

SIXTY-NINTH DAY - MAY 1, 2019
LEGISLATIVE JOURNAL
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

SIXTY-NINTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, May 1, 2019

PRAYER

The prayer was offered by Pastor Adam DeMike, Faith Missionary Church, Weeping Water.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Foley presiding.

The roll was called and all members were present except Senators Bostelman, M. Hansen, Morfeld, Pansing Brooks, Wayne, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the sixty-eighth day was approved.

RESOLUTION(S)

Pursuant to Rule 4, Sec. 5(b), LRs 90 and 91 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 90 and 91.

GENERAL FILE

LEGISLATIVE BILL 397. Title read. Considered.

Senator Cavanaugh offered her amendment, AM1528, found on page 1355.

Senator Briese requested a ruling of the Chair on whether the Cavanaugh amendment is germane to the bill.

The Chair ruled the Cavanaugh amendment is not germane to the bill.

Senator Cavanaugh challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Senator Chambers moved for a call of the house. The motion prevailed with 25 ayes, 3 nays, and 21 not voting.

Senator Cavanaugh requested a roll call vote, in reverse order, on the motion to overrule the Chair.

Voting in the affirmative, 20:

Blood	Chambers	Howard	Lathrop	Quick
Bolz	Crawford	Hunt	McCollister	Vargas
Brandt	DeBoer	Kolowski	Morfeld	Walz
Cavanaugh	Hansen, M.	Kolterman	Pansing Brooks	Wishart

Voting in the negative, 27:

Albrecht	Dorn	Halloran	Linehan	Slama
Arch	Erdman	Hansen, B.	Lowe	Stinner
Bostelman	Friesen	Hilgers	McDonnell	Williams
Brewer	Geist	Hilkemann	Moser	
Briese	Gragert	Hughes	Murman	
Clements	Groene	Lindstrom	Scheer	

Present and not voting, 1:

La Grone

Excused and not voting, 1:

Wayne

The Cavanaugh motion to overrule the Chair failed with 20 ayes, 27 nays, 1 present and not voting, and 1 excused and not voting.

The Chair was sustained.

The Chair declared the call raised.

Senator Chambers offered the following motion:

MO75

Bracket until June 6, 2019.

Pending.

RESOLUTION(S)**LEGISLATIVE RESOLUTION 101.** Introduced by Scheer, 19.

WHEREAS, Norfolk High School received a 2018 NebraskARTS Award presented by Nebraskans for the Arts; and

WHEREAS, Nebraskans for the Arts annually recognizes select schools and school districts that make notable and worthwhile contributions to the arts and arts education in Nebraska; and

WHEREAS, Norfolk High School is home to a diverse student population supported by an outstanding staff focused on providing quality academic and extra-curricular programs in the arts; and

WHEREAS, Norfolk High School's arts programs have developed partnerships with businesses and the community, providing students with the ability to enhance their creative skills and career opportunities; and

WHEREAS, Norfolk High School was one of only two schools to receive this award for 2018; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

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

1. That the Legislature congratulates Norfolk High School for receiving a 2018 NebraskARTS award.

2. That a copy of this resolution be sent to Norfolk High School Principal, Derek Ippensen, on behalf of the school's students, teachers, staff, and parents.

Laid over.

LEGISLATIVE RESOLUTION 102. Introduced by Howard, 9.

WHEREAS, Thomas Rogers Kimball was born April 19, 1862 in Linwood, Ohio, moved to Omaha with his family in 1871, and graduated from Omaha High School in 1878; and

WHEREAS, Thomas Rogers Kimball continued his study in architecture and fine arts at the University of Nebraska, the Cowles School of Art in Boston, the Massachusetts Institute of Technology, and the L'Ecole des Beaux Arts in Paris before co-founding the publishing firm Bates and Kimball; and

WHEREAS, Bates and Kimball founded, edited, and published the Technology Architectural Review for the Massachusetts Institute of Technology, a predecessor to The Architectural Review, an industry magazine still in circulation today; and

WHEREAS, after forming the Boston architectural partnership Walker and Kimball, Thomas Rogers Kimball and his wife Annie returned to Nebraska, becoming involved in the Omaha Chamber of Commerce, the Omaha Civic League, the Association of Professional Men's Clubs, and the Omaha Club; and

WHEREAS, Thomas Rogers Kimball first attained national prominence when his partnership was selected as architect in chief of the 1898 Trans-Mississippi and International Exposition in Omaha. He went on to design many notable Nebraska buildings on his own, including St. Cecilia Cathedral in Omaha, the Hall County Courthouse in Grand Island, the Holdrege Public Library, the Omaha World-Herald Building, the Burlington Station in Omaha, and the Omaha Country Club; and

WHEREAS, Thomas Rogers Kimball was recognized for his architectural achievements with election to the American Institute of Architects College of Fellows and was the first Nebraskan to serve as national president of the American Institute of Architects for 1919-1920; and

WHEREAS, Thomas Rogers Kimball's greatest and most enduring contribution to Nebraska was his service as professional advisor for the Capitol Commission, where he administered the construction of the state capitol, retaining his position for 14 years, from 1919 to 1932; and

WHEREAS, Thomas Rogers Kimball pioneered a double-blind competition process to choose an architect for the state capitol, keeping the names of both the jurors and competing architectural firms anonymous, thereby encouraging the nation's top architectural firms to compete without the potential for corruption, political patronage, or cronyism. This process is still used as the standard for architectural competitions; and

WHEREAS, Thomas Rogers Kimball was inducted into the Nebraska Hall of Fame in 2019 by the Nebraska Hall of Fame Commission.

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

1. That the Legislature congratulates the family of Thomas Rogers Kimball on his induction into the Nebraska Hall of Fame.

