

SEVENTY-FIFTH DAY - MAY 9, 2005

LEGISLATIVE JOURNAL

**NINETY-NINTH LEGISLATURE
FIRST SESSION**

SEVENTY-FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Monday, May 9, 2005

PRAYER

The prayer was offered by Senator Fischer.

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 Senators Brown, Byars, Combs, Foley, Dw. Pedersen, and Thompson who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the seventy-fourth day was approved.

MESSAGE FROM THE GOVERNOR

May 6, 2005

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 38e, 382e, and 551e were received in my office on May 3, 2005.

These bills were signed by me and delivered to the Secretary of State on May 6, 2005.

Sincerely,
(Signed) Dave Heineman
Governor

GENERAL FILE**LEGISLATIVE BILL 683A.** Title read. Considered.

Senator Schimek offered the following amendment:

AM1494

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. There is hereby appropriated \$8,262 from the
- 4 General Fund for FY2006-07 to the Governor, for Program 2, to aid
- 5 in carrying out the provisions of Legislative Bill 683,
- 6 Ninety-ninth Legislature, First Session, 2005.
- 7 Total expenditures for permanent and temporary salaries
- 8 and per diems from funds appropriated in this section shall not
- 9 exceed \$7,500 for FY2006-07.
- 10 Sec. 2. There is hereby appropriated \$2,879 from the
- 11 General Fund for FY2006-07 to the Lieutenant Governor, for Program
- 12 8, to aid in carrying out the provisions of Legislative Bill 683,
- 13 Ninety-ninth Legislature, First Session, 2005.
- 14 Total expenditures for permanent and temporary salaries
- 15 and per diems from funds appropriated in this section shall not
- 16 exceed \$2,500 for FY2006-07.
- 17 Sec. 3. There is hereby appropriated \$5,758 from the
- 18 General Fund for FY2006-07 to the Secretary of State, for Program
- 19 9, to aid in carrying out the provisions of Legislative Bill 683,
- 20 Ninety-ninth Legislature, First Session, 2005.
- 21 Total expenditures for permanent and temporary salaries
- 22 and per diems from funds appropriated in this section shall not
- 23 exceed \$5,000 for FY2006-07.
- 24 Sec. 4. There is hereby appropriated \$8,637 from the
- 1 General Fund for FY2006-07 to the Auditor of Public Accounts, for
- 2 Program 10, to aid in carrying out the provisions of Legislative
- 3 Bill 683, Ninety-ninth Legislature, First Session, 2005.
- 4 Total expenditures for permanent and temporary salaries
- 5 and per diems from funds appropriated in this section shall not
- 6 exceed \$7,500 for FY2006-07.
- 7 Sec. 5. There is hereby appropriated \$8,572 from the
- 8 General Fund for FY2006-07 to the Attorney General, for Program 11,
- 9 to aid in carrying out the provisions of Legislative Bill 683,
- 10 Ninety-ninth Legislature, First Session, 2005.
- 11 Total expenditures for permanent and temporary salaries
- 12 and per diems from funds appropriated in this section shall not
- 13 exceed \$7,500 for FY2006-07.
- 14 Sec. 6. There is hereby appropriated \$8,637 from the
- 15 General Fund for FY2006-07 to the State Treasurer, for Program 12,
- 16 to aid in carrying out the provisions of Legislative Bill 683,
- 17 Ninety-ninth Legislature, First Session, 2005.
- 18 Total expenditures for permanent and temporary salaries

19 and per diems from funds appropriated in this section shall not
20 exceed \$7,500 for FY2006-07.

21 Sec. 7. There is hereby appropriated \$28,788 from the
22 General Fund for FY2006-07 to the Public Service Commission, for
23 Program 14, to aid in carrying out the provisions of Legislative
24 Bill 683, Ninety-ninth Legislature, First Session, 2005.

25 Total expenditures for permanent and temporary salaries
26 and per diems from funds appropriated in this section shall not
27 exceed \$25,000 for FY2006-07.

1 Sec. 8. Since an emergency exists, this act takes effect
2 when passed and approved according to law."

The Schimek amendment was adopted with 33 ayes, 0 nays, 10 present and
not voting, and 6 excused and not voting.

Advanced to E & R for review with 34 ayes, 0 nays, 9 present and not
voting, and 6 excused and not voting.

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 82 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 82.

A BILL FOR AN ACT relating to personal property; to amend sections
52-604, 60-6,114, 60-6,294, 60-6,297, 60-6,298, 60-2404, and 60-2410,
Reissue Revised Statutes of Nebraska, and sections 9-317 and 9-324,
Uniform Commercial Code; to change provisions relating to liens, towing,
and operation of emergency vehicles; to except emergency vehicles from
size and weight restrictions and require a permit for operation of emergency
vehicles as prescribed; to change provisions relating to purchase-money
security interests; to harmonize provisions; to provide operative dates; and
to repeal the original sections.

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

Voting in the affirmative, 43:

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

Voting in the negative, 0.

Present and not voting, 1:

Chambers

Excused and not voting, 5:

Brown Combs Foley Pedersen, Dw. Thompson

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 161 with 36 ayes, 3 nays, 5 present and not voting, and 5 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 161.

A BILL FOR AN ACT relating to political subdivisions; to amend sections 14-405, 15-201, 16-669, 16-670, 17-522, 19-905, 19-2404, 19-2405, 23-165, and 74-1307, Reissue Revised Statutes of Nebraska, and sections 16-611 and 17-558, Revised Statutes Supplement, 2004; to change provisions relating to zoning, the vacation of streets and alleys, sewer and water improvements, and sidewalk construction and maintenance; to provide powers relating to trees; to provide for special assessment districts; to change provisions relating to bond issuance by railroad transportation safety districts; to harmonize provisions; and to repeal the original sections.

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

Voting in the affirmative, 40:

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

Voting in the negative, 2:

Erdman Langemeier

Present and not voting, 2:

Beutler Schrock

Excused and not voting, 5:

Brown Combs Foley Pedersen, Dw. Thompson

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 401 with 33 ayes, 4 nays, 7 present and not voting, and 5 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 401.

A BILL FOR AN ACT relating to elections; to amend sections 31-735, 32-101, 32-903, 32-904, 32-915, 32-939, and 32-1041, Reissue Revised Statutes of Nebraska; to change provisions relating to the election of the board of trustees of sanitary and improvement districts; to change provisions relating to registering to vote, precincts, polling places, voting, and ballots; to harmonize provisions; and to repeal the original sections.

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

Voting in the affirmative, 39:

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

Voting in the negative, 0.

Present and not voting, 5:

Bourne	Chambers	Connealy	Howard	Synowiecki
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Excused and not voting, 5:

Brown	Combs	Foley	Pedersen, Dw.	Thompson
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 682.

A BILL FOR AN ACT relating to elections; to amend sections 32-564 and 32-571, Reissue Revised Statutes of Nebraska; to change provisions relating to filling a vacancy in the office of Representative in Congress; to harmonize provisions; and to repeal the original sections.

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

Voting in the affirmative, 42:

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

Voting in the negative, 0.

Present and not voting, 2:

Chambers Connealy

Excused and not voting, 5:

Brown Combs Foley Pedersen, Dw. Thompson

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

GENERAL FILE

LEGISLATIVE BILL 748. Title read. Considered.

The Standing Committee amendment, AM0435, found on page 678, was considered.

Senator Bourne offered the following amendment to the Standing Committee amendment:

AM1493

(Amendments to Standing Committee amendments, AM0435)

- 1 1. On page 2, line 6, after the first comma insert "line
- 2 21, after 'are' insert 'adjacent to facilities of the metropolitan
- 3 utilities district and'; in".

Pending.

