

**EIGHTY-FIRST DAY - MAY 19, 2005****LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE  
FIRST SESSION****EIGHTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, May 19, 2005

**PRAYER**

The prayer was offered by Senator Janssen.

**ROLL CALL**

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

The roll was called and all members were present except Senator Kruse who was excused; and Senators Brown, Cornett, Engel, Landis, Dw. Pedersen, and D. Pederson who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the eightieth day was approved.

**SELECT FILE**

**LEGISLATIVE BILL 312A.** Advanced to E & R for engrossment.

**GENERAL FILE**

**LEGISLATIVE BILL 348.** Title read. Considered.

The Standing Committee amendment, AM1332, printed separately and referred to on page 1315, was considered.

Senator Bourne renewed his pending amendment, AM1355, found on page 1338, to the Standing Committee amendment.

The Bourne amendment was adopted with 29 ayes, 3 nays, 12 present and not voting, and 5 excused and not voting.

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

AM1349

(Amendments to Standing Committee amendments, AM1332)

- 1 1. On page 19, line 21, strike "five" and insert "a fee
- 2 established in the manner provided in subsection (3) of section
- 3 81-118.01."; and in line 22 strike "dollars." and show as
- 4 stricken.

The Bourne amendment was adopted with 27 ayes, 2 nays, 15 present and not voting, and 5 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 27 ayes, 4 nays, 14 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 29 ayes, 3 nays, 14 present and not voting, and 3 excused and not voting.

### **SELECT FILE**

**LEGISLATIVE BILL 566.** E & R amendment, AM7069, found on page 1044, was adopted.

Senator D. Pederson renewed his pending amendment, AM1315, found on page 1304.

The D. Pederson amendment was adopted with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

Senator Schimek renewed her pending amendment, AM0993, printed separately and referred to on page 1528.

The Schimek amendment was adopted with 28 ayes, 0 nays, 18 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

### **SELECT COMMITTEE REPORTS** **Enrollment and Review**

#### **Correctly Engrossed**

The following bills were correctly engrossed: LBs 90, 90A, 312, and 312A.

ER9038

Enrollment and Review Change to LB 90

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

1. In the E & R amendments, AM7099, on page 8, line 16, "has" has been inserted after the comma.

ER9037

## Enrollment and Review Change to LB 312

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

1. In the Redfield amendment, AM1615, on page 1, lines 9 and 14, "43" has been struck and "47" inserted.
2. In the Connealy et al. amendment, AM1608, on page 24, line 8, the comma has been struck and an underscored period inserted.
3. In the E & R amendments, AM7100:
  - a. On page 63, line 7, "the" has been struck; and
  - b. On page 76, line 8, "the" has been inserted after "(f)".
4. On page 1, the matter beginning with "the" in line 1 through line 9 and all amendments thereto have been struck and "revenue and taxation; to amend sections 49-801.01, 66-1349, 77-202, 77-1229, 77-2711, 77-2715.07, 77-2717, 77-27,119, 77-27,187 to 77-27,188, 77-27,194 to 77-27,195, and 77-4109, Reissue Revised Statutes of Nebraska, and sections 66-1344, 77-2701, 77-2701.04, 77-2734.03, and 77-5536, Revised Statutes Supplement, 2004; to provide for and change provisions relating to tax incentives, credits, refunds, and exemptions; to rename the Employment Expansion and Investment Incentive Act; to adopt the Nebraska Advantage Act, the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Microenterprise Tax Credit Act; to harmonize provisions; to provide an operative date; and to repeal the original sections." inserted.

(Signed) Michael Flood, Chairperson

**AMENDMENT - Print in Journal**

Senator Beutler filed the following amendment to LB 48:  
AM1652

(Amendments to Standing Committee amendments, AM0662)

- 1 1. Insert the following new sections:
- 2 "Sec. 3. Section 19-4624, Revised Statutes Supplement,
- 3 2004, is amended to read:
- 4 19-4624. Sections 19-4624 to ~~19-4645~~ 19-4640 shall be
- 5 known and may be cited as the Municipal Natural Gas System
- 6 Condemnation Act.
- 7 Sec. 4. Section 19-4628, Revised Statutes Supplement,
- 8 2004, is amended to read:
- 9 19-4628. (1) A city proposing to acquire a gas system
- 10 through the exercise of the power of eminent domain shall initiate
- 11 the process by ordering the preparation of a resolution of intent
- 12 to pursue condemnation of the gas system in accordance with the
- 13 requirements of the Municipal Natural Gas System Condemnation Act
- 14 by a vote of a majority of the members of the governing body of the

15 city.

16 (2) The resolution of intent shall describe the property  
17 subject to the proposed condemnation, including the types of  
18 property and facilities to be subject to the condemnation and the  
19 extent and amount of property to be appropriated.

20 Sec. 5. Section 19-4630, Revised Statutes Supplement,  
21 2004, is amended to read:

22 19-4630. (1) The resolution of intent to pursue  
23 condemnation shall be presented to the governing body of the city  
1 at a regular meeting of such governing body. At that meeting the  
2 governing body may adopt the resolution of intent and, if it does  
3 so, shall set a time ~~at least forty five days after the date of the~~  
4 ~~meeting at which the resolution of intent was adopted~~ at which time  
5 the governing body of the city shall hold a public hearing.

6 (2) At the public hearing, the sole item of business to  
7 be conducted shall be the public hearing on the resolution of  
8 intent at which the public shall be permitted to comment on the  
9 proposed condemnation, the utility shall be permitted to respond to  
10 ~~the statements set out in~~ the resolution of intent and any comments  
11 made at the public hearing, and the governing body may act as  
12 provided in section 19-4631.

13 (3) The clerk of the city shall transmit a copy of the  
14 resolution of intent and notice of the date and time of the public  
15 hearing to the utility by United States registered mail with  
16 signature confirmation, ~~within seven days after the meeting at~~  
17 ~~which the resolution of intent was adopted.~~ At least thirty days  
18 prior to the public hearing, the city shall publish notice of the  
19 time and place of the public hearing and a summary of the  
20 resolution of intent in a legal newspaper published in or of  
21 general circulation in the city.

22 (4) The utility may present to the city a description of  
23 portions of the gas system which (a) are not described as part of  
24 the gas system being condemned by the city and (b) are served  
25 through the town border station of the city. The utility may  
26 require the city to include in its description of the gas system  
27 being condemned any or all of those portions of the system if the  
1 proposed condemnation would sever those portions of the system from  
2 the utility's distribution facilities and would require the utility  
3 to create new infrastructure to link these portions to its existing  
4 delivery system outside the city. If the utility chooses to  
5 require the city to include additional portions of the gas system  
6 in the description of the property being condemned, it shall do so  
7 prior to the adjournment of the public hearing.

8 Sec. 6. Section 19-4632, Revised Statutes Supplement,  
9 2004, is amended to read:

10 19-4632. Following the adoption of the motion, including  
11 an override of any veto, if necessary, the clerk of the city shall  
12 transmit to the Chief Justice of the Supreme Court notice of the  
13 decision of the city to pursue condemnation of the gas system. The

14 Supreme Court shall, within thirty days after the receipt of such  
15 notice, appoint three judges of the district court from three of  
16 the judicial districts of the state to constitute a court of  
17 ~~condemnation~~ valuation to ascertain and find the value of the gas  
18 system being taken. The Supreme Court shall enter an order  
19 requiring the judges to attend as a court of ~~condemnation~~ valuation  
20 at the county seat of the county in which the city is located,  
21 within such time as may be stated in the order, except upon  
22 stipulation by all necessary parties as to the value of the gas  
23 system filed with the Supreme Court prior to such date. The judges  
24 shall attend as ordered and at the first meeting shall select a  
25 presiding judge, organize, and proceed with the court's duties.  
26 The court may adjourn from time to time and shall fix a time for  
27 the appearance before it of all such corporations or persons as the  
1 court may deem necessary to be made parties to such condemnation  
2 proceedings or which the city or the utility may desire to have  
3 made a party to the proceedings. If such time of appearance shall  
4 occur after any proceedings have begun, the proceedings shall be  
5 reviewed by the court, as it may direct, to give all parties full  
6 opportunity to be heard. All corporations or persons, including  
7 all mortgagees, bondholders, trustees for bondholders,  
8 leaseholders, or other parties or persons claiming any interest in  
9 or lien upon the gas system, may be made parties to the  
10 proceedings. All parties shall be served with notice of the  
11 proceedings and the time and place of the meeting of the court of  
12 ~~condemnation~~ valuation in the same manner and for such length of  
13 time as the service of a summons in cases begun in the district  
14 court, either by personal service or service by publication, and  
15 actual personal service of notice within or without the state shall  
16 supersede the necessity of notice by publication.  
17 Sec. 7. Section 19-4633, Revised Statutes Supplement,  
18 2004, is amended to read:  
19 19-4633. In all proceedings before it, the court of  
20 ~~condemnation~~ valuation shall appoint a reporter of its proceedings  
21 who shall report and preserve all evidence introduced before it.  
22 The clerk of the district court, in the county where the city is  
23 located, shall attend upon the court of ~~condemnation~~ valuation and  
24 perform the duties of the clerk thereof, as the court of  
25 ~~condemnation~~ valuation may direct. The sheriff of the county or  
26 any of his or her deputies shall attend upon the court and shall  
27 have power to serve summonses, subpoenas, and all other orders or  
1 papers ordered to be served by the court. In case of a vacancy on  
2 the court, the vacancy shall be filled by the Supreme Court if the  
3 vacancy occurs while the Supreme Court is in session, and if it  
4 occurs while the Supreme Court is not in session, then by the Chief  
5 Justice. The judges constituting the court of ~~condemnation~~  
6 valuation shall be paid by the city a per diem for their services  
7 in an amount to be established by rule of the Supreme Court and the  
8 city shall pay their necessary traveling expenses, accommodation

