

**FIFTY-THIRD DAY - MARCH 28, 2007****LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE  
FIRST SESSION****FIFTY-THIRD DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, March 28, 2007

**PRAYER**

The prayer was offered by Pastor Jack Sample, United Methodist Church, Wood River.

**ROLL CALL**

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

The roll was called and all members were present except Senators Ashford, Cornett, Engel, Heidemann, Louden, Pedersen, and Raikes who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-second day was approved.

**GENERAL FILE**

**LEGISLATIVE BILL 328A.** 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 395A.** 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.

**SELECT FILE**

**LEGISLATIVE BILL 395.** ER8041, found on page 763, was adopted.

Senator Mines renewed his motion, found on page 935, to bracket LB 395 to May 15, 2007.

Senator Mines withdrew his motion to bracket.

Senator Johnson renewed his amendment, AM585, found on page 754.

Senators Johnson and Mines offered the following amendment to the Johnson amendment:

AM852

(Amendments to AM585)

1 1. Strike section 16 and insert the following new  
2 sections:

3 Sec. 16. (1) In any city of the metropolitan class which  
4 had an ordinance in effect on January 1, 2007, prohibiting smoking  
5 in certain public places, the provisions of such ordinance shall  
6 supersede the other provisions of the Nebraska Clean Indoor Air Act  
7 enacted by this legislative bill until June 1, 2009, except that  
8 the governing body of such city may, prior to such date, (a) repeal  
9 such ordinance and become subject to such act at an earlier time or  
10 (b) adopt a new ordinance pursuant to section 17 of this act.

11 (2) In any other city or village, any ordinance with  
12 respect to smoking regulation which was not adopted under section  
13 17 of this act shall become invalid on June 1, 2008.

14 Sec. 17. (1) On and after September 1, 2007, the  
15 governing body of any city, village, or county, or the voters  
16 of any city, village, or unincorporated area of any county as  
17 provided in subsection (2) of this section, may adopt a nonsmoking  
18 ordinance or resolution that is less stringent than or more  
19 stringent than the Nebraska Clean Indoor Air Act enacted by this  
20 legislative bill, except that such ordinance or resolution shall  
21 not be less stringent than sections 71-5707 to 71-5709 as such  
22 sections existed prior to September 1, 2007.

1 (2) A proposed ordinance or resolution may be placed on  
2 the ballot for the voters of the city, village, or unincorporated  
3 area of the county (a) by a majority vote of the governing body  
4 of such city, village, or county, (b) by initiative under sections  
5 18-2501 to 18-2538, or (c) by petition meeting the requirements  
6 of and subject to sections 32-628 to 32-630 and signed by at  
7 least five percent of the registered voters residing in the  
8 unincorporated area of such county on the day such petitions are  
9 filed for verification. The election shall be conducted as provided  
10 in sections 32-556 to 32-559.

11 (3) Any ordinance or resolution adopted by the governing  
12 body of any city, village, or county under subsection (1) of this  
13 section without being submitted to the voters under subsection (2)  
14 of this section shall take effect ninety days after its adoption  
15 unless, within such ninety-day period, such governing body receives  
16 a petition signed by at least five percent of the registered  
17 voters residing in such city, village, or unincorporated area of  
18 such county on the date the ordinance or resolution was adopted  
19 requesting that such ordinance or resolution be repealed. Upon

20 verification of the signatures on such petition, the ordinance or  
 21 resolution shall be repealed.

22 (4) A copy of any ordinance or resolution adopted by a  
 23 city, village, or county under this section shall be provided to  
 24 the Department of Health and Human Services and to the local public  
 25 health department as defined in section 71-1626 of such city,  
 26 village, or county.

27 Sec. 22. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,  
 1 13, 14, 15, 18, 19, 20, 21, and 24 of this act become operative  
 2 on June 1, 2008. Sections 16, 17, 22, and 23 of this act become  
 3 operative on September 1, 2007.

4 2. On page 1, line 3, strike "20" and insert "21".

5 3. On page 3, lines 11 and 12, strike "and 16" and insert  
 6 ", 16, and 17".

7 4. On page 4, strike beginning with "shall" in line 12  
 8 through "to" in line 14 and insert "of"; in line 15 strike "and";  
 9 and in line 16 strike "other".

10 5. On page 4, line 19; and page 5, lines 2, 12 and 13,  
 11 and 27, strike "Regulation and Licensure".

12 6. On page 5, line 13, strike ". The charge against such  
 13 person" and insert ", and such charge".

