

THIRTY-FIRST DAY - FEBRUARY 24, 2014

LEGISLATIVE JOURNAL

**ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION**

THIRTY-FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Monday, February 24, 2014

PRAYER

The prayer was offered by Pastor Glenn Wapelhorst, Christ the King Church, Norfolk.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Krist presiding.

The roll was called and all members were present except Senators Conrad and Murante who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirtieth day was approved.

COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE BILL 191. Placed on Select File with amendment.
ER138 is available in the Bill Room.

(Signed) John Murante, Chairperson

COMMITTEE REPORTS
Banking, Commerce and Insurance

LEGISLATIVE BILL 751. Placed on General File.

(Signed) Mike Gloor, Chairperson

Revenue

LEGISLATIVE BILL 987. Placed on General File.

(Signed) Galen Hadley, Chairperson

MOTION - Approve Appointments

Senator Gloor moved the adoption of the Banking, Commerce and Insurance Committee report for the confirmation of the following appointment(s) found on page 581:

Nebraska Exchange Stakeholder Commission

Patrick Booth
 Craig D. Buescher
 Shari Flowers
 James "JJ" Green
 Michael Groene
 Laura S. Gyhra
 Kyle Kollmorgen
 Britt A. Thedinger
 Sherry Wupper

Voting in the affirmative, 39:

Adams	Crawford	Harr, B.	Larson	Schumacher
Bloomfield	Davis	Howard	Lathrop	Seiler
Brasch	Dubas	Janssen	Lautenbaugh	Smith
Campbell	Garrett	Johnson	McCoy	Sullivan
Carlson	Gloor	Karpisek	McGill	Wallman
Chambers	Haar, K.	Kintner	Nelson	Watermeier
Coash	Hansen	Kolowski	Nordquist	Wightman
Cook	Harms	Krist	Schilz	

Voting in the negative, 0.

Present and not voting, 8:

Ashford	Bolz	Hadley	Pirsch
Avery	Christensen	Mello	Scheer

Excused and not voting, 2:

Conrad Murante

The appointments were confirmed with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 983A. Title read. Considered.

Advanced to Enrollment and Review Initial with 32 ayes, 0 nays, 15 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 920A. Title read. Considered.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 11 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 901. Title read. Considered.

Senator McGill offered her amendment, AM2033, found on page 617.

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

Advanced to Enrollment and Review Initial with 31 ayes, 0 nays, 13 present and not voting, and 5 excused and not voting.

LEGISLATIVE BILL 690. Title read. Considered.

Committee AM1681, found on page 502, was offered.

Pending.

COMMITTEE REPORTS

Agriculture

LEGISLATIVE BILL 941. Placed on General File with amendment. AM2023

- 1 1. On page 2, strike beginning with "supplying" in line
- 2 20 through "milk" in line 22 and insert "the capacity of instate
- 3 processors to utilize increased instate milk production, (iii) the
- 4 potential for expansion of self-processing and direct marketing of
- 5 Nebraska milk and dairy products".
- 6 2. On page 3, line 13, strike "and local governments" and
- 7 insert "government".

(Signed) Ken Schilz, Chairperson

Judiciary

LEGISLATIVE BILL 780. Placed on General File.

LEGISLATIVE BILL 1028. Placed on General File.

LEGISLATIVE RESOLUTION 399. Reported to the Legislature for further consideration.

LEGISLATIVE BILL 551. Indefinitely postponed.

(Signed) Brad Ashford, Chairperson

Urban Affairs

LEGISLATIVE BILL 1012. Placed on General File.

LEGISLATIVE BILL 1014. Placed on General File.

(Signed) Amanda McGill, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 450. Introduced by Hadley, 37.

WHEREAS, Jessie Harris, an esteemed resident of Kearney, Nebraska, and a junior at Kearney High School, has achieved national recognition for exemplary volunteer service by being selected as a distinguished finalist in the 2014 Prudential Spirit of Community Awards; and

WHEREAS, this prestigious award, presented by Prudential Financial in partnership with the National Association of Secondary School Principals, honors young volunteers across America who have demonstrated an extraordinary commitment to serving their communities; and

WHEREAS, Jessie earned this distinction by giving generously of her time and energy. She is an active volunteer with a number of organizations including the historic Frank House at the University of Nebraska at Kearney (UNK), the World Theatre, and the Buffalo County Historical Society. In addition to serving as a tour guide, working the concession stand, and conducting small repair projects, Jessie and a friend co-authored a book on her town's historic homes with the proceeds going to benefit the UNK Frank House and the Buffalo County Historical Society; 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 young people like Jessie who use their considerable talents and resources to serve others.