9 bills, and all other necessary expenses incurred while in  
10 attendance upon the sittings of the court of ~~condemnation~~  
11 valuation, with reimbursement for expenses to be made as provided  
12 in sections 81-1174 to 81-1177. The city shall pay the reporter  
13 that is appointed by the court the amount that is set by the court.  
14 The sheriff shall serve all summonses, subpoenas, or other orders  
15 or papers ordered issued or served by the court of ~~condemnation~~  
16 valuation at the same rate and compensation for which he or she  
17 serves like papers issued by the district court, but shall account  
18 to the county for all compensation as required of him or her under  
19 the law governing his or her duties as sheriff.

20 Sec. 8. Section 19-4634, Revised Statutes Supplement,  
21 2004, is amended to read:

22 19-4634. (1) In ascertaining the value of the gas  
23 system, the court of ~~condemnation~~ valuation shall have full power  
24 to summon witnesses, administer oaths, take evidence, order the  
25 taking of depositions, and require the production of any and all  
26 books and papers deemed necessary for a full investigation and  
27 ascertainment of the value of any portion of the gas system. When  
1 part of the gas system appropriated under the Municipal Natural Gas  
2 System Condemnation Act extends beyond the territory within which  
3 the city exercising the power of eminent domain has a right to  
4 operate the gas system, the court of ~~condemnation~~ valuation, in  
5 determining the damages caused by the appropriation, shall take  
6 into consideration the fact that the portion of the gas system  
7 beyond that territory is being detached and not appropriated by the  
8 city, and the court of ~~condemnation~~ valuation shall award damages  
9 by reason of the detachment and the destruction in value and  
10 usefulness of the detached and unappropriated property as it will  
11 remain and be left after the detachment and appropriation. The  
12 court shall have all the necessary powers and perform all the  
13 necessary duties in the condemnation and ascertainment of the value  
14 and in making an award of the value of the gas system.

15 (2) The court of ~~condemnation~~ valuation shall have power  
16 to apportion the costs of the proceedings before it between the  
17 city and the utility, and the city shall provide for and pay the  
18 costs as ordered by the court. The city shall make provisions for  
19 the necessary funds and expenses to carry on the proceedings of the  
20 court while the proceedings are in progress. ~~If the governing body~~  
21 ~~of the city elects to abandon the condemnation proceedings, the~~  
22 ~~city shall pay all the costs made before the court.~~

23 (3) ~~If the services of expert witnesses or attorneys are~~  
24 ~~secured by the utility, their fees or compensation as billed to the~~  
25 ~~utility are to be taxed and paid as costs by the city to the extent~~  
26 ~~that the court determines that the fees and compensation sought (a)~~  
27 ~~reflect the prevailing industry or professional charges for such~~  
1 ~~services in cases of the size involved in the condemnation and (b)~~  
2 ~~were reasonably necessary to a just and accurate determination of~~  
3 ~~the value of the gas system. The costs of any appeal shall be~~

4 adjudged against the party defeated in the appeal in the same  
5 degree and manner as is done under the general court practice  
6 relating to appellate proceedings.

7 Sec. 9. Section 19-4635, Revised Statutes Supplement,  
8 2004, is amended to read:

9 19-4635. (1) Upon the determination and filing of a  
10 finding of the value of the gas system by the court of ~~condemnation~~  
11 valuation, the city shall have the right and power, by resolution  
12 adopted by a majority of the members of its governing body, to  
13 elect to abandon the proceedings to acquire the gas system by the  
14 exercise of the power of eminent domain.

15 (2) If the city (a) does not elect to abandon within  
16 ninety days after the finding and filing of value or (b) formally  
17 notifies the utility by United States registered mail with  
18 signature confirmation that its governing body has voted to proceed  
19 with the condemnation, the utility owning the gas system may appeal  
20 from the finding of value and award by the court of ~~condemnation~~  
21 valuation to the ~~district court~~ Court of Appeals.

22 (3) The appeal shall be made by filing with the city  
23 clerk within twenty days after (a) the expiration of the time given  
24 the city to exercise its rights of abandonment or (b) the date of  
25 the receipt of the notice of the city's intent to proceed with  
26 condemnation, a bond to be approved by the court of ~~condemnation~~  
27 valuation, conditioned for the payment of all costs which may be  
1 made on any appeal, and by filing in the ~~district court~~ Court of  
2 Appeals, within ninety days after such bond is filed, a transcript  
3 of the proceedings before the court of ~~condemnation~~ valuation,  
4 including the evidence taken before it, certified by the clerk,  
5 reporter, and judges of the court of ~~condemnation~~ valuation. The  
6 appeal in the ~~district court~~ Court of Appeals shall be tried and  
7 determined upon the pleadings, proceedings, and evidence in the  
8 transcript.

9 (4) Notwithstanding the provisions of subsection (1) of  
10 this section, the city may abandon the proceedings to acquire the  
11 gas system by the exercise of the power of eminent domain at any  
12 time prior to taking physical possession of the gas system.

13 Sec. 10. Section 19-4636, Revised Statutes Supplement,  
14 2004, is amended to read:

15 19-4636. Upon the hearing of the appeal in the ~~district~~  
16 ~~court~~ Court of Appeals, judgment shall be pronounced, as in  
17 ordinary cases, for the value of the gas system. The city or  
18 utility may appeal the judgment to the Supreme Court. All actions  
19 and proceedings under the Municipal Natural Gas System Condemnation  
20 Act which are heard by the ~~district court~~ Court of Appeals or the  
21 Supreme Court shall be expedited for hearing and decision by the  
22 appropriate court as soon as the issues and parties are properly  
23 before such court. Such proceedings and actions shall be preferred  
24 over all other civil cases irrespective of their position on the  
25 calendar.

26 Sec. 11. Section 19-4637, Revised Statutes Supplement,  
27 2004, is amended to read:

1 19-4637. (1) A city shall not appropriate a gas system  
2 through the exercise of the power of eminent domain without the  
3 approval of the registered voters of the city as provided in the  
4 Municipal Natural Gas System Condemnation Act.  
5 (2) At such time as ~~(a) the court of condemnation~~  
6 valuation has finally determined the value of the gas system, ~~and~~  
7 ~~no appeal has been perfected to the district court from that~~  
8 ~~determination by the city or the utility, (b) the district court~~  
9 ~~has pronounced its final judgment on the value of the gas system,~~  
10 ~~and neither the utility or city has perfected an appeal to the~~  
11 ~~Supreme Court from such judgment, or (c) the Supreme Court has~~  
12 ~~pronounced its final judgment on the value of the gas system,~~ the  
13 governing body of the city may submit to the registered voters of  
14 the city at any general or special city election the question of  
15 whether the city should acquire the gas system by the exercise of  
16 the power of eminent domain at the price established by the court  
17 of ~~condemnation valuation~~, the ~~district court~~ Court of Appeals, or  
18 the Supreme Court as the case may be. The ballot language shall  
19 describe the property to be acquired and the interest in the  
20 property being sought and shall recite the cost of the acquisition  
21 as adjudged by the court establishing the value of the gas system.  
22 The ballot question shall be in the following form:

23 Shall the city of (name of city) acquire by the exercise  
24 of the power of eminent domain the gas system currently owned by  
25 (name of utility); ~~at a total cost of (set out the total dollar~~  
26 ~~amount to be awarded to the utility as determined by the court of~~  
27 ~~condemnation, the district court, or the Supreme Court as the case~~  
1 ~~may be): ....Yes ....No~~

2 (3) The city shall submit the question to the registered  
3 voters in the manner prescribed in the Election Act. The question  
4 may be placed before the registered voters of the city at any  
5 general or special city election called for the purpose and may be  
6 submitted in connection with any city special election called for  
7 any other purpose. The votes cast on the question shall be  
8 canvassed and the result found and declared as prescribed in the  
9 Election Act.

