

SIXTY-THIRD DAY - APRIL 17, 2009

LEGISLATIVE JOURNAL

**ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION**

SIXTY-THIRD DAY

Legislative Chamber, Lincoln, Nebraska
Friday, April 17, 2009

PRAYER

The prayer was offered by Pastor John Nelson, Christ Lutheran Church, Columbus.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Ashford, Haar, Hansen, Karpisek, and Loudon who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-second day was approved.

BILL ON FIRST READING

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

LEGISLATIVE BILL 476A. Introduced by Stuthman, 22.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 476, One Hundred First Legislature, First Session, 2009; to reduce an appropriation; and to declare an emergency.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 16, 2009, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

Jensen, Ronald L./Jensen Associates, Inc.

National Rifle Association Institute for Legislative Action
Mines, Mick

International Business Machines Corporation (IBM)
Welsch, Mark E.
GASP-Group to Alleviate Smoking Pollution

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

REPORTS

The following reports were received by the Legislature:

Health and Human Services

Division of Developmental Disabilities, Beatrice State Developmental
Center Baseline Quarterly Report

Roads, Nebraska Department of

Board of Public Roads Classifications and Standards Minutes for
February 2009

Thirty-Ninth Annual Report of the Board of Examiners for County
Highway and City Street Superintendents for the period January 1, 2008
to December 31, 2008

GENERAL FILE

LEGISLATIVE BILL 27A. Title read. Considered.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 7 present
and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 497A. Title read. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 12 present
and not voting, and 3 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 463A. Advanced to Enrollment and Review for
Engrossment.

BILLS ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 111. With Emergency Clause.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to
amend section 60-682.01, Revised Statutes Cumulative Supplement, 2008;

to change provisions relating to fines for speeding in a construction zone; 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:

Adams	Dierks	Hansen	McGill	Schilz
Ashford	Dubas	Harms	Mello	Stuthman
Avery	Fischer	Heidemann	Nantkes	Sullivan
Campbell	Flood	Howard	Nelson	Utter
Carlson	Friend	Janssen	Nordquist	Wallman
Christensen	Fulton	Karpisek	Pahls	White
Coash	Gay	Langemeier	Pankonin	Wightman
Cook	Giese	Lathrop	Pirsch	
Cornett	Gloor	Lautenbaugh	Price	
Council	Hadley	McCoy	Rogert	

Voting in the negative, 0.

Present and not voting, 1:

Haar

Excused and not voting, 1:

Louden

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 LB121 with 44 ayes, 1 nay, 3 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 121.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 13-520, 23-3202, and 32-519, Reissue Revised Statutes of Nebraska, and sections 13-519, 77-1339, 77-1340, 77-1342, and 77-3442, Revised Statutes Cumulative Supplement, 2008; to change budget limitations; to require reimbursement by counties to the state for property tax assessment services; to provide for reassumption of the assessment function by counties on or

before July 1, 2013; to change tax levy limitations; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 77-1340.01, 77-1340.02, and 77-1340.03, Reissue Revised Statutes of Nebraska, and section 77-1340, Revised Statutes Cumulative Supplement, 2008, as amended by section 6 of this legislative bill.

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, 42:

Adams	Council	Haar	McGill	Rogert
Ashford	Dierks	Hadley	Mello	Stuthman
Avery	Dubas	Hansen	Nantkes	Utter
Campbell	Fischer	Harms	Nelson	Wallman
Carlson	Flood	Heidemann	Nordquist	White
Christensen	Friend	Karpisek	Pahls	Wightman
Coash	Fulton	Lathrop	Pankonin	
Cook	Gay	Lautenbaugh	Pirsch	
Cornett	Gloor	McCoy	Price	

Voting in the negative, 6:

Giese	Janssen	Schilz
Howard	Langemeier	Sullivan

Excused and not voting, 1:

Louden

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

The following bill was read and put upon final passage:

LEGISLATIVE BILL 121A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 121, One Hundred First Legislature, First Session, 2009; and to reduce an appropriation.

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	Dierks	Hadley	McGill	Schilz
Ashford	Dubas	Hansen	Mello	Stuthman
Avery	Fischer	Harms	Nantkes	Sullivan
Campbell	Flood	Heidemann	Nelson	Utter
Carlson	Friend	Janssen	Nordquist	Wallman
Christensen	Fulton	Karpisek	Pahls	White
Coash	Gay	Langemeier	Pankonin	Wightman
Cook	Giese	Lathrop	Pirsch	
Cornett	Gloor	Lautenbaugh	Price	
Council	Haar	McCoy	Rogert	

Voting in the negative, 0.

Present and not voting, 1:

Howard

Excused and not voting, 1:

Louden

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 LB164 with 46 ayes, 0 nays, 2 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 164.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 2-5413 and 81-12,125, Reissue Revised Statutes of Nebraska, and sections 77-27,187.02, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, 77-5804, 77-5806, 77-5905, and 77-5906, Revised Statutes Cumulative Supplement, 2008; to change economic development tax incentive provisions; to provide operative dates; 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, 48:

Adams	Dierks	Hadley	McCoy	Rogert
Ashford	Dubas	Hansen	McGill	Schilz
Avery	Fischer	Harms	Mello	Stuthman
Campbell	Flood	Heidemann	Nantkes	Sullivan
Carlson	Friend	Howard	Nelson	Utter
Christensen	Fulton	Janssen	Nordquist	Wallman
Coash	Gay	Karpisek	Pahls	White
Cook	Giese	Langemeier	Pankonin	Wightman
Cornett	Gloor	Lathrop	Pirsch	
Council	Haar	Lautenbaugh	Price	

Voting in the negative, 0.

Excused and not voting, 1:

Louden

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 LB202 with 44 ayes, 0 nays, 4 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 202.

