

FORTIETH DAY - MARCH 10, 2003**LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE
FIRST SESSION****FORTIETH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, March 10, 2003

PRAYER

The prayer was offered by Dr. Robert Rademacher, Lutheran Churches, Kennard, Nebraska.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Heineman presiding.

The roll was called and all members were present except Senators Byars, Hartnett, and Mossey who were excused; and Senators Combs, Cunningham, Landis, and D. Pederson who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-ninth day was approved.

ANNOUNCEMENTS

Senator Byars designates LB 513 as his priority bill.

Senator Smith designates LB 303 as his priority bill.

The Education Committee designates LB 574 as its priority bill.

ATTORNEY GENERAL'S OPINIONSOpinion # 03002

DATE: March 6, 2003

SUBJECT: Constitutionality of LB 226, Reimbursement of Labor Organizations for Legal Representation in Grievance or Legal Actions by Nonmember Employees.

REQUESTED BY: Senator Gene Tyson; Vice Chairperson
Banking, Commerce and Insurance Committee

WRITTEN BY: Jon Bruning, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have requested the opinion of the Attorney General regarding the constitutional validity of proposed legislation requiring reimbursement of a labor organization for certain representation costs by employees who are not members of the labor organization. The specific question asked is whether the provisions of LB 226 would be violative of Art. XV, sec. 13 of the Nebraska Constitution, commonly referred to as the "right to work" law.

Section 1 of LB 226 would add a new statutory provision as set forth below:

If an employee who is not a member of a labor organization, as defined in section 48-218, chooses to have legal representation from the labor organization in any grievance or legal action, such employee shall reimburse the labor organization for his or her pro rata share of the actual legal fees and court costs incurred by the labor organization in representing the employee in such grievance or legal action.

(Emphasis added).

Section 2 of the bill would amend Neb. Rev. Stat. §48-217 (1998) in the following respects:

To make operative the provisions of sections 13, 14, and 15 of Article XV of the Constitution of Nebraska, no person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join; or affiliate with, ~~or pay a fee either directly or indirectly to~~ a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership in or nonmembership in a labor organization.

Article XV, sec. 13 of the Nebraska Constitution states:

No person shall be denied employment because of membership in or affiliation with, or resignation or expulsion from a labor organization or because of refusal to join or affiliate with a labor organization; nor shall any individual or corporation or association of any kind enter into any contract, written or oral, to exclude persons from employment because of membership or nonmembership in a labor organization.

The Nebraska Supreme Court has determined that a purpose of Art. XV, sec. 13 is to provide that employment of an individual cannot be based upon his or her membership in a labor organization. *Lincoln Federal Labor Union v. Northwestern Iron and Metal Co.*, 149 Neb. 507, 31 N.W.2d 477 (1948). The constitutional amendment was enacted in 1946 as the result of a referendum petition, thus there is no applicable history. In 1947, LB 344, which contained substantially similar language was enacted by the Legislature. The legislative history indicates that the principal concern was prohibiting closed shop provisions, although mention was made of prohibiting other forms of union security. *Op. Att'y Gen. No. 82* (March 13, 1979)(quoting report of the Attorney General, 1959-1960, No. 173, at 295-96).

LB 226 authorizes reimbursement of the labor organization by a nonmember employee for representation costs of the labor organization if the employee chooses representation by the labor organization. This type of provision is generally recognized as a "fair share" arrangement. A "fair share" arrangement differs from an "agency shop" arrangement. The "agency shop" is an agreement between an employer and union organization that employees who are not union members shall, as a condition of continued employment, contribute an equal amount to the fees and dues paid by union members. This device owes its conception to the existence of "right to work laws" in nineteen of the United States. See Report of the Attorney General, 1959-60, No. 173, at 295.

We have found no Nebraska case authority that has addressed the validity of "fair share" arrangements in the context of Nebraska's right to work law. In other jurisdictions, courts have found that union security devices such as agency shop provisions and fair share arrangements are violative of states' right to work laws. See e.g. *Independent Guard Association v. Wackenhut, Servs.*, 90 Nev. 198, 522 P.2d 1010 (1974); *State Employees Association v. Mills*, 115 N.H. 473, 342 A.2d 6 (1975); *Ficek v. International Brotherhood of Boilermaker, Iron Shop Builders, Blacksmiths, Forgers and Helpers, Local #647*, 219 N.W.2d 860 (N. Dak. 1974); *Schmerhorn v. Retail Clerks International Association*, 141 So.2d 269 (Fla. 1962). Also see *Florida Education Association/United v. Public Employees Relations Comm'n*, 346 So.2d 551 (Fla. Dist. Ct. App. 1977)(finding that an agreement which requires nonmember teachers to contribute fair share fees for services of bargaining representatives as a condition of employment to be violative of the state's right to work laws.)

This office has previously addressed constitutional issues concerning fair share legislative proposals. In *Op. Att'y Gen. No. 82* (March 5, 1979), we considered whether a proposed legislative act which would authorize an agreement between the employer and the labor organization certifying the labor organization as the exclusive bargaining agent was constitutionally offensive. The proposal would have required the employee to pay the labor organization a service fee equivalent to the employee's proportionate share of the organization's costs of negotiating and administering a collective

bargaining contract and processing grievances under the agreement. It was concluded the provisions were constitutionally suspect under Art. XV, sec. 13 of the Nebraska Constitution because the required payment of a service fee forces an employee to join or affiliate with a labor organization as a condition of employment. *id.* at 3.

