

FIFTY-FIRST DAY - MARCH 30, 2010
LEGISLATIVE JOURNAL
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
FIFTY-FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Tuesday, March 30, 2010

PRAYER

The prayer was offered by Reverend Dwight Ford, Grace City 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 Senator Krist who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the fiftieth day was approved.

AMENDMENT - Print in Journal

Senator Loudon filed the following amendment to LB1002:
AM2434

(Amendments to Final Reading copy)

- 1 1. On page 4, line 12, strike "one hundred" and insert
- 2 "twenty-five".

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR538 was referred to the Reference Committee.

BILLS ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 836.

A BILL FOR AN ACT relating to wildlife management; to amend sections 37-448 and 37-559, Reissue Revised Statutes of Nebraska, and sections 37-201 and 37-523, Revised Statutes Supplement, 2009; to authorize the extension of existing deer hunting seasons as prescribed; to change certain hunting and trapping restrictions; to provide for the destruction of mountain lions and other predators as prescribed; to define a term; to provide for permits and the use of certain fees; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 46:

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

Voting in the negative, 1:

Stuthman

Present and not voting, 1:

McGill

Excused and not voting, 1:

Krist

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

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB879 with 41 ayes, 2 nays, 5 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 879. With Emergency Clause.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 9-1,101, 66-719, 77-1784, 77-2701.38, 77-2711, 77-2712.03, 77-2756, 77-2789, 77-2790, 77-2794, 77-2796, 77-27,100, 77-27,119, 77-5725, 77-5726, 77-5735, and 81-8,128, Reissue Revised Statutes of Nebraska, section 60-484, Revised Statutes Cumulative Supplement, 2008, and section 49-801.01, Revised Statutes Supplement, 2009; to update references to the Internal Revenue Code of 1986; to change provisions relating to waiver of interest, the streamlined sales and use tax agreement, electronic fund transfers, income tax withholding, overpayments of tax, failure to file, penalties, certain appeal procedures, certain tax incentives, and funding; to require the Department of Motor Vehicles to provide certain information to the Department of Revenue as prescribed; to provide for publication of delinquent taxpayer lists, disclosure of certain information to the Department of Labor, and applicability; to eliminate a provision relating to electronic filings and payments; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections; to outright repeal section 77-2769.02, Reissue Revised Statutes of Nebraska; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bills were read and put upon final passage:

LEGISLATIVE BILL 882.

A BILL FOR AN ACT relating to agriculture; to amend section 54-744, Revised Statutes Supplement, 2009; to change provisions relating to disposal of dead animals; to provide a penalty; to provide an operative date; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

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

LEGISLATIVE BILL 937. With Emergency Clause.

A BILL FOR AN ACT relating to learning community coordinating councils; to amend section 32-546.01, Revised Statutes Supplement, 2009; to terminate provisions relating to per diems; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the

emergency clause attached?' "

Voting in the affirmative, 38:

Campbell	Fischer	Hansen	Lautenbaugh	Schilz
Carlson	Flood	Harms	Louden	Stuthman
Christensen	Fulton	Heidemann	McCoy	Sullivan
Coash	Gay	Howard	Nelson	Utter
Conrad	Giese	Janssen	Pankonin	Wallman
Cornett	Gloor	Karpisek	Pirsch	Wightman
Dierks	Haar	Langemeier	Price	
Dubas	Hadley	Lathrop	Rogert	

Voting in the negative, 8:

Adams	Cook	McGill	Nordquist
Ashford	Council	Mello	Pahls

Present and not voting, 2:

Avery	White
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Excused and not voting, 1:

Krist

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 937A. With Emergency Clause.

A BILL FOR AN ACT relating to appropriations; to amend Laws 2009, First Special Session, LB 1, section 227; to change appropriations to aid in carrying out the provisions of Legislative Bill 937, One Hundred First Legislature, Second Session, 2010; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 38:

Avery	Dubas	Hadley	Lathrop	Schilz
Campbell	Fischer	Hansen	Lautenbaugh	Stuthman
Carlson	Flood	Harms	Louden	Sullivan
Christensen	Fulton	Heidemann	McCoy	Utter
Coash	Gay	Howard	Pankonin	Wallman
Conrad	Giese	Janssen	Pirsch	Wightman
Cornett	Gloor	Karpisek	Price	
Dierks	Haar	Langemeier	Rogert	

Voting in the negative, 9:

Adams	Cook	McGill	Nelson	Pahls
Ashford	Council	Mello	Nordquist	

Present and not voting, 1:

White

Excused and not voting, 1:

Krist

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB956 with 45 ayes, 1 nay, 2 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 956. With Emergency Clause.

A BILL FOR AN ACT relating to the Nebraska Scholarship Act; to amend sections 9-836.01, 85-1901, 85-1902, 85-1903, 85-1907, 85-1908, 85-1909, 85-1911, 85-1912, 85-1913, 85-1914, 85-1915, 85-1917, 85-1918, 85-1919, and 85-1920, Reissue Revised Statutes of Nebraska, section 85-1412, Revised Statutes Supplement, 2009, and section 9-812, Revised Statutes Supplement, 2009, as amended by section 1, Legislative Bill 2, One Hundred First Legislature, First Special Session, 2009; to rename the act and a fund; to redefine terms; to change provisions relating to awards; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB1018 with 42 ayes, 1 nay, 5 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 1018.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 18-2506, Reissue Revised Statutes of Nebraska; to adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act; to restrict the use of municipal initiative and referendum on action permitted by the act; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

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

The following bills were read and put upon final passage:

LEGISLATIVE BILL 728.

A BILL FOR AN ACT relating to offenses against children; to amend section 29-119, Reissue Revised Statutes of Nebraska; to adopt the Exploited Children's Civil Remedy Act; to redefine a term with respect to plea agreements; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 47:

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

Voting in the negative, 1:

Council

Excused and not voting, 1:

Krist

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

LEGISLATIVE BILL 951.

A BILL FOR AN ACT relating to elections; to amend sections 32-101, 32-604, 32-808, 32-915, and 32-939, Reissue Revised Statutes of Nebraska; to change provisions relating to holding multiple offices, early voting, and provisional ballots; to require postsecondary educational institutions to provide information on early voting; to harmonize provisions; to repeal the original sections; and to outright repeal section 32-939.01, Reissue Revised Statutes of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 32:

Adams	Cook	Hadley	Lathrop	Rogert
Ashford	Cornett	Hansen	McCoy	Sullivan
Avery	Council	Harms	McGill	White
Campbell	Dubas	Heidemann	Mello	Wightman
Carlson	Gay	Howard	Nordquist	
Christensen	Giese	Karpisek	Pahls	
Conrad	Haar	Langemeier	Pankonin	

Voting in the negative, 11:

Coash	Flood	Lautenbaugh	Stuthman
Dierks	Fulton	Nelson	Utter
Fischer	Janssen	Schilz	

Present and not voting, 5:

Gloor	Louden	Pirsch	Price	Wallman
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Excused and not voting, 1:

Krist

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

LEGISLATIVE BILL 951A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 951, One Hundred First Legislature, Second Session, 2010.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 37:

Adams	Cornett	Giese	Karpisek	Pankonin
Ashford	Council	Haar	Langemeier	Rogert
Avery	Dierks	Hadley	Lathrop	Sullivan
Campbell	Dubas	Hansen	McCoy	White
Carlson	Fischer	Harms	McGill	Wightman
Christensen	Flood	Heidemann	Mello	
Conrad	Fulton	Howard	Nordquist	
Cook	Gay	Janssen	Pahls	

Voting in the negative, 2:

Stuthman Wallman

Present and not voting, 9:

Coash	Lautenbaugh	Nelson	Price	Utter
Gloor	Louden	Pirsch	Schilz	

Excused and not voting, 1:

Krist

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

LEGISLATIVE BILL 1057. With Emergency Clause.

A BILL FOR AN ACT relating to water resources; to amend sections 46-2,137 and 46-753, Reissue Revised Statutes of Nebraska; to create the Republican River Basin Water Sustainability Task Force; to provide for expenses, powers, and duties; to provide a termination date; to create a fund; to provide for transfers of funds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Return LB742 to Select File

Senator Council moved to return LB742 to Select File for her specific amendment, FA69, found on page 1042.

