

TWENTY-SECOND DAY - FEBRUARY 8, 2010

LEGISLATIVE JOURNAL

**ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION**

TWENTY-SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Monday, February 8, 2010

PRAYER

The prayer was offered by Senator Carlson.

ROLL CALL

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

The roll was called and all members were present except Senators Council, Pahls, and Schilz who were excused; and Senator Giese who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-first day was approved.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 867. Placed on Select File with amendment.
ER8159

- 1 1. In the Standing Committee amendments, AM1638, renumber
- 2 section 2 as section 1.
- 3 2. On page 1, line 1, after "amend" insert "section
- 4 53-123.15, Revised Statutes Cumulative Supplement, 2008, and"; in
- 5 line 2 after the semicolon insert "to provide for placement of
- 6 certain shipping license fees in the General Fund;"; and in line 3
- 7 strike "section" and insert "sections".
- 8 3. Renumber original section 1 as section 2.

LEGISLATIVE BILL 848. Placed on Select File.

LEGISLATIVE BILL 746. Placed on Select File with amendment.
ER8160

- 1 1. In the Standing Committee amendments, AM1669, on page
- 2 1, line 13, strike "executive".

- 3 2. On page 1, line 3, after the semicolon insert "to
 4 change the membership of the Racial Profiling Advisory Committee;
 5 to change and provide powers and duties;"

(Signed) Jeremy Nordquist, Chairperson

ANNOUNCEMENT

Senator Janssen designates LB200 as his priority bill.

RESOLUTION

LEGISLATIVE RESOLUTION 315. Introduced by Lautenbaugh, 18; Ashford, 20; Council, 11; White, 8.

WHEREAS, Cornelius "Neal" John Mosser passed away February 1, 2010, at the age of ninety; and

WHEREAS, Neal Mosser faithfully served his country as a technical sergeant in the United States Marine Corps during World War II; and

WHEREAS, Neal Mosser amassed numerous athletic accomplishments in his career, including setting state college basketball scoring records in two seasons at St. Joseph College, as well as playing for the University of Nebraska-Lincoln from 1946 to 1948, serving as team captain in 1947; and

WHEREAS, Neal Mosser served as coach to the now-closed Omaha Technical High School from 1949 to 1967; and

WHEREAS, Neal Mosser, as coach of Omaha Technical High School, made the team a dominant force in Nebraska high school basketball, amassing a 230-120 overall record and finishing in the Omaha World-Herald Top 10 in all but two seasons and finishing eight times in the top three; and

WHEREAS, Coach Mosser's 1963 team, one of the best ever in the state, went 22-2 for the season and beat Omaha Creighton Prep 91-73 to win a Nebraska State High School Boys Basketball Championship in a tournament in which the team averaged eighty-three points per game; and

WHEREAS, during his tenure as coach of Omaha Technical High School, Coach Mosser was an instrumental force in helping to integrate high school basketball, coaching on fairness and merit, as well as standing up to injustices he observed on the court; and

WHEREAS, Coach Mosser has been inducted into the Omaha Technical High School, St. Joseph College, and Nebraska High School Sports halls of fame; and

WHEREAS, upon his retirement from his position as counselor at Omaha South High School in 1982, Coach Mosser had given thirty-four years of service to the Omaha public school system; and

WHEREAS, Coach Mosser is survived by four sons, Joe, Tom, Jerry, and Tim, as well as twelve grandchildren and seventeen great-grandchildren.

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

1. That the Legislature posthumously honors Coach Cornelius "Neal" John Mosser for his personal accomplishments as well as for his service to his country, the city of Omaha, and the State of Nebraska.

2. That the Legislature extends its sympathy and condolences to the family of Coach Cornelius "Neal" John Mosser.

3. That a copy of this resolution be sent to the family of Coach Cornelius "Neal" John Mosser.

Laid over.

ATTORNEY GENERAL'S OPINION

Opinion 10006

DATE: February 4, 2010

SUBJECT: Article XVI, § 1 Of The Nebraska Constitution;
Authority Of The Nebraska Legislature To Submit
Constitutional Amendments To The Electors Of The
State At Special Elections After A General Election.

REQUESTED BY: John A. Gale
Nebraska Secretary of State

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

On May 30, 2007, the 100th Nebraska Legislature, First Session, passed LR 1CA by a four-fifths majority. LR 1CA proposed an amendment to the Nebraska Constitution which would raise the salaries of members of the Legislature to twenty-two thousand dollars per year, and it also called for that constitutional amendment to be presented to the electors of the state at a special election to be held in conjunction with the statewide primary election in 2010. Similarly, the 100th Nebraska Legislature, Second Session, passed LR 5CA by a four-fifths majority on February 1, 2008. LR 5CA proposed an amendment to the Nebraska Constitution which would allow the Legislature to authorize governmental subdivisions in Nebraska to own and finance real and personal property to be used by nonprofit enterprises through the issuance of revenue bonds. LR 5CA was also to be submitted to the electors of Nebraska "[a]t the primary election in May 2010."

