

January 15, 1981

LB 193-222

rules which the motion is before the desk.

SPEAKER MARVEL: Any further discussion? All those in favor of that motion vote aye, opposed vote no. Have you all voted? The motion is the Wesely motion. Have you all voted? Record the vote.

CLERK: 25 ayes, 10 nays on adoption of the permanent rules, Mr. President.

SPEAKER MARVEL: The motion is carried and the amendment is adopted. Senator Cullan wants to meet with the Public Health and Welfare Committee underneath the south balcony. Is that right, Senator Cullan? What is the next item?

CLERK: Mr. President, I have a series of matters to read in, if I may. First of all, Senator DeCamp offers a proposed rule change which will be submitted to the Rules Committee for their consideration. (See pages 180 and 181 of the Legislative Journal.)

Mr. President, new bills: LB 193 (Title read). LB 194 (Title read). LB 195 (Title read). LB 196 (Title read). LB 197 (Title read). LB 198 (Title read). LB 199 (Title read). LB 200 (Title read). LB 201 (Title read). LB 202 (Title read). LB 203 (Title read). LB 204 (Title read). LB 205 (Title read). LB 206 (Title read). LB 207 (Title read). LB 208 (Title read). LB 209 (Title read). LB 210 (Title read). LB 211 (Title read). LB 212 (Title read). LB 213 (Title read). LB 214 (Title read). LB 215 (Title read). LB 216 (Title read). LB 217 (Title read). LB 218 (Title read). LB 219 (Title read). LB 220 (Title read). LB 221 (Title read). LB 222 (Title read). (See pages 181 through 188 of the Legislative Journal.)

Mr. President, in addition your Committee on Business and Labor gives notice of public hearing for Wednesday, January 28. (See page 189 of the Legislative Journal.)

Mr. President, communication from the Chairman of the Executive Board which will be inserted in the Legislative Journal. (See page 189 of the Journal.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Beutler regarding deferred compensation funds which will be inserted in the Legislative Journal. (See pages 189 through 192 of the Journal.)

SPEAKER MARVEL: May I have the attention of the members of the Legislature for just a second. I think the last few days have been tough on all of us. I think we are all

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LB 54, 110, 154, 205,
275, 288, 409, 459.

SPEAKER MARVEL: Four excused. Have you all voted?
Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I guess numerically it
is possible so I will ask for a Call of the House and
a roll call vote, unless a couple of people would like
to.....okay, I give up.

SPEAKER MARVEL: Okay, record the vote.

CLERK: 17 ayes, 22 nays, Mr. President. I have nothing
further on the bill, Mr. President.

SPEAKER MARVEL: Senator Schmit. Senator Schmit, we
are about to close up shop for noon. Your light is on.
Senator Wagner, do you wish to close on your bill?

SENATOR WAGNER: Mr. Speaker, I think enough has been
said. I would just kind of like to move the bill and
make it go on. Thank you.

SPEAKER MARVEL: Senator Schmit, did you wish the floor?
The motion is the adoption of the Wagner...let's see,
LB 110 as amended. All those in favor of that motion
vote aye, opposed vote no. This is the advancement of
the bill. Have you all voted? Record the vote.

CLERK: 29 ayes, 5 nays, Mr. President, on the motion
to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is
advanced. Do you have some items to read in?

CLERK: Yes, sir. Mr. President, your committee on
Retirement Systems whose Chairman is Senator Fowler
instructs me to report LB 288 to General File with
amendments. (Signed) Senator Fowler. (See pages 503
and 504 of the Legislative Journal.)

Your Committee on Banking whose Chairman is Senator
DeCamp instructs me to report 275 to General File.
Retirement reports 459 to General File with amendments.
Banking, 154 to General File with amendments. Banking,
409 to General File with amendments. Judiciary, LB 54
to General File with amendments, and Judiciary, 205
to General File with amendments. Signed by the res-
pective Chairs. (See pages 504 through 507 of the
Legislative Journal.)

Mr. President, Senator Warner wants to note that the

SPEAKER MARVEL: All those in favor of the committee amendments to LB 54 vote aye, opposed vote no. Record.

CLERK: 34 ayes, 0 nays on adoption of committee amendments, Mr. President.

SPEAKER MARVEL: The motion is carried. The amendment is adopted.

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER MARVEL: The motion is to advance LB 54 to E & R for review. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. LB 205.

CLERK: Mr. President, LB 205 was introduced by Senator Dave Newell. (Title read.) The bill was read on January 15. It was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, this just tightens up as to who the authorized arson investigators are. I move for the adoption of the committee amendment.

SPEAKER MARVEL: Senator Chambers, do you want to speak to the committee amendments? Okay. The motion is the adoption of the committee amendments to LB 205. All those in favor vote aye, opposed vote no. Record the vote.

CLERK: 31 ayes, 0 nays on adoption of committee amendments, Mr. President.

SPEAKER MARVEL: The motion is carried. The committee amendments are adopted. Senator Newell.

SENATOR NEWELL: Mr. President, members of the body, LB 205 is a bill that authorizes arson investigators in the cities of metropolitan class or Omaha to have the authority to make arrests, carry weapons and allowed subpoena powers. As we all know there is a great problem with arson especially in our large urban centers. There has been a number of news articles and television clips in recent months and years indicating the problem with arson. This bill authorizes

those fire, those four captains and they are all captains, fifty years old or older, mature individuals, to have the same authority as their team members, the police officers who work together in this whole area of arson in our major metropolitan city. Basically this bill has been supported by professional insurance agents, the City of Omaha, the Omaha Task Force, the Fire Unions, a whole lot of folks. That is it.

SPEAKER MARVEL: Senator Chambers, then Senator Beutler.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I hope you will pay attention to this bill. It is one of the most pernicious pieces of legislation to come before us and I am not saying that in jest. What you are doing here is taking what, in effect, is a fireman, the old traditional concept of a fireman, they must say firefighter because females also get on the fire division, but, Lincoln who testified for this bill said they didn't want any parts of it. They don't want their investigators carrying pistols. Now I said, pistols, but based on the wording of the law these people can carry any weapon of any kind, any variety. They can carry short barreled shotguns. They can carry rifles. They can carry pistols, brass knuckles, any kind of thing that can qualify as a weapon. This is a very poorly drafted piece of-- Senator Newell, this has no reflection on you because you didn't draft it--this is trash legislation. Now, in addition to what I have just said, the firefighter, the arson investigator is a peace officer but in addition to being classed as a peace officer a few lines further, he or she has all the power of a police officer. So, is there a difference between a peace officer and a police officer? Who knows? But in any case, these individuals, while not being law enforcement people, can do anything a peace officer can do, anything a police officer can do with reference to warrants, to subpoenas. They can place people under oath. They can make you produce documents and if you say something which they say is false, they can have you charged with perjury. We are talking about the fire division, not the police division, not the county attorney's office, but fire investigators and let us look in the bill to see what the true duty of a fire investigator is. It is to determine the cause, origin, and circumstances of a fire. Now how is being loaded down with weapons going to help this individual determine the cause, origin and circumstances of a fire? Some of the individuals who want to be carting around these pistols, rifles, shotguns and whatnots have been on the fire division for nineteen years and some longer and have never encountered a situation where they needed to draw a pistol on anybody or threaten or intimidate

anybody with a shotgun or where a warrant could not be obtained by going through a judge and the proper procedures. Fire fighters, fire investigators can get warrants right now. So, why should you give them a lot of pieces of paper that say warrant and all that he or she has to do is write out the information on the spot and serve it? That is not going to assist in the investigation of a fire. In Omaha now they have what they call the team concept where a fire investigator and a police officer will work as a team and since this team concept came into being, the number of arrests and convictions in arson cases, both of those have risen. The bill is totally unnecessary. Nothing was said at the committee hearing to justify giving these people this awesome power. A prosecutor, the county attorney cannot walk around doing all of these things. The Attorney General cannot carry subpoenas and warrants in his pocket. The Attorney General cannot go about armed with a concealed weapon. So, you are taking a person who is not even a law enforcement individual and cloaking him with more power than the Attorney General, not just with reference to carrying the pistol, shotguns, rifles, brass knuckles, knives and whatnot, hand grenades, flame throwers and any other imaginable item. But the power to have these warrants in the pocket and fill them out and issue them, subpoenas, why should a fire investigator be given that awesome amount of power when nothing was shown to demonstrate the need for it? Unfortunately, I was offering a bill in another committee when this atrocity was voted out of committee without a dissenting vote. It never should have occurred and I hope that the members of the Legislature will not pass this bill merely to placate three or four older individuals in Omaha who want to carry pistols. Remember like we found out on the bill we just got through passing where people thought they had a certain amount of coverage under an insurance policy and they didn't because of the general concept they had of insurance? Well look at this bill. In the minds of the public an arson investigator is a fire fighter. So, if the word goes out that a bill was passed authorizing these people to carry pistols, it means that any fireman on a truck has a weapon.

SPEAKER MARVEL: You have thirty seconds.

SENATOR CHAMBERS: It will create problems while solving none and I think it is a gross error in judgement to give this kind of blanket power and authority to people who are not even law enforcement officers. I hope that you will not support this bill and I am going to put a kill motion on it but I didn't think that we would take it up today.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I just had a chance to look at the bill for the first time today also, but I sure have a lot of questions about it and I would like to direct some of those questions to Senator Newell at this time if I may because I think some of them are very important questions. First of all, as I understand the bill, we are talking about arson investigators but the powers that they are given are not limited even. I mean assuming for the moment that you wanted to give them police powers, those police powers are not limited to arson investigations and if they see somebody, I suppose violating traffic laws or if they see a robbery in progress, these are police officers that can pull out their weapons and deal with it under this bill. Is that not correct?

SENATOR NEWELL: Senator Beutler, the situation is simply this. We are authorizing these four officers in the Omaha area to have the same powers as police officers. Now as you well know, police officers have the authority to carry weapons both on duty and off duty and so forth. Now, in fact, Department SOP is not going to allow them and is not going to authorize them to be involved in anything other than the natural investigation of fires but if you....

SENATOR BEUTLER: Is there any reason why police officers could not investigate fires? I mean if you want police officers to investigate fires, can't we just assign a couple of people in the Police Department to investigate fires?

SENATOR NEWELL: All right, Senator Beutler, here is the situation and I am sure you are aware that....

SENATOR BEUTLER: Senator Newell, thank you, your answer is going to be too long. I will get the answers from you at another time. I would like to point out a few more problems with the bill. First of all, it is too broadly drawn in my opinion with regard to the police powers that are being given to them. Secondly, Senator Chambers has already pointed out that they have a subpoena power. I don't think regular police officers have that kind of power, so not only are you giving them police officer power, but you are making them super policemen in a way without the protections that we have found historically that should be applicable to all police officers regardless of the type of investigation that they are doing. There is a perjury provision in here having to do with someone who knowingly gives false testimony material to an issue or a point in question while under oath or affirmation in any hearing conducted under this act. Well, I am

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LB 205, 198, 124

not sure what hearing is provided for in this act, but if there is a legal proceeding provided for, it would seem to me that the perjury provisions that are applicable that are presently in our statute and applicable to someone who puts himself under oath would be equally applicable here. But it seems to me, and I guess I am really repeating in part what Senator Chambers has said, that the bill is extremely broad and overdrawn and a very serious set of amendments should be added to it before it advances any further in this Legislature I would think. Thank you.

SPEAKER MARVEL: Unless there is objections, since it is after twelve, we will stop and everything will be left as it is and then we will take it up the next time we reach General File which will probably be tomorrow. Any objections? Okay, are there any items that the Clerk needs to read into the record?

CLERK: Yes, sir. Mr. President, Senator Hefner would like to print amendments to LB 124 in the Journal. (See page 649 of the Legislative Journal.)

Mr. President, two resolutions. The first is LR 21 offered by Senator Fowler. (Read LR 21 as found on pages 647-648 of the Legislative Journal.) Mr. President, in conjunction with that resolution Senator Fowler asks unanimous consent to have LR 21 referred to Public Works for a public hearing.

SPEAKER MARVEL: No objections, so ordered.

CLERK: Mr. President, yes, sir, new resolution, LR 22, offered by Senators Von Minden, Hefner, Chronister and Wagner. (Read LR 22. See page 650 of the Journal.) That will be laid over, Mr. President.

Mr. President, Senator Schmit would like to have the Ag and Environment Committee meet tomorrow at 8:45 a.m. under the North balcony for purposes of conducting an executive session.

Finally, Mr. President, Public Works Committee whose chairman is Senator Kremer to whom is referred LB 198 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments. (Signed) Senator Kremer. (See pages 650-654 of the Journal.)

SPEAKER MARVEL: Senator Wiitala, will you adjourn us until 9:00 a.m., February 25, 1981.

SENATOR WIITALA: Mr. Chairman, I move that we adjourn until 9:00 a.m., February 25.

LR 23
LB 21, 38, 67, 77, 80,
104, 109, 144, 186, 205,
206, 206A, 221, 236, 260,
204A.

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SENATOR LABEDZ: Will it be on the agenda tomorrow morning?

SPEAKER MARVEL: It will either be on the agenda tomorrow or the next day.

SENATOR LABEDZ: Thank you.

SPEAKER MARVEL: Do you have some items to read in?

CLERK: Yes, sir, I do. Mr. President, Senator Warner would like to print amendments to LB 144 in the Journal. (See pages 659 and 660 of the Legislative Journal.) New resolution, LR 23 by Senator Maresh and Senator Beutler. (Read LR 23 as found on page 660 of the Legislative Journal.) Mr. President that will be laid over. New bill, LB 204A, offered by Senator Wagner. (Read title to LB 204A for the first time.) Your committee on Public Works gives notice of public hearing. Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 21 and find the same correctly engrossed, 38, 67, 77, 80, 104, 109, 126, 206, 206A, 221, 236, and 260 all correctly engrossed. (Signed) Senator Kilgarin, Chair.

SPEAKER MARVEL: Okay, we revert to General File, LB 205.

CLERK: Mr. President, LB 205 was considered by the body yesterday. There was a motion to adopt the committee amendments which prevailed. There was some discussion and I now have a motion to indefinitely postpone the bill as offered by Senator Chambers.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the first thing I have to do is apologize to Senator Pirsch because yesterday I said this bill emerged from committee without a single dissenting vote, but she did vote against it. It is kind of interesting that she being from Omaha and I being from Omaha, she being notoriously law and order, I being notoriously whatever the contrary is, both agree that this bill is not a very good thing. So what I am asking that you do is consider what the purpose and role of an arson investigator is. The bill states it's to study the cause, origin and circumstances of fires. Nothing in this bill enhances that responsibility or that function. We don't want to create quasi law enforcement people when their job is not law enforcement. They have the team concept in Omaha right

now where they cooperate with the Omaha police division and if arrests need to be made, they are made. Usually, if a fire is set deliberately, that is what arson is, and the intent is to obtain benefit from it, then the person who does it is not going to be staying around. So this bill is not in response to any problem that has arisen in Omaha or anywhere else in the state. It is a situation that came to the attention of some of the nice middleaged gentlemen in Omaha who work for the Fire Department. They want to carry pistols. There is no need in them going about armed. It does not help them determine the cause, the origin or circumstances of fires. Never have they been in a situation where they had to engage in a shoot out. Never did they present a single situation where they needed to carry warrants or subpoenas on their person that they could fill out on the spot and place somebody under arrest, place somebody under oath, interrogate them, make them produce books and papers, cite them for perjury if they make a misstatement. All of these things are in this bill and there was no justification shown for any of them. Fire investigators should remain that. They investigate the causes, origins and circumstances of fires and that is sufficient. I asked Senator Newell why the State Fire Marshal was not here to support this bill at the committee hearing, and, Senator Newell, the most he could say is that Wally Barnett, the Fire Marshal, didn't oppose it. I talked to Wally Barnett about it and he doesn't see it as one of those things that he could actively support because the necessity for it has not been shown. Now, the State Fire Marshals can carry pistols, but there is a different situation where they go throughout the state in isolated areas and are not accompanied by a law enforcement person when they make an investigation. In Omaha they have these people with them. A thin, weak as cream argument was offered in the committee that there are not always officers on duty at the time these people go out to make their investigation, such as very early in the morning. So I guess what they are envisioning is something which does not occur now, and that's that when they get the right to carry guns, issue subpoenas and all these other things, they are going to trot out at four o'clock in the morning and make some arrests, serve some warrants, or command people to produce books, papers, and be interrogated. I think that is ridiculous. This bill would make a laughing stock of the Legislature and justifiably should do so. The law enforcement function that needs to be met in Omaha in connection with fire investigation is being met. Remember, this bill is not an arson preventer. It is not an arson detector. It gives

some individuals the right to carry guns. And although Senator Newell and others wanted to trot out the credentials of the individuals who happen to be fire investigators now and say, look at them, they are fine gentlemen, they are not the ones who are going to be fire investigators forever. And all they have to do is designate somebody a fire investigator regardless of his or her rank, as is stated in the bill, and that person becomes qualified under this bill to carry these weapons and do all these other things I mentioned. I hope that you will view this bill in terms of its broad impact, the ramifications that can be associated with it, and that you will support this motion to indefinitely postpone it. As a member of the Judiciary Committee, I have had this thing trotted by me before and to quote the departed Senator Lewis...that moment of silence was in his honor, his expression was, "That dog won't hunt". I think it fits with this bill and if you kill it, you will not impair any legitimate fire investigation activities in Omaha. If you pass it, you are creating a class of people who are not law enforcement individuals, they are not officers of the court, who have more power than any judge, than the Attorney General, than the county attorney, than a police officer, and yet the individual is neither a judge, nor a law enforcement person. So I hope that you will sustain this motion to indefinitely postpone

LB 205.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to support Senator Chambers in his kill motion on this bill. I would like to relate to you a little bit of a situation that I had brought to me a couple of years ago, and it seems to me that that's the underlying issue that we are dealing with here. If I understand the issue here correctly, we are attempting to give some people in Omaha the powers that the State Fire Marshal's office has. In other words, we are creating a quasi State Fire Marshal's office in Omaha, Nebraska. A couple of years ago a nephew of mine, who happens to be a contractor in the business of spraying urethane foam, had a contract for a high rise building in Omaha. After he got the contract, he investigated a little further and the coating to be put over this foam was not a fire retardant coating. The foam itself is susceptible to fire. He approached me and asked me how it could be that the coating could be used in the City of Omaha whereby at the same time he

couldn't do this in outstate Nebraska. It couldn't be used in Ogallala. It couldn't be used in Imperial. It couldn't be used anywhere else in the State of Nebraska but yet it was going to be used in Omaha. And he was a little bit upset because the fact of the matter was that if the building had caught on fire, he was afraid he would be held liable. To make a long story short, we did some investigating, discovered that as a matter of fact he was right, the State Fire Marshal's office would not allow that to happen, would not allow that particular coating to be used over this material any place in Nebraska where they had jurisdiction. But as a matter of fact, although they do have jurisdiction in Omaha, they informed us they didn't have the manpower to cover Omaha, therefore they allowed Omaha to do their own thing. They allowed Omaha through their own regulations to regulate that sort of thing and as a matter of fact they weren't regulating it as stringently as it would have been in the rest of the State of Nebraska. Well, that building was constructed and it was coated, and so what happened was that a situation is done in Omaha that wouldn't be allowed to be done in Farnam or anywhere else. Well, I think that is wrong, number one. I think it is terribly wrong. And I also think this is terribly wrong because what we are doing here is exactly the same thing. We are giving those people the authority to do something that nobody else in the State of Nebraska has the authority to do. Not only that, we are creating a so-called police agent, policeman, with the power of issuing subpoenas, the power of issuing warrants. None of the other policemen in the State of Nebraska have that power. The rest of the police officers in the State of Nebraska, including the State Safety Patrol, have to have a judge issue the subpoena, or a judge issue the warrant before they can get such a document. But here we are giving that power to somebody that doesn't even have the benefit of having training as a police officer. I think this body had better take a real serious look at LB 205, and I certainly support Senator Chambers' motion.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, I don't know...I've got these coming from different directions so I guess I've got to deal with them independently. First of all, I would like to deal with Senator Vickers. Senator Vickers, first of all, I think that this body ought to look at this issue very seriously and I wish you would read the bill and then we would have a very equal place in which to start. Senator Vickers,

first of all I want to assure you that the question that you raise about standards in terms of buildings and building codes, that is not the problem of the investigators...of the arson investigators in Omaha. We departmentalize things in the big city a little differently than we do in the rest of the state, and I think you have to realize there are some differences, and that really is the problem for permits and inspections, Senator Vickers. It has nothing to do with the arson investigators. Now I know that you are grasping to oppose this bill for various sins of the city and there are various sins in that city and I can't hope to defend them all, but that is not arson investigators that have created the problem there. We do have a Fire Marshal's office and we have the Fire Marshal's office for very unique reasons and that is to deal with all those problems that happen in greater Nebraska and not necessarily within the incorporated limits of cities, towns and etcetera. So, Senator Vickers, there is a difference in function. The Fire Marshal's is a coordinated sort of thing where it has various activities, we departmentalize them in Omaha. I would like to deal with this issue, try to deal with it in a very fair and open way and ask this body to look at it and come to understand some of the difficulties we have here. First of all, I am trying to get some things from Senator Beutler's office to give some case histories, and if anybody is hearing this, they could maybe bring that stuff down to me, return it to me so that I can use those examples. Second of all, I would like to say that in the City of Omaha we have a far larger number of arsons than are incidents in the rest of the state as a whole. In other words, better than half the arson situations happen in the metropolitan area of Omaha. That's well and way above its proportion to population. This bill is not an unusual bill. It's nothing that's brand new. It's been done in many, many other cities across this country, and it is needed because we have a particular problem in large metropolitan areas with arson. Now arson is not just a white-collar crime, you know, we watch it on television, we see people burning buildings and collecting insurance. Arson frequently and most frequently in the City of Omaha is really...most commonly occurs in the inner city in the older neighborhoods, and much of the motivation for this is vengeance. It is revenge and trying to deal with individuals in a way that will be most harmful to them, not necessarily to try to take life but to take property which is near and dear to all of us. And so, therefore, we have special situations and more difficulty in this whole question of ours. Now what we are trying to do is give the arson investigators in Omaha, who frequently

have problems with the criminal element, with individuals who are vengeful and so forth, we are trying to give them police powers, and that I admit, and that is correct, and that is what other cities of large metropolitan areas do, and that is what the powers that the Fire Marshal has, Senator Vickers. Senator Vickers, believe me. Senator Vickers, we are trying to give them those powers. Now let me say this, is that you argue that these people are untrained, but the bill specifically states that they will have to go through the training of the police officer. Senator Vickers, I hope you are listening, much of this is for you. The bill specifically states that they will have to go through that training, Senator Vickers, plus the other training that they receive as a fire investigator, and these men are generally captains in the....they are all captains. They all have twenty plus years of service, and we are talking about four investigators. Now, Senator Chambers, you too must look at the bill. There has been some amendments adopted which further clarify what we are talking about. The amendments that were adopted by the committee clarify that we are not talking about any officer. You don't just designate an officer. These are officers who are arson investigators. We have changed the language from the original bill to further define and clarify who would have this authority. Now there are a number of case histories that I can read at this time. It talks about the kinds of danger and the difficulties that these officers come before.