More recently, the question of the constitutional validity of a legislative proposal which would require nonunion employees in a bargaining unit covered by a collective bargaining unit to pay fees to the labor organization was addressed. The "fair share" amount would have represented the proportionate share of the cost borne by the labor organization in representing the nonmember employees. We concluded that the fair share provisions were constitutionally suspect under Art. XV, sec. 13 of the Nebraska Constitution. *Op. Att'y Gen. No. 93009* (February 19, 1993) at 3.

The fair share provisions of LB 226 differ from constitutionally suspect provisions of the previous legislative proposals because membership or affiliation with a labor organization is not coerced as a condition of employment. The provisions of LB 226 neither compel nor require a nonmember employee to join or affiliate with a labor organization because the representation by the labor organization is not mandated as a condition of employment. Rather, the employee is required to reimburse the labor organization for his or her share of actual legal fees and costs incurred by the labor organization only if the employee chooses representation by the organization.

The precise issue presented by the provisions of LB 226 under similar circumstances has been considered by the Supreme Court of Nevada. In *Cone v. Nebraska Service Employees Union/SEIU Local 1107*, 116 Nev. 473, 998 P.2d 1178 (2000), the court addressed the question whether reimbursement or the imposition of fees on nonunion employees for representation by the union in grievance matters violated the state's right to work laws. Under the facts of the case, a union policy established a fee schedule for all members of the union for representation in grievance matters and notified nonunion employees that they could select outside counsel to represent them in bargaining unit matters. The Supreme Court of Nevada concluded that the policy of imposing fees on nonunion members of a bargaining unit for representation in grievance matters did not violate the state's right to work laws. The court concluded that the policy was not like an agency shop agreement because paying a service fee for grievance representation was not a condition of employment. In so concluding, the court stated: "(A)n individual could opt to hire his or her own legal counsel, and thereby forego giving the union any money at all without fear of losing his or her job." *id.* at 478, 998 P.2d at 1181.

We think the rationale of *Cone* is persuasive. The provisions of LB 226 do not compel a nonmember employee to pay any amounts to a labor organization if the employee opts to have representation other than representation by the labor organization. Accordingly, a nonmember would

not be required to pay any amount to the labor organization as a condition of obtaining or retaining his or her employment. For these reasons, it is our opinion that the provisions of LB 226 are not offensive to Art. XV, sec. 13 of the Nebraska Constitution.

Sincerely,
JON BRUNING
Attorney General
(Signed) Fredrick F. Ned
Assistant Attorney General

21-260-09

Opinion # 03003

DATE: March 7, 2003

SUBJECT: LB 550; LB 551; Termination Of Bridge Commissions
For Interstate County Bridges And Transfer Of Their
Duties.

REQUESTED BY: Senator Mark Quandahl
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

The Nebraska Statutes dealing with "Interstate County Bridges" are found at Neb. Rev. Stat. §§ 39-855 through 39-876 (1998). Those statutes generally provide for the construction and operation of highway bridges between Nebraska and adjoining states. Among other things, those statutes allow Nebraska counties and municipal corporations to create bridge commissions for the construction and operation of interstate bridges, to issue revenue bonds for bridge construction, and to charge tolls on interstate bridges for payment of those revenue bonds.

At least two bills introduced during this legislative session deal with various aspects of the statutes pertaining to Interstate County Bridges. LB 550 would amend § 39-867 to state that when the revenue bonds issued by a city or city-appointed bridge commission for a particular bridge are paid in full, the ownership of that bridge would be transferred to the county in Nebraska in which the Nebraska end of the bridge is located. At that time, any existing bridge commission for such a bridge would be dissolved, and the county would take over the obligations of that commission. The county could collect tolls on the bridge to pay for its management, maintenance and upkeep.

LB 551, on the other hand, would amend § 39-856 so as to add many of the same provisions to that statute as those which would be added to § 39-867 by LB 550, except that the entity which would be designated to take

over a bridge after its revenue bonds were paid off would be the city where the Nebraska end of the bridge is located, rather than the county. LB 551 would also allow a city so designated to defer dissolution of the bridge commission in question.

Given the introduction of LB 550 and LB 551, you have requested our opinion as to "which governmental entity is responsible for operating and maintaining the Bellevue Bridge once the outstanding bonds have been satisfied." In that context, you have posed two specific questions to us:

1. When does the [Bellevue Bridge] Commission's responsibility to operate and maintain the bridge terminate?
2. Which governmental entity does the [Bellevue Bridge] Commission transfer responsibility for management of the bridge to upon satisfaction of the outstanding bondholders?

After conversations with your staff, we understand that both of your specific questions pertain to the current status of the law involving the Bellevue Bridge, and assume that neither LB 550 or LB 551 has been enacted.

Both of your specific questions regarding the Bellevue Bridge Commission presume that the Commission's responsibility to operate the bridge terminates at some point under existing law, and that at that point, either a county or a city will be required to take over management and operation of the bridge.¹ However, our review of the existing law in this area leads us to a different conclusion.

Neb. Rev. Stat. § 39-868 (1998) provides that a bridge commission created under the statutes pertaining to Interstate County Bridges shall be a "public body corporate and politic" with the power "to contract, to sue and be sued, and to adopt a seal and alter the same at pleasure." Neb. Rev. Stat. § 39-870 (1998) provides further that:

The [bridge] commission shall have power to establish bylaws, rules and regulations for its own government, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under sections 30-868 to 39-870. The commission may employ engineering, architectural and construction experts and inspectors, and attorneys, and such other employees as may be necessary in its opinion, and fix their compensations, all of whom shall do such work as the commission shall direct.

As a result, a bridge commission under the statutes pertaining to Interstate County Bridges is a public body corporate and politic with substantial powers to manage and conduct its own affairs.

