

NINETIETH DAY - JUNE 5, 2013
LEGISLATIVE JOURNAL
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
NINETIETH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, June 5, 2013

PRAYER

The prayer was offered by Senator Harms.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Heidemann presiding.

The roll was called and all members were present except Senator Schilz who was excused until he arrives.

CORRECTIONS FOR THE JOURNAL

The Journal for the eighty-ninth day was approved.

MESSAGES FROM THE GOVERNOR

June 4, 2013

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 23 and 23A were received in my office on May 29, 2013.

These bills were signed and delivered to the Secretary of State on June 4, 2013.

Sincerely,
(Signed) Dave Heineman
Governor

June 4, 2013

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 104e, 216e, 216A, 306e, 306Ae, 368, and 368A were received in my office on May 29, 2013.

These bills were signed and delivered to the Secretary of State on June 4, 2013.

Sincerely,
(Signed) Dave Heineman
Governor

June 5, 2013

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 90, 224, 568e, and 568Ae were received in my office on June 4, 2013.

These bills were signed and delivered to the Secretary of State on June 5, 2013.

Sincerely,
(Signed) Dave Heineman
Governor

COMMITTEE REPORT

Transportation and Telecommunications

LEGISLATIVE BILL 383. Placed on General File with amendment.
AM1169 is available in the Bill Room.

(Signed) Annette Dubas, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 387. Introduced by Health and Human Services Committee: Campbell, 25, Chairperson; Crawford, 45; Howard, 9; Krist, 10; Watermeier, 1.

PURPOSE: The purpose of this resolution is to examine how Nebraska is utilizing Temporary Assistance for Needy Families (TANF) funds. The study should focus on, but not be limited to, gathering information on utilization, transfer, and availability of TANF block grant funds. The study should also include a breakdown of funding utilization by use including, but not limited to, basic assistance, administration, work-related activities, child care, tax credits, pregnancy prevention, and other non-assistance as well as specific uses within those categories.

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

1. That the Health and Human Services Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

LEGISLATIVE RESOLUTION 388. Introduced by Kolowski, 31.

WHEREAS, Jeff Slobotski launched his Omaha-based blog, Silicon Prairie News, in 2008 at age 30 to highlight Midwestern innovation. Silicon Prairie News soon morphed into a full news site covering the Midwest tech scene and is dedicated to connecting, engaging, and supporting entrepreneurs, creators, and investors; and

WHEREAS, while traveling across America as a sales rep for Truist, a social responsibility-powering tech company, Jeff regularly visited the country's startup hubs. Intrigued by his experiences, Jeff began chronicling his travels on a personal blog. Impressed by the burgeoning startup scene in Omaha and the Midwest, Jeff was inspired to create a new site to exclusively cover startups in Omaha and the Midwest and Silicon Prairie News was born; and

WHEREAS, initially the site published just a few stories each week, usually short profiles of Omaha-based companies. Five years later Jeff has built the site into a robust platform with constantly updated content, developed a webcast, hired a team of eight full-time employees, and opened additional offices in Des Moines and Kansas City; and

WHEREAS, following his online success, in 2009 Jeff launched the Big Omaha conference which brings together more than 700 entrepreneurs from more than 30 states as well as a handful of countries around the globe each year to share their knowledge and push ideas forward; and

WHEREAS, Jeff was named one of Omaha's Ten Outstanding Young Omahans by the Omaha Jaycees and was recently highlighted as one of the "Up and Comers" in Forbes Magazine. Jeff also received the Midlands Business Journal's "Forty Under 40" award, and is a member of the Young Entrepreneur Council; and

WHEREAS, Jeff is heavily involved as a volunteer in community organizations, including Packs of Promise, a nonprofit group he founded to assist Omaha's homeless during the winter. Jeff also serves on the Greater Omaha Chamber of Commerce Board of Directors and is a member of the World Economic Forum's Global Shapers; and

WHEREAS, Jeff is a 1996 graduate of Millard West High School and one of the first class of students enrolled under the leadership of Principal Dr. Rick Kolowski. Jeff looks back on his high school experience as a pivotal part of shaping him into who he is today and giving him the opportunity to think and dream bigger; and

WHEREAS, the success of the State of Nebraska, the strength of our communities, and the overall vitality of American society depend in great measure upon the dedication of people like Jeff Slobotski who use their considerable innovation, heart, and resources to push the state and nation forward.

