

**THIRTY-THIRD DAY - FEBRUARY 28, 2022**

**LEGISLATIVE JOURNAL**

**ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION**

**THIRTY-THIRD DAY**

Legislative Chamber, Lincoln, Nebraska  
Monday, February 28, 2022

**PRAYER**

The prayer was offered by Senator Blood.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was offered by Senator Arch.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Foley presiding.

The roll was called and all members were present except Senator Day who was excused; and Senators M. Hansen and Morfeld who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

Change Thirty-Second Day, "Thursday, February 24" to "Friday, February 25."

Page 647, line 18, strike "1137A" and insert "1173A".

The Journal for the thirty-second day was approved as corrected.

**COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 939.** Placed on Select File with amendment.

[ER109](#)

1 1. On page 1, strike lines 2 through 4 and insert "77-2715.03,  
2 Reissue Revised Statutes of Nebraska, and section 77-2734.02, Revised  
3 Statutes Supplement, 2021; to change individual income and corporate tax  
4 rates as prescribed; and to repeal the original sections."

**LEGISLATIVE BILL 925.** Placed on Select File with amendment.

[ER108](#)

- 1 1. On page 2, line 31, strike "Nebraska".  
 2 2. On page 4, line 6, strike the third comma; in line 22 strike  
 3 "City" and insert "city"; and in line 25 after "community" insert an  
 4 underscored comma.  
 5 3. On page 5, line 9, after "States" insert "Department of  
 6 Agriculture" and after "and" insert "the".

**LEGISLATIVE BILL 925A.** Placed on Select File.

(Signed) Terrell McKinney, Chairperson

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

Senator Kolterman filed the following amendment to LB767A:  
AM2076

- 1 1. Strike the original section and insert the following new section:  
 2 Section 1. There is hereby appropriated (1) \$172,930 from the  
 3 Department of Insurance Cash Fund for FY2022-23 and (2) \$176,277 from the  
 4 Department of Insurance Cash Fund for FY2023-24 to the Department of  
 5 Insurance, for Program 69, to aid in carrying out the provisions of  
 6 Legislative Bill 767, One Hundred Seventh Legislature, Second Session,  
 7 2022.  
 8 Total expenditures for permanent and temporary salaries and per  
 9 diems from funds appropriated in this section shall not exceed \$145,338  
 10 for FY2022-23 or \$148,245 for FY2023-24.

**COMMITTEE REPORT(S)**

Natural Resources

**LEGISLATIVE BILL 1015.** Placed on General File.

**LEGISLATIVE BILL 1023.** Placed on General File with amendment.  
AM1914 is available in the Bill Room.

(Signed) Bruce Bostelman, Chairperson

**RESOLUTION(S)**

Pursuant to Rule 4, Sec. 5(b), LRs 297, 298, 299, and 300 were adopted.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business,  
 the President signed the following: LRs 297, 298, 299, and 300.

**MOTION(S) - Confirmation Report(s)**

Senator Lathrop moved the adoption of the Judiciary Committee report for  
 the confirmation of the following appointment(s) found on page 607-608:

Crime Victim's Reparations Committee  
 Gerald Randall (Rand) Hansen

Voting in the affirmative, 41:

Aguilar	Cavanaugh, M.	Hansen, B.	Lowe	Vargas
Albrecht	DeBoer	Hilgers	McDonnell	Walz
Arch	Dorn	Hilkemann	McKinney	Wayne
Blood	Erdman	Hughes	Moser	Williams
Bostelman	Flood	Jacobson	Murman	Wishart
Brandt	Friesen	Kolterman	Pahls	
Brewer	Geist	Lathrop	Sanders	
Briese	Gragert	Lindstrom	Slama	
Cavanaugh, J.	Halloran	Linehan	Stinner	

Voting in the negative, 0.

Present and not voting, 2:

Clements      Hunt

Excused and not voting, 6:

Bostar	Hansen, M.	Morfeld
Day	McCollister	Pansing Brooks

The appointment was confirmed with 41 ayes, 0 nays, 2 present and not voting, and 6 excused and not voting.

Senator Bostelman moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 592:

Nebraska Game and Parks Commission  
Scott L. Cassels

Voting in the affirmative, 37:

Aguilar	Cavanaugh, J.	Hilkemann	McDonnell	Stinner
Albrecht	DeBoer	Hughes	McKinney	Vargas
Arch	Dorn	Jacobson	Moser	Walz
Blood	Flood	Kolterman	Murman	Wayne
Bostar	Geist	Lindstrom	Pahls	Williams
Bostelman	Gragert	Linehan	Pansing Brooks	
Brandt	Hansen, B.	Lowe	Sanders	
Brewer	Hilgers	McCollister	Slama	

Voting in the negative, 1:

Erdman

Present and not voting, 8:

Briese	Clements	Halloran	Lathrop
Cavanaugh, M.	Friesen	Hunt	Wishart

Excused and not voting, 3:

Day	Hansen, M.	Morfeld
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The appointment was confirmed with 37 ayes, 1 nay, 8 present and not voting, and 3 excused and not voting.

Senator Bostelman moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 593:

Nebraska Ethanol Board  
 Scott B. McPheeters  
 Taylor D. Nelson

Voting in the affirmative, 41:

Aguilar	Clements	Hansen, B.	McCollister	Stinner
Albrecht	DeBoer	Hilgers	McDonnell	Vargas
Arch	Dorn	Hilkemann	McKinney	Walz
Blood	Erdman	Hughes	Moser	Wayne
Bostar	Flood	Jacobson	Murman	Williams
Bostelman	Friesen	Kolterman	Pahls	
Brandt	Geist	Lindstrom	Pansing Brooks	
Brewer	Gragert	Linehan	Sanders	
Cavanaugh, J.	Halloran	Lowe	Slama	

Voting in the negative, 0.

Present and not voting, 5:

Briese	Cavanaugh, M.	Hunt	Lathrop	Wishart
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Excused and not voting, 3:

Day	Hansen, M.	Morfeld
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The appointments were confirmed with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

Senator Bostelman moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 613:

Nebraska Power Review Board  
 Bridget Troxel Peck

Voting in the affirmative, 41:

Aguilar	Clements	Hansen, B.	Lowe	Slama
Albrecht	DeBoer	Hilgers	McCollister	Stinner
Arch	Dorn	Hilkemann	McDonnell	Vargas
Blood	Erdman	Hughes	McKinney	Walz
Bostar	Flood	Jacobson	Moser	Williams
Bostelman	Friesen	Kolterman	Murman	
Brandt	Geist	Lathrop	Pahls	
Brewer	Gragert	Lindstrom	Pansing Brooks	
Cavanaugh, J.	Halloran	Linehan	Sanders	

Voting in the negative, 0.