SENATOR CLARK: You have got about 30 seconds.

SENATOR NEWELL: Well, I think I will try to get another five minutes a little later on. Thank you, sir.

SENATOR CLARK: Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker and...or Senator, and the other members of the Legislature, I am on the Judiciary Committee and did hear the testimony and voted against sending this bill to the floor. I remain unconvinced, but I do want to stand up and say that I think we have an excellent process in Omaha. We have the team concept which is the law enforcement officer working with a fire person. I am wondering why when they tell us that they are going to train a fire officer at the law enforcement training to carry a gun, to consider all of the things that a police officer needs to know, why don't we just train police officers in the art of arson investigating who already have been through the

law enforcement training? I also would like to point out that there is no provision in our statutes under the State Fire Marshal Act that allows them arrest powers. The only arrest powers that the State Fire Marshal's office has is to four people who are special deputies by special appointment to the Governor. We have not chosen to put this power in our State Fire Marshal statutes. I support our fire officers and police officers in Omaha. They are doing a great job, particularly in this regard, but I have not been convinced that there is a need for this particular bill.

SENATOR CLARK: Senator Goodrich, did you want to speak on the kill motion?

SENATOR GOODRICH: On the kill motion?

SENATOR CLARK: Yes.

SENATOR GOODRICH: Mr. President and members of the body, I just want to respond to Senator Vickers' comments that he made a few minutes ago regarding this particular bill. Senator Vickers, you indicated that the City of Omaha is handling things one way. The rest of the state is handling things another way through the Fire Marshal's office. I would like to interpret your remarks as a motion that we bring the two together, that we bring the inspections in Omaha in under the State Fire Marshal's office. If that is your motion, I will second it, believe me, because right now the only reason it is that way is because of the fact that there is a hell of a cost involved, and if the state wants to pick up that cost, be our guest, because we are not only picking up that cost for inspecting our own but we are also paying our share of the costs of inspecting the rest of the state. So I would second your motion wholeheartedly right today. Let's put the two together and let's let the state pay that whole cost. Number two, Senator Vickers indicated, for example, that there was no training in this particular bill, there was no provision for training of the people that are being allowed to carry the guns and that sort of thing. Well, if Senator Vickers would go to page 2, line 12, it says that only if that person has satisfactorily completed a training program offered and approved by the Nebraska Law Enforcement Training Center or equivalent training offered by the city. I guess that isn't any training so I guess one might as well close down the training center. Number three, I would like to tell Senator Vickers about one incident that happened in Omaha, and it does not speak too highly for the Police Department

of the City of Omaha, but it's the truth. The usual procedure in a burglary where there is a serious confrontation between the burglar and the property owner or the inhabitants of the property where there has been some personal injury, that sort of thing, is that the police come in, they do their bit of calming things down, restoring order. They then bring in the fingerprint people and the photographers, the technical people to take evidence, to make the drawings, take the pictures, take the fingerprints, that sort of thing. On one occasion in Omaha, and this is why I happen to be in favor of the bill, on one occasion in Omaha the police department came in, they did their thing, they left, and incidentally they are not supposed to leave until the fingerprint people, the technicians are gone, have done their thing and they are gone, but they did, they got another call so they answered the call leaving the technician there. The technician in the process of going through the house opened the door and there stands the burglar in a closet.

SENATOR CLARK: You have one minute left.

SENATOR GOODRICH: Consequently, the technician had no gun, no protection, no anything. Here he is standing there facing the burglar himself. The police should have done a thorough enough search, should have caught the guy, but they didn't. The technician was standing there with no defense of any kind. Fortunately, the burglar decided to run. The technician was happy to see him go and let him go. But that's why, for example, I be in favor of letting the arson investigator or the technician even carry the weapon for his own defense. Thank you.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, I will yield my time to Senator Newell if he wants to complete his remarks.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Thank you, Senator Koch, I appreciate that. We have talked a great deal about various problems and I think that Senator Vickers' point that Senator Goodrich very ably explained the difficulty in terms of giving those kinds of authorities. You know, frankly, there is a desire to shift some of the cost and if the City of Omaha could shift the cost to the State of Nebraska, that would be a most convenient thing, Senator

Vickers. Now I am not sure that everybody in this body would be in total agreement with that, but certainly Senator Goodrich and myself can see the wisdom of your remarks and your arguments. We would be more than willing to help do that. And while you are at it, if you could take over our police and fire departments, we would appreciate that too and we have some courts that we would like to cede to the state, and, frankly, Senator Vickers, you have an excellent idea and I would like to expound upon that, and if we weren't dealing with this bill at this time, I would be more than happy to share some of those costs that the city...the people of Omaha have. This bill basically is going to allow...again, I want to restate this point, it is going to allow the City of Omaha to have the same powers that the Fire Marshal's office has. We are not going to give these powers to a whole lot of people. We are going to give it to four people who are going through the Law Enforcement Program, who are going to go through all the training plus the training they have had as fire officials. The people that get these kinds of jobs by standard operating procedure and etcetera are going to have right now twenty some years of experience and that is not going to be changed. They are all captains. They are all responsible individuals, all four of them. Well, frankly, the Chamber of Commerce, when it studied the cities, the Economic Task Force recommended that this be done because of the managerial and other kinds of factors. It will save the city money. It will save the city money inasmuch as you will not have to call in a team on every situation that occurs. These officers are frequently in danger and that is why there is a need to carry weapons. These are irresponsible men who all of a sudden are going to go brandishing guns and shoot up the neighborhood. They are people who have had many examples and many situations where their life was endangered. And Senator Labedz has offered to read some of those examples. This is, in fact, a good bill, a well thought out bill. To discuss Senator Chambers' arguments, first of all, standard operating procedure for the police and the fire division would not authorize these individuals to carry shotguns and tear gas canisters and etcetera, etcetera. If, Senator Chambers, you wish to make it very clear that they can only carry a thirty-eight, or whatever, that amendment can be accommodated. I think it is unnecessary. It is not likely to be a problem but we are more than happy to put that in if that would in any pacify you, which I know it won't. So, we are really not talking about that either. We are not talking about the kinds of fears that could be thrown up in this area. This is a good bill. The bill

has been well thought out. It has not been before the committee. I introduced this bill last year, and last year there were some problems with it and I withdrew that bill. I withdrew the bill at that time, and since that time we have had a year to look at it and study and try to specifically deal with the problems that need to be dealt with in this area. I think we have an excellent bill. It is well thought out and I think it deserves this body's total understanding and consideration. Thank you.

SENATOR CLARK: Senator DeCamp, did you wish to talk on this? The question has been called for. Do I see five hands? I do. The question before the House is ceasing debate. All those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on ceasing debate? The question before the House is to cease debate. Record the vote. Senator DeCamp.

SENATOR DeCAMP: Bernice doesn't want to talk. She is voting yes.

SENATOR CLARK: Senator DeCamp, what do you want to do?

SENATOR DeCAMP: I just want three more votes so we can get on with the business. Vard's button doesn't work, he told me. Mr. President, I would ask, since we are going to have to have a Call of the House on the bill anyway, I would ask for a Call of the House and then just take call in votes and get this one over with.

SENATOR CLARK: The question is to cease debate. Call of the House has been requested. All those in favor vote aye. All those opposed vote nay. Have you all voted? Record the vote.

CLERK: 16 ayes, 3 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. Everyone will take their seats and check in, please. All unauthorized personnel will leave the floor. If everyone will check in, please, we will save a little time. Senator DeCamp, do you want to authorize call ins? Did you all check in, please? We have got 33 out of 49. Senator Goll, Senator Cullan, Senator Higgins, Senator Carsten, Senator Lamb, Senator Hoagland. Senator Higgins and Senator Lamb is

what we are waiting for. Senator DeCamp, do you want call ins? They are all here except Senator Higgins. Do you want to raise the Call? The Call is raised. Senator Labedz is the next speaker. Report the vote on the.....

CLERK: 22 ayes, 4 nays to cease debate, Mr. President.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Chairman. I did want the opportunity to read a few of the investigation reports that occur in Omaha in regard to arson investigators, but I also want to mention the fact that right now we do have, and I did confirm this with Senator Pirsch, that we do have state, appointed by the Governor, deputies to the Sheriff's office that do carry fire arms and are eligible and have a right to make arrests, and these are just a few of the things that are happening in Douglas County, or I should say in Omaha, and I would like to give you a couple of examples. For instance, five persons injured in this fire. Fire was started in an apartment where two small children were sleeping in their bedroom. A couch was set on fire by their father who was drunk. The fire took off extremely fast and the children had to be hospitalized along with their mother. Because of the suspect's past record of assault, battery, disorderly conduct, felonious assault, public drunkenness and the fact he tried to burn an apartment where he thought the mother of his children was living, four arson investigators were sent to make the arrest. After gathering evidence and testimony pointing the individual responsible for this fire, they approached the suspect at a construction site where he was working. He was charged with first degree murder. But these are the types of people that the arson investigator has to work with. On June 17th, police were summoned to an address and the nature of the call was, man with a gun. However, no one responded when the officers knocked on the door. Some time during the night the suspect returned and set the house on fire as witnessed by two women living next door. The suspect took off running when he realized he had been recognized by two women. Later during a time when officers were searching the area, he fired two shots at one witness and made verbal threats. When he was finally located approximately three weeks after the latest fire, officers chased him in the hilltop area and noticed a door had been forced in a vacant structure. One police officer entered the structure with a drawn revolver, but fire captain so and so only stood by the

patrol car, would have been unable to assist his partner in any manner other than to call for police assistance should the worst have occurred, and later they found a loaded two caliber pistol in his back pocket. Officers responded to a call of a disturbance. Party broke windows at apartment structure and set fire to it. Suspect was standing outside in front and when officers tried to arrest him, he hit them in the mouth and a fight broke out. Then when another officer arrived, the suspect jumped on the hood of the cruiser and went berserk. He had to be...he was subdued, placed in a straightjacket and taken to a hospital. There are several other cases and I don't want to take the time to read them all, but if we as the members of the Legislature have given the authority to deputies from the Sheriff's Department to carry a gun 24 hours a day and can make arrests, I see no reason why the arson investigators shouldn't at least be given the privilege or the right to carry firearms. I urge the members of this body to support LB 205. It is badly needed in Douglas County and I am sure in other parts of the State of Nebraska. Thank you very much.

SENATOR CLARK: I've got Senator Vickers next and then Senator Chambers to close.

SENATOR VICKERS: Mr. President and members, Senator Newell and Senator Goodrich suggested that they would be willing to operate with the State Fire Marshal's office doing it if we took over the operations and supply the costs and so forth. I would suggest to the members of this body that that's not really the question. The question is not the cost. The question is whether or not we are going to allow Omaha to continue doing things as they please, whether or not they want to live under the same regulations the rest of the state does. I think that's the question. It seems to me that, and at least that's what came to light in the building that I was describing to you earlier, their regulations are different than the state laws...state regulations. And I would like to tell you a story of another incident then that is completely unrelated to this but I think illustrates the point that I am trying to make. About two years ago the Public Works Committee had a bill come before it that allowed left turns on red from a one-way to another one-way. It was sent from the Public Works Committee. It was passed by this body. The bill in state law now says that you can make a left turn on red from a one-way to another one-way unless there is a sign up prohibiting the turn, exactly as it is on right turns

on red. Now, after that bill took effect, we were informed, or I noticed there was an article in the paper that indicated that the City of Omaha, because of previous ordinance that they had, was going to enforce it just the other way around. They were going to say you could make a left turn on red if there was a sign up saying you could. Now, I don't know whether they've continued doing it that way now, but that's the way the ordinance indicated originally that you had to have a sign up saying you could, therefore, they were going to continue doing it that way, just backward from state law. Now, I am not suggesting Omaha always does it that way, but I certainly would suggest that their regulations should be in conformity, and that was what I was trying to suggest with the State Fire Marshal's office. I don't particularly care whether it's people in the State Fire Marshal's office or the people of Omaha investigating...or not investigating but permitting certain construction to be built, but I think they should be uniform, and I think the state law should prevail, or the state regulations should prevail. And it seems to me that that's what we are doing right here. If the State Fire Marshal's office has the authority and they do, then let's let them use that authority in the investigation of fires now. Fires occur and are disastrous no matter where they occur. I suspect they occur in proportion to the number of people there are in the area, so obviously there would be more fires in the Omaha area. But I would remind this body that the large metropolitan City of Kearney has had a number of fires this past winter. Maybe we should allow those people to have this same authority. But they are not asking for it. They are willing to let the process work as it should work. Thank you, Mr. President.

SENATOR CLARK: Senator Chambers, do you wish to close?

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I don't know if everybody listened to those things Senator Labedz read, but after she read them and there is absolutely no sense to them or connection with this bill, I think being intelligent as she is, she became embarrassed and that's why she voted to cease debate hoping that she wouldn't have to go through that. Talking about somebody jumping on a cruiser and going berserk is the reason that a fire marshal ought to carry a pistol, and in every instance the individual involved was apprehended apparently by the police. So the arson investigator having a gun wouldn't have made any difference. But remember this, at the hearing nobody from the police division supported

this bill. Nobody from the City Attorney's office was there to discuss the very serious problems of liability. Now, we have a situation where before an arrest can be made there must be a determination that a crime was committed. So how do you determine the crime was committed? The arson investigator conducts an investigation. It is not enough for the arson investigator to see somebody and say, aha, I think this person is here and he or she started this fire, and makes an arrest. There has to be a preliminary investigation and this was established at the hearing, a determination that arson was committed. Maybe somebody from the City Attorney's office did testify because...yes, he did, I asked him this question. When establishing probable cause for an arrest, isn't it necessary that first you must have a crime, then probable cause that the persons arrested committed it? He said, yes, there cannot be an arrest prior to the establishment of the commission of a crime. So in many instances, if a person were there who were suspect, there has not even been a determination that a crime has been committed. If a bad arrest is made and is found later by evidence that this person may have committed it, but the only evidence that would have been admissible was based on the arrest, and the arrest was made without probable cause, the evidence would be suppressed and the case would be dismissed. It is not enough merely to go through a block of training in handling firearms to be competent in their use or even knowing when to draw it. You have to have experience and seasoning so that you don't panic like an ordinary person untrained may do and draw that gun out of fear. Senator Newell is asking that you arm civilians and send them through a perfunctory training period. Now, even though they want to be police officers for some purposes, and peace officers for others, they don't want to take the traffic training or some of the other aspects of training that police officers and peace officers have to take. So, I think what you ought to do is look at this bill and see it for what it is, a granting of an abundance of power to these fire people that no other officer or official in the state possesses. One thing that I hope those who are concerned about the sanctity of a person's home and documents will look at is on page 3 where they can require you to produce documents. There are no guidelines other than to say, any documents or objects which are deemed pertinent to the investigation. Who does the deeming? Whoever issues the subpoena. Who issues the subpoena? The fire investigator. What legal training does he have to equip him to know what probable cause is or any other thing? Nothing. There

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LB 205

is no requirement of that. I say that the team concept that they have in Omaha right now of an arson investigator and a police officer has resulted in an increase in arrests and convictions and no fire investigator being injured. So I think there is no need for this bill and I hope you will support this motion to indefinitely postpone.

SENATOR CLARK: The question before the House is to indefinitely postpone LB 205. All those in favor vote aye. All those opposed vote nay. Have you all voted? Have you all voted on indefinitely postponing LB 205? Record the vote.

CLERK: 8 ayes, 22 nays on the motion to indefinitely postpone, Mr. President.

SENATOR CLARK: The motion lost.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CLARK: Senator Newell, what do you want to do with the bill?

SENATOR NEWELL: Mr. President and members of the body, it is indeed difficult for me to deal with some of the issues that have been brought forth in this argument, in this discussion. We have provided some examples, some case histories of what the problems have been. We are asking for similar authority as the State Fire Marshal's office because Omaha has, in fact, better than 50 percent of the arson fires in the state. Now these individuals who are going to be authorized, this will, in fact, have to take the same training. This is limited to the City of Omaha. Senator Vickers' arguments I think have been dealt with. We have here a well thought out bill, a bill in which there is a great deal of support from the insurance industry, from the fire union, from the city. In fact, one of Senator Chambers' arguments was that no one from the City Attorney's office was down to testify that. Well, he said he corrected it and that is, thereby stands the correction. This is authority that I think the City of Omaha desperately needs. These individuals are frequently put in danger and the question of whether or not they should be authorized those kinds of safeties that other police officers are granted I think is imperative. This bill has been well thought out. It is no different from some of the other granting of police powers. The difference here is that, in fact, these individuals will be required to take the training. They will, in fact, have to be trained. They are trained in

fire investigation. They have been on the force twenty some years and they will be required to get the training. We are not granting them the power of a posse. We are not granting them those kinds of powers at all. The fears that have been initiated here are ones I think that are not very legitimate, in fact, they are more principled than I think they are legitimate. I have made those arguments. This is a good bill. It is supported by many and I urge this body to accept and advance this bill. Thank you.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The motion is to advance 205 to E & R for Review. Senator Chambers, your light is on.

