

January 14, 1981

LB 176-184

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I feel guilty about offering this amendment, and it won't offend me at all if you reject it. In the most serious setting there should be a bit of humor to show that human beings are involved and not mere automatons. The sentence now says, "those individuals and groups not included, introduced, may be inserted in the Journal by request", and since the Journal is composed of pages it would be difficult to insert an individual let alone a group in the Journal. So my amendment was to say "recognition of those individuals and groups" could be inserted in the Journal, or the word could be "acknowledgement" whichever seems more appropriate, but maybe I ought to just leave this like it is, so I ask unanimous consent to withdraw this amendment.

SPEAKER MARVEL: Senator Newell, your light is on. Hearing no objection, so ordered. Senator Beutler, do you have an amendment?

SENATOR BEUTLER: I am sorry, I have lost track here. Senator Chambers had one more amendment, or....

SPEAKER MARVEL: No, it has been completed.

SENATOR BEUTLER: Yes, I think I do have three amendments that are being reproduced right now but I did notify Pat that they were filed.

SPEAKER MARVEL: Are the amendments ready to be processed?

SENATOR BEUTLER: Yes, they are.

SPEAKER MARVEL: Okay, the Clerk is going to read some bills while we are waiting for the next item.

CLERK: Mr. President, the committee on Urban Affairs gives notice of public hearing for January 28. (See page 170 of the Legislative Journal.)

Mr. President, new bills: LB 176 (Read title). LB 177 (Title read). LB 178 (Title read). LB 179 (Title read). LB 180 (Title read). LB 181 (Title read). LB 182 (Title read). LB 183 (Title read). LB 184 (Title read). (See pages 170 through 173 of the Legislative Journal.)

Mr. President, Senators Wiitala, Pirsch and Labedz and Kilgarin ask to be added as co-introducers to LB 61.

SENATOR CLARK PRESIDING

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.

March 10, 1981

LB 72, 179, 376, 500, 269

Senator Chronister asks unanimous consent to add his name to LB 269 as cointroducer.

SPEAKER MARVEL: Hearing no objection, so ordered.

CLERK: Mr. President, Senator Vickers would like to print amendments to LB 72; Senator Dworak to LB 500; Senator Haberman to LB 376. (See pages 833-835 of the Legislative Journal.)

Your committee on Business and Labor gives notice of hearing for March 18 and Business and Labor gives notice of hearing on gubernatorial appointments for March 18 as well, Mr. President.

Mr. President, LB 179 was a bill introduced by the Revenue Committee and signed by its members. (Read title.) The bill was originally read on January 14. It was referred to the Revenue Committee for public hearing. The bill was advanced to General File. There are committee amendments by the Revenue Committee, Mr. President.

SPEAKER MARVEL: Senator Carsten.

SENATOR CARSTEN: Mr. President, members of the Legislature, I move for the adoption of the committee amendments. I guess I better talk to the committee amendments first. The first amendment was to delete Section 1 of the original bill and in our discussion it was felt that there was not sufficient evidence and information available in this particular section and decided that it would be best to just delete it. Section 2 is an additional section to harmonize a date with a related section in the bill and much of this bill is cleanup and it was brought to us by the Revenue Department that needed to harmonize and coordinate the whole procedures and these amendments, of course, contribute to that end. The third one allows an extension of time for good cause regarding certain dates for filing reports by railroads and car companies and the fourth amendment changes the dates for filing by car companies to April 15. Now these are amendments that are beneficial to the Department of Revenue in their operations to bring them into a more reliable and adequate operation. So I move for the adoption of these committee amendments and then I will take the bill section by section, Mr. President.

SPEAKER MARVEL: The motion is the adoption of the Revenue Committee amendments to LB 179. Senator Haberman. All those in favor of adoption of the committee amendments vote aye, opposed vote no.

CLERK: 25 ayes, 0 nays on the adoption of the committee amendments, Mr. President.

