

TWENTY-SEVENTH DAY - FEBRUARY 12, 2007

LEGISLATIVE JOURNAL

**ONE HUNDREDTH LEGISLATURE
FIRST SESSION**

TWENTY-SEVENTH DAY

Legislative Chamber, Lincoln, Nebraska
Monday, February 12, 2007

PRAYER

The prayer was offered by Senator McDonald.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senator Dierks who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-sixth day was approved.

**COMMITTEE REPORTS
Health and Human Services**

LEGISLATIVE BILL 247. Placed on General File.

LEGISLATIVE BILL 463. Placed on General File - Com AM302.
AM302

- 1 1. On page 59, line 13, reinstate the stricken "(1)";
- 2 in line 20 reinstate the stricken "(2) A person"; reinstate the
- 3 stricken matter beginning with "whose" in line 20 through "may"
- 4 in line 22; in line 22 after the stricken "recommend" insert
- 5 "apply for", reinstate the stricken "reinstatement", and after the
- 6 reinstated "reinstatement" insert "of the credential"; reinstate
- 7 the stricken matter beginning with "after" in line 22 through
- 8 line 23; and in line 23 after the reinstated period insert "The
- 9 application shall include such information as may be required by
- 10 the department.".
- 11 2. On page 123, line 2, after "times" insert ", except
- 12 that at any time after the expiration of two years, application may
- 13 be made for reinstatement pursuant to section 48 of this act".
- 14 3. On page 181, line 12, strike "licensed as".

15 4. On page 238, line 9, after "specialist" insert "or,
 16 when such certification is not available, an alternative method of
 17 competency assessment by any means approved by the board".

18 5. On page 408, line 9, after the stricken "(7)" insert
 19 "(4)"; reinstate the stricken matter beginning with "Authorize" in
 20 line 9 through line 14; in line 15 strike "(4)" and insert "(5)";
 21 in line 20 strike "(5)" and insert "(6)"; and in line 23 strike
 22 "(6)" and insert "(7)".

23 6. On page 409, line 7, strike "(7)" and insert "(8)";
 1 and in line 12 strike "(8)" and insert "(9)".

2 7. On page 410, line 2, strike "(9)" and insert "(10)";
 3 in line 5 strike "(10)" and insert "(11)"; and in line 11 strike
 4 "(11)" and insert "(12)".

5 8. On page 420, line 16, strike "(6)" and insert "(7)".

6 9. On page 705, lines 4 through 6, strike the new
 7 matter and reinstate the stricken matter; and in line 6 after the
 8 reinstated "revoked" insert "as provided in section 48 of this
 9 act".

10 10. On page 782, line 2, after "a" insert "licensed";
 11 in line 9 strike the second "or" and insert an underscored comma
 12 and after "Columbia" insert ", or a Canadian province"; in line 16
 13 after the second "a" insert "licensed"; and in line 18 strike "or"
 14 and insert an underscored comma and after "Columbia" insert ", or a
 15 Canadian province".

(Signed) Joel Johnson, Chairperson

Transportation and Telecommunications

LEGISLATIVE BILL 358. Placed on General File - Com AM214.
 AM214

1 1. Strike original section 11 and insert the following
 2 new sections:

3 Sec. 11. Section 75-302, Revised Statutes Cumulative
 4 Supplement, 2006, is amended to read:

5 75-302 For purposes of sections 75-301 to 75-322 and in
 6 all rules and regulations adopted and promulgated by the commission
 7 pursuant to such sections, unless the context otherwise requires:

8 (1) Carrier enforcement division means the carrier
 9 enforcement division of the Nebraska State Patrol or the Nebraska
 10 State Patrol;

11 (2) Certificate means a certificate of public convenience
 12 and necessity issued under Chapter 75, article 3, to common
 13 carriers by motor vehicle;

14 (3) Civil penalty means any monetary penalty assessed by
 15 the commission or carrier enforcement division due to a violation
 16 of Chapter 75, article 3, or section 75-126 as such section applies
 17 to any person or carrier specified in Chapter 75, article 3; any
 18 term, condition, or limitation of any certificate or permit issued

19 pursuant to Chapter 75, article 3; or any rule, regulation, or
20 order of the commission, the Division of Motor Carrier Services,
21 or the carrier enforcement division issued pursuant to Chapter 75,
22 article 3;

23 (4) Commission means the Public Service Commission;

1 (5) Common carrier means any person who or which
2 undertakes to transport passengers or household goods for the
3 general public in intrastate commerce by motor vehicle for hire,
4 whether over regular or irregular routes, upon the highways of this
5 state;

6 (6) Contract carrier means any motor carrier which
7 transports passengers or household goods for hire other than
8 as a common carrier designed to meet the distinct needs of each
9 individual customer or a specifically designated class of customers
10 without any limitation as to the number of customers it can serve
11 within the class;

12 (7) Division of Motor Carrier Services means the Division
13 of Motor Carrier Services of the Department of Motor Vehicles;

14 (8) Escort services means an attendant or caregiver
15 accompanying a minor or persons who are physically, mentally,
16 or developmentally disabled and unable to travel or wait without
17 assistance or supervision;

18 (9) Highway means the roads, highways, streets, and ways
19 in this state;

20 (10) Household goods means personal effects and property
21 used or to be used in a dwelling, when a part of the equipment
22 or supply of such dwelling, and similar property as the commission
23 may provide by regulation if the transportation of such effects or
24 property, is:

25 (a) Arranged and paid for by the householder, including
26 transportation of property from a factory or store when the
27 property is purchased by the householder with the intent to use in
1 his or her dwelling; or

2 (b) Arranged and paid for by another party;

3 (11) Intrastate commerce means commerce between any place
4 in this state and any other place in this state and not in part
5 through any other state;

6 (12) Motor carrier means any person other than a
7 regulated motor carrier who or which owns, controls, manages,
8 operates, or causes to be operated any motor vehicle used to
9 transport passengers or property over any public highway in this
10 state;

11 (13) Motor vehicle means any vehicle, machine, tractor,
12 trailer, or semitrailer propelled or drawn by mechanical power
13 and used upon the highways in the transportation of passengers
14 or property but does not include any vehicle, locomotive, or car
15 operated exclusively on a rail or rails;

16 (14) Permit means a permit issued under Chapter 75,
17 article 3, to contract carriers by motor vehicle;

18 (15) Person means any individual, firm, partnership,
 19 limited liability company, corporation, company, association,
 20 or joint-stock association and includes any trustee, receiver,
 21 assignee, or personal representative thereof;

22 (16) Private carrier means any motor carrier which
 23 owns, controls, manages, operates, or causes to be operated a
 24 motor vehicle to transport passengers or property to or from
 25 its facility, plant, or place of business or to deliver to
 26 purchasers its products, supplies, or raw materials (a) when such
 27 transportation is within the scope of and furthers a primary
 1 business of the carrier other than transportation and (b) when
 2 not for hire. Nothing in sections 75-301 to 75-322 shall apply to
 3 private carriers except sections ~~75-307 to 75-307.03-1~~ 7 to 7 of this
 4 act as they apply to private carriers; and

5 (17) Regulated motor carrier means any person who or
 6 which owns, controls, manages, operates, or causes to be operated
 7 any motor vehicle used to transport passengers, other than those
 8 excepted under section 75-303, or household goods over any public
 9 highway in this state.

10 Sec. 12. Section 75-307, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 ~~75-307 (1) Intrastate-Certificated intrastate motor~~
 13 ~~carriers, including common, and contract, and private carriers,~~
 14 shall comply with reasonable rules and regulations prescribed
 15 by the commission governing the filing with the commission, the
 16 approval of the filings, and the maintenance of proof at such
 17 carrier's principal place of business of surety bonds, policies of
 18 insurance, qualifications as a self-insurer, or other securities
 19 or agreements, in such reasonable amount as required by the
 20 commission, conditioned to pay, within the amount of such surety
 21 bonds, policies of insurance, qualifications as a self-insurer,
 22 or other securities or agreements, any final judgment recovered
 23 against such motor carrier for bodily injuries to or the death of
 24 any person resulting from the negligent operation, maintenance,
 25 or use of motor vehicles under such certificate or permit or for
 26 loss or damage to property of others. No certificate or permit
 27 shall be issued to a common or contract carrier or remain in force
 1 unless such carrier complies with this section and the rules and
 2 regulations prescribed by the commission pursuant to this section.

3 (2) The commission may, in its discretion and under
 4 its rules and regulations, require any certificated carrier to
 5 file a surety bond, policies of insurance, qualifications as a
 6 self-insurer, or other securities or agreements, in a sum to be
 7 determined by the commission, to be conditioned upon such carrier
 8 making compensation to shippers or consignees for all property
 9 belonging to shippers or consignees and coming into the possession
 10 of such carrier in connection with its transportation service. Any
 11 carrier which may be required by law to compensate a shipper or
 12 consignee for any loss, damage, or default for which a connecting

13 motor common carrier is legally responsible shall be subrogated
 14 to the rights of such shipper or consignee under any such bond,
 15 policies of insurance, or other securities or agreements to the
 16 extent of the sum so paid.

17 (3) In carrying out this section, the commission may
 18 classify motor carriers and regulated motor carriers taking into
 19 consideration the hazards of the operations of such carriers and
 20 the value of the household goods carried. Nothing contained in this
 21 section shall be construed to authorize the commission to compel
 22 motor carriers other than common carriers of household goods to
 23 carry cargo insurance.

24 Sec. 14. Section 75-370, Revised Statutes Cumulative
 25 Supplement, 2006, is amended to read:

26 75-370 Enforcement of sections 75-307 ~~to 75-307.03~~ and
 27 75-309 and sections 1 to 7 of this act shall be carried out by the
 1 carrier enforcement division of the Nebraska State Patrol or the
 2 Nebraska State Patrol pursuant to the rules and regulations adopted
 3 and promulgated by the commission to enforce such sections. Any
 4 violation of such sections by any regulated motor carrier, motor
 5 carrier, or private carrier shall be referred to the commission for
 6 disposition under section 75-156, and the commission may take any
 7 other action provided by section 75-133.

8 Sec. 15. Section 75-371, Revised Statutes Cumulative
 9 Supplement, 2006, is amended to read:

10 75-371 Any person, private carrier, common carrier, or
 11 contract carrier which operates any motor vehicle in violation of
 12 section 75-307, ~~75-307.01, 75-307.02, or 75-307.03~~ or sections 1 to
 13 7 of this act or any rule, regulation, or order of the commission
 14 pertaining to any of such sections shall be guilty of a Class IV
 15 misdemeanor. Each day of such violation shall constitute a separate
 16 offense.

17 2. On page 13, line 12, strike "75-307," and show as
 18 stricken.