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

1. That the Legislature recognizes Jeff Slobotski as an outstanding leader and innovator dedicated to championing the amazing talent that exists in Nebraska.

2. That a copy of this resolution be sent to Jeff and Molly Slobotski and their family.

Laid over.

LEGISLATIVE RESOLUTION 389. Introduced by Revenue Committee: Hadley, 37, Chairperson; Janssen, 15; Pirsch, 4; Schumacher, 22; Sullivan, 41.

PURPOSE: The purpose of this resolution is to study local use of taxing powers, including occupation tax and other forms of taxation, and to examine the fiscal relationship between state and local governments. This study shall include, but not be limited to, an analysis of options for changing these taxing powers and fiscal relationships.

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

1. That the Revenue Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

REFERENCE COMMITTEE REPORT

2013 Resolution calling for an Interim Study

LR387	Interim study to examine how Nebraska is utilizing Temporary Assistance for Needy Families (TANF) funds	Health and Human Services
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(Signed) John Wightman, Chairperson
Executive Board

REPORTS

Agency reports electronically filed with the Legislature can be found on the Nebraska Legislature's website at:
<http://www.nebraskalegislature.gov/agencies/view.php>

EXECUTIVE BOARD REPORT

Senator Wightman, Chairperson of the Executive Board, reported the appointments of the following members of the Legislature to the following special committees:

LB517 Water Funding Task Force

Senator Christensen
Senator Davis
Senator Kolowski
Senator Schilz
Senator Watermeier

LR155 Tax Modernization Committee

Senator Bolz
Senator Nordquist

(Signed) John Wightman, Chairperson
Legislative Council, Executive Board

BILL ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB255 with 40 ayes, 5 nays, 3 present and not voting, and 1 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 255.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-801, 28-801.01, 28-804, 28-830, 28-831, and 43-247, Reissue Revised Statutes of Nebraska, and sections 28-707, 28-802, 28-1354, 43-248, 43-250, and 81-1430, Revised Statutes Cumulative Supplement, 2012; to change provisions relating to child abuse; to change provisions and penalties relating to prostitution, solicitation of prostitution, pandering, and keeping a place of prostitution; to provide an affirmative defense to prosecution for prostitution for certain trafficking victims; to provide an affirmative defense to prosecution for solicitation of prostitution for certain trafficking victims; to provide immunity from prosecution for prostitution for persons under eighteen years of age; to define and redefine terms and change penalty provisions relating to human trafficking offenses; to provide for temporary custody and disposition of juveniles committing prostitution; to provide duties for the human trafficking task force; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

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

Voting in the affirmative, 47:

Adams	Coash	Harms	Lathrop	Schumacher
Ashford	Conrad	Harr, B.	McCoy	Seiler
Avery	Cook	Howard	McGill	Smith
Bloomfield	Crawford	Janssen	Mello	Sullivan
Bolz	Davis	Johnson	Murante	Wallman
Brasch	Dubas	Karpisek	Nelson	Watermeier
Campbell	Gloor	Kintner	Nordquist	Wightman
Carlson	Haar, K.	Kolowski	Pirsch	
Chambers	Hadley	Krist	Price	
Christensen	Hansen	Larson	Scheer	

Voting in the negative, 0.

Present and not voting, 1:

Lautenbaugh

Excused and not voting, 1:

Schilz

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

MOTION - Return LB613 to Select File

Senator Chambers moved to return LB613 to Select File for the following specific amendment:

FA158

Strike the enacting clause.

Senator Chambers withdrew his motion to return.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 613. With Emergency Clause.

A BILL FOR AN ACT relating to the Legislature; to amend sections 50-406 and 50-407, Reissue Revised Statutes of Nebraska; to change powers of the Legislative Council and committees of the Legislature; to provide for litigation and appeals; to change provisions relating to court jurisdiction; to repeal the original sections; and to declare an emergency.

