

TWENTY-THIRD DAY - FEBRUARY 9, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION****TWENTY-THIRD DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, February 9, 2009

PRAYER

The prayer was offered by Pastor Clint Poppe, Good Shepard Lutheran Church, Lincoln.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Sheehy presiding.

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

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-second day was approved.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 300. Placed on General File.

(Signed) Chris Langemeier, Chairperson

Judiciary

LEGISLATIVE BILL 305. Placed on General File.

LEGISLATIVE BILL 156. Indefinitely postponed.

LEGISLATIVE BILL 185. Indefinitely postponed.

LEGISLATIVE BILL 203. Indefinitely postponed.

(Signed) Brad Ashford, Chairperson

NOTICE OF COMMITTEE HEARINGS

Agriculture

Room 1510

Tuesday, March 3, 2009 1:30 p.m.

LB593

LB224

LB516

Room 2102

Tuesday, March 10, 2009 1:30 p.m.

LB584

LB667

(Signed) Tom Carlson, Chairperson

Natural Resources

Room 1525

Friday, February 20, 2009 1:30 p.m.

Patrick Bourne - Nebraska Power Review Board

(Signed) Chris Langemeier, Chairperson

ANNOUNCEMENT

Senator Giese designates LB334 as his priority bill.

RESOLUTION**LEGISLATIVE RESOLUTION 20.** Introduced by Fulton, 29.

WHEREAS, engineers plan, design, and implement engineering works that propel the nation's economy, enhance our quality of life, and safeguard America's infrastructure; and

WHEREAS, Nebraska will look, more than before, to the knowledge and skill of engineers to bridge the gap between science, theory, and practical application in creative and innovative ways to meet the challenges of the future; and

WHEREAS, National Engineers Week was founded in 1951 and is celebrated at the time of George Washington's birthday, who himself was a military engineer and land surveyor; and

WHEREAS, Engineers Week encourages young math and science students to realize the practical power of their knowledge; and

WHEREAS, Engineers Week raises public understanding and appreciation of engineers' contributions to society.

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

1. That the Legislature recognizes the contributions and achievements of Nebraska's engineers and that the week of February 15th through the 21st, 2009, be recognized as Engineers Week in Nebraska.

2. That a copy of this resolution be delivered to the American Council of Engineering Companies/Nebraska.

Laid over.

UNANIMOUS CONSENT - Room Change

Senator Wightman asked unanimous consent that the Executive Board conduct its hearing on Monday, February 9, 2009, in Room 1524 instead of Room 2102. No objections. So ordered.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LR 14 and 15 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LR 14 and 15.

GENERAL FILE

LEGISLATIVE BILL 53. Senator Lathrop offered the following motion: MO12

Reconsider the vote taken on AM222.

Senator Lathrop asked unanimous consent to withdraw his motion to reconsider. No objections. So ordered.

Senator Haar withdrew his amendments, AM87 and FA10, found on pages 327 and 404.

Advanced to Enrollment and Review Initial with 36 ayes, 2 nays, 7 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 28. Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 3 nays, 3 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 48. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 204. Title read. Considered.

Senator Fischer renewed her amendment, AM84, found on page 380.

The Fischer amendment was adopted with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 331. Title read. Considered.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 135. Title read. Considered.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 32. Title read. Considered.

Advanced to Enrollment and Review Initial with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

COMMITTEE REPORT

Revenue

LEGISLATIVE BILL 164. Placed on General File with amendment. AM234

- 1 1. Strike original sections 6, 10, and 11 and insert the
- 2 following new sections:
- 3 Sec. 6. Section 77-5725, Revised Statutes Cumulative
- 4 Supplement, 2008, is amended to read:
- 5 77-5725 (1) Applicants may qualify for benefits under the
- 6 Nebraska Advantage Act in one of six tiers:
- 7 (a) Tier 1, investment in qualified property of at least
- 8 one million dollars and the hiring of at least ten new employees.
- 9 There shall be no new project applications for benefits under this
- 10 tier filed ~~on or after January 1, 2011, December 31, 2015,~~ without
- 11 further authorization of the Legislature. All complete project
- 12 applications filed ~~on or before January 1, 2011, December 31,~~
- 13 2015, shall be considered by the Tax Commissioner and approved if

14 the project and taxpayer qualify for benefits. Agreements may be
15 executed with regard to completed project applications filed on or
16 before ~~January 1, 2011~~ December 31, 2015. All project agreements
17 pending, approved, or entered into before such date shall continue
18 in full force and effect;

19 (b) Tier 2, investment in qualified property of at least
20 three million dollars and the hiring of at least thirty new
21 employees;

22 (c) Tier 3, the hiring of at least thirty new employees.