SENATOR CHAMBERS: Mr. President, I am sure that nobody else probably wants to speak on this bill, but I still have to. I say again that it grants too much power to people who are not equipped to have it and who don't even need it. Judges, I say again, don't have this kind of power. The Attorney General doesn't have it. Police officers don't have it. So those of you who don't live in Omaha can very easily say, it doesn't matter what you do in a situation like Omaha's, which happens to be the largest city in the state. But I think it is important. And the thing that disappoints me is that we do have attorneys in the body, and when an issue comes up that they are concerned about...I have been solicited by various attorneys to speak on issues that were before the body, then we have something again that goes to the nature of the law itself and the powers, police powers that are given to agents of the state, and the attorneys are silent. I don't know whether they are afraid to speak, whether somebody has gotten to them or what the problem is. But I am going to listen in the future for the kind of issues that seem important enough for them to discuss with the body. Maybe they out...maybe Senator Johnson got whipped down by that little set-to we had this morning. But what they can all learn from me is how when you are dealing with issues time after time, day after day, you have to be strong physically, mentally, intellectually and principle wise, so that every time a challenge arises you meet it. And I know this might seem to be one of those issues which has been beat to death. But the problem is, the dog has not died. So I have an obligation to continue pushing on the issue. I know there are some people who understand the situation dealing with warrants and subpoenas, and hailing people from their homes to various places for hearings at any time of the day or the night,

commanding that you produce any paper or document that some fireman says you have to produce. That is the power that you other Senators who don't live in Omaha are granting to the fire division, and if you don't believe it, read the bill. On page 3, "any person subpoenaed shall produce any books, papers, documents or material object which is deemed pertinent to the investigation". It doesn't even say material to the investigation, pertinent, touching on it. And do you know who has sole discretion to determine this? A fireman. Who all has the power to authorize the issuing of these subpoenas? Chief Investigator of the Fire Department's Fire Investigation Unit, or other designated head of such unit, or the Chief of the Fire Department, or his or her regularly authorized delegate. This is awesome power. The judges don't even authorize the bailiff to issue warrants and subpoenas. But that is what is being given in this bill so casually. The rest of you can ignore it. I won't. The only way anybody will have of being aware that somebody thought this was a serious issue, a problem worthy of consideration, is to read the transcriptions of this debate, and the only reason I can see that somebody would have to read these transcriptions is if there is an abuse of power under this bill as I am certain will occur. But if you give this bill to Omaha and the people become aware of the fact that it is passed and they heard Senator Newell say that when the fire truck arrives that these people carrying pistols have arrived too. Then if there is jeopardy, everybody on that truck is placed under it. I am opposed to this bill. I think it is totally unnecessary, and for the Legislature to enact a bill like this giving power that it would give to no other official in the state is arbitrary and absolutely irresponsible and inexcusable. I doubt that there is any chance for me to change anybody's mind because I think the votes on this bill are not on its merits but rather on friendship and other considerations. I have done all that I think is within my power to do to stop this bill. I won't have anything else to say on it on General File, but because it is so serious on Select, Senator Newell, you can look for me again.

SPEAKER MARVEL: The motion is the advancement of the bill. Senator Newell, do you wish to close?

SENATOR NEWELL: Well, Mr. President, Senator Chambers does make me quiver. His tenacity is well known, and his arguments have been restated on numerous occasions. I would like to just make this point very quickly, and I

think it is a very legitimate point that this is no different powers than other fire investigators across the state have. Senator Chambers just doesn't want them to have those powers in Omaha and I think his animosity and contempt is very traditional and certainly within his philosophical attitude and framework. I would like to give one example, one example. You know, Senator Chambers indicates that these firemen are just firemen, they are not important people, that they haven't had any real experience. You know, any new police officer goes through the same school that these firemen are going to have to go through. They don't have any more experience either. Now the situation is that these individuals are not going to be using these kinds of powers at all. But there are cases....not very frequently, but there are cases, in fact, when they are going to need to do that, and Senator Labeledz only read just a couple and I would like to read one more. This was...a suspect was drunk and made a threat to his wife that he would burn down the building with her in it and their baby. The suspect poured gasoline all over the stairway leading to the third floor. The wife called her parents who notified 911 to send police. When police arrived, the suspect threw a lit rag at the officers down the gasoline soaked stairs and set off an explosion. The officers were able to radio for help and the fire division and other police arrived, surrounding the building and the suspect was apprehended. He was charged and booked with two counts of attempted murder and one count of first degree arson. These are not...these are not people who are not desirous upon occasion of committing great bodily harm, and these arson investigators need the protection that others in a similar kind of work must have. With that, I urge the advancement of LB 205.

SPEAKER MARVEL: The motion is the advancement of LB 205. All those in favor vote aye, opposed vote no. Have you all voted? Have you all voted? Have you all voted? We are voting on the advancement of LB 205. Have you all voted? Senator Newell.

SENATOR NEWELL: We wouldn't have to have a Call of the House. Mr. President, there doesn't seem to be any rush to kind of resolve this issue.

SPEAKER MARVEL: Record.

CLERK: I have had a request for a record vote. (Read the record vote as found on page 662 of the Legislative Journal.) 27 ayes, 11 ayes, Mr. President.

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LR 24
LB 205, 409, 446

SPEAKER MARVEL: The bill is advanced. The next order of business is LB 409.

CLERK: Mr. President, if I may right before we get to that, your Committee on Government, Military and Veterans Affairs whose Chairman is Senator Kahle reports LB 446 to General File with amendments. Senator Kahle would like to print amendments to LB 446. (See pages 663 through 668 of the Legislative Journal.)

Mr. President, new resolution offered by Senator Goodrich. (Read LR 24 as found on pages 662 and 663 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, LB 409 was introduced by Senator Haberman. (Read title to LB 409.) The bill was read on January 20 of this year. It was referred to the Banking Committee for public hearing. The bill was advanced to General File. There are committee amendments pending by the Banking, Commerce and Insurance Committee, Mr. President.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, normally as committee Chairman I would present these amendments but my good friend, Senator Haberman, has been passing out literature indicating that he is not getting enough attention and publicity, so I graciously yield to the Vice Chairman of the Banking, Commerce and Insurance Committee to handle the amendments on this bill.

SENATOR HABERMAN: Mr. President and members of the Legislature, thank you, John, for your endorsement of being an excellent, outstanding Vice President of the Banking, Insurance and Commerce Committee. The amendments....I thanked him for it. Oh, isn't that what he said? The amendments reduce the Continuing Education hours from 24 hours to 6 hours every two years. It deletes the language that you have to be of good moral character to be a licensee and adds to read, "not have been convicted of a felony or a crime involving moral turpitude", and I move for the adoption of the amendments, Mr. President.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to LB 409. Senator Chambers, your light is on.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to ask Senator DeCamp, the Chairman,

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LB 34, 58, 114, 125, 144,
195, 205, 246, 272, 273,
273A, 325, 355, 359, 388,
409, 491, 546

the motion is the suspension of the rules to introduce a bill as explained by Senator Newell. All those in favor of suspending the rules vote aye, opposed vote no. Record the vote, Mr. Clerk.

CLERK: 30 ayes, 11 nays to suspend the rules and offer introduction, Mr. President.

SPEAKER MARVEL: The motion is adopted.

CLERK: Mr. President, a new bill, LB 546. (Title read.) While we are waiting, your committee on Urban Affairs whose Chairman is Senator Landis to whom we referred LB 58 reports the same back to the Legislature to General File with amendments; 359 General File with amendments; 491 General File with amendments. (Signed) Senator Landis.

Senator DeCamp would like to print amendments to LB 34 in the Journal.

Mr. President, your committee on Enrollment & Review respectfully reports they have carefully examined and reviewed LB 205 and recommend that same be placed on Select File with amendments; 409 Select File with amendments; 195 Select File; 272 Select File; 273 Select File with amendments; 273A Select File; 355 Select File with amendments; 114 Select File; 246 Select File, 325 Select File, 388 Select File with amendments. (Signed) Senator Kilgarin, Chair.

SPEAKER MARVEL: May I have your attention to discuss item #6 and item #6 has to do with the continuation of the discussion on LB 125. There is a request that the bill be laid over until Monday. I have contacted two of the introducers. They are amenable to laying it over until Monday. If we do this, I think we must do it with the understanding that we are not establishing a precedent. But anyway, is there objection to laying over 125 until Monday? Senator Higgins.

SENATOR HIGGINS: Mr. President, who requested that we lay it over?

SPEAKER MARVEL: Senator Haberman.

SENATOR HIGGINS: Thank you.

SPEAKER MARVEL: Any other discussion? Okay, the bill will be laid over until Monday. We now move to General File, LB 144, Mr. Clerk.

March 3, 1981

LB 205, 459

vote aye, opposed vote no. We are voting on the Fowler amendment to LB 459. Record.

CLERK: 25 ayes, 0 nays on adoption of Senator Fowler's amendment, Mr. President.

SPEAKER MARVEL: The motion is carried. The amendment is adopted.

CLERK: Mr. President, Senator Dworak now moves to amend the bill. (Read Dworak amendment found on page 733 of the Journal.)

SPEAKER MARVEL: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, this amendment would affect four people by changing the election date from September 1, 1977, to November 1, 1981. Senator Fowler has no objection to this amendment and has indicated to me that the fiscal impact is rather small. I move the adoption of the amendment.

SPEAKER MARVEL: All those in favor of the Dworak amendment to 459 vote aye, opposed vote no. Have you all voted? Record.

CLERK: 27 ayes, 0 nays on adoption of Senator Dworak's amendment, Mr. President.

SPEAKER MARVEL: The motion is carried. The amendment is adopted.

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER MARVEL: The motion is to advance LB 459 to E & R for engrossment. All those in favor vote aye, opposed vote no. Record.

CLERK: 29 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried and the bill is advanced. The next bill is LB 205.

CLERK: Mr. President, there are E & R amendments to LB 205.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: Mr. Speaker, I move the E & R amendments to LB 205.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. Motion carried. The amendment is adopted. Do you have another amendment?

March 3, 1981

LB 195, 205, 409

CLERK: I have nothing further on the bill, Mr. President.

SPEAKER MARVEL: Senator Kilgarin, do you want to advance the bill, 205 to E & R for engrossment.

SENATOR KILGARIN: I move LB 205 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion carried. The bill is advanced. The next item, LB 409.

CLERK: There are E & R amendments to LB 409, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 409.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. The motion carried. The E & R amendment is adopted.

CLERK: Nothing further on the bill, Senator.

SENATOR KILGARIN: I move LB 409 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion carried. The bill is advanced. 195.

CLERK: I have nothing on the bill, Senator.

SENATOR KILGARIN: I move LB 195 be advanced to E & R for engrossment.

SPEAKER MARVEL: Senator Kahle, your light is on.

SENATOR KAHLE: Mr. Speaker, members, I'm not sure I am even on the right bill but I have been getting some information on small insurance companies and I wonder if Senator Warner would enlighten me as to what this does and if this is the bill they are worried about.

SENATOR WARNER: Senator Kahle, I am not aware of any... Can you give me a clue? This affects fire and casualty only. Is that the kind...I don't know...there is a bill that I would guess you may be getting...because I have had questions which deal with who can sell it. Is that the one you are thinking of?

SENATOR KAHLE: Well the inquiry that I had was from a party that had actually several small insurance companies and I think you're right. I think it is the other bill.

LB 9, 34, 51, 78, 91, 124,
125, 133, 150, 178, 195,
205, 223, 272, 273, 273A
277, 317, 320, 321, 345
363, 376, 409, 439, 459

March 6, 1981

PRESIDENT LUEDTKE PRESIDING

REVEREND GERALD LUNDBY: (Prayer offered.)

PRESIDENT: Senator Higgins, do you want to put your light on and then we will make sure we have got enough. Thank you. Record the presence, Mr. Clerk.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: A quorum being present, is there any corrections to the Journal?

CLERK: I have no corrections to the Journal, Mr. President.

PRESIDENT: All right, the Journal will stand correct as published. Any messages, reports or announcements?

CLERK: Yes, sir, I do. Mr. President, first of all, your committee on Education whose Chairman is Senator Koch to whom was referred LB 78 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; LB 317 General File with amendments; 320 General File with amendments; 321 General File with amendments; 91 Indefinitely postponed; 223 Indefinitely postponed; 363 Indefinitely postponed; 439 Indefinitely postponed. (Signed) Senator Koch, Chair.

Mr. President, your committee on Banking, Commerce and Insurance whose Chairman is Senator DeCamp to whom was referred LB 376 reports LB 376 to General File with amendments; LB 133 Indefinitely postponed; and 277 Indefinitely postponed. (Signed) Senator DeCamp, Chair.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 51 and find the same correctly engrossed; LB 125 correctly engrossed; 150 correctly engrossed; 195 correctly engrossed; 205 correctly engrossed; 272 correctly engrossed; 273 correctly engrossed; 273A correctly engrossed; 409 correctly engrossed; and 459 correctly engrossed. (Signed) Senator Kilgarin, Chair.

Mr. President, LB 9, 34, 124, 178 and 345 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 9, LB 34, LB 124, LB 178, and LB 345.

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LB 204A, 205, 169, 151

SENATOR WAGNER: I would move the A bill, Mr. Speaker.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record.

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Now do you have something to read in?

CLERK: Yes, sir. Mr. President, first of all I have an announcement from the Speaker regarding the submission of priority bill deadline. That will be inserted in the Journal. (See page 836 of the Journal.)

Senator Beutler would like to print amendments to LB 205 in the Journal; Senator Vickers to amend LB 151 and Senator Fowler would like unanimous consent to have his name added to LB 169 as cointroducer. (See pages 837-838 of the Legislative Journal.)

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: That is all I have, Mr. President.

SPEAKER MARVEL: Senator Remmers, would you like to adjourn us until tomorrow at nine o'clock.

SENATOR REMMERS: Mr. Speaker, I move that we adjourn until tomorrow at nine o'clock.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. The motion is carried. We are adjourned until 9:00 a.m., March 11, 1981.

Edited by *Arleen McCrory*
Arleen McCrory

March 11, 1981

LB 195E, 205

CLERK: (Read LB 195E on Final Reading.)

SPEAKER MARVEL: Hold the phone. All legislators are to be in their seats. We will not continue on Final Reading until you follow the rules. Okay, continue.

CLERK: (Reading of LB 195E continued.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass with the emergency clause attached? All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: (Record vote read. See pages 850 and 851, Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The Clerk will now read on Final Reading LB 205.

CLERK: Mr. President, I have a motion on the desk.

SPEAKER MARVEL: Read the motion.

CLERK: Senator Beutler moves to return LB 205 to Select File for specific amendment. The amendment is found on page 837 of the Legislative Journal.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, the bill we are talking about is Senator Newell's bill that tries to help out with the problem, and does I think or probably would, help out with the problem of dealing with arson in the City of Omaha. The bill basically provided a whole arsenal of additional powers to the Fire Department in Omaha to deal with arson investigations. The objections raised very strongly by Senator Chambers on General File and by myself had to do with the nature of these powers and whether it was really advantageous in the long run to give to additional members of our government the powers to do such things as carry weapons, issue subpoenas, involve themselves in investigations without approval by the court and some other items that it seems are being done more and more these days in an attempt to deal with the crime problem. The Welfare Department, for example, has some additional powers now without going through the courts. I am not at all convinced that this general trend is a very healthy trend. At any rate, I think what needs to

be done is for somebody to take an overall view of the problem to see which different agencies have the power to issue subpoenas and instigate investigations. The problem, you see, with this particular bill, for example, is that one of these investigators from the Fire Department can simply decide on his own to come into my business and to get my income tax records and to get my insurance records and to require all my records without approval from any court or from any official in charge. And this kind of approval from an experienced person I think is a minimal requirement. Otherwise you are going to have inexperienced people snooping into the business of citizens of this state in a number of different areas and arson is an area where it would be snooping into the business interest to a large extent of business people in this state. My amendments do not seek to kill the bill or to effectively destroy it in any manner but they do seek to add some moderate safeguards to Senator Newell's idea which I hope are acceptable to you. Basically what I am doing is this. With regard to training requirements, I am asking that anybody who exercises this kind of power be a part of the Fire Department for at least five years, have some experience, have some idea of what an arson investigation is and when you really need to use a subpoena and when not and to have some additional training. In addition, the second change is instead of saying that any one of these investigators that might be appointed can simply decide on his own on a whim, perhaps, to issue a subpoena, that he has to get the approval of the Chief of the Fire Department. So that is the second change, get the approval of the Chief of the Fire Department. The third change basically has to do with the procedures, and what I have done in that regard is simply make the procedures that would be used, make them conform to the procedures presently in effect for the Fire Marshal, for the State Fire Marshal who does the investigations in most all areas of the state outside of Omaha. Therefore, we don't have another whole set of law applying basically to the same thing but different simply because it applies to a different entity. It makes the law consistent. There is a fourth change that is merely a technical change, and those, basically, are my ideas and I think that perhaps with some slight variations Senator Newell does not object to those changes. Thank you.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Newell.

SENATOR NEWELL: Well, members of the body, Senator Beutler, Senator Beutler brought these proposals to me and there are

some slight variations and I am having the amendment xeroxed, but for those who were following this issue, I would like to just kind of explain what the differences between what Chris is offering and what I have suggested to Chris might be an acceptable substitution and I will explain why. Most of it deals in the area of Section 1 in the Beutler amendments. Now that starts out "Such person shall in addition have been an active member of an organized fire department for a minimum of five years." Now I am proposing that we change that to "six years" because six years is the minimum it takes to become a chief, I mean it takes to become a captain in the fire department. So we would take that from "five" to "six" years. The other thing is, the second part of that says "three years of which shall have been in the capacity of an officer". Well, I think what Senator Beutler was intending there is that they had had to have at least three years as a firefighter and we would like to strike that, Chris, so it is six years as a firefighter which would even further clarify and further strengthen that provision. And then to strike out the other part of the language which deals with the training course, "either fire department drill school, vocational course, or fire college". Now the reason we want to do that is because there are right presently no state standards, no state standards or explanations of what these schools are and the language we would propose would be, "and shall meet the minimum qualifications and training standards established for the city for all firefighters". Since there are no state standards, we are basically saying that we are going to use the city standards and that further clarifies that they would have to be a trained officer for six years, as an officer, not three years an officer. So with those amendments, Senator Beutler, if you could accept those, I would be willing to accept your amendment. I think basically Senator Beutler's amendment does clarify, it does tighten up to make sure that how and when and that there has to be authorization by the fire chief for the use of the subpoena powers, et cetera. So with that, I will hand these to Chris, and hopefully he will be able to accept them.

SENATOR NICHOL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Unicameral, I have a question of Senator Beutler.

SENATOR NICHOL: Senator Beyer, will you respond? Senator Beutler, I guess it is.

SENATOR HABERMAN: I ran into a situation in my area in

regards to this. Now as it is now cannot the fire department go to the county attorney's office and be issued a subpoena? I know that they can go to the county attorney's office, this happened in a small town in western Nebraska, and got a subpoena to get a hold of the phone calls made from a private individual's home and the telephone company did not notify this individual for ninety days that they had given this information to the Fire Marshal's Office. So if they have the power to go to the county attorney's office and get a subpoena to get somebody's private phone bill so they can check out the phone numbers, wouldn't they have the power now to go to a county attorney's office and get a subpoena in the case of an arson question?

SENATOR BEUTLER: Senator Haberman, I am speaking a little bit off the top of my head because I haven't researched that part of it but my answer to that would probably be, yes, because arson is a crime. The county attorney has the power to investigate that as well as fire department personnel and he can go through the normal system that we use for (interruption).

SENATOR HABERMAN: Okay, fine. What the Fire Marshal's Department did was went and got the subpoena and served it on the telephone company so, therefore, I feel this language of giving this power to an arson investigator of any rank or title the power of subpoena is unnecessary because they can already do it. All they have to do is go up to the county attorney's office and have them issue the subpoena. So I think the bill goes much further and I am going to support bringing it back and hope that we can make some changes in this because I think it is a dangerous thing to say to someone, "Well, I am on the arson squad. I am going to subpoena so-and-so's records." I think this is pretty dangerous so I am going to support bringing it back and to make some changes.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Beutler's amendments are merely cosmetic. They don't get to the real issue involved in this bill which is the bestowing of tremendous power on firefighters. What you need to do is look not only at Sections 2 and 3 which Senator Beutler is attempting to amend but Section 1. That is where the damage occurs, and so that I can be as brief as possible and as much to the point as possible, I will tell you these things. On page 2, in line 5, in line 6,

you see that these persons are classified as peace officers. Then when you get to the end of line 9 and the beginning of line 10, they have all the powers of police officers when it comes to issuing warrants. So in addition to being considered peace officers and police officers, and in a criminal type statute when you have words, even though they seem similar, each one is considered to have a different meaning, otherwise there would be no purpose in having them there and the criminal law is not considered to be redundant when it has words contained within its provisions. But here are the powers that are given to these firefighters: One, arrest; two, to search; three, to make seizures; four, to secure and serve warrants, the same as police; five, to carry weapons; and, six, to issue these subpoenas on their own. So I think that Senator Beutler's amendments do not go to the real problem connected with this bill and I have a motion up there to return the bill to strike the enacting clause and I think that would be the cleanest way to deal with it because there has been no showing that with the team concept of a firefighter and a police officer in Omaha that arsons are not properly investigated or adequately investigated. But on the chance that you might buy Senator Beutler's motion, I would like to ask him a couple of questions related to the language of his amendment itself. Senator Beutler, and I can be asking the question. You mentioned in your new Section 2, at line 16, "the power to summon and compel the attendance of witnesses", and so forth. Then in line 12 you used the words "Such summons" again, and in line 24, you say it shall have the same effect as subpoenas. Then when we go over to the other page in line 7, "Disobedience of any subpoena", are we talking about two different documents? Is the summons in reality a subpoena or are there two different legal documents here involved?

