

**THIRTY-EIGHTH DAY - MARCH 4, 2009****LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE  
FIRST SESSION****THIRTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, March 4, 2009

**PRAYER**

The prayer was offered by Pastor Clayton Lundstedt, Wymore Church of Christ, Wymore.

**ROLL CALL**

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

The roll was called and all members were present except Senators Ashford, Avery, Cornett, Friend, Harms, and White who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the thirty-seventh day was approved.

**MOTION - Print in Journal**

Senator Fulton filed the following motion to LR7:  
MO20  
Withdraw resolution.

**RESOLUTIONS**

Pursuant to Rule 4, Sec. 5(b), LRs 32, 33, and 34 were adopted.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 32, 33, and 34.

**MOTION - Approve Appointment**

Senator Langemeier moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 624:

Nebraska Environmental Trust Board  
Robert Krohn

Voting in the affirmative, 35:

Adams	Dubas	Hadley	McCoy	Price
Campbell	Fischer	Hansen	McGill	Rogert
Carlson	Flood	Howard	Mello	Schilz
Christensen	Fulton	Karpisek	Nelson	Stuthman
Coash	Gay	Langemeier	Nordquist	Sullivan
Cook	Giese	Lautenbaugh	Pahls	Wallman
Council	Gloor	Louden	Pirsch	Wightman

Voting in the negative, 0.

Present and not voting, 8:

Dierks	Heidemann	Lathrop	Pankonin
Haar	Janssen	Nantkes	Utter

Excused and not voting, 6:

Ashford	Cornett	Harms
Avery	Friend	White

The appointment was confirmed with 35 ayes, 0 nays, 8 present and not voting, and 6 excused and not voting.

**AMENDMENT - Print in Journal**

Senator Lathrop filed the following amendment to LB260:  
FA21  
Amend AM545  
Strike Sec. 14.

**GENERAL FILE**

**LEGISLATIVE BILL 260.** Committee AM456, found on page 571 and considered on page 617, as amended, was renewed.

Senator Fulton renewed his amendment, AM556, found on page 641, to the committee amendment.

Senator Fulton withdrew and refiled his amendment, AM556.

Senator Lautenbaugh withdrew his amendments, FA16 and FA17, found on page 641.

Senator Gloor withdrew and refiled his amendment, AM567, found on page 642.

Senator Pirsch withdrew his amendment, FA18, found on page 642.

Senator Lautenbaugh withdrew and refiled his amendment, AM572, found on page 642.

Senator Pirsch withdrew his amendments, FA19 and FA20, found on page 642.

Senator Carlson offered the following amendment to the committee amendment:

AM577

(Amendments to AM545)

- 1 1. On page 2, after line 16, insert the following new
- 2 subdivision:
- 3 "(a)(i) For a loss of the claimant's freedom an
- 4 amount equal to twenty-five thousand dollars for each year of
- 5 imprisonment, if the time of imprisonment is twenty years or more,
- 6 or fifty thousand dollars for each year spent on death row, if the
- 7 time spent on death row is ten years or more;
- 8 (ii) Physical and emotional pain and suffering
- 9 experienced by the claimant to date and reasonably certain to be
- 10 experienced in the future; and
- 11 (iii) Lost wages and lost earning capacity;"; in
- 12 line 17 strike "(a)" and insert "(b)(i)(A)"; in line 18 after
- 13 "imprisonment" insert ", if the time of imprisonment is less than
- 14 twenty years."; in line 19 after "row" insert ", if the time spent
- 15 on death row is less than ten years"; in line 20 strike "(b)" and
- 16 insert "(B)"; in line 22 after the semicolon insert "and"; in line
- 17 23 strike "(c)" and insert "(C)" and after the semicolon insert
- 18 "and"; after line 23 insert the following new subdivision:
- 19 "(ii) The amounts awarded under subdivision (b) of this
- 20 subsection shall not total more than five hundred thousand dollars
- 21 combined; and"; in line 24 strike "(d)" and insert "(c)(i)(A)"; and
- 22 in line 27 strike "(e)" and insert "(B)".
- 1 2. On page 3, line 4, strike "(f)" and insert "(C)";
- 2 in line 5 strike the period and insert "; and"; and after line 5
- 3 insert the following new subdivision:
- 4 "(ii) The amounts awarded under subdivision (c) of this
- 5 subsection shall not total more than five hundred thousand dollars
- 6 combined."

