

FOURTH DAY - SEPTEMBER 16, 2021

LEGISLATIVE JOURNAL

**ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION**

FOURTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, September 16, 2021

PRAYER

The prayer was offered by Senator Kolterman.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was offered by Senator Halloran.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Hilgers presiding.

The roll was called and all members were present except Senators Groene, Hilkemann, Moser, and Sanders who were excused; and Senators Blood, Bostar, Brewer, Briese, J. Cavanaugh, M. Cavanaugh, DeBoer, Friesen, B. Hansen, M. Hansen, Hunt, Lathrop, Linehan, McDonnell, Morfeld, Vargas, and Wayne who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the third day was approved.

COMMITTEE REPORT(S)

Nebraska Retirement Systems

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

Gerald Clausen - Public Employees Retirement Board

Aye: 5. Clements, Kolterman, McDonnell, Slama, Stinner. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Mark Kolterman, Chairperson

Government, Military and Veterans Affairs

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

Jeffrey Davis - Nebraska Accountability and Disclosure Commission

Aye: 7. Blood, Brewer, Halloran, Hansen, M., Lowe, McCollister, Sanders.
Nay: 0. Absent: 1. Hunt. Present and not voting: 0.

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

Darrin Barner - Nebraska Tourism Commission
John P. Chapo - Nebraska Tourism Commission
Barry McFarland - Nebraska Tourism Commission
Ashley Olson - Nebraska Tourism Commission

Aye: 7. Blood, Brewer, Halloran, Hansen, M., Lowe, McCollister, Sanders.
Nay: 0. Absent: 1. Hunt. Present and not voting: 0.

(Signed) Tom Brewer, Chairperson

Judiciary

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

Habib Olomi - Board of Parole

Aye: 7. Brandt, DeBoer, Geist, Lathrop, Morfeld, Pansing Brooks, Slama.
Nay: 0. Absent: 1. McKinney. Present and not voting: 0.

(Signed) Steve Lathrop, Chairperson

Health and Human Services

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

Kevin Bagley - Health Information Technology Board

Ashley Newmyer - Health Information Technology Board
Felicia Quintana-Zinn - Health Information Technology Board

Aye: 6. Arch, Day, Hansen, B., Murman, Walz, Williams. Nay: 0. Absent: 0.
Present and not voting: 1. Cavanaugh, M.

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

Manuela Banner - Health Information Technology Board
Jessica Benes - Health Information Technology Board
Aimee J. Black - Health Information Technology Board
Jamie L. Bland - Health Information Technology Board
Anna C. Dalrymple - Health Information Technology Board
Lynn Elizabeth Modic Edwards - Health Information Technology Board
Kimberley K. Haynes-Henson - Health Information Technology Board
Monalisa McGee - Health Information Technology Board
Stephen Salzbrenner - Health Information Technology Board

Aye: 7. Arch, Cavanaugh, M., Day, Hansen, B., Murman, Walz, Williams.
Nay: 0. Absent: 0. Present and not voting: 0.

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

Michael Aerni - Foster Care Advisory Committee
Michele R. Marsh - Foster Care Advisory Committee
Noelle M. Petersen - Foster Care Advisory Committee
Peggy Sue Snurr - Foster Care Advisory Committee

Aye: 7. Arch, Cavanaugh, M., Day, Hansen, B., Murman, Walz, Williams.
Nay: 0. Absent: 0. Present and not voting: 0.

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

Donald N. Blackbird Jr. - Nebraska Child Abuse Prevention Fund Board
Paul J. Nelson - Nebraska Child Abuse Prevention Fund Board
Georgina Scurfield - Nebraska Child Abuse Prevention Fund Board

Aye: 7. Arch, Cavanaugh, M., Day, Hansen, B., Murman, Walz, Williams.
Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) John Arch, Chairperson

Education

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

Jeffrey M. Nellhaus - Technical Advisory Committee for Statewide Assessment
Linda Poole - Technical Advisory Committee for Statewide Assessment

Aye: 6. Day, Linehan, Murman, Pansing Brooks, Sanders, Walz. Nay: 0.
Absent: 1. Morfeld. Present and not voting: 1. McKinney.

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

James D. Scheer - Board of Educational Lands and Funds

Aye: 6. Day, Linehan, Murman, Pansing Brooks, Sanders, Walz. Nay: 0.
Absent: 1. Morfeld. Present and not voting: 1. McKinney.

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

Darrin Scott Good - Nebraska Educational Telecommunications Commission

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

(Signed) Lynne Walz, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

LB/LR	Committee
LB12	Redistricting
LB15	Redistricting

(Signed) Dan Hughes, Chairperson
Executive Board

NOTICE OF COMMITTEE HEARING(S)

Redistricting
Room 1524

Friday, September 17, 2021 11:00 a.m.

