes Supplement, 2021, is  
3 amended to read:  
4 77-6703 (1) For taxable years beginning or deemed to begin on or  
5 after January 1, 2020, under the Internal Revenue Code of 1986, as  
6 amended, there shall be allowed to each eligible taxpayer a refundable  
7 credit against the income tax imposed by the Nebraska Revenue Act of 1967  
8 or against the franchise tax imposed by sections 77-3801 to 77-3807. The  
9 credit shall be equal to the credit percentage for the taxable year, as  
10 set by the department under subsection (2) of this section, multiplied by  
11 the amount of school district taxes paid by the eligible taxpayer during

12 such taxable year.

13 (2)(a) For taxable years beginning or deemed to begin during  
14 calendar year 2020, the department shall set the credit percentage so  
15 that the total amount of credits for such taxable years shall be one  
16 hundred twenty-five million dollars;

17 (b) For taxable years beginning or deemed to begin during calendar  
18 year 2021, the department shall set the credit percentage so that the  
19 total amount of credits for such taxable years shall be one hundred  
20 twenty-five million dollars plus either (i) the amount calculated for  
21 such calendar year under subdivision (3)(b)(ii)(B) of section 77-4602 or  
22 (ii) the amount calculated for such calendar year under subdivision (3)  
23 (c)(ii)(B) of section 77-4602, whichever is applicable;

24 (c) For taxable years beginning or deemed to begin during calendar  
25 year 2022, the department shall set the credit percentage so that the  
26 total amount of credits for such taxable years shall be five hundred  
27 forty-eight million dollars ~~the maximum amount of credits allowed under~~  
1 ~~subdivision (2)(b) of this section plus either (i) the amount calculated~~  
2 ~~for such calendar year under subdivision (3)(b)(ii)(B) of section 77-4602~~  
3 ~~or (ii) the amount calculated for such calendar year under subdivision~~  
4 ~~(3)(c)(ii)(B) of section 77-4602, whichever is applicable;~~

5 (d) For taxable years beginning or deemed to begin during calendar  
6 year 2023, the department shall set the credit percentage so that the  
7 total amount of credits for such taxable years shall be five hundred  
8 sixty million seven hundred thousand dollars ~~the maximum amount of~~  
9 ~~credits allowed under subdivision (2)(c) of this section plus either (i)~~  
10 ~~the amount calculated for such calendar year under subdivision (3)(b)(ii)~~  
11 ~~(B) of section 77-4602 or (ii) the amount calculated for such calendar~~  
12 ~~year under subdivision (3)(c)(ii)(B) of section 77-4602, whichever is~~  
13 ~~applicable; and~~

14 (e) For taxable years beginning or deemed to begin during calendar  
15 year 2024, the department shall set the credit percentage so that the  
16 total amount of credits for such taxable years shall be three hundred  
17 seventy-five million dollars; and

18 (e) (f) For taxable years beginning or deemed to begin during  
19 calendar year ~~2024~~ 2025 and each calendar year thereafter, the department  
20 shall set the credit percentage so that the total amount of credits for  
21 such taxable years shall be the maximum amount of credits allowed in the  
22 prior year increased by the allowable growth percentage.

23 (3) If the school district taxes are paid by a corporation having an  
24 election in effect under subchapter S of the Internal Revenue Code, a  
25 partnership, a limited liability company, a trust, or an estate, the  
26 amount of school district taxes paid during the taxable year may be  
27 allocated to the shareholders, partners, members, or beneficiaries in the  
28 same proportion that income is distributed for taxable years beginning or  
29 deemed to begin before January 1, 2021, under the Internal Revenue Code  
30 of 1986, as amended. The department shall provide forms and schedules  
31 necessary for verifying eligibility for the credit provided in this  
1 section and for allocating the school district taxes paid. For taxable  
2 years beginning or deemed to begin on or after January 1, 2021, under the  
3 Internal Revenue Code of 1986, as amended, the refundable credit shall be  
4 claimed by the corporation having an election in effect under subchapter  
5 S of the Internal Revenue Code, the partnership, the limited liability  
6 company, the trust, or the estate that paid the school district taxes.