23 There shall be no new project applications for benefits under this
1 tier filed ~~on or after January 1, 2011~~ December 31, 2015, without
2 further authorization of the Legislature. All complete project
3 applications filed on or before January 1, 2011, December 31,
4 2015, shall be considered by the Tax Commissioner and approved if
5 the project and taxpayer qualify for benefits. Agreements may be
6 executed with regard to completed project applications filed on or
7 before ~~January 1, 2011~~ December 31, 2015. All project agreements
8 pending, approved, or entered into before such date shall continue
9 in full force and effect;

10 (d) Tier 4, investment in qualified property of at least
11 ten million dollars and the hiring of at least one hundred new
12 employees;

13 (e) Tier 5, investment in qualified property of at least
14 thirty million dollars. Failure to maintain an average number of
15 equivalent employees as defined in section 77-5727 greater than or
16 equal to the number of equivalent employees in the base year shall
17 result in a partial recapture of benefits; and

18 (f) Tier 6, investment in qualified property of at least
19 ten million dollars and the hiring of at least seventy-five new
20 employees or the investment in qualified property of at least
21 one hundred million dollars and the hiring of at least fifty new
22 employees. Agreements may be executed with regard to completed
23 project applications filed before January 1, 2016. All project
24 agreements pending, approved, or entered into before such date
25 shall continue in full force and effect.

26 (2) When the taxpayer has met the required levels of
27 employment and investment contained in the agreement for a tier 1,
1 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be
2 entitled to the following incentives:

3 (a) A refund of all sales and use taxes for a tier 2,
4 tier 4, tier 5, or tier 6 project or a refund of one-half of all
5 sales and use taxes for a tier 1 project paid under the Local
6 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
7 13-319, 13-324, and 13-2813 from the date of the application
8 through the meeting of the required levels of employment and
9 investment for all purchases, including rentals, of:

10 (i) Qualified property used as a part of the project;

11 (ii) Property, excluding motor vehicles, based in this
12 state and used in both this state and another state in connection

13 with the project except when any such property is to be used for
14 fundraising for or for the transportation of an elected official;

15 (iii) Tangible personal property by the owner of the
16 improvement to real estate that is incorporated into real estate as
17 a part of a project; and

18 (iv) Tangible personal property by a contractor or
19 repairperson after appointment as a purchasing agent of the owner
20 of the improvement to real estate. The refund shall be based on
21 fifty percent of the contract price, excluding any land, as the
22 cost of materials subject to the sales and use tax; and

23 (b) A refund of all sales and use taxes for a tier 2,
24 tier 4, tier 5, or tier 6 project or a refund of one-half of all
25 sales and use taxes for a tier 1 project paid under the Local
26 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
27 13-319, 13-324, and 13-2813 on the types of purchases, including
1 rentals, listed in subdivision (a) of this subsection for such
2 taxes paid during each year of the entitlement period in which
3 the taxpayer is at or above the required levels of employment and
4 investment.

5 (3) Any taxpayer who qualifies for a tier 1, tier 2,
6 tier 3, or tier 4 project shall be entitled to a credit equal to
7 three percent times the average wage of new employees times the
8 number of new employees if the average wage of the new employees
9 equals at least sixty percent of the Nebraska average annual wage
10 for the year of application. The credit shall equal four percent
11 times the average wage of new employees times the number of new
12 employees if the average wage of the new employees equals at least
13 seventy-five percent of the Nebraska average annual wage for the
14 year of application. The credit shall equal five percent times the
15 average wage of new employees times the number of new employees
16 if the average wage of the new employees equals at least one
17 hundred percent of the Nebraska average annual wage for the year of
18 application. The credit shall equal six percent times the average
19 wage of new employees times the number of new employees if the
20 average wage of the new employees equals at least one hundred
21 twenty-five percent of the Nebraska average annual wage for the
22 year of application. For computation of such credit:

23 (a) Average annual wage means the total compensation paid
24 to employees during the year at the project who are not base-year
25 employees and who are paid wages equal to at least sixty percent
26 of the Nebraska average weekly wage for the year of application,
27 excluding any compensation in excess of one million dollars paid
1 to any one employee during the year, divided by the number of
2 equivalent employees making up such total compensation;

3 (b) Average wage of new employees means the average
4 annual wage paid to employees during the year at the project who
5 are not base-year employees and who are paid wages equal to at
6 least sixty percent of the Nebraska average weekly wage for the
7 year of application, excluding any compensation in excess of one

8 million dollars paid to any one employee during the year; and

9 (c) Nebraska average annual wage means the Nebraska
10 average weekly wage times fifty-two.

