

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

January 26, 1981

LB 52, 206

PRESIDENT: LB 52, Senator. 52, the number of the hostages, you remember that. Any further discussion? Senator Rumery, any closing? Motion then is to suspend Rule 5 for purposes of withdrawing LB 52 but there is also the motion to cancel the hearing and then withdraw. The motion is to suspend for this purpose. The Chair notes it will require 30 votes to suspend the rules. All those in favor of suspending Rule 5 vote aye, opposed nay. Record the vote.

CLERK: 33 ayes, 0 nays on the rules suspension, Mr. President.

PRESIDENT: Motion carries, the rules are suspended for the purposes mentioned. Read the next motion, Mr. Clerk.

CLERK: Mr. President, now that we have suspended the rule to cancel the public hearing, Senator Rumery moves to withdraw the bill and cancel the public hearing.

PRESIDENT: The Chair recognizes Senator Rumery.

SENATOR RUMERY: Mr. President and members of the Legislature, we have cleared the way that makes it possible to do this. Now I move that we cancel the public hearing and withdraw the bill.

PRESIDENT: Motion now is...any further discussion? Motion now is to cancel the hearing and withdraw LB 52. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of the motion.

PRESIDENT: Motion carries. It is adopted and the hearing is canceled and LB 52 is withdrawn. We are ready then to continue with General File, LB 206.

CLERK: Mr. President, LB 206. (Read title) The bill was first read on January 15, 1981. It was referred directly to General File, Mr. President.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, what this bill intends to do is provide a legislative statement of intent that legislators should receive actual expenses during session. Currently we can receive them between sessions. Now if you will look at the language of the bill, LB 206, you will find these words: "The Legislature hereby finds and declares (1) that the Constitution of Nebraska, by expressly providing for the Legislative branch of government, implies

the powers and the duty to provide the means, accessories, and instrumentalities to carry into effect the purposes for which the Legislature was created." Then it goes on to state that the expenses that will be granted are not pay, compensation or perquisites of office. This language comes directly from a Nebraska decision which was based on a case brought by the Attorney General to stop the Governor from receiving the benefits of the Executive Mansion. The Governor salary was set at a specific amount and he was to receive no other benefits, pay or compensation. The Auditor, I think, wanted the action brought, but when the State Supreme Court had this case brought before it, it upheld the right of the Governor to be granted this mansion by the Legislature. Not only did it say that granting this benefit to the Governor was not pay or expenses in violation of the Constitution but it indicated that the Legislature, of which all of us are members, have the right to construe the Constitution and say what various words mean, what various provisions mean, and if there are two or more possible constructions of constitutional language and the Legislature selects one of those constructions, the court will not overturn it and take a different one. So in this particular incident, instance, we had a definition given by the court of perquisites of office. Perquisite or salary relates precisely to the money which is given to a person who is in office as compensation for discharging the duties of that office. Expenses are not perquisites of office. They are apart from it because they do not relate to profit or benefit which you receive from the office itself. It is a mere reimbursement of the money that you expend in carrying out the duties of the office. Therefore the Legislature can construe the Constitution as not prohibiting expenses during the session in the same way that the Attorney General has construed the Constitution to mean that expenses can be given between sessions. Now if you have any questions, I am prepared to answer them but let me go just a bit further on this matter. Some legal research was done on the very issue and there is a memorandum in existence which any of you who are interested may receive a copy of. There was a South Dakota case which has language very similar to that of the Nebraska Constitution relative to expenses for legislators and the South Dakota Supreme Court despite the fact that the South Dakota Constitution limited legislators to their salary and the mileage indicated that they could grant themselves a \$250 or a \$200 lump sum payment for expenses, and in upholding the right of the Legislature to have these expenses, it cited the Nebraska case that I just related to you that related to the right of the Governor to be granted a mansion. So in order that what I am saying is crystal clear, this bill would declare that the granting of expenses to the legislators during the

session, and the word "actual" comes before the word "expenses", would not violate the constitutional prohibition against additional compensation pay or perquisites. Expenses are not included in the definition of pay, compensation or perquisites. So when the Legislature makes this declaration in such a law, I will be the Senator to file a verified voucher to receive expenses for this session that we are in now. If there is a refusal to honor the voucher despite the existence of a statute, I will then seek what is known as a writ of mandamus. This compels a public official to carry out his or her duties as stated in the statute. Without this legislation that is proposed now, there wouldn't be a way to get the matter into court through the writ of mandamus. This summer I submitted a voucher and it was just turned down cold but there was no way really to challenge that because there is no statutory authorization for expenses during session. So this is the only way that we can get the resolution. Based on the trend of modern day decisions in other states, not only relative to legislators but judges, the trend is to uphold the granting of expenses even though there is constitutional language limiting compensation to the salary and this one round trip. If you have any questions, I will be glad to answer them.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, a few questions of Senator Chambers if I may.

PRESIDENT: Senator Chambers, will you respond?

SENATOR BEUTLER: Could you explain just very briefly the difference between LB 690 which we passed last year and LB 206?

SENATOR CHAMBERS: Only the year during which the introduction occurred.

SENATOR BEUTLER: And with regard to 690, the Attorney General gave the opinion that it violated the Nebraska Constitution, is that correct?

SENATOR CHAMBERS: I don't think an opinion was given on that particular bill. What they have gone back to is a 1937 opinion of the Attorney General which has been referred to at various times when senators would ask a question relative to expenses.

SENATOR BEUTLER: Senator Chambers, I would like to read you some language and see if you can identify it.

SENATOR CHAMBERS: All right.

SENATOR BEUTLER: "The Attorney General has advised me that he is of the opinion that LB 690 violates Article III, Section 7 of the Constitution of the State of Nebraska. I, therefore, veto 690 and 690A."

SENATOR CHAMBERS: Well, I don't know that there was a written opinion given to the Legislature so maybe the Governor means that he talked to the Attorney General, but since there is no statement in which you just read as to the rationale for saying it violates the Constitution, I would say that what you read are words and only words. I think it was...do you want me to be very frank about that situation? The Attorney General is in a bind on this issue, because without evaluating the cases that were cited in the original 1937 opinion, the Attorney General's Office has consistently held that we cannot receive expenses during session. So had LB 690 been enacted into law, there would have been a court challenge, our expenses would have been upheld, and it would have been shown that the Attorney General had not been as circumspect as could be desired in reaching his conclusion. So I think the Governor vetoed that bill as a favor to the Attorney General.

SENATOR BEUTLER: Senator Chambers, if you were the Governor and had to make a decision as to whether to veto a bill or not and you asked your Attorney General, wouldn't you expect your Attorney General to react as a professional legal adviser?

SENATOR CHAMBERS: Before I did that, Senator Beutler, I would draw some conclusions of my own. The Governor himself is a lawyer. I am not a lawyer but I am trained in the law and have a law degree so I would be in a position to evaluate and draw some conclusions, but since he was also advised that LB 882 was unconstitutional and signed it anyway and that provisions of the antiabortion bill were unconstitutional but signed it anyway, seeking the Attorney General as a way out is exactly that, a way out, but not really a basis for determining the merits of legislation for purposes of signing or vetoing.

SENATOR BEUTLER: I guess my only question is, since nine months ago, if you are saying he sought the Attorney General as a way out, it was just nine months ago that he used that as a way out and vetoed the bill...

SENATOR CHAMBERS: Yes.

SENATOR BEUTLER: ...then what reasonable expectations do you have that he is going to change his mind this year?

SENATOR CHAMBERS: Two things, we didn't have the opportunity to override that veto because it occurred after we left the session. Finally I have managed to smoke out the Attorney General and he made an admission which I wasn't able to get him to admit last time which is if we get a bill through the Legislature the presumption that the court makes of that law is that it is constitutional. Any construction that can be placed on that law to uphold it will be so placed by the court. In order for a law to be struck down, it takes a supermajority in Nebraska or five of the seven judges rather than four. So the Attorney General has admitted that it would be very difficult for him to defeat our obtaining expenses during the session if this law would pass. Now why he has an interest in seeing that we are denied expenses, I can't explain but I do believe that the Governor might reconsider his position and not veto the bill, but even if he should do that, I mean veto it again, we would have the opportunity to override which I think we should do.

SENATOR BEUTLER: Okay, thank you.

PRESIDENT: The Chair recognizes Senator Fenger.

SENATOR FENGER: A question for Senator Chambers, please.

PRESIDENT: Senator Chambers, will you respond?

SENATOR CHAMBERS: Certainly.

SENATOR FENGER: My question, Senator, is nosed out of ignorance. I noticed though the Reference Committee has referred 206 to Miscellaneous Subjects Committee for hearing. I sit on that committee and I don't recollect having held a hearing. I guess my question is, what is the authority for bypassing a hearing, number one, and number two, I ask the rest of you, are we running a risk of ramrodding legislation beneficial to those of us sitting in the chair and bypassing and what are we going to look like in the eyes of the people of the state if we run a bill directly to the floor that benefits us but those bills that supposedly benefit the people of the State of Nebraska must go through the regular motions? Thank you.

SENATOR CHAMBERS: Senator Fenger, I think your question is well taken. This bill had come before the Legislature, as has already been mentioned, during last session. It was introduced last session by the Executive Board itself, and because of the nature of the subject matter, not much in the way of new information could be developed from the public. So last session the bill was referred directly by

the Executive Board to General File which the rules and the law does allow. So that is why I wanted it to be handled this year in the same way it was last year by being placed directly on General File and that is why it is where it is this morning.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I, too, have two or three questions of Senator Chambers and perhaps I can ask them, all three, and you can answer them all at once. As I understand the bill, the Legislature is asked to make their opinion as to what the Constitution says, in the first two or three lines of the bill. I don't know if the Legislature is the one who should say what the Constitution says. Maybe we are, and you can explain that. The second thing is, perquisite is used in the bill and according to the dictionary "perquisite" says "A payment or profit received in addition to a regular wage or salary" and I don't think you mean it to include the word "profit" in defining the word "perquisite". And also in the bill it says any expenses incidental to the performance of duty which may mean things not necessary in the performance of duty. And, lastly, I was wondering if you had any thoughts about referring this again back to the public for a vote which would probably be futile.

PRESIDENT: Senator Chambers, do you wish to respond to those three questions?

SENATOR CHAMBERS: As far as referring it to the public, I think, Senator Nichol, do you mean as a constitutional amendment? It is not necessary to do it by the constitutional amendment route. The Legislature can enact such a law. So that wouldn't be necessary. But as to perquisite, the idea is to indicate that "perquisite" is "profit". It is additional pay which the Constitution prohibits. However, expenses are not defined as profit or additional pay so there is a distinction. If expenses were perquisites of office, we could not even get the expenses that we now get between sessions. So what the Attorney General has said is that when we are functioning indirectly, so to speak, as Senators between the sessions, we can get expenses, but when we are functioning directly as Senators in the session, we cannot. So there is a conflict right there. But as far as the Constitution being construed by the Legislature, I am going to read you again language from a U...Nebraska Supreme Court decision, I almost said United States Supreme Court decisions. The case is State versus Sheldon. It is found at 78 Nebraska 552 and here is what

the court itself said: "That body", meaning the Legislature, "has the right to construe the Constitution, and if the language of that instrument is subject to two equally reasonable interpretations, if the Legislature adopt one, the courts will not adopt the other." Now in the Attorney General's 1937 opinion this is one of the definitions he gave or one of the constructions that could be placed on the constitutional provision relative to our pay, "Perquisites refers only to compensation or reward for the performance of an official duty and this would not prohibit reimbursement of expenses." So what the Attorney General admitted is that if you accept the definition of "perquisite" as additional compensation, it does not include expenses and by accepting that interpretation expenses can be granted during the session. But the Attorney General in 1937 of his own accord chose to reject that interpretation. So if the Legislature, which the court has said can construe the Constitution, accepts that interpretation of perquisite which the Nebraska Supreme Court has already accepted and we put it in a law, the court will accept the Legislature's construction and the law will be upheld and we will get the expenses.

