

SEVENTY-FIRST DAY - MAY 3, 2005**LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE
FIRST SESSION****SEVENTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, May 3, 2005

PRAYER

The prayer was offered by Pastor Michael Sears, St. Frances of Rome, Azusa, California.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senator Dw. Pedersen who was excused; and Senators Chambers, Cornett, Landis, and Thompson who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

Page 1329, line 22, strike "Nebraska" and insert "Investment".
The Journal for the seventieth day was approved as corrected.

COMMUNICATIONS

April 27, 2005

Mr. Patrick J. O'Donnell
Clerk of the Legislature
P.O. Box 94604
Lincoln, NE 68509-4604

RE: Nebraska Revised Statutes (Reissue 1999), Section 85-408

Dear Mr. O'Donnell:

Pursuant to the listed statute regarding the expenditure of surplus or replacement funds, the Coordinating Commission for Postsecondary Education has reviewed the following projects at its meeting on April 26, 2005:

University of Nebraska-Lincoln - City Campus: Harper/Schramm/Smith Dining Services Facility Renovation Surplus Fund Increase, and

Wayne State College: Parking Lots Improvements.

The Coordinating Commission is recommending approval of each of these proposals. Enclosed is the Commission's evaluation form for each proposal.

Our understanding is that these proposals now require the review and approval of the Executive Board of the Legislative Council or the Legislature pursuant to the same section of the statutes. The University of Nebraska and Nebraska State Colleges will be submitting formal requests for your review.

Please give Mr. Mike Wemhoff, Facilities Officer (471-0028) or me a call if you have any questions.

Cordially,
(Signed) Marshall A. Hill

mah/maw

Enclosures (2)

cc: Jean M. Dale (letter only)
Phil Hovis (letter only)
Rebecca Koller (letter only)
Kathy Tenopir (letter only)
David G. Wagaman (letter only)

April 28, 2005

Senator Pat Engel
Chairman, Executive Board
Room 2010, State Capitol
Lincoln, NE 68509

Dear Senator Engel,

Enclosed is correspondence from Marshall A. Hill, Executive Director of the Coordinating Commission for Postsecondary Education. The correspondence relates to the expenditure of surplus or replacement funds for the following:

University of Nebraska-Lincoln - City Campus: Harper/Schramm/Smith Dining Services Facility Renovation Surplus Fund Increase
Wayne State College: Parking Lots Improvements.

I am forwarding this correspondence to you for Executive Board action.

Sincerely,
(Signed) Patrick J. O'Donnell
Clerk of the Legislature

PJO:jk

BILLS ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 38 with 39 ayes, 1 nay, 4 present and not voting, and 5 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 38. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 85-1503 and 85-1517, Reissue Revised Statutes of Nebraska, and sections 13-519, 77-3442, and 85-1536.01, Revised Statutes Supplement, 2004; to change budget and levy authority for community colleges as prescribed; to define and redefine terms; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 31:

Aguilar	Connealy	Janssen	Pahls	Stuhr
Baker	Cornett	Jensen	Pederson, D.	Synowiecki
Brashear	Cudaback	Johnson	Preister	Wehrbein
Brown	Cunningham	Kopplin	Price	
Burling	Engel	Kremer	Raikes	
Byars	Flood	Kruse	Schimek	
Combs	Howard	McDonald	Schrock	

Voting in the negative, 14:

Bourne	Fischer	Heidemann	Louden	Smith
Chambers	Foley	Hudkins	Mines	Stuthman
Erdman	Friend	Langemeier	Redfield	

Present and not voting, 1:

Beutler

Excused and not voting, 3:

Landis Pedersen, Dw. Thompson

Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

Voting in the affirmative, 30:

Aguilar	Connealy	Howard	Kruse	Raikes
Baker	Cornett	Janssen	McDonald	Schimek
Brashear	Cudaback	Jensen	Pahls	Schrock
Brown	Cunningham	Johnson	Pederson, D.	Stuhr
Burling	Engel	Kopplin	Preister	Synowiecki
Byars	Flood	Kremer	Price	Wehrbein

Voting in the negative, 15:

Bourne	Fischer	Heidemann	Louden	Smith
Chambers	Foley	Hudkins	Mines	Stuthman
Erdman	Friend	Langemeier	Redfield	Thompson

Present and not voting, 2:

Beutler Combs

Excused and not voting, 2:

Landis Pedersen, Dw.