7 (4) For any fiscal year or short year taxpayer, the credit may be  
8 claimed in the first taxable year that begins following the calendar year  
9 for which the credit percentage was determined. The credit shall be taken  
10 for the school district taxes paid by the taxpayer during the immediately  
11 preceding calendar year.

12 (5) For the first taxable year beginning or deemed to begin on or  
13 after January 1, 2021, and before January 1, 2022, under the Internal



14 Revenue Code of 1986, as amended, for a corporation having an election in  
 15 effect under subchapter S of the Internal Revenue Code, a partnership, a  
 16 limited liability company, a trust, or an estate that paid school  
 17 district taxes in calendar year 2020 but did not claim the credit  
 18 directly or allocate such school district taxes to the shareholders,  
 19 partners, members, or beneficiaries as permitted under subsection (3) of  
 20 this section, there shall be allowed an additional refundable credit.  
 21 This credit shall be equal to six percent, multiplied by the amount of  
 22 school district taxes paid during 2020 by the eligible taxpayer.  
 23 2. Renumber the remaining sections and correct the repealer  
 24 accordingly.

The fourth Briese amendment is as follows:

AM2589

1 1. Insert the following new section:  
 2 Sec. 3. Section 77-2734.02, Revised Statutes Supplement, 2021, is  
 3 amended to read:  
 4 77-2734.02 (1) Except as provided in subsection (2) of this section,  
 5 a tax is hereby imposed on the taxable income of every corporate taxpayer  
 6 that is doing business in this state:  
 7 (a) For taxable years beginning or deemed to begin before January 1,  
 8 2013, at a rate equal to one hundred fifty and eight-tenths percent of  
 9 the primary rate imposed on individuals under section 77-2701.01 on the  
 10 first one hundred thousand dollars of taxable income and at the rate of  
 11 two hundred eleven percent of such rate on all taxable income in excess  
 12 of one hundred thousand dollars. The resultant rates shall be rounded to  
 13 the nearest one hundredth of one percent;  
 14 (b) For taxable years beginning or deemed to begin on or after  
 15 January 1, 2013, and before January 1, 2022, at a rate equal to 5.58  
 16 percent on the first one hundred thousand dollars of taxable income and  
 17 at the rate of 7.81 percent on all taxable income in excess of one  
 18 hundred thousand dollars;  
 19 (c) For taxable years beginning or deemed to begin on or after  
 20 January 1, 2022, and before January 1, 2023, at a rate equal to 5.58  
 21 percent on the first one hundred thousand dollars of taxable income and  
 22 at the rate of 7.50 percent on all taxable income in excess of one  
 23 hundred thousand dollars; ~~and~~  
 24 (d) For taxable years beginning or deemed to begin on or after  
 25 January 1, 2023, ~~and before January 1, 2024,~~ at a rate equal to 5.58  
 26 percent on the first one hundred thousand dollars of taxable income and  
 27 at the rate of 7.25 percent on all taxable income in excess of one  
 1 hundred thousand dollars; -  
 2 (e) For taxable years beginning or deemed to begin on or after  
 3 January 1, 2024, and before January 1, 2025, at a rate equal to 5.58  
 4 percent on the first one hundred thousand dollars of taxable income and  
 5 at the rate of 6.50 percent on all taxable income in excess of one  
 6 hundred thousand dollars;  
 7 (f) For taxable years beginning or deemed to begin on or after  
 8 January 1, 2025, and before January 1, 2026, at a rate equal to 5.58  
 9 percent on the first one hundred thousand dollars of taxable income and  
 10 at the rate of 6.24 percent on all taxable income in excess of one  
 11 hundred thousand dollars;  
 12 (g) For taxable years beginning or deemed to begin on or after  
 13 January 1, 2026, and before January 1, 2027, at a rate equal to 5.58  
 14 percent on the first one hundred thousand dollars of taxable income and  
 15 at the rate of 6.00 percent on all taxable income in excess of one  
 16 hundred thousand dollars; and  
 17 (h) For taxable years beginning or deemed to begin on or after  
 18 January 1, 2027, at a rate equal to 5.58 percent on the first one hundred  
 19 thousand dollars of taxable income and at the rate of 5.84 percent on all  
 20 taxable income in excess of one hundred thousand dollars.  
 21 ~~It is the intent of the Legislature to enact legislation after~~  
 22 ~~August 28, 2021, to lower the tax rate applicable to income in excess of~~