SENATOR BEUTLER: (Mike off), Senator Chambers.

SENATOR CHAMBERS: Then should subpoena be substituted when the document itself is being referred to rather than the procedure. Like you can say he summons them to come but it seems to me that (interruption).

SENATOR BEUTLER: That would probably be cleaner language.

SENATOR CHAMBERS: Now, if you will go with me to the bottom of your amendment, line 17 near the bottom of the page.

SENATOR BEUTLER: This is existing language, by the way, Senator Chambers.

SENATOR CHAMBERS: Okay, well, I am still concerned about it. There are things in the law that exist right now that I have tried to get out because they are not good even there. In line 17, "Disobeys any..." (Interruption).

SENATOR BEUTLER: What page are we on now, I am sorry.

SENATOR CHAMBERS: Okay, page 1 of the amendment. It would be 837 of the Journal. Line 17 at the bottom, "disobeys any lawful order of the arson investigator or chief of the department in relation to any investigation", what would a lawful order be? They can tell you to do anything, so what would a lawful order consist of?

SENATOR BEUTLER: Well, it is broad. A lawful order, I suppose, is basically anything that is not otherwise prohibited by law.

SENATOR CHAMBERS: So he could tell people just to get off of the street if he wanted to?

SENATOR BEUTLER: If it is related to the investigation, I suppose it is.

SPEAKER MARVEL: One minute left.

SENATOR CHAMBERS: And when we turn the page and get to line 20, "to produce any paper, book, or document touching any matter under examination", any aspect of it that a document or paper could touch on whether it was directly implicated or not could be ordered produced?

SENATOR BEUTLER: It would seem so to me.

SENATOR CHAMBERS: I hope the members are listening.

SPEAKER MARVEL: Senator Newell.

SENATOR NEWELL: Mr. President, members of the body, the Beutler amendment further clarifies just how these subpoenas powers would be used and utilized. I think that the question that Senator Chambers is trying to raise, is trying to create doubts in the minds of some that this is not, in fact, further clarifying but it is a much broadened. Presently this statute that Senator Beutler offered is in the same statutory power that the Fire Marshal has. It is clarification. The operative word there is related to the investigation and so I think that that is not a major concern. I would accept the Beutler amendments. I do think they tighten down the authority. They authorize one

person in the department instead of authorizing everyone in the department to make the determination whether the subpoena can be used so that any officer that is out there doing investigative work is not going to have that authority unless, in fact, he has gotten that written out by the chief of the arson division. So frankly I think that not only is it much stricter in terms of that but it provides many of the safeguards that the members of this body have asked me to deal with. So with that I would urge the acceptance of the Beutler amendment.

SPEAKER MARVEL: Is Senator Beutler in the room? Senator Beutler, do you want to explain to the body what you have done in substituting one bill for another so they know exactly what they are voting on?

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, what has been substituted for my original amendments are basically my original amendments, by and large, with a couple of changes in Section 1 that Senator Newell requested in order that the amendments would better conform to existing procedure and structure in the Omaha Fire Department. So what we are doing is changing in paragraph one instead of requiring them to be a member of the fire department for five years, we are saying six years, and then instead of specifically specifying a certificate from a certain type of training course should be had, we are saying shall meet the minimal qualifications in training standards established by the city for all firefighters, and those changes, assuming that you accept the philosophy of the bill generally, should make the bill more reasonable in every regard. Thank you.

SPEAKER MARVEL: The motion is to return the bill to Select File. All those in favor of that motion vote aye...excuse me, Senator Chambers, for what purpose do you rise?

SENATOR CHAMBERS: He wasn't closing, was he? Because I did have my light on even before he was called to speak. I ran out of time the other time. But if you rule that he was closing I am not going to challenge it.

SPEAKER MARVEL: No, I didn't indicate that.

SENATOR CHAMBERS: And I will be brief. Members of the Legislature, the purpose that I had in speaking was to try to persuade you not to return this bill to adopt the amendment that Senator Beutler is offering. It does not really get to the heart of the problem. It changes some words without changing the real substance that creates the

problem. These firefighters don't need to have this kind of power, and as Senator Haberman pointed out and Senator Beutler agreed to, they can obtain subpoenas now. There would be a more careful scrutiny of the circumstances under which a subpoena is issued. When you give one person who is not a law enforcement officer, who is not an officer of the court, the power to compel other individuals to appear in person and to produce documents and papers, that is an awesome power, and firefighters do not need to have that. Any documents and papers they need to obtain there is machinery available in the law right now for doing that. So I hope that you will not accept this motion to return the bill, but rather than that, consider the one that I have following Senator Beutler's.

SPEAKER MARVEL: Senator Beutler, do you wish to close on this amendment or are you ready for the vote? Okay. All those in favor of returning the bill to Select File vote aye, opposed vote no. Record the vote.

CLERK: 25 ayes, 4 nays on the motion to return the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is returned. And now we are in the process of adopting the specific amendments to the bill. The bill has been returned. Now, Senator Chambers, do you wish the floor? Yes, sir.

SENATOR CHAMBERS: Mr. Chairman, when a bill is returned for a specific amendment, that amendment itself, can it be amended or we can only deal with the specific amendment for which it was returned?

SPEAKER MARVEL: We have to confine ourselves to the specific amendment.

SENATOR CHAMBERS: So I would like to know exactly what it is we are voting on then because there was a discussion between Senator Newell and Senator Beutler and I don't know what is really before us as the specific amendment?

SPEAKER MARVEL: Senator Beutler, do you wish to respond?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Chambers, as it stands what we are doing is this right now, it is basically my amendments as modified by Senator Newell, and the first thing it does is require additional training on the part of those who are exercising the power of subpoena (interruption).

SENATOR CHAMBERS: That is not...

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SPEAKER MARVEL: Are we...we are talking about the amendment on page 837?

SENATOR CHAMBERS: Right now I don't want an explanation of the amendment itself. I want the language of the amendment and how we got to that point.

SPEAKER MARVEL: Do you want to clarify your amendment, Senator Beutler? Senator Beutler, do you wish to close on your amendment?

SENATOR BEUTLER: Mr. Speaker, I don't want to take up a great deal of time on a bill of this nature, just a note of clarification. What we are voting on is what I explained but technically it is not the amendment that is shown in the Journal. It is the substituted amendment which was the agreed upon compromise between myself and Senator Newell so that is what we are actually voting on. I have explained that. If there is further confusion I would be happy to explain it again.

SPEAKER MARVEL: Senator Newell, do you wish to be recognized?

SENATOR NEWELL: Well, because I think there is some confusion I would like to explain basically the difference between what is in the Journal and what is being proposed. It is very simple. It is only in the first section that there has been any change and that change is that we have said...we have taken it from "five" to "six" years as a minimum and we have required that they meet the minimum qualifications of training standards established by city firefighters since in fact there are no state standards which Senator Beutler's original amendment did. That is the only place that there has been any changes. Basically that further clarifies and further strengthens the intent of the Beutler amendment.

SPEAKER MARVEL: Senator Chambers, your light is on.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have got to vindicate on the record my concern for the well-being of the citizens of the state, and if nobody listens or is concerned on this issue, it no longer matters to me. But what I think of myself and my own integrity requires me to put some things in the record. This is a trash bill. I said it before and I will say it again. If you look at your Final Reading copy on page 2, you are defining these individuals as peace officers which means they have every power to enforce every law of the State of Nebraska whether it deals with traffic, crimes or

whatever. I mentioned this earlier and it made nobody any difference. Yet when they get their training, they don't have to take the training that another peace officer has to take to have that designation. You are creating freaks, mutations and hybrids in law enforcement with this bill, and with all the talk of being concerned about the criminal justice system, you continue blithely, and I would say in ignorance of the true facts of the case, to encumber that system with all kind of monstrosities. With the criminal justice system of Nebraska to be portrayed as a being, a human being, it would be covered with knots, bumps, warts and every other kind of malignant growth that we define as a cancer. Then you wonder why the system doesn't work. You cripple it. You bring it into contempt. You give powers of law enforcement to anybody and you define a peace officer in one section of the statute as one thing. Then you define a firefighter as a peace officer but doesn't have to take the training that the other peace officers have to take. What kind of nonsense is that. Then when your constituents get on you about the way the judges try to administer these insane laws, you join them in condemning the judiciary. The judges are put in a position of trying to bring some sanity out of the insanity that this Legislature continually foments. It is a serious matter that we are dealing with here today. Senator Newell knows these three or four people on the Fire Department in Omaha, these middleaged people who want to carry pistols and make people answer subpoenas. But what happens when Senator Newell is no longer in the Legislature and what happens when these four middleaged gentlemen retire? Then we have a situation of other individuals, not known to Senator Newell and maybe not approved of by Senator Newell, who still have all of this power that he is giving only because he trust the integrity of the individuals who hold that position now. We should never enact a law that creates new powers over citizens based on the personalities of the individuals who hold that office at the moment. We have got to realize that we are creating a system. What we are doing is we are creating an aberration on a system and it is not wise. This bill proves that you cannot trust the committee system of the Nebraska Legislature because people on those committees don't have the knowledge to competently deal with the issues that come before them. I don't know what can be said to make you understand the seriousness of this bill, but since you have decided to run headlong and do this thing, I want to separate myself from it by as much distance as I possibly can. If words could persuade, I would use those words but I am not speaking at this point to persuade anybody, I am speaking only to separate myself from the insanity of this bill, the foolishness of the

Legislature in enacting it, and I would defy the members of this Legislature as a whole to be able to take this bill back to their constituents and explain what they have wrought and why they did it.

SPEAKER MARVEL: You have thirty seconds.

SENATOR CHAMBERS: What you ought to do at the least is to not readvance this bill and give yourself some time to think about it but thoughtfulness has not been the long suit of any legislative body whether at the state, federal or international level. So I have done with the matter.

SPEAKER MARVEL: Senator Schmit, your light is on. Do you wish to be recognized?

SENATOR SCHMIT: Mr. President and members of the Legislature, I have to join Senator Chambers in opposition to the amendments because I think you understand by now the amendments are intended to perhaps sugarcoat a very tasteless bill. I think that we should stop and take a look, not only at this bill, but this Legislature has advanced and passed on Final Reading a number of bills of far ranging scope, and as I tried to point out yesterday or the day before, I believe it was yesterday, on LB 190, if we are not careful we are going to be called to account for some of these things. And so I am going to go on record, I think that the passage of this bill is wrong. You are giving people authority which goes far beyond that which you believe you are granting. I think the bill deserves to be killed. I think that to sweeten the bill to the point that it might be acceptable to a few more of us is a mistake. I think the basic injustices, the basic dangers of the bill are still intact and I certainly cannot support it. I would oppose the Beutler amendments and I would oppose the bill. I think Senator Chambers has given you the reasons very emphatically as to why you should, but I want to call your attention once again, we have not debated many of these bills in depth as we should have. They have passed with minimal debate and the time will come when we will be called to explain why, and some of us are going to be found wanting. In the case of LB 205, the bill sets a dangerous precedent and should not be passed. The Beutler amendment should not be added. The bill should be defeated.

SPEAKER MARVEL: Senator Beutler, do you wish to close on your amendment? The motion is the adoption of the amendment. All those in favor vote aye, opposed vote no. Have you all voted? Clerk, record the vote.

CLERK: 25 ayes, 14 nays on the motion to adopt the amendment, Mr. President.

SPEAKER MARVEL: Motion lost. I am sorry. Motion carried. The motion is to readvance the bill. Senator Newell, do you want to speak to that motion?

SENATOR NEWELL: Yes, Mr. President, members of the body, the situation that we have here is one that I was very fearful might occur when I came back and accepted the Beutler amendments because what happens is is that Senator Chambers in all his eloquence gets up and says "my conscience, and your conscience, and you are not paying attention and you don't know and I am holier than you folks are, and I understand this and you don't", and that may be in part for some of us true and I knew that Senator Chambers would no matter what I tried to do in trying to tighten this up and make it very clear how this authority would be used, who would have responsibility, accepting the Beutler amendments which I thought were very responsible, and I appreciated Chris was bringing this out, tightening it up and so forth, because in fact the intent here is to authorize the police powers to four fire investigators in Omaha who deal with arson. Now arson in Omaha is a different kind of a situation than it is for the state. We are granting these four officers the same powers that the Fire Marshal has. Now the reason we are doing that is very simply this that fifty percent, fifty percent of all arsons in this state happen in Omaha, and it is not the same kind of arson. It is the kind of arson that is more revenge motivated, more venally motivated. It is not the crime of arson for insurance purposes but it substitutes as a revenge and slum clearance and those kinds of things in the older city. The kind of arson that we have in a major metropolitan area, this, by the way, as I provided for you on general file, other cities in other states have the same kind of authority, major metropolitan areas all over this country have these kinds of authorities. I provided case histories of the kinds of times when officers in Omaha were physically threatened, were under grave danger, and we had fifty some cases and we gave a representative sample of about thirteen cases that were, in fact, representative and we read those. Senator Labedz and I read those on the floor. The situation here is simply this that these powers are powers that basically are needed for the investigation for protection of four officers. Now I accepted Senator Beutler's amendments to make sure that these were people with experience, these were people that would have to go through all the training. Senator Goll, they would have to go through all the training of a police officer in the City of Omaha. They would have to go all the

training that a police officer has plus the fire training that needs to be done and so we have all these protections built into the bill.

SPEAKER MARVEL: You have one minute.

SENATOR NEWELL: We are not giving every fireman in the city the authority. We are giving those who deal with arson, a very serious and severe crime, especially in the major metropolitan areas. This is not unprecedented. It is done in many, many major metropolitan cities. It is the same authority that the Fire Marshal has today. It is a well thought out, well researched bill. I have spent two years trying to deal with this problem making sure that we have, in fact, not only a tight procedure but that we are only authorizing those who need these powers to deal with arson. The bill has been endorsed by the Chamber of Commerce, the insurance industry, firefighters, the City of Omaha. The panel from the Chamber of Commerce that went through and studied the city's operation and so forth recommended this. This is not a desire to just blanket give authority to a bunch of firefighters. It is a good bill. It deserves to be readvanced and all of the fears that have been thrown up here are basically just plain unjustified.

SPEAKER MARVEL: Senator Chambers, and then Senator Vard Johnson.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Newell made some very interesting comments, and I think if he makes a statement on this floor, he should be prepared to back it up just like I am prepared to back up what I say. So I would like to ask him some questions about his bill. He said that I made the remark that I am holier than thou and that is why you ought to take my position, that I say I know things that the rest of you may not know. Let us see whether that is true or not. Senator Newell, will you answer some questions about your bill?

SPEAKER MARVEL: Senator Newell, do you yield?

SENATOR NEWELL: Yes, sir.

SENATOR CHAMBERS: In the amendment that you offered or Senator Beutler offered with the corrections you made, what is an organized fire department?

SENATOR NEWELL: An organized fire department is one in which, in terms of the entire bill, is one in which it is paid officers who are...and organized in a municipality. So it is paid officers, basically full time employees, with the clarifi-

cations that Senator Beutler offered that requires they be full time employees with at least a minimum of five years experience.

SENATOR CHAMBERS: Well, in the first part of your amendment, you mentioned organized fire department in line 4, but then in lines 9 and 10, you say organized and paid fire department. So I am wondering if there is a difference between an organized fire department and one which is organized and paid?

SENATOR NEWELL: Senator Chambers, when you look at the entire bill, you will see that the very definition is, this bill would authorize for cities in the metropolitan class with an organized fire department and they are paid...and it says paid, so frankly all the way through the bill with these amendments, we have got to look at both the bill and the amendments, it is clear that we are talking about only Omaha and paid employees who have to be full time with five years experience at the minimum. They all, in fact, have twenty years of experience, but this says five years minimum experience.

SENATOR CHAMBERS: But when we deal with the part of a minimum and you changed it to six years in your amendment, that is what I am looking at, it just says organized fire department and not organized fire department of the metropolitan class. So you could get six years of experience on an organized fire department without having been paid wherever and then come to a metropolitan class and be qualified to hold this position?

SENATOR NEWELL: Senator Chambers, I appreciate your questions. I think they are intended more to create doubts but, frankly, the bill, as you read the bill in conjunction with the amendments, Senator Chambers, you will see that it is five years experience in an organized and paid fire department. It is a metropolitan class city. Everything is, Senator Chambers, as clear as it possibly can be in terms of who would be authorized and how they would be authorized, and, in fact, the individuals involved have twenty years experience or more. The minimum is twenty years.

SENATOR CHAMBERS: Senator Newell, what is the difference between a warrant and a subpoena?

SENATOR NEWELL: I don't know that I can define the difference between a warrant and a subpoena. What we are authorizing here is subpoena powers. The warrant may in fact be another way of determining a specific article, I think, that

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is presented to an individual but we are authorizing subpoena powers in this bill, Senator Chambers.

SENATOR CHAMBERS: But if a warrant must state with specificity the article to be seized, then why don't you just issue a subpoena because you can mention the article in the subpoena?

SENATOR NEWELL: Well, Senator Chambers, I think the purpose for these amendments were to clarify and determine with greater specificity what is authorized in this area. Frankly, these are the same requirements that are required by the State Fire Marshal today in terms of the use of subpoena powers.

SENATOR CHAMBERS: Thank you, Senator Newell.

SENATOR NEWELL: We copied that directly from that statute.

SENATOR CHAMBERS: Thank you. Members of the Legislature, you can tell from the way Senator Newell answered the questions he doesn't really know the answers. He is not acquainted with the ramifications of this bill or the language contained in it and you should look very carefully at the amendment which was offered. "Such person shall in addition have been an active member of an organized fire department for a minimum of six years and shall meet the minimum qualifications and training standards established by the city for all firefighters." In this provision, what city, and it doesn't say anything about the person being paid, and I think like when we are dealing with that abortion bill and you are using languages...language that defines and the definition at one time contains certain words, and then when you are talking about the same individual, apparently, you give a definition using different words, then you have two different entities. I don't know what an organized fire department is. I don't know what the difference between an organized and paid fire department and a simply organized fire department is. But like I say, Senator Newell has indicated that I am just trying to trick you and you know everything about the bill and so does he. Well, I hope you know a little more than he knows about it and you can do with it what you will.

SPEAKER MARVEL: You have fifteen seconds.

SENATOR CHAMBERS: But it is going to be a source of mirth for me and perhaps agony for you later on.

SPEAKER MARVEL: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I should like to encourage this body at this time not to readvance the bill to Final Reading. The reason I ask the body not to do that is not because I think the bill should be killed but rather because I think the bill should be more carefully examined and we need more time to get that examination done to make certain we are doing the right kind of things. We amended the bill this morning to make certain that Omaha arson investigators have the same ability to subpoena individuals and records as does our State Fire Marshal. And I checked the State Fire Marshal statutes and it is absolutely true that the State Fire Marshal does have this authority but the real question, in my opinion, is whether the delivery of this authority to our local firefighters is necessary, and for us to determine that it is necessary, we need to see how the State Fire Marshal has used his authority. I spoke privately with Senator Newell and Senator Newell doesn't at this juncture know the degree to which the State Fire Marshal has used his own subpoena power. It may well be, colleagues, that this is a power that the State Fire Marshal has never invoked, and if our State Fire Marshal has never invoked the power, then I question seriously the justification of its need, and if it is not needed, then there is no sense for us to take a step which really does represent an anomaly in the law enforcement process. Policemen do not have subpoena powers. County attorneys have subpoena powers when they take cases to grand juries. That is our basic investigative weapon through the grand jury process, and as you well know, grand juries are called very infrequently. By and large, most investigative work is done through the old, I guess, footwork and cloak routine where the policemen just go out and talk to witnesses, talk to people who have knowledge, and so, too, do firemen, and that is essentially it. But there are other ways of ensuring the basic civil rights of us all than to confer blanket subpoena authority on individuals and one of those ways, for example, is what we do in the area of search warrants. Local law enforcement officials may issue search warrants but they have to go to a magistrate, to a constable, I am sorry, to a magistrate or to a judge for authority, and once that is approved, then the warrant will issue. In other words, there is always a kind of a check that is operated on a law enforcement process and that is part of the give and take of our trying to root out crime on the one hand, but by the same token trying to be very careful for the civil rights of all of us. Now the other thing I think is interesting about 205 is the fact that it does authorize the arson investigator in the metropolitan city to carry a firearm.

