

**TWENTIETH DAY - FEBRUARY 4, 2009****LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE  
FIRST SESSION****TWENTIETH DAY**

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

**PRAYER**

The prayer was offered by Pastor Howard Jordan, Bible Baptist Church, Beatrice.

**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 Avery who was excused; and Senators Ashford, Cornett, Dierks, Friend, Gay, Louden, and Nantkes who were excused until they arrive.

**PRESIDENT SHEEHY PRESIDING****CORRECTIONS FOR THE JOURNAL**

The Journal for the nineteenth day was approved.

**COMMITTEE REPORT**  
Enrollment and Review

**LEGISLATIVE BILL 158.** Placed on Select File.

(Signed) Jeremy Nordquist, Chairperson

**NOTICE OF COMMITTEE HEARING**

Judiciary

Room 1113

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

LB347

LB252

LB409

LB494

LB472

(Signed) Brad Ashford, Chairperson

**AMENDMENT - Print in Journal**Senator Langemeier filed the following amendment to LB105:  
AM175

- 1 1. On page 29, line 2, strike "eleven" and insert
- 2 "eight".

**MESSAGES FROM THE GOVERNOR**

January 30, 2009

Mr. President, Speaker Flood  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Nebraska Highway Commission:

David Copple, 3405 Rolling Hills Drive, Norfolk, NE 68701

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate of appointment and background information are included for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

January 30, 2009

Mr. President, Speaker Flood  
and Members of the Legislature  
State Capitol Building  
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Coordinating Commission for Postsecondary Education:

John Winkleblack, 707 California Street, Tilden, NE 68781

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate of appointment and background information are included for your review.

Sincerely,  
(Signed) Dave Heineman  
Governor

Enclosures

### **REFERENCE COMMITTEE REPORT**

The Executive Board submits the following report:

**LB/LR      Committee**  
LB660      Judiciary (referred)

Copple, David - Nebraska Highway Commission - Transportation and Telecommunications

Winkleblack, John - Coordinating Commission for Postsecondary Education - Education

(Signed) John Wightman, Chairperson  
Executive Board

### **MOTION - Withdraw LB614**

Senator Howard renewed her motion, MO6, found on page 357, to withdraw LB614.

The Howard motion to withdraw the bill prevailed with 30 ayes, 0 nays, 11 present and not voting, and 8 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 99.** ER8007, found on page 307, was adopted.

Senator Carlson renewed his amendment, AM116, found on page 337.

The Carlson amendment was adopted with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 100.** Senator Council offered the following amendment:

FA5

Reinstate the language stricken on line 21 on page 10.

The Council amendment was adopted with 36 ayes, 0 nays, 8 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 101.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 24.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 85.** Senator Utter renewed his amendment, AM57, found on page 305.

**SPEAKER FLOOD PRESIDING**

Senator Friend moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 33 ayes, 3 nays, and 13 not voting.

The Utter amendment lost with 15 ayes, 24 nays, 7 present and not voting, and 3 excused and not voting.

Senator McGill renewed her amendment, AM104, found on page 335.

The McGill amendment was adopted with 40 ayes, 2 nays, 6 present and not voting, and 1 excused and not voting.

Senator Pirsch offered the following amendment:

FA7

Amend page 2 line 19 as follows: limits as they existed as of the date twenty

years prior to the issuance of any urban growth bonds by a municipality under the authority of this section.

Senator Pirsch withdrew his amendment.

Senator Pirsch offered the following amendment:

AM193

- 1 1. On page 2, line 19, strike "on January 1, 1988" and
- 2 insert "as of the date twenty years prior to the issuance of any
- 3 urban growth bonds by a municipality under the authority of this
- 4 section".

The Pirsch amendment was adopted with 33 ayes, 3 nays, 12 present and not voting, and 1 excused and not voting.

Pending.

