



**2020 SESSION  
FINAL REPORT**



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August 20th, 2020

To: Lancaster County Board of Commissioners

From: Joseph Kohout, Brennen Miller

RE: Final Report for the 2020 Legislative Session

Unprecedented. That word has been used to sum up many parts this year for us all, and it should be of no surprise that it has come to define the 2020 session of the Nebraska Legislature. In January, when senators returned to the snow capped capitol building they found a calmer body than that of the 2019 session, which was fueled by emotion, politics, and tension. Instead, members welcomed a projected budget surplus, and while there was continued tension and stalemate on what route major issues like property taxes and business incentives would take, progress in the 2020 session was underway quickly. Making it through hearings, and with negotiations ongoing on the 'Big 3' issues, session seemed to have bumps ahead, but the short session was believed to be just that: short.

However all changed in early March as COVID-19 reached Nebraska, and as the first community spread cases were reported. Speaker Jim Scheer, and Senator Hilgers, Chair of the Executive Board of the Legislature, announced that the body would suspend the session for an indefinite period, eventually lasting until late July. During this time, negotiations on the 'Big 3' items that would require quick action when the session eventually returned were ongoing, and while the focus of some remained on the already failed LB1106, others came together to design a package in one bill which would again include all three issues. This measure, which was eventually put into LB1107 adopts property tax relief, the ImagiNE Act, which replaces the expiring Nebraska Advantage Act for business incentives, and establishes the ability for the state to appropriate future funds towards the NExT Project, a historic economic development project on the campus of the University of Nebraska Medical Center. This measure, while facing opposition debate when the body returned, eventually passed with a large majority of members before being signed into law by Governor Pete Ricketts on August 17th. The session also held major successes for mental health services in our state, economic development, and produced a balanced budget with no gubernatorial vetoes.

While the session began with less emotion than that of 2019, it returned in the closing days of the 2020 session, with tension boiling over on numerous topics. From property taxes, to state actions towards the fight with COVID-19, to protections to meat packing, police reforms, and public health, emotions rose as did personal attacks between individual members. It is likely that these tensions will continue towards the 2021 session which will convene in January. What has to be seen however is what new personalities join the body with the coming November elections. Those new members will not only bring new ways of working with their colleagues, but new sets of priorities. What can be said for sure is that the invisible enemy we all face together will continue to impact our lives, and with it come many unknowns that the members of the 2021 session may face.

Through this unprecedented time however, we believe that we found success during the 2020 session, which we look forward to carrying through the interim, and into 2021. We thank you for your trust in us to represent you before our state government, and as always stand by willing to answer any questions you may have. Again, thank you.

Joseph D. Kohout  
Managing Partner

Brennen L. Miller  
Associate



## LANCASTER COUNTY SENATOR PRIORITIES

Members of the Lancaster County delegation of senators identified their personal priority bills earlier in the 2020 session. Below, please find the final status of these bills. Please note that all bills not having advanced to the governor for his approval or veto were indefinitely postponed on a procedural motion during the final day of the session.

**Sen. Brandt:** LB996 (Brandt) Create the Broadband Data Improvement Program – APPROVED BY THE GOVERNOR ON JULY 24TH, 2020

**Sen. Dorn:** LB1014 (Lindstrom) Change provisions of the Multiple Employer Welfare Arrangement Act – APPROVED BY THE GOVERNOR ON JULY 24TH, 2020

**Sen. Geist:** LB814 (Geist) Prohibit dismemberment abortion – APPROVED BY THE GOVERNOR ON AUGUST 15TH, 2020

**Sen. Hansen:** LB881 (Hansen, M.) Prohibit deductions of fines from bonds – APPROVED BY THE GOVERNOR ON AUGUST 7TH, 2020. We would note that provisions of LB282 – bail changes - have been incorporated into the bill by virtue of AM2628 adopted on General File.

