

FORTY-FIFTH DAY - MARCH 13, 2017**LEGISLATIVE JOURNAL****ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION****FORTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, March 13, 2017

PRAYER

The prayer was offered by Pastor Steve Todd, Faith Westwood United Methodist Church, Omaha.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Foley presiding.

The roll was called and all members were present except Senators Bolz, Friesen, McCollister, Morfeld, Murante, and Stinner who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-fourth day was approved.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 407. Placed on Select File with amendment.
ER18

(Amendments to Standing Committee amendments, AM140)

- 1 1. On page 1, line 4, insert an underscored comma after
- 2 "Legislature".

(Signed) Anna Wishart, Chairperson

COMMITTEE REPORT(S)

Health and Human Services

LEGISLATIVE BILL 336. Placed on General File with amendment.
AM462

- 1 1. On page 2, line 16, strike "not exceed three dollars" and insert
- 2 "be at least five dollars and not more than ten dollars for each request
- 3 to check the records of the central registry. The department shall not

4 charge a fee for any such request by a child-placing agency as defined in
5 section 71-1926 for purposes of placement of a child in foster care as
6 defined in section 71-1901".

(Signed) Merv Riepe, Chairperson

COMMUNICATION

March 9, 2017

Patrick O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. Clerk:

As Chairperson of the Special Committee regarding the Election Challenge to the Qualification of Senator Ernie Chambers filed by Mr. John Sciara, I hereby file with your office an *Order on Jurisdiction*, adopted by the Special Committee on March 9, 2017. This *Order on Jurisdiction* has been sent to both parties, pursuant to Rule 10, Sec. 4(c).

Sincerely,
(Signed) Senator Dan Watermeier
Chairman, Special Committee

C: Members of the Special Committee

Enclosure - *Order on Jurisdiction*

RESOLUTION(S)

Pursuant to Rule 4, Sec. 5(b), LRs 56 and 57 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 56 and 57.

GENERAL FILE

LEGISLATIVE BILL 368. Senator Hilkemann renewed his amendment, AM503, found on page 661 and considered on page 679.

Pending.

COMMITTEE REPORT(S)

Agriculture

LEGISLATIVE BILL 449. Placed on General File with amendment.

AM536

- 1 1. Strike original sections 1 and 2.
- 2 2. Renumber the remaining section accordingly.

(Signed) Lydia Brasch, Chairperson

Health and Human Services

LEGISLATIVE BILL 282. Placed on General File.

LEGISLATIVE BILL 335. Placed on General File.

LEGISLATIVE BILL 334. Indefinitely postponed.

(Signed) Merv Riepe, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 63. Introduced by Walz, 15;
Bostelman, 23.

WHEREAS, the Howells-Dodge High School girls' basketball team won the 2017 Class C-2 Girls' State Basketball Championship; and

WHEREAS, the Jaguars defeated the Diller-Odell Griffins in the title game with a score of 39-30; and

WHEREAS, this is the first championship win for the Howells-Dodge Jaguars girls' basketball team since the former Howells and Dodge high schools consolidated; and

WHEREAS, Howells-Dodge moved from Class D-1 to Class C-2 this season; and

WHEREAS, Head Coach Scott Polacek guided the team to a final record of 25-3 for the season; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates the Howells-Dodge High School girls' basketball team on winning their first state championship.
2. That a copy of this resolution be sent to the Jaguars and Coach Scott Polacek.

Laid over.

LEGISLATIVE RESOLUTION 64. Introduced by Brasch, 16.

WHEREAS, the West Point Guardian Angels Central Catholic High School girls' basketball team won the 2017 Class D-1 Girls' State Basketball Championship; and

WHEREAS, the Bluejays won against the previously undefeated Dundy County-Stratton Tigers with a score of 53-50 in the second double-overtime final in the history of the girls' state basketball tournament; and

WHEREAS, this is the sixth championship win for the Guardian Angels girls' basketball team; and

WHEREAS, Head Coach Jerry Stracke guided the team to a regular season record of 21-2; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates the West Point Guardian Angels Central Catholic High School girls' basketball team on winning their sixth state championship.

2. That a copy of this resolution be sent to the Bluejays and Coach Jerry Stracke.

Laid over.

ANNOUNCEMENT(S)

Speaker Scheer designates LBs 35, 97, 98, 137, 151, 152, 166, 172, 180, 253, 257, 267, 296, 300, 317, 323, 346, 389, 478, 481, 509, 605, 628, 639, and 647 as Speaker priority bills.