2. That copies of this resolution be sent to the family of Thomas Rogers Kimball and to the Nebraska Hall of Fame Commission.

Laid over.

LEGISLATIVE RESOLUTION 103. Introduced by Lowe, 37; Arch, 14; Cavanaugh, 6; Dorn, 30; Hansen, B., 16; Howard, 9; Murman, 38; Walz, 15; Williams, 36.

PURPOSE: The purpose of this interim study is to review staffing concerns, including, but not limited to, staff retention, at the Beatrice State Developmental Center, the Lincoln Regional Center, the Youth Rehabilitation and Treatment Center-Geneva, and the Youth Rehabilitation and Treatment Center-Kearney.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH 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.

AMENDMENT(S) - Print in Journal

Senator Albrecht filed the following amendment to LB595:

AM1510

(Amendments to Standing Committee amendments, AM1164)

1 1. Strike sections 33 and 34 and insert the following new sections:

2 Sec. 33. Section 43-2,108.02, Reissue Revised Statutes of Nebraska,

3 as amended by section 3, Legislative Bill 354, One Hundred Sixth

4 Legislature, First Session, 2019, is amended to read:

5 43-2,108.02 (1) By January 1, 2020, the Supreme Court shall

6 promulgate a written notice that:

7 (a) States in developmentally appropriate language that, for a

8 juvenile described in section 43-2,108.01, the juvenile's record will be

9 automatically sealed if (i) no charges are filed as a result of the

10 determination of the prosecuting attorney, (ii) the charges are

11 dismissed, (iii) the juvenile has satisfactorily completed the diversion,

12 mediation, restorative justice, probation, supervision, or other

13 treatment or rehabilitation program provided under the Nebraska Juvenile

14 Code, or (iv) the juvenile has satisfactorily completed the county court

15 diversion program, probation ordered by the court, or sentence ordered by

16 the court;

17 (b) States in developmentally appropriate language that, if the

18 record is not sealed as provided in subdivision (1)(a) of this section,

19 the juvenile or the juvenile's parent or guardian may file a motion to

20 seal the record with the court when the juvenile reaches the age of

21 majority or six months have passed since the case was closed, whichever

22 occurs sooner; and

23 (c) Explains in developmentally appropriate language what sealing

24 the record means.

25 (2) For a juvenile described in section 43-2,108.01, the county

26 attorney or city attorney shall attach a copy of the notice to any

1 juvenile petition or criminal complaint.

2 Sec. 34. Section 43-2,108.03, Reissue Revised Statutes of Nebraska,

3 as amended by section 4, Legislative Bill 354, One Hundred Sixth

4 Legislature, First Session, 2019, is amended to read:

5 43-2,108.03 (1)(a) If a juvenile described in section 43-2,108.01

6 was taken into custody, arrested, cited in lieu of arrest, or referred

7 for prosecution without citation but no juvenile petition or criminal

8 complaint was filed against the juvenile with respect to the arrest or

9 custody, the county attorney or city attorney shall notify the government

10 agency responsible for the arrest, custody, citation in lieu of arrest,

11 or referral for prosecution without citation that no criminal charge or

12 juvenile court petition was filed. The county attorney or city attorney

13 shall provide written notification to the juvenile that no juvenile
14 petition or criminal complaint was filed and provide the juvenile with
15 the notice described in section 43-2,108.02.

16 (b) If a juvenile described in subdivision (1)(a) of this section
17 discovers that his or her record was not automatically sealed, such
18 juvenile may notify the county attorney, who shall cause the record to be
19 sealed by providing the notice required by subdivision (1)(a) of this
20 section.

21 (2)(a) If the county attorney or city attorney offered and a
22 juvenile described in section 43-2,108.01 has agreed to pretrial
23 diversion, ~~or mediation, or restorative justice~~, the county attorney or
24 city attorney shall notify the government agency responsible for the
25 arrest or custody when the juvenile has satisfactorily completed the
26 resulting diversion, ~~or mediation, or restorative justice~~. At the time
27 the juvenile is offered diversion or mediation, the county attorney or
28 city attorney shall provide the notice described in section 43-2,108.02
29 to the juvenile. The county attorney or city attorney shall also provide
30 written notification to the juvenile of his or her satisfactory or
31 unsatisfactory completion of diversion, ~~or mediation, or restorative~~
1 ~~justice~~.

2 (b) If a juvenile who was satisfactorily discharged from diversion,
3 ~~or mediation, or restorative justice~~ discovers that his or her record was
4 not automatically sealed, the juvenile may notify the county attorney,
5 who shall cause the record to be sealed by providing the notice required
6 by subdivision (2)(a) of this section.

7 (3)(a) If the juvenile was taken into custody, arrested, cited in
8 lieu of arrest, or referred for prosecution without citation and charges
9 were filed but the case was dismissed by the court, the court shall seal
10 the record as set forth in section 43-2,108.05.

11 (b) If a juvenile described in subdivision (3)(a) discovers that his
12 or her record was not automatically sealed, the juvenile may notify the
13 court, which shall seal the record as set forth in section 43-2,108.05.

14 (4)(a) If a juvenile described in section 43-2,108.01 has
15 satisfactorily completed the probation, supervision, or other treatment
16 or rehabilitation program provided under the Nebraska Juvenile Code or if
17 the juvenile has satisfactorily completed the probation or sentence
18 ordered by a county court, the court shall seal the records as set forth
19 in section 43-2,108.05.

20 (b) If a juvenile described in subdivision (4)(a) discovers that his
21 or her record was not automatically sealed, the juvenile may notify the
22 court, which shall seal the record as set forth in section 43-2,108.05.