Senator Carlson withdrew and refiled his amendment, AM577.

Senator Pirsch offered the following amendment to the committee amendment:

AM582

(Amendments to AM545)

- 1 1. On page 2, line 2, after "claimant" insert "based upon
- 2 an express written finding that the claimant was innocent of the
- 3 felony crimes for which he or she was convicted"; and in line 4,
- 4 strike "a" and insert "an express written".
- 5 2. On page 4, line 5, strike "based on" and insert
- 6 "with an express written finding of"; and in lines 6 and 7 strike
- 7 "vacating or reversing" and insert "with an express written finding
- 8 of innocence that vacates or reverses".

### SENATOR FISCHER PRESIDING

Senator Langemeier moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 34 ayes, 1 nay, and 14 not voting.

Senator Pirsch moved for a call of the house. The motion prevailed with 35 ayes, 0 nays, and 14 not voting.

The Pirsch amendment lost with 11 ayes, 25 nays, 11 present and not voting, and 2 excused and not voting.

Committee AM456, found on page 571 and considered on page 617 and in this day's Journal, as amended, was renewed.

The committee amendment, as amended, was adopted with 42 ayes, 0 nays, 5 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Advanced to Enrollment and Review Initial with 37 ayes, 6 nays, 4 present and not voting, and 2 excused and not voting.

### COMMITTEE REPORTS

Government, Military and Veterans Affairs

**LEGISLATIVE BILL 402.** Placed on General File.

**LEGISLATIVE BILL 550.** Placed on General File.

**LEGISLATIVE BILL 361.** Placed on General File with amendment.

AM552

- 1 1. Strike the original sections and insert the following
- 2 sections:
- 3 Section 1. Section 79-1218, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:

5 79-1218 The board of each educational service unit shall  
6 meet and organize by naming one of its members as president, one  
7 as vice president, and one as secretary. The board shall employ a  
8 treasurer who shall be paid a salary to be fixed by the board.

9 The board of the educational service unit shall determine  
10 the participation of the educational service unit in providing  
11 supplementary educational services. If the board of the educational  
12 service unit does not provide supplementary educational services,  
13 it shall meet during each succeeding January to determine the  
14 participation in providing supplementary educational services  
15 for that calendar year. Meetings may be held by means of  
16 videoconferencing or telephone conference in accordance with  
17 subsections (2) and (3) of section 84-1411.

18 Sec. 2. Section 84-1411, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 84-1411 (1) Each public body shall give reasonable  
21 advance publicized notice of the time and place of each meeting  
22 by a method designated by each public body and recorded in its  
23 minutes. Such notice shall be transmitted to all members of the  
1 public body and to the public. Such notice shall contain an  
2 agenda of subjects known at the time of the publicized notice  
3 or a statement that the agenda, which shall be kept continually  
4 current, shall be readily available for public inspection at the  
5 principal office of the public body during normal business hours.  
6 Agenda items shall be sufficiently descriptive to give the public  
7 reasonable notice of the matters to be considered at the meeting.  
8 Except for items of an emergency nature, the agenda shall not  
9 be altered later than (a) twenty-four hours before the scheduled  
10 commencement of the meeting or (b) forty-eight hours before the  
11 scheduled commencement of a meeting of a city council or village  
12 board scheduled outside the corporate limits of the municipality.  
13 The public body shall have the right to modify the agenda to  
14 include items of an emergency nature only at such public meeting.