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

SENATOR CARSTEN: Now, Mr. President, I move for the advancement of LB 179 as amended. I have passed out to you a combination of sheets that deal with the bill as a whole and an explanation of each section and from that sheet you can readily see that as I stated, we did delete the first section. Section 2 allows the register of deeds to refuse to record a deed unless a completed real estate transfer statement is filed at the same time. A complete and correct real estate transfer statement is crucial for the tax commissioner to make an accurate sales assessment ratio. Some of the sales are on contract and as you know this is not recorded and as a result, it is difficult for the department to do anything in the sales assessment ratio area when this procedure is done. Section 3 adds a new section to the documentary stamp tax imposed under Section 76-901 which provides for a procedure for the filing of a claim for a refund of documentary stamp tax paid as the result of an honest mistake or misunderstanding on the part of the taxpayer, clerical error or invalid tax within two years of the payment of the tax. The general refund statutes are directed to the county treasurer and the documentary stamp is collected by the register of deeds. There has been some problem in this area and the department felt that this was a clarification of it and would be a benefit to the locals in this area. Section 4 changes the date on which anyone seeking an exemption in an intervening year must apply from September 1 to September 15. Language in the statute presently refers to levy date and September 1 and the change needs to be made to conform to the date with the levy date of September 15. Section 5 changes the date when railroad schedules are required to be returned to the State Board of Equalization and assessment from April 1 to March 1 of each year. This is an extension of the time for the Department of Revenue to make analysis and to make recommendations to the state board. Section 6 changes the date from June 1 to April 1 when car company owners are required to return a statement to the State Board of Equalization and assessment. This again will give the Department of Revenue more time to determine the assessment of car companies. Section 7 changes the date from March 1 to January 1 on which the value of the shares of stock of car and freight line companies should be valued. Section 8 relates to the franchise tax of public service companies by adding the due date of April 30 of each year that the companies must return a sworn statement of the amount of capital stock and other information to the State Tax Commissioner and local assessors. Reference to any date has been omitted from the present statute. It relates to the exemption of taxation of motor vehicles of members of the armed forces to bring into conformity with federal law. The statute provides that a service person must pay taxes

and fees and produce a tax receipt from the state of their residence before a license can be issued for a motor vehicle by the Nebraska county treasurer. There are federal cases determined under the Soldiers' and Sailors' Federal Relief Act, that state that this is a violation of the law. Section 10 permits the use of computer files as well as books and unit valuation ledgers to list the taxable lands and lots in a county and as you well know, several counties have now gone onto computer and no longer use the books and unit valuation ledgers. So it provides for that. Section 11 permits county assessors in their discretion with the approval of the county board to waive the personal property penalty of 10% of the tax upon voluntary filing of a late personal property schedule with the assessor. The last Legislature amended 77-1320.05 to allow an involuntary reduction anywhere from 50% to zero and this will bring these two sections into conformity. Section 12 allows the county treasurer to show on the tax statement the amount of taxes due and to give notice to the taxpayer that special assessments are due and to strike from the statutes that the taxes and special assessments are to be shown as separate amounts and the special assessments be identified. Special assessments come due at different times than real estate taxes and at particularly at different times during the year, make it very difficult to list them on a tax statement at the same time as the real estate taxes are listed. 13 defines a term used in the tax statutes that has not previously been defined. The definition is a codification of the recent court cases regarding when a state can require the collection of its sales tax. This definition requires the collection of the tax in all situations that the courts have determined the requirement to collect does not violate federal law. 14 relates to the sales and use tax. The statutes allow the tax to be paid at a time different than the time of sale or purchase for some situations. The statutes have specified the rate to be paid for sales tax is the rate in effect when the tax is due regardless of the rate in effect at the time of sale. This change states the same rule for tax due at a different time than the purchase. The change is to make explicit that the same rule is intended to apply to both sales and purchases. Sections 15 and 16 change terminology to make these sections consistent with other statutes and the new definitions in Section 13 of the bill. The same terminology changes were made in Section 14. Section 17 clarifies that a qualified claimant under the Homestead Exemption Act is one who is sixty-five years of age during the calendar year for which the claim was made. This apparently was inadvertently omitted upon the recodification of the Homestead Exemption Act in the 1979 Legislature. I think you can see, Mr. President and ladies and gentlemen of the Legislature, that this is basically purely a clean up of the operations of the Revenue

March 10, 1981

LB 179

Department and changes that do need to be made to bring them into conformity and compliance with both our own statutes and the federal level as well. With that, Mr. Chairman, I move for the advancement of LB 179.

SPEAKER MARVEL: Before we proceed with the bill, in the front row is one member of the Legislature and Shane Michael, grandson. Would you hold him up so we can see him. Here we are. And underneath the South balcony the parents, Mike and Toni Lenagh, and they are not only the parents of Shane but also the daughter and son-in-law of Senator Labedz. Will you stand so we can see you. We welcome you. Okay, Senator Haberman, do you wish to speak to the bill as a whole?

SENATOR HABERMAN: Mr. President, members of the Unicameral, a question of Senator Carsten, please.

SPEAKER MARVEL: Senator Carsten.

SENATOR HABERMAN: Senator Carsten, I have been receiving a considerable amount of mail from my assessors that they do not wish to be underneath the computer assessing system that is being proposed and Section 10 permits the use of computer files as well as books and unit evaluation ledgers to list the taxable lands and lots in a county. Now can those who have computers use them now?

