

SEVENTY-FIFTH DAY - MAY 8, 2009**LEGISLATIVE JOURNAL****ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION****SEVENTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska
Friday, May 8, 2009

PRAYER

The prayer was offered by Senator Sullivan.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Ashford and McGill who were excused; and Senators Gay, Karpisek, Lautenbaugh, and Nelson who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the seventy-fourth day was approved.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 626. Placed on Select File with amendment.
ER8124

- 1 1. On page 1, strike beginning with "the" in line 1
- 2 through line 7 and insert "public officials and public employees;
- 3 to amend sections 49-1405 and 81-1120.27, Reissue Revised Statutes
- 4 of Nebraska, and sections 49-1401, 49-14,101.01, and 49-14,101.02,
- 5 Revised Statutes Cumulative Supplement, 2008; to change provisions
- 6 relating to use of public resources by public officials and public
- 7 employees; to redefine a term; to harmonize provisions; and to
- 8 repeal the original sections."

LEGISLATIVE BILL 263. Placed on Select File with amendment.
ER8123

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. The Nebraska Seed Law and any rules and
- 4 regulations adopted and promulgated thereunder shall supersede and

5 preempt any ordinance, rule, regulation, or resolution enacted by
 6 any political subdivision of the state regarding the regulation
 7 of seeds. No political subdivision shall prohibit or in any other
 8 manner regulate any matter relating to the registration, labeling,
 9 or sale of seeds based upon the type, nature, or genetic makeup of
 10 such seeds. No political subdivision shall prohibit or in any other
 11 manner regulate any matter relating to the registration, labeling,
 12 sale, storage, transportation, distribution, notification of use,
 13 planting, or cultivation of seeds that are in addition to or in
 14 conflict with the Nebraska Seed Law and any rules and regulations
 15 adopted and promulgated thereunder. Nothing in this section shall
 16 be construed to preempt or otherwise limit the authority of any
 17 city or county to adopt and enforce zoning regulations.

18 Sec. 2. Section 81-2,147, Reissue Revised Statutes of
 19 Nebraska, is amended to read:

20 81-2,147 Sections 81-2,147 to 81-2,147.11 and section 1
 21 of this act shall be known and cited as the Nebraska Seed Law.

22 Sec. 3. The Nebraska Commercial Fertilizer and Soil
 23 Conditioner Act and any rules and regulations adopted and
 1 promulgated thereunder shall supersede and preempt any ordinance,
 2 rule, regulation, or resolution enacted by any political
 3 subdivision of the state regarding the regulation of fertilizer and
 4 soil conditioners. No political subdivision shall prohibit or in
 5 any other manner regulate any matter relating to the registration,
 6 labeling, or sale of fertilizer and soil conditioners. No political
 7 subdivision shall prohibit or in any other manner regulate any
 8 matter relating to the storage, transportation, distribution,
 9 notification of use, or use that are in addition to or in conflict
 10 with the Nebraska Commercial Fertilizer and Soil Conditioner Act
 11 and any rules and regulations adopted and promulgated thereunder.
 12 Nothing in this section shall be construed to preempt or otherwise
 13 limit the authority of any city or county to adopt and enforce
 14 zoning regulations or any natural resources district to enforce the
 15 Nebraska Ground Water Management and Protection Act.

16 Sec. 4. Section 81-2,162.22, Reissue Revised Statutes of
 17 Nebraska, is amended to read:

18 81-2,162.22 Sections 81-2,162.01 to 81-2,162.27 and
 19 section 3 of this act shall be known and may be cited as the
 20 Nebraska Commercial Fertilizer and Soil Conditioner Act.

21 Sec. 5. Original sections 81-2,147 and 81-2,162.22,
 22 Reissue Revised Statutes of Nebraska, are repealed.

LEGISLATIVE BILL 392. Placed on Select File with amendment.
 ER8125 is available in the Bill Room.

