

THIRTY-SIXTH DAY - MARCH 2, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION****THIRTY-SIXTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, March 2, 2009

PRAYER

The prayer was offered by Pastor Darin Corder, Bennet Community Church, Bennet.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Pirsch presiding.

The roll was called and all members were present except Senators Nordquist and Schilz who were excused; and Senators Adams, Dierks, and Heidemann who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-fifth day was approved.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 110. Placed on Select File with amendment.
ER8025

- 1 1. In the Standing Committee amendments, AM181, on page
- 2 6, line 6, strike "plate" and insert "plates".
- 3 2. On page 1, line 3, after "60-3,128," insert
- 4 "60-3,129,"; strike beginning with "to" in line 6 through the first
- 5 semicolon in line 7; in line 8 after the last semicolon insert
- 6 "and"; and strike beginning with the semicolon in line 9 through
- 7 "2008" in line 11.

LEGISLATIVE BILL 110A. Placed on Select File.

(Signed) Jeremy Nordquist, Chairperson

COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 121. Placed on General File with amendment.
AM530

1 1. Insert the following new section:

2 Section 1. Section 13-519, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:
4 13-519 (1)(a) Subject to subdivisions (1)(b) and (c) of
5 this section, for all fiscal years beginning on or after July
6 1, 1998, no governmental unit shall adopt a budget containing
7 a total of budgeted restricted funds more than the last prior
8 year's total of budgeted restricted funds plus allowable growth
9 plus the basic allowable growth percentage of the base limitation
10 established under section 77-3446. For the second fiscal year in
11 which a county will receive a full year of receipts from the
12 tax imposed in sections 77-27,223 to 77-27,227, the prior year's
13 total of restricted funds shall be the prior year's total of
14 restricted funds plus the total receipts from the tax imposed in
15 sections 77-27,223 to 77-27,227 in the prior year. For fiscal years
16 2010-11, 2011-12, and 2012-13 in which a county will reassume the
17 assessment function pursuant to section 77-1340 or section 8 of
18 this act, the prior year's total of restricted funds shall be the
19 prior year's total of restricted funds plus the total budgeted
20 for the reassumption of the assessment function. If a governmental
21 unit transfers the financial responsibility of providing a service
22 financed in whole or in part with restricted funds to another
23 governmental unit or the state, the amount of restricted funds
1 associated with providing the service shall be subtracted from
2 the last prior year's total of budgeted restricted funds for the
3 previous provider and may be added to the last prior year's total
4 of restricted funds for the new provider. For governmental units
5 that have consolidated, the calculations made under this section
6 for consolidating units shall be made based on the combined total
7 of restricted funds, population, or full-time equivalent students
8 of each governmental unit.

9 (b) For all fiscal years beginning on or after July 1,
10 2005, the last prior year's total of budgeted restricted funds
11 shall be increased for a community college area by adding to such
12 area's fiscal year base-year revenue the amount of revenue to be
13 collected under subdivision (2)(c) of section 85-1517 that is in
14 excess of the amount budgeted under this subdivision in the prior
15 fiscal year.

16 (c) For all fiscal years beginning on or after July
17 1, 2008, educational service units may exceed the limitations
18 of subdivision (1)(a) of this section to the extent that one
19 hundred ten percent of the needs for the educational service unit
20 calculated pursuant to section 79-1241.03 exceeds the budgeted
21 restricted funds allowed pursuant to subdivision (1)(a) of this

22 section.

23 (2) A governmental unit may exceed the limit provided in
24 subdivisions (1)(a) and (b) of this section for a fiscal year by up
25 to an additional one percent upon the affirmative vote of at least
26 seventy-five percent of the governing body.

27 (3) A governmental unit may exceed the applicable
1 allowable growth percentage otherwise prescribed in this section
2 by an amount approved by a majority of legal voters voting on
3 the issue at a special election called for such purpose upon the
4 recommendation of the governing body or upon the receipt by the
5 county clerk or election commissioner of a petition requesting an
6 election signed by at least five percent of the legal voters of
7 the governmental unit. The recommendation of the governing body
8 or the petition of the legal voters shall include the amount
9 and percentage by which the governing body would increase its
10 budgeted restricted funds for the ensuing year over and above
11 the current year's budgeted restricted funds. The county clerk or
12 election commissioner shall call for a special election on the
13 issue within fifteen days after the receipt of such governing body
14 recommendation or legal voter petition. The election shall be held
15 pursuant to the Election Act, and all costs shall be paid by the
16 governing body. The issue may be approved on the same question as a
17 vote to exceed the levy limits provided in section 77-3444.

