

**THIRTY-FIFTH DAY - MARCH 2, 2010****LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION****THIRTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, March 2, 2010

**PRAYER**

The prayer was offered by Reverend Ryan Lewis, St. Thomas More Church, Omaha.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Sheehy presiding.

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

**CORRECTIONS FOR THE JOURNAL**

The Journal for the thirty-fourth day was approved.

**COMMITTEE REPORT**

Enrollment and Review

**LEGISLATIVE BILL 1002.** Placed on Select File with amendment.  
ER8177

- 1 1. On page 1, strike beginning with "revenue" in line
- 2 1 through line 7 and insert "political subdivisions; to amend
- 3 section 81-2504, Reissue Revised Statutes of Nebraska; to define
- 4 terms; to provide for applications for state assistance; to provide
- 5 for notice and a hearing; to provide powers and duties for the
- 6 Commission on Indian Affairs; to create a fund; to provide a
- 7 termination date; to harmonize provisions; to provide an operative
- 8 date; and to repeal the original section."

(Signed) Jeremy Nordquist, Chairperson

**NOTICE OF COMMITTEE HEARING**

Revenue

Room 1524

Wednesday, March 10, 2010 4:00 p.m.

LB381

(Signed) Abbie Cornett, Chairperson

**MOTION - Approve Appointment**

Senator Pankonin moved the adoption of the Nebraska Retirement Systems Committee report for the confirmation of the following appointment(s) found on page 688:

Public Employees Retirement Board  
Randall Rehmeier

Voting in the affirmative, 36:

Avery	Fischer	Howard	McGill	Stuthman
Campbell	Flood	Janssen	Mello	Sullivan
Christensen	Gay	Karpisek	Nordquist	Wallman
Coash	Giese	Krist	Pankonin	Wightman
Cook	Gloor	Langemeier	Pirsch	
Cornett	Haar	Lautenbaugh	Price	
Dierks	Hadley	Louden	Rogert	
Dubas	Hansen	McCoy	Schilz	

Voting in the negative, 0.

Present and not voting, 9:

Adams	Conrad	Fulton	Heidemann	Utter
Carlson	Council	Harms	Lathrop	

Excused and not voting, 4:

Ashford	Nelson	Pahls	White
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The appointment was confirmed with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

**GENERAL FILE**

**LEGISLATIVE BILL 1036.** Title read. Considered.

Committee AM1839, found on page 600, was considered.

Senator Gay renewed his amendment, AM2066, found on page 709, to the committee amendment.

Due to computer network problems, all subsequent votes were taken by voice vote, unless a request for a roll call vote was made by a member.

The Gay amendment was adopted.

The committee amendment, as amended, was adopted.

Senator Council offered the following amendment:

AM2083

- 1 1. On page 23, line 14, after "acts" insert "with
- 2 reasonable care".

The Council amendment was adopted.

Advanced to Enrollment and Review Initial.

**LEGISLATIVE BILL 919.** Title read. Considered.

Committee AM1848, found on page 591, was adopted with 40 ayes, 0 nays, 5 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 4 present and not voting, and 4 excused and not voting.

**NOTICE OF COMMITTEE HEARING**

Executive Board

Room 2102

Monday, March 15, 2010 12:00 p.m.

LR335

(Signed) John Wightman, Chairperson

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 888A.** Introduced by Conrad, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 888, One Hundred First Legislature, Second Session, 2010.

**REFERENCE COMMITTEE REPORT**

The Executive Board submits the following report:

Lee, Dennis - State Racing Commission - General Affairs

(Signed) John Wightman, Chairperson  
Executive Board

**GENERAL FILE**

**LEGISLATIVE BILL 937.** Title read. Considered.

**SENATOR LANGEMEIER PRESIDING**

Committee AM1949, found on page 595, was considered.

Senator Fischer renewed her amendment, AM1987, found on page 637, to the committee amendment.

**PRESIDENT SHEEHY PRESIDING**

Senator Fischer moved for a call of the house. The motion prevailed with 32 ayes, 0 nays, and 17 not voting.

Senator Fischer requested a roll call vote, in reverse order, on her amendment.