LEGISLATIVE BILL 561. Placed on Select File with amendment.
 ER8126

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:

3 Section 1. Section 70-670, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 70-670 In addition to any other rights and powers
 6 hereinabove conferred upon any district organized under or subject
 7 to Chapter 70, article 6, each such district shall have and
 8 exercise the power of eminent domain to acquire from any person,
 9 firm, association, or private corporation any and all property
 10 owned, used, or operated, or useful for operation, in the
 11 generation, transmission, or distribution of electrical energy,
 12 including an existing electric utility system or any part thereof.
 13 The procedure to condemn property shall be exercised in the manner
 14 set forth in Chapter 76, article 7. In the case of the acquisition
 15 through the exercise of the power of eminent domain of an existing
 16 electric utility system or part thereof, the Attorney General
 17 shall, upon request of any district, represent such district
 18 in the institution and prosecution of condemnation proceedings.
 19 After acquisition of an existing electric utility system through
 20 the exercise of the power of eminent domain, the district shall
 21 reimburse the state for all costs and expenses incurred in the
 22 condemnation proceedings by the Attorney General. A district may
 23 agree to limit its exercise of the power of eminent domain to
 1 acquire a project which is a renewable energy generation facility
 2 producing electricity with wind and any related facilities.

3 Sec. 2. Section 70-1014.01, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 70-1014.01 ~~An~~ (1) Except as provided in subsection
 6 (2) of this section, an application by a municipality, a
 7 registered group of municipalities, a public power district, a
 8 public power and irrigation district, an electric cooperative, an
 9 electric membership association, or any other governmental entity
 10 for a facility that will generate not more than ten thousand
 11 kilowatts of electric energy at rated capacity and will generate
 12 electricity using solar, wind, biomass, landfill gas, methane gas,
 13 or hydropower generation technology or an emerging generation
 14 technology, including, but not limited to, fuel cells and
 15 micro-turbines, shall be deemed a special generation application.
 16 Such application shall be approved by the board if the board finds
 17 that ~~(1)-(a)~~ the application qualifies as a special generation
 18 application, ~~(2)-(b)~~ the application will provide public benefits
 19 sufficient to warrant approval of the application, although it may
 20 not constitute the most economically feasible generation option,
 21 and ~~(3)-(c)~~ the application under consideration represents a
 22 separate and distinct project from any previous special generation
 23 application the applicant may have filed.

24 (2)(a) An application by a municipality, a registered
 25 group of municipalities, a public power district, a public power
 26 and irrigation district, an electric cooperative, an electric
 27 membership association, or any other governmental entity for a
 1 facility that will generate more than ten thousand kilowatts of

2 electric energy at rated capacity and will generate electricity
 3 using renewable energy sources such as solar, wind, biomass,
 4 landfill gas, methane gas, or new hydropower generation technology
 5 or an emerging technology, including, but not limited to, fuel
 6 cells and micro-turbines, may be filed with the board if (i)
 7 the total production from all such renewable projects, excluding
 8 sales from such projects to other electric-generating entities,
 9 does not exceed ten percent of total energy sales as shown in
 10 the producer's Annual Electric Power Industry Report to the United
 11 States Department of Energy and (ii) the applicant's governing body
 12 conducts at least one advertised public hearing which affords the
 13 ratepayers of the applicant a chance to review and comment on the
 14 subject of the application.

15 (b) The application shall be approved by the board if
 16 the board finds that (i) the applicant is using renewable energy
 17 sources described in this subsection, (ii) total production from
 18 all renewable projects of the applicant does not exceed ten percent
 19 of the producer's total energy sales as described in subdivision
 20 (2)(a) of this section, and (iii) the applicant's governing body
 21 has conducted at least one advertised public hearing which affords
 22 its ratepayers a chance to review and comment on the subject of the
 23 application.

24 (3) A community-based energy development project
 25 organized pursuant to the Rural Community-Based Energy Development
 26 Act which intends to develop renewable energy sources for sale to
 27 one or more Nebraska electric utilities described in this section
 1 may also make an application to the board pursuant to subsection
 2 (2) of this section if (a) the purchasing electric utilities
 3 conduct a public hearing described in such subsection and (b)
 4 the power and energy from the renewable energy sources is sold
 5 exclusively to such electric utilities for a term of at least
 6 twenty years.

