

SIXTY-SECOND DAY - APRIL 14, 2003

LEGISLATIVE JOURNAL

**NINETY-EIGHTH LEGISLATURE
FIRST SESSION**

SIXTY-SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Monday, April 14, 2003

PRAYER

The prayer was offered by Senator Janssen.

ROLL CALL

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

The roll was called and all members were present except Senator Bourne who was excused; and Senators Beutler, Brashear, Brown, Combs, Connealy, Engel, Kremer, Landis, Louden, Maxwell, Preister, and Synowiecki who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-first day was approved.

PRESENTED TO THE GOVERNOR

Presented to the Governor on April 11, 2003, at 1:23 p.m. were the following: LBs 111e, 165, 165A, 175, 186, 233e, 233Ae, 250e, 259, 292e, 294, 333, 333A, 357e, 357Ae, 359, 451e, 487, 524, 607, 619e, 688, 726, 756, and 756A.

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

ATTORNEY GENERAL'S OPINION

Opinion # 03009

DATE: April 11, 2003

SUBJECT: Changing the Boundaries of Community College Areas

REQUESTED BY: Senator Tom Baker

Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested the opinion of this office regarding the constitutionality of potential legislation to change the boundaries of the community college areas. The state is currently divided into six community college areas pursuant to Neb. Rev. Stat. § 85-1504 (1999). Your question is whether it is constitutional to change, legislatively, the boundaries of the community college areas or whether the counties would be required to vote on their "district affiliation." It is our understanding, after our telephone conversation, that you do not have a concern as to a specific constitutional provision. Rather, you are asking our general opinion whether this type of legislation may be constitutionally suspect in light of the original statutory scheme which provided for a vote of area citizens prior to the forming or joining of community college areas.

The current statutes governing community colleges are found at Neb. Rev. Stat. §§ 85-1501 through 85-1542 (1999 and Cum. Supp. 2002). In reviewing the history of these statutes, we have found that the current scheme was enacted in 1975 after provisions of a prior act, the Technical Community College Area Act, were found unconstitutional by the Nebraska Supreme Court in *State ex rel. Western Nebraska Technical Community College Area v. Tallon*, 192 Neb. 201, 219 N.W.2d 454 (1974). Specifically, a prior statute was found to provide for a property tax to support a state purpose contrary to Article VIII, § 1A of the Nebraska Constitution. As described by the Nebraska Supreme Court, the Technical Community College Area Act of 1971 "designated eight different community college areas but did not place each of the counties in the State of Nebraska into an area but left the forming or joining of areas to the vote of the citizens, or otherwise for designation by the Legislature during the 1973 legislative session, since the Act did not become fully effective operatively until July 1, 1973." *Id.* at 205, 219 N.W.2d at 457. Neb. Rev. Stat. § 85-1504, which divides the state into six community college areas, was enacted in 1975 as part of the new statutory scheme to address the concerns of the Nebraska Supreme Court. The old statutory provisions which provided for a vote to be held prior to the establishment of these community college areas were not included in the new statutory scheme.

We are unaware of any state constitutional provision that would restrict the Legislature in changing the boundaries of any of the community college areas. As a general principle, the Legislature may legislate on any subject not inhibited by the state or federal constitutions and restrictions on this legislative power will not be inferred unless the restriction is clearly implied. *State ex rel. Creighton Univ. v. Smith*, 217 Neb. 682, 353 N.W.2d 267 (1984); *Lenstrom v. Thone*, 209 Neb. 783, 311 N.W.2d 884 (1981). While Nebraska statutes at one time provided for a vote of the citizens in an area as one means of establishing a community college area, the statutes

which were enacted after the community college areas had been established no longer provide such an option and we know of no constitutional provision that would require that the voters of each county or community college area vote on a change in the boundaries of their community college area.