23 one hundred thousand dollars to 7.00 percent for taxable years beginning  
 24 or deemed to begin on or after January 1, 2024, and before January 1,  
 25 2025, and to 6.84 percent for taxable years beginning or deemed to begin  
 26 on or after January 1, 2025.  
 27 For corporate taxpayers with a fiscal year that does not coincide  
 28 with the calendar year, the individual rate used for this subsection  
 29 shall be the rate in effect on the first day, or the day deemed to be the  
 30 first day, of the taxable year.  
 31 (2) An insurance company shall be subject to taxation at the lesser  
 1 of the rate described in subsection (1) of this section or the rate of  
 2 tax imposed by the state or country in which the insurance company is  
 3 domiciled if the insurance company can establish to the satisfaction of  
 4 the Tax Commissioner that it is domiciled in a state or country other  
 5 than Nebraska that imposes on Nebraska domiciled insurance companies a  
 6 retaliatory tax against the tax described in subsection (1) of this  
 7 section.  
 8 (3) For a corporate taxpayer that is subject to tax in another  
 9 state, its taxable income shall be the portion of the taxpayer's federal  
 10 taxable income, as adjusted, that is determined to be connected with the  
 11 taxpayer's operations in this state pursuant to sections 77-2734.05 to  
 12 77-2734.15.  
 13 (4) Each corporate taxpayer shall file only one income tax return  
 14 for each taxable year.  
 15 2. Renumber the remaining sections and correct the repealer  
 16 accordingly.

The first Briese amendment, [AM2588](#), found in this day's Journal, was offered.

#### **SPEAKER HILGERS PRESIDING**

#### **SENATOR HUGHES PRESIDING**

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

The Chair ruled there had not been a full and fair debate, pursuant to Rule 7, Sec. 4, on the Briese amendment.

#### **SENATOR ARCH PRESIDING**

Pending.

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

#### **LEGISLATIVE BILL 1011.** Placed on Final Reading.

##### [ST55](#)

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

1. The Lathrop amendment, AM2465, has been incorporated into the Standing Committee amendment, and the Lathrop amendment, AM2110, has been stricken.

#### **LEGISLATIVE BILL 1012.** Placed on Final Reading.

#### **LEGISLATIVE BILL 1013.** Placed on Final Reading.

#### **LEGISLATIVE BILL 1241.** Placed on Final Reading.

##### [ST54](#)

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

1. On page 1, line 5, "to adopt the Law Enforcement Attraction and Retention Act;" has been inserted after the second semicolon; and in line 6, "to provide operative dates;" has been inserted after the first semicolon.

(Signed) Terrell McKinney, Chairperson

**NOTICE OF COMMITTEE HEARING(S)**

Health and Human Services  
Room 1510 8:30 AM

Monday, April 11, 2022

Frances Beurivage - Commission for the Deaf and Hard of Hearing

(Signed) John Arch, Chairperson

**RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 362.** Introduced by McDonnell, 5.

**PURPOSE:** The purpose of this resolution is to propose an interim study to examine the costs and benefits associated with the usage of permeable surfaces. This study will determine the water quality and quantity benefits of permeable surfacing and measure the cost of installation and maintenance against the reduced costs for storm water conveyance infrastructure.

