

TWENTY-EIGHTH DAY - FEBRUARY 15, 2012

LEGISLATIVE JOURNAL

**ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION**

TWENTY-EIGHTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, February 15, 2012

PRAYER

The prayer was offered by Senator Fischer.

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 Conrad and McGill who were excused; and Senators Coash, Harms, Karpisek, and Lautenbaugh 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 807. Placed on Select File with amendment.
ER176

- 1 1. On page 1, line 3, strike "and"; and in line 4 after
- 2 "section" insert "; and to declare an emergency".

LEGISLATIVE BILL 862. Placed on Select File.

LEGISLATIVE BILL 862A. Placed on Select File.

LEGISLATIVE BILL 760. Placed on Select File with amendment.
ER177

- 1 1. On page 1, line 4, after "Council" insert "and
- 2 grants".

LEGISLATIVE BILL 739. Placed on Select File.

LEGISLATIVE BILL 985. Placed on Select File.

(Signed) Tyson Larson, Chairperson

COMMITTEE REPORT

Health and Human Services

LEGISLATIVE BILL 599. Placed on General File.

(Signed) Kathy Campbell, Chairperson

ANNOUNCEMENTS

Senator Gloor designates LB834 as his priority bill.

The Education Committee designates LB870 as its priority bill.

Senator Avery designates LB1104 as his priority bill.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 389, 390, 391, 392, 393, 394, 395, and 396 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 389, 390, 391, 392, 393, 394, 395, and 396.

GENERAL FILE**LEGISLATIVE BILL 1043.** Title read. Considered.

Committee AM1822, found on page 421, was adopted with 33 ayes, 0 nays, 10 present and not voting, and 6 excused and not voting.

Advanced to Enrollment and Review Initial with 33 ayes, 0 nays, 10 present and not voting, and 6 excused and not voting.

SELECT FILE**LEGISLATIVE BILL 370.** ER145, found on page 302, was adopted.

Senator Wightman renewed his amendment, AM1996, found on page 509.

The Wightman amendment was adopted with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 576. ER164, found on page 417, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 498. ER163, found on page 417, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 836. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 714. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 852. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 853. ER166, found on page 417, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 677. ER168, found on page 430, was adopted.

Senator Lathrop offered the following amendment:

AM2022

(Amendments to E & R amendments, ER168)

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 28-929, Revised Statutes Cumulative
- 4 Supplement, 2010, is amended to read:
- 5 28-929 (1) A person commits the offense of assault on an
- 6 officer or a health care professional in the first degree if:
- 7 (a) He or she intentionally or knowingly causes serious
- 8 bodily injury:
- 9 (i) To a peace officer, a probation officer, or an
- 10 employee of the Department of Correctional Services; ~~or~~
- 11 (ii) To an employee of the Department of Health and Human
- 12 Services if the person committing the offense is committed as a
- 13 dangerous sex offender under the Sex Offender Commitment Act; ~~and~~
- 14 or
- 15 (iii) To a health care professional; and
- 16 (b) The offense is committed while such officer or
- 17 employee is engaged in the performance of his or her official
- 18 duties or while the health care professional is on duty at a
- 19 hospital or a health clinic.
- 20 (2) Assault on an officer or a health care professional
- 21 in the first degree shall be a Class ID felony.
- 22 Sec. 2. Section 28-930, Revised Statutes Cumulative

1 Supplement, 2010, is amended to read:

2 28-930 (1) A person commits the offense of assault on an
3 officer or a health care professional in the second degree if:

4 (a) He or she:

5 (i) Intentionally or knowingly causes bodily injury with
6 a dangerous instrument:

7 (A) To a peace officer, a probation officer, or an
8 employee of the Department of Correctional Services; ~~or~~

9 (B) To an employee of the Department of Health and Human
10 Services if the person committing the offense is committed as a
11 dangerous sex offender under the Sex Offender Commitment Act; or

12 (C) To a health care professional while the health care
13 professional is on duty at a hospital or a health clinic; or

14 (ii) Recklessly causes bodily injury with a dangerous
15 instrument:

16 (A) To a peace officer, a probation officer, or an
17 employee of the Department of Correctional Services; ~~or~~

18 (B) To an employee of the Department of Health and Human
19 Services if the person committing the offense is committed as a
20 dangerous sex offender under the Sex Offender Commitment Act; ~~and~~
21 or

22 (C) To a health care professional; and

23 (b) The offense is committed while such officer or
24 employee is engaged in the performance of his or her official
25 duties or while the health care professional is on duty at a
26 hospital or a health clinic.

27 (2) Assault on an officer or a health care professional
1 in the second degree shall be a Class II felony.

2 Sec. 3. Section 28-931, Revised Statutes Cumulative
3 Supplement, 2010, is amended to read:

4 28-931 (1) A person commits the offense of assault on an
5 officer or a health care professional in the third degree if:

6 (a) He or she intentionally, knowingly, or recklessly
7 causes bodily injury:

8 (i) To a peace officer, a probation officer, or an
9 employee of the Department of Correctional Services; ~~or~~

10 (ii) To an employee of the Department of Health and Human
11 Services if the person committing the offense is committed as a
12 dangerous sex offender under the Sex Offender Commitment Act; ~~and~~
13 or

14 (iii) To a health care professional; and

15 (b) The offense is committed while such officer or
16 employee is engaged in the performance of his or her official
17 duties or while the health care professional is on duty at a
18 hospital or a health clinic.

19 (2) Assault on an officer or a health care professional
20 in the third degree shall be a Class IIIA felony.

21 Sec. 4. For purposes of sections 28-929, 28-930, and
22 28-931 and section 5 of this act:

23 (1) Health care professional means a physician or other
 24 health care practitioner who is licensed, certified, or registered
 25 to perform specified health services consistent with state law who
 26 practices at a hospital or a health clinic;

27 (2) Health clinic has the definition found in section
 1 71-416; and

2 (3) Hospital has the definition found in section 71-419.

3 Sec. 5. Every hospital and health clinic shall display at
 4 all times in a prominent place a printed sign with a minimum height
 5 of twenty inches and a minimum width of fourteen inches, with each
 6 letter to be a minimum of one-fourth inch in height, which shall
 7 read as follows:

8 WARNING: ASSAULTING A HEALTH CARE PROFESSIONAL WHO IS
 9 ENGAGED IN THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES IS A
 10 FELONY.

11 Sec. 6. Original sections 28-929, 28-930, and 28-931,
 12 Revised Statutes Cumulative Supplement, 2010, are repealed.

The Lathrop amendment was adopted with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 873. ER167, found on page 432, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 770. ER169, found on page 432, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 771. ER170, found on page 432, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 536. ER171, found on page 439, was adopted.

Senator Wightman withdrew his amendment, AM1988, found on page 508.

