

SEVENTEENTH DAY - JANUARY 30, 2012**LEGISLATIVE JOURNAL****ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION****SEVENTEENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, January 30, 2012

PRAYER

The prayer was offered by Senator McCoy.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Sheehy presiding.

The roll was called and all members were present except Senators Conrad, Lautenbaugh, and Schilz who were excused; and Senators Christensen, Cornett, Council, and Karpisek who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixteenth day was approved.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 760. Placed on General File.

LEGISLATIVE BILL 739. Placed on General File with amendment.
AM1669

- 1 1. On page 2, line 24; and page 3, line 14, strike
- 2 "Commencing" and insert "Beginning".
- 3 2. On page 2, line 6, strike "commencing" and insert
- 4 "beginning".

LEGISLATIVE BILL 849. Placed on General File with amendment.
AM1777

- 1 1. On page 4, lines 2 through 5, strike the new matter.

(Signed) Chris Langemeier, Chairperson

NOTICE OF COMMITTEE HEARINGS

Banking, Commerce and Insurance

Room 1507

Monday, February 6, 2012 1:30 p.m.

LB1143
LB984
LB1003

Room 1507

Tuesday, February 7, 2012 1:30 p.m.

LB882
LB1129
LB1100
LB810

(Signed) Rich Pahls, Chairperson

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 378, 379, and 380 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 378, 379, and 380.

GENERAL FILE

LEGISLATIVE BILL 946. Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 1 nay, 4 present and not voting, and 4 excused and not voting.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 426. Placed on Select File with amendment.
ER152

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 13-3108, Revised Statutes Supplement,
- 4 2011, is amended to read:
- 5 13-3108 (1) Upon the annual certification under section
- 6 13-3107, the State Treasurer shall transfer after the audit the

7 amount certified to the Sports Arena Facility Support Fund which
8 is hereby created. Any money in the fund available for investment
9 shall be invested by the state investment officer pursuant to
10 the Nebraska Capital Expansion Act and the Nebraska State Funds
11 Investment Act.

12 (2)(a) It is the intent of the Legislature to appropriate
13 from the fund money to be distributed to any political subdivision
14 for which an application for state assistance under the Sports
15 Arena Facility Financing Assistance Act has been approved an
16 amount not to exceed seventy percent of the (i) state sales tax
17 revenue collected by retailers doing business at eligible sports
18 arena facilities on sales at such facilities, (ii) state sales
19 tax revenue collected on primary and secondary box office sales
20 of admissions to such facilities, and (iii) new state sales tax
21 revenue collected by nearby retailers and sourced under sections
22 77-2703.01 to 77-2703.04 to a location within six hundred yards of
23 the eligible facility.

1 (b) The amount to be appropriated for distribution as
2 state assistance to a political subdivision under this subsection
3 for any one year after the tenth year shall not exceed the highest
4 such amount appropriated under subdivision (2)(a) of this section
5 during any one year of the first ten years of such appropriation.
6 If seventy percent of the state sales tax revenue as described
7 in subdivision (2)(a) of this section exceeds the amount to be
8 appropriated under this subdivision, such excess funds shall be
9 transferred to the General Fund.

10 (3) The total amount of state assistance approved for an
11 eligible sports arena facility shall not (a) exceed fifty million
12 dollars or (b) be paid out for more than twenty years after the
13 issuance of the first bond for the sports arena facility.

14 (4) State assistance to the political subdivision shall
15 no longer be available upon the retirement of the bonds issued
16 to acquire, construct, improve, or equip the facility or any
17 subsequent bonds that refunded the original issue or when state
18 assistance reaches the amount determined under subsection (3) of
19 this section, whichever comes first.

20 (5) State assistance shall not be used for an operating
21 subsidy or other ancillary facility.

22 (6) The thirty percent of state sales tax revenue
23 remaining after the appropriation and transfer in subsection (2) of
24 this section shall be appropriated by the Legislature to the Civic
25 and Community Center Financing Fund.

26 (7) ~~Any~~ Except as provided in subsection (8) of this
27 section for a city of the primary class, any municipality that has
1 applied for and received a grant of assistance under the Civic and
2 Community Center Financing Act shall not receive state assistance
3 under the Sports Arena Facility Financing Assistance Act for the
4 same project for which the grant was awarded under the Civic and
5 Community Center Financing Act.

6 (8) A city of the primary class shall not be eligible to
 7 receive a grant of assistance from the Civic and Community Center
 8 Financing Act if the city has applied for and received a grant
 9 of assistance under the Sports Arena Facility Financing Assistance
 10 Act.

