

**FIFTY-SECOND DAY - MARCH 30, 2006****LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE  
SECOND SESSION****FIFTY-SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, March 30, 2006

**PRAYER**

The prayer was offered by Senator Fischer.

**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 Senators Cunningham, Heidemann, Preister, and Synowiecki who were excused until they arrive.

**SPEAKER BRASHEAR PRESIDING****CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-first day was approved.

**REPORT OF REGISTERED LOBBYISTS**

Following is a list of all lobbyists who have registered as of March 29, 2006, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

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

O'Hara, Lindsay & Associates, Inc.  
Omaha Paper Stock Company

Poorbaugh-Seifert, Renee A.  
Nebraska Association of Convention and Visitors Bureaus

Radcliffe, Walter H. of Radcliffe & Associates  
Custom Electronics Design and Installation Assn.

**REPORTS**

The following reports were received by the Legislature:

**Criminal Justice, Commission on Law Enforcement and**

Traffic Stops in Nebraska Report

**Investment Council**

2005 Annual Report

**Property Assessment and Taxation, Department of**

2005 Annual Report

**Retirement Systems, Public Employees**

State of Nebraska Employees Retirement Plan, Nebraska County Employees Retirement Plan, and State of Nebraska Deferred Compensation Plan

**RESOLUTIONS**

Pursuant to Rule 4, Sec. 5(b), LRs 315 and 316 were adopted.

**SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 315 and 316.

**WITHDRAW - Amendments to LB 57**

Senator Beutler withdrew his pending amendment, AM1369, found on page 1384, First Session, 2005, to LB 57.

Senator Foley withdrew his pending amendment, AM1893, found on page 357, to LB 57.

Senator Beutler withdrew his pending amendment, AM2972, found on page 1321, to LB 57.

**MOTIONS - Return LB 57 to Select File**

Senator Chambers moved to return LB 57 to Select File to reoffer his specific amendment, FA197, found on page 1312, First Session, 2005, and considered on pages 319 and 321.

Senator Chambers withdrew his motion to return.

Senator Chambers moved to return LB 57 to Select File to reoffer his specific amendment, FA198, found on page 1312, First Session, 2005, and considered on pages 322, 330, and 333.

Senator Chambers withdrew his motion to return.

Senator Chambers moved to return LB 57 to Select File to reoffer his specific amendment, FA202, found on page 1315, First Session, 2005, and considered on page 369.

Senator Chambers withdrew his motion to return.

Senator Chambers moved to return LB 57 to Select File to reoffer his specific amendment, FA203, found on page 1315, First Session, 2005, and considered on page 377.

Senator Chambers withdrew his motion to return.

### **WITHDRAW - Amendment to LB 57**

Senator Howard withdrew her pending amendment, AM2665, found on page 987, to LB 57.

### **MOTION - Return LB 57 to Select File**

Senator Landis moved to return LB 57 to Select File for the following specific amendment:  
AM2989

(Amendments to Final Reading copy)

- 1 1. On page 2, lines 12, 17, and 23, after "she" insert ",
- 2 during the commission of an assault on a pregnant woman,"; and in
- 3 lines 13, 18, and 24 strike "an" and insert "her".

Senator Foley asked unanimous consent to pass over LB 57. No objections. So ordered.

### **WITHDRAW - Amendments to LB 454**

Senator Mines withdrew his pending amendment, AM0652, found on page 1413, First Session, 2005, to LB 454.

Senator Thompson withdrew her pending amendments, FA232 and FA233, found on page 1414, First Session, 2005, to LB 454.

### **MOTION - Return LB 454 to Select File**

Senator Thompson moved to return LB 454 to Select File for her specific pending amendment, AM1477, found on page 1414, First Session, 2005.

Senator Thompson asked unanimous consent to withdraw her specific pending amendment, AM1477, found on page 1414, First Session, 2005, and replace it with her substitute specific amendment, AM2960. No objections. So ordered.

AM2960

(Amendments to Final Reading copy)

- 1 1. On page 8, strike beginning with "The" in line 13
- 2 through line 14; strike beginning with "The" in line 18 through
- 3 "renewal" in line 19 and insert "Renewal"; in line 21 after "(3)"
- 4 insert "The Nebraska State Patrol shall establish fees for initial
- 5 and renewal applications for applicants at rates sufficient to
- 6 cover the costs of administering the Concealed Handgun Permit Act";
- 7 and in line 22 strike "Nebraska State Patrol" and insert "patrol".

## SENATOR JANSSEN PRESIDING

## SPEAKER BRASHEAR PRESIDING

Senator Combs offered the following motion:

Invoke cloture on LB 454, pursuant to Rule 7, Section 10.