Voting in the affirmative, 27:

Avery	Fischer	Heidemann	Louden	Utter
Campbell	Fulton	Howard	McCoy	Wallman
Carlson	Gay	Janssen	Pirsch	Wightman
Christensen	Gloor	Karpisek	Price	
Coash	Hadley	Krist	Schilz	
Dierks	Hansen	Lautenbaugh	Stuthman	

Voting in the negative, 14:

Adams	Cook	Flood	Lathrop	Nordquist
Ashford	Cornett	Giese	McGill	Sullivan
Conrad	Council	Haar	Mello	

Present and not voting, 4:

Harms	Langemeier	Pankonin	Rogert
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Excused and not voting, 4:

Dubas	Nelson	Pahls	White
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The Fischer amendment was adopted with 27 ayes, 14 nays, 4 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

The committee amendment, as amended, was adopted with 30 ayes, 11 nays, 4 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 35 ayes, 10 nays, and 4 excused and not voting.

### COMMITTEE REPORT

Banking, Commerce and Insurance

**LEGISLATIVE BILL 931.** Placed on General File with amendment. AM2047 is available in the Bill Room.

(Signed) Pete Pirsch, Vice Chairperson

### RESOLUTION

**LEGISLATIVE RESOLUTION 343.** Introduced by Hadley, 37.

WHEREAS, Matthew Stubbs of Minden, Nebraska, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest rank in scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks of Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle Scout. Throughout his scouting experience, Matthew has learned, been tested on, and been recognized for various scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council; and

WHEREAS, only five percent of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, Matthew, through his hard work and perseverance, has joined other high achievers who are Eagle Scouts, such as astronauts, political and industry leaders, artists, scientists, and athletes.

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

1. That the Legislature congratulates Matthew Stubbs on achieving the rank of Eagle Scout.

2. That a copy of this resolution be sent to Matthew Stubbs.

Laid over.

### AMENDMENT - Print in Journal

Senator Avery filed the following amendment to LB1021:  
AM2033

(Amendments to Standing Committee amendments, AM1969)

- 1 1. On page 5, strike beginning with "High" in line 4
- 2 through "Act" in line 5 and insert "requirements of sections 4 to
- 3 7 of this act"; and in line 9 strike "The act does" and insert
- 4 "Sections 4 to 7 of this act do".
- 5 2. On page 6, lines 23 and 24; page 8, lines 3 through 5
- 6 and 26 and 27; page 9, lines 24 and 25; page 11, lines 13 and 14
- 7 and 19 and 20; and page 12, lines 3 and 4, 9 and 10, and 18 and 19,
- 8 strike "the High School Activities Association Meetings and Records
- 9 Availability Act" and insert "sections 4 to 7 of this act".
- 10 3. On page 6, line 25; and page 7, line 1, strike "board"
- 11 and insert "body".
- 12 4. On page 7, line 24, strike "board's" and insert
- 13 "body's".
- 14 5. On page 12, line 12, strike "public" and insert
- 15 "association governing".

### ANNOUNCEMENT

Senator Karpisek announced the General Affairs Committee will hold an executive session Wednesday, March 3, 2010, at 4:00 p.m., in Room 1015.

### VISITORS

Visitors to the Chamber were Senator Sullivan's husband, Mike Sullivan, from Cedar Rapids; Marie and Jacob Baumgartner from Lincoln; members of Change to Win Coalition-Teamsters, Laborers, Brotherhood of Locomotive Engineers, and UFCW from across the state; and Phil Shaw from Auburn and Bob Sieck from Lincoln.

**RECESS**

At 11:42 a.m., on a motion by Speaker Flood, 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 Senators Pahls and White who were excused; and Senators Ashford, Campbell, Cornett, Council, Dierks, Nelson, and Utter who were excused until they arrive.

**SELECT FILE**

**LEGISLATIVE BILL 1006.** ER8166, found on page 641, was adopted.

Senator Adams renewed his amendment, AM2055, found on page 701.

The Adams amendment was adopted with 34 ayes, 0 nays, 6 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 865.** ER8165, found on page 641, was adopted.

Senator Fischer offered the following amendment:  
AM2078

(Amendments to E & R amendments, ER8165)

- 1 1. On page 2, line 16, strike "used for food or fiber".

The Fischer amendment was adopted with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 910.** ER8168, found on page 641, was adopted.

