

SIXTY-FIFTH DAY - APRIL 13, 2017**LEGISLATIVE JOURNAL****ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION****SIXTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, April 13, 2017

PRAYER

The prayer was offered by Pastor Katie Barrett-Todd, Dunbar Presbyterian Church, Dunbar.

ROLL CALL

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

The roll was called and all members were present except Senator Geist who was excused; and Senators Bolz, Brewer, Craighead, McCollister, Stinner, Wayne, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-fourth day was approved.

COMMUNICATION(S)

April 12, 2017

Patrick O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. Clerk:

As Chairperson of the Special Committee regarding the Election Challenge to the Qualification of Senator Ernie Chambers filed by Mr. John Sciara, I hereby file with your office the *Report of the Special Committee*.

Sincerely,
(Signed) Senator Dan Watermeier
Chairman, Special Committee

**REPORT OF THE SPECIAL COMMITTEE
ON THE ELECTION CHALLENGE**

IN RE: SPECIAL COMMITTEE ON THE ELECTION CHALLENGE TO
THE QUALIFICATION OF SENATOR ERNEST W. CHAMBERS OF
DISTRICT 11

John Sciara (the “Challenger”), challenged Senator Ernest W. Chambers’ (the “Incumbent”), qualifications to represent District 11 in the Nebraska Legislature. The Challenger alleges the Incumbent is not qualified to represent Legislative District 11 because he did not reside in the district for one year before he was elected.¹ On November 15, 2016, the Challenger filed his Petition of Qualifications Challenge (“Petition”) to contest the Incumbent’s residency qualifications. This is the first opportunity a Special Committee of the Legislature has had to consider a qualifications challenge against a Senator. The Special Committee (the “Committee”) convened on April 7, 2017, to consider the Challenger’s allegations. After considering the evidence offered at the hearing, the Committee recommends that the Challenger’s Petition be dismissed.

STATUTORY AUTHORITY

Under Legislative Rule 10, § 4, “[e]lection contests and qualifications challenges shall be heard and determined as expeditiously as possible under adversary procedures wherein each party to the proceedings has a reasonable opportunity to present his claim, any defense and arguments and to respond to those of his opponents.”² Neb. Rev. Stat. §§ 32-1101 to 32-1117 govern election contests. Section 32-1101 provides, in relevant part:

Sections 32-1101 to 32-1117 shall apply to contests of any election. The election of any person to an elective office, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested: . . . (2) If the incumbent was not eligible to the office at the time of the election . . .³

¹ See Neb. Const. art. III, § 8 (“No person shall be eligible to the office of member of the Legislature unless on the date of the general election at which he is elected, or on the date of his appointment he . . . has resided within the district from which he is elected for the term of one year next before his election . . .”).

² R. Neb. Unicameral Leg. 10, § 4.

³ Neb. Rev. Stat. § 32-1101.

In addition, the Legislature has adopted Rule 10 to govern challenges to a candidate's qualifications for the Legislature. Rule 10 § 1(b) provides, in relevant part:

A qualifications challenge shall place in issue only the qualifications of a person elected as a member of the Legislature under the Constitution. A qualifications challenge shall only determine whether a person elected to the Legislature is qualified to hold or retain the seat.⁴

Under the Election Act, the term "residence" means:

(1) that place in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.⁵

STATEMENT OF FACTS

The Incumbent was first elected to the Legislative seat in District 11 in 1970 and re-elected to consecutive terms until 2008 when he became ineligible to seek re-election because of term limits. On November 8, 2016, Incumbent was again elected to the District 11 Legislative seat winning over eighty percent of the votes cast. After the Challenger filed his Petition, the Incumbent was seated conditionally until the Committee could convene a hearing. The evidence adduced at the hearing is as follows:

The Incumbent has resided at different addresses in District 11 throughout his legislative career. He resided at 19th and Lothrop with his wife and children but moved to an apartment at 3122 North 24th Street after he and his wife divorced. In 1986, he moved to 1825 Binney Street, which is also located in District 11. In 2006, he purchased the Binney Street residence. At the hearing, the Incumbent testified that the Binney Street residence is his home and domicile. The Incumbent lives by himself. He is not married and his children are grown. The Incumbent offered several exhibits that support his testimony that the Binney Street residence is his home and domicile, including:

⁴ R. Neb. Unicameral Leg. 10, § 1(b).

⁵ Neb. Rev. Stat. § 32-116.

- The deed to his house;
- Real property tax statement;
- Homeowners insurance renewal certificate;
- Vehicle registration;
- Auto renewal policy;
- Life insurance premium notice;
- Credit union statement;
- Mailing samples;
- Omaha World Herald subscription;
- Telephone directory excerpt; and
- Utility statements.

Each one of these Exhibits shows the Incumbent's address as 1825 Binney Street, Omaha, Nebraska 68110. Additionally, the Incumbent offered invoices from several contractors showing the repair and maintenance he has done on his residence. Finally, the Incumbent offered a certified copy of his voter registration. His registration shows that he has been a registered voter in District 11 since 1960.

