

THIRTY-FOURTH DAY - FEBRUARY 26, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION****THIRTY-FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, February 26, 2009

PRAYER

The prayer was offered by Dr. Dan Flanagan, St. Paul's United Methodist Church, Papillion.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senator Council who was excused; and Senators Friend and Lautenbaugh who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-third day was approved.

ANNOUNCEMENT

Senator Rogert designates LB260 as his priority bill.

RESOLUTIONS

LEGISLATIVE RESOLUTION 37. Introduced by Fischer, 43.

WHEREAS, Caleb Hoyt of Ainsworth High School won the 2009 Class C State Wrestling Championship in the 135-pound division; and

WHEREAS, Caleb Hoyt is a four-time state qualifier in wrestling and holds a 3.0 cumulative GPA; and

WHEREAS, Caleb Hoyt finished with a career record of 125-29, ranking fourth all-time in career victories at Ainsworth High School; and

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

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

1. That the Legislature congratulates Caleb Hoyt on his state championship in wrestling and his career achievements.
2. That a copy of this resolution be sent to Caleb Hoyt.

Laid over.

LEGISLATIVE RESOLUTION 38. Introduced by Harms, 48.

WHEREAS, Lane Matthew Laucomer, of Troop 13, Scottsbluff, Nebraska, has completed the requirements for the rank of Eagle Scout in the Boy Scouts of America; and

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

WHEREAS, to achieve the rank of Eagle Scout, a Boy Scout is required to earn 21 merit badges, 12 of which are in required areas, and complete a community service project approved by the troop and the scout council. Lane earned 24 merit badges and served his troop in a variety of leadership roles. For his Eagle Scout community service project, Lane remodeled a Sunday school classroom, painted a shed, and completed landscaping at Bethel Baptist Church in Scottsbluff; and

WHEREAS, only a small percentage of the boys who join the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, on March 21, 2009, Lane will receive the rank of Eagle Scout and, through his hard work and perseverance, will join other high achievers who are Eagle Scouts, such as astronauts, political and industry leaders, artists, scientists, and athletes.

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

1. That the Legislature congratulates Lane Matthew Laucomer on achieving the rank of Eagle Scout.
2. That a copy of this resolution be sent to Lane Matthew Laucomer.

Laid over.

ANNOUNCEMENT

Pursuant to Rule 8, Sec. 3, the Appropriations Committee presented its preliminary report on February 26, 2009, summarizing the recommended appropriations for the following biennium.

BILL ON FIRST READING

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

LEGISLATIVE BILL 680. Introduced by Appropriations Committee: Heidemann, 1, Chairperson; Fulton, 29; Hansen, 42; Harms, 48; Mello, 5; Nantkes, 46; Nelson, 6; Nordquist, 7; Wightman, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to carry out the federal American Recovery and Reinvestment Act of 2009; to provide an operative date; and to declare an emergency.

GENERAL FILE

LEGISLATIVE BILL 168. Title read. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 207. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 16 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 177. Title read. Considered.

SENATOR ROBERT PRESIDING

Committee AM123, found on page 367, was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 7 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 377. Title read. Considered.

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

LEGISLATIVE BILL 219. Title read. Considered.

Advanced to Enrollment and Review Initial with 31 ayes, 1 nay, 15 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 219A. Title read. Considered.

Senator Flood renewed his amendment, AM369, found on page 484.

The Flood amendment was adopted with 30 ayes, 0 nays, 17 present and not

voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 110. Title read. Considered.

SENATOR STUTHMAN PRESIDING

Committee AM181, found on page 367, was considered.

Pending.

NOTICE OF COMMITTEE HEARINGS
Health and Human Services

Room 1510

Thursday, March 5, 2009 1:00 p.m.

Rebecca Morris - Stem Cell Research Advisory Committee
Dennis R. Roop - Stem Cell Research Advisory Committee

LB406
LB457
LB481

(Signed) Tim Gay, Chairperson

Judiciary

Room 1113

Thursday, March 5, 2009 2:00 p.m.

LB594
LB675
LB676
LR26

(Signed) Brad Ashford, Chairperson

Business and Labor

Room 2102

Monday, March 9, 2009 1:30 p.m.

