

FIFTEENTH DAY - JANUARY 28, 2010**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION****FIFTEENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, January 28, 2010

PRAYER

The prayer was offered by Pastor Rick Johnson, St. Paul's Lutheran Church, DeWitt.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Fischer and Pahls who were excused; and Senators Ashford and Cornett who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fourteenth day was approved.

COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 708. Placed on General File.

LEGISLATIVE BILL 806. Placed on General File.

LEGISLATIVE BILL 873. Placed on General File.

LEGISLATIVE BILL 823. Indefinitely postponed.

(Signed) Abbie Cornett, Chairperson

NOTICE OF COMMITTEE HEARINGS

Natural Resources

Room 1525

Thursday, February 4, 2010 1:30 p.m.

LB1048 (Wind Briefing) Invited testimony on amendment to LB1048 only

Friday, February 5, 2010 1:30 p.m.

LB1057

LB1076

(Signed) Chris Langemeier, Chairperson

GENERAL FILE

LEGISLATIVE BILL 190A. Title read. Considered.

Advanced to Enrollment and Review Initial with 41 ayes, 0 nays, 5 present and not voting, and 3 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 235. ER8140, found on page 266, was adopted.

Senator Adams offered the following amendment:

AM1640

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Leases involving the production of wind or
- 4 solar energy on lands under the control of the Board of Educational
- 5 Lands and Funds shall be regulated by sections 1 to 5 of this act.
- 6 Sec. 2. For purposes of sections 1 to 5 of this act:
- 7 (1) Board means the Board of Educational Lands and Funds;
- 8 (2) Lease means any lease, easement, covenant, or other
- 9 such contractual arrangement;
- 10 (3) Lessee means any individual, corporation, or other
- 11 entity that enters into a lease with the board;
- 12 (4) Solar energy means radiant energy, direct, diffuse,
- 13 or reflected, received from the sun at wavelengths suitable for
- 14 conversion into thermal, chemical, or electrical energy; and
- 15 (5) Wind energy means the use of wind to produce
- 16 electricity.
- 17 Sec. 3. The board may authorize leases of any school
- 18 or public lands belonging to the state and under its control
- 19 for exploration and development of wind or solar energy for such
- 20 durations and under such terms and conditions as the board shall
- 21 deem appropriate, except that the initial term for any such wind
- 22 energy lease and any amendment thereto shall not exceed forty
- 23 years. In making such determinations, the board shall consider
- 1 comparable arrangements involving other lands similarly situated
- 2 and any other relevant factors bearing upon such leases. Any such
- 3 lease authorized by the board shall be created in writing and shall
- 4 be filed, duly recorded, and indexed in the office of the register
- 5 of deeds of the county in which the real property subject to the

6 lease is located. Such leases shall run with the land benefited and
 7 burdened and shall include, as applicable, the contents specified
 8 in sections 66-911 and 66-911.01.

9 Sec. 4. (1) If a wind or solar energy lease is authorized
 10 by the board on land already being leased for agricultural or other
 11 purposes by a prior lessee, the existing rights of the prior lessee
 12 shall not be impaired, and the board shall reduce the rental amount
 13 due from such prior lessee in proportion to the amount of land that
 14 is removed from use as a result of the wind or solar energy lease.

15 (2) A lessee for agricultural or other purposes shall
 16 be compensated for all damages to personal property owned by
 17 such lessee or to growing crops, including grass, caused by
 18 operations under a concurrent lease of such land for wind or
 19 solar energy purposes, and the board shall require the lessee
 20 under the wind or solar energy lease to provide such insurance and
 21 indemnity agreements which the board determines are necessary for
 22 the protection of the state and its lessees.

23 (3) If a wind or solar energy lease is authorized by the
 24 board on land concurrently being leased for agricultural purposes,
 25 the lessee for agricultural purposes shall have priority as to
 26 the use of the water on the land, but lessees for other purposes,
 27 including wind or solar lessees, shall be allowed reasonable use of
 1 the water on the land.

2 Sec. 5. The board may adopt and promulgate such rules
 3 and regulations as it shall deem necessary and proper to regulate
 4 the leasing of school and public lands for wind or solar energy
 5 exploration and development pursuant to sections 1 to 5 of this act
 6 and to prescribe such terms and conditions, including bonds, as it
 7 shall deem necessary in order to protect the interests of the state
 8 and its lessees.

The Adams amendment was adopted with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

Senator Heidemann offered the following amendment:

AM1649

1 1. Insert the following new section:

2 Sec. 7. Since an emergency exists, this act takes effect

3 when passed and approved according to law.