14 7. Renumber the remaining sections accordingly.

The Johnson-Mines amendment was adopted with 25 ayes, 4 nays, 17 present and not voting, and 3 excused and not voting.

Pending.

## RESOLUTIONS

**LEGISLATIVE RESOLUTION 64.** Introduced by Howard, 9.

WHEREAS, national adoption awareness began in 1976 and expanded from a week of observation to a month of observation in 1990; and

WHEREAS, Adoption Awareness Month is a time to celebrate family and to bring about awareness that there are hundreds of thousands of children in foster homes awaiting adoption; and

WHEREAS, every child deserves a loving, nurturing, and permanent home; and

WHEREAS, adoption gives children a brighter future, brings great joy to the adoptive parents, and places fewer demands on social services; and

WHEREAS, adoptive children often need extra patience and support to help them overcome previous hardships; and

WHEREAS, there are families able and willing to adopt children who have special needs; and

WHEREAS, children waiting for adoptive parents and families who have adopted these children require and deserve community and public support.

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

1. That the Nebraska Legislature recognizes November, 2007, as Adoption Awareness Month in Nebraska.

2. That during November, 2007, communities are encouraged to participate in activities designed to increase public awareness about the benefits of adoption.

Laid over.

**LEGISLATIVE RESOLUTION 65.** Introduced by Howard, 9.

WHEREAS, April, 2007, is National Child Abuse Prevention Month; and  
 WHEREAS, the federal Child Abuse Prevention and Treatment Act defines child abuse and neglect as any act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, sexual abuse or exploitation, or places the child at imminent risk of serious harm; and

WHEREAS, in 2004, 872,000 children nationally were victims of abuse or neglect and more than sixty percent of those child victims experienced neglect, almost eighteen percent were physically abused, ten percent were sexually abused, and seven percent were emotionally mistreated; and

WHEREAS, it is estimated that nationwide approximately twelve in one thousand children are victims of abuse or neglect each year; and

WHEREAS, the State of Nebraska received 13,897 reports of child abuse and neglect in 2005; and

WHEREAS, research indicates that the physical, emotional, social, and economic consequences associated with child abuse and neglect are life-long; and

WHEREAS, incidents of child neglect, physical abuse, sexual abuse, and emotional mistreatment are preventable.

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

1. That the Legislature recognizes April, 2007, as Child Abuse Prevention Month in Nebraska.

2. That during April, 2007, communities are encouraged to participate in activities designed to increase public awareness about the importance of child abuse prevention.

Laid over.

**COMMITTEE REPORT**  
**Enrollment and Review**

**Correctly Reengrossed**

The following bill was correctly reengrossed: LB 255.

(Signed) Amanda McGill, Chairperson

**SELECT FILE**

**LEGISLATIVE BILL 395.** Senator Johnson withdrew his amendment AM797, found on page 918.

Senator Mines offered the following amendment to the Johnson amendment: AM858

(Amendments to AM852)

- 1 1. On page 2, line 16, after "petition" insert "meeting
- 2 the requirements of and subject to sections 32-628 to 32-630 and;
- 3 and strike beginning with "ordinance" in line 20 through line
- 4 21 and insert "repeal of such ordinance or resolution shall be
- 5 placed on the ballot for the voters of such city, village, or
- 6 unincorporated area of the county, and the ordinance or resolution
- 7 shall not take effect unless and until the repeal is rejected by
- 8 the voters. The election shall be conducted as provided in sections
- 9 32-556 to 32-559."

Senator Mines withdrew his amendment.

The Johnson amendment, AM585, found on page 754 and considered in this day's Journal, as amended, was renewed.

Senator Johnson moved for a call of the house. The motion prevailed with 33 ayes, 1 nay, and 15 not voting.

Senator Johnson requested a roll call vote on his amendment.

Voting in the affirmative, 31:

Adams	Cornett	Johnson	Nelson	Stuthman
Aguilar	Dubas	Kruse	Pahls	White
Ashford	Flood	Langemeier	Pankonin	Wightman
Avery	Gay	Lathrop	Pirsch	
Carlson	Hansen	McDonald	Preister	
Chambers	Harms	McGill	Raikes	
Christensen	Janssen	Mines	Rogert	

Voting in the negative, 5:

Erdman	Friend	Karpisek	Nantkes	Wallman
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Present and not voting, 10:

Burling	Fischer	Heidemann	Kopplin	Schimek
Engel	Fulton	Howard	Pedersen	Synowiecki

Absent and not voting, 1:

Hudkins

Excused and not voting, 2:

Dierks            Louden

The Johnson amendment, as amended, was adopted with 31 ayes, 5 nays, 10 present and not voting, 1 absent and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Senator Fischer withdrew her amendment, FA23, found on page 758.