## COMMITTEE REPORTS

### Revenue

**LEGISLATIVE BILL 89.** Placed on General File with amendment.

AM92

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 77-4001, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 77-4001 Sections 77-4001 to 77-4025 and section 3 of this
- 6 act shall be known and may be cited as the Tobacco Products Tax
- 7 Act.
- 8 Sec. 2. Section 77-4002, Reissue Revised Statutes of
- 9 Nebraska, is amended to read:
- 10 77-4002 For purposes of the Tobacco Products Tax Act,
- 11 unless the context otherwise requires, the definitions found in
- 12 sections 77-4003 to 77-4007 and section 3 of this act shall be
- 13 used.
- 14 Sec. 3. Snuff means any finely cut, ground, or powered
- 15 tobacco that is not intended to be smoked.
- 16 Sec. 4. Section 77-4008, Reissue Revised Statutes of
- 17 Nebraska, is amended to read:
- 18 77-4008 ~~(1)(a)~~ A tax is hereby imposed upon the first
- 19 owner of tobacco products to be sold in this state. ~~The tax~~
- 20 (b) The tax on snuff shall be forty cents per ounce and
- 21 a proportionate tax at the like rate on all fractional parts of an
- 22 ounce. Such tax shall be computed based on the net weight as listed
- 23 by the manufacturer.
- 1 (c) The tax on tobacco products other than snuff shall
- 2 be twenty percent of ~~(a)(i)~~ the purchase price of such tobacco
- 3 products paid by the first owner or ~~(b)(ii)~~ the price at which
- 4 a first owner who made, manufactured, or fabricated the tobacco

5 product sells the items to others. ~~Such tax~~

6 (d) The tax on tobacco products shall be in addition to  
7 all other taxes.

8 (2) Whenever any person who is licensed under section  
9 77-4009 purchases tobacco products from another person licensed  
10 under section 77-4009, the seller shall be liable for the payment  
11 of the tax.

12 ~~(3) On and after October 1, 2002, and continuing until~~  
13 ~~October 1, 2004, the Tax Commissioner shall remit the amount~~  
14 ~~collected pursuant to this section to the State Treasurer, and the~~  
15 ~~State Treasurer shall credit three fourths of such amount to the~~  
16 ~~General Fund and one fourth of such amount to the Cash Reserve~~  
17 ~~Fund. On and after October 1, 2004, amounts collected~~ Amounts  
18 collected pursuant to this section shall be used and distributed  
19 pursuant to section 77-4025.

20 Sec. 5. Section 77-4014, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 77-4014 (1) On or before the tenth day of each calendar  
23 month, ~~commencing on or after January 1, 1988,~~ every person  
24 licensed under subsection (1) of section 77-4009 shall file a  
25 return with the Tax Commissioner showing either the quantity and  
26 the price of each tobacco product brought or caused to be brought  
1 into this state for sale or the quantity and the price of each  
2 tobacco product made, manufactured, or fabricated in this state for  
3 sale in this state, whichever is applicable, during the preceding  
4 calendar month. For snuff, such return shall also include the net  
5 weight as listed by the manufacturer.

6 (2) Every person licensed pursuant to subsection (2) of  
7 section 77-4009 shall, in the manner described in subsection (1)  
8 of this section, file a return showing in detail the different  
9 kinds, quantity, and wholesale sales price of each tobacco product  
10 shipped or transported to retailers in this state to be sold by  
11 such retailers during the preceding calendar month. For snuff,  
12 such return shall also include the net weight as listed by the  
13 manufacturer.

14 (3) Returns shall be made upon forms furnished and  
15 prescribed by the Tax Commissioner. Each return shall be  
16 accompanied by a remittance for the full tax liability shown, less  
17 an amount of such liability equal to any amount allowed a payer of  
18 the sales and use tax pursuant to subdivision (1)(d) of section  
19 77-2708 as compensation to reimburse the licensee for his or her  
20 expenses incurred in complying with the Tobacco Products Tax Act.

21 Sec. 6. Section 77-4017, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 77-4017 (1) Every licensee shall keep complete and  
24 accurate records for all places of business, including itemized  
25 invoices of tobacco products (a) held, purchased, manufactured, or  
26 brought in or caused to be brought into this state or (b) for a  
licensee located outside of this state, shipped or transported to

27 retailers in this state. For snuff, such records shall also include  
 1 the net weight as listed by the manufacturer.

2 (2) All books, records, and other papers and documents  
 3 required to be kept by this section shall be preserved for a period  
 4 of at least three years after the due date of the tax imposed  
 5 by the Tobacco Products Tax Act unless the Tax Commissioner, in  
 6 writing, authorizes their destruction or disposal at an earlier  
 7 date.

8 (3) At any time during usual business hours, duly  
 9 authorized agents or employees of the Tax Commissioner may enter  
 10 any place of business of a licensee and inspect the premises,  
 11 the records required to be kept pursuant to this section, and  
 12 the tobacco products contained in such place of business for  
 13 purposes of determining whether or not such licensee is in full  
 14 compliance with the act. Refusal to permit such inspection by a  
 15 duly authorized agent or employee of the Tax Commissioner shall be  
 16 grounds for revocation, cancellation, or suspension of the license.