SENATOR CARSTEN: They can but as I understand, Senator Haberman, they can but it has never really been spelled out. This is not mandatory. It is only permitting those that are using them to go ahead and use them without any problem.

SENATOR HABERMAN: Fine, and this has nothing to do or is not opening up any doors to the other bill that I was talking about?

SENATOR CARSTEN: Oh, no, that is strictly a mandatory bill, Senator Haberman, and this is only permissive for those that are now using or that want to in the future, use a computer, they may do so.

SENATOR HABERMAN: Thank you, Senator Carsten.

SPEAKER MARVEL: The motion is the advancement of LB 179 to E & R for review. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

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

March 10, 1981

LB 179, 204

SPEAKER MARVEL: The bill is advanced. We now go to LB 204.

CLERK: (Read title.) The bill was read on January 15 of this year. It was referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments pending by the Government Committee, Mr. President.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. President and members, I move the committee amendments to LB 204.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to LB 204. Before Senator Kahle explains the amendments, underneath the South balcony from Schuyler, Nebraska, students of the Secretarial Procedure Class, 14 students, Arlene Kluck is the teacher. Will you hold up your hands so we can see where you are. Okay, welcome to the Unicameral. Senator Kahle, do you wish to explain the amendments?

SENATOR KAHLE: Okay, the amendments are technical and were offered at the hearing by Senator Wagner who is the introducer of LB 204 and the purpose is to complete entire sections of the statutes in the bill. Now perhaps I should give a little bit of information on the bill so that you can vote intelligently. The intent of LB 204 is to create a uniform system of mileage reimbursement for all public servants in the state. The bill lumps all political subdivisions, boards, commissions, agencies and private citizens, parents of school children, subpoenaed witnesses under one of the three reimbursement categories. These categories are county employees, sheriffs, and state employees. Every other statute that authorizes mileage reimbursement has a specific amount stricken and instead refers to whatever the rate is in one of the other three statutes. County employees reimbursement is listed at twenty-one cents a mile in statute 23-1112. State employees are listed in twenty-one (sic) cents a mile in statute 84-306.03. That is three cents more per mile than county employees receive in statute 23-1112. Whenever a board or a commission member is also authorized to receive actual expense the statute refers to sections dealing with actual expense it violates for state employees in the statutes. And then I have already told you about the committee amendments. I think it is an effort by Senator Wagner to codify the mileage amounts that appear in the statutes through... it is a large bill and I think Senator Wagner could probably explain the bill much better than I can. I, again, move the committee amendments.

SPEAKER MARVEL: Senator Wagner, do you have amendments to the committee amendments?

March 12, 1981

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

SPEAKER MARVEL PRESIDING

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

REV. TOM HUXTABLE: Prayer offered.

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

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

SPEAKER MARVEL: Senator Dworak.

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

SPEAKER MARVEL: Record the vote.

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

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

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

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

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

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

Your Committee on Banking reports LB 403 to General File

March 19, 1981

LR 43
LB 179, 350, 420

The motion then is the adoption of LR 43. All those in favor vote aye, opposed nay. Has everyone voted? Record the vote.

CLERK: 36 ayes, 0 nays on the adoption of the resolution, Mr. President.

PRESIDENT: Motion carries and LR 43 is adopted. Do you want to read some matters in?

CLERK: If I may, Mr. President. Urban Affairs Committee whose Chairman is Senator Landis reports LB 350 as indefinitely postponed; and LB 420 as indefinitely postponed. (Signed) Senator Landis.

I have a reference report from the Executive Board regarding certain gubernatorial appointments.

PRESIDENT: The next bill then on Select File will be LB 179.

CLERK: Mr. President, there are E & R amendments to LB 179.

PRESIDENT: The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 179.

PRESIDENT: Motion to adopt the E & R amendments on LB 179. Any discussion? All those in favor of adopting the E & R amendments on LB 179 signify by saying aye, opposed nay. The E & R amendments are adopted on LB 179.

CLERK: Mr. President, I now have an amendment offered by Senator Lamb found on page 976 of the Journal.

PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I would refer you to page 976 for the amendment to the bill. This amendment is designed to undo the harm which was enacted with LB 120, Senator Burrows' bill, in regard to the attorney fees for people that are unhappy with local subdivisions of government. The amendment to LB 179 retains the allowance of LB 120 in the award of attorney fees but relieves the public officer or the employee of personal liability for the payment of the civil penalty and attorney fees if the employee or officer acted reasonably and in good faith in the performance of the public duty. It would remain with the governing body to determine what constitutes a reasonable and good faith action. The payment of any monetary awards would be made by the political subdivision in compliance with Section 77-1619. I move the

March 19, 1981

LB 179

amendment be adopted.