The Challenger alleges he heard rumors that the Incumbent resided in Bellevue with his Legislative assistant, Cynthia Grandberry. Ms. Grandberry testified that she has been the Incumbent's legislative assistant since 1972. She lives at 2914 Jack Pine Circle, Bellevue, Nebraska 68123, and she has lived there since 2000. Ms. Grandberry's mother lived with her until she entered a care facility. Since then Ms. Grandberry has lived alone. Ms. Grandberry and the Incumbent carpool daily to and from Lincoln. The Incumbent parks in her driveway or in her garage. Sometimes the Incumbent and Ms. Grandberry eat supper together but more often than not only eat lunch together at the Capitol. The Incumbent often uses Ms. Grandberry's computer and copier to prepare handouts during the Legislative session. Ms. Grandberry testified that the Incumbent does not live with her.

Senator Carol Blood is Ms. Grandberry's neighbor. She lives down the street from Ms. Grandberry at 2812 Jack Pine Street, Bellevue, Nebraska 68123. Senator Blood testified that she and Ms. Grandberry live in a small neighborhood and they "know what goes on in their neighborhood." There are only two ways in and out of the neighborhood. But there is only one direct route out of the neighborhood from Ms. Grandberry's home, which is located in a cul-de-sac. That route runs directly in front of Senator Blood's home. Senator Blood testified that she regularly sees the Incumbent and Ms. Grandberry carpool together. She also testified that she has not observed the Incumbent staying at Ms. Grandberry's house. Senator Blood testified that the Incumbent "does not live there."

The Challenger did not offer any exhibits to rebut the Incumbent's evidence. He did attempt to impeach Senator Blood's testimony by calling Senator John Lowe to testify. Senator Lowe testified that at the new Senator orientation, he and Senator Blood had a conversation in which Senator Blood said she sees the Incumbent "all the time" and that she sees the

Incumbent "drive by all the time." Instead of impeaching Senator Blood's testimony, these statements are consistent with Senator Blood's, and Ms. Grandberry's, testimony that the Incumbent and Ms. Grandberry carpool daily to and from Lincoln.

The Challenger also questioned the amount of water usage on the Incumbent's MUD bill and inferred from the MUD bill that it was low. But the Challenger failed to offer evidence to establish what is considered low water use or what normal water use is for a single person household. Finally, the Challenger testified that he attempted to observe the Incumbent at his residence. First, the Challenger testified that he has observed the Incumbent in District 11 at various times. But on one occasion at 2:00 a.m. he parked near the Incumbent's residence and did not observe the Incumbent's vehicle or observe the Incumbent leave his residence in the morning. Also, the Challenger testified that he parked in an alley near Ms. Grandberry's residence at 4:30 a.m. one morning and observed the Incumbent drive by. On cross-examination, the Challenger admitted that the early morning observations were made after the November 8, 2016 election.

It is on this scant record that the Challenger asks the Committee to recommend that the Legislature overturn the District 11 election results in which over eighty percent of District 11 voters voted for the Incumbent.

APPLICATION OF THE FACTS TO THE LAW

In his Petition, the Challenger alleged that the Incumbent "while having a residence in North Omaha, actually domiciles in Bellevue, making him ineligible under the Nebraska Constitution for failing to meet the requirement to reside in the district for one year prior to election date." The Challenger's Petition is a qualifications challenge. In a qualifications challenge, the burden of proof is on the party disputing the election results.⁶

⁶ See *State ex rel. Johnson v. Hagemeister*, 161 Neb. 475, 476 HN1, 73 N.W.2d 625, 627 HN1 (1955) (One who sues to recover a public office has the burden of proving every fact essential to his title, his recovery depending upon the strength of his own title and not upon the weakness of the claim of his adversary); *Arends v. Whitten*, 172 Neb. 297, 300, 109 N.W.2d 363, 365 (1961) ("In an election contest on the ground that, through 'ignorance and mistake' of election officers, enough illegal votes were cast in a voting precinct to change the result of the election, the burden is on contestant to prove the casting of the illegal votes and also the candidates for whom they were cast." (quoting *Mehrens v. Election Canvassing Bd.*, 134 Neb. 151, 278 N.W. 252 (1938))); *Plouzek v. Saline Cnty. Reorganization Comm.*, 181 Neb. 440, 442 HN2, 148 N.W.2d 919, 921 HN2 (1967) (A party disputing the results of an election upon the basis that illegal votes were cast or legal votes rejected has the burden of showing not only that such votes were sufficient in number to change the result of the election, but that a change actually resulted therefrom).

The Challenger has the burden to prove by the greater weight of the evidence that the Incumbent “actually domiciles in Bellevue.” The Challenger did not meet his burden of proof.

