

**TWENTY-SECOND DAY - FEBRUARY 8, 2016****LEGISLATIVE JOURNAL****ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION****TWENTY-SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Monday, February 8, 2016

**PRAYER**

The prayer was offered by Pastor Ron Drury, Shepherd of the Hills Lutheran Church, Hickman.

**ROLL CALL**

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

The roll was called and all members were present except Senators Morfeld and Murante who were excused; and Senators Bolz, McCoy, Sullivan, and Watermeier who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the twenty-first day was approved.

**RESOLUTION(S)**

Pursuant to Rule 4, Sec. 5(b), LRs 424, 425, 426, 427, and 428 were adopted.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 424, 425, 426, 427, and 428.

**ANNOUNCEMENT**

Pursuant to Rule 8, Sec. 3, the Appropriations Committee presented its preliminary report on February 8, 2016, summarizing the recommended appropriations for the following biennium.

**SELECT FILE**

**LEGISLATIVE BILL 759.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 760.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 761.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 771.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 699.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 751.** ER155, found on page 483, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 695.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 702.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 775.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 737.** ER157, found on page 484, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 876.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 853.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 270.** ER149, found on page 450, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 131.** ER150, found on page 450, was adopted.

Senator B. Harr offered the following amendment:

AM2047

(Amendments to Standing Committee amendments, AM405)

1 1. Insert the following new sections:

2 Sec. 2. Section 33-114, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

4 33-114 Each county treasurer shall receive for and on behalf of the  
5 county for services rendered to other governmental subdivisions and  
6 agencies, when fees for services rendered by him or her are not otherwise  
7 specifically provided, the following fees: (1) On all sums of money  
8 collected by him or her for each fiscal year, two percent of the sums so  
9 collected; (2) for the collection of all sums of money, general or  
10 bonded, of drainage, irrigation, or natural resources districts, one  
11 percent of the sums so collected; (3) for the collection of all ad  
12 valorem taxes and special assessments, general or bonded, of sanitary and  
13 improvement districts, two percent of the sums so collected; ~~(4 3)~~ for  
14 the collection of all sums of money for municipal taxes, general or  
15 special, including money for bond sinking fund or bond interest fund and  
16 school money, one percent of the sums so collected; and ~~(5 4)~~ for the  
17 collection of all sums of money for special assessments for municipal  
18 improvements, one and one-half percent of the sums so collected.  
19 On all sums collected, such percentage shall be allowed but once. In  
20 computing the amount collected for the purpose of charging percentage,  
21 all sums from whatever fund derived shall be included together, except  
22 the school fund. The treasurer shall be paid in the same proportion from  
23 the respective funds of the state collected by him or her whether the  
24 funds are in money or state warrants.  
25 Sec. 3. Original section 33-114, Reissue Revised Statutes of  
26 Nebraska, is repealed.

The B. Harr amendment was adopted with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 505.** ER153, found on page 465, was adopted.

Senator Krist offered his amendment, AM1959, found on page 477.

The Krist amendment was adopted with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 505A.** Senator Krist offered the following amendment:

AM1999

1 1. Insert the following new section:

2 Sec. 2. There is hereby appropriated (1) \$30,000 from the General  
3 Fund for FY2016-17 and (2) \$-0- from the General Fund for FY2017-18 to  
4 the Nebraska Commission on Law Enforcement and Criminal Justice, for  
5 Program 215, to aid in carrying out the provisions of Legislative Bill  
6 505, One Hundred Fourth Legislature, Second Session, 2016.  
7 No expenditures for permanent and temporary salaries and per diems  
8 for state employees shall be made from funds appropriated in this  
9 section.  
10 2. On page 2, after line 5 insert:  
11 "No expenditures for permanent and temporary salaries and per diems  
12 for state employees shall be made from funds appropriated in this  
13 section.".

The Krist amendment was adopted with 31 ayes, 0 nays, 14 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 275.** ER151, found on page 465, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 474.** ER152, found on page 466, was adopted.

Senator Chambers offered his amendment, AM1958, found on page 501.

The Chambers amendment was adopted with 35 ayes, 0 nays, 11 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 474A.** ER154, found on page 466, was adopted.

Advanced to Enrollment and Review for Engrossment.

#### GENERAL FILE

**LEGISLATIVE BILL 188.** Senator Chambers renewed his motion, MO174, found on page 504 and considered on page 516, to reconsider the vote taken on FA85.

Senator Chambers moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

Senator Chambers requested a roll call vote on the motion to reconsider.