Present and not voting, 5:

Briese	Cavanaugh, M.	Hunt	Wayne	Wishart
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Excused and not voting, 3:

Day	Hansen, M.	Morfeld
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The appointment was confirmed with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

Senator Bostelman moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 631:

Nebraska Oil and Gas Conservation Commission  
Paul E. Strommen

Voting in the affirmative, 40:

Aguilar	Clements	Halloran	Lindstrom	Pahls
Albrecht	DeBoer	Hansen, B.	Linehan	Pansing Brooks
Arch	Dorn	Hilgers	Lowe	Sanders
Blood	Erdman	Hilkemann	McCollister	Slama
Bostelman	Flood	Hughes	McDonnell	Stinner
Brandt	Friesen	Jacobson	McKinney	Vargas
Brewer	Geist	Kolterman	Moser	Walz
Briese	Gragert	Lathrop	Murman	Williams

Voting in the negative, 0.

Present and not voting, 6:

Bostar	Cavanaugh, M.	Wayne
Cavanaugh, J.	Hunt	Wishart

Excused and not voting, 3:

Day Hansen, M. Morfeld

The appointment was confirmed with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

Senator Bostelman moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 631:

Nebraska Oil and Gas Conservation Commission  
Dallen R. Juelfs

Voting in the affirmative, 41:

Aguilar	Cavanaugh, J.	Halloran	Linehan	Slama
Albrecht	Clements	Hansen, B.	McCollister	Stinner
Arch	DeBoer	Hilgers	McDonnell	Vargas
Blood	Dorn	Hilkemann	McKinney	Walz
Bostar	Erdman	Hughes	Moser	Williams
Bostelman	Flood	Jacobson	Murman	
Brandt	Friesen	Kolterman	Pahls	
Brewer	Geist	Lathrop	Pansing Brooks	
Briese	Gragert	Lindstrom	Sanders	

Voting in the negative, 0.

Present and not voting, 5:

Cavanaugh, M. Hunt Lowe Wayne Wishart

Excused and not voting, 3:

Day Hansen, M. Morfeld

The appointment was confirmed with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

**BILL ON FINAL READING**

The following bill was read and put upon final passage:

**LEGISLATIVE BILL 592.**

A BILL FOR AN ACT relating to the Automated Medication Systems Act; to amend sections 71-2449 and 71-2451, Reissue Revised Statutes of Nebraska; to provide for use of automated medication distribution machines as prescribed; to change provisions relating to emergency doses and prescription requirements; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 46:

Aguilar	Cavanaugh, M.	Hansen, B.	Lowe	Stinner
Albrecht	Clements	Hilgers	McCollister	Vargas
Arch	DeBoer	Hilkemann	McDonnell	Walz
Blood	Dorn	Hughes	McKinney	Wayne
Bostar	Erdman	Hunt	Moser	Williams
Bostelman	Flood	Jacobson	Murman	Wishart
Brandt	Friesen	Kolterman	Pahls	
Brewer	Geist	Lathrop	Pansing Brooks	
Briese	Gragert	Lindstrom	Sanders	
Cavanaugh, J.	Halloran	Linehan	Slama	

Voting in the negative, 0.

Excused and not voting, 3:

Day Hansen, M. Morfeld

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

#### **WITHDRAW - Motion to LB708**

Senator M. Cavanaugh withdrew her motion, [MO149](#), found on page 616, to bracket LB708 until April 20, 2022.

#### **BILLS ON FINAL READING**

The following bills were read and put upon final passage:

#### **LEGISLATIVE BILL 708.**

A BILL FOR AN ACT relating to law; to amend section 49-707, Reissue Revised Statutes of Nebraska; to eliminate a copyright requirement; to harmonize provisions; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 45:

Aguilar	Cavanaugh, J.	Halloran	Lindstrom	Pansing Brooks
Albrecht	Cavanaugh, M.	Hansen, B.	Linehan	Sanders
Arch	Clements	Hilgers	Lowe	Slama
Blood	Dorn	Hilkemann	McCollister	Stinner
Bostar	Erdman	Hughes	McDonnell	Vargas
Bostelman	Flood	Hunt	McKinney	Walz
Brandt	Friesen	Jacobson	Moser	Wayne
Brewer	Geist	Kolterman	Murman	Williams
Briese	Gragert	Lathrop	Pahls	Wishart

Voting in the negative, 0.

Present and not voting, 1:

DeBoer

Excused and not voting, 3:

Day            Hansen, M.    Morfeld

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

#### **LEGISLATIVE BILL 754.**

A BILL FOR AN ACT relating to schools; to amend section 79-10,110.03, Revised Statutes Supplement, 2021; to extend the commercial air filter pilot program; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 41:

Aguilar	Cavanaugh, J.	Hilgers	McCollister	Vargas
Albrecht	DeBoer	Hilkemann	McDonnell	Walz
Arch	Dorn	Hughes	McKinney	Wayne
Blood	Flood	Hunt	Moser	Williams
Bostar	Friesen	Jacobson	Murman	Wishart
Bostelman	Geist	Kolterman	Pansing Brooks	
Brandt	Gragert	Lathrop	Sanders	
Brewer	Halloran	Lindstrom	Slama	
Briese	Hansen, B.	Linehan	Stinner	

Voting in the negative, 3:

Clements    Erdman    Lowe



Present and not voting, 2:

Cavanaugh, M. Pahls

Excused and not voting, 3:

Day Hansen, M. Morfeld

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

**LEGISLATIVE BILL 758.**

A BILL FOR AN ACT relating to the Nebraska Farm-to-School Program Act; to amend sections 79-2902 and 79-2904, Revised Statutes Supplement, 2021; to define terms; to change provisions relating to the Nebraska farm-to-school program; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 46:

Aguilar	Cavanaugh, M.	Hansen, B.	Lowe	Stinner
Albrecht	Clements	Hilgers	McCollister	Vargas
Arch	DeBoer	Hilkemann	McDonnell	Walz
Blood	Dorn	Hughes	McKinney	Wayne
Bostar	Erdman	Hunt	Moser	Williams
Bostelman	Flood	Jacobson	Murman	Wishart
Brandt	Friesen	Kolterman	Pahls	
Brewer	Geist	Lathrop	Pansing Brooks	
Briese	Gragert	Lindstrom	Sanders	
Cavanaugh, J.	Halloran	Linehan	Slama	

Voting in the negative, 0.

