

SIXTIETH DAY - APRIL 10, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****SIXTIETH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, April 10, 2007

PRAYER

The prayer was offered by Pastor Bob Lawrence, Auburn Church of Christ, Auburn.

ROLL CALL

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

The roll was called and all members were present except Senator Ashford who was excused; and Senators McGill and Pedersen who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-ninth day was approved.

**COMMITTEE REPORTS
Enrollment and Review**

LEGISLATIVE BILL 334. Placed on Select File - ER8068.
ER8068

- 1 1. In the Janssen amendment, AM886:
- 2 a. On page 2, line 19, strike the second comma; and in
- 3 line 23 strike the first comma; and
- 4 b. On page 6, line 12, strike "old" and insert "new".
- 5 2. In the Standing Committee amendments, AM775:
- 6 a. Strike section 95;
- 7 b. On page 38, line 5, strike the comma;
- 8 c. On page 39, line 5, strike the comma and show as
- 9 stricken;
- 10 d. On page 41, line 6, strike "department", show as
- 11 stricken, and insert "Department of Revenue";
- 12 e. On page 57, line 19, strike "division", show as
- 13 stricken, and insert "department";
- 14 f. On page 119, line 27, strike "77-5014,"; and
- 15 g. Renumber the remaining sections accordingly.

16 3. On page 1, strike lines 2 through 14 and insert
 17 "sections 2-257, 23-1611, 35-509, 49-506, 49-617, 57-239, 76-214,
 18 77-103, 77-105, 77-202.01, 77-202.05, 77-202.09, 77-361, 77-370,
 19 77-374, 77-377, 77-414, 77-421, 77-603.01, 77-605, 77-607,
 20 77-683, 77-685, 77-687, 77-689, 77-690, 77-691, 77-701, 77-702,
 21 77-705, 77-706, 77-709, 77-801.02, 77-803, 77-804, 77-1233.06,
 22 77-1247, 77-1249.01, 77-1250, 77-1250.02, 77-1250.03, 77-1250.04,
 23 77-1250.05, 77-1301.01, 77-1334, 77-1339, 77-1346, 77-1374,
 1 77-1376, 77-1613.01, 77-1735, 77-1736.06, 77-1749, 77-1750,
 2 77-1763, 77-1766, 77-3902, 77-3903, 77-3904, 77-3905, 77-3906,
 3 77-3907, 77-3908, 77-4105, 77-5008, 77-5014, 81-101, 81-102,
 4 and 81-109, Reissue Revised Statutes of Nebraska, sections
 5 11-201, 23-1601, 60-147, 60-3,189, 60-3,202, 77-202.02, 77-202.03,
 6 77-202.04, 77-202.12, 77-202.13, 77-366, 77-422, 77-603, 77-612,
 7 77-684, 77-802.02, 77-1229, 77-1249, 77-1311, 77-1311.02, 77-1327,
 8 77-1330, 77-1331, 77-1333, 77-1340, 77-1342, 77-1345, 77-1355,
 9 77-1392, 77-1514, 77-1775, 77-5007, 77-5725, 77-6006, and 81-1401,
 10 Revised Statutes Cumulative Supplement, 2006, and section 79-1016,
 11 Revised Statutes Cumulative Supplement, 2006, as affected by
 12 Referendum 2006, No. 422; to merge the Department of Property
 13 Assessment and Taxation with the Department of Revenue; to change
 14 provisions relating to property taxation, distribution of property
 15 tax proceeds, and the Tax Equalization and Review Commission; to
 16 harmonize provisions; to provide an operative date; to repeal the
 17 original sections; to outright repeal sections 77-415, 77-417,
 18 77-704, 77-708, and 81-109, Reissue Revised Statutes of Nebraska,
 19 and section 77-703, Revised Statutes Cumulative Supplement, 2006;
 20 and to declare an emergency."
 21 4. On page 2, strike lines 1 through 24.

LEGISLATIVE BILL 219. Placed on Select File.

LEGISLATIVE BILL 596. Placed on Select File.

(Signed) Amanda McGill, Chairperson

COMMITTEE REPORTS

Judiciary

LEGISLATIVE BILL 580. Placed on General File - Com AM851.
 AM851

1 1. Insert the following new section:
 2 Sec. 3. Section 69-2708, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 69-2708 (1) Not later than twenty calendar days after
 5 the end of each calendar quarter, and more frequently if so
 6 directed by the Tax Commissioner, each stamping agent shall submit
 7 such information as the Tax Commissioner requires to facilitate
 8 compliance with sections 69-2704 to 69-2710, including, but not
 9 limited to, a list by brand family of the total number of
 10 cigarettes or, in the case of roll-your-own, the equivalent stick

11 count for which the stamping agent affixed stamps during the
12 previous calendar quarter or otherwise paid the tax due for such
13 cigarettes. The stamping agent shall maintain, and make available
14 to the Tax Commissioner, all invoices and documentation of sales
15 of all nonparticipating manufacturer cigarettes and any other
16 information relied upon in reporting to the Tax Commissioner for a
17 period of five years.

18 (2) The Attorney General may require at any time from the
19 nonparticipating manufacturer proof, from the financial institution
20 in which such manufacturer has established a qualified escrow fund
21 for the purpose of compliance with section 69-2703, of the amount
22 of money in such fund, exclusive of interest, the amounts and dates
23 of each deposit to such fund, and the amounts and dates of each
1 withdrawal from such fund.

2 (3) In addition to the information required to be
3 submitted pursuant to subsection (1) of this section, the Tax
4 Commissioner or Attorney General may require a stamping agent,
5 distributor, or tobacco product manufacturer to submit any
6 additional information, including, but not limited to, samples of
7 the packaging or labeling of each brand family, as is necessary
8 to enable the Tax Commissioner or Attorney General to determine
9 whether a tobacco product manufacturer is in compliance with
10 sections 69-2704 to 69-2710.

11 (4) To promote compliance with sections 69-2704 to
12 69-2707, a tobacco product manufacturer subject to the requirements
13 of subdivision (1)(c) of section 69-2706 shall make the escrow
14 deposits required by section 69-2703 in quarterly installments
15 during the year in which the sales covered by such deposits are
16 made: ~~if (a) it is the first year~~ Through the end of the calendar
17 year following the year the tobacco product manufacturer is listed
18 in the directory established pursuant to section 69-2706; (b) if
19 the tobacco product manufacturer is removed from then subsequently
20 relisted in the directory, then for all periods following the
21 relisting through the end of the calendar year following the year
22 the tobacco product manufacturer is relisted in the directory;
23 (c) if the tobacco product manufacturer has failed to make a
24 complete and timely escrow deposit for any calendar year as
25 required by section 69-2703; or for any quarter as required in
26 this section; or ~~(e)-(d)~~ if the tobacco product manufacturer has
27 failed to pay any judgment, including any civil penalty ordered
1 under section 69-2703 or 69-2709. The Tax Commissioner may require
2 production of information sufficient to enable the Tax Commissioner
3 to determine the adequacy of the amount of the installment
4 deposit. The Tax Commissioner may adopt and promulgate rules and
5 regulations implementing how tobacco product manufacturers subject
6 to the requirements of subdivision (1)(c) of section 69-2706 make
7 quarterly payments.

8 2. On page 2, strike beginning with "such" in line 13
9 through line 14, show as stricken, and insert "subsection (4) of

10 section 69-2708."

11 3. On page 3, line 24, strike "and" and show as stricken.

12 4. On page 4, line 15, strike the period, show as

13 stricken, and insert "; and

14 (v) That such nonparticipating manufacturer consents to

15 be sued in the district courts of the State of Nebraska for

16 purposes of the state (A) enforcing any provision of sections

17 69-2703 to 69-2710 and any rules and regulations adopted and

18 promulgated thereunder or (B) bringing a released claim as defined

19 in section 69-2702."

20 5. On page 6, line 4, after "69-2703" insert "or

21 subsection (4) of section 69-2708".

22 6. On page 11, line 3, strike "the General Fund." and

23 insert "be remitted to the State Treasurer for distribution in

24 accordance with Article VII, section 5, of the Constitution of

25 Nebraska."; in line 5 strike "with" and insert "to"; in line 6

26 strike "other" and insert "applicable"; and in line 7 before "and"

27 insert "69-2708,".

1 7. Renumber the remaining sections accordingly.

(Signed) Steve Lathrop, Vice Chairperson

Health and Human Services

LEGISLATIVE BILL 399. Placed on General File - Com AM936.

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

(Signed) Joel Johnson, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 69. Introduced by Fischer, 43.

WHEREAS, Benjamin Paxton, son of Phil and Kim Paxton, a senior at Valentine High School, has attained the rank of Eagle Scout of the Boy Scouts of America; and

WHEREAS, to earn the rank of Eagle Scout, the highest advancement rank in Scouting, a Boy Scout must fulfill requirements in the areas of leadership, service, and outdoor skills. Although many options are available to demonstrate proficiency in these areas, a number of specific skills are required to advance through the ranks: Tenderfoot, Second Class, First Class, Star, Life, and finally Eagle. Throughout his Scouting experience, Ben Paxton has learned, been tested on, and been recognized for various Scouting skills; and

WHEREAS, to achieve the rank of Eagle Scout, Ben earned twenty-three merit badges, two more than the required twenty-one merit badges, twelve of which are in required areas, and completed a community service project approved by the troop and the scout council; and

WHEREAS, Ben spent days planning, completing paperwork, and taking pictures for his Eagle Scout community service project; and

WHEREAS, for his Eagle Scout community service project, Ben cleaned and replaced steps on the Nature Conservancy trail; and

WHEREAS, Ben built two new foot bridges on the Nature Conservancy trail; and

WHEREAS, these improved steps and new foot bridges will be usable for people many years in the future.

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

1. That the Legislature congratulates Benjamin Paxton for the exemplary achievement of earning the rank of Eagle Scout.

2. That a copy of this resolution be sent to Benjamin Paxton.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 701. Title read. Considered.

Committee AM938, printed separately and referred to on page 1086, was considered.

Senator Flood 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:

AM962

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following sections:
- 3 Sec. 5. Section 2-3202, Revised Statutes Cumulative
- 4 Supplement, 2006, is amended to read:
- 5 2-3202 For purposes of Chapter 2, article 32, and
- 6 sections 6 to 9 and 15 of this act unless the context otherwise
- 7 requires:
- 8 (1) Commission means the Nebraska Natural Resources
- 9 Commission;
- 10 (2) Natural resources district or district means a
- 11 natural resources district operating pursuant to Chapter 2, article
- 12 32;
- 13 (3) Board means the board of directors of a district;
- 14 (4) Director means a member of the board;
- 15 (5) Other special-purpose districts means rural
- 16 water districts, drainage districts, reclamation districts, and
- 17 irrigation districts;
- 18 (6) Manager means the chief executive hired by a majority
- 19 vote of the board to be the supervising officer of the district;

20 and

21 (7) Department means the Department of Natural Resources.