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

Voting in the affirmative, 36:

|          |            |           |               |            |
|----------|------------|-----------|---------------|------------|
| Aguilar  | Connealy   | Foley     | Langemeier    | Smith      |
| Baker    | Cornett    | Friend    | Louden        | Stuhr      |
| Beutler  | Cudaback   | Heidemann | McDonald      | Synowiecki |
| Bourne   | Cunningham | Hudkins   | Pahls         | Wehrbein   |
| Brashear | Engel      | Janssen   | Pedersen, Dw. |            |
| Burling  | Erdman     | Jensen    | Pederson, D.  |            |
| Byars    | Fischer    | Kremer    | Redfield      |            |
| Combs    | Flood      | Kruse     | Schrock       |            |

Voting in the negative, 10:

|          |         |       |         |          |
|----------|---------|-------|---------|----------|
| Brown    | Johnson | Mines | Raikes  | Stuthman |
| Chambers | Landis  | Price | Schimek | Thompson |

Present and not voting, 2:

|        |          |
|--------|----------|
| Howard | Preister |
|--------|----------|

Excused and not voting, 1:

Kopplin

The Combs motion to invoke cloture prevailed with 36 ayes, 10 nays, 2 present and not voting, and 1 excused and not voting.

The Thompson motion to return to Select File failed with 8 ayes, 30 nays, 10 present and not voting, and 1 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 454 with 36 ayes, 7 nays, 5 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

**LEGISLATIVE BILL 454.**

A BILL FOR AN ACT relating to handguns; to amend section 28-1202, Reissue Revised Statutes of Nebraska; to adopt the Concealed Handgun Permit Act; to provide penalties; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original section.

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, 33:

|          |            |           |               |          |
|----------|------------|-----------|---------------|----------|
| Aguilar  | Connealy   | Flood     | Kremer        | Redfield |
| Baker    | Cornett    | Foley     | Langemeier    | Schrock  |
| Bourne   | Cudaback   | Friend    | Louden        | Smith    |
| Brashear | Cunningham | Heidemann | McDonald      | Stuhr    |
| Burling  | Engel      | Hudkins   | Pahls         | Wehrbein |
| Byars    | Erdman     | Janssen   | Pedersen, Dw. |          |
| Combs    | Fischer    | Jensen    | Pederson, D.  |          |

Voting in the negative, 12:

|          |         |        |          |
|----------|---------|--------|----------|
| Beutler  | Howard  | Landis | Raikes   |
| Brown    | Johnson | Mines  | Schimek  |
| Chambers | Kruse   | Price  | Thompson |

Present and not voting, 3:

|          |          |            |
|----------|----------|------------|
| Preister | Stuthman | Synowiecki |
|----------|----------|------------|

Excused and not voting, 1:

Kopplin

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 454A.**

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 454, Ninety-ninth Legislature, Second Session, 2006.

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, 36:

|          |            |            |               |          |
|----------|------------|------------|---------------|----------|
| Aguilar  | Connealy   | Friend     | Louden        | Smith    |
| Baker    | Cornett    | Heidemann  | McDonald      | Stuhr    |
| Bourne   | Cunningham | Hudkins    | Pahls         | Thompson |
| Brashear | Engel      | Janssen    | Pedersen, Dw. | Wehrbein |
| Brown    | Erdman     | Jensen     | Pederson, D.  |          |
| Burling  | Fischer    | Johnson    | Raikes        |          |
| Byars    | Flood      | Kremer     | Redfield      |          |
| Combs    | Foley      | Langemeier | Schrock       |          |

Voting in the negative, 4:

|         |          |        |       |
|---------|----------|--------|-------|
| Beutler | Chambers | Landis | Price |
|---------|----------|--------|-------|

Present and not voting, 8:

|          |       |          |            |
|----------|-------|----------|------------|
| Cudaback | Kruse | Preister | Stuthman   |
| Howard   | Mines | Schimek  | Synowiecki |

Excused and not voting, 1:

Kopplin

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

**SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 454 and 454A.

**AMENDMENTS - Print in Journal**

Senator Schrock filed the following amendment to LB 1226:

AM2979

(Amendments to Standing Committee amendments, AM2578)

- 1 1. On page 84, line 15, after "46-715" insert ". This
- 2 subdivision does not apply to a water user described in this
- 3 subdivision that is regulated by the Industrial Ground Water
- 4 Regulatory Act or the United States Nuclear Regulatory Commission".

Senator Schimek filed the following amendment to LB 239:  
AM1792

- 1 1. On page 4, line 15, strike "2005" and insert "2006".

Senators Wehrbein and Cunningham filed the following amendment to LB 489:  
(Amendment, AM2941, is printed separately and available in the Bill Room, Room 1104.)

