

FORTY-NINTH DAY - MARCH 20, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****FORTY-NINTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, March 20, 2007

PRAYER

The prayer was offered by Pastor Jim Helgren, First Evangelical Lutheran Church, Wilber.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Sheehy presiding.

The roll was called and all members were present except Senators Hansen and Heidemann who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-eighth day was approved.

**COMMITTEE REPORTS
Enrollment and Review**

LEGISLATIVE BILL 328. Placed on Select File - ER8054.
(Amendment is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 160. Placed on Select File.

LEGISLATIVE BILL 578. Placed on Select File - ER8052.
ER8052

- 1 1. On page 1, strike lines 2 through 5 and insert
- 2 "section 53-101, Revised Statutes Cumulative Supplement, 2006; to
- 3 provide for the rounding of amounts relating to state alcohol
- 4 excise tax laws; and to repeal the original section."

LEGISLATIVE BILL 681. Placed on Select File.

LEGISLATIVE BILL 106. Placed on Select File - ER8053.

ER8053

- 1 1. Strike the original sections and all amendments
 2 thereto and insert the following new sections:
 3 Section 1. Section 77-4001, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 77-4001 Sections 77-4001 to 77-4025 and section 4 of this
 6 act shall be known and may be cited as the Tobacco Products Tax
 7 Act.
 8 Sec. 2. Section 77-4002, Reissue Revised Statutes of
 9 Nebraska, is amended to read:
 10 77-4002 For purposes of the Tobacco Products Tax Act,
 11 unless the context otherwise requires, the definitions found in
 12 sections 77-4003 to 77-4007 and section 4 of this act shall be
 13 used.
 14 Sec. 3. Section 77-4004, Reissue Revised Statutes of
 15 Nebraska, is amended to read:
 16 77-4004 First owner ~~shall mean means~~ any person:
 17 (1) Engaged in the business of selling tobacco products
 18 or smoking tobacco in this state who brings or causes to be brought
 19 into this state from outside this state any tobacco products or
 20 smoking tobacco for sale in this state, including a retailer who
 21 purchases directly from suppliers outside this state who are not
 22 licensed pursuant to subsection (2) of section 77-4009;
 23 (2) Who makes, manufactures, or fabricates tobacco
 1 products or smoking tobacco in this state for sale in this state;
 2 or
 3 (3) Engaged in business outside this state who ships
 4 or transports tobacco products or smoking tobacco to retailers in
 5 this state and who becomes licensed pursuant to subsection (2) of
 6 section 77-4009.
 7 Sec. 4. Smoking tobacco means (1) cigars, (2) cheroots,
 8 (3) stogies, (4) periques, and (5) granulated, plug cut, crimp cut,
 9 ready rubbed, and other tobacco prepared in such manner as to be
 10 suitable for smoking, except that smoking tobacco does not mean
 11 cigarettes as defined in section 77-2601.
 12 Sec. 5. Section 77-4007, Reissue Revised Statutes of
 13 Nebraska, is amended to read:
 14 77-4007 Tobacco products ~~shall mean (1) cigars, (2)~~
 15 ~~cheroots, (3) stogies, (4) periques, (5) granulated, plug cut,~~
 16 ~~crimp cut, ready rubbed, and other smoking tobacco, (6) means (1)~~
 17 ~~snuff, (7)-(2) snuff flour, (8)-(3) cavendish, (9)-(4) plug and~~
 18 ~~twist tobacco, (10)-(5) fine cut and other chewing tobacco, (11)~~
 19 ~~(6) shorts, refuse scraps, clippings, cuttings, and sweepings of~~
 20 ~~tobacco, and (12)-(7) other kinds and forms of tobacco, prepared~~
 21 ~~in such manner as to be suitable for chewing, or smoking in a pipe~~
 22 ~~or otherwise or both for chewing and smoking, except that tobacco~~
 23 ~~products shall does~~ not mean cigarettes as defined in section
 24 77-2601.
 25 Sec. 6. Section 77-4008, Reissue Revised Statutes of

26 Nebraska, is amended to read:

27 77-4008 ~~(4)-(1)(a)~~ A tax is hereby imposed upon the first
1 owner of tobacco products and smoking tobacco to be sold in this
2 state.