In Nebraska, the terms “residence” and “domicile” are generally convertible terms.⁷ Nebraska courts have long held that residency or domicile is determined by the person’s subjective intent supported by objective facts. “It is not residence alone, but it is the intention of the person, expressed or implied from the facts in evidence, conjoined with residence, that determines domicile.”⁸ A person establishes his or her domicile by physical presence in a place and his or her state of mind concerning his or her intent to remain there.⁹ Long ago the Nebraska Supreme Court said “[i]t is elementary and it is the universal rule that residence in a community is determined by the intention of the parties.”¹⁰

Furthermore, domicile depends upon no one fact or combination of circumstances.¹¹ “[A]ll of the surrounding circumstances and the conduct of the person must be taken into consideration to determine his domicile.”¹² In general, the domicile of an individual is his or her “true, fixed and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning.”¹³

Yet, Nebraska law recognizes that a person may have two places of residence.¹⁴ But only one of them may be his or her domicile.¹⁵ “One

⁷ *Gosney v. Dep’t of Pub. Welfare*, 206 Neb. 137, 143, 291 N.W.2d 708, 713 (1980) (quoting *Wood v. Roeder*, 45 Neb. 311, 315, 63 N.W. 853, 855 (1895)).

⁸ *State v. Jensen*, 269 Neb. 213, 219, 691 N.W.2d 139, 145 (2005) (quoting *In re Estate of Meyers*, 137 Neb. 60, 67, 288 N.W. 35, 38 (1939)).

⁹ *Jensen*, at 218, 691 N.W.2d at 144 (citing *Mississippi Choctaw Indians Band v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 104 L. Ed. 2d 29 (1989); *Texas v. Florida*, 306 U.S. 398, 59 S. Ct. 563, 83 L. Ed. 817 (1939)).

¹⁰ *Wray v. Wray*, 149 Neb. 376, 381, 31 N.W.2d 228, 231-32 (1948) (quoting *Williams v. Williams*, 101 Neb. 369, 162 N.W. 147 (1917)).

¹¹ *State v. Jones*, 202 Neb. 488, 492, 275 N.W.2d 851, 853 (1979) (citation omitted).

¹² *Jones*, 202 Neb. at 492, 275 N.W.2d at 853 (citation omitted).

¹³ *Gosney*, 206 Neb. at 143, 291 N.W.2d at 713 (quoting *Vlandis v. Kline*, 412 U.S. 441, 453 (1973)).

¹⁴ *Jones*, 202 Neb. at 491, 275 N.W.2d at 853.

¹⁵ *Id.*

acquires a ‘domicile of origin’ at birth, and that domicile continues until a new one, a ‘domicile of choice,’ is acquired.”¹⁶ “In order to effect a change of domicile there must not only be a change of residence, but an intention to permanently abandon the former home. The mere residing at a different place, although evidence of a change, is, however long continued, *per se* insufficient.”¹⁷ To acquire a domicile by choice there must be evidence of: “(1) Residence (bodily presence) in the new locality, and (2) an intention there to remain. . . . Act and intent must, therefore, concur, and the absence of either of these thwarts the change.”¹⁸

Also, “[o]ne fact of particular significance in ascertaining a person's domicile is the act of registering and voting.”¹⁹ On this point, the Nebraska Supreme Court noted the importance of registering to vote:

In doubtful cases particular significance should be attached to the repeated exercise of the right to vote, because this right depends upon citizenship and domicile, and must be generally, if not universally, supported by the oath of the voter. Such act is a distinct, unequivocal and public assertion by the voter of his legal domicile.²⁰

Here, the greater weight of the evidence shows that the Incumbent was domiciled in District 11 at 1825 Binney Street “for the term of one year next before his election.”²¹ The Incumbent purchased that residence in 2006 but resided in it for several years before. He maintains the residence, receives mail and the newspaper at his residence and testified that it is his domicile. The Incumbent insures the property, pays taxes on the property and registers his vehicle at that address. Moreover, as Nebraska law instructs, the most significant fact is that the Incumbent has repeatedly exercised his right to vote in District 11,²² has been a registered voter at the Binney Street address since 1986,²³ and has been a registered voter in District 11 since 1960.²⁴

¹⁶ *Jensen*, 269 Neb. at 218, 691 N.W.2d at 144 (quoting *In re Jones' Estate*, 192 Iowa 78, 81, 182 N.W. 227, 228 (1921)).

¹⁷ *Gosney*, 206 Neb. at 143, 291 N.W.2d at 713 (quoting *State v. School District*, 55 Neb. 317, 320, 75 N.W. 855, 856 (1898)) (internal quotation marks omitted).

¹⁸ *Jones*, 202 Neb. at 492, 275 N.W.2d at 853 (citation omitted).

¹⁹ *Jensen*, 269 Neb. at 218, 691 N.W.2d at 144 (citing *In re Meyers' Estate*, 137 Neb. 60, 288 N.W. 35 (1939)).

²⁰ *Id.*, 269 Neb. at 218-19, 691 N.W.2d at 144-45 (quoting *In re Meyers' Estate*, 137 Neb. at 66, 288 N.W. at 38).

²¹ See Neb. Const. art. III, § 8, *supra* note 1.

²² Exhibit 109.

²³ *Id.*

²⁴ *Id.*, Attachment C.