Excused and not voting, 3:

Day Hansen, M. Morfeld

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

**LEGISLATIVE BILL 892.**

A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to amend section 81-885.02, Reissue Revised Statutes of Nebraska, and sections 81-885.04 and 81-885.13, Revised Statutes Cumulative

Supplement, 2020; to change provisions relating to restrictions on unlicensed persons, applicability of the act, and broker's license applications; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 39:

Aguilar	Briese	Hansen, B.	Linehan	Sanders
Albrecht	Cavanaugh, J.	Hilgers	McCollister	Stinner
Arch	Cavanaugh, M.	Hilkemann	McDonnell	Vargas
Blood	DeBoer	Hunt	McKinney	Walz
Bostar	Dorn	Jacobson	Moser	Wayne
Bostelman	Flood	Kolterman	Murman	Williams
Brandt	Friesen	Lathrop	Pahls	Wishart
Brewer	Gragert	Lindstrom	Pansing Brooks	

Voting in the negative, 5:

Clements	Erdman	Halloran	Lowe	Slama
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Present and not voting, 2:

Geist	Hughes
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Excused and not voting, 3:

Day	Hansen, M.	Morfeld
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

### GENERAL FILE

**LEGISLATIVE BILL 91.** Title read. Considered.

Committee [AM96](#), found on page 398, First Session, 2021, was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

**MESSAGE(S) FROM THE GOVERNOR**

February 28, 2022

Patrick J. O'Donnell  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bill 906E was received in my office on February 25, 2022.

This bill was signed and delivered to the Secretary of State on February 28, 2022.

Sincerely,  
(Signed) Pete Ricketts  
Governor

**COMMITTEE REPORT(S)**  
Health and Human Services**LEGISLATIVE BILL 856.** Placed on General File.**LEGISLATIVE BILL 1091.** Placed on General File with amendment.[AM1875](#)

1 1. Strike the original sections and insert the following new  
2 sections:  
3 Section 1. Sections 1 to 6 of this act shall be known and may be  
4 cited as the Nebraska Nursing Incentive Act.  
5 Sec. 2. The Legislature finds and declares that:  
6 (1) There is a nursing shortage in Nebraska. Nebraska will  
7 experience a shortage of more than five thousand nurses by 2025. Seventy-  
8 three of Nebraska's ninety-three counties have less than the national  
9 average ratio of registered nurses to patients. Sixty-six counties in  
10 Nebraska have been deemed medically underserved. Nine counties in  
11 Nebraska have no registered nurses, and four counties have just one  
12 registered nurse; and  
13 (2) The nursing shortage affects both Nebraska's physical health and  
14 its economic health. Lack of care impedes the ability of communities  
15 throughout the state to attract and retain residents and the businesses  
16 that employ them. The issue has only become more exacerbated during the  
17 COVID-19 pandemic.  
18 Sec. 3. For purposes of the Nebraska Nursing Incentive Act:  
19 (1) Approved nursing program means a program that (a) is approved  
20 pursuant to sections 38-2232 to 38-2236, (b) is offered by a public or  
21 private postsecondary institution in Nebraska, and (c) consists of  
22 courses of instruction in regularly scheduled classes leading only to an  
23 associate degree, diploma, or certificate in nursing; and  
24 (2) Department means the Department of Health and Human Services.  
25 Sec. 4. The department shall administer a scholarship program under  
26 the Nebraska Nursing Incentive Act and shall award scholarships to  
27 students who qualify under section 5 of this act.

1 Sec. 5. (1) To qualify for a scholarship under the Nebraska Nursing  
 2 Incentive Act, a student shall (a) be a resident of Nebraska, (b) intend  
 3 to enroll or be enrolled in an approved nursing program, (c) intend to  
 4 practice as a licensed practical nurse, licensed registered nurse, or  
 5 nurse aide upon completion of the approved nursing program, and (d) agree  
 6 in writing to work for two years in this state as a licensed practical  
 7 nurse, licensed registered nurse, or nurse aide upon completion of the  
 8 approved nursing program.  
 9 (2) A student who meets the requirements of subsection (1) of this  
 10 section shall receive a scholarship of up to two thousand five hundred  
 11 dollars per semester.  
 12 Sec. 6. It is the intent of the Legislature to appropriate five  
 13 million dollars from Federal Funds for fiscal year 2022-23 to the  
 14 department to carry out the Nebraska Nursing Incentive Act. The Federal  
 15 Funds to be appropriated are from funds allocated to the State of  
 16 Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant  
 17 to the federal American Rescue Plan Act of 2021, Public Law 117-2,  
 18 Subtitle M, Sec. 9901.

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.

Cheryl Livingston - Commission for the Blind and Visually Impaired  
 Linda Mentink - Commission for the Blind and Visually Impaired

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.

Richard L. Wiener - 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.

Peggy A. Williams - Commission for the Deaf and Hard of Hearing

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

(Signed) John Arch, Chairperson

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 308.** Introduced by McDonnell, 5.

WHEREAS, over one hundred nine thousand health care workers that care for the sick and injured are employed in Nebraska; and

WHEREAS, Nebraska's health care workers are stewards of good health; and

WHEREAS, Nebraska's health care workers are always there in times of need for emergencies, lifesaving treatments, life-enhancing education, welcoming new lives into the world, and helping patients and families at the end of life; and

WHEREAS, the contributions of Nebraska's health care workers to their communities have been invaluable throughout the global pandemic; and

WHEREAS, Nebraska's health care workers have gone above and beyond in caring for patients in the face of great personal risk, often putting the workers' own lives in harm's way, and loss of time with family; and

WHEREAS, Nebraska's health care workers contribute to the quality of life and health of Nebraskans, going well beyond the walls of hospitals; and

WHEREAS, Nebraska owes a profound debt of gratitude to its health care workers and their families; and

WHEREAS, Health Care Workers Appreciation Week is meant to show doctors, nurses, and everyone that works in Nebraska's health care system that their passion and hard work is noticed, valued, and respected.