22 Sec. 6. In order to implement its duties and obligations
23 under the Nebraska Ground Water Management and Protection Act
1 and in addition to other powers authorized by law, the board
2 of a district with jurisdiction that includes a river subject
3 to an interstate compact among three or more states and that
4 also includes one or more irrigation districts within the compact
5 river basin may issue negotiable bonds and refunding bonds of the
6 district and entitled river flow enhancement bonds, with terms
7 determined appropriate by the board, payable by (1) funds granted
8 to such district by the state or federal government for one or more
9 qualified projects, (2) the occupation tax authorized by section
10 9 of this act, or (3) the levy authorized by section 2-3231.

11 The district may issue the bonds or refunding bonds directly
12 or such bonds may be issued to any joint entity as defined in
13 section 13-803 or to any joint public agency as defined in section
14 13-2503 in connection with any joint project which is to be owned,
15 operated, or financed by the joint entity or joint public agency
16 for the benefit of the district. For the payment of such bonds
17 or refunding bonds, the district may pledge one or more permitted
18 payment sources.

19 Sec. 7. The board of a district issuing bonds pursuant to
20 section 6 of this act may agree to pay fees to fiscal agents in
21 connection with the placement of bonds of the district. Such bonds
22 shall be subject to the same terms and conditions as provided by
23 section 2-3254.07 for improvement area bonds and such other terms
24 and conditions as the board determines appropriate.

25 Sec. 8. The proceeds of bonds issued pursuant to section
26 6 of this act shall only be used to pay or refinance the costs
27 of: (1) Acquisition and ownership of water rights in accordance
1 with Chapter 46, article 6, pertaining to groundwater, and Chapter
2 46, article 2, pertaining to surface water, including storage
3 water rights with respect to a river or any of its tributaries;
4 (2) acquisition by purchase or lease or the administration and
5 management, pursuant to mutual agreement, of canals and other
6 works, including reservoirs, constructed for irrigation from a
7 river or any of its tributaries; (3) vegetation management,
8 including but not limited to, the removal of invasive species
9 in or near a river or any of its tributaries; and (4) the
10 augmentation of river flows.

11 Sec. 9. (1) The district may levy an occupation tax
12 upon the activity of irrigation of agricultural lands within
13 such district on an annual basis, not to exceed ten dollars per
14 irrigated acre, for the purpose of repaying principal and interest
15 on any bonds or refunding bonds issued pursuant to section 6 of
16 this act for one or more projects under section 8 of this act.

17 (2) Acres classified by the county assessor as irrigated
18 shall be subject to such district's occupation tax unless, on or

19 before July 1, 2007, and on or before March 1 in each subsequent
20 year, the record owner certifies to the district the nonirrigation
21 status of such acres.

22 (3) Any such occupation tax shall remain in effect so
23 long as the district has bonds outstanding which have been issued
24 stating such occupation tax as an available source for payment.

25 (4) Such occupation taxes shall be collected and
26 accounted for by the county treasurer at the same time as general
27 real estate taxes, and such occupation taxes shall be and remain a
1 perpetual lien against such real estate until paid.

2 (5) Such lien shall be inferior only to general taxes
3 levied by political subdivisions of the state. When such occupation
4 taxes have become delinquent and the real property on which the
5 irrigation took place has not been offered at any tax sale, the
6 district may proceed in district court in the county in which the
7 real estate is situated to foreclose in its own name the lien
8 in the same manner and with like effect as a foreclosure of a
9 real estate mortgage, except that sections 77-1903 to 77-1917 shall
10 govern when applicable.

11 Sec. 10. Section 2-3225, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 2-3225 (1)(a) Each district shall have the power and
14 authority to levy a tax of not to exceed four and one-half cents
15 on each one hundred dollars of taxable valuation annually on all of
16 the taxable property within such district unless a higher levy is
17 authorized pursuant to section 77-3444.

18 (b) Each district shall also have the power and authority
19 to levy a tax equal to the dollar amount by which its restricted
20 funds budgeted to administer and implement ground water management
21 activities and integrated management activities under the Nebraska
22 Ground Water Management and Protection Act exceed its restricted
23 funds budgeted to administer and implement ground water management
24 activities and integrated management activities for FY2003-04, not
25 to exceed one cent on each one hundred dollars of taxable valuation
26 annually on all of the taxable property within the district.

27 (c) In addition to the power and authority granted in
1 subdivisions (1)(a) and (b) of this section, each district located
2 in a river basin, subbasin, or reach that has been determined
3 to be fully appropriated pursuant to section 46-714 or designated
4 overappropriated pursuant to section 46-713 by the Department of
5 Natural Resources shall also have the power and authority to
6 levy a tax equal to the dollar amount by which its restricted
7 funds budgeted to administer and implement ground water management
8 activities and integrated management activities under the Nebraska
9 Ground Water Management and Protection Act exceed its restricted
10 funds budgeted to administer and implement ground water management
11 activities and integrated management activities for FY2005-06, not
12 to exceed three cents on each one hundred dollars of taxable
13 valuation on all of the taxable property within the district for

14 fiscal year 2006-07 ~~and not to exceed two cents on each one~~
 15 ~~hundred dollars of taxable valuation annually on all of the taxable~~
 16 ~~property within the district for fiscal years 2007-08 and 2008-09.~~
 17 and each fiscal year thereafter through fiscal year 2011-12.

18 (d) In addition to the power and authority granted in
 19 subdivisions (a) through (c) of this subsection, a district with
 20 jurisdiction that includes a river subject to an interstate compact
 21 among three or more states and that also includes one or more
 22 irrigation districts within the compact river basin may annually
 23 levy a tax not to exceed ten cents per one hundred dollars of
 24 taxable valuation of all taxable property in the district for
 25 the payment of principal and interest on bonds and refunding
 26 bonds issued pursuant to section 6 of this act. Such levy is
 27 not includable in the computation of other limitations upon the
 1 district's tax levy.

2 (2) The proceeds of such tax shall be used, together with
 3 any other funds which the district may receive from any source, for
 4 the operation of the district. When adopted by the board, the levy
 5 shall be certified by the secretary to the county clerk of each
 6 county which in whole or in part is included within the district.
 7 Such levy shall be handled by the counties in the same manner
 8 as other levies, and proceeds shall be remitted to the district
 9 treasurer. Such levy shall not be considered a part of the general
 10 county levy and shall not be considered in connection with any
 11 limitation on levies of such counties.

12 Sec. 11. Section 2-3231, Reissue Revised Statutes of
 13 Nebraska, is amended to read:

14 2-3231 Each district shall have the power and authority
 15 to:

16 (1) Contract for the construction, preservation,
 17 operation, and maintenance of tunnels, reservoirs, regulating or
 18 reregulating basins, diversion works and canals, dams, drains,
 19 drainage systems, or other projects for a purpose mentioned in
 20 section 2-3229, and necessary works incident thereto, and to hold
 21 the federal government or any agency thereof free from liability
 22 arising from any construction;

23 (2) Contract with the United States for a water supply
 24 and water distribution and drainage systems under any Act of
 25 Congress providing for or permitting such contract;

26 (3) Acquire by purchase, lease, or otherwise mutually
 27 arrange to administer and manage any project works undertaken by
 1 the United States or any of its agencies, or by this state or
 2 any of its agencies; ~~Provided, except that this section shall~~
 3 ~~not apply to any project being administered or managed by any~~
 4 ~~public power district, public power and irrigation district, or~~
 5 ~~metropolitan utilities district; and, ~~reclamation district, or~~~~
 6 ~~irrigation district; and~~

7 (4) Act as agent of the United States, or any of its
 8 agencies, or for this state or any of its agencies, in connection

9 with the acquisition, construction, operation, maintenance or
10 management of any project within its boundaries.

11 Sec. 12. Section 13-808, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 13-808 (1) Any joint entity may issue such types of bonds
14 as its governing body may determine subject only to any agreement
15 with the holders of outstanding bonds, including bonds as to which
16 the principal and interest are payable exclusively from all or a
17 portion of the revenue from one or more projects, from one or more
18 revenue-producing contracts, including securities acquired from any
19 person, bonds issued by any qualified public agency under the
20 Public Facilities Construction and Finance Act, or leases made by
21 the joint entity with any person, including any of those public
22 agencies which are parties to the agreement creating the joint
23 entity, or from its revenue generally or which may be additionally
24 secured by a pledge of any grant, subsidy, or contribution from any
25 person or a pledge of any income or revenue, funds, or money of the
26 joint entity from any source whatsoever or a mortgage or security
27 interest in any real or personal property, commodity, product, or
1 service or interest therein.

2 (2) Any bonds issued by such joint entity shall be
3 issued on behalf of those public agencies which are parties to
4 the agreement creating such joint entity and shall be authorized
5 to be issued for the specific purpose or purposes for which
6 the joint entity has been created. Such specific purposes may
7 include, but shall not be limited to, joint projects authorized by
8 the Public Facilities Construction and Finance Act; solid waste
9 collection, management, and disposal; waste recycling; sanitary
10 sewage treatment and disposal; public safety communications;
11 correctional facilities; water treatment plants and distribution
12 systems; drainage systems; flood control projects; fire protection
13 services; ground water quality management and control; river flow
14 enhancement; education and postsecondary education; hospital and
15 other health care services; bridges, roads, and streets; and law
16 enforcement.

17 (3) As an alternative to issuing bonds for financing
18 public safety communication projects, any joint entity may enter
19 into a financing agreement with the Nebraska Investment Finance
20 Authority for such purpose.

21 (4) Any joint entity formed for purposes of providing or
22 assisting with the provision of public safety communications may
23 enter into an agreement with any other joint entity relating to
24 (a) the operation, maintenance, or management of the property or
25 facilities of such joint entity or (b) the operation, maintenance,
26 or management of the property or facilities of such other joint
27 entity.

1 Sec. 13. Section 13-2530, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 13-2530 (1) Any joint public agency may issue such types

4 of bonds as its board may determine subject only to any agreement
 5 with the holders of outstanding bonds, including bonds as to which
 6 the principal and interest are payable exclusively from all or
 7 a portion of the revenue from one or more projects, from one
 8 or more revenue-producing contracts, including securities acquired
 9 from any person, bonds issued by any qualified public agency under
 10 the Public Facilities Construction and Finance Act, or leases made
 11 by the joint public agency with any person, including any of
 12 the public agencies which are parties to the agreement creating
 13 the joint public agency, or from its revenue generally or which
 14 may be additionally secured by a pledge of any grant, subsidy,
 15 or contribution from any person or a pledge of any income or
 16 revenue, funds, or money of the joint public agency from any
 17 source whatsoever or a mortgage or security interest in any real
 18 or personal property, commodity, product, or service or interest
 19 therein.

20 (2) Any bonds issued by such joint public agency shall
 21 be issued on behalf of the joint public agency solely for the
 22 specific purpose or purposes for which the joint public agency has
 23 been created. Such specific purposes may include, but shall not
 24 be limited to, joint projects authorized by the Public Facilities
 25 Construction and Finance Act; solid waste collection, management,
 26 and disposal; waste recycling; sanitary sewage treatment and
 27 disposal; public safety communications; correctional facilities;
 1 water treatment plants and distribution systems; drainage systems;
 2 flood control projects; fire protection services; ground water
 3 quality management and control; river flow enhancement; education
 4 and postsecondary education; hospital and other health care
 5 services; bridges, roads, and streets; and law enforcement.