AMENDMENT(S) - Print in Journal

Senator Riepe filed the following amendment to LB92:

AM609

1 1. Insert the following new sections:

2 Sec. 2. Section 71-8509, Revised Statutes Cumulative Supplement,
3 2016, is amended to read:

4 71-8509 (1) The Department of Health and Human Services shall adopt
5 and promulgate rules and regulations providing for telehealth services
6 for children's behavioral health. Such rules and regulations relate
7 specifically to children's behavioral health and are in addition to the
8 Nebraska Telehealth Act.

9 For purposes of sections 71-8509 to 71-8512, child means a person
10 under nineteen years of age.

11 (2) The rules and regulations required pursuant to subsection (1) of
12 this section shall include, but not be limited to:

13 (a) An appropriately trained staff member or employee familiar with
14 the child's treatment plan or familiar with the child shall be

15 immediately available in person to the child receiving a telehealth
 16 behavioral health service in order to attend to any urgent situation or
 17 emergency that may occur during provision of such service. This
 18 requirement may be waived by the child's parent or legal guardian; and
 19 (b) In cases in which there is a threat that the child may harm
 20 himself or herself or others, before an initial telehealth service the
 21 health care practitioner shall work with the child and his or her parent
 22 or guardian to develop a safety plan. Such plan shall document actions
 23 the child, the health care practitioner, and the parent or guardian will
 24 take in the event of an emergency or urgent situation occurring during or
 25 after the telehealth session. Such plan may include having a staff member
 26 or employee familiar with the child's treatment plan immediately
 27 available in person to the child, if such measures are deemed necessary
 1 by the team developing the safety plan; ~~and~~
 2 ~~(c) Services provided by means of telecommunications technology,~~
 3 ~~other than telehealth behavioral health services received by a child, are~~
 4 ~~not covered if the child has access to a comparable service within thirty~~
 5 ~~miles of his or her place of residence.~~
 6 Sec. 4. Original section 71-8509, Revised Statutes Cumulative
 7 Supplement, 2016, is repealed.
 8 2. Renumber the remaining section and correct internal references
 9 accordingly.

Senator Wishart filed the following amendment to LB622:
 AM496 is available in the Bill Room.

COMMUNICATION(S)

Received a copy of House Joint Resolution No. 2 from the state of Wyoming relating to petitioning Congress to call a convention to propose amendments to the Constitution of the United States to require a balanced federal budget.

GENERAL FILE

LEGISLATIVE BILL 368. The Hilkemann amendment, AM503, found on page 661 and considered on page 679 and in this day's Journal, was renewed.

Senator Hilkemann withdrew his amendment, FA43, found on page 682.

Pending.

SELECT FILE

LEGISLATIVE BILL 18. ER6, found on page 524, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 18A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 19. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 29. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 94. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 8. ER9, found on page 552, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 85. ER11, found on page 556, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 99. ER13, found on page 584, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 184. ER15, found on page 595, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 185. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 186. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 203. ER12, found on page 583, was adopted.

Advanced to Enrollment and Review for Engrossment.

COMMITTEE REPORT(S)
Judiciary

LEGISLATIVE BILL 191. Placed on General File.

LEGISLATIVE BILL 394. Placed on General File.

LEGISLATIVE BILL 478. Placed on General File.

LEGISLATIVE BILL 178. Placed on General File with amendment.
AM523 is available in the Bill Room.

LEGISLATIVE BILL 188. Placed on General File with amendment.

AM527

- 1 1. On page 4, line 6; and page 6, line 4, strike "If" and insert
 2 "Except as otherwise provided in the Nebraska Indian Child Welfare Act,
 3 if".
 4 2. On page 4, line 8, after "section" insert "28-319 or".
 5 3. On page 6, line 8, strike "mother" and insert "parent"; in lines
 6 8 and 26 after "section" insert "28-319 or"; strike beginning with "been"
 7 in line 9 through "child" in line 10 and insert "fathered the child or
 8 given birth to the child"; in line 25, strike "shall" and insert "may";
 9 and strike beginning with "If" in line 27 through line 31.
 10 4. On page 8, line 1, strike "No", show as stricken, and insert
 11 "Except as otherwise provided in the Nebraska Indian Child Welfare Act,
 12 no"; and in line 4 strike the new matter and insert "unless the custodial
 13 parent or guardian, as defined in section 43-245, consents".

LEGISLATIVE BILL 487. Placed on General File with amendment.