15 (2) A meeting of a state agency, state board, state  
16 commission, state council, or state committee, of an advisory  
17 committee of any such state entity, of an organization created  
18 under the Interlocal Cooperation Act, the Joint Public Agency  
19 Act, or the Municipal Cooperative Financing Act, of the governing  
20 body of a public power district having a chartered territory  
21 of more than fifty counties in this state, of a board of  
22 an educational service unit, or of the governing body of a  
23 risk management pool or its advisory committees organized in  
24 accordance with the Intergovernmental Risk Management Act may be  
25 held by means of videoconferencing or, in the case of the Judicial  
26 Resources Commission in those cases specified in section 24-1204,  
27 by telephone conference, if:

1 (a) Reasonable advance publicized notice is given;

2 (b) Reasonable arrangements are made to accommodate the  
3 public's right to attend, hear, and speak at the meeting, including

4 seating, recordation by audio or visual recording devices, and  
5 a reasonable opportunity for input such as public comment or  
6 questions to at least the same extent as would be provided if  
7 videoconferencing or telephone conferencing was not used;

8 (c) At least one copy of all documents being considered  
9 is available to the public at each site of the videoconference or  
10 telephone conference;

11 (d) At least one member of the state entity, advisory  
12 committee, board, or governing body is present at each site of the  
13 videoconference or telephone conference; and

14 (e) No more than one-half of the state entity's, advisory  
15 committee's, or governing body's meetings in a calendar year are  
16 held by videoconference or telephone conference.

17 Videoconferencing, telephone conferencing, or  
18 conferencing by other electronic communication shall not be used  
19 to circumvent any of the public government purposes established  
20 in the Open Meetings Act.

21 (3) A meeting of a board of an educational service  
22 unit, the governing body of an entity formed under the Interlocal  
23 Cooperation Act, the Joint Public Agency Act, or the Municipal  
24 Cooperative Financing Act, or of the governing body of a risk  
25 management pool or its advisory committees organized in accordance  
26 with the Intergovernmental Risk Management Act may be held by  
27 telephone conference call if:

1 (a) The territory represented by the educational service  
2 unit or member public agencies of the entity or pool covers more  
3 than one county;

4 (b) Reasonable advance publicized notice is given  
5 which identifies each telephone conference location at which an  
6 educational service unit board member or a member of the entity's  
7 or pool's governing body will be present;

8 (c) All telephone conference meeting sites identified in  
9 the notice are located within public buildings used by members of  
10 the educational service unit board or entity or pool or at a place  
11 which will accommodate the anticipated audience;

12 (d) Reasonable arrangements are made to accommodate the  
13 public's right to attend, hear, and speak at the meeting, including  
14 seating, recordation by audio recording devices, and a reasonable  
15 opportunity for input such as public comment or questions to  
16 at least the same extent as would be provided if a telephone  
17 conference call was not used;

18 (e) At least one copy of all documents being considered  
19 is available to the public at each site of the telephone conference  
20 call;

21 (f) At least one member of the educational service unit  
22 board or governing body of the entity or pool is present at each  
23 site of the telephone conference call identified in the public  
24 notice;

25 (g) The telephone conference call lasts no more than one

26 hour; and

27 (h) No more than one-half of the entity's or pool's  
1 meetings in a calendar year are held by telephone conference call,  
2 except that a governing body of a risk management pool that meets  
3 at least quarterly and the advisory committees of the governing  
4 body may each hold more than half of their meetings by telephone  
5 conference call if the governing body's quarterly meetings are not  
6 held by telephone conference call or videoconferencing.

7 Nothing in this subsection shall prevent the  
8 participation of consultants, members of the press, and  
9 other nonmembers of the governing body at sites not identified in  
10 the public notice. Telephone conference calls, emails, faxes, or  
11 other electronic communication shall not be used to circumvent any  
12 of the public government purposes established in the Open Meetings  
13 Act.

14 (4) The secretary or other designee of each public body  
15 shall maintain a list of the news media requesting notification  
16 of meetings and shall make reasonable efforts to provide advance  
17 notification to them of the time and place of each meeting and the  
18 subjects to be discussed at that meeting.