18 (4) In lieu of the election procedures in subsection (3)
19 of this section, any governmental unit may exceed the allowable
20 growth percentage otherwise prescribed in this section by an amount
21 approved by a majority of legal voters voting at a meeting of
22 the residents of the governmental unit, called after notice is
23 published in a newspaper of general circulation in the governmental
24 unit at least twenty days prior to the meeting. At least ten
25 percent of the registered voters residing in the governmental unit
26 shall constitute a quorum for purposes of taking action to exceed
27 the allowable growth percentage. If a majority of the registered
1 voters present at the meeting vote in favor of exceeding the
2 allowable growth percentage, a copy of the record of that action
3 shall be forwarded to the Auditor of Public Accounts along with
4 the budget documents. The issue to exceed the allowable growth
5 percentage may be approved at the same meeting as a vote to exceed
6 the limits or final levy allocation provided in section 77-3444.

7 2. On page 25, line 11, strike "2, 3, 4, 12, and 14" and
8 insert "3, 4, 5, 13, and 15"; in line 18 after "sections" insert
9 "13-519,".

10 3. Renumber the remaining sections and correct internal
11 references accordingly.

(Signed) Abbie Cornett, Chairperson

Education

LEGISLATIVE BILL 206. Placed on General File with amendment.
AM512

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

3 Section 1. Sections 1 to 6 of this act shall be known and
4 may be cited as the In the Line of Duty Dependent Education Act.

5 Sec. 2. The Legislature finds and declares that:

6 (1) Nebraska's law enforcement officers and firefighters
7 place their lives at risk in the line of duty to protect the
8 citizens and property of this state;

9 (2) The services performed by Nebraska law enforcement
10 officers and firefighters are necessary for the protection of the
11 citizens and property of this state;

12 (3) Nebraska law enforcement officers and firefighters
13 have lost or may lose their lives in the performance of their
14 official duties; and

15 (4) Nebraska law enforcement officers and firefighters
16 perform dangerous and hazardous acts in order to protect the
17 citizens and property of this state.

18 It is the intent of the Legislature to recognize the
19 ultimate sacrifice made by Nebraska law enforcement officers and
20 firefighters who are killed in the line of duty on or after the
21 effective date of this act by providing a postsecondary educational
22 benefit for their surviving children to attend state universities,
23 state colleges, and community colleges located in Nebraska.

1 Sec. 3. For purposes of the In the Line of Duty Dependent
2 Education Act:

3 (1) Associate degree program means a degree program at
4 a community college, state college, or state university which
5 typically requires completion of an organized program of study of
6 at least sixty semester credit hours or an equivalent that can be
7 shown to accomplish the same goal. Associate degree program does
8 not include a baccalaureate degree program;

9 (2) Baccalaureate degree program means a degree program
10 at a community college, state college, or state university which
11 typically requires completion of an organized program of study of
12 at least one hundred twenty semester credit hours or an equivalent
13 that can be shown to accomplish the same goal;

14 (3) Child means a resident or nonresident of Nebraska who
15 is the child by birth or adoption of a Nebraska law enforcement
16 officer killed in the line of duty or a Nebraska firefighter killed
17 in the line of duty;

18 (4) Community college means a public postsecondary
19 educational institution which is part of the community college
20 system and includes all branches and campuses of such institution
21 located within the State of Nebraska;

22 (5) Education benefit means the In the Line of Duty

23 Dependent Education Benefit established under section 4 of this
24 act;

25 (6) Fatal injury means an event occurring in the line of
26 duty which is a proximate cause in the death of a law enforcement
27 officer or firefighter;

1 (7) Firefighter means a member of a paid or volunteer
2 fire department in Nebraska, including a member of a rescue squad
3 associated with a paid or volunteer fire department in Nebraska,
4 and a member of an emergency medical services ambulance squad;