A constitutional majority having voted in the affirmative, the bill was declared passed with the emergency clause stricken.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 382 with 42 ayes, 2 nays, 3 present and not voting, and 2 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 382. With Emergency.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 71-168, 71-1,146.01, 71-1,147.35, 71-374, 71-375, 71-5402, 71-5403, and 71-5404, Reissue Revised Statutes of Nebraska, sections

28-401, 28-405, 28-414, 28-1437, and 71-1,142, Revised Statutes Supplement, 2004, and section 2, Legislative Bill 306, Ninety-ninth Legislature, First Session, 2005; to provide for electronic transmission of prescriptions; to define, redefine, and eliminate terms; to change provisions relating to controlled substances, dispensing, compounding, and destroying certain drugs, and drug product selection; to provide an exception to mandatory reporting requirements for pharmacist interns; to change provisions relating to the Board of Cosmetology; to provide for relabeling and redispensing of certain prescription drugs and devices; to change provisions relating to criminal background checks required of certain professionals; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 47:

Aguilar	Connealy	Heidemann	Langemeier	Schrock
Baker	Cornett	Howard	Louden	Smith
Beutler	Cudaback	Hudkins	McDonald	Stuhr
Bourne	Cunningham	Janssen	Mines	Stuthman
Brashear	Engel	Jensen	Pahls	Synowiecki
Brown	Erdman	Johnson	Pederson, D.	Thompson
Burling	Fischer	Kopplin	Preister	Wehrbein
Byars	Flood	Kremer	Price	
Chambers	Foley	Kruse	Redfield	
Combs	Friend	Landis	Schimek	

Voting in the negative, 0.

Excused and not voting, 2:

Pedersen, Dw. Raikes

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 551. With Emergency.

A BILL FOR AN ACT relating to public health and welfare; to amend sections 71-1,356, 71-1,358, 71-810, 71-813, 71-815 to 71-818, and 71-922, Revised Statutes Supplement, 2004; to change training requirements relating to alcohol and drug counselor training supervisors; to establish a data and information system; to provide duties for the Division of Behavioral Health Services; to change provisions relating to membership on a council, on

advisory committees, and on a commission; to change provisions relating to the Compulsive Gamblers Assistance Fund; to change provisions relating to mental health board proceedings; to provide an operative date; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 47:

Aguilar	Connealy	Heidemann	Langemeier	Schrock
Baker	Cornett	Howard	Louden	Smith
Beutler	Cudaback	Hudkins	McDonald	Stuhr
Bourne	Cunningham	Janssen	Mines	Stuthman
Brashear	Engel	Jensen	Pahls	Synowiecki
Brown	Erdman	Johnson	Pederson, D.	Thompson
Burling	Fischer	Kopplin	Preister	Wehrbein
Byars	Flood	Kremer	Price	
Chambers	Foley	Kruse	Redfield	
Combs	Friend	Landis	Schimek	

Voting in the negative, 0.

Excused and not voting, 2:

Pedersen, Dw. Raikes

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Return LB 82 to Select File

Senator Mines moved to return LB 82 to Select File for the Mines et al. specific pending amendment, AM1246, found on page 1236.

The Mines motion to return prevailed with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 82. The Mines et al. specific pending amendment, AM1246, found on page 1236, was adopted with 33 ayes, 1 nay, 13 present and not voting, and 2 excused and not voting.

Advanced to E & R for reengrossment.

WITHDRAW - Amendment to LB 161

Senator Foley withdrew his pending amendment, AM1253, found on page 1260, to LB 161.

MOTION - Return LB 161 to Select File

Senator Foley moved to return LB 161 to Select File for the following specific amendment:

AM1343

(Amendments to Final Reading copy)

- 1 1. On page 4, line 14, after "calculated" insert "and
 2 the means of notice to the owners of the record title of the
 3 property proposed to be improved, including a written statement of
 4 the proposed benefits and an estimate of the costs to be assessed
 5 according to the method of assessment"; in line 16 after
 6 "benefited" insert "and the method of assessment"; and strike the
 7 matter beginning with "Upon" in line 16 through the period in line
 8 26.
- 9 2. On page 5, strike the matter beginning with
 10 "representing" in line 1 through "thereof" in line 4 and insert "of
 11 property within the proposed district which would be subject to
 12 more than fifty percent of the total of all special assessments to
 13 be levied for the purposes authorized by this subdivision"; strike
 14 the matter beginning with "In" in line 10 through the period in
 15 line 13; and strike the matter beginning with "representing" in
 16 line 15 through "district" in line 18 and insert "of property
 17 within the proposed district which would be subject to more than
 18 fifty percent of the total of all special assessments to be levied
 19 for the purposes authorized by this subdivision".

The Foley motion to return prevailed with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 161. The Foley specific amendment, AM1343, found in this day's Journal, was adopted with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

Advanced to E & R for reengrossment.

WITHDRAW - Amendment to LB 211

Senator Landis withdrew his pending amendment, AM1327, found on page 1307, to LB 211.

