

FORTY-SEVENTH DAY - MARCH 15, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****FORTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, March 15, 2007

PRAYER

The prayer was offered by Senator Kruse.

ROLL CALL

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

The roll was called and all members were present except Senators Ashford, Engel, Heidemann, Loudon, Mines, Nantkes, and White who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-sixth day was approved.

MESSAGE FROM THE GOVERNOR

March 14, 2007

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

Dear Mr. O'Donnell:

Engrossed Legislative Bill 185e was received in my office on March 8, 2007.

I signed this bill and delivered it to the Secretary of State on March 14, 2007.

Sincerely,
(Signed) Dave Heineman
Governor

MESSAGE FROM THE GOVERNOR

March 15, 2007

Mr. President, Speaker Flood
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Senators:

Please withdraw the following individual from consideration for confirmation of appointment to the Community Corrections Council:

Alan Smith, 210094 Wright's Gap Road, Gering NE 69341

Thank you.

Sincerely,
(Signed) Dave Heineman
Governor

REPORTS

The following reports were received by the Legislature:

Economic Development, Department of

LB 327 Report to the Legislature on the Nebraska Microenterprise Development Act, January 2007

Roads, Department of

Board of Public Roads Classifications and Standards Minutes for December 2006

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of March 14, 2007, 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

Goodier, Donna
Nebraska Association of Convention and Visitors Bureaus

GENERAL FILE

LEGISLATIVE BILL 663. Senator Hudkins asked unanimous consent to bracket until April 18, 2007. No objections. So ordered.

LEGISLATIVE BILL 328. Title read. Considered.

Committee AM391, printed separately and referred to on page 596, was considered.

Senator Synowiecki renewed his amendment, AM479, found on page 798, to the committee amendment.

The Synowiecki amendment was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

The committee amendment, as amended, was adopted with 35 ayes, 0 nays, 9 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 37 ayes, 0 nays, 7 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 160. Title read. Considered.

Committee AM503, found on page 676, was adopted with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 578. Title read. Considered.

Committee AM573, found on page 800, was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for review with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 681. Title read. Considered.

Advanced to E & R for review with 29 ayes, 2 nays, 15 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 106. Title read. Considered.

Committee AM365, found on page 638, was considered.

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

The Chair sustained the division of the question.

The first committee amendment is as follows:

FA40

- 1 1. Strike the original sections and insert the following
 2 new sections:
 3 Section 1. Section 77-4001, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 77-4001 Sections 77-4001 to 77-4025 and section 4 of this
 6 act shall be known and may be cited as the Tobacco Products Tax
 7 Act.
 8 Sec. 2. Section 77-4002, Reissue Revised Statutes of
 9 Nebraska, is amended to read:
 10 77-4002 For purposes of the Tobacco Products Tax Act,
 11 unless the context otherwise requires, the definitions found in
 12 sections 77-4003 to 77-4007 and section 4 of this act shall be
 13 used.
 14 Sec. 3. Section 77-4004, Reissue Revised Statutes of
 15 Nebraska, is amended to read:
 16 77-4004 First owner ~~shall mean~~ means any person:
 17 (1) Engaged in the business of selling tobacco products
 18 or smoking tobacco in this state who brings or causes to be brought
 19 into this state from outside this state any tobacco products or
 20 smoking tobacco for sale in this state, including a retailer who
 21 purchases directly from suppliers outside this state who are not
 22 licensed pursuant to subsection (2) of section 77-4009;
 23 (2) Who makes, manufactures, or fabricates tobacco
 1 products or smoking tobacco in this state for sale in this state;
 2 or
 3 (3) Engaged in business outside this state who ships
 4 or transports tobacco products or smoking tobacco to retailers in
 5 this state and who becomes licensed pursuant to subsection (2) of
 6 section 77-4009.
 7 Sec. 4. Smoking tobacco means (1) cigars, (2) cheroots,
 8 (3) stogies, (4) periques, and (5) granulated, plug cut, crimp cut,
 9 ready rubbed, and other tobacco prepared in such manner as to be
 10 suitable for smoking, except that smoking tobacco does not mean
 11 cigarettes as defined in section 77-2601.
 12 Sec. 5. Section 77-4007, Reissue Revised Statutes of
 13 Nebraska, is amended to read:
 14 77-4007 Tobacco products ~~shall mean~~ (1) cigars, (2)
 15 cheroots, (3) stogies, (4) periques, (5) granulated, plug cut,
 16 crimp cut, ready rubbed, and other smoking tobacco, (6) means (1)
 17 snuff, (7)-(2) snuff flour, (8)-(3) cavendish, (9)-(4) plug and
 18 twist tobacco, (10)-(5) fine cut and other chewing tobacco, (11)
 19 (6) shorts, refuse scraps, clippings, cuttings, and sweepings of
 20 tobacco, and (12)-(7) other kinds and forms of tobacco, prepared
 21 in such manner as to be suitable for chewing, or smoking in a pipe