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

Voting in the affirmative, 47:

Adams	Coash	Harms	Lathrop	Schumacher
Ashford	Conrad	Harr, B.	McCoy	Seiler
Avery	Cook	Howard	McGill	Smith
Bloomfield	Crawford	Janssen	Mello	Sullivan
Bolz	Davis	Johnson	Murante	Wallman
Brasch	Dubas	Karpisek	Nelson	Watermeier
Campbell	Gloor	Kintner	Nordquist	Wightman
Carlson	Haar, K.	Kolowski	Pirsch	
Chambers	Hadley	Krist	Price	
Christensen	Hansen	Larson	Scheer	

Voting in the negative, 0.

Present and not voting, 1:

Lautenbaugh

Excused and not voting, 1:

Schilz

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LBs 255 and 613.

RESOLUTIONS

LEGISLATIVE RESOLUTION 350. Read. Considered.

LEGISLATIVE RESOLUTION 359. Read. Considered.

LEGISLATIVE RESOLUTION 370. Read. Considered.

LEGISLATIVE RESOLUTION 371. Read. Considered.

LEGISLATIVE RESOLUTION 372. Read. Considered.

LEGISLATIVE RESOLUTION 373. Read. Considered.

LEGISLATIVE RESOLUTION 374. Read. Considered.

LEGISLATIVE RESOLUTION 375. Read. Considered.

LEGISLATIVE RESOLUTION 376. Read. Considered.

LEGISLATIVE RESOLUTION 377. Read. Considered.

LEGISLATIVE RESOLUTION 378. Read. Considered.

LEGISLATIVE RESOLUTION 379. Read. Considered.

LEGISLATIVE RESOLUTION 380. Read. Considered.

LEGISLATIVE RESOLUTION 381. Read. Considered.

LEGISLATIVE RESOLUTION 382. Read. Considered.

LEGISLATIVE RESOLUTION 383. Read. Considered.

LEGISLATIVE RESOLUTION 385. Read. Considered.

LEGISLATIVE RESOLUTION 386. Read. Considered.

LRs 350, 359, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 385, and 386 were adopted with 41 ayes, 0 nays, 7 present and not voting, and 1 excused and not voting.

MOTION - Suspend Rules

Senator Kolowski offered the following motion to LR388:

MO104

Suspend the rules, Rule 4, Sec. 6, to permit consideration of LR388.

The Kolowski motion to suspend the rules prevailed with 34 ayes, 0 nays, 14 present and not voting, and 1 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 388. Read. Considered.

LR388 was adopted with 38 ayes, 0 nays, 10 present and not voting, and 1 excused and not voting.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 360, 361, 362, 363, 364, 365, 366, 367, and 368 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 360, 361, 362, 363, 364, 365, 366, 367, 368, 350, 359, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 385, 386, and 388.

COMMITTEE REPORT

Business and Labor

LEGISLATIVE BILL 373. Placed on General File with amendment.

AM1550

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 45-1201, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 45-1201 Sections 45-1201 to 45-1210 and section 5 of this
- 6 act shall be known and may be cited as the Nebraska Construction
- 7 Prompt Pay Act.
- 8 Sec. 2. Section 45-1202, Reissue Revised Statutes of
- 9 Nebraska, is amended to read:
- 10 45-1202 For purposes of the Nebraska Construction Prompt
- 11 Pay Act:
- 12 (1) Contractor includes individuals, firms, partnerships,
- 13 limited liability companies, corporations, or other associations of
- 14 persons engaged in the business of the construction, alteration,
- 15 repairing, dismantling, or demolition of buildings, roads, bridges,

16 viaducts, sewers, water and gas mains, streets, disposal plants,
 17 water filters, tanks and towers, airports, dams, levees and canals,
 18 water wells, pipelines, transmission and power lines, and every
 19 other type of structure, project, development, or improvement
 20 coming within the definition of real property and personal
 21 property, including such construction, repairing, or alteration
 22 of such property to be held either for sale or rental. Contractor
 23 also includes any subcontractor engaged in the business of such
 1 activities and any person who is providing or arranging for labor
 2 for such activities, either as an employee or as an independent
 3 contractor, for any contractor or person;