5 (8) Law enforcement officer means any person who is
6 responsible for the prevention or detection of crime or the
7 enforcement of the penal, traffic, or highway laws of the State of
8 Nebraska or any political subdivision of the state for more than
9 one hundred hours per year and who is authorized by law to make
10 arrests;

11 (9) Line of duty means any action that a Nebraska law
12 enforcement officer or firefighter is authorized or obligated by
13 law, rule, or regulation to perform, related to or as a condition
14 of employment or service;

15 (10) State college means a public postsecondary
16 educational institution which is part of the Nebraska state college
17 system and includes all branches and campuses of such institution
18 located within the State of Nebraska;

19 (11) State university means a public postsecondary
20 educational institution which is part of the University of Nebraska
21 and includes all branches and campuses of such institution located
22 within the State of Nebraska;

23 (12) Tuition and fees means the charges and cost of
24 tuition and fees as set by the governing body of a state
25 university, state college, or community college; and

26 (13) Volunteer fire department means a volunteer
27 department as defined in section 35-1303 located in Nebraska which
1 provides fire protection services within Nebraska.

2 Sec. 4. (1) The In the Line of Duty Dependent Education
3 Benefit is established for children of law enforcement officers
4 and firefighters killed in the line of duty. In order for a child
5 to be eligible for the benefit, the law enforcement officer or
6 firefighter must have incurred the fatal injury on or after the
7 effective date of this act.

8 (2) Notwithstanding the provisions of this section, a
9 death that occurs as the direct and proximate result of a
10 preexisting physical condition, disease, or illness shall be
11 excluded from eligibility under this section unless the aggravation
12 of such condition, disease, or illness caused by being in the line
13 of duty was a direct and proximate cause of death.

14 (3) Any child who is the child of a law enforcement
15 officer killed in the line of duty as provided in subsection (1)
16 of this section or of a firefighter killed in the line of duty
17 as provided in such subsection shall be eligible for the education

18 benefit if the child is twenty-five years of age or younger. An
19 eligible child shall meet all admission requirements of the state
20 university, state college, or community college to which he or she
21 is applying.

22 (4) The education benefit shall be provided only for
23 full-time undergraduate students who are pursuing studies leading
24 to a degree from an associate degree program or a baccalaureate
25 degree program. The eligible child may receive the education
26 benefit for up to five years if he or she otherwise continues to be
27 eligible for participation. All education benefits received under
1 the In the Line of Duty Dependent Education Act shall cease when
2 the eligible child reaches twenty-six years of age.

3 (5) A child becomes eligible for the education benefit
4 after he or she has applied for federal financial aid grants and
5 state scholarships and grants to cover tuition and fees. The child
6 must provide a record of application for such financial aid to the
7 state university, state college, or community college to which he
8 or she is applying.

9 (6) The state university, state college, or community
10 college shall waive tuition and fees remaining due after
11 subtracting awarded federal financial aid grants and state
12 scholarships and grants for an eligible child during the time the
13 child is enrolled as a full-time student. To remain eligible,
14 the child must comply with all requirements of the institution
15 for continued attendance and award of an associate degree or a
16 baccalaureate degree.

17 (7) An application for an education benefit shall include
18 a certified copy of the eligible child's birth certificate or
19 applicable adoption record and verification of the death of the law
20 enforcement officer or firefighter who was the child's parent.

21 (8) Verification of the death of the law enforcement
22 officer or firefighter shall be made by obtaining a certificate
23 of eligibility from the following sources: (a) Certificates of
24 eligibility for the children of law enforcement officers shall
25 be obtained from the Superintendent of Law Enforcement and
26 Public Safety; (b) certificates of eligibility for the children
27 of firefighters, except as provided in subdivision (c) of this
1 subsection, shall be obtained from the State Fire Marshal; and (c)
2 certificates of eligibility for the children of emergency medical
3 services ambulance squads that are not associated with a paid or
4 volunteer fire department shall be obtained from the Department of
5 Health and Human Services.