**Sen. Morfeld:** LB997 (Morfeld) Adopt the Out-of-Network Emergency Medical Care Act – APPROVED BY THE GOVERNOR ON JULY 24TH, 2020

**Sen. Pansing-Brooks:** LB627 (Pansing-Brooks) [NO NEW ACTION] Prohibit discrimination based upon sexual orientation and gender identity –

GENERAL FILE. We would note that Senator Pansing-Brooks LR466 which calls on the legislature to affirm the U.S. Supreme Court decision on Bostock v. Clayton County which determined that employers that fire an individual merely for being gay or transgender violates the Civil Rights Act was adopted by the legislature on August 12th, 2020

**Sen. Wishart:** LB1052 (Wishart) Change provisions regarding the preferred drug list under the Medical Assistance Act – APPROVED BY THE GOVERNOR ON AUGUST 7th, , 2020.



## INTERIM STUDIES INTRODUCED ON BEHALF OF LANCASTER COUNTY

Below is a list of each of the interim studies for Lancaster County as recorded by the Clerk of the Legislature

**LR367 (Dorn)** Interim study to examine set fee and fine amounts and the costs experienced by county governments when administering the associated services

**LR379 (Geist)** Interim study to examine whether continuity of care and safety for individuals and the public can be enhanced by allowing mental health providers to coordinate with law enforcement.

**LR388 (Hansen, M.)** Interim study to examine the coordination of efforts to find alternatives to incarceration for offenses that involve operating a motor vehicle under the influence of alcohol or other drugs (24/7)

**LR453 (Geist)** Interim study to examine barriers to obtaining state identification that may exist for inmates in county correctional facilities who are in the process of being released or who have been recently released

**LR455 (Wishart)** Interim study to examine the burden on counties with regard to the costs paid for office space used by the Dept. of Health and Human Services for the administration of public health programs

Also attached to this report, please find a list of those interim study resolutions that we believe are of interest to Lancaster County. As you review these studies, please do not hesitate to contact us with any questions you may have, or to add or remove any additional studies that you note.



## **LANCASTER COUNTY PRIORITIES**

### **LB247 (Bolz) Adopt the Advance Mental Health Care Directives Act.**

APPROVED BY THE GOVERNOR ON AUGUST 6<sup>TH</sup>, 2020

Adopt the Advance Mental Health Care Directives Act under LB247. Introduced by Senator Bolz during the 2019 session, the bill was advanced by the Judiciary Committee with an amendment, AM2206, that addressed concerns raised by parties at the hearing and after the hearing.

LB247 was designated as a Speaker priority bill on February 25, 2020. On Wednesday, March 4, 2020, the Legislature debated the bill and with the exception of a couple of questions from Senators Dorn and Clements, the bill moved easily to Select File. We worked on a vote count and detected no issues in the two days leading up to debate. A procedural amendment was filed on LB247 that was adopted on Select File.

On July 20, 2020, LB247 was advanced to Enrollment and Review Final for Engrossment. On July 23, 2020, the bill was placed on Final Reading. On July 31, 2020, the bill was passed and presented to the Governor.

### **LB267 (Bolz) Provide a duty for the county board relating to deficient bridges and authorize a tax levy.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

This would allow for financing of County Bridges under Neb. Rev. Stat. 23-120(3)(b). Introduced during the 2019 session by Senator Bolz, the bill was advanced to General File unanimously from the Government, Military and Veterans Affairs Committee.

The bill was debated for approximately 2.5 hours on February 10th, and was the subject of a filibuster by Senators who oppose any increase in the property tax. It is important to note that this was the first bill that has hit the floor that deals with giving authority to a local political subdivision to utilize property tax increase for a specific purpose. , Senator Andrew LaGrone filed an amendment that is the sum and substance of LB20 that would replace the bonding provisions of the bill. The bill did not come back up for debate prior to the body adjourning for the year.

### **LB335 (M. Hansen) Authorize a 24/7 sobriety program permit for operating a motor vehicle as a condition of bail.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

Statutory Changes to Implement Statewide 24/7 Sobriety Program. Introduced by Senator Matt Hansen during the 2019 session, LB335 currently sits in the Judiciary Committee. The interim brought conversations with opposition, which brought fruitful developments towards producing an amendment. The bill will did not advance this year; and it will need to be worked on during the interim.