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

1. That the Legislature congratulates and honors Jessie Harris for her selection as a distinguished finalist in the 2014 Prudential Spirit of Community Awards, recognizes her outstanding record of volunteer service, peer leadership, and community spirit, and extends best wishes for her continued success and happiness.

2. That a copy of this resolution be sent to Jessie Harris.

Laid over.

AMENDMENTS - Print in Journal

Senator B. Harr filed the following amendment to LB348:
AM1764

(Amendments to Standing Committee amendments, AM642)

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

3 Section 1. Section 77-1333, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 77-1333 (1) The Legislature finds that:

6 (a) The provision of safe, decent, and affordable housing
7 to all residents of the State of Nebraska is a matter of public
8 concern and represents a legitimate and compelling state need,
9 affecting the general welfare of all residents;

10 (b) Rent-restricted housing projects effectively provide
11 safe, decent, and affordable housing for residents of Nebraska;

12 (c) Such projects are restricted by federal law as to the
13 rents paid by the tenants thereof;

14 (d) Of all the professionally accepted mass appraisal
15 methodologies, which include the sales comparison approach, the
16 income approach, and the cost approach, the utilization of
17 the income-approach methodology results in the most accurate
18 determination of the actual value of such projects; and

19 (e) This section is intended to (i) further the provision
20 of safe, decent, and affordable housing to all residents of
21 Nebraska and (ii) comply with Article VIII, section 1, of
22 the Constitution of Nebraska, which empowers the Legislature to
1 prescribe standards and methods for the determination of value of
2 real property at uniform and proportionate values.

3 ~~(1)~~(2) For purposes of this section, rent-restricted
4 housing project means a project consisting of five or more houses
5 or residential units that is financed, in whole or in part, with an
6 allocation of federal low-income housing tax credits under section
7 42 of the Internal Revenue Code.

8 (3) The Rent-Restricted Housing Projects Valuation
9 Committee is created. For administrative purposes only, the
10 committee shall be within the Department of Revenue. The committee
11 shall consist of the following three persons:

12 (a) A representative of local government assessing
13 officials appointed by the Tax Commissioner. Such representative
14 shall be skilled in the valuation of property and shall hold a
15 certificate issued under section 77-422;

16 (b) A representative of the low-income housing industry
17 appointed by the Tax Commissioner. The appointment shall be based
18 on a recommendation made by the Nebraska Commission on Housing and
19 Homelessness; and

20 (c) The Property Tax Administrator or a designee of the
21 Property Tax Administrator who holds a certificate issued under
22 section 77-422. Such person shall serve as the chairperson of the

23 committee.

24 (4) The committee shall meet annually in November to
 25 examine the information on rent-restricted housing projects that
 26 was provided pursuant to subsection (8) of this section. The
 27 Department of Revenue shall electronically publish notice of such
 1 meeting no less than thirty days in advance. The committee shall
 2 also solicit information on the sale of any such rent-restricted
 3 housing projects. The committee shall, after reviewing all such
 4 information, calculate a market-derived capitalization rate on
 5 an annual basis as provided in subsection (5) of this section.
 6 The annual capitalization rate and information reviewed by the
 7 committee shall be assembled in an annual report and shall be
 8 forwarded by the Property Tax Administrator to each county assessor
 9 in Nebraska no later than December 1 of each year for his or
 10 her use in determining the valuation of rent-restricted housing
 11 projects. The Department of Revenue shall publish the annual
 12 report electronically but may charge a fee for copies. The Tax
 13 Commissioner shall set the fee based on the reasonable cost of
 14 producing the report.

15 (5)(a) The committee shall calculate the capitalization
 16 rate using the band-of-investment technique. The capitalization
 17 rate is a composite rate weighted by the proportions of total
 18 property investment represented by debt and equity. The capital
 19 structure shall weight equity at eighty percent and debt at
 20 twenty percent unless a substantially different market capital
 21 structure can be verified to the county assessor. The yield
 22 for equity is calculated using the capital asset pricing model
 23 as provided in subdivision (b) of this subsection. The yield
 24 for debt is equivalent to the average yield on thirty-year
 25 non-inflation-indexed United States Treasury bonds, also referred
 26 to as the thirty-year Treasury constant maturity rate.

27 (b)(i) The capital asset pricing model used to calculate
 1 the yield for equity is represented by the following formula: $Re =$
 2 $B(Rm - Rf) + Rf$, where:

3 (A) Re equals return on equity;

4 (B) B equals beta;

5 (C) Rm equals return on the market;

6 (D) Rf equals risk-free rate of return; and

7 (E) $Rm - Rf$ equals market-risk premium.