22 ~~or otherwise or both for chewing and smoking~~, except that tobacco
23 products shall does not mean cigarettes as defined in section
24 77-2601.

1 Sec. 7. Section 77-4009, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-4009 (1) Each first owner of tobacco products and
4 smoking tobacco to be sold in this state shall be licensed by
5 the Tax Commissioner. Every application for such license shall be
6 made on a form prescribed by the Tax Commissioner. The application
7 shall include: (a) The name and address of the applicant or, if
8 the applicant is a firm, partnership, limited liability company, or
9 association, the name and address of each of its members or, if
10 the applicant is a corporation, the name and address of each of
11 its officers and the address of its principal place of business;
12 (b) the location of the place of business to be licensed; and (c)
13 such other information as the Tax Commissioner may require for the
14 purpose of administering the Tobacco Products Tax Act.

15 (2) A person outside of this state who ships or
16 transports tobacco products or smoking tobacco to any person
17 in this state to be sold in this state may make application for a
18 license and be granted such a license by the Tax Commissioner. If
19 a license is granted, such person shall be subject to the Tobacco
20 Products Tax Act and shall be entitled to act as a licensee.
21 A person outside this state who receives a license shall have
22 established sufficient contact with this state for the exercise
23 of personal jurisdiction over the person in any matter or issue
24 arising under the act.

25 Sec. 8. Section 77-4014, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 77-4014 (1) On or before the tenth day of each calendar
1 month ~~commencing on or after January 1, 1988~~, every person licensed
2 under subsection (1) of section 77-4009 shall file a return with
3 the Tax Commissioner showing either the quantity and the price of
4 each tobacco product or smoking tobacco brought or caused to be
5 brought into this state for sale or the quantity and the price
6 of each tobacco product or smoking tobacco made, manufactured,
7 or fabricated in this state for sale in this state, whichever
8 is applicable, during the preceding calendar month. For tobacco
9 products, such return shall also include the net weight as listed
10 by the manufacturer.

11 (2) Every person licensed pursuant to subsection (2) of
12 section 77-4009 shall, in the manner described in subsection (1) of
13 this section, file a return showing in detail the different kinds,
14 quantity, and wholesale sales price of each tobacco product or
15 smoking tobacco shipped or transported to retailers in this state
16 to be sold by such retailers during the preceding calendar month.
17 For tobacco products, such return shall also include the net weight
18 as listed by the manufacturer.

19 (3) Returns shall be made upon forms furnished and

20 prescribed by the Tax Commissioner. Each return shall be
21 accompanied by a remittance for the full tax liability shown, less
22 an amount of such liability equal to any amount allowed a payer of
23 the sales and use tax pursuant to subdivision (1)(d) of section
24 77-2708 as compensation to reimburse the licensee for his or her
25 expenses incurred in complying with the Tobacco Products Tax Act.

26 Sec. 9. Section 77-4017, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 77-4017 (1) Every licensee shall keep complete and
2 accurate records for all places of business, including itemized
3 invoices of tobacco products and smoking tobacco (a) held,
4 purchased, manufactured, or brought in or caused to be brought
5 into this state or (b) for a licensee located outside of this
6 state, shipped or transported to retailers in this state. For
7 tobacco products, such return shall also include the net weight as
8 listed by the manufacturer.

9 (2) All books, records, and other papers and documents
10 required to be kept by this section shall be preserved for a period
11 of at least three years after the due date of the tax imposed
12 by the Tobacco Products Tax Act unless the Tax Commissioner, in
13 writing, authorizes their destruction or disposal at an earlier
14 date.

15 (3) At any time during usual business hours, duly
16 authorized agents or employees of the Tax Commissioner may enter
17 any place of business of a licensee and inspect the premises,
18 the records required to be kept pursuant to this section, and
19 the tobacco products and smoking tobacco contained in such place
20 of business for purposes of determining whether or not such
21 licensee is in full compliance with the act. Refusal to permit
22 such inspection by a duly authorized agent or employee of the
23 Tax Commissioner shall be grounds for revocation, cancellation, or
24 suspension of the license.