11 Sec. 2. Original section 13-3108, Revised Statutes
 12 Supplement, 2011, is repealed.

13 2. On page 1, line 3, strike "Cumulative" and strike
 14 "2010" and insert "2011"; and in line 4 strike "the use of
 15 multiple" and insert "eligibility for".

LEGISLATIVE BILL 310. Placed on Select File with amendment.
 ER154

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

3 Section 1. Section 28-311.09, Reissue Revised Statutes of
 4 Nebraska, is amended to read:

5 28-311.09 (1) Any victim who has been harassed as
 6 defined by section 28-311.02 may file a petition and affidavit
 7 for a harassment protection order as provided in subsection
 8 (3) of this section. Upon the filing of such a petition and
 9 affidavit in support thereof, the ~~judge or~~ court may issue a
 10 harassment protection order without bond enjoining the respondent
 11 from (a) imposing any restraint upon the person or liberty of
 12 the petitioner, (b) harassing, threatening, assaulting, molesting,
 13 attacking, or otherwise disturbing the peace of the petitioner, or
 14 (c) telephoning, contacting, or otherwise communicating with the
 15 petitioner.

16 (2) The petition for a harassment protection order shall
 17 state the events and dates of acts constituting the alleged
 18 harassment.

19 (3) A petition for a harassment protection order shall be
 20 filed with the clerk of the district court, and the proceeding may
 21 be heard by the county court or the district court as provided in
 22 section 25-2740.

23 (4) A petition for a harassment protection order filed
 1 pursuant to subsection (1) of this section may not be withdrawn
 2 except upon order of the court. An order issued pursuant to
 3 subsection (1) of this section shall specify that it is effective
 4 for a period of one year unless otherwise modified by the court.
 5 Any person who knowingly violates an order issued pursuant to
 6 subsection (1) of this section after service shall be guilty of a
 7 Class II misdemeanor.

8 (5)(a) Fees to cover costs associated with the filing of
 9 a petition for a harassment protection order or the issuance or
 10 service of a harassment protection order seeking only the relief
 11 provided by this section shall not be charged, except that a court
 12 may assess such fees and costs if the court finds, by clear and
 13 convincing evidence, that the statements contained in the petition

14 were false and that the harassment protection order was sought in
15 bad faith.

16 (b) A court may also assess costs associated with the
17 filing of a petition for a harassment protection order or the
18 issuance or service of a harassment protection order seeking only
19 the relief ~~sought in the harassment protection order provided by~~
20 this section against the respondent.

21 (6) The clerk of the district court shall make available
22 standard application and affidavit forms for a harassment
23 protection order with instructions for completion to be used by a
24 petitioner. The clerk and his or her employees shall not provide
25 assistance in completing the forms. The State Court Administrator
26 shall adopt and promulgate the standard application and affidavit
27 forms provided for in this section as well as the standard
1 temporary and final harassment protection order forms and provide
2 a copy of such forms to all clerks of the district courts in this
3 state. These standard temporary and final harassment protection
4 order forms shall be the only such forms used in this state.

5 (7) Any order issued under subsection (1) of this section
6 may be issued ex parte without notice to the respondent if it
7 reasonably appears from the specific facts shown by affidavit of
8 the petitioner that irreparable harm, loss, or damage will result
9 before the matter can be heard on notice. If the specific facts
10 included in the affidavit (a) do not show that the petitioner will
11 suffer irreparable harm, loss, or damage or (b) show that, for any
12 other compelling reason, an ex parte order should not be issued,
13 the court ~~or judge~~ may forthwith cause notice of the application
14 to be given to the ~~adverse party respondent~~ stating that he or she
15 may show cause, not more than fourteen days after service, ~~upon him~~
16 ~~or her~~, why such order should not be entered. If such ex parte
17 order is issued without notice to the respondent, the court shall
18 forthwith cause notice of the petition and order and a form with
19 which to request a show-cause hearing to be given the respondent
20 stating that, upon service on the respondent, the order shall
21 remain in effect for a period of one year unless the respondent
22 shows cause why the order should not remain in effect for a period
23 of one year. ~~The court shall also cause to be served upon the~~
24 ~~respondent a form with which to request a show-cause hearing.~~ If
25 the respondent wishes to appear and show cause why the order should
26 not remain in effect for a period of one year, he or she shall
27 affix his or her current address, telephone number, and signature
1 to the form and return it to the clerk of the district court
2 within five days after service upon him or her. Upon receipt of
3 the request for a show-cause hearing, the court shall immediately
4 schedule a show-cause hearing to be held within thirty days after
5 the receipt of the request for a show-cause hearing and shall
6 notify the petitioner and respondent of the hearing date.
7 (8) Upon the issuance of any harassment protection order,
8 ~~under this section~~, the clerk of the court shall forthwith provide