23 (5) A government agency or court that receives notice under
24 subdivision (1)(a) or (2)(a) of this section shall, upon such receipt,
25 immediately seal all records housed at that government agency or court
26 pertaining to the citation, arrest, record of custody, complaint,
27 disposition, diversion, ~~or mediation, or restorative justice~~.

28 (6) When a juvenile described in section 43-2,108.01 whose records
29 have not been automatically sealed as provided in subsection (1), (2),
30 (3), or (4) of this section reaches the age of majority or six months

31 have passed since the case was closed, whichever occurs sooner, such
 1 juvenile or his or her parent or guardian may file a motion in the court
 2 of record asking the court to seal the record pertaining to the offense
 3 which resulted in disposition, adjudication, or diversion in juvenile
 4 court or diversion or sentence of the county court. The motion shall set
 5 forth the facts supporting the argument that the individual who is the
 6 subject of the juvenile petition or criminal complaint has been
 7 satisfactorily rehabilitated.

8 2. On page 51, line 11, strike "43-2,108.02, 43-2,108.03,"; in line
 9 12, strike the second "and"; and in line 13 after the last comma insert
 10 "and sections 43-2,108.02 and 43-2,108.03, Reissue Revised Statutes of
 11 Nebraska, as amended by sections 3 and 4, respectively, Legislative Bill
 12 354, One Hundred Sixth Legislature, First Session, 2019".

Senator Friesen filed the following amendment to LB184:
 AM1470

(Amendments to Standing Committee amendments, AM1252)

- 1 1. On page 2, line 26, strike "or" and insert "and".
- 2 2. On page 9, line 31, after "and" insert "to".
- 3 3. On page 10, line 1, after "of" insert "a" and strike "poles" and
 4 insert "pole".
- 5 4. On page 16, line 17; and page 18, line 4, strike "permit" and
 6 insert "permitting".

Senator Howard filed the following amendment to LB460:
 AM1505

(Amendments to Standing Committee amendments, AM1211)

- 1 1. On page 6, line 29; and page 7, lines 4, 5, and 6, strike
 2 "September" and insert "October".
- 3 2. On page 7, line 31, after "expense" insert "not less than once
 4 during each five-year period".
- 5 3. On page 8, line 14, after "check" insert "or a background check";
 6 and in line 16 after "check" insert "or a background check described in
 7 this subsection"; and in line 30 strike "subject to federal" and insert
 8 "and information from background checks described in this subsection
 9 subject to state or federal".
- 10 4. On page 10, line 15, after "checks" insert "not less than once
 11 during each five-year period".

Senator M. Hansen filed the following amendment to LB464:
 AM1440

(Amendments to Standing Committee amendments, AM895)

- 1 1. Strike section 2 and insert the following new section:
- 2 Sec. 2. The following sums of money, or so much thereof as may be
 3 required, are hereby appropriated from the General Fund or from other
 4 funds as indicated in the state treasury, not otherwise appropriated, for
 5 the payment of tort claims which have been settled by the State Claims
 6 Board and approved by the district court, which have been settled by the
 7 Attorney General in the district court, or in which court judgments have

8 been entered and which require the approval of the Legislature for
 9 payment.
 10 \$35,000.00 for Tort Claim Number 2016-15465, against the State of
 11 Nebraska, pay to Donald Johnson and Mark D. Kratina, Mark D. Kratina,
 12 P.C., 300 Jackson Place, 514 South 13th Street, Omaha, NE 68102-2837, out
 13 of the General Fund.
 14 \$11,560.30 for Tort Claim Number 2016-15753, against the State of
 15 Nebraska, pay to Gerald Burkinshaw and Vincent M. Powers & Associates,
 16 411 South 3rd Street, Suite 300, Lincoln, NE 68508, out of the State
 17 Building Revolving Fund.
 18 The claims included in this section shall be paid through Program
 19 591 in Agency 65.
 20 For informational purposes only, the appropriations contained in
 21 this section and fund source:

<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
22 <u>GENERAL FUND</u>	<u>\$35,000.00</u>
23 <u>CASH FUND</u>	<u>\$11,560.30</u>
24 <u>REVOLVING FUND</u>	<u>\$-0-</u>
25 <u>TOTAL</u>	<u>\$46,560.30</u>

Senator Vargas filed the following amendment to LB478:
 AM1507

(Amendments to Standing Committee amendments, AM1216)

- 1 1. Insert the following new section:
- 2 Sec. 3. Since an emergency exists, this act takes effect when passed
- 3 and approved according to law.

Senator Cavanaugh filed the following amendment to LB397:
 AM1569 is available in the Bill Room.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 583. Placed on Select File with amendment.
 ER103

- 1 1. On page 1, line 6, strike "counties" and insert "certain cities,
- 2 counties,".

(Signed) Julie Slama, Chairperson

VISITOR(S)

Visitors to the Chamber were Emery Erikson from Lincoln; Rich Groene and Claudia Stuben, Senator Groene's brother and sister and Senator B. Hansen's uncle and aunt, from Omaha; students from Malcolm Elementary School; students from Beals Elementary School, Omaha; students from Tri County Public Schools, DeWitt; students and teachers from Florence Elementary School, Omaha; and elementary and junior high students with the University of Nebraska-Kearney's string project.

RECESS

At 12:08 p.m., on a motion by Senator Arch, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:30 p.m., President Foley presiding.

ROLL CALL

The roll was called and all members were present except Senators Friesen, M. Hansen, Howard, Morfeld, and Stinner who were excused until they arrive.

COMMITTEE REPORT(S)

Transportation and Telecommunications

LEGISLATIVE BILL 378. Placed on General File.