SPEAKER BRASHEAR PRESIDING

RESOLUTIONS

LEGISLATIVE RESOLUTION 106. Introduced by Kremer, 34.

PURPOSE: The purpose of this interim study is to examine goals and funding for animal damage control programs. The study shall specifically examine the allocation of responsibility for animal damage control between the state, local governments and individual cooperators utilizing animal damage control services, the availability of animal damage control services for protecting human health, public infrastructures, and wildlife resources in addition to minimizing conflicts with agriculture, and potential sources of funding to carry out animal damage control services in cooperation with the Wildlife Services Division of the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

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

1. That the Agriculture Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative

Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 107. Introduced by McDonald, 41; Kremer, 34.

PURPOSE: This study shall examine the need to update and clarify Nebraska's law of division fences, sections 34-101 et seq., Nebraska Revised Statutes. The study shall specifically examine (1) the statutory liabilities and responsibilities of owners of adjoining properties with respect to erecting and maintaining division fences, (2) the means available to property owners for resolving disputes arising under the law of division fences, (3) whether improvements could be made in the process of appointing fence viewer panels and in the timeline and process for appeal of fence viewer decisions, (4) the availability of private civil remedies, and (5) whether access to mediation services under the Farm Mediation Act or other programs should be made available.

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

1. That the Agriculture Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

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

Referred to the Executive Board.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

LB/LR	Committee
LR 98	Executive Board

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

AMENDMENT - Print in Journal

Senator Schrock filed the following amendment to LB 120:
AM1476

- 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, and section 6,
- 6 Legislative Bill 162, Ninety-ninth Legislature, First Session,
- 7 2005, is amended to read:

8 37-420. (1) Any veteran ~~of any war as defined in section~~
9 ~~80-401.01~~ who is a legal resident of the State of Nebraska and who
10 was discharged or separated with a characterization of honorable or
11 general (under honorable conditions) shall be exempt from the
12 payment of any fees provided by the laws of the State of Nebraska
13 and established by the commission pursuant to section 37-327 for
14 the privilege of fishing or hunting in Nebraska if the veteran:

15 (a) Is rated by the United States Department of Veterans
16 Affairs as fifty percent or more disabled as a result of service in
17 the armed forces of the United States; or

18 (b) Is receiving a pension from the department as a
19 result of total and permanent disability, which disability was not
20 incurred in the line of duty in the military service.

21 (2) The exemption described in subsection (1) of this
22 section shall not extend to the privilege of commercial fishing,
23 trapping of fur-bearing animals, or hunting for deer, antelope,
24 wild turkey, or any other species of fish and game on which the
1 open season is limited to a restricted number of permits or to
2 special permits for a restricted area or game management unit.

3 (3) If disabled persons are unable by reason of physical
4 infirmities to hunt and fish in the normal manner, the commission
5 may issue special permits without cost to those persons to hunt and
6 fish from a vehicle, but such permits shall not authorize any
7 person to shoot from any public highway.

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

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

13 (6) Permits issued under subdivision (3) of this section
14 as it existed prior to the operative date of this section shall not
15 expire as provided in section 37-421.

16 Sec. 3. Section 37-421, Reissue Revised Statutes of
17 Nebraska, as amended by section 7, Legislative Bill 162,
18 Ninety-ninth Legislature, First Session, 2005, is amended to read:

19 37-421. (1) The commission may issue an annual
20 combination fishing and hunting permit upon application and payment
21 of a fee of five dollars to (a) any Nebraska resident ~~who is a~~
22 ~~veteran of any war as defined in section 80-401.01~~, who is
23 sixty-four years of age or older, and who was discharged or
24 separated with a characterization of honorable or general (under
25 honorable conditions) or (b) any Nebraska resident who is
26 sixty-nine years of age or older. A person who is issued a permit
27 under this section shall be exempt from the payment of any

1 additional fees provided by the laws of the State of Nebraska and
2 established by the commission pursuant to section 37-327 for the
3 privilege of fishing or hunting in Nebraska, except that such
4 exemption shall not extend to the privilege of commercial fishing,
5 trapping of fur-bearing animals, or hunting for deer, antelope,

6 wild turkey, or any other species of fish and game on which the open season is limited to a restricted number of permits or to special permits for a restricted area or game management unit.

(2) A permit issued as provided in this section shall expire as provided in section 37-405. Permits issued under this section as it existed before the operative date of this section shall not expire as provided in section 37-405.

(3) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

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

Sec. 4. Section 37-729, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

(2) Such owner who leases land to the state for recreational purposes shall not by giving such lease or receiving such wildlife habitat improvement payment (a) ~~(1)~~ extend any

1 assurance to any person using the land that the premises are safe
 2 for any purpose, ~~(2)~~ (b) confer upon such persons the legal status
 3 of an invitee or licensee to whom a duty of care is owed, or ~~(3)~~
 4 (c) assume responsibility for or incur liability for any injury to
 5 person or property caused by an act or omission of a person who
 6 enters upon the leased land.

7 (3) The provisions of this section shall apply whether
 8 the person entering upon the leased land is an invitee, licensee,
 9 trespasser, or otherwise.

10 Sec. 6. Section 37-734, Reissue Revised Statutes of
 11 Nebraska, is amended to read:

12 37-734. Nothing in sections 37-729 to 37-736 limits in
 13 any way any liability which otherwise exists (1) for willful or
 14 malicious failure to guard or warn against a dangerous condition,
 15 use, structure, or activity or (2) for injury suffered in any case
 16 where the owner of land charges the person or persons who enter or
 17 go on the land. ~~Rental paid by a group, organization, corporation,~~
 18 ~~or the state or federal government shall not be deemed a charge~~
 19 ~~made by the owner of the land. Lease payments for recreational~~
 20 ~~purposes or wildlife benefits or wildlife habitat improvement~~
 21 ~~payments made by any nonprofit conservation corporation, political~~
 22 ~~subdivision, or state or federal agency shall not be deemed a~~
 23 ~~charge made by the owner of the land.~~

24 Sec. 7. Sections 1, 2, 3, and 8 of this act become
 25 operative on January 1, 2006. The other sections of this act
 26 become operative on their effective date.

27 Sec. 8. Original section 54-2419, Reissue Revised
 1 Statutes of Nebraska, section 37-420, Reissue Revised Statutes of
 2 Nebraska, as amended by section 6, Legislative Bill 54,
 3 Ninety-ninth Legislature, First Session, 2005, and section 6,
 4 Legislative Bill 162, Ninety-ninth Legislature, First Session,
 5 2005, and section 37-421, Reissue Revised Statutes of Nebraska, as
 6 amended by section 7, Legislative Bill 162, Ninety-ninth
 7 Legislature, First Session, 2005, are repealed.

8 Sec. 9. Original sections 37-729, 37-733, and 37-734,
 9 Reissue Revised Statutes of Nebraska, are repealed.

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

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 82, 161, 401, and 682.

RESOLUTION

Pursuant to Rule 4, Sec. 5(b), LR 95 was adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LR 95.

VISITORS

Visitors to the Chamber were 60 fifth-grade students and teachers from Wahoo; Bryan Kelley from Lincoln; 18 fourth-grade students and teacher from Trinity Lutheran School, Lincoln; Senator Louden's wife and daughter, SharonAnn Louden from Ellsworth and Jennifer Sutton from Chicago; members of the Community Character Development Coalition from Norfolk and Pierce; 52 fourth-grade students and teacher from St. Michael's Elementary School, Hastings; 21 third- and fourth-grade students and teacher from Zion Lutheran School, Hastings; Sharon Zych and Lyn Mueller from Bellevue; and 45 fourth-grade students and teachers from Montclair Elementary School, Omaha.