19 3. On page 14, line 14, after the semicolon insert "and";
 20 strike lines 15 through 18 and show as stricken; and in line 19
 21 strike "(8)", show as stricken, and insert "(7)".

22 4. On page 15, line 19, strike "75-307.01,"; and in line
 23 22 after "Sections" insert "75-307.01, 75-307.02, 75-307.03,".

24 5. Renumber the remaining sections and correct repealer
 25 accordingly.

(Signed) Deb Fischer, Chairperson

Business and Labor

LEGISLATIVE BILL 543. Placed on General File - Com AM249.
 AM249

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following sections:

3 Section 1. The Mechanical Safety Inspection Fund is
 4 created. All fees collected by the Department of Labor pursuant to
 5 the Nebraska Amusement Ride Act and the Conveyance Safety Act shall
 6 be remitted to the State Treasurer for credit to the Mechanical
 7 Safety Inspection Fund. Fees so collected shall not lapse into the
 8 General Fund. Fees so collected shall be used for the sole purpose
 9 of administering the provisions of the Nebraska Amusement Ride Act
 10 and the Conveyance Safety Act. Any money in the Mechanical Safety
 11 Inspection Fund available for investment shall be invested by the
 12 state investment officer pursuant to the Nebraska Capital Expansion
 13 Act and the Nebraska State Funds Investment Act. All funds existing
 14 in the Elevator Inspection Fund and the Nebraska Amusement Ride
 15 Fund on the operative date of this act shall be transferred to the
 16 Mechanical Safety Inspection Fund.

17 Sec. 2. Section 48-1809, Reissue Revised Statutes of
 18 Nebraska, is amended to read:

19 48-1809 The commissioner shall establish by rules and
 20 regulations a schedule of permit fees not to exceed fifty dollars
 21 for each amusement ride. Such permit fees shall be established with
 22 due regard for the costs of administering the Nebraska Amusement
 23 Ride Act and shall be remitted to the State Treasurer for credit to
 1 the Mechanical Safety Inspection Fund.

2 Sec. 3. Section 48-2501, Revised Statutes Cumulative
 3 Supplement, 2006, is amended to read:

4 48-2501 Sections 48-2501 to 48-2533 and section 4 of this
 5 act shall be known and may be cited as the Conveyance Safety Act.

6 Sec. 4. Section 48-418, Revised Statutes Cumulative
 7 Supplement, 2006, is amended to read:

8 ~~48-418~~ The Commissioner of Labor shall, ~~on or before the~~
 9 ~~first day of July 1965,~~ appoint a state elevator inspector, subject
 10 to the approval of the Governor, who shall work under the direct
 11 supervision of the commissioner. The state elevator inspector
 12 serving on the operative date of this act shall continue to
 13 serve unless removed by the commissioner. The person so appointed
 14 shall be qualified by (a) not less than five years' experience
 15 in the installation, maintenance, and repair of elevators as
 16 determined by the commissioner, (b) certification as a qualified
 17 elevator inspector by an association accredited by the American
 18 Society of Mechanical Engineers, or (c) not less than five years'
 19 journeyman experience in elevator installation, maintenance, and
 20 inspection as determined by the Commissioner of Labor and shall
 21 be familiar with the inspection process provided by the Nebraska
 22 Elevator Code provided under section 48-418.12 and the inspection
 23 process and rules and regulations adopted and promulgated under the
 24 Conveyance Safety Act. The commissioner, subject to the approval
 25 of the Governor, may appoint deputy inspectors possessing the
 26 same qualifications as the state elevator inspector. A qualified
 27 individual may apply for the position of inspector or deputy
 1 inspector and such application shall include the applicant's social

2 security number, but such social security number shall not be a
3 public record.

4 Sec. 5. Section 48-2503, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 48-2503 (1) The Conveyance Advisory Committee is created.

7 One member shall be the state elevator inspector appointed pursuant
8 to section ~~48-418.4~~ 4 of this act. One member shall be the State
9 Fire Marshal or his or her designee. The Governor shall appoint the
10 remaining members of the committee as follows: One representative
11 from a major elevator manufacturing company; one representative
12 from an elevator servicing company; one representative who is a
13 building manager; one representative who is an elevator mechanic;
14 and one representative of the general public from each county that
15 has a population of more than one hundred thousand inhabitants. The
16 committee shall be appointed within ninety days after January 1,
17 2008.

18 (2) The members of the committee appointed by the
19 Governor shall serve for terms of three years, except that of
20 the initial members appointed, two shall serve for terms of one
21 year and three shall serve for terms of two years. The state
22 elevator inspector and the State Fire Marshal or his or her
23 designee shall serve continuously. The appointed members shall be
24 reimbursed for their actual and necessary expenses for service
25 on the committee as provided in sections 81-1174 to 81-1177. The
26 members of the committee shall elect a chairperson who shall be the
27 deciding vote in the event of a tie vote.

1 (3) The committee shall meet and organize within thirty
2 days after the appointment of the members. The committee shall meet
3 quarterly at a time and place to be fixed by the committee for the
4 consideration of code regulations and for the transaction of such
5 other business as properly comes before it. Special meetings may be
6 called by the chairperson or at the request of two or more members
7 of the committee. Any appointed committee member absent from three
8 consecutive meetings shall be dismissed.

9 Sec. 6. Section 48-2506, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 ~~48-2506 (1) The Conveyance Inspection Fund is created.~~
12 ~~The commissioner shall use the fund for the administration of the~~
13 ~~Conveyance Safety Act. Fees collected in the administration of the~~
14 ~~act shall be remitted to the State Treasurer for credit to the fund~~
15 ~~and shall not lapse into the General Fund. Any money in the fund~~
16 ~~available for investment shall be invested by the state investment~~
17 ~~officer pursuant to the Nebraska Capital Expansion Act and the~~
18 ~~Nebraska State Funds Investment Act.~~

19 ~~(2)-(1)~~ The commissioner shall, after a public hearing
20 conducted by the commissioner or his or her designee, establish a
21 reasonable schedule of fees for licenses, permits, certificates,
22 and inspections authorized under the Conveyance Safety Act. The
23 commissioner shall establish the fees at a level necessary

24 to meet the costs of administering the act. Inspection fee
 25 schedules relating to the inspection of conveyances adopted by
 26 the commissioner prior to the operative date of this act shall
 27 continue to be effective until they are amended or repealed by the
 1 commissioner.

2 (2) The commissioner shall administer the Conveyance
 3 Safety Act. It is the intent of the Legislature that, beginning
 4 in fiscal year 2008-09, the funding for the administration of the
 5 act shall be entirely from cash funds remitted to the ~~Conveyance~~
 6 ~~Inspection Fund.~~ Mechanical Safety Inspection Fund that are fees
 7 collected in the administration of the act.

8 Sec. 7. Section 48-2507, Revised Statutes Cumulative
 9 Supplement, 2006, is amended to read:

10 48-2507 (1) The Conveyance Safety Act applies to the
 11 ~~design,~~ construction, operation, inspection, testing, maintenance,
 12 alteration, and repair of conveyances. Conveyances include the
 13 following equipment, associated parts, and hoistways which are not
 14 exempted under section 48-2508:

15 (a) Hoisting and lowering mechanisms equipped with a car
 16 which moves between two or more landings. This equipment includes
 17 elevators;

18 (b) Power driven stairways and walkways for carrying
 19 persons between landings. This equipment includes:

20 (i) Escalators; and

21 (ii) Moving sidewalks; and

22 (c) Hoisting and lowering mechanisms equipped with a car,
 23 which serves two or more landings and is restricted to the carrying
 24 of material by its limited size or limited access to the car. This
 25 equipment includes:

26 (i) Dumbwaiters;

27 (ii) Material lifts and dumbwaiters with automatic
 1 transfer devices; and

2 (iii) Conveyors and related equipment within the scope of
 3 American Society of Mechanical Engineers B20.1.

4 (2) The act applies to the ~~design,~~ construction,
 5 operation, inspection, maintenance, alteration, and repair of
 6 automatic guided transit vehicles on guideways with an exclusive
 7 right-of-way. This equipment includes automated people movers.

8 (3) The act applies to conveyances in private residences
 9 at the time of installation. ~~Such, and such~~ conveyances are
 10 subject to inspection at installation, ~~but and~~ are not subject to
 11 periodic inspections.

12 Sec. 8. Section 48-2512, Revised Statutes Cumulative
 13 Supplement, 2006, is amended to read:

14 48-2512 (1) No person shall wire, alter, replace, remove,
 15 or dismantle an existing conveyance contained within a building
 16 or structure located in a county that has a population of more
 17 than one hundred thousand inhabitants unless such person is a
 18 licensed elevator mechanic or he or she is working under the

19 direct supervision of a person who is a licensed elevator mechanic.
 20 Neither a licensed elevator mechanic nor a licensed elevator
 21 contractor is required to perform nonmechanical maintenance of
 22 a conveyance. Neither a licensed elevator contractor nor a
 23 licensed elevator mechanic is required for removing or dismantling
 24 conveyances which are destroyed as a result of a complete
 25 demolition of a secured building.

26 (2) It shall be the responsibility of licensed
 27 elevator mechanics and licensed elevator contractors to ensure
 1 that installation and service of a conveyance is performed in
 2 compliance with applicable fire and safety codes. It shall be the
 3 responsibility of the owner of the conveyance to ensure that the
 4 conveyance is maintained in compliance with applicable fire and
 5 safety codes.

6 (3) All new conveyance installations shall be performed
 7 by a licensed elevator mechanic under the control of a licensed
 8 elevator contractor or by a licensed elevator contractor.
 9 Subsequent to installation, a licensed elevator contractor shall
 10 certify compliance with the Conveyance Safety Act.

11 Sec. 9. This act becomes operative on January 1, 2008.

12 Sec. 10. Original section 48-1809, Reissue Revised
 13 Statutes of Nebraska, and sections 48-418, 48-2501, 48-2503,
 14 48-2506, 48-2507, and 48-2512, Revised Statutes Cumulative
 15 Supplement, 2006, are repealed.

16 Sec. 11. The following sections are outright repealed:
 17 Sections 48-418.01, 48-418.02, 48-418.03, 48-418.05, 48-418.06,
 18 48-418.07, 48-418.08, 48-418.10, 48-418.11, 48-418.12, 48-418.14,
 19 and 48-1810, Reissue Revised Statutes of Nebraska, and sections
 20 48-418.04, 48-418.09, and 48-2505, Revised Statutes Cumulative
 21 Supplement, 2006.

(Signed) Abbie Cornett, Chairperson

AMENDMENT - Print in Journal

Senator Burling filed the following amendment to LB 204:
 AM274

- 1 1. On page 3, line 4, after the period insert "A
- 2 relative of the contractor employed by the contractor is not an
- 3 employee under this section. For purposes of this section relative
- 4 means a parent, grandparent, spouse, child, or grandchild of the
- 5 contractor.".