PRESIDENT: Any further discussion on the Lamb amendment to LB 179? Senator Burrows.

SENATOR BURROWS: I think it is a very, Mr. Chairman, I think this is a very reasonable amendment and I support the Lamb amendment. I think he has come up with some very reasonable language. Thank you.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I have got to ask Senator Lamb a couple of questions which would give me an opportunity to digest what he has put in. Senator Lamb, exactly what does your amendment cover now, which individuals?

PRESIDENT: Senator Lamb, would you respond?

SENATOR LAMB: Yes, sir. Well, my understanding, Senator Chambers, is the problem with LB 120 is that the officeholder would be responsible for attorney fees in these cases where someone brings an action against the subdivision and then wins. This amendment would relieve the officeholder of that responsibility if he acted reasonably and in good faith in the performance of his duties but it would require that...it would leave in the requirement that the public subdivision would be responsible for those attorney fees.

SENATOR CHAMBERS: All right, Mr. Chairman and members of the Legislature, I would like to amend Senator Lamb's amendment and not being aware that this would come up this morning I will have to get the language but this is what the amendment would do or say. Since he has used the language "good faith" and "reasonably", I would like to say in the amendment that the "disobedience of the unambiguous directives of a statute" or "unambiguous statutory directives will not be considered reasonable or good faith action by the official or employee". And I will tell Senator Lamb what it is saying. If there is a statute which is not ambiguous, which clearly defines the duty of an official, if that official disobeys that statute or decides on his or her own volition that this statute ought not be complied with, disobedience to such a statute will not be considered good faith or reasonable. So if Senator Lamb doesn't understand what I am saying, I would like him to make that known so I can clarify it further but that is the amendment I would like to offer and I will write it out.

PRESIDENT: Senator Chambers, are you going to write this out right now? If you want to, we will be at ease until you get the amendment up on the desk. While we are doing that, the Chair will take this opportunity to introduce, I believe, the 39 fourth graders and four adults from Oakdale School, District #66 in Omaha, who are just coming in the North balcony. They are from the Districts of Senator Koch and Senator Wiitala with teachers, Miss Betty Jantz, Miss Deborah Bolay, Miss Trudy Breitag, the teachers. They are in the North balcony. Would you welcome the students and adults from Oakdale School District? Welcome to your Legislature.

PRESIDENT: Senator Chambers, do you wish to elaborate on your amendment? Read the amendment.

CLERK: Mr. President, Senator Chambers moves to amend the Lamb amendment: Disobedience to unambiguous statutory provisions shall not be deemed reasonable or good faith action by a public official or employee.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the purpose of this amendment, I say again, is to take away from a public official or employee the unencumbered discretion to obey or disobey a statutory requirement. If we do not put in the amendment that I am offering, then any employee or official can simply disregard any statute he or she chooses, and if a citizen files a mandamus action and recovers, then the state or any other political subdivision is going to be compelled to pay the cost of that action. So by drafting the language to say "unambiguous statutory provision", it means that if a legitimate question exists relative to what the statute means, then in good faith and acting reasonably an employee or official may not act in the way that an aggrieved citizen feels he or she ought to act. But where we have a clear statutory duty placed on a public official that duty ought to be carried out, and if the official being aware of that duty chooses not to carry it out, there ought to be personal liability on such official or employee who does not act in accord with the unambiguous requirement of the statute. I ask that you accept this amendment to Senator Lamb's amendment, and if you do, the amendment in toto would indicate that only in the case of where unreasonableness or bad faith is shown will the official or employee be personally liable. In all other cases, the political subdivision would pay the costs.

PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: I rise to oppose the Chambers amendment on a couple of grounds. First of all, who is going to decide what is ambiguous and what is not ambiguous. I think that would have to be defined very clearly. Is it the officeholder going to decide that? Is it the court going to decide it? Who decides that? But let me just read again. The amendment says if such officer acted reasonably and in good faith, that is my amendment. Now by any stretch of the imagination is an officer or an employee acting in good faith if they are not enforcing the law, if they are violating the law, and I can't see how it could be construed that they are acting in good faith if they are not enforcing the law, they are not complying with the law as written. So I see no reason for this. I had this carefully researched. I don't believe that the Chambers amendment is necessary. I think it might add some confusion. I ask that the amendment to my amendment be defeated.

PRESIDENT: Senator Vard Johnson, did you wish to speak to the amendment to the amendment?