Senator Erdman withdrew his amendment, AM366, found on page 758.

Senator Carlson moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 4 nays, and 18 not voting.

Senator Johnson moved for a call of the house. The motion prevailed with 36 ayes, 0 nays, and 13 not voting.

Senator Johnson requested a machine vote on the advancement of the bill.

Advanced to E & R for engrossment with 35 ayes, 4 nays, 9 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

## **SPEAKER FLOOD PRESIDING**

### **GENERAL FILE**

**LEGISLATIVE BILL 232.** Title read. Considered.

Committee AM677, found on page 841, was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Senator Hudkins withdrew her amendment, AM692, found on page 839.

Advanced to E & R for review with 36 ayes, 0 nays, 10 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 502.** Title read. Considered.

Committee AM544, found on page 726, was considered.

Pending.

### VISITORS

Visitors to the Chamber were Casey Sorensen from Lincoln; 50 fourth-grade students from Avery Elementary, Bellevue; 15 twelfth-grade students and teachers from Omaha North High School, Omaha; Theresa Hilton, Rebecca Rayman, and Joe, Rosie, and Maricio Velasco from Columbus; members of the Tri-Diocesan Council of Catholic Women from across the state; and 31 eighth-grade students, teacher, and sponsors from Blue Hill.

### RECESS

At 12:03 p.m., on a motion by Senator Erdman, the Legislature recessed until 1:30 p.m.

### AFTER RECESS

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

### ROLL CALL

The roll was called and all members were present except Senator Pedersen who was excused; and Senators Ashford, Engel, and Kruse who were excused until they arrive.

### GENERAL FILE

**LEGISLATIVE BILL 502.** Committee AM544, found on page 726 and considered in this day's Journal, was renewed.

### SENATOR FRIEND PRESIDING

Senator Mines offered the following amendment to the committee amendment:

AM875

(Amendments to Standing Committee amendments, AM544)

- 1 1. Strike the original amendment and insert the following
- 2 new amendments:
- 3 1. On page 2, lines 12 and 15, strike "one hundred" and
- 4 insert "forty".
- 5 2. On page 3, line 1, strike "ten" and insert "thirteen";
- 6 in lines 3 and 4 strike "twenty-five" and insert "fifteen"; and in
- 7 lines 12, 23, and 25 strike "twenty-five" and insert "ten".

Senator Erdman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 1 nay, and 21 not voting.

The Mines amendment was adopted with 34 ayes, 3 nays, 10 present and not

voting, and 2 excused and not voting.

The committee amendment, as amended, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Senator Wightman renewed his amendment, AM683, found on page 884.

The Wightman amendment was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Senator Hudkins offered the following amendment:

FA54

Page 4, line 10 strike "2007" and insert "2008"

The Hudkins amendment was adopted with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

Advanced to E & R for review with 32 ayes, 8 nays, 8 present and not voting, and 1 excused and not voting.

**LEGISLATIVE BILL 343.** Title read. Considered.

Committee AM661, found on page 809, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 40 ayes, 0 nays, 7 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 343A.** Title read. Considered.

Advanced to E & R for review with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

## RESOLUTION

**LEGISLATIVE RESOLUTION 66.** Introduced by Flood, 19.

WHEREAS, the Battle Creek High School Speech Team won the C1-5 District Speech Championship and qualified nine members of the team to compete in the state competition; and

WHEREAS, the Battle Creek High School Speech Team was runner-up in the state competition; 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 HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Coach Peggy Belt, Coach Cari McConnell, and Volunteer Coach Shane Bernhardt and the following members of the Battle Creek High School Speech Team on their



achievements this year: Stephanie Smolek; Jarred Vogel; Cody Hrabanek; Jeremy Grant; Callie Reeves; Alex McCleary; Jackson Schroeder; Casie Sorrick; Kassie Coover; Kacey Christiansen; Emilee Straka; Sami Sorrick; and Drew Nguyen.

2. That a copy of this resolution be sent to the Battle Creek High School Speech Team.

Laid over.

### AMENDMENTS - Print in Journal

Senator Harms filed the following amendment to LB 658:  
AM860

- 1 1. On page 5, line 14, strike "fifteen" and insert "ten";
- 2 and in line 16 strike "fifty-five" and insert "thirty".