Sincerely,
JON BRUNING
Attorney General
(Signed) Lynn A. Melson
Assistant Attorney General

pc: Patrick J. O'Donnell
Clerk of the Legislature
09-551-11.op

AMENDMENTS - Print in Journal

Senator Wehrbein filed the following amendment to LB 305:
FA1302

- 7 Sec. 1. Section 37-1015, Reissue Revised Statutes of
8 Nebraska, is amended to read:
9 37-1015. (1) The position of State Recreational Trails
10 Coordinator ~~is~~ may be established. ~~The coordinator shall be~~ and
11 appointed by the Game and Parks Commission. Necessary office
12 space, furniture, equipment, and supplies as well as necessary
13 professional, technical, and clerical assistance shall be provided
14 by the commission.
15 (2) The duties of the State Recreational Trails
16 Coordinator shall include, but not be limited to:
17 (a) Maintaining and updating the Nebraska Comprehensive
18 Trails Plan. For purposes of this section, Nebraska Comprehensive
19 Trails Plan means the document dated July 1994 and entitled A
20 Network of Discovery: A Comprehensive Trails Plan for the State of
21 Nebraska;
22 (b) Marketing and promoting trails across the state;
23 (c) Maintaining and updating an inventory of trails
24 programs in Nebraska;
25 (d) Providing a central point for exchanging information
26 among communities with trails programs;
27 (e) Providing organizational and technical assistance to
1 communities and regional groups;
2 (f) Managing the state trails application and evaluation
3 process;
4 (g) Coordinating state government's trails development
5 efforts and administering the state trails program;
6 (h) Preparing and publishing an annual report on trails
7 development in the state;
8 (i) Monitoring and filing paperwork on rail abandonments

9 when necessary, consistent with rail-watch corridors established by
 10 the Nebraska Comprehensive Trails Plan or its updates; and
 11 (j) Managing other right-of-way acquisition efforts when
 12 state involvement becomes necessary.

Senator Hudkins filed the following amendment to LB 305:
 FA1303

4 Section 37-1253, Reissue Revised Statutes of
 5 Nebraska, is amended to read:
 6 37-1253. (1) No person shall operate or give permission
 7 for the operation of a motorboat on the waters of this state in
 8 such a manner as to exceed a noise level of 96 decibels when
 9 measured at one hundred feet or more on plane using the A-weighting
 10 network of a sound level meter complying with the standards set
 11 forth in S1.4-1983 (R 2001) of the American National Standards
 12 Institute, as those standards existed on the operative date of this
 13 section.

GENERAL FILE

LEGISLATIVE BILL 494. Title read. Considered.

Advanced to E & R for review with 34 ayes, 0 nays, 2 present and not voting, and 13 excused and not voting.

Senator Mossey asked unanimous consent to be excused until he returns. No objections. So ordered.

LEGISLATIVE BILL 464. Title read. Considered.

Advanced to E & R for review with 33 ayes, 0 nays, 2 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 480. Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 4 present and not voting, and 14 excused and not voting.

LEGISLATIVE BILL 481. Title read. Considered.

Advanced to E & R for review with 36 ayes, 0 nays, 2 present and not voting, and 11 excused and not voting.

LEGISLATIVE BILL 521. Title read. Considered.

Advanced to E & R for review with 37 ayes, 0 nays, 4 present and not voting, and 8 excused and not voting.

LEGISLATIVE BILL 349. Title read. Considered.

The Standing Committee amendment, AM0399, found on page 561, was adopted with 38 ayes, 0 nays, 4 present and not voting, and 7 excused and not voting.

Advanced to E & R for review with 38 ayes, 0 nays, 4 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 498. Title read. Considered.

Advanced to E & R for review with 33 ayes, 0 nays, 9 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 461. Title read. Considered.

Advanced to E & R for review with 25 ayes, 7 nays, 10 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 548. Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 307. Title read. Considered.

The Standing Committee amendment, AM0472, found on page 618, was adopted with 33 ayes, 0 nays, 9 present and not voting, and 7 excused and not voting.

Advanced to E & R for review with 37 ayes, 0 nays, 5 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 529. Title read. Considered.

The Standing Committee amendment, AM0504, found on page 619, was considered.