On January 11, 2010, Michael J. Flood, Speaker of the Nebraska Legislature, wrote to you and indicated that members of the Legislature "feel that a pay increase for state senators, while important to our institution, is not appropriate at this time" because of the "difficult financial times" and the fact that Nebraska families are "struggling to make ends meet." Speaker Flood then indicated that, based upon a previous opinion of this office and the Legislature's own research, the Legislature's practice of directing that a proposed constitutional amendment be placed on a ballot in the future

instead of at the next election might be "constitutionally flawed." As a result, Speaker Flood requested that you seek our opinion "to determine the effect of the delayed submission." He also stated, "[w]e believe that a delayed submission date is constitutionally suspect and as such, LR 1 CA should not appear on the 2010 Primary Election Ballot."

Speaker Flood's correspondence caused you to review our opinion set out at 1969-70 Rep. Att'y Gen. 102 (Opinion No. 67, dated August 8, 1969). Your reading of that opinion suggested that "a special election [for a proposed constitutional amendment] requested by the Legislature should occur sometime prior to the next regular General Election to accommodate the 'unusual importance or urgency' of the proposed measure." On that basis, you asked us if the scheduling of elections for LR 1 CA and LR 5 CA was improper so that those measures should not be placed on the 2010 Primary Election ballot. For the reasons discussed at length below, we believe that neither of those proposed constitutional amendments should be placed on the ballot for the 2010 Primary Election in Nebraska.

Before we turn to an analysis of the question you posed to us, we will briefly discuss the Legislature's role in submitting constitutional amendments to the people for their approval. Under art. XVI, § 1 of the Nebraska Constitution, the Legislature may propose amendments to the constitution for submission to the electors of Nebraska. When such a proposal for amendment to a state constitution is submitted, a legislature is not exercising its legislative power, but is acting under a limited power conferred by the people, i.e., submission of a proposed constitutional amendment to the people is not a legislative act. *Morris v. Governor of Maryland*, 263 Md. 20, 281 A.2d 216 (1971); *Bourbon v. Governor of Maryland*, 258 Md. 252, 265 A.2d 477 (1970); *Hutcheson v. Gonzales*, 41 N.M. 474, 71 P.2d 140 (1937); *Weston v. Ryan*, 70 Neb. 211, 97 N.W. 347 (1903); *In re Senate File 31*, 25 Neb. 864, 41 N.W. 981 (1889); 16 Am. Jur.2d Constitutional Law § 26 (2008). As a result, the power of the legislature to initiate changes in a state constitution is a delegated power rather than a plenary one, and it must be strictly construed. *State of Alabama v. Manley*, 441 So.2d. 864 (Ala. 1983); *Bourbon v. Governor of Maryland*, 258 Md. 252, 265 A.2d 477 (1970); *Leach v. Brown*, 167 Ohio St. 1, 145 N.E.2d 525 (1957); 16 Am. Jur.2d Constitutional Law § 26 (2008). In proposing a constitutional amendment, a legislature acts in the character and capacity of a constitutional convention and not in the exercise of its normal legislative authority. *Chaney v. Bryant*; 259 Ark. 294, 532 S.W.2d 741 (1976). The adoption of a proposed constitutional amendment by the Legislature does not amend the constitution; it is a mere proposal which possesses no validity until ratified by a majority vote of the people. *Cunningham v. Exon*, 207 Neb. 513, 300 N.W.2d 6 (1980); *In re Senate File 31*, 25 Neb. 864, 41 N.W. 981 (1889).

Art. XVI, §1, the constitutional provision at issue in this instance, provides, as is pertinent:

The Legislature may propose amendments to this Constitution. If the same be agreed to by three-fifths of the members elected to the Legislature, such proposed amendments shall be entered on the journal, with yeas and nays, and published once each week for three consecutive weeks, in at least one newspaper in each county, where a newspaper is published, immediately preceding the next election of members of the Legislature or a special election called by the vote of four-fifths of the members elected to the Legislature for the purpose of submitting such proposed amendments to the electors. At such election said amendments shall be submitted to the electors for approval or rejection upon a ballot separate from that upon which the names of candidates appear.