8 (ii) The beta is assumed to be one which indicates the
 9 risk level to be consistent with the market as a whole. The
 10 risk-free rate of return is calculated by averaging the yield of
 11 the three-month and six-month non-inflation-indexed United States
 12 Treasury bonds. The return on the market is calculated based on
 13 the average annual return on the Standard and Poor's 500 Index or
 14 by reference to other published secondary sources that reflect the
 15 rate of return on the market as a whole.

16 (6) The county assessor shall ~~perform~~ utilize an
 17 income-approach calculation for all rent-restricted housing

18 projects constructed to allow an allocation of low income
19 housing tax credits under section 42 of the Internal Revenue
20 Code and approved by the Nebraska Investment Finance Authority
21 when considering determining the assessed valuation to place
22 on the property for each assessment year. The income-approach
23 calculation shall be consistent with this section and any rules
24 and regulations adopted and promulgated by the Tax Commissioner,
25 and shall comply with professionally accepted mass appraisal
26 techniques. Any low-income housing tax credits authorized under
27 section 42 of the Internal Revenue Code that were granted to
1 owners of the project shall not be considered income for purposes
2 of the calculation. Each county assessor, when utilizing the
3 income-approach calculation, shall utilize the capitalization
4 rate calculated by the Rent-Restricted Housing Projects Valuation
5 Committee except as otherwise provided in subsection (7) of this
6 section, but may be considered in determining the capitalization
7 rate to be used when capitalizing the income stream. The county
8 assessor, in determining the actual value of any specific property,
9 may consider other methods of determining value that are consistent
10 with professionally accepted mass appraisal methods described in
11 section 77-112.

12 (7) If a county assessor, based on the facts and
13 circumstances, believes that the income-approach calculation does
14 not result in a valuation of a rent-restricted housing project
15 at actual value or that the market-derived capitalization rate
16 set by the Rent-Restricted Housing Projects Valuation Committee
17 to value any rent-restricted housing project does not result
18 in a valuation at actual value, then the county assessor shall
19 present such facts and circumstances to the county board of
20 equalization. If the county board of equalization, based on
21 such facts and circumstances, concurs with the county assessor,
22 then the county board of equalization shall petition the Tax
23 Equalization and Review Commission to consider, respectively,
24 (a) the county assessor's utilization of another professionally
25 accepted mass appraisal technique that, based on the facts and
26 circumstances presented by a county board of equalization, would
27 result in a substantially different determination of actual value
1 of the rent-restricted housing project or (b) an adjustment to
2 the capitalization rate of such rent-restricted housing project.
3 Petitions must be filed within thirty days after the property is
4 assessed. Hearings held pursuant to this section may be held by
5 means of videoconference or telephone conference. The burden of
6 proof is on the petitioning county board of equalization to show
7 that failure to make an adjustment, either to the professionally
8 accepted mass appraisal technique utilized or the capitalization
9 rate employed, would result in a value that is not equitable and
10 in accordance with the law. At the hearing, the commission may
11 receive testimony from any interested person. After a hearing, the
12 commission shall, within the powers granted in section 77-5023,

- 13 enter its order based on evidence presented to it at such hearing.
 14 Payment of taxes shall be suspended, without penalty or interest,
 15 until the commission enters its order.
 16 ~~(2)~~(8) The owner of a rent-restricted housing project
 17 shall file a statement with the county assessor and the
 18 Rent-Restricted Housing Projects Valuation Committee on or before
 19 October 1 of each year that details income and expense data for
 20 the prior year, a description of any land-use restrictions, and
 21 such other information as the county assessor or the committee may
 22 require.
- 23 Sec. 2. Section 77-5007, Revised Statutes Cumulative
 24 Supplement, 2012, is amended to read:
 25 77-5007 The commission has the power and duty to hear and
 26 determine appeals of:
- 27 (1) Decisions of any county board of equalization
 1 equalizing the value of individual tracts, lots, or parcels of
 2 real property so that all real property is assessed uniformly and
 3 proportionately;
- 4 (2) Decisions of any county board of equalization
 5 granting or denying tax-exempt status for real or personal property
 6 or an exemption from motor vehicle taxes and fees;
- 7 (3) Decisions of the Tax Commissioner determining the
 8 taxable property of a railroad company, car company, public service
 9 entity, or air carrier within the state;
- 10 (4) Decisions of the Tax Commissioner determining
 11 adjusted valuation pursuant to section 79-1016;
- 12 (5) Decisions of any county board of equalization on
 13 the valuation of personal property or any penalties imposed under
 14 sections 77-1233.04 and 77-1233.06;
- 15 (6) Decisions of any county board of equalization on
 16 claims that a levy is or is not for an unlawful or unnecessary
 17 purpose or in excess of the requirements of the county;
- 18 (7) Decisions of any county board of equalization
 19 granting or rejecting an application for a homestead exemption;
- 20 (8) Decisions of the Department of Motor Vehicles
 21 determining the taxable value of motor vehicles pursuant to section
 22 60-3,188;
- 23 (9) Decisions of the Tax Commissioner made under section
 24 77-1330;
- 25 (10) Any other decision of any county board of
 26 equalization;
- 27 (11) Any other decision of the Tax Commissioner regarding
 1 property valuation, exemption, or taxation;
- 2 (12) Decisions of the Tax Commissioner pursuant to
 3 section 77-3520;
- 4 (13) Final decisions of a county board of equalization
 5 appealed by the Tax Commissioner or Property Tax Administrator
 6 pursuant to section 77-701; ~~and~~
- 7 (14) Determinations of the Rent-Restricted Housing