LEGISLATIVE BILL 462. Placed on General File with amendment.
AM1568

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

2 sections:

3 Section 1. Section 76-2301, Reissue Revised Statutes of Nebraska, is

4 amended to read:

5 76-2301 Sections 76-2301 to 76-2331 and sections 4, 6, 8, 9, 10, 15,

6 and 16 of this act shall be known and may be cited as the One-Call

7 Notification System Act.

8 Sec. 2. Section 76-2303, Reissue Revised Statutes of Nebraska, is

9 amended to read:

10 76-2303 For purposes of the One-Call Notification System Act, the

11 definitions found in sections 76-2303.01 to 76-2317 and sections 4 and 6

12 of this act shall be used.

13 Sec. 3. Section 76-2305, Reissue Revised Statutes of Nebraska, is

14 amended to read:

15 76-2305 Center means a call ~~shall mean the statewide one-call~~

16 ~~notification~~ center which shall have as its principal purpose the

17 statewide receipt and dissemination to participating operators of

18 information on a fair and uniform basis concerning intended excavations

19 by excavators in areas where operators have underground facilities.

20 Sec. 4. Locator means a person who identifies and marks underground

21 facilities for an operator, including a contractor who performs such

22 location services for an operator.

23 Sec. 5. Section 76-2315, Reissue Revised Statutes of Nebraska, is

24 amended to read:

25 76-2315 Person ~~means shall mean~~ an individual, partnership, limited

26 liability company, association, municipality, state, county, political

27 subdivision, utility, joint venture, or corporation and shall include the

1 employer, employee, or contractor of an individual.

2 Sec. 6. Ticket means the compilation of data received by the center
3 in the notice of excavation and the facility locations provided to the
4 center and which is assigned a unique identifying number.

5 Sec. 7. Section 76-2319, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 76-2319 (1) The center shall be governed by a board of directors who
8 shall oversee operation of the center pursuant to rules and regulations
9 adopted and promulgated by the State Fire Marshal to carry out the One-
10 Call Notification System Act. The board of directors shall have the
11 authority to propose rules and regulations which may be adopted and
12 promulgated pursuant to this section and have such other authority as
13 provided by rules and regulations adopted and promulgated by the State
14 Fire Marshal that are not inconsistent with the One-Call Notification
15 System Act.

16 (2) The board of directors shall also establish a competitive
17 bidding procedure to select a vendor to provide the notification service,
18 establish a procedure by which members of the center share the costs of
19 the center on a fair, reasonable, and nondiscriminatory basis, and do all
20 other things necessary to implement the purpose of the center. Any
21 agreement between the center and a vendor for the notification service
22 may be modified from time to time by the board of directors, and any
23 agreement shall be reviewed by the board of directors at least once every
24 three years, with an opportunity to receive new bids if desired by the
25 board of directors.

26 (3) ~~(2)~~ The rules and regulations adopted and promulgated by the
27 State Fire Marshal to carry out subsection (2) of this section may
28 provide for:

29 (a) Any requirements necessary to comply with United States
30 Department of Transportation programs;

31 (b) The qualifications, appointment, retention, and composition of
1 the board of directors; and

2 (c) Best practices for the marking, location, and notification of
3 proposed excavations which shall govern the center, excavators, and
4 operators of underground facilities.

5 (4) ~~(3)~~ Any rule or regulation adopted and promulgated by the State
6 Fire Marshal pursuant to subdivision ~~(3)(c)~~ ~~(2)(e)~~ of this section shall
7 originate with the board of directors.

8 Sec. 8. Any locator acting as a contractor for an operator to
9 perform location services shall be trained in locator standards and
10 practices applicable to the industry. The board may review locator
11 training materials provided by operators, locators, and excavators and
12 may make recommendations regarding best practices for locators, if deemed
13 appropriate.

14 Sec. 9. Notwithstanding any other provision of the One-Call
15 Notification System Act, any plastic or nonmetallic underground
16 facilities installed underground on or after January 1, 2021, shall be
17 installed in such a manner as to be locatable, either by mapping or by
18 use of tracer wire, by the operator for purposes of the act.

19 Sec. 10. The board of directors shall assess the effectiveness of

20 enforcement programs, enforcement actions, and its damage prevention and
21 public awareness programs and make a report to the Governor and the
22 Legislature no later than December 1, 2021, and by December 1 every odd-
23 numbered year thereafter. The report to the Legislature shall be made
24 electronically.

25 Sec. 11. Section 76-2322, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 76-2322 An excavator shall serve notice of intent to excavate upon
28 the center by submitting a locate request using a method provided by the
29 center. The center shall inform the excavator of all operators to whom
30 such notice will be transmitted and shall promptly transmit such notice
31 to every operator having an underground facility in the area of intended
1 excavation. The notice shall be transmitted to operators and excavators
2 as a ticket. The center shall assign an identification number to each
3 notice received, which number shall be evidenced on the ticket.

4 Sec. 12. Section 76-2323, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 76-2323 (1) Upon receipt of the information contained in the notice
7 pursuant to section 76-2321, an operator shall advise the excavator of
8 the approximate location of underground facilities in the area of the
9 proposed excavation by marking or identifying the location of the
10 underground facilities with stakes, flags, paint, or any other clearly
11 identifiable marking or reference point and shall indicate if the
12 underground facilities are subject to section 76-2331. The location of
13 the underground facility given by the operator shall be within a strip of
14 land eighteen inches on either side of the marking or identification plus
15 one-half of the width of the underground facility. If in the opinion of
16 the operator the precise location of a facility cannot be determined and
17 marked as required, the operator shall provide all pertinent information
18 and field locating assistance to the excavator at a mutually agreed to
19 time. The location shall be marked or identified using color standards
20 prescribed by the center. The operator shall respond no later than two
21 business days after receipt of the information in the notice or at a time
22 mutually agreed to by the parties.