We have been unable to find any Nebraska cases which define the terms

"body corporate" or "body corporate and politic." However, cases from other jurisdictions indicate that the term "body corporate" is a term applied to corporations, public and private. *Isner v. Interstate Commerce Commission*, 90 F. Supp. 361 (E.D. Mich. S.D. 1950). In addition, the term "body corporate and politic" is a term applied to public corporations having the powers and duties of government. *Utah State Building Commission, for Use and Benefit of Mountain States Supply Co. v. Great American Indemnity Co.*, 105 Utah 11, 140 P.2d 763 (1943). Therefore, it appears to us that bridge commissions created under the Interstate County Bridge statutes, including the Bellevue Bridge Commission, are public corporations, having governmental duties and powers.

Generally, a corporation will exist indefinitely and until it is legally dissolved, if the period of its existence is not limited by its charter. *Pontiac Improvement Co. v. Leisy*, 144 Neb. 705, 14 N.W.2d 384 (1944); 18 C.J.S. Corporations § 52. And, a corporation will continue to exist during, but not beyond, the period to which its existence is limited by its charter or by constitutional or statutory provisions. 18 C.J.S. Corporations § 52.

In the present instance, we have reviewed the various provisions of the statutes pertaining to Interstate County Bridges, and we have found no statutory provisions pertaining to dissolution of the bridge commissions created under those statutes. Nor have we found anything in those statutes which speaks generally to the termination of a bridge commission's responsibility to operate and maintain a bridge after its revenue bonds are retired, apart from a provision in § 39-867 which provides that bridge tolls shall be discontinued upon the payment of certain revenue refunding bonds. Consequently, absent some provision in the charter of the Bellevue Bridge Commission dealing with the dissolution of that commission², we believe that the Bellevue Bridge Commission and its obligation to maintain and operate the Bellevue Bridge continue indefinitely, even after satisfaction of the outstanding revenue bonds involving that structure. Under those circumstances, the Commission is not required to transfer its responsibilities with respect to the bridge to any other governmental entity. A different result involving termination of the Bellevue Bridge Commission would require passage of LB 550, LB 551 or other similar legislation.

¹Your opinion request contains few specifics, but we assume that the governmental entities involved with the Bellevue Bridge are Sarpy County and the City of Bellevue.

²We have not been provided with any materials pertaining to the charter of the Bellevue Bridge Commission, so we have no information as to what that charter may provide, if anything, regarding dissolution of the commission.

Sincerely yours,
JON BRUNING
Attorney General

(Signed) Dale A. Comer
Assistant Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature
05-154-21

STANDING COMMITTEE REPORTS
Urban Affairs

LEGISLATIVE BILL 235. Placed on General File.

LEGISLATIVE BILL 476. Placed on General File.

LEGISLATIVE BILL 549. Placed on General File.

LEGISLATIVE BILL 720. Placed on General File.

LEGISLATIVE BILL 97. Placed on General File as amended.
Standing Committee amendment to LB 97:

AM0413

1 1. On page 3, strike beginning with the comma in line 21
2 through "such" in line 22 and insert "subject to the following:
3 (a) There is reserved to the city the right to maintain, operate,
4 repair, and renew sewers now existing there and (b) there is
5 reserved to the public utilities and cable television systems the
6 right to maintain, repair, renew, and operate installed water
7 mains, gas mains, pole lines, conduits, electrical transmission
8 lines, sound and signal transmission lines, and other similar
9 services and equipment and appurtenances above, on, and below the
10 surface of the ground for the purpose of serving the general public
11 or abutting properties, including such lateral connection or branch
12 lines as may be ordered or permitted by the city or such other
13 utility or cable television system and to enter upon the premises
14 to accomplish such purposes at any and all reasonable times. The
15 city shall, within thirty days after the effective date of the
16 vacation, file a certified copy of the vacating ordinance or
17 resolution with the register of deeds for the county in which the
18 vacated property is located to be indexed against all affected
19 lots".

LEGISLATIVE BILL 91. Indefinitely postponed.

LEGISLATIVE BILL 277. Indefinitely postponed.

LEGISLATIVE BILL 615. Indefinitely postponed.

(Signed) D. Paul Hartnett, Chairperson

Education

LEGISLATIVE BILL 513. Placed on General File.

(Signed) Ron Raikes, Chairperson

AMENDMENT - Print in Journal

Senator Schrock filed the following amendment to LB 619:
AM0701

(Amendments to Standing Committee amendments, AM0380)

- 1 1. Insert the following new sections:
- 2 "Section 1. Section 2-1575, Revised Statutes Supplement,
- 3 2002, is amended to read:
- 4 2-1575. Sections 2-1575 to 2-1585 and section 2 of this
- 5 act shall be known and may be cited as the Nebraska Soil and Water
- 6 Conservation Act.
- 7 Sec. 2. Payments may be made from the Nebraska Soil and
- 8 Water Conservation Fund to the owners of private land for the
- 9 purpose of adopting or implementing practices or measures to reduce
- 10 the consumptive use of water in river basins in which an interstate
- 11 agreement, compact, or decree could require reduction in water
- 12 usage.
- 13 Payments made pursuant to this section may be made as
- 14 part of research, cost-sharing, or other programs implemented by
- 15 natural resources districts, irrigation districts, or other
- 16 entities to develop voluntary incentive-based practices or measures
- 17 to reduce the consumptive use of water.
- 18 Payments made pursuant to this section shall be in
- 19 accordance with terms and conditions established by the commission.
- 20 The commission may establish terms and conditions for receipt of
- 21 payments under this section which are different than those
- 22 established for receipt of payments pursuant to section 2-1579."
- 23 2. On page 17, line 7, after "sections" insert
- 1 "2-1575,".
- 2 3. Renumber the remaining sections and correct internal
- 3 references accordingly.

