FIFTY-SEVENTH DAY - APRIL 8, 2004

LEGISLATIVE JOURNAL

NINETY-EIGHTH LEGISLATURE
SECOND SESSION

FIFTY-SEVENTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, April 8, 2004

PRAYER

The prayer was offered by Pastor Dana Bainbridge, First United Methodist Church, Omaha.

ROLL CALL

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

The roll was called and all members were present except Senator Bourne who was excused; and Senators Brown, Burling, Combs, Cunningham, Engel, Hartnett, Kremer, Landis, Louden, Maxwell, Mossey, and Preister who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-sixth day was approved.

SELECT COMMITTEE REPORTS

Enrollment and Review

Correctly Reengrossed

The following bill was correctly reengrossed: LB 479.

Correctly Engrossed

The following bill was correctly engrossed: LB 692.

ER9135

   Enrollment and Review Change to LB 692

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

1. On page 1, the matter beginning with "energy" in line 1 through line 4
has been struck and "judgments against the state; to amend section 25-21,211, Reissue Revised Statutes of Nebraska; to change provisions relating to payment of judgments; and to repeal the original section." inserted.

(Signed) Ray Mossey, Chairperson

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 7, 2004, 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

Fischer, Gary L.
Family Housing Advisory Services, Inc.

REPORT

The following report was received by the Legislature:

Criminal Justice, Commission on Law Enforcement and Traffic Stop Report

RESOLUTION

LEGISLATIVE RESOLUTION 397. Read. Considered.

LR 397 was adopted with 25 ayes, 0 nays, 11 present and not voting, and 13 excused and not voting.

MOTION - Approve Appointment

Senator Jensen moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment found on page 1522:

Health and Human Services System
Nancy Montanez, Director

Voting in the affirmative, 28:

Aguilar    Combs    Hudkins    Price    Stuhr
Baker      Cudaback Janssen Quandahl Stuthman
Brashear   Cunningham Jensen Raikes Tyson
Bromm      Erdman   Jones Redfield Wehrbein
Brown      Friend   Maxwell Schrock
Byars      Hartnett Pedersen, Dw. Smith
Voting in the negative, 0.

Present and not voting, 14:

Beutler  Foley  Kruse  Pederson, D.  Thompson
Chambers  Johnson  McDonald  Schimek  Vrtiska
Connealy  Kremer  McDonald  Schimek  Vrtiska

Excused and not voting, 7:

Bourne  Engel  Louden  Preister
Burling  Landis  Mossey

The appointment was confirmed with 28 ayes, 0 nays, 14 present and not voting, and 7 excused and not voting.

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 LB 983 with 34 ayes, 2 nays, 6 present and not voting, and 7 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 983.

A BILL FOR AN ACT relating to motor fuels; to amend sections 60-1307, 66-482 to 66-489.01, 66-496, 66-498, 66-499, 66-4,105, 66-4,106, 66-4,114, 66-4,116, 66-4,140, 66-4,141, 66-4,143 to 66-4,147, 66-4,149, 66-502, 66-525, 66-685 to 66-687, 66-698, 66-6,100, 66-6,106, 66-6,107, 66-6,109.01 to 66-6,111, 66-712, 66-713, 66-717, 66-718, 66-720, 66-722, 66-726, 66-727, 66-733 to 66-737, 66-1334, 66-1345, 66-1401, 66-1510, 66-1521, 77-2704.05, and 77-2734.03, Reissue Revised Statutes of Nebraska, and sections 39-2215, 60-1303, and 60-1306, Revised Statutes Supplement, 2003; to change and eliminate provisions relating to motor fuels taxation; to impose taxes; to eliminate provisions relating to tax credit gasoline and the Diesel Fuel Tax Act; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal sections 66-490 to 66-492, 66-494, 66-4,118 to 66-4,121, 66-4,124 to 66-4,132, 66-4,134, 66-4,142, and 66-650 to 66-683, Reissue Revised Statutes of Nebraska.

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

Voting in the affirmative, 40:
Voting in the negative, 0.

Present and not voting, 3:

Chambers  Jones  Tyson

Excused and not voting, 6:

Bourne  Jensen  Louden
Burling  Landis  Preister

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

GENERAL FILE

**LEGISLATIVE BILL 32.** The first Standing Committee amendment, FA1445, found on page 505, was renewed.

Pending.

**LEGISLATIVE BILL 958.** Title read. Considered.

The Standing Committee amendment, AM3226, found on page 1138, was considered.

Senator Chambers renewed his pending amendment, FA1613, found on page 1390, to the Standing Committee amendment.

Senator Chambers moved for a call of the house. The motion prevailed with 15 ayes, 0 nays, and 34 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 27:
The Chambers amendment lost with 1 aye, 27 nays, 16 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Chambers renewed his pending amendment, FA1614, found on page 1390, to the Standing Committee amendment.