The Challenger's evidence, in contrast, was no more than rumor, hearsay and innuendo. Even viewing the Challenger's evidence in the most favorable light, the Challenger established nothing more than the Incumbent has not always been physically present at his home on Binney Street. That evidence is "*per se* insufficient."²⁵ In fact, the *State v. Jensen*²⁶ case the Challenger cited as legal authority at the hearing, says as much. There, the State alleged that Jensen illegally voted in the Royal village trustee election because he did not reside in the village of Royal. The evidence showed that Jensen averaged five to ten nights sleeping at his home in Royal, but twenty to twenty-six nights sleeping at his family's farm, which was located outside the village of Royal. Jensen was convicted of illegal voting because the trial court concluded that the evidence showed a lack of "habitual habitation" at the home in Royal.²⁷ On appeal, however, the Supreme Court determined that "habitual habitation" was not the appropriate standard because in 1994 the Legislature amended the Election Act and deleted the phrase "habitual habitation" from the definition of "residence."²⁸ Accordingly, the Supreme Court concluded that "the county court erred in concluding that 'habitual habitation' was necessary to establish residence for voting purposes, because whether a voter is habitually present at a particular residence is not dispositive of the issue of domicile."²⁹

Here, the Challenger's argument appears to be nothing more than the Incumbent is not "habitually present" at 1825 Binney Street. The Challenger's argument and evidence, however, do not support his contention that the Incumbent's domicile is somewhere other than 1825 Binney Street. The Committee finds that the Challenger failed to prove a change in the Incumbent's residence or that the Incumbent permanently abandon his

²⁵ *Gosney*, 206 Neb. at 143, 291 N.W.2d at 713 (quoting *School District*, 55 Neb. at 320, 75 N.W. at 856).

²⁶ 269 Neb. 213, 691 N.W.2d 139 (2005).

²⁷ *Jensen*, 269 Neb. at 216, 691 N.W.2d at 143.

²⁸ *Id.*, 269 Neb. at 220, 691 N.W.2d at 146 ("Although § 32-1528 includes the phrase 'actually reside,' it does not require habitual presence. Prior to amendment, Neb. Rev. Stat. § 32-107 (Reissue 1993) provided: 'Residence shall mean that place at which a person has established his home, where he is habitually present, and to which when he departs he intends to return.' However, § 32-107 was amended in 1994, see 1994 Neb. Laws, L.B. 76, and the definition of residence for purposes of the Election Act is now found in § 32-116(1), which states that a residence is 'that place . . . with which a person has a settled connection for the determination of his or her civil status or other legal purposes.'").

²⁹ *Id.*, 269 Neb. at 220, 691 N.W.2d at 145.

residence at 1825 Binney Street.³⁰ Thus the weight of the evidence and Nebraska law compel the Committee to recommend that the Legislature deny the Challenger's qualifications challenge and dismiss the Challenger's Petition.

CONCLUSION

In construing Article III, § 8 of the Nebraska Constitution, the Committee unanimously concludes that the Challenger, John Sciara, did not meet his burden of proving that the Incumbent, Senator Ernest W. Chambers, "actually domiciles in Bellevue." The Committee further concludes that the Incumbent "has resided within [District 11] for the term of one year next before his election." The Committee therefore recommends that the Legislature deny the Challenger's qualifications challenge and dismiss his Petition. The original hearing transcript and the exhibits the Committee received are being filed contemporaneously with this report.

Dated this 12th day of April, 2017.

(Signed) Senator Dan Watermeier, Chairman
(Signed) Senator Kate Bolz
(Signed) Senator Sue Crawford
(Signed) Senator Dan Hughes
(Signed) Senator John Kuehn
(Signed) Senator John McCollister
(Signed) Senator Jim Scheer

REPORTS

Agency reports electronically filed with the Legislature can be found on the Nebraska Legislature's website at:
<http://www.nebraskalegislature.gov/agencies/view.php>

MOTION(S) - Confirmation Report(s)

Senator Kolterman moved the adoption of the Nebraska Retirement Systems Committee report for the confirmation of the following appointment(s) found on page 888:

Nebraska Investment Council
Richard DeFusco

Voting in the affirmative, 30:

³⁰ *Gosney*, 206 Neb. at 143, 291 N.W.2d at 713 (quoting *School District*, 55 Neb. at 320, 75 N.W. at 856).

Albrecht	Ebke	Hilkemann	Lindstrom	Riepe
Baker	Erdman	Howard	Linehan	Scheer
Bostelman	Friesen	Kolowski	Lowe	Schumacher
Brasch	Halloran	Kolterman	McDonnell	Smith
Clements	Hansen	Krist	Pansing Brooks	Vargas
Crawford	Hilgers	Larson	Quick	Walz

Voting in the negative, 0.

Present and not voting, 10:

Blood	Chambers	Harr	Kuehn	Watermeier
Briese	Groene	Hughes	Morfeld	Williams

Excused and not voting, 9:

Bolz	Craighead	McCollister	Stinner	Wishart
Brewer	Geist	Murante	Wayne	

The appointment was confirmed with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 253. Title read. Considered.

