

January 13, 1981

LR 3

simply list up for you that we are listing up for Nebraskans women's contributions to the development of the United States and it is important for us to recognize their contribution. I am pleased to have a part in LR 3 and I urge your adoption of it.

SPEAKER MARVEL: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman, just a simple question for Senator Beutler. I think I know the answer. You are not advocating any holiday or paid holiday with vacation or anything of that nature, are you?

SENATOR BEUTLER: None whatsoever. I am against energy holidays even.

SENATOR NICHOL: Okay, thank you.

SPEAKER MARVEL: Senator Beutler, do you wish to close on the resolution?

SENATOR BEUTLER: No closing, Mr. Speaker.

SPEAKER MARVEL: The motion before the House is the adoption of LR 3. All those in favor vote aye, opposed vote no. The Clerk will record the vote.

CLERK: 38 ayes, 0 nays on adoption of LR 3, Mr. President.

SPEAKER MARVEL: The motion is carried and the resolution is adopted. We now are ready for item #6, introduction of new bills.

CLERK: Yes, sir.

SPEAKER MARVEL: Do you have any new bills?

CLERK: (Read LB 114-121 by title for the first time as found on pages 128-129 of the Legislative Journal.)

SPEAKER MARVEL: While we are waiting for additional bills to come in, I think we will start on item #7 and begin to take a discussion on the rules. Meanwhile, we still encourage all of you to get the bills in so they can be referred.

CLERK: Mr. President, when we last considered adoption of permanent rules Senator Wesely.... We were considering the adoption of Rule 5, Section 5, dealing with limitation of bill introduction. Senator Wesely had a proposed amendment to that section which read, "strike the 10 bill limitation

February 5, 1981

LB 33, 96, 120, 122

Your committee on Judiciary gives notice of public hearing for March 17.

Your committee on Government, Military and Veterans Affairs gives notice of March 5, 6, 12 and 13, signed by respective Chairs.

Mr. President, your committee on Urban Affairs whose chairman is Senator Landis to whom is referred LB 33 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 122 indefinitely postponed, (Signed) Senator Landis.

Your committee whose chairman is Senator Nichol instructs me to report that LB 96 is advanced to General File and LB 120 advanced to General File, (Signed) Senator Nichol. (See page 449 of the Legislative Journal.)

SPEAKER MARVEL: Senator Schmit, do you want to adjourn us until tomorrow morning at nine o'clock?

SENATOR SCHMIT: Mr. Chairman, I move we adjourn until nine o'clock tomorrow morning.

SPEAKER MARVEL: The motion is adjournment until 9:00 a.m. on Friday, February 6, 1981. All those in favor say aye, opposed no. Motion carried, we are adjourned.

Edited by Arleen McCrory
Arleen McCrory

SENATOR CLARK PRESIDING

SENATOR CLARK: We will now take up LB 120. Senator Burrow's bill. The Clerk will read.

CLERK: Read title.

SENATOR CLARK: Senator Burrows.

SENATOR BURROWS: Mr. Chairman, members of the body, I move the advancement of LB 120. LB 120 provides for the recovery of attorney fees should an individual prevail in a mandamus action against a public official or a political subdivision. Mandamus means to demand. When a mandamus action is filed it is a request for a court to determine if an official or a political subdivision is properly discharging its legal duty. Should the court find that if such duty is not being met it will issue a writ of mandamus directing such political subdivision or official to fulfill its obligation. Currently any citizen who prevails must pay his own attorney fees. Under LB 120, a citizen would be permitted to recover reasonable attorney fees if he wins such a suit. The issuance of such a writ would indicate that the government is not complying with the law, hence a private citizen should not bear the cost of such an action. It is important to remember that under this proposal an individual can recover attorney fees only if he proves that a public official or political subdivision is not fulfilling its legal duties and obligations. Equity would dictate that one should recover attorney fees. I think the real need of this would come when in certain instances subdivisions have ignored the law flatly and openly on payment of small amounts, I think are one of the big criteria where an individual can not afford presently to force compliance with the law. We had some circumstances where sheriffs were owed money by the counties, spelled out already in law as to paying jail fees and so forth and the county officials in a few instances have found that situation to their advantage where attorney fees are not allowed and it could cost more in attorney fees to collect the money than an individual would receive in the case of the suit. This allows reasonable attorney fees when the individual wins and only when he wins. If there are any questions, I'd be glad to answer. Thank you.

SENATOR CLARK: Senator Vard Johnson, talking on attorneys fees.

SENATOR V. JOHNSON: I have a simple question of Senator Burrows and that is this, Senator Burrows, if you would yield.

SENATOR BURROWS: Sure.