AM568 is available in the Bill Room.

LEGISLATIVE BILL 509. Placed on General File with amendment.

AM357

- 1 1. Strike the original sections and insert the following new
 2 sections:
 3 Section 1. Section 25-1223, Reissue Revised Statutes of Nebraska, is
 4 amended to read:
 5 25-1223 (1) Upon the request of a party to a civil action or
 6 proceeding, a subpoena may be issued to command an individual to testify
 7 at a trial or deposition. The term trial in reference to a subpoena
 8 includes a hearing at which testimony may be taken.
 9 (2) The clerk or a judge of the court in which the action or
 10 proceeding is pending shall issue a trial subpoena upon the request of a
 11 party. An attorney, as an officer of the court, may issue and sign a
 12 trial subpoena on behalf of the court if the attorney is authorized to
 13 practice in the court. An attorney who issues a subpoena must file a copy
 14 of the subpoena with the court on the day the subpoena is issued.
 15 (3) A person before whom a deposition may be taken may issue a
 16 deposition subpoena on behalf of the court in which the action or
 17 proceeding is pending. An attorney, as an officer of the court, may issue
 18 and sign a deposition subpoena on behalf of the court if the attorney is
 19 authorized to practice in the court.
 20 (4) A subpoena shall state the name of the court from which it is
 21 issued, the title of the action, and the case number and shall command
 22 each person to whom it is directed to appear and testify at the time and
 23 place specified in the subpoena.
 24 (5) A trial subpoena that is issued in a civil action or proceeding
 25 (a) at the request of an agency of state government or (b) pursuant to
 26 section 25-2304 shall contain the following statement: As a witness in
 27 [insert name of court], you are entitled to receive a witness fee in the
 1 amount of [insert amount from section 33-139] for each day that you are

2 required to be in court and, if you live more than one mile from the
 3 courthouse, you are also entitled to receive mileage at the rate that
 4 state employees receive. Ask the lawyer or party who subpoenaed you or
 5 the clerk of the court for information about what you should do to
 6 receive the fees and mileage to which you are entitled.

7 (6) Any other trial subpoena in a civil action or proceeding shall
 8 contain the following statement: As a witness in [insert name of court],
 9 you are entitled to receive a witness fee in the amount of [insert amount
 10 from section 33-139] for each day that you are required to be in court
 11 and, if you live more than one mile from the courthouse, you are also
 12 eligible to receive mileage at the rate that state employees receive. You
 13 should have received your witness fee for one day with this subpoena. Ask
 14 the lawyer or party who subpoenaed you or the clerk of the court for
 15 information about what you should do to receive the additional fees, if
 16 any, and mileage to which you are entitled.

17 (7) The Supreme Court may promulgate forms for subpoenas for use in
 18 civil and criminal actions and proceedings. Any such forms shall not be
 19 in conflict with the laws governing such matters.

20 (8) A subpoena may be served by a sheriff or constable. It may also
 21 be served by a person who is twenty-one years of age or older and who is
 22 not a party to the action or proceeding.

23 ~~The clerks of the several courts and judges of the county courts~~
 24 ~~shall on application of any person having a cause or any matter pending~~
 25 ~~in court, issue a subpoena for witnesses under the seal of the court,~~
 26 ~~inserting all the names required by the applicant in one subpoena, which~~
 27 ~~may be served by any person not interested in the action, or by the~~
 28 ~~sheriff, coroner or constable; but when served by any person other than a~~
 29 ~~public officer, proof of service shall be shown by affidavit, but no~~
 30 ~~costs of serving the same shall be allowed, except when served by an~~
 31 ~~officer.~~

1 Sec. 2. Section 25-1224, Reissue Revised Statutes of Nebraska, is
 2 amended to read:

3 25-1224 (1) A subpoena commanding an individual to appear and
 4 testify at a trial or deposition may command that at the same time and
 5 place specified in the subpoena for the individual to appear and testify,
 6 the individual must produce designated documents, electronically stored
 7 information, or tangible things in the individual's possession, custody,
 8 or control. The scope of a command to produce documents, electronically
 9 stored information, or tangible things pursuant to this section is
 10 governed by the rules of discovery in civil cases.

11 (2) The Supreme Court may promulgate a rule for discovery in civil
 12 cases that specifies the procedures to be followed when a party seeks to
 13 serve a deposition subpoena that commands the individual to produce
 14 designated documents, electronically stored information, or tangible
 15 things in the individual's possession, custody, or control. Any such rule
 16 shall not conflict with the laws governing such matters.