Committee AM693, found on page 811, was offered.

Senator Crawford offered her amendment, AM829, found on page 919, to the committee amendment.

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

The committee amendment, as amended, was adopted with 32 ayes, 1 nay, 13 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 13 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 628. Senator Chambers renewed his motion, MO78, found on page 1010, to reconsider the vote taken to recommit to committee.

Pending.

AMENDMENT(S) - Print in Journal

Senator Groene filed the following amendment to LB478:
AM988

- 1 1. Insert the following new section:
- 2 Sec. 3. Since an emergency exists, this act takes effect when
- 3 passed and approved according to law.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 102. Introduced by McCollister, 20; Harr, 8.

WHEREAS, Lisa Yanney Roskens, along with the Omaha Equestrian Foundation, presented the 2017 Longines Fédération Equestre Internationale (FEI) World Cup Jumping Finals and the 2017 FEI World Cup Dressage Finals in Omaha; and

WHEREAS, the FEI World Cup Finals is the most prestigious championship for equestrian sports, attracting the top riders and horses in the world, including Olympic, World, and European champions representing 27 countries; and

WHEREAS, the FEI World Cup Finals was the first global championship hosted in Omaha; and

WHEREAS, due to the professional vision of Lisa Yanney Roskens, the State of Nebraska is not only a hub for amateur national championships, but has the potential to be a hub for global professional championships as well.

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

1. That the Legislature hereby congratulates and honors Lisa Yanney Roskens and the Omaha Equestrian Foundation for presenting the 2017 Longines FEI World Cup Jumping Finals & FEI World Cup Dressage Finals.
2. That a copy of this resolution be sent to Lisa Yanney Roskens and the Omaha Equestrian Foundation.

Laid over.

MESSAGE(S) FROM THE GOVERNOR

April 10, 2017

Mr. President, Speaker Scheer
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Nebraska Natural Resources Commission:

Mark Czaplewski, 2747 Lakewood Drive, Grand Island, NE 68801

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

April 10, 2017

Mr. President, Speaker Scheer
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the State Emergency Response Commission:

Steven F. Danon, 4804 South 160 Street, Omaha, NE 68135

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,
(Signed) Pete Ricketts
Governor

Enclosures

COMMITTEE REPORT(S)
Natural Resources

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

Greg Moen - Nebraska Power Review Board

Aye: 8 Albrecht, Bostelman, Geist, Hughes, Kolowski, McCollister, Quick, Walz. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Dan Hughes, Chairperson

COMMITTEE REPORT(S)
Health and Human Services

LEGISLATIVE BILL 333. Placed on General File with amendment.

AM1022

1 1. Strike the original sections and insert the following new

2 sections:

3 Section 1. Section 68-1005, Reissue Revised Statutes of Nebraska, is

4 amended to read:

5 68-1005 In order to qualify for assistance to the disabled, an
6 individual shall, in addition to the requirements set forth in section
7 68-1002, be considered to be disabled if he or she is unable to engage in
8 any substantial gainful activity by reason of any medically determinable
9 physical or mental impairment which can be expected to result in death or
10 which has lasted or can be expected to last for a continuous period of
11 not less than one year one hundred eighty days or, in the case of a child
12 under eighteen years of age, if he or she suffers from any medically
13 determinable physical or mental impairment of comparable severity. In
14 determining eligibility for assistance to the disabled, the Department of
15 Health and Human Services may adopt the determination of the Social
16 Security Administration that an individual is or is not disabled for the
17 purposes of the federal programs of Supplemental Security Income or Old
18 Age Survivors' and Disability Insurance. A county board may furnish to an
19 individual medical services or maintenance support based on disability as
20 described in this section, except that if the Social Security

21 Administration has denied benefits to an individual on the basis of the
22 duration of the individual's disability, the department shall perform an
23 independent medical review of such individual's disability.

24 Sec. 2. Section 71-1107, Revised Statutes Cumulative Supplement,
25 2016, is amended to read:

26 71-1107 Developmental disability means a severe, chronic disability,
27 including an intellectual disability, other than mental illness, which:
1 an intellectual disability or a severe chronic cognitive impairment,
2 other than mental illness, that is manifested before the age of twenty-
3 two years and is likely to continue indefinitely.

4 (1) Is attributable to a mental or physical impairment unless the
5 impairment is solely attributable to a severe emotional disturbance or
6 persistent mental illness;

7 (2) Is manifested before the age of twenty-two years;

8 (3) Is likely to continue indefinitely;

9 (4) Results in substantial functional limitations in one of each of
10 the following areas of adaptive functioning:

11 (a) Conceptual skills, including language, literacy, money, time,
12 number concepts, and self-direction;

13 (b) Social skills, including interpersonal skills, social
14 responsibility, self-esteem, gullibility, wariness, social problem
15 solving, and the ability to follow laws and rules and to avoid being

16 victimized; and

17 (c) Practical skills, including activities of daily living, personal
18 care, occupational skills, health care, mobility, and the capacity for
19 independent living; and

20 (5) Reflects the individual's need for a combination and sequence of
21 special, interdisciplinary, or generic services, individualized support,
22 or other forms of assistance that are of lifelong or extended duration
23 and are individually planned and coordinated.

