

FORTY-EIGHTH DAY - MARCH 19, 2015**LEGISLATIVE JOURNAL****ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION****FORTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, March 19, 2015

PRAYER

The prayer was offered by Pastor Lance Burch, Reality Church, La Vista.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Hadley presiding.

The roll was called and all members were present except Senators Davis and Nordquist who were excused; and Senators Kolowski, Mello, and Morfeld who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-seventh day was approved.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 15. Placed on Select File with amendment.
ER52

1 1. On page 1, strike beginning with "43-272.01" in line 1 through
2 line 4 and insert "43-272, Reissue Revised Statutes of Nebraska, and
3 section 43-272.01, Revised Statutes Cumulative Supplement, 2014; to
4 require the Supreme Court to promulgate guidelines; to provide and change
5 duties for guardians ad litem; to provide for compensation of guardians
6 ad litem; to define terms; to repeal the original sections; and to
7 declare an emergency."

LEGISLATIVE BILL 139. Placed on Select File with amendment.
ER51 is available in the Bill Room.

LEGISLATIVE BILL 139A. Placed on Select File.

LEGISLATIVE BILL 33. Placed on Select File.

LEGISLATIVE BILL 324. Placed on Select File with amendment.

ER53

1 1. In the Standing Committee amendments, AM662:

2 a. On page 16, line 5, after "obligations" insert an underscored
3 comma; in line 11 after "relewy" insert an underscored comma; and in
4 lines 12 and 14 after "releved" insert an underscored comma; and

5 b. On page 17, line 17, after "In" insert "the".

6 2. On page 1, line 2, strike "31-729, and 31-740" and insert

7 "31-727.03, 31-729, 31-740, 31-763, and 31-766"; and in line 4 after the

8 semicolon insert "to provide additional powers for certain sanitary and

9 improvement districts subject to approval as prescribed; to require

10 acknowledgments to be obtained from purchasers of real estate within

11 sanitary and improvement districts as prescribed;".

(Signed) Matt Hansen, Chairperson

COMMITTEE REPORT(S)

Revenue

LEGISLATIVE BILL 76. Placed on General File.

LEGISLATIVE BILL 542. Placed on General File.

LEGISLATIVE BILL 591. Placed on General File with amendment.

AM627 is available in the Bill Room.

LEGISLATIVE BILL 574. Indefinitely postponed.

(Signed) Mike Gloor, Chairperson

MESSAGE(S) FROM THE GOVERNOR

March 18, 2015

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 23, 34, 35, 37, 46, 129, 146, 155e, 164, 179,
207 and 279e were received in my office on March 12, 2015.

These bills were signed and delivered to the Secretary of State on March
18, 2015.

Sincerely,
(Signed) Pete Ricketts
Governor

PR/lhk

RESOLUTION(S)**LEGISLATIVE RESOLUTION 127.** Introduced by Craighead, 6.

WHEREAS, the Omaha Creighton Prep High School basketball team won the 2015 Class A Boys' State Basketball Championship by defeating Omaha South High School by a score of 46-41; and

WHEREAS, the win gives the Creighton Prep Bluejays basketball team its 12th state championship; 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 FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the Omaha Creighton Prep High School basketball team on winning the 2015 Class A Boys' State Basketball Championship.

2. That a copy of this resolution be sent to the Omaha Creighton Prep High School basketball team.

Laid over.

LEGISLATIVE RESOLUTION 128. Introduced by Craighead, 6.

WHEREAS, Brooke Biby, a sixth grade student at Joslyn Elementary School in Omaha, won the 2015 Midwest Spelling Bee; and

WHEREAS, the win gives Brooke and the Joslyn Jaguars their first Midwest Spelling Bee title; and

WHEREAS, Brooke will represent Nebraska and western Iowa at the Scripps National Spelling Bee in Washington, D.C. in May; 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 FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Brooke Biby on winning the 2015 Midwest Spelling Bee.

2. That a copy of this resolution be sent to Brooke Biby, her teachers Jennifer Sinnott and Kristi Eggen, and Principal Betsy Kosch.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 31. Title read. Considered.

Committee AM359, found on page 765, was offered.

Senator Hilkemann offered the following motion:

MO53

Bracket until June 5, 2015.

Senator Gloor moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 11 nays, and 13 not voting.

Senator Hilkemann moved for a call of the house. The motion prevailed with 40 ayes, 0 nays, and 9 not voting.

Senator Hilkemann requested a roll call vote on the motion to bracket.

