

TWENTY-SEVENTH DAY - FEBRUARY 14, 2006**LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE
SECOND SESSION****TWENTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, February 14, 2006

PRAYER

The prayer was offered by Pastor Michael McDonald, Grace Bible Fellowship Church, Stella.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Brashear, Landis, Dw. Pedersen, and Raikes who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-sixth day was approved.

**SELECT COMMITTEE REPORTS
Enrollment and Review**

LEGISLATIVE BILL 853. Placed on Select File as amended.
(E & R amendment, AM7161, is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 173. Placed on Select File as amended.
E & R amendment to LB 173:
AM7162

- 1 1. On page 1, strike beginning with "section" in line
- 2 2 through line 5 and insert "sections 69-1301, 69-1305.02, and
- 3 69-1308, Reissue Revised Statutes of Nebraska; to define and
- 4 redefine terms; to change provisions relating to gift certificates,
- 5 gift cards, credit memos, and general-use prepaid cards; and to
- 6 repeal the original sections."

(Signed) Michael Flood, Chairperson

**STANDING COMMITTEE REPORTS
Transportation and Telecommunications**

LEGISLATIVE BILL 815. Placed on General File.

- LEGISLATIVE BILL 816.** Indefinitely postponed.
- LEGISLATIVE BILL 1056.** Indefinitely postponed.
- LEGISLATIVE BILL 1057.** Indefinitely postponed.
- LEGISLATIVE BILL 1152.** Indefinitely postponed.
- LEGISLATIVE BILL 1191.** Indefinitely postponed.

(Signed) Tom Baker, Chairperson

**NOTICE OF COMMITTEE HEARING
Nebraska Retirement Systems
Room 1525**

Wednesday, March 22, 2006 12:15 p.m.
 Nebraska Investment Council - Annual Report
 NE Public Employees Retirement Board - Annual Report

(Signed) Elaine Stuhr, Chairperson

ANNOUNCEMENT

The Transportation and Telecommunications Committee designates LB 275 as its priority bill.

MOTIONS - Approve Appointments

Senator Schimek moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 612:

- State Emergency Response Commission
 - Richard Christensen
 - Tim Hofbauer
 - Mark Reimers

Voting in the affirmative, 31:

Aguilar	Cudaback	Hudkins	Mines	Stuthman
Beutler	Cunningham	Janssen	Pahls	Thompson
Brown	Engel	Kopplin	Price	Wehrbein
Burling	Erdman	Kremer	Schimek	
Chambers	Fischer	Kruse	Schrock	
Combs	Flood	Langemeier	Smith	
Cornett	Howard	Louden	Stuhr	

Voting in the negative, 0.

Present and not voting, 14:

Baker	Connealy	Heidemann	McDonald	Redfield
Bourne	Foley	Jensen	Pederson, D.	Synowiecki
Byars	Friend	Johnson	Preister	

Excused and not voting, 4:

Brashear	Landis	Pedersen, Dw.	Raikes
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The appointments were confirmed with 31 ayes, 0 nays, 14 present and not voting, and 4 excused and not voting.

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 612:

Environmental Quality Council
Mark Whitehead

Voting in the affirmative, 30:

Aguilar	Cudaback	Heidemann	Kremer	Redfield
Baker	Cunningham	Howard	Langemeier	Schrock
Bourne	Engel	Hudkins	Louden	Smith
Byars	Erdman	Janssen	Pahls	Stuhr
Chambers	Fischer	Johnson	Price	Stuthman
Cornett	Flood	Kopplin	Raikes	Thompson

Voting in the negative, 0.

Present and not voting, 16:

Beutler	Connealy	Kruse	Preister
Brown	Foley	McDonald	Schimek
Burling	Friend	Mines	Synowiecki
Combs	Jensen	Pederson, D.	Wehrbein

Excused and not voting, 3:

Brashear	Landis	Pedersen, Dw.
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The appointment was confirmed with 30 ayes, 0 nays, 16 present and not voting, and 3 excused and not voting.

Senator Schrock moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 612:

Nebraska Power Review Board

Michael Siedschlag

Voting in the affirmative, 35:

Aguilar	Cunningham	Howard	Landis	Schrock
Bourne	Engel	Hudkins	Langemeier	Smith
Byars	Erdman	Janssen	Louden	Stuhr
Chambers	Fischer	Jensen	McDonald	Stuthman
Connealy	Flood	Johnson	Pahls	Synowiecki
Cornett	Foley	Kopplin	Price	Thompson
Cudaback	Heidemann	Kremer	Redfield	Wehrbein

Voting in the negative, 0.

Present and not voting, 12:

Baker	Burling	Kruse	Preister
Beutler	Combs	Mines	Raikes
Brown	Friend	Pederson, D.	Schimek

Excused and not voting, 2:

Brashear Pedersen, Dw.

The appointment was confirmed with 35 ayes, 0 nays, 12 present and not voting, and 2 excused and not voting.