I looked through the State Fire Marshal statutes and I was not able to find similar authorization for our State Fire Marshal. Now maybe it exists elsewhere. I couldn't just find it, I don't know, but at least in my fairly cursory examination, I could not find that authorization. It could well be that a certain amount of arson investigative work is dangerous. Again I don't know what the facts are in support of that point but we probably are a nation that is too footloose and fancy-free with firearms and it is very rare that we ever draw the line, you know, to begin to limit, to curtail the use of firearms.

SPEAKER MARVEL: You have one minute.

SENATOR V. JOHNSON: It is always to expand in a sense our prerogatives in carrying weapons. It seems to me that you and I need to spend a lot of time concerned over who can and who cannot carry firearms and I would suggest this is an opportune time for us to hold a bill, not defeat it, not kill it, not strike the enacting clause, but to hold the bill to ask its sponsor to come up with the factual justification, and if it is truly needed, then you and I can advance it to Final Reading as amended and we can approve of it but at this juncture I don't think...I think we would be unwise in returning this bill to the Final Reading.

SPEAKER MARVEL: Senator Newell, do you want to close on the motion to readvance the bill? The motion is to re-advance the bill. Senator Newell, do you wish to close?

SENATOR NEWELL: Yes. Senator Johnson, the Fire Marshal does have the authorization to carry weapons. Now that is granted by the State Patrol which has granting powers. Now some people will argue that you can grant Omaha firemen the authority right now to carry weapons and I think you can probably for a limited period of time or for a specific duty and cause and sometimes I expect it could be granted for longer. That is the old deputization sort of activity. In this case it is granted by the State Patrol to the Fire Marshal and it is an on-going authorization. So that is why you couldn't find it in the statutes, Senator Johnson. Senator Johnson, I did have for those who were interested a number of case histories, frankly, where the lives of the officers involved were very much in danger. There is about fifty such case histories and I provided this body with about fifteen of those which is a representative sample and we scratched out the names of the specific situations and so forth. I want to further say that we have created a great deal of

confusion on this and I think that confusion is totally unnecessary and unwarranted. We have in here the requirements as the bill would be amended that this be a paid and authorized fire department. We have, in fact, shown in every way that this is a requirement, that they have to go through the same training and that this training will not be slighted. They must go through fire school and police schools. So frankly we are not authorizing here any powers, any powers, that are not already existing for those people who deal with arson on a state level but Omaha, as I said before, has better than fifty percent of all arsons in the State of Nebraska. We are authorizing four individuals, not the entire fire department, but four individuals these authorities. I don't think that there is any great concern here that we haven't already dealt with and analyzed. Senator Johnson, I tried to explain to you before and you sometimes listen and you sometimes don't listen and I always appreciate it when you have fourth or fifth doubts and have made it very apparent that you don't listen and I can appreciate that freedom. That is one that we all have a right to exercise and I might do that in the future a little more myself. So with that, I think that we have thought this through. This is a well thought out...the Beutler amendments add to the clarity that authorizes only one person, Senator Johnson, Senator Goll, Senator Cope, Senator Kilgarin, it authorizes only one person to authorize the use of the subpoena powers. So there is in fact a stricter control now than there was in the original bill. That has to be justified to the chief of the fire division. He has to then authorize this. If there is or if there will be any abuses, I am sure they will be brought to us and that we will fully understand the ramifications, and at that time when we find those abuses which I don't think have occurred in the Fire Marshal's Office, is one of the reasons why I couldn't answer that, and it won't occur in the City of Omaha and that is why I don't think it is a very big concern. But if there are, I promise you, Senator Johnson, that I will be the first to come back in here and amend these provisions. Now, Senator Johnson and the rest of the members of the body, I think that we have dealt with this as honestly and forthrightly as we possible could.

SENATOR CLARK PRESIDING

SENATOR CLARK: You have thirty seconds left.

SENATOR NEWELL: Thank you, Bob, and I think that the provisions and the limitations that Senator Beutler's amendments have authorized make this a better bill in terms of those who are fearful that we are going to be granting guns helter-skelter.

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LB 205, 272

We are talking about four individuals and it specifies in the bill that it cannot be any others in the fire department. So with that, I urge the readvancement of LB 205.

SENATOR CLARK: The question before the House is readvancement...he was closing, Senator Chambers. What is the point of order? State your point of order.

SENATOR CHAMBERS: I would like to know if an amendment is drafted...well, this one says, "On page 2, line 17, after the period..." and there is no period on line 17, should the bill drafter assume that it meant line 7 and insert the language there or line 18 or wherever it seems appropriate to insert the language, that is what I would like to know. Will the bill drafter make that decision or what? There is no period on line 17 for the language to be inserted.

SENATOR CLARK: Senator Newell, Senator Newell. Did you make a typographical error when you drafted the amendment?

SENATOR NEWELL: I am trying to look at that now. Senator Beutler, do you have that original?

SENATOR CLARK: Is it all right with you, Senator Newell, if we just hold the bill up and go ahead with Final Reading until you can find it? That is exactly what we will do then. The Clerk will read 272 on Final Reading. I would like to take this opportunity to introduce 21 members of the Student Council at Omaha Bryan, Erwin Rehder is their teacher, and they are in the North balcony. I think they are in Senator Beyer's District. Will you stand and be recognized? Welcome to the Legislature. Also we have the daughter of Senator Maresh, Mrs. Joe DeFlyer, two grandchildren, Erika and Elizabeth. They are from Grand Forks, North Dakota. They are under the North balcony. Will you stand and be recognized please? The Clerk will read 272.

ASSISTANT CLERK: (Read LB 272 on Final Reading.)

SENATOR CLARK: (Mike not on.) ...seats. Senator Haberman, we are supposed to be in our seats please. The Clerk will continue when they get in their seats. Continue.

ASSISTANT CLERK: (Continued reading of LB 272 on Final Reading.)

SENATOR CLARK: All provisions of law having been complied

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LR 12, 33 - 35
LB 173, 205, 479

A new resolution, LR 33. (Read. See page 862, Legislative Journal.) That will be laid over, Mr. President. Mr. President, LR 34 offered by Senator Marsh. (Read. See page 863, Legislative Journal.) That will be laid over, Mr. President. Mr. President, LR 35 offered by Senators Newell and Fenger. (Read. See pages 863 and 864, Legislative Journal.) That, too, will be laid over, Mr. President.

Mr. President, your committee on Banking, Commerce and Insurance whose Chairman is Senator DeCamp reports LR 12 back to the membership. That is signed by Senator DeCamp.

Mr. President, Senator Carsten reports LB 479 to General File with amendments.

An Attorney General's opinion addressed to Senator Warner regarding 173 will be inserted in the Journal.

SENATOR CLARK: We will now take up the readvancement of LB 205. I understand that E & R can clarify anything that is in there. All those in favor of readvancing the bill vote aye, opposed vote no.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the readvancement of 205? Record the vote.

CLERK: 27 ayes, 4 nays on the motion to readvance the bill, Mr. President.

SENATOR CLARK: The bill is readvanced. We now have a motion on the desk.

CLERK: Mr. President.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: I would like to know for future reference how that matter was handled where the amendment improperly stated where it should be inserted, how was that handled?

SENATOR CLARK: Where the what?

SENATOR CHAMBERS: The issue on 205 was that the amendment stated where in the bill the new language should be inserted and it could not be inserted there.

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LB 205

SENATOR CLARK: It is my understanding that E & R will clean it up.

SENATOR CHAMBERS: I want to know how E & R made the decision because there are a number of places it could have been (interruption).

SENATOR CLARK: Maybe the Clerk could tell you that. I don't know. Senator Newell, can you clarify it.

SENATOR NEWELL: Yes, I talked to Emory and Emory said that, basically, it was a typo from 17 and it should have been line 18 at the end. There was one word on the second line. He just made a note and said it could be cleaned up in E & R.

SENATOR CHAMBERS: Mr. Chairman.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, for the integrity of the legislative process, I would object to that having been done by E & R, especially in consultation with the Senator whose bill it is and I don't think it would be hard for Senator Newell to get that amended or he can try...well, I won't tell him what to do. Let me express my objection to E & R changing an amendment that was formally adopted on the floor where we don't have a misspelled word or a left out word, where the correction would be obvious. Since there is several places where that could have gone, and it seemed more appropriate to me that it was line 7 than at the end of line 18, I am expressing my objection to that and I hope the other Senators will understand the point that I am making. So let me ask the Chair this. Has the Chair made a ruling that E & R can make this correction?

SENATOR CLARK: I have to make the ruling that was my understanding, Senator Chambers.

SENATOR CHAMBERS: I want to be in a position (interruption).

SENATOR CLARK: I think they have done this many times.

SENATOR CHAMBERS: Well, since this one has been brought to my attention, I want to object to it, and if there has been no ruling, there is no way for me to do it.

SENATOR CLARK: I rule that it is all right. Now do you want to make a motion to reconsider it?

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LB 205

SENATOR CHAMBERS: To challenge the ruling by the Chair, right.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Yes, I would ask just quickly if Senator Chambers would not mind, would he not oppose bringing it back real quick and readvancing it or is it...sure, he would oppose it. You see, it is not the question of whether it is E & R, it is just another opportunity to keep the bill from advancing and I think that clarification needs to be made for the members of the body.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: I thought the Clerk wanted to ask me to clarify what I was asking. That is all, I don't have any comment.

SENATOR CLARK: The Clerk wanted to know what I had ruled on.

SENATOR CHAMBERS: Oh, okay, then I will make that clear. The amendment stated that at page...we are talking about LB 205, the Final Reading copy, that at page 2, line 17, after the period, insert some amendatory language.

CLERK: I understand that. What I am wondering, Senator, is what...why is there a ruling from the Chair necessary in this instance? For Journal purposes, I need to know that.

SENATOR CHAMBERS: That E & R is going to decide that the appropriate place to put that language is line 18, and what I am saying is, are we going to adopt the policy where an amendment has been drafted and presented to us in a very precise form and we adopt it, then E & R can change it? It would be different if the language were just presented and E & R were asked to insert it. But where we vote on a bill where we return it for a specific amendment and a variation occurs, should E & R correct it?

SENATOR CLARK: Senator Wesely.

SENATOR WESELY: Yes, I think I can explain the situation to Senator Chambers. As former E & R Chairman, we worked out a policy where there was a great deal of complaints about the fact that those advanced from Select File to Final Reading that were amended on Select File frequently had these little technical errors involved and so I received a lot of complaints the two years I was E & R Chairman that we always had to keep bringing bills back from Final Reading

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LB 205

and clarifying and so we set up a process that is not always...I think it is clear in the rules that...it should be...but we did set up a process in conjunction with the Exec Board Chairman, the Speaker and myself where they had a little more flexibility than in the past so that they can clean up these errors without always having to bring them back from Final Reading. So it has been the policy for at least a year or two to do the sort of things that Senator Newell has decided to do. If you don't like that, we can change that policy but it has been common to allow that flexibility so we didn't keep bringing bills back like we used to.

SENATOR CLARK: There is a motion on the desk by you for returning the bill? The Clerk will read the motion.

CLERK: Mr. President, Senator Chambers moves that LB 205 be returned to Select File for specific amendment, that amendment being to strike the enacting clause.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I can't think of anything new to say so I am not going to prolong this discussion. I am asking that you return this bill and the effect, as you all know, of striking the enacting clause would be the death of the bill. That is my intention and that is why I made the motion.

SENATOR CLARK: Senator Newell.

SENATOR NEWELL: Mr. President, members of the body, I would just like to ask Senator Chambers, since this is going to be readvanced, it has got to go through E & R, it will come back up on Final Reading, couldn't you do it at that time instead of doing it now and then again then again, you know, whenever. I mean I know that you want a lot of opportunities to kill the bill, Senator Chambers, but aren't you really wasting our time by taking too many of them?

SENATOR CHAMBERS: Mr. Chairman, in response to Senator Newell's question, I think he is wasting our time with the bill, but to show that I can be gracious, I will withdraw the motion at this time and wait until the bill should wind up on Final Reading again. That is where it is now?

CLERK: It is on E & R for engrossment. It will come back in, report in correctly engrossed.

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LB 205, 56

SENATOR CHAMBERS: Then I will wait. I won't take any more time this morning. I will wait until it is to be read.

SENATOR CLARK: Thank you. We will take up LB 56 now. We have got forty-five minutes.

CLERK: Mr. President, LB 56 was a bill introduced by Senator Samuel Cullan. (Read title.) The bill was first read on January 9. It was referred to the Public Works Committee for hearing. The bill was advanced to General File. There are committee amendments pending by the Public Works Committee, Mr. President.

SENATOR CLARK: Senator Cullan...Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, the committee amendments are rather extensive. I will explain them and then I am offering an amendment to the committee amendments but I will refer to the committee amendments first. First of all, it has to do with the requirement of a permit in case that an industrial user wishes to withdraw groundwater in the State of Nebraska. The committee amendments stipulate a change when we are addressing the withdrawal from one thousand acre feet, the committee amendments change that to five thousand acre feet. It deletes the requirement that both the Department of Water Resources and the Natural Resource Districts have to approve that permit. It deletes the Natural Resource District, which leaves only the Department of Water Resources to grant the permit. Then the remaining amendments are somewhat important and I will try to explain them very briefly. First of all it defines what we mean by industrial purposes and it does include manufacturing, commercial, and power generation for the use of this water. Next it requires the Director to determine if an application filed is complete or incomplete, and if incomplete, to give the reasons why. It goes on to establish a deadline for the various phases of application consideration. Next it allows the applicant to file with the Director any waivers of liability signed by persons that are potentially affected. It requires the Director to issue a written order containing specific findings of fact when granting or denying this permit or the application for one. It allows the Director to grant a permit only if it is in the public interest and lists factors for the Director to consider in determining what is public interest. It allows the revocation of a permit only for three years nonuse, we are talking nonuse now, of the water or violation of what the permit conditions may be. It defines the "affected person" for the purpose of who can appeal a decision by the Director. It

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LB 51, 104, 150, 151, 154, 179, 190,
195, 204, 204A, 205, 220, 272, 409,
403.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: (Microphone not on)...Tom Huxtable who is the Minister of the Eastridge Presbyterian Church.

REV. TOM HUXTABLE: Prayer offered.

SPEAKER MARVEL: Will you all record your presence, please.

CLERK: Mr. President, Senator Vard Johnson would like to be excused until he arrives. Mr. President, Senator Burrows would like to be excused until he arrives. Senator Wagner and Senator Labeledz until they arrive.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: A record attendance, please. A record vote on attendance, please.

SPEAKER MARVEL: Record the vote.

CLERK: There is a quorum present, Mr. President.

SPEAKER MARVEL: Do you have any other items on your desk?

CLERK: Yes, sir, I do. Mr. President, I have several matters to read in. Mr. President, LBs 51, 150, 195, 272, 409, and 154 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LB 51, LB 150, LB 195, LB 272, LB 409, LB 154.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports LB 104 is correctly engrossed and LB 205 correctly engrossed. (Signed) Senator Kilgarin as Chair. (See page 874 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 190 and recommend that same be placed on Select File with amendments; 220 Select File, 151 Select File with amendments; 179 Select File with amendments; 204 Select File with amendments; 204A Select File. (Signed) Senator Kilgarin, Chair. (See page 873 of the Legislative Journal.)

Your Committee on Banking reports LB 403 to General File

March 19, 1981

LB 138, 202, 205, 344, 375,
401, 466, 503, 504, 531

Mr. President, Senator DeCamp to print amendments to LB 531; Senator DeCamp to LB 138 and Senator Hoagland and Beutler to 205, all to be printed in the Journal. (See pages 1044-1048 of the Legislative Journal.)

Your committee on Judiciary whose chairman is Senator Nichol reports 202 to General File; 503 indefinitely postponed; 504 indefinitely postponed.

Mr. President, Senator Koch asks unanimous consent to add his name to LB 344, 375, 401; Senator Cullan to 466.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: I believe that is all that I have, Mr. President.

SPEAKER MARVEL: Senator Fowler, would you like to adjourn us until nine-thirty.

SENATOR FOWLER: I move we adjourn until Monday at nine-thirty.

SPEAKER MARVEL: All in favor of adjourning until Monday, March 23, 1981, at nine-thirty say aye, opposed no. The motion is carried. We are adjourned.

Edited by

Arleen McCrory
Arleen McCrory

March 23, 1981

LR 40
LB 132, 138, 205

Attorney General's Opinion addressed to Senator Vard Johnson regarding LB 138, one to Senator Hoagland regarding LB 205, and one to Senator DeCamp regarding LB 132. (See pages 1053 through 1060 of the Legislative Journal.)

PRESIDENT: Before we begin the day, we have a rather pleasant task to take care of. If you will notice on your desks you have some Bread of Life sustenance from... made of Nebraska's wheat and this connotes the fact that Governor Thone has proclaimed this as Bake and Take Days, where the wheat producers of Nebraska have joined with wheat producers in surrounding wheat states to sponsor this Bake and Take Days. And we have the pleasure this morning together with the Nebraska Wheat Committee and their representatives to have with us the 1981 Wheat Queen from Senator Tom Vickers' District, Tammy Hoffman from Indianola. Tammy, would you just stand up? Tammy is presenting to you together with the other members of the Wheat Commission....would Sue Smith and Dan McGuire and Mark Kunkee...I think they are over here somewhere along the south side, would you stand and be recognized? Welcome to the Legislature, and we thank the Wheat Commission and Wheat Queen for bestowing upon us this wonderful wheat product this morning so that it can help the Legislature through the day. And I think that Tammy has something special to present to the Clerk if he will finish his task, and get his hands clean. Do you want to make that presentation? Presentation to Patrick O'Donnell. Pat has got an official presentation and now she is going to present me with the same, I think, so we will proceed with....now dispensing with the....Senator Vickers is smiling on with admiration with what comes out of his District. Okay, we will now proceed then with the business for the morning. Proceed with agenda item #4 on resolutions. Although the machine is not operative at this moment, we will commence with the discussion of the resolutions and hopefully we will have it fixed before we take a vote. So we will commence then, Mr. Clerk, with LR 40. Proceed then with LR 40, Mr. Clerk.

CLERK: Mr. President, LR 40 is a resolution offered by Senators Maresh, Sieck and Warner, found on page 985 of the Journal. (Read LR 40.)

SENATOR MARESH: Mr. President and members of the Legislature, this resolution calls attention to Crete's outstanding record. During this past season they won 23 games and lost only...this is the girl's basketball team, won 23 games and lost only 3. Last year they won 17 and lost only 4. I think this is an outstanding record,

April 1, 1981

LB 72, 205

and Koch move to return LB 72 to Select File for a specific amendment, that amendment being to strike the enacting clause.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I think Senator Fitzgerald wanted to say something with regard to this bill and I would like to give him a little bit of my time if I could.

SPEAKER MARVEL: Senator Fitzgerald.

SENATOR FITZGERALD: Mr. Speaker and members, I have been a Senator going on seven years today and today is one of the hardest things I have to do. My heart bleeds. I indefinitely postpone LB 72 as a concerned citizen. I believe it is my duty to ask your support to save these poor little animals. They will be affected by this bill. I believe LB 72 is a bad bill and the animal it affects should have a fair chance to survive just like the little babies in the abortion bill. And you got to go back memory lane here and you see a little bunny rabbit going down the lane and bouncing back and forth down there, not a worry in its mind, and here he comes upon a trap. Now this trap...and he's trying to be lured into this trap by Senator Bernice. But who owns the trap? Pope Mahoney. So this is what we have got to take under consideration today. And I am awful sorry that I had to do this but it just is duty. I thank you.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, it is always a serious matter when you put a motion like this up on Final Reading, and I and everybody else who did this were...we did feel bad about doing this, Bernice, and the main thing about it I guess was that as Senator Nichol put it, the bill altogether seemed awfully fuzzy. And without going into all the details of our deliberations, I think there was one message basically that we wanted to get across to you and simply put it is simply this, April Fool. We withdraw the motion, Mr. Speaker.