Senator Brashear offered the following motion:
Recommit to the Judiciary Committee.

Senator Brashear withdrew his motion.

Senator Chambers moved for a call of the house. The motion prevailed with 16 ayes, 1 nay, and 32 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 3:
Chambers Louden Schimek

Voting in the negative, 17:
Brashear Cunningham Kruse Quandahl Tyson
Bromm Engel Maxwell Redfield
Combs Erdman Mines Smith
Connealy Foley Pedersen, Dw. Stuhr

Present and not voting, 21:
The Chambers amendment lost with 3 ayes, 17 nays, 21 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Senator Chambers renewed his pending amendment, FA1615, found on page 1390, to the Standing Committee amendment.

SENATOR JANSEN PRESIDING

SENATOR CUDABACK PRESIDING

Pending.

MOTION - Adjourn Sine Die

Senator Friend moved to adjourn sine die.

SPEAKER BROMM PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 34 ayes, 0 nays, and 15 not voting.

Senator Landis requested a roll call vote on the Friend motion to adjourn sine die.

Voting in the affirmative, 3:

Friend        Stuthman    Tyson

Voting in the negative, 38:
Present and not voting, 2:

Chambers               Maxwell

Excused and not voting, 6:

Bourne                   Hudkins       Preister
Hartnett                 Mossey        Synowiecki

The Friend motion to adjourn sine die failed with 3 ayes, 38 nays, 2 present and not voting, and 6 excused and not voting.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 300, 301, 328, 329, 392, and 393 were adopted.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LRs 300, 301, 328, 329, 392, 393, and 397.

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LB 983.

AMENDMENTS - Print in Journal

Senator Synowiecki filed the following amendment to LR 11CA:

AM3632

(Amendments to Second Final Reading copy)

1 1. On page 3, line 8, after the first period insert the
2 following new subsection:
3   "(6) The Legislature may authorize slot machines within a
4 licensed racetrack enclosure if live thoroughbred horseracing has
5 been conducted at such enclosure during each of the four years
6 immediately preceding such authorization"; in line 12 strike "and"
7 and insert a comma; and in line 16 after "gaming" insert ", and to
8 authorize slot machines at licensed racetrack enclosures".

Senator Baker filed the following amendment to LB 1065:
(Amendments to E & R amendments, AM7228)

1. Strike sections 1 to 3, 6 to 11, and 18 to 21 and
insert the following new sections:

"Section 1. Section 66-489, Reissue Revised Statutes of Nebraska, as amended by section 12, Legislative Bill 983, Ninetieth Legislature, Second Session, 2004, is amended to read:

(1) At the time of filing the return required by section 66-488, each producer of ethanol shall, in addition to the tax imposed pursuant to sections 66-4,140, 66-4,145, and 66-4,146 in addition to the other taxes provided for by law, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer in an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund.