Senator Carlson offered the following amendment:  
AM2075

(Amendments to E & R amendments, ER8168)

1. On page 4, strike beginning with "to" in line 5 through "shall" in line 6 and insert "and"; in line 7 strike "Such" and insert "If the person collecting the fee is the licensing jurisdiction, the three cents shall be credited to the licensing jurisdiction's general fund. If the person collecting the fee is a private contractor, the three cents shall be credited to

an account of the private contractor. The"; in line 8 after "remittance" insert "to the State Treasurer"; and in line 10 after "jurisdiction" insert "or private contractor".

The Carlson amendment was adopted with 25 ayes, 0 nays, 15 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 910A.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 770.** ER8167, found on page 641, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 888.** ER8170, found on page 680, was adopted.

Senator Conrad renewed her amendment, AM1847, found on page 622.

The Conrad amendment was adopted with 28 ayes, 0 nays, 12 present and not voting, and 9 excused and not voting.

Senator Lautenbaugh renewed his amendment, AM2041, found on page 709.

The Lautenbaugh amendment was adopted with 29 ayes, 0 nays, 11 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 821.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE RESOLUTION 295CA.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 689.** ER8169, found on page 680, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 764.** Considered.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 805.** ER8173, found on page 691, was adopted.

Advanced to Enrollment and Review for Engrossment.



**LEGISLATIVE BILL 951.** ER8171, found on page 692, was adopted.

Senator Avery offered the following amendment:

AM2061

1 1. Insert the following new sections:

2 Sec. 2. Section 32-604, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

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

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

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

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

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

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

20 Sec. 4. Section 32-915, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 32-915 (1) A person whose name does not appear on the

23 precinct list of registered voters at the polling place for the  
 24 precinct in which he or she resides or whose name appears with a  
 25 notation that he or she received a ballot for early voting may vote  
 26 a provisional ballot if he or she:

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

3 (b) Is not entitled to vote under section 32-914.01 or  
 4 32-914.02;

5 (c) Has not registered to vote or voted in any other  
 6 county since registering to vote in the county in which the  
 7 precinct is located;

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

11 (e) Completes and signs a registration application before  
 12 voting.

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

19 (3) Each person voting by provisional ballot shall  
 20 enclose his or her ballot in an envelope marked Provisional  
 21 Ballot and shall, by signing the certification on the front of the  
 22 envelope or a separate form attached to the envelope, certify to  
 23 the following facts:

24 (a) I am a registered voter in ..... County;

25 (b) My name or address did not correctly appear on the  
 26 precinct list of registered voters;

27 (c) I registered to vote on or about this date  
 1 .....

2 (d) I registered to vote  
 3 .... in person at the election office or a voter  
 4 registration site,

5 .... by mail,  
 6 .... on a form through the Department of Motor Vehicles,  
 7 .... on a form through another state agency,  
 8 .... in some other way;

9 (e) I have not resided outside of this county or voted  
 10 outside of this county since registering to vote in this county;

11 (f) My current address is shown on the registration  
 12 application completed as a requirement for voting by provisional  
 13 ballot; and

14 (g) I am eligible to vote in this election and I have not  
 15 voted and will not vote in this election except by this ballot.

16 (4) The voter shall sign the certification under penalty  
 17 of election falsification. The following statements shall be on

18 the front of the envelope or on the attached form: By signing the  
 19 front of this envelope or the attached form you are certifying to  
 20 the information contained on this envelope or the attached form  
 21 under penalty of election falsification. Election falsification  
 22 is a Class IV felony and may be punished by up to five years  
 23 imprisonment, a fine of up to ten thousand dollars, or both.

24 (5) If the person's name does not appear on the precinct  
 25 list of registered voters for the polling place and the judge or  
 26 clerk of election determines that the person's residence address is  
 27 located in another precinct within the same county, the judge or  
 1 clerk of election shall direct the person to his or her correct  
 2 polling place to vote.

3 Sec. 7. In addition to the requirements of 20 U.S.C.  
 4 1094(a)(23), the University of Nebraska, each state college, and  
 5 each community college shall provide information furnished by  
 6 the Secretary of State on early voting prior to each statewide  
 7 primary and general election to each student enrolled in a  
 8 degree or certificate program and physically in attendance at  
 9 the institution. The information shall include instructions on  
 10 early voting and an application to request a ballot for early  
 11 voting. The institution may provide the information electronically.