SPEAKER MARVEL: We are now ready on Final Reading for LB 205.

CLERK: Mr. President, I have a motion on the desk. Senator....well, I have apparently three motions, Mr.

President. The first is offered by Senator Chambers to return LB 205 to Select File for a specific amendment, that amendment being to strike the enacting clause.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this motion was on the bill several days ago when it was being considered but Senator Newell asked that I wait until it come up again in the natural order of events on Final Reading so that is why we are taking it today rather than having considered it when it was first put in. And the reasons that I have today for wanting the bill killed are the same that I had originally. It is putting too much power in the hands of people who ought not have that kind of power based on the job that they have been assigned to do. It is going back again to the philosophy that everybody who is in a public office, a quasi public office even, ought to be carrying firearms. I think a time is going to have to be reached when not every activity that somebody undertakes of a public nature should be accompanied by carrying a firearm and being given discretionary power to use it, or to inflict deadly force. I think you ought to look at this bill and especially on page 5 of the Final Reading copy, the blue version, where the section of law defining law enforcement officer has been amended also so that now these arson investigators are officially law enforcement officers. They are not just fire investigators. They are a hybrid. In the same way that the State Patrol, police officers, sheriffs and the rest of them are law enforcement officers so are these arson investigators. And a side issue that might be of interest to some of the people who are concerned about these matters, could occur when negotiation for salaries would occur. If these people are law enforcement officers and if the day would arise when the law enforcement officers were receiving a higher salary than firefighters, then these guys have been given a very strong arguing point by the statute. They also are law enforcement officers. So perhaps their salary ought to be pegged to that which is given to others. But in order not to take a great long time at this particular juncture, I want some things into the record again and I hope that you will pay attention, that these people are being given powers of arrest, search, seizure, the infliction of deadly force, the issuing of subpoenas, the compelling of attendance before these individuals wherever they would happen to be, the compelling of the production of books, papers or any document, and then here is the balloon phrase, "deemed pertinent". There is no guideline or standard for determining

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what pertinence would mean. There are other overbroad categories in this bill. On page 4 of the blue copy in line 4, "disobeys any lawful order of the arson investigator or chief of the fire department in relation to any investigation." You have broadened it again not just the arson investigator but now the chief conducting any investigation of any matter whatsoever can give what would be considered a lawful order and we don't have the definition of that, and if you disobey him, then you stand to undergo a sanction imposed by this bill. Also, the term "contemptuous conduct" without definition is placed in this bill. So even were a person dragged before a court and accused of some of these activities and be found not to be guilty of any of them, the harassing aspect has already occurred. In many instances people are arrested not because it is felt they will be found guilty but to put them through the trouble of the booking, going before a judge, posting bond and the other things. So when you have a country which is not supposed to be a police state and you are going to take individuals who are not even law enforcement officers and give them greater power than that possessed by any judge. Judges are not allowed to carry weapons and inflict deadly force. Give them more power than any police officer. They are not allowed to issue subpoenas and compel people to come before them, produce books, documents and papers. You are giving all of this power to a firefighter and there has been no justification given for it. I have on my desk two or three items handed out by Senator Newell described as case histories, and you will see that every one of them is really a law enforcement matter. It should be handled by the police. And, in fact, these things are handled by the police and were handled by the police. I wish that you would not act precipitately and pass this bill. No need has been shown for it. I don't think anybody has heard anything from the County Attorney's office in Douglas County where they say such a thing is needed. I don't think Senator Newell can demonstrate that the County Attorney has said he has had any problems or had problems brought to his attention by the fire division in Omaha that would justify this bill. But if he has such evidence and information, I wish he would put it into the record. A couple of other items. When we get to page 4 again, on this idea of disobeying any lawful order not only of the arson investigator which this bill is supposed to be about, but the fire chief, the word that relates to the investigation that tells you whether or not such an order can be given is just touching...touching is the word, anything touching on this investigation. So I guess that means that could

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be a very tenuous, not even a logical relationship between what the fire chief is trying to compel a person to do and the investigation. So if you would read this bill, you will see that it broadens in an unacceptable way the power of one category of public employee and in addition to that defines that employee as a law enforcement officer without requiring that employee to take all of the training that every other person defined as a law enforcement officer must take. As a matter of fact, there is a specific exclusion so that they don't have to take the training relative to traffic. But suppose part of their investigation relates to the diverting of traffic, or the control and movement of vehicles. They have not been given the training but they have all of the power of any law enforcement officer in that set of circumstances. So I think the bill is very flawed. It is poorly conceived, and there is no justification for it. Therefore, the motion that I have made is to return it to Select File for the purpose of striking the enacting clause.

SENATOR CLARK PRESIDING

SENATOR CLARK: Is there any further discussion on the indefinite postponement? Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, I rise to oppose the motion, which is not terribly surprising. But what might be surprising is that I am going to concede. I think Senator Chambers has made some points and being a man of compromising nature and so forth, I am going to concede and bring...if this motion fails, offer to bring the bill back and strike the whole question of subpoena powers. Just for the record, I have reason to believe that the Governor would not sign the bill with the subpoena powers in it and for that reason I can see now that the subpoena powers are not as necessary as they used to be, and so I will take that odious section, Senator Chambers, out of the bill and I know that that won't make it any more palatable to you, but I am sure that that will make it more palatable to other members of the body. So I would urge you to defeat this motion and I will offer one next to strike the subpoena powers. Thank you.

SENATOR CLARK: Is there any further discussion? Senator Chambers, do you wish to close?

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, when we are dealing with a subject of this importance and we went through all of that debate earlier

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on the subpoenas and Senator Newell and the ones who have supported this bill felt it was so essential, how now can they sacrifice their principles just because the Governor has said he won't sign the bill. I have had bills that I believed in knowing the Governor would veto it but I still felt that the bill should maintain its integrity. So if the Governor objected to other provisions of the bill, it means that his mere threat would be enough to override the judgment that the Legislature has already made about certain aspects of the bill. That subpoena portion, as Senator Newell, is not the only thing that I find obnoxious, so I still will be opposed to the bill. But should the Governor undertake additional consideration of the bill and find provisions in it that are not acceptable, and he says he would veto, is the Legislature going to again hold up the bill, return it for these types of amendments, and wind up nevertheless with a very bad piece of public policy which is to declare that these fire fighters are, in fact, law enforcement officers? If you are going to do this kind of thing and blend the two, you would do better to just kill the bill and undertake a study to determine whether the police and fire functions should be combined in one division, and then designate specific duties to individuals in that division and the same way in the police department. There are some who work the vice detail, some who work traffic, some who work homicide and other things. There is, in other words, a division of responsibility and duties. But the mere fact that the Governor said he would not accept the subpoena does not make the rejection of the subpoena portion any more valid today than it was when I offered the arguments that I gave. There has been no argumentation given which is different from the original arguments that were given when the body chose to put that section into the bill. So if it was your opinion that the subpoena section was necessary and essential and justified, you certainly should not now move to take that provision out just because the Governor said he didn't like it. If Senator Newell has convinced you that that power is necessary for the proper discharge of an arson investigator's duty, you are letting the Governor tell you that despite the fact that it is necessary, you should not give this power to the arson investigators. If you do what Senator Newell would ask you to do with this motion, I think you are behaving irresponsibly and irrationally. It would be one thing to say that you have thought it over and feel that is too much power to give. It's another thing to say that even though you believe it is necessary, you are going to strip it just because of what Senator Newell said the Governor has indicated to him.

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I think this bill is not good and you can get rid of the whole issue once and for all by returning it to Select File, striking the enacting clause, then between now and next year let Senator Newell, the County Attorney's office in Douglas County, the police division, the fire division, all come together with a bill if they all agree that such a thing is necessary. Remember, if an arson is a felony it must be prosecuted by the county attorney's office. That is the position where the felonies are handled. The county attorney is not clamoring for this bill. The county attorney, to my knowledge, has not given any information that indicates that arson charges cannot be prosecuted because this bill is not on the books. It clutters the statutes. It clouds the status of what a law enforcement officer is in this state. So I hope that you will not tinker any more with the bill but go ahead and bring it back and strike the enacting clause.

SPEAKER MARVEL: The motion is to return the bill to Select File and strike the enacting clause. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Chambers.

SENATOR CHAMBERS: I would like a roll call vote.

SPEAKER MARVEL: All legislators need to be in your seats and the unauthorized personnel needs to leave the floor. And record your presence. Senator Lowell Johnson, will you please record your presence? Senator Cal Carsten, will you please record your presence? You have? Okay. We are ready for the roll call vote. There are six absent and the others have been accounted for. Ready to call the roll? Okay, call the roll.

CLERK: (Read the roll call vote as found on page 1239 of the Legislative Journal.) 8 ayes, 32 nays on the motion to return, Mr. President.

SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, Senators Beutler and Hoagland move to return LB 205 to Select File for a specific amendment, and the amendment is on page 1046 of the Journal.

SPEAKER MARVEL: 1046?

CLERK: Yes, sir. Withdraw that one, Senator? Okay, Mr. President, Senators Beutler and Newell move to return

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LB 205 to Select File for a specific amendment.

SPEAKER MARVEL: Senator Newell.

SENATOR NEWELL: Was that printed in the Journal?

CLERK: No, sir.

SENATOR NEWELL: It was not.

CLERK: No, sir.

SENATOR NEWELL: Could you...well, let me explain it briefly. The amendment brings the bill back to strike all the subpoena powers which are sections....what sections are those, Pat? Can you read that?

CLERK: Strike original Section 2 of the bill, Senator. It's....I think you are striking 81-509, statutory section 81-509.

SENATOR NEWELL: Okay. Now, basically we take all the subpoena powers out of the bill except for a clarification that is needed in a different section which Senator Beutler can talk about in a minute, the reasons for the need for that. This amendment would strike the subpoena powers. The purpose of this is to try to meet some objections that have been made on the floor and at the same time the full recognition that the Governor had indicated to me that he preferred to see this section out, and unlike some I can compromise when it seems important and necessary to save other important sections or other important parts of the bill. I would give the rest of my time to Senator Beutler to explain why there was a need to clarify the Fire Marshal's language. Chris, do you want to do that?

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, just a brief explanation. When we amended the subpoena sections with regard to the fire fighters law which Senator Newell is interested in, a certain portion of that was said to be unconstitutional by the Attorney General. So subsequent to that time the subpoena power has been withdrawn completely from Senator Newell's bill, so the Attorney General's Opinion really didn't make any difference. But the draft that the Attorney General said was unconstitutional was taken directly from another section of the statutes which was the subpoena power given to the Fire Marshal. So if it was wrong in Senator Newell's bill, it is also unconstitutional in the existing

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sections of the Fire Marshal's law. So all this does is change a little bit of language in that law and you can see that on page 3 of....well, you don't have the amendments, I guess. Basically, it changes language that says,"that you shall be guilty of" to "subject to conviction for". In other words, it is changing the technical language to say that you have to be convicted before you are guilty of something, which makes a lot of sense, doesn't it. So that is all we are doing is trying to clear up the Fire Marshal's statutes a little bit now that we have had a problem identified to us even though Senator Newell has no interest in that at this particular point in time. Thank you.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have not seen the amendment. I take this kind of thing very seriously and some of you all ought to be glad that I would not let this bill slide through even though some of you are anxious to be done with it. Had I not assumed my responsibility, nothing would have been done with this atrocity and it would now be in law probably. The Governor may not even have been aware of the significance of it had not I raised the issues and persevered. And now we get word that the Attorney General has looked...or somebody has, at other aspects of the law related to this same area and found unconstitutional provisions. Haste makes waste and it also makes the Legislature look ridiculous. Some of us cannot take the time to consider every piece of legislation thoroughly, but when a Senator has taken that time, it might behoove the rest of us to at least pay attention. A lot of times it is difficult not to resort to sarcasm and mockery on this floor because that is the only way you can catch people's attention and save them from themselves. We are enacting laws and the laws that we enact will affect the lives of all of the citizens of the state potentially. When we talk about things like granting the power to inflict lethal force, or use lethal force, or employ it, that is a serious decision that we are making. And I think you ought to overcome whatever little pique or irritation you may have based on the way I approach these matters and look at the issue. When everybody has been lined up on an issue, it is necessary to find some way to bring that type of thing to a halt so that people can calmly consider the issue that is before us. And what I would like to have, Mr. Speaker, is a copy of the amendment because Senator Newell has not shown which provisions of the bill have been stricken. Is it all of

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Section 2? Then I will have an idea if that is what we are dealing with.

SPEAKER MARVEL: Do you ask unanimous consent to pass over the bill, or do you have a copy of it now?

SENATOR CHAMBERS: Well, I think this bill is greased and it is going to go anyway, so there is no way I can get it passed over.

SPEAKER MARVEL: I have no idea whether anything is greased or not.

SENATOR CHAMBERS: I have an idea to that effect, but I will ask unanimous consent to lay it over.

SPEAKER MARVEL: Are there any objections?

SENATOR NEWELL: I object. We will just have these speeches again and the time again. I think it is time to do it now, get it cleaned up so that we can readvance it and spend less time on the issue, so I would object.

SPEAKER MARVEL: Okay, so what is the motion then? Okay, the motion is to return to Select File for the specific amendment. That is the motion.

SENATOR CHAMBERS: I will finish my time then discussing that motion. From what I see, that significant to this bill, is that all of Section 2 will be stricken, which in the blue copy would be pages 3 and 4. All of pages 3 and 4 will be stricken from the bill. And contrary to what Senator Newell said, he is not asking for this amendment based on anything that was said on the floor. The Governor may have listened and decided to order the Legislature and Senator Newell to take the position because of what was said on the floor. But the only reason Senator Newell is responding is because the Governor told him to. There is a lack of understanding on this floor of what subpoena powers really are. But some people fortunately do understand. There have been times that the Governor has intruded over here and it has bothered me, but this time I am glad that he assumed the responsibility of a competent legislator and has told this body what it had better do. And I can see him now like I used to see Governor Exon with the whip, cracking it and popping it, and the Senators leap. But, again, in this instance I am glad. If he does it on another issue that I disagree with, then I will be critical. But when the people's welfare is involved, you have to take help from wherever you can get it. I still

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think that the bill is bad, and I am going to watch and see what you do on this motion, because it means that rational discussion does not sway this body at all, but a dictate from the Governor's office will. And when you cannot move people with rational discussion, the best thing probably to do is to go ask the Governor to tell the Legislature what its duty is and to order them to carry it out.

SPEAKER MARVEL: Your time has elapsed. Okay, the motion is to return the bill to Select File for a specific amendment. Is that right? All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 26 ayes, 2 nays, Mr. President, on the motion to return the bill to Select File.

SPEAKER MARVEL: Okay, the bill has been returned. Now the motion is the adoption of the amendment.

CLERK: Yes, sir.

SPEAKER MARVEL: Senator Newell.

SENATOR NEWELL: Yes. Mr. President and members of the body, very briefly. The motion strikes Section 2, the subpoena powers, and because Senator Hoagland brought it to my attention and asked for an Attorney General's Opinion about a specific section, and that was in the Fire Marshal's bill, authorization, we need to clarify that also. It is not necessary in 205 since we are striking all of the subpoena powers, but the subpoena powers that presently exist in the law for the Fire Marshal's office needed to be clarified so that there is not the question of presumption of guilt until after there is a court ruling. It is just a clarification for the Fire Marshal, the subpoena powers would no longer exist in 205 in its authorization for the Omaha Fire Department, the four members who presently would be granted these powers. What would remain in the bill very simply then is this, the authority to upon completion of training, police training etcetera, etcetera, to be able to carry firearms for their personal protection. I passed out case histories earlier to explain why this power was necessary. I think that most of the body understands this. I think this amendment should be adopted. And I think that to answer briefly Senator Chambers' arguments, personally I thought the subpoena powers were important, but some of us have to make decisions based on the political realities and the Governor does have the veto and that

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veto is a very important thing, and when he was nice enough as he was in this case to inform me of his opposition, I had two choices, one is to fully expect and anticipate the veto and try to override, or try to meet his wishes, and I chose I think wisely to meet his wishes, and I would hope that the body would accept this amendment. Thank you.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, again I stand before you on the losing side but on the side of what is right and what is proper. Fortunately, there are people in places other than this Chamber who take note of what we do here, and I think there ought to be a bit of embarrassment, if not shame, at the way the Legislature is backtracking from a position that it officially said was a valid one and not because of any rational reason. A threat by the Governor to veto a bill is not a rational reason for forsaking a principle. I wonder how those Senators feel, the one or two or maybe three who spoke so forcefully in favor of giving these individuals subpoena power, and now all of that is for naught. Some day somebody may review this bill. Maybe somebody in one of Professor Gradwohl's courses that study legislation will look at this bill and observe the flip-flopping of the Legislature which flip-flopping has no rational or logical basis, and derive not only an understanding about this bill, if such is possible, but the mechanics of changing legislation. If the Governor wants to veto the bill, then it would be the obligation of whoever has that bill and thinks that it's important to seek the 30 votes to override the veto. But, obviously, despite all of what we were told about the responsibility of these middleaged gentlemen in Omaha who want to carry these pistols and issue subpoenas, despite the plea that they need these things and that it will be a benefit and a help to them, you suddenly disregard their feelings now. Suppose they are at home when they get the word of this and they start crying and their feelings are hurt because they were made to feel earlier that you believed them, that you thought they needed this power. Senator Newell gave you all of that talk about arson being such a high percentage of the serious crimes that are committed now, and you bought it. He persuaded you that certain tools were necessary for arson investigators to handle this terrible, devastating crime which is on the upswing, and you bought it. You put those provisions in the law to give the tools to these quasi law enforcement, quasi fire fighters. And now you suddenly reverse your field

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and say, well, after all, they don't really need those powers, arson can be fought effectively without giving them these powers. So Senator Newell was totally wrong. Those portly, middleaged gentlemen in Omaha who wanted to carry pistols and have this power were totally wrong. And that old Chambers who stood up on the floor and irritated everybody, was absolutely right, and he has been Governor certified as right. So this is really on this particular amendment a no-lose situation for me and a no-win for you. If you vote for the amendment, you vote against what I want, but you are voting for the position that I originally tried to persuade you to assume but you wouldn't. None are so deaf as those who will not hear. It is like the old example of the dog returning to his vomit. It wasn't good and he left it, then with tail drooping, ears hanging, a cast hangdown dog look....

SPEAKER MARVEL: One minute.

SENATOR CHAMBERS:they all must return to the original position and adopt it. But not unwillingly...happily running to embrace the position that they so strenuously resisted before. It would be a wonderful commentary on the Nebraska legislative process if this sudden and complete reversal were based on the study of the evidence and a conclusion being arrived at that the original position was wrong. But that is not why the change came. It is because one individual told the Legislature, you had better turn around and you had better do what Chambers told you to do, but which you were too stiff-necked to do. So now I am ordering it, I am compelling it, and myself, and I am through trying to paraphrase the Governor, I am speaking for Chambers now, I am glad that I am able to reach the Governor because the Governor controls the Legislature. In this instance I control the Governor, so at this particular time I am the most powerful politician in this state and I want to thank you all for massaging my ego and elevating me to this high status. It is almost like being on a pedestal. The air is thin and it's lonely up here, but for the brief instant that I have it I am going to enjoy it and make the most of it. Thank you.

SPEAKER MARVEL: The Chair recognizes Senator Newell to close.

SENATOR NEWELL: Just briefly. The people in Omaha have understood this. They are not crying. They would like the remaining sections. Senator Chambers, you are a brilliant man, there is no question about that. Senator

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Hoagland, I thank you for bringing forth the Attorney General's Opinion which clarifies the other sections. That's all. Thank you.

SPEAKER MARVEL: The motion is the adoption of the Newell amendment. All those in favor vote aye, opposed vote no. Record the vote.

CLERK: 27 ayes, 1 nay on the motion to adopt the Newell amendment, Mr. President.

SPEAKER MARVEL: The motion is carried. The amendment is adopted. Okay, the motion now is to readvance the bill. All those in favor say aye, opposed no. The motion is carried, the bill is readvanced.

