

SIXTY-SECOND DAY - APRIL 12, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****SIXTY-SECOND DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, April 12, 2007

PRAYER

The prayer was offered by Pastor Brian Kottas, Southwest District United Methodist Churches, McCook.

ROLL CALL

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

The roll was called and all members were present except Senator Christensen who was excused; and Senators Dubas, Heidemann, Pedersen, Preister, Raikes, and Stuthman who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-first day was approved.

**COMMITTEE REPORT
Health and Human Services**

LEGISLATIVE BILL 482. Placed on General File - Com AM932.
AM932

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Sections 1 to 5 of this act shall be known and
- 4 may be cited as the Autism Treatment Program Act.
- 5 Sec. 2. The purposes of the Autism Treatment Program Act
- 6 are to (1) create the Autism Treatment Program administered by the
- 7 Center for Autism Spectrum Disorders at the University of Nebraska
- 8 Medical Center and (2) provide for the development of a waiver or
- 9 an amendment to an existing waiver under the medical assistance
- 10 program established in section 68-903.
- 11 Sec. 3. The Autism Treatment Program is created. The
- 12 program shall be administered by the Center for Autism Spectrum
- 13 Disorders at the University of Nebraska Medical Center. The program
- 14 shall provide or coordinate the provision of statewide intensive

15 early intervention services based on behavioral principles for
16 children with a medical diagnosis of an autism spectrum disorder
17 or an educational verification of autism. The program shall utilize
18 private funds and funds transferred by the Legislature from the
19 Nebraska Health Care Cash Fund to the Autism Treatment Program
20 Cash Fund. Transfers from the Nebraska Health Care Cash Fund in
21 any fiscal year shall be contingent upon the receipt of private
22 matching funds for such program, with no less than one dollar of
23 private funds received for every two dollars transferred from the
1 Nebraska Health Care Cash Fund.

2 Sec. 4. The Autism Treatment Program Cash Fund is
3 created. The fund shall include revenue transferred from the
4 Nebraska Health Care Cash Fund and revenue received from gifts,
5 grants, bequests, donations, or other contributions from public or
6 private sources. The Autism Treatment Program Cash Fund shall be
7 administered by the Center for Autism Spectrum Disorders at the
8 University of Nebraska Medical Center for purposes of the Autism
9 Treatment Program created in section 3 of this act. Any money in
10 the fund available for investment shall be invested by the state
11 investment officer pursuant to the Nebraska Capital Expansion Act
12 and the Nebraska State Funds Investment Act.

13 Sec. 5. (1) The Department of Health and Human Services
14 shall apply for a waiver or an amendment to an existing waiver
15 under the medical assistance program established in section 68-903
16 for the purpose of providing medical assistance for intensive
17 early intervention services based on behavioral principles for
18 children with a medical diagnosis of an autism spectrum disorder
19 or an educational verification of autism. Such waiver shall not be
20 construed to create an entitlement to services provided under such
21 waiver.

22 (2) It is the intent of the Legislature that such
23 waiver (a) require means testing for and cost-sharing by recipient
24 families, (b) limit eligibility only to children for whom such
25 services have been initiated prior to the age of nine years,
26 (c) limit the number of children served according to available
27 funding, (d) require demonstrated progress toward the attainment
1 of treatment goals as a condition for continued receipt of medical
2 assistance benefits for such treatment, (e) be developed in
3 consultation with the Health and Human Services Committee of
4 the Legislature and the federal Centers for Medicare and Medicaid
5 Services and with the input of parents and families of children
6 with autism spectrum disorders and organizations advocating on
7 behalf of such persons, and (f) be submitted to the federal Centers
8 for Medicare and Medicaid Services as soon as practicable, but no
9 later than July 1, 2008.

10 Sec. 6. Section 71-7611, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 71-7611 (1) The Nebraska Health Care Cash Fund is
13 created. The State Treasurer shall transfer ~~fifty two~~ fifty-three

14 million dollars annually no later than July 15 from the Nebraska
15 Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco
16 Settlement Trust Fund to the Nebraska Health Care Cash Fund.
17 The state investment officer upon consultation with the Nebraska
18 Investment Council shall advise the State Treasurer on the amounts
19 to be transferred from the Nebraska Medicaid Intergovernmental
20 Trust Fund and from the Nebraska Tobacco Settlement Trust
21 Fund under this section in order to sustain such transfers in
22 perpetuity. The state investment officer shall report to the
23 Legislature on or before October 1 of every even-numbered year on
24 the sustainability of such transfers.

25 (2) Any money in the Nebraska Health Care Cash Fund
26 available for investment shall be invested by the state investment
27 officer pursuant to the Nebraska Capital Expansion Act and the
1 Nebraska State Funds Investment Act.