25 Sec. 10. Section 77-4018, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 77-4018 When tobacco products or smoking tobacco for
1 which the tax imposed by the Tobacco Products Tax Act has been
2 reported and paid are (1) sold, shipped, or transported by the
3 licensee to retailers, licensees, or ultimate consumers outside
4 this state or (2) returned to the manufacturer by the licensee, a
5 refund or credit of the tax shall be made to the licensee. For the
6 purpose of making such credit or refund, the Tax Commissioner may
7 issue a tax credit or may prepare a voucher showing the net amount
8 of such refund due. The Tax Commissioner shall have a warrant
9 drawn upon the State Treasurer for the amount of any such refund
10 certified by the Tax Commissioner.

11 Sec. 11. Section 77-4024, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-4024 Any person who violates the Tobacco Products Tax
14 Act or any person who sells, delivers, or accepts tobacco products

15 or smoking tobacco with the intent to evade the act shall be guilty
 16 of a Class IV felony.

18 Sec. 13. Original sections 77-4001, 77-4002, 77-4004,
 19 77-4007, 77-4008, 77-4009, 77-4014, 77-4017, 77-4018, and 77-4024,
 20 Reissue Revised Statutes of Nebraska, are repealed.

The first committee amendment was adopted with 30 ayes, 1 nay, 15 present and not voting, and 3 excused and not voting.

The second committee amendment is as follows:

FA41

25 Sec. 6. Section 77-4008, Reissue Revised Statutes of
 26 Nebraska, is amended to read:

27 77-4008 ~~(1)-(1)(a)~~ A tax is hereby imposed upon the first
 1 owner of tobacco products and smoking tobacco to be sold in this
 2 state.

3 (b) The tax on tobacco products shall be sixty-five
 4 cents per ounce and a proportionate tax at the like rate on all
 5 fractional parts of an ounce. Such tax shall be computed based on
 6 the net weight as listed by the manufacturer. Any product listed
 7 by the manufacturer as having a net weight of less than one ounce
 8 shall be taxed as if the product has a net weight of one ounce.

9 (c) The tax on smoking tobacco shall be twenty percent
 10 of ~~(a)-(i)~~ the purchase price of such tobacco products paid by the
 11 first owner or ~~(b)-(ii)~~ the price at which a first owner who made,
 12 manufactured, or fabricated the tobacco product sells the items to
 13 others. ~~Such tax~~

14 (d) The tax on tobacco products and smoking tobacco shall
 15 be in addition to all other taxes.

16 (2) Whenever any person who is licensed under section
 17 77-4009 purchases tobacco products or smoking tobacco from another
 18 person licensed under section 77-4009, the seller shall be liable
 19 for the payment of the tax.

20 ~~(3) On and after October 1, 2002, and continuing until~~
 21 ~~October 1, 2004, the Tax Commissioner shall remit the amount~~
 22 ~~collected pursuant to this section to the State Treasurer, and the~~
 23 ~~State Treasurer shall credit three fourths of such amount to the~~
 24 ~~General Fund and one fourth of such amount to the Cash Reserve~~
 25 ~~Fund. On and after October 1, 2004, amounts collected~~ Amounts
 26 collected pursuant to this section shall be used and distributed
 27 pursuant to section 77-4025.

Senator Chambers offered the following amendment to the second committee amendment:

FA43

Amend AM365 P. 3, line 3 strike "sixty-five" and insert "one dollar, five"

The Chambers amendment was adopted with 25 ayes, 3 nays, 19 present and not voting, and 2 excused and not voting.

Senator Hudkins offered the following amendment to the second committee amendment:

FA44

In AM365, in the original Section 6, on Page 3 line 26 after the word "section" insert "not in excess of the amount of revenue collected in fiscal year 2006-2007." After the period in line 27 insert "Amounts collected pursuant to this section in excess of the amount of revenue collected in fiscal year 2006-2007 shall be used and distributed pursuant to the Highway Allocation Fund."

Senator Engel requested a ruling of the Chair on whether the Hudkins amendment is germane to the second committee amendment.

SPEAKER FLOOD PRESIDING

The Chair ruled the Hudkins amendment is germane to the second committee amendment.