SENATOR V. JOHNSON: Incidentally I like your bill, it is a sound bill, it is one that every member should support, but, the question I have is this. Who pays the attorney fee? Will it be paid by the individual defendant? That is the public official who fails to carry out his duty? Or, in turn, will it be paid by the city, if it is a city defendant or by the county if it is a county defendant or by the state if it is a state defendant?

SENATOR BURROWS: My understanding of it, and you probably know better than I, that it would be paid by the county defendant if they lose the case.

SENATOR V. JOHNSON: I honestly don't have that good of an understanding of it, Senator Burrows, but I would certainly hope that would be the case mostly because the individual defendants would not have the ability to pay the fee in a case, even though it might be a very modest fee. It seems to be only appropriate for his employer i.e. the city, county or state to pick up that cost.

SENATOR BURROWS: Thank you.

SENATOR CLARK: Senator Goodrich.

SENATOR GOODRICH: A question of Senator Burrows if he would yield. Senator Burrows, this just strikes me as one thing that is going to encourage one heck of a lot of lawsuits against public bodies because of the fact that the attorneys themselves will be in a position to generate those law suits because they now, if we pass your bill, they now can get paid from those lawsuits where before they were not out generating those lawsuits because they were not sure of being able to get paid. Now my thought is, would you react to this and give us your idea of is this going to generate through the efforts of the attorneys themselves seeking fees, is this going to generate an awful lot of lawsuits against public bodies?

SENATOR BURROWS: If I can answer that in this way, I don't feel that it will generate any more lawsuits of any significance. I think that it will bring about compliance with the law. We have had individuals on certain county boards around the state that have decided that they want to follow the law only when they agree with the law and I think that it would be common practice where the county attorney might tell the board that is trying to avoid the law that, "Well you owe the sheriff, say a hundred dollars, if you just sit tight he can't afford to sue you because his attorney fees will cost more than the hundred dollars." In this case I think the county attorney would advise that board to pay the hundred dollars, follow the law and if they don't like the

February 10, 1981

LB 120, 85

law they can come back to this body and change it. So I see personally no significant increase in lawsuits but possibly a significant increase of public officials and subdivisions following the law. Thank you.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President and members a question of Senator Burrows.

SENATOR BURROWS: Yes.

SENATOR COPE: Senator Burrows, will a judge make the decision as to the amount of attorney fees?

SENATOR BURROWS: Yes, the judge will decide what is reasonable. Ordinarily the judge will ask the attorney, he will present a log of phone calls, correspondence, and time involved and then the judge will make the decision as to what is paid and in the final analysis "reasonable" will be what the judge decides.

SENATOR COPE: Thank you.

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

SENATOR BURROWS: I will waive closing.

SENATOR CLARK: The question before the House is the advancement of 120. All those in favor vote aye, those opposed vote nay. Record the vote.

CLERK: 35 ayes, no nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The motion passed and the bill is advanced. We will now take up LB 85.

CLERK: Mr. President, LB 85 was offered by Senator Steve Fowler and Senator Emil Beyer. (Read title.) The bill was read on January 12. It was referred to the Urban Affairs Committee. The bill was advanced to General File. There are committee amendments pending by the Urban Affairs Committee, Mr. President.

SENATOR CLARK: Senator Landis, do you want to take the committee amendments?

SENATOR LANDIS: Yes, I will. I have indicated to Senator Haberman that I would defer to him but let me just go through them quickly and then ask if he had any things to add to that

February 12, 1981

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Monsignor Charles J. Keenan of the Blessed Sacrament Parish, Lincoln, Nebraska.

MONSIGNOR KEENAN: Prayer offered.

SPEAKER MARVEL: Roll call. Will you please record your presence. Have you all recorded your presence? Record the vote.

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

SPEAKER MARVEL: Do you have some items to read into the record?

CLERK: Yes, sir, I do. Mr. President, your committee on Enrollment and Review respectfully reports that we have carefully examined and reviewed LB 336 and recommend that same be placed on Select File with amendments; 336A Select File; 33 Select File; 96 Select File; 31 Select File, 214 Select File, 120 Select File and 85 Select File with amendments, (Signed) Senator Kilgarin, Chair. (See pages 512-513 of the Legislative Journal.)

Mr. President, your committee on Banking, Commerce and Insurance whose chairman is Senator DeCamp to whom is referred LB 195 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; 272 General File with amendments; 273 General File with amendments and 355 General File with amendments, (Signed) Senator DeCamp, Chair. (See pages 512-514 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 14 and find the same correctly engrossed; 18, 41, 51, 64, 65 and 121 all correctly engrossed.

And finally, Mr. President, I have a lobby registration report covering the week of February 6 through February 11, 1981. (See page 515 of the Journal.)

SPEAKER MARVEL: Okay, we will go to item #4, introduction of new bills.