RESOLUTION

LEGISLATIVE RESOLUTION 43. Read. Considered.

Senator Bromm asked unanimous consent to have all the senators' names added as cointroducers to LR 43. No objections. So ordered.

LR 43 was adopted with 38 ayes, 0 nays, 4 present and not voting, and 7 excused and not voting.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 43.

GENERAL FILE

LEGISLATIVE BILL 165. Senator Beutler renewed his pending amendment, FA1191, found on page 754.

Senator Beutler withdrew his amendment.

Senator Foley asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for review with 30 ayes, 2 nays, 11 present and not voting, and 6 excused and not voting.

STANDING COMMITTEE REPORT
Business and Labor

LEGISLATIVE BILL 435. Placed on General File.

(Signed) Floyd P. Vrtiska, Chairperson

SELECT COMMITTEE REPORTS
Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: LBs 61, 127, 161, 175, 219, 234, 234A, 561, 562, 562A, and 563.

ER9032

Enrollment and Review Change to LB 61

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

1. On page 16, line 28, "has" has been struck, shown as stricken, and "have" inserted.

ER9029

Enrollment and Review Change to LB 234

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

1. On page 1, line 1, "an" has been inserted after "for"; and in line 2 "hearings" has been struck and "process" inserted.

ER9028

Enrollment and Review Change to LB 561

The following changes, required to be reported for publication in the

Journal, have been made:

1. On page 2, line 16, "grant" has been struck, shown as stricken, and "grants" inserted.

ER9033

Enrollment and Review Change to LB 562

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

1. In the E & R amendments, AM7066, on page 1, line 8, "and redefine" has been struck and ", redefine, and eliminate" inserted.

2. On page 20, line 19, "and" has been inserted after the semicolon.

ER9027

Enrollment and Review Change to LB 563

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

1. On page 1, line 2, "60-305.02," has been inserted after the first comma; and in line 12 "interstate" has been struck and "interjurisdiction" inserted.

(Signed) Ray Mossey, Chairperson

NOTICE OF COMMITTEE HEARING

Judiciary
Room 1113

LB 808 Wednesday, March 19, 2003

1:30 p.m.

(Signed) Kermit A. Brashear, Chairperson

GENERAL FILE

LEGISLATIVE BILL 688. Title read. Considered.

The Standing Committee amendment, AM0074, found on page 576, was considered.

Senator Chambers renewed his pending amendment, FA1185, found on page 699, to the Standing Committee amendment.

SENATOR CUDABACK PRESIDING

SPEAKER BROMM PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

The Chambers amendment was adopted with 41 ayes, 0 nays, 3 present and

not voting, and 5 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 39 ayes, 0 nays, 5 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Pending.

STANDING COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 348. Placed on General File as amended.
Standing Committee amendment to LB 348:
AM0690

1 1. Strike the original sections and insert the following
2 new sections:
3 "Section 1. Section 37-324, Reissue Revised Statutes of
4 Nebraska, is amended to read:
5 37-324. (1) The funds derived from the sale of permits
6 and publications as provided in the Game Law, any unexpended
7 balance now on hand from the sale of hunting, fur-harvesting, and
8 fishing permits, and all money required by the Game Law to be paid
9 into the State Game Fund are hereby appropriated to the use of the
10 commission (a) for the propagation, importation, protection,
11 preservation, and distribution of game and fish and necessary
12 equipment therefor and all things pertaining thereto, (b) for the
13 creation of cash funds under section 37-326, (c) for the
14 administration and enforcement of the State Boat Act, (d) for
15 boating safety educational programs, (e) for the construction and
16 maintenance of boating and docking facilities, navigation aids, and
17 access to boating areas and such other uses which will promote the
18 safety and convenience of the boating public in Nebraska, and (f)
19 ~~(e)~~ for publishing costs for publications relating to topics listed
20 in subdivisions (a) ~~through (d)~~ and (b) of this subsection and
21 other topics of general interest to the state as approved by the
22 commission. An amount equal to two dollars from each annual
23 resident fishing permit and two dollars from each combination
24 hunting and fishing permit sold in this state shall be used by the
1 commission for the administration, construction, operation, and
2 maintenance of fish hatcheries and for the distribution of fish.
3 (2) Expenditures for publications on topics of general
4 interest to the state shall not exceed the income derived from
5 single-copy and subscription sales of commission publications and
6 advertising revenue from such publications.
7 Sec. 2. Section 37-1214, Revised Statutes Supplement,
8 2002, is amended to read:
9 37-1214. (1) Except as otherwise provided in section
10 37-1211, the owner of each motorboat shall register such vessel or

11 renew the registration every three years as provided in section
12 37-1226. The owner of such vessel shall file an initial
13 application for a certificate of number pursuant to section 37-1216
14 with ~~the county treasurer of the county in which the applicant~~
15 ~~resides or, in the case of a nonresident, with any a county~~
16 treasurer on forms approved and provided by the commission. The
17 application shall be signed by the owner of the vessel, shall
18 contain the year manufactured, and shall be accompanied by a fee
19 for the three-year period of not less than fifteen dollars and not
20 more than twenty dollars for Class 1 boats, not less than thirty
21 dollars and not more than forty dollars for Class 2 boats, not less
22 than forty-five dollars and not more than sixty dollars for Class 3
23 boats, and not less than seventy-five dollars and not more than one
24 hundred dollars for Class 4 boats, as established by the commission
25 pursuant to section 37-327.