10 Sec. 12. Section 19-4638, Revised Statutes Supplement,  
11 2004, is amended to read:

12 19-4638. If the election at which the question is  
13 submitted is a special election and sixty percent of the votes cast  
14 upon such proposition are in favor, or if the election at which the  
15 question is submitted is a general election and a majority of the  
16 votes cast upon such proposition are in favor, then the officer  
17 possessing the power and duty to ascertain and declare the result  
18 of the election shall certify the result immediately to the  
19 governing body of the city. The governing body of the city may  
20 then proceed to tender the amount of the value and award made by

21 the court of ~~condemnation valuation, district court~~ the Court of  
 22 Appeals, or the Supreme Court to the utility owning the gas system  
 23 and shall have the right and power to take immediate possession of  
 24 the gas system upon the tender."

25 2. On page 2, lines 20 and 21; and page 4, line 9,

26 strike "7 to 14" and insert "17 to 24".

27 3. On page 5, line 27, strike "10 and 11" and insert "20  
 1 and 21".

2 4. On page 8, line 18; and page 10, line 19, strike "9"  
 3 and insert "19".

4 5. On page 14, line 12, strike "section" and insert

5 "sections" and after the second comma insert "19-4624, 19-4628,

6 19-4630, and 19-4632 to 19-4638"; and in line 16 after "Nebraska"

7 insert ", and sections 19-4629 and 19-4641 to 19-4645, Revised  
 8 Statutes Supplement, 2004".

9 6. Renumber the remaining sections accordingly.

### BILL ON FIRST READING

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

**LEGISLATIVE BILL 348A.** Introduced by Bourne, 8.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 348, Ninety-ninth Legislature, First Session, 2005.

### EASE

The Legislature was at ease from 10:52 a.m. until 11:22 a.m.

### SELECT FILE

**LEGISLATIVE BILL 126.** E & R amendment, AM7018, found on page 573, was adopted.

Senator Fischer reoffered her amendment, AM0100, found on page 511 and considered on page 519.

Senator Fischer asked unanimous consent to withdraw her pending amendment, AM0100, found on page 511, and replace it with the Louden-Fischer substitute amendment, AM1217. No objections. So ordered.  
 AM1217

1 1. Strike original sections 5, 13, 18, 22, 25, 28, 35,

2 44, 46, and 47 and all amendments thereto and insert the following  
 3 new sections:

4 "Sec. 4. If, on December 1, 2005, the elementary

5 attendance center of an affiliated Class I district meets one or

6 more of the requirements of subdivisions (1) through (4) of this

7 section, such Class I district shall not be subject to a  
8 dissolution order pursuant to section 2 or 3 of this act and shall  
9 continue to be affiliated with the Class II, III, IV, or V school  
10 district or districts with which it is affiliated on such date.  
11 The elementary attendance center shall meet at least one of the  
12 following requirements:  
13 (1) The fall membership of the elementary attendance  
14 center for the school year immediately preceding the first school  
15 year in which the elementary attendance center would be closed or  
16 the grades offered would be changed included a total number of  
17 students that was at least two times the number of grades in which  
18 students are enrolled at the elementary attendance center for the  
19 school year in which the fall membership was measured;  
20 (2) The elementary attendance center is at least four  
21 miles from another elementary attendance center within the district  
22 on a reasonably maintained public highway or the elementary  
23 attendance center is the only elementary attendance center located  
24 within the boundaries of an incorporated city or village. For  
1 purposes of this subdivision, any public highway, road, or street  
2 with a functional classification as a minimum maintenance road and  
3 highway pursuant to sections 39-2103 and 39-2113 does not qualify  
4 as a reasonably maintained public highway;  
5 (3) The three-year average cost per pupil in the average  
6 daily membership, less special education and transportation costs,  
7 of the elementary attendance center for the school year immediately  
8 preceding the first school year in which the elementary attendance  
9 center would be closed or the grades offered would be changed was  
10 equal to or lower than the three-year average cost per pupil in the  
11 average daily membership, less special education and transportation  
12 costs, of the Class II, III, IV, or V school district; or  
13 (4) The three-year average student achievement in grades  
14 tested pursuant to section 79-760 for the school year immediately  
15 preceding the first school year in which the elementary attendance  
16 center would be closed or the grades offered would be changed was  
17 equal to or greater than the three-year average student achievement  
18 for students in corresponding grades in the Class II, III, IV, or V  
19 district.  
20 Sec. 30. (1) Beginning June 15, 2006, the school board  
21 of any Class II, III, IV, or V school district shall not take  
22 action to close an elementary attendance center or to change the  
23 elementary grades offered at an elementary attendance center if:  
24 (a) The fall membership of the elementary attendance  
25 center for the school year immediately preceding the first school  
26 year in which the elementary attendance center would be closed or  
27 the grades offered would be changed included a total number of  
1 students that was at least two times the number of grades in which  
2 students are enrolled at the elementary attendance center for the  
3 school year in which the fall membership was measured;  
4 (b) The elementary attendance center is at least four

5 miles from another elementary attendance center within the district  
6 on a reasonably maintained public highway or the elementary  
7 attendance center is the only elementary attendance center located  
8 within the boundaries of an incorporated city or village. For  
9 purposes of this subdivision, any public highway, road, or street  
10 with a functional classification as a minimum maintenance road and  
11 highway pursuant to sections 39-2103 and 39-2113 does not qualify  
12 as a reasonably maintained public highway;

13 (c) The three-year average cost per pupil in the average  
14 daily membership, less special education and transportation costs,  
15 of the elementary attendance center for the school year immediately  
16 preceding the first school year in which the elementary attendance  
17 center would be closed or the grades offered would be changed was  
18 equal to or lower than the three-year average cost per pupil in the  
19 average daily membership, less special education and transportation  
20 costs, of the Class II, III, IV, or V school district; or

21 (d) The three-year average student achievement in grades  
22 tested pursuant to section 79-760 for the school year immediately  
23 preceding the first school year in which the elementary attendance  
24 center would be closed or the grades offered would be changed was  
25 equal to or greater than the three-year average student achievement  
26 for students in corresponding grades in the Class II, III, IV, or V  
27 district.

1 (2) The temporary relocation of some or all of the  
2 students to an alternate elementary attendance center for a period  
3 not to exceed two years shall not constitute the closing of an  
4 elementary attendance center or a change in the grades offered at  
5 such elementary attendance center. An alternate elementary  
6 attendance center pursuant to this subsection shall not be subject  
7 to subsection (1) of this section.

8 (3) The grades offered at the elementary attendance  
9 center shall include any grade for which a student could enroll and  
10 receive education at the elementary attendance center for the  
11 specified school year.

12 (4) For purposes of this section, elementary attendance  
13 center means a building in which education was offered by a school  
14 district in one or more of the grades kindergarten through grade  
15 eight.

16 Sec. 31. Section 79-543, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 79-543. No person shall file for office, be nominated or  
19 elected, or serve as a member of a school board in any class of  
20 school district unless he or she is a legal voter in such district.  
21 For elections to be held during 2006, the legal voters of a Class  
22 II, III, IV, or VI school district shall include residents of  
23 territory that will be attached to such school district on June 15,  
24 2006, pursuant to section 2 or 3 of this act.

25 Sec. 35. Section 79-1001, Revised Statutes Supplement,  
26 2004, is amended to read:

- 27 79-1001. Sections 79-1001 to 79-1033 and section 40 of  
 1 this act shall be known and may be cited as the Tax Equity and  
 2 Educational Opportunities Support Act.
- 3 Sec. 40. (1) If, in calculating state aid for a local  
 4 system, the weighted formula student calculation for such local  
 5 system under section 79-1007.01 is adjusted by one or more of the  
 6 demographic factors described in subdivision (1)(c) of such section  
 7 for the calculation of adjusted formula students pursuant to such  
 8 section, the local system shall allocate the additional state aid  
 9 it receives as a result of such adjustments to the attendance  
 10 centers in the local system in which the students affected by such  
 11 demographic factors are enrolled, to be spent on the additional  
 12 costs generated by such factors.
- 13 (2) For purposes of assisting local systems in carrying  
 14 out the requirements of this section, the State Department of  
 15 Education shall calculate for each local system described in  
 16 subsection (1) of this section the amount of aid it would have  
 17 received without the adjustments pursuant to subdivision (1)(c) of  
 18 section 79-1007.01. The local system shall demonstrate, through  
 19 the annual audits of the districts in the local system required  
 20 pursuant to section 79-1089, that its expenditures comply with the  
 21 requirements of this section.
- 22 (3) The State Department of Education shall adopt and  
 23 promulgate rules and regulations to carry out the requirements of  
 24 this section."
- 25 2. On page 3, line 3, strike "IV, and VI" and insert  
 26 "and IV"; strike beginning with "or" in line 5 through "part" in  
 27 line 6; in lines 13, 18, 24, and 28 strike "IV, or VI" and insert  
 1 "or IV".
- 2 3. On page 4, lines 2 and 20, strike "or" through  
 3 "part"; in lines 3, 5, 8, 11, and 18 strike "IV, or VI" and insert  
 4 "or IV"; and strike beginning with "or" in line 7 through "part" in  
 5 line 8.
- 6 4. On page 4, line 27; and page 6, line 4, strike  
 7 "Notwithstanding" and insert "Except as provided in section 4 of  
 8 this act, notwithstanding".
- 9 5. On page 5, line 1, after "section" insert "and except  
 10 as provided in subsection (6) of this section"; in lines 6, 10, 13,  
 11 and 15 strike "IV, or VI" and insert "or IV"; in line 7 strike "or"  
 12 through "part"; and strike lines 26 through 28 and insert the  
 13 following new subsection:  
 14 "(6) This section does not apply to any territory of a  
 15 Class I district which is part of a Class VI district on the  
 16 operative date of this section."
- 17 6. On page 6, strike lines 1 through 3; in line 10 after  
 18 "act" insert "and except for any territory of any Class I district  
 19 which is part of a Class VI district"; in lines 10, 20, and 24 and  
 20 25 strike "IV, or VI" and insert "or IV"; strike beginning with  
 21 "To" in line 12 through line 16; and in line 26 strike "IV, and VI"