Senator Council withdrew her motion to return.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 742.

A BILL FOR AN ACT relating to government; to provide requirements for settled claims and settlement agreements; to provide that settled claims and settlement agreements are public records; and to define terms.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?'"

Voting in the affirmative, 48:

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

Voting in the negative, 0.

Excused and not voting, 1:

Krist

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

ATTORNEY GENERAL'S OPINION

Opinion 10009

DATE: March 29, 2010

SUBJECT: LB 1102 Constitutionality of Legislation Authorizing Wagering on "Historic Horseraces."

REQUESTED BY: Senator Beau McCoy
Senator Tony Fulton
Nebraska Legislature

WRITTEN BY: Jon Bruning, Attorney General
L. Jay Bartel, Assistant Attorney General

You have each requested our opinion regarding the constitutionality of LB 1102. The bill as introduced proposes to amend Neb. Rev. Stat. § 2-1203.01 (2007) to authorize the State Racing Commission ["Commission"] to "[l]icense and regulate parimutuel wagering on historic horseraces. . . ." LB 1102, § 1.¹ Neb. Const. art. III, § 24, permits the Legislature to enact "laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure." Your requests regarding the constitutionality of LB 1102 raise the following issues:

1. Does Neb. Const. art. III, § 24, allow the Legislature to authorize wagering on historic horseraces?

2. Is the horse race wagering which may be authorized under Neb. Const. art. III, § 24, limited to wagering on live horse races?
3. Is wagering using an electronic historic horseracing terminal a method of parimutuel wagering on horse races which may be permitted under Neb. Const. art. III, § 24?
4. Does LB 1102, as introduced, constitute an impermissible delegation of legislative authority?

In addition, Senator Fulton has requested that we address: (1) whether the enactment of LB 1102 will allow Native American tribes to engage in additional gaming on tribal lands involving wagering on historic horseraces; and (2) if passage of the bill will allow Native American tribes to engage in such gaming, whether the state would have the authority to regulate such gaming conducted on tribal lands.

A. Wagering on "Historic Horseraces" Through "Instant Racing Terminals."

While LB 1102 as introduced proposes to authorize the Commission to license and regulate wagering on "historic horseraces," it provides no definition of the term or explanation of the manner in which such wagering would occur. The Introducer's Statement of Intent on LB 1102, however, states the bill "would allow Nebraska licensed horse racing premises the ability to install and operate Instant Racing Terminals." Committee Records on LB 1102, 101st Leg., 2nd Sess., Introducer's Statement of Intent 1 (February 10, 2010).

The wagering on "historic horseraces" which would be authorized under LB 1102 thus appears to refer to the patented wagering system known as "Instant Racing."² "Instant Racing" was developed as a joint venture between Amtote International and RaceTech, LLC. The "Instant Racing" system allows bettors to wager on the results of previously run or "historic" races through electronic "Instant Racing Terminals" ["IRTs"]. The machines reportedly can access over 200,000 historic races. Wagers are made by coin or currency. Players can utilize limited Daily Racing Form past performance data (i.e. winning percentages, average earnings per start, trainer and jockey success, etc.) provided in graphic form before making their selections. The data is provided in such a way that bettors cannot identify the exact race. The machines contain a video screen which allows bettors to view the entire race after placing their wagers, or only a short clip of the stretch run of the race.

Wagering generally is limited to selections involving the order of finish of the first three horses, such as selecting the first three finishers in order, the top two finishers, or the winner and any two of the top three finishers. Variations on such wagering are provided for under the Association of

Racing Commissioners International Model Rules for Instant Racing. RaceTech promotes the product as a true parimutuel wagering system. The machines are connected to the same wagering pool and wagers are processed through a central totalisator. Unlike most parimutuel wagering, where many wagers are made on a single race, Instant Racing involves wagers on many different races.³ Winners receive graduated payoffs based on their correct selection of the order of finish. Payoffs are also determined by timing - the bettor who hits first receives the highest payoff.

In appearance and operation, IRTs resemble slot machines or video lottery devices. The "bells and whistles" associated with slot machines or video lottery devices are all present (except for the pull-handle). The machines are the same height and design as a slot machine, and include flashing buttons, blinking lights, video display, and, in some cases, program numbers spin on the video display like cherries or other figures on a slot or video lottery machine. The machines also can include a "Quick Pick" feature where bettors allow the machine to select at random three numbers to be bet on a race. Pictures of IRTs on the Amtote website illustrate the physical appearance of the machines and their resemblance to slot machines or video lottery devices.

B. Legality of IRTs Under Nebraska Law.

You have asked us to address the constitutionality of the wagering on historic horseraces which would be authorized under LB 1102. This requires consideration of several issues, each of which are addressed below.

1. Does Neb. Const. art. III, § 24, allow the Legislature to authorize wagering on historic horseraces through IRTs?

Art. III, § 24 of the Nebraska Constitution, contains a general prohibition against the Legislature's authorization of "any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time." Neb. Const. art. III, § 24(1). The constitutional provision contains certain exceptions to this general prohibition, one of which allows the Legislature to authorize parimutuel wagering on horse races. Specifically, art. III, § 24(4), provides, in relevant part:

Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure. . . .

The Nebraska Constitution was amended in 1934 to allow the Legislature to authorize parimutuel wagering on horseracing. The constitutional amendment was necessitated by Nebraska Supreme Court decisions holding

that parimutuel wagering on horse races was a form of "gambling" and a "lottery" or "game of chance" prohibited under the Nebraska Constitution. *State ex rel. Sorenson v. Ak-Sar-Ben Exposition Co.*, 118 Neb. 851, 226 N.W. 705 (1929), permanent injunction entered *State ex rel. Sorenson v. Ak-Sar-Ben Exposition Co.*, 121 Neb. 248, 236 N.W. 736 (1931). Following adoption of the constitutional amendment, the Legislature enacted statutes legalizing parimutuel wagering on horse races in 1935. See *Comp. Stat. §§ 2-1501 to 2-1519 (Supp. 1935)*. This legislation is substantially similar to the current statutes governing parimutuel wagering on live racing within licensed racetrack enclosures. Compare *Comp. Stat. §§ 2-1504, 2-1505, 2-1507, and 2-1516 (Supp. 1935)* with *Neb. Rev. Stat. §§ 2-1204, 2-1205, 2-1207, and 2-1216 (2007)*. The statutes governing parimutuel wagering were amended in 1987 to authorize "intrastate" simulcasting. 1987 Neb. Laws, LB 708 (codified at *Neb. Rev. Stat. §§-1224 to 2-1227 (Supp. 1987)*). Because of uncertainty as to whether the language in art. III, § 24, was sufficient to allow intrastate simulcasting, and recognition that the Constitution could not be construed to permit the Legislature to authorize interstate simulcasting, a constitutional amendment to specifically allow simulcast wagering was proposed in 1988. *Committee Records on LR 15CA, 90th Leg., 1st Sess. 37 (March 23, 1987)*.⁴ The legislative history of LR 15CA indicates the amendment was intended to expand parimutuel wagering to allow simulcast wagering on live horseraces run both inside and outside the state, retaining the requirement that the wagering be conducted only within licensed racetrack enclosures.⁵ The amendment was approved by a majority of voters at the 1988 general election.

The Nebraska Supreme Court has recognized the following general rules governing the interpretation of constitutional provisions:

The intent and understanding of [the] framers [of a constitutional provision] and the people who adopted it as expressed in the instrument is the main inquiry in construing it. . . . The words of a constitutional provision will be interpreted and understood in their most natural and obvious meaning unless the subject indicates or the text suggests they are used in a technical sense. The court may not supply any supposed omission, or add words to or take words from the provision as framed. It must be construed as a whole, and no part will be rejected as meaningless or surplusage, if it can be avoided. If the meaning is clear, the court will give to it the meaning that obviously would be accepted and understood by the layman. . . . It is permissible to consider the facts of history in determining the meaning of the language of the Constitution. . . . 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 the scope of the remedy its terms imply.

State ex rel. Spire v. Beermann, 235 Neb. 384, 389-90, 455 N.W.2d 749, 752 (1990) (quoting *State ex rel. State Railway Comm'n v. Ramsey*, 151 Neb. 333, 340-41, 37 N.W.2d 502, 508 (1949) (citations omitted)).