A BILL FOR AN ACT relating to certificates of title; to amend sections 37-1201, 37-1211, 37-1277, 37-1279, 37-1282, 37-1283, 37-1287, and 37-1290, Reissue Revised Statutes of Nebraska, and sections 60-101, 60-140, 60-147, 60-152, 60-164, 60-165, 60-166, and 60-168.01, Revised Statutes Cumulative Supplement, 2008; to provide for electronic records of certificates of title and electronic notation of liens; to change provisions relating to certificates of title; 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, 48:

Adams	Dierks	Hadley	McCoy	Rogert
Ashford	Dubas	Hansen	McGill	Schilz
Avery	Fischer	Harms	Mello	Stuthman
Campbell	Flood	Heidemann	Nantkes	Sullivan
Carlson	Friend	Howard	Nelson	Utter
Christensen	Fulton	Janssen	Nordquist	Wallman
Coash	Gay	Karpisek	Pahls	White
Cook	Giese	Langemeier	Pankonin	Wightman
Cornett	Gloor	Lathrop	Pirsch	
Council	Haar	Lautenbaugh	Price	

Voting in the negative, 0.

Excused and not voting, 1:

Louden

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 202A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 202, One Hundred First Legislature, First Session, 2009.

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	Dierks	Hadley	McCoy	Schilz
Ashford	Dubas	Hansen	McGill	Stuthman
Avery	Fischer	Harms	Mello	Sullivan
Campbell	Flood	Heidemann	Nantkes	Utter
Carlson	Friend	Howard	Nelson	Wallman
Christensen	Fulton	Janssen	Nordquist	White
Coash	Gay	Karpisek	Pahls	Wightman
Cook	Giese	Langemeier	Pirsch	
Cornett	Gloor	Lathrop	Price	
Council	Haar	Lautenbaugh	Rogert	

Voting in the negative, 0.

Present and not voting, 1:

Pankonin

Excused and not voting, 1:

Louden

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

LEGISLATIVE BILL 206. With Emergency Clause.

A BILL FOR AN ACT relating to postsecondary education; to adopt the In the Line of Duty Dependent Education Act; 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:

Adams	Dubas	Hansen	McCoy	Schilz
Ashford	Fischer	Harms	McGill	Stuthman
Avery	Flood	Heidemann	Mello	Sullivan
Campbell	Friend	Howard	Nantkes	Utter
Carlson	Fulton	Janssen	Nelson	Wallman
Christensen	Gay	Karpisek	Nordquist	White
Coash	Giese	Langemeier	Pahls	Wightman
Cook	Gloor	Lathrop	Pankonin	
Council	Haar	Lautenbaugh	Pirsch	
Dierks	Hadley	Louden	Rogert	

Voting in the negative, 0.

Present and not voting, 2:

Cornett Price

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 LB292 with 41 ayes, 1 nay, and 7 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 292.

A BILL FOR AN ACT relating to sports agents; to amend section

84-907.03, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Uniform Athlete Agents Act; to provide penalties; to harmonize provisions; to provide an operative date; to provide severability; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 292A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 292, One Hundred First Legislature, First Session, 2009.

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, 48:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	White
Cook	Giese	Langemeier	Pahls	Wightman
Cornett	Gloor	Lathrop	Pankonin	
Council	Haar	Lautenbaugh	Pirsch	

Voting in the negative, 0.

Present and not voting, 1:

Wallman

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

LEGISLATIVE BILL 300.

A BILL FOR AN ACT relating to public power and irrigation districts; to amend section 70-637, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to bidding requirements; 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	Hansen	McCoy	Rogert
Ashford	Fischer	Harms	McGill	Schilz
Avery	Flood	Heidemann	Mello	Stuthman
Campbell	Friend	Howard	Nantkes	Sullivan
Carlson	Fulton	Janssen	Nelson	Utter
Christensen	Gay	Karpisek	Nordquist	White
Coash	Giese	Langemeier	Pahls	Wightman
Cook	Gloor	Lathrop	Pankonin	
Cornett	Haar	Lautenbaugh	Pirsch	
Dierks	Hadley	Louden	Price	

Voting in the negative, 0.

Present and not voting, 2:

Council Wallman

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 LB328 with 44 ayes, 0 nays, and 5 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 328. With Emergency Clause.

A BILL FOR AN ACT relating to finance; to amend sections 8-113, 8-702, 45-712, 45-713, 45-718, 45-719, 45-720, 45-721, 45-1008, 45-1018, 45-1019, and 45-1025, Reissue Revised Statutes of Nebraska, and sections 45-701, 45-702, 45-703, 45-704, 45-705, 45-706, 45-707, 45-708, 45-709, 45-710, 45-711, 45-714, 45-715, 45-716, 45-717, 45-717.01, 45-717.02, 45-722, 45-723, 45-1001, 45-1002, 45-1007, 45-1013, 45-1024, 45-1033, and 76-2711, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to mortgage origination and installment loans; to implement certain federal requirements; to rename an act; to transfer provisions; to provide for civil penalties; to provide for licensee duties; to eliminate obsolete provisions; to harmonize 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, 49:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 328A. With Emergency Clause.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 328, One Hundred First Legislature, First Session, 2009; 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	Dierks	Hadley	McCoy	Rogert
Ashford	Dubas	Hansen	McGill	Schilz
Avery	Fischer	Harms	Mello	Stuthman
Campbell	Flood	Heidemann	Nantkes	Sullivan
Carlson	Friend	Howard	Nelson	Utter
Christensen	Fulton	Janssen	Nordquist	Wallman
Coash	Gay	Karpisek	Pahls	White
Cook	Giese	Lathrop	Pankonin	Wightman
Cornett	Gloor	Lautenbaugh	Pirsch	
Council	Haar	Louden	Price	

Voting in the negative, 0.

Present and not voting, 1:

Langemeier

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 340. With Emergency Clause.

A BILL FOR AN ACT relating to the Coordinating Commission for Postsecondary Education; to amend section 85-1412, Reissue Revised Statutes of Nebraska; to provide a duty for the commission; 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, 49:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 LB355 with 36 ayes, 0 nays, and 13 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 355. With Emergency Clause.