This study shall include, but not be limited to:

- (1) Determining what qualifies as a permeable surface;
- (2) Evaluating the cost of installation of permeable surfaces compared to traditional surfaces;
- (3) Evaluating the cost of operation and maintenance associated with permeable surfaces compared to traditional surfaces;
- (4) Determining the environmental impacts of permeable surfaces to water flow and runoff;
- (5) Determining the water quality benefits of permeable surfaces compared to traditional surfaces in terms of pollutant retention and reduction;
- (6) Determining the water quantity benefits of permeable surfaces compared to traditional surfaces in terms of volume and rate of storm water runoff;
- (7) Determining the relative economic benefit in terms of dollar value or a dollars-per-acre metric of water quality and quantity benefits of permeable surfaces compared to traditional surfaces;
- (8) Determining the minimum or maximum size threshold at which the water quality and quantity benefits of permeable surfaces are negligible compared to traditional surfaces; and
- (9) Determining potential statutory changes that balance the costs and benefits associated with the usage of permeable surfaces including potential property tax reduction.

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

1. That the Natural Resources Committee of the Legislature shall be designated to conduct an interim study to carry out the purpose 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 363.** Introduced by Bostelman, 23.

**PURPOSE:** The purpose of this resolution is to propose an interim study to examine the reprocessing and recycling of spent nuclear fuel and to examine the statutes relating to the disposal, transportation, and storage of spent nuclear fuel. The study may include, but not be limited to, an examination of the following:

(1) Statutes governing the disposal, transportation, and storage of spent nuclear fuel within Nebraska;

(2) The feasibility of conducting pyrochemical processing or electrorefining of spent nuclear fuel;

(3) Molten salt reactors and the potential of such reactors to recycle spent nuclear fuel;

(4) Advanced non-light water reactors and advanced nuclear reactors and the potential of such reactors to reprocess spent nuclear fuel; and

(5) The amount of money Nebraska has paid into the federal Nuclear Waste Fund, which has failed to produce a permanent nuclear waste storage facility.

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

1. That the Natural Resources Committee of the Legislature shall be designated to conduct an interim study to carry out the purpose 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.

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

Senator M. Hansen filed the following amendment to [LB825](#):

[FA152](#)

Strike the enacting clause.

Senator Slama filed the following amendment to [LB825](#):

[FA153](#)

Strike Section 1.

#### **CONFLICT OF INTEREST STATEMENT**

Pursuant to Rule 1, Sec. 19, Senator Pansing Brooks has filed a Potential

Conflict of Interest Statement under the Nebraska Political Accountability and Disclosure Act. The statement is on file in the Clerk of the Legislature's Office.

**SELECT FILE**

**LEGISLATIVE BILL 825.** The first Briese amendment, [AM2588](#), found and considered in this day's Journal, was renewed.

**SENATOR WILLIAMS PRESIDING**

Senator Slama offered the following motion:

[MO183](#)

Bracket until April 13, 2022.

**SENATOR ARCH PRESIDING**

**SENATOR WILLIAMS PRESIDING**

Senator Lindstrom offered the following motion:

[MO184](#)

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Lindstrom moved for a call of the house. The motion prevailed with 33 ayes, 5 nays, and 11 not voting.

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

Voting in the affirmative, 32:

Aguilar	Clements	Halloran	Lindstrom	Slama
Albrecht	Dorn	Hansen, B.	Linehan	Stinner
Arch	Erdman	Hilgers	Lowe	Wayne
Bostelman	Flood	Hilkemann	McDonnell	Williams
Brandt	Friesen	Hughes	Moser	
Brewer	Geist	Jacobson	Murman	
Briese	Gragert	Kolterman	Sanders	

Voting in the negative, 0.

Present and not voting, 13:

Blood	Cavanaugh, M.	Hunt	McKinney	Wishart
Bostar	DeBoer	Lathrop	Morfeld	
Cavanaugh, J.	Hansen, M.	McCollister	Vargas	

Excused and not voting, 4:

Day	Pahls	Pansing Brooks	Walz
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The Lindstrom motion to invoke cloture failed with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

### BILL ON FIRST READING

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

**LEGISLATIVE BILL 741A.** Introduced by DeBoer, 10.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 741, One Hundred Seventh Legislature, Second Session, 2022.