23 (2) The marking or identification shall be done in a manner that
24 will last for a minimum of five business days on any nonpermanent surface
25 and a minimum of ten business days on any permanent surface. If the
26 excavation will continue for longer than five business days, the operator
27 shall remark or reidentify the location of the underground facility upon
28 the request of the excavator. The request for remarking or
29 reidentification shall be made through the center.

30 (3) An operator who determines that such operator # does not have
31 any underground facility located in the area of the proposed excavation
1 shall notify the ~~center excavator~~ of the determination prior to the date
2 of commencement of the excavation, or prior to two full business days
3 after transmittal of the ticket, whichever occurs sooner. All ticket
4 responses made under this subsection shall be transmitted to the operator
5 by the center.

6 Sec. 13. Section 76-2324, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 76-2324 An excavator who fails to give notice of an excavation
9 pursuant to section 76-2321 or who fails to comply with section 76-2331
10 and who damages an underground facility by such excavation shall be
11 strictly liable to the operator of the underground facility for the cost
12 of all repairs to the underground facility. An excavator who gives the
13 notice and who damages an underground facility shall be liable to the
14 operator for the cost of all repairs to the underground facility unless
15 the damage to the underground facility was due to the operator's failure
16 to comply with section 76-2323. An operator who fails to comply with
17 section 76-2323 shall be liable to the excavator for actual damages
18 caused by such failure. An excavator who fails to give notice of an
19 excavation pursuant to section 76-2321 and who damages an underground
20 facility that is operated by the excavator shall not be in violation of
21 the One-Call Notification System Act.

22 In addition to any liability provided in this section an operator of
23 a damaged underground facility shall be entitled to any other remedies
24 available at law or in equity provided by statute or otherwise.

25 Sec. 14. Section 76-2325, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 76-2325. (1) Any person who violates the provisions of section
28 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 or
29 section 8 or 9 of this act shall be subject to a civil penalty as
30 follows:

31 (a) (1) For a violation by an excavator or an operator related to a
1 gas or hazardous liquid underground pipeline facility or a fiber optic
2 telecommunications facility, an amount not to exceed ten thousand dollars
3 for each violation for each day the violation persists, up to a maximum
4 of five hundred thousand dollars; and

5 (b) (2) For a violation by an excavator or an operator related to
6 any other underground facility, an amount not to exceed five thousand
7 dollars for each day the violation persists, up to a maximum of fifty
8 thousand dollars.

9 (2) An action to recover a civil penalty shall be brought by the
10 Attorney General or a prosecuting attorney on behalf of the State of
11 Nebraska in any court of competent jurisdiction of this state. The trial
12 shall be before the court, which shall consider the nature,
13 circumstances, and gravity of the violation and, with respect to the
14 person found to have committed the violation, the degree of culpability,
15 the absence or existence of prior violations, whether the violation was a
16 willful act, any good faith attempt to achieve compliance, and such other
17 matters as justice may require in determining the amount of penalty
18 imposed. All penalties shall be remitted to the State Treasurer for
19 distribution in accordance with Article VII, section 5, of the
20 Constitution of Nebraska.

21 Sec. 15. The Attorney General shall make an annual report to the
22 Legislature, the State Fire Marshal, and the board by each March 15 on
23 the number of complaints filed and the number of such complaints
24 prosecuted under section 76-2325 during the previous calendar year. The
25 report to the Legislature shall be made electronically.

26 Sec. 16. The State Fire Marshal may, by rule and regulation, define

27 occurrences relating to damage of an underground facility that creates an
28 emergency condition that requires an excavator to immediately notify an
29 operator or a locator, if applicable, and the center regarding the
30 location and extent of damage to an underground facility.

31 Sec. 17. Section 86-101, Reissue Revised Statutes of Nebraska, is
1 amended to read:

2 86-101 Sections 86-101 to 86-165 and sections 19 and 20 of this act
3 shall be known and may be cited as the Nebraska Telecommunications
4 Regulation Act.

5 Sec. 18. Section 86-103, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 86-103 For purposes of the Nebraska Telecommunications Regulation
8 Act, unless the context otherwise requires, the definitions found in
9 sections 86-103.01 to 86-121 and sections 19 and 20 of this act apply.

10 Sec. 19. Internet-protocol-enabled service or IP-enabled service
11 means any service, capability, functionality, or application provided
12 using Internet protocol, or any successor protocol, that enables a
13 service user to send or receive a communication in Internet protocol
14 format, including, but not limited to, voice, data, or video.

15 Sec. 20. Voice over Internet protocol service means an
16 interconnected voice over Internet protocol service as defined in 47
17 C.F.R. part 9, as such regulations existed on January 1, 2019.

18 Sec. 21. Section 86-124, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 86-124 (1) The commission shall not regulate the following:

21 (a) ~~(1)~~ One-way broadcast or cable television transmission of
22 television or radio signals; ~~and~~

23 (b) ~~(2)~~ Mobile radio services, radio paging services, and wireless
24 telecommunications service; -

25 (c) Interexchange services; and

26 (d) Internet-protocol-enabled service and voice over Internet
27 protocol service, including rates, service or contract terms, conditions,
28 or requirements for entry for such service.