LB9
LB10
LB11
LB12
LB13
LB15

(Signed) Lou Ann Linehan, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 21-014

SUBJECT: Whether LB 12 Is Within The Scope Of The Governor's Special Session Call.

REQUESTED BY: Senator Mark Kolterman
Nebraska Legislature

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

INTRODUCTION

The One Hundred Seventh Legislature convened its First Special Session on September 13, 2021. The special session was convened pursuant to a Proclamation issued by the Governor on August 27, 2021. The Governor's Proclamation called the Legislature into special session "for the purpose of considering and enacting legislation on only" seven subjects. Among the subjects listed is "[e]nacting legislation to redistrict boundaries for members of the Legislature." You have introduced LB 12, which proposes to amend Neb. Rev. Stat. § 32-508 (2016) to increase the number of members of the Legislature by changing the number of legislative districts from forty-nine to fifty. Your question is whether LB 12 falls within the scope of the Governor's Proclamation calling the Legislature into special session. As explained below, we conclude the bill is outside the scope of the call.

ANALYSIS

The Governor's authority to call the Legislature into special session is found in Neb. Const. art. IV, § 28, which provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they are called together.

We have discussed this constitutional provision in numerous previous opinions, and have noted that the final portion of art. IV, § 8 "places an express limitation on the power of the Legislature to act during a special session." Op. Att'y Gen. No. 09010 at 2 (November 6, 2009); Op. Att'y Gen. No. 01034 at 2 (October 31, 2001); Op. Att'y Gen. No. 89069 at 1 (November 9, 1989). That limitation was described in *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964):

It is well established that the Legislature while in special session can transact no business except that for which it was called together. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation. (Citations omitted).

While noting the express constitutional limitation on the power of the Legislature to act in a special session, the court in *Arrow Club* also recognized that,

"[w]hile the Legislature must confine itself to the matters submitted, it need not follow the views of the Governor or legislate in any particular way. Within the special business or designated subjects submitted, the Legislature cannot be restricted or dictated to by the Governor. It is a free agent, and the Governor, under the guise of definition, cannot direct or control its action." (quoting *Commonwealth ex rel. Schnader v. Liveright*, 308 Pa. 35, 57, 161 A. 697, 703 (1932)).

The Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened. The purpose or subject as stated in the proclamation is to be determined by an analysis and construction of the proclamation as in the case of any written instrument. The presumption is always in favor of the constitutionality of legislation, and an act should be held to be within the call if it can be done by any reasonable construction. *Arrow Club*, 177 Neb. at 690, 131 N.W.2d at 137 (emphasis added) (citations omitted).

Further, in *Jaksha v. State*, 222 Neb. 690, 696, 385 N.W.2d 922, 926 (1986), the Nebraska Supreme Court quoted favorably from *Stickler v. Higgins*, 269 Ky. 260, 265, 106 S.W.2d 1008, 1011 (1937), to the effect that a Kentucky constitutional provision very similar to Neb. Const. art. IV, § 8 confers upon the Governor "the power and authority to limit . . . the subjects

that the Legislature might consider at [an] extraordinarily called session." The *Jaksha* court then went on to state:

We conclude that Neb. Const. art. IV, § 8, as part of the power of the executive branch of government, permits the Governor to determine when an extraordinary occasion exists, necessitating convention of a special session of the Nebraska Legislature. The subject matter restriction envisioned in Neb. Const. art. IV, § 8, empowers the Governor to set the boundaries of legislative action permissible at a special session of the Nebraska Legislature. 222 Neb. at 698, 385 N.W.2d at 927.

We have also recognized that, while the Legislature may enact legislation during a special session "relating to, germane to, and having a natural connection with the purpose for which it was convened," *Arrow Club*, 177 Neb. at 690, 131 N.W.2d at 137, the Nebraska Supreme Court has "adopted a narrow view of germaneness, limiting it to 'a specified phase of a general subject.'" Op. Att'y Gen. No. 01034 at 4 (Oct. 31, 2001) (quoting *Arrow Club*, 177 Neb. at 689, 131 N.W.2d at 137)). As stated in Opinion No. 01034: "In light of the *Arrow Club* decision, it appears the Nebraska Supreme Court would take a restrictive view of what legislation is considered germane to a Governor's special session call." *Id.*

The Governor's call, in addition to authorizing legislation to appropriate funds for the necessary expenses of the special session, includes six subjects. Each is limited to "[e]nacting legislation to redistrict boundaries" for various offices. The subject of item five of the call is "[e]nacting legislation to redistrict boundaries for members of the Legislature." LB 12 would amend Neb. Rev. Stat. § 32-508 (2016) to "divide the state into fifty legislative districts," rather than the forty-nine legislative districts currently established by law.