(3) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of..."
25 passengers for hire within municipalities or within a radius of six
26 miles thereof.
27 (b) The owner or agent of any bus equipped to carry more
1 than seven persons for hire and engaged entirely in the
2 transportation of passengers for hire within municipalities, or
3 within a radius of six miles thereof, in lieu of the excise tax
4 provided for in this section, shall pay an equalization fee of a
5 sum equal to twice the amount of the registration fee applicable to
6 such vehicle under the laws of this state. Such equalization fee
7 shall be paid in the same manner as the registration fee and be
8 disbursed and allocated as registration fees.
9 (c) Nothing in this section shall be construed as
10 permitting motor fuels to be sold tax exempt. The department shall
11 refund tax paid on motor fuels used in buses deemed exempt by this
12 section.
13 (4) Natural gasoline purchased for use as a denaturant by
14 a producer at an ethanol facility as defined in section 66-1333
15 shall be exempt from the motor fuels tax imposed by subsection (1)
16 of this section as well as the tax imposed pursuant to sections
17 66-4,140, 66-4,145, and 66-4,146.
18 (5) Motor fuels purchased on a Nebraska Indian
19 reservation where the purchaser is a Native American who resides on
20 the reservation shall be exempt from the motor fuels tax imposed by
21 this section as well as the tax imposed pursuant to sections
22 66-4,140, 66-4,145, and 66-4,146.
23 (6) Motor fuels purchased for use by the United States
24 Government or its agencies shall be exempt from the motor fuels tax
25 imposed by this section as well as the tax imposed pursuant to
26 sections 66-4,140, 66-4,145, and 66-4,146.
27 (7) In the case of diesel fuel, there shall be no tax on
1 the motor fuels reported if (a) the diesel fuel has been indelibly
2 dyed and chemically marked in accordance with regulations issued by
3 the Secretary of the Treasury of the United States under 26 U.S.C.
4 4082 or (b) the diesel fuel contains a concentration of sulphur in
5 excess of five-hundredths percent by weight or fails to meet a
6 cetane index minimum of forty and has been indelibly dyed in
7 accordance with regulations promulgated by the Administrator of the
8 Environmental Protection Agency pursuant to 42 U.S.C. 7545.
9 Sec. 4. Section 66-726, Reissue Revised Statutes of
10 Nebraska, as amended by section 51, Legislative Bill 983,
11 Ninety-eighth Legislature, Second Session, 2004, is amended to
12 read:
13 66-726. (1) The department may adjust all errors in
14 payment, refund tax paid on motor fuel destroyed, refund tax
15 overpaid on motor fuel, and refund an amount equal to the
16 per-gallon tax imposed by this state on sales of motor fuel on
17 which tax was paid in this state but which was sold in a state
18 other than Nebraska.
19 (2)(a) Motor fuels shall be exempt from the taxes imposed
20 by sections 66-489, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when
21 the fuels are used for agricultural, quarrying, industrial, or
22 other nonhighway use.
23 (b) The department shall refund tax paid on motor fuels
24 used for an exempt purpose. The purchaser of tax-paid motor fuels
25 used for an exempt purpose shall file a claim for refund with the
26 department on forms prescribed by the department and shall provide
27 such documentation and maintain such records as the department
1 reasonably requires to substantiate that the fuels were used for
2 exempt purposes.
3 (c) The refund claim shall include: (i) The name of
4 claimant; (ii) the make, horsepower, and other mechanical
5 description of machinery in which the motor fuels were used; (iii)
6 a statement as to the source or place of business where such motor
7 fuels, used solely for agricultural, quarrying, industrial, or
8 other nonhighway uses, were acquired; that no part of such motor
9 fuels were used in propelling licensed motor vehicles; and that the
10 motor fuels for which refund of the tax thereon is claimed were
11 used solely for agricultural, quarrying, industrial, or other
12 nonhighway uses; and (iv) any other information deemed necessary by
13 the department.
14 (d) The department shall deduct (i) from each claim for
15 refund of tax paid on purchases of motor vehicle fuels under this
16 subsection two and one-quarter cents per gallon through December
17 31, 2004, and commencing January 1, 2010, and three and one-half
18 cents per gallon commencing January 1, 2005, through December 31,
19 2009, of the tax paid and (ii) from each claim for refund of tax
20 paid on purchases of diesel fuel under this subsection one cent per
21 gallon of the tax paid.
22 (e) The department shall transmit monthly to the State
23 Treasurer a report of the number of gallons of motor vehicle fuel
24 for which refunds have been approved under this subsection,
25 through December 31, 2004, and commencing January 1, 2010, and
26 the State Treasurer shall thereupon transfer from the Highway Trust
27 Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter
1 cents per gallon approved for refund, and commencing January 1,
2 2005, through December 31, 2009, the State Treasurer shall
3 transfer from the Highway Trust Fund (a) to the Ethanol
4 Production Incentive Cash Fund one and one-quarter cents per gallon
5 approved for refund and (b) to the Agricultural Alcohol Fuel Tax
6 Fund one and one-quarter cents per gallon approved for refund.
7 (3) No refund shall be allowed unless a claim is filed
8 setting forth the circumstances by reason of which refund should be
9 allowed. Such claim shall be filed with the department within
10 three years from the date of the payment of the tax.
11 (4) In each calendar year, no claim for refund related to
12 motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel
13 can be for an amount less than twenty-five dollars.
14 (5) The department shall administer and enforce this
section. The department may call to its aid when necessary any
member of the Nebraska State Patrol, any police officer, any county
attorney, or the Attorney General. The employees of the department
are empowered to stop and inspect motor vehicles, to inspect
premises, and temporarily to impound motor vehicles or motor fuels
when necessary to administer this section.
(6) The department may adopt and promulgate such rules
and regulations as are necessary for the prompt and effective
enforcement of this section.
(7) Any claimant for refund of motor fuels tax under this
section who is unable to produce the original copy of any invoice
to substantiate the refund for the reason that the same has been
lost, mutilated, or destroyed may make proof of his or her claim by
an affidavit and such other evidence as may be required by the
department, and if such claim is verified by investigation, such
claim may be allowed.
(8) The changes made to this section by this legislative
bill apply to motor fuels purchased during any tax year ending or
deemed to end on or after January 1, 2005, under the Internal
Revenue Code.
Sec. 11. Sections 1, 4, and 12 of the act become
operative on January 1, 2005. The other sections of this act
become operative on their effective date.
Sec. 12. Original sections 66-489 and 66-726, Reissue
Revised Statutes of Nebraska, as amended by sections 12 and 51,
respectively, Legislative Bill 983, Ninety-eighth Legislature,
2004, are repealed.
Sec. 13. Original sections 66-4,124, 66-4,134, 66-1344,
66-1344.01, 66-1345, 66-1345.01, 66-1519, and 77-4103, Reissue
Revised Statutes of Nebraska, are repealed.
2. On page 15, lines 2 and 3, strike "effective date of
this act" and insert "operative date of this section".
3. On page 16, strike lines 5 and 6; and in line 27
strike "66-4,134" and insert "66-489, 66-4,134, 66-726".
4. On page 19, line 7, strike "eight", show as stricken,
and insert "ten".
5. Renumber the remaining sections accordingly.