### AMENDMENT(S) - Print in Journal

Senator Stinner filed the following amendment to LB1014:

[AM2580](#)

(Amendments to E&R amendments, ER155)

1 1. Insert the following new section:

2 Sec. 18. AGENCY NO. 25 — DEPARTMENT OF HEALTH AND HUMAN SERVICES

3 Program No. 347 - Public Assistance

4

	<u>FY2021-22</u>	<u>FY2022-23</u>
5 FEDERAL FUND	-0-	4,000,000
6 PROGRAM TOTAL	-0-	4,000,000

7 There is included in the appropriation to this program for FY2022-23

8 \$4,000,000 Federal Funds for state aid, which shall only be used for such

9 purpose.

10 There is included in the amount shown as aid for this program for

11 FY2022-23 \$4,000,000 Federal Funds to contract with a statewide nonprofit

12 organization that supports children and families to increase child care

13 capacity in areas of need by providing grants to expand or start child

14 care programs for children from birth through five years of age.

15 Expenditures from the appropriation to this program shall not be

16 restricted to state aid if operating and administrative expenditures are

17 necessary to administer the funding appropriated pursuant to this

18 section. In such instances, an agency, board, or commission shall be

19 reimbursed through the Federal Fund appropriation to the Military

20 Department, Agency No. 31, Program No. 191, as identified in section 31

21 of this act.

22 2. On page 25, line 30; and page 26 line 1, strike "46,000,000" and

23 insert "42,000,000".

24 3. On page 26, line 3, strike "\$46,000,000" and insert

25 "\$42,000,000".

26 4. On page 27, line 4, strike "\$10,000,000" and insert "\$6,000,000".

1 5. Renumber the remaining sections and correct internal references

2 accordingly.

Senator Stinner filed the following amendment to LB1014:

[AM2584](#)

(Amendments to E&R amendments, ER155)

1 1. On page 8, after line 11 insert the following new paragraph:

2 "Expenditures from the appropriation to this program shall not be

3 restricted to state aid if operating and administrative expenditures are

- 4 necessary to administer the funding appropriated pursuant to this  
 5 section. In such instances, an agency, board, or commission shall be  
 6 reimbursed through the Federal Fund appropriation to the Military  
 7 Department, Agency No. 31, Program No. 191, as identified in section 30  
 8 of this act."
- 9 2. On page 9, after line 3 insert the following new subsection:  
 10 "(3) Expenditures from the appropriation to this program shall not  
 11 be restricted to state aid if operating and administrative expenditures  
 12 are necessary to administer the funding appropriated pursuant to this  
 13 section. In such instances, an agency, board, or commission shall be  
 14 reimbursed through the Federal Fund appropriation to the Military  
 15 Department, Agency No. 31, Program No. 191, as identified in section 30  
 16 of this act."
- 17 3. On page 13, line 22, after "departments" insert "that receive aid  
 18 pursuant to section 71-1628.08".
- 19 4. On page 21, line 1, before both occurrences of "\$5,000,000"  
 20 insert "up to".
- 21 5. On page 22, line 13, strike "\$15,000,000" and insert  
 22 "\$10,000,000".
- 23 6. On page 29, line 22, after "FY2021-22" insert "no less than".

Senator Bostelman filed the following amendment to LB1102:  
AM2470

(Amendments to E&R amendments, ER142)

