

FIFTY-EIGHTH DAY - APRIL 8, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION****FIFTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, April 8, 2009

PRAYER

The prayer was offered by Reverend Theodora Boolin, First Baptist Church, Beatrice.

ROLL CALL

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

The roll was called and all members were present except Senators Cornett, Dubas, Friend, Haar, Loudon, Nantkes, Schilz, and Wightman who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-seventh day was approved.

MOTION - Approve Appointment

Senator Ashford moved the adoption of the Judiciary Committee report for the confirmation of the following appointment(s) found on page 948:

Board of Parole
James Pearson

Voting in the affirmative, 38:

Adams	Council	Hadley	Lautenbaugh	Rogert
Ashford	Dierks	Hansen	McCoy	Stuthman
Avery	Fischer	Harms	McGill	Sullivan
Campbell	Flood	Howard	Nelson	Utter
Carlson	Fulton	Janssen	Nordquist	Wallman
Christensen	Gay	Karpisek	Pahls	White
Coash	Giese	Langemeier	Pirsch	
Cook	Gloor	Lathrop	Price	

Voting in the negative, 0.

Present and not voting, 3:

Heidemann Mello Pankonin

Excused and not voting, 8:

Cornett Friend Louden Schilz
Dubas Haar Nantkes Wightman

The appointment was confirmed with 38 ayes, 0 nays, 3 present and not voting, and 8 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 601A. Title read. Considered.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 8 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 159. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 159A. Title read. Considered.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 489. Title read. Considered.

Committee AM731, found on page 767, was considered.

SENATOR STUTHMAN PRESIDING

Senator Wallman moved the previous question. The question is, "Shall the debate now close?" The motion failed with 21 ayes, 9 nays, and 19 not voting.

The committee amendment was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

COMMITTEE REPORTS

Judiciary

LEGISLATIVE BILL 39. Placed on General File with amendment.
AM980

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

3 Section 1. (1) The following evidence is not admissible
4 in any civil or criminal proceeding involving alleged sexual
5 misconduct except as provided in subsections (2) and (3) of this
6 section:

7 (a) Evidence offered to prove that any victim engaged in
8 other sexual behavior; and

9 (b) Evidence offered to prove any victim's sexual
10 predisposition.

11 (2)(a) In a criminal case, the following evidence is
12 admissible, if otherwise admissible under these rules:

13 (i) Evidence of specific instances of sexual behavior by
14 the victim offered to prove that a person other than the defendant
15 was the source of semen, injury, or other physical evidence;

16 (ii) Evidence of specific instances of sexual behavior by
17 the victim with respect to the defendant of the sexual misconduct
18 offered by the defendant to prove consent or by the prosecution;
19 and

20 (iii) Evidence, the exclusion of which would violate the
21 constitutional rights of the defendant.

22 (b) In a civil case, evidence offered to prove the sexual
23 behavior or sexual predisposition of any victim is admissible if it
1 is otherwise admissible under these rules and its probative value
2 substantially outweighs the danger of harm to any victim and of
3 unfair prejudice to any party. Evidence of a victim's reputation is
4 admissible only if it has been placed in controversy by the victim.

5 (3)(a) A party intending to offer evidence under
6 subsection (2) of this section shall:

7 (i) File a written motion at least fifteen days before
8 trial specifically describing the evidence and stating the purpose
9 for which it is offered unless the court, for good cause, requires
10 a different time for filing or permits filing during trial; and

11 (ii) Serve the motion on all parties and notify
12 the victim or, when appropriate, the victim's guardian or
13 representative.

14 (b) Before admitting evidence under this rule the court
15 shall conduct a hearing in camera outside the presence of any jury
16 and afford the victim and parties a right to attend and be heard.

17 Sec. 2. For purposes of sections 3 and 4 of this act,
18 offense of sexual assault means sexual assault under section 28-319
19 or 28-320, sexual assault of a child under section 28-319.01
20 or 28-320.01, sexual assault by use of computer under section
21 28-320.02, sexual abuse of an inmate or parolee under sections

22 28-322.01 to 28-322.03, and sexual abuse of protected persons under
23 section 28-322.04.

24 Sec. 3. (1) In a criminal case in which the defendant
25 is accused of an offense of sexual assault, evidence of the
26 defendant's commission of another offense or offenses of sexual
27 assault is admissible if there is clear and convincing evidence
1 otherwise admissible under these rules that the defendant committed
2 the other offense or offenses. If admissible, such evidence may be
3 considered for its bearing on any matter to which it is relevant.

4 (2) In a case in which the prosecution intends to offer
5 evidence under this rule, the prosecuting attorney shall disclose
6 the evidence to the defendant, including statements of witnesses or
7 a summary of the substance of any testimony that is expected to be
8 offered, at least fifteen days before the scheduled date of trial
9 or at such later time as the court may allow for good cause.

10 (3) Before admitting evidence of the defendant's
11 commission of another offense or offenses of sexual assault under
12 this rule, the court shall conduct a hearing outside the presence
13 of any jury and afford the victim and parties a right to attend and
14 be heard. At the hearing, the rules of evidence shall apply and the
15 court shall apply a section 27-403 balancing and admit the evidence
16 unless the risk of prejudice substantially outweighs the probative
17 value of the evidence. In assessing the balancing, the court may
18 consider any relevant factor such as (a) the probability that the
19 other offense occurred, (b) the proximity in time and intervening
20 circumstances of the other offenses, and (c) the similarity of the
21 other acts to the crime charged.

22 (4) This rule shall not be construed to limit the
23 admission or consideration of evidence under any other rule.

24 Sec. 4. (1) In a civil case in which a claim for damages
25 or other relief is predicated on a party's alleged commission of
26 conduct constituting an offense of sexual assault, evidence of that
27 party's commission of another offense or offenses of sexual assault
1 is admissible if there is clear and convincing evidence otherwise
2 admissible under these rules that the party committed the other
3 offense or offenses. If admissible, such evidence may be considered
4 for its bearing on any matter to which it is relevant.

5 (2) A party who intends to offer evidence under this
6 section shall disclose the evidence to the party against whom it
7 will be offered, including statements of witnesses or a summary of
8 the substance of any testimony that is expected to be offered, at
9 least fifteen days before the scheduled date of trial or at such
10 later time as the court may allow for good cause.