MOTION - Return LB 211 to Select File

Senator Landis moved to return LB 211 to Select File for the following specific amendment:

AM1373

(Amendments to Final Reading copy)

- 1 1. Strike section 2 and insert the following new
- 2 sections:
- 3 "Section 1. Sections 1 to 10 of this act shall be known
- 4 and may be cited as the Nebraska Archaeological Resources
- 5 Preservation Act.
- 6 Sec. 2. The Legislature hereby finds and declares that:
- 7 (1) Archaeological sites represent an important public
- 8 resource embodying the record of our state's cultural heritage;
- 9 (2) The resource base of archaeological sites is being
- 10 threatened at an increasing rate by agricultural, urban,
- 11 commercial, transportation, governmental, and industrial
- 12 development; and
- 13 (3) The rights of private property owners must be
- 14 maintained even when their property contains archaeological sites
- 15 or resources.
- 16 Sec. 3. For purposes of the Nebraska Archaeological
- 17 Resources Preservation Act:
- 18 (1) Archaeological resource means any material object of
- 19 past human life or activities that is of archaeological interest.
- 20 Such objects include, but are not limited to, pottery, basketry,
- 21 bottles, weapons, tools, structures or portions of structures,
- 22 dwellings, rock paintings, rock carvings, intaglios, graves, human
- 23 skeletal materials, or any portion or piece of any of such items.
- 1 Nonfossilized and fossilized paleontological specimens, or any
- 2 portion or piece thereof, shall not be considered archaeological
- 3 resources unless found in an archaeological context. No object
- 4 shall be treated as an archaeological resource under this
- 5 subdivision unless such object is determined to be at least fifty
- 6 years of age;
- 7 (2) Archaeological site means a place or location where
- 8 archaeological resources are found;
- 9 (3) Master archaeological site file means the records
- 10 inventory of all known Nebraska archaeological sites maintained by
- 11 the Nebraska State Historical Society;
- 12 (4) National Register of Historic Places means the
- 13 register of districts, sites, buildings, structures, and objects
- 14 significant in American history, architecture, archaeology,
- 15 engineering, and culture, maintained by the Secretary of the
- 16 Interior under the authority of the federal Historic Sites,
- 17 Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National
- 18 Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);
- 19 (5) State agency means any division, department, board,
- 20 bureau, commission, or agency of the State of Nebraska; and

21 (6) Undertaking means a project, activity, or program
22 funded in whole or in part under the jurisdiction of a state
23 agency.

24 Sec. 4. (1) There is hereby established the State
25 Archaeology Office which shall be a division within the Nebraska
26 State Historical Society. The purpose of the office shall be to
27 coordinate and encourage appropriate archaeological undertakings
1 and to preserve archaeological resources. The State Archaeology
2 Office may adopt and promulgate rules and regulations to carry out
3 the purposes of the Nebraska Archaeological Resources Preservation
4 Act.

5 (2) The State Archaeology Office shall be headed by the
6 State Archaeologist. The State Archaeologist shall be a graduate
7 of a recognized college or university with a graduate degree in
8 archaeology or anthropology and shall have sufficient practical
9 experience and knowledge of archaeology to carry out the purposes
10 of the act.

11 (3) The State Archaeology Office may:

12 (a) Promote development of archaeological resources for
13 educational, cultural, tourism, and scientific purposes;

14 (b) Support popular and avocational interest in
15 archaeological resources through field trips, demonstrations,
16 seminars, and excavations throughout the state;

17 (c) Conduct a program of locating, identifying,
18 quantifying, and assessing the significance of the state's
19 archaeological resources;

20 (d) Maintain the master archaeological site file;

21 (e) Advise state agencies, political subdivisions,
22 nongovernmental organizations, commercial and business interests,
23 private property owners, individuals, and others as to the
24 provisions and requirements of the act;

25 (f) Serve as the liaison office in transactions dealing
26 with archaeological resources between state agencies and between
27 the state and the federal government;

1 (g) Cooperate with state agencies and others in
2 overseeing the execution of undertakings required by the act;

3 (h) Serve as the liaison office between state agencies
4 and Indian tribes, the Commission on Indian Affairs, or other
5 constituent groups culturally affiliated with archaeological sites
6 involved in undertakings;

7 (i) Maintain a list of archaeologists qualified to
8 conduct research projects required by the act;

9 (j) Maintain a permanent repository and electronic data
10 base of published and unpublished sources on the archaeological
11 resources of the state;

12 (k) Prepare, publish, and distribute for professional use
13 and public education reports, bulletins, pamphlets, maps, and other
14 products necessary to achieve the purposes of the act;

15 (l) Implement a program of emergency salvage archaeology,

16 which includes surveys and either salvage or preservation of
17 archaeological resources imperiled by development activities or
18 natural forces;

19 (m) Administer and manage grants, bequests, devises, tax
20 incentives, and easements of property to the state for the purposes
21 of preserving archaeological sites and resources; and

22 (n) Ensure the long-term curation and management of
23 collections and records resulting from undertakings within the
24 state;

25 (o) Identify properties included in the National Register
26 of Historic Places that are endangered, and coordinate or
27 facilitate the purchase and maintenance of such properties by other
1 public or private agencies in order to preserve archeological sites
2 or resources located on the properties; and

3 (p) Conduct all other activities necessary to carry out
4 the purposes of the act.