6 (3) As an alternative to issuing bonds for financing
 7 public safety communication projects, any joint public agency may
 8 enter into a financing agreement with the Nebraska Investment
 9 Finance Authority for such purpose.

10 (4) Any joint public agency formed for purposes of
 11 providing or assisting with the provision of public safety
 12 communications may enter into an agreement with any other joint
 13 public agency relating to (a) the operation, maintenance, or
 14 management of the property or facilities of such joint public
 15 agency or (b) the operation, maintenance, or management of the
 16 property or facilities of such other joint public agency.

17 Sec. 31. Section 77-3442, Revised Statutes Cumulative
 18 Supplement, 2006, is amended to read:

19 77-3442 (1) Property tax levies for the support of local
 20 governments for fiscal years beginning on or after July 1, 1998,
 21 shall be limited to the amounts set forth in this section except as
 22 provided in section 77-3444.

23 (2)(a) Except as provided in subdivision (2)(d) of this
 24 section, school districts and multiple-district school systems,
 25 except learning communities and school districts that are members

26 of learning communities, may levy a maximum levy of one dollar and
27 five cents per one hundred dollars of taxable valuation of property
1 subject to the levy.

2 (b) Except as provided in subdivision (2)(d) of this
3 section, for fiscal year 2008-09 and each fiscal year thereafter,
4 (i) learning communities may levy a maximum levy for the general
5 fund budgets of member school districts equal to the ratio of the
6 aggregate difference of one hundred ten percent of the formula
7 needs as calculated pursuant to section 79-1007.02 minus the amount
8 of state aid certified pursuant to section 79-1022 and minus the
9 other actual receipts included in local system formula resources
10 pursuant to section 79-1018.01 for each member school district for
11 such school fiscal year divided by each one hundred dollars of
12 taxable property subject to the levy, except that such levy shall
13 not exceed one dollar and two cents on each one hundred dollars
14 of taxable property subject to the levy, and (ii) school districts
15 that are members of learning communities may levy a maximum levy
16 of the difference of one dollar and two cents on each one hundred
17 dollars of taxable property subject to the levy minus the learning
18 community levy pursuant to this subdivision for purposes of such
19 school district's general fund budget and special building funds.

20 (c) Excluded from the limitations in subdivisions (a) and
21 (b) of this subsection are amounts levied to pay for sums agreed to
22 be paid by a school district to certificated employees in exchange
23 for a voluntary termination of employment and amounts levied
24 to pay for special building funds and sinking funds established
25 for projects commenced prior to April 1, 1996, for construction,
26 expansion, or alteration of school district buildings. For purposes
27 of this subsection, commenced means any action taken by the school
1 board on the record which commits the board to expend district
2 funds in planning, constructing, or carrying out the project.

3 (d) Federal aid school districts may exceed the maximum
4 levy prescribed by subdivision (2)(a) or (b) of this section
5 only to the extent necessary to qualify to receive federal aid
6 pursuant to Title VIII of Public Law 103-382, as such title existed
7 on September 1, 2001. For purposes of this subdivision, federal
8 aid school district means any school district which receives ten
9 percent or more of the revenue for its general fund budget from
10 federal government sources pursuant to Title VIII of Public Law
11 103-382, as such title existed on September 1, 2001.

12 (e) For school fiscal year 2002-03 through school fiscal
13 year 2007-08, school districts and multiple-district school systems
14 may, upon a three-fourths majority vote of the school board of
15 the school district, the board of the unified system, or the
16 school board of the high school district of the multiple-district
17 school system that is not a unified system, exceed the maximum
18 levy prescribed by subdivision (2)(a) of this section in an amount
19 equal to the net difference between the amount of state aid that
20 would have been provided under the Tax Equity and Educational

21 Opportunities Support Act without the temporary aid adjustment
22 factor as defined in section 79-1003 for the ensuing school fiscal
23 year for the school district or multiple-district school system
24 and the amount provided with the temporary aid adjustment factor.
25 The State Department of Education shall certify to the school
26 districts and multiple-district school systems the amount by which
27 the maximum levy may be exceeded for the next school fiscal year
1 pursuant to this subdivision (e) of this subsection on or before
2 February 15 for school fiscal years 2004-05 through 2007-08.

3 (f) For fiscal year 2008-09 and each fiscal year
4 thereafter, learning communities may levy a maximum levy of two
5 cents on each one hundred dollars of taxable property subject to
6 the levy for special building funds for member school districts.

7 (g) For fiscal year 2008-09 and each fiscal year
8 thereafter, learning communities may levy a maximum levy of one
9 cent on each one hundred dollars of taxable property subject to the
10 levy for the learning community budget and for projects approved by
11 the learning community coordinating council.

12 (3) Community colleges may levy a maximum levy on each
13 one hundred dollars of taxable property subject to the levy of
14 seven cents, plus amounts allowed under subsection (7) of section
15 85-1536.01, except that any community college whose valuation per
16 reported aid equivalent student as defined in section 85-1503 was
17 less than eighty-two percent of the average valuation per statewide
18 reimbursable reported aid equivalent total as defined in section
19 85-1503 for all community colleges for fiscal year 1997-98 may levy
20 up to an additional one-half cent for each of fiscal years 2005-06
21 and 2006-07 upon a three-fourths majority vote of the board.

22 (4) Natural resources districts may levy a maximum levy
23 of four and one-half cents per one hundred dollars of taxable
24 valuation of property subject to the levy. Natural resources
25 districts shall also have the power and authority to levy a
26 tax equal to the dollar amount by which their restricted funds
27 budgeted to administer and implement ground water management
1 activities and integrated management activities under the Nebraska
2 Ground Water Management and Protection Act exceed their restricted
3 funds budgeted to administer and implement ground water management
4 activities and integrated management activities for FY2003-04,
5 not to exceed one cent on each one hundred dollars of taxable
6 valuation annually on all of the taxable property within the
7 district. In addition, natural resources districts located in a
8 river basin, subbasin, or reach that has been determined to be
9 fully appropriated pursuant to section 46-714 or designated as
10 overappropriated pursuant to section 46-713 by the Department of
11 Natural Resources shall also have the power and authority to
12 levy a tax equal to the dollar amount by which their restricted
13 funds budgeted to administer and implement ground water management
14 activities and integrated management activities under the Nebraska
15 Ground Water Management and Protection Act exceed their restricted

16 funds budgeted to administer and implement ground water management
17 activities and integrated management activities for FY2005-06, not
18 to exceed three cents on each one hundred dollars of taxable
19 valuation on all of the taxable property within the district for
20 fiscal year 2006-07 ~~and not to exceed two cents on each one~~
21 ~~hundred dollars of taxable valuation annually on all of the taxable~~
22 ~~property within the district for fiscal years 2007-08 and 2008-09.~~
23 and each fiscal year thereafter through fiscal year 2011-12.

24 (5) Educational service units may levy a maximum levy of
25 one and one-half cents per one hundred dollars of taxable valuation
26 of property subject to the levy.

27 (6)(a) Incorporated cities and villages which are not
1 within the boundaries of a municipal county may levy a maximum levy
2 of forty-five cents per one hundred dollars of taxable valuation
3 of property subject to the levy plus an additional five cents per
4 one hundred dollars of taxable valuation to provide financing for
5 the municipality's share of revenue required under an agreement
6 or agreements executed pursuant to the Interlocal Cooperation Act
7 or the Joint Public Agency Act. The maximum levy shall include
8 amounts levied to pay for sums to support a library pursuant
9 to section 51-201, museum pursuant to section 51-501, visiting
10 community nurse, home health nurse, or home health agency pursuant
11 to section 71-1637, or statue, memorial, or monument pursuant to
12 section 80-202.

13 (b) Incorporated cities and villages which are within the
14 boundaries of a municipal county may levy a maximum levy of ninety
15 cents per one hundred dollars of taxable valuation of property
16 subject to the levy. The maximum levy shall include amounts paid
17 to a municipal county for county services, amounts levied to pay
18 for sums to support a library pursuant to section 51-201, a museum
19 pursuant to section 51-501, a visiting community nurse, home health
20 nurse, or home health agency pursuant to section 71-1637, or a
21 statue, memorial, or monument pursuant to section 80-202.

22 (7) Sanitary and improvement districts which have been in
23 existence for more than five years may levy a maximum levy of forty
24 cents per one hundred dollars of taxable valuation of property
25 subject to the levy, and sanitary and improvement districts which
26 have been in existence for five years or less shall not have
27 a maximum levy. Unconsolidated sanitary and improvement districts
1 which have been in existence for more than five years and are
2 located in a municipal county may levy a maximum of eighty-five
3 cents per hundred dollars of taxable valuation of property subject
4 to the levy.

5 (8) Counties may levy or authorize a maximum levy of
6 fifty cents per one hundred dollars of taxable valuation of
7 property subject to the levy, except that five cents per one
8 hundred dollars of taxable valuation of property subject to the
9 levy may only be levied to provide financing for the county's
10 share of revenue required under an agreement or agreements executed

11 pursuant to the Interlocal Cooperation Act or the Joint Public
12 Agency Act. The maximum levy shall include amounts levied to pay
13 for sums to support a library pursuant to section 51-201 or museum
14 pursuant to section 51-501. The county may allocate up to fifteen
15 cents of its authority to other political subdivisions subject
16 to allocation of property tax authority under subsection (1) of
17 section 77-3443 and not specifically covered in this section to
18 levy taxes as authorized by law which do not collectively exceed
19 fifteen cents per one hundred dollars of taxable valuation on any
20 parcel or item of taxable property. The county may allocate to
21 one or more other political subdivisions subject to allocation
22 of property tax authority by the county under subsection (1) of
23 section 77-3443 some or all of the county's five cents per one
24 hundred dollars of valuation authorized for support of an agreement
25 or agreements to be levied by the political subdivision for the
26 purpose of supporting that political subdivision's share of revenue
27 required under an agreement or agreements executed pursuant to the
1 Interlocal Cooperation Act or the Joint Public Agency Act. If an
2 allocation by a county would cause another county to exceed its
3 levy authority under this section, the second county may exceed the
4 levy authority in order to levy the amount allocated.

5 (9) Municipal counties may levy or authorize a maximum
6 levy of one dollar per one hundred dollars of taxable valuation
7 of property subject to the levy. The municipal county may allocate
8 levy authority to any political subdivision or entity subject to
9 allocation under section 77-3443.

10 (10) Property tax levies for judgments, except judgments
11 or orders from the Commission of Industrial Relations, obtained
12 against a political subdivision which require or obligate a
13 political subdivision to pay such judgment, to the extent such
14 judgment is not paid by liability insurance coverage of a
15 political subdivision, for preexisting lease-purchase contracts
16 approved prior to July 1, 1998, for bonded indebtedness approved
17 according to law and secured by a levy on property, and for
18 payments by a public airport to retire interest-free loans from the
19 Department of Aeronautics in lieu of bonded indebtedness at a lower
20 cost to the public airport are not included in the levy limits
21 established by this section.