A BILL FOR AN ACT relating to cigar bars; to amend sections 53-101, 53-103, 53-124, 53-131, and 71-5730, Revised Statutes Cumulative Supplement, 2008; to define cigar bar; to provide for a nonrefundable application fee and requirements for certain Class C liquor license applications; to preempt county resolutions and city ordinances relating to smoking in cigar bars; to exempt cigar bars from the Nebraska Clean Indoor Air Act; to harmonize provisions; to provide an operative date; 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, 28:

Ashford	Flood	Langemeier	Nelson	Schilz
Carlson	Friend	Lathrop	Nordquist	Wallman
Coash	Fulton	Lautenbaugh	Pahls	White
Cornett	Heidemann	McCoy	Pirsch	Wightman
Council	Janssen	McGill	Price	
Fischer	Karpisek	Mello	Rogert	

Voting in the negative, 21:

Adams	Dierks	Haar	Louden	Utter
Avery	Dubas	Hadley	Nantkes	
Campbell	Gay	Hansen	Pankonin	
Christensen	Giese	Harms	Stuthman	
Cook	Gloor	Howard	Sullivan	

Not voting, 0.

Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

Voting in the affirmative, 27:

Ashford	Flood	Lathrop	Nordquist	Wallman
Carlson	Friend	Lautenbaugh	Pahls	White
Coash	Fulton	McCoy	Pirsch	Wightman
Cornett	Heidemann	McGill	Price	
Council	Karpisek	Mello	Rogert	
Fischer	Langemeier	Nelson	Schilz	

Voting in the negative, 22:

Adams	Dierks	Haar	Janssen	Sullivan
Avery	Dubas	Hadley	Louden	Utter
Campbell	Gay	Hansen	Nantkes	
Christensen	Giese	Harms	Pankonin	
Cook	Gloor	Howard	Stuthman	

Not voting, 0.

A constitutional majority having voted in the affirmative, the bill was declared passed with the emergency clause stricken.

The following bills were read and put upon final passage:

LEGISLATIVE BILL 361.

A BILL FOR AN ACT relating to public meetings; to amend sections 79-1218, 84-1411, and 84-1413, Reissue Revised Statutes of Nebraska; to provide for videoconferencing and telephone conferences by educational service unit boards; to change provisions relating to telephone conferences by a risk management pool; to authorize electronic voting devices for certain public entities; 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, 48:

Adams	Dubas	Hansen	McCoy	Rogert
Ashford	Fischer	Harms	McGill	Schilz
Avery	Flood	Heidemann	Mello	Stuthman
Campbell	Friend	Howard	Nantkes	Sullivan
Carlson	Fulton	Janssen	Nelson	Utter
Christensen	Gay	Karpisek	Nordquist	Wallman
Coash	Giese	Langemeier	Pahls	White
Cook	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	Pirsch	
Dierks	Hadley	Louden	Price	

Voting in the negative, 0.

Present and not voting, 1:

Cornett

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

LEGISLATIVE BILL 396.

A BILL FOR AN ACT relating to health care; to amend section 68-901, Revised Statutes Cumulative Supplement, 2008; to adopt the Medical Home Pilot Program Act; to harmonize provisions; 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, 48:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	White
Cook	Giese	Langemeier	Pahls	Wightman
Cornett	Gloor	Lathrop	Pankonin	
Council	Haar	Lautenbaugh	Pirsch	

Voting in the negative, 1:

Wallman

Not voting, 0.

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

LEGISLATIVE BILL 449.

A BILL FOR AN ACT relating to the School Employees Retirement Act; to amend section 79-954, Reissue Revised Statutes of Nebraska; to change provisions relating to the cessation of disability retirement allowance as prescribed; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 458.

A BILL FOR AN ACT relating to public assistance; to amend section 68-1721, Revised Statutes Cumulative Supplement, 2008; to provide for vocational training as prescribed; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 111, 121, 121A, 164, 202, 202A, 206, 292, 292A, 300, 328, 328A, 340, 361, and 396.

BILLS ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB477 with 39 ayes, 0 nays, and 10 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 477.

A BILL FOR AN ACT relating to water; to amend sections 46-290, 46-291, 46-701, 46-706, 46-707, and 46-739, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to water transfer permits; to require reports of title as prescribed; to provide for filing instruments of transfer of the right to use ground water; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 511. With Emergency Clause.

A BILL FOR AN ACT relating to health care facilities; to amend section 71-5803.09, Reissue Revised Statutes of Nebraska; to redefine a term for purposes of certificate of need; 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, 49:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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.

LEGISLATIVE BILL 517.

A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend sections 43-283.01 and 43-292, Reissue Revised Statutes of Nebraska; to provide additional grounds for not reunifying the family and for termination of parental rights; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 LB547 with 40 ayes, 1 nay, and 8 present and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 547. With Emergency Clause.

A BILL FOR AN ACT relating to teachers; to amend sections 9-812, 79-808, 79-8,132, 79-8,133, 79-8,134, 79-8,135, 79-8,136, 79-8,137, 79-8,138, 79-8,139, and 79-8,140, Reissue Revised Statutes of Nebraska; to provide for the indication of areas of specialization on certificates and permits; to change provisions relating to the Attracting Excellence to Teaching Program Act; to rename the act and a fund; to change provisions relating to loans and loan forgiveness pursuant to the Attracting Excellence to Teaching Program; to create the Enhancing Excellence in Teaching

Program; to define and redefine terms; to provide for administration of the program; to provide for contracts; to provide for loans and loan forgiveness for eligible students as prescribed; to harmonize provisions; to provide operative dates; 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, 49:

Adams	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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 547A. With Emergency Clause.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 547, One Hundred First Legislature, First Session, 2009; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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.

LEGISLATIVE BILL 620.

A BILL FOR AN ACT relating to the Legislature; to amend section 50-421, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to the office of Legislative Audit and Research; 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	Dierks	Hadley	Louden	Price
Ashford	Dubas	Hansen	McCoy	Rogert
Avery	Fischer	Harms	McGill	Schilz
Campbell	Flood	Heidemann	Mello	Stuthman
Carlson	Friend	Howard	Nantkes	Sullivan
Christensen	Fulton	Janssen	Nelson	Utter
Coash	Gay	Karpisek	Nordquist	Wallman
Cook	Giese	Langemeier	Pahls	White
Cornett	Gloor	Lathrop	Pankonin	Wightman
Council	Haar	Lautenbaugh	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.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 449, 458, 477, 511, 517 547, 547A, and 620.

SENATOR ROBERT PRESIDING**MOTION - Return LB158 to Select File**

Senator Flood moved to return LB158 to Select File for his specific amendment, AM1006, found on page 1022.