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

1. That the Legislature recognizes February 28, 2022, through March 4, 2022, as Health Care Workers Appreciation Week.

2. That the Legislature urges businesses and individuals to participate in Health Care Workers Appreciation Week by displaying white ribbons in their windows or yard, lighting up businesses in white or leaving the lights on, conducting an act of kindness for a health care worker, or sharing a simple "thank you".

3. That the Legislature encourages all members of our state to express appreciation to Nebraska's health care workers for their dedication and devotion to their work.

Laid over.

**LEGISLATIVE RESOLUTION 309.** Introduced by Murman, 38.

WHEREAS, Future Farmers of America (FFA) is a dynamic youth organization that changes lives and prepares members for premier leadership, personal growth, and career success through agricultural education; and

WHEREAS, FFA held its ninety-fourth National Convention & Expo in Indianapolis, Indiana on October 27, 2021, through October 30, 2021; and

WHEREAS, each year at the convention, four FFA members are honored with American Star Awards for outstanding accomplishments in FFA and agricultural education, and these awards are presented to FFA members who

demonstrate outstanding agricultural skills and competencies through completion of a supervised agricultural experience; and

WHEREAS, Grady Johnson graduated from Holdrege High School in Holdrege, Nebraska and was a member of the FFA chapter there; and

WHEREAS, Grady successfully completed a supervised agricultural experience, demonstrated top management skills, completed key agricultural education, scholastic, and leadership requirements, and earned an American FFA Degree, the highest level of student accomplishment of the FFA; and

WHEREAS, Grady was named American Star Farmer at the convention; and

WHEREAS, the Legislature recognizes the achievements of the youth of our state.

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

1. That the Legislature congratulates Grady Johnson on being named American Star Farmer for 2021 by the Future Farmers of America.

2. That copies of this resolution be sent to Holdrege High School, agriculture education teacher Jeff Moore, and Grady Johnson.

Laid over.

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

Pursuant to Rule 1, Sec. 19, Senator Wishart 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.

#### **PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following: LBs 592, 708, 754, 758, and 892.

#### **GENERAL FILE**

**LEGISLATIVE BILL 59.** Title read. Considered.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 75.** Title read. Considered.

Committee [AM341](#), found on page 492, First Session, 2021, was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 45 ayes, 0 nays, 2 present

and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 705.** Title read. Considered.

Committee [AM1653](#), found on page 483, was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 1148.** Title read. Considered.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 971.** Title read. Considered.

Advanced to Enrollment and Review Initial with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 691.** Title read. Considered.

Advanced to Enrollment and Review Initial with 42 ayes, 0 nays, 5 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 1178.** Title read. Considered.

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

#### **PRESENTED TO THE GOVERNOR**

Presented to the Governor on February 28, 2022, at 11:00 a.m. were the following: LBs 592, 708, 754, 758, and 892.

(Signed) Jamie Leishman  
Clerk of the Legislature's Office

#### **COMMITTEE REPORT(S)**

##### Agriculture

The Agriculture Committee desires to report that the committee voted not to confirm the appointment(s) listed below. The Committee suggests the appointment(s) be rejected by the Legislature and suggests a record vote.

Terry L. Cone - Nebraska Brand Committee

Aye: 7. Brandt, Brewer, Cavanaugh, J., Gragert, Halloran, Hansen, B., Lathrop. Nay: 0. Absent: 1. Groene. Present and not voting: 0.

(Signed) Steve Halloran, Chairperson

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

Senator Friesen filed the following amendment to LB750:  
AM2067

(Amendments to Standing Committee amendments, AM1966)

1. On page 18, line 26, strike the new matter; in line 27 strike the paragraphing and "(a) Six" and reinstate the stricken "six"; in line 28 strike the new matter and reinstate the stricken matter; and strike lines 29 and 30.
2. On page 19, line 17, strike "twenty-five" and reinstate the stricken "fifty"; and in line 19 strike "Five dollars" and insert "Four dollars and twenty-five cents".

**COMMITTEE REPORT(S)**

Revenue

**LEGISLATIVE BILL 850.** Placed on General File.

**LEGISLATIVE BILL 917.** Placed on General File.

**LEGISLATIVE BILL 951.** Indefinitely postponed.

**LEGISLATIVE BILL 1272.** Indefinitely postponed.

(Signed) Lou Ann Linehan, Chairperson

**SELECT FILE**

**LEGISLATIVE BILL 847.** ER104, found on page 573, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 567.** ER107, found on page 573, was adopted.

Senator B. Hansen offered the following amendment:

AM1958

(Amendments to E & R amendments, ER107)

1. On page 2, line 31, strike "October 1," show as stricken, and insert "the effective date of this act".
2. On page 3, line 1, strike the new matter.
3. On page 4, line 5, strike "October 1, 2021" and insert "the effective date of this act".

The B. Hansen amendment was adopted with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 749.** Advanced to Enrollment and Review for Engrossment.



**LEGISLATIVE BILL 704.** [ER106](#), found on page 576, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 786.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 791.** Advanced to Enrollment and Review for Engrossment.

#### GENERAL FILE

**LEGISLATIVE BILL 1236.** Title read. Considered.

Committee [AM1986](#), found on page 619, was adopted with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

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

**LEGISLATIVE BILL 717.** Placed on Select File.

**LEGISLATIVE BILL 1037.** Placed on Select File with amendment.

#### [ER110](#)

1 1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:  
3 Section 1. (1) The Department of Administrative Services shall  
4 contract for the completion of an evaluation of the state's procurement  
5 practices. The evaluation shall analyze past procurement challenges and  
6 address potential areas for improvement, including, but not limited to:  
7 (a) Due diligence, (b) evaluation of cost, (c) accountability for  
8 decisionmaking, and (d) protest procedures.  
9 (2) The department shall contract with an outside consultant with  
10 expertise in government procurement within sixty days after the operative  
11 date of this section for the purpose of conducting such evaluation. Such  
12 contract shall not be subject to any competitive bidding requirement.  
13 (3) The evaluation shall be completed with input from (a) the  
14 chairpersons of the Government, Military and Veterans Affairs Committee  
15 of the Legislature and the Health and Human Services Committee of the  
16 Legislature and other members of the Legislature as such chairpersons  
17 deem appropriate, (b) the Department of Health and Human Services, and  
18 (c) any other using agencies, as defined in section 81-145, deemed  
19 appropriate to participate by the Department of Administrative Services.  
20 (4) The Department of Administrative Services shall electronically  
21 submit a report with the results of the evaluation to the Legislature and  
22 the Governor on or before November 15, 2022. Such report shall include  
23 recommendations for improvements to the state's procurement policies and  
24 practices.  
25 Sec. 2. Section 81-153, Reissue Revised Statutes of Nebraska, is