9 the petitioner, without charge, with two certified copies of such
 10 order. The clerk of the court shall also forthwith provide the
 11 local police department or local law enforcement agency and the
 12 local sheriff's office, without charge, with one copy each of
 13 such order and one copy each of the sheriff's return thereon.
 14 The clerk of the court shall also forthwith provide a copy of
 15 the harassment protection order to the sheriff's office in the
 16 county where the respondent may be personally served together
 17 with instructions for service. Upon receipt of the order and
 18 instructions for service, such sheriff's office shall forthwith
 19 serve the harassment protection order upon the respondent and file
 20 its return thereon with the clerk of the court which issued the
 21 harassment protection order within fourteen days of the issuance
 22 of the harassment protection order. If any harassment protection
 23 order is dismissed or modified by the court, the clerk of the court
 24 shall forthwith provide the local police department or local law
 25 enforcement agency and the local sheriff's office, without charge,
 26 with one copy each of the order of dismissal or modification.

27 (9) A peace officer may, with or without a warrant,
 1 arrest a person if (a) the officer has probable cause to believe
 2 that the person has committed a violation of ~~an~~ a harassment
 3 protection order issued pursuant to this section or a violation
 4 of a valid foreign harassment protection order recognized pursuant
 5 to section 28-311.10 and (b) a petitioner under this section
 6 provides the peace officer with a copy of a harassment protection
 7 order, ~~or~~ the peace officer determines that such an order exists
 8 after communicating with the local law enforcement agency, or a
 9 person protected under a valid foreign harassment protection order
 10 recognized pursuant to section 28-311.10 provides the peace officer
 11 with a copy of ~~a valid foreign harassment protection~~ such order.

12 (10) A peace officer making an arrest pursuant to
 13 subsection (9) of this section shall take such person into custody
 14 and take such person before ~~a judge of~~ the county court or
 15 the court which issued the harassment protection order within
 16 a reasonable time. At such time the court shall establish the
 17 conditions of such person's release from custody, including the
 18 determination of bond or recognizance, as the case may be. The
 19 court shall issue an order directing that such person shall have no
 20 contact with the alleged victim of the harassment.

21 Sec. 2. Section 42-903, Reissue Revised Statutes of
 22 Nebraska, is amended to read:

23 42-903 For purposes of the Protection from Domestic Abuse
 24 Act, unless the context otherwise requires:

25 (1) Abuse means the occurrence of one or more of the
 26 following acts between household members:

- 27 (a) Attempting to cause or intentionally and knowingly
 1 causing bodily injury with or without a dangerous instrument;
 2 (b) Placing, by ~~physical menace,~~ means of credible
 3 threat, another person in fear of ~~imminent~~ bodily injury; or

- 4 (c) Engaging in sexual contact or sexual penetration
5 without consent as defined in section 28-318;
- 6 (2) Department means the Department of Health and Human
7 Services;
- 8 (3) Family or household members includes spouses or
9 former spouses, children, persons who are presently residing
10 together or who have resided together in the past, persons who
11 have a child in common whether or not they have been married
12 or have lived together at any time, other persons related
13 by consanguinity or affinity, and persons who are presently
14 involved in a dating relationship with each other or who have
15 been involved in a dating relationship with each other. For
16 purposes of this subdivision, dating relationship means frequent,
17 intimate associations primarily characterized by the expectation
18 of affectional or sexual involvement, but does not include a
19 casual relationship or an ordinary association between persons in a
20 business or social context; and
- 21 (4) Law enforcement agency means the police department
22 or town marshal in incorporated municipalities, the office of the
23 sheriff in unincorporated areas, and the Nebraska State Patrol.
- 24 Sec. 3. Section 42-924, Reissue Revised Statutes of
25 Nebraska, is amended to read:
- 26 42-924 (1) Any victim of domestic abuse may file a
27 petition and affidavit for a protection order as provided in
1 subsection (2) of this section. Upon the filing of such a petition
2 and affidavit in support thereof, the ~~judge or court~~ may issue a
3 protection order without bond granting the following relief:
- 4 (a) Enjoining the respondent from imposing any restraint
5 upon the petitioner or upon the liberty of the petitioner;
- 6 (b) Enjoining the respondent from threatening,
7 assaulting, molesting, attacking, or otherwise disturbing the peace
8 of the petitioner;
- 9 (c) Enjoining the respondent from telephoning,
10 contacting, or otherwise communicating with the petitioner;
- 11 (d) Removing and excluding the respondent from the
12 residence of the petitioner, regardless of the ownership of the
13 residence;
- 14 (e) Ordering the respondent to stay away from any place
15 specified by the court;
- 16 (f) Awarding the petitioner temporary custody of any
17 minor children not to exceed ninety days; or
- 18 (g) Ordering such other relief deemed necessary to
19 provide for the safety and welfare of the petitioner and any
20 designated family or household member.
- 21 (2) Petitions for protection orders shall be filed with
22 the clerk of the district court, and the proceeding may be heard
23 by the county court or the district court as provided in section
24 25-2740.