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

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

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

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

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

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

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

15 (2) A person outside of this state who ships or
16 transports tobacco products or smoking tobacco to any person
17 in this state to be sold in this state may make application for a
18 license and be granted such a license by the Tax Commissioner. If
19 a license is granted, such person shall be subject to the Tobacco
20 Products Tax Act and shall be entitled to act as a licensee.

21 A person outside this state who receives a license shall have
22 established sufficient contact with this state for the exercise
23 of personal jurisdiction over the person in any matter or issue
24 arising under the act.

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

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

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

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

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

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

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

15 (3) At any time during usual business hours, duly

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

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

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

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

13 77-4024 Any person who violates the Tobacco Products Tax
14 Act or any person who sells, delivers, or accepts tobacco products
15 or smoking tobacco with the intent to evade the act shall be guilty
16 of a Class IV felony.

17 Sec. 12. Section 77-4025, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-4025 There is hereby created a cash fund in the
20 Department of Revenue to be known as the Tobacco Products
21 Administration Cash Fund. ~~Except as otherwise provided in section~~
22 ~~77-4008, all~~ All revenue collected or received by the Tax
23 Commissioner from the license fees and taxes imposed by the Tobacco
24 Products Tax Act shall be remitted to the State Treasurer for
25 credit to the Tobacco Products Administration Cash Fund. All costs
26 required for administration of the Tobacco Products Tax Act shall
27 be paid from such fund. Credits and refunds allowed under the act
1 shall be paid from the Tobacco Products Administration Cash Fund.
2 Any receipts, after credits and refunds, in excess of the amounts
3 sufficient to cover the costs of administration may be transferred
4 to the General Fund at the direction of the Legislature. The State
5 Treasurer shall transfer two million five hundred thousand dollars
6 from the Tobacco Products Administration Cash Fund to the General
7 Fund within fifteen days after November 1, 2002. Any money in the
8 Tobacco Products Administration Cash 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 Sec. 13. This act becomes operative on October 1, 2007.

13 Sec. 14. Original sections 77-4001, 77-4002, 77-4004,
14 77-4007, 77-4008, 77-4009, 77-4014, 77-4017, 77-4018, 77-4024, and
15 77-4025, Reissue Revised Statutes of Nebraska, are repealed.

16 2. On page 1, strike lines 2 through 4 and insert

17 "sections 77-4001, 77-4002, 77-4004, 77-4007, 77-4008, 77-4009,
18 77-4014, 77-4017, 77-4018, 77-4024, and 77-4025, Reissue Revised
19 Statutes of Nebraska; to change the tax on certain tobacco
20 products; to define and redefine terms; to harmonize provisions;
21 to".

LEGISLATIVE BILL 292A. Placed on Select File - ER8055.
ER8055

- 1 1. On page 2, lines 2 and 4, strike "Department of"; and
- 2 in lines 2 and 3, 5, and 6 and 7 strike "Finance and Support".

(Signed) Amanda McGill, Chairperson

COMMITTEE REPORTS

Government, Military and Veterans Affairs

LEGISLATIVE BILL 646. Placed on General File - Com AM752.
(Amendment is printed separately and available in the Bill Room, Room
1104.)

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

John E. Falgione - State Fire Marshal

VOTE: Aye: Senators Adams, Aguilar, Avery, Karpisek, Mines, Pahls, Rogert. Nay: None. Absent: Senator Friend.

(Signed) Ray Aguilar, Chairperson

MESSAGE FROM THE GOVERNOR

March 19, 2007

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 83e, 124e, 145, 231, 237, 239, 248, 347, and 390 were received in my office on March 13, 2007.

I signed these bills and delivered them to the Secretary of State on March 19, 2007.

Sincerely,
 (Signed) Dave Heineman
 Governor

GENERAL FILE

LEGISLATIVE BILL 476. Senator Flood renewed his amendment, AM307, found on page 554.

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

Senator Langemeier moved for a call of the house. The motion prevailed with 36 ayes, 0 nays, and 13 not voting.

The motion to cease debate prevailed with 27 ayes, 12 nays, and 10 present and not voting.

Senator Flood requested a roll call vote on his amendment.