Senator Wightman offered the following amendment:

AM2046

(Amendments to Standing Committee amendments, AM1668)

1 1. Insert the following new sections:

2 Sec. 9. A transfer on death deed shall be signed by
 3 the transferor or by some person in his or her presence and by
 4 his or her direction and shall be attested in writing by two

5 or more disinterested witnesses, whose signatures along with the
 6 transferor's signature shall be made before an officer authorized
 7 to administer oaths under the laws of this state or under the laws
 8 of the state where execution occurs and evidenced by the officer's
 9 certificate, under official seal, in form and content substantially
 10 as follows:

11 I, the transferor, sign my name to this
 12 instrument this day of 20, and being first duly
 13 sworn, do hereby declare to the undersigned authority that I sign
 14 and execute this transfer on death deed to transfer my interest
 15 in the described real property and that I sign it willingly or
 16 willingly direct another to sign for me, that I execute it as my
 17 free and voluntary act for the purposes therein expressed, that
 18 I am eighteen years of age or older or am not at this time a
 19 minor, and that I am of sound mind and under no constraint or undue
 20 influence.

21 Transferor

22 We, and, the witnesses, sign our names to
 1 this instrument, being first duly sworn, and do hereby declare to
 2 the undersigned authority that the transferor signs and executes
 3 this transfer on death deed to transfer his or her interest in
 4 the described real property and that he or she signs it willingly
 5 or willingly directs another to sign for him or her, and that he
 6 or she executes it as his or her free and voluntary act for the
 7 purposes therein expressed, and that each of us, in the presence
 8 and hearing of the transferor, hereby signs this deed as witness
 9 to the transferor's signing, and that to the best of his or her
 10 knowledge the transferor is eighteen years of age or older or is
 11 not at this time a minor and the transferor is of sound mind and
 12 under no constraint or undue influence.

13 Witness

14 Witness

15 THE STATE OF

16 COUNTY OF

17 Subscribed, sworn to, and acknowledged before me by
 18, the transferor, and subscribed and sworn to before me
 19 by and, witnesses, this day of
 20 20..... .

21 (SEAL)(Signed)

22 (Official capacity of officer)

23 Sec. 26. Section 76-201, Reissue Revised Statutes of
 24 Nebraska, is amended to read:

25 76-201 The term real estate, as used in For purposes of
 26 sections 76-201 to 76-281 and section 31 of this act, the term real
 27 estate shall be construed as coextensive in meaning with lands,
 1 tenements, and hereditaments, and as embracing all chattels real,
 2 except leases for a term not exceeding one year.

3 Sec. 27. Section 76-202, Reissue Revised Statutes of
 4 Nebraska, is amended to read:

5 76-202 The term purchaser, as used in sections 76-201 to
6 76-281 and section 31 of this act, shall be construed to embrace
7 every person to whom any real estate or interest therein shall
8 be conveyed for valuable consideration, and also any assignee of
9 mortgage or lease, or other conditional estate.

10 Sec. 28. Section 76-203, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 76-203 The term deed, as used in sections 76-201 to
13 76-281 and section 31 of this act, shall be construed to embrace
14 every instrument in writing by which any real estate or interest
15 therein is created, aliened, mortgaged, or assigned, or by which
16 the title to any real estate may be affected in law or equity,
17 except last wills and leases for one year or for a less time.

18 Sec. 33. Section 76-246, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 76-246 No instrument containing a power to convey, or in
21 any manner to affect real estate, executed, acknowledged or proved,
22 and certified and recorded in conformity with the requirements of
23 sections 76-211 to 76-245 and section 31 of this act, can be
24 revoked by any act of the party or parties thereto until the
25 instrument of revocation is executed, acknowledged or proved, and
26 certified and filed for record with the register of deeds of the
27 county in which the power is recorded.

1 Sec. 34. Section 76-277, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 ~~76-277 The provisions of sections Sections 76-201 to~~
4 ~~76-281 shall and section 31 of this act apply to the conveyance of~~
5 ~~all claims and improvements upon the public lands.~~

6 2. On page 1, line 3, strike "22" and insert "23".

7 3. On page 2, line 7, after the period insert "A transfer
8 on death deed is subject to the common-law principles of equity
9 except to the extent modified by the Nebraska Uniform Real Property
10 Transfer on Death Act."; and in line 13 after the period insert
11 "If the property is agricultural land, the transferor may designate
12 in the transfer on death deed the disposition of the transferor's
13 interest in growing crops to the transferor's estate or to one
14 or more of the designated beneficiaries. If the property is
15 agricultural land and the transfer on death deed does not contain
16 a designation of the disposition of the transferor's interest in
17 growing crops, the transferor's interest in the growing crops shall
18 pass to the transferor's estate.".

19 4. On page 3, strike lines 1 through 3 and insert the
20 following new subdivision:

21 "(4) Must be recorded (i) within thirty days after being
22 executed as required in section 9 of this act, (ii) before the
23 transferor's death, and (iii) in the public records in the office
24 of the register of deeds of the county where the property is
25 located.".

26 5. On page 4, line 16, after the second occurrence of

- 27 "deed" insert "and that is executed with the same formalities as
 1 required in section 9 of this act"; and strike lines 20 through 23
 2 and insert the following new subdivision:
 3 "(2) Is acknowledged by the transferor after the
 4 acknowledgment of the deed being revoked and is recorded (i) within
 5 thirty days after being executed, (ii) before the transferor's
 6 death, and (iii) in the public records in the office of the
 7 register of deeds of the county where the deed is recorded.".
 8 6. On page 5, line 19, strike "20" and insert "21".
 9 7. On page 9, line 11, strike "16" and insert "17".
 10 8. On page 19, line 27, strike "27" and insert "31".
 11 9. On page 20, line 6, strike "12" and insert "13".
 12 10. On page 21, line 4, strike "12, 13, and 14" and
 13 insert "13, 14, and 15".
 14 11. On page 25, line 20, after the second comma insert
 15 "76-201, 76-202, 76-204,"; and in line 21 after the second comma
 16 insert "76-246, 76-277,".
 17 12. Renumber the remaining sections accordingly.

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

Senator B. Harr offered the following amendment:
 AM2042

(Amendments to Standing Committee amendments, AM1668)

- 1 1. On page 23, line 6, strike "husband and wife, or",
 2 show as stricken, and insert "spouses, between ex-spouses for the
 3 purpose of conveying any rights to property acquired or held during
 4 the marriage, or between".

The B. Harr amendment was adopted with 31 ayes, 0 nays, 13 present and not voting, and 5 excused and not voting.

SENATOR GLOOR PRESIDING

Senator Flood offered the following amendment:
 FA33

Amend AM1668

On page 3 line 13 after the word "after" insert "a proportionate"

The Flood amendment was adopted with 29 ayes, 0 nays, 15 present and not voting, and 5 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 269. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 828. ER172, found on page 439, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 725. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 470. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 879. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 646. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 886. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 890. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 854. ER174, found on page 469, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 911. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 942. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 800. Advanced to Enrollment and Review for Engrossment.

GENERAL FILE

LEGISLATIVE BILL 723. Title read. Considered.

Advanced to Enrollment and Review Initial with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 794. Title read. Considered.

Advanced to Enrollment and Review Initial with 28 ayes, 0 nays, 16 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 831. Title read. Considered.

SENATOR CARLSON PRESIDING

Senator Krist renewed his amendment, AM2008, found on page 524.

PRESIDENT SHEEHY PRESIDING

Senator Krist withdrew his amendment.