SENATOR V. JOHNSON: Yes, I will take just a couple of minutes to speak to Senator Chambers' amendment. I can appreciate precisely why Senator Chambers has offered this exact amendment because there can be nothing more galling to a citizen than to have some official functionary tell that citizen that he is not going to obey what appears to be a very clear dictate of a statute and so that poor citizen is ultimately compelled to go to court by a mandamus action to get an order from the court directing this functionary to do that which the statute says should be done, and what Senator Chambers is attempting to do through his amendment very simply is to make it clear that any official functionary who acts in the face of an unambiguous statute proceeds at his own risk. I do not think, however, that the amendment, per se, is necessary only because I think that that exact concept is encompassed within the expression of "reasonableness and good faith". I don't think that an official acts reasonably if, in fact, the statute is clear in its command, that is it is unambiguous and he fails to act but I certainly appreciate precisely what Senator Chambers wants to do. I would like to ask Senator Chambers this one question. Senator Chambers.

PRESIDENT: Senator Chambers, will you respond?

SENATOR CHAMBERS: Yes.

SENATOR V. JOHNSON: Do you yourself believe that your amendment is necessary or do you think that, in fact, the concept of your amendment is clearly encompassed within the meaning of the words, "reasonable and good faith?"

SENATOR CHAMBERS: I think that the thrust of the amendment is contained in the existing language of Senator Lamb's amendment but I want to remove every shadow of doubt.

SENATOR V. JOHNSON: You want to make it clear beyond a reasonable doubt?

SENATOR CHAMBERS: Yes.

SENATOR V. JOHNSON: All right, thank you, Senator Chambers.

PRESIDENT: Senator DeCamp. The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Well, I just have concerns that he may be doing the opposite. Senator Chambers may be doing the opposite of what he wants. He is saying cases of unambiguous language. Well that is the whole issue. Whether it was or was not ambiguous the official may have said it was and so on and so forth. The language that Senator Lamb has already the "reasonable and in good faith" should be about as far as you go before you start getting into counterconfusion and so I would say just stick with what Senator Lamb has offered and not go too much further. You have solved the main problem if you do that, the main issue, and you still have the concept that Senator Burrows introduced and passed through here pretty fast which was public officials better follow the law or a mandamus action. To enforce it is not going to cost the individual who has to force the official.

PRESIDENT: The Chair recognizes Senator Chambers then to close, on the amendment to the amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, perhaps Senator Lamb can assist me and it won't be necessary for me to clutter up his amendment. Senator Lamb, would you yield to a question or two?

PRESIDENT: Senator Lamb, would you respond, Senator Lamb?

SENATOR LAMB: Yes.

SENATOR CHAMBERS: Is it your intention by your amendment to make it possible for an official or an employee...

PRESIDENT: Just a minute, Senator Chambers, we are going to try to get some...I can't hear up here hardly (gavel). Let's please have some order so we can hear the dialogue between Senator Chambers and Senator Lamb. Senator Chambers, do you want to proceed and attempt to get the dialogue going.

SENATOR CHAMBERS: All right. Is it your intention to make it possible by your amendment for an official or an employee to just disregard the law and make the political subdivision have to pay the cost of a mandamus action?

SENATOR LAMB: No, absolutely not.

SENATOR CHAMBERS: So if we have a situation then where the law is pretty clear, then it would be your intention that an official or an employee would disregard that directive at his or her own peril?

SENATOR LAMB: Right, absolutely.

SENATOR CHAMBERS: And if it would be found that the law was clear in its requirements, would it be your intention that this type of disobedience would not be considered reasonable or good faith?

SENATOR LAMB: That is correct, Senator Chambers.

SENATOR CHAMBERS: With that into the record I will ask unanimous consent to withdraw my amendment.

PRESIDENT: The amendment to the amendment is withdrawn, Senator Chambers. Thank you. We will now proceed with the amendment itself. Is there any further discussion on the amendment itself? Seeing none, Senator Lamb, do you wish to close?

SENATOR LAMB: No closing. I believe it has been sufficiently discussed.

PRESIDENT: All right, the motion then is the adoption of the Lamb amendment to LB 179. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Lamb's amendment.

PRESIDENT: The motion carries. The Lamb amendment is adopted. Any further amendments on the bill, Mr. Clerk?

CLERK: Senator Lamb moves to amend by adding the emergency clause.

March 19, 1981

LB 179, 3, 6, 204, 366, 415

PRESIDENT: The Chair recognizes Senator Lamb on the amendment to add the emergency clause.

SENATOR LAMB: Mr. President, members, the reason for adding the emergency clause is obvious in that the emergency clause was on LB 120. In order to correct that situation as soon as possible we need the emergency clause on this bill also. Thank you.