SENATOR LANGEMEIER PRESIDING

Senator Hudkins moved for a call of the house. The motion prevailed with 29 ayes, 1 nay, and 19 not voting.

Senator Hudkins requested a roll call vote on her amendment.

Voting in the affirmative, 6:

Avery	Gay	Louden
Erdman	Hudkins	Wallman

Voting in the negative, 30:

Adams	Cornett	Howard	McGill	Raikes
Aguilar	Dubas	Janssen	Mines	Rogert
Burling	Engel	Johnson	Nantkes	Schimek
Carlson	Hansen	Karpisek	Pedersen	Synowiecki
Chambers	Harms	Kopplin	Pirsch	White
Christensen	Heidemann	Lathrop	Preister	Wightman

Present and not voting, 11:

Fischer	Fulton	McDonald	Pankonin
Flood	Kruse	Nelson	Stuthman
Friend	Langemeier	Pahls	

Excused and not voting, 2:

Ashford	Dierks
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The Hudkins amendment lost with 6 ayes, 30 nays, 11 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

The second committee amendment, as amended, was adopted with 29 ayes, 6 nays, 12 present and not voting, and 2 excused and not voting.

The third committee amendment is as follows:

FA42

17 Sec. 12. This act becomes operative on October 1, 2007.

The third committee amendment was adopted with 37 ayes, 1 nay, 9 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 31 ayes, 6 nays, 10 present and not voting, and 2 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 57. Introduced by Dubas, 34.

WHEREAS, less than four percent of the boys in the Boy Scouts of America achieve the rank of Eagle Scout; and

WHEREAS, Phillip Johnson has demonstrated a strong commitment to the community of Central City, Nebraska, through service projects and volunteer hours; and

WHEREAS, Phillip has demonstrated diligence in his pursuit to attain the honorary status of Eagle Scout; and

WHEREAS, Phillip has earned and deserves the honor of being named "An Eagle Scout".

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature commends Phillip Johnson for his outstanding accomplishment of becoming an Eagle Scout.

2. That a copy of this resolution be sent to Phillip Johnson.

Laid over.

LEGISLATIVE RESOLUTION 58. Introduced by Synowiecki, 7.

WHEREAS, the Omaha Central Eagles won the 2007 Class A Boys' State Basketball Championship; and

WHEREAS, the Eagles, under the direction of Coach Eric Behrens, won their second straight state championship by defeating Bellevue West in overtime, 93-85; and

WHEREAS, seniors Alex Deleon and Ben Kline provided the young team with outstanding leadership; and

WHEREAS, Ronnell Grixby, Alex Deleon, Lorenzo Wilson, and Josh Jones contributed 55 of Central's first 79 points, before fouling out of the game; and

WHEREAS, Chris Griffin, Ben Kline, Paul Simms, Doug Knickrehm, and Josh Bruning stepped up in overtime to lead the Eagles to the championship.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the Omaha Central Eagles on winning the 2007 Class A Boys' State Basketball Championship.

2. That a copy of this resolution be sent to the Eagles and Coach Eric Behrens.

Laid over.

BILLS ON FIRST READING

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

LEGISLATIVE BILL 343A. Introduced by Langemeier, 23.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 343, One Hundredth Legislature, First Session, 2007.

LEGISLATIVE BILL 292A. Introduced by Hansen, 42.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 292, One Hundredth Legislature, First Session, 2007.

AMENDMENTS - Print in Journal

Senator Wightman filed the following amendment to LB 502:
AM683

- 1 1. Insert the following new section:
- 2 Sec. 4. Section 77-2010, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 77-2010 All taxes imposed by sections 77-2001 to 77-2037,
- 5 unless otherwise herein provided for, shall be due and payable
- 6 twelve months after the date of the death of the decedent, and
- 7 interest at the rate specified in section 45-104.01, as such rate
- 8 may from time to time be adjusted by the Legislature, shall be
- 9 charged and collected on any unpaid taxes due from the date the
- 10 same became payable, and in all cases ~~where~~ in which the personal
- 11 representatives or trustees do not pay such tax within twelve
- 12 months from the death of the decedent, they shall be required to
- 13 give bond in the form and to the effect prescribed in section
- 14 77-2009 for the payment of the tax together with interest. In
- 15 addition, for failure to file an appropriate proceeding for the

16 determination of the tax within twelve months after the date of
 17 the death of the decedent there shall be added to the amount due
 18 a penalty of five percent per month, up to a maximum penalty of
 19 twenty-five percent of the unpaid taxes due.