Senator Krist offered the following amendment:

AM2049

- 1 1. Insert the following new sections:
- 2 Sec. 24. The Genetic Counseling Practice Act shall not
- 3 be construed to require any genetic counselor to counsel or refer
- 4 for abortion, and licensing of a genetic counselor shall not be
- 5 contingent upon his or her participation in counseling or referral
- 6 with respect to abortion. The refusal of a genetic counselor to
- 7 participate in counseling or referral with respect to abortion
- 8 shall not form the basis for any claim of damages on account of
- 9 the refusal or for any disciplinary or recriminatory action against
- 10 the genetic counselor if the genetic counselor informs the patient
- 11 that the genetic counselor will not participate in counseling or
- 12 referral with respect to abortion and offers to direct the patient
- 13 to the online directory of licensed genetic counselors maintained
- 14 by the department.
- 15 Sec. 25. The department shall maintain an online
- 16 directory of all genetic counselors licensed by the department.
- 17 2. On page 2, line 1, strike "23" and insert "25".
- 18 3. Renumber the remaining sections accordingly.

The Krist amendment was adopted with 29 ayes, 0 nays, 16 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 25 ayes, 0 nays, 21 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 871. Title read. Considered.

Advanced to Enrollment and Review Initial with 27 ayes, 0 nays, 19 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 686. Title read. Considered.

Committee AM1774, found on page 394, was considered.

Pending.

COMMITTEE REPORTS

Natural Resources

LEGISLATIVE BILL 742. Placed on General File with amendment.
AM1934

1 1. Strike the original sections and insert the following
2 new sections:
3 Section 1. Section 70-1014, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:
5 70-1014 After hearing, the board shall have authority to
6 approve or deny the application. Except as provided in section
7 70-1014.01 for special generation applications and except as
8 provided in section 70-1014.02, before approval of an application,
9 the board shall find that the application will serve the public
10 convenience and necessity, and that the applicant can most
11 economically and feasibly supply the electric service resulting
12 from the proposed construction or acquisition, without unnecessary
13 duplication of facilities or operations.

14 If the application involves a transmission line or
15 related facilities planned and approved by a regional transmission
16 organization and the regional transmission organization has issued
17 a notice to construct or similar notice or order to a utility
18 to construct the line or related facilities, the board shall also
19 consider information from the regional transmission organization's
20 planning process and may consider the benefits to the region, which
21 shall include Nebraska, provided by the proposed line or related
22 facilities as part of the board's process in determining whether to
23 approve or deny the application.

1 Sec. 2. Section 70-1014.01, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:
3 70-1014.01 (1) Except as provided in subsection (2)
4 of this section, an application by a municipality, a registered
5 group of municipalities, a public power district, a public power
6 and irrigation district, an electric cooperative, an electric
7 membership association, or any other governmental entity, for
8 a facility that will generate not more than ten thousand
9 kilowatts of electric energy at rated capacity and will generate
10 electricity using solar, wind, biomass, landfill gas, methane gas,
11 or hydropower generation technology or an emerging generation
12 technology, including, but not limited to, fuel cells and
13 micro-turbines, shall be deemed a special generation application.
14 Such application shall be approved by the board if the board
15 finds that (a) the application qualifies as a special generation
16 application, (b) the application will provide public benefits
17 sufficient to warrant approval of the application, although it
18 may not constitute the most economically feasible generation
19 option, and (c) the application under consideration represents a
20 separate and distinct project from any previous special generation
21 application the applicant may have filed.

22 (2)(a) An application by a municipality, a registered
 23 group of municipalities, a public power district, a public power
 24 and irrigation district, an electric cooperative, an electric
 25 membership association, or any other governmental entity for a
 26 facility that will generate more than ten thousand kilowatts of
 27 electric energy at rated capacity and will generate electricity
 1 using renewable energy sources such as solar, wind, biomass,
 2 landfill gas, methane gas, or new hydropower generation technology
 3 or an emerging technology, including, but not limited to, fuel
 4 cells and micro-turbines, may be filed with the board if (i)
 5 the total production from all such renewable projects, excluding
 6 sales from such projects to other electric-generating entities,
 7 does not exceed ten percent of total energy sales as shown in
 8 the producer's Annual Electric Power Industry Report to the United
 9 States Department of Energy and (ii) the applicant's governing body
 10 conducts at least one advertised public hearing which affords the
 11 ratepayers of the applicant a chance to review and comment on the
 12 subject of the application.

13 (b) The application filed under subdivision (2)(a) of
 14 this section shall be approved by the board if the board finds that
 15 (i) the applicant is using renewable energy sources described in
 16 this subsection, (ii) total production from all renewable projects
 17 of the applicant does not exceed ten percent of the producer's
 18 total energy sales as described in subdivision (2)(a) of this
 19 section, and (iii) the applicant's governing body has conducted at
 20 least one advertised public hearing which affords its ratepayers a
 21 chance to review and comment on the subject of the application.

22 ~~(3)-(3)(a)~~ A community-based energy development project
 23 organized pursuant to the Rural Community-Based Energy Development
 24 Act or any privately developed project which intends to develop
 25 renewable energy sources for sale to one or more Nebraska electric
 26 utilities described in this section may also make an application
 27 to the board pursuant to ~~subsection (2) of this section if (a)~~
 1 this subsection if (i) the purchasing electric utilities conduct
 2 a public hearing described in ~~such subsection and (b) subdivision~~
 3 (2)(a) of this section, (ii) the power and energy from the
 4 renewable energy sources is sold exclusively to such electric
 5 utilities for a term of at least twenty years, and (iii) the
 6 total production from all such renewable projects, excluding sales
 7 from such projects to other electric-generation entities, does
 8 not exceed ten percent of total energy sales of such purchasing
 9 electric utilities as shown in such utilities' Annual Electric
 10 Power Industry Report to the United States Department of Energy or
 11 the successor to such report.

12 (b) The application filed under subdivision (3)(a) of
 13 this section shall be approved by the board if the board finds that
 14 the purchasing electric utilities have met the conditions described
 15 in subdivision (3)(a) of this section.

16 (4) No facility or part of a facility which is approved
 17 pursuant to this section is subject to eminent domain by any
 18 electric supplier, or by any other entity if the purpose of the
 19 eminent domain proceeding is to acquire the facility for electric
 20 generation or transmission.

21 Sec. 3. Original sections 70-1014 and 70-1014.01, Revised
 22 Statutes Cumulative Supplement, 2010, are repealed.

(Signed) Chris Langemeier, Chairperson
 General Affairs

LEGISLATIVE BILL 781. Placed on General File.

LEGISLATIVE BILL 1130. Placed on General File.

LEGISLATIVE BILL 979. Placed on General File with amendment.
 AM1907

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

3 Section 1. Section 9-326, Reissue Revised Statutes of
 4 Nebraska, is amended to read:

5 9-326 (1) Any nonprofit organization holding a
 6 certificate of exemption under section 501(c)(3), (c)(4), (c)(5),
 7 (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code
 8 or any volunteer fire company or volunteer first-aid, rescue,
 9 ambulance, or emergency squad may apply for a license to conduct a
 10 lottery by the sale of pickle cards.