The Heidemann amendment was adopted with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 552. ER8146, found on page 314, was adopted.

Senator White offered the following amendment:

AM1629

(Amendments to E & R amendments, ER8146)

- 1 1. Insert the following new sections:
- 2 Sec. 11. Section 81-2402, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 81-2402 As used in the Prompt Payment Act, unless the
- 5 context otherwise requires:
- 6 (1) Agency shall mean the state and any agency,
- 7 department, office, commission, board, panel, or division of the
- 8 state. Agency shall include the University of Nebraska and the
- 9 Nebraska state colleges;
- 10 (2) Bill shall mean a proper billing or invoice which
- 11 requests a payment and which is supplemented by all necessary
- 12 verification and forms required by agency rules and regulations to
- 13 process payments;
- 14 (3) Creditor shall mean any person, corporation,
- 15 association, or other business concern engaged in a trade or
- 16 business, either on a for-profit or not-for-profit basis, and
- 17 providing any goods or services to an agency;
- 18 (4) Good faith dispute shall mean:
- 19 (a) A contention by the agency that goods delivered or
- 20 services rendered were of less quantity or quality than ordered or
- 21 specified by contract, faulty, or installed improperly; or
- 22 (b) Any other reason giving cause for the withholding
- 1 of payment by the agency until the dispute is settled, except
- 2 that failure to give notice as prescribed in section 81-2405 shall
- 3 preclude an agency from claiming a good faith dispute in the case
- 4 of a defective or improper billing;
- 5 (5) Goods shall mean any goods, supplies, materials,
- 6 equipment, or other personal property but shall not mean any real
- 7 property; and
- 8 (6) Services shall mean any contractual services,
- 9 including, but not limited to, architectural, engineering,
- 10 medical, financial consulting, or other professional services, any
- 11 construction services, and any other personal services but shall
- 12 not mean any services performed as an officer or employee of any
- 13 agency.
- 14 Sec. 13. Original section 81-2402, Reissue Revised
- 15 Statutes of Nebraska, is repealed.
- 16 2. On page 2, line 22; and page 4, line 3, strike
- 17 "forty-five" and insert "thirty".
- 18 3. On page 7, line 1, strike "23, and 81" and insert "and
- 19 23".
- 20 4. Renumber the remaining section accordingly.

The White amendment was adopted with 40 ayes, 0 nays, 6 present and not

voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 216. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 147. ER8147, found on page 339, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 181. ER8148, found on page 343, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 190. ER8149, found on page 344, was adopted.

Senator Avery renewed his amendment, AM1621, found on page 373.

The Avery amendment was adopted with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

Senator Avery renewed his amendment, AM1627, found on page 373.

The Avery 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.

COMMITTEE REPORTS

Agriculture

LEGISLATIVE BILL 667. Placed on General File with amendment. AM1575

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. The Legislature finds the duty of adjoining
- 4 landowners for the construction and maintenance of division fences
- 5 to be beneficial to the public interest and welfare. Such benefits
- 6 are not confined to historical and traditional societal benefits
- 7 that accrue from the proper constraint of livestock, but also
- 8 include suppression of civil disputes and public and private
- 9 nuisances and the protection of public safety. Division fences
- 10 promote the peace and security of society by the demarcation of
- 11 rural boundaries, physical separation of conflicting land uses,
- 12 enhancement of privacy, diminishment of frequency of public burden
- 13 imposed by incidences of trespass and adverse possession, and the
- 14 mitigation of impacts of conflicting land use intrusion into those
- 15 areas of the state devoted to agricultural and horticultural use.

16 Sec. 2. Section 34-102, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 34-102 (1) When there are two or more adjoining
19 landowners, each of them shall construct and maintain a just
20 proportion of the division fence between them. Just proportion
21 means an equitable allocation of the portion of the fenceline to
22 be physically constructed and maintained by each landowner or, in
23 lieu thereof, an equitable contribution to the costs to construct
1 and maintain the division fence to be made by either landowner.
2 Unless otherwise specified in statute or by agreement of the
3 parties, such equitable allocation shall be one which results in
4 an equal burden of construction and maintenance of the division
5 fence. ~~except that if the adjoining landowners each cause or~~
6 ~~allow the use of the division fence to confine livestock upon their~~
7 ~~respective properties, each landowner shall construct and maintain~~
8 ~~the division fence between them in equal shares.~~ This section
9 shall not be construed to compel the erection and maintenance of a
10 division fence if neither of the adjoining landowners desires such
11 division fence.