Senators Landis, Bromm, Combs, Connealy, Friend, Hartnett, Janssen,
Mines, Raikes, and Schimek filed the following amendment to LB 650:

AM3531
1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:
3 "Section 1. Section 13-2802, Reissue Revised Statutes of
4 Nebraska, is amended to read:
5 13-2802. Whenever creation of a municipal county is
6 proposed involving a city of the metropolitan class, the
7 interjurisdictional planning commission shall include in its plan a
8 recommendation with regard to the territory within which any
9 metropolitan utilities district shall have and may exercise the
tool of eminent domain pursuant to subsection (2) of section
14-2116. The plan shall further include a recommendation with
regard to the territory which shall be deemed to be within the
13 corporate boundary limits or extraterritorial zoning jurisdiction
14 of a municipality or a municipality dissolved by the creation of
15 the municipal county for purposes of sections 57-1301 to 57-1307
16 the State Natural Gas Regulation Act. The question of creation of
17 the municipal county shall not be submitted to a vote under section
18 13-2810 until a law adopting the provisions required by this
19 section has been enacted.
20 Sec. 2. Section 66-1801, Reissue Revised Statutes of
21 Nebraska, is amended to read:
22 66-1801. Sections 66-1801 to 66-1857 and sections 5 to
23 12 of this act shall be known and may be cited as the State Natural
24 Gas Regulation Act.
1 Sec. 3. Section 66-1804, Reissue Revised Statutes of
2 Nebraska, is amended to read:
3 66-1804. (1) The commission shall have full power,
4 authority, and jurisdiction to regulate natural gas public
5 utilities and may do all things necessary and convenient for the
6 exercise of such power, authority, and jurisdiction. Except as
7 provided in the Nebraska Natural Gas Pipeline Safety Act of 1969,
8 and notwithstanding any other provision of law, such power,
9 authority, and jurisdiction shall extend to, but not be limited to,
10 all matters encompassed within the State Natural Gas Regulation
11 Act, and sections 57-1301 to 57-1307.
12 (2) The State Natural Gas Regulation Act and all grants
13 of power, authority, and jurisdiction in the act made to the
14 commission shall be liberally construed, and all incidental powers
15 necessary to carry into effect the provisions of the act are
16 expressly granted to and conferred upon the commission.
17 Sec. 4. Section 66-1852, Reissue Revised Statutes of
18 Nebraska, is amended to read:
19 66-1852. (1) Except as provided in sections 5 to 12 of
20 this act, 57-1301 to 57-1307 as those statutes govern
21 jurisdictional utilities and metropolitan utilities districts, no
22 person, public or private, shall extend duplicative or redundant
23 natural gas mains or other natural gas services into any area which
24 has existing natural gas utility infrastructure or where a contract
25 has been entered into for the placement of natural gas utility
26 infrastructure.
27 (2) This section shall not apply in any area in which two
1 or more jurisdictional utilities share authority to provide natural
2 gas within the same territory under franchises issued by the same
3 city.
4 Sec. 5. (1) Except as provided in subsection (2) of this
5 section, the initial boundaries of the exclusive service areas of
6 jurisdictional utilities, cities, and metropolitan utilities
7 districts shall extend to any location at which any jurisdictional
8 utility, city, and metropolitan utilities district was providing
10 (2) Where two or more jurisdictional utilities are
11 providing natural gas service to customers within the same area
12 pursuant to franchise agreements with the same city, such
13 jurisdictional utilities shall possess and may exercise equal
14 authority in the exclusive service area of such city and its
15 extraterritorial jurisdiction.
16 Sec. 6. Except as provided in sections 8 and 9 of this
17 act, the formal boundaries of the exclusive service areas of
18 jurisdictional utilities, cities, or metropolitan utilities
19 districts shall be established by the commission upon the following
20 basis:
21 (1) Except as provided in subdivision (4) of this
22 section, for any city owning, maintaining, and operating a natural
23 gas distribution system, the exclusive service area for the city
24 shall be its initial service area boundaries and all the territory
25 within the corporate boundaries of the city and its
26 extraterritorial zoning jurisdiction as established by its
27 governing body pursuant to state law as such extraterritorial
28 zoning jurisdiction existed on March 15, 2004, and as such
29 jurisdiction may be extended on such basis from time to time, when
30 the city formally expresses its intention to provide natural gas
31 service and evidences such intent;
32 (2) Except as provided in subdivision (4) of this
33 section, for any metropolitan utilities district, the exclusive
34 service area for the district shall be all the territory within the
35 initial service area boundaries of the district and all the
36 territory where the district provides natural gas service within
37 the entire corporate boundaries of any city and shall extend to the
38 extraterritorial zoning jurisdiction of any such city as
39 established by its governing body pursuant to state law as such
40 extraterritorial zoning jurisdiction existed on March 15, 2004, and
41 as such jurisdiction may be extended on such basis from time to
42 time;
43 (3) Except as provided in subdivision (4) of this
44 section, for any jurisdictional utility, the exclusive service area
45 for the utility shall be the initial service area boundaries of the
46 area within which the utility provided natural gas service on March
47 15, 2004, and any area into which it has extended such service
48 subsequent to such date as authorized or recognized by the
49 commission; and
50 (4) For any jurisdictional utility, metropolitan
51 utilities district, or city providing natural gas service to an
52 entire city under a franchise agreement with that city, the
53 exclusive service area for such jurisdictional utility,
54 metropolitan utilities district, or city shall extend to the
55 corporate boundaries of the city and to its extraterritorial
Sec. 7. (1) Within ninety days following the effective date of this section, each jurisdictional utility, city, and metropolitan utilities district shall file with the commission a detailed map or maps of its exclusive service area as it exists on March 15, 2004, drawn to a scale of not less than one inch per mile or drawn to a larger scale, if required for clarity, showing the location of its natural gas pipelines and related facilities as of March 15, 2004. The commission may require that such maps be updated as often as the commission deems reasonably necessary to carry out its responsibilities under the State Natural Gas Regulation Act.