22 and insert "and IV".

23 7. On page 7, line 5, after the semicolon insert "and";  
 24 strike beginning with "all" in line 5 through "(iv)" in line 7; in  
 25 lines 7, 18, and 26 strike "IV or VI" and insert "or IV"; and in  
 26 line 27 strike "or a part".

27 8. On page 8, lines 6, 8, 11, 13, and 23, strike "IV, or  
 1 VI" and insert "or IV"; and in line 19 strike "(6)" and insert  
 2 "(5)".

3 9. On page 9, lines 6 and 23, strike "IV, or VI" and  
 4 insert "or IV"; strike beginning with "On" in line 9 through "(6)"  
 5 in line 22; in line 26 strike "(7)" and insert "(6)"; and in line  
 6 28 strike "(8)" and insert "(7)".

7 10. On page 12, lines 14 through 18, strike the new  
 8 matter and reinstate the stricken matter.

9 11. On page 13, reinstate the stricken matter beginning  
 10 with "For" in line 6 through the second "school" in line 11; in  
 11 line 11 after the stricken "system" insert "district"; reinstate  
 12 the stricken matter beginning with "which" in line 11 through line  
 13 12; in line 19 reinstate the stricken "(1)" through "in", after the  
 14 reinstated "in" insert "subsection", and reinstate the stricken  
 15 "(2)"; in line 20 reinstate the stricken "of this section, no" and  
 16 strike the new matter; and reinstate the stricken matter in lines  
 17 23 through 28.

18 12. On page 14, reinstate the stricken matter in lines 1  
 19 through 15.

20 13. On page 18, reinstate the stricken matter in lines 7  
 21 through 10 and 28.

22 14. On page 19, lines 1 and 3, reinstate the stricken  
 23 matter except for the stricken "Class II, III, IV, V, or VI"; and  
 24 reinstate the stricken matter in lines 2, 4, and 5.

25 15. On page 24, line 15, strike the new matter.

26 16. On page 25, line 2, strike the new matter; reinstate  
 27 the stricken matter beginning with "the" in line 4 through "and" in  
 1 line 5; and in line 5 after the stricken "(7)" insert "(6)".

2 17. On page 26, lines 25 through 27, strike the new  
 3 matter and reinstate the stricken matter.

4 18. On page 37, lines 15 through 28; and page 38, lines  
 5 1 through 14, reinstate the stricken matter.

6 19. On page 54, strike lines 24 through 28 and show the  
 7 old matter as stricken.

8 20. On page 55, strike lines 1 through 12, show the old  
 9 matter as stricken, and insert:

10 "(28) Local system means: (a) For school fiscal years  
 11 prior to 2006-07, a Class VI district and the associated Class I  
 12 districts or a Class II, III, IV, or V district and any affiliated  
 13 Class I districts or portions of Class I districts; (b) for school  
 14 fiscal year 2006-07, a Class VI district and the associated Class I  
 15 districts or portions thereof, a Class II, III, IV, or V district  
 16 and any Class I districts or portions thereof that will be merged

17 with the Class II, III, IV, or V district on June 15, 2006,  
 18 pursuant to section 2 of this act, or a Class II, III, IV, or V  
 19 district and any Class I districts or portions thereof that will  
 20 continue to be affiliated with the Class II, III, IV, or V district  
 21 pursuant to section 4 of this act; and (c) for school fiscal year  
 22 2007-08 and each school fiscal year thereafter, a Class VI district  
 23 and the associated Class I districts or portions thereof or a Class  
 24 II, III, IV, or V district and any Class I districts or portions  
 25 thereof that will continue to be affiliated with the Class II, III,  
 26 IV, or V district pursuant to section 4 of this act. The  
 27 membership, expenditures, and resources of Class I districts that  
 1 are affiliated with multiple high school districts will be  
 2 attributed to local systems based on the percent of the Class I  
 3 valuation that is affiliated with each high school district;".  
 4 21. Amend the operative date and repealer sections so  
 5 that the sections added by this amendment become operative on their  
 6 effective date.  
 7 22. Renumber the remaining sections, amend the  
 8 repealers, and correct internal references accordingly.

Pending.

## RESOLUTIONS

**LEGISLATIVE RESOLUTION 225.** Introduced by Health and Human Services Committee: Jensen, 20, Chairperson; Byars, 30; Cunningham, 40; Erdman, 47; Howard, 9; Johnson, 37; Stuthman, 22.

**PURPOSE:** The purpose of this study is to examine and address various health and human services issues within the jurisdiction of the Health and Human Services Committee of the Legislature, including, but not limited to: Health and human services planning and evaluation; the statewide behavioral health system; the Nebraska Mental Health Commitment Act; health insurance availability and affordability; prescription drug access and policy; the medical assistance program established in section 68-1018; the Nebraska Health Care Funding Act; public health law and policy; the Nebraska Health and Human Services System; the Nebraska Clean Indoor Air Act; the Uniform Licensing Law; the regional administrative structure for the delivery of state developmental disability programs and services, mental health programs and services, and aging programs and services; marriage and family preservation; children in out-of-home care; the Welfare Reform Act; and state public assistance programs.

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

1. That the Health and Human Services 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 226.** Introduced by Government, Military and Veterans Affairs Committee: Schimek, 27, Chairperson; Brown, 6; Burling, 33; Mines, 18; Wehrbein, 2.

**PURPOSE:** To examine Nebraska's county government structure, both revenue and spending, and overall government structure with an emphasis on whether regional services would be more efficient.

The committee shall examine all of the services provided at the county level and their purpose, role, function, and necessity.

The committee may include input from other lay, professional, organizational, and governmental representatives in analyzing and developing a report summarizing any recommendations for (a) the restructure of government and (b) amendments to the Constitution of Nebraska with respect to counties.

The committee shall provide a report to the Legislature no later than December 15, 2005, and shall include any proposed legislation for the Legislature to consider during the 2006 session.

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

1. That the Government, Military and Veterans Affairs 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.

### **VISITORS**

Visitors to the Chamber were Roger Foster from Crete; Senator Mines' daughter, Laney Mines, from Blair; 36 fourth-grade students and teachers from Newell Elementary School, Grand Island; Jeff Warren from Blair and Brita Castrop from Omaha; and Becca Hier and Travis Williamson from Crete.

### **RECESS**

At 12:01 p.m., on a motion by Senator Friend, 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 Kruse who was excused; and Senators Combs, Cornett, Engel, Heidemann, Hudkins, McDonald, Dw. Pedersen, and Thompson who were excused until they arrive.

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 478A.** Introduced by Cornett, 45.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 478, Ninety-ninth Legislature, First Session, 2005.

**SELECT FILE**

**LEGISLATIVE BILL 126.** The Louden-Fischer pending amendment, AM1217, found in this day's Journal, was renewed.

Pending.

**RESOLUTION**

**LEGISLATIVE RESOLUTION 227.** Introduced by Smith, 48.

WHEREAS, James Livingston currently serves the community of Scottsbluff as the chief of police; and

WHEREAS, Chief Livingston is retiring on June 3, 2005, after twenty-nine years of service in law enforcement; and

WHEREAS, Chief Livingston should be honored for his dedicated years of service to the grateful citizens of Scottsbluff.

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

1. That Chief James Livingston be congratulated for his exemplary service as chief of police to the community of Scottsbluff.

2. That a copy of this resolution be sent to Chief Livingston.

Laid over.