LB557
LB267

(Signed) Steve Lathrop, Chairperson

COMMITTEE REPORT

Judiciary

LEGISLATIVE BILL 260. Placed on General File with amendment.
AM456

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

3 Section 1. Sections 1 to 12 of this act shall be known
4 and may be cited as the Nebraska Claims for Wrongful Conviction and
5 Imprisonment Act.

6 Sec. 2. The Legislature finds that innocent persons who
7 have been wrongfully convicted of crimes and subsequently imprisoned
8 have been uniquely victimized, have distinct problems reentering
9 society, and have difficulty achieving legal redress due to a
10 variety of substantive and technical obstacles in the law. The
11 Legislature also finds that such persons should have an available
12 avenue of redress. In light of the particular and substantial
13 horror of being imprisoned for a crime one did not commit,
14 the Legislature intends by enactment of the Nebraska Claims for
15 Wrongful Conviction and Imprisonment Act that persons who can
16 demonstrate that they were wrongfully convicted shall immediately
17 receive services upon release as provided in section 6 of this
18 act and persons who can meet the higher standard of proving their
19 actual innocence shall be able to receive monetary compensation.

20 Sec. 3. In order to present an actionable claim for
21 wrongful conviction and imprisonment, a claimant must verify the
22 claim and establish by documentary evidence that:

23 (1) He or she has been convicted of one or more felony
1 crimes and subsequently sentenced to a term of imprisonment for
2 such felony crime or crimes and has served all or any part of the
3 sentence;

4 (2) Due to exoneration based upon actual innocence;

5 (a) He or she was pardoned for the crime or crimes for
6 which he or she was sentenced on grounds which are the basis for
7 the complaint;

8 (b) The statute on which the information or indictment
9 was based violated the United States Constitution or the
10 Constitution of Nebraska;

11 (c) The judgment of conviction was vacated; or

12 (d) The judgment of conviction was reversed;

13 (3) If there was a vacatur or reversal, either the
14 information or indictment was dismissed or, if a new trial was
15 held, the defendant was found not guilty;

16 (4) His or her claim is not time-barred by section 9 of
17 this act; and

18 (5) He or she is or was not concurrently imprisoned for
19 any felony crime or crimes for which a valid judgment of conviction

20 exists or existed.

21 Sec. 4. All claims seeking recovery under the Nebraska
22 Claims for Wrongful Conviction and Imprisonment Act from the state
23 shall be filed with the State Claims Board in the manner provided
24 in the State Tort Claims Act. All claims seeking recovery under the
25 Nebraska Claims for Wrongful Conviction and Imprisonment Act from a
26 political subdivision shall be filed in the manner provided in the
27 Political Subdivisions Tort Claims Act.

1 Sec. 5. To obtain a judgment in his or her favor, a
2 claimant must prove by clear and convincing evidence:

3 (1) The elements required under section 3 of this act;

4 (2) That he or she did not commit any of the crimes
5 charged in the information or indictment; and

6 (3) That he or she did not commit or suborn perjury,
7 fabricate evidence, or otherwise make a false statement to cause
8 or bring about his or her conviction or the conviction of another.
9 However, neither a confession or admission, coerced by a wrongful
10 act by an employee of the state or a political subdivision,
11 and later found to be false, nor a guilty plea to a crime the
12 claimant did not commit, constitutes bringing about his or her own
13 conviction under the Nebraska Claims for Wrongful Conviction and
14 Imprisonment Act.

15 Sec. 6. If the State Claims Board or a court finds that
16 the claimant was wrongfully convicted and incarcerated pursuant to
17 section 3 of this act, the court may award:

18 (1) Damages for the physical injury of wrongful
19 conviction and incarceration which shall be not less than
20 twenty-five thousand dollars for each year of incarceration, with
21 an additional twenty-five thousand dollars for each year served on
22 death row. This amount shall reflect:

23 (a) An adjustment for inflation from the date of
24 enactment by the method provided in section 151 of the Internal
25 Revenue Code of 1986, as amended, and partial years the claimant
26 served; and

27 (b) Consideration of:

