

SIXTY-SIXTH DAY - APRIL 22, 2009

LEGISLATIVE JOURNAL

**ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION**

SIXTY-SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, April 22, 2009

PRAYER

The prayer was offered by Senator Nelson.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Rogert presiding.

The roll was called and all members were present except Senator Cornett who was excused; and Senators Adams and Nantkes who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-fifth day was approved.

COMMITTEE REPORT

Health and Human Services

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Todd Reckling - Director of Children and Family Services, Department of Health and Human Services

Aye: 7 Senators Campbell, Gay, Gloor, Howard, Pankonin, Stuthman, Wallman. Nay: 0. Absent: 0.

(Signed) Tim Gay, Chairperson

GENERAL FILE

LEGISLATIVE BILL 97. Title read. Considered.

Committee AM893, found on page 978, was considered.

Senator Flood renewed his amendment, AM1094, found on page 1120, to the committee amendment.

PRESIDENT SHEEHY PRESIDING

Pending.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 84, 85, 86, and 87 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 84, 85, 86, and 87.

GENERAL FILE

LEGISLATIVE BILL 97. The Flood amendment, AM1094, found on page 1120 and considered in this day's Journal, to the committee amendment, was renewed.

The Flood amendment was adopted with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

Committee AM893, found on page 978 and considered in this day's Journal, as amended, was renewed.

The committee amendment, as amended, was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 44 ayes, 0 nays, 4 present and not voting, and 1 excused and not voting.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 237. Placed on Select File with amendment.
ER8091

- 1 1. In the Standing Committee amendments, AM870:
- 2 a. On page 8, line 11, strike "Marianas" and insert
- 3 "Mariana";
- 4 b. On page 10, line 1, strike "1"; and
- 5 c. On page 28, line 10, strike "be" and insert "by"; and
- 6 in line 16 strike "act" and insert "compact".
- 7 2. On page 1, strike beginning with "juveniles" in
- 8 line 1 through line 7 and insert "children; to amend section
- 9 43-1005, Reissue Revised Statutes of Nebraska; to adopt the
- 10 Interstate Compact for Juveniles and the Interstate Compact for

11 the Placement of Children; to provide for a compact administrator
 12 and an advisory council; to provide for certain expenses related to
 13 the Interstate Compact for Juveniles; to eliminate the Interstate
 14 Compact on Juveniles and the Interstate Compact on the Placement
 15 of Children and related provisions; to repeal the original section;
 16 and to outright repeal sections 43-1001, 43-1002, 43-1003, 43-1004,
 17 43-1006, 43-1007, 43-1008, 43-1009, 43-1010, 43-1101, and 43-1102,
 18 Reissue Revised Statutes of Nebraska."

19 3. On page 4, line 6; page 11, line 8; and page 26, line
 20 5, strike "therefore" and insert "therefor".

21 4. On page 6, line 22, strike "Island" and insert
 22 "Islands"; and in line 23 strike "Marianas" and insert "Mariana".

23 5. On page 17, line 16, strike "wilful" and insert
 1 "willful".

2 6. On page 19, line 25, strike "act" and insert
 3 "compact".

4 7. On page 23, line 23, strike "Marianas" and insert
 5 "Mariana".

6 8. On page 24, line 4, after "2004" insert an underscored
 7 comma.

LEGISLATIVE BILL 237A. Placed on Select File.

LEGISLATIVE BILL 92. Placed on Select File with amendment.
 ER8092

1 1. On page 1, strike line 2 and insert "section
 2 60-601, Revised Statutes Cumulative Supplement, 2008;"; and in
 3 line 4 after "vehicles" insert "and road assistance vehicles on a
 4 controlled-access highway".

(Signed) Jeremy Nordquist, Chairperson

BILL ON FIRST READING

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

LEGISLATIVE BILL 405A. Introduced by Cornett, 45.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 405, One Hundred First Legislature, First Session, 2009.

AMENDMENT - Print in Journal

Senator Fischer filed the following amendment to LB497:
 AM1155

(Amendments to AM1015)

1 1. On page 20, line 14, after "The" insert "revocation
 2 order shall require that the person not drive for a period of

3 forty-five days, after which the"; in line 15 strike "during the
 4 period of revocation"; and strike beginning with "and" in line 17
 5 through "60-6,211.05" in line 18, show the old matter as stricken,
 6 and insert "for the remainder of the revocation period and have
 7 an ignition interlock device installed on any motor vehicle he
 8 or she operates during the remainder of the revocation period.
 9 Such revocation shall be administered upon sentencing, upon final
 10 judgment of any appeal or review, or upon the date that any
 11 probation is revoked".