Senator Erdman filed the following amendment to LB 239:  
FA651

Amendment to AM1792

Strike "2006" and insert "2007"

Senator Erdman filed the following amendment to LB 239:  
FA652

Amendment to AM1792

Strike "2006" and insert "2008"

### GENERAL FILE

**LEGISLATIVE BILL 845.** Title read. Considered.

### SENATOR CUDABACK PRESIDING

Senator Kruse renewed his pending amendment, AM2320, found on page 694.

Senator Landis moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 1 nay, and 22 not voting.

The Kruse amendment was adopted with 28 ayes, 1 nay, 19 present and not voting, and 1 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 21 present and not voting, and 1 excused and not voting.

**LEGISLATIVE BILL 745.** Title read. Considered.

The Standing Committee amendment, AM0679, found on page 731, First Session, 2005, was considered.

Senator Chambers offered the following motion:

Bracket LB 745 until April 11, 2006.

Pending.

### PRESENTED TO THE GOVERNOR

Presented to the Governor on March 30, 2006, at 11:45 a.m. were the following: LBs 454 and 454A.

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

### SELECT COMMITTEE REPORTS Enrollment and Review

**LEGISLATIVE BILL 1199.** Placed on Select File as amended.

E & R amendment to LB 1199:

AM7204

- 1 1. In the Standing Committee amendment, AM2715:
- 2 a. On page 7, line 19, strike "did" and insert "does";
- 3 b. On page 8, line 6, after "section" insert "and";
- 4 c. On page 8, lines 21 and 24; page 9, line 2; page 10,
- 5 line 3; and page 18, line 1, strike the commas and reinstate the
- 6 stricken "or";
- 7 d. On page 9, line 7, reinstate the stricken "or"; in
- 8 line 8 strike the comma; and in line 13 after the second comma
- 9 insert "or" and strike the last comma;
- 10 e. On page 30, line 9, strike "they are" and insert "he
- 11 or she is";
- 12 f. On page 37, line 11, strike the comma and show as
- 13 stricken; and in line 12 after "sentencing" insert an underscored
- 14 comma;
- 15 g. On page 49, line 23, strike the new matter and after
- 16 "28-386" insert "or section 6 of this act";
- 17 h. On page 50, line 3, after the first comma insert "in";
- 18 i. On page 58, line 2, after "disorder" insert an
- 19 underscored comma;
- 20 j. On page 61, line 9, after "71-921" insert "or section
- 21 64 of this act";
- 22 k. On page 62, line 22, strike "subsection" and insert
- 23 "subdivision";
- 1 l. On page 64, line 10, after "Act" insert "or the Sex
- 2 Offender Commitment Act";
- 3 m. On page 67, line 19, strike the last "the", show as
- 4 stricken, and insert "either"; and in line 22 strike "acts", show
- 5 as stricken, and insert "actions";
- 6 n. On page 69, line 17; page 72, line 14; page 76, lines
- 7 10 and 18; page 77, line 8; and page 78, line 23, after "in" insert
- 8 "subdivision (1) of";

- 9 o. On page 87, line 22, after "offender" insert an  
 10 underscored comma; and in line 24 strike "69" and insert "68";
- 11 p. On page 90, line 25, strike the new matter and  
 12 reinstate the stricken matter;
- 13 q. On page 96, line 2, after "offenders" insert "as  
 14 defined in section 90 of this section";
- 15 r. On page 97, line 13, strike the commas and after  
 16 "incarceration" insert "or";
- 17 s. On page 98, line 4, strike "section 81-1850 and" and  
 18 strike "88" and insert "89"; and in line 7 after "or" insert  
 19 "with";
- 20 t. On page 100, line 7, strike "his or her" and insert  
 21 "the"; and in line 16 strike "(5)";
- 22 u. On page 106, line 1, reinstate the stricken matter;  
 23 in line 8 strike the last occurrence of "parole"; and in line 20  
 24 strike "sex offenders" and insert "individuals";
- 25 v. On page 106, lines 11 and 24; and page 107, line 13,  
 26 strike "a sex offender" and insert "an individual";
- 27 w. On page 106, line 22; page 107, lines 2 and 9;  
 1 and page 110, line 6, strike "Parole Administrator" and insert  
 2 "administrator";
- 3 x. On page 107, lines 5 and 6, strike "101 of this act"  
 4 and insert "83-1,102";
- 5 y. On page 108, line 5, after the semicolon insert "and";  
 6 in line 16 strike "(d)" and insert "(iv)"; in line 18, strike  
 7 "(iv)" and insert "(v)"; in line 21 strike "(v)" and insert "(vi)";  
 8 and in line 27 strike "offender" and insert "individual";
- 9 z. On page 109, line 14, strike "offender" and  
 10 insert "individual"; and in line 21 strike "person" and insert  
 11 "individual";
- 12 aa. On page 110, line 12, after "evidence" insert "(a)";  
 13 in line 13 strike "(a)"; and in line 20 strike "90" and insert  
 14 "89";
- 15 bb. On page 111, line 4, strike the new matter and  
 16 reinstate the stricken matter; and in line 5 after "Act" insert "or  
 17 the Sex Offender Commitment Act";
- 18 cc. On page 116, line 7, after "lifetime" insert  
 19 "community";
- 20 dd. On page 117, line 12, strike "their" and insert  
 21 "its"; and
- 22 ee. On page 118, line 24, strike "; and" and insert an  
 23 underscored period.
- 24 2. On page 1, strike beginning with "crimes" in line 1  
 25 through line 13 and insert "sex offenses; to amend sections 28-319,  
 26 28-367, 29-2028, 29-2221, 42-1203, 71-1,206.14, 71-1,206.18,  
 27 71-1,206.34, 71-6908, 79-267, 83-1,100, and 83-1,103, Reissue  
 1 Revised Statutes of Nebraska, sections 28-101, 28-111, 28-311,  
 2 28-318, 28-320.01, 28-320.02, 28-707, 29-119, 29-1926, 29-2290,  
 3 29-2923, 29-3705, 29-4001, 29-4005, 29-4006, 29-4007, 29-4011,