1 (i) Economic damages, including, but not limited to:

2 (A) Lost wages;

3 (B) Costs associated with his or her criminal defense and
4 efforts to prove innocence; and

5 (C) Medical and dental expenses incurred or expected to
6 be incurred after release;

7 (ii) Noneconomic damages for:

8 (A) Personal physical injuries or physical sickness; and

9 (B) Any nonphysical injuries or sickness incurred during
10 or as a result of incarceration;

11 (2) Up to five years of physical and mental health care
12 through the state employees group health insurance program, to
13 be offset by any amount provided through the claimant's employer
14 during that time period;

15 (3) Reimbursement for any tuition and fees paid for
16 the education of the claimant at any community college in this
17 state, any state college in this state, or the University of
18 Nebraska, including any necessary assistance to meet the criteria
19 required therefor, or a mutually agreed upon vocational program,
20 and employment skills development training;

21 (4) Compensation for child support payments owed by the
22 claimant that became due and interest on child support arrearages
23 that accrued during the time served in prison but were not paid;

24 (5) Compensation for any reasonable costs incurred by
25 the claimant for immediate services secured upon exoneration
26 and release, including housing, transportation and subsistence,
27 reintegrative services, and mental and physical health care costs
1 incurred by the claimant for the time period between his or her
2 release from wrongful incarceration and the date of his or her
3 award; and

4 (6) Reasonable attorney's fees for bringing a claim under
5 the Nebraska Claims for Wrongful Conviction and Incarceration Act,
6 calculated at ten percent of the damage award plus expenses.
7 Reasonable attorney's fees, exclusive of expenses, shall not exceed
8 seventy-five thousand dollars. Such fees shall not be deducted from
9 the compensation due the claimant, and the claimant's counsel is
10 not entitled to receive additional fees from the claimant.

11 Sec. 7. (1) The damage award under section 6 of this act
12 shall not be subject to:

13 (a) Any state taxes, except for those portions of the
14 judgment awarded as attorney's fees for bringing a claim under the
15 Nebraska Claims for Wrongful Conviction and Imprisonment Act; or

16 (b) Treatment as gross income to a claimant under the
17 Nebraska Revenue Act of 1967.

18 (2) The damage award shall not be offset by any expenses
19 incurred by the state or any political subdivision, including, but
20 not limited to:

21 (a) Expenses incurred:

22 (i) To secure the claimant's custody; or

23 (ii) To feed, clothe, or provide medical services for the
24 claimant; or

25 (b) The value of any services or reduction in fees for
26 service, or the value thereof, to be provided to the claimant that
27 may be awarded to the claimant pursuant to the act.

1 (3) If the court finds that any property of the claimant
2 was subjected to a lien pursuant to defense services rendered by
3 the state to defend the client in connection with the criminal case
4 that resulted in his or her wrongful conviction, the court shall
5 extinguish the lien.

6 Sec. 8. (1) The Board of Pardons, upon the issuance of
7 a full pardon on or after the effective date of this act, shall
8 provide a copy of the Nebraska Claims for Wrongful Conviction and
9 Imprisonment Act at the time the pardon is issued to the individual

10 pardoned. The individual shall acknowledge, in writing, his or
11 her receipt of a copy of the act on a form established by the
12 board, which acknowledgement shall be retained on file by the board
13 as part of its official records and shall be admissible in any
14 proceeding filed by a claimant under the act.

15 (2) In the event a claimant granted a full pardon on
16 or after the effective date of this act shows he or she did not
17 receive a copy of the information required by this section, he or
18 she shall receive a one-year extension on the three-year statute of
19 limitations provided in section 9 of this act.

20 Sec. 9. A claim for compensation brought under the
21 Nebraska Claims for Wrongful Conviction and Imprisonment Act shall
22 be filed within two years after either the grant of a pardon or the
23 grant of judicial relief. Any action by the state challenging or
24 appealing the grant of such judicial relief shall toll the two-year
25 period. Persons convicted, incarcerated, and released from custody
26 prior to the effective date of this act shall file a claim under
27 the act within three years after the effective date of this act.