2 (3) The State Treasurer shall transfer one million
3 dollars annually from the Nebraska Health Care Cash Fund to the
4 Autism Treatment Program Cash Fund for five fiscal years beginning
5 in fiscal year 2007-08. Such transfers in any fiscal year shall
6 be contingent upon the receipt of private matching funds under
7 the Autism Treatment Program Act, with no less than one dollar of
8 private funds received for every two dollars transferred from the
9 Nebraska Health Care Cash Fund to the Autism Treatment Program Cash
10 Fund.

11 ~~(3) The State Treasurer shall transfer two million~~
12 ~~dollars from the Nebraska Health Care Cash Fund to the University~~
13 ~~of Nebraska Medical Center Designated Cash Fund within fifteen days~~
14 ~~after July 1, 2005.~~

15 ~~(4) The State Treasurer shall transfer two million~~
16 ~~dollars from the Nebraska Health Care Cash Fund to the University~~
17 ~~of Nebraska Medical Center Designated Cash Fund within fifteen days~~
18 ~~after July 1, 2006.~~

19 ~~(5) The State Treasurer shall transfer one million nine~~
20 ~~hundred thirty nine thousand eight hundred sixty three dollars~~
21 ~~from the Nebraska Health Care Cash Fund to the Nebraska Capital~~
22 ~~Construction Fund within five days after July 1, 2005.~~

23 ~~(6) The State Treasurer shall transfer seven hundred~~
24 ~~thousand dollars from the Nebraska Health Care Cash Fund to the~~
25 ~~Nebraska Capital Construction Fund within five days after July 1,~~
26 ~~2005.~~

27 ~~(7)(4) The University of Nebraska and postsecondary~~
1 ~~educational institutions having colleges of medicine in Nebraska~~
2 ~~and their affiliated research hospitals in Nebraska, as a condition~~
3 ~~of receiving any funds appropriated or transferred from the~~
4 ~~Nebraska Health Care Cash Fund, shall not discriminate against~~
5 ~~any person on the basis of sexual orientation.~~

6 Sec. 7. This act becomes operative on July 1, 2007.

7 Sec. 8. Original section 71-7611, Revised Statutes
8 Cumulative Supplement, 2006, is repealed.

9 Sec. 9. Since an emergency exists, this act takes effect
 10 when passed and approved according to law.

(Signed) Joel Johnson, Chairperson

GENERAL FILE

LEGISLATIVE BILL 377. Title read. Considered.

Committee AM912, printed separately and referred to on page 1121, was considered.

PRESIDENT SHEEHY PRESIDING

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 73. Introduced by Chambers, 11.

WHEREAS, Lyme disease is a common but frequently misunderstood illness that, if not caught early and treated properly, can cause serious health problems; and

WHEREAS, Lyme disease is a bacterial infection that is usually transmitted by a tick bite, and early signs of infection may include a rash and flu-like symptoms such as fever, muscle aches, headaches, and fatigue; and

WHEREAS, although Lyme disease can be treated with antibiotics if caught early, the disease often goes undetected because it mimics other illnesses or may be misdiagnosed and, if untreated, can lead to severe heart, neurological, vision, and joint problems, because the bacteria can affect many different organs and organ systems; and

WHEREAS, although Lyme disease accounts for 95 percent of all vector-borne infections in the United States, the ticks that spread the disease also spread other diseases such as ehrlichiosis, babesiosis, and anaplasmosis; and

WHEREAS, the Centers for Disease Control and Prevention indicate that the Lyme disease reported cases are only 10 percent of actual cases that meet its surveillance criteria; and

WHEREAS, the persistence of symptomatology in many patients without reliable testing makes treatment of patients more difficult; and

WHEREAS, the "Lyme and Tick-borne Disease Prevention, Education, and Research Act of 2007" has been introduced in the 110th Congress as H.R.741; and

WHEREAS, the "Lyme and Tick-borne Disease Prevention, Education, and Research Act of 2007" would advance the treatment of, and cure for, Lyme and other tick-borne diseases by expanding federal efforts concerning prevention, education, treatment, and research activities related to Lyme and other tick-borne diseases, providing authorization for the appropriation of \$20 million for each of the federal fiscal years 2008 through 2012 for these

activities and requiring the Secretary of Health and Human Services to annually report to Congress on these activities and make recommendations for further research and education, and establishing a Tick-borne Diseases Advisory Committee within the Office of the Secretary of Health and Human Services.

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

1. That the Legislature respectfully encourages the United States Congress to enact the "Lyme and Tick-borne Disease Prevention, Education, and Research Act of 2007" which is currently pending in the Congress as H.R.741 and any subsequent companion bill passed in the United States Senate.