- 1 1. On page 1, line 13, after "agent" insert "of the state"; and in  
 2 line 25 strike "which is" and insert "in such quantities that are".
- 3 2. On page 2, line 3, strike "land, air" and insert "air, land"; and  
 4 strike beginning with "apply" in line 15 through "spills" in line 16 and  
 5 insert "be used to pay for the costs of releases".
- 6 3. On page 3, line 7, strike "issue" and insert "including issuing".
- 7 4. On page 4, line 15, strike "6" and insert "10"; in line 16 strike  
 8 "this act" and insert "the Nebraska Environmental Response Act"; in line  
 9 25 strike "another person, entity, or responsible person" and insert "the  
 10 responsible person or any other person"; in line 27 strike "An entity"  
 11 and insert "A person"; and strike beginning with the third "the" in line  
 12 29 through "responsible" in line 30 and insert "such".
- 13 5. On page 5, line 3, strike "a responsible" and insert "such"; in  
 14 line 7 strike "The responsible" and insert "Such"; in line 23 after  
 15 "county" insert "in Nebraska"; in line 28 strike "responsible"; and  
 16 strike line 31 and insert "violation has occurred of any provision of the  
 17 Nebraska Environmental Response Act, an order issued under the act".
- 18 6. On page 6, line 1, strike "Environmental Response Act."; in line  
 19 2 strike "has occurred."; in line 4 strike "of"; in line 5 strike "the  
 20 act"; in line 16 strike "act" and insert "Nebraska Environmental Response  
 21 Act"; and in line 25 strike the first "or" and insert ", including" and  
 22 strike "to seek" and insert "seeking".
- 23 7. On page 10, line 14, strike "and" and insert ". The order"; in  
 24 line 21 strike "hearing" and insert "director or hearing"; in line 23  
 25 after "director" insert "or hearing officer shall" and strike "shall";  
 26 and in line 25 after "director" insert "or hearing officer".
- 1 8. On page 11, line 5, strike "Department of Environment and Energy"  
 2 and insert "department".

## RESOLUTION(S)

**LEGISLATIVE RESOLUTION 364.** Introduced by Wishart, 27.

**PURPOSE:** The purpose of this resolution is to propose an interim study to explore the establishment of an insurtech regulatory sandbox. Insurers using innovative technologies in their business operations may be uncertain if those initiatives can meet the state's existing statutory framework. This study will evaluate whether current statutes need temporary flexibility. The issues addressed by this interim study shall include, but not be limited to:

- (1) How insurtech sandbox programs work, examined in conjunction with the Department of Insurance;
- (2) Efforts in other states to establish insurance specific sandbox programs in an effort to encourage innovation, entrepreneurship, and economic development; and
- (3) Costs associated with establishing an insurtech sandbox.

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

1. That the Banking, Commerce and Insurance Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

**LEGISLATIVE RESOLUTION 365.** Introduced by Wishart, 27.

**PURPOSE:** The purpose of this resolution is to propose an interim study to review the operations of the Department of Motor Vehicles and explore potential policies to improve efficiency in the department. The issues addressed by this interim study shall include, but not be limited to:

- (1) Evaluating the current structure of the Department of Motor Vehicles;
- (2) Examining what services could be made more efficient, including moving some services online; and
- (3) Assessing potential costs that could be reduced and how those savings could be passed on to Nebraska taxpayers.

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

1. That the Transportation and Telecommunications 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 366.** Introduced by Wishart, 27.



PURPOSE: The purpose of this resolution is to propose an interim study to survey and examine at least three of the current certified community behavioral health clinics established through the federal Substance Abuse and Mental Health Services Administration's demonstration program in order to provide additional information on the impact of the implementation of such clinics on the current mental health and substance use treatment system in Nebraska. Such clinics have been established in 42 states across the country to expand access to care and improve coordination with law enforcement, the legal system, and schools. The study shall include, but not be limited to, an examination of:

(1) The need for accessible care in each area served by the current clinics and how implementation of the new model has impacted that need and waitlists for services;

(2) The impact of clinics on individuals with co-occurring mental health conditions;

(3) The effect of increased access to initial services;

(4) The effect of efficient and timely transitioning between levels of care such as the transition from residential facilities to community-based care management and support;

(5) The effect of reductions in high emergency department utilizers with at least one psychiatric condition;

(6) How partnerships with other agencies and resources supports reduction in law enforcement interactions and avoids need for hospitalization;

(7) How implementation of the clinic model in the state medical assistance program system would increase Nebraska's behavioral health workforce and provide detailed data on impact to the system; and

(8) Best practices and essential elements in choosing a type of prospective payment system.

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

1. That the Health and Human Services 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.

**MOTION(S) - Place LB933 on General File**

Senator Albrecht offered her motion, [MO159](#), found on page 871, to place LB933 on General File pursuant to Rule 3, Section 20(b).

Pending.