The plain language of art. XVI, § 1 suggests that three-fifths of the members of the Legislature can propose a constitutional amendment which will be presented to the people at the next election of members of the Legislature (the next General Election), or at a special election called for that purpose, when four-fifths of the members of the Legislature vote for the special election process. It also seems to us that the language of that constitutional provision suggests some immediacy or urgency in connection with its special election provisions, based upon the four-fifths, super-majority requirement.

In determining the meaning of constitutional language, effect must be given to the intent of the framers of the organic law and of the people who adopted it. In re Applications A-16027, 243 Neb. 419, 499 N.W.2d 548 (1993). It is permissible to consider the facts of history and "historical or operative facts" in determining the meaning of language of the Constitution, including the historical and operative facts in connection with its adoption. *Pig Pro Nonstock Cooperative v. Moore*, 253 Neb. 72, 568 N.W.2d 217 (1997); *Omaha National Bank v. Spire*, 223 Neb. 209, 389 N.W.2d 269 (1986).

It is also appropriate and helpful to consider, in connection with the historical background, the evil and mischief attempted to be remedied, the objects sought to be accomplished, and scope of the remedy its terms imply.

State ex rel. Spire v. Beermann, 235 Neb. 384, 390, 455 N.W.2d 749, 752 (1990) (quoting *State Railway Commission v. Ramsey*, 151 Neb. 333, 340-41, 37 N.W.2d 502, 507 (1949)). Accordingly, we have reviewed the historical facts and background pertaining to the special election language in art. XVI, § 1 in order to ascertain its meaning.

The provisions in art. XVI, § 1 which allow the Legislature to present a constitutional amendment to the electors at a special election if four-fifths of the members of that body vote to do so were placed in the Nebraska Constitution in 1968 as a result of 1967 Neb. Laws LB 217. LB 217 was introduced by state Senator Terry Carpenter, and portions of the legislative

history of that bill offer some sense of the objects he sought to accomplish with the proposed constitutional change.

During the public hearing on LB 217, Senator Carpenter introduced the bill, and made the following comments:

We'll take up LB 217. . . . The amendment I have, (See Exhibit J) after I gave some consideration and thought to the matter goes further than that, in that it says that by three-fourths vote of the Legislature like any other Constitutional amendment the Legislature by that vote can call a special election to amend the Constitution. . . . So at least consider this amendment, to at least getting it out on the floor, in order to see in the judgment of the majority of the Legislature itself for the committee to feel this might be desirable and necessary. Otherwise there is no way in the world between general elections irrespective of the situation that this Legislature either in regular session or special session can submit an amendment to the Constitution, any sooner than every two years. It may be that the three-fifths might be too lacking -- I don't care what the number is -- I am only trying to visualize if and when this circumstance does arise, maybe it never will arise, but if it does we will not have the ability to do this. It is well . . . Submitting a question like this which can be decided within the area of three or four months.

Committee Records on LB 217, 77th Neb. Leg.,12-13 (February 10, 1967)(emphasis added). Subsequently, during floor debate on the bill, Senator Carpenter offered the following:

Now, what is the purpose of this bill? This legislature today is going through a great deal of mental anguish. . . . we are now confronted in an area in which I am sure none of us really knows what to do. I can foresee by the imaginative mind that I have in the future that this stage (sic) could be confronted with a problem in which we would not be willing to act until we got further advice and consent from the people of this state. . . . As the constitution now says, we cannot amend the constitution except at a general election, which means that every two years. What this bill says and the intent and the expects from it is this, that if a condition arises in which 4/5 of us want too (sic), based upon the number of 40 if none exists, can then submit by special election of the people of this state for further guidance or to amend and constitute the point which at that particular time we feel is not broad enough in order for us to take care of the emergency as might exist. I realize that this is only, so to speak, a law in inventory, so to speak. I realize that it may never exist and I hope that it doesn't. But, if it does you want to tie our hands for two years in order to muddle through and to go through in a state of anguish to a point that we can't do anything until the next general election and I think this bill has extreme importance

Floor Debate on LB 217, 77th Neb. Leg., 581 (February 24, 1967)(Statement of Sen. Carpenter)(emphasis added). Senator Carpenter also stated:

On this amendment [LB 217], because of the emergency nature of it, to be used on line 15, we say called by 4/5 of the Legislature. So the 4/5 notes only apply in the event that this Legislature – some Legislature would call a special session for the purposes of the bill.