2. That each member of Nebraska's congressional delegation receive a copy of this resolution.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR 73 was referred to the Reference Committee.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

LB/LR	Committee
LR 73	Health and Human Services

(Signed) L. Patrick Engel, Chairperson
Legislative Council, Executive Board

AMENDMENTS - Print in Journal

Senator Johnson filed the following amendment to LB 610:
AM925

- 1 1. On page 2, line 15, after "maintain" insert ", along
- 2 with each sex offender's permanent medical records,"; and in line
- 3 18 strike beginning with the comma through "records".

Senator Fulton filed the following amendment to LB 377:
AM988

(Amendments to Standing Committee amendments, AM912)

- 1 1. Insert the following new section:
- 2 Sec. 12. Section 29-2523, Revised Statutes Cumulative
- 3 Supplement, 2006, is amended to read:
- 4 29-2523 The aggravating and mitigating circumstances
- 5 referred to in sections 29-2519 to 29-2524 shall be as follows:
- 6 (1) Aggravating Circumstances:
- 7 (a) The offender was previously convicted of another
- 8 murder or a crime involving the use or threat of violence to the

9 person, or has a substantial prior history of serious assaultive or
10 terrorizing criminal activity;

11 (b) The murder was committed in an effort to conceal
12 the commission of a crime, or to conceal the identity of the
13 perpetrator of such crime;

14 (c) The murder was committed for hire, or for pecuniary
15 gain, or the defendant hired another to commit the murder for the
16 defendant;

17 (d) The murder was especially heinous, atrocious, cruel,
18 or manifested exceptional depravity by ordinary standards of
19 morality and intelligence;

20 (e) At the time the murder was committed, the offender
21 also committed another murder;

22 (f) The offender knowingly created a great risk of death
1 to at least several persons;

2 (g) The victim was a public servant having lawful custody
3 of the offender or another in the lawful performance of his or her
4 official duties and the offender knew or should have known that the
5 victim was a public servant performing his or her official duties;

6 (h) The murder was committed knowingly to disrupt or
7 hinder the lawful exercise of any governmental function or the
8 enforcement of the laws; or

9 (i) The victim was a law enforcement officer engaged in
10 the lawful performance of his or her official duties as a law
11 enforcement officer and the offender knew or reasonably should have
12 known that the victim was a law enforcement officer.

13 (2) Mitigating Circumstances:

14 (a) The offender has no significant history of prior
15 criminal activity;

16 (b) The offender acted under unusual pressures or
17 influences or under the domination of another person;

18 (c) The crime was committed while the offender was under
19 the influence of extreme mental or emotional disturbance;

20 (d) The age of the defendant at the time of the crime;

21 (e) The offender was an accomplice in the crime committed
22 by another person and his or her participation was relatively
23 minor;

24 (f) The victim was a participant in the defendant's
25 conduct or consented to the act; ~~or~~

26 (g) At the time of the crime, the capacity of the
27 defendant to appreciate the wrongfulness of his or her conduct
1 or to conform his or her conduct to the requirements of law
2 was impaired as a result of mental illness, mental defect, or
3 intoxication; or;

4 (h) The offender can reasonably and effectively be
5 controlled by institutional security measures.

6 2. On page 14, lines 15 and 16; page 15, lines 6 and 7;
7 and page 17, lines 12 and 13 and 21 and 22, strike "that cannot
8 reasonably and effectively be controlled by institutional security

- 9 measures".
10 3. On page 14, line 22; and page 22, line 26, strike
11 "and" and after "29-2521.05" insert "29-2523".
12 4. Renumber the remaining sections and correct internal
13 references and the repealer section accordingly.

VISITORS

Visitors to the Chamber were Dayton Daberkow from Madison; 62 fourth-grade students and teachers from Wasmer Elementary, Grand Island; 11 eleventh- and twelfth-grade students and sponsors from Southern High School, Wymore; 23 fourth-grade students from Freeman Elementary, Adams; Senator Harms' wife, Patricia, from Scottsbluff, and daughter and granddaughter, Suzette and Madison, from Greeley, Colorado; 13 fourth-grade students, teacher, and sponsors from Cornerstone Elementary, Bellevue; Steven Ramaekers from Columbus; and Clerk Magistrates from Wayne, Sidney, and Trenton.

RECESS

At 12:00 p.m., on a motion by Senator McGill, 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 Senator Christensen who was excused; and Senators Dierks, Dubas, Kruse, and Nantkes who were excused until they arrive.

MESSAGE FROM THE GOVERNOR

April 12, 2007

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

Dear Mr. President, Speaker Flood and Senators:

Contingent upon your approval, the following individuals are being appointed to the Commission for the Deaf and Hard of Hearing:

Clifford Carlson, 5925 Upton Grey Circle, Lincoln NE 68516
Maureen Larsen, 19235 South 204th St., Gretna NE 68028

Raymond Meester, 4300 Everett St., Lincoln NE 68506
 Dr. David Rutledge, 8423 Echo Circle, Lincoln NE 68520-1117

The aforementioned appointees are respectfully submitted for your consideration. Copies of the appointment certificates and applications are attached for your review.