The Flood motion to return prevailed with 44 ayes, 0 nays, and 5 present and not voting.

SELECT FILE

LEGISLATIVE BILL 158. The Flood specific amendment, AM1006, found on page 1022, was adopted with 44 ayes, 0 nays, and 5 present and not voting.

Advanced to Enrollment and Review for Reengrossment.

MOTION - Return LB54 to Select File

Senator Langemeier moved to return LB54 to Select File for the following specific amendment:
AM1099

(Amendments to Final Ready copy)

- 1 1. Insert the following new section:
- 2 Section 1. Section 46-713, Revised Statutes Cumulative
- 3 Supplement, 2008, as amended by section 3, Legislative Bill 483,
- 4 One Hundred First Legislature, First Session, 2009, is amended to
- 5 read:
- 6 46-713 (1)(a) By January 1 of each year beginning in
- 7 2006 and except as otherwise provided in this section and section
- 8 46-720, the Department of Natural Resources shall complete an
- 9 evaluation of the expected long-term availability of hydrologically
- 10 connected water supplies for both existing and new surface water
- 11 uses and existing and new ground water uses in each of the
- 12 state's river basins and shall issue a report that describes the
- 13 results of the evaluation. For purposes of the evaluation and the
- 14 report, a river basin may be divided into two or more subbasins or
- 15 reaches. A river basin, subbasin, or reach for which an integrated
- 16 management plan has been or is being developed pursuant to sections
- 17 46-715 to 46-717 or pursuant to section 46-719 shall not be
- 18 evaluated unless it is being reevaluated as provided in subsection
- 19 (2) of this section. For each river basin, subbasin, or reach

20 evaluated, the report shall describe (i) the nature and extent
21 of use of both surface water and ground water in each river
22 basin, subbasin, or reach, (ii) the geographic area within which
1 the department preliminarily considers surface water and ground
2 water to be hydrologically connected and the criteria used for
3 that determination, and (iii) the extent to which the then-current
4 uses affect available near-term and long-term water supplies.
5 River basins, subbasins, and reaches designated as overappropriated
6 in accordance with subsection (4) of this section shall not be
7 evaluated by the department. The department is not required to
8 perform an annual evaluation for a river basin, subbasin, or reach
9 during the four years following a status change in such river
10 basin, subbasin, or reach under subsection (12) of section 46-714.

11 (b) Based on the information reviewed in the evaluation
12 process, the department shall arrive at a preliminary conclusion
13 for each river basin, subbasin, and reach evaluated as to
14 whether such river basin, subbasin, or reach presently is fully
15 appropriated without the initiation of additional uses. The
16 department shall also determine if and how such preliminary
17 conclusion would change if no additional legal constraints were
18 imposed on future development of hydrologically connected surface
19 water and ground water and reasonable projections are made about
20 the extent and location of future development in such river basin,
21 subbasin, or reach.

22 (c) In addition to the conclusion about whether a river
23 basin, subbasin, or reach is fully appropriated, the department
24 shall include in the report, for informational purposes only,
25 a summary of relevant data provided by any interested party
26 concerning the social, economic, and environmental impacts of
27 additional hydrologically connected surface water and ground water
1 uses on resources that are dependent on streamflow or ground water
2 levels but are not protected by appropriations or regulations.

3 (d) In preparing the report, the department shall rely
4 on the best scientific data, information, and methodologies readily
5 available to ensure that the conclusions and results contained
6 in the report are reliable. In its report, the department shall
7 provide sufficient documentation to allow these data, information,
8 methodologies, and conclusions to be independently replicated
9 and assessed. Upon request by the department, state agencies,
10 natural resources districts, irrigation districts, reclamation
11 districts, public power and irrigation districts, mutual irrigation
12 companies, canal companies, municipalities, and other water users
13 and stakeholders shall provide relevant data and information in
14 their possession. The Department of Natural Resources shall specify
15 by rule and regulation the types of scientific data and other
16 information that will be considered for making the preliminary
17 determinations required by this section.

18 (2)(a) The department shall complete a reevaluation
19 of a river basin, subbasin, or reach for which an integrated

20 management plan has been or is being prepared if the department has
21 reason to believe that a reevaluation might lead to a different
22 determination about whether such river basin, subbasin, or reach
23 is fully appropriated or overappropriated. A decision to reevaluate
24 may be reached by the department on its own or in response
25 to a petition filed with the department by any interested
26 person. To be considered sufficient to justify a reevaluation,
27 a petition shall be accompanied by supporting information showing
1 that (i) new scientific data or other information relevant to the
2 determination of whether the river basin, subbasin, or reach is
3 fully appropriated or overappropriated has become available since
4 the last evaluation of such river basin, subbasin, or reach, (ii)
5 the department relied on incorrect or incomplete information when
6 the river basin, subbasin, or reach was last evaluated, or (iii)
7 the department erred in its interpretation or application of the
8 information available when the river basin, subbasin, or reach was
9 last evaluated. If a petition determined by the department to be
10 sufficient is filed before July 1 of any year, the reevaluation of
11 the river basin, subbasin, or reach involved shall be included in
12 the next annual report prepared in accordance with subsection (1)
13 of this section. If any such petition is filed on or after July 1
14 of any year, the department may defer the reevaluation of the river
15 basin, subbasin, or reach involved until the second annual report
16 after such filing.

17 (b) If the reevaluation results in a different
18 determination by the department, then (i) the department shall
19 notify, by certified mail, the affected natural resources districts
20 and any irrigation district, public power and irrigation district,
21 mutual irrigation company, canal company, or municipality that
22 relies on water from the affected river basin, subbasin, or
23 reach of the preliminary change in the determination and (ii)
24 the department shall hold one or more public hearings not more
25 than ninety days after the publication of the notice required
26 in subdivision (b)(i) of this subsection. Notice of the hearings
27 shall be provided in the same manner as the notice required in
1 subsection (1) of section 46-714. Any interested person may appear
2 at the hearing and present written or oral testimony and evidence
3 concerning the appropriation status of the river basin, subbasin,
4 or reach.