Floor Debate on LB 217, 77th Neb. Leg., 622 (February 27, 1967)(Statement of Sen. Carpenter)(emphasis added). Finally, the following exchange occurred between Sen. Gerdes and Sen. Carpenter regarding LB 217 during floor debate on February 27, 1967:

Senator Gerdes: I would like to ask Senator Carpenter a question. As I understand it, and maybe I do not. If we had decided to have a special election, something came up so important, that we have to have a special election, then we would have to have a 4/5 vote of the Legislature to put this before the people.

Senator Carpenter: That is correct.

Floor Debate on LB 217, 77th Neb. Leg., 624 (February 27, 1967) (emphasis added).

From the legislative history discussed above, it is apparent that Senator Carpenter introduced LB 217 to deal with the fact that there was no way under the Nebraska Constitution as it existed in 1967 for the Legislature to quickly submit an amendment to the Nebraska Constitution to the people because, at that time, any amendment proposed by the Legislature could not be voted on until the next General Election. Moreover, LB 217 was designed to allow quick amendment of the Nebraska Constitution in situations where the circumstances involved important and urgent issues which required emergency action.

The opinion of this office which you and Speaker Flood cited is consistent with those conclusions. In 1969-70 Rep. Att'y Gen. 102 (Opinion No. 67, dated August 8, 1969), we considered whether the Legislature was permitted, under art. XVI, § 1, to determine which of several constitutional amendments proposed by the Legislature could be submitted at a particular special election. In the course of that opinion, which was written in 1969 shortly after LB 217 was submitted to the voters, we stated:

The amendment of 1968 [LB 217] permitted the Legislature to call a special election for the submission of proposed constitutional amendments, where before, such could be submitted only at general elections. . . .

The amendment of 1968, as we have noted, permits the calling of a special election at the discretion of the Legislature. The requirement of a four-fifths majority for the calling thereof suggests a constitutional anticipation that special elections should be held only for proposed amendments of unusual importance or urgency. It would be inconsistent with this concept to require the submission of relatively minor proposed amendments merely because a special election had been called for a truly significant measure.

* * *

On the basis of our analysis of Article XVI, Section 1, Constitution of Nebraska, it is our opinion that the Legislature may, by a four-fifths vote, call a special election and may provide which proposed constitutional amendments shall be submitted thereat. All such proposed amendments which are not specifically designated to be submitted at the special election shall be submitted at the next succeeding election of members of the Legislature.

1969-70 Rep. Att'y Gen. 102, 103-104 (Opinion No. 67, dated August 8, 1969).

The historical background of LB 217 discussed above indicates that the evil or mischief which LB 217 was designed to remedy was the fact that there was no way for the Legislature to quickly submit a proposed constitutional amendment to the electors in Nebraska when urgent or important situations required that action. The object of the bill was to create such a process using special elections, to be initiated when a four-fifths majority of the Legislature determined it was necessary. With those conclusions in mind, we will again consider the language of art XVI, § 1.

It is our view that the language of art. XVI, § 1 implicitly means that, in important or urgent situations, a four-fifths majority of the Legislature may submit a constitutional amendment to the electors of Nebraska more quickly than under the usual circumstances. Therefore, since the Legislature acts under a limited, delegated authority when it proposes constitutional amendments, and that authority must be strictly construed, we believe that art. XI, § 1 authorizes four-fifths of the members of the Legislature to submit a constitutional amendment to the people at a special election before the next General Election. We do not believe that it authorizes the Legislature to submit such an amendment to the people in the future, after the next General Election.¹ On that basis, we conclude that LR 1CA and LR 5CA are beyond the constitutional authority of the Legislature, and absent such authority, should not be placed on the ballot for the 2010 General Election.

¹We note that our conclusion regarding the Legislature's authority to submit constitutional amendments at special elections beyond the next General

Election is consistent with the notion that one legislature cannot bind a succeeding legislature or restrict or limit the power of its successors to enact legislation. *State ex rel. Stenberg v. Moore*, 249 Neb. 589, 544 N.W.2d 344 (1996).

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

cc: Patrick J. O'Donnell
Clerk of the Legislature
05-172-20

COMMUNICATION

February 4, 2010

Speaker Mike Flood
Nebraska Legislature
Room 2103
State Capitol
Lincoln, NE 68509

Dear Speaker Flood:

On January 11th of this year, you wrote to me suggesting that I should ask for an Attorney General's Opinion regarding LR1CA (2007) and LR 5CA (2008). Both measures were passed by a 4/5ths majority and had been delivered to my office. Both measures called for a special election to be held in conjunction with the Primary Election to be held in May 2010. Your concern was that it might be improper to place the issues on a ballot for an election that would occur after the next election for members of the Legislature. As you are aware I made that request shortly after receiving your letter.