26 (2) If a county board consolidates services under the
27 office of a designated county official other than the county
1 treasurer pursuant to section 23-186, the powers and duties of the
2 county treasurer relating to registration under sections 37-1214 to
3 37-1227 shall be performed by the designated county official.

4 Sec. 3. Section 37-1241.04, Revised Statutes Supplement,
5 2002, is amended to read:

6 37-1241.04. (1) A person shall operate a personal
7 watercraft on the waters of this state in a reasonable and prudent
8 manner. A maneuver which unreasonably or unnecessarily endangers
9 life, limb, or property is prohibited and includes weaving through
10 congested vessel traffic, ~~or~~ jumping the wake produced by another
11 vessel at a distance of less than ~~thirty~~ thirty five yards, or jumping
12 the wake produced by a motorboat or personal watercraft that is
13 towing a person or persons.

14 (2) A person shall not operate a personal watercraft on
15 the waters of this state unless he or she is facing forward on the
16 watercraft.

17 Sec. 4. Section 37-1241.06, Revised Statutes Supplement,
18 2002, is amended to read:

19 37-1241.06. (1)(a) No person under fourteen years of age
20 shall operate a motorboat or personal watercraft on the waters of
21 this state.

22 (b) No person under sixteen years of age shall operate a
23 motorboat or personal watercraft on the waters of this state with
24 an individual in tow behind the motorboat or personal watercraft.

25 (2) Effective May 1, 2000, and until January 1, 2004, a
26 person under sixteen years of age shall not operate a motorboat or
27 personal watercraft on the waters of this state unless he or she
1 has successfully completed a boating safety course approved by the
2 commission and has been issued a valid boating safety certificate.

3 (3) Effective January 1, 2004, a person under eighteen
4 years of age shall not operate a motorboat or personal watercraft
5 on the waters of this state unless he or she has successfully

6 completed a boating safety course approved by the commission and
 7 has been issued a valid boating certificate.

8 (4) Effective January 1, 2005, a person under twenty-five
 9 years of age shall not operate a motorboat or personal watercraft
 10 on the waters of this state unless he or she has successfully
 11 completed a boating safety course approved by the commission and
 12 has been issued a valid boating certificate.

13 (5) ~~No person under fourteen years of age shall operate a~~
 14 ~~personal watercraft on the waters of this state.~~ The commission
 15 may charge a fee of no more than ten dollars for a boating safety
 16 course required by this section.

17 Sec. 5. Section 37-1241.07, Revised Statutes Supplement,
 18 2002, is amended to read:

19 37-1241.07. Effective May 1, 2000 on the operative date
 20 of this section, the owner of a boat livery, or his or her agent or
 21 employee, shall not lease, hire, or rent a motorboat or personal
 22 watercraft to, or for operation by, any person under sixteen
 23 eighteen years of age, unless the person presents his or her
 24 certificate issued under section 37-1241.06.

25 Sec. 6. Section 37-1256, Revised Statutes Supplement,
 26 2002, is amended to read:

27 37-1256. (1) In the case of collision, accident, or
 1 other casualty involving a vessel, the operator thereof, if the
 2 collision, accident, or other casualty results in death, a missing
 3 person, or injury to a person or damage to property in excess of
 4 five hundred dollars, shall file with the commission a full
 5 description of the collision, accident, or other casualty,
 6 including such information and within such time limit as the
 7 commission may by regulation require.

8 (2) The commission or any other law enforcement agency
 9 shall notify the Nebraska State Patrol as soon as practicable in
 10 any cases of collision, accident, or other casualty involving a
 11 vessel, when the collision, accident, or other casualty results in
 12 death, a missing person, or life-threatening injury to a person.

13 (3) The Nebraska State Patrol shall collaborate with the
 14 commission or any other law enforcement agency in any
 15 investigations pursuant to this section to assure that such
 16 investigations are conducted in accordance with accepted practices.

17 Sec. 7. Section 37-1273, Reissue Revised Statutes of
 18 Nebraska, is amended to read:

19 37-1273. All fees as provided by the State Boat Act
 20 shall be remitted to the ~~state treasury and by the State Treasurer~~
 21 placed in for credit to the State Game Fund to be used primarily
 22 for (1) administration and enforcement of the State Boat Act, (2)
 23 boating safety educational programs, (3) the construction and
 24 maintenance of boating and docking facilities, navigation aids, and
 25 access to boating areas and such other uses as will promote the
 26 safety and convenience of the boating public in Nebraska, and (4)
 27 publishing costs subject to the restrictions and limitations in

1 section 37-324. Secondary uses for the fees shall be for the
 2 propagation, importation, protection, preservation, and
 3 distribution of game and fish and necessary equipment therefor and
 4 all things pertaining thereto. Such fund, when appropriated by the
 5 Legislature, shall be used (1) for the propagation, importation,
 6 protection, preservation, and distribution of game and fish and
 7 necessary equipment therefor and all things pertaining thereto; (2)
 8 for administration and enforcement of the State Boat Act; (3) for
 9 the construction and maintenance of boating and docking facilities,
 10 navigation aids, and access to boating areas and such other uses as
 11 will promote the safety and convenience of the boating public in
 12 Nebraska, and (4) for publishing costs subject to the restrictions
 13 and limitations in section 37-324.

14 Sec. 8. Sections 1 to 3, 6, 7, and 9 of this act become
 15 operative on June 1, 2003. The other sections of this act become
 16 operative on their effective date.