Voting in the affirmative, 48:

| | | | | |
|-------------|---------|------------|----------|------------|
| Adams | Dubas | Heidemann | Louden | Preister |
| Aguilar | Engel | Howard | McDonald | Raikes |
| Ashford | Erdman | Hudkins | McGill | Rogert |
| Avery | Fischer | Janssen | Mines | Stuthman |
| Burling | Flood | Johnson | Nantkes | Synowiecki |
| Carlson | Friend | Karpisek | Nelson | Wallman |
| Chambers | Fulton | Kopplin | Pahls | White |
| Christensen | Gay | Kruse | Pankonin | Wightman |
| Cornett | Hansen | Langemeier | Pedersen | |
| Dierks | Harms | Lathrop | Pirsch | |

Voting in the negative, 0.

Present and not voting, 1:

Schimek

The Flood amendment was adopted with 48 ayes, 0 nays, and 1 present and not voting.

The Chair declared the call raised.

Senator Flood renewed his amendment, AM287, found on page 557.

Senator Flood withdrew his amendment.

Senator Kruse offered the following amendment:

AM766

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 29-2532, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 29-2532 (1)(a) The mode of inflicting the punishment of
- 6 death, in all cases, shall be cases in which the crime for which
- 7 the punishment of death has been imposed was committed prior to
- 8 the effective date of this act, shall be, at the option of the
- 9 convicted person being punished and as provided in subdivisions
- 10 (1)(b) and (c) of this subsection, (i) by causing to pass
- 11 through the body of the convicted person a current or currents
- 12 of electricity of sufficient intensity to cause death; and the
- 13 application of such current or currents shall be continued until
- 14 such convicted person is dead or (ii) by gunshots administered by
- 15 firing squad sufficient to cause death.
- 16 (b) If the convicted person being punished was sentenced
- 17 to death prior to the effective date of this act, then the warden
- 18 of the Department of Correctional Services facility designated by
- 19 the Director of Correctional Services to carry out the sentence
- 20 of death, or his or her designee, shall provide written notice
- 21 to the convicted person of the requirement to choose a mode of
- 22 inflicting the punishment of death set forth in this section within
- 23 thirty days after the effective date of this act. Such notice shall
- 1 state that a failure to choose shall result in the punishment of
- 2 death being inflicted pursuant to subdivision (1)(a)(ii) of this
- 3 subsection. If a choice is made by the convicted person, it shall
- 4 be made in writing and received by the warden or his or her
- 5 designee within thirty days after receipt by the convicted person
- 6 of the warden's written notice.
- 7 (c) If the convicted person being punished was sentenced
- 8 to death on or after the effective date of this act, then
- 9 the warden of the Department of Correctional Services facility

10 designated by the Director of Correctional Services to carry out
 11 the sentence of death, or his or her designee, shall provide
 12 written notice to the convicted person of the requirement to choose
 13 a mode of inflicting the punishment of death set forth in this
 14 section within thirty days after the sentence has been affirmed by
 15 the Nebraska Supreme Court pursuant to section 29-2528. Such notice
 16 shall state that a failure to choose shall result in the punishment
 17 of death being inflicted pursuant to subdivision (1)(a)(ii) of
 18 this subsection. If a choice is made by the convicted person, it
 19 shall be made in writing and received by the warden or his or her
 20 designee within thirty days after receipt by the convicted person
 21 of the warden's written notice.

22 (d) If the convicted person being punished fails to
 23 choose as provided in this subsection, the mode of inflicting the
 24 punishment of death shall be pursuant to subdivision (1)(a)(ii) of
 25 this section.

26 (2) The mode of inflicting the punishment of death, in
 27 cases in which the crime for which the punishment of death has been
 1 imposed was committed on or after the effective date of this act,
 2 shall be by gunshots administered by firing squad sufficient to
 3 cause death.

4 (3) The warden of the ~~Nebraska Penal and Correctional~~
 5 ~~Complex~~ Department of Correctional Services facility designated by
 6 the Director of Correctional Services to carry out the sentence
 7 of death, and in case of ~~his~~ such warden's death, sickness,
 8 absence, or inability to act, then the deputy warden, shall be the
 9 executioner. ~~The ; PROVIDED, the~~ warden may in writing specially
 10 designate and appoint a suitable and competent person, or, in case
 11 of a firing squad, persons, to act for him or her, and under his
 12 or her direction, as executioner, or, in case of a firing squad,
 13 executioners, in any particular case. A crime punishable by death
 14 ~~must shall~~ be punished according to ~~the provisions herein made this~~
 15 section and not otherwise.

