

POTENTIAL LEGISLATIVE PROPOSALS FOR 2020

The County Board is reviewing potential topics for interim legislative studies following the conclusion of the 2019 legislative session. The following list represents potential legislative topics which have been identified for possible introduction during the 2020 session, and which may be appropriate topics for interim review.

1. Restrict Appeals from Decisions on Special/Conditional Permits to the Petition in Error Process Under Neb. Rev. Stat. §25-1901

The Nebraska Supreme Court has ruled there are two procedures under which an appeal can be made to the district court from a decision rendered by a county board on a zoning request for a special or conditional permit: 1) a petition in error under §25-1901; or 2) an appeal pursuant to §25-1937. See Olmer v. Madison County Bd. of Comm'rs, 275 Neb. 852, 752 N.W. 2d 124. When reviewing a decision under a petition in error the district court determines whether the county board acted within its jurisdiction and whether the decision rendered is supported by sufficient relevant evidence. Under §25-1937, the district court decides the appeal de novo, which requires the district court to conduct a trial to produce a new record on the appeal, and then rule independently based on that record. Under this procedure the district court may be required to conduct a new public hearing to create a record. The Supreme Court noted the potential burden that could be placed on the district court for appeals conducted under §25-1937. The simple solution is to amend §23-114.01(5) to provide that all appeals are made pursuant to the petition in error process under §25-1901.

2. Provide County Engineer with Statutory Authority to Tow Vehicles Stranded on County Roads During Snow Storms

During snow storms motor vehicles can get stuck and abandoned by the owners, which interferes with the County Engineer's snow removal operations. Under existing law, only the Sheriff's Office has authority to ticket an abandoned vehicle and have it towed. Providing legislative authority to the Engineer to tow such abandoned vehicles would expedite the snow removal process on County roads.

3. Amend the Open Meetings Act to Allow Director Evaluations to Be Performed in Closed Session

The Lancaster County Board conducts annual evaluations of its appointed directors at the Board's Thursday Staff Meetings. Neb. Rev. Stat. §84-1410(1)(d) should be amended to allow the Board to conduct director evaluations in closed session, regardless of whether a closed session is necessary to prevent needless injury to the reputation of the person being evaluated.

4. Authorize a Reasonable Fee for the Filing of a Petition to Vacate or Abandon a County Public Road under Neb. Rev. Stat. §39-1723

Counties are not authorized to charge a fee for a petition filed under §39-1723 requesting the vacation or abandonment of a county road. When a petition is filed the county is obligated to perform a study as defined under §39-1722. The vacation study required to be conducted can be costly, and counties should be allowed to charge a reasonable filing fee for the petition to help cover the cost of the study.

5. Clarify the Meaning of Public Purpose under Neb. Rev. Stat. §77-202(1)(a)

§77-202(1)(a) provides that property of the state and its subdivisions is exempt from property taxes to the extent it is used for a public purpose. Although an extensive definition of public purpose is provided under §77-202(1)(a)(ii), recent cases decided by the Lancaster County Board of Equalization have shown that the definition public purpose is vague and should be further clarified.

6. Amend the Mental Health Commitment Act to Allow Sharing of Mental Health Information Among Providers and Law Enforcement Agencies

The Nebraska Mental Health Commitment Act places strict limitations on the release of a person's mental health records. See Neb. Rev. Stat. §71-961. These confidentiality requirements restrict the ability of providers and law enforcement to share mental health information. The inability to share information can interfere with the continuity of care for the subject and the ability of law enforcement to protect the public safety. §71-961 should be broadened to allow providers to share mental health records when it will assist in providing better continuity of care to the individual or when the safety of the individual or the public can be enhanced by allowing law enforcement agencies to share such information.

7. Enforcement of Noxious Weed Violations on Out-Lots with 0 Value

As a by-product of the subdivision process, out-lots are sometimes created which have little or no independent value. Maintenance of the out-lots usually falls to a home owner association created in conjunction with the subdivision. If noxious weed assessments are levied against a 0-value out-lot, the only remedy for collection is through foreclosure or a treasurer's deed. Like property taxes, special assessments are not personal obligations of the property owner. Since the property has no value, it is unlikely a buyer will bid on the property, and the certificate for the weed assessment will go unpaid. A potential solution to this problem is to make the special assessment for weed violations applicable to every individual lot subject to the authority of the home owner association, with joint and several liability for the weed assessment.