6 (9) Within forty-five days after receipt of a completed
7 application, the state university, state college, or community
8 college shall send written notice of the applicant's eligibility or
9 ineligibility for the education benefit. If the child is determined
10 not to be eligible for the benefit, the notice shall include
11 the reason or reasons for such determination and an indication
12 that an appeal of the determination may be made pursuant to the

13 Administrative Procedure Act.

14 (10) Upon a determination of eligibility for the child to
 15 obtain the education benefit, the state university, state college,
 16 or community college is prohibited from charging the child, the
 17 child's surviving parent, or the child's guardian any tuition or
 18 fees as long as the child remains eligible.

19 Sec. 5. Each state university, state college, or
 20 community college shall adopt the procedures, rules, and
 21 regulations necessary to carry out the In the Line of Duty
 22 Dependent Education Act.

23 Sec. 6. A finding that a student qualifies for an
 24 education benefit pursuant to the In Line of Duty Dependent
 25 Education Act shall not be admissible as evidence for any other
 26 purpose.

27 Sec. 7. Since an emergency exists, this act takes effect
 1 when passed and approved according to law.

(Signed) Greg Adams, Chairperson

Judiciary

LEGISLATIVE BILL 356. Placed on General File with amendment.
 AM529

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

3 Section 1. It is the intent of the Legislature to
 4 appropriate from the General Fund fifteen million dollars for
 5 fiscal year 2009-10 and fifteen million dollars for fiscal year
 6 2010-11 to the Department of Health and Human Services - Behavioral
 7 Health, Program 38, Behavioral Health Aid, for behavioral health
 8 services for children under the Nebraska Behavioral Health
 9 Services Act. Such services shall include, but not be limited
 10 to, the expansion of the Professional Partners Program and
 11 services provided on a sliding-fee schedule basis. General Funds
 12 appropriated pursuant to this section shall be excluded from the
 13 calculation of county matching funds under subsection (3) of
 14 section 71-808, shall be allocated to the regional behavioral
 15 health authorities, and shall be distributed based on the 2008
 16 allocation formula.

17 Sec. 2. Section 71-804, Revised Statutes Cumulative
 18 Supplement, 2008, is amended to read:

19 71-804 For purposes of the Nebraska Behavioral Health
 20 Services Act:

21 (1) Behavioral health disorder means mental illness
 22 or alcoholism, drug abuse, problem gambling, or other addictive
 23 disorder;

1 (2) Behavioral health region means a behavioral health
 2 region established in section 71-807;

3 (3) Behavioral health services means services,

4 including, but not limited to, consumer-provided services, support
 5 services, inpatient and outpatient services, and residential and
 6 nonresidential services, provided for the prevention, diagnosis,
 7 and treatment of behavioral health disorders and the rehabilitation
 8 and recovery of persons with such disorders;

9 (4) Children means Nebraska residents under nineteen
 10 years of age;

11 ~~(4)-(5)~~ Community-based behavioral health services or
 12 community-based services means behavioral health services that are
 13 not provided at a regional center;

14 ~~(5)-(6)~~ Department means the Department of Health and
 15 Human Services;

16 ~~(6)-(7)~~ Director means the Director of Behavioral Health;

17 ~~(7)-(8)~~ Division means the Division of Behavioral Health
 18 of the department;

19 ~~(8)-(9)~~ Medical assistance program means the program
 20 established pursuant to the Medical Assistance Act;

21 ~~(9)-(10)~~ Public behavioral health system means the
 22 statewide array of behavioral health services for children
 23 and adults provided by the public sector or private sector
 24 and supported in whole or in part with funding received and
 25 administered by the department, including behavioral health
 26 services provided under the medical assistance program;

27 ~~(10)-(11)~~ Regional center means one of the state
 1 hospitals for the mentally ill designated in section 83-305;
 2 and

3 ~~(11)-(12)~~ Regional center behavioral health services or
 4 regional center services means behavioral health services provided
 5 at a regional center.

6 Sec. 3. Section 71-808, Revised Statutes Cumulative
 7 Supplement, 2008, is amended to read:

8 71-808 (1) A regional behavioral health authority shall
 9 be established in each behavioral health region by counties acting
 10 under provisions of the Interlocal Cooperation Act. Each regional
 11 behavioral health authority shall be governed by a regional
 12 governing board consisting of one county board member from each
 13 county in the region. Board members shall serve for staggered
 14 terms of three years and until their successors are appointed and
 15 qualified. Board members shall serve without compensation but shall
 16 be reimbursed for their actual and necessary expenses as provided
 17 in sections 81-1174 to 81-1177.