11 (2) Prior to applying for any license, an organization
 12 shall:

13 (a) Be incorporated in this state as a not-for-profit
 14 corporation or organized in this state as a religious or
 15 not-for-profit organization. For purposes of this subsection,
 16 a domesticated foreign corporation shall not be considered
 17 incorporated in this state as a not-for-profit corporation;

18 (b) Conduct activities within this state in addition to
 19 the conduct of lottery by the sale of pickle cards;

20 (c) Be authorized by its constitution, articles, charter,
 21 or bylaws to further in this state a lawful purpose;

22 (d) Operate without profit to its members, and no part of
 23 the net earnings of such organization shall inure to the benefit of
 1 any private shareholder or individual; and

2 (e) With the exception of a volunteer fire company, a
 3 ~~or~~ volunteer first-aid, rescue, ambulance, or emergency squad, or
 4 a not-for-profit corporation whose primary purpose is to support
 5 a volunteer fire company, first-aid squad, rescue squad, ambulance
 6 squad, or emergency squad, have been in existence in this state
 7 for five years immediately preceding its application for a license
 8 and have had during that five-year period a bona fide membership
 9 actively engaged in furthering a lawful purpose. A society defined

10 in section 21-608 which is chartered in Nebraska under a state,
 11 grand, supreme, national, or other governing body may use the
 12 charter date of its parent organization to satisfy such five-year
 13 requirement.

14 Sec. 2. Original section 9-326, Reissue Revised Statutes
 15 of Nebraska, is repealed.

LEGISLATIVE BILL 1067. Placed on General File with amendment.
 AM1961

- 1 1. On page 4, line 12, strike "one minute" and insert
- 2 "three minutes".

LEGISLATIVE BILL 992. Indefinitely postponed.

(Signed) Russ Karpisek, Chairperson

Executive Board

LEGISLATIVE RESOLUTION 373CA. Placed on General File with
 amendment.

AM1948

- 1 1. On page 2, line 7, strike "thirty-two thousand"
- 2 and insert "twenty-two thousand five hundred"; and in line 18
- 3 strike "thirty-two thousand" and insert "twenty-two thousand five
- 4 hundred".

LEGISLATIVE BILL 1059. Indefinitely postponed.

LEGISLATIVE RESOLUTION 377CA. Indefinitely postponed.

(Signed) John Wightman, Chairperson

Education

LEGISLATIVE BILL 870. Placed on General File with amendment.
 AM2023

- 1 1. Insert the following new sections:
- 2 Sec. 3. Section 79-760.05, Revised Statutes Supplement,
- 3 2011, is amended to read:
- 4 79-760.05 (1) The State Board of Education shall
- 5 implement a statewide system for tracking individual student
- 6 achievement, using the student identifier system of the State
- 7 Department of Education, that can be aggregated to track student
- 8 progress by demographic characteristics, including, but not
- 9 limited to, race, poverty, high mobility, attendance, and limited
- 10 English proficiency, on available measures of student achievement
- 11 which include, but need not be limited to, national assessment
- 12 instruments, ~~and~~ state assessment instruments, and the indicators
- 13 used in the accountability system required pursuant to section 2

14 of this act. Such a system shall be designed so as to aggregate
15 student data by available educational input characteristics, which
16 may include class size, teacher education, teacher experience,
17 special education, early childhood programs, federal programs, and
18 other targeted education programs. School districts shall provide
19 the department with individual student achievement data from
20 assessment instruments required pursuant to section 79-760.03 in
21 order to implement the statewide system.

22 (2) The department shall annually analyze and report
23 on student achievement for the state, each school district, each
1 public school, and each learning community aggregated by the
2 demographic characteristics described in subsection (1) of this
3 section. The department shall report the findings to the Governor,
4 the Legislature, school districts, educational service units, and
5 each learning community. Such analysis shall include aggregated
6 data that would indicate differences in achievement due to
7 available educational input characteristics described in subsection
8 (1) of this section. Such analysis shall include indicators of
9 progress toward state achievement goals for students in poverty,
10 limited English proficient students, and highly mobile students.

11 Sec. 4. (1) Any school district, with the approval of
12 the State Department of Education, may establish and operate a
13 career academy. The purpose of the career academy is to provide
14 holistic education to help students find a career-based educational
15 alternative to a college-bound educational curriculum. A school
16 district may partner with another school district, an educational
17 service unit, a learning community, a postsecondary educational
18 institution, or a private entity in the establishment and operation
19 of a career academy.

20 (2) A career academy established pursuant to subsection
21 (1) of this section shall:

22 (a) Recruit students who seek a career-based curriculum,
23 which curriculum shall be based on criteria determined by the
24 department;

25 (b) Recruit and hire instructors based on their expertise
26 in career-based education;

27 (c) Serve students in grades seven through twelve; and

1 (d) Provide an academic curriculum focusing on
2 mathematics, science, and technology with a transition component
3 to prepare youth for the workforce, including, but not limited to,
4 internships, job training, and skills training.

5 (3) The number of students enrolled in a career academy
6 and their grade levels shall be accounted for separately by the
7 operating school district in the reports required pursuant to
8 section 79-528.

9 In addition to funding from the establishing school
10 district or any of the district's partners, a career academy may
11 also receive private donations for operating expenses.

12 (4) The department shall define standards and criteria
 13 for (a) the establishment, evaluation, and continuing approval of
 14 career academies, (b) career-based curriculum utilized by career
 15 academies, (c) the necessary data elements and collection of
 16 data pertaining to career academies, and (d) the establishment
 17 of advisory boards consisting of business and education
 18 representatives to provide guidance and direction for the operation
 19 of career academies.

20 Sec. 5. Section 79-828, Reissue Revised Statutes of
 21 Nebraska, is amended to read:

22 79-828 (1) The contract of a probationary certificated
 23 employee shall be deemed renewed and remain in full force and
 24 effect unless amended or not renewed in accordance with sections
 25 79-824 to 79-842.

26 (2) The purpose of the probationary period is to allow
 27 the employer an opportunity to evaluate, assess, and assist the
 1 employee's professional skills and work performance prior to the
 2 employee obtaining permanent status.

3 All probationary certificated employees employed by ~~Class~~
 4 ~~I, II, III, and VI school districts~~ any class of school district
 5 shall, during each year of probationary employment, be evaluated
 6 at least once each semester, unless the probationary certificated
 7 employee is a superintendent, in accordance with the procedures
 8 outlined below:

9 The probationary certificated employee shall be observed
 10 and evaluation shall be based upon actual classroom observations
 11 for an entire instructional period. If deficiencies are noted in
 12 the work performance of any probationary certificated employee, the
 13 evaluator shall provide the ~~teacher or administrator~~ probationary
 14 certificated employee at the time of the observation with a list
 15 of deficiencies, and a list of suggestions for improvement and
 16 assistance in overcoming the deficiencies. The evaluator shall also
 17 provide the probationary certificated employee with , and followup
 18 evaluations and assistance when deficiencies remain.

19 If the probationary certificated employee is a
 20 superintendent, he or she shall be evaluated twice during the first
 21 year of employment and at least once annually thereafter.

22 Any certificated employee employed prior to September
 23 1, 1982, by the school board of any Class I, II, III, or VI
 24 school district shall serve the probationary period required by law
 25 prior to such date and shall not be subject to any extension of
 26 probation.

27 (3) If the school board or the superintendent or
 1 superintendent's designee determines that it is appropriate to
 2 consider whether the contract of a probationary certificated
 3 employee or the superintendent should be amended or not renewed for
 4 the next school year, such certificated employee shall be given
 5 written notice that the school board will consider the amendment
 6 or nonrenewal of such certificated employee's contract for the

7 ensuing school year. Upon request of the certificated employee,
8 notice shall be provided which shall contain the written reasons
9 for such proposed amendment or nonrenewal and shall be sufficiently
10 specific so as to provide such employee the opportunity to prepare
11 a response and the reasons set forth in the notice shall be
12 employment related.

