

TWENTY-EIGHTH DAY - FEBRUARY 18, 2009

LEGISLATIVE JOURNAL

**ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION**

TWENTY-EIGHTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, February 18, 2009

PRAYER

The prayer was offered by Pastor Kenneth Leischner, First Christian Church, Falls City.

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 Senators Ashford, Avery, Cornett, and Gay who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-seventh day was approved.

COMMITTEE REPORTS

Health and Human Services

LEGISLATIVE BILL 250. Placed on General File with amendment. AM250 is available in the Bill Room.

LEGISLATIVE BILL 290. Placed on General File with amendment. AM293

- 1 1. Strike the original section and insert the following
- 2 new section:
- 3 Section 1. (1) No individual who has been convicted of
- 4 a felony or of any crime involving moral turpitude, or who has
- 5 been charged with or indicted for a felony or crime involving moral
- 6 turpitude and there has been no final resolution of the prosecution
- 7 of the crime, shall provide transportation services under contract
- 8 with the Department of Health and Human Services, whether as an
- 9 employee or as a volunteer, for vulnerable adults as defined in
- 10 section 28-371 or for persons under nineteen years of age.
- 11 (2) In order to assure compliance with subsection (1)
- 12 of this section, any individual who will be providing such

13 transportation services to such vulnerable adults or persons under
14 nineteen years of age and any individual who is providing such
15 services on the effective date of this act shall be subject
16 to a national criminal history record information check by the
17 Department of Health and Human Services through the Nebraska State
18 Patrol.

19 (3) In addition to the national criminal history record
20 information check required in subsection (2) of this section,
21 all individuals employed to provide transportation services under
22 contract with the Department of Health and Human Services to
23 vulnerable adults or persons under nineteen years of age shall
1 submit to a national criminal history record information check
2 every two years during the period of such employment.

3 (4) Individuals shall submit two full sets of
4 fingerprints to the Nebraska State Patrol to be submitted to
5 the Federal Bureau of Investigation for the national criminal
6 history record information check required under this section. The
7 individual shall pay the actual cost of fingerprinting and the
8 national criminal history record information check.

9 (5)(a) Individuals shall authorize release of the results
10 and contents of a national criminal history record information
11 check under this section to the employer and the Department of
12 Health and Human Services as provided in this section.

13 (b) The Nebraska State Patrol shall not release the
14 contents of a national criminal history record information check
15 under this section to the employer or the individual but shall only
16 indicate in writing to the employer and the individual whether the
17 individual has a criminal record.

18 (c) The Nebraska State Patrol shall release the results
19 and the contents of a national criminal history record information
20 check under this section in writing to the department in accordance
21 with applicable federal law.

22 (6) The Department of Health and Human Services may
23 develop and implement policies that provide for administrative
24 exceptions to the prohibition in subsection (1) of this section,
25 including, but not limited to, situations in which relatives of
26 the vulnerable adult or person under nineteen years of age provide
27 transportation services for such vulnerable adult or person under
1 nineteen years of age or situations in which the circumstances
2 of the crime or the elapsed time since the commission of the
3 crime do not warrant the prohibition. Any decision made by the
4 department regarding an administrative exception under this section
5 is discretionary and is not appealable.

6 (7) An individual who does not comply with this section
7 is guilty of a Class V misdemeanor.

LEGISLATIVE BILL 540. Placed on General File with amendment.
AM115

- 1 1. On page 2, line 22, after the semicolon insert "and
- 2 (g) The probation administrator or his or her designee.";
- 3 and strike lines 23 through 25 and show the old matter as stricken.
- 4 2. On page 3, strike lines 1 through 5 and show the old
- 5 matter as stricken; and in line 6 reinstate the stricken matter.

LEGISLATIVE BILL 150. Indefinitely postponed.

LEGISLATIVE BILL 611. Indefinitely postponed.

(Signed) Tim Gay, Chairperson

SELECT FILE

LEGISLATIVE BILL 5. Senator Stuthman offered the following motion:
MO14

Bracket until May 29, 2009.