12 2. Renumber the remaining sections and correct internal  
 13 references and the repealer accordingly.

Pending.

### EXPLANATION OF VOTES

Had I been present, I would have voted "aye" on final passage of LBs 190, 190A, 690, 691, 736, 751, 650, 650A, 698, 721, 722, 731, 738, 743, 749, 791, 798, 814, 871, 667, 705, 708, 725, 762, 788, 797, 806, 816, 832, 873, 911, 226, 512, 643, 711, 723, 746, 787, 848, 867, 890, 891, 892, and 914.

(Signed) Robert Giese

### RESOLUTIONS

**LEGISLATIVE RESOLUTION 344.** Introduced by Giese, 17.

WHEREAS, Kalin Koch won the 2010 Class D State Wrestling Championship in the 140-pound division; and

WHEREAS, Kalin Koch, a senior at Winside High School, defeated Joe Brown of Oakland-Craig High School 13-7 to win the state championship; and

WHEREAS, the state championship gave Kalin Koch his fourth state medal, as he finished sixth in the 135-pound division in 2007, fourth in the 130-pound division in 2008, and third in the 140-pound division in 2009; and

WHEREAS, Kalin Koch's father, Mark Koch, won the 1982 Class D State Wrestling Championship in the 119-pound division, making Kalin the fifth Winside wrestler to join his father as a state champion; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Kalin Koch on winning the 2010 Class D State Wrestling Championship in the 140-pound division.

2. That a copy of this resolution be sent to Kalin Koch.

Laid over.

**LEGISLATIVE RESOLUTION 345.** Introduced by Giese, 17.

WHEREAS, Josh Watchorn won the 2010 Class D State Wrestling Championship in the 215-pound division; and

WHEREAS, Josh Watchorn, a senior at Ponca High School, defeated Adam Crouch of Anselmo-Merna High School 5-3 to win the state championship; and

WHEREAS, the state championship gave Josh Watchorn his second state medal, as he finished third in the 215-pound division in 2009; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Josh Watchorn on winning the 2010 Class D State Wrestling Championship in the 215-pound division.

2. That a copy of this resolution be sent to Josh Watchorn.

Laid over.

## COMMITTEE REPORTS

### Natural Resources

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

Jerrold Burke - Game and Parks Commission

Aye: 8 Senators Carlson, Cook, Dubas, Fischer, Haar, Langemeier, McCoy, Schilz. Nay: 0. Absent: 0. Present and not voting: 0.

**LEGISLATIVE BILL 895.** Placed on General File.

**LEGISLATIVE BILL 993.** Placed on General File.

**LEGISLATIVE BILL 1025.** Indefinitely postponed.

(Signed) Chris Langemeier, Chairperson

### **GENERAL FILE**

**LEGISLATIVE BILL 763.** Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 2 nays, 11 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 1087.** Title read. Considered.

Committee AM2034, found on page 685, was considered.

### **SPEAKER FLOOD PRESIDING**

The committee amendment was adopted with 39 ayes, 0 nays, 4 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 4 present and not voting, and 6 excused and not voting.

### **COMMITTEE REPORT**

Revenue

**LEGISLATIVE BILL 779.** Placed on General File with amendment. AM2038 is available in the Bill Room.

(Signed) Abbie Cornett, Chairperson

### **AMENDMENTS - Print in Journal**

Senator Karpisek filed the following amendment to LB258:  
AM2006

(Amendments to E & R amendments, ER8164)

- 1 1. Insert the following new section:
- 2 Section 1. Section 28-416, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 28-416 (1) Except as authorized by the Uniform Controlled
- 5 Substances Act, it shall be unlawful for any person knowingly or
- 6 intentionally: (a) To manufacture, distribute, deliver, dispense,
- 7 or possess with intent to manufacture, distribute, deliver, or
- 8 dispense a controlled substance; or (b) to create, distribute,
- 9 or possess with intent to distribute a counterfeit controlled
- 10 substance.
- 11 (2) Except as provided in subsections (4), (5), (7), (8),
- 12 (9), and (10) of this section, any person who violates subsection
- 13 (1) of this section with respect to: (a) A controlled substance

14 classified in Schedule I, II, or III of section 28-405 which is an  
15 exceptionally hazardous drug shall be guilty of a Class II felony;  
16 (b) any other controlled substance classified in Schedule I, II, or  
17 III of section 28-405 shall be guilty of a Class III felony; or (c)  
18 a controlled substance classified in Schedule IV or V of section  
19 28-405 shall be guilty of a Class IIIA felony.