18 (2) The regional governing board shall appoint a regional
 19 administrator who shall be responsible for the administration
 20 and management of the regional behavioral health authority. Each
 21 regional behavioral health authority shall encourage and facilitate
 22 the involvement of consumers in all aspects of service planning
 23 and delivery within the region and shall coordinate such activities
 24 with the office of consumer affairs within the division. Each
 25 regional behavioral health authority shall establish and utilize

26 a regional advisory committee consisting of consumers, providers,
 27 and other interested parties and may establish and utilize such
 1 other task forces, subcommittees, or other committees as it deems
 2 necessary and appropriate to carry out its duties under this
 3 section.

4 (3) Each county in a behavioral health region shall
 5 provide funding for the operation of the behavioral health
 6 authority and for the provision of behavioral health services
 7 in the region. The total amount of funding provided by counties
 8 under this subsection shall be equal to one dollar for every three
 9 dollars from the General Fund. The division shall annually certify
 10 the total amount of county matching funds to be provided. At least
 11 forty percent of such amount shall consist of local and county
 12 tax revenue, and the remainder shall consist of other nonfederal
 13 sources. The regional governing board of each behavioral health
 14 authority, in consultation with all counties in the region, shall
 15 determine the amount of funding to be provided by each county
 16 under this subsection. Any General Funds transferred from regional
 17 centers for the provision of community-based behavioral health
 18 services after July 1, 2004, and funds appropriated pursuant to
 19 this legislative bill shall be excluded from any calculation of
 20 county matching funds under this subsection.

21 Sec. 4. Original sections 71-804 and 71-808, Revised
 22 Statutes Cumulative Supplement, 2008, are repealed.

(Signed) Brad Ashford, Chairperson

GENERAL FILE

LEGISLATIVE BILL 260. Title read. Considered.

Committee AM456, found on page 571, was considered.

Senator Rogert withdrew his amendment, AM524, found on page 606.

Senator Rogert offered the following amendment to the committee amendment:

AM545

1 1. Strike the original sections and all amendments
 2 thereto and insert the following new sections:
 3 Section 1. Sections 1 to 11 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 wrongly 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 have a claim
 17 against the state as provided in the act.

18 Sec. 3. In order to recover under the Nebraska Claims for
 19 Wrongful Conviction and Imprisonment Act, the claimant shall prove
 20 each of the following by a preponderance of the evidence:

21 (1) That he or she was convicted of one or more felony
 22 crimes and subsequently sentenced to a term of imprisonment for
 23 such felony crime or crimes and has served all or any part of the
 1 sentence;

2 (2) That the Board of Pardons has pardoned the claimant
 3 or that a court has vacated the conviction of the claimant based
 4 upon a finding that the claimant was innocent of the felony crimes
 5 for which he or she was convicted;

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 guilty plea, nor a confession or admission
 10 coerced by law enforcement and later found to be false, constitutes
 11 bringing about his or her own conviction; and

12 (4) Damages under section 4 of this act.

13 Sec. 4. (1) A claimant under the Nebraska Claims
 14 for Wrongful Conviction and Imprisonment Act shall recover the
 15 following damages found to directly result from the wrongful
 16 conviction:

17 (a) For a loss of the claimant's freedom an amount equal
 18 to twenty-five thousand dollars for each year of imprisonment or
 19 fifty thousand dollars for each year spent on death row;

20 (b) Physical and emotional pain and suffering experienced
 21 by the claimant to date and reasonably certain to be experienced in
 22 the future;

23 (c) Lost wages and lost earning capacity;

24 (d) Medical expenses incurred in the treatment of the
 25 claimant's injuries to date and reasonably certain to be incurred
 26 in the future;

27 (e) The reasonable costs of necessary vocational
 1 rehabilitation to restore the claimant's earning capacity to a
 2 level equivalent to his or her earning capacity immediately prior
 3 to the wrongful conviction; and

4 (f) Costs incurred with his or her criminal defense and
 5 expenses related to establishing the claimant's innocence.