12 (2) Unless the adjoining landowners have agreed
13 otherwise, such fence shall be a ~~lawful wire~~ fence, as defined in
14 subsection (5) of section 34-115.

15 ~~(3) The duty assigned to adjoining landowners by this~~
16 ~~section applies (a) when either or both of the adjoining lands lie~~
17 ~~within an area zoned for agricultural or horticultural purposes as~~
18 ~~defined in section 77-1359 and either or both of the adjoining~~
19 ~~lands are utilized as agricultural or horticultural land and (b) in~~
20 ~~all other areas of the state when both of the adjoining lands are~~
21 ~~utilized as agricultural or horticultural land.~~

22 Sec. 3. Original section 34-102, Reissue Revised Statutes
23 of Nebraska, is repealed.

(Signed) Tom Carlson, Chairperson

Education

LEGISLATIVE BILL 711. Placed on General File.

(Signed) Greg Adams, Chairperson

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

Kanger, Bernard, Jr. - Board of Emergency Medical Services - Health and
Human Services

(Signed) John Wightman, Chairperson
Executive Board

GENERAL FILE

LEGISLATIVE BILL 635. Senator Lautenbaugh offered the following motion:

MO76

Bracket until April 14, 2010.

SENATOR LANGEMEIER PRESIDING**SPEAKER FLOOD PRESIDING**

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

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

Voting in the affirmative, 25:

Adams	Fulton	Heidemann	Louden	Price
Carlson	Gloor	Janssen	McCoy	Schilz
Christensen	Hadley	Krist	Nelson	Stuthman
Coash	Hansen	Langemeier	Pankonin	Utter
Flood	Harms	Lautenbaugh	Pirsch	Wightman

Voting in the negative, 12:

Conrad	Giese	Lathrop	Nordquist
Cook	Haar	McGill	Rogert
Council	Howard	Mello	Wallman

Present and not voting, 6:

Ashford	Dierks	Karpisek
Avery	Gay	Sullivan

Absent and not voting, 1:

Cornett

Excused and not voting, 5:

Campbell	Dubas	Fischer	Pahls	White
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The Lautenbaugh motion to bracket prevailed with 25 ayes, 12 nays, 6 present and not voting, 1 absent and not voting, and 5 excused and not voting.

The Chair declared the call raised.

NOTICE OF COMMITTEE HEARING

Judiciary

Room 1113

Thursday, February 4, 2010 1:30 p.m.

LB905
 LB889
 LB1033
 LB860
 LB842
 LB843

(Signed) Brad Ashford, Chairperson

AMENDMENTS - Print in Journal

Senator Avery filed the following amendment to LB190:
 AM1677

(Amendments to E & R amendments, ER8149)

- 1 1. Insert the following new section:
 2 Section 1. Section 29-2262, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 29-2262 (1) When a court sentences an offender to
 5 probation, it shall attach such reasonable conditions as it deems
 6 necessary or likely to insure that the offender will lead a
 7 law-abiding life. No offender shall be sentenced to probation if
 8 he or she is deemed to be a habitual criminal pursuant to section
 9 29-2221.
 10 (2) The court may, as a condition of a sentence of
 11 probation, require the offender:
 12 (a) To refrain from unlawful conduct;
 13 (b) To be confined periodically in the county jail or to
 14 return to custody after specified hours but not to exceed (i) for
 15 misdemeanors, the lesser of ninety days or the maximum jail term
 16 provided by law for the offense and (ii) for felonies, one hundred
 17 eighty days;
 18 (c) To meet his or her family responsibilities;
 19 (d) To devote himself or herself to a specific employment
 20 or occupation;
 21 (e) To undergo medical or psychiatric treatment and to
 22 enter and remain in a specified institution for such purpose;
 1 (f) To pursue a prescribed secular course of study or
 2 vocational training;
 3 (g) To attend or reside in a facility established for the
 4 instruction, recreation, or residence of persons on probation;