Senator Bourne moved the adoption of the Judiciary Committee report for the confirmation of the following appointment(s) found on page 617:

Board of Parole

Rosalyn R. Cotton

Miguel Gomez

Voting in the affirmative, 37:

Aguilar	Cornett	Howard	Louden	Stuhr
Beutler	Cudaback	Hudkins	McDonald	Stuthman
Bourne	Engel	Janssen	Pahls	Synowiecki
Burling	Erdman	Jensen	Pederson, D.	Thompson
Byars	Fischer	Kopplin	Preister	Wehrbein
Chambers	Flood	Kremer	Price	
Combs	Foley	Landis	Redfield	
Connealy	Heidemann	Langemeier	Smith	

Voting in the negative, 0.

Present and not voting, 10:

Baker	Cunningham	Johnson	Mines	Schimek
Brown	Friend	Kruse	Raikes	Schrock

Excused and not voting, 2:

Brashear Pedersen, Dw.

The appointments were confirmed with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 1111. Advanced to E & R for engrossment.

LEGISLATIVE BILL 776. Senator Schrock renewed his pending amendment, AM2245, found on page 627.

Senator Schrock withdrew his amendment.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 818. E & R amendment, AM7157, found on page 602, was adopted.

Senator Burling renewed his pending amendment, AM2258, found on page 642.

Senator Chambers offered the following amendment to the Burling pending amendment:

FA444

Amendment to AM2258

P. 1, line 10 strike "needed" and insert "used",

The Chambers amendment was adopted with 28 ayes, 0 nays, 19 present and not voting, and 2 excused and not voting.

The Burling amendment, as amended, was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Senators Schrock and Wehrbein offered the following amendment:

AM2299

- 1 1. Insert the following new sections:
- 2 Sec. 2. Section 81-15,160, Revised Statutes Cumulative
- 3 Supplement, 2004, is amended to read:
- 4 81-15,160 (1) The Waste Reduction and Recycling Incentive
- 5 Fund is created. The department shall deduct from the fund amounts
- 6 sufficient to reimburse itself for its costs of administration
- 7 of the fund. The fund shall be administered by the Department
- 8 of Environmental Quality. The fund shall consist of proceeds from

9 the fees imposed pursuant to the Waste Reduction and Recycling
10 Incentive Act.

11 (2) The fund may be used for purposes which include, but
12 are not limited to:

13 (a) Technical and financial assistance to political
14 subdivisions for creation of recycling systems and for modification
15 of present recycling systems;

16 (b) Recycling and waste reduction projects, including
17 public education, planning, and technical assistance;

18 (c) Market development for recyclable materials separated
19 by generators, including public education, planning, and technical
20 assistance;

21 (d) Capital assistance for establishing private and
22 public intermediate processing facilities for recyclable materials
23 and facilities using recyclable materials in new products;

1 (e) Programs which develop and implement composting of
2 yard waste and composting with sewage sludge;

3 (f) Technical assistance for waste reduction and waste
4 exchange for waste generators;

5 (g) Programs to assist communities and counties to
6 develop and implement household hazardous waste management
7 programs; and

8 (h) Capital assistance for establishing private and
9 public facilities to manufacture combustible waste products and
10 to incinerate combustible waste to generate and recover energy
11 resources. ~~except that no disbursements shall be made under this
12 section for scrap tire processing related to tire derived fuel.~~

13 The State Treasurer shall transfer two million one
14 hundred thousand dollars from the Waste Reduction and Recycling
15 Incentive Fund to the General Fund within five days after August
16 16, 2002.

17 (3) Grants up to one million dollars annually shall be
18 available until June 30, ~~2007~~ 2011, for new scrap tire projects
19 only, if acceptable scrap tire project applications are received.
20 Eligible categories of disbursement under section 81-15,161 may
21 include, but are not limited to:

22 (a) Reimbursement for the purchase of crumb rubber
23 generated and used in Nebraska, with disbursements not to exceed
24 fifty percent of the cost of the crumb rubber;

25 (b) Reimbursement for the purchase of tire-derived
26 product which utilizes a minimum of twenty-five percent recycled
27 tire content, with disbursements not to exceed twenty-five percent
1 of the product's retail cost, except that persons who applied for
2 a grant between June 1, 1999, and May 31, 2001, for the purchase
3 of tire-derived product which utilizes a minimum of twenty-five
4 percent recycled tire content may apply for reimbursement on or
5 before July 1, 2002. Reimbursement shall not exceed twenty-five
6 percent of the product's retail cost and may be funded in fiscal
7 years 2001-02 and 2002-03;

8 (c) Participation in the capital costs of building,
9 equipment, and other capital improvement needs or startup costs for
10 scrap tire processing, including processing related to tire-derived
11 fuel, or manufacturing of tire-derived product, with disbursements
12 not to exceed fifty percent of such costs or five hundred
13 thousand dollars, whichever is less. Disbursements shall not exceed
14 twenty-five percent of such costs or two hundred fifty thousand
15 dollars, whichever is less, if the scrap tire processing relates to
16 tire-derived fuel;

17 (d) Participation in the capital costs of building,
18 equipment, or other startup costs needed to establish collection
19 sites or to collect and transport scrap tires, with disbursements
20 not to exceed fifty percent of such costs;

21 (e) Cost-sharing for the manufacturing of tire-derived
22 product, with disbursements not to exceed twenty dollars per ton
23 or two hundred fifty thousand dollars, whichever is less, to any
24 person annually;

25 (f) Cost-sharing for the processing of scrap tires, with
26 disbursements not to exceed twenty dollars per ton or two hundred
27 fifty thousand dollars, whichever is less, to any person annually;

1 (g) Cost-sharing for the use of scrap tires for civil
2 engineering applications for specified projects, with disbursements
3 not to exceed twenty dollars per ton or two hundred fifty thousand
4 dollars, whichever is less, to any person annually; and

5 (h) Disbursement to a political subdivision up to one
6 hundred percent of costs incurred in cleaning up scrap tire
7 collection and disposal sites.