11 (3) Before admitting evidence of a party's commission of
12 another offense or offenses of sexual assault under this rule,
13 the court shall conduct a hearing outside the presence of any
14 jury and afford the victim and parties a right to attend and be
15 heard. At the hearing, the rules of evidence shall apply and the
16 court shall apply a section 27-403 balancing and admit the evidence

17 unless the risk of prejudice substantially outweighs the probative
 18 value of the evidence. In assessing the balancing, the court may
 19 consider any relevant factor such as (a) the probability that the
 20 other offense occurred, (b) the proximity in time and intervening
 21 circumstances of the other offenses, and (c) the similarity of the
 22 other acts to the crime charged.

23 (4) This section shall not be construed to limit the
 24 admission or consideration of evidence under any other section of
 25 the Nebraska Evidence Rules.

26 Sec. 5. Section 27-404, Reissue Revised Statutes of
 27 Nebraska, is amended to read:

1 27-404 (1) Evidence of a person's character or a trait of
 2 his or her character is not admissible for the purpose of proving
 3 that he or she acted in conformity therewith on a particular
 4 occasion, except:

5 (a) Evidence of a pertinent trait of his or her character
 6 offered by an accused, or by the prosecution to rebut the same;
 7 (b) Evidence of a pertinent trait of character of the
 8 victim of the crime offered by an accused or by the prosecution to
 9 rebut the same, or evidence of a character trait of peacefulness
 10 of the victim offered by the prosecution in a homicide case to
 11 rebut evidence that the victim was the first aggressor. In the
 12 case of sexual assault, reputation or opinion evidence of the past
 13 sexual behavior of the victim of the sexual assault will not be
 14 admissible; or

15 (c) Evidence of the character of a witness as provided in
 16 sections 27-607 to 27-609.

17 (2) Evidence of other crimes, wrongs, or acts is not
 18 admissible to prove the character of a person in order to show
 19 that he or she acted in conformity therewith. It may, however,
 20 be admissible for other purposes, such as proof of motive,
 21 opportunity, intent, preparation, plan, knowledge, identity, or
 22 absence of mistake or accident.

23 (3) When such evidence is admissible pursuant to this
 24 section, in criminal cases evidence of other crimes, wrongs, or
 25 acts of the accused may be offered in evidence by the prosecution
 26 if the prosecution proves to the court by clear and convincing
 27 evidence that the accused committed the crime, wrong, or act. Such
 1 proof shall first be made outside the presence of any jury.

2 (4) Regarding the admissibility in a civil or criminal
 3 action of evidence of a person's commission of another offense or
 4 offenses of sexual assault under sections 28-319 to 28-322.04, see
 5 sections 2 to 4 of this act.

6 Sec. 6. Section 27-1103, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 27-1103 These rules and sections 1 to 4 of this act may
 9 be known and cited as the Nebraska Evidence Rules.

10 Sec. 7. Section 28-318, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 28-318 As used in sections 28-317 to ~~28-321~~, 28-323,
13 unless the context otherwise requires:

14 (1) Actor means a person accused of sexual assault;

15 (2) Intimate parts means the genital area, groin, inner
16 thighs, buttocks, or breasts;

17 (3) Past sexual behavior means sexual behavior other than
18 the sexual behavior upon which the sexual assault is alleged;

19 (4) Serious personal injury means great bodily injury or
20 disfigurement, extreme mental anguish or mental trauma, pregnancy,
21 disease, or loss or impairment of a sexual or reproductive organ;

22 (5) Sexual contact means the intentional touching of the
23 victim's sexual or intimate parts or the intentional touching of
24 the victim's clothing covering the immediate area of the victim's
25 sexual or intimate parts. Sexual contact shall also mean the
26 touching by the actor of the actor's sexual or intimate parts or
27 the clothing covering the immediate area of the actor's sexual or
1 intimate parts when such touching is intentionally caused by the
2 actor. Sexual contact shall include only such conduct which can be
3 reasonably construed as being for the purpose of sexual arousal or
4 gratification of either party. Sexual contact shall also include
5 the touching of a child with the actor's sexual or intimate parts
6 on any part of the child's body for purposes of sexual assault of a
7 child under sections 28-319.01 and 28-320.01;

8 (6) Sexual penetration means sexual intercourse in its
9 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any
10 intrusion, however slight, of any part of the actor's or victim's
11 body or any object manipulated by the actor into the genital
12 or anal openings of the victim's body which can be reasonably
13 construed as being for nonmedical or nonhealth purposes. Sexual
14 penetration shall not require emission of semen;

15 (7) Victim means the person alleging to have been
16 sexually assaulted;

17 (8) Without consent means:

18 (a)(i) The victim was compelled to submit due to the
19 use of force or threat of force or coercion, or (ii) the victim
20 expressed a lack of consent through words, or (iii) the victim
21 expressed a lack of consent through conduct, or (iv) the consent,
22 if any was actually given, was the result of the actor's deception
23 as to the identity of the actor or the nature or purpose of the act
24 on the part of the actor;

25 (b) The victim need only resist, either verbally or
26 physically, so as to make the victim's refusal to consent genuine
27 and real and so as to reasonably make known to the actor the
1 victim's refusal to consent; and

2 (c) A victim need not resist verbally or physically where
3 it would be useless or futile to do so; and

4 (9) Force or threat of force means (a) the use of
5 physical force which overcomes the victim's resistance or (b) the
6 threat of physical force, express or implied, against the victim or

7 a third person that places the victim in fear of death or in fear
8 of serious personal injury to the victim or a third person where
9 the victim reasonably believes that the actor has the present or
10 future ability to execute the threat.

11 Sec. 8. Section 28-1010, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-1010 A person commits indecency with an animal when
14 such person subjects an animal to sexual penetration as defined in
15 ~~subdivision (6) of~~ section 28-318. Indecency with an animal is a
16 Class III misdemeanor.

17 Sec. 9. Section 83-4,143, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 83-4,143 (1) It is the intent of the Legislature that
20 the court target the felony offender (a) who is eligible and
21 by virtue of his or her criminogenic needs is suitable to be
22 sentenced to intensive supervision probation with placement at the
23 incarceration work camp, (b) for whom the court finds that other
24 conditions of a sentence of intensive supervision probation, in
25 and of themselves, are not suitable, and (c) who, without the
26 existence of an incarceration work camp, would, in all likelihood,
27 be sentenced to prison.

1 (2) When the court is of the opinion that imprisonment is
2 appropriate, but that a brief and intensive period of regimented,
3 structured, and disciplined programming within a secure facility
4 may better serve the interests of society, the court may place an
5 offender in an incarceration work camp for a period not to exceed
6 one hundred eighty days as a condition of a sentence of intensive
7 supervision probation. The court may consider such placement if the
8 offender (a) is a male or female offender convicted of a felony
9 offense in a district court, (b) is medically and mentally fit
10 to participate, with allowances given for reasonable accommodation
11 as determined by medical and mental health professionals, and (c)
12 has not previously been incarcerated for a violent felony crime.
13 Offenders convicted of a crime under sections 28-319 to ~~28-324~~
14 28-323 or of any capital crime are not eligible to be placed in an
15 incarceration work camp.