19 (5) When it is necessary to hold an emergency meeting  
20 without reasonable advance public notice, the nature of the  
21 emergency shall be stated in the minutes and any formal action  
22 taken in such meeting shall pertain only to the emergency.  
23 Such emergency meetings may be held by means of electronic or  
24 telecommunication equipment. The provisions of subsection (4)  
25 of this section shall be complied with in conducting emergency  
26 meetings. Complete minutes of such emergency meetings specifying  
27 the nature of the emergency and any formal action taken at the  
1 meeting shall be made available to the public by no later than the  
2 end of the next regular business day.

3 (6) A public body may allow a member of the public or  
4 any other witness other than a member of the public body to appear  
5 before the public body by means of video or telecommunications  
6 equipment.

7 Sec. 3. Section 84-1413, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 84-1413 (1) Each public body shall keep minutes of all  
10 meetings showing the time, place, members present and absent, and  
11 the substance of all matters discussed.

12 (2) Any action taken on any question or motion duly moved  
13 and seconded shall be by roll call vote of the public body in open  
14 session, and the record shall state how each member voted or if the  
15 member was absent or not voting. The requirements of a roll call  
16 or viva voce vote shall be satisfied by a municipality, a county,  
17 a joint entity created pursuant to the Interlocal Cooperation Act,  
18 a joint public agency created pursuant to the Joint Public Agency  
19 Act, or an agency formed under the Municipal Cooperative Financing  
20 Act which utilizes an electronic voting device which allows the

21 yeas and nays of each member of ~~the such county board,~~ city  
 22 council, ~~or~~ village board, or governing body to be readily seen by  
 23 the public.

24 (3) The vote to elect leadership within a public body may  
 25 be taken by secret ballot, but the total number of votes for each  
 26 candidate shall be recorded in the minutes.

27 (4) The minutes of all meetings and evidence and  
 1 documentation received or disclosed in open session shall be  
 2 public records and open to public inspection during normal business  
 3 hours.

4 (5) Minutes shall be written and available for inspection  
 5 within ten working days or prior to the next convened meeting,  
 6 whichever occurs earlier, except that cities of the second class  
 7 and villages may have an additional ten working days if the  
 8 employee responsible for writing the minutes is absent due to a  
 9 serious illness or emergency.

10 Sec. 4. Original sections 79-1218, 84-1411, and 84-1413,  
 11 Reissue Revised Statutes of Nebraska, are repealed.

**LEGISLATIVE BILL 422.** Placed on General File with amendment.  
 AM327

- 1 1. On page 4, strike beginning with "and" in line 23
- 2 through "Afghanistan" in line 24.

**LEGISLATIVE BILL 488.** Placed on General File with amendment.  
 AM504

- 1 1. On page 2, line 6, after "served" insert "on active
- 2 duty"; and in line 7 after "States" insert "other than active duty
- 3 for training".

**LEGISLATIVE BILL 501.** Placed on General File with amendment.  
 AM551

- 1 1. Insert the following new section:
- 2 Sec. 2. Section 32-607, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 32-607 All candidate filing forms shall contain the
- 5 following statement: I hereby swear that I will abide by the laws
- 6 of the State of Nebraska regarding the results of the primary and
- 7 general elections, that I am a registered voter and qualified to
- 8 be elected, and that I will serve if elected. Candidate filing
- 9 forms shall also contain the candidate's name; residence address;
- 10 mailing address if different from the residence address; telephone
- 11 number; office sought; and party affiliation if the office sought
- 12 is a partisan office. Candidate filing forms shall be filed with
- 13 the following filing officers:

- 14 (1) For candidates for national, state, or congressional
- 15 office, directors of public power and irrigation districts,
- 16 directors of reclamation districts, directors of natural resources
- 17 districts, members of the boards of educational service units,



18 members of governing boards of community colleges, delegates to  
 19 national conventions, and other offices filled by election held in  
 20 more than one county and judges desiring retention, in the office  
 21 of the Secretary of State;

22 (2) For officers elected within a county, in the office  
 23 of the election commissioner or county clerk. If the candidate is  
 1 not a resident of the county, he or she shall submit a certificate  
 2 of registration obtained under section 32-316 with the candidate  
 3 filing form;