MESSAGE FROM THE GOVERNOR

February 9, 2007

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 11, 28, 44, 94, 115, and 167e were received in my office on February 5, 2007.

I signed these bills and delivered them to the Secretary of State on February 9, 2007.

Sincerely,
(Signed) Dave Heineman
Governor

ATTORNEY GENERAL'S OPINIONOpinion 07004

DATE: February 9, 2007

SUBJECT: Authority Of The Legislative Performance Audit Committee To Review Agency Records Subject To The Attorney/Client Privilege

REQUESTED BY: Former Senator Chris Beutler
Legislative Performance Audit Committee

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

The Legislative Performance Audit Committee (the "Committee") is created under the Legislative Performance Audit Act (the "Act"), Neb. Rev. Stat. §§ 50-1201 through 50-1215 (2004, Cum. Supp. 2006). The Committee is authorized to conduct performance audits of state agencies and their programs and activities in order to provide an independent legislative assessment of those agencies and programs. Performance audits consider such things as the effectiveness and results of programs, agency economy and efficiency, internal control by state agencies and agency compliance with legal and other requirements. The Committee is assisted in the performance of its duties by the Legislative Auditor and those employees of Legislature within the Legislative Performance Audit Section (the "Section").

The Section recently conducted a performance audit of the School-Based Teacher-Led Assessment and Reporting System ("STARS") managed by the Nebraska Department of Education (the "Department"). In the course of that performance audit, the Department declined to provide the Section with access to eight letters which the Department had previously received from this office pursuant to our review of agency rules and regulations. In declining to provide the Section with those letters, the Department relied on the attorney/client privilege, since the letters did not involve published opinions of the Attorney General. The Department's refusal to provide the Section with those letters led to this opinion request and the four separate questions which you have posed to us. After a brief discussion of the background circumstances in this case, we will discuss each of your questions in turn.

BACKGROUND

We have previously considered questions similar to the matters at issue in your current opinion request. In 2004, you asked us, "[w]hether the Legislative Performance Audit Committee has the inherent authority to access any and all of an agency's information and records, confidential or otherwise, in whatever form they may be." Op. Att'y Gen. No. 04022 at 3, 4 (August 14, 2004). We will quote at length from Opinion No. 04022 because our discussion there is germane to the questions currently under consideration:

We have found no Nebraska cases which directly address the scope of the Committee's authority to obtain "confidential" or privileged information as it goes about its responsibilities to conduct performance audits. Nor are there any Nebraska statutes which directly address that issue. Our research also indicates that there is little law from other jurisdictions which is helpful in this area. Therefore, we would first point out that the law concerning your initial inquiry is not clear. However, we can again offer several observations concerning the Committee's authority to obtain "confidential" information.

* * *

There are also evidentiary privileges set out at Neb. Rev. Stat. " 27-501 through 27-513 (1995) and in common law. Those privileges allow certain communications such as those between an attorney and client or a physician and patient to be kept confidential. Authorities which have considered application of those privileges in the context of audits have come to varying conclusions.

The Attorney General of North Dakota has indicated that privileges set out in the North Dakota Rules of Evidence such as the attorney/client privilege apply only to court proceedings, and do not prevent the release of attorney billing information to the North Dakota State Auditor. Op. N.D. Att'y Gen. No. L-1 (January 17, 1995). Similarly, the

Attorney General of Delaware opined that a county auditor could review certain county billing records, even if they included potential information subject to the attorney/client privilege. Op. Del. Att'y Gen. No. 04-IB09 (April 15, 2004). On the other hand, in *Kyle v. Louisiana Public Service Commission*, 2004 WL 691662 (La. Ct. App. April 2, 2004), the Louisiana Court of Appeals held that the Public Service Commission in Louisiana could assert both the attorney/client privilege and the deliberative process privilege to limit access to information sought by the legislative auditor in Louisiana in connection with a performance audit. And, the Attorney General of Missouri has indicated that in situations where the attorney/client privilege or the attorney work product privilege is properly assertable in pending or imminent litigation, the state auditor is not entitled to access to the litigation records of an agency. Op. Mo. Att'y Gen. No. 74-87 (October 5, 1987).

As a result, it is not at all clear whether evidentiary or common law privileges may be properly asserted with respect to a performance audit by the Committee. Moreover, we would also point out that a performance audit by the Committee is an audit of executive branch agencies by the Legislature and the legislative branch of government. Floor Debate on LB 607, 98th Neb. Leg., 1st Sess. 41 (February 12, 2003)(Statement of Sen. Schimek). That, in turn, raises questions regarding whether certain privileges which might be raised by an executive agency such as the executive privilege or the deliberative process privilege could raise separation of powers issues under art. II, § 1 of the Nebraska Constitution. For example, the Attorney General of Maryland has indicated that a statute which purports to give a legislative auditor authority to examine any record pertinent to an executive agency's performance cannot exceed those powers allocated to the legislative branch under the constitution and separation of powers principles. Op. Md. Att'y Gen. No. 91-014 (March 18, 1991).

* * *

To summarize the discussion above, we believe that the [State] Auditor's general authority to review records in the context of an audit is broader than that of the Committee. That result may allow an argument that the Committee has less authority to review confidential records than does the Auditor. We also do not believe that the confidentiality provisions of the Public Records Statutes limit access by the Committee to agency records. However, agencies may well be able to assert evidentiary privileges in response to records requests from the Committee in connection with an audit, particularly when the records at issue implicate separation of powers issues and privileges. Some of the current uncertainties in the statutes could be remedied by clarifying legislation. In that regard, we would point out that it may be easier to overcome an evidentiary privilege in an audit by the Committee if there is a statutory provision similar to Neb. Rev. Stat. § 84-311 (1999) which places strictures on the Committee and its staff with respect to

the unauthorized release of information obtained in an audit.

Op. Att'y Gen. No. 04022 at 4-7 (August 14, 2004)(footnotes omitted).

Subsequent to issuance of our Opinion No. 04022 in 2004, the Legislature passed 2006 Neb. Laws LB 588, and that bill is now codified, in part, at Neb. Rev. Stat. § 50-1213 (1)(Cum. Supp. 2006). Section 50-1213 (1) added new language to the Nebraska Statutes, and provides:

The [Legislative Performance Audit] section shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law. If such a law exists, the agency shall provide the committee with a written explanation of its inability to produce such information and records and, after reasonable accommodations are made, shall grant the section access to all information and records or portions thereof that can legally be reviewed. Accommodations that may be negotiated between the agency and the committee include, but are not limited to, a requirement that specified information or records be reviewed on agency premises and a requirement that specified working papers be securely stored on agency premises.

Question No. 1: Are there any circumstances in which the attorney-client privilege would bar [Legislative Performance Audit] Section access to an agency's confidential or privileged information and records that relate to a program being audited under the Legislative Performance Audit Act?

We have reviewed the various authorities cited in our Opinion No. 04022, and there has been little change in the status of the law since we wrote that opinion in 2004. There are no Nebraska cases which directly address the precise issue raised in your first question, and authorities from other jurisdictions arrive at differing results when considering an auditor's access to materials subject to the attorney/client privilege. Consequently, we are left with the language of the statutes at issue. The pertinent portion of § 50-1213 (1) provides that the Legislative Performance Audit Section "shall have access to any and all information and records, confidential or otherwise, of any agency, in whatever form they may be, unless the section is denied such access by federal law or explicitly named and denied such access by state law." Neb. Rev. Stat. § 27-503 (1995) codifies the attorney/client privilege.

Both sides of this debate have raised legitimate arguments in support of their positions. Among other things, the Section argues that the language of § 50-1213 (1) is clear, and gives it access to all records, confidential or otherwise, unless it is explicitly denied such access by state law. In that regard, the Section alleges that § 27-503 does not explicitly deny the Section access to information subject to the attorney/client privilege in connection with a legislative performance audit. On the other hand, the Department

argues that performance audits are "proceedings" subject to the attorney/client privilege, that one statute should not be interpreted to nullify another, that statutes changing the common law should be strictly construed so as to abrogate the common law no further than required, and that "confidential" as it is used in § 50-1213 (1) is different than "privileged." The arguments raised by both sides make the initial inquiry presented in your opinion request a close question.

In Nebraska, statutes should be construed in *pari materia* and from their language as a whole to determine the intent of the Legislature. *Alegent Health Bergan Mercy Medical Center v. Haworth*, 260 Neb. 63, 615 N.W.2d 460 (2000). A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause or sentence will be rejected as superfluous or meaningless. *Sydow v. City of Grand Island*, 263 Neb. 389, 639 N.W.2d 913 (2002). Absent clear legislative intent, a construction of a statute will not be adopted which has the effect of nullifying another statute. *Keller v. Tavarone*, 262 Neb. 2, 628 N.W.2d 222 (2001). With those various rules of statutory construction in mind, it seems to us that it is possible to construe and apply § 50-1213 (1) and § 27-503 in a way that would give effect to both statutes by taking into account the confidentiality provisions contained in the latter subsections of § 50-1213.

After § 50-1213 establishes the Section's right to access information in connection with a performance audit in subsection (1), additional subsections of that same statute impose confidentiality requirements upon the Section and members of the Committee:

(2) Except as provided in this section, any confidential information or confidential records shared with the section shall remain confidential and shall not be shared by an employee of the section with any person who is not an employee of the section, including any member of the committee. If necessary for the conduct of the performance audit, the section may discuss or share confidential information with the chairperson of the committee. If a dispute arises between the section and the agency as to the accuracy of a performance audit or preaudit inquiry involving confidential information or confidential records, the Speaker of the Legislature, as a member of the committee, will be allowed access to the confidential information or confidential records for the purpose of assessing the accuracy of the performance audit or preaudit inquiry.

(3) Except as provided in subdivision (10)(c) of section 77-27,119, if the speaker or chairperson knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or she shall be guilty of a Class III misdemeanor. Except as provided in subsection (11) of section 77-2711 and subdivision (10)(c) of section 77-27,119, if any employee or former employee of the section knowingly divulges or makes known, in any manner not permitted by law, confidential information or confidential records, he or

she shall be guilty of a Class III misdemeanor and, in the case of an employee, shall be dismissed.

(4) No proceeding of the committee or opinion or expression of any member of the committee or section employee acting at the direction of the committee shall be reviewable in any court. No member of the committee or section employee acting at the direction of the committee shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters relating to the work of the section except in a proceeding brought to enforce the Legislative Performance Audit Act.

(5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of section 84-712.05, the working papers obtained or produced by the committee or section shall not be considered public records. The committee may make the working papers available for purposes of an external quality control review as required by generally accepted government auditing standards. However, any reports made from such external quality control review shall not make public any information which would be considered confidential when in the possession of the section.