17 Sec. 7. This act becomes operative on October 1, 2009.

18 Sec. 8. Original sections 77-4001, 77-4002, 77-4008,  
 19 77-4014, and 77-4017, Reissue Revised Statutes of Nebraska, are  
 20 repealed.

(Signed) Abbie Cornett, Chairperson

Banking, Commerce and Insurance

**LEGISLATIVE BILL 177.** Placed on General File with amendment.  
 AM123

1 1. On page 4, line 1, strike "five" and insert "three"  
 2 and after "placing" insert ", temporarily lifting, or removing".

**LEGISLATIVE BILL 377.** Placed on General File.

(Signed) Rich Pahls, Chairperson

Transportation and Telecommunications

**LEGISLATIVE BILL 219.** Placed on General File.

**LEGISLATIVE BILL 110.** Placed on General File with amendment.  
 AM181 is available in the Bill Room.

**LEGISLATIVE BILL 261.** Placed on General File with amendment.  
 AM182

1 1. Strike the original sections and insert the following  
 2 new sections:  
 3 Section 1. Section 60-4,111.01, Reissue Revised Statutes  
 4 of Nebraska, is amended to read:  
 5 60-4,111.01 (1) The Department of Motor Vehicles,

6 the courts, or law enforcement agencies may store or compile  
7 information acquired from an operator's license or state  
8 identification card for their statutorily authorized purposes.

9 ~~(2) No Except as otherwise provided in subsection (3)~~  
10 ~~or (4) of this section, no person having use of or access to~~  
11 ~~machine-readable information encoded on an operator's license or a~~  
12 ~~state identification card shall compile, store, preserve, trade, or~~  
13 ~~sell such information. Violation of this subsection shall be Any~~  
14 ~~person who trades or sells such information shall be guilty of a~~  
15 ~~Class IV felony. Any person who compiles, stores, or preserves such~~  
16 ~~information except as authorized in subsection (3) or (4) of this~~  
17 ~~section shall be guilty of a Class IV felony.~~

18 (3) For purposes of compliance with and enforcement of  
19 restrictions on the purchase of alcohol, lottery tickets, and  
20 tobacco products, a retailer who sells any of such items pursuant  
21 to a license issued under the applicable statutory provision may  
22 scan machine-readable information encoded on an operator's license  
23 or a state identification card presented for the purpose of such  
1 a sale. The retailer may store the following information obtained  
2 from the license or card: Age and license or card identification  
3 number. The retailer shall post a sign at the point of sale  
4 of any of such items stating that the license or card will be  
5 scanned and that the age and identification number will be stored.  
6 The stored information may be used by a law enforcement agency  
7 for purposes of enforcement of the restrictions on the purchase  
8 of alcohol, lottery tickets, and tobacco products. The programmer  
9 for computer software designed to store such information shall  
10 certify to the retailer that the software is capable of storing  
11 only the information allowed by this subsection. Intentional or  
12 grossly negligent programming by the programmer which allows for  
13 the storage of more than the age and identification number shall be  
14 a Class IV felony. A retailer who knowingly stores more information  
15 than the age and identification number from the operator's license  
16 or state identification card shall be guilty of a Class IV felony.

17 (4) A person having use of or access to machine-readable  
18 information encoded on an operator's license or a state  
19 identification card may scan, compile, store, and preserve such  
20 information:

21 (a) For purposes of providing such information to a  
22 consumer reporting agency subject to and in compliance with the  
23 federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act  
24 existed on January 1, 2009;

25 (b) As necessary to effect, administer, or enforce a  
26 transaction requested by the holder of the license or card;

27 (c) To protect against or prevent actual or potential  
1 fraud, unauthorized transactions, claims, or other liability; or

2 (d) For resolving a dispute or inquiry by the holder of  
3 the license or card.



- 4 Sec. 2. Original section 60-4,111.01, Reissue Revised  
5 Statutes of Nebraska, is repealed.