17 ~~The subpoena shall be directed to the person therein named,~~
 18 ~~requiring him to attend at a particular time and place, to testify as a~~
 19 ~~witness; and it may contain a clause directing a witness to bring with~~

20 ~~him any book, writing or other thing under his control, which he is bound~~
21 ~~by law to produce as evidence.~~

22 Sec. 3. Section 25-1226, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 25-1226 (1) A subpoena for a trial or deposition may be served by
25 personal service, which is made by leaving the subpoena with the
26 individual to be served, or by certified mail service, which is made by
27 sending the subpoena by certified mail with a return receipt requested
28 showing to whom and where delivered and the date of delivery. Service by
29 certified mail is made on the date of delivery shown on the signed
30 receipt.

31 (2) A subpoena for a trial must be served at least two days before
1 the day on which the individual is commanded to appear and testify. A
2 court may shorten the period for service for good cause shown. In
3 determining whether good cause exists, a court may consider all relevant
4 circumstances, including, but not limited to, the need for the testimony,
5 the burden on the individual, and the reason why the individual was not
6 subpoenaed earlier.

7 ~~The subpoena shall be served either (1) personally or (2) by mailing~~
8 ~~a copy thereof by either registered or certified mail not less than six~~
9 ~~days before the trial day of the cause upon which said witness is~~
10 ~~required to attend. The person making such service shall make a return~~
11 ~~thereof showing the manner of service.~~

12 Sec. 4. Section 25-1228, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 25-1228 (1) The witness fee for one day's attendance must be served
15 with a trial subpoena except when the subpoena is issued (a) at the
16 request of an agency of state government or (b) pursuant to section
17 25-2304.

18 (2) The person serving the subpoena shall make a return of service
19 stating the name of the individual served, the date and method of
20 service, and, if applicable, that the required witness fee was served
21 with the subpoena. The return of service must be by affidavit unless the
22 subpoena was served by a sheriff or constable. If service was made by
23 certified mail, the signed receipt must be attached to the return of
24 service.

25 (3) The cost of service of a subpoena is taxable as a court cost,
26 and when service of a subpoena is made by a person other than a sheriff
27 or constable, the cost taxable as a court cost is the lesser of the
28 actual amount incurred for service of process or the statutory fee set
29 for sheriffs in section 33-117.

30 (4) Except as provided in section 25-2304, the party at whose
31 request a trial subpoena is issued in a civil action or proceeding must
1 pay the witness the fees and mileage to which the witness is entitled
2 under section 33-139. Any fees and mileage that were not paid to the
3 witness before the witness testified must be paid to the witness within a
4 reasonable time after the witness testified.

5 (1) ~~Except as provided in subsection (2) of this section, a witness~~
6 ~~may demand his traveling fees, and fee for one day's attendance, when the~~

7 subpoena is served upon him, and if the same be not paid the witness
8 shall not be obliged to obey the subpoena. The fact of such demand and
9 nonpayment shall be stated in the return.

10 (2) When a subpoena is issued at the request of any agency of state
11 government, the witness shall not be entitled to demand his traveling
12 fees and fee for one day's attendance but shall be required to obey the
13 subpoena if, at the time of service upon him, he is furnished a statement
14 prepared by the agency advising him of the rate of travel fees allowable,
15 the fee for each day's attendance pursuant to the subpoena, and that he
16 will be paid at such rates following his attendance.

17 Sec. 5. Section 29-1901, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 29-1901 (1) The statutes governing subpoenas in civil actions and
20 proceedings shall also govern subpoenas in traffic and criminal cases,
21 except that subsections (1), (3), and (4) of section 25-1228 shall not
22 apply to those cases. The payment of compensation and mileage to
23 witnesses in those cases shall be governed by section 29-1903.

24 (2) A trial subpoena in a traffic and criminal case shall contain
25 the statement specified in subsection (5) of section 25-1223.

26 (1) In all criminal cases it shall be the duty of the clerk, upon a
27 praecipe being filed, to issue writs of subpoena for all witnesses named
28 in the praecipe, directed to the sheriff of his or her county or of any
29 county in the state where the witnesses reside or may be found, which
30 shall be served and returned as in other cases. Such sheriff, by writing
31 endorsed on such writs, may depute any disinterested person to serve and
1 return the same. The writs of subpoena and all notices to appear shall
2 include the following or substantially similar language: You may be
3 entitled to compensation for witness fees and mileage for each day
4 actually employed in attendance on the court or grand jury.