- 5 (h) To refrain from frequenting unlawful or disreputable
6 places or consorting with disreputable persons;
- 7 (i) To possess no firearm or other dangerous weapon if
8 convicted of a felony, or if convicted of any other offense, to
9 possess no firearm or other dangerous weapon unless granted written
10 permission by the court;
- 11 (j) To remain within the jurisdiction of the court and
12 to notify the court or the probation officer of any change in his
13 or her address or his or her employment and to agree to waive
14 extradition if found in another jurisdiction;
- 15 (k) To report as directed to the court or a probation
16 officer and to permit the officer to visit his or her home;
- 17 (l) To pay a fine in one or more payments as ordered;
- 18 (m) To pay for tests to determine the presence of drugs
19 or alcohol, psychological evaluations, offender assessment screens,
20 and rehabilitative services required in the identification,
21 evaluation, and treatment of offenders if such offender has the
22 financial ability to pay for such services;
- 23 (n) To perform community service as outlined in sections
24 29-2277 to 29-2279 under the direction of his or her probation
25 officer;
- 26 (o) To be monitored by an electronic surveillance device
27 or system and to pay the cost of such device or system if the
1 offender has the financial ability;
- 2 (p) To participate in a community correctional facility
3 or program as provided in the Community Corrections Act;
- 4 (q) To successfully complete an incarceration work camp
5 program as determined by the Department of Correctional Services;
- 6 (r) To satisfy any other conditions reasonably related to
7 the rehabilitation of the offender;
- 8 (s) To make restitution as described in sections 29-2280
9 and 29-2281; or
- 10 (t) To pay for all costs imposed by the court, including
11 court costs and the fees imposed pursuant to section 29-2262.06.
- 12 (3) In all cases in which the offender is guilty
13 of violating section 28-416, a condition of probation shall be
14 mandatory treatment and counseling as provided by such section.
- 15 (4) In all cases in which the offender is guilty of
16 a crime covered by the DNA Identification Information Act, a
17 condition of probation shall be the collecting of a DNA sample
18 pursuant to the act and the paying of all costs associated with the
19 collection of the DNA sample prior to release ~~on~~ from probation.
- 20 2. On page 3, line 18, reinstate the stricken matter; and
21 in line 19 strike the new matter.
- 22 3. On page 5, after line 17, insert the following new
23 subsection:
- 24 "(3) A person who is serving a term of probation and has
25 a DNA sample collected pursuant to this section shall pay all costs
26 associated with the collection of the DNA sample."

- 27 4. On page 6, lines 3 and 6, after "sections" insert
 1 "29-2262,".
 2 5. Renumber the remaining sections and correct internal
 3 references accordingly.

Senator Avery filed the following amendment to LB190A:
 AM1674

- 1 1. Strike the original sections and insert the following
 2 new sections:
 3 Section 1. The State Treasurer shall transfer (1)
 4 \$249,250 from the State Settlement Cash Fund to the State DNA
 5 Sample and Data Base Fund on or before August 1, 2010, and (2)
 6 \$73,250 from the State Settlement Cash Fund to the State DNA Sample
 7 and Data Base Fund on or before July 15, 2011.
 8 Sec. 2. There is hereby appropriated \$72,800 from the
 9 State DNA Sample and Data Base Fund for FY2010-11 to the Department
 10 of Correctional Services, for Program 200, to aid in carrying
 11 out the provisions of Legislative Bill 190, One Hundred First
 12 Legislature, Second Session, 2010.
 13 No expenditures for permanent and temporary salaries and
 14 per diems for state employees shall be made from funds appropriated
 15 in this section.
 16 Sec. 3. There is hereby appropriated (1) \$176,450 from
 17 the State DNA Sample and Data Base Fund for FY2010-11 and (2)
 18 \$73,250 from the State DNA Sample and Data Base Fund for FY2011-12
 19 to the Nebraska State Patrol, for Program 100, to aid in carrying
 20 out the provisions of Legislative Bill 190, One Hundred First
 21 Legislature, Second Session, 2010.
 22 No expenditures for permanent and temporary salaries and
 23 per diems for state employees shall be made from funds appropriated
 1 in this section.

UNANIMOUS CONSENT - Add Cointroducers

Senator Dubas asked unanimous consent to add her name as cointroducer to LB689. No objections. So ordered.

Senator McCoy asked unanimous consent to add his name as cointroducer to LB747 and LB836. No objections. So ordered.

Senator Nordquist asked unanimous consent to add his name as cointroducer to LB778 and LB988. No objections. So ordered.

Senator Mello asked unanimous consent to add his name as cointroducer to LB800. No objections. So ordered.

Senator Cornett asked unanimous consent to add her name as cointroducer to LB988 and LB990. No objections. So ordered.

VISITORS

Visitor to the Chamber was Ashlea Millsap from Kearney.

The Doctor of the Day was Dr. Jeff Harrison from Papillion.

ADJOURNMENT

At 12:05 p.m., on a motion by Senator Langemeier, the Legislature adjourned until 10:00 a.m., Friday, January 29, 2010.

Patrick J. O'Donnell
Clerk of the Legislature