1 Sec. 10. Either party to an action for compensation
2 brought under the Nebraska Claims for Wrongful Conviction and
3 Imprisonment Act is entitled to the rights of appeal afforded
4 parties in a civil action.

5 Sec. 11. (1) Any person convicted and subsequently
6 imprisoned for one or more crimes who, on the grounds of actual
7 innocence, is either pardoned or whose conviction is reversed or
8 vacated on the basis of newly discovered evidence, and either
9 the charges are dismissed or he or she is subsequently retried
10 and acquitted, shall receive up to two years of immediate
11 services needed upon release, including, but not limited to:
12 Housing; secondary or postsecondary education; vocational training;
13 transportation; subsistence monetary assistance; reintegrative
14 services; and mental, physical, and dental health care. The need
15 for these services shall be determined through a review by the
16 Department of Health and Human Services and provided by the
17 appropriate state entities or political subdivisions.

18 (2) When a conviction is vacated, a judge may order that
19 services similar to those in this section be provided.

20 Sec. 12. (1) Upon obtaining a postconviction exoneration
21 for actual innocence through either a pardon based on innocence
22 from an erroneous felony conviction or a judicial order vacating or
23 reversing an erroneous felony conviction, a person may petition the
24 district court in which the erroneous felony conviction occurred
25 for an order to expunge all records of the erroneous felony
26 conviction. The petition shall be accompanied by a certified
27 copy of the pardon or judicial order vacating or reversing the
1 erroneous felony conviction. The petitioner shall serve a copy of
2 the petition on the county attorney of the county in which the
3 erroneous felony conviction occurred. If the county attorney files
4 no objection to the petition, the court may grant the petition.

5 (2) If the county attorney files an objection to the
 6 petitioner's request for expunging the criminal record of the
 7 erroneous felony conviction, the court shall conduct a hearing on
 8 the matter.

9 (3) If a court determines that the petition is warranted
 10 and orders the expunction of all records pertaining to the
 11 petitioner's erroneous felony conviction, a law enforcement agency
 12 may gain access to such person's expunged records only with a court
 13 order upon good cause showing that access to the expunged records
 14 is required for the performance of official law enforcement duties.

15 (4) If a court determines that the petition is warranted
 16 and orders the expunction of all records pertaining to the
 17 petitioner's erroneous felony conviction, the court shall notify
 18 the Nebraska State Patrol and any other law enforcement agency to
 19 expunge all records pertaining to the petitioner's erroneous felony
 20 conviction.

21 (5) The Nebraska State Patrol, any other law enforcement
 22 agency involved, and the court shall provide written notice of the
 23 expunction by certified mail to the petitioner.

24 (6) A person who obtains a court order to expunge all
 25 records pertaining to such person's erroneous felony conviction may
 26 lawfully answer and swear under oath that an arrest, prosecution,
 27 or conviction pertaining to the erroneous conviction never
 1 occurred.

2 (7) Any party may appeal a final order granting or
 3 denying the expunction of records pertaining to the erroneous
 4 felony conviction.

(Signed) Brad Ashford, Chairperson

GENERAL FILE

LEGISLATIVE BILL 110. Senator Nordquist offered the following amendment to the committee amendment:

AM276

1 1. Insert the following new section:

2 Sec. 14. Section 85-1920, Reissue Revised Statutes of
 3 Nebraska, is amended to read:

4 85-1920 The Nebraska Scholarship Fund is created. Money
 5 in the fund shall include amounts credited pursuant to section
 6 3 of this act and amounts transferred from the State Lottery
 7 Operation Trust Fund pursuant to section 9-812. For fiscal years
 8 2003-04 and 2004-05, two million dollars shall be used to carry
 9 out the Nebraska Scholarship Act, and the remainder accruing to
 10 the Nebraska Scholarship Fund shall be transferred to the General
 11 Fund. For fiscal year 2005-06, two million five hundred thousand
 12 dollars shall be used to carry out the Nebraska Scholarship Act,
 13 and the remainder accruing to the Nebraska Scholarship Fund shall
 14 be transferred to the General Fund. For fiscal year 2006-07

15 and each fiscal year thereafter, all amounts accruing to the
 16 Nebraska Scholarship Fund shall be used to carry out the Nebraska
 17 Scholarship Act. Any money in the fund available for investment
 18 shall be invested by the state investment officer pursuant to
 19 the Nebraska Capital Expansion Act and the Nebraska State Funds
 20 Investment Act.