PRESIDENT: Any discussion on the Lamb amendment to add the emergency clause on LB 179? Hearing none, Senator Lamb, I guess that is your opening and your closing. The question then is the adoption of the Lamb amendment to add the emergency clause. All those in favor vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries. The emergency clause is adopted. Any further amendments on LB 179?

CLERK: I have nothing further on the bill.

PRESIDENT: Senator Kilgarin, is to move the bill.

SENATOR KILGARIN: I move LB 179 be advanced to E & R for engrossment.

PRESIDENT: Motion to advance LB 179 to E & R for engrossment. Any discussion? All those in favor of the advancing of LB 179 signify by saying aye, opposed nay. LB 179 is advanced to E & R for engrossment.

CLERK: Mr. President, your committee on Revenue reports LB 3 to General File with amendments and LB 6 as indefinitely postponed, (Signed) Senator Carsten as Chair.

Your committee on Retirement reports LB 366 to General File with amendments, (Signed) Senator Fowler as Chair.

Your committee on Public Health reports LB 415 to General File with amendments, (Signed) Senator Cullan.

Your committee on Urban Affairs reports LB 224 to General File with amendments and that is signed by Senator Landis. (See pages 1018-1024 of the Legislative Journal.)

PRESIDENT: Before we take up LB 204, the Chair would like to introduce some guests from Senator Carsten's district, 15

LB 48, 62, 98, 172, 179,
226, 239, 266, 299, 304,
332, 342, 343, 344, 360,
453, 454, 506, 545

March 24, 1981

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Pastor Wayne Schroeder of the Calvary Lutheran Church and School, 28th and Franklin, Lincoln, Nebraska.

PASTOR SCHROEDER: Prayer offered.

SPEAKER MARVEL: Have you all recorded your presence? Is everybody here or are there still some missing? While we are waiting for the quorum you might be interested in the fact that our Clerk is hobbling around. The problem is that I was teaching him some dirty plays in basketball and got too vigorous. Record the vote.

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

SPEAKER MARVEL: Do you have some items under item #3?

CLERK: Yes, sir, I do, several in fact. Mr. President, I have a series of reports to read in. Your committee on Public Works whose chairman is Senator Kremer to whom was referred LB 98 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 226 to General File with amendments and LB 344 to General File with amendments, (Signed) Senator Kremer. (See pages 1082-1086 of the Legislative Journal.)

Your committee on Revenue whose chairman is Senator Carsten instructs me to report LB 454 to General File; LB 172 General File with amendments; LB 304 General File with amendments; LB 360 to General File with amendments; LB 506 General File with amendments; LB 48 indefinitely postponed; LB 62 indefinitely postponed; LB 299 indefinitely postponed; LB 332 indefinitely postponed; LB 342 indefinitely postponed; LB 343 indefinitely postponed; LB 453 indefinitely postponed, all signed by Senator Carsten as Chair. (See pages 1086-1089 of the Legislative Journal.)

Mr. President, your committee on Administrative Rules and Regs reports, whose chairman is Senator Vard Johnson, reports LB 266 to General File with amendments.

Your committee on Government reports LB 239 to General File with amendments and LB 545 to General File with amendments, signed Senator Kahle as Chair. (See pages 1089-1093.)

Mr. President, LB 179 is reported correctly engrossed.

Mr. President, LR 40, 41 and 42 are ready for your signature.

April 1, 1981

LB 113A, 179, 292, 292A,
317, 327, 479.

amendments; 113A, Select File; 327, Select File; 317, Select File; 292, Select File with amendments; 292A, Select File; 479, Select File. All signed by Senator Kilgarin as Chair, Mr. President. (See pages 1235 through 1238 of the Legislative Journal.)

SPEAKER MARVEL: The next order of business is Final Reading, item #4. All legislators will please take your seats so we can proceed with Final Reading. All unauthorized personnel please leave the floor. The first bill on Final Reading is LB 179E. Senator Koch, your light is on, did you wish to be recognized? Okay. LB 179E.

CLERK: Mr. President, I have a motion on the desk. Senator Hoagland moves to return LB 179 to Select File for a specific amendment, and there are copies that have been distributed, Mr. President.