12 2. On page 20, lines 22 through 24; page 22, lines
 13 4 through 6; page 24, lines 14 through 16; page 25, lines 24
 14 through 26; page 28, lines 4 through 6; and page 30, lines 9
 15 through 11, strike "and submit to alcohol abuse counseling if
 16 such certified substance abuse professional determines that such
 17 counseling is appropriate." and insert ". Upon presentation of
 18 suitable evidence to the court that the person has undergone an
 19 acceptable alcohol assessment because of the arrest leading to
 20 the sentence, the court may waive the mandatory assessment. An
 21 acceptable alcohol assessment shall include recommendations by a
 22 certified substance abuse professional as to whether the person
 1 shall undergo counseling. Based on the recommendations of an
 2 acceptable alcohol assessment, the court shall order the person
 3 to submit to alcohol abuse counseling, if the court deems alcohol
 4 abuse counseling to be appropriate.".

5 3. On page 21, line 13, strike the underscored period and
 6 reinstate the stricken matter.

MESSAGE FROM THE GOVERNOR

April 22, 2009

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 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 were received in my office on April 17, 2009.

These bills were signed and delivered to the Secretary of State on April
 22, 2009.

Sincerely,
 (Signed) Dave Heineman
 Governor

GENERAL FILE

LEGISLATIVE BILL 402. Title read. Considered.

Senator Avery renewed his amendment, AM1138, found on page 1155.

The Avery amendment was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 9 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 195. Title read. Considered.

Committee AM952, found on page 1059, was adopted with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 8 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 653. Title read. Considered.

Committee AM1071, found on page 1024, was considered.

Senator Harms offered the following amendment to the committee amendment:

AM1149

(Amendments to Standing Committee amendments, AM1071)

1 1. Insert the following new section:

2 Sec. 5. Since an emergency exists, this act takes effect
3 when passed and approved according to law.

4 2. On page 2, line 9, strike "The" and insert "The
5 initial members of the committee shall be appointed as soon as
6 possible after the effective date of this act, and thereafter
7 the"; and in line 25 after "agencies" insert ", the University of
8 Nebraska.".

Senator Sullivan moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 32 ayes, 1 nay, and 16 not voting.

The Harms amendment was adopted with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

Senator Dierks moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 33 ayes, 0 nays, and 16 not voting.

The committee amendment, as amended, was adopted with 40 ayes, 0 nays, 7 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

AMENDMENT - Print in Journal

Senator Dierks filed the following amendment to LB568:
AM1156

(Amendments to Standing Committee amendments, AM732)

- 1 1. On page 1, line 23, strike "ten" and insert "five".

UNANIMOUS CONSENT - Add Cointroducer

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB653. No objections. So ordered.

VISITORS

Visitors to the Chamber were Kortnye Hurst from Lincoln; 9 fourth-grade students and teachers from St. Stanislaus School, Omaha; 51 fourth-grade students and teachers from Hayward School, Nebraska City; 32 fourth-grade students from Woodland Park School, Norfolk; 65 twelfth-grade students from Centura High School, Cairo; and 126 fourth-grade students from Gomez Heritage School, Omaha.

RECESS

At 11:55 a.m., on a motion by Senator Loudon, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., President Sheehy presiding.

ROLL CALL

The roll was called and all members were present except Senator Cornett who was excused; and Senators Howard and Karpisek who were excused until they arrive.

AMENDMENT - Print in Journal

Senator Loudon filed the following amendment to LB545:
AM1172

(Amendments to LB 1118)

- 1 1. On page 42, line 25, after "(e)" insert "Expenditures
- 2 for districts which do not receive equalization aid under the Tax

- 3 Equity and Educational Opportunities Support Act and which wish to
 4 fund an elementary only educational site;
 5 (f)".
 6 2. On page 43, line 2, strike "(f)" and insert "(g)"; in
 7 line 15 strike "(g)" and insert "(h)"; in line 17 strike "(h)" and
 8 insert "(i)"; and in line 24 strike "(i)" and insert "(j)".

GENERAL FILE

LEGISLATIVE BILL 545. Senator Council renewed her amendment, AM1141, found on page 1152, to the second committee amendment.

Senator Harms moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 15 nays, and 8 not voting.

Senator White requested a roll call vote, in reverse order, on the Council amendment.

The Council amendment lost with 16 ayes, 30 nays, 2 present and not voting, and 1 excused and not voting.