24 An individual from birth through the age of nine years who has a
25 substantial developmental delay or specific congenital or acquired
26 condition may be considered to have a developmental disability without
27 manifesting substantial functional limitations in three or more of the
28 areas of adaptive functioning described in subdivision (4) of this
29 section if the individual, without services and support, has a high
30 probability of manifesting such limitations in such areas later in life.

31 Sec. 3. Section 71-1108.01, Revised Statutes Cumulative Supplement,
1 2016, is amended to read:

2 71-1108.01 Intellectual disability means a state of significantly
3 subaverage general intellectual functioning which is associated with
4 significant impairments in adaptive functioning manifested before the age
5 of twenty-two years. Significant subaverage general intellectual
6 functioning shall refer to a score of seventy or below on a properly
7 administered and valid intelligence quotient test.

8 Sec. 4. Section 83-1201, Revised Statutes Cumulative Supplement,
9 2016, is amended to read:

10 83-1201 Sections 83-1201 to 83-1227 and section 9 of this act shall
11 be known and may be cited as the Developmental Disabilities Services Act.
12 Sec. 5. Section 83-1202, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 83-1202 It is the intent of the Legislature that:

15 (1) All persons with developmental disabilities shall receive
16 services and assistance which present opportunities to increase their
17 independence, productivity, and integration into the community;

18 (2) All persons with developmental disabilities shall have access to
19 a full array of services appropriate for them as individuals;

20 (3) All persons with developmental disabilities shall have a right,
21 to the maximum extent possible, to live, work, and recreate with people
22 who are not disabled;

23 (4) All persons with developmental disabilities shall, to the
24 maximum extent possible, be served in their communities and should only
25 be served by specialized programs when their needs cannot be met through
26 general services available to all persons, including those without
27 disabilities;

28 (5) All persons with developmental disabilities shall have the right
29 to receive age-appropriate services consistent with their individual
30 needs, potentials, and abilities;

31 (6) All persons with developmental disabilities shall be afforded
1 the same rights, dignity, and respect as members of society who are not
2 disabled; and

3 (7) Persons who deliver services to persons with developmental
4 disabilities shall be assured a uniform system of compensation and
5 training and a full range of work-site enhancements which attract and
6 retain qualified employees; ;
7 (8) The first priority of the state in responding to the needs of
8 persons with developmental disabilities should be to ensure that all such
9 persons have sufficient food, housing, clothing, medical care, protection
10 from abuse or neglect, and protection from harm; and
11 (9) The second priority of the state in responding to the needs of
12 persons with developmental disabilities should be to ensure that all such
13 persons receive appropriate assessment of their needs, planning to meet
14 their needs, information about services available to meet their needs,
15 referral to services matched to their needs, coordination of services
16 delivered, support sufficient to allow them to live with their natural
17 families or independently, transportation to facilitate access to
18 services, and meaningful habilitation, education, training, employment,
19 and recreation designed to enhance their skills, increase their
20 independence, and improve their quality of life.

21 Sec. 6. Section 83-1209, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 83-1209 To carry out the policies and purposes of the Developmental
24 Disabilities Services Act, the director shall:
25 (1) Ensure effective management by (a) determining whether
26 applicants are eligible for specialized services, (b) authorizing service
27 delivery for eligible persons, (c) ensuring that services are available,
28 accessible, and coordinated, (d) ensuring that eligible persons have
29 their needs assessed by a team process, have individual program plans
30 developed by a team process to address assessed needs, which plans
31 incorporate the input of the individual and the family, and have services
1 delivered in accordance with the program plan, (e) having the amount of
2 funding for specialized services determined by an objective assessment
3 process, (f) providing information and referral services to persons with
4 developmental disabilities and their families, (g) promoting the
5 development of pilot projects of high quality, cost-efficient services
6 provided by specialized programs, and (h) administering the Beatrice
7 State Developmental Center;
8 (2) Ensure a coordinated statewide response by (a) developing a
9 comprehensive and integrated statewide plan for specialized services to
10 persons with developmental disabilities in conjunction with state and
11 local officials, designated advocates for such persons, service
12 providers, and the general public, (b) reporting biennially to the
13 Legislature, the Governor, service providers, and the public on persons
14 served and progress made toward meeting requirements of the plan, and (c)
15 creating a statewide registry of persons eligible for specialized
16 services. The report submitted to the Legislature shall be submitted
17 electronically;
18 (3) Ensure specialized services which are efficient and
19 individualized by (a) developing a written policy which ensures the
20 adequate and equitable distribution of fiscal resources based upon a