13 (4) The school board may elect to amend or not renew
14 the contract of a probationary certificated employee for any reason
15 it deems sufficient if such nonrenewal is not for constitutionally
16 impermissible reasons, and such nonrenewal shall be in accordance
17 with sections 79-824 to 79-842. Amendment or nonrenewal for reason
18 of reduction in force shall be subject to sections 79-824 to 79-842
19 and 79-846 to 79-849.

20 (5) Within seven calendar days after receipt of
21 the notice, the probationary certificated employee may make a
22 written request to the secretary of the school board or to the
23 superintendent or superintendent's designee for a hearing before
24 the school board.

25 (6) Prior to scheduling of action or a hearing on
26 the matter, if requested, the notice of possible amendment
27 or nonrenewal and the reasons supporting possible amendment or
1 nonrenewal shall be considered a confidential employment matter as
2 provided in sections 79-539, 79-8,109, and 84-1410 and shall not be
3 released to the public or any news media.

4 (7) At any time prior to the holding of a hearing or
5 prior to final determination by the school board to amend or not
6 renew the contract involved, the probationary certificated employee
7 may submit a letter of resignation for the ensuing year, which
8 resignation shall be accepted by the school board.

9 (8) The probationary certificated employee shall be
10 afforded a hearing which shall not be required to meet the
11 requirements of a formal due process hearing as set forth in
12 section 79-832 but shall be subject to section 79-834.

13 2. On page 2, line 20, after "the" insert "level of"; in
14 line 21 after "districts" insert "on the indicators used in the
15 accountability system"; and in line 23 strike "79-757" and insert
16 "79-828, Reissue Revised Statutes of Nebraska, and sections 79-757
17 and 79-760.05".

18 3. Renumber the remaining sections and correct internal
19 references accordingly.

(Signed) Greg Adams, Chairperson

NOTICE OF COMMITTEE HEARINGS

Revenue

Room 1524

Wednesday, February 22, 2012 1:30 p.m.

- LB753
- LB798
- LB888
- LB1114

Room 1524

Thursday, February 23, 2012 1:30 p.m.

- LB989
- LB1011
- LB1075
- LB1106
- LB1138

Room 1524

Friday, February 24, 2012 1:30 p.m.

- LB883
- LB974
- LB1071
- LB1135

(Signed) Abbie Cornett, Chairperson

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 526. Placed on Select File with amendment.
ER179

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 46-294, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 46-294 (1) Except for applications approved in accordance
- 6 with subsection (1) of section 46-291, the Director of Natural
- 7 Resources shall approve an application filed pursuant to section
- 8 46-290 only if the application and the proposed transfer or change
- 9 meet the following requirements:
- 10 (a) The application is complete and all other information
- 11 requested pursuant to section 46-293 has been provided;

12 (b) The proposed use of water after the transfer or
13 change will be a beneficial use of water;

14 (c)(i) Any requested transfer in the location of use is
15 within the same river basin as defined in section 46-288 or (ii)
16 the river basin from which the appropriation is to be transferred
17 is tributary to the river basin to which the appropriation is to be
18 transferred;

19 (d) Except as otherwise provided in subsection (4) of
20 this section, the proposed transfer or change, alone or when
21 combined with any new or increased use of any other source of water
22 at the original location or within the same irrigation district,
23 reclamation district, public power and irrigation district, or
1 mutual irrigation or canal company for the original or other
2 purposes, will not diminish the supply of water available for or
3 otherwise adversely affect any other water appropriator and will
4 not significantly adversely affect any riparian water user who
5 files an objection in writing pursuant to section 46-291;

6 (e) The quantity of water that is transferred for
7 diversion or other use at the new location will not exceed
8 the historic consumptive use under the appropriation or portion
9 thereof being transferred, except that this subdivision does not
10 apply to (i) a transfer in the location of use if both the current
11 use and the proposed use are for irrigation, the number of acres
12 to be irrigated will not increase after the transfer, and the
13 location of the diversion from the stream will not change or (ii)
14 a transfer or change in the purpose of use of a surface water
15 irrigation appropriation as provided for in subsection (3), (5), or
16 (6) of section 46-290 if the transfer or change in purpose will
17 not diminish the supply of water available or otherwise adversely
18 affect any other water appropriator, adversely affect Nebraska's
19 ability to meet its obligations under a multistate agreement, or
20 result in administration of the prior appropriation system by the
21 Department of Natural Resources, which would not have otherwise
22 occurred;

23 (f) The appropriation, prior to the transfer or change,
24 is not subject to termination or cancellation pursuant to sections
25 46-229 to 46-229.04;

26 (g) If a proposed transfer or change is of an
27 appropriation that has been used for irrigation and is in the name
1 of an irrigation district, reclamation district, public power and
2 irrigation district, or mutual irrigation or canal company or is
3 dependent upon any such district's or company's facilities for
4 water delivery, such district or company has approved the transfer
5 or change;

6 (h) If the proposed transfer or change is of a
7 storage-use appropriation and if the owner of that appropriation is
8 different from the owner of the associated storage appropriation,
9 the owner of the storage appropriation has approved the transfer
10 or change;

11 (i) If the proposed transfer or change is to be
12 permanent, either (i) the purpose for which the water is to
13 be used before the transfer or change is in the same preference
14 category established by section 46-204 as the purpose for which
15 the water is to be used after the transfer or change or (ii) the
16 purpose for which the water is to be used before the transfer or
17 change and the purpose for which the water is to be used after the
18 transfer or change are both purposes for which no preferences are
19 established by section 46-204;

20 (j) If the proposed transfer or change is to be
21 temporary, it will be for a duration of no less than one year
22 and, except as provided in section 46-294.02, no more than thirty
23 years;

24 (k) The transfer or change will not be inconsistent with
25 any applicable state or federal law and will not jeopardize the
26 state's compliance with any applicable interstate water compact or
27 decree or cause difficulty in fulfilling the provisions of any
1 other formal state contract or agreement; and

2 (l) The proposed transfer or change is in the public
3 interest. The director's considerations relative to the public
4 interest shall include, but not be limited to, (i) the economic,
5 social, and environmental impacts of the proposed transfer or
6 change and (ii) whether and under what conditions other sources of
7 water are available for the uses to be made of the appropriation
8 after the proposed transfer or change. The Department of Natural
9 Resources shall adopt and promulgate rules and regulations to
10 govern the director's determination of whether a proposed transfer
11 or change is in the public interest.

12 (2) The applicant has the burden of proving that the
13 proposed transfer or change will comply with subdivisions (1)(a)
14 through (l) of this section, except that (a) the burden is on a
15 riparian user to demonstrate his or her riparian status and to
16 demonstrate a significant adverse effect on his or her use in order
17 to prevent approval of an application and (b) if both the current
18 use and the proposed use after a transfer are for irrigation,
19 the number of acres to be irrigated will not increase after the
20 transfer, and the location of the diversion from the stream will
21 not change, there is a rebuttable presumption that the transfer
22 will be consistent with subdivision (1)(d) of this section.