22 (11) The limitations on tax levies provided in this
23 section are to include all other general or special levies
24 provided by law. Notwithstanding other provisions of law, the
25 only exceptions to the limits in this section are those provided by
26 or authorized by sections 77-3442 to 77-3444.

27 (12) Tax levies in excess of the limitations in this
1 section shall be considered unauthorized levies under section
2 77-1606 unless approved under section 77-3444.

3 (13) For purposes of sections 77-3442 to 77-3444,
4 political subdivision means a political subdivision of this state
5 and a county agricultural society.

Senator Christensen asked unanimous consent to withdraw his amendment, FA64, found on page 1102, and replace it with his substitute amendment, AM957, to the first committee amendment. No objections. So ordered.
AM957

(Amendments to Standing Committee amendments, AM938)

- 1 1. Insert the following new section:
- 2 Sec. 7. The authority to issue bonds for qualified
- 3 projects granted in section 6 of this act terminates on January 1,
- 4 2023, except that any bonds already issued and in existence for
- 5 qualified projects shall continue to be authorized for the life of
- 6 the bond and any subsequent refunding of a bond or bonds issued
- 7 solely for the purposes of the original qualified project.
- 8 2. On page 6, line 10, strike "9" and insert "10".
- 9 3. Renumber the remaining sections and correct internal
- 10 references accordingly.

Pending.

ANNOUNCEMENT

The Chair announced April 7 was Senator Erdman's birthday.

GENERAL FILE

LEGISLATIVE BILL 701. The Christensen amendment, AM957, found in this day's Journal, to the first committee amendment, was renewed.

Pending.

COMMITTEE REPORTS

Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: LBs 198, 232, 338, 415, 415A, 457, 502, and 562.

ST9021

Enrollment and Review Change to LB 198

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

1. In the Fulton-Schimek amendment, AM801, on page 1, line 1, "line 17, strike 'and';" has been struck; and in line 5 "and" has been struck.
2. In the Schimek-Avery-Fulton amendment, AM705, on page 1, line 7, "(3)" has been struck and "(4)" inserted.

ST9022

Enrollment and Review Change to LB 457

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

1. In the Hansen amendment, AM898, on page 1, line 10, "phone" has been struck and "telephone" inserted.

2. On page 1, the matter beginning with "43-1314" in line 1 through line 4 has been struck and "43-1318, Reissue Revised Statutes of Nebraska; to require a caregiver information form for foster care proceedings; to provide a duty for the Supreme Court; to harmonize provisions; and to repeal the original section." inserted.

(Signed) Amanda McGill, Chairperson

MESSAGE FROM THE GOVERNOR

April 9, 2007

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

Dear Mr. President, Speaker Flood and Senators:

Contingent upon your approval, the following individual is appointed as Administrator of the Office of Juvenile Services:

Terri Nutzman, 3401 South 81st Street, Lincoln NE 68506

The aforementioned appointee is respectfully submitted for your consideration. Copies of the appointment certificate and application form are attached for your review.

Sincerely,
(Signed) Dave Heineman
Governor

Enclosures

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the following report:

Nutzman, Terri - Office of Juvenile Services - Judiciary

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

COMMITTEE REPORTS
Judiciary

LEGISLATIVE BILL 377. Placed on General File - Com AM912.
(Amendment is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 674. Placed on General File - Com AM805.
AM805

- 1 1. Strike the original section and insert the following
2 new sections:
3 Section 1. (1) For purposes of this section:
4 (a) Employer means a person which employs any individual
5 within this state as an employee;
6 (b) Employee means any individual permitted to work by
7 an employer pursuant to an employment relationship or who has
8 contracted to sell the goods of an employer and to be compensated
9 by commission. Services performed by an individual for an employer
10 shall be deemed to be employment, unless it is shown that (i)
11 such individual has been and will continue to be free from control
12 or direction over the performance of such services, both under
13 his or her contract of service and in fact, (ii) such service
14 is either outside the usual course of business for which such
15 service is performed or such service is performed outside of all
16 the places of business of the enterprise for which such service
17 is performed, and (iii) such individual is customarily engaged
18 in an independently established trade, occupation, profession, or
19 business. This subdivision is not intended to be a codification of
20 the common law and shall be considered complete as written;
21 (c) Person means the state or any individual,
22 partnership, limited liability company, association, joint-stock
23 company, trust, corporation, political subdivision, or personal
1 representative of the estate of a deceased individual, or the
2 receiver, trustee, or successor thereof;
3 (d) Temporary employee means an employee of a temporary
4 help firm assigned to work for the clients of such temporary help
5 firm; and
6 (e) Temporary help firm means a firm that hires its own
7 employees and assigns them to clients to support or supplement
8 the client's work force in work situations such as employee
9 absences, temporary skill shortages, seasonal workloads, and
10 special assignments and projects.
11 (2) Except as otherwise provided in subsection (3) of
12 this section, an employer shall not:
13 (a) Publicly post or publicly display in any manner
14 more than the last four digits of an individual's social security
15 number, including intentional communication of more than the last
16 four digits of the social security number or otherwise making more
17 than the last four digits of the social security number available

18 to the general public or to an individual's coworkers;

19 (b) Require an individual to transmit more than the last
20 four digits of his or her social security number over the Internet
21 unless the connection is secure or the information is encrypted;

22 (c) Require an individual to use more than the last four
23 digits of his or her social security number to access an Internet
24 web site unless a password, unique personal identification number,
25 or other authentication device is also required to access the
26 Internet web site; or

27 (d) Require an individual to use more than the last four
1 digits of his or her social security number as an employee number
2 for any type of employment-related activity.

3 (3)(a) Except as otherwise provided in subdivision (b) of
4 this subsection, an employer shall be permitted to use more than
5 the last four digits of an employee's social security number only
6 for:

7 (i) Compliance with state or federal laws, rules, or
8 regulations;

9 (ii) Internal administrative purposes, including
10 provision of more than the last four digits of social security
11 numbers to third parties for such purposes as administration
12 of personnel benefit provisions for the employer and employment
13 screening and staffing; and

14 (iii) Commercial transactions freely and voluntarily
15 entered into by the employee with the employer for the purchase of
16 goods or services.

17 (b) The following uses for internal administrative
18 purposes described in subdivision (a)(ii) of this subsection shall
19 not be permitted:

20 (i) As an identification number for occupational
21 licensing;

22 (ii) As an identification number for drug-testing
23 purposes except when required by state or federal law;

24 (iii) As an identification number for company meetings;

25 (iv) In files with unrestricted access within the
26 company;

27 (v) In files accessible by any temporary employee unless
1 the temporary employee is bonded or insured under a blanket
2 corporate surety bond or equivalent commercial insurance; or

3 (vi) For posting any type of company information.

4 (4) An employer who violates this section is guilty of a
5 Class V misdemeanor.

6 (5) Evidence of a conviction under this section is
7 admissible in evidence at a civil trial as evidence of the
8 employer's negligence.

9 Sec. 2. This act becomes operative on September 1, 2008.

(Signed) Steve Lathrop, Vice Chairperson

VISITORS

Visitors to the Chamber were 28 fourth-grade students and teachers from Battle Creek; 27 fourth-grade students and teachers from Seymour Elementary, Ralston; members of St. Patrick's Catholic Church, Lincoln; 51 tenth-grade students, sponsors, and members of GFWC Nebraska Federation of Women's Clubs from across the state; and Lacy Bryant, Kristina Phillips, and Jessica Jorgensen from Curtis.

RECESS

At 12:02 p.m., on a motion by Senator McDonald, the Legislature recessed until 1:30 p.m.

AFTER RECESS

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

ROLL CALL

The roll was called and all members were present except Senator Ashford who was excused; and Senators Dierks, Engel, Fulton, Harms, Heidemann, Kruse, McDonald, Nantkes, Nelson, Synowiecki, White, and Wightman who were excused until they arrive.

COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE BILL 564. Placed on Select File - ER8069.
ER8069

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 13-910, Revised Statutes Cumulative
- 4 Supplement, 2006, is amended to read:
- 5 13-910 The Political Subdivisions Tort Claims Act and
- 6 sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall not apply
- 7 to:
- 8 (1) Any claim based upon an act or omission of an
- 9 employee of a political subdivision, exercising due care, in
- 10 the execution of a statute, ordinance, or officially adopted
- 11 resolution, rule, or regulation, whether or not such statute,
- 12 ordinance, resolution, rule, or regulation is valid;
- 13 (2) Any claim based upon the exercise or performance of
- 14 or the failure to exercise or perform a discretionary function or
- 15 duty on the part of the political subdivision or an employee of the
- 16 political subdivision, whether or not the discretion is abused;
- 17 (3) Any claim based upon the failure to make an
- 18 inspection or making an inadequate or negligent inspection of
- 19 any property other than property owned by or leased to such

20 political subdivision to determine whether the property complies
21 with or violates any statute, ordinance, rule, or regulation or
22 contains a hazard to public health or safety unless the political
23 subdivision had reasonable notice of such hazard or the failure
1 to inspect or inadequate or negligent inspection constitutes a
2 reckless disregard for public health or safety;

3 (4) Any claim based upon the issuance, denial,
4 suspension, or revocation of or failure or refusal to issue,
5 deny, suspend, or revoke any permit, license, certificate, or
6 order. Nothing in this subdivision shall be construed to limit
7 a political subdivision's liability for any claim based upon the
8 negligent execution by an employee of the political subdivision
9 in the issuance of a certificate of title under the Motor Vehicle
10 Certificate of Title Act and the State Boat Act;

11 (5) Any claim arising with respect to the assessment or
12 collection of any tax or fee or the detention of any goods or
13 merchandise by any law enforcement officer;

14 (6) Any claim caused by the imposition or establishment
15 of a quarantine by the state or a political subdivision, whether
16 such quarantine relates to persons or property;

17 (7) Any claim arising out of assault, battery, false
18 arrest, false imprisonment, malicious prosecution, abuse of
19 process, libel, slander, misrepresentation, deceit, or interference
20 with contract rights;

21 (8) Any claim by an employee of the political subdivision
22 which is covered by the Nebraska Workers' Compensation Act;

23 (9) Any claim arising out of the malfunction,
24 destruction, or unauthorized removal of any traffic or road sign,
25 signal, or warning device unless it is not corrected by the
26 political subdivision responsible within a reasonable time after
27 actual or constructive notice of such malfunction, destruction, or
1 removal. Nothing in this subdivision shall give rise to liability
2 arising from an act or omission of any political subdivision
3 in placing or removing any traffic or road signs, signals, or
4 warning devices when such placement or removal is the result of a
5 discretionary act of the political subdivision;

6 (10) Any claim arising out of snow or ice conditions
7 or other temporary conditions caused by nature on any highway as
8 defined in section 60-624, bridge, public thoroughfare, or other
9 public place due to weather conditions. Nothing in this subdivision
10 shall be construed to limit a political subdivision's liability
11 for any claim arising out of the operation of a motor vehicle
12 by an employee of the political subdivision while acting within
13 the course and scope of his or her employment by the political
14 subdivision;

15 (11) Any claim arising out of the plan or design for
16 the construction of or an improvement to any highway as defined
17 in such section or bridge, either in original construction or any
18 improvement thereto, if the plan or design is approved in advance

19 of the construction or improvement by the governing body of the
 20 political subdivision or some other body or employee exercising
 21 discretionary authority to give such approval; ~~or~~

22 (12) Any claim arising out of the alleged insufficiency
 23 or want of repair of any highway as defined in such section,
 24 bridge, or other public thoroughfare. Insufficiency or want of
 25 repair shall be construed to refer to the general or overall
 26 condition and shall not refer to a spot or localized defect. A
 27 political subdivision shall be deemed to waive its immunity for
 1 a claim due to a spot or localized defect only if the political
 2 subdivision has had actual or constructive notice of the defect
 3 within a reasonable time to allow repair prior to the incident
 4 giving rise to the claim; ~~or -~~

5 (13)(a) Any claim relating to recreational activities for
 6 which no fee is charged (i) resulting from the inherent risk of
 7 the recreational activity, (ii) arising out of a spot or localized
 8 defect of the premises unless the spot or localized defect is
 9 not corrected by the political subdivision leasing, owning, or
 10 in control of the premises within a reasonable time after actual
 11 or constructive notice of the spot or localized defect, or (iii)
 12 arising out of the design of a skatepark or bicycle motocross
 13 park constructed for purposes of skateboarding, inline skating,
 14 bicycling, or scootering that was constructed or reconstructed,
 15 reasonably and in good faith, in accordance with generally
 16 recognized engineering or safety standards or design theories
 17 in existence at the time of the construction or reconstruction.
 18 For purposes of this subdivision, a political subdivision shall be
 19 charged with constructive notice only when the failure to discover
 20 the spot or localized defect of the premises is the result of gross
 21 negligence.