The Supreme Court has further recognized that the terms and provisions of the Constitution must be read in a manner which reflects changed circumstances:

A Constitution is intended to meet and be applied to any conditions and circumstances as they arise in the course of the progress of the community. The terms and provisions are constantly expanded and enlarged by construction to meet the advancing affairs of men. While the powers granted thereby do not change, they do apply in different periods to all things to which they are in their nature applicable.

State ex rel. State Railway Comm'n v. Ramsey, 235 Neb. at 338, 37 N.W.2d at 506.

Art. III, § 24(4), authorizes legislation "providing for the licensing and regulation of wagering on the results of horse races, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure. . . ." If wagering on "historic horseraces" by use of IRTs is construed to be "wagering on the results of horse races", is done "by the parimutuel method", and is "conducted by licensees within a licensed racetrack enclosure", it could be argued that it conforms to the language of art. III, § 24(4) and thus may be authorized by the Legislature. Moreover, as this form of wagering no doubt did not exist when the Constitution was amended to authorize parimutuel wagering on horse races in 1934, or in 1988 when simulcast wagering was approved, recognizing the Legislature's power to authorize wagering on "historic horseraces" could be viewed as consistent with the principle that constitutional terms and provisions are "expanded and enlarged by construction to meet the advancing affairs of men." State ex rel. State Railway Comm'n v. Ramsey, 235 Neb. at 338, 37 N.W.2d at 506.

The history of the Nebraska constitutional provision allowing the Legislature to permit parimutuel wagering on horse races, however, appears to support only authorizing the enactment of statutes such as those currently in place, providing for parimutuel wagering on live races conducted within Nebraska licensed racetrack enclosures or live races simulcast from other racetracks inside or outside Nebraska to Nebraska racetracks. While it is possible to interpret the literal language permitting the Legislature to authorize "wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method . . . ," to encompass wagering at IRTs, such a construction appears to significantly expand on the intent underlying adoption of this constitutional provision. Originally, parimutuel wagering on horse racing was authorized in 1934 out of recognition of the importance of the livestock and horse breeding industries. Allowing parimutuel wagering on horse races provided a means to support and promote these industries, an important part of the state's agricultural economy. When the Constitution was amended in 1988 to authorize wagering on simulcast race events, it was done so largely to help the racing

industry in the face of competition from other gambling. Simulcast wagering, however, involves only wagering at Nebraska racetracks on live race events conducted either within or outside the State. At no time have Nebraska voters specifically indicated their approval to allow the Legislature to permit wagering on horse races run years ago utilizing electronic machines resembling slot machines or video gaming devices. Indeed, the Constitution refers only to wagering on horse races "wherever" run, not "whenever" run. Therefore, we conclude that a legislative attempt to allow IRTs at licensed Nebraska racetracks, while not clearly unconstitutional, is likely contrary to the limited grant of authority given the Legislature to permit parimutuel wagering on horse races under art. III, § 24.⁶

The Nebraska Constitution prohibits all "games of chance," and allows the Legislature to authorize only a state lottery and certain other lotteries, bingo, and parimutuel wagering on the results of horse races. Neb. Const. art. III, § 24. This constitutional provision has been construed to prohibit "casino gambling." *State ex rel. Lemon v. Gale*, 272 Neb. 295, 307, 721 N.W.2d 347, 358 (2006). It is well-established that "[t]he Legislature cannot circumvent an express provision of the Constitution by doing indirectly what it may not do directly." *Haman v. Marsh*, 237 Neb. 699, 708, 467 N.W.2d 836, 844 (1991). There is no question that the Constitution presently prohibits the Legislature from authorizing "casino gambling" which, of course, includes the use of slot machines or other video or electronic gambling devices. Given the similarity between IRTs and these impermissible gambling devices, a court may find legislation authorizing IRTs as parimutuel wagering on horse races to be an improper attempt to indirectly allow what the Constitution directly forbids.

A recent Wyoming Supreme Court decision supports the conclusion that IRTs are actually impermissible gambling devices, rather than a form of parimutuel wagering on horse races which may be permitted under art. III, § 24. *Wyoming Downs Rodeo Events, LLC v. State of Wyoming*, 134 P.3d 1223 (Wyo. 2006). The Wyoming Supreme Court stated that IRTs "look and are used like a slot machine or other similar gambling device . . .," and determined that patent documents describing the IRTs, as well as a description of their operation and photographs depicting the devices, "corroborate[d] the inescapable conclusion" that IRTs were "gambling devices" which could not be authorized by the Wyoming State Pari-Mutuel Commission. *Id.* at 1229-30. The court noted the devices could not be construed to fall within the authorization for "simulcasting," as the definition of simulcasting "suggest[ed] that pari-mutuel races are generally live events." *Id.* at 1230. Rejecting the argument that IRTs were "a mere accoutrement of pari-mutuel wagering and that the governing statutes must be construed so as to embrace new 'inventions' and 'technologies'". . . , the court stated: "[W]e are not dealing with a new technology here, we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled." *Id.*

We believe our Supreme Court would also likely conclude that IRTs are impermissible electronic gambling devices within the prohibition against "games of chance" in art. III, § 24(1), and not a form of parimutuel wagering on horse races which may be authorized under art. III, § 24(4). By their nature and operation, IRTs are player-activated instant gaming machines which more closely resemble slot machines than horse races. Unlike wagering on actual horse races, these devices do not allow bettors to know the identity of the horse, jockey, or racetrack; at most, bettors are provided limited "handicapping" information. The wagering involved in the use of IRTs is far removed from conventional wagering on horse races conducted at a racetrack or simulcast live from other racetracks. In our view, the Nebraska Supreme Court, like the Wyoming court, would be inclined to view IRTs as "slot machine[s] that attempt[] to mimic traditional pari-mutuel wagering." 134 P.3d at 1230. Accordingly, we conclude that Neb. Const. art. III, § 24(4), likely does not permit the Legislature to authorize wagering on historic horseraces through IRTs.

2. Is the horse race wagering which may be authorized under Neb. Const. art. III, § 24, limited to wagering on live horse races?

Parimutuel wagering on horse races in Nebraska is governed by the provisions of Neb. Rev. Stat. §§ 2-1201 to 2-1246 (2007 and Supp. 2009). Enforcement of state laws and rules and regulations governing horse racing is granted to the Commission. Neb. Rev. Stat. § 2-1203.01(1) (2007). Certain entities (the State Board of Agriculture, a county fair board, a county agricultural society, "or a corporation or association of persons organized and carried on for civic purposes or which conducts a livestock exposition for the promotion of the livestock and horse-breeding industries of the state and which does not permit its members to derive personal profit from its activities by way of dividends or otherwise . . ."), may be licensed by the Commission "to conduct horseracing at a designated place within the state." Neb. Rev. Stat. § 2-1204 (2007). The license issued by the Commission must designate "the place where the race or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee." Neb. Rev. Stat. § 2-1205 (2007). Parimutuel wagering on such "live" horse racing is authorized by Neb. Rev. Stat. § 2-1207 (2007).

In addition to licensing "live" races or race meetings at which parimutuel wagering is conducted, the Commission may license racetracks to conduct intrastate and interstate simulcast wagering on horse races. Neb. Rev. Stat. §§ 2-1223 to 2-1229 (2007). "[S]imulcast" is defined to "mean the telecast of live audio and visual signals of any horserace conducted in the state for the purpose of parimutuel wagering. . . ." Neb. Rev. Stat. § 2-1225(7) (2007). (emphasis added).⁷ "Interstate simulcast" is defined to "mean parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state." Neb. Rev. Stat. § 2-1225(7) (2007).

Any licensed racetrack "which operates at least one live race meet during each calendar year . . ." may be "issued a[n] [intrastate] simulcast facility license" allowing the licensee to "display the simulcast of a horserace on which parimutuel wagering shall be allowed." Neb. Rev. Stat. § 2-1226 (2007) (emphasis added). Intrastate simulcast licensing requires execution of a written agreement between the sending and receiving tracks, which must be approved by the organization representing a majority of licensed owners and trainers at each track. Neb. Rev. Stat. § 2-1227(1) (2007). Simulcasts between racetracks in Nebraska "shall result in the combination of all wagers placed at the receiving track located in the state with the wagers placed at the sending track located in the state so as to produce common parimutuel betting pools for the calculation of odds and the determination of payouts from such pools. . . ." Neb. Rev. Stat. § 2-1227(4) (2007).