**LEGISLATIVE BILL 10.** Indefinitely postponed.

(Signed) Deb Fischer, Chairperson

### **RESOLUTION**

**LEGISLATIVE RESOLUTION 18.** Introduced by Gay, 14; Cornett, 45.

WHEREAS, Inez Boyd has demonstrated her commitment to her community and the State of Nebraska by devoting nearly three decades of her life to public service; and

WHEREAS, Inez Boyd was first elected to public office as a member of the Bellevue City Council and served in that position from 1972 to 1982; and

WHEREAS, Inez Boyd served as the Mayor of Bellevue from 1986 to 1994; and

WHEREAS, Inez Boyd served as a Sarpy County Commissioner from 2000 to 2008; and

WHEREAS, Inez Boyd was a member of the Bellevue Chamber of Commerce, Board of Directors from 1986 to 1996; and

WHEREAS, Inez Boyd was a member of the League of Nebraska Municipalities, including serving as president and as a member of the board of directors for several years; and

WHEREAS, Inez Boyd was a member of the Great Plains Girl Scout Council, including serving as president and a member of the board of directors for four years; and

WHEREAS, Inez Boyd has been a member of the Board of Directors for United Way/CHAD; and

WHEREAS, Inez Boyd has been recognized for her work and has been named Sarpy County Chamber of Commerce Business Leader of the Year, as well as the Bellevue Leader's Person of the Year.

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

1. That Inez Boyd be recognized for her dedication and congratulated on her retirement from elected office.

2. That Inez Boyd is encouraged to continue to share her many skills and her experience and explore future public service opportunities.

3. That a copy of this resolution be sent to Inez Boyd.

Laid over.

**SELECT FILE**

**LEGISLATIVE BILL 85.** Senator McGill offered the following amendment:

AM66

- 1 1. On page 4, after line 9 insert the following new
- 2 subsection:
- 3 "(6) For purposes of this section, municipality means a
- 4 city of the primary or metropolitan class.".

The McGill amendment lost with 13 ayes, 24 nays, 11 present and not voting, and 1 excused and not voting.

Senator Janssen offered the following amendment:

AM67

- 1 1. On page 3, line 3, after "district" insert "and that
- 2 levied at least ninety percent of the maximum levy pursuant to
- 3 section 77-3442 in the prior fiscal year".

Senator Janssen moved for a call of the house. The motion prevailed with 42 ayes, 1 nay, and 6 not voting.

Senator Janssen requested a roll call vote on his amendment.

Voting in the affirmative, 16:

Adams	Hadley	Lautenbaugh	Pirsch
Carlson	Heidemann	Louden	Schilz
Christensen	Howard	Nelson	Stuthman
Fischer	Janssen	Pankonin	Utter

Voting in the negative, 32:

Ashford	Dubas	Haar	McGill	Sullivan
Campbell	Flood	Hansen	Mello	Wallman
Coash	Friend	Harms	Nantkes	White
Cook	Fulton	Karpisek	Nordquist	Wightman
Cornett	Gay	Langemeier	Pahls	
Council	Giese	Lathrop	Price	
Dierks	Gloor	McCoy	Rogert	

Excused and not voting, 1:

Avery

The Janssen amendment lost with 16 ayes, 32 nays, and 1 excused and not voting.

The Chair declared the call raised.

Senator Friend offered the following amendment:

FA8

On page 3, in line 3, after "ordinance" insert: "approved by a vote of two-thirds of the members of its governing body".

The Friend amendment was adopted with 46 ayes, 0 nays, 2 present and not voting, and 1 excused and not voting.

Senator Stuthman requested a record vote on the advancement of the bill.

Voting in the affirmative, 36:

Ashford	Dubas	Hansen	Nantkes	Sullivan
Campbell	Flood	Harms	Nelson	Wallman
Carlson	Friend	Karpisek	Nordquist	White
Coash	Fulton	Langemeier	Pahls	Wightman
Cook	Gay	Lathrop	Pankonin	
Cornett	Giese	McCoy	Price	
Council	Gloor	McGill	Rogert	
Dierks	Haar	Mello	Schilz	

Voting in the negative, 10:

Adams	Hadley	Howard	Louden	Stuthman
Fischer	Heidemann	Janssen	Pirsch	Utter

Present and not voting, 2:

Christensen Lautenbaugh

Excused and not voting, 1:

Avery

Advanced to Enrollment and Review for Engrossment with 36 ayes, 10 nays, 2 present and not voting, and 1 excused and not voting.

**LEGISLATIVE BILL 120.** ER8006, found on page 308, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 251.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 166.** ER8009, found on page 321, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 123.** ER8011, found on page 330, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 75.** ER8010, found on page 330, was adopted.

Advanced to Enrollment and Review for Engrossment.