8 The director shall give preference to projects which
9 utilize scrap tires generated and used in Nebraska and to
10 educational institutions to purchase tire-derived products.

11 (4) Priority for grants made under section 81-15,161
12 shall be given to grant proposals demonstrating a formal
13 public/private partnership except for grants awarded from fees
14 collected under subsection (6) of section 13-2042.

15 (5) Grants awarded from fees collected under subsection
16 (6) of section 13-2042 may be renewed for up to a five-year
17 grant period. Such applications shall include an updated integrated
18 solid waste management plan pursuant to section 13-2032. Annual
19 disbursements are subject to available funds and the grantee
20 meeting established grant conditions. Priority for such grants
21 shall be given to grant proposals showing regional participation
22 and programs which address the first integrated solid waste
23 management hierarchy as stated in section 13-2018 which shall
24 include toxicity reduction. Disbursements for any one year shall
25 not exceed fifty percent of the total fees collected after rebates
26 under subsection (6) of section 13-2042 during that year.

27 (6) Any person who stores waste tires in violation
1 of section 13-2033, which storage is the subject of abatement
2 or cleanup, shall be liable to the State of Nebraska for the

- 3 reimbursement of expenses of such abatement or cleanup paid by the
 4 Department of Environmental Quality.
 5 (7) The Department of Environmental Quality may receive
 6 gifts, bequests, and any other contributions for deposit in the
 7 Waste Reduction and Recycling Incentive Fund. Any money in the fund
 8 available for investment shall be invested by the state investment
 9 officer pursuant to the Nebraska Capital Expansion Act and the
 10 Nebraska State Funds Investment Act.
 11 Sec. 4. The following section is outright repealed:
 12 Section 81-1504.03, Revised Statutes Cumulative Supplement, 2004.
 13 2. On page 4, line 6, strike "section 13-2039" and insert
 14 "sections 13-2039 and 81-15,160".
 15 3. Renumber the remaining sections accordingly.

Senator Preister offered the following amendment to the Schrock-Wehrbein pending amendment:

FA443

Amendment to AM2299

On page 3, line 14 strike "two-hundred"

Pending.

ANNOUNCEMENTS

The Business and Labor Committee designates LB 1237 and LB 489 as its priority bills.

Senator Byars designates LB 1069 as his priority bill.

SELECT COMMITTEE REPORT Enrollment and Review

LEGISLATIVE BILL 872. Placed on Select File.

(Signed) Michael Flood, Chairperson

STANDING COMMITTEE REPORTS Education

LEGISLATIVE BILL 1211. Indefinitely postponed.

(Signed) Ron Raikes, Chairperson

Revenue

LEGISLATIVE BILL 1189. Placed on General File.

(Signed) David Landis, Chairperson

Banking, Commerce and Insurance**LEGISLATIVE BILL 1193.** Placed on General File.**LEGISLATIVE BILL 652.** Indefinitely postponed.**LEGISLATIVE BILL 686.** Indefinitely postponed.

(Signed) Mick Mines, Chairperson

AMENDMENTS - Print in JournalSenator Schrock filed the following amendment to LB 140:
AM2263

- 1 1. On page 2, strike beginning with "natural" in line
- 2 11 through "technician" in line 12 and insert "a holder of a
- 3 license or certificate issued under the Water Well Standards
- 4 and Contractors' Licensing Act employed by a natural resources
- 5 district".

Senator Schrock filed the following amendment to LB 975:
AM2293

(Amendments to Standing Committee amendments, AM2002)

- 1 1. Insert the following sections:
- 2 Sec. 17. (1) Except as provided in subsection (2) of
- 3 this section, a county planning commission or county board shall
- 4 grant a conditional use permit or special exception to any existing
- 5 animal feeding operation seeking to construct or modify a livestock
- 6 waste control facility if the purpose of seeking such permit or
- 7 exception is to comply with federal or state regulations pertaining
- 8 to livestock waste management.
- 9 (2) A county planning commission or county board is not
- 10 required to grant a conditional use permit or special exception
- 11 under subsection (1) of this section if:
- 12 (a) Construction of the livestock waste control facility
- 13 would allow the capacity of the animal feeding operation to
- 14 increase by more than the greater of (a) ten percent or (b)
- 15 five hundred cattle, three hundred fifty dairy cows, one thousand
- 16 two hundred fifty swine each weighing fifty-five pounds or more,
- 17 five thousand swine each weighing less than fifty-five pounds, two
- 18 hundred fifty horses, five thousand sheep or lambs, twenty-seven
- 19 thousand five hundred turkeys, fifteen thousand laying hens or
- 20 broilers if the animal feeding operation uses a liquid manure
- 21 handling system, sixty-two thousand five hundred chickens that are
- 22 not laying hens if the animal feeding operation uses other than
- 1 a liquid manure handling system, forty-one thousand laying hens
- 2 if the animal feeding operation uses other than a liquid manure
- 3 handling system, fifteen thousand ducks if the animal feeding
- 4 operation uses other than a liquid manure handling system, or two
- 5 thousand five hundred ducks if the animal feeding operation uses a

6 liquid manure handling system; or

7 (b) The operation has not complied with inspection
8 requirements pursuant to section 54-2423.