CLERK: Mr. President, Senator Nichol moves to suspend Rule 5, Section 5 so as to permit the introduction of Request 889 by himself.

SPEAKER MARVEL: Senator Nichol.

February 17, 1981

LB 15, 85, 120

CLERK: There is nothing on the bill, Senator.

PRESIDENT: Senator Kilgarin. 120.

SENATOR KILGARIN: I move LB 120 be advanced to E & R for Engrossment.

PRESIDENT: Motion to advance LB 120 to E & R for Engrossment. Any discussion? All those in favor signify by saying aye. Opposed nay. LB 120 is advanced to E & R for Engrossment. LB 85.

CLERK: Nothing, Senator.

PRESIDENT: Senator Kilgarin.

SENATOR KILGARIN: I move LB 85 be advanced to E & R for Engrossment.

PRESIDENT: Motion to advance LB 85 to E & R for Engrossment. Any discussion? All those in favor signify by saying aye. Opposed nay. LB 85 is advanced to E & R for Engrossment. Anything further, Mr. Clerk

CLERK: No, sir.

PRESIDENT: All right. Ready for agenda item #7, Final Reading. Everybody...the Sergeant at Arms will see to it that all members are at their desks and all personnel are off the floor. We shall proceed with Final Reading when we have everybody at their places. As soon as everyone gets to his or her desk why we shall commence with Final Reading. We have almost an hour of it, so it probably would be well to get started. Are we about ready? While we are waiting, the Chair will note that Senator Fenger had a birthday on Sunday. He didn't say how old he was but there is fudge being distributed so as to make your Final Reading hour a little bit more acceptable. So, Happy Birthday, Senator Fenger, whatever the year is, Happy Birthday to you. All right, I guess....if all the members will get to their desks we will start with Final Reading. There are a couple of Senators on the floor if the Sergeant at Arms would... yes, sir, if you would. Thank you. Thank you. All right, we will commence with Final Reading. The first bill on Final Reading is LB 15. Mr. Clerk, proceed.

CLERK: (Read 15 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure

February 18, 1981

LR 15
LB 31, 33, 85, 96, 120, 336,
336A

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by the Reverend Rex Bevins, St. Paul Methodist Church.

REVEREND REX BEVINS: Prayer offered.

PRESIDENT: Roll call.

CLERK: Mr. President, Senator Kremer would like to be excused until he arrives; Senator Sieck until he arrives. Mr. President, Senator Labedz and Senator Burrows until they arrive.

PRESIDENT: Senator Lowell Johnson, do you want to press your button showing you are here, please. Senator DeCamp, will you push your button so we can start out. Thank you. Record the presence, Mr. Clerk.

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

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: All right, the Journal stands correct as published. Are there any other messages, reports or announcements?

CLERK: Mr. President, first of all Senator Maresh would like to have a meeting of the Business and Labor Committee now underneath the north balcony for just a few minutes. Senator Maresh would like to have a Business and Labor meeting underneath the north balcony now for just a few minutes.

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 31 and find the same correctly engrossed; 33, 85, 96, 120, 336, 336A, all correctly engrossed.

Mr. President, LR 15 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and do sign LR 15.

CLERK: Mr. President, I have a report from the Accounting and Budgeting Office regarding session employees.

Mr. President, I have an Attorney General's Opinion

February 23, 1981

LB 96, 120, 179, 190

pass? Those in favor vote aye, those opposed vote no.
Record the vote.

CLERK: (Record vote read. See page 624, Legislative Journal.)
48 ayes, 0 nays, 1 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading.
The Clerk will now read LB 120E.

CLERK: (Read LB 120 on Final Reading.)

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

CLERK: (Record vote read. See pages 624 and 625, Legislative
Journal.) 48 ayes, 0 nays, 1 present and not voting, Mr. Pre-
sident.

SPEAKER MARVEL: The bill is declared passed with the emer-
gency clause attached on Final Reading.

CLERK: Mr. President, two matters to read in if I may.
Senator Koch would like to print amendments to LB 190 in
the Legislative Journal.

Mr. President, your committee on Revenue whose Chairman is
Senator Carsten to whom was referred LB 179 instructs me to
report the same back to the Legislature with the recommenda-
tion it be advanced to General File with committee amendments
attached.

February 23, 1981

LB 31, 33, 85, 96,
120, 178

Mr. President, your committee on Ag will have an Executive Session at 8:50 a.m., tomorrow morning underneath the North balcony. Your committee on Ag tomorrow morning at 8:50 a.m.