Sincerely,
 (Signed) Dave Heineman
 Governor

Enclosures

AMENDMENT - Print in Journal

Senator Schimek filed the following amendment to LB 405:
 AM849

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new section:
- 3 Section 1. If, on or after March 1, 2007, a city of the
- 4 metropolitan class annexes territory consisting of a city of the
- 5 first or second class or village, the annexed territory shall be
- 6 included in a single city council district of the annexing city of
- 7 the metropolitan class until the next federal decennial census. The
- 8 provisions of section 14-201.03 relating to number and boundaries
- 9 of city council districts of a city of the metropolitan class shall
- 10 apply to the annexing city of the metropolitan class after such
- 11 annexation is effective.

GENERAL FILE

LEGISLATIVE BILL 377. Senator Chambers offered the following amendment to the committee amendment:

AM989

(Amendments to Standing Committee amendments, AM912)

- 1 1. On page 4, line 26, strike "A ruling by", show as
- 2 stricken, and insert "If" and after "court" insert "rules".
- 3 2. On page 5, line 1, after "section" insert ", such
- 4 ruling".

SENATOR LANGEMEIER PRESIDING

Senator White moved the previous question. The question is, "Shall the debate now close?"

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

The motion to cease debate prevailed with 26 ayes, 6 nays, 15 present and not voting, and 2 excused and not voting.

The Chambers amendment was adopted with 42 ayes, 0 nays, 5 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 74. Introduced by Hudkins, 21.

PURPOSE: Funding for the public K-12 educational system is an ongoing issue for the Legislature. For more than a decade, the Legislature has consistently started the process of funding our educational school system by first looking at the ability of a local school system to fund its needs from property tax revenue. The state has then provided funding through a state aid to education formula that attempts to fund each school district in proportion to the district's needs that are unmet by property tax revenue. In 2007, LB 241 would have deemed teachers employed by K-12 school districts to be state employees for purposes of compensation. The amount of funding necessary to implement this policy decision is uncertain and how such action would impact the budget of the State of Nebraska and the amount of further equalization funding that would be necessary are issues that need to be understood in order for the Legislature to seriously consider implementation of such a policy.

In Article VII, section 1, the Nebraska Constitution of Nebraska states "The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." How the Legislature will fund this requirement of the state constitution is of utmost importance to the property taxpayers of this state. Financial support of education makes the heaviest demand on the amount of revenue raised through the property tax system. Finding a new method of appropriating the necessary funds for the support of the K-12 educational system is the most paramount issue to be resolved in order to provide meaningful property tax relief.

The Appropriations Committee shall conduct an interim study to analyze the fiscal impact of making K-12 public school teachers employees of the State of Nebraska. The study should cover the following issues:

1. What would be the fiscal impact on the state budget to finance the compensation packages of K-12 public school teachers?
2. What could be the impact on the current state aid to education formula?
3. Are there any constitutional hurdles that would impede the enactment of the necessary statutes to make the K-12 public school teachers state employees?

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

1. That the Appropriations 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 upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Carlson, Clifford - Commission for the Deaf and Hard of Hearing - Health and Human Services

Larsen, Maureen - Commission for the Deaf and Hard of Hearing - Health and Human Services

Meester, Raymond - Commission for the Deaf and Hard of Hearing - Health and Human Services

Rutledge, David - Commission for the Deaf and Hard of Hearing - Health and Human Services

(Signed) Pat Engel, Chairperson
Legislative Council, Executive Board

GENERAL FILE

LEGISLATIVE BILL 377. Senator Erdman offered the following motion: To reconsider the vote on AM989.

Senator Erdman asked unanimous consent to withdraw his motion to reconsider. No objections. So ordered.

Committee AM912, printed separately and referred to on page 1121 and considered in this day's Journal, as amended, was renewed.

Senator Wallman moved the previous question. The question is, "Shall the debate now close?"

Senator Wallman moved for a call of the house. The motion prevailed with 34 ayes, 1 nay, and 14 not voting.

The motion to cease debate prevailed with 25 ayes, 10 nays, 11 present and not voting, and 3 excused and not voting.

The committee amendment, as amended, lost with 23 ayes, 25 nays, and 1

excused and not voting.

The Chair declared the call raised.

Pending.

VISITORS

Visitors to the Chamber were 16 fifth-grade students and teachers from Heartland Community School, Bradshaw; and 46 fourth-grade students and sponsors from Pierce.

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

ADJOURNMENT

At 4:37 p.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Friday, April 13, 2007.

Patrick J. O'Donnell
Clerk of the Legislature

