

TWENTY-EIGHTH DAY - FEBRUARY 14, 2011**LEGISLATIVE JOURNAL****ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION****TWENTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, February 14, 2011

PRAYER

The prayer was offered by Senator Utter.

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 Senator Cook who was excused; and Senators Cornett, Janssen, and Schilz who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-seventh day was approved.

COMMITTEE REPORTS**Enrollment and Review**

LEGISLATIVE BILL 19. Placed on Final Reading.
LEGISLATIVE BILL 28. Placed on Final Reading.
LEGISLATIVE BILL 29. Placed on Final Reading.
LEGISLATIVE BILL 30. Placed on Final Reading.
LEGISLATIVE BILL 46. Placed on Final Reading.
LEGISLATIVE BILL 59. Placed on Final Reading.
LEGISLATIVE BILL 68. Placed on Final Reading.
LEGISLATIVE BILL 72. Placed on Final Reading.
LEGISLATIVE BILL 111. Placed on Final Reading.
LEGISLATIVE BILL 122. Placed on Final Reading.
LEGISLATIVE BILL 134. Placed on Final Reading.

LEGISLATIVE BILL 135. Placed on Final Reading.

ST1

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

1. On page 1, the matter beginning with "the" in line 1 through line 4 has been struck and "certificates of title; to amend section 60-161, Reissue Revised Statutes of Nebraska, and section 37-1287, Revised Statutes Cumulative Supplement, 2010; to change provisions relating to remittance of fees; and to repeal the original sections." inserted.

LEGISLATIVE BILL 154. Placed on Final Reading.

LEGISLATIVE BILL 157. Placed on Final Reading.

ST2

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

1. In the Coash amendment, AM215, on page 4, line 14, "semicolon" has been struck and "colon" inserted.

2. In the E & R amendments, ER6, on page 49, line 21, "30-2210, 30-2211," has been inserted after the first comma.

3. On page 1, line 3, "30-2618," has been inserted after the first comma, "30-2629," has been inserted after the fourth comma, and "30-2632," has been inserted after the fifth comma.

LEGISLATIVE BILL 157A. Placed on Final Reading.

LEGISLATIVE BILL 170. Placed on Final Reading.

LEGISLATIVE BILL 208. Placed on Final Reading.

ST3

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

1. On page 15, line 5, "it" has been inserted after "upon".

LEGISLATIVE BILL 211. Placed on Final Reading.

(Signed) Tyson Larson, Chairperson

NOTICE OF COMMITTEE HEARINGS

Business and Labor

Room 2102

Monday, February 28, 2011 1:30 p.m.

LB517

LB588

LB593

LB594

(Signed) Steve Lathrop, Chairperson

Natural Resources

Room 1525

Wednesday, February 23, 2011 1:30 p.m.

LB487
 LB103
 LB458

Thursday, February 24, 2011 1:30 p.m.

LB369
 LB533
 LB227

Friday, February 25, 2011 1:30 p.m.

Ginger S. Willson - State Energy Office

LB579
 LB580

(Signed) Chris Langemeier, Chairperson

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 66 and 67 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 66 and 67.

GENERAL FILE

LEGISLATIVE BILL 114. Committee AM199, found on page 436 and considered on page 523, was renewed.

The committee amendment was adopted with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 243. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 62. Title read. Considered.

Committee AM245, found on page 456, was adopted with 30 ayes, 3 nays, 15 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 16 present and not voting, and 1 excused and not voting.

COMMITTEE REPORT

Revenue

LEGISLATIVE BILL 165. Placed on General File with amendment. AM316

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 86-704, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 86-704 (1) Any telecommunications company, incorporated
- 6 or qualified to do business in this state, is granted the right
- 7 to construct, operate, and maintain telecommunications lines and
- 8 related facilities along, upon, across, and under the public
- 9 highways of this state, and upon and under lands in this state,
- 10 whether state or privately owned, except that (a) such lines and
- 11 related facilities shall be so constructed and maintained as not to
- 12 interfere with the ordinary use of such lands or of such highways
- 13 by the public and (b) all aerial wires and cables shall be placed
- 14 at a height of not less than eighteen feet above all highway
- 15 crossings.
- 16 (2) Sections 86-701 to 86-707 shall not transfer the
- 17 rights now vested in municipalities in relation to the regulation
- 18 of the poles, wires, cables, and other appliances or authorize
- 19 a telecommunications company to erect any poles or construct any
- 20 conduit, cable, or other facilities along, upon, across, or under
- 21 a public highway within a municipality without first obtaining
- 22 the consent of the governing body of the municipality. The
- 23 municipality shall not exercise any authority over any rights the
- 1 telecommunications company may have to deliver telecommunications
- 2 services as authorized by the Public Service Commission or the
- 3 Federal Communications Commission.
- 4 (3) Consent from a governing body for the use of a public
- 5 highway within a municipality shall be based upon a lawful exercise
- 6 of its statutory and constitutional authority. Such consent shall
- 7 not be unreasonably withheld, and a preference or disadvantage
- 8 shall not be created through the granting or withholding of

9 such consent. A municipality shall not adopt an ordinance that
 10 prohibits or has the effect of prohibiting the ability of a
 11 telecommunications company to provide telecommunications service.