25 (3) A petition filed pursuant to subsection (1) of this
 26 section may not be withdrawn except upon order of the court. An
 27 order issued pursuant to subsection (1) of this section shall
 1 specify that it is effective for a period of one year and, if
 2 the order grants temporary custody, the number of days of custody
 3 granted to the petitioner unless otherwise modified by the court.
 4 Any person who knowingly violates an order issued pursuant to
 5 subsection (1) of this section or section 42-931 after service
 6 shall be guilty of a Class ~~H-I~~ misdemeanor, except that (a) any
 7 person convicted of violating such order who has a prior conviction
 8 for violating a protection order shall be guilty of a Class-I
 9 misdemeanor and (b) ~~any person convicted of violating such order~~
 10 ~~who has a prior conviction for violating the same protection order~~
 11 ~~or a protection order granted to the same petitioner shall be~~
 12 ~~guilty of a Class IV felony. IV felony.~~
 13 (4) If there is any conflict between sections 42-924 to
 14 42-926 and any other provision of law, sections 42-924 to 42-926
 15 shall govern.

16 Sec. 4. Original sections 28-311.09, 42-903, and 42-924,
 17 Reissue Revised Statutes of Nebraska, are repealed.

18 2. On page 1, strike lines 2 through 7 and insert
 19 "28-311.09, 42-903, and 42-924, Reissue Revised Statutes of
 20 Nebraska; to change provisions relating to protection order
 21 petitions, definitions, and penalties; and to repeal the original
 22 sections."

LEGISLATIVE BILL 612. Placed on Select File with amendment.
 ER155

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

3 Section 1. Actions for an injury or injuries suffered
 4 by a plaintiff when the plaintiff was a victim of a violation of
 5 section 28-319.01 or 28-320.01 can only be brought within twelve
 6 years after the plaintiff's twenty-first birthday.

7 Sec. 2. The Revisor of Statutes shall assign section 1 of
 8 this act within Chapter 25, article 2.

(Signed) Tyson Larson, Chairperson

COMMITTEE REPORT

Judiciary

LEGISLATIVE BILL 985. Placed on General File.

(Signed) Brad Ashford, Chairperson

AMENDMENT - Print in Journal

Senator Cornett filed the following amendment to LB426:
AM1783

(Amendments to E & R amendments, ER152)

- 1 1. Insert the following new section:
 2 Section 1. Section 13-2706, Revised Statutes Cumulative
 3 Supplement, 2010, is amended to read:
 4 13-2706 (1) Except as provided in subsection (2) of this
 5 section for a city of the primary class, any municipality that has
 6 applied for and received a grant of assistance under the Sports
 7 Arena Facility Financing Assistance Act shall not receive state
 8 assistance under the Civic and Community Center Financing Act for
 9 the same project for which the grant was awarded under the Sports
 10 Arena Facility Financing Assistance Act.
 11 (2) A city of the primary class shall not be eligible to
 12 receive a grant of assistance from the Civic and Community Center
 13 Financing Act if the city has applied for and received a grant
 14 of assistance under the Sports Arena Facility Financing Assistance
 15 Act.
 16 (3) Any city that has received funding under the
 17 Convention Center Facility Financing Assistance Act shall not
 18 receive state assistance under the Civic and Community Center
 19 Financing Act.
 20 ~~Any municipality, except a city that has received funding~~
 21 ~~under the Convention Center Facility Financing Assistance Act~~
 22 ~~or the Sports Arena Facility Financing Assistance Act, (4) Any~~
 1 municipality eligible for a grant of assistance as provided in
 2 this section may apply for a grant of assistance from the fund.
 3 Application shall be made on forms developed by the department.
 4 2. Renumber the remaining sections and correct the
 5 repealer accordingly.

NOTICE OF COMMITTEE HEARINGS
 Transportation and Telecommunications

Room 1113

Monday, February 6, 2012 1:30 p.m.