CLERK: Mr. President, I have a motion on the desk. Senator Chambers moves to return LB 205 to Select File for a specific amendment to strike Section 3.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Yes, I heard somebody say, here we go, and I can only say, amen to that. Members of the Legislature, Section 3 will be found on pages 5 and 6 of LB 205, and that is where they amend the law enforcement definition section of the statute to make these individuals law enforcement officers. I don't think that is necessary and I don't think it is wise. And I am going to read you this language to show you what I see as an internal problem. "A full-time employee of an organized and paid fire department of any city of the metropolitan class, who is an authorized arson investigator, and whose duties consist of determining the cause, origin, and circumstances of fires or explosions, while on duty in the course of any such investigation". Now when you make a reference like "any such investigation" at the end of the section, and the lawyers, I hope they will confirm this, it means that it is referring back to an investigation that has been mentioned earlier. There is no investigation defined in this section. There is no reference to any other investigation in this section. So what they ought to do is at least clean that language up if they want to. But, look, and I will ask... Senator Beutler is not here, nor Senator Hoagland. They are the ones who support this bill, and, Senator Newell, I am not disregarding you, I want to establish a legal point if I... oh, Senator Landis, you haven't been in this, but could I ask you a question? If you would turn to pages 5 and 6 of LB 205. It's the blue copy. And the words

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especially that I am looking at are on page 6 at the top where it says, "the course of any such investigation". Reading that you would expect the type of investigation that they are referring to to have been mentioned.

SENATOR LANDIS: That would have been a previously mentioned investigation.

SENATOR CHAMBERS: All right, now in this section there is no investigation mentioned, so if you read the language, can you tell me how you view this section?

SENATOR LANDIS: Well, let me just say that the assumption I make is, as I look at the language, they mean what is not stated and that is the circum.....on line 27, page 5, they are probably discussing an investigation of the circumstances of fires and explosions while on duty, but they don't say that. When you turn the page, that becomes investigation and that word is not used in the previous page, although I would expect what they meant to be saying, there is an unwritten reference to the investigation of determining the cause, origin and circumstances of fires or explosions while on duty in the course of such investigations, I think. But there is...when you use the word "such" in that instance, it means a previously mentioned phrase which they are then applying a second time to clarify that grant of authority.

SENATOR CHAMBERS: Thank you.

SENATOR LANDIS: And I don't see it in that section.

SENATOR CHAMBERS: Thank you, Senator Landis. And I wanted him to answer just for that purpose. And here is what I will tell the members of the Legislature. There is a difference between going through certain steps to make a determination of a thing and the idea of an investigation. The two words are not the same, and when you have two different words appearing in a section, they are not the same. They have a different meaning. And when statutes are interpreted, you don't take two different words and give them the same meaning because it is felt that no language in a statute is surplusage, that every word has a meaning and that the Legislature had a purpose for putting it there. So if you do not have any investigation stated here, nor any authorization to conduct an investigation stated here, the definition itself is inadequate, but it probably won't make anybody any difference. But again I want it into the record to show that I do read these bills and I think it is a serious step of a policy

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nature that you are taking when you define these people as law enforcement officers. Why couldn't you do away with this particular section? If they want to carry guns, you have already said they can carry guns over here on page 2. You have said they are peace officers. You said they have the powers of arrest, search, and seizure, the securing and service of warrants, just like police officers. They can carry any weapons that they want to carry. All of that is already given to them. So why take another section of statute which is clear in its meaning and import and change that to define these people as law enforcement officers? At the same time, in the body of the bill itself you exclude these individuals from having to take part of the training that other law enforcement officers have to take. So does that seem reasonable to you? You want them to be law enforcement officers. You so define them, but you explicitly exclude them from having to take training that law enforcement officers must take. In your haste to pass this bill for whatever reason, I hope you will think about this and move the bill back and strike this section which is not even essential to the bill, but it can create a difficulty with reference to the definition section that relates to what a law enforcement officer in this state is. So I am asking that you return the bill and strike that section.

SPEAKER MARVEL: Okay, the motion is to return the bill for a specific amendment. All those in favor of that motion vote aye, opposed vote no. Senator Beutler, your light is on. He's gone. Okay, the motion is to return the bill for a specific amendment. All those in favor of that motion vote aye, opposed vote no. Have you all voted? One more time, have you all voted? Okay, record the vote.

CLERK: 7 ayes, 21 nays, Mr. President, on the motion to return.

SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, Senator Newell moves to return LB 205 to Select File for a specific amendment. (Read the Newell amendment as found on page 1242 of the Legislative Journal.)

SPEAKER MARVEL: The Chair recognizes Senator Newell.

SENATOR NEWELL: Yes, Mr. President, since Senator Chambers will harp on this question of whether or not this is properly

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drafted, I offer this amendment to clarify it. Thank you.

SPEAKER MARVEL: The motion is to return the bill to Select File. Senator Dworak, do you want to speak to the motion? Your light is on.

SENATOR DWORAK: Mr. Speaker and colleagues, for those of us that have been here several years, I think it becomes, through precedent and past experience, very dangerous when we start writing legislation on the floor making this many significant changes. Now we have all seen bills badgered. We have all seen bills harassed, and there is an element of that here that I think we recognize. But I also think that when the sponsors are scrambling to correct language that is in the bill, we are in a very precarious situation. My only comment is that I don't think the state will sink or fall depending on the success or failure of this particular legislation, and it would appear to me that enough technicalities and enough errors in this piece of legislation have been manifested that I seriously question whether we might not just accept the premise that maybe we should start over next year.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I don't think this bill has been harassed and badgered at all by me, so perhaps it has been harassed and badgered by those who are in favor of it, because I have had to speak a long time to get the attention of the people who have assured you that this bill has been researched for years...it has been studied for years and nothing is wrong with it. But I trust my judgment and my judgment told me things were wrong with it. And, Senator Dworak, the one thing you said that I can agree with is that when you begin to hasten to write legislation on the floor, errors can be made. So I could make a suggestion to Senator Newell now about the amendment he offered. I think he said that what he would do is strike "any such" and put the word "an", and I would say he should withdraw that amendment and say, "in the course of an arson investigation", and then he has tightened up his definition. I read words and I know a lot of times the things I say people don't agree with and there are points where reasonable people can differ. But sometimes a juncture can be reached where people merely are opposed because of the one who is trying to bring about the changes. You will just have

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to suffer through and bear with the idea that I am a part of this Legislature and that I am going to utilize every prerogative which is available to me. And even though my name won't be an aye vote in favor of , atrocity like this, I am trying to show some of the rest of you that it may not be as good a thing as you have been led to believe that it is. Bills should not be passed as favors to individuals or groups. But I think Senator Newell should amend his amendment, he should withdraw that one and then put "an arson investigation". And if you agree that you are going to mess up the definition section of law enforcement officer, then you should at least help him to do what I think it is he is trying to do. And I do believe he is trying to restrict what these people do under this bill to when they are engaged on duty in an arson investigation.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: I call the question.

SENATOR CLARK: The question has been called. Do I see five hands? I do. The question before the House is to cease debate. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on ceasing debate? Record the vote.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has ceased. Senator Newell, do you wish to close on your amendment?

SENATOR NEWELL: Yes, Mr. President. Just for anybody who is really watching this, basically on line 6 of the blue copy we are changing, on the top of page 6 on line 1 it says...from the preceding page it goes something like this, it says, "while on duty in the course of and you strike "any such", the new word is "an" investigation, just clarifying that. The change I think is all that is necessary. And, Senator Chambers, I do feel a little bit like you are harassing me, but then I am not going to be complaining. I think this change would clarify it, put the bill in order to once again be enrolled and sent to Final Reading. I would urge the body

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to accept this change, and I thank you.

SENATOR CLARK: The question before the House is the return of the bill, LB 205, for a specific amendment. Senator Newell.

SENATOR NEWELL: Is it the adoption of the amendment? It's been returned....or it hasn't been returned? Okay.

SENATOR CLARK: No, it hasn't been returned yet. Record the vote.

CLERK: 26 ayes, 3 nays on the motion to return, Mr. President.

SENATOR CLARK: The bill is returned. Now the amendment, Senator Newell. The question before the House is the adoption of the Newell amendment. Is there any discussion? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have a question of Senator Newell.

SENATOR CLARK: Senator Newell, will you respond?

SENATOR NEWELL: Yes, Senator Chambers.

SENATOR CHAMBERS: Senator Newell, are you saying by this definition that you are adopting that the only types of investigations that are conducted are conducted for the purpose of determining whether there has been arson or not?

SENATOR NEWELL: Those are the kind of investigations that fire investigators conduct, Senator Chambers.

SENATOR CHAMBERS: So you are saying that fire investigators don't study or investigate the causes or origins of fire even when they know that arson may not be involved?

SENATOR NEWELL: No, they do that, Senator Chambers.

SENATOR CHAMBERS: So, by you putting the word "arson" investigation, it could be an investigation for something other than to determine arson, couldn't it?

SENATOR NEWELL: That is correct, Senator Chambers.

SENATOR CHAMBERS: So then these people are allowed to have all the powers of law enforcement officers during the

course of any investigation, not just one that relates to arson?

SENATOR NEWELL: Senator Chambers, their duties are very clearly defined in.....

SENATOR CHAMBERS: No, I am not asking that, I am asking you a question so that we can get the sense of this amendment. With your amendment they would be law enforcement officers based on the definition you are putting in this section, when they are conducting any investigation.

SENATOR NEWELL: If they go through the training that is necessary and if they meet all the other qualifications, then they are, in fact, they do fit the qualifications of a law enforcement officer, that is correct, Senator Chambers.

SENATOR CHAMBERS: Thank you. Members of the Legislature, and I am saying this for the record because I know you all are tired now and you are saturated with the discussion of this. In the body of the bill and during all of the discussion, you have been told that these people are to carry guns and have the powers of police officers only when investigating arson. Now you are giving a definition, Senator Beutler, which expands it and says they have the power to carry these guns and all these powers of police officers when they are conducting any investigation. And Senator Newell has acknowledged that they do conduct investigations of fires that are not related to arson. So it means whenever one of these people is involved in an investigation, he or she is a full fledged law enforcement officer to the same extent that a member of the State Patrol is. That is what the definition that you are putting into the law enforcement section will do. And if that is what you want to do, then I say, have at it, but I want no part of it and I have done all I could to call your attention to it.

SENATOR CLARK: The question before the House is the adoption of the Newell amendment. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the adoption of the Newell amendment? Record the vote.

CLERK: 27 ayes, 6 nays on the motion to adopt Senator Newell's amendment, Mr. President.

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SENATOR CLARK: The amendment is adopted. Now to re-advance the bill. All those in favor of readvancing the bill say aye. Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. Chairman. Members of the Legislature, I would like to ask Senator Beutler a question. Senator Beutler, was it your understanding while this bill was being discussed that it was to relate only to arson investigators who have certain training and so forth, which is not the issue now? And that they would have these powers only when they are investigating arson?

SENATOR BEUTLER: Yes.

SENATOR CHAMBERS: Now, if the definition which has been adopted in the law enforcement section says that they are law enforcement officers during the conduct of an investigation, but does not define it as an arson investigation, wouldn't that mean that they're law enforcement officers when they are conducting any investigation that relates to a fire, the cause, origin or whatever?

SENATOR BEUTLER: Looking at the bill as a whole, Senator Chambers, it would be my interpretation if I were a judge looking at it that it does relate only to arson investigations....

SENATOR CHAMBERS: But, Senator Beutler, you....

SENATOR BEUTLER:despite the language interpretive problem that you are suggesting.

SENATOR CHAMBERS: You will note that the amended portion of the section is not part of the original bill. It is a separate section of statute which gives definition of law enforcement officers. Now that definition determines what in this state constitutes a law enforcement officer. So, would the court adopt the definition of a law enforcement officer as given by the statute? Or would it interpret that and say, well, the definition does not mean what it says?

SENATOR BEUTLER: I think they would interpret it in conjunction with Section 1 of the bill.

SENATOR CHAMBERS: If they don't do that, would that definition that was adopted expand the powers of these people into other areas than investigation of arson?

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LB 5, 205

SENATOR BEUTLER: If they don't do that, I assume that it probably would.

SENATOR CHAMBERS: All right, members of the Legislature, I know the bill is going to pass but I tried to get an Attorney General's Opinion...no, I am not going to undertake that obligation, I have done enough. But I hope that the Governor is listening and that he perhaps may study the situation and see what the courts may do and he can talk to the Attorney General and other people, and being not a part of the Legislature officially and above the fray, he may want to determine whether or not he would like to set his signature to a bill which makes one of these fire fighters a law enforcement person when he or she is conducting any investigation of any kind. And based on the definition that you have just adopted, that is what this bill now does.

SENATOR CLARK: The question before the House is the advancement of the bill. All those in favor vote aye. All those opposed vote nay. Do you want a record vote? Voting aye.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the advancement of 205? Record the vote.

CLERK: 28 ayes, 9 nays, Mr. President.

SENATOR CLARK: The bill is readvanced. We will now go to number 5, LB 5, constitutional amendment. Motion to reconsider. LB 5. Motion to reconsider.

CLERK: Mr. President, Senator Beutler has moved and the motion is found on page 1142 to reconsider the body's action on Final Reading of LB 5.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, just to refresh your memory, this is the bill that does away with Final Reading except if one Senator requests Final Reading. When this came up for the Final Reading on the bill itself, it only got 26 votes. It needs 30 to pass. That was the day you may recall that there were a dozen Senators missing from the Legislature. I believe that it does have the votes. I don't want to go through all the arguments again unless others would like to rehash them. Basically, though, I would just remind you that this year, for example, the Speaker has

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LB 72, 181, 205, 284,
284A, 512, 529, 556

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The morning prayer will be given by
Pastor Jack Glass, of the First Assembly of God.

PASTOR GLASS: Prayer.

SPEAKER MARVEL: Will you please record your presence.

CLERK: Mr. President, Senator Burrows would like to be
excused until he arrives. Mr. President, Senators Clark
and Nichol would like to be excused for the day. Senators
Cullan, Pirsch and Sieck until they arrive.

SPEAKER MARVEL: Record.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have any items under number three?

CLERK: Mr. President, Senator Warner gives notice of
hearing scheduled on LB 556 by the Appropriations Committee.

Your Committee on Enrollment and Review respectfully
reports they have carefully examined and reviewed LB 284
and recommends the same be placed on Select File. LB 284A
Select File. (Signed) Senator Kilgarin, Chair.

Your Committee on Enrollment and Review respectively reports
they have carefully examined and engrossed LB 72 and find
the same correctly engrossed and 205 correctly re-engrossed.
(signed) Senator Kilgarin.

Mr. President, I have a report of registered lobbyists for
the week of March 27th through April 1st.

Mr. President, Senator Schmit would like to print amendments
to LB 11. Senator Howard Peterson to LB 512. Senator
Vickers to 181.

Mr. President, Senator Sieck and Kahle ask unanimous consent
to add their names to LB 529 as co-introducers.

SPEAKER MARVEL: Hearing no objection so ordered.

CLERK: I believe Mr. President that is all that I have at
this time.

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LR 51
LB 72, 205

PRESIDENT: Any others wish to discuss LR 51? If not, Senator Kilgarin, I guess your opening is your close, unless you want to add anything. Okay, the question then is the adoption of LR 51. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of the resolution.

PRESIDENT: Motion carries and LR 51 is adopted. We will go to the next resolution which is....no that's all the resolutions. So that ends....we will go on to the Final Reading, in fact. That's where we are. Sergeant at Arms will clear the aisles and all those people not having business on the floor will leave the floor at this time. The Sergeant at Arms will see to it that all members are at their seats. Ready for Final Reading. Will all members please be at their desks so that we can proceed promptly with Final Reading. All right, we will proceed then, Mr. Clerk, with Final Reading on LB 72.

CLERK: (Read LB 72 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 72 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 1347 and 1348 of the Legislative Journal.) 33 ayes, 9 nays, 5 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 72 passes. Before we take up LB 205 on Final Reading the Chair would like to introduce some 25 students from the Lincoln School of Commerce, Joan Kraft, their teacher. They are up here in the north balcony. And we welcome you to your Unicameral to the Lincoln School of Commerce. Would you welcome them to the Legislature. We will now proceed with LB 205 on Final Reading, Mr. Clerk.

CLERK: Mr. President, I have a motion on the desk.

PRESIDENT: Read the motion.

CLERK: Senator Chambers moves to return LB 205 to Select File for a specific amendment, that amendment being to strike the enacting clause.

PRESIDENT: The Chair recognizes Senator Chambers.

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LB 205

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, before I begin, I must commend Senator Newell for his persistence and his tenacity. He has brought this bill before us time and time again, despite the fact that substantial flaws were detected in the bill. It has had to be rewritten. There has been serious debate and discussion among the Senators now as to whether the bill is even necessary, which I think it definitely is not. But Senator Newell being persistent as he is and believing in this bill, has brought it before us once again for consideration. So I am asking that in view of the amount of time that we have spent on this bill and the problems that still exist with it, we ought to indefinitely postpone it. And I would like to ask Senator Newell a couple of questions to make clear that what I am saying is correct. Senator Newell, without going into every detail of this bill, is it your intention to give certain fire investigators certain law enforcement powers only while they are on duty during the course of an arson investigation?

PRESIDENT: Senator Newell, will you respond?

SENATOR CHAMBERS: Is that the substance of the bill?

SENATOR NEWELL: Senator Chambers, you have read and reread and reread this bill, and you have tried to amend it and kill it at every stage of the....(interruption).

SENATOR CHAMBERS: Could you answer the question, Senator Newell, this is my time.

SENATOR NEWELL: Senator Chambers, you fully understand the bill. You fully understand the intent. I don't think that the need for me to clarify that any more....so I would say that, Senator Chambers....(interruption).

SENATOR CHAMBERS: But I need the clarification. Are they to have this power only during an arson investigation?

SENATOR NEWELL: Senator Chambers, the bill is ever so specific. We discussed this last time it was on Final Reading.

SENATOR CHAMBERS: Then you refuse to answer that question?

SENATOR NEWELL: I will answer....I will explain the bill when I am up to bat, Senator Chambers.

SENATOR CHAMBERS: Members of the Legislature, Senator Newell

knows what I am getting at because he knows that not one place in this bill does it limit their power to an arson investigation, not once do you see the term arson investigation anywhere in this bill. I will tell you the places where investigation is mentioned. On page 2, look at the pink copy, which is the third Final Reading copy, you will find in line 7, "any such investigation to determine the cause or origin of a fire". Nothing connected with arson. If you go to line 11, you see again, "any such investigation". No reference to arson. Then when we come down to the bottom of page 2, you have the words, "during the course of investigating the cause, origin or circumstances of a fire", which does not relate to arson. Then when we come over to an amendment of the existing statute which defines a law enforcement officer, on page 6 of the pink copy, you will see in line 6 the words, "the course of an investigation", but not an arson investigation. So you see what Senator Newell has given you, the impression is the intent of the bill is not the intent at all. And this is why he refused to answer the question. This bill does not limit these men's powers to an arson investigation. Any time they are undertaking any investigation touching on the cause, origin or circumstances of a fire, which need not even be at the site of the fire, they are law enforcement officers. You remember how I tried to raise the point and harped on it over and over that when you change the definitional section as to what constitutes a law enforcement officer, you should put in the word that only when they are engaged in an arson investigation. But Senator Newell did not want it. And Senator Beutler had said he felt that that definition section would be read in conjunction with the rest of the bill. But nowhere in the rest of the bill does it mention an arson investigation. So they knew that they were expanding considerably the powers to be granted these individuals and it was not limited to the time when they are investigating arson, and this is why Senator Newell refused to answer the question. He said quite correctly that I have read the bill over and over, and I wish those of you who thought that you were giving a broad amount of power to a certain group of individuals during a very limited set of circumstances will see that you have been misled. That is not what this bill does. If it was the intent, it shows that Senator Newell has not read his bill as carefully as I have read it, or the ones who gave him the bill misled him as to what their intentions are. So I am asking in view of what the bill itself says, that you return this bill and strike the enacting clause. If you don't do that, it will then be necessary to amend the bill even further. And if you are going to give Omaha people the bill that they said that

they wanted but which no other fire division in the state wants, which Lincoln does not want, you would have to on line 7 of page 2 strike "such" and insert the word "arson" so that you know you are limiting this power to an arson investigation. In line 11 you would have to strike the word "such" and insert the word "arson". On lines 25 and 26 you would have to strike the words, "investigating the cause, origin and circumstances of a fire", and insert "an arson investigation". Then you would have to go to page 6 in the definitional section and in line 6 of page 6 between the words "an" and "investigation" you would have to insert the word "arson". Now if you are insistent on forcing something like this through the Legislature as unwise as it is, you should at least...you should at least restrict the boundaries of it to what you have been told the bill's intention is during all of these discussions. I know that when I persevere in laying on an issue as I have done this one, you might think that there is no real point behind it other than to delay the bill. But you will remember that the last time we considered it I offered the information that I am giving now and said that they ought to amend this bill so that it says what they say it is designed to do. The bill in its present form does not conform to the representations that were made to you about it, and, therefore, I make the motion that it be returned and the enacting clause be stricken.