16 (3) It is also the intent of the Legislature that the
17 Board of Parole may recommend placement of felony offenders at
18 the incarceration work camp. The offenders recommended by the
19 board shall be offenders currently housed at other Department
20 of Correctional Services adult correctional facilities and shall
21 complete the incarceration work camp programming prior to release
22 on parole.

23 (4) When the Board of Parole is of the opinion that
24 a felony offender currently incarcerated in a Department of
25 Correctional Services adult correctional facility may benefit
26 from a brief and intensive period of regimented, structured, and
27 disciplined programming immediately prior to release on parole, the
1 board may direct placement of such an offender in an incarceration

2 work camp for a period not to exceed one hundred eighty days as
 3 a condition of release on parole. The board may consider such
 4 placement if the felony offender (a) is medically and mentally fit
 5 to participate, with allowances given for reasonable accommodation
 6 as determined by medical and mental health professionals, and (b)
 7 has not previously been incarcerated for a violent felony crime.
 8 Offenders convicted of a crime under sections 28-319 to ~~28-321~~
 9 ~~28-323~~ or of any capital crime are not eligible to be placed in an
 10 incarceration work camp.

11 Sec. 10. The Revisor of Statutes shall assign sections 1
 12 to 4 of this act to Chapter 27, the Nebraska Evidence Rules.

13 Sec. 11. This act becomes operative on January 1, 2010.

14 Sec. 12. Original sections 27-404, 27-1103, 28-318,
 15 28-1010, and 83-4,143, Reissue Revised Statutes of Nebraska, are
 16 repealed.

17 Sec. 13. The following section is outright repealed:
 18 Section 28-321, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 97. Placed on General File with amendment.
 AM893 is available in the Bill Room.

LEGISLATIVE BILL 285. Placed on General File with amendment.
 AM774

1 1. Strike section 4 and insert the following new section:

2 Sec. 4. Section 29-4003, Reissue Revised Statutes of
 3 Nebraska, is amended to read:

4 29-4003 ~~(1) Except as provided in subsection (2) of this~~
 5 ~~section, the (1)(a) The Sex Offender Registration Act shall apply~~
 6 ~~applies~~ to any person who on or after January 1, 1997:

7 ~~(i) Has ever pleaded (a) Pleads guilty to, pleaded nolo~~
 8 ~~contendere to, or been or is found guilty of any of the following~~

9 ~~(i)-(A) Kidnapping of a minor pursuant to section 28-313,~~
 10 ~~except when the person is the parent of the minor and was not~~
 11 ~~convicted of any other offense in this section;~~

12 ~~(ii)-(B) False imprisonment of a minor pursuant to~~
 13 ~~section 28-314 or 28-315;~~

14 ~~(iii)-(C) Sexual assault pursuant to section 28-319 or~~
 15 ~~28-320;~~

16 ~~(iv)-(D) Sexual assault of a child in the second or third~~
 17 ~~degree pursuant to section 28-320.01;~~

18 ~~(v)-(E) Sexual assault of a child in the first degree~~
 19 ~~pursuant to section 28-319.01;~~

20 ~~(vi)-(F) Sexual assault abuse of a vulnerable adult~~
 21 ~~pursuant to subdivision (1)(c) of section 28-386;~~

22 ~~(vii)-(G) Incest of a minor pursuant to section 28-703;~~

23 ~~(viii)-(H) Pandering of a minor pursuant to section~~
 1 ~~28-802;~~

2 ~~(ix)-(I) Visual depiction of sexually explicit conduct of~~
 3 ~~a child pursuant to section 28-1463.03 or 28-1463.05;~~

- 4 ~~(x)~~(J) Knowingly possessing any visual depiction of
 5 sexually explicit conduct which has a child as one of its
 6 participants or portrayed observers pursuant to section 28-813.01;
- 7 ~~(xi)~~(K) Criminal child enticement pursuant to section
 8 28-311;
- 9 ~~(xii)~~(L) Child enticement by means of a computer
 10 pursuant to section 28-320.02;
- 11 ~~(xiii)~~(M) Debauching a minor pursuant to section 28-805;
 12 or
- 13 ~~(xiv)~~(N) Attempt, solicitation, aiding or abetting,
 14 being an accessory, or conspiracy to commit an offense listed
 15 in subdivisions ~~(1)(a)(i)-(1)(a)(i)(A)~~ through ~~(1)(a)(xiii)~~
 16 (1)(a)(i)(M) of this section;
- 17 (ii) Has ever ~~(b) Enters the state and has pleaded~~
 18 guilty to, ~~pleaded nolo contendere to,~~ or ~~has been found guilty~~
 19 of any offense that is substantially equivalent to a registrable
 20 offense under subdivision ~~(1)(a)-(1)(a)(i)~~ of this section by
 21 any ~~village, town, city,~~ state, territory, commonwealth, or other
 22 jurisdiction of the United States, by the United States Government,
 23 or by court-martial or other military tribunal, ~~or by a foreign~~
 24 jurisdiction, notwithstanding a procedure comparable in effect to
 25 that described under section 29-2264 or any other procedure to
 26 nullify a conviction other than by pardon; or
- 27 (e) Is incarcerated in a jail, a penal or correctional
 1 facility, or any other public or private institution or is under
 2 probation or parole as a result of pleading guilty to or being
 3 found guilty of a registrable offense under subdivision (1)(a) or
 4 (b) of this section prior to January 1, 1997; or
- 5 ~~(d)~~(iii) Enters the state and is required to register
 6 as a sex offender under the laws of another village, town, city,
 7 state, territory, commonwealth, or other jurisdiction of the United
 8 States.
- 9 (b) In addition to the registrable offenses under
 10 subdivision (1)(a)(i) of this section, the Sex Offender
 11 Registration Act applies to any person who on or after the
 12 effective date of this act:
- 13 (i) Has ever pleaded guilty to, pleaded nolo contendere
 14 to, been found guilty of, or been civilly committed for any of the
 15 following:
- 16 (A) Murder in the first degree pursuant to section 28-303
 17 in which there is a sexual element;
- 18 (B) Murder in the second degree pursuant to section
 19 28-304 in which there is a sexual element;
- 20 (C) Manslaughter pursuant to section 28-305 in which
 21 there is a sexual element;
- 22 (D) Assault in the first degree pursuant to section
 23 28-308 in which there is a sexual element;
- 24 (E) Assault in the second degree pursuant to section
 25 28-309 in which there is a sexual element;