9 Sec. 18. A completed nutrient management plan and
10 supporting documentation which has been submitted and remains
11 unchanged as of January 1, 2004, shall not be required to be
12 resubmitted as part of an application for major modification.

13 Sec. 19. Section 81-1513, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 81-1513 (1) Any person who owns or is in control of any
16 plant, building structure, process, or equipment may apply to the
17 director for a variance from rules or regulations. The director
18 may grant such variance if he or she finds that the emissions or
19 discharges occurring or proposed to occur do not endanger or tend
20 to endanger human health or safety or that compliance with the
21 rules or regulations from which variance is sought would produce
22 serious hardship without equal or greater benefits to the public.
23 In making such findings the director shall give due consideration
24 to all the facts and circumstances bearing upon the reasonableness
25 of the emissions or discharges involved including, but not limited
26 to:

27 (a) The character and degree of injury to or interference
1 with the health and physical property of the people;

2 (b) The social and economic value of the source of the
3 air, water, or land pollution;

4 (c) The question of priority of location in the area
5 involved; and

6 (d) The technical practicability and economic
7 reasonableness of reducing or eliminating the emissions or
8 discharges resulting from such source.

9 (2) No variance shall be granted until the director has
10 considered the relative interests of the applicant, other owners of
11 property likely to be affected by the discharges, and the general
12 public. Before any variance is granted, the director shall give
13 public notice of an application for such variance immediately upon
14 receipt of such application and in accordance with the rules and
15 regulations of the department. The notice shall be published in a
16 newspaper of general circulation in the county in which the plant,
17 building structure, process, or equipment on which the proposed
18 variance is located.

19 (3) Any variance or renewal thereof shall be granted
20 within the requirements of subsection (1) of this section, for time
21 periods and under conditions consistent with the reasons therefor,
22 and within the following limitations:

23 (a) If the variance is granted on the ground that
24 there is no practicable means known or available for the adequate
25 prevention, abatement, or control of the air, water, or land
26 pollution involved, it shall be only until the necessary means for
27 prevention, abatement, or control become known and available and

- 1 subject to the taking of any substitute or alternate measures that
2 the director may prescribe;
- 3 (b) If the variance is granted on the ground that
4 compliance with the particular requirement or requirements from
5 which variance is sought will necessitate the taking of measures
6 which, because of their extent or cost, must be spread over a
7 considerable period of time, it shall be for a period not to exceed
8 such reasonable time as, in the view of the director, is requisite
9 for the taking of the necessary measures. A variance granted on the
10 ground specified in this section shall contain a timetable for the
11 taking of action in an expeditious manner and shall be conditioned
12 on adherence to such timetable; and
- 13 (c) If the variance is granted on the ground that it is
14 justified to relieve or prevent hardship of a kind other than that
15 provided for in subdivision (a) or (b) of this subsection, it shall
16 be for not more than one year.
- 17 (4) Any variance granted pursuant to this section may
18 be renewed on terms and conditions and for periods which would
19 be appropriate on initial granting of a variance. If complaint
20 is made to the director on account of the variance, no renewal
21 thereof shall be granted unless the director finds that renewal
22 is justified. No renewal shall be granted except on application
23 therefor. Any such application shall be made at least thirty
24 days prior to the expiration of the variance. Immediately upon
25 receipt of an application for renewal and before approving the
26 renewal application, the director shall give public notice of
27 such application in accordance with rules and regulations of the
1 department. The public notice shall be published in the county in
2 a newspaper of general circulation in which the plant, building
3 structure, process, or equipment on which the variance is located.
- 4 (5) A variance or renewal shall not be a right of the
5 applicant or holder thereof but shall be in the discretion of the
6 director. The granting or denial of a variance or a renewal shall
7 be by final order of the director. Any person adversely affected by
8 such an order may appeal the decision, and the appeal shall be in
9 accordance with the Administrative Procedure Act.
- 10 (6) Nothing in this section and no variance or renewal
11 granted pursuant to this section shall be construed to prevent or
12 limit the application of the emergency provisions and procedures of
13 section 81-1507 to any person or his or her property.
- 14 (7) No variance shall be granted which will sanction any
15 violation of state or federal statutes or regulations.
- 16 2. On page 1, line 5, strike "section 16" and insert
17 "sections 16, 17, and 18".
- 18 3. On page 15, lines 20 and 22, after "chickens" insert
19 "or ducks".
- 20 4. On page 16, line 3, after "54-2435" insert "and
21 section 16 of this act".
- 22 5. Amend the operative date and repealer sections so that

- 23 the sections added by this amendment become operative on their
 24 effective date with the emergency clause.
 25 6. Renumber the remaining sections accordingly.