4 29-4103, 71-912, 71-914, 71-916, 71-917, 71-918, 71-942, 71-944,  
 5 71-945, 71-946, 71-947, 71-948, 71-949, 71-954, 71-956, 71-957,  
 6 71-958, 71-959, 71-960, 71-961, 71-962, 80-601, 81-1850, 83-338,  
 7 83-351, 83-364, 83-376, and 83-933, Revised Statutes Cumulative  
 8 Supplement, 2004, and sections 29-110, 29-4003, 29-4004, 29-4009,  
 9 29-4013, 83-1.102, 83-1.135, and 83-4.143, Revised Statutes  
 10 Supplement, 2005; to create the offenses of sexual assault of  
 11 a child in the first, second, and third degrees; to provide  
 12 penalties; to change provisions relating to sex offenses and  
 13 the Sex Offender Registration Act; to adopt the Sexual Predator  
 14 Residency Restriction Act and the Sex Offender Commitment Act;  
 15 to provide duties for authorities with respect to the release  
 16 of certain sex offenders; to provide for lifetime community  
 17 supervision of certain sex offenders as prescribed; to provide  
 18 duties for the Office of Parole Administration and parole officers;  
 19 to change provisions relating to the Nebraska Treatment and  
 20 Corrections Act; to provide duties for sentencing courts; to  
 21 establish a working group; to provide a termination date; to  
 22 harmonize provisions; and to repeal the original sections.".  
 23 3. On page 2, strike lines 1 through 12.

**LEGISLATIVE BILL 1199A.** Placed on Select File.

**LEGISLATIVE BILL 1226.** Placed on Select File as amended.  
 E & R amendment to LB 1226:

AM7210

1 1. In the Standing Committee amendments, AM2578:  
 2 a. On page 1, line 18, strike "such section" and insert  
 3 "section 2-955";  
 4 b. On page 5, line 14, strike "whereapplying" and insert  
 5 "when applying";  
 6 c. On page 5, line 23; and page 6, line 8, strike  
 7 beginning with "as" through the last comma.  
 8 d. On page 26, line 7, strike "department's" and after  
 9 "approval" insert "of the Department of Natural Resources";  
 10 e. On page 31, line 12, strike "department", show as  
 11 stricken, and insert "Department of Natural Resources";  
 12 f. On page 34, line 11; and page 35, line 17, strike  
 13 "subsection" and insert "subdivision";  
 14 g. On page 42, line 21, strike "are" and insert "is";  
 15 h. On page 45, line 19, strike "subdivision" and insert  
 16 "subsection";  
 17 i. On page 48, line 2; and page 81, line 5, strike  
 18 "department" and insert "Department of Natural Resources";  
 19 j. On page 53, lines 19 and 20, strike "director of the  
 20 department" and insert "Director of Natural Resources";  
 21 k. On page 81, line 11, strike "(b)" and insert "(b)(i)";  
 22 in line 18 strike "(b)(ii)" and insert "(b)(iii)"; in line 19  
 23 strike "(i)" and insert "(ii)"; and in line 21 after "west" insert