Licensed racetracks which conduct "live" racing for a certain number of days are eligible to receive interstate simulcast facility licenses. Neb. Rev. Stat. § 2-1228 (2007). "Any racetrack issued an interstate simulcast facility license may conduct the interstate simulcast of any horserace permitted under its license, and parimutuel wagering shall be allowed on such horserace." *Id.* An interstate simulcast facility license issued to a licensed racetrack in Nebraska allows the racetrack "to receive the interstate simulcast of horseraces for parimutuel wagering purposes from any track located outside of the state." Neb. Rev. Stat. § 2-1229(1) (2007). Among the factors the Commission is to consider in acting on an interstate simulcast facility license is whether "such interstate simulcast would have a significant effect upon either live racing or the simulcasting of live racing of the same type and at the same time conducted in this state. . . ." *Id.* (emphasis added).

Commission approval of an interstate simulcast facility license is conditioned upon: (1) Prior written approval of "any other racetrack issued a license . . . and conducting live racing of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting;" (2) Prior written approval of "any other racetrack issued a license . . . which is simulcasting the racing program of any licensee conducting live racing in this state of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting;" and (3) "[A] written agreement between the receiving track and the sending track located outside of the state . . . setting forth the division of all proceeds between the sending and receiving tracks and all other conditions under which such interstate simulcast will be conducted." Neb. Rev. Stat. § 2-1229(1)(a)-(c) (2007) (emphasis added). The agreement between the sending and receiving track "shall have the consent of the group representing the majority of horsepersons racing at the sending track and of the organization which represented a majority of the licensed owners and trainers at the receiving track's immediately preceding live thoroughbred race meeting." *Id.* at

§ 2-1229(1)(c) (emphasis added).

Neb. Rev. Stat. § 2-1216 (2007) provides: "The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings . . ., shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding." Parimutuel wagering on horse racing is authorized and governed by Neb. Rev. Stat. § 2-1207 (2007), which provides, in pertinent part:

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. . . . Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting . . . by any person who may legally wager on any horse race in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner [After taking out authorized or required deductions from amounts wagered], . . . [t]he balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be specified with respect to wagers upon horses selected to run first. (emphasis added).

Subsection (3) of § 2-1207 further provides that "there shall be no wagering except under the parimutuel method outlined in this section."

A review of the Nebraska statutes authorizing parimutuel wagering on horse races noted above indicates the Legislature has approved only parimutuel wagering on: (1) "live" horse races conducted in Nebraska within the confines of a license racetrack; (2) "live" horse races simulcast "intrastate" from one racetrack in Nebraska to other licensed Nebraska racetracks; and (3) "live" horse races simulcast from racetracks outside Nebraska to licensed Nebraska racetracks. The statutory scheme authorizing parimutuel wagering on horse races does not permit wagering on replays of races previously run in Nebraska or elsewhere. Only wagering on live races conducted at licensed race meets in Nebraska, or wagering on live events simulcast from

within or outside Nebraska, is permitted under Nebraska's current statutes governing parimutuel wagering on horse racing.⁸

The statutes authorizing parimutuel wagering on live horse races conducted at licensed race meets in Nebraska and simulcasts of live races from other licensed Nebraska racetracks or from racetracks outside Nebraska are consistent with the Constitution's authorization of such wagering "on the results of horse races, wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure." Neb. Const. art. III, § 24. Again, the history of this constitutional provision, including the 1988 amendment to authorize simulcasting, demonstrates an intent to allow the Legislature to authorize parimutuel wagering on horse races "wherever run," either in or outside Nebraska. The voters approving the original authorization of parimutuel wagering in 1934, as well as those approving the 1988 simulcasting amendment, no doubt understood such wagering was to be made on live horse races. While the language of art. III, § 24(4) does not specifically foreclose wagering on replays of previously run or historic horse races employing electronic or video gambling devices, we conclude it is likely that wagering on "historic horseraces" through IRTs may not be authorized under art. III, § 24.⁹

3. Is wagering using an electronic historic horseracing terminal a method of parimutuel wagering on horse races which may be permitted under Neb. Const. art. III, § 24?

As stated previously, art. III, § 24(4), likely cannot be construed to allow the Legislature to authorize wagering on "historic horseraces" through IRTs. Further, while the Instant Racing system is promoted as a parimutuel wagering system, there is a question as to whether the manner in which "Instant Racing" would be conducted is truly "parimutuel" wagering. It may be true that "Instant Racing" can be said to involve parimutuel wagering in a broad sense, since there is a pooling of wagers and a distribution of amounts wagered to winners. There appears, however, to be a distinction between parimutuel wagering on traditional live and simulcast races, and Instant Racing. Unlike most parimutuel wagering on live and simulcast races, where many wagers are made on a single race or series of races, Instant Racing involves wagers on many different races. The pools also do not pertain to specific races.¹⁰ It is not clear that wagering on historic horseraces through IRTs is truly "parimutuel" in nature. In view of our conclusion that, for the reasons noted above, such wagering likely may not be authorized under art. III, § 24, it is not necessary to determine whether the particular manner in which such wagering is proposed to be conducted could be considered wagering "by the parimutuel method" as that term is used in art. III, § 24(4).¹¹

4. Does LB 1102, as Introduced, Constitute an Improper Delegation of Legislative Authority?

There may also be a question as to whether the lack of definition and standards in LB 1102's grant of authority to the Commission to authorize wagering on "historic horseraces" is an unconstitutional delegation of legislative authority. "It is a fundamental general principle that the Legislature may not delegate legislative power to an administrative or executive authority." *Schumacher v. Johanns*, 272 Neb. 346, 364, 722 N.W.2d 37, 51 (2006). "The Legislature does, however, have power to authorize an administrative or executive department to make rules and regulations to carry out an expressed legislative purpose, or for the complete operation and enforcement of a law within designated limitations." *Id.* "The limitations of the power granted and the standards by which the granted powers are to be administered must, however, be clearly and definitely stated in the authorizing act." *Id.* "Such standards may not rest on indefinite, obscure, or vague generalities, or upon extrinsic evidence not readily available." *Id.* "Where the Legislature has provided reasonable limitations and standards for carrying out delegated duties, there is no unconstitutional delegation of legislative authority." *Id.*

LB 1102 seeks to allow the Commission to "[l]icense and regulate parimutuel wagering on historic horseraces." The bill as introduced contains no definition of "historic horseraces", and no indication that it is intended to authorize wagering on previously run races through the use of IRT devices resembling slot machines or other electronic gambling devices. Perhaps this intent can be inferred from the use of the term "historic horseraces", and the Introducer's Statement of Intent that the bill "would allow Nebraska licensed horse racing premises the ability to install and operate Instant Racing Terminals." Committee Statement on LB 1102, 101st Leg., 2nd Sess., Introducer's Statement of Intent 1 (February 10, 2010). The vagueness and lack of specificity in the bill itself, however, raises a question as to whether the bill as introduced involves an improper delegation of legislative authority without adequate standards.

We note that a recently filed Judiciary Committee amendment would add several provisions to the bill, including: (1) a definition of "historic horserace" as "a form of horserace that creates a parimutuel pool from wagers placed on a horserace previously held at a licensed racetrack"; (2) a requirement that the Commission shall not issue a license for wagering on historic horseraces unless the county board of the county in which the licensed facility is located has adopted a resolution approving such wagering; (3) authority for the Commission to adopt rules and regulations to implement wagering on historic horseraces; (4) directing the Commission to require that "enough of the historic horserace [] be televised so as to maintain the integrity of such horserace before another wager may take place or before beginning another historic horserace"; (5) establishing a license fee of \$1000 for each machine used for wagering on historic horseraces to be credited to the Historic Horseracing Distribution Fund ["Fund"]; (6) imposition of a tax on gross sums wagered on historic horseraces to be credited to the Fund; and (7) a mechanism for distribution of proceeds from the Fund. AM2234, §§ 2-4 (March 16, 2010). The

Committee amendment appears to eliminate the absence of definition and standards present in the bill as initially introduced, and likely would eliminate any improper delegation of legislative authority present in the introduced bill.