- 26 (F) Assault in the third degree pursuant to section
 27 28-310 in which there is a sexual element;
- 1 (G) Stalking pursuant to section 28-311.03 in which there
 2 is a sexual element;
- 3 (H) Unlawful intrusion pursuant to section 28-311.08 on a
 4 minor;
- 5 (I) Kidnapping pursuant to section 28-313 in which there
 6 is a sexual element;
- 7 (J) False imprisonment pursuant to section 28-314 or
 8 28-315 in which there is a sexual element;
- 9 (K) Sexual abuse of an inmate or parolee in the first
 10 degree pursuant to section 28-322.02;
- 11 (L) Sexual abuse of an inmate or parolee in the second
 12 degree pursuant to section 28-322.03;
- 13 (M) Sexual abuse of a protected individual pursuant to
 14 section 28-322.04;
- 15 (N) Incest pursuant to section 28-703;
- 16 (O) Child abuse pursuant to subdivision (1)(d) or (e) of
 17 section 28-707;
- 18 (P) Enticement by electronic communication device
 19 pursuant to section 28-833; or
- 20 (Q) Attempt, solicitation, aiding or abetting, being
 21 an accessory, or conspiracy to commit an offense listed in
 22 subdivisions (1)(b)(i)(A) through (1)(b)(i)(P) of this section;
- 23 (i) Has ever pleaded guilty to, pleaded nolo contendere
 24 to, been found guilty of, or been civilly committed for any
 25 offense that is substantially equivalent to a registrable offense
 26 under subdivision (1)(b)(i) of this section by any village,
 27 town, city, state, territory, commonwealth, or other jurisdiction
 1 of the United States, by the United States Government, or
 2 by court-martial or other military tribunal, or by a foreign
 3 jurisdiction, notwithstanding a procedure comparable in effect to
 4 that described under section 29-2264 or any other procedure to
 5 nullify a conviction other than by pardon; or
- 6 (iii) Enters the state and is required to register as
 7 a sex offender under the laws of another village, town, city,
 8 state, territory, commonwealth, or other jurisdiction of the United
 9 States.
- 10 (2) In the case of a person convicted of a violation
 11 of section 28-313, 28-314, 28-315, or 28-805, the convicted person
 12 shall be subject to the Sex Offender Registration Act, unless the
 13 sentencing court determines at the time of sentencing, in light
 14 of all the facts, that the convicted person is not subject to the
 15 act. The sentencing court shall make such determination part of the
 16 sentencing order.
- 17 (3)-(2) A person appealing a conviction of a registrable
 18 offense under this section shall be required to comply with the act
 19 during the appeals process.

20 2. On page 11, strike beginning with "in" in line 22
21 through "living." in line 24.

(Signed) Brad Ashford, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 83. Introduced by Natural Resources Committee: Langemeier, 23, Chairperson; Carlson, 38; Cook, 13; Dubas, 34; Fischer, 43; Haar, 21; McCoy, 39; Schilz, 47; Giese, 17; Gloor, 35; Hansen, 42; Pirsch, 4.

PURPOSE: To study issues relating to expanded development of wind energy in Nebraska, while preserving the ability of the state's unique public power system to continue serving the state with low-cost, reliable electricity. The study may use as a guide the National Renewable Energy Laboratory's report that focuses on the impact on renewable energy in Nebraska. This study shall, as a starting point of reference, based on U.S. Department of Energy findings, assume that a total of 7,800 megawatts of wind power would be consumed in or exported from Nebraska by 2030.

A task force comprised of individuals from the electric utility and wind energy industries will be convened by the committee to provide technical expertise and advice relevant to the study. An advisory group of all interested parties shall also be convened by the committee to review, advise, and make recommendations to the committee. The committee shall conduct a study that includes, but is not limited to, the following topics:

1. The roles the state's public power utilities and private developers play in the generation of wind energy for consumption both in Nebraska and for export.

2. The role of the Nebraska Power Review Board in approving renewable generation and transmission projects.

3. The current status of the eminent domain power of utilities and the policy changes, if any, that would be necessary for public and private wind energy development.

4. The process for planning, constructing, operating, and financing generation and transmission facilities in the state and region and changes that may be required.

5. The land use, including leases and contracts on public and private lands, and environmental impacts of developing wind energy, including transmission needs.

6. The financial benefits and risks that will affect Nebraskans due to the expansion of wind energy for consumption and export and how the benefits could be maximized while at the same time minimizing the risks to ratepayers and taxpayers.

7. The content and status of the legislative bills related to renewable energy and public power that were introduced in the One Hundred First Legislature, First Session.

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

1. That the Natural Resources Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall, on or before December 1, 2009, make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 84. Introduced by Coash, 27; Campbell, 25; Haar, 21; McGill, 26; Nantkes, 46; Wallman, 30.

WHEREAS, David Lorenzen, a Lincoln firefighter, has served with the Lincoln Fire and Rescue Department for 18 years and is a leader in the training of new recruits; and

WHEREAS, Bryce Fankhauser and Jeffrey Sorensen, Lincoln police officers, are leaders in protecting the residents of Lincoln from drug-related crimes, have 66 combined felony arrests in 2008, and have 576 combined misdemeanor arrests in 2008; and

WHEREAS, the Knights of Columbus have selected David Lorenzen as Lincoln Fire and Rescue Department Firefighter of the Year; and

WHEREAS, the Knights of Columbus have selected Bryce Fankhauser and Jeffrey Sorensen as Lincoln Police Department Police Officers of the Year.

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

1. That the Legislature extends its congratulations to David Lorenzen, Bryce Fankhauser, and Jeffrey Sorensen.

2. That copies of this resolution be sent to David Lorenzen, Bryce Fankhauser, and Jeffrey Sorensen.

Laid over.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 54. Placed on Final Reading.

LEGISLATIVE BILL 111. Placed on Final Reading.

LEGISLATIVE BILL 121. Placed on Final Reading.

LEGISLATIVE BILL 121A. Placed on Final Reading.

LEGISLATIVE BILL 158. Placed on Final Reading.

ST9017

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

1. In the Flood amendment, AM951:

a. On page 2, line 7; and page 4, line 10, "the" has been inserted after the first comma;

b. On page 3, line 25, the comma has been struck and shown as stricken;

c. On page 4, line 13, "(a)" has been struck and "(i)" inserted; in line 14 "(b)" has been struck and "(ii)" inserted; in line 17 "(c)" has been struck and "(iii)" inserted; and in line 19 "(d)" has been struck and "(iv)" inserted;

d. On page 6, line 20, an underscored comma has been inserted after "commission"; and

e. On page 8, line 5, the comma has been struck.