Voting in the affirmative, 21:

Baker	Gloor	Howard	Pansing Brooks Williams
Bolz	Haar, K.	Johnson	Riepe
Campbell	Hadley	Kolowski	Seiler
Cook	Hansen	Kuehn	Smith
Crawford	Hilkemann	Lindstrom	Watermeier

Voting in the negative, 19:

Chambers	Groene	Krist	Murante	Schumacher
Coash	Hughes	Larson	Scheer	Stinner
Ebke	Kintner	McCoy	Schilz	Sullivan
Friesen	Kolterman	Morfeld	Schnoor	

Present and not voting, 6:

Bloomfield	Craighead	McCollister
Brasch	Garrett	Mello

Excused and not voting, 3:

Davis	Harr, B.	Nordquist
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The Hilkemann motion to bracket failed with 21 ayes, 19 nays, 6 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

Pending.

BILL ON FIRST READING

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

LEGISLATIVE BILL 105A. Introduced by Watermeier, 1.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 105, One Hundred Fourth Legislature, First Session, 2015.

COMMITTEE REPORT(S)

Education

LEGISLATIVE BILL 227. Placed on General File with amendment.
AM903

1 1. On page 2, strike beginning with "Legislature" in line 3 through
2 line 5, show as stricken, and insert "department shall".

The Education 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.

Dennis Baack - Nebraska Educational Telecommunications Commission
Marilyn Hadley - Nebraska Educational Telecommunications Commission
Darlene Starman - Nebraska Educational Telecommunications Commission

Aye: 8 Baker, Cook, Groene, Kolowski, Morfeld, Pansing Brooks, Schnoor, Sullivan. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Kate Sullivan, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 129. Introduced by Brasch, 16.

WHEREAS, Joe Berg of West Point-Beemer High School won the 2015 Class B State Wrestling Championship in the 126-pound division; and

WHEREAS, Joe's win helped lead the West Point-Beemer Cadets to a fifth-place team finish; and

WHEREAS, Joe displayed outstanding determination, perseverance, and skill in winning the state championship; 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 FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Joe Berg on his state wrestling championship.
2. That a copy of this resolution be sent to Joe Berg.

Laid over.

LEGISLATIVE RESOLUTION 130. Introduced by Brasch, 16.

WHEREAS, Nick Arlt of Oakland-Craig High School won the 2015 Class D State Wrestling Championship in the 160-pound division; and

WHEREAS, Nick's win helped lead the Oakland-Craig Knights to a third-place team finish; and

WHEREAS, Nick displayed outstanding determination, perseverance, and skill in winning the state championship; 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 FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Nick Arlt on his state wrestling championship.
2. That a copy of this resolution be sent to Nick Arlt.

Laid over.

LEGISLATIVE RESOLUTION 131. Introduced by Coash, 27; Baker, 30; Bolz, 29; Campbell, 25; Ebke, 32; Hansen, 26; Pansing Brooks, 28.

WHEREAS, Jake Moore is retiring after 25 seasons as the head volleyball coach for Pius X High School in Lincoln; and

WHEREAS, Coach Moore's career win-loss record is an impressive 705-232; and

WHEREAS, Coach Moore's teams have qualified for the State Volleyball Tournament 21 times, including the last 20 consecutive seasons. Under his leadership, Pius X High School has won seven state championships, one state runner-up title, and finished as a state semi-finalist eight other times; and

WHEREAS, Coach Moore was a finalist for the 2014 High School National Coach of the Year.

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

1. That the Legislature congratulates Jake Moore on his retirement and recognizes his successful coaching career.
2. That a copy of this resolution be sent to Jake Moore.

Laid over.

LEGISLATIVE RESOLUTION 132. Introduced by Schnoor, 15.

WHEREAS, lymphedema is a disease characterized by chronic, progressive, potentially incurable, and often severe and debilitating swelling

caused by an accumulation of lymphatic fluid in parts of the body where lymph nodes or lymphatic vessels are damaged or inadequate; and

WHEREAS, lymphedema in adults is most commonly a consequence of damage to the lymphatic system resulting from treatment for cancer; and

WHEREAS, lymphedema affects millions of people of all ages and both genders, many of whom are unaware they have the disease until it has progressed far enough to affect their daily lives or compromise their health; and

WHEREAS, untreated lymphedema often results in disfigurement, pain, disability, and serious infections such as cellulitis, which can require costly medical treatment and hospitalization; and

WHEREAS, lymphedema is a progressive condition which occurs in four stages (latent, reversible, spontaneously reversible, and elephantiasis); and

WHEREAS, due to the lack of awareness, information, and education affecting both the public and the medical community, lymphedema is often misdiagnosed or undiagnosed resulting in unchecked progression of the untreated disease; and

WHEREAS, lymphedema can be well-controlled or the progression of the disease may be halted if it is correctly diagnosed and then subjected to a multiphase treatment regimen carried out by specially trained, nationally certified professionals.