5 (c) Within thirty days after the final hearing under
6 subdivision (b) of this subsection, the department shall notify the
7 appropriate natural resources districts of the department's final
8 determination with respect to the appropriation status of the river
9 basin, subbasin, or reach.

10 (3) A river basin, subbasin, or reach shall be deemed
11 fully appropriated if the department determines based upon its
12 evaluation conducted pursuant to subsection (1) of this section
13 and information presented at the hearing pursuant to subsection
14 (4) of section 46-714 that then-current uses of hydrologically

15 connected surface water and ground water in the river basin,
 16 subbasin, or reach cause or will in the reasonably foreseeable
 17 future cause (a) the surface water supply to be insufficient to
 18 sustain over the long term the beneficial or useful purposes for
 19 which existing natural-flow or storage appropriations were granted
 20 and the beneficial or useful purposes for which, at the time of
 21 approval, any existing instream appropriation was granted, (b) the
 22 streamflow to be insufficient to sustain over the long term the
 23 beneficial uses from wells constructed in aquifers dependent on
 24 recharge from the river or stream involved, or (c) reduction in
 25 the flow of a river or stream sufficient to cause noncompliance by
 26 Nebraska with an interstate compact or decree, other formal state
 27 contract or agreement, or applicable state or federal laws.

1 (4)(a) A river basin, subbasin, or reach shall be deemed
 2 overappropriated if, on July 16, 2004, the river basin, subbasin,
 3 or reach is subject to an interstate cooperative agreement among
 4 three or more states and if, prior to such date, the department
 5 has declared a moratorium on the issuance of new surface water
 6 appropriations in such river basin, subbasin, or reach and has
 7 requested each natural resources district with jurisdiction in the
 8 affected area in such river basin, subbasin, or reach either (i)
 9 to close or to continue in effect a previously adopted closure of
 10 all or part of such river basin, subbasin, or reach to the issuance
 11 of additional water well permits in accordance with subdivision
 12 (1)(k) of section 46-656.25 as such section existed prior to July
 13 16, 2004, or (ii) to temporarily suspend or to continue in effect
 14 a temporary suspension, previously adopted pursuant to section
 15 46-656.28 as such section existed prior to July 16, 2004, on the
 16 drilling of new water wells in all or part of such river basin,
 17 subbasin, or reach.

18 (b) Within sixty days after July 16, 2004, the department
 19 shall designate which river basins, subbasins, or reaches are
 20 overappropriated. The designation shall include a description of
 21 the geographic area within which the department has determined that
 22 surface water and ground water are hydrologically connected and the
 23 criteria used to make such determination.

24 2. Amend the title and repealer and renumber the
 25 remaining sections accordingly.

The Langemeier motion to return prevailed with 42 ayes, 0 nays, and 7 present and not voting.

SELECT FILE

LEGISLATIVE BILL 54. The Langemeier specific amendment, AM1099, found in this day's Journal, was adopted with 41 ayes, 0 nays, and 8 present and not voting.

Advanced to Enrollment and Review for Reengrossment.

AMENDMENT - Print in Journal

Senator Flood filed the following amendment to LB97:
AM1094

(Amendments to Standing Committee amendments, AM893)

- 1 1. Insert the following sections:
- 2 Sec. 2. (1) The following evidence is not admissible
- 3 in any civil or criminal proceeding involving alleged sexual
- 4 misconduct except as provided in subsections (2) and (3) of this
- 5 section:
- 6 (a) Evidence offered to prove that any victim engaged in
- 7 other sexual behavior; and
- 8 (b) Evidence offered to prove any victim's sexual
- 9 predisposition.
- 10 (2)(a) In a criminal case, the following evidence is
- 11 admissible, if otherwise admissible under the Nebraska Evidence
- 12 Rules:
- 13 (i) Evidence of specific instances of sexual behavior by
- 14 the victim offered to prove that a person other than the accused
- 15 was the source of semen, injury, or other physical evidence;
- 16 (ii) Evidence of specific instances of sexual behavior of
- 17 the victim with respect to the accused offered by the accused to
- 18 prove consent of the victim if it is first established to the court
- 19 that such behavior is similar to the behavior involved in the case
- 20 and tends to establish a pattern of behavior of the victim relevant
- 21 to the issue of consent; and
- 22 (iii) Evidence, the exclusion of which would violate the
- 1 constitutional rights of the accused.
- 2 (b) In a civil case, evidence offered to prove the sexual
- 3 behavior or sexual predisposition of any victim is admissible if it
- 4 is otherwise admissible under the Nebraska Evidence Rules and its
- 5 probative value substantially outweighs the danger of harm to any
- 6 victim and of unfair prejudice to any party. Evidence of a victim's
- 7 reputation is admissible only if it has been placed in controversy
- 8 by the victim.
- 9 (3)(a) A party intending to offer evidence under
- 10 subsection (2) of this section shall:
- 11 (i) File a written motion at least fifteen days before
- 12 trial specifically describing the evidence and stating the purpose
- 13 for which it is offered unless the court, for good cause, requires
- 14 a different time for filing or permits filing during trial; and
- 15 (ii) Serve the motion on all parties and notify
- 16 the victim or, when appropriate, the victim's guardian or
- 17 representative.
- 18 (b) Before admitting evidence under this section, the
- 19 court shall conduct a hearing in camera outside the presence of any
- 20 jury and afford the victim and parties a right to attend and be
- 21 heard.

22 Sec. 3. For purposes of sections 4 and 5 of this act,
23 offense of sexual assault means sexual assault under section 28-319
24 or 28-320, sexual assault of a child under section 28-319.01
25 or 28-320.01, sexual assault by use of computer under section
26 28-320.02, sexual abuse of an inmate or parolee under sections
27 28-322.01 to 28-322.03, and sexual abuse of protected persons under
1 section 28-322.04.

2 Sec. 4. (1) In a criminal case in which the accused
3 is accused of an offense of sexual assault, evidence of the
4 accused's commission of another offense or offenses of sexual
5 assault is admissible if there is clear and convincing evidence
6 otherwise admissible under the Nebraska Evidence Rules that the
7 accused committed the other offense or offenses. If admissible,
8 such evidence may be considered for its bearing on any matter to
9 which it is relevant.