2. On page 1, the matter beginning with "adopt" in line 1 through line 2 has been struck and "amend sections 17-107, 17-208, and 23-1734, Reissue Revised Statutes of Nebraska; to change provisions relating to removal and discipline of police officers, village marshals, and deputy sheriffs; to provide restrictions regarding employment, investigation, removal, and discipline of peace officers; to require rules and regulations; and to repeal the original sections." inserted.

LEGISLATIVE BILL 202. Placed on Final Reading.

ST9016

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

1. On page 1, line 4, "60-144," has been inserted after "60-140,".

LEGISLATIVE BILL 202A. Placed on Final Reading.

LEGISLATIVE BILL 300. Placed on Final Reading.

LEGISLATIVE BILL 361. Placed on Final Reading.

(Signed) Jeremy Nordquist, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

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

VISITORS

Visitors to the Chamber were 63 fourth-grade students and teachers from St. Patrick's, Elkhorn; Steve and Julia Ourecky and Kaitlyn Beukenhorst from Omaha; and Weston Sieck from David City.

RECESS

At 11:59 a.m., on a motion by Senator Nantkes, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., President Sheehy presiding.

ROLL CALL

The roll was called and all members were present except Senators Ashford, Cornett, Friend, Gloor, Karpisek, and Loudon who were excused until they arrive.

COMMITTEE REPORT

Government, Military and Veterans Affairs

LEGISLATIVE BILL 626. Placed on General File with amendment.
AM972

- 1 1. Strike the original sections and insert the following
2 new sections:
3 Section 1. Section 49-1401, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:
5 49-1401 Sections 49-1401 to 49-14,141 and section 3 of
6 this act shall be known and may be cited as the Nebraska Political
7 Accountability and Disclosure Act.
8 Sec. 2. Section 49-1405, Reissue Revised Statutes of
9 Nebraska, is amended to read:
10 49-1405 (1) Ballot question shall mean any question which
11 is submitted or which is intended to be submitted to a popular vote
12 at an election, including, but not limited to, a question submitted
13 or intended to be submitted by way of initiative, referendum,
14 recall, or judicial retention, or bond issue or as a result of
15 legislative action or action of a government body, whether or not
16 it qualifies for the ballot.
17 (2) Ballot question shall also mean any question which
18 has been submitted to a popular vote at an election as a result
19 of legislative action or adoption of a resolution by a political
20 subdivision to place an issue or issues on the ballot.
21 Sec. 3. (1) Any use of public resources by a public
22 official or public employee which is incidental or de minimis shall
23 not constitute a violation of section 49-14,101.01 or 49-14,101.02.
1 (2) For purposes of sections 49-14,101.01 and
2 49-14,101.02, a resource of government, including a vehicle, shall
3 not be considered a public resource and personal use shall not be
4 prohibited if (a) the use of the resource for personal purposes
5 is part of the public official's or public employee's compensation
6 provided in an employment contract or a written policy approved
7 by a government body and (b) the personal use of the resource
8 as compensation is reported in accordance with the Internal
9 Revenue Code of 1986, as amended, and taxes, if any, are paid.
10 If authorized by the contract or policy, the resource may be used
11 whether or not the public official or public employee is engaged in

12 the duties of his or her public office or public employment.

13 (3) Use of a government vehicle by a public official or
14 public employee to travel to a designated location or the home
15 of the public official or public employee is permissible when the
16 primary purpose of the travel serves a government purpose and the
17 use is pursuant to a written policy approved by a government body.

18 (4) Pursuant to a collective-bargaining agreement, a
19 public facility may be used by a bargaining unit to meet regarding
20 activities of the union or bargaining unit. This section shall
21 not authorize the use of public resources for the purpose of
22 campaigning for or against the nomination or election of a
23 candidate or the qualification, passage, or defeat of a ballot
24 question.

25 (5) Nothing in the Nebraska Political Accountability and
26 Disclosure Act prohibits a public official or public employee from
27 using his or her personal cellular telephone, electronic handheld
1 device, or computer to access a wireless network to which access is
2 provided to the public by a government body.

3 Sec. 4. Section 49-14,101.01, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 49-14,101.01 (1) A public official or public employee
6 shall not use or authorize the use of his or her public office
7 or any confidential information received through the holding of
8 a public office to obtain financial gain, other than compensation
9 provided by law, for himself or herself, a member of his or
10 her immediate family, or a business with which the individual is
11 associated.

12 (2) A public official or public employee shall not use or
13 authorize the use of personnel, resources, property, or funds under
14 his or her official care and control other than in accordance with
15 prescribed constitutional, statutory, and regulatory procedures or
16 use such items, other than compensation provided by law, for
17 personal financial gain.

18 (3) Unless otherwise restricted by an employment
19 contract, a collective-bargaining agreement, or a written agreement
20 or policy approved by a government body, a public official or
21 public employee may use a telecommunication system, a cellular
22 telephone, an electronic handheld device, or a computer under the
23 control of a government body for email, text messaging, a local
24 call, or a long-distance call to a child at home, a teacher,
25 a doctor, a day care center, a baby-sitter, a family member,
26 or any other person to inform any such person of an unexpected
27 schedule change or for other essential personal business. Any such
1 communication shall be kept to a minimum and shall not interfere
2 with the conduct of public business. A public official or public
3 employee shall be responsible for payment or reimbursement of
4 charges, if any, that directly result from any such communication.
5 An agency or government body may establish procedures for
6 reimbursement of charges pursuant to this subsection.

7 ~~(3)~~(4) A public official shall not accept a gift
8 of travel or lodging or a gift of reimbursement for travel or
9 lodging if the gift is made so that a member of the public
10 official's immediate family can accompany the public official in
11 the performance of his or her official duties.

12 ~~(4)~~(5) A member of the immediate family of a public
13 official shall not accept a gift of travel or lodging or a gift of
14 reimbursement for travel or lodging if the gift is made so that a
15 member of the public official's immediate family can accompany the
16 public official in the performance of his or her official duties.

17 ~~(5)~~(6) This section does not prohibit the Executive
18 Board of the Legislative Council from adopting policies that allow
19 a member of the Legislature to install and use with private funds a
20 telephone line, telephone, and telefax machine in his or her public
21 office for private purposes.