5. Will the Enactment of LB 1102 Allow Native American Tribes to Engage in Gaming Utilizing IRTs on Tribal Lands?

Senator Fulton has requested us to address whether the enactment of LB 1102 will allow Native American tribes to engage in additional gaming on tribal lands involving wagering on historic horseraces through IRTs. Senator Fulton also asks whether, if passage of the bill allows tribes to engage in such gaming, the state would have the authority to regulate those devices operated on tribal lands.

The Indian Gaming Regulatory Act ["IGRA"] was enacted in 1988 for the purpose of providing a statutory basis for the operation and regulation of gaming by Indian tribes. 25 U.S.C. §§ 2701 to 2721. IGRA classifies gaming into three categories, each subject to a different regulatory scheme: (1) "Class I gaming", which includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of. . .tribal ceremonies or celebration"; (2) "Class II gaming", which generally includes bingo, pull-tabs, lotto, tip jars, and other games similar to bingo, non-banking card games "explicitly authorized by the laws of the State" or "not explicitly prohibited by the laws of the State" played at any location in the state, when played in conformity with any state laws and regulations, and banking card games operated on or before May 1, 1988; and (3) "Class III gaming", which means "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. § 2703(6)-(8). Class I gaming is "within the exclusive jurisdiction of the Indian tribes." 25 U.S.C. § 2710(a)(1). Class II gaming is subject to tribal regulation with oversight by the National Indian Gaming Commission. 25 U.S.C. § 2710(d)(3)(A) and (B). Class III gaming is "lawful on Indian lands only if such activities are" authorized by a tribal ordinance or resolution, "located in a State that permits such gaming for any purpose by any person, organization or entity," and is "conducted in conformance with a Tribal-State compact entered into by the Indian Tribe and the State. . . ." 25 U.S.C. § 2710(d)(1)(A) to (C).¹²

The use of IRTs to wager on historic horseraces, not being within the definitions of Class I or Class II gaming in IGRA, would constitute a form of Class III gaming. Under IGRA, a state must negotiate for the conduct of the specific forms of Class III gaming activity the state affirmatively "permits" or authorizes others to conduct under state law. See *Cheyenne River Sioux Tribe v. State of South Dakota*, 3 F.3d 273, 279 (8th Cir. 1993) ("The 'such gaming' language in 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming that it does not presently permit."). If LB 1102 becomes law and wagering on historic horseraces through IRTs is approved under the legislation, the state, absent a judicial determination that such gaming is unconstitutional, would be

obligated to negotiate a compact with any Native American Tribe seeking to conduct this form of Class III gaming on Indian lands located within the state. See Neb. Rev. Stat. § 9-1,106(1) (2007) (Requiring Governor or his or her designated representative to negotiate a tribal-state compact for Class III gaming with any Indian tribe having jurisdiction over Indian lands in Nebraska).¹³ With respect to the state's authority to regulate IRTs located on Indian lands, any state regulatory role would be a matter subject to negotiation as part of the compact process.

C. Conclusion.

In summary, we conclude that LB 1102's attempt to authorize wagering on the results of previously run horse races through the use of IRTs resembling slot machines or other video gambling devices likely does not constitute a form of parimutuel wagering which the Legislature may permit under Neb. Const. art. III, § 24(4). The use of IRT's to wager on the results of previously run horse races appears to be impermissible, as the history of this constitutional provision indicates it was intended to allow wagering on live horse races held within a Nebraska licensed racetrack enclosure or simulcast from racetracks inside or outside Nebraska to a Nebraska licensed racetrack. In view of our determination that wagering on historic horseraces using IRTs likely may not be authorized under art. III, § 24(4), it is not necessary to determine whether the pooled wagering involved in the use of IRTs is a form of "parimutuel" wagering as that term is used in the Constitution. The vagueness and lack of specificity in the introduced bill, which contains no definition of "historic horseraces" and no indication on its face that it is intended to authorize wagering on previously run races through the use of IRTs, raises a question as to whether the bill as originally drafted involves an improper delegation of legislative authority without adequate standards. The pending Judiciary Committee amendment, however, appears to eliminate any improper delegation of legislative authority present in the bill as introduced. Finally, If LB 1102 becomes law and wagering on historic horseraces through IRTs is approved under the legislation, then the state, absent a judicial determination that such gaming is unconstitutional, would be obligated to negotiate a compact with any Native American tribe seeking to conduct this form of Class III gaming on Indian lands located within the state. Any state authority to regulate IRTs operated on Indian lands would be a matter subject to negotiation as part of the compact process.

¹A pending Judiciary Committee amendment would add several provisions to the introduced bill, including a definition of "historic horserace", as well as establishment of licensing fees and taxes on gross sums wagered on historical horse races. AM2234 (filed March 16, 2010).

²The discussion of "Instant Racing" contained herein is based on information from the web site of Amtote International (www.amtote.com), the Wyoming Supreme Court's description of the system in Wyoming Downs Rodeo Events, LLC v. State, 134 P.3d 1223 (Wyo. 2006), and promotional materials issued by RaceTech, LLC.

³Not all current live or simulcast bets involve wagering on a single race. For example, in Pick Six wagering, a bettor must correctly select the first place finisher in six consecutive races to win the jackpot. If no bettor has a winning ticket, a portion of the pot is paid out to those coming closest to the winning combination, with the remainder carried forward to subsequent racing days until a Pick Six winner occurs.

⁴The Attorney General had opined that the intrastate simulcasting proposed under LB 708 was permissible under art. III, § 24, but that such opinion should not be construed to sanction legislative authority to permit interstate simulcast wagering. Op. Att'y Gen. No. 87041 (March 27, 1987). While there was some disagreement as to whether even intrastate simulcasting was permissible, there was apparently no dispute that a constitutional amendment was needed to allow interstate simulcast wagering. Committee Records on LR15CA at 37, 42-44, 49-50.

⁵The original proposed amendment included language authorizing off-track wagering at certain licensed sites. The committee amendments removed this language. Committee Records on LR 15CA, Executive Session Record of Committee Amendments at 1.

⁶The Constitution also requires that the parimutuel wagering be "conducted by licensees within a licensed racetrack enclosure. . . ." Neb. Const. art. III, § 24(4). The requirement that wagering be conducted within the confines of a licensed racetrack has led the Nebraska Supreme Court to declare unconstitutional legislative attempts to sanction betting on horse races from off-track "telercing facilities" (State ex rel. Stenberg v. Douglas Racing Corp., 246 Neb. 901, 524 N.W.2d 61 (1994)), as well as "telephonic wagering" (State ex rel. Stenberg v. Omaha Exposition and Racing, Inc., 263 Neb. 991, 644 N.W.2d 563 (2002)). This requirement does not appear to be at issue, however, as there is no indication that LB 1102 seeks to allow IRTs at any location other than within the confines of a licensed racetrack.

⁷The definition of "simulcast" as the telecast of a live horse race is consistent with the commonly understood meaning of this term, which, in this context, refers to "a closed-circuit television broadcast of an event, as a horse race, while it is taking place." "simulcast." Dictionary.com Unabridged. Random House, Inc., <http://dictionary.reference.com/browse/simulcast> (accessed March 18, 2010).

⁸The Oregon Court of Appeals recently held that the Oregon Racing Commission lacked authority to approve wagering on previously run horse races through IRTs because the Oregon Commission's statutory authority to approve mutuel wagering was limited to authorizing wagering on only live races. MEC Oregon Racing, Inc. v. Oregon Racing Comm'n, 233 Ore. App. 9, __ P.3d __ (2009).

