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TO: Members of the Surrogacy Commission

FROM: Kathleen Pontius, Senate Counsel (651/296-4394)

DATE: November 21, 2016

RE: Key Recommendation Options Included in 2008 SF 2965 (vetoed bill)

During the last hearing, Representative Lesch asked how the 2008 gestational carrier bill that was vetoed by Governor Pawlenty compares with the list of issues and recommendation options currently under consideration by the commission. Following is a list of key issues and how they were addressed in the 2008 bill.

- 1) Established statutory framework governing gestational carrier arrangements and contracts, including requirements governing the gestational carrier and intended parents and contract requirements.
- 2) Gestational carrier arrangement must require at least one intended parent to contribute gamete and no genetic contribution from gestational carrier.
- 3) No background study requirements beyond basic psychological evaluation of intended parents.
- 4) Did not include residency requirements or address choice of law issues.
- 5) Required medical need for gestational carrier evidence by physician's affidavit (medical need was not defined).
- 6) Allowed compensation of gestational carrier beyond expenses (defined as payment of valuable consideration for time, effort, pain, or health risks in excess of reasonable medical and ancillary costs).
- 7) Didn't regulate activities of surrogacy agencies.
- 8) Attorney certification process (prior to or within 24 hours of birth) used to have all records reflect only names of intended parents; no special provisions for pre-birth court orders.

- 9) In event of noncompliance (breach of a contract term or failure to comply with statutory requirements, including use of a gestational carrier who is genetically related to the child), court is to determine rights and obligations based solely on evidence of original intent.
- 10) No specific performance remedy for breach by carrier of contract term that requires her to be impregnated.
- 11) Except as provided in the contract, parties entitled to all remedies available at law or equity.