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

Senator M. Hansen filed the following amendments to LB596:

[FA154](#)

Amend AM2034: Strike line 1.

[FA155](#)

Strike Section 1.

[FA156](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to LB723:

[FA157](#)

Strike Section 1.

[FA158](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to LB729:

[FA159](#)

Amend AM2084: Strike lines 4-5 beginning with the word "and" and ending with "Legislature".

[FA160](#)

Strike Section 1.

[FA161](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to LB730:

[FA162](#)

Amend AM2087: Strike Section 1.

[FA163](#)

Strike Section 2.

[FA164](#)

Strike the enacting clause

Senator M. Hansen filed the following amendments to LB853:

[FA165](#)

Amend AM1601: Strike Section 1.

[FA166](#)

Strike Section 2.

[FA167](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to LB873:

[FA168](#)

Strike Section 1.

[FA169](#)

Strike Section 2.

[FA170](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendment to [LB917](#):

[FA171](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LB927](#):

[FA172](#)

AM2023: Strike Section 2.

[FA173](#)

Strike Section 1.

[FA174](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LB984](#):

[FA175](#)

Amend AM2130: Strike Section 1.

[FA176](#)

Strike Section 2.

[FA177](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LB1261](#):

[FA178](#)

Amend AM2111: Strike "2027" and insert "2028".

[FA179](#)

Strike Section 1.

[FA180](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LR264CA](#):

[FA181](#)

Strike Section 1.

[FA182](#)

Strike Section 2.

[FA183](#)

Strike the enacting clause.

Senator M. Hansen filed the following amendment to [LB919](#):

[AM2593](#) is available in the Bill Room.

**MOTION(S) - Place LB933 on General File**

Senator Albrecht renewed her motion, [MO159](#), found on page 871 and considered in this day's Journal, to place LB933 on General File pursuant to Rule 3, Section 20(b).

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

Pending.

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

Senator Friesen filed the following amendment to [LB344](#):  
[AM2582](#)

(Amendments to AM1880)

- 1 1. Insert the following new section:
- 2 Sec. 3. This act becomes operative on July 1, 2023.
- 3 2. Renumber the remaining sections accordingly.

Senator DeBoer filed the following amendment to [LB919](#):  
[AM2594](#) is available in the Bill Room.

Senator M. Hansen filed the following amendment to [LR283CA](#):  
[FA184](#)  
Strike the enacting clause.

Senator M. Hansen filed the following amendment to [LB864](#):  
[FA185](#)  
Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LB1273](#):  
[FA186](#)  
Strike section 1.

[FA187](#)  
Strike the enacting clause.

Senator M. Hansen filed the following amendments to [LB1150](#):  
[FA188](#)  
Strike section 1.

[FA189](#)  
Strike section 2.

[FA190](#)  
Strike the enacting clause.

**RESOLUTION(S)****LEGISLATIVE RESOLUTION 367.** Introduced by DeBoer, 10.

**PURPOSE:** The purpose of this resolution is to propose an interim study to examine home visitation for families in Nebraska. Home visitation is a prevention strategy used to support pregnant moms and new parents which promotes infant and child health, fosters educational development and school readiness, and prevents abuse and neglect. This study shall assess the status of home visitation in the state of Nebraska and explore ways to expand programming to more families. This study shall include, but not be limited to:

(1) A collection of existing data on the type and location of home visitation programs available in Nebraska and to what extent each program aligns with evidence-based or evidence-informed approaches, including training or professional credentials required for each program model;

(2) A review of the number of parents and children impacted by home visitation, as well as eligibility criteria, target populations, outcome measures, if available, and consideration of wait lists for programs and referral sources, if applicable;

(3) An examination of existing federal, state, and local funding sources for home visitation in the State of Nebraska, including, but not limited to:

(a) Department of Health and Human Services funds;

(b) State Department of Education funds;

(c) Head Start funds;

(d) Private funds;

(e) Maternal, Infant and Early Childhood Home Visitation program funds;

(f) Temporary Assistance for Needy Families funds;

(g) Medicaid funds;

(h) Family First Prevention Services Act funds; and

(i) State of Nebraska General Funds;

(4) A review of potential statutory or administrative changes that would support current models or establish new models of home visitation in Nebraska, a consideration of the status of home visitation in other states, and the potential for home visitation to meet work requirements in the Temporary Assistance for Needy Families program; and

(5) A determination of whether additional state funding is needed to increase development and access to home visitation.