4 (2) Owner means a person (a) who has an interest in any
 5 real property improved, (b) for whom an improvement is made, or
 6 (c) who contracted for an improvement to be made. Owner includes
 7 a person, an entity, or any political subdivision of this state.
 8 Owner does not include the State of Nebraska;

9 (3) Owner's representative means an architect, an
 10 engineer, or a construction manager in charge of a project for
 11 the owner or such other contract representative or officer as
 12 designated in the contract document as the party representing the
 13 owner's interest regarding administration and oversight of the
 14 project;

15 (4) Real property means real estate that is improved,
 16 including private and public land, and leaseholds, tenements, and
 17 improvements placed on the real property;

18 (5) Receipt means actual receipt of cash or funds by the
 19 contractor or subcontractor; ~~and~~

20 (6) Subcontractor means a person or an entity that has
 21 contracted to furnish labor or materials to, or performed labor or
 22 supplied materials for, a contractor or another subcontractor in
 23 connection with a contract to improve real property. Subcontractor
 24 includes materialmen and suppliers; ~~and-~~

25 (7) Substantially complete means the stage of a
 26 construction project when the project, or a designated portion
 27 thereof, is sufficiently complete in accordance with the contract
 1 so that the owner can occupy or utilize the project for its
 2 intended use.

3 Sec. 3. Section 45-1203, Reissue Revised Statutes of
 4 Nebraska, is amended to read:

5 45-1203 (1) When a contractor has performed work in
 6 accordance with the provisions of a contract with an owner, the
 7 owner shall pay the contractor within thirty days after receipt by
 8 the owner or the owner's representative of a payment request made
 9 pursuant to the contract.

10 (2) When a subcontractor has performed work in accordance
 11 with the provisions of a subcontract and all conditions precedent
 12 to payment contained in the subcontract have been satisfied, the
 13 contractor shall pay the subcontractor and the subcontractor shall
 14 pay his, her, or its subcontractor, within ten days after receipt

15 by the contractor or subcontractor of each periodic or final
16 payment, the full amount received for the subcontractor's work
17 and materials based on work completed or service provided under
18 the subcontract for which the subcontractor has properly requested
19 payment, if the subcontractor provides or has provided satisfactory
20 and reasonable assurances of continued performance and financial
21 responsibility to complete the work.

22 (3) The owner or the owner's representative shall release
23 and pay all retainage for work completed in accordance with
24 the provisions of the contract within forty-five days after
25 the project, or a designated portion thereof, is substantially
26 complete. When a subcontractor has performed work in accordance
27 with the provisions of a subcontract and all conditions precedent
1 to payment contained in the subcontract have been satisfied, the
2 contractor shall pay all retainage due such subcontractor within
3 ten days after receipt of the retainage.

4 Sec. 4. Section 45-1204, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 45-1204 When work has been performed pursuant to a
7 contract, a party may only withhold payment:

8 ~~(4) For retainage, in an amount not to exceed the~~
9 ~~amount specified in the contract, if applicable, until the work is~~
10 ~~substantially complete;~~

11 (1) For retainage by any owner, contractor, or
12 subcontractor, in an amount not to exceed the amount specified
13 in the applicable contract, which shall not exceed a rate of ten
14 percent. If the scope of work for the contractor or subcontractor
15 from which retainage is withheld is fifty percent complete and if
16 the contractor or subcontractor has performed work in accordance
17 with the provisions in the applicable contract, no more than
18 five percent of any additional progress payment may be withheld
19 as retainage if the contractor or subcontractor provides or
20 has provided satisfactory and reasonable assurances of continued
21 performance and financial responsibility to complete the work;

22 (2) Of a reasonable amount, to the extent that such
23 withholding is allowed in the contract, for any of the following
24 reasons:

25 (a) Reasonable evidence showing that the contractual
26 completion date will not be met due to unsatisfactory job progress;

27 (b) Third-party claims filed or reasonable evidence that
1 such a claim will be filed with respect to work under the contract;
2 or

3 (c) Failure of the contractor to make timely payments for
4 labor, equipment, subcontractors, or materials; or

5 (3) After substantial completion, in an amount not to
6 exceed one hundred twenty-five percent of the estimated cost to
7 complete the work remaining on the contract.