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

The Standing Committee amendment was adopted with 25 ayes, 2 nays, 15 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

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

Senator Baker requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 20:

Aguilar	Burling	Janssen	Pedersen, Dw.	Schimek
Baker	Cudaback	Jensen	Pederson, D.	Schrock
Beutler	Foley	Johnson	Price	Smith
Bromm	Hartnett	Kruse	Quandahl	Tyson

Voting in the negative, 19:

Byars	Friend	Landis	Raikes	Synowiecki
Combs	Hudkins	McDonald	Redfield	Thompson
Cunningham	Jones	Mines	Stuhr	Wehrbein
Erdman	Kremer	Preister	Stuthman	

Present and not voting, 3:

Chambers	Maxwell	Vrtiska
----------	---------	---------

Excused and not voting, 7:

Bourne	Brown	Engel	Mossey
Brashear	Connealy	Louden	

Failed to advance to E & R for review with 20 ayes, 19 nays, 3 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Senator Redfield asked unanimous consent to be excused until she returns. No objections. So ordered.

LEGISLATIVE BILL 149. Title read. Considered.

The Standing Committee amendment, AM0493, found on page 621, was adopted with 26 ayes, 0 nays, 15 present and not voting, and 8 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 13 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 510. Title read. Considered.

Advanced to E & R for review with 27 ayes, 0 nays, 15 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 707. Title read. Considered.

Advanced to E & R for review with 28 ayes, 0 nays, 14 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 701. Title read. Considered.

Advanced to E & R for review with 26 ayes, 0 nays, 16 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 200. Title read. Considered.

The Standing Committee amendment, AM0394, found on page 753, was adopted with 28 ayes, 0 nays, 14 present and not voting, and 7 excused and not voting.

Advanced to E & R for review with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 235. Title read. Considered.

Advanced to E & R for review with 29 ayes, 0 nays, 13 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 476. Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 97. Title read. Considered.

The Standing Committee amendment, AM0413, found on page 766, was adopted with 34 ayes, 0 nays, 10 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 29 ayes, 0 nays, 15 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 258. Title read. Considered.

The Standing Committee amendment, AM0532, found on page 804, was adopted with 36 ayes, 0 nays, 8 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 354. Title read. Considered.

Advanced to E & R for review with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

SPEAKER BROMM PRESIDING

LEGISLATIVE BILL 610. Title read. Considered.

Advanced to E & R for review with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 118. Title read. Considered.

The Standing Committee amendment, AM0609, found on page 824, was adopted with 26 ayes, 0 nays, 19 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Senator Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

LEGISLATIVE BILL 444. Title read. Considered.

The Standing Committee amendment, AM0856, printed separately and referred to on page 985, was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 454. Title read. Considered.

Pending.

SELECT COMMITTEE REPORTS
Enrollment and Review

LEGISLATIVE BILL 735. Placed on Select File as amended.

(E & R amendment, AM7102, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 735A. Placed on Select File.

LEGISLATIVE BILL 255. Placed on Select File.

LEGISLATIVE BILL 743. Placed on Select File as amended.

E & R amendment to LB 743:

AM7101

- 1 1. On page 1, lines 1 and 5, strike "section" and insert
- 2 "sections"; and in line 2 before "75-156" insert "75-109.01,

3 75-132.01, 75-134, and".

LEGISLATIVE BILL 367. Placed on Select File as amended.

E & R amendment to LB 367:

AM7103

1 1. On page 1, strike beginning with "the" in line 1
2 through line 4 and insert "government; to amend section 81-15,121,
3 Reissue Revised Statutes of Nebraska, and section 9-812, Revised
4 Statutes Supplement, 2002; to change the allocation of lottery
5 proceeds under the State Lottery Act; to eliminate obsolete
6 provisions; to provide for a transfer of funds from the Underground
7 Storage Tank Fund; to provide an operative date; and to repeal the
8 original sections."

(Signed) Ray Mossey, Chairperson

VISITORS

Visitors to the Chamber were 10 twelfth-grade students and teacher from Sterling; 18 fourth-grade students and teacher from Watson Elementary School, Hastings; Steve Brock from Omaha; 27 fourth-grade students and teacher from Wildwood Elementary School, Ralston; and 37 fourth-grade students and teachers from Westside Elementary School, Norfolk.