11 (4) Any taxpayer who qualifies for a tier 6 project shall
12 be entitled to a credit equal to ten percent times the total
13 compensation paid to all employees, other than base-year employees,
14 excluding any compensation in excess of one million dollars paid to
15 any one employee during the year, employed at the project.

16 (5) Any taxpayer who has met the required levels of
17 employment and investment for a tier 2 or tier 4 project shall
18 receive a credit equal to ten percent of the investment made in
19 qualified property at the project. Any taxpayer who has met the
20 required levels of investment and employment for a tier 1 project
21 shall receive a credit equal to three percent of the investment
22 made in qualified property at the project. Any taxpayer who has
23 met the required levels of investment and employment for a tier
24 6 project shall receive a credit equal to fifteen percent of the
25 investment made in qualified property at the project.

26 (6) The credits prescribed in subsections (3), (4), and
27 (5) of this section shall be allowable for compensation paid and
1 investments made during each year of the entitlement period that
2 the taxpayer is at or above the required levels of employment and
3 investment.

4 (7) The credit prescribed in subsection (5) of this
5 section shall also be allowable during the first year of the
6 entitlement period for investment in qualified property at the
7 project after the date of the application and before the required
8 levels of employment and investment were met.

9 (8)(a) A taxpayer who has met the required levels of
10 employment and investment for a tier 4 or tier 6 project shall
11 receive the incentive provided in this subsection. A taxpayer who
12 has a project for an Internet web portal and who has met the
13 required level of investment for a tier 5 project shall receive the
14 incentive provided in this subsection for property in subdivision
15 (8)(b)(ii) of this section. Such investment and hiring of new
16 employees shall be considered a required level of investment and
17 employment for this subsection and for the recapture of benefits
18 under this subsection only.

19 (b) The following property used in connection with such
20 project or projects and acquired by the taxpayer, whether by
21 lease or purchase, after the date the application was filed shall
22 constitute separate classes of personal property:

23 (i) Turbine-powered aircraft, including turboprop,
24 turbojet, and turbofan aircraft, except when any such aircraft is
25 used for fundraising for or for the transportation of an elected
26 official;

27 (ii) Computer systems, made up of equipment that is
1 interconnected in order to enable the acquisition, storage,
2 manipulation, management, movement, control, display, transmission,

3 or reception of data involving computer software and hardware, used
4 for business information processing which require environmental
5 controls of temperature and power and which are capable of
6 simultaneously supporting more than one transaction and more than
7 one user. A computer system includes peripheral components which
8 require environmental controls of temperature and power connected
9 to such computer systems. Peripheral components shall be limited to
10 additional memory units, tape drives, disk drives, power supplies,
11 cooling units, data switches, and communication controllers;

12 (iii) Depreciable personal property used for a
13 distribution facility, including, but not limited to, storage
14 racks, conveyor mechanisms, forklifts, and other property used to
15 store or move products;

16 (iv) Personal property which is business equipment
17 located in a single project if the business equipment is involved
18 directly in the manufacture or processing of agricultural products;
19 and

20 (v) For a tier 6 project, any other personal property
21 located at the project.

22 (c) Such property shall be eligible for exemption from
23 the tax on personal property from the first January 1 following
24 the date of acquisition for property in subdivision (8)(b)(i)
25 of this section, or from the first January 1 following the end
26 of the year during which the required levels were exceeded for
27 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this
1 section, through the ninth December 31 after the first year any
2 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)
3 of this section qualifies for the exemption. In order to receive
4 the property tax exemptions allowed by subdivision (8)(b) of this
5 section, the taxpayer shall annually file a claim for exemption
6 with the Tax Commissioner on or before May 1. The form and
7 supporting schedules shall be prescribed by the Tax Commissioner
8 and shall list all property for which exemption is being sought
9 under this section. A separate claim for exemption must be filed
10 for each project and each county in which property is claimed
11 to be exempt. A copy of this form must also be filed with the
12 county assessor in each county in which the applicant is requesting
13 exemption. The Tax Commissioner shall determine the eligibility
14 of each item listed for exemption and, on or before August 1,
15 certify such to the taxpayer and to the affected county assessor.
16 In determining the eligibility of items of personal property for
17 exemption, the Tax Commissioner is limited to the question of
18 whether the property claimed as exempt by the taxpayer falls
19 within the classes of property described in subdivision (8)(b) of
20 this section. The determination of whether a taxpayer is eligible
21 to obtain exemption for personal property based on meeting the
22 required levels of investment and employment is the responsibility
23 of the Tax Commissioner.