**SELECT COMMITTEE REPORTS**  
**Enrollment and Review**

**LEGISLATIVE BILL 478.** Placed on Select File as amended.

E & R amendment to LB 478:

AM7101

1 1. Strike the original sections and all amendments

2 thereto and insert the following new sections:

3 "Section 1. Section 77-2716, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 77-2716. (1) The following adjustments to federal  
6 adjusted gross income or, for corporations and fiduciaries, federal  
7 taxable income shall be made for interest or dividends received:

8 (a) There shall be subtracted interest or dividends  
9 received by the owner of obligations of the United States and its  
10 territories and possessions or of any authority, commission, or  
11 instrumentality of the United States to the extent includable in  
12 gross income for federal income tax purposes but exempt from state  
13 income taxes under the laws of the United States;

14 (b) There shall be subtracted that portion of the total  
15 dividends and other income received from a regulated investment  
16 company which is attributable to obligations described in  
17 subdivision (a) of this subsection as reported to the recipient by  
18 the regulated investment company;

19 (c) There shall be added interest or dividends received  
20 by the owner of obligations of the District of Columbia, other  
21 states of the United States, or their political subdivisions,  
22 authorities, commissions, or instrumentalities to the extent  
23 excluded in the computation of gross income for federal income tax  
24 purposes except that such interest or dividends shall not be added  
1 if received by a corporation which is a regulated investment  
2 company;

3 (d) There shall be added that portion of the total  
4 dividends and other income received from a regulated investment  
5 company which is attributable to obligations described in  
6 subdivision (c) of this subsection and excluded for federal income  
7 tax purposes as reported to the recipient by the regulated  
8 investment company; and

9 (e)(i) Any amount subtracted under this subsection shall  
10 be reduced by any interest on indebtedness incurred to carry the  
11 obligations or securities described in this subsection or the  
12 investment in the regulated investment company and by any expenses  
13 incurred in the production of interest or dividend income described  
14 in this subsection to the extent that such expenses, including  
15 amortizable bond premiums, are deductible in determining federal  
16 taxable income.

17 (ii) Any amount added under this subsection shall be  
18 reduced by any expenses incurred in the production of such income  
19 to the extent disallowed in the computation of federal taxable  
20 income.

21 (2) There shall be allowed a net operating loss derived  
22 from or connected with Nebraska sources computed under rules and  
23 regulations adopted and promulgated by the Tax Commissioner  
24 consistent, to the extent possible under the Nebraska Revenue Act  
25 of 1967, with the laws of the United States. For a resident  
26 individual, estate, or trust, the net operating loss computed on

27 the federal income tax return shall be adjusted by the  
1 modifications contained in this section. For a nonresident  
2 individual, estate, or trust or for a partial-year resident  
3 individual, the net operating loss computed on the federal return  
4 shall be adjusted by the modifications contained in this section  
5 and any carryovers or carrybacks shall be limited to the portion of  
6 the loss derived from or connected with Nebraska sources.

7 (3) There shall be subtracted from federal adjusted gross  
8 income for all taxable years beginning on or after January 1, 1987,  
9 the amount of any state income tax refund to the extent such refund  
10 was deducted under the Internal Revenue Code, was not allowed in  
11 the computation of the tax due under the Nebraska Revenue Act of  
12 1967, and is included in federal adjusted gross income.

13 (4) Federal adjusted gross income, or, for a fiduciary,  
14 federal taxable income shall be modified to exclude the portion of  
15 the income or loss received from a small business corporation with  
16 an election in effect under subchapter S of the Internal Revenue  
17 Code or from a limited liability company organized pursuant to the  
18 Limited Liability Company Act that is not derived from or connected  
19 with Nebraska sources as determined in section 77-2734.01.

20 (5) There shall be subtracted from federal adjusted gross  
21 income or, for corporations and fiduciaries, federal taxable income  
22 dividends received or deemed to be received from corporations which  
23 are not subject to the Internal Revenue Code.

24 (6) There shall be subtracted from federal taxable income  
25 a portion of the income earned by a corporation subject to the  
26 Internal Revenue Code of 1986 that is actually taxed by a foreign  
27 country or one of its political subdivisions at a rate in excess of  
1 the maximum federal tax rate for corporations. The taxpayer may  
2 make the computation for each foreign country or for groups of  
3 foreign countries. The portion of the taxes that may be deducted  
4 shall be computed in the following manner:  
5 (a) The amount of federal taxable income from operations  
6 within a foreign taxing jurisdiction shall be reduced by the amount  
7 of taxes actually paid to the foreign jurisdiction that are not  
8 deductible solely because the foreign tax credit was elected on the  
9 federal income tax return;

10 (b) The amount of after-tax income shall be divided by  
11 one minus the maximum tax rate for corporations in the Internal  
12 Revenue Code; and

13 (c) The result of the calculation in subdivision (b) of  
14 this subsection shall be subtracted from the amount of federal  
15 taxable income used in subdivision (a) of this subsection. The  
16 result of such calculation, if greater than zero, shall be  
17 subtracted from federal taxable income.

18 (7) Federal adjusted gross income shall be modified to  
19 exclude any amount repaid by the taxpayer for which a reduction in  
20 federal tax is allowed under section 1341(a)(5) of the Internal  
21 Revenue Code.

22 (8)(a) There shall be subtracted from federal adjusted  
23 gross income an amount equal to the difference between the amount  
24 qualified for calculation of a deduction as provided in section  
25 162(l) of the Internal Revenue Code and the amount actually allowed  
26 pursuant to section 162(l)(1) of the Internal Revenue Code.

27 (b) For an individual who itemized deductions on his or  
1 her federal return, the maximum amount subtracted under subdivision  
2 (8)(a) of this section shall be seven and one-half percent of  
3 federal adjusted gross income.

4 (9)(a) Federal adjusted gross income or, for corporations  
5 and fiduciaries, federal taxable income shall be reduced, to the  
6 extent included, by income from interest, earnings, and state  
7 contributions received from the Nebraska educational savings plan  
8 trust created in sections 85-1801 to 85-1814.

9 (b) Federal adjusted gross income or, for corporations  
10 and fiduciaries, federal taxable income shall be reduced, to the  
11 extent not deducted for federal income tax purposes, by the amount  
12 of any gift, grant, or donation made to the Nebraska educational  
13 savings plan trust for deposit in the endowment fund of the trust.

14 (c) Federal adjusted gross income or, for corporations  
15 and fiduciaries, federal taxable income shall be reduced by any  
16 contributions as a participant in the Nebraska educational savings  
17 plan trust, not to exceed five hundred dollars per married filing  
18 separate return or one thousand dollars for any other return.

19 (d) Federal adjusted gross income or, for corporations  
20 and fiduciaries, federal taxable income shall be increased by the  
21 amount resulting from the cancellation of a participation agreement  
22 refunded to the taxpayer as a participant in the Nebraska  
23 educational savings plan trust to the extent previously deducted as  
24 a contribution to the trust.

25 (10)(a) For income tax returns filed after September 10,  
26 2001, federal adjusted gross income or, for corporations and  
27 fiduciaries, federal taxable income shall be increased by

1 eighty-five percent of any amount of any federal bonus depreciation  
2 received under the federal Job Creation and Worker Assistance Act  
3 of 2002 or the federal Jobs and Growth Tax Act of 2003, under  
4 section 168(k) or section 1400L of the Internal Revenue Code of  
5 1986, as amended, for assets placed in service after September 10,  
6 2001, and before December 31, 2005.

7 (b) For a partnership, limited liability company,  
8 cooperative, including any cooperative exempt from income taxes  
9 under section 521 of the Internal Revenue Code of 1986, as amended,  
10 subchapter S corporation, or joint venture, the increase shall be  
11 distributed to the partners, members, shareholders, patrons, or  
12 beneficiaries in the same manner as income is distributed for use  
13 against their income tax liabilities.

14 (c) For a corporation with a unitary business having  
15 activity both inside and outside the state, the increase shall be  
16 apportioned to Nebraska in the same manner as income is apportioned

17 to the state by section 77-2734.05.

18 (d) The amount of bonus depreciation added to federal  
19 adjusted gross income or, for corporations and fiduciaries, federal  
20 taxable income by this subsection shall be subtracted in a later  
21 taxable year. Twenty percent of the total amount of bonus  
22 depreciation added back by this subsection for tax years beginning  
23 or deemed to begin before January 1, 2003, under the Internal  
24 Revenue Code of 1986, as amended, may be subtracted in the first  
25 taxable year beginning or deemed to begin on or after January 1,  
26 2005, under the Internal Revenue Code of 1986, as amended, and  
27 twenty percent in each of the next four following taxable years.

1 Twenty percent of the total amount of bonus depreciation added back  
2 by this subsection for tax years beginning or deemed to begin on or  
3 after January 1, 2003, may be subtracted in the first taxable year  
4 beginning or deemed to begin on or after January 1, 2006, under the  
5 Internal Revenue Code of 1986, as amended, and twenty percent in  
6 each of the next four following taxable years.