RECESS

At 11:59 a.m., on a motion by Senator Aguilar, 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 Senators Aguilar, Brown, Cornett, Flood, Johnson, Kruse, Dw. Pedersen, and Raikes who were excused until they arrive.

PRESENTED TO THE GOVERNOR

Presented to the Governor on May 9, 2005, at 12:03 p.m. were the following: LBs 82, 161, 401, and 682.

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

MESSAGE FROM THE GOVERNOR

May 9, 2005

President, Speaker Brashear
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was reappointed to the Nebraska Liquor Control Commission.

APPOINTEE:

Robert E. Logsdon, 1352 Aldrich Road, Lincoln NE 68510

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Dave Heineman
Governor

web/
Enclosure

GENERAL FILE

LEGISLATIVE BILL 748. The Bourne pending amendment, AM1493, found in this day's Journal, to the Standing Committee amendment, was renewed.

Senator Landis offered the following motion:
Recommit LB 748 to committee.

Senator Engel moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 6 nays, and 18 not voting.

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

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

Voting in the affirmative, 30:

Baker	Cunningham	Johnson	McDonald	Schrock
Brown	Engel	Kopplin	Pedersen, Dw.	Smith
Burling	Erdman	Kremer	Pederson, D.	Stuhr
Byars	Foley	Landis	Preister	Stuthman
Combs	Friend	Langemeier	Redfield	Thompson
Cudaback	Hudkins	Louden	Schimek	Wehrbein

Voting in the negative, 6:

Bourne	Howard	Kruse
Connealy	Janssen	Synowiecki

Present and not voting, 10:

Beutler	Chambers	Heidemann	Mines	Price
Brashear	Fischer	Jensen	Pahls	Raikes

Excused and not voting, 3:

Aguilar	Cornett	Flood
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The Landis motion to recommit to committee prevailed with 30 ayes, 6 nays, 10 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Logsdon, Robert E. - Nebraska Liquor Control Commission - General Affairs

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

SELECT COMMITTEE REPORTS Enrollment and Review

LEGISLATIVE BILL 425. Placed on Select File as amended.

E & R amendment to LB 425:

AM7098

- 1 1. In the Standing Committee amendments, AM0521:
- 2 a. On page 2, line 14, strike "section" and insert
- 3 "sections 137 and ";
- 4 b. On page 3, lines 4 and 5, strike "\$100,000 Cash Funds
- 5 for FY2006-07" and insert "for FY2006-07 \$100,000 Cash Funds";
- 6 c. On page 7, line 10, strike "State";
- 7 d. On page 14, lines 20 and 27; and page 15, line 6,
- 8 after "and" insert "such appropriations";
- 9 e. On page 14, line 22; and page 50, line 2, strike the
- 10 comma;
- 11 f. On page 15, line 11, strike "appropriation amounts"
- 12 and insert "appropriations";
- 13 g. On page 18, line 23, strike "Payment" and insert
- 14 "Radioactive Waste Settlement";

- 15 h. On page 35, lines 22 and 25, strike "Nebraska";
- 16 i. On page 36, line 13 strike "\$13,688 Cash Funds for
17 FY2006-07" and insert "for FY2006-07 \$13,688 Cash Funds";
- 18 j. On page 50, lines 7 and 9, before "Health" insert
19 "Nebraska"; in line 9 strike "Service" and insert "Services"; and
20 in line 14 after "Committee" insert "of the Legislature";
- 21 k. On page 58, line 9, strike "FUNDS" and insert "FUND";
- 22 l. On page 59, strike beginning with the first
23 "\$5,000,000" in line 13 through "FY2006-07" in line 14 and insert
24 "for FY2005-06 \$5,000,000 Cash Funds and for FY2006-07 \$5,000,000
1 Cash Funds";
- 2 m. On page 60, lines 2 and 5, after the first "Funds"
3 insert "and"; in line 8 strike beginning with "\$875,000" through
4 "FY2006-07" and insert "for FY2005-06 \$875,000 General Funds and
5 for FY2006-07 \$875,000 General Funds"; in line 14 strike "U.S." and
6 insert "United States"; and in line 15 strike "Service" and insert
7 "Services";
- 8 n. On page 70, lines 2 and 6; and page 74, lines 1 and
9 4, strike "est." and insert "estimate";
- 10 o. On page 71, line 10, after "for" insert "state";
- 11 p. On page 73, line 27, strike "his" and insert "this";
- 12 q. On page 82, line 25, after "Fund" insert
13 "appropriation";
- 14 r. On page 98, line 17, strike "STATE BOARD OF
15 AGRICULTURE" and insert "NEBRASKA STATE FAIR BOARD";
- 16 s. On page 100, line 1; page 162, line 4; and page 165,
17 line 14, strike the last comma;
- 18 t. On page 105, line 23, after "Byrne" insert "Act";
- 19 u. On page 111, line 7, after "(1)" insert "of this
20 section"; in line 8 after "(2)" insert "of this section"; and in
21 line 20 strike "Building Renewal Task Force" and insert "Task Force
22 for Building Renewal";
- 23 v. On page 117, line 20, strike "State";
- 24 w. On page 122, lines 23 and 26; and page 134, lines 20
25 and 23, strike "Funds," and insert "Funds";
- 26 x. On page 122, lines 23 and 26, strike "\$42,049" and
27 insert "\$42,029";
- 1 y. On page 133, line 5, before "and" insert "\$1,250,000
2 General Funds"; in line 7 strike "corrections" and insert
3 "correctional"; in line 10 after "the" insert "Nebraska"; and in
4 line 17 strike "is not" and insert "not be";
- 5 z. On page 137, line 10, after "Water" insert
6 "Facilities";
- 7 aa. On page 138, line 9, after "Committee" insert "of
8 the Legislature";
- 9 bb. On page 139, line 19, strike "Administration" and
10 insert "Act";
- 11 cc. On page 148, line 26, strike "State Board of
12 Agriculture" and insert "Nebraska State Fair Board";

- 13 dd. On page 151, line 8, after the last comma insert
 14 "Nebraska";
- 15 ee. On page 152, lines 2 and 3, strike "Employee" and
 16 insert "Employees";
- 17 ff. On page 161, line 18; and page 165, line 2, before
 18 "Insurance" insert "Department of";
- 19 gg. On page 162, line 9, strike the semicolon and insert
 20 a period; and in line 12 strike the period and insert a semicolon;
- 21 hh. On page 162, line 19; and page 166, line 2, strike
 22 "Motor Carrier Division" and insert "Division of Motor Carrier
 23 Services";
- 24 ii. On page 165, line 19, strike the semicolon and
 25 insert a period; and in line 22 strike the period and insert a
 26 semicolon; and
- 27 jj. On page 168, line 15, after "devise" insert a comma.
 1 2. On page 1, line 3, strike the semicolon.

LEGISLATIVE BILL 426. Placed on Select File as amended.
 E & R amendment to LB 426:
 AM7097

- 1 1. In the Standing Committee amendments, AM1282:
 2 a. On page 2, line 20, after the second "the" insert
 3 "state"; and
 4 b. On page 3, line 15, after "Revenue" insert "under
 5 section 5 of this act"; and in line 16 strike "deposit" and insert
 6 "credit" and strike "in" and insert "to".
- 7 2. On page 1, strike beginning with "and" in line 1
 8 through "create" in line 4 and insert ", 72-816, 85-302, and
 9 85-316, Reissue Revised Statutes of Nebraska, and sections 71-7611
 10 and 81-1561, Revised Statutes Supplement, 2004; to create funds and
 11 provide powers and duties relating to capital construction,
 12 low-level radioactive waste compact litigation, environmental
 13 remediation, the Nebraska State Fair, and the Ferguson House as
 14 prescribed; to add and change provisions relating to state college
 15 audits and contingency".