12 (4)(a) A municipality shall not levy a tax, fee,
 13 or charge for any right or privilege of engaging in a
 14 telecommunications business or for the use by a telecommunications
 15 company of a public highway other than:

16 (i) An occupation tax authorized under section 14-109,
 17 15-202, 15-203, 16-205, or 17-525; ~~and~~ that meets the following
 18 requirements:

19 (A) The occupation tax shall be imposed only on the
 20 receipts from the sale of telecommunications service as defined in
 21 subdivision (7)(aa) of section 77-2703.04; and

22 (B) The occupation tax shall not exceed six and
 23 twenty-five hundredths percent except as provided in subsection (5)
 24 of this section; and

25 (ii) A public highway construction permit fee or charge
 26 to the extent that the fee or charge applies to all persons seeking
 27 use of the public highway in a substantially similar manner.

1 All public highway construction permit fees or charges shall be
 2 directly related to the costs incurred by the municipality in
 3 providing services relating to the granting or administration of
 4 permits. Any highway construction permit fee or charge shall also
 5 be reasonably related in time to the occurrence of such costs.

6 (b) Any tax, fee, or charge imposed by a municipality
 7 shall be competitively neutral.

8 (5) A municipality may increase an occupation tax
 9 described in subdivision (4)(a)(i) of this section to a rate that
 10 exceeds the limit contained in subdivision (4)(a)(i)(B) of this
 11 section if the question of whether to increase such rate has been
 12 submitted at a primary or general election at which members of the
 13 governing body of the municipality are nominated or elected or
 14 at a special election held within the municipality and in which
 15 all registered voters shall be entitled to vote on such question.

16 A municipality may not increase its existing rate pursuant to
 17 this subsection by more than twenty-five hundredths percent at any
 18 one election. The officials of the municipality shall order the
 19 submission of the question by submitting a certified copy of the
 20 resolution proposing the rate increase to the election commissioner
 21 or county clerk at least fifty days before the election. The
 22 election shall be conducted in accordance with the Election Act. If
 23 a majority of the votes cast upon such question are in favor of
 24 such rate increase, then the governing body of such municipality
 25 shall be empowered to impose the rate increase. If a majority of
 26 those voting on the question are opposed to such rate increase,
 27 then the governing body of the municipality shall not impose such
 1 rate increase.

2 ~~(5)-(6)~~ The changes made by Laws 1999, LB 496, shall not
 3 be construed to affect the terms or conditions of any franchise,

4 license, or permit issued by a municipality prior to August 28,
 5 1999, or to release any party from any obligations thereunder. Such
 6 franchises, licenses, or permits shall remain fully enforceable
 7 in accordance with their terms. A municipality may lawfully enter
 8 into agreements with franchise holders, licensees, or permittees to
 9 modify or terminate an existing franchise, license, or agreement.
 10 ~~(6)~~(7) Taxes or fees shall not be collected by a
 11 municipality through the provision of in-kind services by a
 12 telecommunications company, and a municipality shall not require
 13 the provision of in-kind services as a condition of consent to the
 14 use of a public highway.

15 ~~(7)~~(8) The terms of any agreement between a municipality
 16 and a telecommunications company regarding use of public highways
 17 shall be matters of public record and shall be made available to
 18 any member of the public upon request, except that information
 19 submitted to a municipality by a telecommunications company which
 20 such telecommunications company determines to be proprietary shall
 21 be deemed to be a trade secret pursuant to subdivision (3) of
 22 section 84-712.05 and shall be accorded full protection from
 23 disclosure to third parties in a manner consistent with state law.

24 Sec. 2. Original section 86-704, Reissue Revised Statutes
 25 of Nebraska, is repealed.

26 Sec. 3. Since an emergency exists, this act takes effect
 27 when passed and approved according to law.

(Signed) Dennis Utter, Vice Chairperson

NOTICE OF COMMITTEE HEARINGS

Judiciary

Room 1113

Wednesday, February 23, 2011 1:30 p.m.

LB232
 LB298
 LB512
 LB518
 LB658

Thursday, February 24, 2011 1:30 p.m.

LB669
 LB670
 LB301
 LB463

Friday, February 25, 2011 1:30 p.m.

LB296 (reschedule)

LB349

LB447

LB513

(Signed) Brad Ashford, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 74. Introduced by Larson, 40.

WHEREAS, the community of Plainview will be celebrating one hundred twenty-five years of rich history and perseverance; and

WHEREAS, we must reflect upon the important role that agriculture has played and continues to play for Plainview and across Nebraska; and

WHEREAS, Plainview has gained recognition as the "Klown Kapital" of Nebraska and draws children of all ages to northeast Nebraska to visit the Klown Doll Museum and experience Plainview Klown Days.