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

1. That the Legislature recognizes March 2015 as Lymphedema Awareness Month in Nebraska.

2. That a copy of this resolution be sent to the National Lymphedema Network, the Lymphedema Advocacy Group, the Nebraska Occupational Therapy Association, the American Occupational Therapy Association, the Nebraska Physical Therapy Association, the American Physical Therapy Association, the Nebraska Medical Association, the Lancaster County Medical Society, the Metro Omaha Medical Society, the Nebraska Oncology Society, the Oncology Nursing Society chapters in Nebraska, the University of Nebraska Medical Center, and the CHI Health Creighton University Medical Center.

Laid over.

AMENDMENT(S) - Print in Journal

Senator Schumacher filed the following amendment to LB70:
AM945

(Amendments to E and R amendments, ER27)

1 1. Strike section 3 and insert the following new sections:

2 Sec. 2. Section 77-3001, Reissue Revised Statutes of Nebraska, is

3 amended to read:

4 77-3001 For purposes of the Mechanical Amusement Device Tax Act,

5 unless the context otherwise requires:

6 (1) Person means an individual, partnership, limited liability

7 company, society, association, joint-stock company, corporation, estate,
8 receiver, lessee, trustee, assignee, referee, or other person acting in a
9 fiduciary or representative capacity, whether appointed by a court or
10 otherwise, and any combination of individuals;

11 (2) Mechanical amusement device means any machine which, upon
12 insertion of a coin, currency, credit card, or substitute into the
13 machine, operates or may be operated or used for a game, contest, or
14 amusement of any description, such as, by way of example, but not by way
15 of limitation, pinball games, shuffleboard, bowling games, radio-ray
16 rifle games, baseball, football, racing, boxing games, electronic games
17 of skill, and coin-operated pool tables. Mechanical amusement device also
18 includes game and draw lotteries and coin-operated automatic musical
19 devices. The term does not mean vending machines which dispense tangible
20 personal property, devices located in private homes for private use,
21 pickle card dispensing devices which are required to be registered with
22 the Department of Revenue pursuant to section 9-345.03, or devices which
23 are mechanically constructed in a manner that would render their
24 operation illegal under the laws of the State of Nebraska;

25 (3) Operator means any person who operates a place of business in
26 which a machine or device owned by him or her is physically located or
1 any person who places and who either directly or indirectly controls or
2 manages any machine or device;

3 (4) Distributor means any person who sells, leases, or delivers
4 possession or custody of a machine or mechanical device to operators
5 thereof for a consideration either directly or indirectly received;

6 (5) Whenever in the act, the words machine or device are used, they
7 refer to mechanical amusement device; and

8 (6) Whenever in the act, the words machine, device, person,
9 operator, or distributor are used, the words in the singular include the
10 plural and in the plural include the singular.

11 Sec. 4. (1) Beginning January 1, 2016, in addition to the occupation
12 tax imposed pursuant to section 77-3004, an additional occupation tax
13 shall be levied upon the business of operating a mechanical amusement
14 device that:

15 (a) Accepts currency, coins, tokens, or other value in exchange for
16 play;

17 (b) Awards a monetary prize or anything redeemable for a monetary
18 prize;

19 (c) Is played by a player using a touch screen, computer mouse,
20 touch pad, light pen, laser, or device of similar function by which the
21 player competes against software running the device; and

22 (d) Has not been adjudicated by a court of competent jurisdiction
23 within the State of Nebraska to not constitute a gambling device as
24 defined in subdivision (5) of section 28-1101. Any such adjudication
25 shall be by way of a final order in which the Tax Commissioner has been
26 made a party to the action and written notice has been provided to the
27 Attorney General at the commencement of the action.

28 (2) Any operator of such mechanical amusement device shall pay the
29 occupation tax. The amount of the occupation tax shall be equal to ten