Voting in the affirmative, 11:

Baker	Cook	Howard	Pansing Brooks
Bolz	Crawford	Kolowski	Schumacher
Chambers	Haar, K.	McCollister	

Voting in the negative, 29:

Bloomfield	Fox	Hansen	Kuehn	Seiler
Brasch	Friesen	Hilkemann	Larson	Smith
Coash	Garrett	Hughes	McCoy	Stinner
Craighead	Gloor	Johnson	Riepe	Watermeier
Davis	Groene	Kintner	Scheer	Williams
Ebke	Hadley	Kolterman	Schilz	

Present and not voting, 4:

Campbell	Harr, B.	Krist	Schnoor
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Excused and not voting, 5:

Lindstrom	Mello	Morfeld	Murante	Sullivan
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The Chambers motion to reconsider failed with 11 ayes, 29 nays, 4 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Pending.

**AMENDMENT(S) - Print in Journal**

Senator Schilz filed the following amendment to LB1038:

AM1966

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. Section 46-290, Reissue Revised Statutes of Nebraska, is
- 4 amended to read:
- 5 46-290 (1)(a) Except as provided in this section and sections
- 6 46-2,120 to 46-2,130, any person having a permit to appropriate water for
- 7 beneficial purposes issued pursuant to sections 46-233 to 46-235,
- 8 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the
- 9 use of such appropriation to a location other than the location specified
- 10 in the permit, (ii) to change that appropriation to a different type of
- 11 appropriation as provided in subsection (3) of this section, or (iii) to
- 12 change the purpose for which the water is to be used under a natural-
- 13 flow, storage, or storage-use appropriation to a purpose not at that time
- 14 permitted under the appropriation shall apply for approval of such
- 15 transfer or change to the Department of Natural Resources.
- 16 (b) The application for such approval shall contain (i) the number
- 17 assigned to such appropriation by the department, (ii) the name and

18 address of the present holder of the appropriation, (iii) if applicable,  
19 the name and address of the person or entity to whom the appropriation  
20 would be transferred or who will be the user of record after a change in  
21 the location of use, type of appropriation, or purpose of use under the  
22 appropriation, (iv) the legal description of the land to which the  
23 appropriation is now appurtenant, (v) the name and address of each holder  
24 of a mortgage, trust deed, or other equivalent consensual security  
25 interest against the tract or tracts of land to which the appropriation  
26 is now appurtenant, (vi) if applicable, the legal description of the land  
27 to which the appropriation is proposed to be transferred, (vii) if a  
1 transfer is proposed, whether other sources of water are available at the  
2 original location of use and whether any provisions have been made to  
3 prevent either use of a new source of water at the original location or  
4 increased use of water from any existing source at that location, (viii)  
5 if applicable, the legal descriptions of the beginning and end of the  
6 stream reach to which the appropriation is proposed to be transferred for  
7 the purpose of augmenting the flows in that stream reach, (ix) if a  
8 proposed transfer is for the purpose of increasing the quantity of water  
9 available for use pursuant to another appropriation, the number assigned  
10 to such other appropriation by the department, (x) the purpose of the  
11 current use, (xi) if a change in purpose of use is proposed, the proposed  
12 purpose of use, (xii) if a change in the type of appropriation is  
13 proposed, the type of appropriation to which a change is desired, (xiii)  
14 if a proposed transfer or change is to be temporary in nature, the  
15 duration of the proposed transfer or change, and (xiv) such other  
16 information as the department by rule and regulation requires.  
17 (2) If a proposed transfer or change is to be temporary in nature, a  
18 copy of the proposed agreement between the current appropriator and the  
19 person who is to be responsible for use of water under the appropriation  
20 while the transfer or change is in effect shall be submitted at the same  
21 time as the application.  
22 (3) Regardless of whether a transfer or a change in the purpose of  
23 use is involved, the following changes in type of appropriation, if found  
24 by the Director of Natural Resources to be consistent with section  
25 46-294, may be approved subject to the following:  
26 (a) A natural-flow appropriation for direct out-of-stream use may be  
27 changed to a natural-flow appropriation for aboveground reservoir storage  
28 or for intentional underground water storage;  
29 (b) A natural-flow appropriation for intentional underground water  
30 storage may be changed to a natural-flow appropriation for direct out-of-  
31 stream use or for aboveground reservoir storage;  
1 (c) A natural-flow appropriation for direct out-of-stream use, for  
2 aboveground reservoir storage, or for intentional underground water  
3 storage may be changed to an instream appropriation subject to sections  
4 46-2,107 to 46-2,119 if the director determines that the resulting  
5 instream appropriation would be consistent with subdivisions (2), (3),  
6 and (4) of section 46-2,115;  
7 (d) A natural-flow appropriation for direct out-of-stream use, for  
8 aboveground reservoir storage, or for intentional underground water