LEGISLATIVE BILL 427. Placed on Select File as amended.
 E & R amendment to LB 427:
 AM7096

- 1 1. On page 1, strike beginning with "transfer" in line 2
 2 through "completed" in line 3 and insert "provide for, change, and
 3 eliminate completed fund".

LEGISLATIVE BILL 614. Placed on Select File as amended.
 E & R amendment to LB 614:
 AM7095

- 1 1. On page 1, line 3, strike "to appropriate funds;".

LEGISLATIVE BILL 683A. Placed on Select File.

(Signed) Michael Flood, Chairperson

NOTICE OF COMMITTEE HEARING
General Affairs
Room 1510

Tuesday, May 17, 2005

9:30 a.m.

Robert E. Logsdon - Nebraska Liquor Control Commission

(Signed) Ray Janssen, Chairperson

GENERAL FILE

LEGISLATIVE BILL 748. Senator Chambers offered the following motion:

Reconsider the vote to recommit LB 748 to committee.

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 108. Introduced by Kremer, 34; Fischer, 43.

PURPOSE: The purpose of this interim study is to review issues associated with implementation of a national animal identification program. The study shall specifically seek to quantify resource needs for the Department of Agriculture to carry out state components of a uniform national animal identification program, examine issues of confidentiality and security of information provided by producers and other portions of the livestock industry, and identify costs to producers, markets, and other segments of the livestock industry.

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

1. That the Agriculture Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

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

Referred to the Executive Board.

AMENDMENTS - Print in Journal

Senator Bourne filed the following amendment to LB 748:

AM1492

(Amendments to Standing Committee amendments, AM0435)

1 1. Strike amendment 2 and insert the following new

2 amendment:

3 "2. On page 6, strike beginning with 'and' in line 13
 4 through the period in line 16 and insert 'may be a competitive
 5 natural gas provider by obtaining certification in accordance with
 6 sections 66-1848 and 66-1849. Any metropolitan utilities district
 7 may take title to natural gas and sell it for consumption only to a
 8 political subdivision by obtaining certification in accordance with
 9 sections 66-1848 and 66-1849.'".

Senator Bourne filed the following amendment to LB 748:
 AM1491

(Amendments to Standing Committee amendments, AM0435)

- 1 1. Insert the following new amendments:
 2 "2. On page 4, line 1, after 'subdivision' insert 'or an
 3 end user whose natural gas requirements equal or exceed five
 4 hundred therms per day as determined by average daily consumption'.
 5 3. On page 5, after line 3, insert the following new
 6 subdivision:
 7 '(d) Whenever a city has acquired a natural gas system
 8 pursuant to this section, the city shall comply with the terms and
 9 conditions of a natural gas transportation agreement executed on or
 10 before January 1, 2005, between a jurisdictional utility and an end
 11 user whose natural gas requirements equal or exceed five hundred
 12 therms per day as determined by average daily consumption.'".
 13 2. On page 2, line 7, strike "and"; and in line 14
 14 before the period insert "; and after line 24 insert the following
 15 new subsection:
 16 '(3) Whenever a metropolitan utilities district has
 17 acquired an existing utility's system pursuant to this section, the
 18 metropolitan utilities district shall comply with the terms and
 19 conditions of a natural gas transportation agreement executed on or
 20 before January 1, 2005, between a jurisdictional utility and an end
 21 user whose natural gas requirements equal or exceed five hundred
 22 therms per day as determined by average daily consumption.'".
 23 3. Renumber the remaining amendments accordingly.

Senator Beutler filed the following amendment to LB 748:
 FA235

On page 4, line 23 change "without" to "with"

On page 5, line 16 change "without" to "with"

MOTION - Print in Journal

Senator Landis filed the following motion to LB 748:
 Indefinitely postpone LB 748.

GENERAL FILE

LEGISLATIVE BILL 312. Title read. Considered.

The Standing Committee amendment, AM1350, printed separately and referred to on page 1361, was considered.

Senator Landis requested a division of the question on the Standing Committee amendment.

The Chair sustained the division of the question.

The first Standing Committee amendment is as follows:

(FA236 consists of Sections 3, 4, 5, 6, 12, 16, and 19 through 55 of the Standing Committee amendment.)

Senator Chambers offered the following amendment to the first Standing Committee amendment:

FA242

Amend AM1350

Strike section 3.

Senator Landis offered the following motion:

Bracket LB 312 until January 1, 2006.

SENATOR CUDABACK PRESIDING

SENATOR JANSSEN PRESIDING

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 109. Introduced by Howard, 9; Kruse, 13; Landis, 46; Raikes, 25.

PURPOSE: The purpose of this study is to determine the feasibility of a policy to prohibit bullying behavior in public schools. The study will include, but not be limited to:

1. Examination of the definition of bullying behavior;
2. Examination of the manner in which bullying issues are currently addressed in schools;
3. Examination of the potential improvements in academic outcomes for children as a result of an anti-bullying policy;
4. Examination of existing models of anti-bullying policies in school settings; and
5. Consideration of the fiscal impact associated with implementing anti-bullying policies in school settings.

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

1. That a committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

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

Referred to the Executive Board.

AMENDMENT - Print in Journal

Senator Howard filed the following amendment to LB 500:
AM1490

- 1 1. On page 4, line 26, after "facilities" insert "that
- 2 are provided free to the public".
- 3 2. On page 5, line 4, after "project" insert "
- 4 Development project costs does not include the development,
- 5 construction, or operation of any type of parking facility that
- 6 requires the public to pay a fee".
- 7 3. On page 19, line 8; and page 24, line 11, after the
- 8 period insert "The contracting public body may not pledge any
- 9 portion of the financial assistance received under this section for
- 10 the construction, development, or operation of a parking facility
- 11 that requires the public to pay any type of fee for its use".

GENERAL FILE

LEGISLATIVE BILL 312. The Landis pending motion, found in this day's Journal, to bracket until January 1, 2006, was renewed.

SENATOR CUDABACK PRESIDING

Senator Friend moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 2 nays, and 22 not voting.

The Landis motion to bracket failed with 5 ayes, 32 nays, 6 present and not voting, and 6 excused and not voting.

Senator Landis offered the following motion:
Recommit LB 312 to the Revenue Committee.

Senator Landis withdrew his motion to recommit to committee.

Senator Chambers withdrew his pending amendment, FA242, found in this day's Journal.

The first Standing Committee amendment, FA236, found in this day's Journal, was renewed.

Pending.

AMENDMENTS - Print in Journal

Senator Schimek filed the following amendment to LB 425:
AM1495

(Amendments to Standing Committee amendments, AM0521)

- 1 PURPOSE: Appropriate \$33,000 General Funds to the Legislative
- 2 Council for publishing the Nebraska Blue Book.
- 3 AMENDMENT:
- 4 1. On page 3, line 19, strike "2,865,329" and insert
- 5 "2,898,329"; and in line 21 strike "2,913,783" and insert
- 6 "2,946,783".

Senator Beutler filed the following amendment to LB 312:
FA255
On page 66, line 10 after the first "for" add "political"

Senator Beutler filed the following amendment to LB 312:
FA256
On page 65, line 4 change "sixty" to "seventy five"

Senator Beutler filed the following amendment to LB 312:
FA257
On page 64, line 18 change "seventy five" to "eighty five"

Senator Chambers filed the following amendments to LB 312:
FA258
Amend AM1350

Add a new section: "No business firm which receives any incentives or benefits pursuant to this act shall discriminate against any person on the basis of sexual orientation."

FA240
Amend AM1350
Strike section 1.

FA241
Amend AM1350
Strike section 2.