SENATOR NICHOL: Thank you, Senator Chambers. I would just add that for the record then you say "perquisite" means actual expenses and not any profit so that we have that clear. Any comment on that, Senator Chambers, for the record, you don't want to include additional profit other than actual expenses, is this correct?

SENATOR CHAMBERS: "Perquisite" means the opposite. "Perquisite" does mean profit and we are prohibited by the Constitution from getting that. There is no way I would be in favor of trying to enact a law to increase our compensation or salary, and if a court looked at what we call "expenses", and it turned out to be a guise for increasing the salary, it would be struck down. So I am not trying to increase the salary. This is "actual expenses". We can prepare an A bill and either select a lump sum amount or use the Internal Revenue Code as a guide and give a certain per diem which will reflect the actual expenses connected with being in the Legislature.

SENATOR NICHOL: Thank you, Senator Chambers, that answers my questions exactly. I would only suggest one other thing, Senator Chambers, and that is this, that you have specific items which should or should not be included in these expenses. For example, I live four hundred miles away and I think it is imperative that I have an apartment here during the session. I would say that as far as I am concerned that

is an expense. For those Senators who live in Lincoln, if I were making the decision, I would say, no, they don't need an apartment during the session. They may think that is important. If they lived at Waverly, Nebraska which is a little further, I would not think that would be necessary. Now we come to Omaha which is fifty miles away and at the present time some Senators drive and some have apartments. So it reaches a point where where do you draw the line, Senator Chambers, and I don't know what you have in mind as to where the line is on this sort of thing or other expenses that many would probably be requesting which may or may not be necessary. So perhaps you would like to finish that in your closing remarks.

PRESIDENT: Senator Chambers, do you want to add to that? Senator Nichol, your time is about up. However, our time is up for today, too. Senator Chambers, as you realize, we are to break at 10:30 a.m. for hearings and we have at least two more speakers and your closing so we had better...carry on.

SENATOR CHAMBERS: All I was going to say is that Senator Nichol said that he doesn't mind if we take a vote and his questions can be answered on Select so that is what I would be willing to do for everybody else.

PRESIDENT: You mean you would waive your closing. However, we have Senator Barrett and Senator Schmit, if they want to debate, why we had better put it over. Senator Barrett, do you wish to allow Senator Chambers just to take a vote or would you want to...we are running out of time. We are about out of time today. Do you want to continue this tomorrow so you can debate the matter?

SENATOR BARRETT: If that is agreeable, Mr. President, yes.

PRESIDENT: It is agreeable to go ahead, which is agreeable?

SENATOR BARRETT: I simply had a question. Go ahead. I yield to the Chair.

PRESIDENT: All right. Senator Schmit, do you care whether we go ahead and take a vote on it? All right. Senator Chambers, then we will go ahead. Senator Fenger.

SENATOR FENGER: Mr. President, in view of the complexity and the ramifications of LB 206, under Rule 6, Section 2 (b), I move that LB 206 do in fact be returned to Miscellaneous Subjects Committee for a public hearing and public input.

January 26, 1981

LB 206, 141

PRESIDENT: Senator Chambers, are you familiar with that rule?

SENATOR CHAMBERS: Yes, and, Mr. Chairman, may we just take a vote on his motion which I oppose but he is entitled to make the motion (Interruption).

PRESIDENT: That is right. He is entitled to that motion and you would...so without any further...Senator Beutler, did you wish to discuss that motion? We are out of time really.

SENATOR BEUTLER: Mr. Speaker, I am not in favor of the motion. However, I don't think there should be a vote on the motion. I think it is a matter of right.

PRESIDENT: I am just reading it. I think it is, it is a matter of...Senator Chambers, it is just a matter of, if you will read the rule, just looking at it now, it doesn't sound that there is any vote needed. There was no designation. However, a committee should certainly be in it. Did you say Miscellaneous or did I hear you refer to a committee?

SENATOR FENGER: Yes, Mr. President, it's original designation was Miscellaneous Subjects as my printing of LB 206 shows and I would so move.

PRESIDENT: All right. This is his right, Senator Chambers, so we will just let it go at that and the time has run out on this morning's session. So that will end the discussion then with that reference to LB 206. Speaker Marvel, are you ready then? We have some matters to read in. Mr. Clerk, will you read them in and then the Chair will recognize Speaker Marvel.

CLERK: Mr. President, real quickly, the Executive Board will have a reference meeting tomorrow at 8:45 a.m. in Room 1520.

Mr. President, I have a communication from the Executive Board regarding appointments to the various special committees of the Legislature. (See pages 328 and 329, Legislative Journal.)

Your committee on Judiciary gives notice of public hearing for February 2, 3 and 4.

Your committee on Nebraska Retirement Systems whose Chairman is Senator Fowler to whom we referred LB 141 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments.

92 correctly engrossed, 199 correctly engrossed, 170 correctly engrossed, all signed by Senator Kilgarin, Chair.

Mr. President, I have two Attorney General opinions, the first to Senator Wesely regarding rules and one to Senator Chambers regarding LB 206. (See pages 468 and 469 of the Journal.)

Finally, Mr. President, I have a report from the Department of Roads on the Advertising Control Program submitted pursuant to statute. That will be on file in my office.

SPEAKER MARVEL: We go to item #4 on the agenda and the Chair recognizes Senator Warner.

CLERK: Mr. President, Senator Warner's motion is found on page 392 of the Journal.

SENATOR WARNER: Mr. President, members of the Legislature, the motion pending is one which we have adopted the last several years which would hold any bills on Final Reading which carry an appropriation of general fund money for the coming fiscal year or an A bill which would hold up the bill which has an A bill for the coming year and that none of those bills would be considered on Final Reading until the general appropriation bills have been approved by the Legislature. It would permit any bills that deal with deficiency appropriation for the current year to be enacted or considered as they come up and those of course would not be held up. I would move adoption of the motion, Mr. President.

SPEAKER MARVEL: The motion is the adoption of the Warner motion as explained. All those in favor of that motion vote aye, opposed vote no. Okay, record the vote.

CLERK: 35 ayes, 2 nays, Mr. President, on adoption of the motion.

SPEAKER MARVEL: The motion is carried. We now go to Select File. Senator Kilgarin, shall we take up Select File?

CLERK: There are E & R amendments, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 156.

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

SENATOR KILGARIN: I move LB 156 be advanced to E & R for engrossment.

February 9, 1981

LB 21, 67, 77, 80,
LB 104, 124, 143, 167, 234A,
LB 186, 188A, 206, 221, 236

SPEAKER MARVEL: The Chair is going to make a suggestion. We are going to be facing this kind of procedure from now on and the Chair would like to meet with Senator Chambers. The Chair would like to meet in the Speaker's office with Senator Chambers, Senator Beutler, Senator Kremer and Senator Goodrich immediately upon adjournment and see if we can settle this without taking all this extra time. Now what is before the House? Okay, the Clerk has some items to read in. I would like to meet with Senator Chambers, Beutler, Kremer and Goodrich as soon as we adjourn.

CLERK: Mr. President, your committee on Public Works gives notice of hearing in Room 1517. Your Committee on Education gives notice of public hearing in Room 1517.

Mr. President, a second notice from the committee on Education regarding scheduling of public hearings.

Mr. President, new bills. (Read LB 188A; LB 234 A. See page 478 of the Legislative Journal.)

Mr. President, I have an Attorney General's opinion addressed to Senator Maresh regarding LB 518 from the 1977 legislative session.

Senator Burrows would like to have amendments printed in the Legislative Journal. (See page 479 regarding amendments to LB 167.)

I have notice of hearing from the Public Works Committee.

Mr. President, your committee on Ag and Environment whose chairman is Senator Schmit to whom is referred LB 80 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 104 General File with amendments; 236 General File with amendments, (Signed) Senator Schmit. (See page 480 of the Journal.)

Your committee on Government, Military and Veterans Affairs whose chairman is Senator Kahle to whom is referred LB 221 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 21 General File with amendments; 186 General File with amendments, (Signed) Senator Kahle. (See page 481 of the Journal.)

Mr. President, your committee on Miscellaneous Subjects whose chairman is Senator Hefner to whom is referred LB 124 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 206 General File; 67 General File with amendments; 77 General File with amendments.

February 18, 1981

LB 206

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is LB 206.

CLERK: Mr. President, LB 206 was offered by Senator Chambers. (Read title.) The bill was originally referred to General File. There was a motion on the floor on January 26 to refer it to the Miscellaneous Subjects Committee for public hearing. At that time the motion prevailed. The bill was sent to Miscellaneous Subjects for public hearing. The bill subsequently was advanced to General File. There are no amendments pending, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Paul Bunyon must have been at this mike. I had to reach up and pull it down.

SPEAKER MARVEL: I wasn't out there, sorry.

SENATOR CHAMBERS: Okay, thanks. Mr. Chairman and members of the Legislature, this bill relates to the matter of expenses for the legislators during session. I will try to thumbnail what the situation is, then answer any questions that you might have. The Constitution prohibits Senators from receiving pay or perquisites in addition to the \$400 salary plus one round trip while we are in session. The pay and the perquisite consists of the \$400 salary and the one round trip. There have been State Supreme Court cases in Nebraska which indicate that expenses do not fall within the definition of pay and perquisites. A perquisite is a profit. Expenses merely reimburse the Senators for what they are out of pocket in order to carry out their duties in connection with being in the Legislature. I have had handed around the statement of intent that I presented to the committee because it gives some facts and it also gives a citation to the case in Nebraska which indicated that the Governor could be given a mansion free of charge without violating a pay and perquisite provision of the Constitution that dealt with the Governor's pay. Now, I can tell that there is undivided attention being given to this bill which is so important to us, but despite the fact that nobody really is listening I want to make a record...thank you, Senator Lamb, so that when and if this matter goes to court, it will be clear what has been done. The bill was initially, pursuant to a request that I made to the Executive Board,