29 (2) This section shall not affect or modify:

30 (a) The enforcement of criminal or civil laws, including, but not
31 limited to, laws concerning consumer protection and unfair or deceptive
1 trade practices which apply generally to the conduct of business;

2 (b)(i) Any entity's obligations or rights or commission authority
3 under section 86-122 and under 47 U.S.C. 251 and 252, as such sections
4 existed on January 1, 2019, and (ii) any carrier-to-carrier tariff rates,
5 service quality standards, interconnection agreements, or other
6 obligations for which the commission has jurisdiction under state or
7 federal law;

8 (c) Any requirement to contribute to any fund administered by the
9 commission authorized by the Enhanced Wireless 911 Services Act or the
10 Nebraska Telecommunications Universal Service Fund Act;

11 (d) Any commission jurisdiction over intrastate switched access
12 rates, terms, and conditions, including the resolution of disputes
13 arising from, and implementation of federal and state law with respect
14 to, intercarrier compensation;

15 (e) The eligibility and requirements for the receipt of funds from
 16 the Nebraska Telecommunications Universal Service Fund and the rules,
 17 regulations, and orders under the Nebraska Telecommunications Universal
 18 Service Fund Act or the receipt of funds from the federal universal
 19 service fund, regardless of the unregulated status of the provider's
 20 service under this section; and

21 (f) Any entity's rights and obligations with respect to (i)
 22 registration under section 86-125, (ii) the use of public streets, roads,
 23 highways, and rights-of-way, or (iii) a certificate of public convenience
 24 and necessity or a permit.

25 Sec. 22. Section 86-144, Reissue Revised Statutes of Nebraska, is
 26 amended to read:

27 86-144 ~~Telecommunications (1)(a) Except as provided in subdivision~~
 28 ~~(b) of this subsection, in an exchange in which local competition does~~
 29 ~~not exist, telecommunications companies shall file rate lists which, for~~
 30 ~~all telecommunications service. The rate lists except for basic local~~
 31 ~~exchange rates, shall be effective after ten days' notice to the~~
 1 commission. ~~(b) Notwithstanding any other provision of Chapter 86, a~~
 2 ~~telecommunications company shall not be required to file rate lists,~~
 3 ~~tariffs, or contracts for any telecommunications service, including local~~
 4 ~~exchange and interexchange services, provided as a business service. Upon~~
 5 written notice to the commission, a telecommunications company may
 6 withdraw any rate list, tariff, or contract not required to be filed
 7 under this ~~section~~ ~~subdivision~~ if the telecommunications company posts
 8 the rates, terms, and conditions of its telecommunications service on the
 9 company's web site.

10 ~~(2) In an exchange in which local competition does not exist, basic~~
 11 ~~local exchange rates may be increased by a telecommunications company~~
 12 ~~only after ninety days' notice to all affected subscribers. Such notice~~
 13 ~~of increase shall include (a) the reasons for the rate increase, (b) a~~
 14 ~~description of the affected telecommunications service, (c) an~~
 15 ~~explanation of the right of the subscriber to petition the commission for~~
 16 ~~a public hearing on the rate increase, (d) a list of exchanges which are~~
 17 ~~affected by the proposed rate increase, and (e) the dates, times, and~~
 18 ~~places for the public informational meetings required by this section.~~

19 ~~(3) A telecommunications company which proposes to increase its~~
 20 ~~basic local exchange rates shall hold at least one public informational~~
 21 ~~meeting in each public service commissioner district as established by~~
 22 ~~section 75-101.01 in which there is an exchange affected by the proposed~~
 23 ~~rate increase.~~

24 Sec. 23. Original sections 76-2301, 76-2303, 76-2305, 76-2315,
 25 76-2319, 76-2322, 76-2323, 76-2324, 76-2325, 86-101, 86-103, 86-124, and
 26 86-144, Reissue Revised Statutes of Nebraska, are repealed.

27 Sec. 24. The following section is outright repealed: Section
 28 76-2316, Reissue Revised Statutes of Nebraska.

(Signed) Curt Friesen, Chairperson

GENERAL FILE

LEGISLATIVE BILL 657A. Title read. Considered.

Senator Lowe moved for a call of the house. The motion prevailed with 15 ayes, 6 nays, and 28 not voting.

Senator Lowe requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 41:

Arch	Crawford	Hilkemann	McCollister	Vargas
Blood	DeBoer	Hughes	McDonnell	Walz
Bolz	Dorn	Hunt	Morfeld	Wayne
Bostelman	Friesen	Kolowski	Moser	Williams
Brandt	Geist	Kolterman	Murman	Wishart
Brewer	Halloran	La Grone	Pansing Brooks	
Briese	Hansen, B.	Lathrop	Quick	
Cavanaugh	Hansen, M.	Lindstrom	Scheer	
Chambers	Hilgers	Linehan	Slama	

Voting in the negative, 4:

Albrecht	Clements	Erdman	Lowe
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Present and not voting, 1:

Groene

Excused and not voting, 3:

Gragert	Howard	Stinner
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Advanced to Enrollment and Review Initial with 41 ayes, 4 nays, 1 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

LEGISLATIVE BILL 209. Senator Hunt renewed her motion, MO71, found on page 1333, to recommit to the Judiciary Committee.

Senator Chambers offered the following motion:

MO76

Bracket until June 6, 2019.

Pending.

MESSAGE(S) FROM THE GOVERNOR

May 1, 2019

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 23e, 31e, 31Ae, 180, 222, and 252 were received in my office on April 26, 2019.

Engrossed Legislative Bills 304, 428, 445, 556e, 556Ae, 638, 663, and 698e were received in my office on April 29, 2019.

These bills were signed and delivered to the Secretary of State on May 1, 2019.

Sincerely,
(Signed) Pete Ricketts
Governor

RESOLUTION(S)

LEGISLATIVE RESOLUTION 104. Introduced by Walz, 15; Bolz, 29; Cavanaugh, 6; Friesen, 34; Halloran, 33; Kolterman, 24; Linehan, 39; McCollister, 20; Quick, 35; Stinner, 48; Vargas, 7; Wishart, 27.