I have attached a copy of the Attorney General's response. To summarize, the opinion states that special elections for constitutional amendments were intended for situations when the Legislature needs or wants to submit a measure to the voters "more quickly than under the usual circumstances." (See. p. 7) The opinion concludes that LR 1CA (2007) and LR 5CA (2008) were improper and should not be placed on the 2010 Primary Election ballot.

This letter is to inform you, that in accordance with the Attorney General's Opinion, I will not certify LR 1CA and LR 5CA for the 2010 Primary

Election ballot. Should you have questions or comments regarding this decision, I would encourage you to contact my office.

Sincerely
(Signed) John A. Gale
Secretary of State

cc: Patrick O'Donnell, Clerk of the Legislature

NOTICE OF COMMITTEE HEARINGS
Transportation and Telecommunications

Room 1113

Tuesday, February 16, 2010 1:30 p.m.

LB773
LB820
LB896
LB933
LB991

Monday, February 22, 2010 1:30 p.m.

LB1024
LB1004
LB1100

Tuesday, February 23, 2010 1:30 p.m.

LB1060
LB1065
LB1092
LB998

(Signed) Deb Fischer, Chairperson

UNANIMOUS CONSENT - Room Change

Senator Lathrop asked unanimous consent that the Business and Labor Committee conduct its hearing on Monday, February 8, 2010, in Room 1524 instead of Room 2102. No objections. So ordered.

SELECT FILE

LEGISLATIVE BILL 190A. Senator Avery withdrew his amendment, AM1674, found on page 390.

Senator Avery renewed his amendment, AM1769, found on page 475.

The Avery amendment was adopted with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 297. ER8144, found on page 262, was adopted.

Senator Dubas renewed her amendment, AM1782, found on page 476.

Pending.

COMMITTEE REPORTS

Government, Military and Veterans Affairs

LEGISLATIVE BILL 716. Placed on General File with amendment. AM1694

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

3 Section 1. Section 32-604, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 32-604 (1) Except as provided in subsection (2) or (4) of
6 this section, no person shall be precluded from being elected or
7 appointed to or holding an elective office for the reason that he
8 or she has been elected or appointed to or holds another elective
9 office.

10 (2) No person serving as a member of the Legislature or
11 in an elective office described in Article IV, section 1 or 20,
12 or Article VII, section 3 or 10, of the Constitution of Nebraska
13 shall simultaneously serve in any other elective office, except
14 that such a person may simultaneously serve in another elective
15 office which is filled at an election held in conjunction with the
16 annual meeting of a public body.

17 (3) Whenever an incumbent serving as a member of the
18 Legislature or in an elective office described in Article IV,
19 section 1 or 20, or Article VII, section 3 or 10, of the
20 Constitution of Nebraska assumes another elective office, except
21 an elective office filled at an election held in conjunction with
22 the annual meeting of a public body, the office first held by the
23 incumbent shall be deemed vacant.

1 (4) No person serving in a high elective office shall
2 simultaneously serve in any other high elective office, except that
3 a county attorney may serve as the county attorney for more than
4 one county if appointed under subsection (2) of section 23-1201.01.

5 (5) Notwithstanding ~~subsections (2) through subsection~~
6 (4) of this section, any person holding more than one high elective
7 office upon ~~September 13, 1997, the effective date of this act,~~
8 shall be entitled to serve the remainder of all terms for which he
9 or she was elected or appointed.

10 (6) For purposes of this section, (a) elective office has
 11 the meaning found in section 32-109 and includes an office which is
 12 filled at an election held in conjunction with the annual meeting
 13 of a public body created by an act of the Legislature but does
 14 not include a member of a learning community coordinating council
 15 appointed pursuant to subsection (5) or (7) of section 32-546.01
 16 and (b) high elective office means a member of the Legislature,
 17 an elective office described in Article IV, section 1 or 20, or
 18 Article VII, section 3 or 10, of the Constitution of Nebraska, or a
 19 county, city, community college area, learning community, or school
 20 district elective office.

21 Sec. 2. Section 85-1512, Reissue Revised Statutes of
 22 Nebraska, is amended to read:

23 85-1512 Each board shall divide the community college
 24 area into five election districts as nearly equal in population as
 25 may be practicable and shall transmit the appropriate information
 26 pertaining to such election districts to the Secretary of State
 27 and to the appropriate election officials within the area. Board
 1 members shall be nominated and elected as provided in section
 2 32-514. To be eligible for membership on the board, a person
 3 shall be a registered voter and shall have been a resident of
 4 the area for six months and, for members representing a district,
 5 a resident of the district for six months. ~~No person shall be~~
 6 ~~eligible to membership on a community college board of governors~~
 7 ~~who is an elected or appointed member of any other board relating~~
 8 ~~to education.~~ Each member elected to represent a district shall be
 9 a resident of the district.