16 (4) If the Supreme Court of the United States declares
 17 that the mode of inflicting the punishment of death under
 18 subdivision (1)(a)(i) or (ii) of this section violates the
 19 United States Constitution, or if the Nebraska Supreme Court
 20 declares that the mode of inflicting the punishment of death under
 21 subdivision (1)(a)(i) or (ii) of this section violates the United
 22 States Constitution or the Constitution of Nebraska, the mode of
 23 inflicting the punishment of death shall be by the other remaining
 24 statutory mode of inflicting the punishment of death.

25 Sec. 2. Section 29-2533, Reissue Revised Statutes of
 26 Nebraska, is amended to read:

27 29-2533 When any convicted person ~~shall be sentenced~~
 1 ~~to be electrocuted~~ is punished by death, such punishment shall
 2 be inflicted ~~within the walls of the Department of Correctional~~
 3 ~~Services adult correctional facility, or within the yard or~~
 4 ~~enclosure adjacent thereto,~~ at a Department of Correctional

5 Services facility under the supervision of the warden of such
 6 facility and in such a manner as to exclude the view of all persons
 7 ~~save except~~ those permitted to be present as provided in sections
 8 29-2534 and 29-2535.

9 Sec. 3. Section 29-2542, Reissue Revised Statutes of
 10 Nebraska, is amended to read:

11 29-2542 If any person escapes who has been convicted
 12 of a crime punishable by death, ~~and has been sentenced to be~~
 13 ~~electrocuted death, shall escape, and shall not be and has not been~~
 14 retaken before the time fixed for his or her execution, ~~it shall be~~
 15 lawful for the warden the Director of Correctional Services or his
 16 or her designee may rearrest such person, or any sheriff or other
 17 officer or person ~~to may~~ rearrest such person and return him or her
 18 to the custody of the warden of the ~~Nebraska Penal and Correctional~~
 19 ~~Complex, who shall thereupon make return thereof to Department of~~
 20 Correctional Services. The director shall then notify the Governor
 21 of the state, and the Governor shall thereupon issue a warrant,
 22 fixing and appointing a day for the execution. The director shall
 23 ensure that the designated warden carries out the execution, which
 24 ~~shall be carried into effect by the warden~~ in the same manner as
 25 herein provided for the execution of an original a sentence of
 26 death.

27 Sec. 4. Section 29-2543, Reissue Revised Statutes of
 1 Nebraska, is amended to read:

2 29-2543 Whenever any person has been tried and convicted
 3 before any district court in this state of a crime punishable by
 4 death and under the conviction has been sentenced by the court
 5 to suffer death, it shall be the duty of the clerk of the court
 6 before which the conviction was had to issue a warrant, under the
 7 seal of the court, reciting therein the conviction and sentence
 8 directed to the ~~warden of the Nebraska Penal and Correctional~~
 9 ~~Complex~~ Director of Correctional Services, commanding ~~him or her~~
 10 ~~to proceed at the time named in the sentence to carry the same~~
 11 ~~into execution by causing the person so convicted and sentenced to~~
 12 ~~be electrocuted by the passage of an electric current through the~~
 13 ~~body until dead~~ the director to cause the death of the convicted
 14 person. The clerk shall deliver the warrant to the sheriff of
 15 the county in which conviction was had and such sheriff shall
 16 thereupon forthwith remove such convicted person to a Department
 17 of Correctional Services ~~adult correctional~~ facility of the state
 18 and there deliver him or her, together with the warrant, into the
 19 custody of the ~~warden~~ director who shall receive and safely keep
 20 such ~~convict~~ convicted person within a Department of Correctional
 21 Services ~~adult correctional~~ facility until the time of execution or
 22 until otherwise ordered by competent authority.

23 Sec. 5. Section 29-2544, Reissue Revised Statutes of
 24 Nebraska, is amended to read:

25 29-2544 It shall be the duty of the ~~warden of the~~
 26 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional

27 Services on receipt of such warrant, if the Supreme Court or a
 1 judge thereof shall not have ordered a suspension of the execution,
 2 and if the Board of Pardons shall not have commuted such sentence,
 3 or granted a reprieve or pardon to such convict, to proceed at
 4 the time named in the warrant to carry the sentence into execution
 5 in the manner herein provided; and of the manner of his or her
 6 executing the warrant, and of his or her doings thereon, he or
 7 she shall forthwith make return to the clerk, who shall cause the
 8 warrant and return to be recorded as a part of the records of the
 9 case.