10 (2) In a case in which the prosecution intends to
11 offer evidence under this section, the prosecuting attorney shall
12 disclose the evidence to the accused, including statements of
13 witnesses or a summary of the substance of any testimony that is
14 expected to be offered, at least fifteen days before the scheduled
15 date of trial or at such later time as the court may allow for good
16 cause.

17 (3) Before admitting evidence of the accused's commission
18 of another offense or offenses of sexual assault under this
19 section, the court shall conduct a hearing outside the presence of
20 any jury and afford the victim and parties a right to attend and be
21 heard. At the hearing, the rules of evidence shall apply and the
22 court shall apply a section 27-403 balancing and admit the evidence
23 unless the risk of prejudice substantially outweighs the probative
24 value of the evidence. In assessing the balancing, the court may
25 consider any relevant factor such as (a) the probability that the
26 other offense occurred, (b) the proximity in time and intervening
27 circumstances of the other offenses, and (c) the similarity of the
1 other acts to the crime charged.

2 (4) This section shall not be construed to limit the
3 admission or consideration of evidence under any other section of
4 the Nebraska Evidence Rules.

5 Sec. 5. (1) In a civil case in which a claim for damages
6 or other relief is predicated on a party's alleged commission of
7 conduct constituting an offense of sexual assault, evidence of
8 that party's commission of another offense or offenses of sexual
9 assault is admissible if there is clear and convincing evidence
10 otherwise admissible under the Nebraska Evidence Rules that the
11 party committed the other offense or offenses. If admissible, such
12 evidence may be considered for its bearing on any matter to which
13 it is relevant.

14 (2) A party who intends to offer evidence under this
15 section shall disclose the evidence to the party against whom it
16 will be offered, including statements of witnesses or a summary of

17 the substance of any testimony that is expected to be offered, at
 18 least fifteen days before the scheduled date of trial or at such
 19 later time as the court may allow for good cause.

20 (3) Before admitting evidence of a party's commission of
 21 another offense or offenses of sexual assault under this section,
 22 the court shall conduct a hearing outside the presence of any
 23 jury and afford the victim and parties a right to attend and be
 24 heard. At the hearing, the rules of evidence shall apply and the
 25 court shall apply a section 27-403 balancing and admit the evidence
 26 unless the risk of prejudice substantially outweighs the probative
 27 value of the evidence. In assessing the balancing, the court may
 1 consider any relevant factor such as (a) the probability that the
 2 other offense occurred, (b) the proximity in time and intervening
 3 circumstances of the other offenses, and (c) the similarity of the
 4 other acts to the crime charged.

5 (4) This section shall not be construed to limit the
 6 admission or consideration of evidence under any other section of
 7 the Nebraska Evidence Rules.

8 Sec. 6. Section 27-404, Reissue Revised Statutes of
 9 Nebraska, is amended to read:

10 27-404 (1) Evidence of a person's character or a trait of
 11 his or her character is not admissible for the purpose of proving
 12 that he or she acted in conformity therewith on a particular
 13 occasion, except:

14 (a) Evidence of a pertinent trait of his or her character
 15 offered by an accused, or by the prosecution to rebut the same;
 16 (b) Evidence of a pertinent trait of character of the
 17 victim of the crime offered by an accused or by the prosecution to
 18 rebut the same, or evidence of a character trait of peacefulness of
 19 the victim offered by the prosecution in a homicide case to rebut
 20 evidence that the victim was the first aggressor. ~~In the case of a~~
 21 ~~sexual assault case, reputation, or opinion, or other evidence of~~
 22 ~~the past sexual behavior of the victim of the sexual assault will~~
 23 ~~not be admissible; is governed by section 2 of this act; or~~

24 (c) Evidence of the character of a witness as provided in
 25 sections 27-607 to 27-609.

26 (2) Evidence of other crimes, wrongs, or acts is not
 27 admissible to prove the character of a person in order to show
 1 that he or she acted in conformity therewith. It may, however,
 2 be admissible for other purposes, such as proof of motive,
 3 opportunity, intent, preparation, plan, knowledge, identity, or
 4 absence of mistake or accident.

5 (3) When such evidence is admissible pursuant to this
 6 section, in criminal cases evidence of other crimes, wrongs, or
 7 acts of the accused may be offered in evidence by the prosecution
 8 if the prosecution proves to the court by clear and convincing
 9 evidence that the accused committed the crime, wrong, or act. Such
 10 proof shall first be made outside the presence of any jury.

11 (4) Regarding the admissibility in a civil or criminal

12 action of evidence of a person's commission of another offense or
13 offenses of sexual assault under sections 28-319 to 28-322.04, see
14 sections 3 to 5 of this act.

15 Sec. 7. Section 27-1103, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 27-1103 These rules and sections 2 to 5 of this act may
18 be known and cited as the Nebraska Evidence Rules.

19 Sec. 10. Section 28-318, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-318 As used in sections 28-317 to ~~28-321~~, 28-323,
22 unless the context otherwise requires:

23 (1) Actor means a person accused of sexual assault;

24 (2) Intimate parts means the genital area, groin, inner
25 thighs, buttocks, or breasts;

26 (3) Past sexual behavior means sexual behavior other than
27 the sexual behavior upon which the sexual assault is alleged;

1 (4) Serious personal injury means great bodily injury or
2 disfigurement, extreme mental anguish or mental trauma, pregnancy,
3 disease, or loss or impairment of a sexual or reproductive organ;

4 (5) Sexual contact means the intentional touching of the
5 victim's sexual or intimate parts or the intentional touching of
6 the victim's clothing covering the immediate area of the victim's
7 sexual or intimate parts. Sexual contact shall also mean the
8 touching by the victim of the actor's sexual or intimate parts or
9 the clothing covering the immediate area of the actor's sexual or
10 intimate parts when such touching is intentionally caused by the
11 actor. Sexual contact shall include only such conduct which can be
12 reasonably construed as being for the purpose of sexual arousal or
13 gratification of either party. Sexual contact shall also include
14 the touching of a child with the actor's sexual or intimate parts
15 on any part of the child's body for purposes of sexual assault of a
16 child under sections 28-319.01 and 28-320.01;