(2) The commission shall prepare or cause to be prepared a composite map of this state showing the exclusive service areas of jurisdictional utilities, cities, and metropolitan utilities districts as submitted by such entities pursuant to this section.

(3) The form and detail of all maps shall be determined by the commission.

Sec. 8. (1) The initial exclusive service area boundaries for each jurisdictional utility, city, or metropolitan utilities district shall be shown by the maps filed in accordance with section 7 of this act. After notice and hearing provided to the affected jurisdictional utilities, cities, or metropolitan utilities districts, the commission by order shall thereafter modify those boundaries as set forth in the State Natural Gas Regulation Act.

(2) When an exclusive service area is modified by the commission to transfer areas including then existing customers then served by the facilities of another jurisdictional utility, city, or metropolitan utilities district, unless a voluntary exchange of facilities is agreed upon by the parties involved and approved by the commission, the commission shall require the transfer of the facilities presently serving these customers, subject to the Municipal Natural Gas System Condemnation Act and any other relevant state statute governing condemnation.

(3) Contracts between jurisdictional utilities, cities, metropolitan utilities districts, or any combination of them, to designate exclusive service areas and customers to be served by any of those entities or for the exchange of customers between these entities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate exclusive service areas established pursuant to subsection (1) of this section. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate natural gas service to all areas and customers affected, will promote the efficient and
24 economical use and development of the natural gas systems of the
25 contracting natural gas utilities, and is in the public interest.
26 (4) Except in accordance with the provisions of a
27 customer choice program or other unbundling program approved by the
1 commission or as otherwise permitted in the State Natural Gas
2 Regulation Act, a jurisdictional utility, city, or metropolitan
3 utilities district shall not serve or offer to serve natural gas
4 customers in an exclusive service area assigned to another natural
5 gas utility and a jurisdictional utility, city, or metropolitan
6 utilities district shall not construct facilities to serve natural
7 gas customers in an exclusive service area assigned to another such
8 jurisdictional utility, city, or metropolitan utilities district.
9 The state, a jurisdictional utility, or any other person who is
10 injured or threatened with injury by conduct prohibited by this
11 section may initiate a contested case proceeding with the
12 commission. Upon finding a violation of this section, the
13 commission shall order appropriate corrective action, including
14 discontinuance of the unlawful service to natural gas customers,
15 removal of the unlawful facilities, and any combination of such
16 remedies, or any other disposition the commission deems just and
17 reasonable.
18 Sec. 9. Following the establishment of exclusive service
19 areas pursuant to section 7 of this act, a jurisdictional utility,
20 city, or metropolitan utilities district shall not construct or
21 extend facilities into any area not presently within the exclusive
22 service area of a jurisdictional utility, city, or metropolitan
23 utilities district, or furnish natural gas service to a prospective
24 customer not then being served by a jurisdictional utility, city,
25 or metropolitan utilities district, except upon application to the
26 commission for a modification of its existing exclusive service
27 area. The commission shall, following a hearing on the matter,
1 determine whether it is in the public interest for the applying
2 jurisdictional utility, city, or metropolitan utilities district or
3 another such utility, city, or district to serve the area and in
4 doing so, the commission shall be guided by a balance of the
5 following factors:
6 (1) The expressed preferences of residents or landowners
7 in the area regarding their choice for a natural gas service
8 provider;
9 (2) The proximity of then existing natural gas mains to
10 the area, including the length of time such lines have been in
11 existence;
12 (3) The orderly development of natural gas utility
13 infrastructure as a whole;
14 (4) The impact of granting the application on then
15 existing and future ratepayers of jurisdictional utilities,
16 metropolitan utilities districts, or cities owning, maintaining,
17 and operating natural gas distribution systems;
18 (5) The economic feasibility of the utility providing
service to projected customers within the area; (6) The elimination or prevention of duplicative or redundant natural gas mains and facilities supplying the area; (7) The willingness and good faith intent of the jurisdictional utility, metropolitan utilities district, or city owning, maintaining, and operating a natural gas distribution system to provide adequate and dependable service in the area to be assigned; and (8) Whether the customers in the area have the right to vote for the natural gas rate and service quality regulator for the area.