17 Sec. 9. Original sections 37-324 and 37-1273, Reissue
 18 Revised Statutes of Nebraska, and sections 37-1214, 37-1241.04, and
 19 37-1256, Revised Statutes Supplement, 2002, are repealed.

20 Sec. 10. Original sections 37-1241.06 and 37-1241.07,
 21 Revised Statutes Supplement, 2002, are repealed.

22 Sec. 11. Since an emergency exists, this act takes
 23 effect when passed and approved according to law."

LEGISLATIVE BILL 739. Placed on General File as amended.
 Standing Committee amendment to LB 739:
 AM0699

- 1 1. Insert the following new sections:
- 2 "Sec. 2. If any section in this act or any part of any
- 3 section is declared invalid or unconstitutional, the declaration
- 4 shall not affect the validity or constitutionality of the remaining
- 5 portions.
- 6 Sec. 4. Since an emergency exists, this act takes effect
- 7 when passed and approved according to law."
- 8 2. On page 2, line 24, after "from" insert "the majority
- 9 of".
- 10 3. Renumber the remaining section accordingly.

LEGISLATIVE BILL 748. Indefinitely postponed.

LEGISLATIVE BILL 779. Indefinitely postponed.

(Signed) Ed Schrock, Chairperson

General Affairs

LEGISLATIVE BILL 367. Placed on General File as amended.
 Standing Committee amendment to LB 367:
 AM0731

- 1 1. On page 2, line 18, strike the second "October" and

2 insert "January"; and in line 25 strike "October" and insert
3 "January".

LEGISLATIVE BILL 393. Indefinitely postponed.

(Signed) Ray Janssen, Chairperson

Government, Military and Veterans Affairs

LEGISLATIVE BILL 437. Placed on General File as amended.
Standing Committee amendment to LB 437:

AM0716

- 1 1. On page 2, line 10, strike the new matter and
- 2 reinstate the stricken matter.

LEGISLATIVE BILL 310. Indefinitely postponed.

LEGISLATIVE BILL 463. Indefinitely postponed.

LEGISLATIVE BILL 582. Indefinitely postponed.

LEGISLATIVE BILL 584. Indefinitely postponed.

(Signed) DiAnna R. Schimek, Chairperson

Revenue

LEGISLATIVE BILL 80. Indefinitely postponed.

LEGISLATIVE BILL 109. Indefinitely postponed.

LEGISLATIVE BILL 163. Indefinitely postponed.

LEGISLATIVE BILL 193. Indefinitely postponed.

LEGISLATIVE BILL 284. Indefinitely postponed.

LEGISLATIVE BILL 398. Indefinitely postponed.

LEGISLATIVE BILL 399. Indefinitely postponed.

LEGISLATIVE BILL 519. Indefinitely postponed.

LEGISLATIVE BILL 520. Indefinitely postponed.

LEGISLATIVE BILL 543. Indefinitely postponed.

LEGISLATIVE BILL 577. Indefinitely postponed.

LEGISLATIVE BILL 578. Indefinitely postponed.

LEGISLATIVE BILL 635. Indefinitely postponed.

LEGISLATIVE BILL 642. Indefinitely postponed.

LEGISLATIVE BILL 649. Indefinitely postponed.

LEGISLATIVE BILL 677. Indefinitely postponed.

LEGISLATIVE BILL 728. Indefinitely postponed.

LEGISLATIVE BILL 734. Indefinitely postponed.

LEGISLATIVE BILL 749. Indefinitely postponed.

LEGISLATIVE BILL 769. Indefinitely postponed.

LEGISLATIVE BILL 774. Indefinitely postponed.

(Signed) David Landis, Chairperson

GENERAL FILE

LEGISLATIVE BILL 688. Senator Beutler withdrew his pending amendment, AM0698, found on page 755.

Senator Beutler offered the following amendment:

AM0743

- 1 1. In the Standing Committee amendments, AM0074, in line
- 2 9 after "stipend" insert "or similarly restricting hours of
- 3 participation"
- 4 2. Insert the following new section:
- 5 "Sec. 7. As an alternative to the requirement of section
- 6 4 of this act, the university may limit the number of hours
- 7 required to participate in intercollegiate athletics to such number
- 8 that participation in a sport would not impede the student
- 9 athlete's ability to carry a regular academic workload which allows
- 10 such student athlete to graduate in four years, will allow the
- 11 student athlete adequate time to participate in the intellectual
- 12 and cultural activities on campus, and further will allow the
- 13 student athlete to work an average of at least twelve hours per
- 14 week during the academic school year.".
- 15 3. Renumber the remaining section accordingly.

Pending.

SELECT COMMITTEE REPORTS**Enrollment and Review****Correctly Engrossed**

The following bills were correctly engrossed: LBs 56, 157, 228, 228A, 418, and 537.

ER9034

Enrollment and Review Change to LB 56

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

1. In the E & R amendments, AM7071, on page 2, line 14, "effective" has been struck and "operative" inserted.

ER9035

Enrollment and Review Change to LB 228

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

1. On page 16, line 14, "to" has been struck.

(Signed) Ray Mossey, Chairperson

STANDING COMMITTEE REPORT
Health and Human Services

LEGISLATIVE BILL 756. Placed on General File as amended.
Standing Committee amendment to LB 756:
AM0727

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

3 "Section 1. Sections 1 to 8 of this act shall be known
4 and may be cited as the Cancer Drug Repository Program Act.