SENATOR CARLSON PRESIDING

Senator Lautenbaugh moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 37 ayes, 3 nays, and 9 not voting.

Senator Stuthman moved for a call of the house. The motion prevailed with 44 ayes, 0 nays, and 5 not voting.

Senator Stuthman requested a roll call vote on his motion to bracket.

Voting in the affirmative, 14:

| | | | | |
|----------|---------|---------|-----------|-------|
| Adams | Cornett | Howard | Nantkes | Utter |
| Campbell | Dierks | Lathrop | Nordquist | White |
| Cook | Haar | McGill | Pankonin | |

Voting in the negative, 30:

| | | | | |
|-------------|--------|-----------|-------------|----------|
| Carlson | Flood | Hadley | Langemeier | Pahls |
| Christensen | Friend | Hansen | Lautenbaugh | Pirsch |
| Coash | Fulton | Harms | Louden | Price |
| Council | Gay | Heidemann | McCoy | Schilz |
| Dubas | Giese | Janssen | Mello | Sullivan |
| Fischer | Gloor | Karpisek | Nelson | Wightman |

Present and not voting, 4:

| | | | |
|---------|--------|----------|---------|
| Ashford | Rogert | Stuthman | Wallman |
|---------|--------|----------|---------|

Excused and not voting, 1:

Avery

The Stuthman motion to bracket failed with 14 ayes, 30 nays, 4 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

Pending.

COMMITTEE REPORT
Nebraska Retirement Systems

LEGISLATIVE BILL 23. Indefinitely postponed.

(Signed) Dave Pankonin, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 24. Introduced by Rogert, 16.

WHEREAS, Alexandra Linderm, an esteemed resident of Oakland, Nebraska, and a student at West Point Elementary School, has achieved national recognition for exemplary volunteer service by receiving a 2009 Prudential Spirit of Community Award; and

WHEREAS, this prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Ms. Linderm earned this award by giving generously of her time and energy to a project called "Diapers for Honduras"; and

WHEREAS, the success of the State of Nebraska, the strength of our communities, and the overall vitality of American society depend, in great measure, upon the dedication of young people like Ms. Linderm who use their considerable talents and resources to serve others.

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

1. That the Legislature congratulates and honors Alexandra Linderm as a recipient of a Prudential Spirit of Community Award, recognizes her outstanding record of volunteer service, peer leadership, and community spirit, and extends best wishes for her continued success and happiness.

2. That a copy of this resolution be sent to Alexandra Linderm.

Laid over.

LEGISLATIVE RESOLUTION 25. Introduced by Louden, 49.

WHEREAS, Sydney Swanson, an esteemed resident of Alliance, Nebraska, and a student at Alliance High School, has achieved national recognition for exemplary volunteer service by receiving a 2009 Prudential Spirit of Community Award; and

WHEREAS, this prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Ms. Swanson earned this award by giving generously of her time and energy to organize a donation drive that collected 125 winter coats for less fortunate children in her town, plus an additional 50 coats for developmentally disabled adults. She then secured a grant to expand her drive to other cities in Nebraska; and

WHEREAS, the success of the State of Nebraska, the strength of our communities, and the overall vitality of American society depend, in great measure, upon the dedication of young people like Ms. Swanson who use their considerable talents and resources to serve others.

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

1. That the Legislature congratulates and honors Sydney Swanson as a recipient of a Prudential Spirit of Community Award, recognizes her outstanding record of volunteer service, peer leadership, and community spirit, and extends best wishes for her continued success and happiness.

2. That a copy of this resolution be sent to Sydney Swanson.

Laid over.

BILL ON FIRST READING

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

LEGISLATIVE BILL 669A. Introduced by Ashford, 20; Coash, 27.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 669, One Hundred First Legislature, First Session, 2009; to provide an operative date; and to declare an emergency.

NOTICE OF COMMITTEE HEARINGS
Health and Human Services

Room 1510

Wednesday, February 25, 2009 1:30 p.m.