10 Sec. 3. Original sections 32-604 and 85-1512, Reissue
 11 Revised Statutes of Nebraska, are repealed.

LEGISLATIVE BILL 987. Placed on General File with amendment.
 AM1778

1 1. On page 2, line 7, after the period insert "In
 2 consultation with the department, the institute may include any
 3 other postsecondary institution in Nebraska which has a college of
 4 medicine in the conduct of the study.".

(Signed) Bill Avery, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 316. Introduced by Ashford, 20.

WHEREAS, Mike Kemp has been inducted into the Omaha Hockey Hall of Fame; and

WHEREAS, Mike Kemp helped to start and build the hockey program at the University of Nebraska at Omaha, becoming the school's first head coach of hockey in 1997; and

WHEREAS, Mike Kemp, during his twelve-year tenure as head coach, built the University of Nebraska at Omaha hockey team into an established hockey program and earned a National Collegiate Athletic Association tournament berth in 2006; and

WHEREAS, Mike Kemp currently serves as an Associate Athletic Director at the University of Nebraska at Omaha.

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

1. That the Legislature congratulates Mike Kemp for being inducted into the Omaha Hockey Hall of Fame.

2. That a copy of this resolution be sent to Mike Kemp.

Laid over.

ANNOUNCEMENTS

Senator Gay designates LB735 as his priority bill.

Senator Krist designates LB987 as his priority bill.

The General Affairs Committee designates LR277CA as its priority resolution.

SELECT FILE

LEGISLATIVE BILL 297. The Dubas amendment, AM1782, found on page 476 and considered in this day's Journal, was renewed.

Senator Sullivan moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

The Dubas amendment was adopted with 25 ayes, 4 nays, 16 present and not voting, and 4 excused and not voting.

Senator Dubas moved for a call of the house. The motion prevailed with 40 ayes, 0 nays, and 9 not voting.

Senator Dubas requested a roll call vote, in reverse order, on the advancement of the bill.

Voting in the affirmative, 22:

Ashford	Dierks	Karpisek	Mello	Wallman
Avery	Dubas	Krist	Nordquist	White
Carlson	Flood	Lathrop	Pirsch	
Conrad	Giese	McCoy	Rogert	
Cook	Haar	McGill	Sullivan	

Voting in the negative, 12:

Adams	Gay	Heidemann	Stuthman
Fischer	Hadley	Louden	Utter
Fulton	Hansen	Nelson	Wightman

Present and not voting, 11:

Campbell	Gloor	Janssen	Pankonin
Christensen	Harms	Langemeier	Price
Cornett	Howard	Lautenbaugh	

Excused and not voting, 4:

Coash	Council	Pahls	Schilz
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Failed to advance to Enrollment and Review for Engrossment with 22 ayes, 12 nays, 11 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 373. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 690. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 691. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 736. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 751. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 650. ER8150, found on page 394, was adopted.

Senator Christensen renewed his amendment, AM1682, found on page 474.

The Christensen amendment was adopted with 34 ayes, 0 nays, 10 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 650A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 698. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 226. ER8151, found on page 395, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 798. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 731. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 738. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 814. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 721. ER8153, found on page 405, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 722. Senator Avery renewed his amendment, AM1771, found on page 474.

The Avery amendment was adopted with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

Senator Heidemann offered the following amendment:

AM1767

- 1 1. On page 5, strike beginning with "Priority" in line 17
- 2 through line 22 and show as stricken.

Senator Heidemann withdrew his amendment.

Advanced to Enrollment and Review for Engrossment.

COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 1078. Placed on General File.

(Signed) Abbie Cornett, Chairperson

Judiciary

LEGISLATIVE BILL 352. Placed on General File with amendment.
AM1799

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

3 Section 1. Section 25-505.01, Revised Statutes
4 Supplement, 2009, is amended to read:

5 25-505.01 (1) Unless otherwise limited by statute or by
6 the court, a plaintiff may elect to have service made by any of the
7 following methods:

8 (a) Personal service which shall be made by leaving the
9 summons with the individual to be served;

10 (b) Residence service which shall be made by leaving the
11 summons at the usual place of residence of the individual to be
12 served, with some person of suitable age and discretion residing
13 therein;