SENATOR HOAGLAND: Mr. Speaker and colleagues, we had intended to have this printed in the Journal but we adjourned abruptly enough yesterday so it was not done, and I apologize for that. I would ask you to turn to page 19 of the bill. This is an amendment which is of a technical nature basically, in my opinion, and I apologize for holding up final passage of a bill as long as this to get this change made or to seek this change made but I think it is important enough to do it. If you turn to page 19 and review Section 12 of the bill, there is an inference there in that section that if there is a lawsuit filed against a public employee or public official and that lawsuit is successful, why then the public official or public employee has to pay the entire damages out of his own pocket if the jury in that lawsuit or the court in that lawsuit finds that his action was not reasonable or that his action was not in good faith. Now, what the amendment would provide is that the political subdivision that he is working for will pay the judgment against him as long as he operated...let me get the language here, within the scope of his office or employment. The amendment goes on to provide that there is nothing that should be construed to prevent the discipline of an employee or an official who does not act reasonably and in good faith in the performance of his duties. Now the reason I think this is important is because if this particular provision stays in the law, in my opinion it is going to scare the living daylights out of a lot of public officials and a lot of public employees and they are not going to execute their statutory functions as they should. Now let me try and give you two examples of why I think this could have a detrimental

effect. Let's say one of Wally Barnett's inspectors from the Fire Marshal's Division goes out to look at a project on site and he determines that some kind of a foam used on the outside of a building is flammable, and he tells the contractor, well, you should have come to me before you put that on according to state law, and I am going to direct you to hold the project up until that flammable material is removed. Now, the contractor will then turn around and say to that employee, look, I will hold this contract up and I will take that foam off and put new foam on but I am going to sue you personally. It is going to cost me \$20,000 to do that, and if two years from now some judge or some jury rules that you have not acted reasonably and in good faith, you are going to be totally responsible for that \$20,000 plus attorney fees in some instances. Now, it seems to me that that is going to scare the living daylights out of.... that's going to scare the living daylights out of that public employee and instead of doing his job which is to say stopping the building from being constructed, or you can think of a lot of other instances, a county inspector in a restaurant goes in and says, we have had 18 violations because of a dirty kitchen, your kitchen is still dirty, and we are going to make you shut down for a week until you clean that kitchen up. And the manager says, well, I will shut down for a week but I am going to sue you personally and if a jury or a judge a year and a half from now finds that you did not act reasonably and in good faith, you are personally going to be liable for our losses. Now, you see what I mean. I think that is going to deter public officials from doing what they think ought to be done and the better approach is in this amendment which provides that the political subdivision will pay the damages but they can go ahead and discipline the employee if he did not act reasonably in good faith. So I think for the smooth operation of our state and local governments I would recommend the option of this amendment. Thank you, Mr. Speaker. Mr. Speaker and colleagues, I have been informed that a number of legislators would like this whole matter to be laid over so we can examine the issue further, and with the Chair's consent I might ask that that be done.

SPEAKER MARVEL: Any objections? Okay, so ordered. Okay, LB....the next bill is LB 72, Mr. Clerk.

CLERK: Mr. President, as with the last bill, I have a motion to return LB 72 to Select File for a specific amendment. The amendment is found on page 1186 of the Journal. It is offered by Senator Labeledz.

April 7, 1981

LR 51, 52, 53
LB 284, 331, 179,
366, 296

SENATOR CLARK PRESIDING

SENATOR CLARK: Have you all registered in please. Will everyone check in please. Record.

CLERK: Quorum present, Mr. President.

SENATOR CLARK: We are going to go to number seven. Clerk has some things to read in.

CLERK: Mr. President, new Resolutions, LR 51. Read LR 51. Read LR 52. Read LR 53. All three resolutions were laid over.

Senator DeCamp would like to print amendments to 284. Senator Schmitt to 331. Senator Marsh to 179 and Senator Landis to 366.

SENATOR CLARK: LB 296.

CLERK: Mr. President, LB 296 was introduced by Senator Ron Cope of the 36th District. Read title of bill. The bill was originally read on January 19th, referred to Public Health and Welfare. The bill was advanced to General File. There are committee amendments pending by the Public Health and Welfare Committee Mr. President.

SENATOR CLARK: Senator Cullan, committee amendments.

SENATOR CULLAN: Mr. President and members of the legislature, I would ask for your attention briefly as we review the committee amendments to LB 296. Let me say initially before I get into the committee amendments that Senator Ron Cope from Kearney again has brought to the Legislature, I think, a very important issue in LB 296. He has....it has been his record in the past several years making another strong effort to do what he can to effect the safety and welfare of the citizens of the State of Nebraska. I commend him for bringing LB 296 to us and for presenting the solution, hopefully, to a problem that we have had in the State of Nebraska in recent times as far as so many people dying in fires, very tragic fires in the State of Nebraska. Senator Cope will explain LB 296 to you in detail in a few minutes. I will tell you that I support it and the members of the Public Health and Welfare Committee support the concept of requiring smoke detecting devices in various facilities throughout the State of Nebraska and we would

April 8, 1981

LB 113, 113A, 125, 174,
LB 179, 291, 328A, 331,
LB 257, 379, 392, 400,
LB 478, 479

as previously explained. All those in favor of adopting the amendments vote aye, opposed vote no. Have you all voted? Senator DeCamp. Have you all voted?