20 (3) A person knowingly or intentionally possessing a  
21 controlled substance, except marijuana, unless such substance was  
22 obtained directly or pursuant to a medical order issued by a  
1 practitioner authorized to prescribe while acting in the course of  
2 his or her professional practice, or except as otherwise authorized  
3 by the act, shall be guilty of a Class IV felony.

4 (4)(a) Except as authorized by the Uniform Controlled  
5 Substances Act, any person eighteen years of age or older who  
6 knowingly or intentionally manufactures, distributes, delivers,  
7 dispenses, or possesses with intent to manufacture, distribute,  
8 deliver, or dispense a controlled substance or a counterfeit  
9 controlled substance (i) to a person under the age of eighteen  
10 years, (ii) in, on, or within one thousand feet of the real  
11 property comprising a public or private elementary, vocational, or  
12 secondary school, a community college, a public or private college,  
13 junior college, or university, or a playground, or (iii) within one  
14 hundred feet of a public or private youth center, public swimming  
15 pool, or video arcade facility shall be punished by the next higher  
16 penalty classification than the penalty prescribed in subsection  
17 (2), (7), (8), (9), or (10) of this section, depending upon the  
18 controlled substance involved, for the first violation and for a  
19 second or subsequent violation shall be punished by the next higher  
20 penalty classification than that prescribed for a first violation  
21 of this subsection, but in no event shall such person be punished  
22 by a penalty greater than a Class IB felony.

23 (b) For purposes of this subsection:

24 (i) Playground shall mean any outdoor facility, including  
25 any parking lot appurtenant to the facility, intended for  
26 recreation, open to the public, and with any portion containing  
27 three or more apparatus intended for the recreation of children,  
1 including sliding boards, swingsets, and teeterboards;

2 (ii) Video arcade facility shall mean any facility  
3 legally accessible to persons under eighteen years of age, intended  
4 primarily for the use of pinball and video machines for amusement,  
5 and containing a minimum of ten pinball or video machines; and

6 (iii) Youth center shall mean any recreational facility  
7 or gymnasium, including any parking lot appurtenant to the facility  
8 or gymnasium, intended primarily for use by persons under eighteen  
9 years of age which regularly provides athletic, civic, or cultural  
10 activities.

11 (5)(a) Except as authorized by the Uniform Controlled  
12 Substances Act, it shall be unlawful for any person eighteen  
13 years of age or older to knowingly and intentionally employ, hire,

14 use, cause, persuade, coax, induce, entice, seduce, or coerce any  
15 person under the age of eighteen years to manufacture, transport,  
16 distribute, carry, deliver, dispense, prepare for delivery, offer  
17 for delivery, or possess with intent to do the same a controlled  
18 substance or a counterfeit controlled substance.

19 (b) Except as authorized by the Uniform Controlled  
20 Substances Act, it shall be unlawful for any person eighteen years  
21 of age or older to knowingly and intentionally employ, hire, use,  
22 cause, persuade, coax, induce, entice, seduce, or coerce any person  
23 under the age of eighteen years to aid and abet any person in  
24 the manufacture, transportation, distribution, carrying, delivery,  
25 dispensing, preparation for delivery, offering for delivery, or  
26 possession with intent to do the same of a controlled substance or  
27 a counterfeit controlled substance.

1 (c) Any person who violates subdivision (a) or (b) of  
2 this subsection shall be punished by the next higher penalty  
3 classification than the penalty prescribed in subsection (2), (7),  
4 (8), (9), or (10) of this section, depending upon the controlled  
5 substance involved, for the first violation and for a second or  
6 subsequent violation shall be punished by the next higher penalty  
7 classification than that prescribed for a first violation of this  
8 subsection, but in no event shall such person be punished by a  
9 penalty greater than a Class IB felony.