1 an underscored comma;  
 2 1. On page 82, line 1, strike "(ii)" and insert "(iii)";  
 3 m. On page 83, line 8, strike "(3)(b)(i)" and insert  
 4 "(3)(b)(ii)"; and  
 5 n. On page 88, line 15, after "designated" insert "as".  
 6 2. On page 1, strike beginning with "water" in line 1  
 7 through line 5 and insert "the environment; to amend sections  
 8 46-229.02, 46-229.03, 46-229.04, 46-290, 46-291, 46-294.01,  
 9 46-2,112, 46-2,136, 46-602, 46-655.01, 46-683, 46-691.03, 46-701,  
 10 46-706, 46-712, 46-713, 46-714, 46-715, 46-719, 46-739, 46-740, and  
 11 61-205, Reissued Revised Statutes of Nebraska, sections 2-945.01,  
 12 2-1588, 2-3225, and 2-3240, Revised Statutes Cumulative Supplement,  
 13 2004, and section 77-3442, Revised Statutes Supplement, 2005; to  
 14 change notice requirements for projects under the Noxious Weed  
 15 Control Act; to change provisions relating to the Natural Resources  
 16 Development Fund; to provide and change tax levy authority for  
 17 natural resources districts; to create the Storm Water Management  
 18 Plan Program and the Interrelated Water Management Plan Program;  
 19 to change provisions relating to water appropriations, the Water  
 20 Policy Task Force, water wells, and the Nebraska Ground Water  
 21 Management and Protection Act; to provide powers for the Department  
 22 of Natural Resources; to harmonize provisions; to provide operative  
 23 dates; to repeal the original sections; and to declare an  
 24 emergency."

**LEGISLATIVE BILL 1226A.** Placed on Select File.

**LEGISLATIVE BILL 1227.** Placed on Select File as amended.

E & R amendment to LB 1227:

AM7206

1 1. On page 1, line 6, strike "and" and after "sections"  
 2 insert "; and to declare an emergency".

**LEGISLATIVE BILL 940.** Placed on Select File as amended.

E & R amendment to LB 940:

AM7209

1 1. In the Standing Committee amendments, AM2411, on page  
 2 5, line 23, strike "State".  
 3 2. On page 1, strike beginning with "state" in line 1  
 4 through line 2 and insert "government; to amend sections 32-716,  
 5 32-1524, and 49-1434, Reissue Revised Statutes of Nebraska; to  
 6 change provisions relating to new political parties, prohibited  
 7 acts at or near designated polling sites, and lobbying; to prohibit  
 8 certain activities of the Secretary of State related to campaign  
 9 committees; to create the Office of Homeland Security, the Director  
 10 of State Homeland Security, and the Homeland Security Policy Group;  
 11 and to repeal the original sections."

(Signed) Michael Flood, Chairperson

**NOTICE OF COMMITTEE HEARING**  
**Government, Military and Veterans Affairs**  
 Room 1507

Monday, April 10, 2006

1:15 p.m.

Judy Schweikart - Accountability and Disclosure Commission

(Signed) DiAnna R. Schimek, Chairperson

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 845A.** Introduced by Landis, 46; Kruse, 13.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 845, Ninety-ninth Legislature, Second Session, 2006.

**AMENDMENTS - Print in Journal**

Senator Mines filed the following amendment to LB 1222:  
 AM2986

(Amendments to E &amp; R amendments, AM7200)

- 1 1. Insert the following new sections:
- 2 Section 1. Section 86-420, Revised Statutes Supplement,
- 3 2005, is amended to read:
- 4 86-420 Sections 86-420 to 86-441.01 and section 2 of this
- 5 act shall be known and may be cited as the Emergency Telephone
- 6 Communications Systems Act.
- 7 Sec. 2. Each county shall implement enhanced-911 service
- 8 by July 1, 2009.
- 9 2. On page 8, line 26, after the last comma insert "and
- 10 section 86-420, Revised Statutes Supplement, 2005,".
- 11 3. Renumber the remaining sections and correct internal
- 12 references accordingly.

Senator Baker filed the following amendment to LB 1189:  
 AM2928

(Amendments to E &amp; R amendments, AM7199)

- 1 1. Insert the following new sections:
- 2 Section 1. Section 66-1344, Revised Statutes Supplement,
- 3 2005, is amended to read:
- 4 66-1344 (1) Beginning June 1, 2000, during such period
- 5 as funds remain in the Ethanol Production Incentive Cash Fund,
- 6 any ethanol facility shall receive a credit of seven and one-half
- 7 cents per gallon of ethanol, before denaturing, for new production
- 8 for a period not to exceed thirty-six consecutive months. For