8 Projects Valuation Committee regarding the market-derived
 9 capitalization rate to be used to value rent-restricted housing
 10 projects pursuant to section 77-1333 or the requirement under such
 11 section that an income-approach calculation be used by county
 12 assessors to value rent-restricted housing projects; and
 13 ~~(14)-(15)~~ Any other decision, determination, action, or
 14 order from which an appeal to the commission is authorized.
 15 The commission has the power and duty to hear and grant
 16 or deny relief on petitions.
 17 Sec. 3. Original section 77-1333, Reissue Revised
 18 Statutes of Nebraska, and section 77-5007, Revised Statutes
 19 Cumulative Supplement, 2012, are repealed.

Senator Adams filed the following amendment to LB438:
 AM1934

(Amendments to AM1580)

1 1. On page 4, strike beginning with "significant" in line
 2 8 through "are" in line 9 and insert "(a) a significant revision of
 3 the progress plan is necessary, (b) an entirely new progress plan
 4 is developed, or (c) an alternative administrative structure is".

Senator Coash filed the following amendment to LB699:
 AM2046

(Amendments to Standing Committee amendments, AM1754)

1 1. On page 1, line 9, strike "developmentally disabled"
 2 and after "person" insert "who has a developmental disability
 3 and"; in lines 15 and 22 strike "developmentally disabled"; and
 4 in lines 16 and 23 after "person" insert "who has a developmental
 5 disability".
 6 2. On page 2, line 1, strike "developmentally disabled";
 7 in line 2 after "person" insert "who has a developmental
 8 disability"; in line 3 strike "developmentally"; in line 4 strike
 9 "disabled" and after "person" insert "who has a developmental
 10 disability"; in line 5 strike "developmentally disabled" and insert
 11 "developmental disability has the same meaning as"; and strike line
 12 6.
 13 3. On page 4, line 13, strike "developmentally disabled"
 14 and after "person" insert "who has a developmental disability,";
 15 and in line 15 after "act" insert an underscored comma.
 16 4. On page 5, line 10, strike "developmentally disabled"
 17 and after "persons" insert "who have a developmental disability and
 18 who are".

COMMITTEE REPORT

Agriculture

The Agriculture Committee desires to report that the committee voted not to confirm the appointment listed below. The Committee suggests the appointment be rejected by the Legislature and suggests a record vote.

Mark Fahleson - Nebraska State Fair Board

Aye: 5 Chambers, B. Harr, Johnson, Lathrop, Wallman. Nay: 3 Bloomfield, Hansen, Schilz. Absent: 0. Present and not voting: 0.

(Signed) Ken Schilz, Chairperson

UNANIMOUS CONSENT - Add Cointroducer

Senator Schilz asked unanimous consent to add his name as cointroducer to LB1057. No objections. So ordered.

VISITORS

Visitors to the Chamber were Mayor Rick Jeffrey from Holdrege; Matt Viljoen from South Africa and Beth Fort from York; Dr. Edward and Mary Jane Truemper from Wann; and 16 members of Nebraska Propane Gas Association from across the state.

The Doctor of the Day was Dr. Dorothy Zink from Omaha.

ADJOURNMENT

At 12:01 p.m., on a motion by Senator Avery, the Legislature adjourned until 9:00 a.m., Tuesday, February 25, 2014.

Patrick J. O'Donnell
Clerk of the Legislature