5 Sec. 2. For purposes of the Cancer Drug Repository
6 Program Act:

7 (1) Cancer drug means a prescription drug used to treat
8 (a) cancer or (b) the side effects of a prescription drug used to
9 treat cancer;

10 (2) Department means the Department of Health and Human
11 Services Regulation and Licensure;

12 (3) Health care facility has the definition found in
13 section 71-413;

14 (4) Health clinic has the definition found in section
15 71-416;

16 (5) Hospital has the definition found in section 71-419;

17 (6) Pharmacy has the definition found in section 71-425;

18 (7) Physician office means the office of a physician or
19 an osteopathic physician;

20 (8) Prescribing practitioner means a health care
21 practitioner licensed under the Uniform Licensing Law who is
22 authorized to prescribe cancer drugs; and

23 (9) Prescription drug has the definition found in section
24 71-1,142.

1 Sec. 3. The department shall establish a cancer drug
2 repository program for accepting donated cancer drugs and
3 dispensing such drugs to Nebraska residents. Participation in the
4 program shall be voluntary.

5 Sec. 4. Any person or entity, including but not limited
6 to, a cancer drug manufacturer or health care facility, may donate
7 cancer drugs to the cancer drug repository program. Cancer drugs
8 may be donated at a physician office, pharmacy, hospital, or health
9 clinic that elects to participate in the program and meets criteria
10 established by the department for such participation.

11 Sec. 5. (1) A cancer drug shall only be accepted or
12 dispensed under the cancer drug repository program if such drug is
13 in its original, unopened, sealed, and tamper-evident unit dose
14 packaging, except that a cancer drug packaged in single unit doses
15 may be accepted and dispensed if the outside packaging is opened
16 but the single-unit-dose packaging is unopened.

17 (2) A cancer drug shall not be accepted or dispensed

18 under the cancer drug repository program if (a) such drug bears an
19 expiration date that is earlier than six months after the date the
20 drug was donated or (b) such drug is adulterated or misbranded as
21 described in section 71-2401 or 71-2402.

22 (3) Subject to limitations provided in this section,
23 unused cancer drugs dispensed under the medical assistance program
24 established in section 68-1018 may be accepted and dispensed under
25 the cancer drug repository program.

26 Sec. 6. (1) A physician office, pharmacy, hospital, or
27 health clinic that accepts donated cancer drugs under the cancer
1 drug repository program shall comply with all applicable provisions
2 of state and federal law relating to the storage, distribution, and
3 dispensing of such drugs and shall inspect all such drugs prior to
4 dispensing to determine if they are adulterated or misbranded as
5 described in section 71-2401 or 71-2402. Such drugs shall only be
6 dispensed pursuant to a prescription issued by a prescribing
7 practitioner. Such drugs may be distributed to another
8 participating physician office, pharmacy, hospital, or health
9 clinic for dispensing.

10 (2) A physician office, pharmacy, hospital, or health
11 clinic may charge a handling fee for distributing or dispensing
12 cancer drugs under the cancer drug repository program. Such fee
13 shall be established in rules and regulations adopted and
14 promulgated by the department. Cancer drugs donated under the
15 program shall not be resold.

16 Sec. 7. (1) Any person or entity which exercises
17 reasonable care in donating, accepting, distributing, or dispensing
18 cancer drugs under the Cancer Drug Repository Program Act or rules
19 and regulations adopted and promulgated under the act shall be
20 immune from civil or criminal liability or professional
21 disciplinary action of any kind for any injury, death, or loss to
22 person or property relating to such activities.

23 (2) The donation of a cancer drug by a cancer drug
24 manufacturer does not absolve the manufacturer of any criminal or
25 civil liability that would have existed but for the donation,
26 including, but not limited to, liability for failure to transfer or
27 communicate product or consumer information or the expiration date
1 of the donated cancer drug.

2 Sec. 8. The department, with the approval of the Board
3 of Pharmacy, shall adopt and promulgate rules and regulations to
4 carry out the Cancer Drug Repository Program Act. Initial rules
5 and regulations under the act shall be adopted and promulgated no
6 later than ninety days after the operative date of the act. Such
7 rules and regulations shall include, but are not limited to:

8 (1) Eligibility criteria and other standards and
9 procedures for physician offices, pharmacies, hospitals, and health
10 clinics that accept and distribute or dispense donated cancer
11 drugs;

12 (2) Necessary forms for administration of the cancer drug

13 repository program, including, but not limited to, forms for use by
 14 persons or entities that donate, accept, distribute, or dispense
 15 cancer drugs under the program;

16 (3) The maximum handling fee that may be charged by
 17 physician offices, pharmacies, hospitals, or health clinics that
 18 accept and distribute or dispense donated cancer drugs; and

19 (4)(a) Categories of cancer drugs that the cancer drug
 20 repository program will accept for dispensing and (b) categories of
 21 cancer drugs that the program will not accept for dispensing and
 22 the reason that such drugs will not be accepted.

23 Sec. 9. This act becomes operative on September 15,

24 2003."

(Signed) Jim Jensen, Chairperson

AMENDMENT - Print in Journal

Senator Jones filed the following amendment to LB 619:
 AM0668

(Amendments to Standing Committee amendments, AM0380)

1 1. Insert the following new sections:
 2 "Sec. 5. Section 46-642, Revised Statutes Supplement,
 3 2002, is amended to read:
 4 46-642. (1) If the Director of Natural Resources finds
 5 that the withdrawal and transportation of ground water requested by
 6 the applicant are reasonable, are not contrary to the conservation
 7 and beneficial use of ground water, and are not otherwise
 8 detrimental to the public welfare, he or she shall grant a permit
 9 to the applicant to withdraw and transport water in the amount
 10 applied for or in a lesser amount. The permit so granted shall
 11 have a priority date as of the time when the application is filed
 12 with the director.