Sec. 10. A jurisdictional utility, city, or metropolitan utilities district shall furnish retail service, upon application, to any person within its exclusive service area if it is economically feasible to service and supply the person. The natural gas service shall be furnished by the jurisdictional utility, city, or metropolitan utilities district within a reasonable time after application is made.

Sec. 11. Whenever any city is furnished natural gas pursuant to a franchise agreement with a jurisdictional utility, no metropolitan utilities district or other city proposing to provide natural gas service pursuant to a franchise agreement shall solicit such city to enter into a franchise agreement or promote discontinuance of natural gas service with the jurisdictional utility, unless a specific invitation to submit a proposal on such franchise has been formally presented to the board of directors of the metropolitan utilities district or the governing body of the city proposing to provide natural gas service pursuant to a franchise agreement. For purposes of this section, a specific invitation to submit a proposal shall mean a resolution adopted by the governing body of a city. Whenever a specific invitation to submit a proposal is received by the board of directors of a metropolitan utilities district or the governing body of a city proposing to provide natural gas service pursuant to a franchise agreement, the invitation shall be considered by the board or the governing body of the city in open public session at its next regularly scheduled meeting.

Sec. 12. All books, records, vouchers, papers, contracts, engineering designs, and any other data of a metropolitan utilities district relating to the public interest of an extension or enlargement of natural gas mains or natural gas services, whether in written or electronic form, shall be open and made available for public inspection, investigation, comment, or protest upon reasonable request during business hours, except that such books, records, vouchers, papers, contracts, designs, and other data shall be subject to section 84-712.05.

Sec. 13. Section 75-109.01, Reissue Revised Statutes of Nebraska, is amended to read:

75-109.01. Except as otherwise specifically provided by
law, the Public Service Commission shall have jurisdiction, as
prescribed, over the following subjects:
(1) Common carriers, generally, pursuant to sections
75-101 to 75-158;
(2) Grain pursuant to the Grain Dealer Act and the Grain
Warehouse Act and sections 89-1,104 to 89-1,108;
(3) Manufactured homes and recreational vehicles pursuant
to the Uniform Standard Code for Manufactured Homes and
Recreational Vehicles;
(4) Modular housing units pursuant to the Nebraska
Uniform Standards for Modular Housing Units Act;
(5) Motor carrier registration and safety pursuant to
sections 75-301 to 75-322, 75-369.03, 75-370, 75-371, 75-383, and
75-384;
(6) Pipeline carriers and rights-of-way pursuant to the
State Natural Gas Regulation Act and sections 57-1301 to 57-1302
and 75-501 to 75-503;
(7) Railroad carrier safety pursuant to sections 74-918,
74-919, 74-1323, and 75-401 to 75-430;
(8) Telecommunications carriers pursuant to the Automatic
Dialing-Announcing Devices Act, the Emergency Telephone
Communications Systems Act, the Enhanced Wireless 911 Services Act,
the Intrastate Pay-Per-Call Regulation Act, the Nebraska
Telecommunications Regulation Act, the Nebraska Telecommunications
Universal Service Fund Act, the Telecommunications Relay System
Act, the Telephone Consumer Slamming Prevention Act, and sections
86-574 to 86-580;
(9) Transmission lines and rights-of-way pursuant to
sections 70-301 and 75-702 to 75-724;
(10) Water service pursuant to the Water Service
Regulation Act; and
(11) Jurisdictional utilities governed by the State
Natural Gas Regulation Act. If the provisions of Chapter 75 are
inconsistent with the provisions of the State Natural Gas
Regulation Act, the provisions of the State Natural Gas Regulation
Act control.
Sec. 14. Original sections, 13-2802, 66-1801, 66-1804,
66-1852, and 75-109.01, Reissue Revised Statutes of Nebraska, are
repealed.
Sec. 15. The following sections are outright repealed:
Sections 57-1301 to 57-1307, Revised Statutes Supplement, 2002.

Senator Erdman filed the following amendment to LB 391:
AM3631
(Amendments to E & R amendments, AM7227)
1. On page 1, line 8, after "minor" insert "fifteen
2 years of age or older".