7 (11) For taxable years beginning or deemed to begin on or  
8 after January 1, 2003, under the Internal Revenue Code of 1986, as  
9 amended, federal adjusted gross income or, for corporations and  
10 fiduciaries, federal taxable income shall be increased by the  
11 amount of any capital investment that is expensed under section 179  
12 of the Internal Revenue Code of 1986, as amended, that is in excess  
13 of twenty-five thousand dollars that is allowed under the federal  
14 Jobs and Growth Tax Act of 2003. Twenty percent of the total  
15 amount of expensing added back by this subsection for tax years  
16 beginning or deemed to begin on or after January 1, 2003, may be  
17 subtracted in the first taxable year beginning or deemed to begin  
18 on or after January 1, 2006, under the Internal Revenue Code of  
19 1986, as amended, and twenty percent in each of the next four  
20 following tax years.

21 (12) For taxable years beginning or deemed to begin on or  
22 after January 1, 2005, under the Internal Revenue Code of 1986, as  
23 amended, federal adjusted gross income shall be modified to exclude  
24 the amount of income received as a military retirement benefit  
25 resulting from service in the armed forces of the United States  
26 equal to one-half the amount of income earned as wages and salaries  
27 paid in Nebraska by an employer performing security classified work  
1 for the federal Department of Defense and qualified under 32 C.F.R.  
2 155.1 through 155.6, to the extent that such wages and salaries  
3 exceed forty thousand dollars during the tax year. In order to  
4 receive the exclusion provided in this subsection, the taxpayer  
5 shall submit a certification, signed by the employer's facility  
6 security officer, that the employer has received authorization to  
7 perform classified work for the federal Department of Defense.

8 Sec. 2. Original section 77-2716, Reissue Revised  
9 Statutes of Nebraska, is repealed."

10 2. On page 1, line 2, after "exclude" insert "certain".

**LEGISLATIVE BILL 713.** Placed on Select File as amended.  
(E & R amendment, AM7102, is printed separately and available in the Bill Room, Room 1104.)

(Signed) Michael Flood, Chairperson

### **SELECT FILE**

**LEGISLATIVE BILL 70.** E & R amendment, AM7088, printed separately and referred to on page 1317, was adopted.

Senator Jensen withdrew his pending amendment, AM1156, found on page 1173.

Senator Smith withdrew his pending amendment, AM1646, found on page 1615.

Senator Jensen renewed his pending amendment, AM1153, found on page 1173.

Senator Jensen offered the following amendment to his pending amendment: (Amendment, AM1613, is printed separately and available in the Bill Room, Room 1104.)

Pending.

### **AMENDMENT - Print in Journal**

Senator Stuthman filed the following amendment to LB 116:  
(Amendment, AM1657, is printed separately and available in the Bill Room, Room 1104.)

### **BILL ON FIRST READING**

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

**LEGISLATIVE BILL 677A.** Introduced by Dw. Pedersen, 39.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 677, Ninety-ninth Legislature, First Session, 2005; and to declare an emergency.

### **EASE**

The Legislature was at ease from 3:27 p.m. until 3:32 p.m.

**SELECT FILE**

**LEGISLATIVE BILL 117.** E & R amendment, AM7091, printed separately and referred to on page 1371, was adopted.

Senator Aguilar asked unanimous consent to withdraw his pending amendment, AM0901, found on page 1117, and replace it with the Bourne-Aguilar substitute pending amendment, AM1592, found on page 1556. No objections. So ordered.

Senator Chambers requested a division of the question on the Bourne-Aguilar amendment.

The Chair sustained the division of the question.

The first Bourne-Aguilar amendment is as follows:

FA281

(Amendments to E & R amendments, AM7091)

- 1 1. Insert the following new section:
- 2 "Sec. 7. Section 28-707, Revised Statutes Supplement,
- 3 2004, is amended to read:
- 4 28-707. (1) A person commits child abuse if he or she
- 5 knowingly, intentionally, or negligently causes or permits a minor
- 6 child to be:
  - 7 (a) Placed in a situation that endangers his or her life
  - 8 or physical or mental health;
  - 9 (b) Cruelly confined or cruelly punished;
  - 10 (c) Deprived of necessary food, clothing, shelter, or
  - 11 care;
  - 12 (d) Placed in a situation to be sexually exploited by
  - 13 allowing, encouraging, or forcing such minor child to solicit for
  - 14 or engage in prostitution, debauchery, public indecency, or obscene
  - 15 or pornographic photography, films, or depictions; ~~or~~
  - 16 (e) Placed in a situation to be sexually abused as
  - 17 defined in section 28-319 or 28-320.01; or
  - 18 (f) Placed in or near the processing, cooking, or
  - 19 manufacturing of methamphetamine.
- 20 (2) The statutory privilege between patient and
- 21 physician, between client and professional counselor, and between
- 22 husband and wife shall not be available for excluding or refusing
- 23 testimony in any prosecution for a violation of this section.
  - 1 (3) Child abuse is a Class I misdemeanor if the offense
  - 2 is committed negligently.
  - 3 (4) Child abuse is a Class IIIA felony if the offense is
  - 4 committed knowingly and intentionally and does not result in
  - 5 serious bodily injury as defined in section 28-109.
  - 6 (5) Child abuse is a Class III felony if the offense is
  - 7 committed knowingly and intentionally and results in serious bodily
  - 8 injury as defined in ~~such~~ section 28-109.

9 (6) Child abuse is a Class IB felony if the offense is  
 10 committed knowingly and intentionally and results in the death of  
 11 such child."

**SENATOR ENGEL PRESIDING**

**SENATOR CUDABACK PRESIDING**

Pending.

**STANDING COMMITTEE REPORTS**  
**Judiciary**

**LEGISLATIVE BILL 538.** Placed on General File as amended.  
 (Standing Committee amendment, AM1650, is printed separately and  
 available in the Bill Room, Room 1104.)

**LEGISLATIVE BILL 703.** Placed on General File as amended.  
 Standing Committee amendment to LB 703:  
 AM1469

- 1 1. On page 2, strike beginning with "who" in line 7
- 2 through the comma in line 8.
- 3 2. On page 3, line 4, strike "without reduction of
- 4 sentence" and insert "as reduced by any adjustment".

(Signed) Patrick J. Bourne, Chairperson

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 13A.** Introduced by Landis, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 13, Ninety-ninth Legislature, First Session, 2005.

**LEGISLATIVE BILL 538A.** Introduced by Brashear, 4.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 538, Ninety-ninth Legislature, First Session, 2005.

**AMENDMENT - Print in Journal**

Senator Smith filed the following amendment to LB 70:  
 AM1664

(Amendments to AM1153)

- 1 1. Strike amendment 1 and all amendments thereto and

2 insert the following new amendment:

3 "1. In the E & R amendments, AM7088, strike section 8

4 and insert the following new section:

5 'Sec. 8. Section 60-6,279, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 60-6,279. (1) Except as provided in subsections (2) and  
8 (3) of this section, a ~~A~~ person shall not operate or be a passenger  
9 on a motorcycle or moped on any highway in this state unless such  
10 person is wearing eye protection and a protective helmet of the  
11 type and design manufactured for use by operators of such vehicles  
12 and unless such helmet is secured properly on his or her head with  
13 a chin strap while the vehicle is in motion. All such protective  
14 helmets shall be designed to reduce injuries to the user resulting  
15 from head impacts and shall be designed to protect the user by  
16 remaining on the user's head, deflecting blows, resisting  
17 penetration, and spreading the force of impact. Each such helmet  
18 shall consist of lining, padding, and chin strap and shall meet or  
19 exceed the standards established in the United States Department of  
20 Transportation's Federal Motor Vehicle Safety Standard No. 218, 49  
21 C.F.R. 571.218, for motorcycle helmets.

22 (2) Except as otherwise provided in subsection (3) of  
23 this section, until January 1, 2012, a person shall be exempt from  
1 subsection (1) of this section if he or she (a) is at least  
2 twenty-one years of age, (b) is equipped with eye protection, and  
3 (c) carries proof of successful completion of (i) a motorcycle  
4 safety course under the Motorcycle Safety Education Act completed  
5 prior to January 1, 2007, or (ii) a motorcycle safety course under  
6 the Motorcycle Safety and Training Act completed on or after  
7 January 1, 2007. Proof of completion of a motorcycle safety course  
8 provided by a nationally recognized motorcycle safety foundation  
9 shall meet the requirements of a course for purposes of this  
10 subsection. Such proof of course completion shall be available for  
11 inspection upon demand of any law enforcement officer.

12 (3) Until January 1, 2012, a person shall be exempt from  
13 subsection (1) of this section if he or she (a) was born prior to  
14 January 1, 1986, (b) had a Class M license prior to January 1,  
15 2005, and (c) is equipped with eye protection.