6 (2) The following costs shall not offset damages:

7 (a) Costs of imprisonment; and

8 (b) Value of any care or education provided to the
 9 claimant while he or she is imprisoned.

10 (3) No damages shall be payable to the claimant for those

11 periods of time during which he or she was imprisoned for any
12 unrelated criminal offense.

13 Sec. 5. Upon successful presentation of a claim under the
14 Nebraska Claims for Wrongful Conviction and Imprisonment Act, the
15 claimant shall receive an award of reasonable attorney's fees to be
16 determined by the court.

17 Sec. 6. If the court finds that any property of the
18 claimant was subjected to a lien pursuant to defense services
19 rendered by the state to defend the client in connection with the
20 criminal case that resulted in his or her wrongful conviction, the
21 court shall extinguish the lien.

22 Sec. 7. The Board of Pardons, upon the issuance of a
23 full pardon on or after the effective date of this act, shall
24 provide a copy of the Nebraska Claims for Wrongful Conviction and
25 Imprisonment Act at the time the pardon is issued to the individual
26 pardoned. The individual shall acknowledge, in writing, his or
27 her receipt of a copy of the act on a form established by the
1 board, which acknowledgement shall be retained on file by the board
2 as part of its official records and shall be admissible in any
3 proceeding filed by a claimant under the act.

4 Sec. 8. (1) Upon obtaining a postconviction exoneration
5 for actual innocence through either a pardon based on innocence
6 from an erroneous felony conviction or a judicial order vacating or
7 reversing an erroneous felony conviction, a person may petition the
8 district court in which the erroneous felony conviction occurred
9 for an order to expunge all records of the erroneous felony
10 conviction. The petition shall be accompanied by a certified
11 copy of the pardon or judicial order vacating or reversing the
12 erroneous felony conviction. The petitioner shall serve a copy of
13 the petition on the county attorney of the county in which the
14 erroneous felony conviction occurred. If the county attorney files
15 no objection to the petition, the court may grant the petition.

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

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

26 (4) If a court determines that the petition is warranted
27 and orders the expunction of all records pertaining to the
1 petitioner's erroneous felony conviction, the court shall notify
2 the Nebraska State Patrol and any other law enforcement agency to
3 expunge all records pertaining to the petitioner's erroneous felony
4 conviction.

5 (5) The Nebraska State Patrol, any other law enforcement

6 agency involved, and the court shall provide written notice of the
7 expunction by certified mail to the petitioner.

8 (6) A person who obtains a court order to expunge all
9 records pertaining to such person's erroneous felony conviction may
10 lawfully answer and swear under oath that an arrest, prosecution,
11 or conviction pertaining to the erroneous conviction never
12 occurred.

13 (7) Any party may appeal a final order granting or
14 denying the expunction of records pertaining to the erroneous
15 felony conviction.

16 Sec. 9. Nothing contained in the Nebraska Claims for
17 Wrongful Conviction and Imprisonment Act shall preclude the state
18 from providing services to the claimant upon exoneration and the
19 reasonable value of services provided shall be treated as an
20 advance against any award or judgment.

21 Sec. 10. Claims brought pursuant to the Nebraska Claims
22 for Wrongful Conviction and Imprisonment Act shall be made under
23 the State Tort Claims Act.

24 Sec. 11. Nothing in the Nebraska Claims for Wrongful
25 Conviction and Imprisonment Act shall limit the claimant from
26 making any other claim available against any other party or based
27 upon any other theory of recovery.

1 Sec. 12. Section 81-8,210, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 81-8,210 For purposes of the State Tort Claims Act:

4 (1) State agency includes all departments, agencies,
5 boards, bureaus, and commissions of the State of Nebraska and
6 corporations the primary function of which is to act as, and
7 while acting as, instrumentalities or agencies of the State of
8 Nebraska but shall not include corporations that are essentially
9 private corporations or entities created pursuant to the Interlocal
10 Cooperation Act or the Joint Public Agency Act. State agency does
11 not include any contractor with the State of Nebraska;

12 (2) State Claims Board means the board created by section
13 81-8,220;

14 (3) Employee of the state means any one or more officers
15 or employees of the state or any state agency and shall include
16 duly appointed members of boards or commissions when they are
17 acting in their official capacity. State employee does not include
18 any employee of an entity created pursuant to the Interlocal
19 Cooperation Act or the Joint Public Agency Act or any contractor
20 with the State of Nebraska;