The Nebraska Constitution provides "[t]he Legislature shall by law determine the number of members to be elected and divide the state into legislative districts." Neb. Const. art. III, § 5. The Constitution further provides "[t]he Legislature shall consist of not more than fifty members and not less than thirty members." Neb. Const. art. III, § 6. While the Constitution thus would permit legislation creating an additional legislative district to bring the total membership of the Legislature to fifty senators, the relevant specific subject in the call is restricted to enacting legislation "to redistrict boundaries" for members of the Legislature. The number of legislative districts and members of the Legislature is not sufficiently related to or naturally connected with this specific subject to fall within the limited scope of redistricting legislation permitted under the Governor's Proclamation.

While LB 12 is not within the scope of the current call, "the Governor may, during the Legislature's special session convened pursuant to a gubernatorial proclamation, submit by an appropriate amended proclamation any additional subjects for valid legislation to be enacted at

such special session of the Legislature." *Jaksha v. State*, 222 Neb. at 698, 385 N.W.2d at 927. You are, of course, free to ask the Governor to issue an amended proclamation to expand the subject matter of the call to include consideration of LB 12.

CONCLUSION

The Governor's Proclamation restricts the subject of legislative redistricting to "[e]nacting legislation to redistrict boundaries for members of the Legislature." The increase in the number of legislative districts and members of the Legislature proposed under LB 12 is not sufficiently related to, germane to, and naturally connected with the limited scope of redistricting legislation allowed under the call. Expanding the call to include consideration of the matters proposed in LB 12 would be permissible, however, if the Governor were to issue an amended proclamation adding this subject to the call.

Very truly yours,

(Signed) DOUGLAS J. PETERSON
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

pc Patrick O'Donnell
Clerk of the Nebraska Legislature

07-1417-29

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of September 15, 2021, 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

Acierno, Jenifer
Jensen Rogert Associates, Inc. (Withdrawn 06/23/2021)
Ames, Ann
Windstream
Baird Holm LLP
Bridgepoint Holdings NE, LLC
Benson, David
American Cancer Society Cancer Action Network (Withdrawn
07/29/2021)
Blake, Jeremiah
Blue Cross and Blue Shield of Nebraska

Charter Communications, Inc. (Withdrawn 08/12/2021)
Block, Kristi
Nebraska Grain and Feed Association (Withdrawn 06/02/2021)
DeMont, Nicole
National Redistricting Action Fund
Devitt, Michelle
Heartland Workers Center (Withdrawn 08/17/2021)
Fallabel, Christine
Dexcom, Inc.
Frevert, Ashley
Community Action of Nebraska (Withdrawn 06/17/2021)
Garcia, Lauren
American Federation for Children
Nebraska Catholic Conference (Withdrawn 07/12/2021)
Hack, Mace A.
Nature Conservancy, The (Withdrawn 06/03/2021)
Jones Jr., Dallas
Lincoln Independent Business Association (LIBA) (Withdrawn
07/20/2021)
Kissel Kohout ES Associates, LLC
Accel Entertainment, Inc.
Park'N Go of Nebraska, LLC
Marquis-Favinger, Carrie
Nebraska Realtors Association (Withdrawn 07/21/2021)
Moore, Travis
Lincoln Electric System
Mueller Robak
AMUR Equipment Finance
POET
Nickerson, Jocelyn S.
Humane Society of the United States, The (Withdrawn 07/29/2021)
O'Hara Lindsay & Associates, Inc.
Pace-O-Matic (Withdrawn 07/08/2021)
Saint Francis Ministries
O'Keefe, Karen
Marijuana Policy Project (Withdrawn 07/19/2021)
Peetz & Company
School Employees' Retirement System of Douglas County School District
1 (Withdrawn 07/21/2021)
Potter, Cara E.
Anthem, Inc. and Its Affiliates (Withdrawn 08/03/2021)
Radcliffe, Walter H. of Radcliffe Gilbertson & Brady
CIOX Health, LLC c/o MultiState Associates, Inc. (Withdrawn
08/20/2021)
Waldron, Kelsey
Women's Fund of Greater Omaha, Inc. (Withdrawn 07/13/2021)
Zulkoski Weber LLC
CNH Industrial America LLC c/o MultiState Associates
JE Dunn Construction (Withdrawn 06/22/2021)
John Deere c/o MultiState Associates Inc.

ANNOUNCEMENT

Senator Erdman announced the birthdays of Senators Linehan and Lowe.

SENATOR CLEMENTS PRESIDING**ADJOURNMENT**

At 9:16 a.m., on a motion by Senator Gragert, the Legislature adjourned until 9:00 a.m., Friday, September 17, 2021.

Patrick J. O'Donnell
Clerk of the Legislature