PRESIDENT: The Chair recognizes Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, all I can say is, here we go again. I appreciate the reputation of being persistent but, frankly, I cannot hold a candle to Senator Chambers, whose persistence has been overwhelming and somewhat harassing. For those of you who are following the bill I would like to just kind of show you...point out Section 1 on page 2, we talk about 'any person who is a sworn member of an organized and paid fire department of any city of a metropolitan class who is an authorized arson investigator for such city in order to determine the cause, origin or circumstances of fires, shall classify as a peace officer while on duty and in the course of such investigation.' It goes on to further clarify that, etcetera. Then on the bottom then on line 23 we see, "any person granted the powers enumerated in this section may exercise such powers only while on duty and during the course of investigating the cause, origin and circumstances of a fire." We further go on, if you will look back to the body, on page 2 of that information we go on and talk about the fact that any such officer must

attend school, they must go through all the course training and so forth of a police office, and we go back towards the end and we further clarify it again in the new language on the back on page 6, it says, "a full-time employee of an organized and paid fire department of any city of the metropolitan class who is an authorized arson investigator." So we are further clarifying this that they are an arson investigator and whose duties are consistent with determining the cause, origin, whose duties...again, whose duties are consistent with determining the cause, origin and circumstances of a fire or explosions while on duty in the course of investigation. Now, Mr. President and members of the body, I have... I am not a lawyer, as many of you know, but I have had Senator Landis' assistance and Senator Buettler's assistance in this matter. I have asked the city if there was any great problem with this, and their lawyers have said there are not. Basically, I would like to now at this point kind of reiterate kind of where this bill has been. The original bill not only granted these officers who frequently come under fear for their lives in the normal course of their duty the opportunity and the right to carry firearms, to carry sidearms so that they may protect themselves. We passed out case histories. The other part of the bill that has now been stricken granted them subpoena powers. Because of some opposition or some belief that the Governor objected to that, we struck that part. So, basically, we are now allowing these individuals to protect themselves. There is, in fact, no justification for Senator Chambers' concerns. He is harassing the bill. He said long ago that his primary purpose was to make sure that these firemen did not have this authority. I think his resentment towards the police and fire divisions of the great City of Omaha have been longstanding and we all know about that. I urge you to support the bill. Thank you.

PRESIDENT: Are there any other persons who wish to discuss the motion to return LB 205? Seeing none, Senator Chambers, you may close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Newell again did not answer the question even though he called himself explaining the bill. As he tried to go through it, he became aware that there is not the phrase "arson investigation" anywhere in this bill. Even when you get to line 7 of page 2 and it says, "any such investigation", Senator Landis, in a series of questions earlier in the definitional section confirmed that when you say "any such investigation", you

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are referring to an investigation that had been mentioned earlier in the bill. The word "investigation" does not occur anywhere earlier in the bill. So when it says, "any such investigation", there is no investigation that has been defined or even described with the word "investigation". And you can call it harassing a bill if you want to, but this bill does not do what Senator Newell has led you to say that it does. If you look in the title of the bill which is supposed to tell you what the contents of the bill will be, you find the words, "during investigations as prescribed". You don't find the words "arson investigation" in the title. You don't find it in the body of the bill. You don't find it in the definitional section of a law enforcement officer which has been changed. So I hope that what you will do is to return this bill and not make this broad grant of power. Even those of you who may have worked on the bill earlier, it is not in the form that you in good conscience could vote for it. Senator Landis is a lawyer. Senator Johnson is a lawyer. Senator Beutler is a lawyer. Senator DeCamp is a lawyer, and Senator Hoagland is a lawyer. Now there come times when I think even though these people are in the Legislature primarily as lawmakers, they continue to carry the responsibilities of lawyers, and this means that they should carefully read material that they are going to vote on, and if that material does not properly reflect what it is supposed to reflect, they could not in good conscience vote for it. I don't see how any lawyer reading this bill could vote for it when they know that the understanding falsely has been given that the bill is limited to a time when these people are conducting arson investigations. The record will be clear on the position that I have taken, the attempts that I have made to clarify this issue, simply by telling you what the bill actually says and what it does not say. What some of you who are trying to support this bill should be asking is, why Senator Newell has been so steadfast in refusing to put the words "arson investigation" in the bill if, in fact, that is what he wants it limited to. All I can do now is say over and over what I have already said. There was a guy in Hitler's establishment, to paraphrase him, who said that you can cause people to believe even the biggest lie if you repeat it long enough and often enough. Unfortunately, that principle does not apply when you deal with the truth. The truth can be taken and used to slap somebody in the face with, but they still will not see it. This bill is not limited to arson investigations, and if you read it, you will see it. I think it is a hoax on the people if you pass it. And if Senator Newell is insistent on continuing to deal with this bill, you should require

him to at least amend it to conform to the representations he has made on this floor and to the members of the news media on various occasions.

PRESIDENT: The motion is the return of LB 205 to Select File for the specific amendment, namely to strike the enacting clause. All those in favor vote aye, opposed nay. Have you all voted? Everybody is supposed to be at your desk because we are still "technically", I say, on Final Reading. Record the vote.

CLERK: 5 ayes, 33 nays, Mr. President, on the motion to return the bill.

PRESIDENT: The motion fails.

CLERK: Mr. President, Senator Chambers moves to return LB 205 to Select File for a specific amendment. (Read Chambers' amendment as found on page 1348 of the Journal.)

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, you are going to pass this bill, I can see that, so it ought to at least honestly do what Senator Newell had said its intention is. Personally, I am at the point now on this bill where I am reaching a point of diminishing returns and I think my integrity, my intelligence, my ability to read, have all been vindicated. So since I am opposed to the bill and all those things have been vindicated for me, it says something else about the rest of you. You do things for favors obviously. But this is not a situation where we do favors. We are supposed to make sure that the legislation enacted does what it has been represented to be doing. So the amendment that I am offering will be designed to make sure that we are talking about a situation where an arson investigation is under way. If you don't want this amendment, then you are saying quite clearly that all of the other discussion we have had was indeed in vain, that you do want to give these people these powers whenever they are on duty and not just when they are investigating arson. And I think that is the worst kind of chicanery because you had discussion that dealt with the high rate of arson, how it is a rapidly increasing serious crime, and that only during the investigation of arson are these people to have this power. And now you back off and you say, that's not really what the bill is for at all. Well, this is my polygraph amendment. It is designed to see if the statements that had been made were made in truth or if they were made with the intention to deceive. If they were made with the

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intention to deceive, you will reject these amendments. If you made them in truth, I don't see how you can reject them. So if any of you have any question as to what the amendment is and what it accomplishes, I am prepared to answer those questions.

PRESIDENT: The Chair recognizes Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, I oppose bringing this back to Select File for this amendment. Now first of all, Senator Chambers has tried to push me into a corner. He is a very apt individual and the corner is simply this, these people are...we are talking about four fire arson investigators in Omaha. Their sole responsibility is the investigation of arson. So it makes, you know, in fact the situation is that's all they do, that is their responsibility. All their duties are arson investigation. This sort of thing says we are going to specify that only during the course of an arson investigation. That means they have to unbuckle their weapons and buckle them back up if they go on a coffee break. You know, I don't know exactly what Senator Chambers is trying to do. I talked to the City Attorney. I talked to other lawyers. There is no problem with this bill. This is harassment, and if he brings it back and if we put this amendment on, it actually creates a problem, and even if it did...we bring it back up and he will offer another kill motion on Final Reading again. Senator Chambers, please vote no. I mean, I...not please vote no, I know I don't have to encourage you to vote no, but would you leave me alone, I just want...you know, I'm getting tired of this. I oppose this amendment. It is not....it actually clutters the bill. It hurts the bill. It is intended to do that. It is intended to hurt this legislation and it is hurting me, and I would urge this body to reject this and pass this bill on Final Reading.

PRESIDENT: The Chair recognizes Senator Marsh.

SENATOR MARSH: Mr. President and members of the Legislature, I fail to see how the amendments could hurt the bill. It seems to me we have been talking about providing certain new proposals for certain kinds of individuals and to specify that those are limited to arson investigation is a reasonable kind of amendment. I was a little surprised at Senator Newell as he keeps on objecting. I have not been a supporter of LB 205, but I feel that I could support the proposal if this amendment is added. I cannot support the proposal if it is not added.

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PRESIDENT: Senator Newell, did you wish to speak?

SENATOR NEWELL: Yes. Mr. President and members of the body, I think we have to understand just exactly what this amendment does, and I think it is simple. Basically, it says these arson investigators may wear weapons only during the investigation of a fire. That's what Senator Chambers is trying to put on there, only during that time. I don't know if he is proposing that they buckle and unbuckle their weapons if they go on coffee break or if they are doing paper work. But the bottom line is simply this, that only arson investigators may, in fact, wear these weapons. This is absolutely unnecessary. It clutters the bill. It is not necessary. Senator Marsh can say that she would support the bill. She has not. This does not improve the bill. It actually creates some additional doubts. These four individuals that we are talking about are full-time fire investigators...arson investigators. And...I'm getting a little flustered. I oppose the amendment. It is absolutely...you know how it goes, John. Thank you very much.

PRESIDENT: Senator Chambers, you may close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the amendment does not say, "only during the investigation of a fire", it says, "during an arson investigation", whatever that term entails. And I don't see how in the world Senator Newell can say this amendment that limits the bill in this fashion can hurt it when he has argued that that is what the purpose of the bill is. Now, I think anybody who would accept Senator Newell's proposition as he stated it, is very foolish. Are you going to tell me that you think these men, 40 hours a week, or however many hours these people work, is spent... all that time is spent investigating arson? That is all they do? And if there is no suspected arson, then they don't do anything? They just sit home? If so, this shows that you don't need all that sales tax, Senator DeCamp. You've got people sitting around and the only time they work is if there is possibility of an arson. So while there are no fires to be investigated, these people are doing nothing. That is preposterous. I don't see how this amendment can hurt the bill at all. But, as I say, you are going to pass it, it appears to me. If you do pass it, I hope the Governor will veto it. And if he vetoes it, it certainly won't be done because he feels any fondness or affection toward me. It will be because he has read the bill and has seen the vast expansion of power that is being given to these people under all circumstances when any kind of fire or any type of investigation is being

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undertaken by them. That is a misrepresentation of what the bill was to do. And as for you adopting the amendment, then the bill has to be written again for Final Reading. That is what happens to bills when they are poorly written, when they are poorly researched, and when there is a desire to hustle them through in total disregard of all the facts that may bear on the issues. So despite the fact that there is opposition to anything being done to correct and improve this bill, I have to persist, and I think when the public becomes aware of this issue, what I say will make a lot more sense to them than what Senator Newell has just tried to sell you and get you to swallow. To put into a bill that is supposed to be limited to arson investigation the words that limit it to arson investigation will hurt the bill, is telling you that he suckered all of you. But I guess you can be in a certain set of circumstances so habitually that pretty soon you are immune to any discussion that would show you what is being done to you. Senator Newell said for me to leave him alone. I am not bothering Senator Newell. I am concerned about the kind of laws that go into the law books in the State of Nebraska. My job is to analyze legislation that comes before me. And if others don't have the persistence, if they grow too tired, if their brains are too weak to deal tenaciously with an issue, those weaknesses they will not obtain with me. And any measure that comes before me that I think has something wrong with it, I am going to try to defeat it altogether if I can. That failing, I am going to try to do as much as I can to convert it into at least a semirespectable piece of legislation. If you buy what Senator Newell has told you, then you know that his intent was not to limit these people's powers to the time they are conducting an arson investigation. He said my amendment would hurt the bill. So if it hurts the bill, that tells you that the intent of the bill was not what Senator Newell told you. I ask that you return this bill and adopt the amendment.

PRESIDENT: The motion is to return LB 205 to Select File for the specific amendment which was discussed. All those in favor vote aye, opposed nay. Yes, Senator Chambers.

SENATOR CHAMBERS: I would like to be sure everybody is in their seat and I will take a roll call vote.

PRESIDENT: Well, everybody should be in their seat. All right, Senator Chambers. The Sergeant at Arms will see that all members are at their seat. We are on Final Reading, so there isn't any....all right, would everyone just press

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LB 205

your green button to show that you are present to make for a double check as Senator Chambers requested. Then we will proceed with the vote. We are just recording presence at this point. Just recording presence to make sure that we are still on Final Reading. Senator Wesely... here comes Senator Wesely. Senator Stoney is here. One more. Okay, everybody is here, Senator Chambers. Ready then. The motion then before the House is the motion to return LB 205 for the purpose of the specific amendment proposed by Senator Chambers. All those in favor vote aye, opposed nay. Roll call vote.

CLERK: (Read the roll call vote as found on pages 1348 and 1349 of the Legislative Journal.) 10 ayes, 30 nays, Mr. President, on the motion to return.

PRESIDENT: The motion fails. Any other motions on the desk, Mr. Clerk?

CLERK: No, sir.

PRESIDENT: Before we take the bill up on Final Reading, the Chair would like to introduce some 43 students from Arbor Elementary Grade School in Omaha from Senator Koch's District, teacher, Connie Baxter. They are up here in the north balcony. Would you wave to the Legislature up here, in this corner....welcome to your Legislature. We also have in the north balcony from Senator Warner's District 41 students from Elmwood High School with Jan Kuxhausen and Laura Franchini, sponsors. They are also up here in the north balcony. Welcome to your Legislature. Now we are ready then, Mr. Clerk, for Final Reading on LB 205.

CLERK: (Read LB 205 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 205 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 1349 and 1350 of the Legislative Journal.) 40 ayes, 7 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 205 passes. That will conclude Final Reading today and we will proceed then with....Mr. Clerk, do you have some matters that you want to read in at this time?

CLERK: Just one item, Mr. President. Senator Higgins

April 9, 1981

LBs 35, 72, 205, 296,
328, 251, 477

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The Chaplain for today is Edith Young, Assistant Minister of First Christian Church of Lincoln.

PASTOR EDITH YOUNG: Prayer.

SPEAKER MARVEL: Would you please record your presence? Okay record.

CLERK: Quorum present Mr President.

SPEAKER MARVEL: Okay, item number three.

CLERK: Mr. President your committee on Enrollment and Review respectfully reports that we have carefully examined LB 296 and recommend the same be placed on Select File, 328 Select File with amendments, 477 Select File with amendments, 35 Select File with amendments. (signed) Senator Kilgarin, Chair.

Mr. President, a letter from the Governor to the Clerk regarding LB 351. (See page 1365 of the Legislative Journal).

Mr. President LB 72 and 205 are ready for your signature.

SPEAKER MARVEL: While the Legislature is session and capable of transaction business, I am about to sign and do sign re-engrossed Legislative Bill 72, re-engrossed LB 205.

The Clerk will read a letter from the Governor's office. Can I have your attention for just a minute. The Clerk will read a letter from the Governor's office. In order to have it distributed to you somebody's signature needed to be on the letter, my signature or initials are there. That does not necessarily mean an endorsement, it is simply a convenience for the members of the Legislature.

CLERK: Read letter from Governor Thone. See Legislative Journal pages 1366-68.

April 9, 1981

LR 54
LB 167, 72, 205, 378, 40,
44, 87, 173, 292, 292A,
317, 536,

SENATOR CLARK: We have about three pages left. Can we get the Legislature to take their seats and vote on the bill. Continue.

ASSISTANT CLERK: Continues to read LB 167.

SENATOR CLARK: Everyone is in their seats please. All provisions of law having been complied with, the question is, shall the bill pass? All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 30 ayes, 13 nays, 5 present and not voting, 1 excused and not voting. Vote appears on page 1375 of the Legislative Journal.

SENATOR CLARK: The motion passed, the bill is passed. We have 40 students from Westlawn Elementary School in Grand Island in Howard Peterson's district. Roger Lee is the teacher. They are in the north balcony. Could you raise your hands please. Welcome to the Unicameral. We will now go to item six.

CLERK: Mr. President, your Enrolling Clerk respectfully reports that she has presented to the Governor at 11:00 a.m. LB 72 and 205.

Senator Marsh would like to print amendments to 378.

The Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 40 and find the same correctly engrossed, LB 44 correctly engrossed, LB 87 correctly engrossed, LB 317 correctly engrossed, LB 292 correctly engrossed, 292A correctly engrossed, 173 correctly engrossed and LB 536 correctly engrossed.

Mr. President, a new resolution. Read LR 54. That will be laid over Mr. President.

April 10, 1981

LB 483, 205, 328, 446

SENATOR CLARK: Everyone will check in, please. Will you all check in, please. Senator Burrows, Senator Warner, Senator Cullan, Senator Kilgarin, Senator Cope. Senator Cope, will you check in, please. Senator Beutler, Senator Warner, would you check in, please. Senator Rumery. Senator Warner and Senator Rumery. Senator Rumery, will you check in, please. Call the roll.

CLERK: (Read roll call vote as found on page 1398 of the Legislative Journal.)

SENATOR CLARK: We have five members from the Communications Workers of America in the North balcony. Will you hold up your hands so we can see where you are, please. There they are. Welcome to the Legislature.

CLERK: Mr. President, Senator Dworak voting yes.

SENATOR CLARK: We also have six students from rural District #4, Antelope County is Senator DeCamp's county. Mrs. Scranton is the teacher. They are in the North balcony. Will you hold up your hands, please. Welcome to the Legislature.

CLERK: 17 ayes, 21 nays, Mr. President, on the motion to return.

SENATOR CLARK: The motion failed. Do you have anything further on the bill?

CLERK: I do not.

SENATOR CLARK: Senator Kilgarin. Senator Labedz, do you want to readvance the bill. I'm sorry, it has been readvanced. We will go to item #5, Select File. The first bill, LB 298.

CLERK: If I may, right before we do that, a few items to read in.

SENATOR CLARK: Go right ahead.

CLERK: Senator Schmit would like to print amendments to LB 328. (See pages 1398-1401 of the Legislative Journal.)

I have Attorney General's opinions, one addressed to Senator Chambers regarding LB 205, one to Senator Marsh regarding LB 446, one to Senator Chambers regarding the City of Omaha's use of eminent domain. (See pages 1401-1408 of the Legislative Journal. Senator Kremer would like to be excused Monday and Tuesday.

April 13, 1981

LB 11, 17, 59, 132, 167,
LB 205, 253, 253A, 284,
LB 284A, 329, 333, 366,
LB 483

first one now and then see how we get along.

CLERK: Mr. President, if I may, right before we go to that, your committee on Enrollment and Review respectfully reports LB 132 correctly engrossed; 253, 253A, 284, 284A, and LB 483 all correctly engrossed.

A letter from the Governor addressed to the Clerk. (Read. Re: LB 59, 167, 17 and 205. See page 1446, Legislative Journal.)

Senator Wagner would like to print amendments to LB 11.

And your Enrolling Clerk has presented to the Governor LB 329 and 333.

Mr. President, LB 366 (Read title). The bill was first read on January 19, referred to Retirement for public hearing. The bill was advanced to General File. There are committee amendments by the Retirement Committee.

SPEAKER MARVEL: Senator Fowler, do you wish to explain the committee amendments?

SENATOR FOWLER: I do. I move adoption of the committee amendments. LB 366 is a bill that deals only with police and fire in the City of Lincoln or that is cities of the primary class. The committee amendments are a compromise, a negotiated compromise, between the police, the fire and the city administration. It is acceptable to all sides and acceptable with an amendment that Senator Landis offers. The basic thrust and the reason for the agreement is that civilian employees if you want to use that term, the nonpublic safety employees, are currently being matched \$2 for every \$1 that they contribute. The city matches \$2 for every \$1 that is contributed. The city working with its actuary developed a proposal to improve the Lincoln Police and Fire system to the point that the same matching ratio would be used and that the 7% of employees salary contributed by the police and fire would be matched with a 14% of payroll contribution by the police. So these are amendments. 366, there is a companion bill, 367. That bill was killed. This integrates the proposals. It may be less than the public safety organizations initially wanted but it is something that provides equity and comparability between the systems. I would move for the adoption of the amendments.

SPEAKER MARVEL: The motion is the committee amendments to LB 366. Okay, the motion is to adopt the committee amendments. Senator Schmit, do you wish to speak to the committee amendments?