5 Sec. 5. (1) Except as provided in subsection (2) of this
6 section, the head of any state agency having jurisdiction over a
7 proposed state or state-funded undertaking, which has potential to
8 affect archaeological resources or sites, shall, prior to the
9 approval of the expenditure of any state funds on the undertaking,
10 notify the State Archaeology Office of the undertaking and
11 cooperate with the office to identify and develop measures to
12 mitigate the effect of the undertaking on any archaeological site
13 or resource that is included in or eligible for inclusion in the
14 National Register of Historic Places.

15 (2) The Department of Roads shall be exempt from the
16 provisions of the Nebraska Archaeological Resources Preservation
17 Act as long as a cooperative agreement exists between the
18 Department of Roads and the Nebraska State Historical Society which
19 ensures that all highway construction projects meet federal
20 historic preservation legislation and regulations, and such federal
21 preservation legislation and regulations fulfill or exceed the
22 objectives and standards of the act.

23 (3) Nothing in the Nebraska Archaeological Resources
24 Preservation Act shall be construed to abridge the rights of
25 private property owners and in no case shall a private property
26 owner be required to pay for activities undertaken by the State
27 Archaeology Office.

1 Sec. 6. The State Archaeology Office may accept, use,
2 disburse, and administer all funds or other property, services, and
3 money allotted to it for purposes of the Nebraska Archaeological
4 Resources Preservation Act and may prescribe the conditions under
5 which such funds, property, services, or money will be accepted and
6 administered.

7 Sec. 7. (1) Any person who knowingly and willfully
8 appropriates, excavates, injures, or destroys any archaeological
9 resource on public land without written permission from the State
10 Archaeology Office is guilty of a Class III misdemeanor.

11 (2) When the State Archaeology Office has cause to
 12 believe that a person has engaged in or is engaging in any unlawful
 13 conduct prescribed in this section, it may apply for and obtain, in
 14 an action in the appropriate district court of this state, a
 15 temporary restraining order or injunction, or both, pursuant to the
 16 Nebraska rules of civil procedure prohibiting such person from
 17 continuing such practices, or engaging therein, or doing any act in
 18 furtherance thereof.

19 Sec. 8. No person shall enter or attempt to enter upon
 20 the lands of another without permission and intentionally
 21 appropriate, excavate, injure, or destroy any archaeological
 22 resource or any archaeological site. Any person committing such
 23 act is guilty of a Class III misdemeanor.
 24 Sec. 9. The Nebraska State Historical Society may use
 25 General Fund appropriations to match other funds, grants, or money
 26 received to carry out the Nebraska Archaeological Resources
 27 Preservation Act.

1 Sec. 10. The State Archaeology Cash Fund is hereby
 2 created. The fund may be used to carry out the purposes of the
 3 Nebraska Archaeological Resources Preservation Act. Any money in
 4 the fund available for investment shall be invested by the state
 5 investment officer pursuant to the Nebraska Capital Expansion Act
 6 and the Nebraska State Funds Investment Act.

7 Sec. 12. Section 11 of this act becomes operative on
 8 January 1, 2006. The other sections of this act become operative
 9 on their effective date."

10 2. On page 1, line 1, strike "cemeteries" and insert
 11 "the Nebraska State Historical Society" and after the semicolon
 12 insert "to adopt the Nebraska Archaeological Resources Preservation
 13 Act; to provide penalties;"; and in lines 2 and 3 strike "an
 14 operative date" and insert "operative dates".

15 3. Renumber the remaining section accordingly.

The Landis motion to return prevailed with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 211. The Landis specific amendment, AM1373, found in this day's Journal, was adopted with 40 ayes, 0 nays, 8 present and not voting, and 1 excused and not voting.

Advanced to E & R for reengrossment.

MOTION - Return LB 401 to Select File

Senator Friend moved to return LB 401 to Select File for his specific pending amendment, AM1314, found on page 1313.

The Friend motion to return prevailed with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 401. The Friend specific pending amendment, AM1314, found on page 1313, was adopted with 36 ayes, 0 nays, 12 present and not voting, and 1 excused and not voting.

Advanced to E & R for reengrossment.

MOTION - Return LB 682 to Select File

Senator Redfield moved to return LB 682 to Select File for her specific pending amendment, AM1325, found on page 1337.

Pending.

AMENDMENT - Print in Journal

Senator Schrock filed the following amendment to LB 120:
AM1035

- 1 1. Strike original section 2 and insert the following
- 2 new sections:
- 3 "Sec. 2. Section 37-420, Reissue Revised Statutes of
- 4 Nebraska, as amended by section 6, Legislative Bill 54,
- 5 Ninety-ninth Legislature, First Session, 2005, is amended to read:
- 6 37-420. (1) Any veteran ~~of any war as defined in section~~
- 7 ~~80-401.04~~ who is a legal resident of the State of Nebraska and who
- 8 was discharged or separated with a characterization of honorable or
- 9 general (under honorable conditions) shall be exempt from the
- 10 payment of any fees provided by the laws of the State of Nebraska
- 11 and established by the commission pursuant to section 37-327 for
- 12 the privilege of fishing or hunting in Nebraska if the veteran:
- 13 (a) Is rated by the United States Department of Veterans
- 14 Affairs as fifty percent or more disabled as a result of service in
- 15 the armed forces of the United States;
- 16 (b) Is receiving a pension from the department as a
- 17 result of total and permanent disability, which disability was not
- 18 incurred in the line of duty in the military service; or
- 19 (c) Is sixty-five years of age or older.
- 20 (2) The exemption described in subsection (1) of this
- 21 section shall not extend to the privilege of commercial fishing,
- 22 trapping of fur-bearing animals, or hunting for deer, antelope,
- 23 wild turkey, or any other species of fish and game on which the
- 24 open season is limited to a restricted number of permits or to
- 1 special permits for a restricted area or game management unit.
- 2 (3) If disabled persons are unable by reason of physical
- 3 infirmities to hunt and fish in the normal manner, the commission