21 (4) Tort claim means any claim against the State of
22 Nebraska for money only on account of damage to or loss of property
23 or on account of personal injury or death caused by the negligent
24 or wrongful act or omission of any employee of the state, while
25 acting within the scope of his or her office or employment, under
26 circumstances in which the state, if a private person, would be
27 liable to the claimant for such damage, loss, injury, or death but

1 does not include any claim accruing before January 1, 1970, ~~and~~ any
 2 claim against an employee of the state for money only on account
 3 of damage to or loss of property or on account of personal injury
 4 or death caused by the negligent or wrongful act or omission of
 5 the employee while acting within the scope of his or her employment
 6 occurring on or after August 25, 1989, and any claim allowed under
 7 the Nebraska Claims for Wrongful Conviction and Imprisonment Act;

8 (5) Award means any amount determined by the Risk Manager
 9 or State Claims Board to be payable to a claimant under section
 10 81-8,211 or the amount of any compromise or settlement under
 11 section 81-8,218; and

12 (6) Risk Manager means the Risk Manager appointed under
 13 section 81-8,239.01.

14 Sec. 13. Section 81-8,227, Reissue Revised Statutes of
 15 Nebraska, is amended to read:

16 81-8,227 (1) Except as provided in subsection (2) of this
 17 section, every ~~Every~~ tort claim permitted under the State Tort
 18 Claims Act shall be forever barred unless within two years after
 19 such claim accrued the claim is made in writing to the Risk Manager
 20 in the manner provided by such act. The time to begin suit under
 21 such act shall be extended for a period of six months from the date
 22 of mailing of notice to the claimant by the Risk Manager or State
 23 Claims Board as to the final disposition of the claim or from the
 24 date of withdrawal of the claim under section 81-8,213 if the time
 25 to begin suit would otherwise expire before the end of such period.

26 (2)(a) The date of a qualifying pardon from the Board of
 27 Pardons or a vacation of a conviction by a court shall be the date
 1 the claimant's claim shall accrue under the Nebraska Claims for
 2 Wrongful Conviction and Imprisonment Act for purposes of complying
 3 with the notice and filing requirements of the State Tort Claims
 4 Act.

5 (b) A claim for compensation brought under the Nebraska
 6 Claims for Wrongful Conviction and Imprisonment Act shall be filed
 7 within two years after either the grant of a pardon or the grant of
 8 judicial relief. Any action by the state challenging or appealing
 9 the grant of such judicial relief shall toll the two-year period.
 10 Persons convicted, incarcerated, and released from custody prior to
 11 the effective date of this act shall file a claim under the act
 12 within three years after the effective date of this act.

13 (c) In the event a claimant granted a full pardon on
 14 or after the effective date of this act shows he or she did not
 15 receive a copy of the information required by this section, he or
 16 she shall receive a one-year extension of the notice and statute of
 17 limitations requirements of the State Tort Claims Act.

18 (d) Notwithstanding any other provision of law, failure
 19 to file any applicable notice of claim shall not bar filing of a
 20 claim under the act.

21 ~~(2)-(3)~~ If a claim is made or filed under any other law
 22 of this state and a determination is made by a state agency or

23 court that the State Tort Claims Act provides the exclusive remedy
 24 for the claim, the time to make a claim and begin suit under such
 25 act shall be extended for a period of six months from the date of
 26 the court order making such determination or the date of mailing
 27 of notice to the claimant of such determination by a state agency
 1 if the time to make the claim and to begin suit under such act
 2 would otherwise expire before the end of such period. The time to
 3 begin a suit under such act may be further extended as provided in
 4 subsection (1) of this section.

5 ~~(3)~~(4) If a claim is brought under the Nebraska
 6 Hospital-Medical Liability Act, the filing of a request for review
 7 under section 44-2840 shall extend the time to begin suit under
 8 the State Tort Claims Act an additional ninety days following the
 9 issuance of the opinion by the medical review panel if the time to
 10 begin suit under the State Tort Claims Act would otherwise expire
 11 before the end of such ninety-day period.