Senator Erdman filed the following amendment to LB 391:
1. Insert the following new sections:

"Section 1. Sections 1 to 7 of this act provide a procedure for judicial emancipation of minors.

Sec. 2. A minor who is at least fifteen years of age, married, or living apart from his or her parents or legal guardian, and who is a legal resident of the county, may petition the district court of that county for a decree of emancipation.

Sec. 3. (1) A petition for emancipation shall state:
(a) The name, age, and address of the minor;
(b) The names and addresses of the parents of the minor;
(c) The name and address of any legal guardian of the minor;
(d) If no parent or guardian can be found, the name and address of the child's nearest known relative residing within this state;
(e) That the minor is seeking a decree of emancipation;
and
(f) That the minor willingly lives apart from his or her parents or legal guardian with the consent or acquiescence of the parents or legal guardian.

(2) If any of the facts required by this section are not known, the petition shall so state.

Sec. 4. A notice of filing, together with a copy of the petition for emancipation, shall be served upon:
(1) The parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any;
(2) The legal custodian of the minor, if any;
(3) The appropriate probation officer for his or her review and recommendation, if the minor is a ward of the court; and
(4) The county attorney of the county in which the matter is to be heard.

Sec. 5. In making its determination regarding the petition for emancipation, the court shall consider whether the parents or legal guardian of the minor have consented to emancipation; whether the minor is substantially able to support himself or herself without financial assistance; whether the minor is sufficiently mature and knowledgeable to manage his or her affairs without the guidance of parents or legal guardian; and whether emancipation is in the best interest of the minor. The court shall advise the petitioner of the consequences of emancipation.

Sec. 6. (1) If the court determines that the petition for emancipation should be granted, it shall enter a decree of emancipation. Such a decree emancipates the minor for all purposes and removes the disability of minority insofar as that disability may affect the incurring of indebtedness or contractual obligations.
of any kind; the acquiring, encumbering, and conveying of property
or any interest therein; the litigation and settlement of
controversies; the consenting to medical, dental, or psychiatric
care without parental consent, knowledge, or liability; the
enrolling in any school or college; and the establishment of his or
her own residence. For these purposes, the minor shall be
considered in law as an adult and any obligation he or she incurs
is enforceable by and against such minor without regard to his or
her minority.

(2) Unless otherwise provided by the decree, the
obligation of support otherwise owed a minor by his or her parent
or legal guardian is terminated by the entry of the decree.

Sec. 7. A decree of emancipation does not affect the
status of the minor for purposes of any provision of law which:
(1) Prohibits the sale, purchase, or consumption of
intoxicating liquor to or by a person under twenty-one years of
age;
(2) Prohibits gaming or employment in gaming by or of a
person under twenty-one years of age;
(3) Restricts the ability to marry a person under the age
of seventeen years of age; or
(4) Governs matters relating to juveniles.

2. Renumber the remaining sections accordingly.

RESOLUTIONS

LEGISLATIVE RESOLUTION 400. Introduced by Baker, 44.

WHEREAS, the Legislature is charged with promoting fair competition in
all Nebraska telecommunications markets in a manner consistent with the
federal act; and
WHEREAS, the Legislature is charged with maintaining and advancing
the efficiency and availability of telecommunications services; and
WHEREAS, the Legislature has previously debated and structured the
role of public utilities in delivery of telecommunications through the
enactment of LB 827 in 2001; and
WHEREAS, the Legislature is charged with ensuring that consumers pay
only reasonable charges for telecommunications services; and
WHEREAS, the Legislature intends to preserve and promote the best
interests of the telecommunications consumer; and
WHEREAS, the Legislature enacted LB 827 in 2001, which prohibited
state agencies and political subdivisions from competing with private sector
companies in the provision of telecommunication services but did allow for
the use of such entities’ dark fiber; and
WHEREAS, the Nebraska Supreme Court found in In re Application of
Lincoln Electric System v. Nebraska Public Service Commission, 265 Neb.
70 (2003), subdivision (1)(b) of section 86-128 and subsection (2) of section
86-575, originally contained in LB 827, to be unconstitutional; and
WHEREAS, the United States Supreme Court recently issued an opinion
in Nixon v. Missouri Municipal League, 541 U.S. . . (2004) in which the court held that "any entity" as stated in 42 U.S.C. section 253(a) of the Telecommunications Act of 1996 does not include state political subdivisions, thereby upholding the authority of states to restrict delivery of telecommunications services by political subdivisions; and

WHEREAS, the Transportation and Telecommunications Committee of the Legislature held a public hearing on AM 3471 to LB 20 on April 6, 2004, in response to Nixon v. Missouri Municipal League; and

WHEREAS, the Transportation and Telecommunications Committee desires to address reenactment of those provisions of LB 827 found unconstitutional by the Nebraska Supreme Court, but was unable to do so before the Ninety-eighth Legislature, Second Session, adjourned Sine Die; and

WHEREAS, the Legislature will address the issue during the next Legislative session which convenes January 5, 2005; and

WHEREAS, the Legislature intends that the Public Service Commission preserve and promote universal service in all telecommunications markets.