4 may issue special permits without cost to those persons to hunt and
5 fish from a vehicle, but such permits shall not authorize any
6 person to shoot from any public highway.

7 (4) All permits issued without the payment of any fees
8 pursuant to this section shall be perpetual and become void only
9 upon termination of eligibility as provided in this section.

10 (5) The commission may adopt and promulgate rules and
11 regulations necessary to carry out this section.

12 Sec. 3. Section 37-729, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 37-729. For purposes of sections 37-729 to 37-736:

15 (1) Land includes roads, water, watercourses, private
16 ways, and buildings, structures, and machinery or equipment thereon
17 when attached to the realty;

18 (2) Lease means an agreement between an owner of land and
19 a nonprofit conservation corporation, political subdivision, or
20 state or federal agency;

21 (3) Owner includes tenant, lessee, occupant, or person in
22 control of the premises;

23 ~~(4)~~ (4) Recreational purposes includes, but is not
24 limited to, any one or any combination of the following: Hunting,
25 fishing, swimming, boating, camping, picnicking, hiking, pleasure
26 driving, nature study, wildlife viewing including bird viewing,
27 waterskiing, winter sports, and visiting, viewing, or enjoying
1 historical, archaeological, scenic, or scientific sites, or
2 otherwise using land for purposes of the user; and

3 ~~(5)~~ (5) Charge means the amount of money asked in return
4 for an invitation to enter or go upon the land.

5 Sec. 4. Section 37-733, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 37-733. (1) Unless otherwise agreed in writing, an owner
8 of land ~~(a) leased to the state for recreational purposes for~~
9 recreational purposes or wildlife benefits by any nonprofit
10 conservation corporation, political subdivision, or state or
11 federal agency or (b) receiving wildlife habitat improvement
12 payments from any nonprofit conservation corporation, political
13 subdivision, or state or federal agency owes no duty of care to
14 keep that land safe for entry or use by others or to give warning
15 to persons entering or going upon such land of any hazardous
16 conditions, uses, structures, or activities thereon. ~~Am~~

17 (2) ~~Such owner who leases land to the state for~~
18 recreational purposes shall not by giving such lease or receiving
19 such wildlife habitat improvement payment (a) ~~(1)~~ extend any
20 assurance to any person using the land that the premises are safe
21 for any purpose, ~~(2)~~ (b) confer upon such persons the legal status
22 of an invitee or licensee to whom a duty of care is owed, or ~~(3)~~
23 (c) assume responsibility for or incur liability for any injury to
24 person or property caused by an act or omission of a person who
25 enters upon the leased land.

26 (3) The provisions of this section shall apply whether
 27 the person entering upon the leased land is an invitee, licensee,
 1 trespasser, or otherwise.
 2 Sec. 5. Section 37-734, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 37-734. Nothing in sections 37-729 to 37-736 limits in
 5 any way any liability which otherwise exists (1) for willful or
 6 malicious failure to guard or warn against a dangerous condition,
 7 use, structure, or activity or (2) for injury suffered in any case
 8 where the owner of land charges the person or persons who enter or
 9 go on the land. ~~Rental paid by a group, organization, corporation,~~
 10 ~~or the state or federal government shall not be deemed a charge~~
 11 ~~made by the owner of the land. Lease payments for recreational~~
 12 ~~purposes or wildlife benefits or wildlife habitat improvement~~
 13 ~~payments made by any nonprofit conservation corporation, political~~
 14 ~~subdivision, or state or federal agency shall not be deemed a~~
 15 ~~charge made by the owner of the land.~~
 16 Sec. 6. Sections 1, 2, and 7 of this act become
 17 operative on January 1, 2006. The other sections of this act
 18 become operative on their effective date.
 19 Sec. 7. Original section 54-2419, Reissue Revised
 20 Statutes of Nebraska, and section 37-420, Reissue Revised Statutes
 21 of Nebraska, as amended by section 6, Legislative Bill 54,
 22 Ninety-ninth Legislature, First Session, 2005, are repealed.
 23 Sec. 8. Original sections 37-729, 37-733, and 37-734,
 24 Reissue Revised Statutes of Nebraska, are repealed.
 25 Sec. 9. Since an emergency exists, this act takes effect
 26 when passed and approved according to law."