### COMMITTEE REPORT

Banking, Commerce and Insurance

**LEGISLATIVE BILL 432.** Placed on General File with amendment.  
AM177

- 1 1. Strike section 2.
- 2 2. On page 3, line 6, strike "a holder" and insert "an
- 3 owner"; and in line 8 after "Revenue" insert ", except that the
- 4 Auditor of Public Accounts shall have unrestricted access to such
- 5 records".
- 6 3. Renumber the remaining section and correct the
- 7 repealer accordingly.

(Signed) Rich Pahls, Chairperson

### AMENDMENTS - Print in Journal

Senator Stuthman filed the following amendment to LB5:  
AM179

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 37-513, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 37-513 (1) It shall be unlawful to shoot at any wildlife
- 6 from any highway or roadway, which includes that area of land from
- 7 the center of the traveled surface to the right-of-way on either
- 8 side. Any person violating this subsection shall be guilty of a
- 9 Class III misdemeanor and shall be fined at least fifty dollars.
- 10 (2)(a) ~~It shall be unlawful to trap any wildlife in the county~~
- 11 ~~road right-of-way, except that the commission may allow trapping~~
- 12 ~~of raptors within the county road right-of-way in accordance with~~
- 13 ~~sections 37-497 to 37-4,103.~~
- 14 (b) For purposes of this subsection, county road
- 15 right-of-way means the area which has been designated a part of the
- 16 county road system and which has not been vacated pursuant to law.
- 17 Sec. 2. Section 37-559, Reissue Revised Statutes of
- 18 Nebraska, is amended to read:
- 19 37-559 (1) Any farmer or rancher owning or operating a
- 20

21 farm or ranch may destroy or have destroyed any predator preying on  
 22 livestock or poultry or causing other agricultural depredation on  
 23 land owned or controlled by him or her without a permit issued by  
 1 the commission.

2 (2) Notwithstanding subsection (2) of section 37-513,  
 3 a county may request permission from the commission to permit  
 4 trapping of wildlife in a designated area of the county road  
 5 right-of-way for reasonable wildlife management purposes as  
 6 determined by the commission and if the county board has reason to  
 7 believe that wildlife management is a concern in such area. The  
 8 commission shall require signs to be posted within the designated  
 9 area to provide notice of such traps.

10 ~~(2)-(3)~~ This section shall not be construed to allow ~~such~~  
 11 ~~farmer or rancher~~ any person to destroy or have destroyed species  
 12 which are protected by the provisions of sections 37-314 and 37-501  
 13 to 37-503, the Nongame and Endangered Species Conservation Act,  
 14 the federal Endangered Species Act, the federal Fish and Wildlife  
 15 Coordination Act, as amended, 16 U.S.C. 661 et seq., the federal  
 16 Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et  
 17 seq., the federal Migratory Bird Treaty Act, as amended, 16 U.S.C.  
 18 703 et seq., or rules and regulations adopted and promulgated  
 19 pursuant to such provisions.

20 Sec. 3. Original sections 37-513 and 37-559, Reissue  
 21 Revised Statutes of Nebraska, are repealed.

22 Sec. 4. Since an emergency exists, this act takes effect  
 23 when passed and approved according to law.

Senator Wightman filed the following amendment to LB5:  
 AM185

(Amendments to AM132)

- 1 1. On page 1, line 15, after "right-of-way" insert "or in
- 2 a certain area of the right-of-way as designated by the county".

Senator Lathrop filed the following amendment to LB192:  
 FA6

Strike Sections 2 and 3.

### UNANIMOUS CONSENT - Add Cointroducers

Senator Coash asked unanimous consent to add his name as cointroducer to  
 LB306. No objections. So ordered.

Senator Haar asked unanimous consent to add his name as cointroducer to  
 LB499. No objections. So ordered.

Senator Langemeier asked unanimous consent to add his name as  
 cointroducer to LB675. No objections. So ordered.

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB675 and LB676. No objections. So ordered.

### **VISITORS**

Visitors to the Chamber were Harry Merrihew from Ashby; Dale Caskey from Bassett; 24 twelfth-grade students, teacher, and sponsors from Hartington; and 23 eleventh-grade students from Kearney Catholic School, Kearney.

The Doctor of the Day was Dr. Michael Sayers from Lincoln.

### **ADJOURNMENT**

At 11:56 a.m., on a motion by Senator Nantkes, the Legislature adjourned until 9:00 a.m., Thursday, February 5, 2009.

Patrick J. O'Donnell  
Clerk of the Legislature