Senator Ashford offered the following amendment to the second committee amendment:
 AM1170

(Amendments to AM1119)

- 1 1. In the Adams amendment, AM1078:
- 2 a. On page 3, line 25, strike "year 2009-10" and show as
- 3 stricken; and in line 26, after the stricken matter insert "years
- 4 2009-10 and 2010-11"; and
- 5 b. On page 4, line 20, strike "2010-11" and insert
- 6 "2011-12".

Senator Friend offered the following motion:

MO34

Bracket until April 29, 2009.

Senator Friend withdrew his motion to bracket.

SENATOR FRIEND PRESIDING

PRESIDENT SHEEHY PRESIDING

Senator Louden moved the previous question. The question is, "Shall the debate now close?"

Senator Louden moved for a call of the house. The motion prevailed with 31 ayes, 0 nays, and 18 not voting.

Senator Louden requested a roll call vote on the motion to cease debate.

Voting in the affirmative, 30:

Adams	Dierks	Hadley	Langemeier	Schilz
Avery	Dubas	Hansen	Lautenbaugh	Stuthman
Campbell	Fischer	Harms	Louden	Sullivan
Carlson	Flood	Heidemann	McCoy	Utter
Christensen	Fulton	Janssen	Pankonin	Wallman
Coash	Gay	Karpisek	Price	Wightman

Voting in the negative, 16:

Ashford	Gloor	McGill	Nordquist
Cook	Haar	Mello	Pahls
Council	Howard	Nantkes	Pirsch
Giese	Lathrop	Nelson	White

Present and not voting, 2:

Friend	Rogert
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Excused and not voting, 1:

Cornett

The motion to cease debate prevailed with 30 ayes, 16 nays, 2 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

The Ashford amendment, AM1170, lost with 16 ayes, 29 nays, 3 present and not voting, and 1 excused and not voting.

The second committee amendment, AM1119, found on page 1136 and considered on page 1142, as amended, was renewed.

Senator White offered the following motion:

MO36

Bracket until June 4, 2009.

SPEAKER FLOOD PRESIDING

Senator Adams offered the following motion:

MO37

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Adams moved for a call of the house. The motion prevailed with 41 ayes, 0 nays, and 8 not voting.

Senator Adams requested a roll call vote on the motion to invoke cloture.

Voting in the affirmative, 30:

Adams	Dierks	Hadley	Langemeier	Rogert
Avery	Dubas	Hansen	Lautenbaugh	Schilz
Campbell	Fischer	Harms	Louden	Stuthman
Carlson	Flood	Heidemann	McCoy	Sullivan
Christensen	Fulton	Janssen	Pankonin	Utter
Coash	Gay	Karpisek	Price	Wightman

Voting in the negative, 17:

Ashford	Giese	Lathrop	Nelson	White
Cook	Gloor	McGill	Nordquist	
Council	Haar	Mello	Pahls	
Friend	Howard	Nantkes	Pirsch	

Present and not voting, 1:

Wallman

Excused and not voting, 1:

Cornett

The Adams motion to invoke cloture failed with 30 ayes, 17 nays, 1 present and not voting, and 1 excused and not voting.

AMENDMENTS - Print in Journal

Senator Sullivan filed the following amendment to LB531:
AM1175

- 1 1. On page 2, line 21, strike "five hundred"; show the
- 2 old matter as stricken, and insert "three hundred fifty".

Senator Council filed the following amendment to LB545:
AM1165

- 1 1. Insert the following new section:
- 2 Sec. 10. Section 79-1007.19, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 79-1007.19 For school fiscal year 2008-09 and each school
- 5 fiscal year thereafter, the department shall calculate a teacher
- 6 education adjustment for each district as follows:
- 7 (1) Teacher education points shall be calculated for each
- 8 district by the department based upon data from the fall personnel
- 9 report required pursuant to section 79-804 for the school fiscal
- 10 year immediately preceding the school fiscal year in which aid is

11 to be paid. Each full-time equivalent teacher shall (a) be under
 12 contract with a school district as required pursuant to section
 13 79-818 and (b) only be counted one time in the awarding of any
 14 points pursuant to this section. Each district shall receive one
 15 point for each full-time equivalent teacher who has earned and been
 16 awarded a master's degree or an education specialist's degree and
 17 two points for each full-time equivalent teacher who has earned and
 18 been awarded a doctoral degree;