22 ~~(6)~~(7) Except as provided in section 23-3113, any person
23 violating this section shall be guilty of a Class III misdemeanor,
24 except that no vote by any member of the Legislature shall subject
25 such member to any criminal sanction under this section.

26 Sec. 5. Section 49-14,101.02, Revised Statutes Cumulative
27 Supplement, 2008, is amended to read:

1 49-14,101.02 (1) For purposes of this section, public
2 resources means personnel, property, resources, or funds under the
3 official care and control of a public official or public employee.

4 (2) Except as otherwise provided in this section, a
5 public official or public employee shall not use or authorize
6 the use of public resources for the purpose of campaigning for
7 or against the nomination or election of a candidate or the
8 qualification, passage, or defeat of a ballot question.

9 (3) This section does not prohibit a public official or
10 public employee from making government facilities available to a
11 person for campaign purposes if the identity of the candidate or
12 the support for or opposition to the ballot question is not a
13 factor in making the government facility available or a factor in
14 determining the cost or conditions of use.

15 (4) This section does not prohibit a governing body from
16 discussing and voting upon a resolution supporting or opposing a
17 ballot question or a public corporation organized under Chapter 70
18 from otherwise supporting or opposing a ballot question concerning
19 the sale or purchase of its assets.

20 (5) This section does not prohibit a public official or a
21 public employee under the direct supervision of a public official
22 from responding to specific inquiries by the press or the public as
23 to his or her opinion regarding a ballot question or from providing
24 information in response to a request for information.

25 (6) This section does not prohibit a member of the
26 Legislature from making use of public resources in expressing his
27 or her opinion regarding a candidate or a ballot question or from
1 communicating that opinion. A member is not authorized by this

2 section to utilize mass mailings or other mass communications at
3 public expense for the purpose of campaigning for or against the
4 nomination or election of a candidate. A member is not authorized
5 by this section to utilize mass mailings at public expense for the
6 purpose of qualifying, supporting, or opposing a ballot question.

7 (7) This subsection applies to public officials other
8 than members of the Legislature provided for in subsection (6)
9 of this section. This section does not prohibit, in the normal
10 course of his or her duties, a public official or a public employee
11 under the direct supervision of a public official from using
12 public resources to research and prepare materials to assist the
13 government body for which the individual is a public official or
14 public employee in determining the effect of the ballot question on
15 the government body. This section does not prohibit an individual
16 holding elective office from using public resources to express
17 or communicate his or her opinion regarding a ballot question
18 affecting the government body for which the individual holds the
19 elective office. This section does not authorize mass mailings,
20 mass duplication, or other mass communications at public expense
21 for the purpose of qualifying, supporting, or opposing a ballot
22 question. Mass communications shall not include placing public
23 records demonstrating the consequences of the passage or defeat
24 of a ballot question affecting the government body for which the
25 individual is a public official or public employee on existing web
26 sites of such government body.

27 ~~(7)-(8)~~ Nothing in this section prohibits a public
1 official from campaigning for or against the qualification,
2 passage, or defeat of a ballot question or the nomination or
3 election of a candidate when no public resources are used.

4 ~~(8)-(9)~~ Nothing in this section prohibits a public
5 employee from campaigning for or against the qualification,
6 passage, or defeat of a ballot question or the nomination or
7 election of a candidate when no public resources are used. Except
8 as otherwise provided in this section, a public employee shall
9 not engage in campaign activity for or against the qualification,
10 passage, or defeat of a ballot question or the nomination or
11 election of a candidate while on government work time or when
12 otherwise engaged in his or her official duties.

13 ~~(9)-(10)~~ This section does not prohibit an employee of
14 the Legislature from using public resources consistent with this
15 section for the purpose of researching or campaigning for or
16 against the qualification, passage, or defeat of a ballot question
17 if the employee is under the direction and supervision of a member
18 of the Legislature.

19 (11) Nothing in this section prohibits a public official
20 or public employee from identifying himself or herself by his or
21 her official title.

22 Sec. 6. Section 81-1120.27, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 81-1120.27 (1) The facilities of the state's
 25 telecommunications systems are provided for the conduct of
 26 state business. In addition, the state's telecommunications
 27 systems, cellular telephones, electronic handheld devices, or
 1 computers may be used by state employees and officials for emails,
 2 text messaging, local calls, and long-distance calls to children
 3 at home, teachers, doctors, day care centers, and baby-sitters,
 4 to family members, or others to inform them of unexpected
 5 schedule changes, and for other essential personal business.
 6 ~~The use of the state's telecommunications systems. Any such use~~
 7 for essential personal business shall be kept to a minimum and
 8 shall not interfere with the conduct of state business. ~~Essential~~
 9 ~~personal long distance calls shall be either collect, charged to~~
 10 ~~a third party, nonstate number, or charged to a personal credit~~
 11 ~~card. A state employee or official shall be responsible for payment~~
 12 ~~or reimbursement of charges, if any, that directly result from any~~
 13 such communication. The Department of Administrative Services may
 14 establish procedures for reimbursement of charges pursuant to this
 15 section.

16 (2) A member of the Legislature, while engaged in
 17 legislative business, may make personal long-distance calls on
 18 the state telecommunications system or by using his or her state
 19 credit card. At the end of every month upon the member's receipt
 20 of his or her long-distance call record, the personal long-distance
 21 calls shall be designated by the member and the member billed
 22 for such calls. Reimbursement to the state for such personal
 23 long-distance calls by the member shall be made within thirty days
 24 from the date of designation.

25 (3) A member of the Legislature, at his or her own sole
 26 discretion, may designate any long-distance call as sensitive or
 27 confidential in nature. If a long-distance call is designated as
 1 sensitive or confidential in nature, any long-distance call record
 2 used in an audit shall contain only the date the long-distance call
 3 was made and the cost of the call. In no case shall the person
 4 conducting the audit have access to a long-distance call number
 5 designated as sensitive or confidential in nature by the member
 6 without the written consent of the member. No calls made to or by
 7 a member of the Legislature which are sensitive or confidential in
 8 nature shall be required to be disclosed except that such calls
 9 shall be so designated by the member, and only the amount of the
 10 call and such designation shall be made available to a person
 11 conducting an audit.

12 For purposes of this subsection, sensitive or
 13 confidential in nature shall mean that either the member of the
 14 Legislature or the caller would reasonably expect that the nature
 15 or the content of the call would not be disclosed to another person
 16 without the consent of the member and the caller.

17 Sec. 7. Original sections 49-1405 and 81-1120.27, Reissue
 18 Revised Statutes of Nebraska, and sections 49-1401, 49-14, 101.01,

19 and 49-14,101.02, Revised Statutes Cumulative Supplement, 2008, are
20 repealed.

