

SIXTY-EIGHTH DAY - APRIL 21, 2011

LEGISLATIVE JOURNAL

**ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION**

SIXTY-EIGHTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, April 21, 2011

PRAYER

The prayer was offered by Senator Schumacher.

ROLL CALL

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

The roll was called and all members were present except Senators Campbell, Council, Lathrop, and Wightman who were excused; and Senators Adams, Ashford, and Avery who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-seventh day was approved.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 54. Placed on Final Reading.

LEGISLATIVE BILL 84. Placed on Final Reading.
ST26

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

1. On page 1, the matter beginning with "sections" in line 1 through line 7 has been struck and "section 77-27,132, Reissue Revised Statutes of Nebraska; to adopt the Build Nebraska Act; to change distribution of sales and use tax revenue; and to repeal the original section." inserted.

LEGISLATIVE BILL 177. Placed on Final Reading.

LEGISLATIVE BILL 637. Placed on Final Reading.

LEGISLATIVE BILL 637A. Placed on Final Reading.

(Signed) Tyson Larson, Chairperson

REPORTS

The following reports were received by the Legislature:

Investment Finance Authority, Nebraska (NIFA)

Clean Water State Revolving Fund Revenue Bonds Series 2010B,
Quarterly Report
Drinking Water State Revolving Fund Revenue Bonds Series 2010A,
Quarterly Reports

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of April 20, 2011, 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

Boyer, Wendy W.
Omaha Chamber of Commerce, Greater
Levy, David C.
Edison Mission Energy

GENERAL FILE

LEGISLATIVE BILL 305A. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 10 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 382A. Title read. Considered.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 5 present and not voting, and 7 excused and not voting.

LEGISLATIVE BILL 384A. Title read. Considered.

Senator Heidemann offered the following amendment:
AM1285

- 1 1. Strike original section 1 and renumber the remaining
- 2 sections accordingly.

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

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 9 present and not voting, and 6 excused and not voting.

LEGISLATIVE BILL 360. Title read. Considered.

Committee AM369, found on page 744, was adopted with 35 ayes, 4 nays, 6 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 137. Title read. Considered.

Committee AM735, found on page 856, 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 42 ayes, 0 nays, 3 present and not voting, and 4 excused and not voting.

AMENDMENT - Print in Journal

Senator Adams filed the following amendment to LB382:
AM1265 is available in the Bill Room.

NOTICE OF COMMITTEE HEARING

Natural Resources

Room 1525

Monday, May 2, 2011 12:45 p.m.

Douglas Anderson - Environmental Quality Council
John Baker - Environmental Quality Council
John Kinter - Environmental Quality Council
John Turnbull - Environmental Quality Council
Donald Williams - Environmental Quality Council

(Signed) Chris Langemeier, Chairperson

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 345A. Introduced by Conrad, 46.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 345, One Hundred Second Legislature, First Session, 2011; and to declare an emergency.

GENERAL FILE

LEGISLATIVE BILL 386. Title read. Considered.

Committee AM314, found on page 1066, was considered.

Senator Heidemann renewed his amendment, AM1258, found on page 1276, to the committee amendment.

The Heidemann amendment was adopted with 30 ayes, 2 nays, 12 present and not voting, and 5 excused and not voting.

The committee amendment, as amended, was adopted with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 35 ayes, 1 nay, 8 present and not voting, and 5 excused and not voting.

AMENDMENT - Print in Journal

Senator Fischer filed the following amendment to LB357:
AM1237

- 1 1. On page 2, after line 13 insert the following new
- 2 paragraph:
- 3 "Any incorporated municipality that proposes to impose a
- 4 municipal sales and use tax of two percent or to increase its sales
- 5 and use tax to two percent shall submit the question of such tax or
- 6 increase at a primary or general election. Any such tax or increase
- 7 shall terminate no more than ten years after its effective date.".
- 8 2. On page 4, line 21, strike "The", show as stricken,
- 9 and insert "Except as otherwise provided by section 77-27,142,
- 10 the".
- 11 3. In the E & R amendment, ER89, on page 1, line 4,
- 12 reinstate the stricken matter; and in line 5 reinstate the stricken
- 13 "77-27,142," and "the" and strike "The".

GENERAL FILE

LEGISLATIVE BILL 575. Title read. Considered.

Committee AM955, found on page 1059, was considered.

SENATOR LANGEMEIER PRESIDING

The committee amendment was adopted with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review Initial with 34 ayes, 0 nays, 10 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 575A. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 12 present and not voting, and 5 excused and not voting.

SENATOR GLOOR PRESIDING

LEGISLATIVE BILL 252. Title read. Considered.

Senator Smith offered the following amendment:

AM1286

- 1 1. On page 2, line 13, after "except" insert ", until
- 2 July 1, 2013, the".

Pending.

COMMITTEE REPORT

Enrollment and Review

LEGISLATIVE BILL 283. Placed on Final Reading Second.

(Signed) Tyson Larson, Chairperson

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 305A. Placed on Select File.

LEGISLATIVE BILL 382A. Placed on Select File.