Mr. President, some bills are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LB 31, LB 33, LB 85, LB 96, LB 120. It is my privilege to present underneath the North balcony four guests of Senator Cope, Mr. and Mrs. Melvin Thiemann of Pawnee City; Mrs. Rollie Ayres, Wilma Klein and Mrs. Art Schrepel. Will you please stand so that you and we may wish Senator Cope "Happy Birthday". There is a notation here that underneath the South balcony there will be Cope cakes on the table. I am only reading what is written here. Senator Cope, "Happy Birthday" to you. Underneath the North balcony, it is my privilege to present the former Senator Arnold Ruhnke and Mrs. Ruhnke. Where are you folks? We now proceed to item #6, Select File, LB 178. Mr. Clerk.

CLERK: Mr. President, LB 178 was considered by the body on February 17. At that time the E & R amendments were adopted. There was an amendment by Senator Beutler that was adopted. Pursuant or subsequent to that, Senator Beutler made a motion to indefinitely postpone the bill. I understand, Mr. President, he wishes to temporarily withdraw that motion and offer instead amendments that I believe have been distributed or are being distributed right now, the amendments by Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, again LB 178 is the bill that was submitted by the Department of Revenue having to do with collection procedures. It was amended once on General File or Select File, and subsequent to that time the staff of the Revenue Committee got together with the Department of Revenue and also with representatives from commerce and industry and the banking association to take care of an additional series of technical problems and there were a couple of substantive changes but all the changes, as I understand it, had to do with making the provisions applicable to all different types of taxes, that is, making them uniform, making the notice provisions uniform, for example, and also to require the state prior to selling property at a sale to give notice to other lien holders that the property is about to get sold so that other lien holders would have knowledge of the sale and have an opportunity to protect their rights. There is some cleanup language and some inconsistencies cleared up and I think that is about the sum and substance of what is in the committee's. Basically these are Department of Revenue suggestions. Thank you.

February 24, 1981

LB 14, 24, 31, 33, 41,
45, 46, 64, 81, 82,
85, 96, 120, 121,
130, 14, 158, 213

SPEAKER MARVEL PRESIDING

REV. JOSEPH A. MROCZKOWSKI: Prayer offered.

SPEAKER MARVEL: Will you please record your presence?
Record.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Underneath the North balcony, it is my privilege to present visitors to Nebraska sponsored by Partners of the Americas and the sponsors are Mrs. Ben Schulze and Gilbert Erickson and the visitors are coordinated with Dr. Fortes and his wife Maranna and the technical title is the Coordinator of Congressional Affairs for the Ministry of Education and Cultural Affairs from Brazil. Would you folks please stand so we can welcome you to the Unicameral. Okay, there is some items on the Clerk's desk and we will start with those.

CLERK: Mr. President, a communication from the Governor addressed to the Clerk regarding signing of LBs 14, 18, 41, 45, 46, 64, 81, 82, 121, 130 and 140. (See page 639 of the Legislative Journal.)

Your Enrolling Clerk respectfully reports that she has on February 23 at 2:37 p.m. presented to the Governor the following bills: 31, 33, 85, 96 and 120.

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 24 and find the same correctly engrossed.

Your committee on Appropriations whose chairman is Senator Warner to whom is referred LB 158 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendment, (Signed) Senator Warner, Chair.

Mr. President, I have a report from the State Employment and Training Council. It will be on file in my office.

Mr. President, Senator Cullan asks unanimous consent to add his name to LB 213 as coinstructor.

SPEAKER MARVEL: Do you have any other items?

CLERK: No, sir.

SPEAKER MARVEL: Okay, item #4, resolutions.

March 2, 1981

LB 31, 33, 85, 96,
120, 434, 547.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: (Microphone not on.)

DR. ROBERT PALMER: Prayer offered.

PRESIDENT: Roll call. Senator Cope, will you push your button. Thank you. Now we're....record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President.

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal stands correct as published. Any other messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 434 and recommend that same be placed on Select File. (Signed) Senator Kilgarin, Chair.

Mr. President, communication from the Governor addressed to the Clerk. Engrossed LB 31, 33, 85, 96 and 120 were signed by me on February 27 and delivered to the Secretary of State. Sincerely, Charles Thone, Governor.

Mr. President, I have an Attorney General's Opinion addressed to Senator Vard Johnson. (See pages 701 and 702 of the Legislative Journal.)

PRESIDENT: We are waiting for someone from the Agriculture Committee, Senator Schmit or someone to take care of Agenda Item #3, Motions, motion to introduce a new bill. The Legislature will be at Ease until Senator Schmit gets here to handle the first item on the agenda.

EASE

PRESIDENT: The Chair recognizes Senator Schmit for purpose of introduction of a new bill.

SENATOR SCHMIT: Mr. President and members of the Legislature, I ask the body to consider the introduction of this bill by the Committee on Agriculture and Environment. The bill was introduced last session. It was heard. It was, I believe, four bills down on the worksheet for about