Neb. Rev. Stat. § 50-1213 (2) – (5)(Cum. Supp. 2006)(emphasis added). As a result, the latter subsections of § 50-1213 impose strict confidentiality requirements on the Section, its employees, and on the Committee. And, those confidentiality requirements apply to both to confidential "records" and to confidential "information." In the context of the attorney/client privilege, we read that language broadly to include both actual correspondence or records subject to the privilege, and any privileged information contained in those records. For example, for purposes of a performance audit report, a privileged record such as an informal opinion from this office cannot be quoted or otherwise included in the report. Neither can any conclusions or other information contained in that opinion even be discussed in the report. Disclosure of any of that privileged material would subject the individuals enumerated in §§ 50-1213 (2) – (5) to potential prosecution.

Section 50-1213 (1) clearly grants the Section broad access to confidential information for the purpose of performance audits. However, if the latter subsections of § 50-1213 are also read to strictly prohibit the disclosure and dissemination of confidential information in addition to that broad access, then both § 50-1213 (1) and § 27-503 can be given effect. Such a construction of the statute would allow the Section to have access to confidential material subject to the attorney/client privilege, yet the privilege could be preserved, since the material could not be disclosed. Such a construction of those statutes would also comport with the underlying purpose for the attorney/client privilege, i.e., to promote the freedom of consultation of legal advisors by clients. *State v. Hawes*, 251 Neb. 305, 556 N.W.2d 634 (1996). For those reasons, we believe that the Section can

access information and records belonging to an agency which is subject to the attorney/client privilege in connection with a performance audit of that agency or its programs. However, that privileged material may neither be included nor discussed in the Section's ensuing performance audit report. Nor may the Section, its employees, or the Committee disclose that privileged material in any manner contrary to § 50-1213.

We would also point out that the attorney/client privilege can be waived voluntarily by clients. 98 C.J.S. Witnesses § 378 (2006); 81 Am. Jur. 2d Witnesses § 334 (2006). In addition, such a waiver may be created by self-disclosure of confidential information. 98 C.J.S. Witnesses § 385 (2006). However, it is also true that information subject to the attorney/client privilege retains its privileged character until the client has consented to its disclosure. *Mayberry v. State*, 670 N.E.2d 1262 (Ind. 1996); *Buntin v. Becker*, 727 N.E.2d 734 (Ind. Ct. App. 2000); 98 C.J.S. Witnesses § 385 (2006); 81 Am. Jur. 2d Witnesses § 334 (2006). Consequently, to avoid any potential issues with waiver and to make it clear that there is no consent to disclose privileged material, we expect that most agencies which provide confidential material to the Section for a performance audit will make it clear by correspondence or otherwise that certain materials are confidential and subject to the attorney/client privilege, and that the agency does not consent to their disclosure. Presumably, that notification will also serve as a designation of confidentiality which will trigger the provisions of § 50-1213 (2) – (5).

Question No. 2: Is the approval of the Attorney General required before an agency may release to the Section unpublished communications from the Attorney General's office that relate to a program being audited under the Legislative Performance Audit Act?

In 1995, a state agency requested written advice from this office concerning the agency's obligation to release copies of a numbered informal opinion of the Attorney General.¹ We indicated to that agency in 1995 that release of informal opinions from this office, which might be privileged, is within the discretion of the recipient agency. We believe that a similar rule applies to unpublished communications from this office, including informal opinions, which relate to a program being audited under the Act.

Question No. 3: If attorney-client privilege does not bar access to an agency's confidential or privileged information and records, how long must the Section wait to gain access to them? In other words, at what point can the Section, suspecting an agency of purposely delaying compliance with a request to produce information or records, demand immediate access to such documents?

The Legislative Performance Audit Act contains no provisions which set out time parameters for production of records in connection with a performance audit. Absent any specific time frames in that Act, we assume that an agency undergoing a performance audit may produce records to the Section in a

time frame that is reasonable under the circumstances. In addition, it seems to us that agencies undergoing a performance audit also have a reasonable time to review their records or have their records reviewed by counsel to determine if there is a basis to assert the attorney/client or other privileges and to establish confidentiality for particular records under § 50-1213 (2) – (5). As discussed above, such a designation and denial of consent for disclosure may be necessary to prevent any issues of waiver.

Question No. 4. If an agency refuses to grant the Section access to confidential or privileged information and records not specifically excluded under Section 50-1213 (1) of the Act, what remedies are available?

Neb. Rev. Stat. § 50-1215 (Cum. Supp. 2006) provides that persons who willfully obstruct or hinder the conduct of a performance audit are guilty of a Class II misdemeanor. Presumably, that statute would be enforced by this office or the appropriate county attorney. Apart from those criminal sanctions, the Legislative Performance Audit Act contains no remedies for refusal to grant the Section access to confidential or privileged information. If such a refusal occurs, we assume the Section or the Committee could approach this office and ask us to file some sort of legal action to obtain access to the records. Alternatively, the Section or Committee could seek approval from this office to hire outside counsel to proceed with some form of litigation on behalf of the Section.

¹The Department of Justice issues Official Opinions of the Attorney General which are stamped as such, numbered and dated. Official opinions of the Attorney General are released to the public and otherwise published. In addition, since 1991, the Department of Justice has also issued Informal Opinions of the Attorney General which are marked with an I designation and also given a number. Informal opinions are not published, and are generally considered by this office to be subject to the attorney-client privilege.

Sincerely,
JON BRUNING
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell,
Clerk of the Legislature
05-473-21

MOTIONS - Approve Appointments

Senator Raikes moved the adoption of the Education Committee report for the confirmation of the following appointment(s) found on page 495:

Board of Trustees of the Nebraska State Colleges
Larry Teahon

Voting in the affirmative, 39:

Adams	Fischer	Hudkins	Mines	Raikes
Aguilar	Flood	Janssen	Nantkes	Rogert
Avery	Friend	Johnson	Nelson	Schimek
Burling	Fulton	Karpisek	Pahls	Stuthman
Carlson	Gay	Kopplin	Pankonin	Synowiecki
Chambers	Hansen	Langemeier	Pedersen	Wallman
Christensen	Harms	Louden	Pirsch	Wightman
Engel	Howard	McGill	Preister	

Voting in the negative, 0.

Present and not voting, 9:

Ashford	Dubas	Heidemann	Lathrop	White
Cornett	Erdman	Kruse	McDonald	

Excused and not voting, 1:

Dierks

The appointment was confirmed with 39 ayes, 0 nays, 9 present and not voting, and 1 excused and not voting.

Senator McDonald moved the adoption of the General Affairs Committee report for the confirmation of the following appointment(s) found on page 497:

Nebraska Arts Council
David E. Gardels

Voting in the affirmative, 44:

Adams	Dubas	Harms	Louden	Pirsch
Aguilar	Engel	Heidemann	McDonald	Preister
Ashford	Erdman	Howard	McGill	Raikes
Avery	Fischer	Hudkins	Mines	Schimek
Burling	Flood	Janssen	Nantkes	Stuthman
Carlson	Friend	Johnson	Nelson	Wallman
Chambers	Fulton	Karpisek	Pahls	White
Christensen	Gay	Kopplin	Pankonin	Wightman
Cornett	Hansen	Langemeier	Pedersen	

Voting in the negative, 0.

Present and not voting, 4:

Kruse	Lathrop	Rogert	Synowiecki
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Excused and not voting, 1:

Dierks

The appointment was confirmed with 44 ayes, 0 nays, 4 present and not voting, and 1 excused and not voting.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 35. With Emergency.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,186, Reissue Revised Statutes of Nebraska, and section 60-4,182, Revised Statutes Cumulative Supplement, 2006; to clarify speed limits on certain freeways; to harmonize provisions; to delete obsolete provisions; to repeal the original sections; and to declare an emergency.

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

Voting in the affirmative, 48:

Adams	Dubas	Heidemann	McDonald	Raikes
Aguilar	Engel	Howard	McGill	Rogert
Ashford	Erdman	Hudkins	Mines	Schimek
Avery	Fischer	Janssen	Nantkes	Stuthman
Burling	Flood	Johnson	Nelson	Synowiecki
Carlson	Friend	Karpisek	Pahls	Wallman
Chambers	Fulton	Kopplin	Pankonin	White
Christensen	Gay	Langemeier	Pedersen	Wightman
Cornett	Hansen	Lathrop	Pirsch	
Dierks	Harms	Louden	Preister	

Voting in the negative, 0.

Present and not voting, 1:

Kruse

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 43.

A BILL FOR AN ACT relating to highways; to provide for mowing and hay

harvesting permits for right-of-ways; to provide fees; and to provide duties for the Department of Roads.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 63.

A BILL FOR AN ACT relating to insurance; to amend section 44-784, Reissue Revised Statutes of Nebraska; to change a provision relating to coverage for childhood immunizations; 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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 64.

A BILL FOR AN ACT relating to gaming; to eliminate a fee and tax on certain gaming activity adopted by Initiative 419; and to outright repeal sections 9-901, 9-902, 9-903, and 9-904, Revised Statutes Cumulative Supplement, 2006.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 74 with 44 ayes, 3 nays, and 2 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 74. With Emergency.

A BILL FOR AN ACT relating to food regulation; to amend sections 81-2,244.01, 81-2,257, 81-2,272.10, 81-2,272.17, 81-2,272.24, and 81-2,272.25, Reissue Revised Statutes of Nebraska, and sections 81-2,239 and 81-2,270, Revised Statutes Cumulative Supplement, 2006; to change

and eliminate provisions relating to the Nebraska Pure Food Act; to harmonize provisions; to provide an operative date; to repeal the original sections; to outright repeal sections 81-2,272.03, 81-2,272.04, 81-2,272.05, 81-2,272.06, 81-2,272.14, 81-2,272.15, 81-2,272.16, 81-2,272.19, 81-2,272.20, 81-2,272.21, 81-2,272.22, 81-2,272.23, 81-2,272.26, 81-2,272.28, 81-2,272.29, 81-2,272.30, 81-2,272.33, 81-2,272.35, and 81-2,272.37, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Voting in the affirmative, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bills were read and put upon final passage:

LEGISLATIVE BILL 79.

A BILL FOR AN ACT relating to environmental protection; to amend section 81-1504.01, Revised Statutes Cumulative Supplement, 2006; to change duties of the Department of Environmental Quality; to eliminate obsolete provisions; to repeal the original section; and to outright repeal section 81-1553, Reissue Revised Statutes of Nebraska.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 80.

A BILL FOR AN ACT relating to drinking water; to amend sections 71-5318 and 71-5322, Reissue Revised Statutes of Nebraska; to authorize the transfer of funds, financial assistance for certain political subdivisions with financial hardships, and emergency funding; 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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 80A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 80, One Hundredth Legislature, First Session, 2007.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 110. With Emergency.