24 (9)-(9)(a) The investment thresholds in this section for

25 a particular year of application shall be adjusted by the method
 26 provided in this subsection.

27 (b) For tier 1, tier 2, tier 4, and tier 5, beginning

1 ~~Beginning~~ Beginning October 1, 2006, and each October 1 thereafter, the
 2 average ~~average~~ Producer Price Index for all commodities, published by
 3 the United States Department of Labor, Bureau of Labor Statistics,
 4 for the most recent ~~available period~~ twelve available periods
 5 shall be divided by the Producer Price Index for the first
 6 quarter of 2006 and the result multiplied by the applicable
 7 investment threshold. The investment thresholds shall be adjusted
 8 for cumulative inflation since 2006.

9 (c) For tier 6, beginning October 1, 2008, and each

10 October 1 thereafter, the average Producer Price Index for all
 11 commodities, published by the United States Department of Labor,
 12 Bureau of Labor Statistics, for the most recent twelve available
 13 periods shall be divided by the Producer Price Index for the
 14 first quarter of 2008 and the result multiplied by the applicable
 15 investment threshold. The investment thresholds shall be adjusted
 16 for cumulative inflation since 2008.

17 (d) If the resulting amount is not a multiple of one

18 million dollars, the amount shall be rounded to the next lowest one
 19 million dollars.

20 (e) The investment thresholds established by this

21 subsection apply for purposes of project qualifications for all
 22 applications filed on or after January 1 of the following year for
 23 all years of the project. Adjustments do not apply to projects
 24 after the year of application.

25 Sec. 10. Section 77-5806, Revised Statutes Cumulative
 26 Supplement, 2008, is amended to read:

27 77-5806 The Nebraska Advantage Research and Development
 1 Act shall be operative for all tax years beginning or deemed to
 2 begin on or after January 1, 2006, under the Internal Revenue Code
 3 of 1986, as amended. No business firm shall be allowed to first
 4 claim the credit for any tax year beginning or deemed to begin ~~on~~
 5 ~~or after January 1, 2011, December 31, 2015,~~ under the Internal
 6 Revenue Code of 1986, as amended.

7 Sec. 11. Section 77-5905, Revised Statutes Cumulative
 8 Supplement, 2008, is amended to read:

9 77-5905 (1) If the Department of Revenue determines
 10 that an application meets the requirements of section 77-5904 and
 11 that the investment or employment is eligible for the credit and
 12 (a) the applicant is actively engaged in the operation of the
 13 microbusiness or will be actively engaged in the operation upon its
 14 establishment, (b) the majority of the assets of the microbusiness
 15 are located in a distressed area or will be upon its establishment,
 16 (c) the applicant will make new investment or employment in the
 17 microbusiness, and (d) the new investment or employment will create
 18 new income or jobs in the distressed area, the department shall
 19 approve the application and authorize tentative tax credits to the

20 applicant within the limits set forth in this section and certify
 21 the amount of tentative tax credits approved for the applicant.
 22 Applications for tax credits shall be considered in the order in
 23 which they are received.

24 (2) The department may approve applications up to the
 25 adjusted limit for each calendar year beginning January 1, 2006,
 26 through December 31, ~~2010~~2015. After applications totaling the
 27 adjusted limit have been approved for a calendar year, no further
 1 applications shall be approved for that year. The adjusted limit
 2 in a given year is two million dollars plus tentative tax credits
 3 that were not granted by the end of the preceding year. Tax credits
 4 shall not be allowed for a taxpayer receiving benefits under the
 5 Employment and Investment Growth Act, the Nebraska Advantage Act,
 6 or the Nebraska Advantage Rural Development Act.

(Signed) Abbie Cornett, Chairperson

ATTORNEY GENERAL'S OPINION

Opinion 09005

DATE: February 9, 2009

SUBJECT: Scope of Practice for Physical Therapists.

REQUESTED BY: Abbie Cornett, Senator
Nebraska State Legislature

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

You have requested our opinion whether joint manipulation is within the scope of practice for physical therapists under current Nebraska law. You have informed us that there is some confusion on this issue and that you are considering introducing legislation which would clarify that joint manipulation is not within the scope of practice of physical therapists. Further, your request letter states that it is your understanding that "joint manipulation is a separate and distinct procedure from 'mobilization,' in that manipulation commences where mobilization ends and carries the joint beyond the normal physiological range of motion, producing a joint cavitation." For the reasons set forth below, it is our view that legislative action is not necessary to the extent your inquiry concerns physical therapists' authority to perform any procedure which carries a joint beyond its normal range of motion.

