

SUMMARY: LEGAL ANALYSIS OF NEBRASKA LEGISLATIVE BILL 75

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Nebraska Legislative Bill 75 would restore voting rights to citizens with past criminal convictions upon the completion of their sentence. Under current Nebraska law, voting rights are automatically restored two years after a citizen fully completes their felony sentence. LB 75 would eliminate that waiting period.

The Legislature has the authority to enact LB 75.

Per the Nebraska Supreme Court, “the Legislature may legislate upon any subject not inhibited by the Constitution.”¹ Therefore, the Nebraska Legislature would not require expressly granted authority to enact LB 75, only the absence of a constitutional restriction. The Constitution does not mention restoration of voting rights in particular. Civil rights restoration is mentioned in article VI, § 2, article XV, § 2, and article XV, § 1, but the language in these provisions contains no express restriction curtailing the legislature nor does it assign the function to any branch of government. Moreover, before the 2005 passage of the current automatic restoration statute, the Supreme Court acknowledged that voting rights restoration has been provided for statutorily.²

LB 75 does not encroach on the executive’s power to issue commutations and pardons.

The Constitution blocks any branch of government from exercising another branch’s powers, and empowers the executive branch’s Board of Pardons to “grant respites, reprieves, pardons, or commutations.” The Supreme Court has identified at least two circumstances where the Legislature would encroach on those powers: if a statute commutes a sentence by substituting a milder punishment; or if a statute, like a pardon, nullifies all of a conviction’s legal consequences.

LB 75 does not commute a sentence. The Supreme Court held in a 1996 case that a statute was unlawful because it removed a penalty that “punished” a defendant and was “part of the judgment of the conviction.”³ L.B. 75’s restoration of voting rights addresses a consequence of a criminal conviction, but not a punishment in itself. The legal mechanisms that create disenfranchisement in Nebraska law are separate from the punishments which characterize a criminal sentence.

LB 75 is not a pardon. The Supreme Court in a 2002 case upheld a statute that allowed courts to set aside certain convictions because the law “[did] not nullify all of the legal consequences of the crime committed ... as occurs when a pardon is granted.”⁴ Like that law, L.B. 75 “does not nullify *all*” of a crime’s legal consequences. Unlike a pardon, the bill would address only the right to vote. People who get the right to vote under L.B. 75 would still face the other consequences of their conviction, such as the inability to serve on a jury.

The Legislature would have the authority to enact LB 75 and restore voting rights because such legislation is not expressly barred by the state Constitution. LB 75 is also not prohibited under the state Supreme Court’s rules for when a statute encroaches on the commutation and pardon powers.

¹ Pony Lake Sch. Dist. 30 v. State Comm. for Reorganization of Sch. Dists., 271 Neb. 173, 181, 710 N.W.2d 609, 618 (2006). See City of N. Platte v. Tilgner 282 Neb. 328, 345, 803 N.W.2d 469, 485 (2011); State *ex rel.* Stenberg v. Moore, 249 Neb. 589., 595, 544 N.W.2d 344, 349.

² Ways v. Shively, 264 Neb. 250, 255, 646 N.W.2d 621,626 (2002) (noting that “[r]estoration of the right to vote is implemented through statute” while elsewhere interpreting Nebraska statute at issue not to have restored voting rights to individual who had completed sentence, and also declining to address constitutional issues not raised below).

³ State v. Bainbridge, 249 Neb. 260, 543 N.W.2d 154 (1996).

⁴ State v. Spady, 264 Neb. 99, 645 N.W.2d 539 (2002).