14 (c) Certified mail service which shall be made by (i)
15 within ten days of issuance, sending the summons to the ~~defendant~~
16 individual to be served by certified mail with a return receipt
17 requested showing to whom and where delivered and the date of
18 delivery, and (ii) filing with the court proof of service with the
19 signed receipt attached; or

20 ~~(d) By depositing with a designated delivery service~~
21 ~~authorized pursuant to 26 U.S.C. 7502(f)(2) a copy of the summons~~
22 ~~and complaint, addressed to the party to be served, delivering to~~
23 ~~the addressee, and obtaining a delivery receipt. As used in this~~
1 ~~subdivision, delivery receipt includes an electronic or facsimile~~
2 ~~receipt.~~

3 (d) Designated delivery service which shall be made
4 by (i) within ten days of issuance, sending the summons by
5 a designated delivery service to the individual or entity to
6 be served, (ii) obtaining a signed delivery receipt showing to
7 whom and where delivered and the date of delivery, and (iii)
8 filing with the court proof of service with a copy of the
9 signed delivery receipt attached. As used in this subdivision, a
10 designated delivery service means a delivery service designated as
11 such pursuant to 26 U.S.C. section 7502(f) and a signed delivery
12 receipt includes an electronic or facsimile receipt with an image
13 of the recipient's signature.

14 (2) Failure to make service by the method elected by the
15 plaintiff does not affect the validity of the service.

16 (3) The State Court Administrator shall maintain on the
17 web site of the Supreme Court a list of designated delivery
18 services.

19 Sec. 2. Section 25-506.01, Revised Statutes Supplement,
20 2009, is amended to read:

21 25-506.01 (1) Unless the plaintiff has elected certified
22 mail service or designated delivery service, the summons shall be

23 served by the sheriff of the county where service is made, by
24 a person authorized by section 25-507 or otherwise authorized by
25 law, or by a person, corporation, partnership, or limited liability
26 company not a party to the action specially appointed by the court
27 for that purpose.

1 (2) Certified mail service or designated delivery service
2 shall be made by plaintiff or plaintiff's attorney.

3 Sec. 3. Section 25-507.01, Revised Statutes Supplement,
4 2009, is amended to read:

5 25-507.01 (1) Within twenty days after the date of issue,
6 the person serving the summons, other than by certified mail
7 service or designated delivery service, shall make proof of service
8 to the court stating the time, place, including the address if
9 applicable, name of the person with whom the summons was left, and
10 method of service, or return the unserved summons to the court with
11 a statement of the reason for the failure to serve.

12 (2) When service is by certified mail service or
13 designated delivery service, the plaintiff or plaintiff's attorney
14 shall file proof of service within ten days after ~~return of~~
15 the signed receipt is received or is available electronically,
16 whichever occurs first.

17 (3) Failure to make proof of service or delay in doing so
18 does not affect the validity of the service.

19 Sec. 4. Section 25-508.01, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 25-508.01 (1) An individual party, other than a person
22 under the age of fourteen years, may be served by personal,
23 residence, ~~or~~ certified mail, or designated delivery service.

24 (2) A party under the age of fourteen years may be served
25 by personal, residence, ~~or~~ certified mail, or designated delivery
26 service upon an adult person with whom the minor resides and who is
27 the minor's parent, guardian, or person having care of the minor.

1 If none of these can be found, a party under the age of fourteen
2 years may be served by personal service.

3 (3) If the person to be served is an incapacitated
4 person for whom a conservator or guardian has been appointed or is
5 confined in any institution, notice of the service shall be given
6 to the conservator, guardian, or superintendent or similar official
7 of the institution. Failure to give such notice does not affect the
8 validity of the service on the incapacitated person.

9 Sec. 5. Section 25-509.01, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 25-509.01 A corporation may be served by personal,
12 residence, ~~or~~ certified mail, or designated delivery service upon
13 any officer, director, managing agent, or registered agent, or by
14 leaving the process at the corporation's registered office with
15 a person employed therein, or by certified mail or designated
16 delivery service to the corporation's registered office.

17 Sec. 6. Section 25-510.02, Reissue Revised Statutes of

18 Nebraska, is amended to read:

19 25-510.02 (1) The State of Nebraska, any state agency
20 as defined in section 81-8,210, and any employee of the state as
21 defined in section 81-8,210 sued in an official capacity may be
22 served by leaving the summons at the office of the Attorney General
23 with the Attorney General, deputy attorney general, or someone
24 designated in writing by the Attorney General, or by certified
25 mail or designated delivery service addressed to the office of the
26 Attorney General.

27 (2) Any county, city, or village of this state may be
1 served by personal, residence, ~~or~~ certified mail, or designated
2 delivery service upon the chief executive officer, or clerk.