Senator Schrock filed the following amendment to LB 933:
 AM2247

(Amendments to Standing Committee amendments, AM1915)

- 1 1. Insert the following new section:
 2 Sec. 18. Section 46-714, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 46-714 (1) Whenever the Department of Natural Resources
 5 makes a preliminary determination that a river basin, subbasin,
 6 or reach not previously designated as overappropriated and not
 7 previously determined to be fully appropriated has become fully
 8 appropriated, the department shall place an immediate stay on
 9 the issuance of any new natural-flow, storage, or storage-use
 10 appropriations in such river basin, subbasin, or reach. The
 11 department shall also provide prompt notice of such preliminary
 12 determination to all licensed water well contractors in the state
 13 and to each natural resources district that encompasses any of
 14 the geographic area involved. Such notice to natural resources
 15 districts shall be by certified mail. The notice shall be addressed
 16 to the manager of the natural resources district or his or her
 17 designee and shall include the signature of the director of the
 18 department. Immediately upon receipt of such notice by the natural
 19 resources district, there shall be a stay on issuance of water
 20 well construction permits in the geographic area preliminarily
 21 determined by the department to include hydrologically connected
 22 surface water and ground water in such river basin, subbasin,
 1 or reach. The department shall also notify the public of the
 2 preliminary determination that the river basin, subbasin, or reach
 3 is fully appropriated and of the affected geographic area. Such
 4 notice shall be provided by publication once each week for
 5 three consecutive weeks in at least one newspaper of statewide
 6 circulation and in such other newspaper or newspapers as are deemed
 7 appropriate by the department to provide general circulation in the
 8 river basin, subbasin, or reach.
 9 (2) If the department preliminarily determines a river
 10 basin, subbasin, or reach to be fully appropriated and has
 11 identified the existence of hydrologically connected surface water
 12 and ground water in such river basin, subbasin, or reach, stays
 13 shall also be imposed (a) on the construction of any new water
 14 well in the area covered by the determination if such construction
 15 has not commenced prior to the determination, whether or not a
 16 construction permit for such water well was previously obtained
 17 from the department or a natural resources district, and (b) on
 18 the use of an existing water well or an existing surface water
 19 appropriation in the affected area to increase the number of
 20 acres historically irrigated. Such additional stays shall begin

21 ten days after the first publication, in a newspaper of statewide
22 circulation, of the notice of the preliminary determination that
23 the river basin, subbasin, or reach is fully appropriated.

24 (3) Exceptions to the stays imposed pursuant to
25 subsection (1), (2), (9), or (10) of this section shall exist
26 for (a) test holes, (b) dewatering wells with an intended use
27 of one year or less, (c) monitoring wells, (d) wells constructed
1 pursuant to a ground water remediation plan under the Environmental
2 Protection Act, (e) water wells designed and constructed to pump
3 fifty gallons per minute or less, except that no two or more
4 water wells that each pump fifty gallons per minute or less may
5 be connected or otherwise combined to serve a single project such
6 that the collective pumping would exceed fifty gallons per minute,
7 (f) water wells for range livestock, (g) new surface water uses or
8 water wells that are necessary to alleviate an emergency situation
9 involving the provision of water for human consumption or public
10 health and safety, (h) water wells defined by the applicable
11 natural resources district as replacement water wells, but the
12 consumptive use of any such replacement water well can be no
13 greater than the historic consumptive use of the water well it
14 is to replace or, if applicable, the historic consumptive use of
15 the surface water use it is to replace, (i) new surface water
16 uses and water wells to which a right or permit is transferred
17 in accordance with state law, but the consumptive use of any
18 such new use can be no greater than the historic consumptive use
19 of the surface water use or water well from which the right or
20 permit is being transferred, (j) water wells and increases in
21 ground water irrigated acres for which a variance is granted by
22 the applicable natural resources district for good cause shown,
23 (k) to the extent permitted by the applicable natural resources
24 district, increases in ground water irrigated acres that result
25 from the use of water wells that were constructed within the nine
26 months prior to the effective date of the stay but were not used
27 for irrigation prior to that effective date, (l) to the extent
1 permitted by the applicable natural resources district, increases
2 in ground water irrigated acres that result from the use of water
3 wells that are constructed after the effective date of the stay in
4 accordance with a permit granted by that natural resources district
5 prior to the effective date of the stay, (m) surface water uses for
6 which temporary public-use construction permits are issued pursuant
7 to subsection (8) of section 46-233, (n) surface water uses and
8 increases in surface water irrigated acres for which a variance is
9 granted by the department for good cause shown, and (o) water wells
10 for which permits have been approved by the Department of Natural
11 Resources pursuant to the Municipal and Rural Domestic Ground Water
12 Transfers Permit Act prior to the effective date of the stay.