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

1. That the Legislature intends to address the decision in Nixon v. Missouri Municipal League during the Ninety-ninth Legislature, First Session, which convenes January 5, 2005.

2. That the Legislature intends to reenact the provisions of LB 827 that were declared unconstitutional by the Nebraska Supreme Court in In re Application of Lincoln Electric System v. Nebraska Public Service Commission, 265 Neb. 70 (2003), specifically subdivision (1)(b) of section 86-128 and subsection (2) of section 86-575.

3. That the Legislature desires to convey these policy statements to the Public Service Commission.

Laid over.

LEGISLATIVE RESOLUTION 401. Introduced by Erdman, 47; Smith, 48.

WHEREAS, Leroy Cundall coached high school and college football for fourteen years; and

WHEREAS, Mr. Cundall served as superintendent of Lodgepole Public Schools for three years and superintendent of Bayard Public Schools for twenty-four years; and

WHEREAS, Mr. Cundall has received many awards and recognition including the Distinguished Service Award from the Nebraska School Activities Association, the Outstanding Service Award from the Nebraska Association of Activity Directors, and was inducted into the Chadron State College Athletic Hall of Fame; and

WHEREAS, Mr. Cundall has served on statewide educational committees, fifteen years on the Nebraska School Activities Association Board of Control, numerous other boards, and participated in various civic
organizations in Bayard, Nebraska, where he is presently a member of the city council; and

WHEREAS, Mr. Cundall has served as a great leader and role model for the students, faculty, and staff during his many years of service to both his schools and his community; and

WHEREAS, Mr. Cundall will be retiring this year.

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

1. That the Legislature recognizes and congratulates Leroy Cundall for his many years of service to the schools and communities of Nebraska.

2. That a copy of this resolution be sent to Leroy Cundall.

Laid over.

LEGISLATIVE RESOLUTION 402. Introduced by Erdman, 47; Smith, 48.

WHEREAS, Bill Pile taught and coached six years at Sioux County High School where his wrestling team won the 1975 State Wrestling Championship and he was selected Class D wrestling coach of the year. His team holds the Class D record for consecutive dual wins having won thirty-three in a row and the record for consecutive regular season tournament championships of twenty-four wins; and

WHEREAS, Mr. Pile served as principal at Mullen High School for sixteen years during which time he was also athletic director, head coach for wrestling, girl's basketball, and golf as well as teaching an evening accounting class for Mid-Plains College. Also, while at Mullen, Mr. Pile was inducted into the Chadron State College Hall of Fame and served two-year terms in the positions of Loup Valley Conference Secretary and Loup Valley Conference President; and

WHEREAS, Mr. Pile held the position of superintendent for Leyton Public Schools and later shared superintendent for Leyton and Potter-Dix Public Schools; and

WHEREAS, Mr. Pile has received numerous awards and recognition including membership on an advisory committee to the State Department of Education for the development of the state report card, induction into the Nebraska Wrestling Coaches Hall of Fame, recipient of the Distinguished Service Award from the Nebraska School Activities Association, and appointment by Governor Johanns to the board of the Coordinating Commission for Postsecondary Education; and

WHEREAS, Mr. Pile will be retiring this year; and

WHEREAS, Mr. Pile, throughout his professional coaching, teaching and administrative career, has touched the lives of numerous athletes, students, faculty, and staff by providing a challenging and positive learning environment as well as exemplary leadership.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:
1. That the Legislature recognizes and congratulates Bill Pile for his many years of service to the schools and communities of Nebraska.
2. That a copy of this resolution be sent to Bill Pile.

Laid over.

EXPLANATION OF VOTE

Had I been present, I would have voted "aye" on final passage of LB 1089.

(Signed) Mick Mines

VISITORS

Visitors to the Chamber were John and James Rundel from Trenton; Coby Block from Gothenburg; 24 fourth-grade students and teacher from Plattsmouth; Senator Mines' daughter, Laini Mines, from Blair; 30 advanced nursing students from Creighton University; 5 kindergarten through eighth-grade home school students from Fairbury; 50 fourth-grade students and teachers from Sandoz Elementary School, Omaha; and 8 kindergarten through fourth-grade students and teachers from Garfield School, Butler County.

MOTION - Adjournment

Senator Landis moved to adjourn. The motion prevailed with 19 ayes, 15 nays, 9 present and not voting, and 6 excused and not voting, and at 1:44 p.m., the Legislature adjourned until 9:00 a.m., Tuesday, April 13, 2004.

Patrick J. O'Donnell
Clerk of the Legislature

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