

Hoagland and myself. Request 1665 has been handed out on your desks. Let me read the description and quickly give you five reasons that I think that even though it is late in the session a bill should be introduced to be available to address this issue. The proposed bill would amend existing statutes which govern the Department of Roads bid letting process. Current law does not require that persons convicted of bid rigging reimburse the taxpayers for passed-over charges due to that offense. The bill would require reimbursement to the Roads Department before contractors could be readmitted as qualified bidders on state or local projects which are contracted for by the Roads Department. Reimbursements must also be made to local governments for passed-over charges before readmission as bidders on state contracts. Now, essentially I would say that there are five basic arguments, or five reasons for introduction of this bill. First of all, I am sure we are all aware of the news and rumors with regard to the so-called bid rigging scandal and that we know that it probably involves millions of taxpayers' dollars. Second would be Senator Hoagland's and my contention that since those dollars were taken from the taxpayers from road funds, they should be reimbursed to the road funds and to Nebraska taxpayers. Currently, Nebraska statutes have no provision for such restitution to the road fund and it is very possible... the fourth reason to do this is that it is very possible that many of these cases may be solved between the end of this session and the start of next session in which case it would not be possible for the Legislature next session to establish qualification since the crimes already would have been tried. So it is very important that there be action this session. The reason that we are going for introduction of a bill rather than amendment is to allow an opportunity for a public hearing on the issue so that the proposal of Senator Hoagland and I can be evaluated in public life. So for those five reasons I would suggest that although it is unusual to introduce a bill at this time, it seems the best course to take.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, as Senator Fowler has indicated, this bid rigging problem, of course, is something that just come upon us. Late last week I am sure a number of you read in the newspaper that one contractor from west of Lincoln was given 60 days in jail and his firm, his construction firm, was

fined \$2 million. Now we have been checking where that \$2 million has gone to, and the most current information we have, which we believe is accurate, is that it goes into the Clerk of the United States District Court's fund and from there it is transferred to the general U.S. Treasury. In other words, that \$2 million fund which was no doubt properly levied by Judge Urbom because it was levied in federal court will go into the United States Treasury even though it was for a transgression against the taxpayers of the State of Nebraska. Now as Senator Fowler indicated, it is very important for us to introduce legislation to address this problem this session. This is a fast-breaking situation. There are a number of contractors that are right now contacting the state for immunity grants for guilty pleas. If we wait 12 months to address this issue in the Nebraska Legislature, it will be very likely be too late for us to get the kind of restitution that Senator Fowler and I think that the State of Nebraska is entitled to in these bid rigging schemes, which again involved millions of dollars that have been taken away from the taxpayers of the State of Nebraska. Now if you review the existing statute that deals with the rule-making authority of the Director of the Department of Roads, there is nothing in there about requalifying bidders once they have been disqualified, and there is nothing in there about making restitution. All Section 39-699 addresses is the issue of qualifying people for bidding. It says nothing about setting up a complicated procedure to permit people to buy their way back into the bidding process by making restitution. We have no procedures in state law right now. I don't believe state statutes give the Director the authority to set up such procedures.

SENATOR NICHOL: Twenty seconds.

SENATOR HOAGLAND: And if we are to have restitution, I think it is an issue we need to deal with now. I think we need legislative guidance and we should introduce this bill so the Public Works Committee can have a hearing on it and decide what if any action would be appropriate this year. Thank you, Mr. President.

SENATOR NICHOL: That will conclude the five minutes on the pro, and Senator Haberman, do you wish to speak against the request?

SENATOR HABERMAN: I have a question of Senator Hoagland and then, yes.

February 23, 1982

LB 969

SENATOR NICHOL: Senator Hoagland, would you respond, please?

SENATOR HOAGLAND: Yes.

SENATOR HABERMAN: These firms that were filed, the firms that were fined a couple million dollars, where did that fine money go?

SENATOR HOAGLAND: Senator Haberman, my aide has been checking that out this morning. We have checked with Judge Urbom's Court and the Probation Office of the U.S. District Court, and our information is that the tentative report subject to finalization is it will go into the United States Treasury.

SENATOR HABERMAN: That it went where?

SENATOR HOAGLAND: That it will go into the United States Treasury, because there was a fine levied in federal court, and that is one of the problems we want to take care of here, Senator Haberman. We want to recover that money for the people in the State of Nebraska that pay taxes on gasoline to finance the roads.

SENATOR HABERMAN: Then the intent of your bill is that that fine money and future fine money will be returned to the general fund of the subdivisions in the State of Nebraska?

SENATOR HOAGLAND: Well, Senator Haberman, as you know under state law, fine money has to go to....

SENATOR HABERMAN: Must go to schools.

SENATOR HOAGLAND:schools, school funds, right. Now, what this bill does is it will permit the Department of Roads to set up a restitution procedure and it will be called restitution to the State Road Funds rather than fines that have to go into the school funds. And it is Senator Fowler's and my belief that if we don't have this bill, any monies that the contractors have to pay back are going to have to go into the school fund instead of going back into the Department of Roads fund to reimburse the taxpayers for their monies lost.

SENATOR HABERMAN: Do you think that this bill can be done and gotten so that we can save the money that has been fined now? Put that fine money back now?

February 23, 1982

LB 969

SENATOR HOAGLAND: As far as the \$2 million that Judge Urbom has levied, I don't believe that we will be able to get that money into the State Treasury.