13 (4) Except as otherwise provided in this section, any
14 stay imposed pursuant to subsections (1) and (2) of this section
15 shall remain in effect for the affected river basin, subbasin, or

16 reach until the department has made a final determination regarding
17 whether the river basin, subbasin, or reach is fully appropriated
18 and, if the department's final determination is that the river
19 basin, subbasin, or reach is fully appropriated, shall remain in
20 effect as provided in subsection (12) of this section. Within
21 the time period between the dates of the preliminary and final
22 determinations, the department and the affected natural resources
23 districts shall consult with any irrigation district, reclamation
24 district, public power and irrigation district, mutual irrigation
25 company, canal company, or municipality that relies on water from
26 the affected river basin, subbasin, or reach and with other water
27 users and stakeholders as deemed appropriate by the department
1 or the natural resources districts. The department shall also
2 hold one or more public hearings not more than ninety days after
3 the first publication of the notice required by subsection (1)
4 of this section. Notice of the hearings shall be provided in
5 the same manner as the notice required by such subsection. Any
6 interested person may appear at such hearing and present written or
7 oral testimony and evidence concerning the appropriation status of
8 the river basin, subbasin, or reach, the department's preliminary
9 conclusions about the extent of the area within which the surface
10 water and ground water supplies for the river basin, subbasin, or
11 reach are determined to be hydrologically connected, and whether
12 the stays on new uses should be terminated.

13 (5) Within thirty days after the final hearing under
14 subsection (4) of this section, the department shall notify the
15 appropriate natural resources districts of the department's final
16 determination with respect to the appropriation status of the
17 river basin, subbasin, or reach. If the final determination is
18 that the river basin, subbasin, or reach is fully appropriated,
19 the department, at the same time, shall (a) decide whether to
20 continue or to terminate the stays on new surface water uses and
21 on increases in the number of surface water irrigated acres and (b)
22 designate the geographic area within which the department considers
23 surface water and ground water to be hydrologically connected in
24 the river basin, subbasin, or reach and describe the methods and
25 criteria used in making that determination. The department shall
26 provide notice of its decision to continue or terminate the stays
27 in the same manner as the notice required by subsection (1) of this
1 section.

2 (6) If the department's final determination is that
3 the river basin, subbasin, or reach is not fully appropriated,
4 the department shall provide notice of such determination as
5 provided in subsection (1) of this section, the stays imposed
6 pursuant to subsections (1) and (2) of this section shall terminate
7 immediately, and no further action pursuant to subsections (7)
8 through (12) of this section and sections 46-715 to 46-719 shall be
9 required.

10 (7) Within ninety days after a final determination by

11 the department that a river basin, subbasin, or reach is fully
12 appropriated, an affected natural resources district may hold one
13 or more public hearings on the question of whether the stays on
14 the issuance of new water well permits, on the construction of
15 new water wells, or on increases in ground water irrigated acres
16 should be terminated. Notice of the hearings shall be published as
17 provided in section 46-743.

18 (8) Within forty-five days after a natural resources
19 district's final hearing pursuant to subsection (7) of this
20 section, the natural resources district shall decide (a) whether
21 to terminate the stay on new water wells in all or part of the
22 natural resources district subject to the stay and (b) whether to
23 terminate the stay on increases in ground water irrigated acres. If
24 the natural resources district decides not to terminate the stay
25 on new water wells in any geographic area, it shall also decide
26 whether to exempt from such stay the construction of water wells
27 for which permits were issued prior to the issuance of the stay but
1 for which construction had not begun prior to issuance of the stay.
2 If construction of water wells for which permits were issued prior
3 to the stay is allowed, all permits that were valid when the stay
4 went into effect shall be extended by a time period equal to the
5 length of the stay.

6 (9) Whenever the department designates a river basin,
7 subbasin, or reach as overappropriated, each previously declared
8 moratorium on the issuance of new surface water appropriations in
9 the river basin, subbasin, or reach shall continue in effect. The
10 department shall also provide prompt notice of such designation
11 to all licensed water well contractors in the state and to each
12 natural resources district that encompasses any of the geographic
13 area involved. Immediately upon receipt of such notice by a natural
14 resources district, there shall be a stay on the issuance of new
15 water well construction permits in any portion of such natural
16 resources district that is within the hydrologically connected area
17 designated by the department. The department shall also notify the
18 public of its designation of such river basin, subbasin, or reach
19 as overappropriated and of the geographic area involved in such
20 designation. Such notice shall be published once each week for
21 three consecutive weeks in at least one newspaper of statewide
22 circulation and in such other newspapers as are deemed appropriate
23 by the department to provide general notice in the river basin,
24 subbasin, or reach.

25 (10) Beginning ten days after the first publication
26 of notice under subsection (9) of this section in a newspaper
27 of statewide circulation, there shall also be stays (a) on the
1 construction of any new water well in the hydrologically connected
2 area if such construction has not commenced prior to such date
3 and if no permit for construction of the water well has been
4 issued previously by either the department or the natural resources
5 district, (b) on the use of an existing water well in the

6 hydrologically connected area to increase the number of acres
 7 historically irrigated, and (c) on the use of an existing surface
 8 water appropriation to increase the number of acres historically
 9 irrigated in the affected area.