20 2. On page 4, line 10, after the period insert "The
 21 changes made to section 77-2010 by this legislative bill apply to
 22 decedents dying on or after January 1, 2008."; and in line 11 after
 23 the last comma insert "77-2010,".

1 3. Renumber the remaining sections accordingly.

Senator Kopplin filed the following amendment to LB 639:

AM729

(Amendments to Standing Committee amendments, AM483)

1 1. On page 1, strike beginning with "in" in line 5
 2 through "council" in line 6; and in line 15 strike "learning
 3 community" and insert "district".

4 2. On page 2, lines 5 and 6, strike "or the coordinating
 5 council".

6 3. On page 2, lines 12 and 13; and page 3, lines 12 and
 7 16, strike "or coordinating council".

Senator Kopplin filed the following amendment to LB 639:

AM730

(Amendments to Standing Committee amendments, AM483)

1 1. On page 1, strike beginning with "January" in line 8
 2 through line 11 and insert "September 1, 2009".

3 2. On page 3, strike beginning with "only" in line 18
 4 through "date" in line 20.

COMMITTEE REPORTS

Health and Human Services

LEGISLATIVE BILL 610. Placed on General File.

(Signed) Joel Johnson, Chairperson

Judiciary

LEGISLATIVE BILL 449. Placed on General File.

(Signed) Brad Ashford, Chairperson

Natural Resources

LEGISLATIVE BILL 412. Indefinitely postponed.

(Signed) LeRoy Loudon, Chairperson

MESSAGE FROM THE GOVERNOR

March 15, 2007

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

Dear Mr. O'Donnell:

Engrossed Legislative Bill 296e was received in my office on March 13, 2007.

I signed this bill and delivered it to the Secretary of State on March 15, 2007.

Sincerely,
(Signed) Dave Heineman
Governor

COMMITTEE REPORTS
Enrollment and Review**Correctly Engrossed**

The following bills were correctly engrossed: LBs 34, 136, 143, 203, 223, 255, 349, 374, 441, 441A, 464, 470, 470A, 497, 537, and 661.

ST9018

Enrollment and Review Change to LB 223

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

1. On page 4, line 12, "a" has been inserted after "in".

ST9015

Enrollment and Review Change to LB 255

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

1. In the Rogert-Mines amendment, AM679, on page 4, line 12, the comma has been struck.

2. On page 1, the matter beginning with "section" in line 1 through line 4 has been struck and "sections 48-1228, 48-1229, 48-1230, and 48-1232, Reissue Revised Statutes of Nebraska; to change provisions of the Nebraska Wage Payment and Collection Act; to redefine terms; to provide for unpaid wages constituting commissions; to harmonize provisions; to repeal the original sections; and to declare an emergency." inserted.

ST9014

Enrollment and Review Change to LB 441

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

1. In the Hudkins amendment, AM691, on page 1, line 5, an underscored comma has been inserted after "use".
2. On page 1, line 4, "to provide an excise tax on grapes; to define terms; to provide powers and duties; to provide a penalty;" has been inserted after the first semicolon.

ST9016

Enrollment and Review Change to LB 497

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

1. On page 2, line 18, the semicolon has been struck.
2. On page 3, line 17, "military family" has been struck and "family military" inserted.
3. On page 4, line 25, "of" has been inserted after the first "exercise".
4. On page 5, line 11, "act" has been struck and "Family Military Leave Act" inserted.

(Signed) Amanda McGill, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Pahls asked unanimous consent to add his name as cointroducer to LB 565. No objections. So ordered.

VISITORS

Visitors to the Chamber were members of Leadership Columbus; 10 twelfth-grade students and teacher from Diller-Odell High School, Odell; Senator Stuthman's son, Todd Stuthman, and Bill Luckey and Deb Rasby from Columbus and Nicki Rockwell from Lincoln; Senator Pedersen's granddaughter, Krista Pedersen, and 44 fourth-grade students and teachers from Ackerman Elementary, Omaha; 17 fourth-grade students from St. John's School, Seward; and 14 fourth-grade students and teacher from Lindsay Holy Family, Lindsay.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Dubas, the Legislature adjourned until 9:00 a.m., Monday, March 19, 2007.

Patrick J. O'Donnell
Clerk of the Legislature