sent directly to the floor of the Legislature and the first time that it was presented out here I did go into more detail in the presentation of the reasons behind the bill. I don't want to repeat all of that again because it is not necessary, but let me say this so that we are clear. This bill would allow the receipt of expenses during session in the same way that they are allowed now between sessions. There is one constitutional provision that covers during and between session operation of the Legislature. So it is illogical to allow expenses between sessions when we are not functioning as a Senator to the same extent that we are when we are in session. So I am saying, if all of these various Attorneys General Opinions have justified under the Nebraska Constitution the granting of expenses between sessions, those same opinions justify expenses during session. We should remember also that it is not a court decision that denies us expenses, it is a statement by one Attorney General given in 1937, the same Attorney General who tried to deny the Governor the right to live in the mansion because he said it would violate the pay and perquisite provision of the Constitution. Never has this issue been presented in a fashion that could get it before a court. This is why a law is necessary. Once this bill passes, then it becomes the duty of whoever allows the expenditure of money to honor vouchers offered by Senators to recoup expenses during session. If the vouchers which are presented are honored, then the issue is resolved. If they are not honored, then there exists a clear statutory basis for seeking court action to compel the granting of the expenses. This final point, I don't think that any Senator should see anything wrong with supporting this bill. Remember, the issue has not been resolved by a court yet. My contention and the contention of others who have studied the situation is that we are entitled to expenses in the same way that other state officers are entitled to expenses. So, if a Senator would vote against this bill, my only conclusion would be that he or she would not be interested in receiving the expenses that would be granted under this bill. That is all that I have to offer. I don't think I left any stones unturned considering the presentation I gave the last time. So I am prepared to answer any questions that you ask. This bill does have the emergency clause so that we can get the whole thing resolved as quickly as possible.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Mr. Speaker and members of the Legislature, I just thought I might put this into a context that

might be helpful to you. LB 206 deals with the question of perquisites and the fact that that doesn't prevent us from getting our expenses paid and that is a very important point. I would like to mention the fact that although I can see the definite need for this legislation and will support it, you all know that the League of Women Voters is conducting a petition drive in this state. They have started this this last summer to try and look at our salary situation and try and help us through a petition drive to put on the ballot a change in the Constitution that would better support our legislative members. I prefer that effort and the effort by the grassroot citizenry to try and better compensate us for the work that we do in the Legislature. But I also understand the fact that there are a great deal of expenses that are now not being met. The fact that this bill really doesn't help a Lincoln Senator like myself because it deals with expenses does not bother me at all because I really am concerned about the fact that all of you who have to drive into Lincoln, have to maintain an apartment, have that daily expense of travel and maintenance of a place to stay here, becomes a very, very heavy burden for you, even much more than the situation I and other Lincoln Senators face. And so, because of the extreme nature of the problem I am supporting of this bill, but I also want you to know that that effort by the citizens is going on, that they realize the fact that we are undercompensated and that the expenses involved and the time involved with this body are misunderstood maybe by many of the general public and that a change is needed to better support this Legislature. With that, I would support the bill and encourage your support but also keep in mind the fact that there is a concern out there and that the general public is interested in trying to better compensate us.

SPEAKER MARVEL: Senator Hefner, do you wish to speak to the bill?

SENATOR HEFNER: Mr. President and members of the body, if you will notice in your red book, I voted against advancing this bill to the floor, and the reason that I voted against it is because I think our Constitution is very clear and very exact, and here is what it says: It says, "Each member of the Legislature shall receive a salary not to exceed \$400 per month during the term of his office. In addition to his salary each member shall receive an amount equal to his actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature." It is black on white, very clear. And I think what, Senator

Chambers is trying to twist these words around, and so I am asking this body, if Senator Chambers does take this to court, how much is it going to cost us? How much is it going to cost the State of Nebraska? And at this particular point I would like to ask Senator Chambers a question.

SPEAKER MARVEL: Do you yield?

SENATOR HEFNER: Senator Chambers, what did it cost the state on your court challenge of the Legislature's use of a chaplain? I mean, I understand that the State of Nebraska paid your attorneys.

SENATOR CHAMBERS: I think, Senator Hefner, it was about \$8000 that they were granted in fees, I think. I had no part in that. So I am going by what I read in the paper and I think it was about \$8000.

SENATOR HEFNER: Okay, I understand that you won the case, that the state had to pay your attorneys. Is that correct?

SENATOR CHAMBERS: Well, in reality I didn't win the case, the people won the case. But nevertheless the state, because it took a position which it knew it could not support, was made to pay the cost of requiring court action. That's what the situation is. Now should this bill pass, whoever signs the vouchers to grant the expenses can sign them in the same way that vouchers are signed to grant us expenses now between the session. So what you ought to do, Senator Hefner, is ask, how, if the Constitution is so clear as you stated, we can be given expenses under that same Constitution when we are not in session, for however many trips, to fly to various conferences in other parts of the country and to do various other things that are not allowed if your interpretation of the Constitution is correct.

SENATOR HEFNER: Okay, Senator Chambers. Senator Chambers said and he told this body that it cost approximately \$8000. I have figures that amount to around \$10,000, and this is not the cost to the state of defending this suit, and I imagine that this could be at least that much or more. And so I am asking this body, do we want to go through another court suit? Do we want to put out say another 15 or 20 thousand dollars in court costs and the hiring of attorneys for both sides? And so, therefore, I would ask you to oppose this bill.

SPEAKER MARVEL: Senator Hoagland.

SENATOR HOAGLAND: If Senator Chambers would yield, Mr. Speaker, I would like to ask him two questions about the effective date of this act. Senator Chambers, as I understand the fiscal note on the way the bill is written, if this act is passed, this bill is passed, and becomes effective and the constitutionality is upheld by the Supreme Court, why then we would be able to claim expenses retroactive to the beginning of this session, or January 7th. Am I correct about that?

SENATOR CHAMBERS: Yes, that is my understanding. That is my intention.

SENATOR HOAGLAND: Thank you, Senator Chambers.

SPEAKER MARVEL: Senator Cope.

SENATOR COPE: Mr. President and members, I can't support this for the simple reason that I think it is going to spoil any chance of the Legislature getting a raise. Look at it this way. People are dubious and doubtful about the amount of money that Senators make and you can tell them day after day what it is but they still do not understand. They do have this right by Constitution of allowing an increase. If we try to circumvent that by a bill like this for expenses, I don't think they will ever vote a raise. If it is introduced and we try and should win, then you can be sure that we will never get a raise and I just don't like the idea. It is a chancy thing at the best. We don't know whether it is constitutional or not, or so Senator Chambers says, and for all the odds I am not that much of a gambler. I would rather wait and do it the correct way.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, I rise to support Senator Chambers. And in response to Senator Cope, Senator Cope, at the present time we do draw expenses during the interim and the people out in the State of Nebraska haven't really got upset about this. I think by going the expense route instead of a salary the citizens of the State of Nebraska will understand that because they know that we do have expenses. They know that it does cost us to eat and live and travel because in their lives they have expenses. And the fact that they will not go along with a salary increase, I don't think has anything to do with the issue. I feel Senator Chambers is just trying to clarify something. I think he is right. I think we

should fight it and see what happens and get the issue settled once and for all. Thank you, Mr. President.

SPEAKER MARVEL: Senator Fowler and then Senator Chambers.

SENATOR FOWLER: Mr. President, I support the bill that has been presented. This Legislature has acted on this legislation before. It was developed by the Executive Board based on a legal study as to the whole question of the Constitution in this section. It is not an effort to circumvent the Constitution. There is a question of ambiguity as far as the language and there are previous court cases in Nebraska that deal with this question of perquisites and allow the fact that there is a possibility that expenses can be paid during a legislative session. Now it would seem to me somewhat odd to have a Constitution that says you can get expenses when you are not functioning as a legislative body, that is you can get expenses in the interim but you couldn't get expenses during the session and I think it is that type of ambiguity that indicates that perhaps previous interpretations of the Constitution have been wrong. Now I think it is up to the Legislature to bring this issue to the point that it can be resolved. I think we have a mechanism and vehicle to do so here. I would urge this body to advance this so that we can clarify this question. Ironically, living in Lincoln I would not benefit from this bill because my expenses coming to and from the Capitol have been limited since I live five blocks from the building, but I have seen numerous other Senators who have simply been unable to serve in this body because of the cost simply of traveling to and from the Legislature. I have talked to legislators who have stopped going back to their district during the session because they cannot afford to do so and in so doing that isolates them from the voters back in their district. I think with these sorts of problems pressing upon us when you realize that expenses are paid in the interim and you see previous Nebraska court decisions, I think you can see this is not an effort to circumvent the Constitution. This is an effort to try and clarify an ambiguity and perhaps a contradiction that has existed. So I would say that this bill has been well researched legally. There are questions. There are legal briefs that have been developed by the last Exec Board that could be provided to anyone here who questions whether or not there has been legal research in this area. It is based on cases in Nebraska and I would urge you to vote to advance the bill.

SPEAKER MARVEL: The Chair recognizes Senator Chambers to

close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, remember this one thing, and I just reconfirmed it this morning, I have never accepted free football tickets to Nebraska's games. Senators receive those tickets. Now those tickets are not expenses. They have nothing to do with functioning as a Senator, so the tickets, in fact, are a perquisite. They are a benefit, a profit above and beyond the salary that is granted. It is, Senator Hefner, a perquisite. You failed to read the rest of the language in the Constitution. It said, "no other pay or perquisite" letting you know that the salary and the one round trip constitute the pay and the perquisite which is allowed for being a Senator. In the court cases that I have alluded to there have been allowances for expenses, and the court of this state said that such expenses are not paid, they are not perquisites. When you have to expend money to serve in the Legislature, you are not even breaking even with your salary, you are put below the line. So the expenses rather than being a profit that you make as a result of serving merely brings you back to the position you were in before you were out of pocket money just to come down here and survive as a Senator. But I would like to ask Senator Hefner a question. Senator Hefner, you asked me about the cost of the lawyer fee in the case that I just had relative to the chaplain. Did you vote yea or nay on the most recent abortion bill that was taken to court and partly stricken down as unconstitutional? How did you vote on that bill?

SENATOR HEFNER: (Microphone not on)....understand the question.

SENATOR CHAMBERS: The bill that was passed by the Legislature to put restrictions on abortions in the state. You voted yes on that bill, didn't you?

SENATOR HEFNER: Yes, that is correct.

SENATOR CHAMBERS: And you heard discussions by me and others as to the probable unconstitutionality of parts of that bill, didn't you?

SENATOR HEFNER: Yes.

SENATOR CHAMBERS: But you voted for it anyway knowing it will go to court and cost a lot of money to defend, didn't you?

SENATOR HEFNER: How much did that cost us?

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LB 206

SENATOR CHAMBERS: It would have cost more than this case, I know that much because the lawyer's got a higher fee. But let's forget the amount.

SENATOR HEFNER: Okay.

SENATOR CHAMBERS: You knew that court costs would be involved but you were prepared to have the challenge, weren't you?

SENATOR HEFNER: I didn't know that it would go to court, no.

SENATOR CHAMBERS: Thank you, Senator Hefner. Others in this body knew that the thing was going to court as soon as it was passed and I think deep down in the bottom of Senator Hefner's shoes he had that knowledge also. But what we have to get away from, Senator Cope, is playing ourselves cheap all the time, telling the public we are not going to seek what we are entitled to in the hopes that they will dribble and piddle things out to us. There comes a time when we must aggressively and forthrightly seek that to which we are entitled to under the Constitution. Now other state officials receive expenses for various things. The Governor lives in that mansion. That does not violate the pay and perquisite provision of the Constitution. Would you be willing to tell the public that you will no longer accept the salary until such time as they vote you an increase in order to kind of placate them to the point where they will vote you a higher salary? No. So, if we are entitled to the expenses, we should have them. I think there should be no hesitancy about the issue. Various members of the Miscellaneous Subjects Committee...I think that is where the bill went, were for it. So I don't see any real arguments against the bill. All that the expenses will do is provide for the members of the Legislature that which is provided for every other department of government, namely the means and accessories in the language of the State Supreme Court to carry out the functions for which that department of government was intended. So I ask that you support the bill. Thank you.