⁹Two Alabama Attorney General Opinions have concluded that Instant Racing is permissible because parimutuel wagering on the outcome of horse or dog races involves skill and thus is not an illegal lottery. 192 Op. Att'y Gen. Ala. 42 (December 5, 2008); Op. Att'y Gen. Ala. No. 2001-114 (March 13, 2001). The Nebraska Supreme Court, however, has held that parimutuel wagering on horse races is a form of "gambling" or "lottery" or "game of chance". State ex rel. Ak-Sar-Ben Exposition Co., 118 Neb. 851, 226 N.W. 705 (1929), permanent injunction entered State ex rel. Sorenson v. Ak-Sar-Ben Exposition Co., 121 Neb. 248, 236 N.W. 736 (1931). Because of this decision, the Nebraska Constitution was amended in 1934 to authorize parimutuel wagering on horse races. Further, the Alabama Attorney General opinions assumed, without discussion, that Instant Racing involved parimutuel wagering.

¹⁰As noted in footnote 3, supra, not all wagering on live or simulcast horse races involves only a single race, including wagers such as Pick Six combinations.

¹¹With regard to the "parimutuel" nature of Instant Racing, the Maryland Attorney General concluded that wagering on video replays of "historic horse races" through IRTs was not permissible because it did not constitute parimutuel betting as authorized under the Maryland Horse Racing Act. 20 Op. Att'y Gen. Md. 244 (March 17, 2009). In addition, the Kentucky Attorney General recently determined that Instant Racing was not permissible under Kentucky's parimutuel wagering statute because it did not constitute parimutuel wagering as defined by Kentucky's Administrative Regulations. Op. Att'y Gen. Ky. 10-001 (January 5, 2010).

¹²"Indian lands" is defined in IGRA to include "all lands within the limits of any Indian reservation. . ." and lands held in trust by the United States for the benefit of any Indian tribe over which an Indian tribe exercises governmental power. 25 U.S.C. § 2703(4)(A) and (B). While IGRA generally provides that gaming shall not be conducted on Indian lands acquired by the Secretary of the Interior ["Secretary"] in trust for the benefit of an Indian tribe after October 17, 1988, there are several exceptions, including: (1) lands that are within or contiguous to the boundaries of an Indian tribe's reservation; (2) new trust lands where the Secretary has determined the gaming would not be detrimental to the surrounding community, if the Governor of the State where the gaming is conducted concurs in the Secretary's determination; and (3) lands taken in trust as part of settlement of a land claim or the restoration of lands for an Indian tribe that is restored to federal recognition. 25 U.S.C. § 2719(a) and (b)(1)(A)-(B).

¹³If such negotiations did not result in execution of a compact, the tribe could bring suit in federal district court to challenge the state's failure "to negotiate in good faith." 25 U.S.C. § 2710(d)(7)(A)(i) and 2710(d)(B)(i). If the federal district court found the state failed to negotiate in good faith, then the IGRA remedial process would be triggered to obtain a compact. 25

U.S.C. § 2710(d)(7)(B)(iii). If the state asserts the defense of sovereign immunity to the federal district court suit, the tribe could then petition the Secretary to adopt procedures for Class III gaming, 25 C.F.R. Part 291.

Very truly yours,
JON BRUNING
Attorney General
(Signed) L. Jay Bartel
Assistant Attorney General

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

07-271-20

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LBs 836, 879, 882, 937, 937A, 956, 1018, 728, 951, 951A, 1057, and 742.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 412, 414, 415, 416, 417, 418, and 420 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 412, 414, 415, 416, 417, 418, and 420.

GENERAL FILE

LEGISLATIVE BILL 1102. Title read. Considered.

Committee AM2234, found on page 924, was considered.

Senator Avery offered the following amendment to the committee amendment:

AM2348

(Amendments to Standing Committee amendments, AM2234)

- 1 1. On page 1, line 4, strike "a form of horserace that"
- 2 and insert "an electronic gaming device that displays a horserace
- 3 and".

SENATOR COASH PRESIDING

Pending.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 563A. Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 563, One Hundred First Legislature, Second Session, 2010.

LEGISLATIVE BILL 1102A. Introduced by Giese, 17.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 1102, One Hundred First Legislature, Second Session, 2010.

RESOLUTION

LEGISLATIVE RESOLUTION 539. Introduced by Fulton, 29; Coash, 27; Harms, 48; Janssen, 15; McCoy, 39; Price, 3; Schilz, 47.

WHEREAS, the Ninth Amendment to the United States Constitution states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people;" and

WHEREAS, the Tenth Amendment to the United States Constitution declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;" and

WHEREAS, the framers of the United States Constitution envisioned a federal government with "few and defined" delegated powers, whereby state governments retained "numerous and indefinite" powers extending "to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State;" and

WHEREAS, the United States Government has historically and continues to expand its enumerated powers in a manner inconsistent with the Ninth Amendment to the United States Constitution; and

WHEREAS, the United States Government has historically and continues to assert powers not enumerated under Article I, section 8, of the United States Constitution in a manner inconsistent with the Tenth Amendment to the United States Constitution; and

WHEREAS, a balanced federalism is necessary to preserve the inherent rights of the people, from whose consent the just powers of both state and federal governments are derived.

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

1. That the Legislature encourages the Congress of the United States to adhere to the principles of federalism in accord with the Ninth and Tenth Amendments to the United States Constitution.

2. That a copy of this resolution be sent to all the members of the Nebraska congressional delegation with the request that this resolution be officially entered in the Congressional Record.

3. That a copy of this resolution be sent to each state legislature within these United States of America.

Laid over.

PRESENTED TO THE GOVERNOR

Presented to the Governor on March 30, 2010, at 10:17 a.m. were the following: LBs 836, 879e, 882, 937e, 937Ae, 956e, 1018, 728, 951, 951A, 1057e, and 742.

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

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 817. Placed on Final Reading.

ST9085

The following changes, required to be reported for publication in the Journal, have been made:

1. In the Rogert amendment, AM2314, section 3 has been renumbered as section 7.

2. In the Lautenbaugh amendment, AM2045, section 3 has been inserted into the Standing Committee amendment, AM1964, as section 8.

3. In the Ashford amendment, AM2203, on page 1, line 11, the comma has been struck; in line 18 "natural resources" has been struck; and in line 22 "managed" has been struck and "district-managed" inserted.

4. In the E & R amendments, ER8176, amendment 1b. has been struck.

5. On page 1, the matter beginning with "handguns" in line 1 through line 5 and all amendments thereto have been struck and "law enforcement; to amend sections 2-32,101, 69-2403, 69-2427, 69-2431, and 69-2433, Reissue Revised Statutes of Nebraska, and sections 18-1703 and 28-1212.04, Revised Statutes Supplement, 2009; to authorize natural resources districts to employ law enforcement personnel or private security services; to change city and village powers regarding registration of handguns; to change prohibitions regarding the discharge of firearms in certain cities, villages, and counties; to exempt permitholders under the Concealed Handgun Permit Act and peace officers from the requirement to obtain a certificate to purchase a handgun; to provide a duty for the Nebraska State Patrol under the act; to change requirements for a permit to carry a concealed handgun; to harmonize provisions; and to repeal the original sections." inserted.

LEGISLATIVE BILL 1109. Placed on Final Reading.

LEGISLATIVE BILL 1109A. Placed on Final Reading.

(Signed) Jeremy Nordquist, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Pahls asked unanimous consent to add his name as cointroducer to LR516. No objections. So ordered.

VISITORS

Visitors to the Chamber were 24 fourth-grade students and teacher from Cedar Elementary, Beatrice; 21 fourth-grade students, teacher, and sponsors from Plattsmouth; 43 fifth-grade students, teachers, and sponsor from Christ the King School, Omaha; and 8 students, teacher, and sponsors from St. Luke's Elementary, Ogallala.

RECESS

At 12:02 p.m., on a motion by Senator Rogert, 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 Ashford, Campbell, Council, Dubas, Fischer, Hadley, and Loudon who were excused until they arrive.

COMMITTEE REPORT

General Affairs

The General Affairs 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.

Dennis Lee - State Racing Commission

Aye: 8 Senators Coash, Cook, Dierks, Dubas, Karpisek, Krist, Price, Rogert.
Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Russ Karpisek, Chairperson

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR539 was referred to the Reference Committee.

GENERAL FILE

LEGISLATIVE BILL 1102. The Avery amendment, AM2348, found in this day's Journal, to the committee amendment, was renewed.

Senator Wallman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

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

Senator Avery requested a roll call vote on his amendment.