A BILL FOR AN ACT relating to agriculture; to amend section 2-3918, Reissue Revised Statutes of Nebraska; to adopt the Bovine Tuberculosis Act; to provide penalties; to harmonize provisions; to eliminate provisions relating to tuberculin testing; to repeal the original section; to outright repeal sections 54-706, 54-707, 54-708, 54-709, 54-710, 54-711, 54-712, 54-713, 54-714, 54-715, 54-716, 54-717, 54-718, 54-719, 54-720, 54-721, and 54-722, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Voting in the affirmative, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 111 with 41 ayes, 5 nays, and 3 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 111.

A BILL FOR AN ACT relating to milk; to amend sections 2-3903, 2-3904, 2-3909, 2-3911, 2-3913, 2-3916, 2-3919, 2-3920, 2-3921, 2-3922, 2-3923, 2-3925, 2-3935, 2-3937, and 2-3942, Reissue Revised Statutes of Nebraska, and sections 2-3901, 2-3902, 2-3906, 2-3907, 2-3908, 2-3910, 2-3914, 2-3915, 2-3917, 2-3917.01, 2-3924, and 81-2,270, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions relating to the regulation and processing of milk; to rename a law; to adopt federal and other national milk standards; to provide powers and duties for the Director of Agriculture and the Department of Agriculture; to provide and eliminate penalties; to eliminate an act and a fund; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-3905, 2-3918, 2-3926, 2-3927, 2-3931, 2-3932, 2-3934, 2-3936, 2-3937.01, 2-3939, 2-3940, 2-3941, 2-3943, 2-3944, 2-3945, and 2-3946, Reissue Revised Statutes of Nebraska, and sections 2-3917.02, 2-3928, 2-3929, 2-3930, and 2-3938, Revised Statutes Cumulative Supplement, 2006.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

The following bills were read and put upon final passage:

LEGISLATIVE BILL 148.

A BILL FOR AN ACT relating to motor vehicles; to amend section 60-6,301, Reissue Revised Statutes of Nebraska; to provide an exception to load and weight limits for trucks; 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, 47:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Rogert
Ashford	Erdman	Hudkins	McGill	Schimek
Avery	Fischer	Janssen	Mines	Stuthman
Burling	Flood	Johnson	Nantkes	Wallman
Carlson	Friend	Karpisek	Nelson	White
Chambers	Fulton	Kopplin	Pahls	Wightman
Christensen	Gay	Kruse	Pankonin	
Cornett	Hansen	Langemeier	Pedersen	
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 1:

Raikes

Present and not voting, 1:

Synowiecki

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

LEGISLATIVE BILL 150.

A BILL FOR AN ACT relating to schools; to amend sections 79-809 and 79-810, Reissue Revised Statutes of Nebraska; to change provisions relating to certificate fees; 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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 161.

A BILL FOR AN ACT relating to the Wastewater Treatment Operator Certification Act; to amend section 81-15,130, Reissue Revised Statutes of Nebraska; to change a provision regarding applicant's fees; 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, 47:

Adams	Engel	Howard	McDonald	Raikes
Aguilar	Erdman	Hudkins	McGill	Rogert
Ashford	Fischer	Janssen	Mines	Schimek
Avery	Flood	Johnson	Nantkes	Synowiecki
Burling	Friend	Karpisek	Nelson	Wallman
Carlson	Fulton	Kopplin	Pahls	White
Chambers	Gay	Kruse	Pankonin	Wightman
Cornett	Hansen	Langemeier	Pedersen	
Dierks	Harms	Lathrop	Pirsch	
Dubas	Heidemann	Louden	Preister	

Voting in the negative, 0.

Present and not voting, 2:

Christensen Stuthman

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

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 186 with 41 ayes, 4 nays, and 4 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 186.

A BILL FOR AN ACT relating to real property appraisers; to amend sections 76-2210, 76-2210.01, 76-2210.02, 76-2213, 76-2213.01, 76-2217.01, 76-2219, 76-2223, 76-2226, 76-2227, 76-2228, 76-2228.01, 76-2229, 76-2229.01, 76-2230, 76-2231.01, 76-2232, 76-2233, 76-2233.01, 76-2236, 76-2237, 76-2241, 76-2242, 76-2247.01, and 77-5004, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to credentialing of real property appraisers; to update references; to delete obsolete provisions; 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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

The following bills were read and put upon final passage:

LEGISLATIVE BILL 206.

A BILL FOR AN ACT relating to cities of the metropolitan class; to amend sections 14-553 and 14-554, Reissue Revised Statutes of Nebraska, and section 14-1821, Revised Statutes Cumulative Supplement, 2006; to change and eliminate provisions regarding the city treasurer; to eliminate the requirement of county treasurer serving as ex officio city treasurer; to repeal the original sections; and to outright repeal sections 14-551, 14-552, and 14-561, Reissue Revised Statutes of Nebraska, and section 14-555, Revised Statutes Cumulative Supplement, 2006.

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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 207.

A BILL FOR AN ACT relating to public utilities; to amend sections 14-2110 and 14-2147, Reissue Revised Statutes of Nebraska, and sections 14-2109 and 14-2146, Revised Statutes Cumulative Supplement, 2006; to provide a power for the board of directors of a metropolitan utilities district; 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, 49:

Adams	Dubas	Heidemann	Louden	Preister
Aguilar	Engel	Howard	McDonald	Raikes
Ashford	Erdman	Hudkins	McGill	Rogert
Avery	Fischer	Janssen	Mines	Schimek
Burling	Flood	Johnson	Nantkes	Stuthman
Carlson	Friend	Karpisek	Nelson	Synowiecki
Chambers	Fulton	Kopplin	Pahls	Wallman
Christensen	Gay	Kruse	Pankonin	White
Cornett	Hansen	Langemeier	Pedersen	Wightman
Dierks	Harms	Lathrop	Pirsch	

Voting in the negative, 0.

Not voting, 0.

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

LEGISLATIVE BILL 315. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 49-801.01, Revised Statutes Cumulative Supplement, 2006; to update references to the Internal Revenue Code of 1986; to repeal the original section; and to declare an emergency.

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

Voting in the affirmative, 47:

Keith Deiml - State Emergency Response Commission

VOTE: Aye: Senators Adams, Aguilar, Avery, Friend, Karpisek, Mines, Pahls, Rogert. Nay: None. Absent: None.

LEGISLATIVE BILL 195. Placed on General File.

LEGISLATIVE BILL 199. Placed on General File.

LEGISLATIVE BILL 312. Placed on General File.

LEGISLATIVE BILL 289. Placed on General File - Com AM316.
AM316

- 1 1. On page 3, line 17; and page 5, line 18, strike "(5)",
- 2 show as stricken, and insert "(4)".
- 3 2. On page 4, strike lines 10 through 21 and show as
- 4 stricken; and in line 22 strike "(4)", show as stricken, and insert
- 5 "(3)".
- 6 3. On page 6, line 20, strike "(6)", show as stricken,
- 7 and insert "(5)"; and in line 26 strike "(7)", show as stricken,
- 8 and insert "(6)".

(Signed) Ray Aguilar, Chairperson

Revenue

LEGISLATIVE BILL 177. Placed on General File - Com AM279.
AM279

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 77-5903, Revised Statutes Cumulative
- 4 Supplement, 2006, is amended to read:
- 5 77-5903 For purposes of the Nebraska Advantage
- 6 Microenterprise Tax Credit Act:
- 7 (1) Actively engaged in the operation of a microbusiness
- 8 means personal involvement on a continuous basis in the daily
- 9 management and operation of the business;
- 10 (2) Distressed area means a municipality, county,
- 11 unincorporated area within a county, or census tract in Nebraska
- 12 that has (a) an unemployment rate which exceeds the statewide
- 13 average unemployment rate, (b) a per capita income below the
- 14 statewide average per capita income, or (c) had a population
- 15 decrease between the two most recent federal decennial censuses;
- 16 (3) Equivalent employees means the number of employees
- 17 computed by dividing the total hours paid in a year by the product
- 18 of forty times the number of weeks in a year;
- 19 (4) Microbusiness means any business employing five or
- 20 fewer equivalent employees. Microbusiness does not include a farm

21 or livestock operation unless (a) the person actively engaged in
22 the operation of the microbusiness has a net worth of not more than
23 two hundred thousand dollars, including any holdings by a spouse
1 or dependent, based on fair market value, or (b) the investment
2 or employment is in the processing or marketing of agricultural
3 products, aquaculture, agricultural tourism, or the production of
4 fruits, herbs, tree products, vegetables, tree nuts, dried fruits,
5 organic crops, or nursery crops;

6 (5) New employment means the amount by which the total
7 compensation plus the employer cost for health insurance for
8 employees paid during the tax year to or for employees who
9 are Nebraska residents exceeds the total compensation paid plus
10 the employer cost for health insurance for employees to or for
11 employees who are Nebraska residents in the tax year prior to
12 application. New employment does not include compensation to any
13 employee that is in excess of one hundred fifty percent of the
14 Nebraska average weekly wage. Nebraska average weekly wage means
15 the most recent average weekly wage paid by all employers as
16 reported by October 1 by the Department of Labor;

17 (6) New investment means the increase during the tax year
18 over the year prior to the application in the applicant's (a)
19 purchases of buildings and depreciable personal property located
20 in Nebraska, (b) ~~and~~ expenditures on repairs and maintenance on
21 property located in Nebraska, ~~not including neither subdivision~~
22 (a) or (b) of this subdivision to include vehicles required to be
23 registered for operation on the roads and highways of this state,
24 ~~during the tax year~~ and (c) expenditures on advertising, legal,
25 and professional services. If the buildings or depreciable personal
26 property is leased, the amount of new investment shall be the
27 increase in average net annual rents multiplied by the number of
1 years of the lease for which the taxpayer is bound, not to exceed
2 ten years;

3 (7) Related persons means (a) any corporation,
4 partnership, limited liability corporation, cooperative, including
5 cooperatives exempt under section 521 of the Internal Revenue Code
6 of 1986, as amended, or joint venture which is or would otherwise
7 be a member of the same unitary group, if incorporated, or any
8 person who is considered to be a related person under either
9 section 267(b) and (c) or section 707(b) of the Internal Revenue
10 Code of 1986, as amended, and (b) any individual who is a spouse,
11 parent if the taxpayer is a minor, or minor son or daughter of
12 the taxpayer; and

13 (8) Taxpayer means any person subject to the income tax
14 imposed by the Nebraska Revenue Act of 1967, any corporation,
15 partnership, limited liability company, cooperative, including a
16 cooperative exempt under section 521 of the Internal Revenue Code
17 of 1986, as amended, or joint venture that is or would otherwise
18 be a member of the same unitary group, if incorporated, which is,
19 or whose partners, members, or owners representing an ownership

20 interest of at least ninety percent of such entity are, subject
 21 to such tax, and any other partnership, limited liability company,
 22 subchapter S corporation, cooperative, including a cooperative
 23 exempt under section 521 of the Internal Revenue Code of 1986,
 24 as amended, or joint venture when the partners, shareholders,
 25 or members representing an ownership interest of at least ninety
 26 percent of such entity are subject to such tax.