5 (2) A witness in a traffic, criminal, or juvenile case shall be
6 entitled to a witness fee and mileage after appearing in court in
7 response to a subpoena. The clerk of the court shall immediately submit a
8 claim for payment of witness fees and mileage on behalf of all such
9 witnesses to the county clerk in cases involving a violation of state law
10 or to the city clerk in cases in violation of a city ordinance. All
11 witness fees and mileage paid by a defendant as part of the court costs
12 ordered by the court to be paid shall be reimbursed to the county or city
13 treasurer as appropriate.

14 Sec. 6. Section 29-1903, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-1903 (1) The amount of the witness fee and mileage in traffic,
17 criminal, and juvenile cases is governed by section 33-139.

18 (2) A witness in a traffic, criminal, or juvenile case shall be
19 entitled to a witness fee and mileage after appearing in court in
20 response to a subpoena. The clerk of the court shall immediately submit a
21 claim for payment of witness fees and mileage on behalf of all such
22 witnesses to the county clerk in cases involving a violation of state law
23 or to the city clerk in cases involving a violation of a city ordinance.
24 All witness fees and mileage paid by a defendant as part of the court

25 costs ordered by the court to be paid shall be reimbursed to the county
 26 or city treasurer as appropriate.
 27 ~~(3) Any person accused of crime amounting to a misdemeanor or felony~~
 28 ~~shall have compulsory process to enforce the attendance of witnesses in~~
 29 ~~his or her behalf, and they shall be paid for their mileage and per diem~~
 30 ~~the same fees as are now or may hereafter be allowed by law to witnesses~~
 31 ~~for the state in the prosecution of such accused person. Mileage shall be~~
 1 ~~computed at the rate provided in section 81-1176 for state employees. In~~
 2 ~~case such accused person is convicted and is unable to pay such mileage~~
 3 ~~and per diem to any witnesses, they shall be paid out of the county~~
 4 ~~treasury of the county wherein such crime was committed; and in case such~~
 5 ~~accused person is acquitted upon his or her trial, the fees of his or her~~
 6 ~~witnesses shall be likewise paid out of such county treasury; Provided,~~
 7 ~~however, in no case shall the fees of any such witnesses be so paid,~~
 8 ~~unless before the trial of such accusations such accused person shall~~
 9 ~~make and file an affidavit, stating the names of his or her witnesses,~~
 10 ~~and that he or she has made a statement to his or her counsel of the~~
 11 ~~facts he or she expects to prove by such witnesses, and has been advised~~
 12 ~~by such counsel that their testimony is material on the trial of such~~
 13 ~~accusation, and shall also file an affidavit of such counsel that he or~~
 14 ~~she deems the testimony of such witnesses necessary and material on~~
 15 ~~behalf of such accused person; whereupon the court or judge shall make an~~
 16 ~~order directing that such witnesses, not exceeding fifteen in number, be~~
 17 ~~paid out of the county treasury of the county in which accusations shall~~
 18 ~~be made.~~
 19 Sec. 7. Original sections 25-1223, 25-1224, 25-1226, 25-1228,
 20 29-1901, and 29-1903, Reissue Revised Statutes of Nebraska, are repealed.
 21 Sec. 8. The following sections are outright repealed: Sections
 22 25-1225 and 25-1236, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 589. Placed on General File with amendment.
 AM438

1 1. On page 3, line 12, after the second comma insert "court
 2 appointed special advocate,"; and in line 13 after "proceedings" insert
 3 "or a service or therapy animal".

(Signed) Laura Ebke, Chairperson

UNANIMOUS CONSENT - Add Cointroducer(s)

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator Wayne name added to LB389.

VISITOR(S)

Visitors to the Chamber were 5 legal process students and teacher from Southeast Community College, Lincoln; Gavin Terrano from Lincoln; Senator Hughes' wife, Josie, and his daughter, son-in-law, and grandchildren, Ashley, Tim, Brenna, Hanna, and Easton Colglazier from Grant; 15 twelfth-grade students and teacher from Wilcox-Hildreth; and guests of the U.S. Department of State International Visitor Leadership Program from the Near East and North Africa.

The Doctor of the Day was Dr. Bauer from Lincoln.

ADJOURNMENT

At 11:53 a.m., on a motion by Senator Watermeier, the Legislature adjourned until 9:00 a.m., Tuesday, March 14, 2017.

Patrick J. O'Donnell
Clerk of the Legislature