Senator Louden filed the following amendment to LB 658:  
AM857

- 1 1. On page 5, strike lines 4 through line 25 and insert
- 2 "place the issue on the ballot for the next statewide general
- 3 election in accordance with the Election Act.".
- 4 2. On page 6, strike line 1; strike beginning with "If"
- 5 in line 2 through the period in line 7; in line 7 after "language"
- 6 insert "for the issue placed on the ballot pursuant to section
- 7 2 of this act"; in line 11 strike "petition" and insert "plan
- 8 approved pursuant to section 1 of this act"; in line 14 strike
- 9 "the petitions" and insert "such plan"; and in line 21 strike "the
- 10 petition" and insert "such plan".

Senator Louden filed the following amendment to LB 658:  
AM859

- 1 1. Strike section 8.
- 2 2. Renumber the remaining sections and correct internal
- 3 references accordingly.

Senator Hudkins filed the following amendment to LB 658:  
(Amendment, AM724, is printed separately and available in the Bill Room, Room 1104.)

Senator Dierks filed the following amendment to LB 629:  
AM824

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Sections 1 to 7 of this act shall be known and
- 4 may be cited as the Rural Community-Based Energy Development Act.
- 5 Sec. 2. It is the intent of the Legislature to
- 6 create new rural economic development opportunities through rural
- 7 community-based energy development.
- 8 Sec. 3. For purposes of the Rural Community-Based Energy

9 Development Act:

10 (1) C-BED project or community-based energy development  
 11 project means a new wind energy project that:

12 (a)(i) For a C-BED project that consists of more than two  
 13 turbines, has no single qualified owner owning more than fifteen  
 14 percent of the project and with at least thirty-three percent of  
 15 the power purchase agreement payments flowing to the qualified  
 16 owner or local community; or

17 (ii) For a C-BED project that consists of one or two  
 18 turbines, is owned by one or more qualified owners with at least  
 19 thirty-three percent of the power purchase agreement payments  
 20 flowing to a qualified owner or local community; and

21 (b) Has a resolution of support adopted (i) by the county  
 22 board of each county in which the C-BED project is to be located or  
 23 (ii) by the tribal council for a C-BED project located within the  
 1 boundaries of an Indian reservation;

2 (2) C-BED tariff or tariff means a community-based energy  
 3 development tariff;

4 (3) Electric utility means a power supplier responsible  
 5 for generating more than two hundred megawatts for delivery in  
 6 Nebraska. Electric utility does not include distribution utilities  
 7 purchasing total power requirements from another utility or  
 8 wind-based generating facility;

9 (4) Net present value rate means a rate equal to the net  
 10 present value of the nominal payments to a C-BED project divided by  
 11 the total expected energy production of the C-BED project over the  
 12 life of its power purchase agreement; and

13 (5) Qualified owner means:

14 (a) A Nebraska resident;

15 (b) A limited liability company that is organized under  
 16 the Limited Liability Company Act and that is made up of members  
 17 who are Nebraska residents;

18 (c) A Nebraska nonprofit corporation organized under the  
 19 Nebraska Nonprofit Corporation Act;

20 (d) A Nebraska cooperative association, other than  
 21 a rural electric cooperative association or generation and  
 22 transmission cooperative;

23 (e) A political subdivision or unit of local government,  
 24 including, but not limited to, a school district or public or  
 25 private postsecondary educational institution, or any other local  
 26 or regional governmental organization such as a board, commission,  
 27 or association, but excluding publicly owned electric utilities; or

1 (f) A tribal council.

2 Sec. 4. (1) A C-BED tariff shall have a negotiated per  
 3 kilowatt hour net present value rate over the twenty-year life of  
 4 the power purchase agreement. The negotiated rate shall provide for  
 5 a rate that is higher in the first ten years of the power purchase  
 6 agreement than in the last ten years. The discount rate required  
 7 to calculate the net present value shall be the electric utility's

8 normal discount rate used for its other business purposes.

9 (2) A C-BED project developer and an electric utility  
10 shall negotiate the rate and power purchase agreement terms  
11 consistent with the tariff.

12 (3) At the discretion of a C-BED project developer, the  
13 C-BED project developer and an electric utility may negotiate a  
14 power purchase agreement with terms different from the tariff.

15 (4) A qualified owner, or any combination of qualified  
16 owners, may develop a community-based energy development project  
17 with an equity partner that is not a qualified owner.