WHEREAS, an individual residing at Life Quest at the Coolidge Center, a state-licensed care facility in Palmer, died on September 3, 2017, after three days of life-threatening symptoms; and

WHEREAS, the Department of Health and Human Services produced an eighty-one page report of violations found during inspections in June and July of 2017 and another six-page report after a visit in September of 2017. These reports were not released until officials revoked the facility's mental health care license on October 5, 2017, a month after the incident occurred. The revocation took effect fifteen days later; and

WHEREAS, the report indicates that the Department of Health and Human Services had known about multiple violations in the months preceding the closure of this facility. If more immediate action had been taken to remedy these violations or draw attention to the inequities in quality of care standards, a life could have been saved; and

WHEREAS, the circumstances surrounding this event have garnered media attention throughout Nebraska, along with scrutiny from the public. This care facility, along with multiple others in the past few years, including Hotel Pawnee in North Platte and Park View Villa in Gothenburg, have been

shut down due to violations regarding maintenance, cleanliness, and personnel issues; and

WHEREAS, the individuals affected by these policies are some of the most vulnerable in our community. The citizens of Nebraska have a right to know the standard of care to which our governmental organizations are held, including, but not limited to, policies, procedures, and regulations regarding oversight of assisted living facilities and mental health centers; and

WHEREAS, under Title II of the Americans with Disabilities Act (ADA) it is illegal for public entities, namely state and local governments, to deny the benefits of programs, services, or activities to qualified individuals with disabilities; and

WHEREAS, the regulations which implement Title II mandate that state governments administer services "in the most integrated settings appropriate to the needs of qualified individuals with disabilities"; and

WHEREAS, the integration mandate in the ADA is implicated when a public entity administers its programs in a manner that results in unjustified segregation of persons with disabilities; and

WHEREAS, a public entity may violate the integration mandate in the ADA when it: (1) Directly or indirectly operates facilities or programs that segregate individuals with disabilities; (2) finances the segregation of individuals with disabilities in private facilities; or (3) through planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs.

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

1. That the Legislature hereby calls for the Executive Board of the Legislative Council to meet forthwith and appoint a special committee of the Legislature to be known as the State-Licensed Care Facilities Investigative Committee of the Legislature. The committee shall consist of seven members of the Legislature appointed by the Executive Board. The committee shall elect a chairperson and vice-chairperson from the membership of the committee. The Executive Board is hereby authorized to provide the committee with a legal counsel, committee clerk, and other staff as required by the committee from existing legislative staff. The Executive Board is also authorized to hire outside legal counsel, consultants, and investigators as required by the committee. The committee shall be an investigative committee and is hereby authorized to hold hearings and issue subpoenas as deemed necessary by the committee.

2. The State-Licensed Care Facilities Special Investigative Committee of the Legislature shall limit the scope of its inquiry to assisted living facilities where many of the residents are diagnosed with a mental illness. The oversight committee shall also examine the closures of the mental health centers known as Life Quest, located in Palmer and Blue Hill.

3. The State-Licensed Care Facilities Special Investigative Committee of the Legislature is hereby authorized to study the lack of adequate conditions of state-licensed care facilities, the treatment of individuals residing in such facilities, the effectiveness of regulation and licensure by the Division of

Public Health in providing oversight, and how the Department of Health and Human Services implements and administers its behavioral health services through the behavioral health regions to address the needs of this vulnerable population. The committee shall also investigate what steps the department has taken to advance the recommendations proposed by the Technical Assistance Collaborative as a consultant to the department, namely, the reasons that assisted living facilities are the primary residential options for individuals with severe and persistent mental illness and alternatives such as permanent supportive housing and services do not exist. The committee shall also investigate whether the department is taking adequate steps to ensure behavioral health services are administered in the most integrated setting pursuant to the ADA. The committee shall utilize existing studies, reports, and legislation developed to address the current conditions. The committee shall not be limited to such studies, reports, or legislation.

4. The State-Licensed Care Facilities Special Investigative Committee of the Legislature shall issue a report with its findings and recommendations to the Legislature on or before December 15, 2019.

Laid over.

SPEAKER'S ANNOUNCEMENT

Pursuant to Rule 4, Section 8, LR104 was referred to the Reference Committee.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 105. Introduced by Health and Human Services Committee: Howard, 9, Chairperson; Arch, 14; Cavanaugh, 6; Hansen, B., 16; Murman, 38; Walz, 15.

PURPOSE: The purpose of this interim study is to investigate the eligibility requirements applied to children for the home and community-based waiver for aged and disabled persons under the Medical Assistance Act.

WHEREAS, the purpose of the aged and disabled waiver is to provide care in a community-based setting to adults and children with disabilities who would otherwise require such care in a nursing facility and who do not traditionally qualify for the Medicaid program; and

WHEREAS, to be eligible under the aged and disabled waiver a person must first have a disability determination. If there is a disability determination, the person is then evaluated by the Department of Health and Human Services to see if they meet a specified institutional level of care; and

WHEREAS, prior to 2015, the Department of Health and Human Services used a tool for determining the institutional level of care for children that was not promulgated in rules or regulations for use as an evaluation tool and that was different than the level of care determination for adults; and

WHEREAS, in 2015, the Nebraska Supreme Court in *Merie B. on behalf of Brayden O. v. State*, 290 Neb. 919 (2015), found that the children's

institutional level of care tool the department was using was improper in part because the requirements had not been properly promulgated. There already existed detailed eligibility requirements for an institutional level of care which applied to both adults and children in 471 Neb. Admin. Code 12. Therefore, the Supreme Court instructed the Department of Health and Human Services to use the eligibility requirements that had already been properly promulgated; and