RECESS

At 12:00 p.m., on a motion by Senator Preister, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

ROLL CALL

The roll was called and all members were present except Senator Bourne who was excused; and Senators Bromm, Engel, Landis, and Louden who were excused until they arrive.

GENERAL FILE

LEGISLATIVE BILL 454. Considered.

Senator Beutler offered the following amendment:

FA1304

On page 2, line 12 before the second court add "district"

On page 2, line 12 strike "is" and substitute "shall be"

On page 2, line 13 strike "any"

On page 2, line 13 after "rules" add "which shall be"

Strike Section 3.

SPEAKER BROMM PRESIDING

Senator Chambers offered the following amendment to the Beutler pending amendment:

FA1306

Amend FA1304

Add: On page 2 in line 14 put a period after "program" and in line 15 strike "within the court system.", and in lines 16 and 17 strike "of criminal behavior"

Senators Brashear and Vrtiska asked unanimous consent to be excused until they return. No objections. So ordered.

SENATOR CUDABACK PRESIDING

The Chambers amendment was adopted with 28 ayes, 0 nays, 15 present and not voting, and 6 excused and not voting.

Senators Combs, Friend, and Price asked unanimous consent to be excused until they return. No objections. So ordered.

Senator Chambers offered the following amendment to the Beutler pending amendment:

FA1307

Amend FA1304

On page 2 in line 6 strike "of criminal behavior"; and in line 9 strike "certain" and insert "drug" and strike "component of the" and insert "to."

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

The Beutler amendment, FA1304, as amended, was adopted with 30 ayes, 0 nays, 10 present and not voting, and 9 excused and not voting.

Senator Hartnett offered the following amendment:

FA1308

- 1 1. Strike sections 2 to 7 and insert the following
- 2 section:
- 3 "Sec. 2. Drug court programs shall be subject to rules
- 4 which shall be promulgated by the Supreme Court for procedures to
- 5 be implemented in the administration of such programs.

Pending.

AMENDMENTS - Print in Journal

Senator Brashear filed the following amendment to LB 46A:
AM1303

(Amendments to Final Reading copy)

- 1 1. Insert the following new sections:
- 2 "Sec. 7. There is hereby appropriated (1) \$9,000 from
- 3 the General Fund for FY2003-04 and (2) \$9,000 from the General Fund
- 4 for FY2004-05 to the Supreme Court, for Program 67, to aid in
- 5 carrying out the provisions of Legislative Bill 46, Ninety-eighth
- 6 Legislature, First Session, 2003.
- 7 Sec. 8. There is hereby appropriated (1) \$9,000 from the
- 8 General Fund for FY2003-04 and (2) \$9,000 from the General Fund for
- 9 FY2004-05 to the Department of Correctional Services, for Program
- 10 200, to aid in carrying out the provisions of Legislative Bill 46,
- 11 Ninety-eighth Legislature, First Session, 2003."
- 12 2. Renumber the remaining section accordingly.

Senator Foley filed the following amendment to LB 454:
FA1305

Strike lines 5 and 6 of page 3.

NOTICE OF COMMITTEE HEARING
Transportation and Telecommunications
Room 1113

Tuesday, April 29, 2003

1:00 p.m.

Edward R. Wootton Sr. - Board of Public Roads Classifications and Standards

(Signed) Tom Baker, Chairperson

UNANIMOUS CONSENT - Add Cointroducers

Senator Preister asked unanimous consent to have his name added as cointroducer to LB 743. No objections. So ordered.

Senator Mossey asked unanimous consent to have his name added as cointroducer to LB 232. No objections. So ordered.

VISITORS

Visitors to the Chamber were 32 fourth-grade students and teacher from Grant Elementary School, Norfolk; 45 fourth-grade students and teachers from Hitchcock Elementary School, Omaha; 27 fourth-grade students and teachers from Lincoln Elementary School, Norfolk; Mariam Gbedava from the Republic of Georgia; and 5 kindergarten through eighth-grade students and teacher from Strang.

ADJOURNMENT

At 4:06 p.m., on a motion by Senator Wehrbein, the Legislature adjourned until 9:00 a.m., Tuesday, April 15, 2003.

Patrick J. O'Donnell
Clerk of the Legislature