Applicable Law

In the current Physical Therapy Practice Act, the term "physical therapy" is defined to include:

Alleviating impairment, functional limitation, or disabilities by designing, implementing, or modifying therapeutic interventions which may include any of the following: Therapeutic exercise; functional training in home, community, or work integration or reintegration related to physical movement and mobility; therapeutic massage; mobilization or manual therapy; recommendation, application, and fabrication of assistive, adaptive, protective, and supportive devices and equipment; airway clearance techniques; integumentary protection techniques; nonsurgical debridement and wound care; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction; but which does not include the making of a medical diagnosis.

Neb. Rev. Stat. § 38-2914(2) (Supp. 2007) (emphasis added).

The term "mobilization or manual therapy" is defined within the Act as follows:

Mobilization or manual therapy means a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissues, or both, throughout the normal physiological range of motion that are applied at varying speeds and amplitudes, without limitation.

Neb. Rev. Stat. § 38-2910 (Supp. 2007).

Analysis

The terms "manipulation" and "joint manipulation" are not defined or mentioned in the Physical Therapy Practice Act or elsewhere in Nebraska statutes. It is our understanding that there are differing views as to the meaning of these terms. The medical literature which we have reviewed is less than conclusive as to whether the term "manipulation" includes only movement of a joint beyond its normal physiological range of motion or whether it also might include movement of a joint within its normal physiological range of motion. Physical therapy textbooks and other resources appear to sometimes define manipulation as equivalent to mobilization and at other times discuss manipulation and mobilization as two different procedures.

It is clear, however, under current Nebraska statutes that, pursuant to Neb. Rev. Stat. § 38 2910, physical therapists may perform mobilization or manual therapy and that those mobilization or manual therapy techniques are statutorily limited to the normal physiological range of motion. Physical therapists in Nebraska may not perform any type of manual therapy, mobilization manipulation or joint manipulation which carries the joint beyond the normal physiological range of motion. Furthermore, we believe the literature is clear that a specific type of procedure known as a Grade V

mobilization or Grade V manipulation requires movement beyond the normal range of motion. Therefore, physical therapists in Nebraska may not perform Grade V mobilization or Grade V manipulations.

Legislative history, such as the introducer's statement of intent and floor debate, may be used by a court to construe a statute which is "reasonably considered ambiguous." *Sydow v. City of Grand Island*, 263 Neb. 389, 397, 639 N.W.2d 913, 921 (2002). To the extent that the current Physical Therapy Practice Act may be considered ambiguous because the term manipulation is neither mentioned nor defined, it is appropriate for us to consider the legislative history of the current Act. We have reviewed the legislative history of LB 994, Laws 2006, from which the current Physical Therapy Act is derived. That legislative history indicates that LB 994 originally included the term manipulation but opposition to inclusion of that language arose during floor debate and the term was removed. The term "mobilization or manual therapy" was then added, which term is defined as "skilled passive movements . . . throughout the normal physiological range of motion. . . ." In our view, this legislative history lends some support to the definition of joint manipulation which you employ in your request letter.

Further, Neb. Rev. Stat. § 38-2902 states "[n]othing in the act shall be construed to expand the scope of practice of physical therapy as it existed prior to July 14, 2006." The previous statutory scope of practice for physical therapy did not reference the term "manipulation." Neb. Rev. Stat. § 71-2801 (Reissue (2003)). We found no evidence suggesting that procedures beyond the normal range of motion were considered part of the physical therapy scope of practice.

Finally, the Legislature created a process for professions to follow if they wish to expand the scope of their practice. Neb. Rev. Stat. § 71-6202 provides

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for . . . those licensed or regulated health professions which seek to change their scope of practice.

This process is commonly referred to as the "407" process, named after the legislation LB 407. The burden lies on the profession seeking to expand the scope of its practice to provide justification and assurance that the public will benefit and not be harmed. We believe that if physical therapists wish to include any procedures beyond the scope of the normal range of motion in the scope of their practice they must avail themselves of the 407 process or seek legislative change.

Conclusion

As discussed above, under the existing statutes, physical therapists may not perform treatment techniques which move joints beyond their normal physiological range of motion. Therefore, if manipulation is defined as

treatment which moves joints beyond their normal physiological range of motion, it is not within the current scope of practice for physical therapists, including Grade V manipulation. The actual practice of physical therapy must not exceed its statutory scope as it existed on July 14, 2006. To the extent that the physical therapists believe a need exists to expand the scope of their practice they must follow the 407 process established by the legislature or seek legislative change.

Sincerely,
JON BRUNING
Attorney General

(Signed) Dale A. Comer
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

09-060-20

RESOLUTION

LEGISLATIVE RESOLUTION 21. Introduced by Flood, 19.