LB1040
 LB1052
 LB1112
 LB1155
 LB1030

Room 1113

Tuesday, February 7, 2012 1:30 p.m.

LB893
LB894
LB1095

(Signed) Deb Fischer, Chairperson

General Affairs

Room 1510

Monday, February 6, 2012 1:30 p.m.

Jon Hinrichs - Nebraska Arts Council
Pamela Price - Nebraska Arts Council
LB789
LB978
LB987
LB1130

Room 1510

Monday, February 13, 2012 1:30 p.m.

LB824
LB829
LB992
LB1078

(Signed) Russ Karpisek, Chairperson

Executive Board

Room 2102

Tuesday, February 7, 2012 12:00 p.m.

LR373CA
LB1059
LR377CA
LB761

(Signed) John Wightman, Chairperson

GENERAL FILE

LEGISLATIVE BILL 216. Title read. Considered.

Committee AM878, found on page 1157, First Session, 2011, was considered.

Senator Hadley offered the following amendment to the committee amendment:

FA30

Amend AM878

Strike "2012" on page 8, line 23 and insert "2013".

SENATOR GLOOR PRESIDING**PRESIDENT SHEEHY PRESIDING**

The Hadley amendment was adopted with 36 ayes, 0 nays, 7 present and not voting, and 6 excused and not voting.

The committee amendment, as amended, was adopted with 38 ayes, 0 nays, 5 present and not voting, and 6 excused and not voting.

Senator Pahls offered the following amendment:

AM1701 is available in the Bill Room.

Pending.

RESOLUTION

LEGISLATIVE RESOLUTION 386. Introduced by Bloomfield, 17; Brasch, 16; Krist, 10.

WHEREAS, Henry Trysla, a prominent and well-loved citizen of South Sioux City, passed away on January 22, 2012, at the age of eighty-two; and

WHEREAS, Henry Trysla was a newspaper reporter and editor of the South Sioux City Star, now known as the Dakota County Star, since 1947; and

WHEREAS, Henry Trysla's newspaper and articles were widely read throughout Dakota County, and his positive influence was felt throughout the area; and

WHEREAS, Henry Trysla served as president of the Nebraska Press Association and as past president of the Northeast Nebraska Press Association and was honored for his work at the newspaper, including being named the Master Editor-Publisher award winner by the Nebraska Press Association and being inducted into the Nebraska Press Association Hall of Fame and the University of Nebraska-Lincoln College of Journalism and Mass Communications Hall of Fame; and

WHEREAS, Henry and his wife, Margaret, traveled all over the United States and the world, sharing stories of their travels through his newspaper articles; and

WHEREAS, Henry Trysla was very active in his community, serving as past president of the South Sioux City Rotary Club, South Sioux City Area Chamber of Commerce, and the South Sioux City Development Corporation; and

WHEREAS, Henry Trysla was a founding member of the board of directors of the Dakota County State Bank and a member of the group that established the cable television system in South Sioux City. He worked with the Game and Parks Commission to help establish an 80-acre park on the Missouri River and created the necessary publicity that led to the founding of the Atokad Agriculture and Racing Association; and

WHEREAS, Henry Trysla was a lifelong member of the Catholic Church, serving on the governing board of St. Michael's Catholic Church and as co-chairman of the building committee when the church was built; and

WHEREAS, Henry Trysla is survived by his loving wife, Margaret; his children Teresa, Pat, Maria, Trudi, and Timothy; his sisters Elizabeth, Evie, and Virginia; twelve grandchildren; and a multitude of friends. Henry Trysla will be greatly missed in his community.

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

1. That the Legislature extends its sympathy to the family of Henry Trysla and recognizes the many achievements he made for the betterment of his community.

2. That a copy of this resolution be sent to Margaret Trysla.

Laid over.

UNANIMOUS CONSENT - Add Cointroducers

Senator Hadley asked unanimous consent to add his name as cointroducer to LB1118. No objections. So ordered.

Senators Hadley, Karpisek, and Seiler asked unanimous consent to add their names as cointroducers to LB998. No objections. So ordered.

Senator Council asked unanimous consent to add her name as cointroducer to LB507. No objections. So ordered.

VISITORS

Visitor to the Chamber was Senator Louden's cousin, Harry Merrihew, from Ashby.

The Doctor of the Day was Dr. Theresa Hatcher from Bellevue.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Cook, the Legislature adjourned until 9:00 a.m., Tuesday, January 31, 2012.

Patrick J. O'Donnell
Clerk of the Legislature