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

1. That the Health and Human Services 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.

**MOTION(S) - Place LB933 on General File**

**LEGISLATIVE BILL 933.** Senator Albrecht renewed her motion, [MO159](#), found on page 871 and considered in this day's Journal, to place on General File pursuant to Rule 3, Section 20(b).

Senator Albrecht moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 3 nays, and 20 not voting.

Senator Albrecht moved for a call of the house. The motion prevailed with 34 ayes, 2 nays, and 13 not voting.

Senator Albrecht requested a roll call vote on the motion to place LB933 on General File.

Voting in the affirmative, 28:

Albrecht	Dorn	Halloran	Kolterman	Murman
Arch	Erdman	Hansen, B.	Lindstrom	Sanders
Bostelman	Flood	Hilgers	Linehan	Slama
Brandt	Friesen	Hilkemann	Lowe	Williams
Briese	Geist	Hughes	McDonnell	
Clements	Gragert	Jacobson	Moser	

Voting in the negative, 13:

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

Present and not voting, 1:

Stinner

Excused and not voting, 7:

Aguilar	Day	McCollister	Walz
Brewer	Lathrop	Pahls	

The Albrecht motion to place LB933 on General File prevailed with 28 ayes, 13 nays, 1 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

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

Senator Morfeld filed the following amendment to [LB933](#):

[AM2595](#)

1. Insert the following new section:

2. Sec. 11. The State of Nebraska shall provide free contraceptives  
3 that are approved by the federal Food and Drug Administration to any  
4 woman who requests and needs such contraceptives. Such contraceptives  
5 shall be distributed through distribution points, including, but not  
6 limited to, Title X clinics, family planning clinics, public health  
7 clinics, hospitals, and pharmacies. The costs for such contraceptives  
8 shall be covered through General Fund appropriations.

9 2. Renumber the remaining sections accordingly.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 368.** Introduced by Cavanaugh, M., 6.

**PURPOSE:** The purpose of this resolution is to propose an interim study to identify deficiencies and inefficiencies in Nebraska public policy surrounding disability related service provision and discuss policy reforms that would increase the ability of families that have children with disabilities to access necessary disability related services statewide. Many Nebraska families that have children with disabilities struggle to arrange necessary disability related services for their child with a disability. Families of children with disabilities often face a lack of appropriate services, especially at a nursing level of care, through agency or independent providers. Therefore, family members are forced to provide this care without compensation or reimbursement and are unable to acquire or maintain employment.

The study shall include, but not be limited to, an examination of:

- (1) The adequacy of staffing for direct service professionals by agency providers and independent providers with an emphasis on the availability of service providers for children;
- (2) Opportunities to eliminate the barriers to family member guardians as paid caretakers for those with a nursing level of care or higher;
- (3) How other states have best leveraged the flexibility in medicaid waivers to expand opportunities to find additional providers; and
- (4) Appropriate policies and procedures that will protect the rights of individuals with disabilities who have guardians that provide care in order to minimize potential conflicts of interest without overly invasive regulation.

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

1. That the Health and Human Services 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.

**VISITOR(S)**

Visitors to the Chamber were fourth-grade students from Syracuse Middle School, Syracuse; fourth-grade students from Centura Elementary, Cairo; fourth-grade students from Walt Disney Elementary, Omaha; and members of the Nebraska Chapter of the American Academy of Pediatrics from across the state.

The Doctor of the Day was Dr. George Voigtlander of Lincoln.

**ADJOURNMENT**

At 3:27 p.m., on a motion by Senator Lindstrom, the Legislature adjourned until 9:00 a.m., Monday, March 28, 2022.

Patrick J. O'Donnell  
Clerk of the Legislature