10 (6) It shall not be a defense to prosecution for  
11 violation of subsection (4) or (5) of this section that the  
12 defendant did not know the age of the person through whom the  
13 defendant violated such subsection.

14 (7) Any person who violates subsection (1) of this  
15 section with respect to cocaine or any mixture or substance  
16 containing a detectable amount of cocaine in a quantity of:

17 (a) One hundred forty grams or more shall be guilty of a  
18 Class IB felony;

19 (b) At least twenty-eight grams but less than one hundred  
20 forty grams shall be guilty of a Class IC felony; or

21 (c) At least ten grams but less than twenty-eight grams  
22 shall be guilty of a Class ID felony.

23 (8) Any person who violates subsection (1) of this  
24 section with respect to base cocaine (crack) or any mixture or  
25 substance containing a detectable amount of base cocaine in a  
26 quantity of:

27 (a) One hundred forty grams or more shall be guilty of a  
1 Class IB felony;

2 (b) At least twenty-eight grams but less than one hundred  
3 forty grams shall be guilty of a Class IC felony; or

4 (c) At least ten grams but less than twenty-eight grams  
5 shall be guilty of a Class ID felony.

6 (9) Any person who violates subsection (1) of this  
7 section with respect to heroin or any mixture or substance  
8 containing a detectable amount of heroin in a quantity of:

9 (a) One hundred forty grams or more shall be guilty of a  
10 Class IB felony;

11 (b) At least twenty-eight grams but less than one hundred  
12 forty grams shall be guilty of a Class IC felony; or

13 (c) At least ten grams but less than twenty-eight grams  
14 shall be guilty of a Class ID felony.

15 (10) Any person who violates subsection (1) of this  
16 section with respect to amphetamine, its salts, optical isomers,  
17 and salts of its isomers, or with respect to methamphetamine, its  
18 salts, optical isomers, and salts of its isomers, in a quantity of:

19 (a) One hundred forty grams or more shall be guilty of a  
20 Class IB felony;

21 (b) At least twenty-eight grams but less than one hundred  
22 forty grams shall be guilty of a Class IC felony; or

23 (c) At least ten grams but less than twenty-eight grams  
24 shall be guilty of a Class ID felony.

25 (11) Any person knowingly or intentionally possessing  
26 marijuana weighing more than one ounce but not more than one pound  
27 shall be guilty of a Class III misdemeanor.

1 (12) Any person knowingly or intentionally possessing  
2 marijuana weighing more than one pound shall be guilty of a Class  
3 IV felony.

4 (13) Any person knowingly or intentionally possessing  
5 marijuana weighing one ounce or less shall:

6 (a) For the first offense, be guilty of an infraction,  
7 receive a citation, be fined three hundred dollars, and be assigned  
8 to attend a course as prescribed in section 29-433 if the judge  
9 determines that attending such course is in the best interest of  
10 the individual defendant;

11 (b) For the second offense, be guilty of a Class IV  
12 misdemeanor, receive a citation, and be fined four hundred dollars  
13 and may be imprisoned not to exceed five days; and

14 (c) For the third and all subsequent offenses, be guilty  
15 of a Class IIIA misdemeanor, receive a citation, be fined five  
16 hundred dollars, and be imprisoned not to exceed seven days.

17 (14) Any person convicted of violating this section,  
18 if placed on probation, shall, as a condition of probation,  
19 satisfactorily attend and complete appropriate treatment and  
20 counseling on drug abuse provided by a program authorized under  
21 the Nebraska Behavioral Health Services Act or other licensed drug  
22 treatment facility.

23 (15) Any person convicted of violating this section, if  
24 sentenced to the Department of Correctional Services, shall attend  
25 appropriate treatment and counseling on drug abuse.

26 (16) Any person knowingly or intentionally possessing a  
27 firearm while in violation of subsection (1) of this section shall  
1 be punished by the next higher penalty classification than the  
2 penalty prescribed in subsection (2), (7), (8), (9), or (10) of



3 this section, but in no event shall such person be punished by a  
4 penalty greater than a Class IB felony.

5 (17) A person knowingly or intentionally in possession  
6 of money used or intended to be used to facilitate a violation  
7 of subsection (1) of this section shall be guilty of a Class IV  
8 felony.