SPEAKER MARVEL: The motion is the advancement of LB 206 to E & R for Review. All those in favor vote aye, opposed vote no. Have you all voted?

CLERK: 26 ayes, 8 nays, Mr. President, on the motion to advance the bill.

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LR 17, 18
LB 9, 20, 21, 27-30, 37, 156,
38, 42, 43, 67, 77, 124,
186, 206, 206A, 244, 345, 354

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Father Dale Harges, Sacred Heart Catholic Church here in Lincoln.

FATHER DALE HARGES: (Prayer offered).

PRESIDENT: Roll call. Record the presence, Mr. Clerk.

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

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

CLERK: Mr. President, the Journal is without error this morning.

PRESIDENT: Ah, that is good news. The Journal stands correct as published. We go on to any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports it carefully examined and reviewed LB 21 and recommend that same be placed on Select File with amendments; 186 Select File with amendments; 124 Select File; 206 Select File; 206A Select File; 67 Select File; 77 Select File with amendments; 9 Select File with amendments; 38 Select File with amendments; and 345 Select File. Those are signed by Senator Kilgarrin as Chair.

Mr. President, I have an Attorney General's opinion addressed to Senator Haberman regarding delegation of legislative authority; and one addressed to Senator Beyer regarding LB 354.

Mr. President, I have a report from the Department of Administrative Services, State Building Division regarding the Request for Program Statement/Preliminary Plan Approval. It will be on file in my office.

Mr. President, a communication from the Governor. (Read: Re 244. See page 593, Legislative Journal.)

Mr. President, LBs 28, 42, 156, 20, 27, 29, 30, 37, 43, LR 17 and 18 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 28, LB 42, LB 156, LB 20, LB 29, LB 30, LB 37, LB 43, LR 18 and LR 17. We are ready then for agenda item #4, Final Reading. The Sergeant at Arms will make sure that all unauthorized personnel

February 23, 1981

LB 124, 67, 206, 206A

CLERK: Mr. President, I have an amendment on the bill from Senator Hefner. To amend LB 124, page 3 on line 18 after the word "licenses" add "or bottle club licenses".

SPEAKER MARVEL: Senator Hefner.

SENATOR HEFNER: Mr. President, I ask unanimous consent to pass over this bill for several days and I will try and clear up the language in parts of (c) and (d) in Section 2. And then we also have another amendment, it is getting late so...

SPEAKER MARVEL: I think...is there any objection to that motion? If not, so ordered and I will be glad to work with you, too.

SENATOR HEFNER: Okay, thank you, Mr. Speaker.

SPEAKER MARVEL: The bill is temporarily passed over. We now go to LB 206.

CLERK: I have nothing on the bill, Senator.

SENATOR KILGARIN: I move LB 206 be advanced to E & R for engrossment.

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

CLERK: Nothing on 206A, Senator.

SENATOR KILGARIN: I move LB 206A be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced. LB 67.

CLERK: There are E & R, Senator.

SENATOR KILGARIN: I move LB...I move the E & R amendments to LB 67.

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

SENATOR KILGARIN: I move LB 67 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. LB 77.

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

February 25, 1981

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

March 3, 1981

LB 206, 206A

PRESIDENT: Before we start on Final Reading, the Chair has a very important announcement to make. I wish you would all pay some attention to this because it is a very noteworthy day. A historical day several years ago occurred in the lives of the O'Donnell family when Patrick O'Donnell was born. This is his birthday and another year of stature and attainment has been added to his years of life. Congratulations on your birthday, Pat. I won't tell how old he is if he doesn't. Okay. All right, now he is in good form ready for Final Reading. So if the Sergeant at Arms will get the aisles cleared and all legislators will be at their desks, we will proceed with agenda item #4 on Final Reading. So we can start before while everybody is getting ready we do have to....the Clerk advised me we do have to unbracket these bills, so a motion is in order to unbracket them before we do go on Final Reading. So has that motion, Mr. Clerk?

CLERK: Mr. President, Senator Chambers moves that LB 206 and 206A be unbracketed notwithstanding the motion offered by Senator Warner which was adopted on February 9 of this year and is found on Journal page 391.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have talked to Senator Warner about this motion and he obviously will oppose it because we couldn't expect him to vote for a proposition that would go counter to a proposal that he has offered. And although I understand his reasons for not wanting A bills read until after the budget bill is read, this one is in a bit of a unique situation. I think there is no way we are going to avoid having a lawsuit on this matter. Last year the bill was not passed until after the budget and everything else. We were out of session and the Governor vetoed it. There was no chance to override so the issue was never in a position to be presented. The only way, in view of Senator Warner's motion, that this bill can be read at this point is to unbracket it and have it read and passed in spite of the fact that it has an A bill or an appropriation provision attached. Because of the time frame that would be involved in having a resolution of this matter, I think it would be self-defeating to hold it until the end of the session, perhaps having it vetoed again when we are not in session. So to avoid all of that, I would request that you vote to unbracket this bill, that we pass it and be in a position to resolve this issue of expenses once and for all. As you know, we currently are

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granted expenses when we are not in session, but an Attorney General's Opinion in 1937 stated that we could not be given the expenses during session. The purpose of this bill is to create a situation where if a lawsuit is necessary all of the ingredients that would be required will be available in the law. So I am asking that you support this motion despite the arguments of Senator Warner to the contrary.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, Senator Chambers indicated he talked to me yesterday about accepting this because of filing a lawsuit and I indicated I had no concern about or no problem with having the issue brought up, but I do have a problem of precedent. One of anything never hurts, I suppose, ten can be harmful. If we get in the habit of making exceptions then as tight as we are on money this year we are going to have some problems. So other than if the body would like to take it and understand that this is the only one that we are going to do, that is one thing, but if this is a first of several more to come, then I would argue much harder not to do it.

PRESIDENT: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I rise to oppose unbracketing this bill. If we unbracket this bill, we are going to open up the floodgates. Many other A bills are going to follow this one, and so I would just say again, let's leave this bill bracketed and group all of these A bills together and see how our budget comes out. I believe this would be a fair way of doing it and I will say again to you, if we let this one bill go, then I am sure that many more will follow. Therefore, I would urge you to vote against unbracketing this bill.

PRESIDENT: Before we go on to the next speaker, the Chair would like to introduce some guests of Senator Nichol, Charles Barr, Jack R. Preston, Virginia Lenhart and Mike Chrisman. They are under the south balcony. Would they stand and be recognized? Welcome to your Legislature. The Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I rise in support of Senator Chambers' motion to unbracket his bill. Although I do not support the bill, I don't think it is going to be allowed anyway in the long run, but I would just like to suggest to you again

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that there are 49 members of this Legislature. I have here the stack of the bills so far, the A bills that are listed at the top of your worksheets that are going to be held up, and I know that when Senator Warner offered his motion at the earliest days of the Legislature that we bracket those A bills regardless of the impact, that there was a lot of activity on this floor and very few people understood what was going on. But once again we are falling right back into that same old routine and each succeeding day we march one nearer to the final days of the session and one of these days the budget committee is going to come to the floor with their budget and they are going to say, okay, folks now we have saved for the other 40 members of you \$1412 you can spend as you see fit. We have in our wisdom decided how to spend \$600 million or \$700 million and we have left you this \$1400 and you can jockey it around any way you like just as long as you stay within that amount, and we will be glad to go along with it, and we will approve it with some reservations, of course, but you try to tinker with that budget bill, we are going to descend on you with the full weight of the 9 members like we did last year. And I think you should recall what happened last year, and I think the members of the budget committee should recall what happened. I tried time after time to amend areas of the budget bill. My major contribution last year was to delete the \$7500 that Senator Kelly had put in the bill to be spent on unidentified flying objects. I think we all recognized that that was not a major contribution on my part last session. But that was all I was able to do, and the bill went to the Governor intact, and then Governor Thone, because he had some very serious reservations about the bill, took the meat cleaver to the bill and when Governor finished with the meat cleaver, it looked like a four year old kid had used it on George Washington's cherry tree, and it came back to this body, and this body, because we have our own way you know getting back at people, we supported the Governor's vetoes, even though we probably didn't agree with all of them. But in any case, with a few major exceptions, as Senator Koch said, there were some alterations. But that didn't seem to me and I don't think it seemed to you at the time, nor did it seem to the members of the budget committee to be the most reasonable way to approach the process. Now if you are going to leave those A bills bracketed, then bear in mind that when the time comes to vote upon them, you are not going to be arguing as the impact upon the total expenditures of the state. You are only going to be arguing about those budget bills as they impact upon each other, I mean, those A bills, and the relationship

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of one A bill to another may not be nearly as significant or it may be much more significant than its impact upon the entire budget. It may well be that all of these A bills are more desirable, more important, more qualified to be passed into law than some of the expenditures that the budget committee has decided upon. I think, ladies and gentlemen, that you have once again and I have with you, although I voted against Senator Warner's motion....

PRESIDENT: Half a minute, Senator.

SENATOR SCHMIT:Fallen into the same old trap, the easy does it method whereby we just sit back and say we will bracket those bills and then when we get done, like the father tells his son, I would like to have bought you the new bicycle but I've run out of money and so you will have to keep on walking this year. So, ladies and gentlemen, I rise in support of Senator Chambers' motion and I ask you to consider carefully what you are doing because the consequences of what you are doing will be with us the rest of the session.

PRESIDENT: The Chair would also like to introduce at this time a guest of Senator Chronister, Mark Schoultman from Howells, Nebraska, presently a student at Chadron State College. He is under the south balcony. Would Mark stand up and be recognized. Welcome, Mark. The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman and members, I intended to make a statement but I think I would make it in the form of a question to Senator Chambers.

PRESIDENT: Senator Chambers, will you respond?

SENATOR CHAMBERS: Yes, I will.

SENATOR KREMER: Relative to LB 206, unbracketing, I think you will have to agree with me this will probably go to the court immediately.

SENATOR CHAMBERS: Yes. Right.

SENATOR KREMER: And you would agree that there will be a constitutional amendment offered that would raise the salaries of the Senators.

SENATOR CHAMBERS: Yes.

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SENATOR KREMER: What kind of an effect would that have on the constitutional amendment if this thing is in court at the time? Would it not practically destroy our chances of getting a raise in our salaries?

SENATOR CHAMBERS: No, Senator Kremer, I think the two issues are entirely distinct...(interruption).

SENATOR KREMER: I mean in the eyes of the public. I am talking about the eyes of Mr. Public out there. He is saying, now wait a minute, here they are trying to get reimbursed for their expenses and at the same time they want a raise in their salaries, and will that harm to any extent at all in your opinion the chances of getting something passed in the way of a constitutional amendment to raise our salaries?