17 (6) Sexual penetration means sexual intercourse in its
18 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any
19 intrusion, however slight, of any part of the actor's or victim's
20 body or any object manipulated by the actor into the genital
21 or anal openings of the victim's body which can be reasonably
22 construed as being for nonmedical or nonhealth purposes. Sexual
23 penetration shall not require emission of semen;

24 (7) Victim means the person alleging to have been
25 sexually assaulted;

26 (8) Without consent means:

27 (a)(i) The victim was compelled to submit due to the
1 use of force or threat of force or coercion, or (ii) the victim
2 expressed a lack of consent through words, or (iii) the victim
3 expressed a lack of consent through conduct, or (iv) the consent,
4 if any was actually given, was the result of the actor's deception
5 as to the identity of the actor or the nature or purpose of the act
6 on the part of the actor;

7 (b) The victim need only resist, either verbally or
8 physically, so as to make the victim's refusal to consent genuine
9 and real and so as to reasonably make known to the actor the
10 victim's refusal to consent; and

11 (c) A victim need not resist verbally or physically where
12 it would be useless or futile to do so; and

13 (9) Force or threat of force means (a) the use of
14 physical force which overcomes the victim's resistance or (b) the
15 threat of physical force, express or implied, against the victim or
16 a third person that places the victim in fear of death or in fear
17 of serious personal injury to the victim or a third person where
18 the victim reasonably believes that the actor has the present or
19 future ability to execute the threat.

20 Sec. 28. Section 83-4,143, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 83-4,143 (1) It is the intent of the Legislature that
23 the court target the felony offender (a) who is eligible and
24 by virtue of his or her criminogenic needs is suitable to be
25 sentenced to intensive supervision probation with placement at the
26 incarceration work camp, (b) for whom the court finds that other
27 conditions of a sentence of intensive supervision probation, in
1 and of themselves, are not suitable, and (c) who, without the
2 existence of an incarceration work camp, would, in all likelihood,
3 be sentenced to prison.

4 (2) When the court is of the opinion that imprisonment is
5 appropriate, but that a brief and intensive period of regimented,
6 structured, and disciplined programming within a secure facility
7 may better serve the interests of society, the court may place an
8 offender in an incarceration work camp for a period not to exceed
9 one hundred eighty days as a condition of a sentence of intensive
10 supervision probation. The court may consider such placement if the
11 offender (a) is a male or female offender convicted of a felony
12 offense in a district court, (b) is medically and mentally fit
13 to participate, with allowances given for reasonable accommodation
14 as determined by medical and mental health professionals, and (c)
15 has not previously been incarcerated for a violent felony crime.
16 Offenders convicted of a crime under sections 28-319 to ~~28-324~~
17 28-323 or of any capital crime are not eligible to be placed in an
18 incarceration work camp.

19 (3) It is also the intent of the Legislature that the
20 Board of Parole may recommend placement of felony offenders at
21 the incarceration work camp. The offenders recommended by the
22 board shall be offenders currently housed at other Department
23 of Correctional Services adult correctional facilities and shall
24 complete the incarceration work camp programming prior to release
25 on parole.

26 (4) When the Board of Parole is of the opinion that
27 a felony offender currently incarcerated in a Department of
1 Correctional Services adult correctional facility may benefit

2 from a brief and intensive period of regimented, structured, and
3 disciplined programming immediately prior to release on parole, the
4 board may direct placement of such an offender in an incarceration
5 work camp for a period not to exceed one hundred eighty days as
6 a condition of release on parole. The board may consider such
7 placement if the felony offender (a) is medically and mentally fit
8 to participate, with allowances given for reasonable accommodation
9 as determined by medical and mental health professionals, and (b)
10 has not previously been incarcerated for a violent felony crime.
11 Offenders convicted of a crime under sections 28-319 to ~~28-324~~
12 28-323 or of any capital crime are not eligible to be placed in an
13 incarceration work camp.

14 Sec. 29. The Revisor of Statutes shall assign sections 2
15 to 5 of this act to Chapter 27, article 4, of the Nebraska Evidence
16 Rules.

17 Sec. 31. Sections 2, 3, 4, 5, 6, 7, 10, 28, 29, and 32 of
18 this act become operative on January 1, 2010. The other sections of
19 this act become operative on their effective date.

20 Sec. 32. Original sections 27-404, 27-1103, 28-318, and
21 83-4,143, Reissue Revised Statutes of Nebraska, are repealed.

22 2. Renumber the remaining sections and correct internal
23 references accordingly.

COMMITTEE REPORT

Enrollment and Review

Correctly Enrolled

The following bill was correctly enrolled: LB355.

(Signed) Jeremy Nordquist, Chairperson

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LB355.

MOTION - Place LB385 on General File

Senator Pahls renewed his motion, MO32, found on page 1000, to place LB385 on General File pursuant to Rule 3, Sec. 18.

SENATOR LANGEMEIER PRESIDING

SENATOR ROBERT PRESIDING

Senator Pahls moved for a call of the house. The motion prevailed with 27 ayes, 0 nays, and 22 not voting.

The Pahls motion to place on General File failed with 15 ayes, 29 nays, 3 present and not voting, and 2 excused and not voting.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 131. Placed on Select File with amendment.
ER8075

- 1 1. On page 5, line 10; and page 20, line 10, strike the
- 2 second comma.
- 3 2. On page 7, line 11, strike "lots" and insert "lot".
- 4 3. On page 8, line 22, after "corner" insert "of the".
- 5 4. On page 12, line 8; and page 27, line 8, strike "25"
- 6 and insert "26".
- 7 5. On page 13, line 10; and page 28, line 10, strike the
- 8 semicolon.
- 9 6. On page 16, line 15; and page 31, line 15, strike "18"
- 10 and insert "13".
- 11 7. On page 17, line 22, after "feet" insert an
- 12 underscored semicolon.
- 13 8. On page 21, line 22, strike the first comma and insert
- 14 an underscored semicolon.
- 15 9. On page 24, line 7, strike the comma and insert an
- 16 underscored semicolon.
- 17 10. On page 26, line 3, after "Nebraska" insert an
- 18 underscored comma; and in line 25 strike "section" and insert
- 19 "sections".

LEGISLATIVE BILL 133. Placed on Select File.