LEGISLATIVE BILL 384A. Placed on Select File with amendment.

ER95

- 1 1. On page 1, line 1, strike "appropriate funds" and
- 2 insert "reduce appropriations"; and strike beginning with "to" in
- 3 line 3 through the semicolon in line 4.

(Signed) Tyson Larson, Chairperson

AMENDMENT - Print in Journal

Senator Conrad filed the following amendment to LB345:

AM1018

(Amendments to Standing Committee amendments, AM273)

- 1 1. Strike sections 6 and 9 and insert the following new
- 2 sections:
- 3 Sec. 6. It is the intent of the Legislature to
- 4 appropriate two hundred thousand dollars from the General Fund for
- 5 FY2011-12 and two hundred thousand dollars from the General Fund
- 6 for FY2012-13 for the purpose of providing funding to carry out

7 the Small Business Innovation Act.
 8 Sec. 9. Section 13-208, Reissue Revised Statutes of
 9 Nebraska, is amended to read:
 10 13-208 The total amount of tax credit granted for
 11 programs approved and certified under the Community Development
 12 Assistance Act by the department for any fiscal year shall not
 13 exceed three hundred fifty thousand dollars, except that for
 14 fiscal years 2011-12 and 2012-13, the total amount of tax credit
 15 granted under this section shall be reduced by two hundred thousand
 16 dollars.
 17 2. On page 3, line 8, strike "January" and insert
 18 "December"; and in line 14 strike "January 1" and insert "December
 19 31".

GENERAL FILE

LEGISLATIVE BILL 252. The Smith amendment, AM1286, found in this day's Journal, was renewed.

The Smith amendment lost with 7 ayes, 17 nays, 17 present and not voting, and 8 excused and not voting.

Pending.

AMENDMENT - Print in Journal

Senator Coash filed the following amendment to LB252:
 AM1097

1 1. Strike the original sections and all amendments
 2 thereto and insert the following new sections:
 3 Section 1. Section 12-101, Revised Statutes Cumulative
 4 Supplement, 2010, is amended to read:
 5 12-101 (1) The cemetery in Lincoln, Nebraska, known as
 6 Wyuka Cemetery, is hereby declared to be a public charitable
 7 corporation. The general control and management of the affairs of
 8 such cemetery shall be vested in a board of three trustees until
 9 July 1, 2009, and thereafter shall be vested in a board of five
 10 trustees. The trustees shall serve without compensation and shall
 11 be a body corporate to be known as Wyuka Cemetery, with power
 12 to sue and be sued, to contract and to be contracted with, and
 13 to acquire, hold, and convey both real and personal property for
 14 all purposes consistent with the provisions of sections 12-101 to
 15 12-105, and shall have the power of eminent domain to be exercised
 16 in the manner provided in section 12-201.
 17 (2) The trustees of Wyuka Cemetery shall have the power,
 18 by resolution duly adopted by a majority vote, to authorize one
 19 of their number to sign a petition for paving, repaving, curbing,
 20 recurring, grading, changing grading, guttering, resurfacing,
 21 relaying existing pavement, or otherwise improving any street,

22 streets, alley, alleys, or public ways or grounds abutting cemetery
23 property. When such improvements have been ordered, the trustees
1 shall pay, from funds of the cemetery, such special taxes or
2 assessments as may be properly determined.

3 (3) The trustees of Wyuka Cemetery shall be appointed
4 by the Governor of the State of Nebraska at the expiration of
5 each trustee's term of office. The two trustees appointed for
6 their initial terms of office beginning July 1, 2009, shall be
7 appointed by the Governor to serve a five-year term and a six-year
8 term, respectively. Thereafter, each of the five trustees shall
9 be appointed by the Governor for a term of six years. In the
10 event of a vacancy occurring among the members of the board, the
11 vacancy shall be filled by appointment by the Governor, and such
12 appointment shall continue for the unexpired term.

13 (4) The board of trustees of Wyuka Cemetery shall file
14 with the ~~Secretary of State, Auditor of Public Accounts,~~ on or
15 before the second Tuesday in ~~March~~ June of each year, an itemized
16 report of all the receipts and expenditures in connection with its
17 management and control of the cemetery.

18 (5) The trustees of Wyuka Cemetery shall have the power
19 to provide, in their discretion, retirement benefits for present
20 and future employees of the cemetery, and to establish, participate
21 in, and administer plans for the benefit of its employees or
22 its employees and their dependents, which may provide disability,
23 hospitalization, medical, surgical, accident, sickness and life
24 insurance coverage, or any one or more coverages, and which shall
25 be purchased from a corporation or corporations authorized and
26 licensed by the Department of Insurance.