10 (11) Within ninety days after a designation by
 11 the department of a river basin, subbasin, or reach as
 12 overappropriated, a natural resources district that encompasses any
 13 of the hydrologically connected area designated by the department
 14 may hold one or more public hearings on the question of whether
 15 to terminate the stays on (a) the construction of new water wells
 16 within all or part of its portion of the hydrologically connected
 17 area, (b) the issuance of new water well construction permits in
 18 such area, or (c) the increase in ground water irrigated acres in
 19 such area. Notice of any hearing for such purpose shall be provided
 20 pursuant to section 46-743. Prior to the scheduling of a natural
 21 resources district hearing on the question of whether to terminate
 22 any such stay, the department and the affected natural resources
 23 district shall consult with any irrigation district, reclamation
 24 district, public power and irrigation district, mutual irrigation
 25 company, canal company, or municipality that relies on water from
 26 the affected river basin, subbasin, or reach and with other water
 27 users and stakeholders as deemed appropriate by the department or
 1 the natural resources district.

2 (12) Any stay issued pursuant to this section shall
 3 remain in effect until (a) the stay has been terminated pursuant
 4 to subsection (5), (6), (8), or (11) of this section, (b) an
 5 integrated management plan for the affected river basin, subbasin,
 6 or reach has been adopted by the department and the affected
 7 natural resources districts and has taken effect, (c) an integrated
 8 management plan for the affected river basin, subbasin, or reach
 9 has been adopted by the Interrelated Water Review Board and has
 10 taken effect, (d) the department has completed a reevaluation
 11 pursuant to subsection (2) of section 46-713 and has determined
 12 that the affected river basin, subbasin, or reach is not fully
 13 appropriated or overappropriated, or (e) the stay expires pursuant
 14 to this subsection. Such stay may be imposed initially for not
 15 more than three years following the department's designation of
 16 the river basin, subbasin, or reach as overappropriated or the
 17 department's final determination that a river basin, subbasin, or
 18 reach is fully appropriated and may be extended thereafter on
 19 an annual basis by agreement of the department and the affected
 20 natural resources district for not more than two additional years
 21 if necessary to allow the development, adoption, and implementation
 22 of an integrated management plan pursuant to sections 46-715 to
 23 46-719.

24 2. Insert the following new amendment:

25 "2. On page 8, line 10, after "permit" insert ", except
 26 that this subsection does not apply to appropriations to which
 27 subsection (2) of section 46-237 applies"."

- 1 3. Renumber the remaining amendments and sections and
- 2 correct the repealer accordingly.

SELECT FILE

LEGISLATIVE BILL 818. The Preister pending amendment, FA443, found in this day's Journal, to the Schrock-Wehrbein pending amendment, was renewed.

Senator Preister withdrew his amendment.

Senator Schrock withdrew the Schrock-Wehrbein pending amendment, AM2299, found in this day's Journal.

Pending.

SELECT COMMITTEE REPORTS **Enrollment and Review**

Correctly Engrossed

The following bills and resolution were correctly engrossed: LBs 14, 85, 85A, 1003, and LR 2CA.

ER9064

Enrollment and Review Change to LB 1003

The following changes, required to be reported for publication in the Journal, have been made:

1. In the E & R amendments, AM7149, on page 1, line 10, "77-27,117," has been inserted after the second comma; and in line 18 "provisions" has been inserted after "tax".

2. In the Standing Committee amendments, AM1935, on page 44, line 9, "7, 8, and 19" has been struck and "8, 9, and 20" inserted; in line 12 "20" has been struck and "21" inserted; and in line 21 "section" has been struck and "sections 77-27,117 and" inserted.

ER9065

Enrollment and Review Change to LR 2CA

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 1, line 2, "FIRST" has been struck and "SECOND" inserted.

(Signed) Michael Flood, Chairperson

STANDING COMMITTEE REPORTS
Health and Human Services

LEGISLATIVE BILL 952. Placed on General File.

LEGISLATIVE BILL 1079. Placed on General File.

LEGISLATIVE BILL 1086. Placed on General File.

LEGISLATIVE BILL 1116. Placed on General File.

LEGISLATIVE BILL 1232. Placed on General File.

LEGISLATIVE BILL 1244. Placed on General File.

LEGISLATIVE BILL 869. Placed on General File as amended.

Standing Committee amendment to LB 869:

AM2246

- 1 1. Strike original section 1.
 2 2. On page 3, line 12, strike "and" through the comma,
 3 show as stricken, and insert an underscored comma; and in lines 19
 4 to 25 strike the new matter and reinstate the stricken matter.
 5 3. On page 4, after line 2, insert the following new
 6 subsection:
 7 "(4) For FY2006-07 and each fiscal year thereafter,
 8 proceeds from the tax imposed pursuant to section 68-1803 shall be
 9 remitted to the State Treasurer for credit as follows:
 10 (a) To the ICF/MR Reimbursement Protection Fund for
 11 allocation as described in this subdivision: (i) Fifty-five
 12 thousand dollars for administration of the fund; (ii) the amount
 13 needed to reimburse intermediate care facilities for the mentally
 14 retarded for the cost of the tax; (iii) twenty-five percent of
 15 the funds collected pursuant to subsection (1) of section 68-1803
 16 for payment of rates to non-state-operated intermediate care
 17 facilities for the mentally retarded; and (iv) twenty-five percent
 18 of the funds collected pursuant to subsection (1) of section
 19 68-1803 for community-based services for persons with developmental
 20 disabilities; and
 21 (b) To the General Fund: The remainder of the proceeds."
 22 4. Renumber the remaining sections accordingly.

LEGISLATIVE BILL 790. Indefinitely postponed.