(Signed) Bill Avery, Chairperson

GENERAL FILE

LEGISLATIVE BILL 489A. Title read. Considered.

Senator Sullivan offered the following amendment:

AM1001

- 1 1. On page 2, line 1, strike "\$400,000" and insert
- 2 "\$198,000"; and in line 2 strike "\$500,000" and insert "\$297,000".

The Sullivan amendment was adopted with 27 ayes, 0 nays, 16 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 26 ayes, 0 nays, 17 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 246. Title read. Considered.

Committee AM749, found on page 780, was adopted with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 440. Title read. Considered.

Committee AM660, found on page 746, was adopted with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 286. Title read. Considered.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 15 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 436. Title read. Considered.

Committee AM708, found on page 776, was considered.

Pending.

ANNOUNCEMENT

Senator Carlson announced the Agriculture Committee will hold an executive session Thursday, April 9, 2009, immediately upon adjournment, in Room 2102.

BILL ON FIRST READING

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

LEGISLATIVE BILL 218A. Introduced by Cornett, 45; Heidemann, 1.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 218, One Hundred First Legislature, First Session, 2009; to eliminate certain appropriations; and to declare an emergency.

AMENDMENTS - Print in Journal

Senator Council filed the following amendment to LB497:
AM1015 is available in the Bill Room.

Senator Pankonin filed the following amendment to LB35:
AM934

(Amendments to Standing Committee amendments, AM836)

- 1 1. Insert the following new section:
- 2 Sec. 6. Section 24-703, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 24-703 (1) Each original member shall contribute monthly
- 5 four percent of his or her monthly compensation to the fund
- 6 until the maximum benefit as limited in subsection (1) of section
- 7 24-710 has been earned. It shall be the duty of the Director
- 8 of Administrative Services in accordance with subsection (10) of
- 9 this section to make a deduction of four percent on the monthly
- 10 payroll of each original member who is a judge of the Supreme
- 11 Court, a judge of the Court of Appeals, a judge of the district
- 12 court, a judge of a separate juvenile court, a judge of the county
- 13 court, a clerk magistrate of the county court who was an associate
- 14 county judge and a member of the fund at the time of his or her
- 15 appointment as a clerk magistrate, or a judge of the Nebraska
- 16 Workers' Compensation Court showing the amount to be deducted and
- 17 its credit to the fund. The Director of Administrative Services
- 18 and the State Treasurer shall credit the four percent as shown
- 19 on the payroll and the amounts received from the various counties
- 20 to the fund and remit the same to the director in charge of the
- 21 judges retirement system who shall keep an accurate record of the
- 22 contributions of each judge.
- 1 (2)(a) Beginning on July 1, 2004, each future member
- 2 who has not elected to make contributions and receive benefits as

3 provided in section 24-703.03 shall contribute monthly six percent
4 of his or her monthly compensation to the fund until the maximum
5 benefit as limited in subsection (2) of section 24-710 has been
6 earned. After the maximum benefit as limited in subsection (2) of
7 section 24-710 has been earned, such future member shall make no
8 further contributions to the fund, except that any time the maximum
9 benefit is changed, a future member who has previously earned the
10 maximum benefit as it existed prior to the change shall contribute
11 monthly six percent of his or her monthly compensation to the fund
12 until the maximum benefit as changed and as limited in subsection
13 (2) of section 24-710 has been earned.

14 (b) Beginning on July 1, 2004, a judge who first serves
15 as a judge on or after such date or a future member who elects
16 to make contributions and receive benefits as provided in section
17 24-703.03 shall contribute monthly eight percent of his or her
18 monthly compensation to the fund until the maximum benefit as
19 limited by subsection (2) of section 24-710 has been earned. After
20 the maximum benefit as limited in subsection (2) of section 24-710
21 has been earned, such judge or future member shall contribute
22 monthly four percent of his or her monthly compensation to the fund
23 for the remainder of his or her active service.

24 (c) It shall be the duty of the Director of
25 Administrative Services to make a deduction on the monthly payroll
26 of each such future member who is a judge of the Supreme Court,
27 a judge of the Court of Appeals, a judge of the district court,
1 a judge of a separate juvenile court, a judge of the county
2 court, a clerk magistrate of the county court who was an associate
3 county judge and a member of the fund at the time of his or her
4 appointment as a clerk magistrate, or a judge of the Nebraska
5 Workers' Compensation Court showing the amount to be deducted and
6 its credit to the fund. This shall be done each month. The Director
7 of Administrative Services and the State Treasurer shall credit the
8 amount as shown on the payroll and the amounts received from the
9 various counties to the fund and remit the same to the director in
10 charge of the judges retirement system who shall keep an accurate
11 record of the contributions of each judge.

12 (3) A Nebraska Retirement Fund for Judges fee of five
13 dollars shall be taxed as costs in each (a) civil cause of action,
14 criminal cause of action, traffic misdemeanor or infraction, and
15 city or village ordinance violation filed in the district courts,
16 the county courts, and the separate juvenile courts, (b) filing in
17 the district court of an order, award, or judgment of the Nebraska
18 Workers' Compensation Court or any judge thereof pursuant to
19 section 48-188, (c) appeal or other proceeding filed in the Court
20 of Appeals, and (d) original action, appeal, or other proceeding
21 filed in the Supreme Court. Beginning on July 1, 2009, and until
22 July 1, 2014, such fee shall be six dollars. In county courts a sum
23 shall be charged which is equal to ten percent of each fee provided
24 by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to

25 the nearest even dollar. No judges retirement fee shall be charged
26 for filing a report pursuant to sections 33-126.02 and 33-126.06.
27 When collected by the clerk of the district or county court, such
1 fees shall be paid and information submitted to the director in
2 charge of the judges retirement system on forms prescribed by the
3 board by the clerk within ten days after the close of each calendar
4 quarter. The board may charge a late administrative processing fee
5 not to exceed twenty-five dollars if the information is not timely
6 received or the money is delinquent. In addition, the board may
7 charge a late fee of thirty-eight thousandths of one percent of the
8 amount required to be submitted pursuant to this section for each
9 day such amount has not been received. Such director shall promptly
10 thereafter remit the same to the State Treasurer for credit to
11 the fund. No Nebraska Retirement Fund for Judges fee which is
12 uncollectible for any reason shall be waived by a county judge as
13 provided in section 29-2709.

14 (4) All expenditures from the fund shall be authorized by
15 voucher in the manner prescribed in section 24-713. The fund shall
16 be used for the payment of all annuities and other benefits and for
17 the expenses of administration.