FA243
Amend AM1350
Strike section 4.

FA244
Amend AM1350
Strike section 5.

FA245
Amend AM1350

Strike section 6.

FA246
Amend AM1350
Strike section 7.

FA247
Amend AM1350
Strike section 8.

FA248
Amend AM1350
Strike section 9.

FA249
Amend AM1350
Strike section 10.

FA250
Amend AM1350
Strike section 11.

FA251
Amend AM1350
Strike section 12.

FA252
Amend AM1350
Strike section 13.

FA253
Amend AM1350
Strike section 14.

FA254
Amend AM1350
Strike section 15.

GENERAL FILE

LEGISLATIVE BILL 312. The first Standing Committee amendment, FA236, found in this day's Journal, was renewed.

The first Standing Committee amendment was adopted with 38 ayes, 0 nays, 4 present and not voting, and 7 excused and not voting.

The second Standing Committee amendment is as follows:
FA237
23 Sec. 7. Section 77-2701, Revised Statutes Supplement,

24 2004, is amended to read:

25 77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222
26 and sections 1, 2, and 9 to 11 of this act shall be known and may
27 be cited as the Nebraska Revenue Act of 1967.

1 Sec. 8. Section 77-2701.04, Revised Statutes Supplement,
2 2004, is amended to read:

3 77-2701.04. For purposes of sections 77-2701.04 to
4 77-2713 and sections 9 to 11 of this act, unless the context
5 otherwise requires, the definitions found in sections 77-2701.05 to
6 77-2701.45 and sections 9 and 10 of this act shall be used.

7 Sec. 9. Manufacturing means an action or series of
8 actions performed upon tangible personal property, either by hand
9 or machine, which results in that tangible personal property being
10 reduced or transformed into a different state, quality, form,
11 property, or thing.

12 Sec. 10. (1) Manufacturing machinery and equipment means
13 any machinery or equipment purchased, leased, or rented by a person
14 engaged in the business of manufacturing for use in manufacturing,
15 including, but not limited to:

16 (a) Machinery or equipment for use in manufacturing to
17 produce, fabricate, assemble, process, finish, refine, or package
18 tangible personal property;

19 (b) Machinery or equipment for use in transporting,
20 conveying, handling, or storing the raw materials or components to
21 be used in manufacturing or the products produced by manufacturing;

22 (c) Molds and dies for use in manufacturing that
23 determine the physical characteristics of the finished product or
24 its packaging material;

25 (d) Machinery or equipment for use in manufacturing to
26 maintain the integrity of the product or to maintain unique
27 environmental conditions required for either the product or the
1 machinery and equipment used in manufacturing by a manufacturer;

2 (e) Testing equipment for use in manufacturing to measure
3 the quality of the finished product;

4 (f) Computers, software, and related peripheral equipment
5 for use in manufacturing to guide, control, operate, or measure the
6 manufacturing process;

7 (g) Machinery or equipment for use in manufacturing to
8 produce steam, electricity, or chemical catalysts and solutions
9 that are essential to the manufacturing process even if such
10 produced items are consumed during the course of the manufacturing
11 process or do not become necessary or integral parts of the
12 finished product; and

13 (h) A repair or replacement part or accessory purchased
14 for use in maintaining, repairing, or refurbishing machinery and
15 equipment used in manufacturing.

16 (2) Manufacturing machinery and equipment does not
17 include: Motor vehicles required to be registered for operation on
18 the roads and highways of this state; hand tools; office equipment;

19 and computers, software, and related peripheral equipment not used
 20 in guiding, controlling, operating, or measuring of the
 21 manufacturing process. Machinery or equipment does not need to
 22 come into direct physical contact with any of the raw materials,
 23 components, or products that are part of the manufacturing process
 24 to be considered manufacturing machinery or equipment.
 25 Sec. 11. (1) Sales and use taxes shall not be imposed on
 26 the gross receipts from the sale, lease, or rental and on the
 27 storage, use, or other consumption in this state of manufacturing
 1 machinery and equipment.
 2 (2) Sales and use taxes shall not be imposed on the gross
 3 receipts from the sale of installation, repair, and maintenance
 4 services performed on or with respect to manufacturing machinery
 5 and equipment.

The second Standing Committee amendment was adopted with 32 ayes, 1 nay, 9 present and not voting, and 7 excused and not voting.

The third Standing Committee amendment is as follows:
 FA238

6 Sec. 17. Section 77-27,188, Reissue Revised Statutes of
 7 Nebraska, is amended to read:
 8 77-27,188. (1) A refundable credit against the taxes
 9 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
 10 taxpayer who has an approved application under the Employment
 11 Expansion and Investment Incentive Act, who is engaged in a
 12 qualifying business as described in section 77-27,189, and who
 13 after January 1, ~~2004~~ 2006:
 14 ~~(a)~~ (a)(i) ~~Increases the employment and investment of~~
 15 ~~such business~~ by two new equivalent Nebraska employees and makes an
 16 increased investment of at least one hundred twenty-five thousand
 17 dollars prior to the end of the first taxable year after the year
 18 in which the application was submitted in any county in this state
 19 with a population of less than ~~twenty-five~~ fifteen thousand
 20 inhabitants, according to the most recent federal decennial census,
 21 or in any designated enterprise zone pursuant to 42 U.S.C. 11501 or
 22 the Enterprise Zone Act; or
 23 ~~(b)~~ (ii) Increases employment by five new equivalent
 24 Nebraska employees and ~~who~~ makes an increased investment ~~in this~~
 25 state of at least two hundred fifty thousand dollars prior to the
 26 end of the first taxable year after the year in which the
 27 application was submitted in any county in this state with a
 1 population of less than twenty-five thousand inhabitants, according
 2 to the most recent federal decennial census; and
 3 ~~(c)~~ (b) Pays a minimum qualifying wage of eight dollars
 4 and twenty-five cents per hour to the new equivalent Nebraska
 5 employees for which tax credits are sought under the Employment
 6 Expansion and Investment Incentive Act. The Department of Revenue
 7 shall adjust the minimum qualifying wages required for applications

8 filed after January 1, 2004, and each January 1 thereafter, as
9 follows: The current rural Nebraska average weekly wage shall be
10 divided by the rural Nebraska average weekly wage for 2003; and the
11 result shall be multiplied by the eight dollars and twenty-five
12 cents minimum qualifying wage for 2003 and rounded to the nearest
13 one cent. The amount of increase or decrease in the minimum
14 qualifying wages for any year shall be the cumulative change in the
15 rural Nebraska average weekly wage since 2003. For purposes of
16 this subsection, rural Nebraska average weekly wage means the most
17 recent average weekly wage paid by all employers in all counties
18 with a population of less than twenty-five thousand inhabitants as
19 reported by October 1 by the Department of Labor.

20 (c) For purposes of this section, a teleworker working in
21 Nebraska from his or her residence for a taxpayer shall be
22 considered an employee of the taxpayer, and property of the
23 taxpayer provided to the teleworker working in Nebraska from his or
24 her residence shall be considered an investment. Teleworker
25 includes an individual working on a per item basis and an
26 independent contractor working for the taxpayer so long as the
27 taxpayer withholds Nebraska income tax from wages or other payments
1 made to such teleworker. For purposes of calculating the number of
2 new equivalent Nebraska employees when the teleworkers are paid on
3 a per item basis or are independent contractors, the total wages or
4 payments made to all such new employees during the year shall be
5 divided by the qualifying wage as determined in subdivision (b) of
6 this subsection, with the result divided by two thousand eighty
7 hours.

8 (2) The amount of the credit shall be three thousand
9 dollars for each new equivalent Nebraska employee and two thousand
10 seven hundred fifty dollars for each fifty thousand dollars of
11 increased investment.