27 (6)(a) Beginning December 31, 1998, and each December
1 31 thereafter, the trustees shall file with the Public Employees
2 Retirement Board an annual report on each retirement plan
3 established pursuant to this section and section 401(a) of the
4 Internal Revenue Code and shall submit copies of such report to
5 the members of the Nebraska Retirement Systems Committee of the
6 Legislature. The annual report shall be in a form prescribed by the
7 Public Employees Retirement Board and shall contain the following
8 information for each such retirement plan:

- 9 (i) The number of persons participating in the retirement
10 plan;
- 11 (ii) The contribution rates of participants in the plan;
- 12 (iii) Plan assets and liabilities;
- 13 (iv) The names and positions of persons administering the
14 plan;
- 15 (v) The names and positions of persons investing plan
16 assets;
- 17 (vi) The form and nature of investments;
- 18 (vii) For each defined contribution plan, a full
19 description of investment policies and options available to plan
20 participants; and

21 (viii) For each defined benefit plan, the levels of
22 benefits of participants in the plan, the number of members who
23 are eligible for a benefit, and the total present value of such
24 members' benefits, as well as the funding sources which will pay
25 for such benefits.

26 If a plan contains no current active participants, the
27 trustees may file in place of such report a statement with the
1 Public Employees Retirement Board indicating the number of retirees
2 still drawing benefits, and the sources and amount of funding for
3 such benefits.

4 (b) Beginning December 31, 1998, and every four years
5 thereafter, if such retirement plan is a defined benefit plan,
6 the trustees shall cause to be prepared a quadrennial report and
7 shall file the same with the Public Employees Retirement Board
8 and submit to the members of the Nebraska Retirement Systems
9 Committee of the Legislature a copy of such report. The report
10 shall consist of a full actuarial analysis of each such retirement
11 plan established pursuant to this section. The analysis shall be
12 prepared by an independent private organization or public entity
13 employing actuaries who are members in good standing of the
14 American Academy of Actuaries, and which organization or entity
15 has demonstrated expertise to perform this type of analysis and is
16 unrelated to any organization offering investment advice or which
17 provides investment management services to the retirement plan.

18 Sec. 2. Section 77-2704.15, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-2704.15 (1) Sales and use taxes shall not be imposed
21 on the gross receipts from the sale, lease, or rental of
22 and the storage, use, or other consumption in this state of
23 purchases by the state, including public educational institutions
24 recognized or established under the provisions of Chapter 85,
25 or by any county, township, city, village, rural or suburban
26 fire protection district, city airport authority, county airport
27 authority, joint airport authority, drainage district organized
1 under sections 31-401 to 31-450, natural resources district,
2 elected county fair board, housing agency as defined in section
3 71-1575 except for purchases for any commercial operation that
4 does not exclusively benefit the residents of an affordable housing
5 project, cemetery created under section 12-101, or joint entity or
6 agency formed to fulfill the purposes described in the Integrated
7 Solid Waste Management Act by any combination of two or more
8 counties, townships, cities, or villages pursuant to the Interlocal
9 Cooperation Act, the Integrated Solid Waste Management Act, or
10 the Joint Public Agency Act, except for purchases for use in the
11 business of furnishing gas, water, electricity, or heat, or by any
12 irrigation or reclamation district, the irrigation division of any
13 public power and irrigation district, or public schools or learning
14 communities established under Chapter 79.

15 (2) The appointment of purchasing agents shall be
16 recognized for the purpose of altering the status of the
17 construction contractor as the ultimate consumer of building
18 materials which are physically annexed to the structure and which
19 subsequently belong to the state or the governmental unit. The
20 appointment of purchasing agents shall be in writing and occur
21 prior to having any building materials annexed to real estate in
22 the construction, improvement, or repair. The contractor who has
23 been appointed as a purchasing agent may apply for a refund of or
24 use as a credit against a future use tax liability the tax paid
25 on inventory items annexed to real estate in the construction,
26 improvement, or repair of a project for the state or a governmental
27 unit.

1 (3) Any governmental unit listed in subsection (1) of
2 this section, except the state, which enters into a contract
3 of construction, improvement, or repair upon property annexed to
4 real estate without first issuing a purchasing agent authorization
5 to a contractor or repairperson prior to the building materials
6 being annexed to real estate in the project may apply to the Tax
7 Commissioner for a refund of any sales and use tax paid by the
8 contractor or repairperson on the building materials physically
9 annexed to real estate in the construction, improvement, or repair.

10 Sec. 3. This act becomes operative on July 1, 2011.

11 Sec. 4. Original section 77-2704.15, Reissue Revised
12 Statutes of Nebraska, and section 12-101, Revised Statutes
13 Cumulative Supplement, 2010, are repealed.

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

UNANIMOUS CONSENT - Add Cointroducers

Senator Krist asked unanimous consent to add his name as cointroducer to LB575. No objections. So ordered.

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB137 and LB575. No objections. So ordered.

VISITORS

Visitors to the Chamber were Brandy Pappas from Lincoln; a group of foreign exchange students from across the state; 17 fourth-grade students and teacher from Pleasanton; 34 fourth-grade students and teachers from North Bend Central Public School, North Bend; 20 fourth-grade students and teacher from Pender; and 65 fourth-grade students and teachers from Upchurch Elementary, Millard.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Lautenbaugh, the Legislature adjourned until 10:00 a.m., Tuesday, April 26, 2011.

Patrick J. O'Donnell
Clerk of the Legislature