7 Sec. 3. Original sections 70-670 and 70-1014.01, Reissue
 8 Revised Statutes of Nebraska, are repealed.

9 2. On page 1, strike beginning with "public" in line
 10 1 through line 4 and insert "electricity; to amend sections
 11 70-670 and 70-1014.01, Reissue Revised Statutes of Nebraska; to
 12 permit public power districts to agree to limit the power of
 13 eminent domain; to change provisions relating to special generation
 14 applications for electric generation facilities; and to repeal the
 15 original sections."

LEGISLATIVE BILL 545A. Placed on Select File with amendment.
 ER8127

- 1 1. On page 1, line 3, after the semicolon insert "to
- 2 eliminate appropriations to the State Department of Education;"
- 3 2. On page 5, line 22, strike "bill" and insert "act".

(Signed) Jeremy Nordquist, Chairperson

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 60. Placed on Final Reading.
LEGISLATIVE BILL 94. Placed on Final Reading.
LEGISLATIVE BILL 129. Placed on Final Reading.
LEGISLATIVE BILL 208. Placed on Final Reading.
LEGISLATIVE BILL 209. Placed on Final Reading.
LEGISLATIVE BILL 278. Placed on Final Reading.
LEGISLATIVE BILL 389. Placed on Final Reading.
LEGISLATIVE BILL 422. Placed on Final Reading.
LEGISLATIVE BILL 445. Placed on Final Reading.
LEGISLATIVE BILL 447. Placed on Final Reading.
LEGISLATIVE BILL 488. Placed on Final Reading.

LEGISLATIVE BILL 498. Placed on Final Reading.
 ST9035

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

1. On page 1, line 3, "to require statements regarding conflicts of interest;" has been inserted after the last semicolon.

LEGISLATIVE BILL 501. Placed on Final Reading.
LEGISLATIVE BILL 531. Placed on Final Reading.

(Signed) Jeremy Nordquist, Chairperson

COMMUNICATION

Received communication from Board of Educational Lands and Funds.

REPORTS

The following reports were received by the Legislature:

Fiscal Office, Legislative

Monthly Consensus Estimate of General Fund Receipts

Investment Finance Authority, Nebraska (NIFA)

2006 Series A, B, C, D, E and F Community Development Loan Notes
 (City of Lincoln Program-2006) Report

Revenue, Nebraska Department of

Monthly Consensus Estimate of General Fund Receipts

Roads, Nebraska Department of

Board of Public Roads Classifications and Standards Minutes for March
 2009

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of May 7, 2009, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

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

Carlson, Kyle

Planned Parenthood of Nebraska & Council Bluffs

Falkstrom, Mike

Planned Parenthood of Nebraska & Council Bluffs

Husch Blackwell Sanders, LLP

Crown Cork and Seal Company, Inc.

Kissel/Erickson & Sederstrom Associates, LLC

Investment Finance Authority, Nebraska (withdrawn 05/01/2009)

SELECT FILE

LEGISLATIVE BILL 671A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 342A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 97A. ER8119, found on page 1329, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 246A. Advanced to Enrollment and Review for Engrossment.

BILL ON FINAL READING**Dispense With Reading at Large**

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB188 with 40 ayes, 0 nays, 4 present and not voting, and 5 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 188. With Emergency Clause.

A BILL FOR AN ACT relating to retirement; to amend sections 23-2308.01, 23-2315, 23-2317, 23-2319, 23-2321, 81-2017, 84-712.05, 84-1302, 84-1307, 84-1309.02, 84-1317, 84-1319, 84-1321, 84-1323,

84-1330, 84-1331, and 84-1512, Reissue Revised Statutes of Nebraska, and section 23-2306, Revised Statutes Cumulative Supplement, 2008; to provide and change participation, cash balance benefit, payment deferral, and death benefit provisions relating to the County Employees Retirement Act and the State Employees Retirement Act; to change contribution provisions relating to the Nebraska State Patrol Retirement Act; to provide for deferred compensation transfers under the State Employees Retirement Act; to provide for the withholding of certain records from the public; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

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

Voting in the affirmative, 45:

Adams	Dierks	Hadley	Lautenbaugh	Price
Avery	Dubas	Hansen	Louden	Rogert
Campbell	Fischer	Harms	McCoy	Schilz
Carlson	Flood	Heidemann	Mello	Stuthman
Christensen	Friend	Howard	Nantkes	Sullivan
Coash	Fulton	Janssen	Nordquist	Utter
Cook	Giese	Karpisek	Pahls	Wallman
Cornett	Gloor	Langemeier	Pankonin	White
Council	Haar	Lathrop	Pirsch	Wightman

Voting in the negative, 0.