10 Sec. 6. If any section in this act or any part of any
 11 section is declared invalid or unconstitutional, the declaration
 12 shall not affect the validity or constitutionality of the remaining
 13 portions.

14 Sec. 7. Original sections 29-2532, 29-2533, 29-2542,
 15 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, are
 16 repealed.

17 Sec. 8. Since an emergency exists, this act takes effect
 18 when passed and approved according to law.

Senator Kruse withdrew his amendment.

Senator Nantkes moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 29 ayes, 4 nays, and 16 not voting.

Senator Langemeier moved for a call of the house. The motion prevailed with 49 ayes, 0 nays, and 0 not voting.

Senator Chambers requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 24:

| | | | | |
|---------|----------|----------|----------|------------|
| Adams | Chambers | Johnson | McGill | Rogert |
| Aguilar | Cornett | Kopplin | Nantkes | Schimek |
| Ashford | Dierks | Kruse | Pedersen | Synowiecki |
| Avery | Dubas | Lathrop | Preister | Wallman |
| Carlson | Howard | McDonald | Raikes | |

Voting in the negative, 25:

| | | | | |
|-------------|--------|-----------|------------|----------|
| Burling | Flood | Harms | Langemeier | Pankonin |
| Christensen | Friend | Heidemann | Louden | Pirsch |
| Engel | Fulton | Hudkins | Mines | Stuthman |
| Erdman | Gay | Janssen | Nelson | White |
| Fischer | Hansen | Karpisek | Pahls | Wightman |

Not voting, 0.

Failed to advance to E & R for review with 24 ayes, 25 nays, and 0 not voting.

The Chair declared the call raised.

AMENDMENT - Print in Journal

Senator Kruse filed the following amendment to LB 578:
AM759

(Amendments to AM573)

- 1 1. Insert the following new section:
- 2 Sec. 3. Section 53-1,121, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 53-1,121 (1) City police, county sheriffs, officers of
- 5 the Nebraska State Patrol, and any other such law enforcement
- 6 officer with power to arrest for traffic violations may take a
- 7 person who is ~~intoxicated~~ under the influence of alcohol or drugs
- 8 and in the judgment of the officer dangerous to himself, herself,
- 9 or others, or who is otherwise incapacitated, from any public or
- 10 quasi-public property. An officer removing ~~an intoxicated~~ such a
- 11 person from public or quasi-public property shall make a reasonable
- 12 effort to take such ~~intoxicated~~ person to his or her home or to
- 13 place such person in any hospital, clinic, ~~alcoholism substance~~
- 14 abuse center, or with a medical doctor as may be necessary to
- 15 preserve life or to prevent injury. Such effort at placement shall
- 16 be deemed reasonable if the officer contacts those facilities or
- 17 doctors which have previously represented a willingness to accept
- 18 and treat such individuals and which regularly do accept such
- 19 individuals. If such efforts are unsuccessful or are not feasible,
- 20 the officer may then place ~~such intoxicated person~~ the person who
- 21 is under the influence of alcohol or drugs in civil protective
- 22 custody. ~~Civil~~ except that civil protective custody shall be used
- 1 only as long as is necessary to preserve life or to prevent injury;
- 2 and, except as provided in subsection (2) of this section, for no
- 3 under no circumstances for longer than twenty-four hours.
- 4 (2) In counties in which the county board has adopted
- 5 a resolution stating that suitable facilities exist within the
- 6 county for the care and treatment of persons suffering from chronic
- 7 alcoholism or substance abuse, individuals who have been placed
- 8 in civil protective custody three or more times in the previous
- 9 month may be held in civil protective custody for up to seventy-two
- 10 hours if necessary to preserve life or prevent injury. A resolution
- 11 adopted pursuant to this subsection shall include a designation of
- 12 the specific facility or facilities to be used for seventy-two-hour
- 13 civil protective custody and specify the maximum number of patients
- 14 that can be served at any one time by each such facility.
- 15 (2)-(3) The placement of such person in civil protective
- 16 custody shall be recorded at the facility or jail to which he or
- 17 she is delivered and communicated to his or her family or next of

18 kin, if they can be located, or to such person designated by the
 19 person taken into civil protective custody.

20 ~~(3)-(4)~~ The law enforcement officer who acts in
 21 compliance with this section shall be deemed to be acting in the
 22 course of his or her official duty and shall not be criminally or
 23 civilly liable for such actions.