SENATOR CHAMBERS: No, Senator Kremer, because I think most people who have jobs are aware of expenses and what those entail and I doubt that any provision which is designed to raise the Senators' salary is going to pass. There have been all kind of efforts. There have been all types of phrasings of the amendment. There have been support in terms of telling that you will only spend a penny, or something like that and people say, well, that's a penny too much. So I don't think this issue ought to be tied into that. Either we are entitled to the expenses under the Constitution or we are not. Right now we have what I feel to be is a very confusing situation for the public. We get expenses when we are not in session. We don't get them when we are. We have an obligation, I think, to resolve the matter and had the Attorney General done proper research it wouldn't be necessary to go to court anyway. But I don't think the two are related and I don't think despite what has been said by some news editors in Lincoln that the two ought to be joined. The World Herald yesterday supported an increase in salary but also supported the idea of dealing with the expenses issue. So I think the two can run side by side without hurting each other.

SENATOR KREMER: Thank you, Senator Chambers. I probably agree with you that the two do not necessarily have to run together or they could. I just don't want...and I think I will support the motion to unbracket and I will support the court's taking a look at this and they will make the decision anyway. But I am still a little bit worried what Mr. John Q Public is going to say, well, here they are trying to get everything all at once, and maybe we won't, I don't know. Thank you.

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PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I think Senator Kremer raises a very excellent point with respect to why this bill should be unbracketed and why we should attempt to pass it at this point in time. I think it is to our advantage to try and have this issue resolved in the courts as soon as possible. From my perspective, I fail to understand why it is proper for us to receive expenses during the interim if it is not proper for us to receive expenses during the session, which is, of course, the point in time when most of us do our work and when it is more expensive for us to maintain our existence here in Lincoln. And I just fail to understand the constitutional arguments that it is proper during the interim but it isn't proper during the legislative session, and I think Senator Chambers is appropriate in getting this resolved as soon as possible, and the sooner this issue is resolved one way or the other, the better off that we will be as far as pay raises are concerned I think. And as far as timing is concerned, Senator Kremer, if this issue passes early in the session, Senator Chambers and others will have an opportunity to litigate the issue early and that will be resolved before November of 1982 when the issue will be before the voters. And so I think it is wise of us to resolve this just as soon as possible and I applaud Senator Chambers for bringing the issue to us and for doing the research behind it to convince a number of us that it is, in fact, a good proposal.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I am supporting the unbracketing motion if, indeed, the bill is legitimately ever bracketed, and I would just make a matter of record something at this time. Number one, the motion you passed that has locked this bill up and others was dramatically different than what you passed in previous years. The motion says that all these bills that have basically any impact whatsoever on the General Fund are going to be locked up until after, after the Appropriations bills are all passed. Now I have done a little checking on it and you are talking about a couple hundred bills. All the major bills of the Legislature are going to be sitting there to be decided I am going to guess on the last day or so of the Legislature with everything created into a jumble again. It is a major change from the way you have done it in the past in terms of what the procedure is. I think there were two votes

against the motion, mine was one of them. I think you are going to discover before all is said and done that no matter what we do on General File, Select File and everything else and all the debate we are spending on all of these bills, you are just wasting your time because on a calm day at the beginning of the session without too much information you passed a motion that is going to trap you completely. And I am supporting unbracketing it for that very reason. I also have a ten year study of Appropriations bills showing when the last Appropriations bill, remember it says all Appropriations bills, when the last Appropriations bill has always been passed. You are talking the last day of the session in almost every case. Now you tell me how you are going to handle two or three hundred major bills that can all be amended or changed or anything else in the last couple of hours. I am just saying that you are in a lot deeper than anybody dreams in what you did at the beginning of the session so I am supporting unbracketing the motion irrespective of any merits of the bill itself which is a completely separate issue. I am supporting unbracketing it to set the precedent that we better be handling these issues now as they come up rather than locking everything in and be the prisoner, literally the prisoner, on the last day or whenever the Appropriations Committee chooses, be their prisoner forever. So I support unbracketing.

PRESIDENT: We would save a lot of time, too, if we would restrain ourselves to the subject of the motion to unbracket rather than get into the merit of the...as Senator DeCamp said, into the merit of the bills. The Chair recognizes Senator Koch.

SENATOR KOCH: I will yield to Senator Warner.

PRESIDENT: All right, Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, what Senator DeCamp just said is not so. The motion that was adopted this year is identical to the one adopted last year. What we did do last year was after the Appropriation bills had passed this body, we then went ahead and withdrew the motion and took up the A bills. But the wording was the same. I said when I initially started that I didn't object if this was one bill, but it is very evident from Senator Schmit's remarks and Senator DeCamp's remarks and there may have been one or two others, that that is not the issue of this bill. The issue is their intent...is their attempt to get new programs that have higher priority than the funding of existing programs of state government and state aid programs, and it is

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perfectly clear what they are trying to do, and if that is the case then I am going to oppose the unbracketing of 206. Senator Chambers has an alternative he can use. He can take the '81-'82 appropriation out of the A bill, leave the appropriation for '80-'81, which is a deficiency appropriation that is not covered by the motion. He can then file his lawsuit and there is no need whatsoever to do it. I was trying to be a friendly fellow about this, but obviously that is not the purpose of the....I am sure Senator Chambers' purpose was exactly what he said. But obviously there are others who want to make this into something else. So on the basis of the discussion that I have heard and the obvious intent of a number of people, and I am not going to comment on some of their other remarks at this time, but I am sure I will have an opportunity to later, I am going to have to oppose the bill to unbracket and inform you that Senator Chambers has an option to pass it by amending the A bill so that can proceed and I would hope the body would turn the motion down.

PRESIDENT: The Chair recognizes Senator Barrett.

SENATOR BARRETT: Mr. President and members, I rise in support of Senator Chambers' motion to unbracket the bill. I think timing is so very, very important. This matter... a similar bill as you will recall was passed last year. Because of the lateness of the session, the Governor vetoed the bill. We did not have a chance to override it. We could very well be in the same position this year. The matter has been a ping pong, a virtual ping pong for nearly 44 years. The time has certainly come for this thing to be resolved by the courts once and for all, and I believe the unbracketing of the bill is the obvious move in the right direction. I support Senator Chambers in his effort to get this matter of 206 moving. Thank you.

PRESIDENT: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I don't know how we got two issues going here at the same time, but we certainly do and they seem to be counteracting against each other. I very strongly support what Senator Chambers is trying to do and if he could use the vehicle outlined by Senator Warner, I think that would be a more proper way to go about it. Now as far as bracketing A bills so that we can take a look at the total amount of expenditures before we make our prioritization as to what expenditures should or shouldn't be made, I don't know of any other common sense way to budget. If we keep taking

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things as they come across the floor one at a time without any concept or any idea as to the total amount of money we are going to spend, whenever we see a goodie we like and we are going to buy it, there is no way we can possibly stay with any kind of fiscal responsibility whatsoever. We have to look at the total package and then make our priorities. We can't look at it from the perspective of the request. The requests, as many of you are finding out already, are unlimited and they are all worthwhile and they are all something everybody needs some place, but obviously, everybody can't get everything they want. And this body, come the day when we look at the budget and look at all the A bills, is going to be forced to do some extremely hard decision making and prioritization, and if we don't get the whole basket together where we can take a look at it, pick our priorities, take a look at existing revenues, there is no way we can make an intelligent decision. So I, as much as I am in favor of Senator Chambers and LB 206, because of this other issue that has been interjected into this debate, am going to have to vote against unbracketing.

PRESIDENT: The Chair recognizes Senator Cope.

SENATOR COPE: I call for the question.

PRESIDENT: All right, the question has been called for. Do I see five hands? Yes, I do, I see five hands. All those in favor of ceasing debate vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 3 nays to cease debate, Mr. President.

PRESIDENT: The motion carries. Debate ceases. Senator Chambers, you may close.

SENATOR CHAMBERS: Mr. President and members of the Legislature, let me try to say something very briefly and I hope you will hear what I am saying. There are undercurrents related to other bills that are flowing across the floor this morning. But remember this, if there are enough votes to unbracket any other bill, that will be done in disregard of what is done on this particular matter. On the other hand, those of you who don't want to unbracket any bills, I am sure each and everyone of you can see that this bill is unique and distinct from every other A bill on the board. It is a matter which did pass last year, as Senator Barrett pointed out, and was vetoed while we were out of session. There is nobody who can ensure that an appropriation bill will not be left for

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action on the last day of the session. If that would occur, this bill could pass the last day and be vetoed again. So I would bring it in the following year and it would be bracketed. We would get down to the tail end, it would be vetoed and we couldn't override and it would be a yearly thing. If you vote to unbracket this bill and you are opposed to unbracketing others, your vote on this will not establish a precedent because there is a distinct difference between this and every other bill. So I am hoping that you will vote on the basis of what this bill is and the purposes to be accomplished. If it is not done in a timely fashion, it will have to be redone last year as it is being redone this year. So I hope you will vote to unbracket this bill, then vote to pass it. Thank you.

PRESIDENT: The question before the House then is the motion to unbracket LB 206 and 206A. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 30 ayes, 13 nays to unbracket the bill, Mr. President.

PRESIDENT: The motion carries. The bills are unbracketed. So we are then ready in a position to go on Final Reading.

CLERK: Yes, sir.

PRESIDENT: All right. The Sergeant at Arms will see that all unauthorized personnel are off the floor. All members will be at their desks, and we will proceed then with Final Reading on these two bills. All right, Mr. Clerk, you may proceed with the reading of LB 206.

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

PRESIDENT: Read the motion.

CLERK: Mr. President, Senator Hefner moves to return LB 206 to Select File for a specific amendment, that amendment being to strike the enacting clause.

PRESIDENT: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I have a motion up there to return LB 206 to Select File and strike the enacting clause. This bill as written does one thing. It authorizes the legislators to receive actual expenses during the session as is now allowed between sessions. But our State Constitution says each

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member of the Legislature shall receive a salary not to exceed \$400 per month during his or her term of office. In addition to his salary, each member shall receive an amount equal to his actual expenses in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay or perquisites other than such salary and expenses. I think our Constitution is very clear. It is very distinct. Senator Chambers, I think it is black on white. It says one trip down and one trip back, no others. And I realize that Senator Chambers here is trying to prove a point, but to prove this point it is going to cost the State of Nebraska thousands and thousands of dollars and, therefore, I am objecting to this bill. Senator Chambers has diagnosed a problem but he has come up with the wrong solution. This solution that he has is wrong. I think the correct solution would be to introduce a bill calling for a constitutional amendment so that the people, so that the people in the State of Nebraska could vote on it. I think that we have hoodwinked the public long enough. Let's get back to principles. I think that if this bill passes, it could jeopardize our chances of getting a constitutional amendment to raise our salary, defeat it. I believe Senator Labeledz and Senator Johnson each have a bill to raise our salaries. But I am sure that if this bill goes through, they will...the public will turn these constitutional amendments down. Think of the court cost. Think of the attorney fees that this will cost us if this bill is passed. I feel that this bill attempts to circumvent the Constitution. It attempts to end-run our Constitution and, of course, I don't think the public likes to see us do these things. It is against my principle to not stand up here this morning and explain to you why I oppose this bill. Our Constitution spells it out so plainly and so clearly, no expenses should be allowed to Senators during the session except one trip to Lincoln and one trip home. Our Constitution doesn't say anything about expenses in between sessions, and so I say to you this morning, let your conscience be your guide and I just wanted to call this to your attention one more time. I truly believe that Senator Chambers is doing what he thinks is right, but I believe it is wrong. I believe that the right solution would be a constitutional amendment. With this being said, I unanimously ask this motion to be withdrawn.

PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: He asked unanimous consent to withdraw the motion.

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PRESIDENT: Oh, excuse me, I didn't hear you. I was talking and I didn't hear you. The motion is withdrawn, so we are then...is there anything further on the desk, Mr. Clerk?

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

PRESIDENT: All right, we will then proceed as we started to proceed a couple of times before with Final Reading. Is everybody at their desks? The Sergeant at Arms will see that everyone is off the floor and that all legislators are at their desks. We are on Final Reading. Mr. Clerk, you may proceed then with the Final Reading of LB 206.

CLERK: (Read LB 206 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 206 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 723 and 724 of the Legislative Journal.) 27 ayes, 20 nays, 2 present and not voting, Mr. President.

PRESIDENT: The bill fails to receive the constitutional majority to pass with the emergency clause. Having failed to receive that majority for the emergency clause, the question now is, shall LB 206 pass without the emergency clause? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 724 of the Legislative Journal.) 27 ayes, 20 nays, 2 present and not voting, Mr. President.

PRESIDENT: LB 206 passes. Now the next bill is the A bill and we want to call upon the Chairman of the Appropriations Committee to explain whether this will be one of those bills that will require 30 votes because it exceeds the budget. Senator Warner, would you comment on that?

SENATOR WARNER: Mr. President and members of the Legislature, at least under the procedure that we have been operating since what, '76 or 7, the requirement for an A bill that is an item in excess of the Governor's budget requires 30 votes. Since the Governor does not have this item in his budget and I have not specifically checked on

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LB 9, 34, 59, 69, 206,
206A, 308, 331

(Recorder malfunctioned. Following are the proceedings taken from the Journal.)

SPEAKER MARVEL PRESIDING

G. BRUCE CURRIER: Prayer offered.

ROLL CALL

CORRECTIONS FOR THE JOURNAL

MESSAGES, REPORTS, ANNOUNCEMENTS: LB 331 placed on General File as amended. (See pages 746-747 of the Journal.)

Message from the Governor. (See page 747.)

Executive Board report. (See pages 747-748.)

Attorney General's opinions re LB 59, LB 308, LB 69 as found on pages 748-752.

Speaker Marvel signed LE 206 and LB 206A.

FINAL READING: LB 9 read and passed on Final Reading. Final vote 33 ayes, 12 nays as found on pages 752-753 of the Journal.

Senator DeCamp moved to return LB 34 to Select File for a specific amendment.

Senator DeCamp asked unanimous consent to withdraw his motion.

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LB 345, 30, 206, 206A, 457

SENATOR CLARK: LB 345 is declared passed. We will now go to item #5, a motion by Senator Koch, LB 30.

CLERK: Mr. President, Senator Koch moves that LB 30 become law notwithstanding the objections of the Governor.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, I would ask unanimous consent to pass over item #5 on the agenda, both items.

SENATOR CLARK: Mr. Speaker, is that all right with you?

SENATOR KOCH: I am requesting, Senator Marvel, that we pass over item #5 on the agenda. We may pass over it indefinitely but we might take it up later this morning. I will advise you of that. Thank you.

SENATOR CLARK: We will pass over item #5 and go to item #6, Select File.

CLERK: Mr. President, if I may right before that, read a few things. Your Enrolling Clerk respectfully reports that she has presented to the Governor at 10:12 a.m. today, 206 and 206A.

Mr. President, Senator Stoney asks to be excused all day tomorrow and Monday.

Mr. President, Senator Koch asks to be excused through Friday, March 6.

SENATOR CLARK: LB 457.

CLERK: Mr. President, LB 457, there are no E & R amendments to the bill. I do have amendments from Senator Maresh, Mr. President.

SENATOR CLARK: Read the amendment. Senator Maresh, do you want to explain the amendment? It is two pages long.

SENATOR MARESH: Yes, Mr. Chairman, the amendment is very brief and simple and what it does, it adds waterways to the duties of the Transportation Advisory Committee. This is one area that is not covered by the Transportation Advisory Committee and I serve on this committee and I feel this is one of the duties we should include for this committee, to study what can be done to promote barge transportation on the Missouri River. Governor Thone has used some of the Old West Regional Commission money to establish a Missouri River Marketing Office and they are trying to promote the river with this. Last year this body passed

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LB 32, 76, 83, 136, 144,
206, 206A, 354, 457, 492

respectfully reports and examined engrossed LB 76 and finds the same correctly engrossed; LB 83 correctly engrossed; LB 136 correctly engrossed; LB 144 correctly engrossed; and LB 354 correctly engrossed; LB 457 correctly engrossed. (Signed) Senator Kilgarin.

Mr. President, I have a message from the Governor. (Read. Re: LB 206 and 206A. See pages 818 and 819, Legislative Journal.)

Mr. President, I have an Attorney General's opinion addressed to Senator Vickers regarding LB 32.

Mr. President, Senator Kremer would like to have the Public Works Committee meet underneath the North balcony right now for purposes of an exec session, the Public Works Committee underneath the North balcony, Mr. President, right now if possible.

Mr. President, your committee on Government, Military and Veterans Affairs reports LB 492 to General File, (Signed) by Senator Kahle as Chairman.

PRESIDENT: The Chair recognizes Speaker Marvel for an important announcement. Speaker Marvel. Would the Legislature please pay some attention to the Speaker at this point.

SPEAKER MARVEL: I wish you would get out your paper and pencils because we are talking about deadlines for priority bills. You will find on page 137 of the Journal for the fifth day, January 13, 1981, Rule 5, Section 6 which talks about scheduling of bills and priority bills. Your individual priority selection as well as your committee selection, the deadline is March 13 which is Friday. The deadline for the Speaker is March 17 and the chairmen who met this morning, although the rule does create some misunderstanding, what would happen is that your bills designated by either yourself or the chairman of your committee or committees, those bills would be gathered in by the Speaker's office and we would set them up as priorities on the agenda. Now there is some discussion about a way to maneuver so you can get more priority bills than somebody else and I would assume that no one in this body would operate that way but March 13 is the deadline for priority bills individual and committee and March 17 is the deadline as far as the Speaker's office is concerned and we would implement this through the agenda. If anybody has any questions I will try to answer them, otherwise you can find on your worksheet for this morning the beginnings of a listing of priority bills. There are five listed this morning, 56, 245, 269, 290 and 404.

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LR 32
LB 132, 206, 206A, 361
190

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 132 to General File with amendments; Mr. President, LB 361 to General File with amendments. Those are both signed by Senator Kremer as Chair.

Mr. President, new resolution, LR 32 by Senator Hefner. (Read. See pages 829 and 830, Legislative Journal.) That will be laid over, Mr. President.

Mr. President, Senator Chambers moves that LB 206 and 206A become law notwithstanding the objection of the Governor. That will be laid over as well.

PRESIDENT: We are ready then for agenda item #7, General File. The first bill on General File is LB 190. Mr. Clerk, will you read?

SPEAKER MARVEL: All right, we are ready for item #5.

CLERK: Mr. President, Senator Chambers moves that LB 206 be passed notwithstanding the objections of the Governor.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, LB, this motion is to override the Governor's veto of LB 206 which was a bill to grant legislator's expenses during session. I hope you will listen because what I am saying this morning is designed to persuade you, not just to get words into the record. We have already established a legislative history at the committee hearing and at the other stages of floor debate but there are a couple of items I think you ought to pay close attention to and especially Senator Hefner and some of the others that think it is unconstitutional to be given expenses during session but not unconstitutional to be given expenses when we are not in session. We do get expenses right now as a matter of fact, during session. All you have to do is take a trip while we are in session and you will be approved for reimbursement of that trip. Now nobody has said that is unconstitutional so we are getting limited expenses right now. You can get free football tickets during session, well no, that is not during session, is it? But nevertheless, the football tickets don't qualify as expenses under any definition of the Constitution. It is, as a matter of fact, a perquisite of office which is specifically prohibited by the Constitution, yet the tickets are not considered illegal. So, we have got concrete examples right now of things being done which we have been told cannot be done and they are not illegal. I will tell you where the controversy originated. Had I taken the time or had I had the time to take, I would have tried to see what the political party of the 1937 Attorney General was and the political party of the Governor because at that time when this first Attorney General's opinion was handed down, the Governor was given a house by the Legislature. There was a provision in the Constitution that limited him to a specific number of dollars in compensation. The Attorney General filed an action saying that the Legislature acted unconstitutionally in giving the Governor this house because it increased his salary in violation of the Constitution. The Nebraska Supreme Court looked at that situation and said, no, it does not violate the Constitution. This is in the nature of an expense and not an increase in salary. Since it does not increase the salary of the Governor it is not unconstitutional and the Governor can have the house and that has come down from 1937 to today without challenge. The legislators are in a similar situation.

We have a matter of an Attorney General's opinion given in 1937 on which other Attorneys General had given opinions saying that senators cannot be given expenses during session but between sessions. Our only legal position in this state is as members of the Legislature we are recognized in the Constitution only as members of the Legislature. So if at any time we can legally be given expenses, then we can be given legal expenses all of the time that we are on the official business of carrying out the duties of our office. So there is no constitutional impediment to us receiving these expenses. Now, the conflicts that exist between the State Supreme Court ruling and the Attorney General's office must be resolved in behalf of what the position is of the Supreme Court. The only reason the Governor vetoed this bill last year is because the Attorney General asked him to do so. It is of no interest to the Governor and of no concern to him. It doesn't relate to the Executive Branch of government at all. The Executive Branch can receive expenses without violating the Constitution and the Governor's house proves it. The State Supreme Court right now has a very active Chief Justice who is constantly trying to upgrade the court and push for a greater respect on the part of the public for this court. The only child which is treated like one of those whose parentage is not determined is the Legislature and we do it to ourselves because we allow ourselves to be deprived of those things that we have a legal right to receive. The Constitution does not prohibit us from receiving the expenses. The State Supreme Court has already given a decision in the case of the Governor which indicates we can receive the expenses too. I had tried and I gave you a handout to prove it, to obtain a set of circumstances where the issue could be placed before the court by offering a voucher. When D., the Department of Administrative Services rejected the voucher they said there is no statutory authorization for the granting of expenses so that ended the matter. We have got to have a statutory authorization for the expenses and we will not lose this case. Why would the Attorney General want the bill vetoed? Because it would mean a series of Attorneys General from 1937 have unquestioningly followed a mistaken opinion which was not well researched. So rather than have any type of embarrassment come to the office, they don't want the issue challenged in court. It can only be resolved through a judicial decision. Right now the public is in a position to question our integrity and our motives by saying if the senators are so pure and if expenses are unconstitutional, why are they accepted when the senators are not functioning in session as senators? Why will they accept reimbursement for trips during session which is the granting of expenses if they are unconstitutional? What I hope the senators will do is

to think about this matter in terms of the third independent arm of the government. This is the Legislature, We have to stop allowing it to be kicked around. We have to stop demeaning and degrading it ourselves by indicating we are not worth anything or even entitled to all of the things that other public officials are receiving now. What I am asking you to do is to vote, we need 30 to override, to override the Governor's veto of LB 206. You can see from his very brief message vetoing the bill, that he had no personal opposition and no real interest in the bill. It was done as a favor to the Attorney General and I think even if they have that relationship, we are not bound as a Legislature to uphold the Attorney General's office ego. What ought to have been done by the present Attorney General if not any who came before him, was to review the matter, undertake the proper legal research, review court cases which have granted expenses in other states to legislators who are bound by a similar provision of Constitution, study those cases and simply acknowledge that the first opinion was ill-conceived and mistakenly given and that senators as a matter of fact, can be granted expenses during session under the Constitution. So, I am asking that you will all vote to override the Governor's veto.