Excused and not voting, 4:

Ashford	Gay	McGill	Nelson
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LB188.

SELECT FILE

LEGISLATIVE BILL 187. ER8109, found on page 1289, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 9. ER8099, found on page 1260, was adopted.

Senator Pahls renewed his motion, MO49, found on page 1384, to bracket until June 4, 2009.

SENATOR ROBERT PRESIDING

Senator Pahls withdrew his motion to bracket.

Senator Adams renewed his amendment, AM1217, found on page 1230.

SENATOR LANGEMEIER PRESIDING

SENATOR ROBERT PRESIDING

Senator Hadley requested a record vote on the Adams amendment.

Voting in the affirmative, 39:

Adams	Dubas	Hadley	Lautenbaugh	Pirsch
Avery	Fischer	Hansen	Louden	Rogert
Campbell	Flood	Harms	McCoy	Stuthman
Carlson	Friend	Howard	Mello	Sullivan
Coash	Fulton	Janssen	Nantkes	Utter
Cook	Giese	Karpisek	Nelson	Wallman
Cornett	Gloor	Langemeier	Nordquist	Wightman
Council	Haar	Lathrop	Pankonin	

Voting in the negative, 0.

Present and not voting, 7:

Dierks	Heidemann	Price	White
Gay	Pahls	Schilz	

Excused and not voting, 3:

Ashford	Christensen	McGill
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The Adams amendment was adopted with 39 ayes, 0 nays, 7 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 494. Senator Wightman renewed his amendment, AM1244, found on page 1280.

The Wightman amendment was adopted with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

Senator Cornett reoffered her amendment, AM1203, found on page 1209 and considered on page 1214.

The Cornett amendment was adopted with 31 ayes, 0 nays, 14 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

PRESENTED TO THE GOVERNOR

Presented to the Governor on May 8, 2009, at 9:22 a.m. was the following: LB188e.

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

RESOLUTION

LEGISLATIVE RESOLUTION 112. Introduced by Sullivan, 41; Carlson, 38.

PURPOSE: The purpose of this interim study is to examine Nebraska's fence laws and develop a proposal to refine and simplify those laws as applied in rural and urban areas. The study shall seek to involve livestock producers, landowners, legal experts, and other interested parties to examine fence issues and to recommend actions to clarify and improve Nebraska's fence laws.

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

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

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

Referred to the Executive Board.

AMENDMENTS - Print in Journal

Senator Howard filed the following amendment to LB63:
AM1360

(Amendments to E & R amendments, ER8031)

- 1 1. Insert the following new sections:
- 2 Sec. 40. Sections 40 to 44 of this act shall be known and
- 3 may be cited as the Lindsay Ann Burke Act.
- 4 Sec. 41. The Legislature finds and declares that all
- 5 students have a right to work and study in a safe, supportive
- 6 environment that is free from harassment, intimidation, and

7 violence. The Legislature further finds that when a student is a
8 victim of dating violence, his or her academic life suffers and his
9 or her safety at school is jeopardized. The Legislature therefor
10 finds and declares that a policy to create a better understanding
11 and awareness of dating violence shall be adopted by each school
12 district. It is the intent of the Legislature to require each
13 school district to establish a policy for educating staff and
14 students about dating violence.

15 Sec. 42. For purposes of the Lindsay Ann Burke Act,
16 unless the context otherwise requires:

17 (1) Dating partner means any person, regardless of
18 gender, involved in an intimate relationship with another person
19 primarily characterized by the expectation of affectionate
20 involvement whether casual, serious, or long-term;

21 (2) Dating violence means a pattern of behavior where one
22 person uses threats of, or actually uses, physical, sexual, verbal,
1 or emotional abuse to control his or her dating partner;

2 (3) Department means the State Department of Education;
3 and

4 (4) School district has the same meaning as in section
5 79-101.