24 ~~(4)-(5)~~ The taking of an individual into civil protective
 25 custody under this section shall not be considered an arrest. No
 26 entry or other record shall be made to indicate that the person has
 27 been arrested or charged with a crime.

1 ~~(5)-(6)~~ For purposes of this section: ~~public~~

2 ~~(a) Public property shall mean~~ means any public
 3 right-of-way, street, highway, alley, park, or other state, county,
 4 or municipally owned property; ~~and -~~

5 ~~(6) For the purposes of this section, quasi-public~~
 6 ~~property shall mean and include~~ (b) Quasi-public property means
 7 and includes private property or publicly owned property utilized
 8 for proprietary or business uses which invites patronage by the
 9 public or which invites public ingress and egress.

10 2. Renumber the remaining section and amend the repealer
 11 accordingly.

COMMITTEE REPORT

Natural Resources

LEGISLATIVE BILL 458. Placed on General File - Com AM741.
 AM741

1 1. Strike the original sections and insert the following
 2 sections:

3 Section 1. The Riparian Vegetation Management Task Force
 4 is created. The Governor shall appoint the members of the task
 5 force. The members shall include one representative from the
 6 Department of Agriculture, the Department of Natural Resources,
 7 the office of the Governor, the office of the State Forester, the
 8 Game and Parks Commission, and the University of Nebraska; two
 9 representatives nominated by the Nebraska Association of Resources
 10 Districts; two representatives nominated by the Nebraska Weed
 11 Control Association; and one riparian landowner from each of the
 12 state's congressional districts. In addition to such members, any
 13 member of the Natural Resources Committee of the Legislature may
 14 serve as a member of the task force at his or her option. This
 15 section terminates on June 30, 2009.

16 Section 2. The Riparian Vegetation Management Task Force, in
 17 consultation with appropriate federal agencies, shall develop and
 18 prioritize vegetation management goals and objectives and develop
 19 plans and policies to achieve such goals and objectives. The
 20 task force shall convene within thirty days after the appointment
 21 of the members is complete to elect a chairperson and conduct
 22 such other business as deemed necessary. The efforts of the task

23 force shall be initially directed toward river basins designated
 1 by the Department of Natural Resources as fully appropriated or
 2 overappropriated. Task force meetings shall be held in communities
 3 within the Republican and Platte River basins. The task force
 4 shall make preliminary recommendations to the Governor and the
 5 Legislature regarding funding and legislation needed to achieve its
 6 goals on or before December 15, 2007, and each year thereafter,
 7 with a final report due prior to June 30, 2009. It is the
 8 intent of the Legislature that expenses of the task force be paid
 9 from funds appropriated for this legislative bill and shall not
 10 exceed twenty-five thousand dollars per fiscal year. This section
 11 terminates on June 30, 2009.

12 Sec. 3. Section 2-945.01, Revised Statutes Cumulative
 13 Supplement, 2006, is amended to read:

14 2-945.01 Sections 2-945.01 to 2-966 and sections 1 and 2
 15 of this act shall be known and may be cited as the Noxious Weed
 16 Control Act.

17 Sec. 4. Section 2-958.02, Revised Statutes Cumulative
 18 Supplement, 2006, is amended to read:

19 2-958.02 (1) From funds available in the Noxious Weed and
 20 Invasive Plant Species Assistance Fund, the director may administer
 21 a grant program to assist local control authorities and other weed
 22 management entities in the cost of implementing and maintaining
 23 noxious weed control programs and in addressing special weed
 24 control problems as provided in this section.

25 (2) The director shall receive applications by local
 26 control authorities and weed management entities for assistance
 27 under this ~~subsection~~ ~~section~~ and, in consultation with the
 1 advisory committee created under section 2-965.01, award grants
 2 for any of the following eligible purposes:

3 (a) To conduct applied research to solve locally
 4 significant weed management problems;

5 (b) To demonstrate innovative control methods or land
 6 management practices which have the potential to reduce landowner
 7 costs to control noxious weeds or improve the effectiveness of
 8 noxious weed control;

9 (c) To encourage the formation of weed management
 10 entities;

11 (d) To respond to introductions or infestations of
 12 invasive plants that threaten or potentially threaten the
 13 productivity of cropland and rangeland over a wide area;

14 (e) To respond to introductions and infestations of
 15 invasive plant species that threaten or potentially threaten the
 16 productivity and biodiversity of wildlife and fishery habitats on
 17 public and private lands;

18 (f) To respond to special weed control problems involving
 19 weeds not included in the list of noxious weeds promulgated by
 20 rule and regulation of the director if the director has approved a
 21 petition to bring such weeds under the county control program;

22 (g) To conduct monitoring or surveillance activities
23 to detect, map, or determine the distribution of invasive plant
24 species and to determine susceptible locations for the introduction
25 or spread of invasive plant species; and

26 (h) To conduct educational activities.