### **Amend the Mental Health Commitment Act to allow Sharing of Mental Health Information Among Providers and Law Enforcement Agencies.**

INTERIM STUDY INTRODUCED TO CONTINUE THIS PRIORITY



After numerous meetings with stakeholders over the 2019 interim, produced by LR183 introduced by Senator Geist, the initial draft and subsequent revisions were received back from the revisers' office and forwarded to interested parties for review. During her discussions with the State Patrol, it became clear to Senator Geist that the Patrol would be placing a fiscal note on the bill and also be appearing in opposition. Too, the Patrol believed it necessary to obtain an Attorney General's opinion on the bill regarding the release of records. As such, Senator Geist indicated that she would hold off on introduction of the bill in 2020 as she believed that the workload of the Judiciary Committee would not provide the necessary bandwidth to get the bill passed.

### **BILLS IDENTIFIED BY DEPARTMENT HEADS & ELECTED OFFICIALS**

#### **Kerry Eagan: LB1148 (Vargas) Change provisions relating to the Office of Juvenile Services and the placement of juveniles at youth rehabilitation and treatment centers.**

APPROVED BY THE GOVERNOR ON AUGUST 6<sup>TH</sup>, 2020

The 2019 bill was to be a response to the issues raised following action by the Department in 2019 to house individuals at the Lancaster County Youth detention facility. It included provisions that would prohibit the use of the secure detention facility by the state on page 18 at lines 5 – 8. The hearing on this bill occurred on Thursday, February 6, 2020. Those who appeared in support included Juliet Summers from Voices for Children, Christine Henningsen from Nebraska Youth Advocates, and Bri McClarty from the Dodge County Attorney's Office. Those in opposition included Danette Smith, the CEO of the Nebraska Department of Health and Human Services. A letter was sent regarding our concerns, but it was not noted for the record as it was received the morning of the hearing.

Senator Hilkemann designated LB1148 as his priority on February 21, 2020. On February 27, 2020, LB1148 was placed on General File with AM2637, introduced by the Judiciary Committee. On March 3, 2020, Senator Lathrop filed AM2666. On page 33, lines 24-28 of AM2637 language was included that states that a secure detention facility shall not be utilized as a youth rehabilitation and treatment center.

AM2637 (Judiciary), AM2810 (Lathrop), AM2666 (Lathrop) were all adopted. AM2810 struck the language noted in above in AM2637 which we believed could have an adverse affect on the use of the secure detention facility could not be utilized as a YRTC.

AM3075 (Vargas) was adopted on July 20, 2020. That same day, the bill advanced to Enrollment and Review for Engrossment. On July 22, 2020, the bill was advanced to Final Reading. LB1148 was passed and presented to the Governor on July 31, 2020.

#### **Bob Walla: LB1218 (Wayne) Adopt the Nebraska Historically Underutilized Business Program Act.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

LB 1218 is the Nebraska Historically Underutilized Business Program Act. The purpose of the act is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state and local procurement and contracting. Section 3 defines terms for the act.

Section 4 allows for businesses to become certified as an historically underutilized business (HUB) and retain that certification for five years, as long as the business' certification status does



not change. The Department of Labor and Department of Transportation may conduct any necessary investigation to determine qualifications for the program. A business must complete an annual affidavit of certification and may recertify up to three times, for a maximum of fifteen years. The Department of Labor shall maintain a list of all businesses that have been certified and the nature of the business along with its capacity to perform the work.

Section 5 requires each constitutional office, state agency, and political subdivision to make a good faith effort to utilize HUBs in contracts for construction, services, and commodities purchases. The statewide HUB goals for the procurement categories are as follows: 10% for heavy construction other than building contracts; 20% for all building construction, including general contractors and operative builders contracts; 20% for all special trade construction contracts; 10% for professional services contracts 10% for all other services contracts; and 10% for commodities contracts.

Government entities shall establish their own specific HUB goals for each procurement category. At a minimum, the statewide HUB goals should be each government entity's starting point for establishing specific goals.