16 (4) Except for the eye protection requirements of this  
17 section, until January 1, 2012, enforcement of this section by  
18 state or local law enforcement agencies shall be accomplished only  
19 as a secondary action when an operator or passenger has been cited  
20 or charged with a violation or some other offense.

21 (5) For purposes of this section, eye protection means  
22 glasses that cover the orbital region of the operator's face, a  
23 protective face shield attached to a protective helmet, goggles, or  
24 a windshield on the motorcycle that protects the operator's  
25 horizontal line of vision in all operating positions.'."

**SELECT FILE**

**LEGISLATIVE BILL 117.** Senator Flood offered the following amendment to the first Bourne-Aguilar pending amendment:

FA284

Amend FA281

Strike "in or" from line 18.

The Flood amendment was adopted with 28 ayes, 0 nays, 16 present and not voting, and 5 excused and not voting.

The first Bourne-Aguilar pending amendment, FA281, found in this day's Journal, as amended, was renewed.

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

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

The motion to cease debate prevailed with 25 ayes, 1 nay, and 23 not voting.

The first Bourne-Aguilar amendment, as amended, lost with 2 ayes, 13 nays, 30 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

The second Bourne-Aguilar amendment is as follows:

FA282

12 2. On page 17, line 11, strike "nineteen" and insert  
 13 "eighteen"; and in lines 19 and 20 strike "an operator's license or  
 14 state identification card" and insert "a valid driver's or  
 15 operator's license, a Nebraska state identification card, a  
 16 military identification card, an alien registration card, or a  
 17 passport".

The second Bourne-Aguilar amendment was adopted with 33 ayes, 1 nay, 11 present and not voting, and 4 excused and not voting.

The third Bourne-Aguilar amendment is as follows:

FA283

18 3. On page 18, line 7, strike ", by retail,"; in line 8  
 19 after "acquire" insert ", other than wholesale acquisition by a  
 20 retail business in the normal course of its trade or business,";  
 21 and in line 15 strike "and" and after "28-456" insert ", and  
 22 28-707".

23 4. Renumber the remaining section accordingly.

The third Bourne-Aguilar amendment was adopted with 29 ayes, 0 nays, 15

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

Senator Beutler reoffered his amendment, AM1316, found on page 1302 and considered on page 1316.

Senator Beutler asked unanimous consent to withdraw his pending amendment, AM1316, found on page 1302, and replace it with his substitute amendment, AM1655. No objections. So ordered.  
AM1655

(Amendments to E & R amendments, AM7091)

1 1. On page 18, after line 6 insert the following new  
2 subsection:  
3 "(3) By January 1, 2006, the Nebraska State Patrol shall  
4 develop and present a complete plan to the Judiciary Committee of  
5 the Legislature for an electronic log of sales of drug products  
6 subject to this section and a central repository of information  
7 collected. The plan shall include:  
8 (a) Electronic transmission of information by sellers;  
9 (b) A central repository capable of providing on-line  
10 access to the information collected in the form required by the  
11 patrol and that is secured against unauthorized access; and  
12 (c) A researched estimate of the costs of implementing  
13 and maintaining the electronic log and central repository.  
14 The plan, after review by and advice from the committee,  
15 shall be implemented by January 1, 2007, if funding for the plan is  
16 provided by the Legislature.".

Pending.

**LEGISLATIVE BILL 673.** E & R amendment, AM7086, printed separately and referred to on page 1274, was adopted.

Senator Beutler reoffered his amendment, AM1187, found on page 1176.

Senator Beutler asked unanimous consent to withdraw his pending amendment, AM1187, found on page 1176, and replace it with the Loudon substitute pending amendment, AM1587, found on page 1488. No objections. So ordered.

Senator Chambers requested a division of the question on the Loudon amendment.

Senator Chambers withdrew his request for the division of the question on the Loudon amendment.

Senator Chambers offered the following amendment to the Loudon pending amendment:

FA285

Amend AM1587

Strike Section 1.

Pending.

### AMENDMENTS - Print in Journal

Senator Brown filed the following amendment to LB 117:  
AM1467

(Amendments to E & R amendments, AM7091)

- 1 1. Insert the following new sections:
- 2 "Sec. 7. Section 60-4,111.01, Reissue Revised Statutes
- 3 of Nebraska, is amended to read:
- 4 60-4,111.01. (1) The Department of Motor Vehicles, the
- 5 courts, or law enforcement agencies may store or compile
- 6 information acquired from an operator's license or state
- 7 identification card for their statutorily authorized purposes.
- 8 (2) ~~No~~ Except as provided in sections 8 to 16 of this
- 9 act, no person having use of or access to machine-readable
- 10 information encoded on an operator's license or a state
- 11 identification card shall compile, store, preserve, trade, or sell
- 12 such information. Violation of this subsection ~~shall be~~ is a Class
- 13 IV felony.
- 14 Sec. 8. An electronic verification service provider that
- 15 sells or markets an electronic verification device to a commercial
- 16 user in Nebraska or provides support for such a device shall
- 17 present information to the Department of Motor Vehicles to
- 18 establish that such provider has sufficient infrastructure to
- 19 protect any personal information stored or maintained and has
- 20 demonstrated financial stability.
- 21 Sec. 9. A commercial user or electronic verification
- 22 service provider may capture, transmit, store, maintain a record
- 23 of, or use personal information obtained from a driver's license or
- 1 a state identification card using an electronic verification device
- 2 for age-verification, for prosecution of drug-related offenses, for
- 3 drug enforcement, or to prevent fraud.
- 4 Sec. 10. Except as otherwise provided in section 13 of
- 5 this act, a commercial user may capture or maintain a record of
- 6 personal information only as provided in section 11 of this act and
- 7 only if such commercial user has made a clear and conspicuous
- 8 disclosure to an individual who is required or requested to provide
- 9 identification as part of a commercial transaction substantially as
- 10 follows:
- 11 "The personal identification information contained on
- 12 your driver's license or state identification card is being
- 13 electronically scanned and captured as a part of this transaction
- 14 and may be recorded and retained by this establishment."
- 15 Sec. 11. Except as otherwise provided in section 13 of
- 16 this act, a commercial user or electronic verification service
- 17 provider may capture, transmit, store, maintain a record of, and

18 use personal information obtained pursuant to section 9 of this act  
19 only for the following purposes:

20 (1) Compliance or assistance with any official law  
21 enforcement investigation or the order of any state or federal  
22 administrative agency or court;

23 (2) Prevention of fraud, misrepresentation, or any  
24 similar offense pursuant to section 9 of this act against an  
25 individual providing the driver's license or state identification  
26 card;

27 (3) Defense to any action brought against a commercial  
1 user regarding the individual providing the driver's license or  
2 state identification card pursuant to section 9 of this act;

3 (4) Prosecution of any drug-related offense except that  
4 such information may not be used for investigation of the  
5 underlying offense; and

6 (5) Any other purpose expressly required or permitted by  
7 law.

8 Sec. 12. A commercial user or electronic verification  
9 service provider may maintain a record of personal information  
10 obtained pursuant to sections 9 to 11 of this act for a period of  
11 four years after the date of capture. After such four-year period,  
12 the commercial user or service provider shall delete or otherwise  
13 remove such information from its electronic records.

14 Sec. 13. A commercial user or electronic verification  
15 service provider may use personal information captured from a  
16 driver's license or state identification card if the commercial  
17 user or service provider has obtained the express consent of the  
18 individual who presented the license or card but only in the manner  
19 and to the extent that such individual has expressly authorized.

20 Sec. 14. Except as otherwise provided in sections 9 to  
21 11 of this act, no commercial user or electronic verification  
22 service provider shall buy, sell, transfer, or disclose to any  
23 other person, or maintain, download, or use in any manner, personal  
24 information captured from a driver's license or state  
25 identification card.

26 Sec. 15. A violation of sections 9 to 14 of this act is  
27 a Class IV felony.

1 Sec. 16. Any person aggrieved by a violation of sections  
2 9 to 14 of this act may bring a civil action, including an action  
3 for immediate relief by means of an injunction or other order of  
4 the court."

5 2. On page 17, line 20, strike "and"; and in line 21  
6 after "(e)" insert "After December 31, 2008, sold by a person who  
7 records the purchaser's name, address, and date of birth, the date  
8 of purchase, and the amount of the drug product purchased in an  
9 electronic format that is capable of being recorded and compiled as  
10 part of an electronic database. If an operator's license or state  
11 identification card is used to record the data required in this  
12 section, such information shall be gathered in compliance with

13 sections 8 to 16 of this act; and

14 (f)".

15 3. On page 18, line 14, after "Original" insert "section

16 60-4,111.01, Reissue Revised Statutes of Nebraska, and".

17 4. Renumber the remaining sections accordingly.