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

1. That the Legislature congratulates the community of Plainview on its quasiqucentennial celebration.
2. That a copy of this resolution be sent to the Plainview City Council.

Laid over.

LEGISLATIVE RESOLUTION 75. Introduced by Larson, 40.

WHEREAS, the community of Randolph will be celebrating one hundred twenty-five years of rich history and perseverance; and

WHEREAS, we must reflect upon the important role that agriculture has played and continues to play for Randolph and across Nebraska; and

WHEREAS, Randolph has gained recognition as the Honey Capital of the Nation, a tribute to the per capita number of beekeeping families.

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

1. That the Legislature congratulates the community of Randolph on its quasiqucentennial celebration.
2. That a copy of this resolution be sent to the Randolph City Council.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 36. Title read. Considered.

SENATOR GLOOR PRESIDING

Advanced to Enrollment and Review Initial with 33 ayes, 3 nays, 12 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 225. Title read. Considered.

PRESIDENT SHEEHY PRESIDING

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 10 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 274. Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 10 present and not voting, and 1 excused and not voting.

LEGISLATIVE BILL 401. Title read. Considered.

Senator Howard offered the following amendment:

AM341

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 71-5905, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 71-5905 (1) An assisted-living facility shall not admit
- 6 or retain a resident who requires complex nursing interventions or
- 7 whose condition is not stable or predictable unless:
- 8 (a) The resident, if he or she is not a minor and is
- 9 competent to make a rational decision as to his or her needs or
- 10 care, or his or her authorized representative, and his or her
- 11 physician or a registered nurse agree that admission or retention
- 12 of the resident is appropriate;
- 13 (b) The resident or his or her authorized representative
- 14 agrees to arrange for the care of the resident through appropriate
- 15 private duty personnel, a licensed home health agency, or a
- 16 licensed hospice; and
- 17 (c) The resident's care does not compromise the facility
- 18 operations or create a danger to others in the facility.
- 19 (2) Health maintenance activities at an assisted-living
- 20 facility shall be performed in accordance with the Nurse Practice
- 21 Act and the rules and regulations adopted and promulgated under the
- 22 act.
- 23 (3) Each assisted-living facility shall provide written
- 1 information about the practices of the assisted-living facility
- 2 to each applicant for admission to the facility or his or her
- 3 authorized representative. The information shall include:

- 4 (a) A description of the services provided by the
 5 assisted-living facility and the staff available to provide the
 6 services;
 7 (b) The charges for services provided by the
 8 assisted-living facility;
 9 (c) Whether or not the assisted-living facility accepts
 10 residents who are eligible for the medical assistance program under
 11 the Medical Assistance Act and, if applicable, the policies or
 12 limitations on access to services provided by the assisted-living
 13 facility for residents who seek care paid by the medical assistance
 14 program;
 15 (d) The circumstance under which a resident would be
 16 required to leave an assisted-living facility;
 17 (e) The process for developing and updating the resident
 18 services agreement; and
 19 (f) For facilities that have special care units for
 20 dementia, the additional services provided to meet the special
 21 needs of persons with dementia.
 22 Sec. 2. Original section 71-5905, Reissue Revised
 23 Statutes of Nebraska, is repealed.

Pending.

COMMITTEE REPORTS

Enrollment and Review

- LEGISLATIVE BILL 396.** Placed on Select File.
LEGISLATIVE BILL 256. Placed on Select File.
LEGISLATIVE BILL 311. Placed on Select File.
LEGISLATIVE BILL 347. Placed on Select File.
LEGISLATIVE BILL 462. Placed on Select File.
LEGISLATIVE BILL 98. Placed on Select File.

(Signed) Tyson Larson, Chairperson

COMMITTEE REPORTS

Enrollment and Review

- LEGISLATIVE BILL 23.** Placed on Final Reading.
LEGISLATIVE BILL 47. Placed on Final Reading.
LEGISLATIVE BILL 74. Placed on Final Reading.
LEGISLATIVE BILL 75. Placed on Final Reading.
LEGISLATIVE BILL 76. Placed on Final Reading.
LEGISLATIVE BILL 163. Placed on Final Reading.
LEGISLATIVE BILL 163A. Placed on Final Reading.
LEGISLATIVE BILL 212. Placed on Final Reading.
LEGISLATIVE BILL 241. Placed on Final Reading.

(Signed) Tyson Larson, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB524. No objections. So ordered.

VISITOR

The Doctor of the Day was Dr. Tiffany Nguyen from Omaha.

ADJOURNMENT

At 11:58 a.m., on a motion by Speaker Flood, the Legislature adjourned until 9:00 a.m., Tuesday, February 15, 2011.

Patrick J. O'Donnell
Clerk of the Legislature