Section 6 sets forth priorities that, if there is an adequate number of qualified and certified HUBs, first priority shall be given to Tier 1 HUBs; and then Tier II HUBs, followed by Tier III HUBs. Any business receiving a sales and use tax incentive from this state shall receive an additional 1% of such sales and use tax incentive for utilizing a Tier I HUB. 0.5% for utilizing a Tier II or Tier III HUB. Total incentives awarded shall not exceed five million dollars for all businesses. Each government entity that considers entering into a contract with an expected value of one hundred thousand dollars or more over the life of the contract shall determine whether subcontracting opportunities are probable. If so, the government entity shall require that each bid, proposal, offer, or other applicable expression of interest include a HUB subcontracting plan as set forth in section 5.

Section 9 requires the Department of Labor to offer HUBs assistance and training regarding state procurement procedures. A government entity with a biennial budget that exceeds ten million dollars in contracts shall designate a staff member to service as the HUB coordinator for the agency. The position of coordinator must be at least equal to the position of procurement director.

Section 10 requires the Department of Labor to compile, in the most cost-efficient form, a directory of businesses certified as HUBs. The directory shall be updated and provide access electronically or in another acceptable form to each government entity.

Section 11 requires the Department of Labor to design a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract.

Section 15 allows the Director of Administrative Services to adopt and promulgate rules and regulations to administer the Nebraska Historically Underutilized Business Program Act.

The bill was heard by the Government, Military and Veterans Affairs Committee on February 13, 2020. Senator Wayne designated the bill as his priority on February 21, 2020.

Doug Carlson, Deputy Director Department of Administrative Services, testified against the bill and argued that the bill will limit competition and drive up costs.



There were discussions to limit the scope of the bill to those political subdivisions with an annual budget exceeding \$50 Million. Placed on General File on August 4<sup>th</sup>, 2020 with AM3242 which was the substance of the ImagiNE Small Business and Urban Revitalization Act. This same amendment was filed as an amendment to LB1107 as well. The bill was not debated this session

**Brad Johnson: LB1171 (Cavanaugh) Change provisions under the Healthy Pregnancies for Incarcerated Women Act.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

The bill expresses the strong intent for the Legislature to keep mothers and infants together in correctional settings. The bill would require the construction of a nursery at the Lancaster County Correctional Facility to allow a mother to lactate and express and provide that milk to their infant. Brad prepared a fiscal note for the bill that indicated costs for the construction of a new wing of our current facility would cost in excess of \$10 Million. Commissioner Flowerday has discussed the cost with Senator Cavanaugh while at the capitol on ,February 10th. The hearing on this bill occurred on February 12, 2020.

During testimony, Senator Cavanaugh offered AM2405 which would limit the provisions of the bill to only the expression of milk as applicable to counties and the provisions dealing with the construction of a nursery to only state facilities. We do have a concern that it may be applicable to YRTC Lincoln; however, we believe there may be another amendment that may address this as well. Those who appeared on the bill included Juliet Summers from Voices for Children, Jasmine Harris with Rise – all in support. In opposition, Scott Frakes with the Department of Correctional Services, Steven Greene with Division of Children and Family Services and Elaine Menzel in a neutral capacity.

**Brad Johnson: LB230 (Pansing-Brooks) Provide for room confinement of juveniles as prescribed. NEUTRAL.**

APPROVED BY THE GOVERNOR ON FEBARURY 12<sup>TH</sup>, 2020

Under LB230, additional rules are mandated to juvenile facilities regarding placement in room confinement of a juvenile in a juvenile facility specifically, room confinement of a juvenile for longer than one hour during a twenty-four-hour period shall be documented and approved in writing by a supervisor in the juvenile facility. It is the intent and purpose of this rule shall not be avoided by the use of consecutive periods of room confinement. New rules relating to confinement are outlined in the bill also, for example, notice to the juvenile's parent or guardian, rooms having adequate lighting, amongst others.

When a similar measure was introduced in 2017, Commissioners Brinkman and Schorr met with Senator Pansing-Brooks to discuss the bill. The Board did request that we meet with Senator Pansing-Brooks to discuss a requirement in the bill requiring continuous monitoring. She indicated that she is willing to clarify the record on the continuous monitoring language of the bill to mean electronic or every 15 minutes.