23 (3) In approving an application, the director may impose
24 any reasonable conditions deemed necessary to protect the public
25 interest, to ensure consistency with any of the other criteria
26 in subsection (1) of this section, or to provide the department
27 with information needed to properly and efficiently administer the
1 appropriation while the transfer or change remains in effect.
2 If necessary to prevent diminution of supply for any other
3 appropriator, the conditions imposed by the director shall require
4 that historic return flows be maintained or replaced in quantity,
5 timing, and location. After approval of any such transfer or

6 change, the appropriation shall be subject to all water use
7 restrictions and requirements in effect at any new location of use
8 and, if applicable, at any new diversion location. An appropriation
9 for which a transfer or change has been approved shall retain
10 the same priority date as that of the original appropriation.
11 If an approved transfer or change is temporary, the location of
12 use, purpose of use, or type of appropriation shall revert to the
13 location of use, purpose of use, or type of appropriation prior to
14 the transfer or change.

15 (4) In approving an application for a transfer, the
16 director may also authorize the overlying of water appropriations
17 on the same lands, except that if any such overlying of
18 appropriations would result in either the authorized diversion
19 rate or the authorized aggregate annual quantity that could be
20 diverted to be greater than is otherwise permitted by section
21 46-231, the director shall limit the total diversion rate or
22 aggregate annual quantity for the appropriations overlain to the
23 rate or quantity that he or she determines is necessary, in the
24 exercise of good husbandry, for the production of crops on the
25 land involved. The director may also authorize a greater number of
26 acres to be irrigated if the amount and rate of water approved
27 under the original appropriation is not increased by the change of
1 location. An increase in the number of acres to be irrigated shall
2 be approved only if (a) such an increase will not diminish the
3 supply of water available to or otherwise adversely affect another
4 water appropriator or (b) the transfer would not adversely affect
5 the water supply for any river basin, subbasin, or reach that has
6 been designated as overappropriated pursuant to section 46-713 or
7 determined to be fully appropriated pursuant to section 46-714 and
8 (i) the number of acres authorized under the appropriation when
9 originally approved has not been increased previously, (ii) the
10 increase in the number of acres irrigated will not exceed five
11 percent of the number of acres being irrigated under the permit
12 before the proposed transfer or a total of ten acres, whichever
13 acreage is less, and (iii) all the use will be either on the
14 quarter section to which the appropriation was appurtenant before
15 the transfer or on an adjacent quarter section.

16 Sec. 2. Original section 46-294, Reissue Revised Statutes
17 of Nebraska, is repealed.

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

20 2. On page 1, line 3, strike "and"; and in line 4 after
21 "section" insert "; and to declare an emergency".

LEGISLATIVE BILL 42. Placed on Select File with amendment.
ER178

- 1 1. On page 5, line 6, after "Institute" insert an
- 2 underscored comma.

LEGISLATIVE BILL 780. Placed on Select File.

LEGISLATIVE BILL 861. Placed on Select File.

LEGISLATIVE BILL 733. Placed on Select File.

LEGISLATIVE BILL 860. Placed on Select File.

LEGISLATIVE BILL 878. Placed on Select File.

LEGISLATIVE BILL 759. Placed on Select File with amendment.
ER180

- 1 1. On page 1, strike beginning with "to" in line 2
- 2 through the semicolon in line 4.

LEGISLATIVE BILL 786. Placed on Select File with amendment.
ER181

- 1 1. On page 1, line 4, strike "and" and after "section"
- 2 insert "; and to declare an emergency".

LEGISLATIVE BILL 811. Placed on Select File.

LEGISLATIVE BILL 1031. Placed on Select File.

(Signed) Tyson Larson, Chairperson

GENERAL FILE

LEGISLATIVE BILL 686. Committee AM1774, found on page 394 and considered in this day's Journal, was renewed.

Senator Loudon offered the following amendment to the committee amendment:

FA34

Amend AM1774

On page 2, line 14 after the word "testing", insert "a retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine,"

Pending.

COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 962. Placed on General File with amendment.
AM2018

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 77-382, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 77-382 (1) The department shall prepare a tax expenditure
- 6 report describing ~~(1)-(a)~~ the basic provisions of the Nebraska
- 7 tax laws, ~~(2)-(b)~~ the actual or estimated revenue loss caused
- 8 by the exemptions, deductions, exclusions, deferrals, credits, and

9 preferential rates in effect on July 1 of each year and allowed
10 under Nebraska's tax structure and in the property tax, and ~~(3)~~(c)
11 the elements which make up the tax base for state and local income,
12 including income, sales and use, property, and miscellaneous taxes.

13 (2) The department shall review the major tax exemptions
14 for which state general funds are used to reduce the impact of
15 revenue lost due to a tax expenditure. The report shall indicate an
16 estimate of the amount of the reduction in revenue resulting from
17 the operation of all tax expenditures. The report shall list each
18 tax expenditure relating to sales and use tax under the following
19 categories:

20 (a) Agriculture, which shall include a separate listing
21 for the following items: Agricultural machinery; agricultural
22 chemicals; seeds sold to commercial producers; water for irrigation
23 and manufacturing; commercial artificial insemination; mineral
1 oil as dust suppressant; animal grooming; oxygen for use in
2 aquaculture; animal life whose products constitute food for human
3 consumption; and grains;

4 (b) Business across state lines, which shall include
5 a separate listing for the following items: Property shipped
6 out-of-state; fabrication labor for items to be shipped
7 out-of-state; property to be transported out-of-state; property
8 purchased in other states to be used in Nebraska; aircraft
9 delivery to an out-of-state resident or business; state reciprocal
10 agreements for industrial machinery; and property taxed in another
11 state;

12 (c) Common carrier and logistics, which shall include a
13 separate listing for the following items: Railroad rolling stock
14 and repair parts and services; common or contract carriers and
15 repair parts and services; common or contract carrier accessories;
16 and common or contract carrier safety equipment;

17 (d) Consumer goods, which shall include a separate
18 listing for the following items: Motor vehicles and motorboat
19 trade-ins; merchandise trade-ins; certain medical equipment and
20 medicine; newspapers; laundromats; telefloral deliveries; motor
21 vehicle discounts for the disabled; and political campaign
22 fundraisers;

23 (e) Energy, which shall include a separate listing for
24 the following items: Motor fuels; energy used in industry; energy
25 used in agriculture; aviation fuel; and minerals, oil, and gas
26 severed from real property;

27 (f) Food, which shall include a separate listing for the
1 following items: Food for home consumption; supplemental nutrition
2 assistance program; school lunches; meals sold by hospitals; meals
3 sold by institutions at a flat rate; food for the elderly,
4 handicapped, and supplemental security income recipients; and meals
5 sold by churches;

6 (g) General business, which shall include a separate
7 listing for the following items: Component and ingredient parts;

8 manufacturing machinery; containers; film rentals; molds and dies;
 9 syndicated programming; intercompany sales; intercompany leases;
 10 sale of a business or farm machinery; and transfer of property in a
 11 change of business ownership;

12 (h) Lodging and shelter, which shall include a
 13 separate listing for the following item: Room rentals by certain
 14 institutions;

15 (i) Miscellaneous, which shall include a separate listing
 16 for the following items: Cash discounts and coupons; separately
 17 stated finance charges; casual sales; lease-to-purchase agreements;
 18 and separately stated taxes;