WHEREAS, the NEBRASKAland Foundation, on Saturday, February 28, 2009, at the annual Statehood Day dinner held in the Nebraska State Capitol, will present the Distinguished NEBRASKAlander Award, along with the WagonMaster Award, the Trailblazer Award, and the Pioneer Award; and

WHEREAS, the WagonMaster Award will be presented to Jack Pollock of Ogallala. Mr. Pollock, a longtime Nebraska newspaperman, has received the Henry Fonda Award and the Friend of the Travel Industry Award and has been inducted into the Nebraska Newspaper Hall of Fame. He currently serves on the boards of the Keith County Community Foundation and the Petrified Wood Gallery in Ogallala, Nebraska. He also serves on the Keith County Visitors Committee; and

WHEREAS, the Pioneer Award will be presented to Ron Hull of Lincoln. Mr. Hull has been a pioneer in public television. From 1982 to 1988 he was director of the Program Fund for the Corporation for Public Broadcasting in Washington, D.C., and he has been a tireless fundraiser for Nebraska Educational Television. He also served as chairperson of the Nebraska Lewis and Clark Bicentennial Commission; and

WHEREAS, the Trailblazer Award will be presented to the Honorable Douglas Bereuter of Alamo, California. Mr. Bereuter has enjoyed a distinguished career in public service. He started in various roles in state government under Governor Tiemann. He served as a Nebraska state senator, and he also served for twenty-six years in the United States House of Representatives. Since September 1, 2004, he has been the president of The Asia Foundation, a nonprofit, nongovernmental organization committed to the development of the Asia-Pacific region; and

WHEREAS, the Distinguished NEBRASKAlander Award will be presented to the Woods family of Lincoln. The Woods family has been involved in a wide variety of enterprises for seven generations dating back to 1873, including residential and commercial development (Woods Brothers Realty), nurseries, farming, telephone service (Lincoln Telephone & Telegraph), street-car service, truck and aviation manufacturing (Arrow Aircraft Corporation), art acquisition, law, and charitable enterprises (Woods Charitable Fund and the Lincoln Community Foundation).

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

1. That the Legislature extends its appreciation to the honorees for their service to the State of Nebraska.
2. That a copy of this resolution be given to all honorees.

Laid over.

AMENDMENT - Print in Journal

Senator Nelson filed the following amendment to LB325:
AM169

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 32-328, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 32-328 (1) The election commissioner or county clerk
- 6 shall, upon the personal application of any registered voter or
- 7 whenever informed of any error and after due investigation, correct
- 8 any error in the voter registration register. For such purpose,
- 9 the election commissioner or county clerk may summon witnesses and
- 10 compel their attendance to appear at the office of the election
- 11 commissioner or county clerk to give testimony pertaining to
- 12 residence, qualifications, or any other facts required to be
- 13 entered in the voter registration register. Such testimony shall be
- 14 transcribed and become a part of his or her records.
- 15 (2) If the name of any registered voter of any precinct
- 16 does not appear on the precinct list of registered voters through
- 17 an error and the election commissioner or county clerk informs
- 18 the precinct inspector or judge of election that credible evidence
- 19 exists that substantiates that an error has been made, the precinct
- 20 inspector or judge of election shall enter the correction in the
- 21 precinct list of registered voters, initial the correction, and
- 22 authorize the receiving board to issue the proper ballots to the
- 23 voter as directed by the election commissioner or county clerk
- 1 and receive his or her vote. The election commissioner or county
- 2 clerk shall designate whether the voter is entitled to a regular
- 3 ballot or a provisional ballot as provided in section 32-915. All
- 4 corrections shall be entered on the voter registration register as
- 5 soon as possible after the election.

6 Sec. 2. Section 32-329, Reissue Revised Statutes of
7 Nebraska, is amended to read:
8 32-329 (1) The Secretary of State with the assistance
9 of the election commissioners and county clerks shall perform
10 list maintenance with respect to the computerized statewide voter
11 registration list on a regular basis. The list maintenance shall be
12 conducted in a manner that ensures that:

13 (a) The name of each registered voter appears in the
14 computerized list;

15 (b) Only persons who have been entered into the register
16 in error or who are not eligible to vote are removed from the
17 computerized list; and

18 (c) Duplicate names are eliminated from the computerized
19 list.