6 Sec. 43. (1) On or before March 1, 2010, the department
7 shall develop and adopt a model dating violence policy to assist
8 school districts in developing policies for dating violence.

9 (2) On or before July 1, 2010, each school district shall
10 develop and adopt a specific policy to address incidents of dating
11 violence involving students at school, which shall be made a part
12 of the requirements for accreditation in accordance with section
13 79-703. Such policy shall include a statement that dating violence
14 will not be tolerated.

15 (3) To ensure notice of a school district's dating
16 violence policy, the policy shall be published in any school
17 district handbook, manual, or similar publication that sets forth
18 the comprehensive rules, procedures, and standards of conduct for
19 students at school.

20 (4) Each school district shall provide dating violence
21 training to staff deemed appropriate by a school district's
22 administration. The dating violence training shall include, but
23 not be limited to, basic awareness of dating violence, warning
24 signs of dating violence, and the school district's dating violence
25 policy. The dating violence training may be provided by any school
26 district or combination of school districts, an educational service
27 unit, or any combination of educational service units.

1 (5) Each school district shall inform the students'
2 parents or legal guardians of the school district's dating violence
3 policy. If requested, the school district shall provide the parents
4 or legal guardians a copy of the school district's dating violence
5 policy and relevant information.

6 (6) This section does not prevent a victim of dating

7 violence from seeking redress under any other available law, either
 8 civil or criminal and does not create or alter any existing tort
 9 liability.
 10 Sec. 44. Each school district shall incorporate dating
 11 violence education that is age-appropriate into the school
 12 program. Dating violence education shall include, but not be
 13 limited to, defining dating violence, recognizing dating violence
 14 warning signs, and identifying characteristics of healthy dating
 15 relationships.

Senator Mello filed the following amendment to LB633:

AM1331

(Amendments to E & R amendments, ER8102)

1 1. On page 2, line 18, after the period insert "The
 2 college shall distribute no more than fifty percent of the fund
 3 to neighborhood associations and no more than fifty percent of the
 4 fund to small communities.".

Senator Gay filed the following amendment to LB160:

AM1361

(Amendments to E & R amendments, ER8101)

1 1. On page 2, strike beginning with "Proceeds" in line
 2 18 through line 27 and insert "(a) Prior to the issuing of bonds
 3 pursuant to section 1 of this act or expending funds of a natural
 4 resources district encompassing a city of the metropolitan class to
 5 pay costs of a reservoir or water quality basin project or projects
 6 greater than twenty surface acres, a county board of the affected
 7 county may pass a resolution stating that it does not approve of
 8 the construction of such reservoir or water quality basin project
 9 or projects within its exclusive zoning jurisdiction. A vote on the
 10 resolution shall take place within ninety days after notice from
 11 the board of directors of the natural resources district of its
 12 intent to issue bonds.

13 (b) No proceeds from bonds issued pursuant to section 1
 14 of this act or funds of a natural resources district encompassing
 15 a city of the metropolitan class may be used to pay costs of a
 16 reservoir or water quality basin project or projects greater than
 17 twenty surface acres if the county board of the affected county
 18 passes such a resolution.

19 (c) Sections 1 to 5 of this act do not (i) limit
 20 the authority of a natural resources district with regard to
 21 reservoirs, water quality basin projects, or other projects of
 22 less than twenty surface acres or (ii) prohibit use of funds of
 1 a natural resources district for preliminary studies or reports
 2 necessary, in the discretion of the board of directors of the
 3 natural resources district, to determine whether a reservoir or
 4 water quality basin project should be presented to a county board
 5 pursuant to this section.

6 2. On page 3, strike lines 1 through 4.

GENERAL FILE

LEGISLATIVE BILL 542. Senator Campbell renewed her amendment, AM1224, found on page 1246 and considered on page 1347.

SENATOR CARLSON PRESIDING

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

Senator Gloor moved for a call of the house. The motion prevailed with 30 ayes, 2 nays, and 17 not voting.

The motion to cease debate failed with 22 ayes, 6 nays, 13 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Pending.