12 (3) An employee of a qualified employee leasing company
13 shall be considered to be an employee of the client-lessee for
14 purposes of this section if the employee performs services for the
15 client-lessee. A qualified employee leasing company shall provide
16 the Department of Revenue access to the records of employees leased
17 to the client-lessee.

18 (4) The credit shall not exceed the amounts set out in
19 the application and approved by the Tax Commissioner.

20 (5)(a) If a taxpayer who receives tax credits creates
21 fewer jobs or less investment than approved in the project
22 agreement, the taxpayer shall repay the tax credits as provided in
23 this subsection.

24 (b) If less than seventy-five percent of the proposed
25 jobs in the project agreement are created, one hundred percent of
26 the job creation tax credits shall be repaid. If seventy-five
27 percent or more of the proposed jobs in the project agreement are
1 created, no repayment of the job creation tax credits is necessary.

2 (c) If less than seventy-five percent of the proposed

3 investment in the project agreement is created, one hundred percent
 4 of the investment tax credits shall be repaid. If seventy-five
 5 percent or more of the proposed investment in the project agreement
 6 is created, no repayment of the investment tax credits is
 7 necessary.

8 (6) For taxpayers who submitted applications for benefits
 9 under the Employment Expansion and Investment Incentive Act before
 10 January 1, 2006, subsection (1) of this section, as such subsection
 11 existed immediately prior to such date, shall continue to apply to
 12 such taxpayers. The changes made by this legislative bill shall
 13 not preclude a taxpayer from receiving the tax incentives earned
 14 prior to January 1, 2006.

15 Sec. 18. Section 77-27,195, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 77-27,195. (1) The Tax Commissioner shall prepare a
 18 report identifying the amount of investment in this state and the
 19 number of equivalent jobs created by each taxpayer claiming a
 20 credit pursuant to the Employment Expansion and Investment
 21 Incentive Act. The report shall include the amount of credits
 22 claimed in the aggregate. The report shall be issued on or before
 23 March 15 of each year beginning with March 15, 1988, for all
 24 credits allowed during the previous calendar year.

25 (2) Beginning with applications filed on or after January
 26 1, 2006, the report shall provide information on project-specific
 27 total incentives used every two years for each approved project and
 1 shall disclose (a) the identity of the taxpayer, (b) the location
 2 of the project, and (c) the total credits used and refunds approved
 3 during the immediately preceding two years expressed as a single,
 4 aggregated total. The incentive information required to be
 5 reported under this subsection shall not be reported for the first
 6 year the taxpayer attains the required employment and investment
 7 thresholds. The information on first-year incentives used shall be
 8 combined with and reported as part of the second year. Thereafter,
 9 the information on incentives used for succeeding years shall be
 10 reported for each project every two years containing information on
 11 two years of credits used and refunds approved. The incentives
 12 used shall include incentives which have been approved by the
 13 Department of Revenue, but not necessarily received, during the
 14 previous two calendar years.

The third Standing Committee amendment was adopted with 35 ayes, 0
 nays, 7 present and not voting, and 7 excused and not voting.

The fourth Standing Committee amendment is as follows:
 FA239

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 "Section 1. (1) Any business firm which makes
- 4 expenditures in research and experimental activities as defined in

5 section 174 of the Internal Revenue Code of 1986, as amended, in
6 this state shall be allowed a research tax credit as provided in
7 this section. The credit amount shall equal three percent of the
8 amount expended in research and experimental activities by the
9 business firm in the tax year in this state in excess of the base
10 amount. The base amount is the average amount expended in research
11 and experimental activities by the business firm in this state in
12 the two tax years immediately preceding the first tax year that the
13 credit is claimed. The credit shall be allowed for the first year
14 it is claimed and for the four tax years immediately following.

15 (2) The amount expended in research and experimental
16 activities in this state in any tax year may be determined either
17 by satisfactory proof of purchase or by apportioning the amount
18 deducted on the federal return to the state based on the average of
19 the property factor as determined in section 77-2734.12 and the
20 payroll factor as determined in section 77-2734.13.

21 (3) The credit allowed under this section may be used to
22 obtain a refund of state sales and use taxes paid, may be used
23 against the income tax liability of the taxpayer, or may be used as
24 a refundable credit claimed on an income tax return of the
1 taxpayer. The return need not reflect any income tax liability
2 owed by the taxpayer.

3 (4) A claim for the credit may be filed quarterly for
4 refund of the state sales and use taxes paid, either directly or
5 indirectly, after the filing of the income tax return for the tax
6 year in which the credit was first allowed.

7 (5) The credit may be used to obtain a refund of state
8 sales and use taxes paid before the end of the tax year for which
9 the credit was allowed, except that the amount refunded under this
10 subsection shall not exceed the amount of the state sales and use
11 taxes paid, either directly or indirectly, by the taxpayer on the
12 qualifying expenditures.

13 (6) For purposes of subsections (4) and (5) of this
14 section, the taxpayer shall be deemed to have paid indirectly any
15 state sales or use taxes paid by a contractor on building materials
16 annexed to an improvement to real estate built for the taxpayer.
17 The contractor shall certify to the taxpayer the amount of the
18 state sales and use taxes paid on the building materials, or the
19 taxpayer, with the permission of the Tax Commissioner and a
20 certification from the contractor that state sales and use taxes
21 were paid on all building materials, may presume that forty percent
22 of the cost of the improvement was for building materials annexed
23 to real estate on which the tax was paid.

24 (7) Credits distributed to a partner, limited liability
25 company member, shareholder, or beneficiary may be used against the
26 income tax liability of the partner, member, shareholder, or
27 beneficiary receiving the credits.

1 (8) For purposes of this section, business firm means any
2 business entity, including a corporation, a fiduciary, a sole

3 proprietorship, a partnership, a joint venture, a limited liability
4 company, or another private entity that is subject to sales tax
5 under section 77-2703. Business firm does not include a political
6 subdivision or an organization that is exempt from income taxes
7 under section 501(a) of the Internal Revenue Code of 1986, as
8 amended.

9 (9) This section shall be operative for all tax years
10 beginning or deemed to begin on or after January 1, 2006, under the
11 Internal Revenue Code of 1986, as amended. No business firm shall
12 be allowed to first claim the credit for any year beginning or
13 deemed to begin on or after January 1, 2011, under the Internal
14 Revenue Code of 1986, as amended.

15 Sec. 2. (1) The Small Business Microenterprise Tax
16 Credit Program is created. The program shall be administered by
17 the Department of Revenue. The purpose of the program is to
18 provide investment tax credits to applicants for creating or
19 expanding microbusinesses that contribute to the revitalization of
20 economically depressed areas through the creation of new or
21 improved income, self-employment, or other new jobs in the area.

22 (2) The department shall accept applications for
23 investment tax credits from taxpayers who are actively engaged in
24 the operation of a microbusiness in a depressed area or who will
25 establish a microbusiness that they will actively operate in a
26 depressed area within the current or subsequent tax year.

27 (3) The department may convene an advisory committee of
1 individuals with expertise in small business development, lending,
2 and community development to evaluate applications and advise the
3 department in authorizing tentative investment tax credits.