The Judiciary Committee advanced LB230 with a committee amendment attached (AM450). The bill was not prioritized during the 2019 Session. The bill was debated on General File and AM2121 was adopted on Select File. The bill was subsequently moved to Final Reading. The bill passed on Final Reading on February 6, 2020.



**Joe Nigro: LB1007 (Hansen, M.) Change provisions relating to competency to stand trial and be sentenced.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

The bill makes significant changes to the competency provisions and individuals charged with crimes. In some cases, it would require dismissal by the court and order to competency restoration. In other cases, it would require a competency restoration. The hearing occurred on Friday, January 31, 2020 and testimony was offered in support by Joe Nigro and opposition testimony was offered by Katie Zulkoski on behalf of the County Attorneys Association.

The provisions of this bill were included in LB881 at sections 7, 8 and 9. The amended version of this would reduce the time between court reviews of a person's competency to stand trial to every sixty days and also creates a process for a defendant to move to dismiss the charges if they will not be restored to competency in the reasonably foreseeable future. LB881 was signed by the Governor on August 7, 2020.

**Joe Nigro: LB1017 (Geist) Appropriate funds to the Supreme Court. SUPPORT.**

PLACED IN BUDGET. APPROVED BY GOVERNOR RICKETTS ON AUGUST 6<sup>TH</sup>, 2020

Appropriates \$617,788 in FY2020-21, \$767,788 in FY2021-22 and 767,788 in FY2022-23 to the Supreme Court to provide for a pilot program for a mental health, problem solving court. Hearing occurred on Wednesday, February 05, 2020 and support testimony was offered by Danielle Conrad on behalf of the ACLU, Corey Steele on behalf of the Supreme Court, Sean Flowerday on behalf of Lancaster County and Liz Neeley on behalf of the Nebraska State Bar Association. If the Appropriations Committee takes action on the bill, they would likely include it in their budget. LB1017 was heard by the Appropriations Committee on February 5, 2020.

We are pleased to report that the Appropriations Committee included the provisions of this bill in its full amount in the budget recommendations. LB1008 and LB1009, the budget bills, were signed by the Governor.

**Sara Hoyle: LB1095 (McDonnell) Authorize counties containing a city of the metropolitan class to establish juvenile justice programs and services.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

The bill would give a general, specific power to counties containing a city of the metropolitan class (Douglas) the ability to establish specific juvenile justice programs and simultaneously give them ordinance authority to do the same. Douglas County brought this concept up at tri-county. The hearing occurred on Thursday, February 6, 2020. The bill was not advanced during the 2020 session.

**Kerry Eagan: LB941 (Hunt) Create the Nebraska Youth in Care Bill of Rights.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

Creates the Nebraska Youth in Care Bill of Rights; It is the policy of the Legislature to ensure that the quality of care provided to children placed in foster family homes, juvenile facilities, or child-care institutions is as close as possible to the care a child would receive in a family setting.

This is accomplished by honest and clear communication and information to help them understand the system or systems in which they are involved, to provide consistent opportunities



for such children to have their voices heard in their cases, to successfully reunify children with their families or help such children find permanency, to support lifelong family connections for such children, to place such children in an environment accepting of their cultures and beliefs, and to provide such children with the skills, knowledge, and resources they need to become successful adults. The hearing occurred on Thursday, January 30, 2020. A significant amount of testimony was offered on behalf of several organizations. Opposition testimony was offered by NACO. The bill was not advanced during the 2020 session.

**Kerry Eagan: LB1117 (Pansing-Brooks) Change sentencing provisions for crimes committed by a person under twenty-one years of age and change provisions relating to jurisdiction over juveniles.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

The bill makes a series of changes to the provisions at the age of individuals could be for purposes conviction and the minimum and maximum sentences. The bill, most significantly for Lancaster County, would allow for county court and juvenile court to take jurisdiction of cases where the age of the person at the time of the commission of the crime was 16 or 17 years of age.