27 Sec. 2. Original section 77-5903, Revised Statutes

1 Cumulative Supplement, 2006, is repealed.

2 Sec. 3. This act shall be operative for all applications

3 for benefits received on or after the effective date of this act.

(Signed) Ray Janssen, Chairperson

GENERAL FILE

LEGISLATIVE BILL 231. Title read. Considered.

SENATOR LANGEMEIER PRESIDING

Advanced to E & R for review with 38 ayes, 0 nays, and 11 present and not voting.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 314. Placed on General File - Com AM289.
 AM289

1 1. Insert the following new sections:

2 Sec. 2. Section 46-602, Revised Statutes Cumulative
 3 Supplement, 2006, is amended to read:

4 46-602 (1) Each water well completed in this state on
 5 or after July 1, 2001, excluding test holes and dewatering wells
 6 to be used for less than ninety days, shall be registered with
 7 the Department of Natural Resources as provided in this section
 8 within sixty days after completion of construction of the water
 9 well. The water well contractor as defined in section 46-1213
 10 constructing the water well, or the owner of the water well if
 11 the owner constructed the water well, shall file the registration
 12 on a form made available by the department and shall also file
 13 with the department the information from the well log required
 14 pursuant to section 46-1241. The department shall, by January 1,
 15 2002, provide water well contractors with the option of filing such
 16 registration forms electronically. No signature shall be required
 17 on forms filed electronically. The fee required by subsection (3)
 18 of section 46-1224 shall be the source of funds for any required
 19 fee to a contractor which provides the on-line services for such
 20 registration. Any discount in the amount paid the state by a credit
 21 card, charge card, or debit card company or a third-party merchant

22 bank for such registration fees shall be deducted from the portion
23 of the registration fee collected pursuant to section 46-1224.

1 (2)(a) If the newly constructed water well is a
2 replacement water well, the registration form shall include
3 (i) the registration number of the water well being replaced,
4 if applicable, and (ii) the date the original water well was
5 decommissioned or a certification that the water well will be
6 decommissioned within one hundred eighty days or a certification
7 that the original water well will be modified and equipped to
8 pump fifty gallons per minute or less and will be used only for
9 livestock, monitoring, observation, or any other nonconsumptive use
10 or de minimus use approved by the applicable natural resources
11 district.

12 (b) For purposes of this section, replacement water well
13 means a water well which is constructed to provide water for
14 the same purpose as the original water well and is operating in
15 accordance with any applicable permit from the department and any
16 applicable rules and regulations of the natural resources district
17 and, if the purpose is for irrigation, the replacement water well
18 delivers water to the same tract of land served by the original
19 water well and (i) replaces an abandoned water well within three
20 years after the last operation of the abandoned water well and
21 the original water well is decommissioned either before or within
22 one hundred eighty days after such construction, (ii) replaces a
23 water well that has not been abandoned but will not be used after
24 construction of the new water well and the original water well
25 will be decommissioned within one hundred eighty days after such
26 construction, except that in the case of a municipal water well,
27 the original municipal water well may be used after construction
1 of the new water well but shall be decommissioned within one year
2 after completion of the replacement water well, or (iii) will
3 continue to be used but will be modified and equipped within one
4 hundred eighty days after such construction of the replacement
5 water well to pump fifty gallons per minute or less and will
6 be used only for livestock, monitoring, observation, or any other
7 nonconsumptive or de minimus use and approved by the applicable
8 natural resources district.

9 (c) No water well shall be registered as a replacement
10 water well until the Department of Natural Resources has received
11 a properly completed notice of decommissioning for the water well
12 being replaced on a form made available by the department, or
13 properly completed notice, prepared in accordance with subsection
14 (7) of this section, of the modification and equipping of the
15 original water well to pump fifty gallons per minute or less
16 for use only for livestock, monitoring, observation, or any other
17 nonconsumptive or de minimus use approved by the applicable natural
18 resources district. Such notices, as required, shall be completed
19 by (i) the water well contractor as defined in section 46-1213
20 who decommissions the water well or modifies and equips the water

21 well, (ii) the pump installation contractor as defined in section
22 46-1209 who decommissions the water well or modifies and equips the
23 water well, or (iii) the owner if the owner decommissions a driven
24 sandpoint well which is on land owned by him or her for farming,
25 ranching, or agricultural purposes or as his or her place of
26 abode. The Department of Health and Human Services Regulation and
27 Licensure shall, by rule and regulation, determine which contractor
1 or owner shall be responsible for such notice in situations in
2 which more than one contractor or owner may be required to provide
3 notice under this subsection.

4 (3) For a series of two or more water wells completed and
5 pumped into a common carrier as part of a single site plan for
6 irrigation purposes, a registration form and a detailed site plan
7 shall be filed for each water well. The registration form shall
8 include the registration numbers of other water wells included in
9 the series if such water wells are already registered.

10 (4) A series of water wells completed for purposes
11 of installation of a ground heat exchanger for a structure
12 for utilizing the geothermal properties of the ground shall be
13 considered as one water well. One registration form and a detailed
14 site plan shall be filed for each such series.

15 (5) One registration form shall be required along with
16 a detailed site plan which shows the location of each such water
17 well in the site and a log from each such water well for water
18 wells constructed as part of a single site plan for (a) monitoring
19 ground water, obtaining hydrogeologic information, or extracting
20 contaminants from the ground, (b) water wells constructed as part
21 of remedial action approved by the Department of Environmental
22 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and
23 (c) water well owners who have a permit issued pursuant to the
24 Industrial Ground Water Regulatory Act and also have an underground
25 injection control permit issued by the Department of Environmental
26 Quality.

27 (6) The Department of Natural Resources shall be notified
1 by the owner of any change in the ownership of a water well
2 required to be registered under this section. Notification shall be
3 in such form and include such evidence of ownership as the Director
4 of Natural Resources by rule and regulation directs. The department
5 shall use such notice to update the registration on file. The
6 department shall not collect a fee for the filing of the notice.

7 (7) The water well contractor or pump installation
8 contractor responsible therefor shall notify the department within
9 sixty days on a form provided by the department of any pump
10 installation or any modifications to the construction of the water
11 well or pump, after the initial registration of the well. For
12 a change of use resulting in modification and equipping of an
13 original water well which is being replaced in accordance with
14 subsection (2) of this section, the water well contractor or pump
15 installation contractor shall notify the department within sixty

16 days on a form provided by the department of the water well and
17 pump modifications and equipping of the original water well. A
18 water well owner shall notify the department within sixty days on
19 a form provided by the department of any other changes or any
20 inaccuracies in recorded water well information, including, but not
21 limited to, changes in use. The department shall not collect a fee
22 for the filing of the notice.

23 (8) Whenever a water well becomes an illegal water well
24 as defined in section 46-706, the owner of the water well shall
25 either correct the deficiency that causes the well to be an illegal
26 water well or shall cause the proper decommissioning of the water
27 well in accordance with rules and regulations adopted pursuant
1 to the Water Well Standards and Contractors' Licensing Act. The
2 water well contractor who decommissions the water well, the pump
3 installation contractor who decommissions the water well, or the
4 owner if the owner decommissions a driven sandpoint well which is
5 on land owned by him or her for farming, ranching, or agricultural
6 purposes or as his or her place of abode, shall provide a properly
7 completed notice of abandonment to the Department of Natural
8 Resources within sixty days. The Department of Health and Human
9 Services Regulation and Licensure shall, by rule and regulation,
10 determine which contractor or owner shall be responsible for such
11 notice in situations in which more than one contractor or owner may
12 be required to provide notice under this subsection. The Department
13 of Natural Resources shall not collect a fee for the filing of the
14 notice.

15 (9) Except for water wells which are used solely for
16 domestic purposes and were constructed before September 9, 1993,
17 and for test holes and dewatering wells used for less than ninety
18 days, each water well which was completed in this state before
19 July 1, 2001, and which is not registered on that date shall be an
20 illegal water well until it is registered with the Department of
21 Natural Resources. Such registration shall be completed by a water
22 well contractor or by the current owner of the water well, shall
23 be on forms provided by the department, and shall provide as much
24 of the information required by subsections (1) through (5) of this
25 section for registration of a new water well as is possible at the
26 time of registration.

27 (10) Water wells which are or were used solely for
1 injecting any fluid other than water into the underground water
2 reservoir, which were constructed before July 16, 2004, and which
3 have not been properly decommissioned on or before July 16, 2004,
4 shall be registered on or before July 1, 2005.

5 (11) Water wells described in subdivision (1)(b) of
6 section 46-601.01 shall be registered with the Department of
7 Natural Resources as provided in subsection (1) of this section
8 within sixty days after the water well is constructed. Water wells
9 described in subdivision (1)(b) of section 46-601.01 which were
10 constructed prior to the effective date of this act shall be

11 registered within one hundred eighty days of such date.

12 Sec. 4. If any section in this act or any part of any
13 section is declared invalid or unconstitutional, the declaration
14 shall not affect the validity or constitutionality of the remaining
15 portions.

16 Sec. 6. Since an emergency exists, this act takes effect
17 when passed and approved according to law.

18 2. On page 3, line 15, after the comma insert "and
19 section 46-602, Revised Statutes Cumulative Supplement, 2006,".

20 3. Renumber the remaining sections accordingly.

(Signed) LeRoy Loudon, Chairperson

General Affairs

LEGISLATIVE BILL 637. Placed on General File.

LEGISLATIVE BILL 638. Placed on General File.

LEGISLATIVE BILL 301. Placed on General File - Com AM204.
AM204

1 1. On page 2, line 18; and page 3, line 2, strike

2 "January", show as stricken, and insert "July".

(Signed) Vickie McDonald, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 211A. Introduced by Cornett, 45.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 211, One Hundredth Legislature, First Session, 2007; and to declare an emergency.

PRESENTED TO THE GOVERNOR

Presented to the Governor on February 12, 2007, at 11:25 a.m. were the following: LBs 35e, 43, 63, 64, 74e, 79, 80, 80A, 110e, 111, 148, 150, 161, 186, 206, 207, and 315e.

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

RESOLUTION

LEGISLATIVE RESOLUTION 28. Introduced by Fischer, 43.