4 (4) The application shall be on a form developed by the
5 department and shall contain:

6 (a) A description of the microbusiness;

7 (b) Projected income and expenditures;

8 (c) The market to be served by the microbusiness and the
9 way the expansion addresses the market;

10 (d) The amount of projected investment increase that
11 would generate the credit;

12 (e) The projected improvement in income or creation of
13 new self-employment or other jobs in the distressed area;

14 (f) The nature of the applicant's engagement in the
15 operation of the microbusiness; and

16 (g) Other documents, plans, and specifications as
17 required by the department;

18 (5)(a) If the department determines that an application
19 meets the requirements of this section and that the investment is
20 eligible for the credit and (i) the applicant is actively engaged
21 in the operation of the microbusiness or will be actively engaged
22 in the operation upon its establishment, (ii) the majority of the
23 assets of the microbusiness are located in a depressed area or will
24 be upon its establishment, (iii) the applicant will make new

25 investment in the microbusiness, and (iv) the new investment will
26 create new income or jobs in the depressed area, the department
27 shall approve the application and authorize tentative investment
1 tax credits to the applicant within the limits set forth in this
2 section and certify the amount of tentative investment tax credits
3 approved for the applicant. Applications for investment tax
4 credits shall be considered in the order in which they are
5 received.

6 (b) The department may approve applications up to the
7 adjusted limit for each calendar year beginning January 1, 2006,
8 through December 31, 2010. After applications totaling the
9 adjusted limit have been approved for a calendar year, no further
10 applications shall be approved for that year. The adjusted limit
11 in a given year is two million dollars plus tentative investment
12 tax credits that were not granted by the end of the preceding year.
13 Investment tax credits shall not be allowed for a taxpayer
14 receiving benefits under the Employment and Investment Growth Act,
15 the Employment Expansion and Investment Incentive Act, or the
16 Nebraska Advantage Act.

17 (6) Taxpayers shall be entitled to refundable investment
18 tax credits equal to twenty percent of the taxpayer's new
19 investment in the microbusiness during the tax year not to exceed
20 the amount of tentative investment tax credits approved by the
21 department under subsection (5) of this section. The taxpayer
22 shall claim the investment tax credit by filing a form developed by
23 the Tax Commissioner and attaching the tentative investment tax
24 credit certification granted by the department. Tentative
25 investment tax credits expire after the end of the tax year
26 following the year the tentative investment tax credit was
27 certified. The total lifetime investment tax credits claimed by
1 any one taxpayer under the program shall be limited to ten thousand
2 dollars.

3 (7) For purposes of this section:

4 (a) Actively engaged in the operation of a microbusiness
5 means personal involvement on a continuous basis in the daily
6 management and operation of the business;

7 (b) Distressed area means a municipality that has had a
8 population decrease between the two most recent federal decennial
9 censuses, an unincorporated area within a county that has had a
10 population decrease between the two most recent federal decennial
11 censuses, a designated federal enterprise zone, and a census tract
12 that based on the most recent federal decennial census data
13 available has less than eighty percent of the statewide per capita
14 income;

15 (c) Microbusiness means any business employing five or
16 fewer employees;

17 (d) New investment means the increase in the applicant's
18 purchases for real property, plant, equipment, or inventory over
19 such purchases in the year prior to an application for an

20 investment tax credit, but not including interest costs. If such
 21 real property, plant, or equipment is leased, the amount of new
 22 investment shall be the increase in average net annual rent
 23 multiplied by the number of years of the lease for which the
 24 taxpayer is bound, not to exceed ten years; and
 25 (e) Taxpayer means any person subject to the income tax
 26 imposed by the Nebraska Revenue Act of 1967, any corporation,
 27 partnership, limited liability company, cooperative, including a
 1 cooperative exempt under section 521 of the Internal Revenue Code
 2 of 1986, as amended, or joint venture that is or would otherwise be
 3 a member of the same unitary group, if incorporated, which is, or
 4 whose partners, members, or owners representing an ownership
 5 interest of at least ninety percent of such entity are, subject to
 6 such tax, and any other partnership, limited liability company,
 7 subchapter S corporation, cooperative, or joint venture when the
 8 partners, shareholders, or members representing an ownership
 9 interest of at least ninety percent of such entity are subject to
 10 such tax.

1 Sec. 13. Section 77-2715.07, Reissue Revised Statutes of
 2 Nebraska, is amended to read:

3 77-2715.07. (1) There shall be allowed to qualified
 4 resident individuals as a nonrefundable credit against the income
 5 tax imposed by the Nebraska Revenue Act of 1967:

6 (a) A credit equal to the federal credit allowed under
 7 section 22 of the Internal Revenue Code; and

8 (b) A credit for taxes paid to another state as provided
 9 in section 77-2730.

10 (2) There shall be allowed to qualified resident
 11 individuals against the income tax imposed by the Nebraska Revenue
 12 Act of 1967:

13 (a) For returns filed reporting federal adjusted gross
 14 incomes of greater than twenty-nine thousand dollars, a
 15 nonrefundable credit equal to twenty-five percent of the federal
 16 credit allowed under section 21 of the Internal Revenue Code of
 17 1986, as amended;

18 (b) For returns filed reporting federal adjusted gross
 19 income of twenty-nine thousand dollars or less, a refundable credit
 20 equal to a percentage of the federal credit allowable under section
 21 21 of the Internal Revenue Code of 1986, as amended, whether or not
 22 the federal credit was limited by the federal tax liability. The
 23 percentage of the federal credit shall be one hundred percent for
 24 incomes not greater than twenty-two thousand dollars, and the
 25 percentage shall be reduced by ten percent for each one thousand
 26 dollars, or fraction thereof, by which the reported federal
 27 adjusted gross income exceeds twenty-two thousand dollars; ~~and~~

1 (c) A refundable credit for individuals who qualify for
 2 an income tax credit under the Beginning Farmer Tax Credit Act for
 3 all taxable years beginning or deemed to begin on or after January
 4 1, 2001, under the Internal Revenue Code of 1986, as amended; and

5 (d) A refundable credit for individuals who qualify for
6 an income tax credit under section 1 or 2 of this act.

7 (3) There shall be allowed to all individuals as a
8 nonrefundable credit against the income tax imposed by the Nebraska
9 Revenue Act of 1967:

10 (a) A credit for personal exemptions allowed under
11 section 77-2716.01; and

12 (b) A credit for contributions to certified community
13 betterment programs as provided in the Community Development
14 Assistance Act. Each partner, each shareholder of an electing
15 subchapter S corporation, each beneficiary of an estate or trust,
16 or each member of a limited liability company shall report his or
17 her share of the credit in the same manner and proportion as he or
18 she reports the partnership, subchapter S corporation, estate,
19 trust, or limited liability company income.

20 (4) There shall be allowed as a credit against the income
21 tax imposed by the Nebraska Revenue Act of 1967:

22 (a) A credit to all resident estates and trusts for taxes
23 paid to another state as provided in section 77-2730; and

24 (b) A credit to all estates and trusts for contributions
25 to certified community betterment programs as provided in the
26 Community Development Assistance Act.

27 (5) There shall be allowed to all business firms as a
1 credit against the income tax imposed by the Nebraska Revenue Act
2 of 1967 a credit as provided in section 77-27,222.

3 Sec. 14. Section 77-2717, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-2717. (1)(a) The tax imposed on all resident estates
6 and trusts shall be a percentage of the federal taxable income of
7 such estates and trusts as modified in section 77-2716, plus a
8 percentage of the federal alternative minimum tax and the federal
9 tax on premature or lump-sum distributions from qualified
10 retirement plans. The additional taxes shall be recomputed by (i)
11 substituting Nebraska taxable income for federal taxable income,
12 (ii) calculating what the federal alternative minimum tax would be
13 on Nebraska taxable income and adjusting such calculations for any
14 items which are reflected differently in the determination of
15 federal taxable income, and (iii) applying Nebraska rates to the
16 result. The federal credit for prior year minimum tax, after the
17 recomputations required by the Nebraska Revenue Act of 1967, and
18 the ~~credit~~ credits provided in section 77-27,222 and sections 1 and
19 2 of this act shall be allowed as a reduction in the income tax
20 due. A refundable income tax credit shall be allowed for all
21 resident estates and trusts under sections 1 and 2 of this act.