The bill was heard by the Judiciary Committee on February 13, 2020. Juliet Summers, representing Voices of Hope Nebraska, testified in support of the bill. Summers argued that the bill would allow youth to receive age-appropriate, evidence-based treatment. Jim Maguire, president of the Nebraska Fraternal Order of Police, countered this point in his opposing testimony. Maguire stated that severe crimes require severe punishments and that he was unconvinced that individuals of 18, 19, or 20 years of age don't know that they cannot kill someone. The bill was not advanced by the committee

**LB1057 (Lowe) Change provisions regarding appeals of certain zoning decisions by county planning commissions and county boards. SUPPORT.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

The bill is introduced by Senator Lowe at the request of NACO but originated from Lancaster County. The hearing occurred on Wednesday, February 5, 2020 before the Government, Military & Veterans Affairs Committee. Those who appeared in support included Jon Cannon on behalf of NACO and Kerry Eagan on behalf of Lancaster County. Those in opposition included David Levy on behalf of the Nebraska State Bar Association and Ansley Fellers on behalf of the Farm Bureau.

**LB999 (Wayne) Require cities and villages to pay for appointed counsel for prosecutions and adjudications for violation of city and village ordinances. MONITOR.**

INDEFINITELY POSTPONED ON A PROCEDURAL MOTION

This bill requires a city or village to reimburse the public defender or contracting attorney in a prosecution for a violation of a city or village ordinance. This includes the proportionate share of the appointed counsel's salary, any expenses, trial expenses, and expert witness fees. In adjudication for a violation of a city or village ordinance, the governing body of such city or village shall allow the account, bill, or claim presented by any attorney or guardian ad litem for services performed in the amount determined by the court. During closing on the bill, Senator Justin Wayne indicated that he seeks applicability of the bill to only the three largest counties. The bill was not advanced by the committee.



**LB1105 (Hansen, B) Change audit provisions under the Medical Assistance Act.**

APPROVED BY THE GOVERNOR ON AUGUST 10<sup>TH</sup>, 2020

The bill makes it the intent of the legislature to establish and maintain integrity procedures and guidelines for the medical assistance program that meet minimum federal requirements and that coordinate with federal program integrity efforts in order to provide a system that encourages efficient and effective provision of services by Nebraska providers for the medical assistance program.

Allows for one or more program integrity contractors to be used to promote the integrity of the medical assistance program, assist with investigations and recovery audits, or to investigate the occurrence of fraud, waste, or abuse. Requires that a program integrity contractor retained by the department or the federal Centers for Medicare and Medicaid Services work with the department at the start of a recovery audit to review this section and section 68-973 and any other relevant state policies, procedures, regulations, and guidelines regarding program integrity audits.

The program integrity contractor is to comply with audit procedures. A copy of the statutes, policies, and procedures shall be specifically maintained in the audit records to support the audit findings. Defines program integrity audit as an audit conducted by the federal Centers for Medicare and Medicaid Services, the department, or the federal Centers for Medicare and Medicaid Services with the coordination and cooperation of the department.

Defines program integrity contractor as private entities with which the department or the federal Centers for Medicare and Medicaid Services contracts to carry out integrity responsibilities under the medical assistance program, including, but not limited to, recovery audits, integrity audits, and unified program integrity audits, in order to identify underpayments and overpayments, and recoup overpayments.

The bill was heard by the Health and Human Services Committee on February 19, 2020. Testifying in support of the bill was District 5 Commissioner, Rick Vest. Commissioner Vest stated that without the bill, needless pain will continue. Vest also argued that providers need to be treated fairly. Also supporting the bill were Marty Killeen (a pediatric dentist), Ben Reimer (a dental resident), Jessica Meeske (a pediatric dentist) and Wendy Meginnis. Opposing the bill was Jeremy Brunssen, Interim Director for the Division of Medicaid and Long-term Care. Brunssen stated that the bill is not protecting all parties.

The amended provisions of LB1105 were amended into LB956 via AM2827. LB956 is Senator Walz's priority bill. LB956 was passed by the Legislature on a vote of 47-0-2 and sent to the Governor on August 4, 2020.



We thank you for your trust in Kissel, Kohout, ES Associates and our services before Nebraska's state government. Our firm works tirelessly in order to promote and protect your interests, and the tremendous work being done therein. The opportunity to work on behalf of you is not just a job, it is a personal passion for our entire team.

This concludes our report on the 2020 session

# THANK YOU

**Kissel, Kohout  
ES Associates LLC**