(Signed) Jim Jensen, Chairperson

AMENDMENT - Print in Journal

Senator Beutler filed the following amendment to LB 872:

AM2281

- 1 1. On page 11, line 11; and page 23, lines 17 and 18,
 2 strike "emissions trading programs" and insert "such emissions
 3 trading programs as the department shall direct".

SELECT FILE

LEGISLATIVE BILL 818. Advanced to E & R for engrossment.

LEGISLATIVE BILL 778. E & R amendment, AM7155, printed separately and referred to on page 579, was adopted.

Senator Langemeier renewed his pending amendment, AM2256, found on page 629.

The Langemeier amendment was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 887. E & R amendment, AM7154, found on page 579, was adopted.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 1007. E & R amendment, AM7158, found on page 601, was adopted.

Senator Baker offered the following amendment:
AM2277

- 1 1. Insert the following new section:
- 2 Sec. 21. (1) A provision, a clause, a covenant, or
- 3 an agreement contained in, collateral to, or affecting a motor
- 4 carrier transportation contract that purports to indemnify, defend,
- 5 or hold harmless or has the effect of indemnifying, defending,
- 6 or holding harmless the motor carrier transportation contract's
- 7 promisee from or against any liability for loss or damage
- 8 resulting from the negligence or intentional acts or omissions
- 9 of the motor carrier transportation contract's promisee or any
- 10 agents, employees, servants, or independent contractors who are
- 11 directly responsible to the motor carrier transportation contract's
- 12 promisee, is against the public policy of this state and is
- 13 unenforceable.
- 14 (2) Nothing contained in this section affects a
- 15 provision, a clause, a covenant, or an agreement in which a
- 16 motor carrier indemnifies or holds harmless a motor carrier
- 17 transportation contract's promisee against liability for damages to
- 18 the extent that the damages were caused by and resulting from the
- 19 negligence of the motor carrier or its agents, employees, servants,
- 20 or independent contractors who are directly responsible to the
- 21 motor carrier.
- 22 (3) As used in this section:
- 23 (a) Motor carrier means any person who or which owns,

- 1 controls, manages, operates, or causes to be operated any motor
 2 vehicle used to transport goods over any public highway in this
 3 state, whether in intrastate or interstate commerce;
 4 (b) Motor carrier transportation contract means a
 5 contract, agreement, or understanding covering:
 6 (i) The transportation of property for compensation or
 7 hire by a motor carrier;
 8 (ii) The entrance on property by a motor carrier for
 9 the purpose of loading, unloading, or transporting property for
 10 compensation or for hire; or
 11 (iii) A service incidental to activity described in
 12 subdivision (i) or (ii) of this subsection, including, but not
 13 limited to, storage of property.
 14 A motor carrier transportation contract does not include
 15 provisions of the Uniform Intermodal Interchange and Facilities
 16 Access Agreement administered by the Intermodal Association of
 17 North America or any other provision, clause, covenant, or
 18 agreement providing for the interchange, use, or possession of
 19 intermodal chassis, containers, or other intermodal equipment; and
 20 (c) Promisee means the party to a motor carrier
 21 transportation contract who or which is not a motor carrier or, if
 22 the promisee is a motor carrier, is not the motor carrier actually
 23 doing the transporting.
 24 2. Renumber the remaining sections accordingly.

The Baker amendment was adopted with 32 ayes, 0 nays, 16 present and not voting, and 1 excused and not voting.

Advanced to E & R for engrossment.

GENERAL FILE

LEGISLATIVE BILL 1019. Title read. Considered.

The Standing Committee amendment, AM2207, printed separately and referred to on page 611, was adopted with 33 ayes, 0 nays, 14 present and not voting, and 2 excused and not voting.

Advanced to E & R for review with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 478. The Cornett pending amendment, AM1810, found on page 142 and considered on page 638, was renewed.

Senator Chambers offered the following amendment to the Cornett pending amendment:

FA448

Amendment to AM1810

P. 7, line 26 after 6 insert "as such provisions existed on the effective date of this act".

Pending.

ANNOUNCEMENT

Senator Baker announced the Transportation and Telecommunications Committee will hold an executive session Tuesday, February 21, 2006, at 1:30 p.m., in Room 1113.

STANDING COMMITTEE REPORT **General Affairs**

LEGISLATIVE RESOLUTION 259CA. Placed on General File.

(Signed) Ray Janssen, Chairperson

ANNOUNCEMENTS

Senator Wehrbein designates LB 990 as his priority bill.

Senator Cunningham designates LB 1258 as his priority bill.

Senator McDonald designates LR 259CA as her priority resolution.

AMENDMENT - Print in Journal

Senator Brashear filed the following amendment to LB 188:
(Amendment, AM2262, is printed separately and available in the Bill Room, Room 1104.)

VISITORS

Visitors to the Chamber were 20 members from the NSEA-Retired; and the volunteer youth group with the Nebraska Library Association.

The Doctor of the Day was Dr. Teresa Stump from Omaha.

ADJOURNMENT

At 12:01 p.m., on a motion by Senator Price, the Legislature adjourned until 9:00 a.m., Wednesday, February 15, 2006.

Patrick J. O'Donnell
Clerk of the Legislature