RESOLUTION

LEGISLATIVE RESOLUTION 97. Introduced by Fischer, 43.

WHEREAS, the Stuart High School Mock Trial Team placed first in the Nebraska State Championship; and

WHEREAS, the team will represent their school, Legislative District 43, and the State of Nebraska at the National High School Mock Trial Championship in Charlotte, North Carolina, May 5-8, 2005; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the members of the Stuart High School Mock Trial Team be congratulated for its success.

2. That a copy of this resolution be sent to the Stuart High School Mock Trial Team and their Coach, Attorney Janet Krotter Chvala.

Laid over.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board referred the University of Nebraska's and Wayne State College's requests to issue revenue bonds to the Appropriations Committee for further consideration.

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

BILL ON FIRST READING

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

LEGISLATIVE BILL 454A. Introduced by Combs, 32.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 454, Ninety-ninth Legislature, First Session, 2005.

VISITORS

Visitors to the Chamber were 11 seventh- through ninth-grade students and teacher from Christ Is King School, Norfolk; 45 fourth-grade students and teachers from Arbor Park Middle School, Blair; Kathy and Lucas Christensen from Sindal, North Jutland, Denmark; 25 fourth-grade students and teacher from Karen Western Elementary School, Omaha; Senator Connealy's cousins, Pastor Michael Sears and Tony Sears from California and John Sears from Minnesota; and Dianne Swanson and Stephanie Wallman from Beatrice.

RECESS

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

AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

ROLL CALL

The roll was called and all members were present except Senator Dw. Pedersen who was excused; and Senators Aguilar, Cornett, Loudon, Price, and Thompson who were excused until they arrive.

MOTION - Return LB 682 to Select File

Senator Redfield renewed her pending motion, found in this day's Journal, to return LB 682 to Select File for her specific pending amendment,

AM1325, found on page 1337.

The Redfield motion to return prevailed with 34 ayes, 0 nays, 9 present and not voting, and 6 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 682. The Redfield specific pending amendment, AM1325, found on page 1337, was adopted with 31 ayes, 1 nay, 13 present and not voting, and 4 excused and not voting.

Advanced to E & R for reengrossment.

MOTION - Reconsider Action on LB 38

Senator Landis offered the following motion:

Reconsider the vote taken on the final passage of LB 38 with the emergency clause attached.

Senator Landis requested a roll call vote on his motion to reconsider.

Voting in the affirmative, 34:

Aguilar	Combs	Foley	Kruse	Raikes
Baker	Connealy	Howard	Landis	Schimek
Beutler	Cornett	Janssen	McDonald	Schrock
Brashear	Cudaback	Jensen	Mines	Stuhr
Brown	Cunningham	Johnson	Pahls	Synowiecki
Burling	Engel	Kopplin	Pederson, D.	Wehrbein
Byars	Flood	Kremer	Preister	

Voting in the negative, 12:

Bourne	Fischer	Hudkins	Redfield
Chambers	Friend	Langemeier	Smith
Erdman	Heidemann	Louden	Stuthman

Excused and not voting, 3:

Pedersen, Dw. Price Thompson

The Landis motion to reconsider prevailed with 34 ayes, 12 nays, and 3 excused and not voting.

BILL ON FINAL READING

The following bill was put upon final passage:

LEGISLATIVE BILL 38. With Emergency.

Senator Flood requested a roll call vote.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'" "

Voting in the affirmative, 33:

Aguilar	Combs	Howard	Landis	Schimek
Baker	Connealy	Janssen	McDonald	Schrock
Beutler	Cornett	Jensen	Mines	Stuhr
Brashear	Cudaback	Johnson	Pahls	Synowiecki
Brown	Cunningham	Kopplin	Pederson, D.	Wehrbein
Burling	Engel	Kremer	Preister	
Byars	Flood	Kruse	Raikes	

Voting in the negative, 12:

Bourne	Fischer	Hudkins	Redfield
Chambers	Friend	Langemeier	Smith
Erdman	Heidemann	Louden	Stuthman

Present and not voting, 1:

Foley

Excused and not voting, 3:

Pedersen, Dw. Price Thompson

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

SPEAKER BRASHEAR PRESIDING

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 382, 551, and 38.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 78, 80, 81, 82, 83, 84, and 85 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 78, 80, 81, 82, 83, 84, and 85.

SENATOR CUDABACK PRESIDING**SELECT FILE**

LEGISLATIVE BILL 753. E & R amendment, AM7074, found on page 1077, was adopted.

Senator Bourne renewed the Bourne-Landis pending amendment, AM1136, found on page 1159.

The Bourne-Landis amendment was adopted with 32 ayes, 1 nay, 10 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

GENERAL FILE

LEGISLATIVE BILL 117. The fifth Standing Committee amendment, FA192, found on page 1326, was renewed.

Senator Beutler renewed his pending amendment, AM1181, found on page 1189 and considered on pages 1301 and 1326, to the fifth Standing Committee amendment.

Senator Beutler withdrew his amendment.