WHEREAS, the Nebraska Supreme Court also found the children's institutional level of care tool the department had been using was arbitrary and overly restrictive. The court found that the standards used by the department for a children's level of care resulted in the unreasonable exclusion of profoundly disabled children. The department followed the ruling of the court and used the existing level of care promulgated in 471 Neb. Admin. Code 12 to determine eligibility for both adults and children from 2015 through 2018; and

WHEREAS, in December 2018, the department promulgated rules and regulations to codify the pre-2015 children's institutional level of care requirements, which the Nebraska Supreme Court had found to be arbitrary and overly restrictive. The department began assessing the eligibility of children for the aged and disabled waiver using these more restrictive regulations in January 2019. Children with disabilities currently admitted under the waiver have been deemed ineligible under the new standards and have lost needed services.

The issues addressed by this interim study shall include, but not be limited to:

(1) Current eligibility requirements for the Medical Assistance Act under the aged and disabled waiver, including the institutional level of care determination applied to children;

(2) The independent evaluation of the children's institutional level of care eligibility requirements being conducted by the Department of Health and Human Services;

(3) Effects of the eligibility requirements and the resulting loss of coverage;

(4) The benefits of providing disabled children early intervention services and therapies which could result in an improved quality of life and possibly result in less dependence on services as adults; and

(5) The best use of resources in the medical assistance program to provide quality of life and care for children with disabilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH 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 Health and Human Services Committee shall conduct the study and investigation pursuant to Rule 3 of the Rules of the Nebraska Unicameral Legislature.

3. 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 106. Introduced by Hansen, M., 26.

PURPOSE: The purpose of this interim study is to review the Boiler Safety Code Advisory Board and occupational regulations for boiler inspectors. Such a review is required by section 84-948 and this study shall fulfill the requirements of the Occupational Board Reform Act. The study shall include an examination of the transition of duties under the Boiler Inspection Act from the Department of Labor to the State Fire Marshall.

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

1. That the Business and Labor 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.

SPEAKER'S MAJOR PROPOSAL

April 30, 2019

Patrick O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. O'Donnell:

Please be advised that pursuant to Rule 1, Section 17, the Executive Board has approved Speaker Scheer's request that LB294 be designated as a 2019 Speaker Major Proposal.

Respectfully,
(Signed) Senator Mike Hilgers
Chair, Executive Board

C: Speaker Jim Scheer

COMMITTEE REPORT(S)

Health and Human Services

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Roger A. Wells - Nebraska Rural Health Advisory Commission

Aye: 7 Arch, Cavanaugh, Hansen, B., Howard, Murman, Walz, Williams.
Nay: 0. Absent: 0. Present and not voting: 0.

The Health and Human Services Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Frances Beurivage - Commission for the Deaf and Hard of Hearing
Sandra Shaw - Commission for the Deaf and Hard of Hearing

Aye: 7 Arch, Cavanaugh, Hansen, B., Howard, Murman, Walz, Williams.
Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Sara Howard, Chairperson

GENERAL FILE

LEGISLATIVE BILL 209. The Chambers motion, MO76, found in this day's Journal, to bracket until June 6, 2019, was renewed.

Pending.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 657A. Placed on Select File.

(Signed) Julie Slama, Chairperson

AMENDMENT(S) - Print in Journal

Senator Wishart filed the following amendment to LB209:

FA63

Amend AM1432

On page 7, line 5, strike "Materials" and insert "Medically accurate materials" On page 8, line 5, after "site" insert "medically accurate".

Senator Wishart filed the following amendment to LB209:

FA64

Amend AM1432

On page 7, line 5, strike "Materials" and insert "Medically accurate materials" On page 8, line 5, after "site" insert "medically accurate".

Senator Walz filed the following amendment to LB570:
AM1480

(Amendments to E&R amendments, ER69)

- 1 1. On page 3, line 31, strike the new matter.
- 2 2. On page 4, strike lines 1 through 4, show the old matter as
- 3 stricken, and insert "shall, in collaboration with the Department of
- 4 Correctional Services, the Department of Economic Development, the
- 5 Department of Labor, the Department of Transportation, the Department of
- 6 Veterans' Affairs, the State Department of Education, the University of
- 7 Nebraska, and the Equal Opportunity Commission,"; in lines 8 through 19
- 8 strike the new matter and insert "chief executive officer of the
- 9 Department of Health and Human Services"; and in line 20 strike "as".
- 10 3. On page 5, line 2, after the comma insert "the Public Service
- 11 Commission,"; and in line 29 strike "November 1" and insert "December
- 12 15".

Senator Wishart filed the following amendment to LB610:
AM1554 is available in the Bill Room.

Senator Wayne filed the following amendment to LB657:
AM1541 is available in the Bill Room.

CONFLICT OF INTEREST STATEMENT

Pursuant to Rule 1, Sec. 19, Senator Wayne has filed a Potential Conflict of Interest Statement under the Nebraska Political Accountability and Disclosure Act. The statement is on file in the Clerk of the Legislature's Office.

VISITOR(S)

Visitors to the Chamber were David and Ann Bruntz from Friend; Representative Isaac Lateral from the South Dakota House of Representatives and Neal Dutenhoffer from Kearney; students from Edison Elementary School, Omaha; Virginia Hill from Manassas, VA; and students from Amherst Public School.

The Doctor of the Day was Dr. Alexis Erbst from Omaha.

ADJOURNMENT

At 4:32 p.m., on a motion by Senator Bolz, the Legislature adjourned until 9:00 a.m., Wednesday, May 1, 2019.

Patrick J. O'Donnell
Clerk of the Legislature