9 (18) In addition to the penalties provided in this  
10 section:

11 (a) If the person convicted or adjudicated of violating  
12 this section is younger than twenty-one years of age and has one or  
13 more licenses or permits issued under the Motor Vehicle Operator's  
14 License Act:

15 (i) For the first offense, the court may, as a part  
16 of the judgment of conviction or adjudication, impound any such  
17 licenses or permits for thirty days and require such person to  
18 attend a drug education class;

19 (ii) For a second offense, the court, as a part of the  
20 judgment of conviction or adjudication, may (A) impound any such  
21 licenses or permits for ninety days and (B) require such person  
22 to complete no fewer than twenty and no more than forty hours of  
23 community service and to attend a drug education class; and

24 (iii) For a third or subsequent offense, the court, as a  
25 part of the judgment of conviction or adjudication, may (A) impound  
26 any such licenses or permits for twelve months and (B) require  
27 such person to complete no fewer than sixty hours of community  
1 service, to attend a drug education class, and to submit to a drug  
2 assessment by a licensed alcohol and drug counselor; and

3 (b) If the person convicted or adjudicated of violating  
4 such section is younger than twenty-one years of age and does not  
5 have a permit or license issued under the Motor Vehicle Operator's  
6 License Act:

7 (i) For the first offense, the court, as part of the  
8 judgment of conviction or adjudication, may (A) prohibit such  
9 person from obtaining any permit or any license pursuant to the act  
10 for which such person would otherwise be eligible until thirty days  
11 after the date of such order and (B) require such person to attend  
12 a drug education class;

13 (ii) For a second offense, the court, as part of the  
14 judgment of conviction or adjudication, may (A) prohibit such  
15 person from obtaining any permit or any license pursuant to the  
16 act for which such person would otherwise be eligible until ninety  
17 days after the date of such order and (B) require such person to  
18 complete no fewer than twenty hours and no more than forty hours of  
19 community service and to attend a drug education class; and

20 (iii) For a third or subsequent offense, the court,  
21 as part of the judgment of conviction or adjudication, may (A)  
22 prohibit such person from obtaining any permit or any license  
23 pursuant to the act for which such person would otherwise be  
24 eligible until twelve months after the date of such order and

- 25 (B) require such person to complete no fewer than sixty hours of  
 26 community service, to attend a drug education class, and to submit  
 27 to a drug assessment by a licensed alcohol and drug counselor.  
 1 A copy of an abstract of the court's conviction or  
 2 adjudication shall be transmitted to the Director of Motor Vehicles  
 3 pursuant to sections 60-497.01 to 60-497.04.  
 4 2. Renumber the remaining sections, amend the repealer,  
 5 and correct internal references accordingly.

Senator Adams filed the following amendment to LB1014:  
 AM2058

(Amendments to Standing Committee amendments, AM1979)

- 1 1. On page 2, strike beginning with "Additional" in  
 2 line 26 through line 27 and insert "Each school district that  
 3 receives funds under subsection (2) of this section for teacher  
 4 performance pay shall utilize such funds as a supplement to  
 5 the salary schedule provided for in local collective-bargaining  
 6 agreements. For purposes of distribution of such funds only,  
 7 the Legislature finds that teacher performance pay measurements,  
 8 criteria, and payout amounts are mandatory topics of collective  
 9 bargaining.".  
 10 2. On page 3, strike lines 1 through 6.

Senator Rogert filed the following amendment to LB882:  
 AM2074

(Amendments to Standing Committee amendments, AM1853)

- 1 1. Insert the following amendments:  
 2 1. Insert the following section:  
 3 Sec. 2. This act becomes operative on October 1, 2010.  
 4 4. Renumber the remaining section accordingly.  
 5 2. Renumber the remaining amendments accordingly.

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Flood asked unanimous consent to add his name as cointroducer to  
 LB258 and LB943. No objections. So ordered.

### **VISITORS**

Visitor to the Chamber was Andrew Rutten from Norfolk.

The Doctor of the Day was Dr. Marlon Weiss from Lincoln.

**ADJOURNMENT**

At 3:54 p.m., on a motion by Senator Lathrop, the Legislature adjourned until 9:00 a.m., Wednesday, March 3, 2010.

Patrick J. O'Donnell  
Clerk of the Legislature