19 (j) Nonprofits, governments, and exempt entities, which
 20 shall include a separate listing for the following items: Purchases
 21 by political subdivisions of the state; purchases by churches
 22 and nonprofit colleges and medical facilities; purchasing agents
 23 for public real estate construction improvements; contractor as
 24 purchasing agent for public agencies; Nebraska lottery; admissions
 25 to school events; sales on Native American Indian reservations;
 26 school-supporting fundraisers; fine art purchases by a museum;
 27 purchases by the Nebraska State Fair Board; purchases by the
 1 Nebraska Investment Finance Authority and licensees of the State
 2 Racing Commission; purchases by the United States Government;
 3 public records; and sales by religious organizations;

4 (k) Recent sales tax expenditures, which shall include a
 5 separate listing for each sales tax expenditure created by statute
 6 or rule and regulation after the effective date of this act; and

7 (l) Telecommunications, which shall include a separate
 8 listing for the following items: Telecommunications access charges;
 9 prepaid calling arrangements; conference bridging services; and
 10 nonvoice data services.

11 (3) The report shall make recommendations relating to the
 12 elimination, in whole or in part, of particular tax expenditures or
 13 to the limiting of the duration of particular tax expenditures to a
 14 fixed number of years.

15 (4) It is the intent of the Legislature that nothing
 16 in the Tax Expenditure Reporting Act shall cause the valuation or
 17 assessment of any property exempt from taxation on the basis of its
 18 use exclusively for religious, educational, or charitable purposes.

19 Sec. 2. Section 77-2715.01, Reissue Revised Statutes of
 20 Nebraska, is amended to read:

21 77-2715.01 (1)(a) Commencing in 1987 the Legislature
 22 shall set the rate for the income tax imposed by section 77-2715
 23 and the rate of the sales tax imposed by subsection (1) of section
 24 77-2703. The rate of the income tax set by the Legislature shall be
 25 considered the primary rate for establishing the tax rate schedules
 26 used to compute the tax.

27 (b) The Legislature shall set the rates of the sales tax
 1 and income tax so that the estimated funds available plus estimated
 2 receipts from the sales, use, income, and franchise taxes will be

3 not less than three percent nor more than seven percent in excess
 4 of the appropriations and express obligations for the biennium for
 5 which the appropriations are made. The purpose of this subdivision
 6 is to insure that there shall be maintained in the state treasury
 7 an adequate General Fund balance, considering cash flow, to meet
 8 the appropriations and express obligations of the state.

9 (c) For purposes of this section, express obligation
 10 shall mean an obligation which has fiscal impact identifiable by a
 11 sum certain or by an established percentage or other determinative
 12 factor or factors.

13 (2) The Speaker of the Legislature and the chairpersons
 14 of the Legislature's Executive Board, Revenue Committee, and
 15 Appropriations Committee shall constitute a committee to be known
 16 as the Tax Rate Review Committee. The Tax Rate Review Committee
 17 shall meet with the Tax Commissioner within ten days after July
 18 15 and November 15 of each year and shall determine whether
 19 the rates for sales tax and income tax should be changed. In
 20 making such determination ~~they~~ the committee shall recalculate
 21 the requirements pursuant to the formula set forth in subsection
 22 (1) of this section, taking into consideration the appropriations
 23 and express obligations for any session, all miscellaneous claims,
 24 deficiency bills, and all emergency appropriations. The committee
 25 shall prepare an annual report of its determinations under this
 26 section. The committee shall submit such report electronically
 27 to the Legislature and shall append the tax expenditure report
 1 required under section 77-382.

2 In the event it is determined by a majority vote of the
 3 committee that the rates must be changed as a result of a regular
 4 or special session or as a result of a change in the Internal
 5 Revenue Code of 1986 and amendments thereto, other provisions of
 6 the laws of the United States relating to federal income taxes,
 7 and the rules and regulations issued under such laws, ~~they~~ the
 8 committee shall petition the Governor to call a special session of
 9 the Legislature to make whatever rate changes may be necessary.

10 Sec. 3. Original sections 77-382 and 77-2715.01, Reissue
 11 Revised Statutes of Nebraska, are repealed.

(Signed) Abbie Cornett, Chairperson

Transportation and Telecommunications

LEGISLATIVE BILL 1091. Placed on General File.

LEGISLATIVE BILL 715. Placed on General File with amendment.
 AM2000

1 1. On page 2, line 13, after "capability" insert

2 "provided by a local exchange carrier".

3 2. On page 3, after line 3, insert the following new
 4 subsection:

5 "(3) If an application for the revision of an exchange
6 service area includes more than one customer in a particular
7 exchange, the commission shall consider the circumstances of
8 each customer and the impact to the obligations of any affected
9 telecommunications company which has not consented to the
10 application."; in line 23 reinstate the stricken matter and strike
11 "and" and show as stricken; and in line 25 after "exchanges" insert
12 ", and will not impose an undue and unreasonable technological or
13 engineering burden on any affected telecommunications company".

LEGISLATIVE BILL 1167. Indefinitely postponed.

(Signed) Deb Fischer, Chairperson

AMENDMENTS - Print in Journal

Senator Dubas filed the following amendment to LB686:
AM1913

(Amendments to Standing Committee amendments, AM1774)

- 1 1. On page 3, line 16, after the semicolon insert "or";
- 2 strike lines 17 through 24; and in line 25 strike "(15)" and insert
- 3 "(14)".

Senator Cornett filed the following amendment to LB1118:
AM2052

- 1 1. Insert the following new sections:
- 2 Sec. 4. Section 77-5705, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 77-5705 Base Except for a tier 5 project that is
- 5 sequential to a tier 2 large data center project, base year
- 6 means the year immediately preceding the year of application. For
- 7 a tier 5 project that is sequential to a tier 2 large data center
- 8 project, the base year means the last year of the tier 2 large
- 9 data center project entitlement period relating to direct sales tax
- 10 refunds.
- 11 Sec. 6. Section 77-5723, Reissue Revised Statutes of
- 12 Nebraska, is amended to read:
- 13 77-5723 (1) In order to utilize the incentives set
- 14 forth in the Nebraska Advantage Act, the taxpayer shall file
- 15 an application, on a form developed by the Tax Commissioner,
- 16 requesting an agreement with the Tax Commissioner.
- 17 (2) The application shall contain:
- 18 (a) A written statement describing the plan of employment
- 19 and investment for a qualified business in this state;
- 20 (b) Sufficient documents, plans, and specifications as
- 21 required by the Tax Commissioner to support the plan and to define
- 22 a project;
- 23 (c) If more than one location within this state is
- 1 involved, sufficient documentation to show that the employment and

2 investment at different locations are interdependent parts of the
3 plan. A headquarters shall be presumed to be interdependent with
4 each other location directly controlled by such headquarters. A
5 showing that the parts of the plan would be considered parts of
6 a unitary business for corporate income tax purposes shall not
7 be sufficient to show interdependence for the purposes of this
8 subdivision;

9 (d) A nonrefundable application fee of one thousand
10 dollars for a tier 1 project, two thousand five hundred dollars for
11 a tier 2, tier 3, or tier 5 project, five thousand dollars for a
12 tier 4 project, and ten thousand dollars for a tier 6 project. The
13 fee shall be credited to the Nebraska Incentives Fund; and

14 (e) A timetable showing the expected sales tax refunds
15 and what year they are expected to be claimed. The timetable shall
16 include both direct refunds due to investment and credits taken as
17 sales tax refunds as accurately as possible.