SENATOR HABERMAN: What if we take an injunction against Judge Urbom. Well, you can't do that. Thank you, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, I....

SPEAKER MARVEL: You have three minutes.

SENATOR WARNER:first before I speak in opposition I want to ask three questions of Senator Hoagland.

SPEAKER MARVEL: Senator Hoagland, do you yield?

SENATOR HOAGLAND: Yes, I do, Senator Warner.

SENATOR WARNER: First, does the bill assume or does it permit and can you do a penalty or a reimbursement for... can you pass a law affecting something in the past and make it retroactive, or does it only have to be from this time forward?

SENATOR HOAGLAND: As far as the civil restitution provisions are concerned, Senator Warner, it can be retroactive. The ex post facto provisions of the U.S. Constitution just apply to criminal liability. We could not increase the criminal penalties for acts that have already occurred but we could change the civil rules for restitution. I believe that is correct.

SENATOR WARNER: And secondly, you have used...it was my impression that the federal case dealt with the federal portion of the highway construction and did not necessarily involve state funds, so that \$2 million really doesn't have anything to do with violation of state law. Isn't it just the federal requirements?

SENATOR HOAGLAND: Well, Senator Warner, I am not familiar in that detail with the facts of that case, but it might have been a 90/10 or an 80/20 matching, in which case we could sure argue that we are entitled to the 10 or the 20 percent that we match the federal funds with.

SENATOR WARNER: Well, let me phrase....is it a fine or reimbursement that the court filed in the case?

February 23, 1982

LB 969, 825, 838, 859

SENATOR HOAGLAND: That was a fine, and this bill is intended to set up reimbursement procedures so we can get reimbursements in the State of Nebraska.

SENATOR WARNER: But it is two different issues then, right?

SENATOR HOAGLAND: Yes.

SPEAKER MARVEL: The motion is to suspend the rules to introduce the bill. All those in favor of suspending the rules to introduce the bill vote aye, opposed vote no. Need 30 votes. Have you all voted? Have you all voted? Record the vote.

CLERK: Mr. President, Senator Fowler would like a record vote. (Read the record vote as found on page 815 of the Legislative Journal.) 31 ayes, 9 nays, Mr. President, on the motion to suspend the rules and introduce the bill.

SPEAKER MARVEL: The motion is carried. The Clerk has a couple of items to read in.

CLERK: Mr. President, new bill, LB 969, offered by Senators Fowler and Hoagland. (Read title as found on page 816 of the Legislative Journal.)

Mr. President, I have a gubernatorial appointment report from Miscellaneous Subjects to be inserted in the Journal. (See page 816 of the Legislative Journal.)

Mr. President, your committee on Miscellaneous Subjects whose Chairman is Senator Hefner instructs me to report LB 825 advanced to General File, LB 859 advanced to General File and LB 838 General File with committee amendments attached, all signed by Senator Hefner. (See pages 816 and 817 of the Legislative Journal.)

SPEAKER MARVEL: Before we proceed, it is my privilege to introduce in Senator Marsh's District 60 Third and Fourth Grade students from Holmes Elementary School in Lincoln, teachers, Willa Smith and Berdine Heskett. Where are you located? Hold up your hands so we can wish you good morning. We are ready for LB 230.

February 25, 1982

LB 215, 304, 353, 408, 431,
608, 641, 653, 688, 702,
852, 873, 896, 938, 953, 969

if it readvances we will be done with the issue for the day. To reacquaint the members, this is where we allow... the District Court does not appeal the issue of whether or not it is the appropriate forum on child termination cases as described earlier in today's session.

SPEAKER MARVEL: The motion is to adopt the Landis amendment. All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 39 ayes, 0 nays on the motion to adopt the amendment.

SPEAKER MARVEL: The motion is carried. The amendment is adopted. Okay, the motion is to readvance the bill to E & R for Engrossment. All in favor of that motion say aye. Opposed no. The motion is carried. The bill is readvanced. Senator Nichol has a meeting underneath the south balcony, and the Clerk has several items to read in- to the record.

CLERK: Mr. President, Senator Newell would like to print amendments to 702 in the Journal. (See pages 879 and 880 of the Journal.) Sena'or Beutler to print amendments to LB 852. (See pages 878 and 879 of the Journal.) Notice of hearing from Public Works for LB 969 set for Thursday, March 4. Your committee on Education whose Chairman is Senator Koch reports 653 advanced to General File with committee amendments attached; 688 General File with committee amendments attached; 896 General File with committee amendments attached; 938 General File with committee amendments attached, and 641 indefinitely postponed. (See pages 873. (See pages 873 and 874 of the Legislative Journal.) Your Enrolling Clerk has presented the bills passed on Final Reading this morning to the Governor. LB 608 offered by the Public Works Committee has been advanced to General File. Senator Chambers would like to print amendments to LB 408. (See pages 875 and 876 of the Journal.) The Ag and Environment Committee reports LB 953 advanced to General File with committee amendments attached. (See page 876 and 877 of the Journal.)

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign engrossed LB 304, re-engrossed LB 353, re-engrossed LB 431. This announcement from the Nebraska Livestock Feeders Luncheon at the Airport Inn. Transportation for those who have made reservations will be at the west entrance. Senator Marsh, do you want to adjourn us to