WHEREAS, in May 2005, the United States Congress enacted the REAL

ID Act of 2005 (REAL ID Act) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror Act, and Tsunami Relief, 2005 (Public Law 109-13); and

WHEREAS, Congress passed the REAL ID Act as a rider on a military spending bill without a hearing in either the House or the Senate; and

WHEREAS, the implementation of the REAL ID Act intrudes upon the states' sovereign power contained in the Tenth Amendment to the United States Constitution to determine their own policies for the identification, licensure, and credentialing of individuals residing therein; and

WHEREAS, the REAL ID Act mandates an unfunded national driver's license on the people of Nebraska by requiring the state to conform its process of issuing driver's licenses and identification cards to federal standards by May 2008; and

WHEREAS, the REAL ID Act creates the potential of a massive public sector data base containing information on every American that is accessible to motor vehicle employees and law enforcement officers nationwide that can be used to gather and manage information on citizens; and

WHEREAS, the REAL ID Act converts the state driver licensing function into federal law enforcement and national security functions that are outside the purpose and core competency of driver licensing bureaus; and

WHEREAS, the National Governor's Association, National Conference of State Legislatures, and American Association of Motor Vehicle Administrators predict state compliance with the REAL ID Act provisions will require all of the estimated 245 million driver's license and identification card holders in the United States to renew their current identity documents in person, thereby placing enormous burdens on current driver's license and identification card holders such as higher license and card costs, longer lines to obtain licenses and cards, increased license and card requests, and a waiting period to obtain licenses and cards; and

WHEREAS, the REAL ID Act will cost the states over \$11 billion to implement according to a recent survey of forty-seven licensing authorities conducted by the National Governor's Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators, with the Nebraska Department of Motor Vehicles estimating that the implementation of the REAL ID Act will cost Nebraska \$26 million, none of which are costs that will be paid for by the federal government; and

WHEREAS, the REAL ID Act wrongly coerces states into doing the federal government's bidding by threatening to refuse noncomplying states' citizens the privileges and immunities enjoyed by other states' citizens; and

WHEREAS, the REAL ID Act threatens the privacy and liberty of every driver's license and identification card holder in the United States of America.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature opposes enactment or enforcement in this state of the REAL ID Act.

2. That Congress should repeal the REAL ID Act to avoid the significant problems it currently poses to state sovereignty, individual liberty, and limited government.

3. That the Clerk of the Legislature transmit copies of this resolution to the President of the United States, the President pro Tempore of the United States Senate, the Speaker of the United States House of Representatives, and the Nebraska congressional delegation.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR 28 was referred to the Reference Committee.

AMENDMENT - Print in Journal

Senator Harms filed the following amendment to LB 192:
AM285

(Amendments to Standing Committee amendments, AM240)

- 1 1. Insert the following new sections:
- 2 Sec. 7. The commission shall prepare a biennial report
- 3 on scholarships awarded pursuant to the Access College Early
- 4 Scholarship Program Act and shall submit the report to the Clerk of
- 5 the Legislature. The report shall include, but not be limited to,
- 6 the number and amount of scholarships awarded and the postsecondary
- 7 educational institutions attended by scholarship recipients.
- 8 Sec. 8. A student or the student's parent or legal
- 9 guardian may request in writing a review of any adverse decision by
- 10 requesting such review within twenty days of notice of the adverse
- 11 decision, addressed to the executive director of the commission.
- 12 The review shall be pursuant to the Administrative Procedure Act.
- 13 2. On page 4, line 5, strike "7" and insert "9"; in line
- 14 26, strike "(1)"; and in line 27 strike "such" and insert "
- 15 (1) Such".
- 16 3. On page 5, line 24, after "of" insert "the
- 17 verification of eligibility and".
- 18 4. Renumber the remaining sections accordingly.

MOTION - Print in Journal

Senator Flood filed the following motion to LB 476:
Bracket LB 476 to May 31, 2007.

AMENDMENTS - Print in Journal

Senator Flood filed the following amendment to LB 476:
AM307

- 1 1. Strike original sections 20, 21, 22, and 23 and insert
- 2 the following new sections:
- 3 Sec. 10. Section 29-1602, Revised Statutes Cumulative
- 4 Supplement, 2006, is amended to read:
- 5 29-1602 All informations shall be filed in the court
- 6 having jurisdiction of the offense specified therein, by the

7 prosecuting attorney of the proper county as informant. The
 8 prosecuting attorney shall subscribe his or her name thereto
 9 and endorse thereon the names of the witnesses known to him or her
 10 at the time of filing. After the information has been filed, the
 11 prosecuting attorney shall endorse on the information the names of
 12 such other witnesses as shall then be known to him or her as the
 13 court in its discretion may prescribe, ~~except that if a notice of~~
 14 ~~aggravation is contained in the information as provided in section~~
 15 ~~29-1603, the prosecuting attorney may endorse additional witnesses~~
 16 ~~at any time up to and including the thirtieth day prior to the~~
 17 ~~trial of guilt.~~

18 Sec. 19. Section 29-2261, Revised Statutes Cumulative
 19 Supplement, 2006, is amended to read:

20 29-2261 (1) Unless it is impractical to do so, when an
 21 offender has been convicted of a felony, ~~other than murder in the~~
 22 ~~first degree,~~ the court shall not impose sentence without first
 23 ordering a presentence investigation of the offender and according
 1 due consideration to a written report of such investigation. ~~When~~
 2 ~~an offender has been convicted of murder in the first degree and~~
 3 ~~(a) a jury renders a verdict finding the existence of one or more~~
 4 ~~aggravating circumstances as provided in section 29-2520 or (b)(i)~~
 5 ~~the information contains a notice of aggravation as provided in~~
 6 ~~section 29-1603 and (ii) the offender waives his or her right to~~
 7 ~~a jury determination of the alleged aggravating circumstances, the~~
 8 ~~court shall not commence the sentencing determination proceeding as~~
 9 ~~provided in section 29-2521 without first ordering a presentence~~
 10 ~~investigation of the offender and according due consideration to a~~
 11 ~~written report of such investigation.~~

12 (2) A court may order a presentence investigation in any
 13 case, except in cases in which an offender has been convicted
 14 of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
 15 misdemeanor, a traffic infraction, or any corresponding city or
 16 village ordinance.

17 (3) The presentence investigation and report shall
 18 include, when available, an analysis of the circumstances attending
 19 the commission of the crime, the offender's history of delinquency
 20 or criminality, physical and mental condition, family situation and
 21 background, economic status, education, occupation, and personal
 22 habits, and any other matters that the probation officer deems
 23 relevant or the court directs to be included. All local and state
 24 police agencies and Department of Correctional Services adult
 25 correctional facilities shall furnish to the probation officer
 26 copies of such criminal records, in any such case referred to
 27 the probation officer by the court of proper jurisdiction, as the
 1 probation officer shall require without cost to the court or the
 2 probation officer.

3 Such investigation shall also include:

4 (a) Any written statements submitted to the county
 5 attorney by a victim; and

6 (b) Any written statements submitted to the probation
7 officer by a victim.

8 (4) If there are no written statements submitted to the
9 probation officer, he or she shall certify to the court that:

10 (a) He or she has attempted to contact the victim; and

11 (b) If he or she has contacted the victim, such officer
12 offered to accept the written statements of the victim or to reduce
13 such victim's oral statements to writing.

14 For purposes of subsections (3) and (4) of this section,
15 the term victim shall be as defined in section 29-119.

16 (5) Before imposing sentence, the court may order the
17 offender to submit to psychiatric observation and examination for
18 a period of not exceeding sixty days or such longer period as the
19 court determines to be necessary for that purpose. The offender
20 may be remanded for this purpose to any available clinic or mental
21 hospital, or the court may appoint a qualified psychiatrist to make
22 the examination. The report of the examination shall be submitted
23 to the court.

24 (6) Any presentence report or psychiatric examination
25 shall be privileged and shall not be disclosed directly or
26 indirectly to anyone other than a judge, probation officers
27 to whom an offender's file is duly transferred, the probation
1 administrator or his or her designee, or others entitled by law
2 to receive such information, including personnel and mental health
3 professionals for the Nebraska State Patrol specifically assigned
4 to sex offender registration and community notification for the
5 sole purpose of using such report or examination for assessing
6 risk and for community notification of registered sex offenders.

7 For purposes of this subsection, mental health professional means

8 (a) a practicing physician licensed to practice medicine in this
9 state under the provisions of section 71-102, (b) a practicing
10 psychologist licensed to engage in the practice of psychology in
11 this state as provided in section 71-1,206.14, or (c) a practicing
12 mental health professional licensed or certified in this state as
13 provided in section 71-1,333. The court may permit inspection of
14 the report or examination of parts thereof by the offender or his
15 or her attorney, or other person having a proper interest therein,
16 whenever the court finds it is in the best interest of a particular
17 offender. The court may allow fair opportunity for an offender to
18 provide additional information for the court's consideration.

19 (7) If an offender is sentenced to imprisonment, a copy
20 of the report of any presentence investigation or psychiatric
21 examination shall be transmitted immediately to the Department of
22 Correctional Services. Upon request, the Board of Parole or the
23 Office of Parole Administration may receive a copy of the report
24 from the department.

25 (8) Notwithstanding subsection (6) of this section, the
26 Nebraska Commission on Law Enforcement and Criminal Justice under
27 the direction and supervision of the Chief Justice of the Supreme

1 Court shall have access to presentence investigations and reports
 2 for the sole purpose of carrying out the study required under
 3 subdivision (7) of section 81-1425. The commission shall treat such
 4 information as confidential, and nothing identifying any individual
 5 shall be released by the commission.

6 (9) Notwithstanding subsection (6) of this section, the
 7 Supreme Court or an agent of the Supreme Court acting under the
 8 direction and supervision of the Chief Justice shall have access to
 9 psychiatric examinations and presentence investigations and reports
 10 for research purposes. The Supreme Court and its agent shall
 11 treat such information as confidential and nothing identifying any
 12 individual shall be released.

13 2. On page 19, strike beginning with "The" in line 4
 14 through line 8 and show the old matter as stricken; and strike
 15 lines 16 through 25 and show the old matter as stricken.

16 3. On page 20, strike lines 1 through 5 and show as
 17 stricken; and in line 6 strike "(3)", show as stricken, and insert
 18 "(2)".

19 4. On page 21, line 25, strike "If an information
 20 charging a" and show as stricken.

21 5. On page 22, strike beginning with "violation" in line
 22 1 through the period in line 4 and show the old matter as stricken.

23 6. On page 25, strike beginning with "or" in line 17
 24 through line 19, show the old matter as stricken, and insert an
 25 underscored period.

26 7. On page 39, strike beginning with "imposed" in line 20
 27 through "29-2523" in line 21; and in line 25 strike "pursuant to
 1 section 29-2520".

2 8. On page 40, line 1, strike "to 29-2523".

3 9. On page 51, line 25, after "28-303," insert
 4 "29-1602,".