COMMITTEE REPORT

Transportation and Telecommunications

LEGISLATIVE BILL 181. Placed on General File with amendment. AM1282

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 86-101, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 86-101 Sections 86-101 to 86-163 and section 2 of
- 6 this act shall be known and may be cited as the Nebraska
- 7 Telecommunications Regulation Act.
- 8 Sec. 2. (1) Any telecommunications carrier that intends
- 9 to place a line, wire, or cable across a railroad right-of-way
- 10 shall request permission for such placement from the railroad
- 11 carrier. The request shall be in the form of a completed crossing
- 12 application, including engineering specifications. Upon receipt of
- 13 such application, the railroad carrier and the telecommunications
- 14 carrier may enter into a binding wire-crossing agreement. If the
- 15 railroad carrier and the telecommunications carrier are unable to
- 16 negotiate a binding wire-crossing agreement within sixty days after
- 17 receipt of the crossing application by the railroad carrier, either
- 18 party may submit a petition to the commission for a hearing on
- 19 the disputed terms and conditions of the purported wire-crossing
- 20 agreement.
- 21 (2)(a) Unless otherwise agreed to by all parties, the
- 22 commission shall, after providing proper notice, hold and complete
- 23 such hearing within sixty days after receipt of the petition.

1 The commission shall issue an order of its decision within
2 thirty days after the hearing. In rendering its decision, the
3 commission shall consider whether the terms and conditions at
4 issue are unreasonable or against the public interest, taking into
5 account safety, engineering, or access requirements of the railroad
6 carrier as such requirements are prescribed by the Federal Railroad
7 Administration and established rail industry standards.

8 (b) Upon issuance of an order by the commission under
9 subdivision (a) of this subsection, the railroad carrier and the
10 telecommunications carrier shall have fifteen days after the date
11 of issuance to file a conforming wire-crossing agreement with
12 the commission. The commission shall have fifteen days after
13 the date of such filing to approve or reject the agreement. If
14 the commission does not issue an approval or rejection of such
15 agreement within the fifteen-day requirement, the agreement shall
16 be deemed approved. The commission may reject a wire-crossing
17 agreement if it finds that the agreement does not conform to the
18 order issued by the commission. If the commission enters such a
19 finding, the parties shall revise the agreement to comply with
20 the commission's order and shall refile the agreement to the
21 commission for further review. If the commission does not approve
22 or reject the revised agreement within fifteen days after the date
23 of refiling, the agreement shall be deemed approved.

24 (3)(a) Except as provided in subsection (4) of this
25 section or as otherwise agreed to by all parties, if a
26 telecommunications carrier places a line, wire, or cable across a
27 railroad right-of-way pursuant to this section, it shall pay the
1 railroad carrier a one-time standard crossing fee of one thousand
2 two hundred fifty dollars for each applicable crossing. In addition
3 to the standard crossing fee, the telecommunications carrier shall
4 reimburse the railroad carrier for any actual flagging expenses
5 associated with the placement of the line, wire, or cable.

6 (b) The standard crossing fee shall be in lieu of
7 any license fee or any other fees or charges to reimburse the
8 railroad carrier for any direct expense incurred as a result of the
9 placement of the line, wire, or cable.

10 (4) If a railroad carrier or telecommunications carrier
11 believes a special circumstance exists for the placement of a
12 line, wire, or cable across a railroad right-of-way, the railroad
13 or telecommunications carrier may petition the commission for
14 additional requirements or for relief from the standard crossing
15 fee in its initial petition to the commission pursuant to
16 subsection (1) of this section. If the petition is filed with
17 the request for additional requirements or relief, the commission
18 shall determine if a special circumstance exists that necessitates
19 additional requirements for such placement or a modification of the
20 standard crossing fee.

21 (5) This section applies to any telecommunications
22 carrier certified by the commission pursuant to section 86-128.

23 This section does not apply to any longitudinal encumbrance or
 24 any line, wire, or cable within any public right-of-way and does
 25 not change, modify, or supersede any rights or obligations created
 26 pursuant to sections 86-701 to 86-707.