Senator Dw. Pedersen filed the following amendment to LB 117:  
AM1076

(Amendments to Standing Committee amendments, AM0712)

1 1. On page 17, lines 1 through 3, 8, and 9, strike the

2 new matter and reinstate the stricken matter; in line 10 strike

3 "milligrams"; and in lines 15 and 16 and 16 and 17 strike "one

4 thousand four hundred forty milligrams" and insert "three grams".

5 2. On page 18, strike beginning with "one" in line 8

6 through line 10 and insert "three grams of pseudoephedrine".

Senator Synowiecki filed the following amendment to LB 117:  
AM1663

(Amendments to E & R amendments, AM7091)

1 1. On page 15, strike beginning with the last comma in

2 line 12 through "abuse" in line 14, show as stricken, and insert ":

3 (a) Satisfactorily attend and complete an appropriate

4 mental health or drug abuse assessment, conducted by a licensed

5 mental health professional or substance abuse professional

6 authorized to complete such assessment, and complete recommended

7 treatment and counseling"; in line 16 before the period insert ":

8 (b) Be subject to periodic urinalysis testing by the

9 supervising probation officer for the use of illegal drugs; and

10 (c) If convicted of violating subsection (1) of this

11 section with respect to amphetamine, its salts, optical isomers,

12 and salts of its isomers, or with respect to methamphetamine, its

13 salts, optical isomers, and salts of its isomers, be prohibited

14 from using any medication containing pseudoephedrine unless

15 prescribed by a practitioner"; in line 17 after "(15)" insert

16 "(a)"; and strike beginning with "attend" in line 18 through

17 "abuse" in line 19, show as stricken, and insert "satisfactorily

18 attend and complete an appropriate mental health or drug abuse

19 assessment, conducted by a licensed mental health professional or

20 substance abuse professional authorized to complete such

21 assessment, and complete recommended treatment and counseling while

22 -serving such sentence within the department or, if such treatment

23 is not completed while serving such sentence, while on parole if

1 parole is granted.

2 (b) Any person convicted of violating this section, if

3 sentenced to the Department of Correctional Services and granted

4 parole shall:

5 (i) Be subject to periodic urinalysis testing by the

6 supervising parole officer for the use of illegal drugs; and

7 (ii) If convicted of a felony under subsection (2) or

8 (10) of this section, be prohibited from using any medication  
 9 containing pseudoephedrine unless prescribed by a practitioner".

Senator Redfield filed the following amendment to LB 117:  
 AM1606

(Amendments to E & R amendments, AM7091)

- 1 1. On page 17, line 23, strike "product" and insert
- 2 "products, unless such drug products are pediatric formulations in
- 3 liquid, liquid capsule, or gel capsule form and phenylpropanolamine
- 4 or pseudoephedrine is not the only active ingredient".

Senator Dw. Pedersen filed the following amendment to LB 117:  
 AM1668

(Amendments to E & R amendments, AM7091)

- 1 1. On page 17, lines 1 through 3, 8, and 9, strike the
- 2 new matter and reinstate the stricken matter; in line 10 strike
- 3 "milligrams"; and in lines 15 and 16 and 16 and 17 strike "one
- 4 thousand four hundred forty milligrams" and insert "three grams".
- 5 2. On page 18, strike beginning with "one" in line 8
- 6 through line 10 and insert "three grams of pseudoephedrine".

Senator McDonald filed the following amendment to LB 332:  
 AM1656

(Amendments to Standing Committee amendments, AM0795)

- 1 1. Strike section 1 and insert the following new
- 2 section:
- 3 "Sec. 2. It is the intent of the Legislature to
- 4 appropriate five hundred thousand dollars from the General Fund for
- 5 FY2005-06 and five hundred thousand dollars from the General Fund
- 6 for FY2006-07, for compulsive gamblers assistance programs, which
- 7 appropriations shall be in addition to any funds appropriated from
- 8 the Charitable Gaming Operations Fund or the State Lottery
- 9 Operation Trust Fund to the Compulsive Gamblers Assistance Fund for
- 10 such fiscal years for such programs.".
- 11 2. Amend the repealer and renumber the remaining
- 12 sections accordingly.

### SELECT FILE

**LEGISLATIVE BILL 673.** The Chambers pending amendment, FA285, found in this day's Journal, to the Loudon pending amendment, was renewed.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Loudon pending amendment:

FA286

Amend AM1587

Strike Section 2.

**SENATOR BAKER PRESIDING**

**SENATOR CUDABACK PRESIDING**

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Loudon pending amendment:

FA287

Amend AM1587

Strike Section 3.

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the Loudon pending amendment:

FA288

Amend AM1587

Strike Section 4.

**SPEAKER BRASHEAR PRESIDING**

Senator Loudon offered the following motion:

Invoke cloture on LB 673, pursuant to Rule 7, Section 10.

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

Senator Loudon requested a roll call vote, in reverse order, on his motion to invoke cloture.

Voting in the affirmative, 32:

Aguilar	Cornett	Foley	Kremer	Smith
Baker	Cudaback	Friend	Langemeier	Stuhr
Beutler	Cunningham	Heidemann	Louden	Stuthman
Burling	Engel	Hudkins	McDonald	Wehrbein
Byars	Erdman	Janssen	Raikes	
Combs	Fischer	Jensen	Redfield	
Connealy	Flood	Kopplin	Schrock	

Voting in the negative, 3:

Chambers      Howard      Schimek

Present and not voting, 7:

Bourne	Brown	Pahls	Synowiecki
Brashear	Johnson	Pederson, D.	

Excused and not voting, 7:

Kruse	Mines	Preister	Thompson
Landis	Pedersen, Dw.	Price	

The Louden motion to invoke cloture failed with 32 ayes, 3 nays, 7 present and not voting, and 7 excused and not voting.

### AMENDMENTS - Print in Journal

Senator Byars filed the following amendment to LB 114:  
AM1480

- 1 1. On page 3, line 14, after "of" insert "(1)"; and in
- 2 line 16 before the period insert "and (2) a telephone number or
- 3 other contact information to assist the parent or guardian in
- 4 receiving information regarding free or reduced-cost visual
- 5 evaluations for low-income families who qualify".

Senator Redfield filed the following amendment to LB 40:  
AM1666

(Amendments to AM1227)

- 1 1. Insert the following new section:
- 2 "Sec. 3. Section 58-708, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 58-708. (1) During each calendar year in which funds are
- 5 available from the Affordable Housing Trust Fund for use by the
- 6 Department of Economic Development, the department shall allocate a
- 7 specific amount of funds, not less than a per capita share of the
- 8 qualified allocation plan fund amount, to each community with a
- 9 population of fifty thousand or more inhabitants according to the
- 10 most recent federal decennial census. Entitlement area funds
- 11 allocated under this section that are not awarded to an eligible
- 12 project from within the entitlement area within one year shall be
- 13 made available for distribution to eligible projects elsewhere in
- 14 the state. The department shall announce a grant and loan
- 15 application period of at least ninety days duration for all
- 16 nonentitlement areas. In selecting projects to receive trust fund
- 17 assistance, the department shall develop a qualified allocation
- 18 plan and give first priority to financially viable projects that
- 19 serve the lowest income occupants for the longest period of time.
- 20 The qualified allocation plan shall:
- 21 (a) Set forth selection criteria to be used to determine
- 22 housing priorities of the housing trust fund which are appropriate
- 23 to local conditions, including the community's immediate need for
- 1 affordable housing, proposed increases in home ownership, private
- 2 dollars leveraged, level of local government support and

3 participation, and repayment, in part or in whole, of financial  
4 assistance awarded by the fund; and  
5 (b) Give first priority in allocating trust fund  
6 assistance among selected projects to those projects which serve  
7 the lowest income occupant and are obligated to serve qualified  
8 occupants for the longest period of time.  
9 (2) The department shall fund in order of priority as  
10 many applications as will utilize available funds less actual  
11 administrative costs of the department in administering the  
12 program. In administering the program the department may contract  
13 for services or directly provide funds to other governmental  
14 entities or instrumentalities."  
15 2. On page 10, line 5, after the second comma insert  
16 "58-708,".  
17 3. Renumber the remaining sections accordingly.

Senator Raikes filed the following amendment to LB 126:  
(Amendment, AM1672, is printed separately and available in the Bill Room,  
Room 1104.)

### VISITORS

Visitors to the Chamber were over 70 members of the Norfolk area Chamber of Commerce; 48 fourth-grade students and teacher from Meadows Elementary School, Omaha; 42 fourth-grade students and teachers from Jefferson Elementary School, Grand Island; and Senator Cunningham's son, John Cunningham, from Chicago.

The Doctor of the Day was Dr. David Minnick from Broken Bow.

### MOTION - Adjournment

Senator Fischer moved to adjourn. The motion prevailed with 16 ayes, 15 nays, 12 present and not voting, and 6 excused and not voting, and at 7:22 p.m., the Legislature adjourned until 9:00 a.m., Friday, May 20, 2005.

Patrick J. O'Donnell  
Clerk of the Legislature