22 (b) The tax imposed on all nonresident estates and trusts
23 shall be the portion of the tax imposed on resident estates and
24 trusts which is attributable to the income derived from sources
25 within this state. The tax which is attributable to income derived
26 from sources within this state shall be determined by multiplying

27 the liability to this state for a resident estate or trust with the
1 same total income by a fraction, the numerator of which is the
2 nonresident estate's or trust's Nebraska income as determined by
3 sections 77-2724 and 77-2725 and the denominator of which is its
4 total federal income after first adjusting each by the amounts
5 provided in section 77-2716.

6 (2) In all instances wherein a fiduciary income tax
7 return is required under the provisions of the Internal Revenue
8 Code, a Nebraska fiduciary return shall be filed, except that a
9 fiduciary return shall not be required to be filed regarding a
10 simple trust if all of the trust's beneficiaries are residents of
11 the State of Nebraska, all of the trust's income is derived from
12 sources in this state, and the trust has no federal tax liability.
13 The fiduciary shall be responsible for making the return for the
14 estate or trust for which he or she acts, whether the income be
15 taxable to the estate or trust or to the beneficiaries thereof.
16 The fiduciary shall include in the return a statement of each
17 beneficiary's distributive share of net income when such income is
18 taxable to such beneficiaries.

19 (3) The beneficiaries of such estate or trust who are
20 residents of this state shall include in their income their
21 proportionate share of such estate's or trust's federal income and
22 shall reduce their Nebraska tax liability by their proportionate
23 share of the credit as provided in section 77-27,222. There shall
24 be allowed to a beneficiary a refundable income tax credit under
25 the Beginning Farmer Tax Credit Act for all taxable years beginning
26 or deemed to begin on or after January 1, 2001, under the Internal
27 Revenue Code of 1986, as amended.

1 (4) If any beneficiary of such estate or trust is a
2 nonresident during any part of the estate's or trust's taxable
3 year, he or she shall file a Nebraska income tax return which shall
4 include (a) in Nebraska adjusted gross income that portion of the
5 estate's or trust's Nebraska income, as determined under sections
6 77-2724 and 77-2725, allocable to his or her interest in the estate
7 or trust and (b) a reduction of the Nebraska tax liability by his
8 or her proportionate share of the credit as provided in section
9 77-27,222 and shall execute and forward to the fiduciary, on or
10 before the original due date of the Nebraska fiduciary return, an
11 agreement which states that he or she will file a Nebraska income
12 tax return and pay income tax on all income derived from or
13 connected with sources in this state, and such agreement shall be
14 attached to the Nebraska fiduciary return for such taxable year.

15 (5) In the absence of the nonresident beneficiary's
16 executed agreement being attached to the Nebraska fiduciary return,
17 the estate or trust shall remit a portion of such beneficiary's
18 income which was derived from or attributable to Nebraska sources
19 with its Nebraska return for the taxable year. The amount of
20 remittance, in such instance, shall be the highest individual
21 income tax rate determined under section 77-2715.02 multiplied by

22 the nonresident beneficiary's share of the estate or trust income
23 which was derived from or attributable to sources within this
24 state. The amount remitted shall be allowed as a credit against
25 the Nebraska income tax liability of the beneficiary.

26 (6) The Tax Commissioner may allow a nonresident
27 beneficiary to not file a Nebraska income tax return if the
1 nonresident beneficiary's only source of Nebraska income was his or
2 her share of the estate's or trust's income which was derived from
3 or attributable to sources within this state, the nonresident did
4 not file an agreement to file a Nebraska income tax return, and the
5 estate or trust has remitted the amount required by subsection (5)
6 of this section on behalf of such nonresident beneficiary. The
7 amount remitted shall be retained in satisfaction of the Nebraska
8 income tax liability of the nonresident beneficiary.

9 (7) For purposes of this section, unless the context
10 otherwise requires, simple trust shall mean any trust instrument
11 which (a) requires that all income shall be distributed currently
12 to the beneficiaries, (b) does not allow amounts to be paid,
13 permanently set aside, or used in the tax year for charitable
14 purposes, and (c) does not distribute amounts allocated in the
15 corpus of the trust. Any trust which does not qualify as a simple
16 trust shall be deemed a complex trust.

17 Sec. 15. Section 77-2734.03, Revised Statutes
18 Supplement, 2004, is amended to read:

19 77-2734.03. (1)(a) For taxable years commencing prior to
20 January 1, 1997, any (i) insurer paying a tax on premiums and
21 assessments pursuant to section 77-908 or 81-523, (ii) electric
22 cooperative organized under the Joint Public Power Authority Act,
23 or (iii) credit union shall be credited, in the computation of the
24 tax due under the Nebraska Revenue Act of 1967, with the amount
25 paid during the taxable year as taxes on such premiums and
26 assessments and taxes in lieu of intangible tax.

27 (b) For taxable years commencing on or after January 1,
1 1997, any insurer paying a tax on premiums and assessments pursuant
2 to section 77-908 or 81-523, any electric cooperative organized
3 under the Joint Public Power Authority Act, or any credit union
4 shall be credited, in the computation of the tax due under the
5 Nebraska Revenue Act of 1967, with the amount paid during the
6 taxable year as (i) taxes on such premiums and assessments included
7 as Nebraska premiums and assessments under section 77-2734.05 and
8 (ii) taxes in lieu of intangible tax.

9 (c) For taxable years commencing or deemed to commence
10 prior to, on, or after January 1, 1998, any insurer paying a tax on
11 premiums and assessments pursuant to section 77-908 or 81-523 shall
12 be credited, in the computation of the tax due under the Nebraska
13 Revenue Act of 1967, with the amount paid during the taxable year
14 as assessments allowed as an offset against premium and related
15 retaliatory tax liability pursuant to section 44-4233.

16 (2) There shall be allowed to corporate taxpayers a tax

17 credit for contributions to community betterment programs as
 18 provided in the Community Development Assistance Act.

19 (3) There shall be allowed to corporate taxpayers a
 20 refundable income tax credit under the Beginning Farmer Tax Credit
 21 Act for all taxable years beginning or deemed to begin on or after
 22 January 1, 2001, under the Internal Revenue Code of 1986, as
 23 amended.

24 (4) There shall be allowed to corporate taxpayers a tax
 25 credit as provided in section 77-27,222.

26 (5) The changes made to this section by Laws 2004, LB
 27 983, apply to motor fuels purchased during any tax year ending or
 1 deemed to end on or after January 1, 2005, under the Internal
 2 Revenue Code of 1986, as amended.

3 (6) There shall be allowed to corporate taxpayers
 4 refundable income tax credits under sections 1 and 2 of this act.

The fourth Standing Committee amendment was adopted with 41 ayes, 0
 nays, 3 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 39 ayes, 1 nay, 4 present and not voting,
 and 5 excused and not voting.

VISITORS

Visitors to the Chamber were 48 fourth-grade students and teacher from
 Conestoga Elementary School, Murray; 60 ninth-grade students and teachers
 from Lincoln East High School and Wilcox Hildreth High School; former
 Senator Jerry Schmitt from Ord; 17 sixth-grade students and teacher from
 North Loup-Scotia Elementary School, North Loup; Senator Price's cousin,
 Carroll G. French, from Page; and 16 members and troop leaders of
 Brownie Troop 362 from Sheridan Elementary School, Lincoln.

ADJOURNMENT

At 8:18 p.m., on a motion by Senator Wehrbein, the Legislature adjourned
 until 9:00 a.m., Tuesday, May 10, 2005.

Patrick J. O'Donnell
 Clerk of the Legislature