20 (2) The election commissioner or county clerk shall
21 verify the voter registration register by using (a) the National
22 Change of Address program of the United States Postal Service
23 and a confirmation notice pursuant to subsection (3) of this
24 section or (b) the biennial mailing of a nonforwardable notice
25 to each registered voter. The Secretary of State shall provide
26 biennial training for the election commissioners and county clerks
27 responsible for maintaining voter registration lists. No name shall
1 be removed from the voter registration register for the sole reason
2 that such person has not voted for any length of time.

3 (3) When an election commissioner or county clerk
4 receives information from the National Change of Address program
5 of the United States Postal Service that a registered voter has
6 moved from the address at which he or she is registered to
7 vote, the election commissioner or county clerk shall ~~immediately~~
8 update the voter registration register to indicate that the voter
9 may have moved and mail a confirmation notice by forwardable
10 first-class mail. If a nonforwardable notice under subdivision
11 (2)(b) of this section is returned as undeliverable, the election
12 commissioner or county clerk shall mail a confirmation notice
13 by forwardable first-class mail. The confirmation notice shall
14 include a confirmation letter and a preaddressed, postage-paid
15 confirmation card. The confirmation letter shall contain statements
16 substantially as follows:

17 (a) The election commissioner or county clerk has
18 received information that you have moved to a different residence
19 address from that appearing on the voter registration register;

20 (b) If you have not moved or you have moved to a
21 new residence within this county, you should return the enclosed
22 confirmation card by the regular registration deadline prescribed
23 in section 32-302. If you fail to return the card by the deadline,
24 you will be required to affirm or confirm your address prior to
25 being allowed to vote. If you are required to affirm or confirm
26 your address, it may result in a delay at your polling place; and

27 (c) If you have moved out of the county, you must

1 reregister to be eligible to vote. This can be accomplished by mail
 2 or in person. For further information, contact your local election
 3 commissioner or county clerk.

4 (4) The election commissioner or county clerk shall
 5 maintain for a period of not less than two years a record of
 6 each confirmation letter indicating the date it was mailed and the
 7 person to whom it was mailed.

8 (5) If information from the National Change of Address
 9 program or the nonforwardable notice under subdivision (2)(b)
 10 of this section indicates that the voter has moved outside the
 11 jurisdiction and the election commissioner or county clerk receives
 12 no response to the confirmation letter and the voter does not offer
 13 to vote at any election held prior to and including the second
 14 statewide federal general election following the mailing of the
 15 confirmation notice, the voter's registration shall be canceled
 16 and his or her name shall be deleted from the voter registration
 17 register.

18 Sec. 3. Section 32-607, Reissue Revised Statutes of
 19 Nebraska, is amended to read:

20 32-607 All candidate filing forms shall contain the
 21 following statement: I hereby swear that I will abide by the laws
 22 of the State of Nebraska regarding the results of the primary and
 23 general elections, that I am a registered voter and qualified to be
 24 elected, and that I will serve if elected. Candidate filing forms
 25 shall be filed with the following filing officers:

26 (1) For candidates for national, state, or congressional
 27 office, directors of public power and irrigation districts,
 1 directors of reclamation districts, directors of natural resources
 2 districts, members of the boards of educational service units,
 3 members of governing boards of community colleges, delegates to
 4 national conventions, and other offices filled by election held in
 5 more than one county and judges desiring retention, in the office
 6 of the Secretary of State;

7 (2) For officers elected within a county, in the office
 8 of the election commissioner or county clerk. If the candidate is
 9 not a resident of the county, he or she shall submit a certificate
 10 of registration obtained under section 32-316 with the candidate
 11 filing form;

12 (3) For officers in school districts which include land
 13 in adjoining counties, in the office of the election commissioner
 14 or county clerk of the county in which the greatest number of
 15 registered voters entitled to vote for the officers reside. If the
 16 candidate is not a resident of the county, he or she shall submit a
 17 certificate of registration obtained under section 32-316 with the
 18 candidate filing form; and

19 (4) For city or village officers, in the office of the
 20 ~~city or village clerk, except that in the case of joint elections,~~
 21 ~~the filing may be either in the office of the election commissioner~~
 22 ~~or county clerk, or in the office of the city or village clerk with~~

23 ~~deputized personnel. When the city or village clerk is deputized to~~
 24 ~~take filings, he or she shall return all filings to the office of~~
 25 ~~the election commissioner or county clerk by the end of the next~~
 26 ~~business day following the filing deadline.~~

27 Sec. 4. Section 32-914.02, Reissue Revised Statutes of
 1 Nebraska, is amended to read:

2 32-914.02 If a person who is registered to vote moves
 3 to a new residence within the same county and precinct and has
 4 continuously resided in such county and precinct since registering
 5 to vote but the voter registration register has not been changed
 6 to reflect the move, the person shall be entitled to vote at the
 7 polling place for the new residence. The election commissioner or
 8 county clerk shall designate whether such a person is entitled
 9 to a regular ballot upon completing a registration application to
 10 update his or her voter registration record at the polling place
 11 or a provisional ballot as provided in section 32-915. The election
 12 commissioner or county clerk shall update the voter registration
 13 register to reflect the change of address.