19 (2) A teacher education index shall be calculated for
 20 each district by dividing the ratio of teacher education points
 21 for the district divided by the number of full-time equivalent
 22 teachers in the district by the ratio of teacher education points
 23 for all districts in the state except the teacher education points
 1 generated by the district for which the teacher education index
 2 is being calculated, divided by the number of full-time equivalent
 3 teachers in all districts in the state except the teachers in the
 4 district for which the teacher education index is being calculated;
 5 and

6 (3) The teacher education adjustment for each district
 7 shall equal ten percent for school fiscal years 2008-09 and
 8 2009-10 and thirteen and seventy-five one-hundredths percent for
 9 each school fiscal year thereafter of the district's basic funding
 10 multiplied by the difference of the product of the district's
 11 teacher education index minus one, except that if the result is
 12 less than zero, the teacher education adjustment shall equal zero.

13 2. Renumber the remaining sections, correct internal
 14 references, and amend the repealer accordingly.

Senator Council filed the following amendment to LB545:
 AMI166

1 1. Insert the following new section:
 2 Sec. 11. Section 79-1007.20, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 79-1007.20 (1) For school fiscal year 2009-10 and each
 5 school fiscal year thereafter, school districts may apply to the
 6 department for a student growth adjustment, on a form prescribed
 7 by the department, on or before October 10 of the school fiscal
 8 year immediately preceding the school fiscal year for which aid
 9 is being calculated. Such form shall require an estimate of the
 10 average daily membership for the school fiscal year for which aid
 11 is being calculated, the estimated student growth calculated by
 12 subtracting the fall membership of the current school fiscal year
 13 from the estimated average daily membership for the school fiscal
 14 year for which aid is being calculated, and evidence supporting
 15 the estimates. On or before the immediately following December
 16 1, the department shall approve the estimated student growth,
 17 approve a modified student growth, or deny the application based
 18 on the requirements of this section, the evidence submitted on the
 19 application, and any other information provided by the department.

20 The state board shall establish procedures for appeal of decisions
21 of the department to the state board for final determination.

22 (2) The student growth adjustment for each approved
23 district shall equal the sum of the product of the school
1 district's basic funding per formula student multiplied by the
2 difference of the approved student growth minus the greater of
3 twenty-five students or one-tenth of one percent of the fall
4 membership for the school fiscal year immediately preceding the
5 school fiscal year for which aid is being calculated plus the
6 product of fifty percent of the school district's basic funding per
7 formula student multiplied by the greater of twenty-five students
8 or one-tenth of one percent of the fall membership for the school
9 fiscal year immediately preceding the school fiscal year for which
aid is being calculated.

11 (3) For school fiscal year 2011-12 and each school
12 fiscal year thereafter, the department shall calculate a student
13 growth adjustment correction for each district that received a
14 student growth adjustment for aid distributed in the most recently
15 available complete data year. Such student growth correction shall
16 equal the product of the difference of the average daily membership
17 for such school fiscal year minus the sum of the formula students
18 and the approved student growth used to calculate the student
19 growth adjustment for such school fiscal year multiplied by the
20 school district's basic funding per formula student used in the
21 final calculation of aid pursuant to section 79-1065 for such
22 school fiscal year, except that the absolute value of a negative
23 correction shall not exceed the original adjustment.

24 2. Renumber the remaining sections, correct internal
25 references, and amend the repealer accordingly.

Senator Council filed the following amendment to LB545:
AM1167

1 1. Insert the following new section:
2 Sec. 12. Section 79-1007.21, Reissue Revised Statutes of
3 Nebraska, is amended to read:
4 79-1007.21 (1) For school fiscal year 2009-10 and each
5 school fiscal year thereafter, school districts may apply to
6 the department for a two-year new school adjustment, on a form
7 prescribed by the department, on or before October 10 of the
8 school fiscal year immediately preceding the school fiscal year
9 for which the first-year new school adjustment would be included
10 in the calculation of state aid. Such form shall require evidence
11 of recent and expected student growth in the attendance area in
12 which the new building or expansion or remodeling of an existing
13 building is to occur, evidence that a new building or the expansion
14 or remodeling of an existing building is being completed to
15 provide additional student capacity to accommodate such growth and
16 not to replace an existing building, evidence that the school
17 fiscal year for which the district would receive the first-year

18 adjustment will be the first full school fiscal year for which
 19 students will utilize such additional capacity, and evidence of
 20 the estimated additional student capacity to be provided by the
 21 project. On or before the immediately following December 1, the
 22 department shall approve the estimated additional capacity for
 23 use in the adjustment, approve a modified estimated additional
 1 capacity for use in the adjustment, or deny the application based
 2 on the requirements of this section, the evidence submitted on the
 3 application, and any other information provided by the department.
 4 Each approval shall include an approved estimated additional
 5 student capacity for the new building. The state board shall
 6 establish procedures for appeal of decisions of the department to
 7 the state board for final determination.