LB136
LB291
LB342
LB390
LB590

(Signed) Tim Gay, Chairperson

Judiciary

Room 1113

Wednesday, February 25, 2009 1:30 p.m.

LB253
LB356
LB345
LB414
LB596

(Signed) Brad Ashford, Chairperson

COMMITTEE REPORTS
Nebraska Retirement Systems

The Nebraska Retirement Systems 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.

Janis Elliott - Public Employees Retirement Board

Aye: 6 Senators Heidemann, Karpisek, Loudon, Mello, Nordquist, Pankonin. Nay: 0. Absent: 0.

The Nebraska Retirement Systems 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.

Gail Werner-Robertson - Nebraska Investment Council

Aye: 6 Senators Heidemann, Karpisek, Louden, Mello, Nordquist, Pankonin. Nay: 0. Absent: 0.

(Signed) Dave Pankonin, Chairperson

EXECUTIVE BOARD ANNOUNCEMENT

Pursuant to LR11 (2009), the Executive Board met and reappointed the following senators to the Developmental Disabilities Special Investigative Committee:

Senators Adams, Cornett, Gay, Harms, Lathrop, Stuthman, and Wallman.

Also, pursuant to LR11, Senator Lathrop will continue as Chairperson and Senator Harms will continue as Vice Chairperson.

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

Batie, Barbara - Nebraska Environmental Trust Board - Natural Resources
Christen, Rodney - Nebraska Environmental Trust Board - Natural Resources
Dinsdale, Kim - Nebraska Educational Telecommunications Commission - Education
Hatcher, Theresa - Board of Emergency Medical Services - Health and Human Services
Hiemer, Troy - Board of Emergency Medical Services - Health and Human Services
Krohn, Robert - Nebraska Environmental Trust Board - Natural Resources

(Signed) John Wightman, Chairperson
Executive Board

SELECT FILE

LEGISLATIVE BILL 5. Senator Lathrop renewed his amendment, AM347, found on page 471.

Senator Lathrop moved for a call of the house. The motion prevailed with 37 ayes, 0 nays, and 12 not voting.

Senator Lathrop requested a roll call vote, in reverse order, on his amendment.

Voting in the affirmative, 18:

| | | | | |
|----------|----------|---------|-----------|---------|
| Ashford | Gloor | Lathrop | Nordquist | Wallman |
| Avery | Haar | McGill | Pankonin | White |
| Campbell | Howard | Mello | Rogert | |
| Cornett | Karpisek | Nantkes | Stuthman | |

Voting in the negative, 30:

| | | | | |
|-------------|---------|-----------|-------------|----------|
| Adams | Dubas | Giese | Langemeier | Pirsch |
| Carlson | Fischer | Hadley | Lautenbaugh | Price |
| Christensen | Flood | Hansen | Louden | Schilz |
| Coash | Friend | Harms | McCoy | Sullivan |
| Cook | Fulton | Heidemann | Nelson | Utter |
| Council | Gay | Janssen | Pahls | Wightman |

Excused and not voting, 1:

Dierks

The Lathrop amendment lost with 18 ayes, 30 nays, and 1 excused and not voting.

The Chair declared the call raised.

Senator Langemeier renewed his amendment, FA12, found on page 472.

The Langemeier amendment was adopted with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 26. Introduced by Lautenbaugh, 18; Carlson, 38; Christensen, 44; Dubas, 34; Fulton, 29; McCoy, 39; Price, 3; Schilz, 47.

WHEREAS, Barack Obama, President of the United States, has promised that one of the top priorities of his new administration is to sign into law the "Freedom of Choice Act", not yet introduced to the 111th Congress, but previously introduced to the 110th Congress as H.R.1964 and S.1173, which purports to classify abortion as a "fundamental right", equal in stature to the right to free speech and the right to vote - rights that, unlike abortion, are specifically enumerated in the United States Constitution; and

WHEREAS, the federal "Freedom of Choice Act" would invalidate any "statute, ordinance, regulation, administrative order, decision, policy, practice, or other action" of any federal, state, or local government or governmental official (or any person acting under government authority) that would "deny or interfere with a woman's right to choose" abortion, or

that would "discriminate against the exercise of the right . . . in the regulation or provision of benefits, facilities, services, or information"; and