Voting in the affirmative, 16:

Adams	Fulton	Howard	Pirsch
Avery	Hansen	McCoy	Price
Christensen	Harms	Nelson	Sullivan
Flood	Heidemann	Pankonin	Wightman

Voting in the negative, 22:

Ashford	Giese	Langemeier	Nordquist	Wallman
Conrad	Gloor	Lathrop	Rogert	White
Cook	Haar	Lautenbaugh	Schilz	
Cornett	Janssen	McGill	Stuthman	
Council	Karpisek	Mello	Utter	

Present and not voting, 6:

Carlson	Dierks	Krist
Coash	Gay	Pahls

Excused and not voting, 5:

Campbell	Dubas	Fischer	Hadley	Louden
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The Avery amendment lost with 16 ayes, 22 nays, 6 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Avery offered the following amendment to the committee amendment:

AM2349

(Amendments to Standing Committee amendments, AM2234)

- 1 1. On page 1, line 16, strike "enough" and insert "the
- 2 entire length".

Senator Avery withdrew his amendment.

Senator Avery offered the following amendment to the committee amendment:

AM2350

(Amendments to Standing Committee amendments, AM2234)

- 1 1. On page 1, line 21, strike "initial, one-time" and
- 2 insert "annual".

Senator Avery withdrew his amendment.

Senator Avery offered the following amendment to the committee amendment:

AM2352

(Amendments to Standing Committee amendments, AM2234)

- 1 1. On page 2, line 25, after the first occurrence of
- 2 "fund" insert ", not to exceed one thousand dollars annually,".

Senator Avery withdrew his amendment.

Committee AM2234, found on page 924 and considered in this day's Journal, was renewed.

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

Senator Price moved for a call of the house. The motion prevailed with 29 ayes, 0 nays, and 20 not voting.

Senator Price requested a roll call vote, in reverse order, on the motion to cease debate.

Voting in the affirmative, 11:

Avery	Fulton	Heidemann	Price
Christensen	Hansen	McCoy	Wightman
Dierks	Harms	Pankonin	

Voting in the negative, 30:

Adams	Cornett	Haar	Lathrop	Pirsch
Ashford	Council	Howard	Lautenbaugh	Rogert
Carlson	Flood	Janssen	McGill	Schilz
Coash	Gay	Karpisek	Mello	Stuthman
Conrad	Giese	Krist	Nordquist	Utter
Cook	Gloor	Langemeier	Pahls	Wallman

Present and not voting, 2:

Nelson White

Excused and not voting, 6:

Campbell	Fischer	Louden
Dubas	Hadley	Sullivan

The motion to cease debate failed with 11 ayes, 30 nays, 2 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

SENATOR LANGEMEIER PRESIDING

Senator Avery reoffered his amendment, AM2349, found in this day's Journal, to the committee amendment.

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

Senator Karpisek moved for a call of the house. The motion prevailed with 29 ayes, 0 nays, and 20 not voting.

The motion to cease debate prevailed with 26 ayes, 2 nays, 19 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

The Avery amendment lost with 17 ayes, 26 nays, 4 present and not voting, and 2 excused and not voting.

Senator Avery reoffered his amendment, AM2350, found in this day's Journal, to the committee amendment.

SENATOR CARLSON PRESIDING

SPEAKER FLOOD PRESIDING

Pending.

EXPLANATION OF VOTES

Had I been present, I would have voted "aye" on final passage of LBs 836, 879e, 882, 937e, 937Ae, 956e, 1018, 728, 951, 951A, 1057e, and 742.

(Signed) Bob Krist

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

LB/LR	Committee
LR538	Government, Military and Veterans Affairs
LR539	Government, Military and Veterans Affairs

(Signed) John Wightman, Chairperson
Executive Board

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 931. Placed on Select File with amendment. ER8224 is available in the Bill Room.

LEGISLATIVE BILL 1072. Placed on Select File with amendment. ER8223

1 1. In the Standing Committee amendments, AM2194, on page
 2 3, line 16, after the comma insert "(i) until July 1, 2011, state
 3 aid to counties paid pursuant to sections 39-2501 to 39-2520,
 4 47-119.01, 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance
 5 premium tax paid to counties, and reimbursements to counties from
 6 funds appropriated pursuant to section 29-3933, and (ii) beginning
 7 on July 1, 2011,".
 8 2. On page 1, strike beginning with line 2 through
 9 "colleges" in line 14 and insert "77-3442, 85-1416, 85-1418,
 10 85-1502, 85-1503, 85-1511, and 85-1517, Reissue Revised Statutes
 11 of Nebraska, and sections 13-518 and 13-519, Revised Statutes
 12 Supplement, 2009; to redefine terms; to change provisions relating
 13 to state aid and tax levy authorization and limits for community
 14 colleges; to provide a termination date for membership provisions
 15 for the association of community college boards and the Community
 16 College Foundation and Equalization Aid Act;".

LEGISLATIVE BILL 779. Placed on Select File with amendment. ER8221 is available in the Bill Room.

(Signed) Jeremy Nordquist, Chairperson

GENERAL FILE

LEGISLATIVE BILL 1102. Senator Giese offered the following motion:
MO96

Invoke cloture pursuant to Rule 7, Sec. 10.

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

Senator Giese requested a roll call vote, in reverse order, on the motion to invoke cloture.

Voting in the affirmative, 30:

Ashford	Council	Hadley	Lautenbaugh	Rogert
Campbell	Dubas	Janssen	Louden	Schilz
Coash	Fischer	Karpisek	McGill	Stuthman
Conrad	Giese	Krist	Mello	Utter
Cook	Gloor	Langemeier	Nordquist	Wallman
Cornett	Haar	Lathrop	Pahls	White

Voting in the negative, 13:

Adams	Christensen	Harms	Nelson	Sullivan
Avery	Dierks	Howard	Pankonin	
Carlson	Hansen	McCoy	Price	

Present and not voting, 5:

Flood	Gay	Heidemann	Pirsch	Wightman
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Excused and not voting, 1:

Fulton

The Giese motion to invoke cloture failed with 30 ayes, 13 nays, 5 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

SENATOR LANGEMEIER PRESIDING

LEGISLATIVE BILL 1103. Title read. Considered.

Committee AM2063, found on page 978, was considered.

Pending.

AMENDMENTS - Print in Journal

Senator Coash filed the following amendment to LB849:
AM2431

(Amendments to Standing Committee amendments, AM2120)

- 1 1. On page 34, line 13, strike "or" and insert "and".

Senator Cornett filed the following amendment to LB877:
AM2439

(Amendments to Standing Committee amendments, AM1877)

- 1 1. On page 1, strike line 12, show the old matter
2 as stricken, and insert "Only the county assessor, the Tax
3 Commissioner, or the Property Tax Administrator may appeal the
4 granting of such an"; and in line 18 after the period insert
5 "If the county assessor, Tax Commissioner, or Property Tax
6 Administrator appeals a county board of equalization's final
7 decision granting an exemption from property taxation, the person,
8 corporation, or organization granted such exemption by the county
9 board of equalization shall be made a party to the appeal and shall
10 be issued a notice of the appeal by the Tax Equalization and Review
11 Commission within thirty days after the appeal is filed.".

- 12 2. On page 3, line 3, strike "exemption of real or
13 personal property" and insert "granting or denying of an exemption
14 of real or personal property to the Tax Equalization and Review
15 Commission. If the Tax Commissioner or Property Tax Administrator
16 files such an appeal, the person, corporation, or organization
17 granted or denied the exemption by the county board of equalization
18 shall be made a party to the appeal and shall be issued a notice
19 of the appeal by the Tax Equalization and Review Commission within
20 thirty days after the appeal is filed"; and in line 6 before
21 "exemption" insert "granting or denying of an".

- 22 3. On page 18, line 5, strike "upon request" and show as
1 stricken; in line 6 after the period insert "Within seven days of
2 issuing a decision and order, the commission shall electronically
3 publish such decision and order on a web site maintained by the
4 commission that is accessible to the general public. The full
5 text of final decisions and orders entered after a hearing by
6 the commission or a panel of commissioners shall be published on
7 the web site. Final decisions and orders that are entered (a)
8 on a dismissal by the appellant or petitioner, (b) on a default
9 order when the appellant or petitioner failed to appear, or (c)
10 by agreement of the parties may be published on the web site in
11 a summary manner identifying the parties, the case number, and
12 the basis for the final decision and order."; and strike lines 18
13 through 23 and insert:

- 14 "(3) The Tax Commissioner or the Property Tax
15 Administrator shall have thirty days after a final decision of the
16 commission to appeal the commission's decision.".