3 (3) Any political subdivision of this state, as defined
4 in subdivision (1) of section 13-903, other than a county, city, or
5 village, may be served by personal, residence, ~~or~~ certified mail,
6 or designated delivery service upon the chief executive officer,
7 clerk, secretary, or other official whose duty it is to maintain
8 the official records, or any member of the governing board or
9 body, or by certified mail or designated delivery service to the
10 principal office of the political subdivision.

11 Sec. 7. Section 25-511.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 25-511.02 A dissolved corporation may be served by
14 personal, residence, ~~or~~ certified mail, or designated delivery
15 service upon any appointed receiver. If there is no receiver, a
16 dissolved corporation may be served by personal, residence, ~~or~~
17 certified mail, or designated delivery service upon any person
18 who at the time of dissolution was an officer, director, managing
19 agent, or registered agent, or upon any officer or director
20 designated in the last annual report filed with the Secretary of
21 State.

22 Sec. 8. Section 25-512.01, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 25-512.01 A partnership or limited partnership may be
25 served by personal, residence, ~~or~~ certified mail, or designated
26 delivery service upon any partner except a limited partner, or by
27 certified mail or designated delivery service at its usual place of
1 business, or the process may be left at its usual place of business
2 with an employee of the partnership or limited partnership.

3 Sec. 9. Section 25-513.01, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 25-513.01 An unincorporated association may be served
6 by personal, residence, ~~or~~ certified mail, or designated delivery
7 service upon an officer or managing agent, or by certified mail
8 or designated delivery service to the association at its usual
9 place of business, or by leaving the process at its usual place of
10 business with an employee of the unincorporated association.

11 Sec. 10. Section 25-514.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 25-514.01 Any party may be served by personal, residence,
 14 ~~or certified mail, or designated delivery~~ service upon an agent
 15 authorized by appointment or by law to receive service of process.

16 Sec. 11. Original sections 25-508.01, 25-509.01,
 17 25-510.02, 25-511.02, 25-512.01, 25-513.01, and 25-514.01, Reissue
 18 Revised Statutes of Nebraska, and sections 25-505.01, 25-506.01,
 19 and 25-507.01, Revised Statutes Supplement, 2009, are repealed.

(Signed) Brad Ashford, Chairperson

AMENDMENTS - Print in Journal

Senator Fischer filed the following amendment to LB743:
 AM1797

1 1. Insert the following new sections:

2 Sec. 3. Section 37-201, Revised Statutes Supplement,
 3 2009, is amended to read:

4 37-201 Sections 37-201 to 37-811 and section 4 of this
 5 act shall be known and may be cited as the Game Law.

6 Sec. 4. Property conveyed by the commission pursuant to
 7 sections 1 and 2 of this act shall be operated and maintained as
 8 follows:

9 (1) The property shall be maintained so as to appear
 10 attractive and inviting to the public;

11 (2) Sanitation and sanitary facilities shall be
 12 maintained in accordance with applicable health standards;

13 (3) Properties shall be kept reasonably open, accessible,
 14 and safe for public use. Fire prevention and similar activities
 15 shall be maintained for proper public safety;

16 (4) Buildings, roads, trails, and other structures and
 17 improvements shall be kept in reasonable repair throughout their
 18 estimated lifetime to prevent undue deterioration and to encourage
 19 public use; and

20 (5) The facility shall be kept open for public use at
 21 reasonable hours and times of the year, according to the type of
 22 area or facility.

23 The commission shall be responsible for compliance and
 1 enforcement of the requirements set forth in this section.

2 Sec. 5. Original section 37-201, Revised Statutes
 3 Supplement, 2009, is repealed.

4 2. Renumber the remaining sections accordingly.

Senator Fulton filed the following amendment to LB873:
 AM1765

1 1. On page 2, line 3, strike "may", show as stricken, and
 2 insert "shall".

Senator Pankonin filed the following amendment to LB373:

FA64

Strike the enacting clause.

ANNOUNCEMENT

The Government, Military and Veterans Affairs Committee designates LB951 and LB686 as its priority bills.

UNANIMOUS CONSENT - Add Cointroducers

Senators Fischer, Janssen, and Price asked unanimous consent to add their names as cointroducers to LB1103. No objections. So ordered.

VISITOR

The Doctor of the Day was Dr. Joe Citta from Columbus.

ADJOURNMENT

At 11:59 a.m., on a motion by Speaker Flood, the Legislature adjourned until 10:00 a.m., Tuesday, February 9, 2010.

Patrick J. O'Donnell
Clerk of the Legislature