26 amended to read:

27 81-153 The materiel division shall have the power and duty to:

1 (1) Purchase or contract for, in the name of the state, the personal

2 property required by the using agencies and the state;

3 (2) Promulgate, apply, and enforce standard specifications

4 established as provided in section 81-154;

5 (3) Sell and dispose of personal property that is not needed by the

6 state or its using agencies as provided in section 81-161.04 or initiate

7 trade-ins when determined to be in the best interest of the state;

8 (4) Determine the utility, quality, fitness, and suitability of all

9 personal property tendered or furnished;

10 (5) Make rules and regulations consistent with sections 81-145 to

11 81-171 and 81-1118 to 81-1118.06 to carry into effect the provisions

12 thereof. Such rules and regulations shall include provisions for

13 modifying and terminating purchase contracts and the cost principles to

14 be used in such modification or termination;

15 (6) Employ such clerical, technical, and other assistants as may be

16 necessary to properly administer such sections, fix their compensation,

17 and prescribe their duties in connection therewith, subject to existing

18 laws and appropriations;

19 (7) Allow the purchase of personal property without competitive

20 bidding when the price has been established by the federal General

21 Services Administration or to allow the purchase of personal property by

22 participation in a contract competitively bid by another state or group

23 of states, a group of states and any political subdivision of any other

24 state, or a cooperative purchasing organization on behalf of a group of

25 states. The division may also give consideration to a sheltered workshop

26 pursuant to section 48-1503 in making such purchases;

27 (8) Enter into any personal property lease agreement when it appears

28 to be in the best interest of the state; ~~and~~

29 (9) Negotiate purchases and contracts when conditions exist to

30 defeat the purpose and principles of public competitive bidding; and -

31 (10) Obtain an electronic procurement system, which shall be funded

1 or paid for by providing the system provider with, as determined by the

2 materiel administrator, a percentage or portion of identified

3 transactions. Such percentage or portion may be collected by the system

4 provider from contractors and bidders.

5 Sec. 3. Section 81-1120, Reissue Revised Statutes of Nebraska, is

6 amended to read:

7 81-1120 (1) There is hereby created the Materiel Division Revolving

8 Fund. The fund shall be administered by the materiel division of the

9 Department of Administrative Services. The fund shall consist of (a) fees

10 paid for printing, copying, central supply, and mailing services provided

11 to state agencies and local subdivisions by the division, ~~and~~ (b)

12 assessments charged by the materiel administrator to state agencies,

13 boards, and commissions for purchasing services provided by the division,

14 and (c) any money collected pursuant to subdivision (10) of section

15 81-153. Such assessments shall be adequate to cover actual and necessary

16 expenses that are associated with providing the service and not otherwise

17 covered by the money collected pursuant to subdivision (10) of section

18 81-153. The fund shall be used to pay for expenses incurred by the

19 division to provide such services.

20 (2) State agencies, boards, and commissions shall make the materiel

21 division assessment payments to the fund no later than August 1 of each

22 year, or in four equal payments to be made no later than August 1,

23 October 1, February 1, and April 1 of each year, at the discretion of the

24 materiel administrator.

25 (3) Any money in the fund available for investment shall be invested

26 by the state investment officer pursuant to the Nebraska Capital

27 Expansion Act and the Nebraska State Funds Investment Act.

28 Sec. 4. Sections 2, 3, and 5 of this act become operative three  
 29 calendar months after the adjournment of this legislative session. The  
 30 other sections of this act become operative on their effective date.  
 31 Sec. 5. Original sections 81-153 and 81-1120, Reissue Revised  
 1 Statutes of Nebraska, are repealed.  
 2 Sec. 6. Since an emergency exists, this act takes effect when  
 3 passed and approved according to law.  
 4 2. On page 1, strike lines 2 and 3 and insert "to amend sections  
 5 81-153 and 81-1120, Reissue Revised Statutes of Nebraska; to require an  
 6 evaluation of the state's procurement practices; to change powers and  
 7 duties of the materiel division and provisions relating to the Materiel  
 8 Division Revolving Fund; to provide operative dates; to repeal the  
 9 original sections; and to declare an emergency."

**LEGISLATIVE BILL 848.** Placed on Select File.  
**LEGISLATIVE BILL 767A.** Placed on Select File.

(Signed) Terrell McKinney, Chairperson

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 310.** Introduced by Lindstrom, 18;  
 Hansen, B., 16.

WHEREAS, Mr. Vincent Einar Lindstrom was born on August 26, 1926,  
 in Oakland, Nebraska; and

WHEREAS, Vincent graduated from Oakland High School at the age of  
 sixteen; and

WHEREAS, Vincent was called to duty with the United States Army  
 235th Division in January 1951 and served his country honorably; and

WHEREAS, Vincent, following his service in the United States Army,  
 settled in Burt County, Nebraska, raising six children while farming the land  
 and later enjoying the company of fourteen grandchildren and seven great  
 grandchildren; and

WHEREAS, Vincent has been a lifelong member of the First Lutheran  
 Church; and

WHEREAS, Vincent served as a past school board member, and a past  
 member of the Viking Lodge in Oakland and was the Oakland Swedish  
 Festival King in 2011; and

WHEREAS, Vincent continues to be a role model for the Oakland  
 community, volunteering for many organizations, including the Burt County  
 Fair, the Golden Oaks Senior Center, and the Oakland Heights Nursing  
 Home where he performs on the piano for residents. He is a self-taught  
 pianist that learned at the young age of eighty-five.

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

1. That the Legislature expresses gratitude to Mr. Vincent Lindstrom for  
 his many years of service to his country, his community, and the State of  
 Nebraska and congratulates him on his ninety-fifth birthday.

2. That a copy of this resolution be sent to Mr. Vincent Lindstrom.

Laid over.