27 (6)(a) A wire-crossing agreement between a railroad
 1 carrier and a telecommunications carrier that includes a provision,
 2 clause, covenant, or agreement contained in, collateral to, or
 3 affecting such wire-crossing agreement that purports to indemnify,
 4 defend, or hold harmless the railroad carrier from any liability
 5 for loss or damage resulting from the negligence or willful
 6 and wanton misconduct of the carrier or its agents, employees,
 7 or independent contractors who are directly responsible to such
 8 carrier or has the effect of indemnifying, defending, or holding
 9 harmless such carrier from the negligence or willful and wanton
 10 misconduct of the carrier or its agents, employees, or independent
 11 contractors who are directly responsible to the carrier is against
 12 the public policy of this state and is unenforceable.

13 (b) Nothing in this section shall affect a provision,
 14 clause, covenant, or agreement in which the telecommunications
 15 carrier indemnifies, defends, or holds harmless a railroad carrier
 16 against liability for loss or damage to the extent that the
 17 loss or damage results from the negligence or willful and
 18 wanton misconduct of the telecommunications carrier or its agents,
 19 employees, or independent contractors who are directly responsible
 20 to the telecommunications carrier.

21 (7) For purposes of this section:

22 (a) Railroad carrier has the same meaning as in section
 23 75-402; and

24 (b) Telecommunications carrier means a telecommunications
 25 common carrier as defined in section 86-118 or a telecommunications
 26 contract carrier as defined in section 86-120.

27 Sec. 3. Original section 86-101, Reissue Revised Statutes
 1 of Nebraska, is repealed.

(Signed) Deb Fischer, Chairperson

AMENDMENTS - Print in Journal

Senator Carlson filed the following amendment to LB224:
 AM1365

(Amendments to E & R amendments, ER8107)

- 1 1. On page 6, line 22, after the period insert "Up
- 2 to one million five hundred thousand dollars in cash or legally
- 3 binding commitments provided by or on behalf of the city of
- 4 Grand Island for the purpose of relocating and reconstructing
- 5 recreational facilities displaced by the relocation of the Nebraska
- 6 State Fair to Grand Island may be considered part of the eight
- 7 million five hundred thousand dollar contribution required by this

8 subdivision".

9 2. On page 9, strike lines 7 through 10.

Senator Dierks filed the following amendment to LB241:
AM1362

(Amendments to E & R amendments, ER8111)

1 1. On page 17, line 13, strike "compensation" and insert

2 "consideration".

GENERAL FILE

LEGISLATIVE BILL 218. Senator Giese renewed his amendment, AM802, found on page 872 and considered on page 1386.

The Giese amendment lost with 7 ayes, 22 nays, 12 present and not voting, and 8 excused and not voting.

Advanced to Enrollment and Review Initial with 30 ayes, 5 nays, 5 present and not voting, and 9 excused and not voting.

LEGISLATIVE BILL 218A. Title read. Considered.

Senator Cornett renewed her amendment, AM1033, found on page 1346.

The Cornett amendment was adopted with 29 ayes, 4 nays, 7 present and not voting, and 9 excused and not voting.

Advanced to Enrollment and Review Initial with 29 ayes, 7 nays, 4 present and not voting, and 9 excused and not voting.

UNANIMOUS CONSENT - Add Cointroducers

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB94. No objections. So ordered.

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB447. No objections. So ordered.

VISITORS

Visitors to the Chamber were 100 fourth-grade students and sponsors from Ackerman Elementary, Millard; 24 fourth-grade students and sponsors from Tri County School, DeWitt; 30 eighth-grade students from Dundy School, Benkelman; 40 eighth-grade students and sponsors from Ord; 34 fourth-grade students from Lewis and Clark, South Sioux City; Senator Coash's sister, brother-in-law, and nieces, Kelly, Joel, Ella, and Lily Johnson, from Lincoln; and Marlin and Denise Weikum.

The Doctor of the Day was Dr. Joe Miller from Lexington.

ADJOURNMENT

At 1:32 p.m., on a motion by Senator Pahls, the Legislature adjourned until 10:00 a.m., Monday, May 11, 2009.

Patrick J. O'Donnell
Clerk of the Legislature