21 2. On page 5, line 9, after "Fund" insert "except that
 22 if specialty license plates are designed pursuant to section 4
 23 of this act for a private, nonprofit college or university or a
 1 state college, the State Treasurer shall credit forty-three percent
 2 of the fee for initial issuance and renewal of such specialty
 3 license plates to the Department of Motor Vehicles Cash Fund and
 4 fifty-seven percent of the fee to the Nebraska Scholarship Fund".

5 3. Renumber the remaining sections and correct the
 6 repealer section accordingly.

The Nordquist amendment lost with 10 ayes, 23 nays, 14 present and not voting, and 2 excused and not voting.

Committee AM181, found on page 367 and considered in this day's Journal, was renewed.

The committee amendment was adopted with 36 ayes, 0 nays, 11 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 30 ayes, 4 nays, 13 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 110A. Title read. Considered.

Advanced to Enrollment and Review Initial with 28 ayes, 0 nays, 19 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 261. Title read. Considered.

Committee AM182, found on page 367, was considered.

Senator Fischer offered the following amendment to the committee amendment:

AM323

(Amendments to Standing Committee amendments, AM182)

1 1. On page 1, line 21, after "issued" insert "or a
 2 contract".

Pending.

COMMITTEE REPORTS
Health and Human Services

LEGISLATIVE BILL 458. Placed on General File.

LEGISLATIVE BILL 172. Placed on General File with amendment.
AM333

- 1 1. On page 4, strike lines 2 through 4 and insert
- 2 "consist of all recoveries for the state's costs and attorney's
- 3 fees received pursuant to subdivision (2)(b) of section 68-940 and
- 4 sections 68-936 and 68-939, except".

(Signed) Tim Gay, Chairperson

MOTIONS - Print in Journal

Senator Gay filed the following motion to LB668:
MO17
Withdraw bill.

Senator Langemeier filed the following motion to LB184:
MO18
Recommit to Natural Resources Committee.

AMENDMENTS - Print in Journal

Senator Nelson filed the following amendment to LB432:
AM501

- 1 1. On page 3, strike lines 9 through 16, show the
- 2 old matter as stricken, and insert "A professional finders' fee
- 3 shall be limited to ten percent of the total amount of the
- 4 property presumed abandoned. To claim any such fee, the finder
- 5 shall disclose to the owner the nature, location, and value of the
- 6 property, notice of when such property was reported to the State
- 7 Treasurer, and notice that the property may be claimed by the owner
- 8 from the State Treasurer free of charge. If the property has not
- 9 yet been abandoned, the finder shall disclose to the owner the
- 10 nature, location, and value of the property, notice of when such
- 11 property will be reported to the State Treasurer, if known, and
- 12 notice that the property may be claimed by the owner from the State
- 13 Treasurer free of charge.".

Senator Avery filed the following amendment to LB167:
AM489

- 1 1. On page 2, line 4, after the period insert "Any such
- 2 program shall be made available to all state employees.".

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

LB/LR **Committee**
LB680 Appropriations

(Signed) John Wightman, Chairperson
Executive Board

UNANIMOUS CONSENT - Add Cointroducers

Senator Hansen asked unanimous consent to add his name as cointroducer to LB153. No objections. So ordered.

Senator McGill asked unanimous consent to add her name as cointroducer to LB356. No objections. So ordered.

Senator McCoy asked unanimous consent to add his name as cointroducer to LB507. No objections. So ordered.

WITHDRAW - Cointroducer

Senator Fischer withdrew her name as cointroducer to LB184.

VISITORS

Visitors to the Chamber were 41 fourth-grade students, teachers, and sponsors from Eagle.

The Doctor of the Day was Dr. Richard Gustafson from Lincoln.

ADJOURNMENT

At 11:59 a.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Friday, February 27, 2009.

Patrick J. O'Donnell
Clerk of the Legislature