SPEAKER MARVEL: Senator Hefner.

SENATOR HEFNER: Mr. President, members of the body, I rise to oppose this motion to override the Governor's veto and I would like to simply call your attention to the Attorney General's opinion on page 803. This was rendered to me on March 6 and in here the Attorney General goes back and explains why it is unconstitutional to allow expenses to the state senators during the session. Senator Chambers' bill as written does one thing. It authorizes the legislators to receive actual expenses during the session and this is what our Constitution says. It says, "Each member of the Legislature shall receive a salary not to exceed \$400 per month during his term of office." And here is where we come to the important part. "In addition to his salary each member shall receive an equal amount to his actual expenses in travelling by the most usual route once to and returning from each regular or special session of the Legislature." It doesn't say that we can go ahead and collect some of our expenses. I think that our Constitution is very clear and very distinct, but here Senator Chambers wants to turn these words around for us. It is true, Senator Chambers, you have diagnosed a problem and it is a very logical problem. I would like to receive my expenses too while I am down here because it costs a lot of money for us to rent a house or to drive back and forth and to pay for our meals

and things like that, but I think that you are coming up with a wrong solution to this problem. I feel that the correct solution is a constitutional amendment that will correct the wording in our Constitution. I feel that if we override the Governor's veto this issue will wind up in the courts and of course we know how much money that is going to cost us. It is going to cost us thousands of dollars. Also, I am positive that we would jeopardize Senator Labedz' and Senator Johnson's bill which they have introduced asking for approval by the people to increase our salaries and I can certainly agree with you that we need an increase. I feel that this bill that Senator Chambers has attempts to circumvent the Constitution. The public is smart out there. They know what is going on down here and I don't think they like it. I don't think that they like to be hoodwinked. Our Constitution says very plainly one trip down and one trip back and that is it and then too, it goes against my principle. I think we are twisting these words around and so, I say to this body this morning, let your conscience be your guide. Senator Chambers is doing what he feels is right but in my mind I think it is wrong. I think the right way is to pass a bill that will bring this to a vote of the people, a constitutional amendment saying that we need expenses, our expenses covered. Therefore, I would urge you this morning to vote against this motion to override the Governor's veto.

SPEAKER MARVEL: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I only have a couple of remarks to make in support of Senator Chambers to override the Governor's veto on LB 206. The first remark I want to say is this, I think the Legislature is entitled to go to court once in a while. You know, we never do get to go to court. We sit here and we pass a law and obviously the Attorney General from time to time tells us the law that we pass is unconstitutional but it isn't up to us to get to go to court on that law. We don't have any chance to go to court on that law. If somebody wants to take the law to court they can take the law to court and a court can decide it but you and I are not in the driver's seat on that. Well this expense issue is one that has been hanging fire for a long time and we have, I guess been wriggling on the turning spit, so to speak, of the 1937 Attorney General's opinion. It has never been challenged. How is it to be challenged but for the passage of a law and a case in court? Now I think that is a fair and just thing to do. In terms of the dollars it is going to cost us most litigation in the Nebraska Supreme Court won't generate that great of cost but the amount of cost

I can guarantee you, that will be generated will be less than the amount of cost at the time we will spend in discussing and rediscussing this very issue over the next ten to fifteen to twenty years until such time as we lay the issue to rest either through a Constitutional amendment or else through a judicial interpretation through our high court. So it seems to me that we have gotten ourselves to a point where we ought to have the issue properly addressed by the courts and whatever the decision is, whatever the decision is, of course we will abide it and should it be that the Nebraska Supreme Court ultimately finds that the 1937 interpretation of the Constitution by the Attorney General is an incorrect interpretation, that finding by the Nebraska Supreme Court does not lock subsequent legislatures in to providing unlimited expenses for us. Every legislature will have the chance to determine a reasonable expense policy for the members and once that determination is made then reasonable expenses, whatever they might be, can be so allowed. So, I would not be discouraged from voting to override the Governor's veto out of concern that either this body or subsequent bodies go hog wild. That's bunkum. We will always act in the best interests of this state and our constituents and I think we will work out policies that are essentially fair and correct and right. I urge you to vote for the override.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker and members, this is going to be a first, I think. I am going to oppose my good friend Senator Hefner and support my friend Senator Chambers. I think we have gone about as far as we can go with this thing and I feel myself that even if we would get a salary increase it is not going to solve our problems. We have a disparity in Nebraska of course, because we are quite a large state and our Capitol is not centered in the center of the state. Those of us living out West, and I only live about halfway, have a different set of expenses and I have kept track of my expenses the last number of years. I know what it costs me to be a state senator. So I think we should face up to the expense part of it and perhaps go to court. I have a real fear that when we go to court we are going to lose the expenses that we are getting now for our interim period. I think the court is going to find that may possibly be unconstitutional also but I'm willing to take that chance. I think we need to bring this to a head and find out if we can collect expenses. It is not really fair. Many of us that argue on this issue have other incomes and we have enough income so that we can give of our time and travel but it is really not fair to the citizens of Nebraska when everyone cannot be a state senator because of the financial burden.

I think it is high time that we look on this issue and get it solved once and for all and I would certainly... whether this does anything in court or not or whether we lose more than we gain is really beside the point. I think we need to face up to the fact that no salary, no matter what it might be, is fair without expenses involved so, therefore, I am going to support Senator Chambers this morning in his effort to try to do something about it. Thank you.

SPEAKER MARVEL: Senator Barrett.

SENATOR BARRETT: Mr. Speaker and members, it may come as a bit of surprise to some but I also rise in wholehearted support of the motion to override the gubernatorial veto. I don't particularly like to override a Governor's veto. I find it personally a bit distasteful but in this particular instance I think it is absolutely necessary. As I indicated on this floor a couple of weeks ago, this has been a football for more than forty years. I think it is high time that this Legislature exercise its prerogative and do exactly what Senator Vard Johnson just said and go to court. Let's take care of this matter once and for all. We know the perseverance and the tenacity of Senator Chambers. He will be back again next year with a similar bill. We had an identical bill last year which was passed by this body, vetoed by this Governor and because we ran out of time there was not an opportunity to override the veto. We now have a perfect opportunity to override the veto, send the matter to the courts and let the courts dispose of it once and for all. I am in wholehearted support of the motion to override the Governor's veto on LB 206. Thank you.

SPEAKER MARVEL: Senator Labeledz.

SENATOR LABEDZ: Thank you, Mr. Speaker. I, too, rise in support of Senator Chambers' motion to override the Governor's veto. The Constitutional Revision and Recreation Committee did advance two bills, LB 138 and 531, calling for an increase in salary but I, myself have very little doubt in my mind that the people of Nebraska are willing to increase the salaries but we keep trying and I will also keep trying because I introduced LB 531. But many good people that I have talked to, in Omaha especially, have wanted to run for the Legislature and I personally have asked them to and the first reply that I get from them is, oh, my gosh, I can't afford it. You can see it happening in Omaha when we have a hundred and fifty-two people that have filed for the City Council and there the salary is \$12,000 a year and I am sure that they have expenses if they are going or travelling to any other meeting. I have been talking to a few of the senators and

I would like to ask Senator Chambers a question if he would yield. Senator Chambers, some of the senators that I have been talking to are very much in doubt about the expenses that would be shown on reports, whether we do it monthly or whatever, because of the fact they are afraid there might be some abuse but I notice that you do have a minimum on what you send in as a trial and wouldn't it be possible then to set a limit for expenses if you were successful in your court case?

SENATOR CHAMBERS: Certainly, Senator Labedz, and in the court cases in other states where expenses have been allowed the court has said that if at any time what is claimed as an expense is so out of line with what it actually costs a person to carry out his or her duties, that will be viewed as an increase of salary and struck down by the court. So not only do we have an internal control on it, the courts would be there and nobody would be able to claim excessive expenses. What happens in the interim for most of us has been an indication of how these expenses can be controlled by legislation.

SENATOR LABEDZ: Thank you, Senator Chambers, and I personally have faith in the members of the Legislature that there would not be an abuse and if we fixed it at a per diem basis and I am sure that that can be done according to what Senator Chambers said, then I urge the members of the body to support Senator Chambers in his motion to override the Governor's veto of LB 206.

SPEAKER MARVEL: Senator Cope.

SENATOR COPE: Mr. President and members, I strongly oppose overriding the Governor. Think this over. What about the people in your district? What about you personally? Are you satisfied with the Congress in setting their own salaries and their own expenses? I think I probably heard everyone in this room complain bitterly that they have this ability and that they are much, much too high. You can very well be sure that your constituents think this, at least the ones I have talked to over the years and we are going to be in the same position and you better think about that because this is in the Constitution that they set the salaries. And this is a right they have, right or wrong, and we had better consider that. If we want this privilege we better have them vote it in. I strongly oppose trying to bring this back on an override.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. President, fellow senators, Senator

Hefner said that he hoped everyone here would vote their conscience today. I hope in the short time I have been here I voted my conscience on every bill and I am voting my conscience today on Senator Chambers' bill to override the Governor's veto for the same reason that I support an increase in senators' salaries. I support the idea that they receive expenses. As I explained in our Constitutional Revision and Recreation Committee when we considered bills to increase senators' salaries, it is my thinking that the people of the State of Nebraska have been shortchanged for many years because intelligent and dedicated men and women who could well serve this state in writing better laws than many of us and in defeating some laws that we should not pass, never have the opportunity to run because they can't afford it. I, myself, can afford to be here because I have the income of my husband and a small business that we own. The \$4,800 I receive, at least half of it is going to be spent travelling back and forth from Lincoln to Omaha and in some cases, spending the night here in Lincoln where weather is inclement or where I have to be here for such an early morning appointment that I wouldn't be able to make it by the time I drove home after a late night meeting and then back again. I further would like to point out to you, senators, that while the Governor has vetoed a bill that would give us expenses, the Governor himself takes expenses and if he feels that conscientious about the fact that we senators might abuse a privilege, perhaps next year we should consider a bill taking away the Governor's expenses and let him live on his salary. So, I am supporting this bill from the standpoint of my own conscience and I am not worried about the constituents in my district because when I explained to them that many of them could be right here today passing laws, if they were as fortunate as I to have other supplemental income or if they were already wealthy in their own right, they, too, could come down here with good ideas and help the people of Nebraska. I, therefore, support Senator Ernest Chambers' motion to override the Governor's veto and I hope the rest of you will vote your conscience the same as I am. Thank you, Mr. President and senators.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, I don't know if any of you noted or really cared, but as this bill was progressing I deliberately avoided voting for it or against it and my good friend Howard said how come you are passing? Are you ducking the issue? And the answer is, no, I wasn't ducking the issue. It is