### ATTORNEY GENERAL'S OPINION

#### Opinion 22-002

SUBJECT:            Constitutionality of Legislation Providing for the Sale and Reacquisition of Educational Lands by the State Board of Educational Lands and Funds Under Certain Circumstances and Conditions (LB 711).

REQUESTED BY:    Senator Lynne Walz  
                          Nebraska State Legislature

WRITTEN BY:       Douglas J. Peterson, Attorney General  
                          John L. Jelkin, Assistant Attorney General

### INTRODUCTION

LB 711 (2022) proposes to require the State Board of Educational Lands and Funds ["Board"] to sell school lands to lessees for economic development, provided that the buyer increases the appraised value of the land by double sometime during a five-year period after purchase. The bill provides that school lands shall be sold pursuant to public auction to the lessee or someone else who is willing to enter into an agreement to increase the land by double sometime during a five-year period after the sale. LB 711 further provides that, should the successful buyer fail to double the appraised value of the land, the Board shall reacquire the land at the land's appraised value based upon its current use rather than the land's fair market value. Additionally, LB711 provides that the Board may not sell tracts of land smaller than 40 acres.

Your opinion request letter expresses concerns that LB 711:

1.       Permits the Board to sell school lands only when the purchaser intends to use the land for economic development;
2.       Requires that the appraised value of the school lands to be sold shall be based on the "current use" of the land and not the highest and best use of the land;

3. Limits the Board's ability to sell tracts smaller than 40 acres, or to allow tracts smaller than 40 acres remaining after sale;
4. Requires the Board to sell a property upon the request of a lessee within 120 days after the board's acceptance of the agreement; and
5. Requires the Board to reacquire school lands if the valuation goals are not met by the purchaser within five years.

With respect to these concerns, you ask us to address whether these provisions unconstitutionally hamper and limit the Board's ability to fulfill its fiduciary duty to manage the Board's property for the benefit of the State's school children.

### **BACKGROUND**

On April 19, 1864, the U.S. Congress passed, and President Abraham Lincoln signed the Enabling Act. (U.S. Stat. at Large, Vol. 13, p. 47.) The Enabling Act allowed the people of Nebraska to form a Constitution and State Government and granted the State of Nebraska admission into the Union on an equal footing with the original States. Section 7 of the Enabling Act provides:

And be it further enacted, that sections number sixteen and thirty-six in every township . . . , shall be, and are hereby granted to said State for the support of the common schools. (U.S. Stat. at Large, Vol. 13, p. 47).

Thereafter, the people of Nebraska did form a Constitution and State Government and by proclamation of then President Andrew Johnson, the State of Nebraska was admitted to the Union on March 1, 1867.

Neb. Const. art. VII, § 6, provides, in relevant part:

No lands now owned or hereafter acquired by the state for educational purposes shall be sold except at public auction under such conditions as the Legislature shall provide. The general management of all lands set apart for educational purposes shall be vested, under the direction of the Legislature, in a board of five members known as the Board of Educational Lands and Funds.

The Nebraska Supreme Court has long recognized that "[t]he public school lands of the state are trust property and the state is required to

administer them as such for the benefit of the common schools of the state." *State ex rel. Ebke v. Board of Educ. Lands and Funds*, 154 Neb. 244, 247, 47 N.W.2d 520, 522 (1951) ["*Ebke*"]. The Court in *Ebke* recognized that

[b]y constitutional provision the lands set aside for the support of schools by the federal government are held in trust by the state. . . .These lands, therefore, are subject to the rules of law applicable to the handling of trust estates because of the status assigned to them by the Constitution. *Id.* at 248, 47 N.W.2d at 522-23.

Discussing the authority of the Legislature to provide for the sale of school lands, the *Ebke* Court stated:

That the Legislature has the power to provide the method of administering the public school lands of the state as a trust is not subject to question. But the method provided must be one which is within the law governing the administration of trust estates. The designation of these lands as a trust in the Constitution has the effect of incorporating into the constitutional provision the rules of law regulating the administration of trusts and the conduct and duties of trustees. A breach of trust in such a situation is in effect a violation of the constitutional provision and has the effect of invalidating the legislation authorizing the breach. *Id.* at 254-55, 47 N.W.2d at 525.

The fiduciary duty placed on the administration of educational lands was also recognized in *Propst v. Board of Educ. Lands and Funds*, 156 Neb. 226, 233-34, 55 N.W.2d 653, 657 (1952), where the Court stated:

The school lands were received and are held in trust by the State of Nebraska for Educational purposes. The state as trustee of the lands and of the income therefrom is required to administer the trust estate under the rules applicable to trustees acting in a fiduciary capacity. The title of the lands is not vested in the state with all of the ordinary incidents of other titles, but the title thereto was granted to and vested in the state upon an express trust for the 'support of common schools' with no right or power of the state to use, dispose of, or alienate the lands or any part thereof, except as allowed by the Enabling Act and the Constitution.

In Op. Att'y Gen. No. 91052 (June 7, 1991), this office summarized these principles as follows:

[I]t is within the authority of the Legislature to direct the sale of public school lands under such conditions as the Legislature shall provide. It must be noted however, the general management of the lands is vested in

the Board of Educational Lands and Funds . . . . The power of the Legislature to direct the sale of educational lands is not without limits. In directing the sale of trust property, the Legislature may not require the sale in a manner which would cause the Board to violate the fiduciary duties which bind the management of educational lands by the Board. . . . Consequently, the State as trustee of the lands and of the income therefrom, is required to administer the trust estate under the rules of law applicable to trustees acting in a fiduciary capacity.

### ANALYSIS

Considering this background, we will proceed to examine each of your concerns regarding the constitutionality of LB 711.

1. Is it constitutional to limit sales of school land to purchasers that intend to use the land for economic development?

Response: No.

LB 711, Section 2 provides that "[t]he Board of Educational land and funds shall review and set priorities for the sale of lands covered by leases expiring each year, giving the highest priority to those lands which it determines, considering all relevant factors, can be sold to the best advantage for purposes of economic development." (emphasis added).

The most obvious concern about this provision is that it violates the state's duty as trustee to act solely in the best interests of the beneficiaries of the trust. *See* Neb. Rev. Stat. § 30-3867(a) (2016) ("A trustee shall administer the trust **solely** in the interests of the beneficiaries.") (emphasis added). In this case, the beneficiaries are the children of the common schools.