9 purposes of this subsection, new production means production which  
10 results from the expansion of an existing facility's capacity by  
11 at least two million gallons first placed into service after June  
12 1, 1999, as certified by the facility's design engineer to the  
13 Department of Revenue. For expansion of an existing facility's  
14 capacity, new production means production in excess of the average  
15 of the highest three months of ethanol production at an ethanol  
16 facility during the twenty-four-month period immediately preceding  
17 certification of the facility by the design engineer. No credits  
18 shall be allowed under this subsection for expansion of an existing  
19 facility's capacity until production is in excess of twelve times  
20 the three-month average amount determined under this subsection  
21 during any twelve-consecutive-month period beginning no sooner than  
22 June 1, 2000. New production shall be approved by the Department  
1 of Revenue based on such ethanol production records as may be  
2 necessary to reasonably determine new production. This credit must  
3 be earned on or before December 31, 2003.

4 (2)(a) Beginning January 1, 2002, any new ethanol  
5 facility which is in production at the minimum rate of one  
6 hundred thousand gallons annually for the production of ethanol,  
7 before denaturing, and which has provided to the Department of  
8 Revenue written evidence substantiating that the ethanol facility  
9 has received the requisite authority from the Department of  
10 Environmental Quality and from the United States Department of  
11 Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives,  
12 on or before June 30, 2004, shall receive a credit of eighteen  
13 cents per gallon of ethanol produced for ninety-six consecutive  
14 months beginning with the first calendar month for which it is  
15 eligible to receive such credit and ending not later than June 30,  
16 2012, if the facility is defined by subdivision (b)(i) of this  
17 subsection, and for forty-eight consecutive months beginning with  
18 the first calendar month for which it is eligible to receive such  
19 credit and ending not later than June 30, 2008, if the facility  
20 is defined by subdivision (b)(ii) of this subsection. The new  
21 ethanol facility shall provide an analysis to the Department of  
22 Revenue of samples of the product collected according to procedures  
23 specified by the department no later than July 30, 2004, and at  
24 least annually thereafter. The analysis shall be prepared by an  
25 independent laboratory meeting the International Organization for  
26 Standardization standard ISO/IEC 17025:1999. Prior to collecting  
27 the samples, the new ethanol facility shall notify the department  
1 which may observe the sampling procedures utilized by the new  
2 ethanol facility to obtain the samples to be submitted for  
3 independent analysis. The minimum rate shall be established for a  
4 period of at least thirty days. In this regard, the new ethanol  
5 facility must produce at least eight thousand two hundred nineteen  
6 gallons of ethanol within a thirty-day period. The ethanol must be  
7 finished product which is ready for sale to customers.

8 (b) For purposes of this subsection, new ethanol facility

9 means a facility for the conversion of grain or other raw feedstock  
10 into ethanol and other byproducts of ethanol production which (i)  
11 is not in production on or before September 1, 2001, or (ii) has  
12 not received credits prior to June 1, 1999. A new ethanol facility  
13 does not mean an expansion of an existing ethanol plant that  
14 does not result in the physical construction of an entire ethanol  
15 processing facility or which shares or uses in a significant manner  
16 any existing plant's systems or processes and does not include  
17 the expansion of production capacity constructed after June 30,  
18 2004, of a plant qualifying for credits under this subsection. This  
19 definition applies to contracts entered into after April 16, 2004.

20 (c) Not more than fifteen million six hundred  
21 twenty-five thousand gallons of ethanol produced annually  
22 at an ethanol facility shall be eligible for credits under  
23 this subsection. Not more than one hundred twenty-five  
24 million gallons of ethanol produced at an ethanol facility  
25 by the end of the ninety-six-consecutive-month period or  
26 forty-eight-consecutive-month period set forth in this subsection  
27 shall be eligible for credits under this subsection.

1 (3) The credits described in this section shall be given  
2 only for ethanol produced at a plant in Nebraska at which all  
3 fermentation, distillation, and dehydration takes place. No credit  
4 shall be given on ethanol produced for or sold for use in the  
5 production of beverage alcohol. Not more than ten million gallons  
6 of ethanol produced during any twelve-consecutive-month period at  
7 an ethanol facility shall be eligible for the credit described  
8 in subsection (1) of this section. The credits described in this  
9 section shall be in the form of a nonrefundable, transferable motor  
10 vehicle fuel or diesel fuel tax credit certificate. No transfer  
11 of credits will be allowed between the ethanol producer and motor  
12 vehicle fuel or diesel fuel licensees who are related parties.