22 (b) For purposes of this subdivision:

23 (i) Recreational activities include, but are not limited
 24 to, whether as a participant or spectator: Hunting, fishing,
 25 swimming, boating, camping, picnicking, hiking, walking, running,
 26 horseback riding, use of trails, nature study, waterskiing, winter
 27 sports, use of playground equipment, biking, roller blading,
 1 skateboarding, golfing, athletic contests; visiting, viewing,
 2 or enjoying entertainment events, festivals, or historical,
 3 archaeological, scenic, or scientific sites; and similar leisure
 4 activities;

5 (ii) Inherent risk of recreational activities means those
 6 risks that are characteristic of, intrinsic to, or an integral part
 7 of the activity;

8 (iii) Gross negligence means the absence of even slight
 9 care in the performance of a duty involving an unreasonable risk of
 10 harm; and

11 (iv) Fee means a fee to participate in or be a spectator
 12 at a recreational activity. A fee shall include payment by the
 13 claimant to any person or organization other than the political

14 subdivision only to the extent the political subdivision retains
 15 control over the premises or the activity. A fee shall not include
 16 payment of a fee or charge for parking or vehicle entry.
 17 (c) This subdivision, and not subdivision (3) of this
 18 section, shall apply to any claim arising from the inspection
 19 or failure to make an inspection or negligent inspection of
 20 premises owned or leased by the political subdivision and used for
 21 recreational activities.

22 Sec. 2. Section 81-8,219, Revised Statutes Cumulative
 23 Supplement, 2006, is amended to read:

24 81-8,219 The State Tort Claims Act shall not apply to:

25 (1) Any claim based upon an act or omission of an
 26 employee of the state, exercising due care, in the execution of a
 27 statute, rule, or regulation, whether or not such statute, rule, or
 1 regulation is valid, or based upon the exercise or performance or
 2 the failure to exercise or perform a discretionary function or duty
 3 on the part of a state agency or an employee of the state, whether
 4 or not the discretion is abused;

5 (2) Any claim arising with respect to the assessment or
 6 collection of any tax or fee, or the detention of any goods or
 7 merchandise by any law enforcement officer;

8 (3) Any claim for damages caused by the imposition or
 9 establishment of a quarantine by the state whether such quarantine
 10 relates to persons or property;

11 (4) Any claim arising out of assault, battery, false
 12 imprisonment, false arrest, malicious prosecution, abuse of
 13 process, libel, slander, misrepresentation, deceit, or interference
 14 with contract rights;

15 (5) Any claim by an employee of the state which is
 16 covered by the Nebraska Workers' Compensation Act;

17 (6) Any claim based on activities of the Nebraska
 18 National Guard when such claim is cognizable under the Federal
 19 Tort Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims
 20 Act of the United States, 32 U.S.C. 715, or when such claim accrues
 21 as a result of active federal service or state service at the call
 22 of the Governor for quelling riots and civil disturbances;

23 (7) Any claim based upon the failure to make an
 24 inspection or making an inadequate or negligent inspection of
 25 any property other than property owned by or leased to the state
 26 to determine whether the property complies with or violates any
 27 statute, ordinance, rule, or regulation or contains a hazard to
 1 public health or safety unless the state had reasonable notice of
 2 such hazard or the failure to inspect or inadequate or negligent
 3 inspection constitutes a reckless disregard for public health or
 4 safety;

5 (8) Any claim based upon the issuance, denial,
 6 suspension, or revocation of or failure or refusal to issue, deny,
 7 suspend, or revoke any permit, license, certificate, or order.
 8 Such claim shall also not be filed against a state employee

9 acting within the scope of his or her office. Nothing in this
10 subdivision shall be construed to limit the state's liability for
11 any claim based upon the negligent execution by a state employee
12 in the issuance of a certificate of title under the Motor Vehicle
13 Certificate of Title Act and the State Boat Act;

14 (9) Any claim arising out of the malfunction,
15 destruction, or unauthorized removal of any traffic or road sign,
16 signal, or warning device unless it is not corrected by the
17 governmental entity responsible within a reasonable time after
18 actual or constructive notice of such malfunction, destruction, or
19 removal. Nothing in this subdivision shall give rise to liability
20 arising from an act or omission of any governmental entity
21 in placing or removing any traffic or road signs, signals, or
22 warning devices when such placement or removal is the result of a
23 discretionary act of the governmental entity;

24 (10) Any claim arising out of snow or ice conditions
25 or other temporary conditions caused by nature on any highway as
26 defined in section 60-624, bridge, public thoroughfare, or other
27 state-owned public place due to weather conditions. Nothing in this
1 subdivision shall be construed to limit the state's liability for
2 any claim arising out of the operation of a motor vehicle by an
3 employee of the state while acting within the course and scope of
4 his or her employment by the state;

5 (11) Any claim arising out of the plan or design for
6 the construction of or an improvement to any highway as defined
7 in such section or bridge, either in original construction or
8 any improvement thereto, if the plan or design is approved in
9 advance of the construction or improvement by the governing body of
10 the governmental entity or some other body or employee exercising
11 discretionary authority to give such approval; ~~or~~

12 (12) Any claim arising out of the alleged insufficiency
13 or want of repair of any highway as defined in such section,
14 bridge, or other public thoroughfare. Insufficiency or want of
15 repair shall be construed to refer to the general or overall
16 condition and shall not refer to a spot or localized defect. The
17 state shall be deemed to waive its immunity for a claim due to
18 a spot or localized defect only if the state has had actual or
19 constructive notice of the defect within a reasonable time to allow
20 repair prior to the incident giving rise to the claim; ~~or~~ -

21 (13)(a) Any claim relating to recreational activities on
22 property leased, owned, or controlled by the state for which no fee
23 is charged (i) resulting from the inherent risk of the recreational
24 activity, (ii) arising out of a spot or localized defect of the
25 premises unless the spot or localized defect is not corrected
26 within a reasonable time after actual or constructive notice of
27 the spot or localized defect, or (iii) arising out of the design
1 of a skatepark or bicycle motocross park constructed for purposes
2 of skateboarding, inline skating, bicycling, or scootering that
3 was constructed or reconstructed, reasonably and in good faith,

4 in accordance with generally recognized engineering or safety
5 standards or design theories in existence at the time of the
6 construction or reconstruction. For purposes of this subdivision,
7 the state shall be charged with constructive notice only when the
8 failure to discover the spot or localized defect of the premises is
9 the result of gross negligence.

10 (b) For purposes of this subdivision:

11 (i) Recreational activities include, but are not limited
12 to, whether as a participant or spectator: Hunting, fishing,
13 swimming, boating, camping, picnicking, hiking, walking, running,
14 horseback riding, use of trails, nature study, waterskiing, winter
15 sports, use of playground equipment, biking, roller blading,
16 skateboarding, golfing, athletic contests; visiting, viewing,
17 or enjoying entertainment events, festivals, or historical,
18 archaeological, scenic, or scientific sites; and similar leisure
19 activities;

20 (ii) Inherent risk of recreational activities means those
21 risks that are characteristic of, intrinsic to, or an integral part
22 of the activity;

23 (iii) Gross negligence means the absence of even slight
24 care in the performance of a duty involving an unreasonable risk of
25 harm; and

26 (iv) Fee means a fee to participate in or be a spectator
27 at a recreational activity. A fee shall include payment by the
1 claimant to any person or organization other than the state only
2 to the extent the state retains control over the premises or the
3 activity. A fee shall not include payment of a fee or charge for
4 parking or vehicle entry.

5 (c) This subdivision, and not subdivision (7) of this
6 section, shall apply to any claim arising from the inspection or
7 failure to make an inspection or negligent inspection of premises
8 owned or leased by the state and used for recreational activities.

9 Sec. 3. Original sections 13-910 and 81-8,219, Revised
10 Statutes Cumulative Supplement, 2006, are repealed.

11 Sec. 4. Since an emergency exists, this act takes effect
12 when passed and approved according to law.

13 2. On page 1, strike beginning with "recreational" in
14 line 1 through line 7 and insert "tort claims; to amend sections
15 13-910 and 81-8,219, Revised Statutes Cumulative Supplement, 2006;
16 to change the Political Subdivisions Tort Claims Act and the
17 State Tort Claims Act with respect to liability for recreational
18 activities; to define terms; to provide for applicability; to
19 repeal the original sections; and to declare an emergency."

(Signed) Amanda McGill, Chairperson

GENERAL FILE

LEGISLATIVE BILL 701. The Christensen amendment, AM957, found in this day's Journal, to the first committee amendment, was renewed.

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

Senator Flood moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 4 nays, and 20 not voting.

The Christensen amendment was adopted with 36 ayes, 0 nays, 3 present and not voting, and 10 excused and not voting.

The Chair declared the call raised.

Senator Wallman offered the following amendment to the first committee amendment:

AM959

(Amendments to Standing Committee amendments, AM938)

1 1. Insert the following new section:

2 Sec. 10. Prior to the expenditure of any revenue raised
 3 under sections 6 to 9 of this act, all districts governed by
 4 section 6 of this act shall enter into an interlocal agreement
 5 under the Interlocal Cooperation Act to jointly manage and operate
 6 the project or projects financed by such revenue.

7 2. On page 6, line 10, strike "9" and insert "10".

8 3. Renumber the remaining sections and correct internal
 9 references accordingly.

SENATOR FRIEND PRESIDING

Senator Wallman withdrew his amendment.

The first committee amendment, AM962, found in this day's Journal, as amended, was renewed.

The first committee amendment, as amended, was adopted with 36 ayes, 0 nays, 11 present and not voting, and 2 excused and not voting.