4 (3) For officers in school districts which include land  
 5 in adjoining counties, in the office of the election commissioner  
 6 or county clerk of the county in which the greatest number of  
 7 registered voters entitled to vote for the officers reside. If the  
 8 candidate is not a resident of the county, he or she shall submit a  
 9 certificate of registration obtained under section 32-316 with the  
 10 candidate filing form; and

11 (4) For city or village officers, in the office of the  
 12 city or village clerk, except that in the case of joint elections,  
 13 the filing may be either in the office of the election commissioner  
 14 or county clerk or in the office of the city or village clerk with  
 15 deputized personnel. When the city or village clerk is deputized to  
 16 take filings, he or she shall return all filings to the office of  
 17 the election commissioner or county clerk by the end of the next  
 18 business day following the filing deadline.

19 2. On page 8, line 10, after "sections" insert "32-607,".

20 3. Renumber the remaining sections accordingly.

**LEGISLATIVE BILL 227.** Indefinitely postponed.

(Signed) Bill Avery, Chairperson

**NOTICE OF COMMITTEE HEARING**

Judiciary

Room 1113

Wednesday, March 11, 2009 1:30 p.m.

LB97  
 LB15  
 LB496  
 LB671  
 LB430

(Signed) Brad Ashford, Chairperson

**RESOLUTION**

**LEGISLATIVE RESOLUTION 43.** Introduced by Dierks, 40.

WHEREAS, the Ewing Tigers won the 2008 Class D-2 State Football Championship; and

WHEREAS, the Ewing Tigers achieved a 49-24 victory over a previously undefeated Humphrey St. Francis team in the Class D-2 championship game; and

WHEREAS, the Ewing Tigers were led by their quarterback, Brett Kaczor, who threw for three touchdowns and ran for three additional touchdowns during the championship game; and

WHEREAS, Ewing's defense was as impressive as its offense, with both teams agreeing that the Ewing defense made the big difference in the game and gave Ewing the victory; 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 the Ewing Tigers on winning the 2008 Class D-2 State Football Championship.

2. That coach Brock Eichelberger be congratulated for his efforts in teaching, coaching, and providing guidance to the members of the Ewing Tigers football team.

3. That a copy of this resolution be sent to the Ewing Tigers football team and their coach, Brock Eichelberger.

Laid over.

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 544A.** 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 544, One Hundred First Legislature, First Session, 2009.

**ANNOUNCEMENTS**

The Banking, Commerce and Insurance Committee designates LB327 as its priority bill.

The Nebraska Retirement Systems Committee designates LB188 as its priority bill.

**GENERAL FILE**

**LEGISLATIVE BILL 307.** Title read. Considered.

**SPEAKER FLOOD PRESIDING**

**SENATOR LANGEMEIER PRESIDING**

Pending.

**COMMITTEE REPORTS**

Natural Resources

**LEGISLATIVE BILL 577.** Indefinitely postponed.

(Signed) Chris Langemeier, Chairperson

Business and Labor

**LEGISLATIVE BILL 51.** Indefinitely postponed.

(Signed) Steve Lathrop, Chairperson

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 356A.** Introduced by Dubas, 34.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 356, One Hundred First Legislature, First Session, 2009.

**ANNOUNCEMENT**

Senator Janssen designates LB111 as his priority bill.

**UNANIMOUS CONSENT - Add Cointroducers**

Senator Janssen asked unanimous consent to add his name as cointroducer to LB111. No objections. So ordered.

Senator Mello asked unanimous consent to add his name as cointroducer to LB136. No objections. So ordered.

**VISITORS**

Visitors to the Chamber were 20 twelfth-grade students and teacher from Lawrence-Nelson, Nelson; members of Bellevue Chamber of Commerce Leadership Group from Bellevue; 55 fourth-grade students and teachers from Morton Elementary, Lexington; and constituents from Madison County.

**ADJOURNMENT**

At 11:54 a.m., on a motion by Senator Pahls, the Legislature adjourned until 9:00 a.m., Thursday, March 5, 2009.

Patrick J. O'Donnell  
Clerk of the Legislature