27 ~~(2)~~(3) The director shall select and prioritize
1 applications for assistance under ~~this subsection (2)~~ of this
2 section based on the following considerations:

3 (a) The seriousness of the noxious weed or invasive plant
4 problem or potential problem addressed by the project;

5 (b) The ability of the project to provide timely
6 intervention to save current and future costs of control and
7 eradication;

8 (c) The likelihood that the project will prevent or
9 resolve the problem or increase knowledge about resolving similar
10 problems in the future;

11 (d) The extent to which the project will leverage federal
12 funds and other nonstate funds;

13 (e) The extent to which the applicant has made progress
14 in addressing noxious weed or invasive plant problems;

15 (f) The extent to which the project will provide a
16 comprehensive approach to the control or eradication of noxious
17 weeds;

18 (g) The extent to which the project will reduce the total
19 population or area of infestation of a noxious weed;

20 (h) The extent to which the project uses the principles
21 of integrated vegetation management and sound science; and

22 (i) Such other factors that the director determines to be
23 relevant.

24 (4) The director shall receive applications for grants
25 under this subsection and shall award grants to recipients and
26 programs eligible under this subsection. Beginning in fiscal year
27 2007-08, it is the intent of the Legislature to appropriate
1 two million dollars annually to the Noxious Weed and Invasive
2 Plant Species Assistance Fund for the management of vegetation
3 within the banks of a natural stream or within one hundred
4 feet of the banks of a channel of any natural stream. Such
5 funds shall only be used to pay for activities and equipment
6 as part of vegetation management programs that have as their
7 primary objective improving conveyance of streamflow in natural
8 streams. Grants from funds appropriated as provided in this
9 subsection shall be disbursed only to weed management entities,
10 including local weed control authorities and natural resources
11 districts, whose territory includes one or more fully appropriated
12 or overappropriated river basins as designated by the Department
13 of Natural Resources with priority for the first year given
14 to fully appropriated river basins that are the subject of
15 an interstate compact or decree. The Nebraska Game and Parks
16 Commission shall assist grant recipients in implementing grant

17 projects under this subsection, and interlocal agreements under the
 18 Interlocal Cooperation Act or the Joint Public Agency Act shall be
 19 utilized whenever possible in carrying out the grant projects. This
 20 subsection terminates June 30, 2009.

21 ~~(3)-(5)~~ Nothing in this section shall be construed to
 22 relieve control authorities of their duties and responsibilities
 23 under the Noxious Weed Control Act or the duty of a person to
 24 control the spread of noxious weeds on lands owned and controlled
 25 by him or her.

26 ~~(4)-(6)~~ The Department of Agriculture may adopt and
 27 promulgate necessary rules and regulations to carry out this
 1 section.

2 Sec. 5. Original sections 2-945.01 and 2-958.02, Revised
 3 Statutes Cumulative Supplement, 2006, are repealed.

4 Sec. 6. Since an emergency exists, this act takes effect
 5 when passed and approved according to law.

(Signed) LeRoy Louden, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Fischer asked unanimous consent to add her name as cointroducer to LB 160. No objections. So ordered.

VISITORS

Visitors to the Chamber were Ralph and Linda Brown and family from Hayes Center; 30 fourth-grade students and teacher from St. Mary's School, David City; Nancy, Jean, and Andrea Wach from Hayes Center; Jane, Christopher, and Sarah Van Horn from Blair; Marsha Reiss; 80 nursing students from Creighton University School of Nursing, Omaha and Hastings campuses; members of Leadership Quest Valley County from Ord; and 36 fifth-grade students, teachers, and sponsors from Clarmar Elementary, Fremont.

ADJOURNMENT

At 12:00 p.m., on a motion by Senator Dierks, the Legislature adjourned until 9:00 a.m., Wednesday, March 21, 2007.

Patrick J. O'Donnell
 Clerk of the Legislature