13 (2) In determining whether to grant or deny a permit
 14 under subsection (1) of this section, the director shall consider
 15 the factors set forth in subdivisions (1) through (7) of section
 16 46-613.01.

17 Sec. 7. Section 46-683, Reissue Revised Statutes of
 18 Nebraska, is amended to read:

19 46-683. (1) The director shall issue a written order
 20 containing specific findings of fact either granting or denying a
 21 permit. The director shall grant a permit only if he or she finds
 22 that the applicant's withdrawal and any transfer of ground water
 23 are in the public interest. In determining whether the withdrawal

1 are in the public interest, the director's
 2 considerations shall include, but not be limited to:

3 (a) Possible adverse effects on existing surface or
 4 ground water users;

5 (b) The effect of the withdrawal and any transfer of
 6 ground water on surface or ground water supplies needed to meet

7 reasonably anticipated domestic and agricultural demands in the
 8 area of the proposed ground water withdrawal;
 9 (c) The availability of alternative sources of surface or
 10 ground water reasonably accessible to the applicant in or near the
 11 region of the proposed withdrawal or use;
 12 (d) The economic benefit of the applicant's proposed use;
 13 (e) The social and economic benefits of existing uses of
 14 surface or ground water in the area of the applicant's proposed use
 15 and any transfer;

16 (f) Any waivers of liability from existing users filed
 17 with the director; ~~and~~

18 (g) The effects on interstate compacts or decrees and the
 19 fulfillment of the provisions of any other state contract or
 20 agreement; and

21 (h) Other factors reasonably affecting the equity of
 22 granting the permit.

23 (2) The director may grant a permit for less water than
 24 requested by the applicant. The director may also impose
 25 reasonable conditions on the manner and timing of the ground water
 26 withdrawals and on the manner of any transfer of ground water which
 27 the director deems necessary to protect existing users of water.

1 The director shall issue such written order within ninety days of
 2 the hearing.

3 Sec. 8. Section 46-691, Revised Statutes Supplement,
 4 2002, is amended to read:

5 46-691. (1) Any person who withdraws ground water for
 6 agricultural purposes, or for any purpose pursuant to a ground
 7 water remediation plan as required under the Environmental
 8 Protection Act, including the providing of water for domestic
 9 purposes, from aquifers located within the State of Nebraska may
 10 transfer the use of the ground water off the overlying land if the
 11 ground water is put to a reasonable and beneficial use within the
 12 State of Nebraska and is used for an agricultural purpose, or for
 13 any purpose pursuant to a ground water remediation plan as required
 14 under the Environmental Protection Act, including the providing of
 15 water for domestic purposes, after transfer, and if such
 16 withdrawal, transfer, and use (a) will not significantly adversely
 17 affect any other water user, (b) is consistent with all applicable
 18 statutes and rules and regulations, and (c) is in the public
 19 interest. The determination made by a natural resources district
 20 under subsection (2) of this section or the director under
 21 subsection (3) of this section shall include consideration of the
 22 factors set forth in subdivisions (1) through (7) of section
 23 46-613.01. For purposes of this section, domestic has the same
 24 meaning as in section 46-613.

25 (2) Any affected party may object to the transfer of
 26 ground water by filing written objections, specifically stating the
 27 grounds for such objection, in the office of the natural resources
 1 district containing the land from which the ground water is

2 withdrawn. Upon the filing of such objections or on its own
 3 initiative, the natural resources district shall conduct a
 4 preliminary investigation to determine if the withdrawal, transfer,
 5 and use of ground water is consistent with the requirements of
 6 subsection (1) of this section. Following the preliminary
 7 investigation, if the district has reason to believe that the
 8 withdrawal, transfer, or use may not comply with any rule or
 9 regulation of the district, it may utilize its authority under the
 10 Nebraska Ground Water Management and Protection Act to prohibit
 11 such withdrawal, transfer, or use. If the district has reason to
 12 believe that the withdrawal, transfer, and use is consistent with
 13 all rules and regulations of the district but may not comply with
 14 one or more other requirements of subsection (1) of this section,
 15 the district shall request that the Department of Natural Resources
 16 hold a hearing on such transfer.

17 (3) At the hearing, all interested persons may appear and
 18 present testimony. Agencies or political subdivisions of this
 19 state and the appropriate natural resources districts shall offer
 20 as evidence any information in their possession which they deem
 21 relevant to the purposes of the hearing. After the hearing, if the
 22 Director of Natural Resources finds that the withdrawal, transfer,
 23 or use of ground water is contrary to the requirements of
 24 subsection (1) of this section, he or she shall issue a cease and
 25 desist order prohibiting the withdrawal and transfer.

26 (4) The director may adopt and promulgate rules and
 27 regulations to carry out this section."

- 1 2. Amend the repealer, correct internal references, and
- 2 renumber the remaining sections accordingly.

BILL ON FIRST READING

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

LEGISLATIVE BILL 357A. Introduced by Schimek, 27.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 357, Ninety-eighth Legislature, First Session, 2003.

ANNOUNCEMENT

The Nebraska Retirement Systems Committee designates LB 320 as its priority bill.

NOTICE OF COMMITTEE HEARING

Revenue
 Room 1524

(Signed) David Landis, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Dw. Pedersen asked unanimous consent to have his name added as cointroducer to LB 597. No objections. So ordered.

VISITORS

Visitors to the Chamber were 25 students, sponsors, and teacher from R-7 School, Holdrege; Carmen Helvey from Lexington; and Bob Tichota from Blair.

ADJOURNMENT

At 12:04 p.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Tuesday, March 11, 2003.

Patrick J. O'Donnell
Clerk of the Legislature