The second committee amendment is as follows:

AM963

1 1. Strike the original sections and all amendments

2 thereto and insert the following sections:

3 Sec. 23. (1) The Water Resources Cash Fund is created.

4 The fund shall be administered by the Department of Natural
 5 Resources. Any money in the fund available for investment shall be
 6 invested by the state investment officer pursuant to the Nebraska

7 Capital Expansion Act and the Nebraska State Funds Investment Act.

8 (2) The State Treasurer shall credit to the fund such
9 money as is (a) transferred to the fund by the Legislature, (b)
10 paid to the state as fees, deposits, payments, and repayments
11 relating to the fund, both principal and interest, (c) donated as
12 gifts, bequests, or other contributions to such fund from public or
13 private entities, (d) made available by any department or agency of
14 the United States if so directed by such department or agency, and
15 (e) credited to the fund from the excise taxes imposed by section
16 66-1345.01 beginning January 1, 2013.

17 (3) The fund shall be expended by the department to
18 (i) aid management actions taken to reduce consumptive uses of
19 water in river basins, subbasins, or reaches which are deemed
20 by the department overappropriated pursuant to section 46-713 or
21 fully appropriated pursuant to section 46-714 or are bound by
22 an interstate compact or decree or a formal state contract or
23 agreement and (ii) the extent funds are not expended on subdivision
1 (i) of this subsection, the department may conduct a statewide
2 assessment of short and long-term water management activities and
3 funding needs to meet statutory requirements in sections 46-713 to
4 46-718 and 46-739 and any requirements of an interstate compact or
5 decree or formal state contract or agreement. The fund shall not
6 be used to pay for administrative expenses or any salaries for the
7 department or any political subdivision.

8 (4) It is the intent of the Legislature that two million
9 seven hundred thousand dollars be transferred each fiscal year from
10 the General Fund to the Water Resources Cash Fund for FY2009-10
11 through FY2018-19.

12 (5)(a) Expenditures from the Water Resources Cash
13 Fund may be made to natural resources districts eligible under
14 subsection (3) of this section for activities to either achieve
15 a sustainable balance of consumptive water uses or to assure
16 compliance with an interstate compact or decree or a formal state
17 contract or agreement and shall require a match of local funding
18 in an amount equal to or greater than forty percent of the total
19 cost of carrying out the eligible activity. Any natural resources
20 district receiving funding from the Water Resources Cash Fund
21 for fiscal year 2007-08 shall submit a report of its planned
22 expenditures for the activity to the Legislature by July 15, 2007,
23 and by November 15, 2007, for funding for any subsequent year. The
24 report shall include:

25 (i) An explanation of how the planned activity will
26 assure compliance with an interstate compact or decree or a formal
27 state contract or agreement as required by section 46-715 and
1 the controls, rules, and regulations designed to carry out the
2 activity; and

3 (ii) A schedule of implementation of the activity or its
4 components.

5 (b) Any natural resources district receiving funding from

6 the Water Resources Cash Fund shall agree as a condition to repay
7 the fund if the Legislature finds that the district failed to
8 implement and enforce its controls, rules, and regulations as
9 required by section 46-715.

10 Sec. 24. Section 61-210, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 61-210 The Department of Natural Resources Cash Fund
13 is created. The State Treasurer shall credit to such fund such
14 money as is specifically appropriated or reappropriated by the
15 Legislature. The State Treasurer shall also credit such fund with
16 payments, if any, accepted for services rendered by the department
17 and fees collected pursuant to subsection (6) of section 46-606
18 and section 61-209. The funds made available to the Department
19 of Natural Resources by the United States, through the Natural
20 Resources Conservation Service of the Department of Agriculture or
21 through any other agencies, shall be credited to the fund by the
22 State Treasurer. Any money in the fund available for investment
23 shall be invested by the state investment officer pursuant to
24 the Nebraska Capital Expansion Act and the Nebraska State Funds
25 Investment Act. The Department of Natural Resources shall allocate
26 money from the fund to pay costs of the programs or activities
27 of the department. The Director of Administrative Services, upon
1 receipt of proper vouchers approved by the department, shall issue
2 warrants on the fund, and the State Treasurer shall countersign
3 and pay from, but never in excess of, the amounts to the credit
4 of the fund. ~~The State Treasurer shall transfer any money in the~~
5 ~~Department of Water Resources Cash Fund and in the Nebraska Natural~~
6 ~~Resources Commission Cash Fund on July 1, 2000, to the Department~~
7 ~~of Natural Resources Cash Fund.~~

8 Sec. 25. Section 66-1345, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 66-1345 (1) There is hereby created the Ethanol
11 Production Incentive Cash Fund which shall be used by the board
12 to pay the credits created in section 66-1344 to the extent
13 provided in this section. Any money in the fund available for
14 investment shall be invested by the state investment officer
15 pursuant to the Nebraska Capital Expansion Act and the Nebraska
16 State Funds Investment Act. The State Treasurer shall transfer to
17 the Ethanol Production Incentive Cash Fund such money as shall be
18 (a) appropriated to the Ethanol Production Incentive Cash Fund by
19 the Legislature, (b) given as gifts, bequests, grants, or other
20 contributions to the Ethanol Production Incentive Cash Fund from
21 public or private sources, (c) made available due to failure to
22 fulfill conditional requirements pursuant to investment agreements
23 entered into prior to April 30, 1992, (d) received as return on
24 investment of the Ethanol Authority and Development Cash Fund, (e)
25 credited to the Ethanol Production Incentive Cash Fund from the
26 excise taxes imposed by section 66-1345.01, and (f) credited to the
27 Ethanol Production Incentive Cash Fund pursuant to sections 66-489,

1 ~~66-4,134~~, 66-726, 66-1345.04, and 66-1519.

2 (2) The Department of Revenue shall, at the end of each
3 calendar month, notify the State Treasurer of the amount of motor
4 fuel tax that was not collected in the preceding calendar month
5 due to the credits provided in section 66-1344. The State Treasurer
6 shall transfer from the Ethanol Production Incentive Cash Fund to
7 the Highway Trust Fund an amount equal to such credits less the
8 following amounts:

9 (a) For 1993, 1994, and 1995, the amount generated during
10 the calendar quarter by a one-cent tax on motor fuel pursuant to
11 sections 66-489 and 66-6,107;

12 (b) For 1996, the amount generated during the calendar
13 quarter by a three-quarters-cent tax on motor fuel pursuant to such
14 sections;

15 (c) For 1997, the amount generated during the calendar
16 quarter by a one-half-cent tax on motor fuel pursuant to such
17 sections; and

18 (d) For 1998 and each year thereafter, no reduction.

19 For 1993 through 1997, if the amount generated pursuant
20 to subdivisions (a), (b), and (c) of this subsection and the
21 amount transferred pursuant to subsection (1) of this section are
22 not sufficient to fund the credits provided in section 66-1344,
23 then the credits shall be funded through the Ethanol Production
24 Incentive Cash Fund but shall not be funded through either the
25 Highway Cash Fund or the Highway Trust Fund. For 1998 and each year
26 thereafter, the credits provided in such section shall be funded
27 through the Ethanol Production Incentive Cash Fund but shall not be
1 funded through either the Highway Cash Fund or the Highway Trust
2 Fund.

3 If, during any month, the amount of money in the Ethanol
4 Production Incentive Cash Fund is not sufficient to reimburse the
5 Highway Trust Fund for credits earned pursuant to section 66-1344,
6 the Department of Revenue shall suspend the transfer of credits by
7 ethanol producers until such time as additional funds are available
8 in the Ethanol Production Incentive Cash Fund for transfer to the
9 Highway Trust Fund. Thereafter, the Department of Revenue shall, at
10 the end of each month, allow transfer of accumulated credits earned
11 by each ethanol producer on a prorated basis derived by dividing
12 the amount in the fund by the aggregate amount of accumulated
13 credits earned by all ethanol producers.

14 (3) The State Treasurer shall transfer from the Ethanol
15 Production Incentive Cash Fund to the Management Services Expense
16 Revolving Fund the amount reported under subsection (4) of section
17 66-1345.02 for each calendar month of the fiscal year as provided
18 in such subsection.

19 (4) On December 31, 2012, the State Treasurer shall
20 transfer ~~one half of the unexpended and unobligated funds,~~
21 including all subsequent investment interest, from the Ethanol
22 Production Incentive Cash Fund to the ~~Nebraska Corn Development,~~

23 Utilization, and Marketing Fund and Grain Sorghum Development,
24 Utilization, and Marketing Fund in the same proportion as funds
25 were collected pursuant to section 66-1345.01 from corn and grain
26 sorghum. The Department of Agriculture shall assist the State
27 Treasurer in determining the amounts to be transferred to the
1 funds. The remaining one-half of the unexpended and unobligated
2 funds shall be transferred to the General Fund. Water Resources
3 Cash Fund.

4 (5) Whenever the unobligated balance in the Ethanol
5 Production Incentive Cash Fund exceeds twenty million dollars, the
6 Department of Revenue shall notify the Department of Agriculture at
7 which time the Department of Agriculture shall suspend collection
8 of the excise tax levied pursuant to section 66-1345.01. If, after
9 suspension of the collection of such excise tax, the balance of
10 the fund falls below ten million dollars, the Department of Revenue
11 shall notify the Department of Agriculture which shall resume
12 collection of the excise tax.

13 (6) On or before December 1, 2003, and each December
14 1 thereafter, the Department of Revenue and the Nebraska Ethanol
15 Board shall jointly submit a report to the Legislature which shall
16 project the anticipated revenue and expenditures from the Ethanol
17 Production Incentive Cash Fund through the termination of the
18 ethanol production incentive programs pursuant to section 66-1344.
19 The initial report shall include a projection of the amount
20 of ethanol production for which the Department of Revenue has
21 entered agreements to provide ethanol production credits pursuant
22 to section 66-1344.01 and any additional ethanol production which
23 the Department of Revenue and the Nebraska Ethanol Board reasonably
24 anticipate may qualify for credits pursuant to section 66-1344.

25 Sec. 26. Section 66-1345.01, Revised Statutes Cumulative
26 Supplement, 2006, is amended to read:

27 66-1345.01 An excise tax is levied upon all corn and
1 grain sorghum sold through commercial channels in Nebraska or
2 delivered in Nebraska. For any sale or delivery of corn or grain
3 sorghum occurring on or after July 1, 1995, and before January
4 1, 2000, the tax is three-fourths cent per bushel for corn and
5 three-fourths cent per hundredweight for grain sorghum. For any
6 sale or delivery of corn or grain sorghum occurring on or after
7 January 1, 2000, and before January 1, 2001, the tax is one-half
8 cent per bushel for corn and one-half cent per hundredweight for
9 grain sorghum. For any sale or delivery of corn or grain sorghum
10 occurring on or after October 1, 2001, and before October 1, 2004,
11 the tax is one-half cent per bushel for corn and one-half cent per
12 hundredweight for grain sorghum. For any sale or delivery of corn
13 or grain sorghum occurring on or after October 1, 2004, and before
14 October 1, 2005, the tax is three-fourths cent per bushel for
15 corn and three-fourths cent per hundredweight for grain sorghum.
16 For any sale or delivery of corn or grain sorghum occurring on
17 or after October 1, 2005, and before October 1, 2010, the tax is

18 seven-eighths cent per bushel for corn and seven-eighths cent per
19 hundredweight for grain sorghum. For any sale or delivery of corn
20 or grain sorghum occurring on or after October 1, 2012, and before
21 October 1, 2019, the tax is one-half cent per bushel for corn and
22 one-half cent per hundredweight for grain sorghum. The tax shall
23 be in addition to any fee imposed pursuant to sections 2-3623 and
24 2-4012.