18 (5) The fund shall consist of the total fund as of
19 December 25, 1969, the contributions of members as provided in this
20 section, all supplementary court fees as provided in subsection (3)
21 of this section, and any required contributions of the state.

22 (6) Not later than January 1 of each year, the State
23 Treasurer shall transfer to the fund the amount certified by the
24 board as being necessary to pay the cost of any benefits accrued
25 during the fiscal year ending the previous June 30 in excess
26 of member contributions for that fiscal year and court fees as
27 provided in subsection (3) of this section and fees pursuant to
1 sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123,
2 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be
3 remitted to the fund, if any, for that fiscal year plus any
4 required contributions of the state as provided in subsection (9)
5 of this section.

6 (7) Benefits under the retirement system to members or to
7 their beneficiaries shall be paid from the fund.

8 (8) Any member who is making contributions to the fund on
9 December 25, 1969, may, on or before June 30, 1970, elect to become
10 a future member by delivering written notice of such election to
11 the board.

12 (9) Not later than January 1 of each year, the State
13 Treasurer shall transfer to the fund an amount, determined on
14 the basis of an actuarial valuation as of the previous June 30
15 and certified by the board, to fully fund the unfunded accrued
16 liabilities of the retirement system as of June 30, 1988, by level
17 payments up to January 1, 2000. Such valuation shall be on the
18 basis of actuarial assumptions recommended by the actuary, approved
19 by the board, and kept on file with the board. For the fiscal

20 year beginning July 1, 2002, and each fiscal year thereafter,
21 the actuary for the board shall perform an actuarial valuation
22 of the system using the entry age actuarial cost method. Under
23 this method, the actuarially required funding rate is equal to the
24 normal cost rate, plus the contribution rate necessary to amortize
25 the unfunded actuarial accrued liability on a level payment basis.
26 The normal cost under this method shall be determined for each
27 individual member on a level percentage of salary basis. The normal
1 cost amount is then summed for all members. The initial unfunded
2 actual accrued liability as of July 1, 2002, if any, shall be
3 amortized over a twenty-five-year period. Prior to July 1, 2006,
4 changes in the funded actuarial accrued liability due to changes
5 in benefits, actuarial assumptions, the asset valuation method, or
6 actuarial gains or losses shall be measured and amortized over a
7 twenty-five-year period beginning on the valuation date of such
8 change. Beginning July 1, 2006, any existing unfunded liabilities
9 shall be reinitialized and amortized over a thirty-year period,
10 and during each subsequent actuarial valuation, changes in the
11 funded actuarial accrued liability due to changes in benefits,
12 actuarial assumptions, the asset valuation method, or actuarial
13 gains or losses shall be measured and amortized over a thirty-year
14 period beginning on the valuation date of such change. If the
15 unfunded actuarial accrued liability under the entry age actuarial
16 cost method is zero or less than zero on an actuarial valuation
17 date, then all prior unfunded actuarial accrued liabilities shall
18 be considered fully funded and the unfunded actuarial accrued
19 liability shall be reinitialized and amortized over a thirty-year
20 period as of the actuarial valuation date. If the actuarially
21 required contribution rate exceeds the rate of all contributions
22 required pursuant to the Judges Retirement Act, there shall be a
23 supplemental appropriation sufficient to pay for the differences
24 between the actuarially required contribution rate and the rate of
25 all contributions required pursuant to the Judges Retirement Act.

26 (10) The state or county shall pick up the member
27 contributions required by this section for all compensation paid
1 on or after January 1, 1985, and the contributions so picked up
2 shall be treated as employer contributions in determining federal
3 tax treatment under the Internal Revenue Code as defined in section
4 49-801.01, except that the state or county shall continue to
5 withhold federal income taxes based upon these contributions until
6 the Internal Revenue Service or the federal courts rule that,
7 pursuant to section 414(h) of the code, these contributions shall
8 not be included as gross income of the member until such time as
9 they are distributed or made available. The state or county shall
10 pay these member contributions from the same source of funds which
11 is used in paying earnings to the member. The state or county
12 shall pick up these contributions by a compensation deduction
13 through a reduction in the compensation of the member. Member
14 contributions picked up shall be treated for all purposes of the

15 Judges Retirement Act in the same manner and to the extent as
 16 member contributions made prior to the date picked up.

17 2. On page 32, line 15, strike "4 and 29" and insert "4,
 18 6, and 30"; in line 16 strike "28, 30, and 33" and insert "29,
 19 31, and 34"; in line 17 strike "13, 14, and 31" and insert "14,
 20 15, and 32"; in line 21 strike "section" and insert "sections" and
 21 after "24-301.02" insert "and 24-703"; and in line 22 strike "is"
 22 and insert "are".

23 3. Renumber the remaining sections and correct internal
 24 references accordingly.

COMMITTEE REPORT

Banking, Commerce and Insurance

LEGISLATIVE BILL 571. Placed on General File with amendment.
 AM983 is available in the Bill Room.

(Signed) Rich Pahls, Chairperson

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 98. Placed on Select File with amendment.
 ER8057

1 1. In the Standing Committee amendments, AM641, on page
 2 7, line 23, strike "fund.", show as stricken, and insert "Buffer
 3 Strip Incentive Fund.".

4 2. On page 1, line 2, strike "and 2-968" and insert
 5 "2-968, and 2-5106" and after "Nebraska" insert ", and section
 6 2-958.01, Revised Statutes Cumulative Supplement, 2008"; and in
 7 line 5 after the first semicolon insert "to provide duties for the
 8 Director of Agriculture; to provide for a transfer of funds;".

LEGISLATIVE BILL 98A. Placed on Select File.

(Signed) Jeremy Nordquist, Chairperson

VISITORS

Visitors to the Chamber were Andrew Bose from Orleans and Shelby Yost from Sutton; Mr. and Mrs. Alfred Kleen and daughter, Kathryn, from Germany and Mr. and Mrs. Bob Lenners from Grand Island; 45 fourth-grade students and teachers from Blumfield Elementary, Ralston; Senator Haar's brother, sister-in-law, and nephew, David, Kathryn, and Tim Haar, from Omaha; members of Leadership Fremont from Fremont; 25 eleventh- and twelfth-grade students and teacher from Leigh; members of the Columbus Area Chamber of Commerce from Columbus; and Congressman Lee Terry.

The Doctor of the Day was Dr. Kip Anderson from Columbus.

ADJOURNMENT

At 3:59 p.m., on a motion by Senator Lautenbaugh, the Legislature adjourned until 9:00 a.m., Thursday, April 9, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