13 (4) Ethanol production eligible for credits under this  
14 section shall be measured by a device approved by the Division of  
15 Weights and Measures of the Department of Agriculture. Confirmation  
16 of approval by the division shall be provided by the ethanol  
17 facility at the time the initial claim for credits provided under  
18 this section is submitted to the Department of Revenue and annually  
19 thereafter. Claims submitted by the ethanol producer shall be  
20 based on the total number of gallons of ethanol produced, before  
21 denaturing, during the reporting period measured in gross gallons.

22 (5) The Department of Revenue shall prescribe an  
23 application form and procedures for claiming credits under this  
24 section. In order for a claim for credits to be accepted, it must  
25 be filed by the ethanol producer within three years of the date  
26 the ethanol was produced or by September 30, 2012, whichever occurs  
27 first.

1 (6) Every producer of ethanol shall maintain records  
2 similar to those required by section 66-487. The ethanol producer  
3 must maintain invoices, meter readings, load-out sheets or

4 documents, inventory records, including work-in-progress, finished  
5 goods, and denaturant, and other memoranda requested by the  
6 Department of Revenue relevant to the production of ethanol. On  
7 an annual basis, the ethanol producer shall also be required to  
8 furnish the department with copies of the reports filed with the  
9 United States Department of Justice, Bureau of Alcohol, Tobacco,  
10 Firearms and Explosives. The maintenance of all of this information  
11 in a provable computer format or on microfilm is acceptable in  
12 lieu of retention of the original documents. The records must be  
13 retained for a period of not less than three years after the claim  
14 for ethanol credits is filed.

15 (7) For purposes of ascertaining the correctness of any  
16 application for claiming a credit provided in this section, the  
17 Tax Commissioner (a) may examine or cause to have examined, by  
18 any agent or representative designated by him or her for that  
19 purpose, any books, papers, records, or memoranda bearing upon such  
20 matters, (b) may by summons require the attendance of the person  
21 responsible for rendering the application or other document or  
22 any officer or employee of such person or the attendance of any  
23 other person having knowledge in the premises, and (c) may take  
24 testimony and require proof material for his or her information,  
25 with power to administer oaths or affirmations to such person  
26 or persons. The time and place of examination pursuant to this  
27 subsection shall be such time and place as may be fixed by the  
1 Tax Commissioner and as are reasonable under the circumstances.  
2 In the case of a summons, the date fixed for appearance before  
3 the Tax Commissioner shall not be less than twenty days from the  
4 time of service of the summons. No taxpayer shall be subjected  
5 to unreasonable or unnecessary examinations or investigations. All  
6 records obtained pursuant to this subsection shall be subject to  
7 the confidentiality requirements and exceptions thereto as provided  
8 in section 77-27,119.

9 (8) To qualify for credits under this section, an ethanol  
10 producer shall provide public notice for bids before entering  
11 into any contract for the construction of a new ethanol facility.  
12 Preference shall be given to a bidder residing in Nebraska when  
13 awarding any contract for construction of a new ethanol facility  
14 if comparable bids are submitted. For purposes of this subsection,  
15 bidder residing in Nebraska means any person, partnership, foreign  
16 or domestic limited liability company, association, or corporation  
17 authorized to engage in business in the state with employees  
18 permanently located in Nebraska. If an ethanol producer enters into  
19 a contract for the construction of a new ethanol facility with  
20 a bidder who is not a bidder residing in Nebraska, such producer  
21 shall demonstrate to the satisfaction of the Department of Revenue  
22 in its application for credits that no comparable bid was submitted  
23 by a responsible bidder residing in Nebraska. The department shall  
24 deny an application for credits if it is determined that the  
25 contract was denied to a responsible bidder residing in Nebraska

26 without cause.

27 (9) The pertinent provisions of Chapter 66, article 7,  
1 relating to the administration and imposition of motor fuel taxes  
2 shall apply to the administration and imposition of assessments  
3 made by the Department of Revenue relating to excess credits  
4 claimed by ethanol producers under the Ethanol Development Act.  
5 These provisions include, but are not limited to, issuance of  
6 a deficiency following an examination of records, an assessment  
7 becoming final after thirty days absent a written protest,  
8 presumptions regarding the burden of proof, issuance of deficiency  
9 within three years of original filing, issuance of notice by  
10 registered or certified mail, issuance of penalties and waiver  
11 thereof, issuance of interest and waiver thereof, and issuance of  
12 corporate officer or employee or limited liability company manager  
13 or member assessments. For purposes of determining interest and  
14 penalties, the due date will be considered to be the date on which  
15 the credits were used by the licensees to whom the credits were  
16 transferred.