25 The excise tax shall be imposed at the time of sale or
26 delivery and shall be collected by the first purchaser. The tax
27 shall be collected, administered, and enforced in conjunction with
1 the fees imposed pursuant to sections 2-3623 and 2-4012. The tax
2 shall be collected, administered, and enforced by the Department of
3 Agriculture. No corn or grain sorghum shall be subject to the tax
4 imposed by this section more than once.

5 In the case of a pledge or mortgage of corn or grain
6 sorghum as security for a loan under the federal price support
7 program, the excise tax shall be deducted from the proceeds of such
8 loan at the time the loan is made. If, within the life of the loan
9 plus thirty days after the collection of the excise tax for corn
10 or grain sorghum that is mortgaged as security for a loan under
11 the federal price support program, the grower of the corn or grain
12 sorghum so mortgaged decides to purchase the corn or grain sorghum
13 and use it as feed, the grower shall be entitled to a refund of
14 the excise tax previously paid. The refund shall be payable by the
15 department upon the grower's written application for a refund. The
16 application shall have attached proof of the tax deducted.

17 The excise tax shall be deducted whether the corn or
18 grain sorghum is stored in this or any other state. The excise
19 tax shall not apply to the sale of corn or grain sorghum to the
20 federal government for ultimate use or consumption by the people
21 of the United States when the State of Nebraska is prohibited from
22 imposing such tax by the Constitution of the United States and laws
23 enacted pursuant thereto.

24 Sec. 27. Section 66-1345.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 66-1345.02 (1) The first purchaser, at the time of sale
27 or delivery, shall retain the excise tax as provided in section
1 66-1345.01 and shall maintain the necessary records of the excise
2 tax for each sale or delivery of corn or grain sorghum. Records
3 maintained by the first purchaser shall provide (a) the name and
4 address of the seller or deliverer, (b) the date of the sale or
5 delivery, (c) the number of bushels of corn or hundredweight of
6 grain sorghum sold or delivered, and (d) the amount of excise
7 tax retained on each sale or delivery. The records shall be open
8 for inspection and audit by authorized representatives of the
9 Department of Agriculture during normal business hours observed by
10 the first purchaser.

11 (2) The first purchaser shall render and have on file
12 with the department by the last day of each January, April, July,

13 and October on forms prescribed by the department a statement of
14 the number of bushels of corn and hundredweight of grain sorghum
15 sold or delivered in Nebraska. At the time the statement is filed,
16 the first purchaser shall pay and remit to the department the
17 excise tax.

18 (3) The department shall remit the excise tax collected
19 to the State Treasurer for credit to the Ethanol Production
20 Incentive Cash Fund within thirty days after the end of each
21 quarter through December 31, 2010. Beginning January 1, 2013,
22 the department shall remit the excise tax collected to the State
23 Treasurer for credit to the Water Resources Cash Fund within thirty
24 days after the end of each quarter.

25 (4) The department shall calculate its costs in
26 collecting and enforcing the excise tax imposed by section
27 66-1345.01 and shall report such costs to the budget division of
1 the Department of Administrative Services within thirty days after
2 the end of the fiscal year. Sufficient funds to cover such costs
3 shall be transferred from the Ethanol Production Incentive Cash
4 Fund to the Management Services Expense Revolving Fund at the end
5 of each calendar month, with such transfers ending December 31,
6 2010. Beginning January 1, 2013, the department shall calculate its
7 costs in collecting and enforcing the excise tax imposed by section
8 66-1345.01 and shall report such costs to the budget division
9 of the Department of Administrative Services within thirty days
10 after the end of the fiscal year. Sufficient funds to cover such
11 costs shall be transferred from the Water Resources Cash Fund to
12 the Management Services Expense Revolving Fund at the end of each
13 calendar month. Funds shall be transferred upon the receipt of
14 a report of costs incurred by the Department of Agriculture for
15 the previous calendar month by the Department of Administrative
16 Services.

17 Sec. 28. The State Treasurer shall transfer \$2,700,000
18 from the General Fund to the Water Resources Cash Fund, on
19 or before June 30, 2008, on such date as directed by the
20 budget administrator of the budget division of the Department
21 of Administrative Services.

22 Sec. 29. The State Treasurer shall transfer \$2,700,000
23 from the General Fund to the Water Resources Cash Fund, on
24 or before June 30, 2009, on such date as directed by the
25 budget administrator of the budget division of the Department
26 of Administrative Services.

27 Sec. 30. It is the intent of the Legislature that the
1 Department of Natural Resources may undertake measures in fiscal
2 year 2006-07 to further facilitate compliance with interstate
3 compact or decree stipulations.

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

FA65

Amend AM963 On page 8, line 21, after "is" insert "one and".

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

Senator Flood moved for a call of the house. The motion prevailed with 37 ayes, 0 nays, and 12 not voting.

The motion to cease debate prevailed with 26 ayes, 7 nays, 13 present and not voting, and 3 excused and not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 0.

Voting in the negative, 30:

Adams	Erdman	Hansen	Kopplin	Pirsch
Aguilar	Fischer	Harms	Louden	Raikes
Avery	Flood	Heidemann	McDonald	Rogert
Carlson	Friend	Hudkins	Nantkes	Schimek
Dubas	Fulton	Johnson	Nelson	White
Engel	Gay	Karpisek	Pankonin	Wightman

Present and not voting, 16:

Burling	Howard	Lathrop	Preister
Chambers	Janssen	McGill	Stuthman
Christensen	Kruse	Mines	Synowiecki
Dierks	Langemeier	Pahls	Wallman

Excused and not voting, 3:

Ashford	Cornett	Pedersen
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The Chambers amendment lost with 0 ayes, 30 nays, 16 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

Pending.

AMENDMENTS - Print in Journal

Senator Preister filed the following amendment to LB 701:
AM966

(Amendments to Standing Committee amendments, AM938)

- 1 1. On page 1, line 23, after the period insert "Such
- 2 plans and policies shall include a prohibition on the use of
- 3 chemicals until all other feasible best management practices for
- 4 vegetation management have been considered and exhausted.".
- 5 2. On page 8, line 9, after "tributaries" insert
- 6 "consistent with the plans established in section 2 of this
- 7 act".

Senator Raikes filed the following amendment to LB 603:
AM940

(Amendments to Standing Committee amendments, AM754)

- 1 1. Insert the following new sections:
- 2 Section 1. Section 13-503, Revised Statutes Cumulative
- 3 Supplement, 2006, is amended to read:
- 4 13-503 For purposes of the Nebraska Budget Act, unless
- 5 the context otherwise requires:
- 6 (1) Governing body shall mean the governing body of
- 7 any county agricultural society, elected county fair board, joint
- 8 airport authority formed under the Joint Airport Authorities
- 9 Act, city or county airport authority, bridge commission created
- 10 pursuant to section 39-868, cemetery district, city, village,
- 11 municipal county, community college, community redevelopment
- 12 authority, county, drainage or levee district, educational
- 13 service unit, rural or suburban fire protection district,
- 14 historical society, hospital district, irrigation district,
- 15 learning community, natural resources district, nonprofit county
- 16 historical association or society for which a tax is levied under
- 17 subsection (1) of section 23-355.01, public building commission,
- 18 railroad transportation safety district, reclamation district,
- 19 road improvement district, rural water district, school district,
- 20 sanitary and improvement district, township, offstreet parking
- 21 district, transit authority, metropolitan utilities district,
- 22 Educational Service Unit Coordinating Council, and political
- 1 subdivision with the authority to have a property tax request, with
- 2 the authority to levy a toll, or that receives state aid;
- 3 (2) Levying board shall mean any governing body which has
- 4 the power or duty to levy a tax;
- 5 (3) Fiscal year shall mean the twelve-month period used
- 6 by each governing body in determining and carrying on its financial
- 7 and taxing affairs;
- 8 (4) Tax shall mean any general or special tax levied
- 9 against persons, property, or business for public purposes as
- 10 provided by law but shall not include any special assessment;
- 11 (5) Auditor shall mean the Auditor of Public Accounts;

12 (6) Cash reserve shall mean funds required for the period
13 before revenue would become available for expenditure but shall not
14 include funds held in any special reserve fund;

15 (7) Public funds shall mean all money, including nontax
16 money, used in the operation and functions of governing bodies.
17 For purposes of a county, city, or village which has a lottery
18 established under the Nebraska County and City Lottery Act, only
19 those net proceeds which are actually received by the county, city,
20 or village from a licensed lottery operator shall be considered
21 public funds, and public funds shall not include amounts awarded as
22 prizes;

23 (8) Adopted budget statement shall mean a proposed budget
24 statement which has been adopted or amended and adopted as provided
25 in section 13-506. Such term shall include additions, if any, to an
26 adopted budget statement made by a revised budget which has been
27 adopted as provided in section 13-511;

1 (9) Special reserve fund shall mean any special fund
2 set aside by the governing body for a particular purpose and not
3 available for expenditure for any other purpose. Funds created
4 for (a) the retirement of bonded indebtedness, (b) the funding
5 of employee pension plans, (c) the purposes of the Political
6 Subdivisions Self-Funding Benefits Act, (d) the purposes of the
7 Local Option Municipal Economic Development Act, (e) voter-approved
8 sinking funds, (f) statutorily authorized sinking funds, or (g) the
9 distribution of property tax receipts by a learning community to
10 member school districts shall be considered special reserve funds;

11 (10) Biennial period shall mean the two fiscal years
12 comprising a biennium commencing in odd-numbered years used by
13 a city in determining and carrying on its financial and taxing
14 affairs; and

15 (11) Biennial budget shall mean a budget by a city of
16 the primary or metropolitan class that adopts a charter provision
17 providing for a biennial period to determine and carry on the
18 city's financial and taxing affairs.