LB 711, Section 3 appears to change Nebraska law to permit the sale of school lands only if the purchaser agrees to use the land for "economic development." Sections 1, 2, 3 and 4. The original language of this section generally authorizes sales of school land. The proposed language appears to provide that **all** sales of school lands are limited to those purchasers who intend to use the land for economic development and who are willing to enter into an agreement to develop the land for economic development and double the appraised value of the land within five years. This provision restricts the Board from selling to anyone else who intends to use the land for farming, ranching or any other purpose that does not constitute economic development. By limiting the pool of prospective bidders, LB 711 results in the Board receiving less money than the property might otherwise bring when all prospective bidders are permitted to participate in the bidding. "A trustee is required to dispose of trust property upon the

most advantageous terms which it is possible for him to secure for the benefit of the cestui que trust whom he represents." *Ebke*, 154 Neb. at 249, 47 N.W.2d at 523. "The duty of loyalty requires a trustee to administer the trust solely in the interests of the beneficiaries. *In re Estate of Stuchlik*, 289 Neb. 673, 688, -857 N.W.2d 57, 69 (2014). Limiting the sale of school lands to only buyers that propose to use the land for economic development violates the state's duty of loyalty to the beneficiaries of the trust.

Further, the "[s]tate, as trustee of public school lands, is without power through legislative means or otherwise to bestow a special benefit upon any person or corporation, public or private, at the expense of the *cestui que trust*, the public school system of the state." *State Bd. of Educational Lands and Funds v. Jarchow*, 219 Neb. 88, 99, 362 N.W.2d 19, 26 (1985) (quoting *State v. Platte Valley Public Power and Irr. Dist.*, 143 Neb. 661, 664, 10 N.W.2d 631, 633 (1943) (emphasis in original)). LB 711's requirement that school lands be sold only for economic development benefits the developer of the lands, and it does so at the expense of the cestui que trust. In other words, it violates the state's duty of loyalty as a trustee of the school lands by bestowing a benefit on a developer at the expense of the education of the state's school children. If the school lands can be developed and their value doubled within five years, the opportunity to develop the property and benefit from the increase in value belongs to the trust, not a third-party purchaser.

Again, the lands set aside for the public schools "by Constitution and congressional act, belong to the public school system of the state and the state is but the trustee thereof." *State ex rel. Johnson v. Central Neb. Public Power & Irr. Dist.*, 143 Neb. 153, 167, 8 N.W.2d 841, 849 (1943). The state, under the guise of economic development, cannot transfer the benefit of developing school lands from the trust to a private developer. The state as trustee owes a duty to the beneficiaries to maximize the income and value of the trust. It may not choose economic development over judicious administration of the assets for the benefit of the trust.

2. Is it constitutional to require that the appraised value of the school land to be sold must be based on the "current use of the land" rather than the "highest and best use" of the property?

Response: No.

The bill provides that that the "appraised value" of school lands subject to sale is to be determined based on the "current use of the land." LB 711, Section 1. The bill eliminates language currently in § 72-257 providing that school land sold at public auction "may be appraised for purposes of sale in the same manner as privately owned land by a certified general real property



appraiser appointed by the board...." *Id.* The bill does not define what "current use of the land" means or how an appraisal is to be made based on such use.

It is our understanding that a valuation based on the current use of property is considered a hypothetical condition or restricted use for valuation purposes. Such valuation method does not arrive at the highest and best use which determination is necessary to obtain the fair market value of the land. The net effect of using a hypothetical condition or restricted use is to value the property at less than its fair market value. A reduced valuation gives the prospective buyer a benefit at the expense of the trust.

"All actions of the trustee must be in the interest of the beneficiaries and no one else." *In re William R. Zutavern Revocable Trust*, 309 Neb. 542, 557, 961 N.W.2d 807, 820-21 (2021). Requiring a valuation and sale of trust property based on the "current use of the land" rather than the fair market value of the land constitutes a breach of the fiduciary duties of a trustee to act in the best interests of the trust.

In a 2014 decision, the Nebraska Court of Appeals found that a trustee breached his fiduciary duty to beneficiaries by failing to ascertain the fair market value of trust property prior to the sale, failing to promptly offer the property for public sale, and mistakenly giving one beneficiary an opportunity to purchase the property under the assumption that she had an active option. *In re Louise V. Steinhoefel Trust*, 22 Neb. App. 293, 854 N.W.2d 792 (2014). The court noted that "[a] breach of trust includes every omission or commission which violates in any manner the obligation of carrying out a trust according to its terms." *Id.* at 299, 854 N.W.2d at 799.

The highest and best use of real estate is the valuation method generally accepted, and used, by real estate appraisers. Valuation of school lands based on "current use of the land" would exclude from consideration any value of the trust property due to future development value, location, and other unique characteristics of the property. This would result in the trust receiving less than the fair market value of school land, and essentially surrenders any added value to the buyers, to the detriment of the trust.

Finally, LB 711, Section 6 amends Neb. Rev. Stat. § 72-258.02 to state "appraised value means the value as determined by a certified general real property appraiser in the same manner as the value is determined for privately owned land." As a practical matter, we do not believe a certified general real property appraiser would be able to render an appraisal based on the "current use" of the property. Rather, a certified general real property appraiser is required to consider other factors to determine the property's

fair market value based on its highest and best use and would likely decline to render an appraisal based only on the "current use" of the property.

3. Is it constitutional to limit the Board's ability to sell tracts smaller than 40 acres, or which results in tracts smaller than 40 acres remaining after sale?

Response: No.

LB 711, Section 2 appears to preclude the Board from selling any property of less than 40 acres or to prohibit dividing land to be sold if it results in a tract of less than 40 acres remaining unsold. We have been advised that the Board presently owns many parcels of less than 40 total acres. LB 711 appears to prohibit the Board from selling any of those parcels, for any reason, at any price. We have been informed that the Board currently sells small, orphaned parcels split off from the main property by a highway. Those parcels are usually less than 40 acres. Although the Board pays taxes on these smaller parcels, the Board typically cannot rent or otherwise use those parcels.