18 (5) Except for an inherited interest, the transfer of  
19 a C-BED project to any person other than a qualified owner is  
20 prohibited during the initial twenty years of the power purchase  
21 agreement.

22 (6) A C-BED project that is operating under a power  
23 purchase agreement under a tariff is not eligible for net energy  
24 billing.

25 Sec. 5. An electric utility shall:

26 (a) Consider mechanisms to encourage the aggregation of  
27 C-BED projects in the same geographical area; and

1 (b) Require any qualified owner to provide sufficient  
2 security to insure performance under the power purchase agreement.

3 Sec. 6. (1) An electric utility that needs to construct  
4 new generation or purchase the output from additional generation  
5 shall take reasonable steps to determine if one or more C-BED  
6 projects are available that (a) can be safely integrated into and  
7 operated within the electric utility's grid without causing any  
8 adverse or unsafe consequences; and (b) is consistent with the  
9 electric utility's resource needs as identified in its most recent  
10 resource plan, to fulfill some or all of the identified need at  
11 minimal impact to customer rates.

12 (2) An electric utility shall include in its integrated  
13 resource plan filed with the Nebraska Power Review Board a  
14 description of its efforts to purchase energy from C-BED projects,  
15 including a list of the C-BED projects under a power purchase  
16 agreement and the amount of C-BED project energy purchased.

17 (3) Nothing in this section shall be construed to  
18 obligate an electric utility to enter into a power purchase  
19 agreement under a C-BED tariff.

20 Sec. 7. To the extent feasible, a C-BED project developer  
21 shall provide, in writing, an opportunity to invest in the C-BED  
22 project to each property owner on whose property a high-voltage  
23 transmission line is constructed that will transmit the energy  
24 generated by the C-BED project to market if the property is located  
25 and the owner resides in the county where the C-BED project is  
26 located.

(Amendments to Standing Committee amendments, AM514)

- 1 1. On page 8, line 4, after "by" insert "two members of
- 2 the school board of each Class I school district within the Class
- 3 II, III, or IV school district and two members of the school board
- 4 or board of education of".

Senator Hudkins filed the following amendment to LB 658:  
AM866

(Amendments to Standing Committee amendments, AM514)

- 1 1. On page 8, strike beginning with "The" in line 3
- 2 through the period in line 8.

Senator Hudkins filed the following amendment to LB 658:  
AM867

(Amendments to Standing Committee amendments, AM514)

- 1 1. Insert the following new section:
- 2 Sec. 70. Any Class II, III, or IV school district
- 3 which sold or demolished a school building of a former Class I
- 4 school district consolidated pursuant to Laws 2005, LB 126, shall
- 5 contribute one hundred thousand dollars to a newly organized Class
- 6 I school district which is within the boundaries of such Class II,
- 7 III, or IV school district if:
- 8 (1) A notice of intent to organize a Class I school
- 9 district within the boundaries of the Class II, III, or IV school
- 10 district is filed on or before January 1, 2008, with the school
- 11 board or board of education of such Class II, III, or IV school
- 12 district;
- 13 (2) A special meeting of the registered voters of the
- 14 proposed Class I school district is held and fifty and one-tenth
- 15 percent of such registered voters present and voting such special
- 16 meeting vote to organize such Class I district; and
- 17 (3) The Class II, III, or IV school district sold or
- 18 demolished such school building on or after November 1, 2005, and
- 19 on or before January 1, 2008.
- 20 2. On page 7, line 15, strike "seven" and insert "five".

Senator Hudkins filed the following amendment to LB 658:  
AM870

- 1 1. On page 3, lines 2, 9, 13, and 18; page 4, lines 2,
- 2 13, and 25; page 5, line 15; page 6, lines 10, 13, 16, and 18; page
- 3 7, lines 8 and 9, 12, 14, 15, 23, and 24; page 8, lines 9 and 16;
- 4 and page 9, lines 2, 8, 17, and 22, strike "or IV" and insert "IV,
- 5 or V".

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Stuthman asked unanimous consent to add his name as cointroducer to LB 562. No objections. So ordered.

**VISITORS**

Visitors to the Chamber were 50 fourth-grade students, teachers, and sponsors from Morton Elementary, Lexington; 48 fourth-grade students from Conestoga School, Murray; and Kate Garhart from Lincoln and Caryn Vincent from York.

The Doctor of the Day was Dr. Jay Matzke from Gothenburg.

**ADJOURNMENT**

At 4:29 p.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Thursday, March 29, 2007.

Patrick J. O'Donnell  
Clerk of the Legislature