19 Sec. 30. Section 84-304, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 84-304 It shall be the duty of the Auditor of Public
22 Accounts:

23 (1) To give information in writing to the Legislature,
24 whenever required, upon any subject relating to the fiscal affairs
25 of the state or with regard to any duty of his or her office;

26 (2) To furnish offices for himself or herself and all
27 fuel, lights, books, blanks, forms, paper, and stationery required
1 for the proper discharge of the duties of his or her office;

2 (3) To examine or cause to be examined, at such time
3 as he or she shall determine, books, accounts, vouchers, records,
4 and expenditures of all state officers, state bureaus, state
5 boards, state commissioners, the state library, societies and
6 associations supported by the state, state institutions, state

7 colleges, and the University of Nebraska, except when required to
8 be performed by other officers or persons. Such examinations shall
9 be done in accordance with generally accepted government auditing
10 standards for financial audits and attestation engagements set
11 forth in Government Auditing Standards (2003 Revision), published
12 by the Comptroller General of the United States, General Accounting
13 Office, and except as provided in subdivision (12) of this section,
14 subdivision (16) of section 50-1205, and section 84-322, shall
15 not include performance audits, whether conducted pursuant to
16 attestation engagements or performance audit standards as set forth
17 in Government Auditing Standards (2003 Revision), published by
18 the Comptroller General of the United States, General Accounting
19 Office;

20 (4)(a) To examine or cause to be examined, at the expense
21 of the political subdivision, when the Auditor of Public Accounts
22 determines such examination necessary or when requested by the
23 political subdivision, the books, accounts, vouchers, records,
24 and expenditures of any agricultural association formed under
25 Chapter 2, article 20, county agricultural society, joint airport
26 authority formed under the Joint Airport Authorities Act, city
27 or county airport authority, bridge commission created pursuant
1 to section 39-868, cemetery district, development district,
2 drainage district, health district, local public health department
3 as defined in section 71-1626, historical society, hospital
4 authority or district, county hospital, housing agency as defined
5 in section 71-1575, irrigation district, county or municipal
6 library, community mental health center, railroad transportation
7 safety district, rural water district, township, Wyuka Cemetery,
8 Educational Service Unit Coordinating Council, any entity created
9 pursuant to the Interlocal Cooperation Act which includes either
10 the participation of the Educational Service Unit Coordinating
11 Council or any educational service unit, any village, any political
12 subdivision with the authority to levy a property tax or a toll, or
13 any entity created pursuant to the Joint Public Agency Act which
14 has separately levied a property tax based on legal authority for
15 a joint public agency to levy such a tax independent of the public
16 agencies forming such joint public agency.

17 (b) The Auditor of Public Accounts may waive the
18 audit requirement of subdivision (4)(a) of this section upon
19 the submission by the political subdivision of a written request
20 in a form prescribed by the auditor. The auditor shall notify the
21 political subdivision in writing of the approval or denial of the
22 request for a waiver;

23 (5) To report promptly to the Governor and the
24 appropriate standing committee of the Legislature the fiscal
25 condition shown by such examinations conducted by the auditor,
26 including any irregularities or misconduct of officers or
27 employees, any misappropriation or misuse of public funds or
1 property, and any improper system or method of bookkeeping or

2 condition of accounts. In addition, if, in the normal course of
3 conducting an audit in accordance with subdivision (3) of this
4 section, the auditor discovers any potential problems related to
5 the effectiveness, efficiency, or performance of state programs, he
6 or she shall immediately report them in writing to the Legislative
7 Performance Audit Committee which may investigate the issue
8 further, report it to the appropriate standing committee of the
9 Legislature, or both;

10 (6)(a) To examine or cause to be examined the books,
11 accounts, vouchers, records, and expenditures of a fire protection
12 district. The expense of the examination shall be paid by the
13 political subdivision.

14 (b) Whenever the expenditures of a fire protection
15 district are one hundred fifty thousand dollars or less per
16 fiscal year, the fire protection district shall be audited no more
17 than once every five years except as directed by the board of
18 directors of the fire protection district or unless the auditor
19 receives a verifiable report from a third party indicating any
20 irregularities or misconduct of officers or employees of the fire
21 protection district, any misappropriation or misuse of public funds
22 or property, or any improper system or method of bookkeeping or
23 condition of accounts of the fire protection district. In the
24 absence of such a report, the auditor may waive the five-year
25 audit requirement upon the submission of a written request by the
26 fire protection district in a form prescribed by the auditor. The
27 auditor shall notify the fire protection district in writing of
1 the approval or denial of a request for waiver of the five-year
2 audit requirement. Upon approval of the request for waiver of the
3 five-year audit requirement, a new five-year audit period shall
4 begin.

5 (c) Whenever the expenditures of a fire protection
6 district exceed one hundred fifty thousand dollars in a fiscal
7 year, the auditor may waive the audit requirement upon the
8 submission of a written request by the fire protection district
9 in a form prescribed by the auditor. The auditor shall notify the
10 fire protection district in writing of the approval or denial of a
11 request for waiver. Upon approval of the request for waiver, a new
12 five-year audit period shall begin for the fire protection district
13 if its expenditures are one hundred fifty thousand dollars or less
14 per fiscal year in subsequent years;

15 (7) To appoint two assistant deputies (a) whose entire
16 time shall be devoted to the service of the state as directed by
17 the auditor, (b) who shall be certified public accountants with at
18 least five years' experience, (c) who shall be selected without
19 regard to party affiliation or to place of residence at the time
20 of appointment, (d) who shall promptly report in duplicate to the
21 auditor the fiscal condition shown by each examination, including
22 any irregularities or misconduct of officers or employees, any
23 misappropriation or misuse of public funds or property, and any

24 improper system or method of bookkeeping or condition of accounts,
25 and it shall be the duty of the auditor to file promptly with the
26 Governor a duplicate of such report, and (e) who shall qualify by
27 taking an oath which shall be filed in the office of the Secretary
1 of State;

2 (8) To conduct audits and related activities for state
3 agencies, political subdivisions of this state, or grantees of
4 federal funds disbursed by a receiving agency on a contractual
5 or other basis for reimbursement to assure proper accounting by
6 all such agencies, political subdivisions, and grantees for funds
7 appropriated by the Legislature and federal funds disbursed by
8 any receiving agency. The auditor may contract with any political
9 subdivision to perform the audit of such political subdivision
10 required by or provided for in section 23-1608 or 79-1229 or this
11 section and charge the political subdivision for conducting the
12 audit. The fees charged by the auditor for conducting audits on a
13 contractual basis shall be in an amount sufficient to pay the cost
14 of the audit. The fees remitted to the auditor for such audits and
15 services shall be deposited in the Auditor of Public Accounts Cash
16 Fund;

17 (9) To conduct all audits and examinations in a timely
18 manner and in accordance with the standards for audits of
19 governmental organizations, programs, activities, and functions
20 published by the Comptroller General of the United States;

21 (10) To develop a plan for implementing on-line
22 filing of budgeted and actual financial information by political
23 subdivisions. Such plan shall describe the technology and staff
24 resources necessary to implement on-line filing of such information
25 and the costs of these resources. Such plan shall be presented to
26 the Clerk of the Legislature on or before January 15, 2003;

27 (11) To develop and maintain an annual budget and actual
1 financial information reporting system that is accessible on-line
2 by the public; and

3 (12) When authorized, to conduct joint audits with the
4 Legislative Performance Audit Committee as described in section
5 50-1205.

6 2. On page 49, strike lines 25 to 27 and insert the
7 following:

8 "Sec. 32. Sections 1, 8, 15, 16, 17, 18, 19, 20, 21, 27,
9 30, 31, 32, 35, and 38 of this act become operative on July 1,
10 2008. Sections 4, 7, 9, 11, 33, 34, 37, and 39 become".

11 3. On page 50, line 5, after "sections" insert "13-503,";
12 and in line 6 after the second comma insert "84-304,".

13 4. Renumber the remaining sections accordingly and
14 correct the internal references accordingly.

Senator Dubas filed the following amendment to LB 701:
AM975

(Amendments to AM963)

1 1. Insert the following new section:

2 Sec. 31. Section 77-2704.24, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-2704.24 (1) Sales and use taxes shall not be imposed
5 on the gross receipts from the sale, lease, or rental of and the
6 storage, use, or other consumption in this state of food or food
7 ingredients except for prepared food and food sold through vending
8 machines.

9 (2) For purposes of this section:

10 (a) Alcoholic beverages means beverages that are suitable
11 for human consumption and contain one-half of one percent or more
12 of alcohol by volume;

13 (b) Dietary supplement means any product, other than
14 tobacco, intended to supplement the diet that contains one or
15 more of the following dietary ingredients: (i) A vitamin, (ii) a
16 mineral, (iii) an herb or other botanical, (iv) an amino acid,
17 (v) a dietary substance for use by humans to supplement the diet
18 by increasing the total dietary intake, or (vi) a concentrate,
19 metabolite, constituent, extract, or combination of any ingredients
20 described in subdivisions (2)(b)(i) through (v) of this section;
21 that is intended for ingestion in tablet, capsule, powder, softgel,
22 gelcap, or liquid form or, if not intended for ingestion in such a
1 form, is not presented as conventional food and is not represented
2 for use as a sole item of a meal or of the diet; and that is
3 required to be labeled as a dietary supplement, identifiable by the
4 supplemental facts box found on the label and as required pursuant
5 to 21 C.F.R. 101.36, as such regulation existed on January 1, 2003;

6 (c) Food and food ingredients means substances, whether
7 in liquid, concentrated, solid, frozen, dried, or dehydrated form,
8 that are sold for ingestion or chewing by humans and are consumed
9 for their taste or nutritional value. Food and food ingredients
10 does not include alcoholic beverages, dietary supplements, ~~or~~
11 tobacco, or bottled water;

12 (d) Food sold through vending machines means food that is
13 dispensed from a machine or other mechanical device that accepts
14 payment;

15 (e) Prepared food means:

16 (i) Food sold with eating utensils provided by the
17 seller, including plates, knives, forks, spoons, glasses, cups,
18 napkins, or straws. A plate does not include a container or
19 packaging used to transport the food; and

20 (ii) Two or more food ingredients mixed or combined by
21 the seller for sale as a single item and food sold in a heated
22 state or heated by the seller, except:

23 (A) Food that is only cut, repackaged, or pasteurized by
24 the seller;

25 (B) Eggs, fish, meat, poultry, and foods containing these
26 raw animal foods requiring cooking by the consumer as recommended
27 by the federal Food and Drug Administration in chapter 3, part
1 401.11 of its Food Code, as it existed on January 1, 2003, so as to
prevent food borne illnesses;

3 (C) Food sold by a seller whose proper primary
4 North American Industry Classification System classification is
5 manufacturing in sector 311, except subsector 3118, bakeries;

6 (D) Food sold in an unheated state by weight or volume as
7 a single item; and

8 (E) Bakery items, including bread, rolls, buns, biscuits,
9 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
10 tarts, muffins, bars, cookies, and tortillas; and

11 (f) Tobacco means cigarettes, cigars, chewing or pipe
12 tobacco, or any other item that contains tobacco.

13 2. On page 1, line 14, strike "and"; and in line 16
14 before the period insert ", and (f) collected as state sales tax on
15 bottled water under the Nebraska Revenue Act of 1967".

16 3. Correct the operative date so that the section added
17 by this amendment becomes operative on October 1, 2007.

18 4. Renumber the remaining sections and correct internal
19 references accordingly.

VISITORS

Visitors to the Chamber were Jonathan and Juanita Trexel from Lincoln and Sheldon and Suzanne Kimber from Commonwealth of Australia; Ben Gorton from Hamilton, New York; and 25 fourth-grade students from Red Cloud.

The Doctor of the Day was Dr. Tuck Smith from Holdrege.

ADJOURNMENT

At 5:06 p.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Wednesday, April 11, 2007.

Patrick J. O'Donnell
Clerk of the Legislature