While selling these small tracts may be in the best interests of the trust, LB 711 prohibits the Board from doing so to the detriment of the beneficiaries of the trust. Additionally, this provision would prevent the Board from developing properties next to communities or golf courses, dividing them into lots, etc., and selling them to the trust's best advantage. Additionally, it would prevent the Board from selling off acreages, pivot corners, or farmsteads, even if such sales would be in the best interests of the Trust. We believe this prohibition would prevent the Board from meeting its fiduciary obligation to maximize the income and value of the trust's assets.

4. Is it constitutional to require that the Board sell a property upon the request of a lessee within 120 days after the board's acceptance of the agreement?

Response: No.

LB 711, Section 3 appears to allow a present lessee to force the sale of any tract of school land (not just the tract the tenant is currently leasing) within 120 days. LB 711 does not provide any exception for existing leases nor does it allow the delay of the sale to coincide with the termination of the lease presently on the property. This provision would require the Board to terminate current leases early. This may result in litigation against the Board based on a breach of contract. This provision removes the Board's

discretion in these cases even though such action may not be in the best interests of the Trust.

Requiring the sale of school lands within 120 days after the request of a lessee hampers the Board's ability to exercise reasonable care and due caution in violation of the Board's duties as a trustee. "A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." Neb. Rev. Stat. § 30-3869 (2016). This duty includes the ability to decide if, and when, trust assets should be sold. To require a sale at the discretion of the tenant infringes on the Board's duties as a trustee of the school lands.

In 1949, our office was asked if the state could amend the statutes governing the sale of school lands to grant a preference to the leaseholder to purchase the lands at the highest bid made at public auction. 1949-50 Rep. Att'y Gen. 83 (Feb. 7, 1949). In that opinion, we stated:

To grant a special privilege to the lessee to purchase the lands at the highest bid would not be a sale to the highest and best bidder since the phrase "public auction" as used in our Constitution, and as above defined, clearly contemplates that the one who make the highest and best bid would receive title to the real estate free from the right of any other person to take the benefit of his bid from him simply by equaling the amount of his bid. *Id.*

Finally, "a trustee owes beneficiaries of a trust his undivided loyalty and good faith, and all of his acts as trustee must be in the interests of the cestui que trust and no one else." *Ebke*, 154 Neb. 244, 249, 47 N.W.2d at 523. This provision in LB 711 acts to thwart the Board's fiduciary duty of loyalty and good faith to the best interests of the beneficiaries and only the beneficiaries.

5. Is it constitutional to require the Board to "reacquire" certain property if the goals were not met by the purchaser?

Response: No.

LB 711, Section 3 requires that the successful bidder enter into an agreement to improve or develop the land within one year after date of purchase. The section further provides that, if the appraised value of the land is not twice as much as the purchase price at some point within five years after the date of purchase, the Board "shall take all actions necessary to reacquire such land for the State of Nebraska as educational land" and

"shall pay the purchaser the appraised value for the land...determined as of the date of the failed condition." *Id.*

"The Legislature is authorized to provide by statute the terms upon which the public school lands of the state may be sold, but such terms must be consonant with the duties and functions of a trustee acting in a fiduciary capacity. It is the duty and function of a trustee to avoid unnecessary risks of loss and at the same time to obtain a maximum return to the trust estate consistent with the avoidance of such risks." *Banks v. State*, 181 Neb. 106, 123,147 N.W.2d 2d 132, 141 (1966) (J. Carter, concurring). "A trustee shall administer the trust as a prudent person would, by considering the purposes, term, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution." Neb. Rev. Stat. § 30-3869 (2016). Also, "[a] trustee shall take reasonable steps to take control of and protect the trust property." Neb. Rev. Stat. § 30-3874 (2016).

The reacquisition requirement in LB 711 violates the State's duty to properly administer school lands in a prudent manner as it prevents the Board from considering whether such acquisition is in the best interests of the Trust. For example, it would be a violation of the Board's fiduciary duty if it is required to assume ownership of a "development" that was a failed attempt at economic development. The property in such a failed venture could be abandoned or damaged. A trustee should not be forced to accept contaminated or otherwise undesirable property. Additionally, it would be a breach of fiduciary duty for the Board to reacquire a failed going concern if the Board lacked the ability to properly manage the going concern. It would not be a reasonable step for a trustee to accept lands that are a liability and constitute a drain on trust assets.

Finally, under current law, the Board is without funds or authority to reacquire the property from the buyer. Neb. Rev. Stat. § 79-1035.02 (2014) requires that income funds be placed in the temporary school fund which are then distributed to the common schools. The entire balance of the temporary school fund shall be used exclusively for the maintenance and support of the common schools. The expenditure of the Trust's regular income is governed by Neb. Rev. Stat. §§ 72-232.02, 77- 232.03, 77-232.04, 77-232.06, 77-232.07, and 77-240.08 (2018). None of these sections authorize the Board to expend funds to reacquire school lands.

Neb. Rev. Stat. § 79-1035.01 (2014) requires that proceeds from land sales be deposited in the permanent school fund and invested in perpetuity in trust for the benefit of the common schools. Regarding the deposit of sale proceeds in the permanent fund, that issue is governed by Neb. Rev. Stat. §§ 72-259(2) and 72-268 (2018). There are no statutes empowering

the Board to withdraw funds from the permanent fund to reacquire school lands. Thus, the Board is without authority to use the money from either fund to reacquire the land from the buyer.

### CONCLUSION

For the reasons stated above, we conclude that LB 711 is unconstitutional in several respects. The proposed legislation would encroach on the Board's duties as trustee to administer the school lands. As written, LB 711 would violate the fiduciary duties placed on the state by the constitution.

Sincerely yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) John L. Jelkin  
Assistant Attorney General

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

25-421-30

### UNANIMOUS CONSENT - Add Cointroducer(s)

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

Senator Aguilar name added to LB773.  
Senator Jacobson name added to LB783.  
Senator J. Cavanaugh name added to LB921.  
Senator M. Hansen name added to LB1173.  
Senator Blood name added to LB1241.  
Senator Bostar name added to LB1241.  
Senator M. Hansen name added to LR305.

### VISITOR(S)

Visitor to the Chamber was Don Lease, Banner County.

The Doctor of the Day was Dr. Theresa Hatcher of Omaha

**ADJOURNMENT**

At 11:56 a.m., on a motion by Senator McCollister, the Legislature adjourned until 9:00 a.m., Tuesday, March 1, 2022.

Patrick J. O'Donnell  
Clerk of the Legislature