WHEREAS, the federal "Freedom of Choice Act" would nullify any federal or state law "enacted, adopted, or implemented before, on, or after the date of its enactment" and would effectively prevent the State of Nebraska from enacting similar protective measures in the future; and

WHEREAS, the federal "Freedom of Choice Act" would invalidate more than five hundred fifty federal and state abortion-related laws, laws supported by the majority of the American public; and

WHEREAS, the federal "Freedom of Choice Act" would specifically invalidate the following common-sense, protective laws properly enacted by the State of Nebraska: Sections 28-325 to 28-345, Reissue Revised Statutes of Nebraska; and

WHEREAS, the federal "Freedom of Choice Act" will not make abortion safe or rare, but will instead actively promote and subsidize abortion with state and federal tax dollars and do nothing to ensure its safety; and

WHEREAS, the federal "Freedom of Choice Act" will protect and promote the abortion industry, sacrifice women and their health to a radical political ideology of unregulated abortion-on-demand, and silence the voices of everyday Americans who want to engage in a meaningful public discussion and debate over the availability, safety, and even desirability of abortion.

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

1. That the Legislature strongly opposes the federal "Freedom of Choice Act" and urges Congress to summarily reject it.

2. That the Legislature strongly opposes the federal "Freedom of Choice Act" because it seeks to circumvent the states' general legislative authority as guaranteed under the Tenth Amendment to the United States Constitution.

3. That the Legislature strongly opposes the federal "Freedom of Choice Act" because it seeks to undermine the right and responsibility of the states and the people to debate, vote on, and determine abortion policy.

4. That the Legislature strongly opposes the federal "Freedom of Choice Act" because the protection of women's health through state regulations on abortion is a compelling state interest that should not be nullified by Congress.

5. That the Legislature strongly opposes the federal "Freedom of Choice Act" because its enactment would nullify sections 28-325 to 28-345, Reissue Revised Statutes of Nebraska, laws that the Legislature and the people of Nebraska strongly support.

6. That the Secretary of State of Nebraska transmit a copy of this resolution to the Governor of Nebraska, President of the United States, President of the United States Senate, and Speaker of the United States House of Representatives.

Laid over.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR26 was referred to the Reference Committee.

RESOLUTIONS**LEGISLATIVE RESOLUTION 27.** Introduced by Heidemann, 1.

WHEREAS, Jacob Buss, an esteemed resident of Tecumseh and a student at Johnson County Central High School, has achieved national recognition for exemplary volunteer service by receiving a 2009 Prudential Spirit of Community Award; and

WHEREAS, this prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Mr. Buss earned this award by giving generously of his time and energy to the American Cancer Society's Relay for Life fundraiser, serving as the entertainment committee chair for two years and as chairperson of the entire fundraiser this year; and

WHEREAS, the success of the State of Nebraska, the strength of our communities, and the overall vitality of American society depend, in great measure, upon the dedication of young people like Mr. Buss who use their considerable talents and resources to serve others.

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

1. That the Legislature congratulates and honors Jacob Buss as a recipient of a 2009 Prudential Spirit of Community Award, recognizes his outstanding record of volunteer service, peer leadership, and community spirit, and extends best wishes for his continued success and happiness.

2. That a copy of this resolution be sent to Jacob Buss.

Laid over.

LEGISLATIVE RESOLUTION 28. Introduced by Flood, 19; Ashford, 20.

WHEREAS, former state Senator Richard F. Proud, of Battlement Mesa, Colorado, died on January 24, 2009, in Rifle, Colorado, at the age of 87; and

WHEREAS, Richard F. Proud served as a Second Lieutenant in the United States Navy during World War II and was commander of the landing craft LCT912 in the Pacific theater; and

WHEREAS, Richard F. Proud was a retired attorney and served in the Nebraska Legislature from 1965 to 1975, representing Legislative District 12 in Omaha. He also served as Speaker of the Legislature in 1973 and 1974; and

WHEREAS, Richard F. Proud became widely known in 1974 when he was invited to speak with President Richard Nixon about the difficulties faced by the farming industry; and

WHEREAS, Richard F. Proud is survived by his wife, Jean, his children, Carol, John, and George, and his eight grandchildren.