Senator Avery filed the following amendment to LB1102:

FA70

Amend AM2234

Page 1, line 22 strike "one", insert "five".

Senator Avery filed the following amendment to LB1102:

FA71

Amend AM2234

Page 3, line 2 strike "five", insert "ten".

Senator Carlson filed the following amendment to LB862:

AM2441

(Amendments to Standing Committee amendments, AM2004)

- 1 1. Insert the following new section:
- 2 Sec. 3. Section 46-739.01, Revised Statutes Supplement,
- 3 2009, is amended to read:
- 4 46-739.01 (1) Notwithstanding any other provision of law,
- 5 no district shall approve a transfer of certified water uses
- 6 or certified irrigated acres or allow a ground water user or
- 7 landowner to participate in a financial or other incentive program
- 8 established pursuant to subsection (8) of section 46-739 unless
- 9 the person seeking such transfer or participation in such program
- 10 has submitted to the district a report of title issued by an
- 11 attorney or a registered abstractor, on a form prescribed by the
- 12 district, reflecting (a) the owner and legal description of the
- 13 land from which the certified water uses or certified irrigated
- 14 acres are to be transferred or which is the subject of such program
- 15 and (b) the existence of all liens, evidenced by the filing of
- 16 a mortgage, trust deed, or other equivalent consensual security
- 17 interest, against the land from which the certified water uses
- 18 or certified irrigated acres are to be transferred or which is
- 19 the subject of such program and the name and address of each
- 20 such lienholder, if any. If the report of title reflects the
- 21 existence of any lien evidenced by the filing of a mortgage, trust
- 22 deed, or other equivalent consensual security interest, written
- 1 consent to such transfer or participation in such program shall be
- 2 obtained from each such lienholder. The district may assess a fee
- 3 against the person seeking such transfer or participation in such
- 4 program to recoup its costs in reviewing the report of title. This
- 5 subsection does not apply to a transfer of certified water uses or
- 6 certified irrigated acres resulting from: A one-time transfer of
- 7 four acres or less; participation in a financial or other incentive
- 8 program that involves the transfer, purchase, or retirement of four
- 9 acres or less; or a transfer that involves one landowner on a
- 10 single tract of land in which there is no reduction or increase in
- 11 certified water uses or certified irrigated acres and the transfer
- 12 involves an improvement in irrigation efficiency.
- 13 (2) Approval of a transfer of certified water uses or
- 14 certified irrigated acres or authorization of a ground water user

15 or landowner to participate in such financial or other incentive
 16 program by a district shall not affect the rights of any lienholder
 17 who is not reflected in the report of title and from whom the
 18 required consent was not obtained. Such a lienholder may bring an
 19 action against the person seeking such transfer or participation
 20 in such program for damages or injunctive or other relief for any
 21 injury done to the lienholder's interest in land or use of ground
 22 water resulting from such transfer or participation.

23 (3) This section does not limit the right to resort to
 24 other means of review, redress, or relief provided by law.

25 2. Renumber the remaining sections and amend the repealer
 26 accordingly.

Senator Christensen filed the following amendment to LB1102:
 FA72

Amend AM2234

On page 1 line 16 after "require" and before "enough" add "a wait of 22 minutes and".

Senator Langemeier filed the following amendment to LB1048:
 AM2413 is available in the Bill Room.

GENERAL FILE

LEGISLATIVE BILL 1103. Senator Conrad offered the following amendment to the committee amendment:
 AM2432

(Amendments to Standing Committee amendments, AM2063)

- 1 1. On page 2, strike lines 9 and 10; in line 11 strike
- 2 "(6)" and insert "(5)"; in line 15 strike "(7)" and insert "(6)";
- 3 strike lines 18 through 21; in line 22 strike "(9)" and insert
- 4 "(7)"; and in line 25 strike "(10)" and insert "(8)".
- 5 2. On page 3, line 23; and page 4, line 3, strike
- 6 "post-fertilization age" and insert "viability".
- 7 3. On page 4, strike beginning with "the" in line 8
- 8 through "of" in line 9; and in lines 9 and 10 strike "twenty or
- 9 "more weeks" and insert "viable".
- 10 4. On page 5, strike lines 9 through 14; in line 15
- 11 strike "(c)" and insert "(a)"; in lines 15 and 24 strike "probable
- 12 "post-fertilization age" and insert "unborn child"; in lines 16 and
- 13 25 strike "twenty or more weeks" and insert "viable"; and in line
- 14 23 strike "(d)" and insert "(b)".

The Conrad amendment lost with 5 ayes, 27 nays, 9 present and not voting, and 8 excused and not voting.

Senator Conrad offered the following amendment to the committee amendment:

AM2425

(Amendments to Standing Committee amendments, AM2063)

- 1 1. On page 2, strike beginning with "for" in line 3
- 2 through "function" in line 8 and insert "preserve her health".
- 3 2. On page 4, lines 13 and 14; and page 5, lines 19 and
- 4 20, strike "avert serious risk of substantial and irreversible
- 5 physical impairment of a major bodily function" and insert
- 6 "preserve her health".
- 7 3. On page 4, strike beginning with "No" in line 15
- 8 through the period in line 19; and strike beginning with the second
- 9 "the" in line 24 through line 27 and insert "damage to her health".
- 10 4. On page 5, strike lines 1 through 3.
- 11 5. On page 6, strike beginning with the third "the" in
- 12 line 3 through line 5 and insert "damage to her health".

The Conrad amendment lost with 6 ayes, 27 nays, 8 present and not voting, and 8 excused and not voting.

Senator Conrad offered the following amendment to the committee amendment:

AM2423

(Amendments to Standing Committee amendments, AM2063)

- 1 1. On page 2, line 4; page 4, lines 13 and 25; and page
- 2 6, line 4, strike "physical".
- 3 2. On page 2, strike beginning with "No" in line 5
- 4 through "function" in line 8.
- 5 3. On page 4, strike beginning with "No" in line 15
- 6 through the period in line 19; and strike beginning with "No" in
- 7 line 26 through line 27.
- 8 4. On page 5, strike lines 1 through 3.

The Conrad amendment lost with 5 ayes, 29 nays, 7 present and not voting, and 8 excused and not voting.

Senator Conrad offered the following amendment to the committee amendment:

AM2424

(Amendments to Standing Committee amendments, AM2063)

- 1 1. On page 2, strike beginning with "No" in line 5
- 2 through "function" in line 8.
- 3 2. On page 4, strike beginning with "No" in line 15
- 4 through line 27.
- 5 3. On page 5, strike lines 1 through 3.

The Conrad amendment lost with 6 ayes, 31 nays, 4 present and not voting, and 8 excused and not voting.

Senator Conrad offered the following amendment to the committee amendment:

AM2430

(Amendments to Standing Committee amendments, AM2063)

- 1 1. Insert the following new section:
- 2 Sec. 13. This act becomes operative on October 15, 2010.
- 3 2. On page 7, line 9, strike "effective" and insert
- 4 "operative".
- 5 3. Renumber the remaining section accordingly.

The Conrad amendment was adopted with 40 ayes, 0 nays, 3 present and not voting, and 6 excused and not voting.

Committee AM2063, found on page 978 and considered in this day's Journal, as amended, was renewed.

The committee amendment, as amended, was adopted with 38 ayes, 4 nays, 1 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 38 ayes, 5 nays, and 6 excused and not voting.

VISITORS

Visitors to the Chamber were 38 twelfth-grade students and teachers from Centura High School, Cairo; and Jim, Wallis, and Drew Higley from Chicago, Illinois and Kathleen Higley from Lincoln.

The Doctor of the Day was Dr. Mike Myers from Lincoln.

ADJOURNMENT

At 8:53 p.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Wednesday, March 31, 2010.

Patrick J. O'Donnell
Clerk of the Legislature