Senator Bourne moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

The fifth Standing Committee amendment was adopted with 39 ayes, 1 nay, 3 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

The sixth Standing Committee amendment is as follows:

FA193

21 (e) Stored behind a counter, in an area not accessible to
22 customers, or in a locked case so that a customer needs assistance
23 from an employee to access the drug product.

Senator Bourne moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

The sixth Standing Committee amendment was adopted with 39 ayes, 0

nays, 5 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

The seventh Standing Committee amendment is as follows:

FA194

7 Sec. 6. No person shall, by retail, purchase, receive,
 8 or otherwise acquire any drug product containing more than one
 9 thousand four hundred forty milligrams of pseudoephedrine base or
 10 one thousand four hundred forty milligrams of phenylpropanolamine
 11 base during a twenty-four-hour period unless purchased pursuant to
 12 a medical order. Any person who violates this section shall be
 13 guilty of an infraction as defined in section 29-431.

SENATOR SCHIMEK PRESIDING

Senator Bourne moved for a call of the house. The motion prevailed with 25 ayes, 0 nays, and 24 not voting.

The seventh Standing Committee amendment was adopted with 39 ayes, 1 nay, 4 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Bourne moved for a call of the house. The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

Senator Chambers requested a record vote on the advancement of the bill.

Voting in the affirmative, 43:

Aguilar	Connealy	Heidemann	Landis	Schrock
Baker	Cornett	Howard	Langemeier	Smith
Beutler	Cunningham	Hudkins	McDonald	Stuhr
Bourne	Engel	Janssen	Mines	Stuthman
Brashear	Erdman	Jensen	Pahls	Synowiecki
Brown	Fischer	Johnson	Preister	Thompson
Burling	Flood	Kopplin	Raikes	Wehrbein
Byars	Foley	Kremer	Redfield	
Combs	Friend	Kruse	Schimek	

Voting in the negative, 1:

Chambers

Present and not voting, 1:

Louden

Excused and not voting, 4:

Cudaback Pedersen, Dw. Pederson, D. Price

Advanced to E & R for review with 43 ayes, 1 nay, 1 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

AMENDMENTS - Print in Journal

Senator Schimek filed the following amendment to LB 424:

AM1372

(Amendments to Standing Committee amendments, AM1284)

- 1 1. On page 26, line 19, after the period insert "Such
- 2 projects to be undertaken in FY2005-06 shall include a Capitol
- 3 heating, ventilating, and air conditioning study as identified in
- 4 the Master Plan."

Senator McDonald filed the following amendment to LB 332:

AM1338

(Amendments to Standing Committee amendments, AM0795)

- 1 1. On page 1, line 14, after the period insert
- 2 "Beginning July 1, 2005, the State Treasurer shall transfer five
- 3 hundred thousand dollars each fiscal year from the State Lottery
- 4 Operation Cash Fund to the Compulsive Gamblers Assistance Fund.
- 5 This transfer shall take place before any other expenditures are
- 6 made from the fund in any fiscal year, shall be taken from the
- 7 advertising, promotion, and marketing budget of the state lottery,
- 8 and shall be absorbed within the operating budget of the state
- 9 lottery without increased appropriations to such fund by the
- 10 Legislature."
- 11 2. On page 9, strike the new matter in lines 25 through
- 12 27.
- 13 3. On page 10, line 1, strike the new matter.

Senators Wehrbein, Cunningham, Kremer, Schrock, and Stuhr filed the following amendment to LB 90:

(Amendment, AM1346, is printed separately and available in the Bill Room, Room 1104.)

Senator Chambers filed the following amendment to LB 425:

AM1429

(Amendments to Standing Committee amendments, AM0521)

- 1 1. On page 10, strike lines 3 through 5 and insert:
- 2 "GENERAL FUND -0- 100,000
- 3 PROGRAM TOTAL -0- 100,000
- 4 SALARY LIMIT -0- 100,000".

STANDING COMMITTEE REPORT
Revenue

LEGISLATIVE BILL 312. Placed on General File as amended.
(Standing Committee amendment, AM1350, is printed separately and available in the Bill Room, Room 1104.)

(Signed) David Landis, Chairperson

PRESENTED TO THE GOVERNOR

Presented to the Governor on May 3, 2005, at 2:43 p.m. were the following:
LBs 382e, 551e, and 38e.

(Signed) Jamie Kruse
Clerk of the Legislature's Office

RESOLUTION

LEGISLATIVE RESOLUTION 98. Introduced by Schrock, 38; Aguilar, 35; Baker, 44; Beutler, 28; Bourne, 8; Burling, 33; Byars, 30; Chambers, 11; Combs, 32; Connealy, 16; Cornett, 45; Cudaback, 36; Flood, 19; Howard, 9; Janssen, 15; Johnson, 37; Kopplin, 3; Kruse, 13; Landis, 46; McDonald, 41; Mines, 18; Pahls, 31; Preister, 5; Raikes, 25; Schimek, 27; Stuhr, 24; Stuthman, 22; Thompson, 14; Wehrbein, 2.