8 (2) The first-year new school adjustment for each
 9 approved district shall equal the school district's basic funding
 10 per formula student multiplied by twenty percent of the approved
 11 estimated additional student capacity. The second-year new school
 12 adjustment for each approved district shall equal the school
 13 district's basic funding per formula student multiplied by ten
 14 percent of the approved estimated additional student capacity.

15 2. Renumber the remaining sections, correct internal
 16 references, and amend the repealer accordingly.

Senator Ashford filed the following amendment to LB545:
 AM1178

(Amendments to AM1078)

1 1. On page 4, after line 18, insert the following new
 2 subsection:

3 "(5) The percentage to be used in the calculation of
 4 averaging adjustments for school fiscal year 2010-11 shall be
 5 seventy-five percent."; in line 19 strike "(5)" and insert "(6)";
 6 and in line 21 strike "2010-11" and insert "2011-12".

Senator Stuthman filed the following amendment to LB198:
 AM1179

(Amendments to Standing Committee amendments, AM679)

1 1. On page 1, strike beginning with "means" in line 11
 2 through line 18 and insert "has the same meaning as in section
 3 77-2601.".

4 2. On page 3, line 10, strike "(5)" and insert "(7)".

5 3. On page 5, after line 5 insert:

6 "(3) A manufacturer of a cigarette that the State Fire
 7 Marshal determines cannot be tested in accordance with the test
 8 method prescribed in subdivision (1)(a) of this section shall
 9 propose a test method and performance standard for the cigarette to
 10 the State Fire Marshal. If the State Fire Marshal determines that
 11 another state has enacted reduced cigarette ignition propensity
 12 standards that include a test method and performance standard that
 13 are the same as those contained in the Reduced Cigarette Ignition

- 14 Propensity Act and the State Fire Marshal finds that the officials
 15 responsible for implementing those requirements have approved the
 16 proposed alternative test method and performance standard for a
 17 particular cigarette proposed by a manufacturer as meeting the
 18 fire safety standards of that state's law or regulation under a
 19 legal provision comparable to this section, then the State Fire
 20 Marshal shall authorize that manufacturer to employ the alternative
 21 test method and performance standard to certify that cigarette for
 22 sale in this state, unless the State Fire Marshal demonstrates a
 1 reasonable basis why the alternative test should not be accepted
 2 under the act. All other applicable requirements of this section
 3 shall apply to the manufacturer."; in line 6, strike "(3)" and
 4 insert "(4)"; after line 14 insert:
 5 "(5) The State Fire Marshal may adopt a subsequent
 6 American Society of Testing and Materials Standard Test Method
 7 for Measuring the Ignition Strength of Cigarettes upon a finding
 8 that such subsequent method does not result in a change in
 9 the percentage of full-length burns exhibited by any tested
 10 cigarette when compared to the percentage of full-length burns
 11 the same cigarette would exhibit when tested in accordance with the
 12 American Society of Testing and Materials Standard E2187-04 and the
 13 performance standard in subdivision (1)(c) of this section."; in
 14 line 15 strike "(4)" and insert "(6)"; and in line 21 strike "(5)"
 15 and insert "(7)".
 16 4. On page 6, line 3, strike "(6)" and insert "(8)".
 17 5. On page 10, line 20, after "Marshal" insert "or Tax
 18 Commissioner".
 19 6. On page 11, lines 3, 16 and 17, and 18 and 19, strike
 20 "State Fire Marshal or".
 21 7. On page 12, lines 2 and 3 and 9, strike "and the State
 22 Fire Marshal".
 23 8. On page 13, line 13, strike "July" and insert
 24 "January".

VISITORS

Visitors to the Chamber were Faye Osborn from Lincoln; Nikki Kling from Guadalajara, Mexico; 34 fourth-grade students from Grant Elementary, Norfolk; and 19 seventh- and eighth-grade students from St. John Lutheran, Battle Creek.

The Doctor of the Day was Dr. Pat Hotovy from York.

ADJOURNMENT

At 4:49 p.m., on a motion by Senator Schilz, the Legislature adjourned until 9:00 a.m., Thursday, April 23, 2009.

Patrick J. O'Donnell
Clerk of the Legislature