9 storage may be changed to an appropriation for induced ground water  
10 recharge if the director determines that the resulting appropriation for  
11 induced ground water recharge would be consistent with subdivisions (2)  
12 (a)(i) and (ii) of section 46-235; ~~and~~

13 (e) An appropriation for manufacturing of hydropower may be changed  
14 in the full amount to an instream basin-management appropriation to be  
15 held jointly by the Game and Parks Commission and any natural resources  
16 district or combination of natural resources districts to maintain the  
17 functional stream flow for conservation of fish and wildlife and for  
18 recreation that existed by the manufacturing of hydropower and to assist  
19 in the implementation of integrated management of ground water and  
20 surface water resources; and

21 (f e) The incidental underground water storage portion, whether or  
22 not previously quantified, of a natural-flow or storage-use appropriation  
23 may be separated from the direct-use portion of the appropriation and may  
24 be changed to a natural-flow or storage-use appropriation for intentional  
25 underground water storage at the same location if the historic  
26 consumptive use of the direct-use portion of the appropriation is  
27 transferred to another location or is terminated, but such a separation  
28 and change may be approved only if, after the separation and change, (i)  
29 the total permissible diversion under the appropriation will not  
30 increase, (ii) the projected consequences of the separation and change  
31 are consistent with the provisions of any integrated management plan  
1 adopted in accordance with section 46-718 or 46-719 for the geographic  
2 area involved, and (iii) if the location of the proposed intentional  
3 underground water storage is in a river basin, subbasin, or reach  
4 designated as overappropriated in accordance with section 46-713, the  
5 integrated management plan for that river basin, subbasin, or reach has  
6 gone into effect, and that plan requires that the amount of the  
7 intentionally stored water that is consumed after the change will be no  
8 greater than the amount of the incidentally stored water that was  
9 consumed prior to the change. Approval of a separation and change  
10 pursuant to this subdivision (f e) shall not exempt any consumptive use  
11 associated with the incidental recharge right from any reduction in water  
12 use required by an integrated management plan for a river basin,  
13 subbasin, or reach designated as overappropriated in accordance with  
14 section 46-713.

15 Whenever any change in type of appropriation is approved pursuant to  
16 this subsection and as long as that change remains in effect, the  
17 appropriation shall be subject to the statutes, rules, and regulations  
18 that apply to the type of appropriation to which the change has been  
19 made.

20 (4) The Legislature finds that induced ground water recharge  
21 appropriations issued pursuant to sections 46-233 and 46-235 and instream  
22 appropriations issued pursuant to section 46-2,115 are specific to the  
23 location identified in the appropriation. Neither type of appropriation  
24 shall be transferred to a different location, changed to a different type  
25 of appropriation, or changed to permit a different purpose of use.

26 (5) In addition to any other purposes for which transfers and

27 changes may be approved, such transfers and changes may be approved if  
28 the purpose is (a) to maintain or augment the flow in a specific stream  
29 reach for any instream use that the department has determined, through  
30 rules and regulations, to be a beneficial use or (b) to increase the  
31 frequency that a diversion rate or rate of flow specified in another  
1 valid appropriation is achieved.

2 For any transfer or change approved pursuant to subdivision (a) of  
3 this subsection, the department shall be provided with a report at least  
4 every five years while such transfer or change is in effect. The purpose  
5 of such report shall be to indicate whether the beneficial instream use  
6 for which the flow is maintained or augmented continues to exist. If the  
7 report indicates that it does not or if no report is filed within sixty  
8 days after the department's notice to the appropriator that the deadline  
9 for filing the report has passed, the department may cancel its approval  
10 of the transfer or change and such appropriation shall revert to the same  
11 location of use, type of appropriation, and purpose of use as prior to  
12 such approval.

13 (6) A quantified or unquantified appropriation for incidental  
14 underground water storage may be transferred to a new location along with  
15 the direct-use appropriation with which it is recognized if the director  
16 finds such transfer to be consistent with section 46-294 and determines  
17 that the geologic and other relevant conditions at the new location are  
18 such that incidental underground water storage will occur at the new  
19 location. The director may request such information from the applicant as  
20 is needed to make such determination and may modify any such quantified  
21 appropriation for incidental underground water storage, if necessary, to  
22 reflect the geologic and other conditions at the new location.