12 ~~(4)~~(5) This section and section 25-213 shall constitute
 13 the only statutes of limitations applicable to the State Tort
 14 Claims Act.

15 Sec. 14. Original sections 81-8,210 and 81-8,227, Reissue
 16 Revised Statutes of Nebraska, are repealed.

SPEAKER FLOOD PRESIDING

Pending.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 29 and 30 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 29 and 30.

GENERAL FILE

LEGISLATIVE BILL 260. The Rogert amendment, AM545, found in this day's Journal, to the committee amendment, was renewed.

Pending.

COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE BILL 204. Placed on Final Reading Second.
ST9010

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

1. In the Fischer amendment, AM429, on page 1, line 1, "the first" has been inserted after "after".

(Signed) Jeremy Nordquist, Chairperson

NOTICE OF COMMITTEE HEARING
General Affairs

Room 1510

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

Judy Pearl-Lee - Nebraska Arts Council

(Signed) Russ Karpisek, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 40. Introduced by Harms, 48; Louden, 49.

WHEREAS, Celesta M. Allen will celebrate her 107th birthday on March 2, 2009; and

WHEREAS, Celesta Allen's birthday will be honored with an open house at the Northfield Villa in Gering, Nebraska, on March 7, 2009; and

WHEREAS, the celebration of Celesta Allen's 107th birthday is worthy of recognition by the Nebraska Legislature.

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

1. That the Legislature wishes Celesta M. Allen a very happy 107th birthday.

2. That a copy of this resolution be sent to Celesta M. Allen.

Laid over.

LEGISLATIVE RESOLUTION 41. Introduced by Giese, 17.

WHEREAS, John Kingsbury was appointed to the State Highway Commission in 1996 by Governor Ben Nelson and was reappointed by Governors Mike Johanns and Dave Heineman; and

WHEREAS, John Kingsbury was a tireless advocate for the communities of northeast Nebraska during his time as the commissioner for District No. 3; and

WHEREAS, John Kingsbury was instrumental in supporting the expansion of Nebraska Highway 35 and its designation as a planned expressway in the Nebraska expressway system; and

WHEREAS, John Kingsbury resigned from the State Highway Commission in December 2008 after twelve years of distinguished service.

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

1. That the Legislature recognizes and congratulates John Kingsbury for his many years of service on the State Highway Commission, commends his dedication to economic development in northeast Nebraska, and extends its best wishes for his continued happiness and success.

2. That a copy of this resolution be sent to John Kingsbury.

Laid over.

COMMITTEE REPORT

Natural Resources

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

Robert Krohn - Nebraska Environmental Trust Board

Aye: 7 Senators Carlson, Cook, Dubas, Fischer, Haar, Langemeier, McCoy.
Nay: 0. Absent: 1 Senator Schilz.

(Signed) Chris Langemeier, Chairperson

AMENDMENTS - Print in Journal

Senator Lathrop filed the following amendment to LB260:
AM549

(Amendments to AM545)

- 1 1. On page 1, line 20, strike "a preponderance of the"
- 2 and insert "clear and convincing".
- 3 2. On page 2, line 5, after the semicolon insert "and";
- 4 in line 11 strike "; and" and insert an underscored period; strike
- 5 line 12; and in line 15 after "found" insert "by a preponderance of
- 6 the evidence".
- 7 3. On page 8, line 20, strike "act" and insert "Nebraska
- 8 Claims for Wrongful Conviction and Imprisonment Act".

Senator Wallman filed the following amendment to LB260:

FA15

Amend AM545

On page 2, line 18, strike "twenty-five" and insert "ten".

UNANIMOUS CONSENT - Add Cointroducers

Senator Sullivan asked unanimous consent to add her name as cointroducer to LB153. No objections. So ordered.

Senator Cornett asked unanimous consent to add her name as cointroducer to LB675. No objections. So ordered.

WITHDRAW - Cointroducer

Senator Sullivan withdrew her name as cointroducer to LB666.

VISITORS

Visitors to the Chamber were 30 fourth-grade students and teachers from York.

The Doctor of the Day was Dr. Andrea VerMaas from Blair.

ADJOURNMENT

At 12:01 p.m., on a motion by Senator Mello, the Legislature adjourned until 9:00 a.m., Tuesday, March 3, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