LEGISLATIVE BILL 113. Placed on Select File with amendment.
ER8071

- 1 1. On page 1, line 4, strike "provide a penalty" and
- 2 insert "prohibit tampering with or falsifying evidence"; in line
- 3 6 strike "and"; and in line 7 after "sections" insert "; and to
- 4 declare an emergency".
- 5 2. On page 8, line 3, strike the comma; and in line 8
- 6 strike "act" and insert "Securities Act of Nebraska".

LEGISLATIVE BILL 163. Placed on Select File.

LEGISLATIVE BILL 434. Placed on Select File.

LEGISLATIVE BILL 348. Placed on Select File with amendment.
ER8072

- 1 1. On page 1, strike beginning with "sections" in line
- 2 1 through line 5 and insert "section 76-214, Revised Statutes
- 3 Cumulative Supplement, 2008; to authorize access to statements at
- 4 the office of the register of deeds; and to repeal the original
- 5 section."

LEGISLATIVE BILL 540. Placed on Select File.

LEGISLATIVE BILL 528. Placed on Select File with amendment. ER8073 is available in the Bill Room.

LEGISLATIVE BILL 450. Placed on Select File.

LEGISLATIVE BILL 274. Placed on Select File.

LEGISLATIVE BILL 339. Placed on Select File.

LEGISLATIVE BILL 412. Placed on Select File.

LEGISLATIVE BILL 27. Placed on Select File with amendment. ER8074

1 1. On page 1, strike beginning with "Autism" in line
 2 1 through line 8 and insert "Medical Assistance Act; to amend
 3 sections 85-1,138, 85-1,139, 85-1,140, 85-1,141, and 85-1,142,
 4 Reissue Revised Statutes of Nebraska, and sections 68-901 and
 5 71-7611, Revised Statutes Cumulative Supplement, 2008; to change
 6 and transfer provisions relating to the Autism Treatment Program
 7 Act, the Autism Treatment Program Cash Fund, and the administration
 8 of the Autism Treatment Program; to provide powers and duties
 9 for the Department of Health and Human Services; to harmonize
 10 provisions; to repeal the original sections; and to declare an
 11 emergency.".

LEGISLATIVE BILL 175. Placed on Select File.

LEGISLATIVE BILL 129. Placed on Select File.

LEGISLATIVE BILL 208. Placed on Select File.

LEGISLATIVE BILL 94. Placed on Select File with amendment. ER8076

1 1. On page 1, line 2, strike "77-3512" and insert
 2 "77-3501, 77-3512,".
 3 2. On page 3, line 7, strike "(1)" and insert "(a)"; and
 4 in line 15 "(3)" has been inserted before "The".

(Signed) Jeremy Nordquist, Chairperson

PRESENTED TO THE GOVERNOR

Presented to the Governor on April 17, 2009, at 10:58 a.m. were the following: LBs 111e, 121, 121A, 164, 202, 202A, 206e, 292, 292A, 300, 328e, 328Ae, 340e, 355, 361, 396, 449, 458, 477, 511e, 517, 547e, 547Ae, and 620.

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

AMENDMENTS - Print in Journal

Senator Dubas filed the following amendment to LB129:
AM1102

- 1 1. On page 2, strike beginning with "and" in line 13
- 2 through "paid" in line 15.

Senator Ashford filed the following amendment to LB35A:
AM1087

- 1 1. Insert the following sections:
- 2 Sec. 3. There is hereby appropriated (1) \$800,000 from
- 3 the Supreme Court Automation Cash Fund for FY2009-10 and (2)
- 4 \$800,000 from the Supreme Court Automation Cash Fund for FY2010-11
- 5 to the Supreme Court, for Program 570, to aid in carrying out the
- 6 provisions of Legislative Bill 35, One Hundred First Legislature,
- 7 First Session, 2009.
- 8 No expenditures for permanent and temporary salaries and
- 9 per diems for state employees shall be made from funds appropriated
- 10 in this section.
- 11 Sec. 4. There is hereby appropriated (1) \$290,000 from
- 12 the Civil Legal Services Fund for FY2009-10 and (2) \$290,000 from
- 13 the Civil Legal Services Fund for FY2010-11 to the Commission on
- 14 Public Advocacy, for Program 429 - Civil Legal Services, to aid
- 15 in carrying out the provisions of Legislative Bill 35, One Hundred
- 16 First Legislature, First Session, 2009.
- 17 No expenditures for permanent and temporary salaries and
- 18 per diems for state employees shall be made from funds appropriated
- 19 in this section.
- 20 There is included in the appropriation to this program
- 21 for FY2009-10 \$290,000 cash funds for state aid, which shall only
- 22 be used for such purpose. There is included in the appropriation to
- 23 this program for FY2010-11 \$290,000 cash funds for state aid, which
- 1 shall only be used for such purpose.
- 2 Sec. 5. The cash fund appropriation for FY2009-10 to the
- 3 Supreme Court, for Program 52, is hereby reduced by \$290,000. The
- 4 cash fund appropriation for FY2010-11 to the Supreme Court, for
- 5 Program 52, is hereby reduced by \$290,000.
- 6 2. Renumber the remaining sections accordingly.

GENERAL FILE

LEGISLATIVE BILL 237. Title read. Considered.

Committee AM870, found on page 943, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 237A. Title read. Considered.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 13 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 92. Title read. Considered.

Committee AM305, found on page 449, was considered.

Senator Howard renewed her amendment, AM328, found on page 469, to the committee amendment.

The Howard amendment was adopted with 36 ayes, 1 nay, 9 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, was adopted with 37 ayes, 1 nay, 8 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 42 ayes, 1 nay, 3 present and not voting, and 3 excused and not voting.

VISITORS

Visitors to the Chamber were 95 eighth-grade students and teachers from Lexington; 45 fourth-grade students and teachers from Sacred Heart School, Norfolk; 38 fourth-grade students and teachers from Golden Hills Elementary, Bellevue; 10 seventh-grade students, teacher, and sponsor from Norfolk; and Sean Schmeits from Brooksville, Maine.

ADJOURNMENT

At 1:15 p.m., on a motion by Senator Langemeier, the Legislature adjourned until 10:00 a.m., Monday, April 20, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