17 (10) If a written protest is filed by the ethanol  
18 producer with the department within the thirty-day period in  
19 subsection (9) of this section, the protest shall: (a) Identify  
20 the ethanol producer; (b) identify the proposed assessment which  
21 is being protested; (c) set forth each ground under which a  
22 redetermination of the department's position is requested together  
23 with facts sufficient to acquaint the department with the exact  
24 basis thereof; (d) demand the relief to which the ethanol producer  
25 considers itself entitled; and (e) request that an evidentiary  
26 hearing be held to determine any issues raised by the protest if  
27 the ethanol producer desires such a hearing.

1 (11) For applications received after April 16, 2004, an  
2 ethanol facility receiving benefits under the Ethanol Development  
3 Act shall not be eligible for benefits under the Employment and  
4 Investment Growth Act, the Invest Nebraska Act, or the Nebraska  
5 Advantage Act.

6 Sec. 9. Original section 66-1344, Revised Statutes  
7 Supplement, 2005, is repealed.

8 2. Correct the operative date section so that the  
9 sections added by this amendment become operative on their  
10 effective date.

11 3. Renumber the remaining sections and correct internal  
12 references accordingly.

## GENERAL FILE

**LEGISLATIVE BILL 745.** The Chambers pending motion, found in this day's Journal, to bracket until April 11, 2006, was renewed.

Pending.

**RESOLUTION**

**LEGISLATIVE RESOLUTION 441.** Introduced by Kremer, 34; Baker, 44; Burling, 33; Combs, 32; Connealy, 16; Cunningham, 40; Engel, 17; Erdman, 47; Fischer, 43; Flood, 19; Friend, 10; Heidemann, 1; Hudkins, 21; Langemeier, 23; Louden, 49; McDonald, 41; Mines, 18; Raikes, 25; Schrock, 38; Smith, 48; Stuhr, 24; Stuthman, 22; Wehrbein, 2.

WHEREAS, having an affordable, reliable, and plentiful energy supply is critical to our economy, as well as our national and international food supply; and

WHEREAS, current and future risks to national energy security are mounting while domestic and global energy demands are growing exponentially; and

WHEREAS, Nebraska has tremendous renewable energy resources; and

WHEREAS, the development of a broad spectrum of renewable energy sources, including wind power, biodiesel, biomass, methane digesters, ethanol, and solar, benefits the environment and will have a direct economic benefit to agricultural landowners and rural communities; and

WHEREAS, rural communities and agriculture sectors will experience multiple benefits, including establishing additional markets for agricultural commodities, increasing farm income, creating added-value uses for crops, livestock, and their byproducts, more productive use of marginal lands, the resolution of air, water, and soil quality problems that may arise from agricultural operations, improving wildlife habitat, and creating many new job opportunities; and

WHEREAS, solar and wind energy can be captured on the vast land areas managed by American agriculture, and technology and production capabilities allow America's farmers and ranchers to play a major role in ensuring a fully sustainable national energy system; and

WHEREAS, American agriculture is well-positioned to play an expanded role in the development and implementation of new energy solutions and, with appropriate technological innovation, incentives, and investments, America's farms and ranches can become the factories that produce a new generation of fuels to help meet the nation's energy needs; and

WHEREAS, "25 by 25" is an agriculturally led initiative that envisions America's farms and ranches producing twenty-five percent of America's energy demand by the year 2025 while continuing to produce abundant, safe, and affordable food and fiber; and

WHEREAS, agriculture's role as an energy producer will have a positive effect on national security and trade imbalances and will serve as a catalyst for rural development in Nebraska.

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

1. That the Legislature supports the vision of "25 by 25", whereby agriculture will provide twenty-five percent of the total energy consumed in the United States by the year 2025, while continuing to produce abundant, safe, and affordable food and fiber.

2. That copies of this resolution be sent to the Nebraska Congressional

Delegation, the Majority Leader and Minority Leader of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Majority and Minority Leader of the U.S. House of Representatives, and President George W. Bush.

### **SPEAKER'S ANNOUNCEMENT**

Pursuant to Rule 4, Section 8, LR 441 was referred to the Reference Committee.

### **REFERENCE COMMITTEE REPORT**

The Legislative Council Executive Board submits the following report:

|              |                  |
|--------------|------------------|
| <b>LB/LR</b> | <b>Committee</b> |
| LR 441       | Agriculture      |

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

### **VISITORS**

Visitors to the Chamber were Kristine Kubik from Prague; 45 high school students and teacher from Ralston; 50 fifth-grade students and teachers from Meadowlark Elementary School, Kearney; and 23 twelfth-grade students and sponsors from Cambridge.

The Doctor of the Day was Dr. Derrick Anderson from Lincoln.

### **ADJOURNMENT**

At 1:29 p.m., on a motion by Senator Price, the Legislature adjourned until 10:00 a.m., Monday, April 3, 2006.

Patrick J. O'Donnell  
Clerk of the Legislature