18 The application and all supporting information shall be
19 confidential except for the name of the taxpayer, the location of
20 the project, the amounts of increased employment and investment,
21 and the information required to be reported by sections 77-5731 and
22 77-5734.

23 (3) An application must be complete to establish the date
24 of the application. An application shall be considered complete
25 once it contains the items listed in subsection (2) of this
26 section, regardless of the Tax Commissioner's additional needs
27 pertaining to information or clarification in order to approve or
1 not approve the application.

2 (4) Once satisfied that the plan in the application
3 defines a project consistent with the purposes stated in the
4 Nebraska Advantage Act in one or more qualified business activities
5 within this state, that the taxpayer and the plan will qualify for
6 benefits under the act, and that the required levels of employment
7 and investment for the project will be met prior to the end of the
8 fourth year after the year in which the application was submitted
9 for a tier 1, tier 3, or tier 6 project or the end of the sixth
10 year after the year in which the application was submitted for
11 a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall
12 approve the application. For a tier 5 project that is sequential
13 to a tier 2 large data center project, the required level of
14 investment shall be met prior to the end of the fourth year after
15 the expiration of the tier 2 large data center project entitlement
16 period relating to direct sales tax refunds.

17 (5) After approval, the taxpayer and the Tax Commissioner
18 shall enter into a written agreement. The taxpayer shall agree
19 to complete the project, and the Tax Commissioner, on behalf of
20 the State of Nebraska, shall designate the approved plan of the
21 taxpayer as a project and, in consideration of the taxpayer's
22 agreement, agree to allow the taxpayer to use the incentives
23 contained in the Nebraska Advantage Act. The application, and

24 all supporting documentation, to the extent approved, shall be
25 considered a part of the agreement. The agreement shall state:

26 (a) The levels of employment and investment required by
27 the act for the project;

1 (b) The time period under the act in which the required
2 levels must be met;

3 (c) The documentation the taxpayer will need to supply
4 when claiming an incentive under the act;

5 (d) The date the application was filed; and

6 (e) A requirement that the company update the Department
7 of Revenue annually on any changes in plans or circumstances which
8 affect the timetable of sales tax refunds as set out in the
9 application. If the company fails to comply with this requirement,
10 the Tax Commissioner may defer any pending sales tax refunds until
11 the company does comply.

12 (6) The incentives contained in section 77-5725 shall be
13 in lieu of the tax credits allowed by the Nebraska Advantage Rural
14 Development Act for any project. In computing credits under the
15 act, any investment or employment which is eligible for benefits
16 or used in determining benefits under the Nebraska Advantage Act
17 shall be subtracted from the increases computed for determining
18 the credits under section 77-27,188. New investment or employment
19 at a project location that results in the meeting or maintenance
20 of the employment or investment requirements, the creation of
21 credits, or refunds of taxes under the Employment and Investment
22 Growth Act shall not be considered new investment or employment
23 for purposes of the Nebraska Advantage Act. The use of carryover
24 credits under the Employment and Investment Growth Act, the Invest
25 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
26 Quality Jobs Act shall not preclude investment and employment from
27 being considered new investment or employment under the Nebraska
1 Advantage Act. The use of property tax exemptions at the project
2 under the Employment and Investment Growth Act shall not preclude
3 investment not eligible for the property tax exemption from being
4 considered new investment under the Nebraska Advantage Act.

5 (7) A taxpayer and the Tax Commissioner may enter into
6 agreements for more than one project and may include more than
7 one project in a single agreement. The projects may be either
8 sequential or concurrent. A project may involve the same location
9 as another project. No new employment or new investment shall be
10 included in more than one project for either the meeting of the
11 employment or investment requirements or the creation of credits.
12 When projects overlap and the plans do not clearly specify, then
13 the taxpayer shall specify in which project the employment or
14 investment belongs.

15 (8) The taxpayer may request that an agreement be
16 modified if the modification is consistent with the purposes
17 of the act and does not require a change in the description of
18 the project. An agreement may not be modified to a tier that

- 19 would grant a higher level of benefits to the taxpayer or to
20 a tier 1 project. Once satisfied that the modification to the
21 agreement is consistent with the purposes stated in the act, the
22 Tax Commissioner and taxpayer may amend the agreement. For a tier 6
23 project, the taxpayer must agree to limit the project to qualified
24 activities allowable under tier 2 and tier 4.
- 25 2. On page 13, line 14, strike "at" through "of" and
26 insert "sequential to".
- 27 3. On page 28, line 24, after the second comma insert
1 "77-5705, 77-5723,".
- 2 4. Renumber the remaining sections accordingly.

ANNOUNCEMENTS

Senator Fischer designates LB745 as her priority bill.

Senator Carlson designates LR358CA as his priority resolution.

The Urban Affairs Committee designates LB1001 and LB863 as its priority bills.

Senator Krist designates LB998 as his priority bill.

Senator Wallman designates LB1090 as his priority bill.

Senator B. Harr designates LB902 as his priority bill.

Senator Karpisek designates LB1067 as his priority bill.

The General Affairs Committee designates LB824 and LB1130 as its priority bills.

The Transportation and Telecommunications Committee designates LB751 and LB715 as its priority bills.

Senator Lambert designates LB750 as his priority bill.

The Legislative Performance Audit Committee designates LB949 and LB1160 as its priority bills.

Senator Larson designates LB806 as his priority bill.

The Judiciary Committee designates LB972 and LB1145 as its priority bills.

VISITORS

Visitors to the Chamber were Jim, Emily, Grace, Jake, Claire, and Gabe Horacek from Papillion; Rick Vest from Lincoln; 25 members of the Nebraska State Bar Association Leadership Academy from across the state;

40 members of Leadership Fremont and Youth Leadership Academy; Jennifer, Jillian, and Kylie Allen from McCook; 30 eleventh-grade students and teachers of UNO Nebraska Leadership Project from across the state; 25 members of Leadership York and Leadership York Youth; Girls Inc. of Omaha; Linda Steinbrink from the Academy of Family Physicians; Nautika Valentine, Kelicia Millard, Mikayla Bell, Ifeoma Ike, and Carolyn Green; Senator Bloomfield's wife, Dee, sister-in-law, Linda Bloomfield from Ponca, and Lee Homan from Pierce; 86 fourth-grade students from Waverly Intermediate; Senator Nelson's wife, Judy, and Anna Pratt from Omaha; Senator Carlson's wife, Margo, Sandi Ericson from Funk, Dorla Lindstrom from Elm Creek, and Christa Fritson and Susie Bauman from Holdrege; Senator Smith's wife, Ruth, from Papillion and Sakura Wakamasue from Tokyo, Japan; and Senator Hadley's wife, Marilyn, from Kearney and Dot Henry from Lincoln.

The Doctor of the Day was Dr. Jason Bepalec from Geneva.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Langemeier, the Legislature adjourned until 9:00 a.m., Thursday, February 16, 2012.

Patrick J. O'Donnell
Clerk of the Legislature