5 10. On page 52, line 1, strike "29-2520, 29-2521,
 6 29-2522, 29-2523," and insert "29-2261,,"; in line 11 after the
 7 last comma insert "29-2520, 29-2521,,"; and in line 11 after
 8 "29-2521.02," insert "29-2521.05, 29-2522, 29-2523,".

9 11. Renumber the remaining sections accordingly.

Senator Flood filed the following amendment to LB 476:
 AM287

1 1. Strike the original sections and insert the following
 2 new sections:

3 Section 1. Section 29-2524, Revised Statutes Cumulative
 4 Supplement, 2006, is amended to read:

5 29-2524 Nothing in sections 25-1140.09, 28-303, 28-313,
 6 and 29-2519 to 29-2546 and sections 7 and 8 of this act shall be in
 7 any way deemed to repeal or limit existing procedures for automatic
 8 review of capital cases, nor shall they in any way limit the right
 9 of the Supreme Court to reduce a sentence of death to a sentence of
 10 life imprisonment without parole in accordance with the provisions

11 of section 29-2308, nor shall they limit the right of the Board
12 of Pardons to commute any sentence of death to a sentence of life
13 imprisonment without parole.

14 Sec. 2. Section 29-2532, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-2532 (1)(a) The mode of inflicting the punishment
17 of death, in all cases, shall be cases in which the crime for
18 which the punishment of death has been imposed was committed
19 prior to the effective date of this act, shall be, at the
20 option of the convicted person being punished and as provided
21 in subdivisions (1)(b) and (c) of this subsection, (i) by
22 causing to pass through the body of the convicted person a
23 current or currents of electricity of sufficient intensity to
1 cause death; and the application of such current or currents
2 shall be continued until such convicted person is dead; or
3 (ii) by intravenous administration of a lethal quantity of an
4 ultra-short-acting barbiturate in combination with a chemical
5 paralytic agent and potassium chloride, or other equally effective
6 substances, sufficient to cause death.

7 (b) If the convicted person being punished was sentenced
8 to death prior to the effective date of this act, then the warden
9 of the Department of Correctional Services facility designated by
10 the Director of Correctional Services to carry out the sentence
11 of death, or his or her designee, shall provide written notice
12 to the convicted person of the requirement to choose a mode of
13 inflicting the punishment of death set forth in this section within
14 thirty days after the effective date of this act. Such notice shall
15 state that a failure to choose shall result in the punishment of
16 death being inflicted pursuant to subdivision (1)(a)(ii) of this
17 subsection. If a choice is made by the convicted person, it shall
18 be made in writing and received by the warden or his or her
19 designee within thirty days after receipt by the convicted person
20 of the warden's written notice.

21 (c) If the convicted person being punished was sentenced
22 to death on or after the effective date of this act, then
23 the warden of the Department of Correctional Services facility
24 designated by the Director of Correctional Services to carry out
25 the sentence of death, or his or her designee, shall provide
26 written notice to the convicted person of the requirement to choose
27 a mode of inflicting the punishment of death set forth in this
1 section within thirty days after the sentence has been affirmed by
2 the Nebraska Supreme Court pursuant to section 29-2528. Such notice
3 shall state that a failure to choose shall result in the punishment
4 of death being inflicted pursuant to subdivision (1)(a)(ii) of
5 this subsection. If a choice is made by the convicted person, it
6 shall be made in writing and received by the warden or his or her
7 designee within thirty days after receipt by the convicted person
8 of the warden's written notice.

9 (d) If the convicted person being punished fails to

10 choose as provided in this subsection, the mode of inflicting the
 11 punishment of death shall be pursuant to subdivision (1)(a)(ii) of
 12 this section.

13 (2) The mode of inflicting the punishment of death, in
 14 cases in which the crime for which the punishment of death has
 15 been imposed was committed on or after the effective date of this
 16 act, shall be by intravenous administration of a lethal quantity
 17 of an ultra-short-acting barbiturate in combination with a chemical
 18 paralytic agent and potassium chloride, or other equally effective
 19 substances, sufficient to cause death.

20 (3) The warden of the ~~Nebraska Penal and Correctional~~
 21 ~~Complex, Department of Correctional Services facility designated by~~
 22 ~~the Director of Correctional Services to carry out the sentence~~
 23 ~~of death, and in case of his such warden's death, sickness,~~
 24 ~~absence, or inability to act, then the deputy warden, shall be the~~
 25 ~~executioner. The ~~;~~ PROVIDED, the warden may in writing specially~~
 26 ~~designate and appoint a suitable and competent person to act for~~
 27 ~~him or her, and under his or her direction, as executioner in~~
 1 ~~any particular case. A crime punishable by death ~~must~~ shall be~~
 2 ~~punished according to the provisions herein made this section and~~
 3 ~~not otherwise.~~

4 (4) If the Supreme Court of the United States declares
 5 that the mode of inflicting the punishment of death under
 6 subdivision (1)(a)(i) or (ii) of this section violates the
 7 United States Constitution, or if the Nebraska Supreme Court
 8 declares that the mode of inflicting the punishment of death under
 9 subdivision (1)(a)(i) or (ii) of this section violates the United
 10 States Constitution of the Constitution of Nebraska, the mode of
 11 inflicting the punishment of death shall be by the other remaining
 12 statutory mode of inflicting the punishment of death.

13 Sec. 3. Section 29-2533, Reissue Revised Statutes of
 14 Nebraska, is amended to read:

15 29-2533 When any convicted person shall be sentenced
 16 to be electrocuted, is punished by death, such punishment shall
 17 be inflicted within the walls of the Department of Correctional
 18 Services adult correctional facility, or within the yard or
 19 enclosure adjacent thereto, at a Department of Correctional
 20 Services facility under the supervision of the warden of such
 21 facility and in such a manner as to exclude the view of all persons
 22 save except those permitted to be present as provided in sections
 23 29-2534 and 29-2535.

24 Sec. 4. Section 29-2542, Reissue Revised Statutes of
 25 Nebraska, is amended to read:

26 29-2542 If any person escapes who has been convicted
 27 of a crime punishable by death, and has been sentenced to be
 1 electrocuted, shall escape, and shall not be death, and has not
 2 been retaken before the time fixed for his or her execution,
 3 it shall be lawful for the warden, the Director of Correctional
 4 Services or his or her designee may rearrest such person, or any

5 sheriff or other officer or person ~~to~~ may rearrest such person and
 6 return him or her to the custody of the ~~warden of the Nebraska~~
 7 ~~Penal and Correctional Complex, who shall thereupon make return~~
 8 ~~thereof to Department of Correctional Services. The director shall~~
 9 then notify the Governor of the state, and the Governor shall
 10 ~~thereupon~~ issue a warrant, fixing and appointing a day for the
 11 execution. The director shall ensure that the designated warden
 12 carries out the execution, which shall be carried into effect by
 13 ~~the warden~~ in the same manner as ~~herein~~ provided for the execution
 14 of ~~an original~~ a sentence of death.

15 Sec. 5. Section 29-2543, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 29-2543 Whenever any person has been tried and convicted
 18 before any district court in this state of a crime punishable by
 19 death and under the conviction has been sentenced ~~by the court to~~
 20 ~~suffer to~~ death, it shall be the duty of the clerk of the court
 21 before which the conviction was had to issue a warrant, under the
 22 seal of the court, reciting therein the conviction and sentence
 23 directed to the ~~warden of the Nebraska Penal and Correctional~~
 24 ~~Complex, Director of Correctional Services, commanding him or her~~
 25 ~~to proceed at the time named in the sentence to carry the same~~
 26 ~~into execution by causing the person so convicted and sentenced to~~
 27 ~~be electrocuted by the passage of an electric current through the~~
 1 ~~body until dead. the director to cause the death of the convicted~~
 2 person. The clerk shall deliver the warrant to the sheriff of
 3 the county in which conviction was had and such sheriff shall
 4 thereupon forthwith remove such convicted person to a Department
 5 of Correctional Services ~~adult correctional~~ facility of the state
 6 and there deliver him or her, together with the warrant, into the
 7 custody of the ~~warden~~ director who shall receive and safely keep
 8 such ~~convict~~ convicted person within a Department of Correctional
 9 Services ~~adult correctional~~ facility until the time of execution or
 10 until otherwise ordered by competent authority.

11 Sec. 6. Section 29-2544, Reissue Revised Statutes of
 12 Nebraska, is amended to read:

13 29-2544 It shall be the duty of the ~~warden of the~~
 14 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional
 15 Services on receipt of such warrant, if the Supreme Court or a
 16 judge thereof shall not have ordered a suspension of the execution,
 17 and if the Board of Pardons shall not have commuted such sentence,
 18 or granted a reprieve or pardon to such ~~convict~~ convicted person,
 19 to proceed at the time named in the warrant to carry the sentence
 20 into execution in the manner herein provided; and of the manner of
 21 his or her executing the warrant, and of his or her doings thereon,
 22 he or she shall forthwith make return to the clerk, who shall cause
 23 the warrant and return to be recorded as a part of the records of
 24 the case.

25 Sec. 7. Notwithstanding any other provision of law, the
 26 assistance with, participation in, or performance of ancillary or

27 other functions pursuant to the administration of the substance or
 1 substances described in subdivision (1)(a)(ii) or subsection (2) of
 2 section 29-2532 in order to carry out the punishment of death as
 3 provided by law shall not be construed to constitute the practice
 4 of medicine and shall not be a violation of the Uniform Controlled
 5 Substances Act or sections 71-2501 to 71-2512.

6 Sec. 8. Notwithstanding any other provision of law,
 7 any pharmacist or pharmaceutical supplier is authorized to
 8 distribute drugs to the Director of Correctional Services or his
 9 or her designee, without prescription, in order to carry out the
 10 punishment of death as provided by law.

11 Sec. 9. If any section in this act or any part of any
 12 section is declared invalid or unconstitutional, the declaration
 13 shall not affect the validity or constitutionality of the remaining
 14 portions.

15 Sec. 10. Original sections 29-2532, 29-2533, 29-2542,
 16 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, and
 17 section 29-2524, Revised Statutes Cumulative Supplement, 2006, are
 18 repealed.

19 Sec. 11. Since an emergency exists, this act takes effect
 20 when passed and approved according to law.

Senator Johnson filed the following amendment to LB 395:
 AM321

- 1 1. Strike section 3.
- 2 2. Renumber the remaining sections and correct internal
- 3 references accordingly.

UNANIMOUS CONSENT - Add Cointroducer

Senator Nelson asked unanimous consent to add his name as cointroducer to
 LB 235. No objections. So ordered.

VISITOR

The Doctor of the Day was Dr. Mike Meeker from Bellevue.

ADJOURNMENT

At 12:03 p.m., on a motion by Senator Raikes, the Legislature adjourned
 until 9:00 a.m., Tuesday, February 13, 2007.

Patrick J. O'Donnell
 Clerk of the Legislature