8 Sec. 5. Any individual, partnership, firm, limited
9 liability company, corporation, or company may bring an action to

10 recover any damages caused to such person or entity by a violation
11 of the Nebraska Construction Prompt Pay Act. In addition to an
12 award of damages, the court may award a plaintiff reasonable
13 attorney's fees and costs as the court determines is appropriate.

14 Sec. 6. Original sections 45-1201, 45-1202, 45-1203, and
15 45-1204, Reissue Revised Statutes of Nebraska, are repealed.

(Signed) Steve Lathrop, Chairperson

PRESENTED TO THE GOVERNOR

Presented to the Governor on June 5, 2013, at 10:40 a.m. were the following: LBs 255 and 613e.

(Signed) Jamie Kruse
Clerk of the Legislature's Office

UNANIMOUS CONSENT - Add Cointroducer

Senator McCoy asked unanimous consent to add his name as cointroducer to LB382. No objections. So ordered.

VISITORS

Visitors to the Chamber were Kendra Nebel from Ceresco and Melissa Davis from Raymond.

RECESS

At 10:57 a.m., on a motion by Speaker Adams, the Legislature recessed until 2:30 p.m.

AFTER RECESS

The Legislature reconvened at 2:30 p.m., President Heidemann presiding.

ROLL CALL

The roll was called and all members were present except Senators Chambers, Conrad, Janssen, and Larson who were excused.

MESSAGE FROM THE GOVERNOR

June 5, 2013

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 255 and 613e were received, signed, and delivered to the Secretary of State earlier today.

Sincerely,
 (Signed) Dave Heineman
 Governor

MOTION - Notify Governor

Senator Campbell moved that a committee of five be appointed to notify the Governor that the One Hundred Third Legislature, First Session of the Nebraska Legislature, is about to complete its work, and to return with any message the Governor may have for the Legislature.

The motion prevailed.

The Chair appointed Senators Brasch, Hansen, Murante, Schilz, and Sullivan to serve on said committee.

The committee returned and escorted Governor Dave Heineman to the rostrum where he delivered a message to the members.

The committee escorted Governor Dave Heineman from the Chamber.

REFERENCE COMMITTEE REPORT

2013 Resolution calling for an Interim Study

LR389	Interim study to examine the local use of taxing powers, including occupation tax and other forms of taxation, and to examine the fiscal relationship between state and local governments	Revenue
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(Signed) John Wightman, Chairperson
 Executive Board

UNANIMOUS CONSENT - Suspend Rules

Senator Adams asked unanimous consent on the adoption of his motion, found on page 1722 and corrected on page 1741, to suspend Rule 6, Sections 3 and 5, and Rule 7, Sections 3 and 7, and to indefinitely postpone the following bills whose provisions have been included in other enacted legislation or whose companion bill has been indefinitely postponed: LBs 98, 229, 231, 232, 232A, 233, 289, 342, 343, 417, 443, 504, 544, and 625.

No objections. So ordered.

MOTION - Journal, Session Laws, and Indexes

Senator Hadley moved that the Legislature approve the preparation and printing of the permanent Legislative Journal, Session Laws, and Indexes by Patrick J. O'Donnell, and that he be directed to send to each member of the Legislature a copy of the permanent Journal and Session Laws.

The motion prevailed.

VISITORS

Visitor to the Chamber was Senator Nordquist's wife, Shannon, from Omaha.

The Doctor of the Day was Dr. Pat Hotovy from York.

MOTION - Adjourn Sine Die

Senator Adams moved that the Journal for the Ninetieth Day, as prepared by the Clerk of the Legislature, be approved and that the One Hundred Third Legislature, First Session of the Nebraska Legislature, having finished all business before it, now at 3:02 p.m., adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell
Clerk of the Legislature