The Nebraska Accountability and Disclosure Commission (Commission) recently entered into three separate settlement agreements with David Hergert, a member of the University of Nebraska Board of Regents who was elected in November 2004. In these agreements, the Commission determined that Hergert had committed four separate violations of the state's campaign finance laws during the 2004 primary and general election periods. As a part of the settlement, Hergert has agreed to pay \$33,512.10 in civil penalties and late filing fees.

In case number 04-35 (John Gould v. David Hergert), the Commission found that Hergert violated section 49-1458, which requires a candidate committee to report late contributions within two days after receiving such contributions. Hergert acknowledged that his committee received a \$44,000 late contribution (in the form of a loan from Hergert) on October 22, 2004, and that this contribution was not reported until November 3, 2004, well after the statutory two-day deadline. As a result of this violation, the settlement agreement requires Hergert to pay a civil penalty in the amount of \$2,000 and a late filing fee in the amount of \$4,400.

In case number 04-36 (Executive Director v. David Hergert), the Commission concluded that Hergert violated subdivision (5)(b) of section 32-1604, which requires a candidate who chooses not to abide by statutory spending limitations to file an affidavit with the Commission within five days after exceeding forty percent of his or her estimated maximum expenditure. In both the primary and general election period, Hergert elected

not to abide by the applicable spending limitation. As a part of the settlement agreement, Hergert acknowledged that he exceeded forty percent of his estimate for the primary election on April 22, 2004, but failed to mail his notice to the Commission until more than two weeks later, on May 10, 2004. He also acknowledged that although he exceeded forty percent of his estimate for the general election on October 19, 2004, the Commission did not receive his notice until November 12, 2004, well after the five-day deadline had passed. As a result of these violations, Hergert agreed to pay civil penalties in the amount of \$2,000 (\$1,000 per violation).

In case number 04-43 (Chris Beutler v. David Hergert), the Commission determined that Hergert violated section 49-1446.04. This provision prohibits a candidate committee from accepting loans in an aggregate amount representing more than fifty percent of nonloan contributions that the committee received during a specified time period. In the settlement agreement, Hergert acknowledged that his candidate committee accepted more than \$25,000 in loans that violated this restriction. As a result of the violation, Hergert agreed to pay a civil penalty in the amount of \$25,112.10. This is the largest civil penalty for a single violation assessed by the Commission since its inception.

The recitations above, as well as other potential violations, demonstrate that by delaying the disclosure of statutorily required information, Hergert and his candidate committee succeeded in undermining the purposes of Nebraska's campaign finance laws by preventing Hergert's opponents from obtaining current information and from accessing public funds to engage in a "fair fight" for the District 7 Board of Regents seat. Regardless of whether Hergert's misconduct was intentional or unintentional, the result was the same--the violations, viewed as a whole, have tainted the 2004 elections and may very well have changed the result of the elections.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature hereby calls for David Hergert to resign his seat on the Nebraska Board of Regents immediately.

2. That the Legislature hereby calls upon the Governor to fill Mr. Hergert's vacated seat pursuant to section 32-573, pending a special election.

3. That the Legislature hereby calls for a special election, to be held in conjunction with the general election in November 2006, to fill Mr. Hergert's vacated seat.

4. That if Mr. Hergert fails to resign within sixty days of receiving notice of this resolution, the Executive Board of the Legislative Council shall meet forthwith and appoint a special committee of the Legislature to consider whether impeachment proceedings against Mr. Hergert are appropriate. The Executive Board is hereby authorized to hire special counsel and to finance whatever investigation is necessary to aid the special committee in reaching a proper determination on the issue of impeachment. The special committee shall render its recommendations to the Executive Board by January of 2006.

5. That the Clerk of the Legislature is hereby directed to send, upon passage, a copy of this resolution, by certified mail with return receipt requested, to Mr. Hergert at his last-known address.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR 98 was referred to the Reference Committee.

GENERAL FILE

LEGISLATIVE BILL 542. Title read. Considered.

The Standing Committee amendment, AM0932, found on page 1003, was considered.

Senator Burling renewed his pending amendment, AM1099, found on page 1126, to the Standing Committee amendment.

SENATOR CUDABACK PRESIDING

Senator Burling moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

The Burling amendment was adopted with 28 ayes, 2 nays, 13 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Pending.

UNANIMOUS CONSENT - Add Cointroducer

Senator Price asked unanimous consent to have her name added as cointroducer to LBs 161, 401, 551, and 682. No objections. So ordered.

VISITORS

Visitors to the Chamber were 8 Youth Council members and sponsors from Butler County; Senator Langemeier's sister, Diane Page, from Phoenix, AZ; and retired Judge John Finney from District 21.

The Doctor of the Day was Dr. Harold Pumphrey from Lincoln.

ADJOURNMENT

At 5:09 p.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Wednesday, May 4, 2005.

Patrick J. O'Donnell
Clerk of the Legislature