23 (7) Unless an incidental underground water storage appropriation is  
24 changed as authorized by subdivision (3)(~~f~~e) of this section or is  
25 transferred as authorized by subsection (6) of this section or subsection  
26 (1) of section 46-291, such appropriation shall be canceled or modified,  
27 as appropriate, by the director to reflect any reduction in water that  
28 will be stored underground as the result of a transfer or change of the  
29 direct-use appropriation with which the incidental underground water  
30 storage was recognized prior to the transfer or change.

31 (8) Any appropriation for manufacturing of hydropower changed under  
1 subdivision (3)(e) of this section to an instream basin-management  
2 appropriation shall maintain the priority date and preference category of  
3 the original appropriation but shall be subject to condemnation and  
4 subordination pursuant to sections 70-668 and 70-669, except that any  
5 person who held a subordination agreement or condemnation award prior to  
6 the transfer shall be allowed to enter into a new subordination agreement  
7 for the original term of subordination agreement or condemnation award at  
8 no additional cost.

9 Sec. 2. Section 70-668, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 70-668 In applying the provisions of law relating to the  
12 appropriation of water, priority of appropriation shall give the better  
13 right as between those using the water for the same purpose, but when the



14 waters of any natural stream are not sufficient for the use of all those  
15 desiring to use the same, those using the water for domestic purposes  
16 shall have preference over those claiming it for any other purpose. Those  
17 using the water for agricultural purposes shall have the preference over  
18 those using the same for manufacturing purposes, and those using the  
19 water for agricultural purposes shall have the preference over those  
20 using the same for power purposes, where turbine or impulse water wheels  
21 are installed, or for instream basin-management purposes.

22 Sec. 3. Section 70-669, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 70-669 No inferior right to the use of the waters of this state  
25 shall be acquired by a superior right without just compensation therefor  
26 to the inferior user. The just compensation paid to those using water for  
27 power purposes shall not be greater than the cost of replacing the power  
28 which would be generated in the plant or plants of the power user by the  
29 water so acquired. The just compensation to be paid to a holder of an  
30 instream basin-management appropriation shall be the cost per acre-foot  
31 of water subordinated for the hydropower appropriation at the time of  
1 approval of transfer. The amount of compensation shall be adjusted  
2 annually in accordance with the Consumer Price Index or, if publication  
3 of the Consumer Price Index is discontinued, a comparable index selected  
4 by the Director of Natural Resources.

5 Sec. 4. Original sections 46-290, 70-668, and 70-669, Reissue  
6 Revised Statutes of Nebraska, are repealed.

**NOTICE OF COMMITTEE HEARING(S)**

Education

Room 1525

Tuesday, February 16, 2016 1:30 p.m.

Charles Ward - Board of Educational Lands and Funds  
LB868  
LB1062

(Signed) Kate Sullivan, Chairperson

Transportation and Telecommunications

Room 1113

Tuesday, February 23, 2016 1:30 p.m.

Mary K. Gerdes - State Highway Commission

(Signed) Jim Smith, Chairperson

General Affairs

Room 1510

Monday, February 22, 2016 1:30 p.m.

Harvey Varenhorst - Nebraska Arts Council  
Sherry McClymont - Nebraska Arts Council  
Kathryn LeBaron - Nebraska Arts Council  
Patrick Drickey - Nebraska Arts Council  
Cory L. Mueller - State Electrical Board  
Edwin Bergstraesser - State Electrical Board

(Signed) Tyson Larson, Chairperson

**BILL ON FIRST READING**

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

**LEGISLATIVE BILL 814A.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 814, One Hundred Fourth Legislature, Second Session, 2016.

**MOTION - Print in Journal**Senator Seiler filed the following motion to LB976:

MO176

Withdraw bill.

**COMMITTEE REPORT(S)**

Executive Board

**LEGISLATIVE BILL 686.** Placed on General File with amendment.

AM1922

1 1. On page 2, lines 21 and 30; and page 3, line 21, before

2 "Constitution" insert "text of the".

(Signed) Bob Krist, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 188.** Senator Chambers offered his amendment, FA86, found on page 506, to the committee amendment.

Pending.

**UNANIMOUS CONSENT - Add Cointroducer(s)**

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

McCoy - LR378CA

**VISITOR(S)**

Visitors to the Chamber were 2 members of the U.S. Department of State and 4 members of the International Visitor Leadership Program from Japan.

**ADJOURNMENT**

At 11:58 a.m., on a motion by Senator Gloor, the Legislature adjourned until 8:30 a.m., Tuesday, February 9, 2016.

Patrick J. O'Donnell  
Clerk of the Legislature