21 consistent rationale for reimbursement that allows funding to follow
22 service recipients as their service needs change and which also includes
23 a plan for funding shortfalls and (b) administering all state and federal
24 funds as may be allowed by law;
25 (4) Ensure maximum quality of services by (a) developing a due
26 process mechanism for resolution of disputes, (b) coordinating the
27 development and implementation of a quality management and improvement
28 plan as described in section 9 of this act review teams designed to
29 enhance the quality of specialized services, (c) developing certification
30 and accreditation requirements for service providers, (d) providing
31 technical assistance to local service providers, and (e) providing
1 eligible persons, their families, and the designated protection and
2 advocacy system authorized pursuant to the Developmental Disabilities
3 Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001 et seq., with
4 copies of all reports resulting from surveys of providers of specialized
5 services conducted as part of the certification and accreditation
6 process; and
7 (5) Establish and staff a developmental disabilities division which
8 shall assist in carrying out the policies and purposes of the
9 Developmental Disabilities Services Act.
10 Sec. 7. Section 83-1212.01, Reissue Revised Statutes of Nebraska, is
11 amended to read:
12 83-1212.01 (1) There is hereby created the Advisory Committee on
13 Developmental Disabilities. The advisory committee shall consist of a
14 representative of a statewide advocacy organization for persons with
15 developmental disabilities and their families, a representative of
16 Nebraska's designated protection and advocacy organization, a
17 representative of the Nebraska Planning Council on Developmental
18 Disabilities, a representative of the University Center for Excellence in
19 Developmental Disability Education, Research, and Service as defined in
20 section 68-1114, and not more than fifteen additional members. At , at
21 least fifty-one percent of the members one third of whom shall be persons
22 with developmental disabilities and family members , at least one third
23 of whom shall be families of persons with developmental disabilities, and
24 no more than one third of whom shall be elected officials or interested
25 community persons.
26 (2) The members shall be appointed by the Governor for staggered
27 terms of three years. Any vacancy shall be filled by the Governor for the
28 remainder of the term. One of the members shall be designated as
29 chairperson by the Governor. Members shall be reimbursed for their actual
30 and necessary expenses as provided in sections 81-1174 to 81-1177.
31 (3) The advisory committee shall advise the department regarding all
1 aspects of the funding and delivery of services to persons with
2 developmental disabilities.
3 (4) The advisory committee shall (a) provide sufficient oversight to
4 ensure that persons placed in the custody of the department under the
5 Developmental Disabilities Court-Ordered Custody Act are receiving the
6 least restrictive treatment and services necessary and (b) oversee the
7 design and implementation of the quality management and improvement plan

8 described in section 9 of this act.

9 (5) The department shall inform the advisory committee of proposed
10 systemic changes to services for persons with developmental disabilities
11 at least thirty days prior to implementation of the changes so that the
12 advisory committee may provide for a response to the proposed changes. If
13 the director determines that circumstances require implementation of the
14 changes prior to such notice, the department shall inform the advisory
15 committee as soon as possible. The advisory committee, in partnership
16 with the director, shall establish criteria for the process of providing
17 the information and receiving the response.

18 Sec. 8. Section 83-1216, Reissue Revised Statutes of Nebraska, is

19 amended to read:

20 83-1216 (1) The department shall administer the medicaid home and
21 community-based services waivers upon application approval by the federal
22 Centers for Medicare and Medicaid Services. Beginning July 1, 2019 1995,
23 persons determined to be eligible for specialized services who ~~on or~~
24 after September 6, 1993, graduate from high school, reach the age of
25 twenty-one years, or are currently receiving services shall receive
26 services in accordance with the Developmental Disabilities Services Act.
27 The amount of funding for any person receiving services shall be
28 determined using an objective assessment process developed by the
29 department and approved by the federal Centers for Medicare and Medicaid
30 Services plan in subsection (3) of this section.

31 (2) The department shall provide directly or by contract service
1 coordination to Nebraska residents found to be eligible for specialized
2 services.

3 (3) It is the intent of the Legislature that by July 1, 2010, all
4 persons determined to be eligible for services shall receive services in
5 accordance with the act.

6 (3) (4) It is the intent of the Legislature that the department take
7 all possible steps to maximize federal funding in order to implement
8 subsections (1) and (2) of this section prior to the date these
9 subsections become entitlements. All Nebraska residents eligible for
10 funding for specialized services through the Division of ~~under the~~
11 Developmental Disabilities Services Act shall apply for and accept any
12 federal medicaid benefits for which they may be eligible and benefits
13 from other funding sources within the department, the State Department of
14 Education, specifically including the Division of Rehabilitation
15 Services, and other agencies to the maximum extent possible.

16 (4) The priorities for funding under this section are as follows:
17 (a) The first funding priority of the state shall be responding to
18 the needs of persons with developmental disabilities in immediate crisis
19 due to caregiver death, homelessness, or a threat to the life and safety
20 of the person;

21 (b) The second funding priority of the state in responding to the
22 needs of persons with developmental disabilities shall be for persons
23 that have resided in an institutional setting for a period of at least
24 twelve consecutive months and who are requesting community-based
25 services.