14 Sec. 5. Section 32-915, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 32-915 (1) A person whose name does not appear on the
 17 precinct list of registered voters at the polling place for the
 18 precinct in which he or she resides, whose name appears on the
 19 precinct list of registered voters at the polling place for the
 20 precinct in which he or she resides at a different residence
 21 address as described in section 32-914.02, or whose name appears
 22 with a notation that he or she received a ballot for early voting
 23 may vote a provisional ballot if he or she:

24 (a) Claims that he or she is a registered voter who has
 25 continuously resided in the county in which the precinct is located
 26 since registering to vote;

27 (b) Is not entitled to vote under section 32-914.01 or
 1 32-914.02;

2 (c) Has not registered to vote or voted in any other
 3 county since registering to vote in the county in which the
 4 precinct is located;

5 (d) Has appeared to vote at the polling place for the
 6 precinct to which the person would be assigned based on his or her
 7 residence address; and

8 (e) Completes and signs a registration application before
 9 voting.

10 (2) A voter whose name appears on the precinct list
 11 of registered voters for the polling place with a notation
 12 that the voter is required to present identification pursuant
 13 to section 32-318.01 but fails to present identification may vote a
 14 provisional ballot if he or she completes and signs a registration
 15 application before voting.

16 (3) Each person voting by provisional ballot shall
 17 enclose his or her ballot in an envelope marked Provisional

18 Ballot and shall, by signing the certification on the front of the
 19 envelope or a separate form attached to the envelope, certify to
 20 the following facts:

21 (a) I am a registered voter in County;

22 (b) My name did not appear on the precinct list of
 23 registered voters;

24 (c) I registered to vote on or about this date
 25

26 (d) I registered to vote

27 in person at the election office or a voter
 1 registration site,

2 by mail,

3 on a form through the Department of Motor Vehicles,

4 on a form through another state agency,

5 in some other way;

6 (e) I have not resided outside of this county or voted

7 outside of this county since registering to vote in this county;

8 (f) My current address is shown on the registration

9 application completed as a requirement for voting by provisional
 10 ballot; and

11 (g) I am eligible to vote in this election and I have not

12 voted and will not vote in this election except by this ballot.

13 (4) The voter shall sign the certification under penalty

14 of election falsification. The following statements shall be on

15 the front of the envelope or on the attached form: By signing the

16 front of this envelope or the attached form you are certifying to

17 the information contained on this envelope or the attached form

18 under penalty of election falsification. Election falsification

19 is a Class IV felony and may be punished by up to five years

20 imprisonment, a fine of up to ten thousand dollars, or both.

21 (5) If the person's name does not appear on the precinct

22 list of registered voters for the polling place and the judge or

23 clerk of election determines that the person's residence address is

24 located in another precinct within the same county, the judge or

25 clerk of election shall direct the person to his or her correct

26 polling place to vote.

27 Sec. 6. Section 32-930, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 32-930 If a person is challenged on the ground that he

3 or she is not eighteen years of age or, during the years in which

4 a statewide general election is held, that he or she will not be

5 eighteen years of age by the first Tuesday after the first Monday

6 in November of such year, the person shall answer the following

7 question on the form provided by the election commissioner or

8 county clerk: Will you be ~~eighteen years of age to the best of~~

9 ~~your knowledge and belief by the statewide general election of this~~
 10 ~~year?~~ at least eighteen years of age on or before the first Tuesday

11 following the first Monday in November of this year?

12 Sec. 7. Original sections 32-328, 32-329, 32-607,

13 32-914.02, 32-915, and 32-930, Reissue Revised Statutes of
14 Nebraska, are repealed.

UNANIMOUS CONSENT - Add Cointroducers

Senator Mello asked unanimous consent to add his name as cointroducer to LB303 and LB476. No objections. So ordered.

Senator Janssen asked unanimous consent to add his name as cointroducer to LB676. No objections. So ordered.

VISITORS

Visitors to the Chamber were Larry Rader from Hastings; and members of the Nebraska Bankers Association Leadership Program from across the state.

The Doctor of the Day was Dr. Jeff Harrison from Papillion.

ADJOURNMENT

At 11:50 a.m., on a motion by Senator Pirsch, the Legislature adjourned until 9:00 a.m., Tuesday, February 10, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