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

1. That the Legislature expresses and extends its sympathy and condolences to the family of Richard F. Proud.

2. That a copy of this resolution be sent to the family of Richard F. Proud.

Laid over.

SELECT FILE

LEGISLATIVE BILL 5. Senator Haar offered the following amendment:
AM238

(Amendments to E & R amendments, ER8014)

- 1 1. On page 1, line 13, after the stricken period insert
- 2 "Any person who intends to trap in a county road right-of-way
- 3 shall first obtain permission from the landowner whose property is
- 4 adjacent to the right-of-way to place such traps and shall, at the
- 5 trapper's expense, erect a sign each two hundred feet along the
- 6 line of traps to provide notice of such traps. Any person violating
- 7 this subsection shall be guilty of a Class V misdemeanor.
- 8 (b)"; and in line 17 strike "(b)", show as stricken, and
- 9 insert "(c)".

The Haar amendment lost with 14 ayes, 20 nays, 10 present and not voting, and 5 excused and not voting.

Senator Stuthman offered the following amendment:
AM371

(Amendments to E & R amendments, ER8014)

- 1 1. On page 1, line 16, after the period insert "Any
- 2 county prohibiting trapping by resolution shall erect signs in
- 3 locations in the county designated by the county board providing
- 4 notice of such prohibition.".

Senator Stuthman withdrew his amendment.

Senator Haar offered the following amendment:
AM374

(Amendments to E & R amendments, ER8014)

- 1 1. On page 1, line 16, after the period insert "Any
- 2 person trapping wildlife in a county road right-of-way shall not
- 3 use traps larger than those permitted by the commission on the
- 4 effective date of this act.".

Senator Haar moved for a call of the house. The motion prevailed with 33 ayes, 0 nays, and 16 not voting.

The Haar amendment was adopted with 25 ayes, 5 nays, 14 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Pending.

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

LB/LR **Committee**
LR26 Judiciary

(Signed) John Wightman, Chairperson
Executive Board

COMMITTEE REPORT

Education

LEGISLATIVE BILL 547. Placed on General File with amendment. AM365 is available in the Bill Room.

(Signed) Greg Adams, Chairperson

AMENDMENTS - Print in Journal

Senator Haar filed the following amendment to LB53:
AM332

- 1 1. On page 5, line 6, strike "and" and show as stricken.
- 2 2. On page 6, line 1, strike the period, show as
- 3 stricken, and insert "; and
- 4 (3) If not included within the geographical area
- 5 described in subdivision (1) or (2) of this section, any voting
- 6 precinct located within a thirty-mile radius of an electric
- 7 generation facility operated by such district."

Senator Flood filed the following amendment to LB219A:
AM369

- 1 1. On page 3, after line 10 insert:
- 2 "The unexpended cash fund and federal fund appropriation
- 3 balances existing on June 30, 2009, are hereby reappropriated
- 4 to Program 644 to meet FY2008-09 obligations. Any reappropriated
- 5 balances remaining after FY2008-09 obligations have been met shall

6 be transferred to the Department of Roads, for Program 568, no
7 later than September 30, 2009.".

VISITORS

Visitors to the Chamber were 5 twelfth-grade students and teacher from Lexington; Andrew Brittenham from Superior; Arlynn, Emily, Andrew, and Victoria Aldinger from Holdrege; members of Nebraska Christian Home Educators Association from across the state; members of Leadership Tomorrow from across the state; and Ron and Kay Pavelka from Glenvil.

The Doctor of the Day was Dr. Stuart Embury from Holdrege.

ADJOURNMENT

At 12:00 p.m., on a motion by Senator Loudon, the Legislature adjourned until 9:00 a.m., Thursday, February 19, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