26 (c) The third funding priority of the state in responding to the
27 needs of persons with developmental disabilities shall be for serving
28 wards of the department or persons placed under the supervision of the
29 Office of Probation Administration by the Nebraska court system who are
30 transitioning upon age nineteen with no other alternatives as determined
31 by the department to support residential services necessary to pursue
1 economic self-sufficiency;

2 (d) The fourth funding priority of the state in responding to the
3 needs of persons with developmental disabilities shall be for serving
4 persons transitioning from the education system upon attaining twenty-one
5 years of age to maintain skills and receive the day services necessary to
6 pursue economic self-sufficiency; and

7 (e) The fifth funding priority of the state in responding to the
8 needs of persons with developmental disabilities shall be for serving all
9 other persons by date of application.

10 Sec. 9. (1)(a) The department shall, with the assistance and
11 support of the Advisory Committee on Developmental Disabilities, develop
12 and implement a quality management and improvement plan to promote and
13 monitor quality relating to services and quality of life for persons with
14 developmental disabilities.

15 (b) The purpose of the quality management and improvement plan is to
16 provide information necessary for an accurate assessment of the quality
17 and effectiveness of services for persons with developmental disabilities
18 and their families and the delivery of such services, with special
19 attention to the impact that the services have on the quality of life of
20 recipients and their families.

21 (c) The quality management and improvement plan shall reflect
22 national best practice for services for persons with developmental
23 disabilities and their families as determined by the department with the
24 assistance of the advisory committee.

25 (d) The quality management and improvement plan shall assess,
26 through both quantitative and qualitative means, (i) the quality of
27 services provided to persons with developmental disabilities and their
28 families, (ii) the ability of the services provided to meet the needs of
29 the recipients of the services, (iii) the effect of the services to
30 support or improve the quality of life of the recipients of the services,
31 and (iv) the satisfaction of the recipients with the process of

1 determination of eligibility and the process of delivery of the services.
2 In order to develop the quality management and improvement plan, the
3 department shall use procedures to collect data from recipients of
4 services for persons with disabilities and their families by relying on
5 external, independent evaluators who are not employed by the department.
6 The quality management and improvement plan shall give significance to
7 input gathered from recipients of services for persons with developmental
8 disabilities and families of such recipients and include information
9 gathered from the department.

10 (e) The quality management and improvement plan shall include
11 recommendations for improvements to the types of services and the
12 delivery of services for persons with developmental disabilities and

13 their families.

14 (2) The department shall provide a quality management plan
15 electronically to the Legislature no later than September 30, 2017. In
16 the plan the department shall detail its approach to ensuring a
17 sustainable, continuous, quality improvement management system for the
18 delivery of services for persons with developmental disabilities and
19 their families that incorporates responsibilities of the department and
20 recipients.

21 (3) The department shall issue an implementation report regarding
22 the quality management and improvement plan and publish it on the web
23 site of the department and provide it electronically to the Legislature
24 on or before December 30, 2017, and March 30, 2018. Beginning in 2018,
25 the department shall annually provide a report regarding outcomes,
26 improvement priorities, and activities of the department during the
27 previous fiscal year. The report shall be published on the web site of
28 the department and shall be provided electronically to the Legislature on
29 or before September 30.

30 Sec. 10. Sections 6, 11, and 14 of this act become operative on
31 October 1, 2017. Sections 1, 7, and 12 of this act become operative three
1 calendar months after the adjournment of this legislative session. The
2 other sections of this act become operative on their effective date.

3 Sec. 11. Original section 83-1209, Reissue Revised Statutes of
4 Nebraska, is repealed.

5 Sec. 12. Original sections 68-1005 and 83-1212.01, Reissue Revised
6 Statutes of Nebraska, are repealed.

7 Sec. 13. Original sections 83-1202 and 83-1216, Reissue Revised
8 Statutes of Nebraska, and sections 71-1107, 71-1108.01, and 83-1201,
9 Revised Statutes Cumulative Supplement, 2016, are repealed.

10 Sec. 14. The following section is outright repealed: Section
11 83-1213, Reissue Revised Statutes of Nebraska.

12 Sec. 15. The following section is outright repealed: Section
13 71-1113, Reissue Revised Statutes of Nebraska.

14 Sec. 16. Since an emergency exists, this act takes effect when
15 passed and approved according to law.

(Signed) Merv Riepe, Chairperson

UNANIMOUS CONSENT - Add Cointroducer(s)

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

Senator Hilkemann name added to LB244.

VISITORS

Visitors to the Chamber were 50 twelfth-grade students, teacher, and sponsor from Lincoln Northeast High School; Hannah Unterberger, an exchange student from Vienna, Austria; students from North Omaha; 75 fourth-grade students from Saddlebrook Elementary, Omaha; Kasady Wolken from Norfolk; Senator Hilgers wife and children, Heather, Alice, Elsie, and Clara Jane; and 13 fourth-grade students and teachers from Falls City South Elementary.

ADJOURNMENT

At 12:01 p.m., on a motion by Senator Brewer, the Legislature adjourned until 9:00 a.m., Tuesday, April 18, 2017.

Patrick J. O'Donnell
Clerk of the Legislature