30 percent of the gross revenue derived from the operation of any mechanical
31 amusement device described in subsection (1) of this section. The Tax
1 Commissioner shall collect such occupation tax concurrently with the
2 collection of the state sales tax in the same manner as the state sales
3 tax is collected. All taxes collected pursuant to this section shall be
4 remitted to the State Treasurer, and the State Treasurer shall credit
5 ninety-seven percent of such taxes to the General Fund and the remaining
6 three percent of such taxes to the Compulsive Gamblers Assistance Fund.
7 (3) The occupation tax imposed in this section shall not apply to:
8 (a) Any device that is specifically authorized by the laws of this
9 state; or
10 (b) Any device not within the definition of a gambling device as
11 defined in subdivision (5) of section 28-1101.
12 (4) To receive the exemption provided in subsection (3) of this
13 section, an operator must:
14 (a) Apply to the Tax Commissioner for a determination that such
15 exemption applies. The application shall contain such information
16 regarding the device's location, software, Internet connectivity, and
17 configuration as may be required by the Tax Commissioner; and
18 (b) Prove by a preponderance of the evidence to the Tax
19 Commissioner, at the operator's expense, that the device, in all its
20 operating configurations, is:
21 (i) A device that is specifically authorized by the laws of this
22 state; or
23 (ii) A device not within the definition of a gambling device as
24 defined in subdivision (5) of section 28-1101.
25 (5) The proof required by subdivision (4)(b)(ii) of this section may
26 be made by:
27 (a) A showing that the software running the game remains constant
28 with the nature of a game that had its software at issue in a judicial
29 case, not overturned by appeal, in which the State of Nebraska was a
30 party, the issue was litigated, and the final order found that the
31 particular game was more controlled by the player than not, and thus was
1 predominantly a game of skill; or
2 (b) Providing the results of an examination of the relevant
3 software, an analysis of the software's performance conducted by a gaming
4 laboratory approved by the Tax Commissioner, the results of human
5 performance tests that weigh the skill component against the chance
6 component of the play, and such other information as may be required by
7 the Tax Commissioner to demonstrate to the satisfaction of the Tax
8 Commissioner that all games playable on the device are more controlled by
9 the player than not, and thus are predominantly games of skill.
10 (6) Except as provided in subsection (7) of this section, the Tax
11 Commissioner shall make an initial review of an application for exemption
12 under this section and any supporting materials within a reasonable time
13 after the application and supporting materials are submitted. If upon
14 such review the Tax Commissioner determines that the device qualifies for
15 exemption, the Tax Commissioner shall submit notice of such determination
16 to the Attorney General for review. If the Attorney General does not

17 object within thirty days after receiving such notification, the Tax
 18 Commissioner shall grant the exemption for the device as configured. If
 19 the Attorney General objects or the Tax Commissioner determines that the
 20 device does not qualify for exemption, the operator shall have the
 21 opportunity for an administrative hearing before the Tax Commissioner at
 22 which evidence may be presented on the issue of whether the device
 23 qualifies for the exemption. After such hearing, the Tax Commissioner
 24 shall enter a final decision approving or denying the exemption. The Tax
 25 Commissioner's final decision may be appealed, and the appeal shall be in
 26 accordance with the Administrative Procedure Act.
 27 (7) For any device in operation on the effective date of this act,
 28 the operator of such device may apply to the Tax Commissioner, in a
 29 manner prescribed by the Tax Commissioner, within fifteen days after the
 30 effective date of this act for an exemption under this section. The Tax
 31 Commissioner shall make an initial review of such an application and any
 1 supporting materials within seventy-five days after the application and
 2 supporting materials are submitted. If upon such review the Tax
 3 Commissioner determines that the device qualifies for exemption, the Tax
 4 Commissioner shall submit notice of such determination to the Attorney
 5 General for review. If the Attorney General does not object within thirty
 6 days after receiving such notification, the Tax Commissioner shall grant
 7 the exemption for the device as configured. If the Attorney General
 8 objects or the Tax Commissioner determines that the device does not
 9 qualify for exemption, the operator shall have the opportunity for an
 10 administrative hearing before the Tax Commissioner at which evidence may
 11 be presented on the issue of whether the device qualifies for the
 12 exemption. After such hearing, the Tax Commissioner shall enter a final
 13 decision approving or denying the exemption. The Tax Commissioner's final
 14 decision may be appealed, and the appeal shall be in accordance with the
 15 Administrative Procedure Act. Any such appeal shall be advanced on the
 16 court docket and heard and decided by the court as quickly as possible.
 17 (8) For purposes of this section, gross revenue means the total
 18 aggregate receipts received from the operation of any mechanical
 19 amusement device described in subsection (1) of this section without any
 20 reduction for prizes, discounts, taxes, or expenses and includes receipts
 21 from admission costs, any consideration necessary for participation, and
 22 the value of any free tickets, games, or plays used.
 23 (9) For purposes of this section, the fact that the device is played
 24 or connected via league or tournament play shall play no factor in
 25 determining whether the occupation tax imposed by this section is due.
 26 2. Renumber the remaining sections, correct internal references, and
 27 correct the repealer accordingly.

VISITORS

Visitors to the Chamber were 12 sixth- through eighth-grade students and teachers from Norris Public School, Firth; 11 twelfth-grade students, teacher, and sponsor from Bertrand; Aaron and Alex Rooker from Omaha; 30 ninth-grade students and teachers from Northstar High School, Lincoln;

24 fourth-grade students and teachers from Arapahoe; 13 fourth-grade students and teachers from Lyons-Decatur Northeast, Lyons; 47 fourth-grade students and teachers from Avery Elementary, Bellevue; and 30 members of the Nebraska Firearm Owners Association.

The Doctor of the Day was Dr. Jeremy Howe from Omaha.

ADJOURNMENT

At 11:56 a.m., on a motion by Senator Schnoor, the Legislature adjourned until 9:00 a.m., Friday, March 20, 2015.

Patrick J. O'Donnell
Clerk of the Legislature