that I have been involved in some things the last couple years and particularly the last couple months and especially the last couple weeks that I felt might generate a potential conflict of interest on the matter, kind of sitting on certain information and for that reason I thought I would just sit it out. I think the information that has been developed to this point now where I am going to vote for the override of the veto as one method of testing it. I don't know if you all remember but I kind of started this with the old Exec Board several years ago when we developed this identical bill and the idea was to force the issue. And the reason I wanted to force the issue was because I have been convinced that we are illegal and have been, that I as a member of the last Exec Board was illegal. The Exec Board was illegal and we are the same way this way. Now, I am voting to override the veto with this understanding, that once you do it you are challenging the whole system and you are going to bring to a head a number of other issues. What am I talking about? I am talking about a whole concept of the Legislative Council and the interim expenses and the whole system. That was created as a special strict device to get expenses and bypass the Constitution and I do not personally see how you can have it legal to collect expenses of doing a job in one case and then say they are illegal when you are really doing the job up front. You create the myth, I am going to use the word the "hoax", that you are somehow serving as not a senator, or whatever when you are a member of the Legislative Council and so then it is okay to get your expenses, so on and so forth. It was for that reason that last summer quite frankly, that I made a matter of record that I did not collect for motel rooms when I stayed in Lincoln, did not collect expenses. I used campaign funds, but the point is other people were getting paid with state tax dollars for the identical thing that I avoided using state tax dollars for and used campaign funds. Okay? Now, I believe that if the veto is overridden you are going to guarantee that the entire system gets challenged because the Attorney General, I am convinced, will not defend on the basis of just expenses during the session. But let's get to the issue of expenses. Can you imagine hiring Bernice Labedz to come down and run your office and then saying, Bernice, now you get \$3.15 an hour and she would be good like she says, but you provide your own typewriter, you provide the paper, you provide the pencils, you do this and that, in other words you pay the expenses of running my office. In a sense, in a very very direct and real sense that is what they are asking us to do and I don't believe in modern times certainly, that that is what is intended. I believe if you hire somebody to do a job

you provide them the necessary and actual expenses of doing the job. I personally am going to offer an amendment, a constitutional amendment as a substitute for one of those up there that says you collect your actual and necessary expenses of doing the job. It only makes sense and I think that should be our first goal rather than any salary increases. You know I could live on one dollar, I wouldn't like it, but I would rather prefer to have one dollar a month or one dollar a year pay and have the job recognized for what it is, a public service donation, rather than to have to pay expenses to serve the public. If I get my expenses I would be happy but if you really do this job you get a lot of travel back and forth, you have to maintain two residences, you have, I suppose depending on which individual is involved and the distance, I am guessing you have got to have at least ten to twenty-five thousand dollars a year actual out of pocket expense to do this job and you new senators who may have doubts about that figure, believe me, ask Senator Kahle, ask some of the others that have been here just a little while now. They will tell you, you are going to have her. You can hide it for a while by borrowing on this and saying, you charge more to that and on and on and on, but it is costing you ten or fifteen thousand dollars a year out of pocket just sitting here...

SPEAKER MARVEL: You have a minute left.

SENATOR DeCAMP: ...so I am voting to override the veto but I am doing it with this understanding. Within the next twenty-four hours to forty-eight hours I am guessing there will be an Attorney General's opinion that indicates much of what I am saying certainly will be brought into the courts and issue if the veto is overridden.

SPEAKER MARVEL: Senator Koch.

SENATOR KOCH: Mr. Speaker and members of the body, since I have been here I have never voted for our salaries and there was a reason for that. Because in my mind it would have been better off to donate to the state and be able to take it off of your income tax. You would be way ahead. I will give you an example of what happened to me just not too long ago. The IRS checked my legislative expenses. They believe that every state senator receives a per diem. That is not true and I was told by this body that I could take \$35 a day for every day I was on legislative business. Needless to say after about seven months of wrestling with the IRS over the Chappy v. IRS case of California, I had to pay a considerable amount of income to the feds and to the

state plus a penalty. I think it is high time that this body determines whether or not the Attorney General's opinion of 1934 or 1935 was indeed an error and if it was an error it is time for us to correct it. This is the only way we can correct it. Not only that, but this serves as a good educational lesson to the general public. The general public believes that each of us receives not only \$4,800 but they believe that we receive considerable expenses and I can prove this through my visitations with various service clubs, civic organizations and through campaigns. When they find out what we get they are absolutely in a state of shock. They really don't know. I am going to support Senator Chambers because I believe this is the only way we are going to get a test. Even if we lose our interim session expenses that wouldn't bother me one iota. I am certain that now is the time to test the Attorney General's opinion and I agree with Senator Johnson. Too often we look at an Attorney General's opinion and that is exactly what it is, only that, and I allowed thirty to buffalo me when I should have tried to override because I had evidence to say that bill was legal in spite of the Attorney General's opinion on home rule charters. I didn't do it because I guess I didn't want to get into a squabble with the Governor. The last remark I am going to make is that of all the people, the Governor ought to know what it costs to serve in public office. He has been all the way to the Potomac and back. The Governor should be the person who should be out front visibly leading and saying, this state should reward its legislators to a higher degree than we are today because it is absolutely impossible to serve unless you yourself are able to take from your own personal incomes and subsidize yourself to the extent you have to to carry out a job of integrity and take care of the business of this state. Therefore, I think this body should vote to override the Governor and put LB 206 into action so the state will make a determination once and for all, do we get expenses or don't we get expenses? Then the people of this state might say, yes, indeed, you are deserving of benefits far greater than you are receiving and we believe we will support you. Thank you.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, as one of the Lancaster County senators who often could not, presumably in the future could not collect on expenses, I feel I am in a unique position to speak for overriding the veto on LB 206. This body should not be limited to those who can afford to give the time to take time away from their business or profession to have an outside source of

income. We need to have a cross section of the citizens of our state represented here. Sometimes I have had the feeling that some of the outstate senators do not necessarily support this proposal because they can afford to serve and might have more opposition in the home district when they are running for reelection. Were it possible because of expenses being paid for more citizens to consider the possibility of running for this office I feel that expenses most citizens think are paid. We continue to try to educate the public that no, we do not have expenses paid during our legislative session but this is one way to help inform more people. I urge you to support the override on LB 206 and 206A.

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

SENATOR CHAMBERS: I am going to call the question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? Okay, the question before the House is shall debate cease. All those in favor vote aye, opposed vote no. Record the vote.

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to cease debate.

SPEAKER MARVEL: The motion carries. Debate is ceased. Senator Chambers is recognized to close on the motion.

SENATOR CHAMBERS: And, Mr. Chairman, I will take about one minute. Senator Hefner read a provision of the Constitution that said we are entitled to \$400 a month plus one round trip by the most useable route but he didn't read the next statement. The next statement says, "Members of the Legislature shall receive no pay nor perquisites other than said salary and expenses." The Constitution is saying that the pay and perquisites of a legislator are that \$400 and the round trip. It is limiting our pay to that amount but it has not touched on expenses and expenses are outside that term "pay and perquisites" because the State Supreme Court has said so and based on that that is how the Governor is given expenses even though the Constitution prohibited him from having more than a dollar amount in his salary. So, with the clarification on that point I will ask for a Call of the House because some of the senators requested that because they were not in the Chamber.

SPEAKER MARVEL: Shall the House go under Call? All those in favor of that motion vote aye, opposed vote no. Record.

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LB 206, 206A, 245

CLERK: 21 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators should be in their seats. Unauthorized personnel should be off the floor and you need to record your presence. Senator Kilgarin and Senator Cope, would you please record your presence. Senator Kremer, Senator Lamb. Okay, everybody who is not absent is here so will all legislators please be in their seats and we can proceed with the roll call. Did you ask for a roll call? Call the roll. The motion before the House is the adoption of the Chambers motion in regard to LB 206.

CLERK: (Read roll call vote found on pages 938-939 of the Legislative Journal.)

SPEAKER MARVEL: The Legislature is still under Call. All legislators be in their seats. Unauthorized personnel please leave the floor.

CLERK: 31 ayes, 12 nays on the motion to override LB 206, Mr. President.

SPEAKER MARVEL: The motion carried. 206A. Senator Chambers.

CLERK: Mr. President, Senator Chambers moves that LB 206A be passed notwithstanding the objections of the Governor.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I am going to ask for a machine vote on this and now that the bill has passed the money can be taken if we win anyway so I think we should appropriate the money to cover the bill. So, I am asking that this bill be passed also.

SPEAKER MARVEL: Okay, the motion is the adoption of the A bill 206A. All those in favor of overriding the A bill vote aye, opposed vote no. Record the vote.

CLERK: (Read record vote as found on pages 939-940 of the Legislative Journal.) 33 ayes, 11 nays, 5 excused and not voting, Mr. President.

SPEAKER MARVEL: The motion is carried. Okay, we are ready for item #6.

CLERK: LB 245 was a bill introduced by Senators Schmit, Hefner, Wagner, Kahle, Lamb, Kremer, Rumery, Howard Peterson, Maresh and DeCamp. (Read title.) The bill was first read on January 16 of this year. It was referred to the Ag and Environment Committee for a hearing. The bill was advanced to General File. I do have committee amendments pending by the Agriculture and Environment Committee, Mr. President.

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LB 328, 477, 35, 112,
245, 206, 206A, 22, 50,
74, 89, 89A, 171, 194,
425, 475, 500, 550,

SPEAKER MARVEL: The motion is the adoption of the Beutler amendment to the committee amendment. All those in favor of the motion vote aye, opposed vote no. Have you all voted? Have you all voted? Shall the House go under Call, all in favor of that motion vote aye, opposed vote no.

CLERK: 13 ayes, 2 nays to go under call Mr. President.

SPEAKER MARVEL: The House is under Call. All Legislators should be in their seats. Record your presence. Unauthorized personnel please leave the floor. Senator Fenger, Senator Koch, Senator Cope, Senator Kilgarin, Senator Kremer, Senator Schmit, Senator Vard Johnson, Senator Sieck, Senator Landis, Senator Newell, Senator Chambers, Senator Pirsch. Do we have them all now? Senator Vard Johnson and Senator Sieck. Will all legislators please be in their seats before we start the roll call. Senator Beutler everybody is accounted except Senator Vard Johnson. He is across the street. This is a roll call vote on the Beutler amendment to the committee amendment. Are you all in your seats? Okay, call the roll.

CLERK: Roll call vote. 15 ayes, 28 nays, 1 present and not voting, 4 excused and not voting, and 1 absent and not voting. Vote appears on pages 940-941 of the Legislative Journal.

SPEAKER MARVEL: Motion lost. Do you have another item?

CLERK: Mr. President, I have certificates and letters accompanying certificates regarding the overrides of LB 206 and 206A. (See pages 941-42 of the Legislative Journal).

Your committee on Enrollment and Review respectively reports we have carefully examined LB 22 and find the same correctly engrossed, 50, 74, 89, 89A, 171, 194, 425, 475 and 500, all correctly engrossed. (Signed) Senator Kilgarin, Chair.

Your Enrolling Clerk has presented certain bills to the Governor on this day. (See page 943 of the Legislative Journal).

Have a reference report referring LB 550.

Government Committee will meet in Executive Session on Thursday at 1:30 in Room 1113.

Judiciary reports 328 to General File as amended and 477 to General File with amendment.

Public Works reports 35 to General File and LB 112 indefinitely postponed. (Signed) Senator Kremer, Chair.