SENATOR DeCAMP: Mr. President, how many are excused? And who might they be? I just wondered. Mr. President, I change from aye to nay for purposes of reconsideration.

CLERK: 16 ayes, 22 nays, Mr. President, on the adoption of the DeCamp, Fowler, Wesely amendment.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, may I read some material in?

A communication from the Governor addressed to the Clerk. (Read. Re: LB 125, 174, 291. See page 1358, Legislative Journal.)

Senator Landis offers explanation of vote.

Senator Carsten would like to print amendments to LB 179.

A new A bill, LB 328A. (Read title. See page 1359, Legislative Journal.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 113 and find the same correctly engrossed; LB 113A correctly engrossed; 331 correctly engrossed; 379 correctly engrossed; 392 correctly engrossed; 478 correctly engrossed; and 479 correctly engrossed. All signed, Senator Kilgarin.

Public Works reports LB 400 to General File with amendments, Mr. President.

Mr. President, the next motion I have on LB 257 is to indefinitely postpone the bill and that is offered by Senator Beutler.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. President, I would like to withdraw that. I ask unanimous consent to withdraw that motion.

SPEAKER MARVEL: Hearing no objection, so.....

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

SPEAKER MARVEL: Senator Warner, your light is on. Do you

SENATOR NICHOL: We will move on to LB 389.

CLERK: Mr. President, if I may, right before that Senator Wagner would like to print amendments to LB 134; Senator Hoagland to LB 179; Senator Wagner to LB 326. (See pages 1467-1468 of the Journal.)

I have an Attorney General's opinion addressed to Senator Maresh. That will be inserted in the Journal, Mr. President.

Mr. President, LB 389 was introduced by Senator Don Wesely and Senator Loran Schmit. (Title read.) The bill was first read on January 20, referred to Public Health and Welfare for a hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President.

SENATOR NICHOL: Senator Wesely, are you going to take the bill?

SENATOR WESELY: Yes, I will handle the committee amendments, too, Mr. President. Mr. President and members of the Legislature, I will handle the committee amendments as vice chairman of the Public Health Committee. If you will look in your book you will find that they do a number of things. The primary intent was to tighten up the bill as introduced to try and clarify more specifically who could benefit from these services that would be provided under LB 389 which said some income guidelines that were more specific and would in a number of other ways provide some clarifying amendments. The attempt was again to try and tighten up the bill to deal with the question of costs involved and Senator Cullan was very influential in developing these different amendments but there are some amendments to those I think we might want to take up at this point.

CLERK: Mr. President, Senator Wesely moves to amend the committee amendments, Senators Wesely and Schmit, and the amendments are found on page 1278 of the Journal.

SENATOR NICHOL: Senator Wesely, are you going to explain your amendments to the committee amendments, please?

SENATOR WESELY: Yes, Mr. President. As I said before, the committee amendments which were drafted attempted I think specifically to deal with the question of narrowing the focus of LB 389 and I think that was appropriate but there were a number of changes that after the amendments were adopted we found to be counterproductive and not, in fact, helpful. You have on your desk a couple of handouts. One is a copy of the amendments. Those can also be found on page 1278 of the Journal. Then also I have passed out a

April 30, 1981

LB 179

we take this opportunity to warn them and then we will proceed accordingly. If this is unsatisfactory with the Legislature, then as I indicated ~~one~~ other time, get yourself 30 votes and overrule it.

PRESIDENT: So we are going to continue with Final Reading, Mr. Speaker. Senator Koch, did you have a question? Senator Koch, I see you have your light on.

SENATOR KOCH: A question of the Speaker.

PRESIDENT: Yes. Mr. Speaker, would you respond to Senator Koch's question? Proceed, Senator Koch.

SENATOR KOCH: Mr. Speaker, if you are going to be unpopular, let's start right now and I will support you.

PRESIDENT: We will...Senator Warner. There has been no Call raised. We are still on Final Reading. Everybody has got to be at your seat, at your desk because we are on Final Reading which I tend to call final debate right now. Okay, we will proceed with final debate. I think we have another motion on the desk. Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, we have got a lot of bills coming up on final. Anything that I can do on this or any other bill to work out arrangements in advance so we don't sit and debate I am going to do. I suggest we pass over any further action on 76. Anybody that wants to do anything on it, I will sit down with you, and as long as it is even slightly reasonable, try to work something out whether it be Senator Chambers, Beutler or whoever. I think we all ought to take that policy on every other cotton picking bill there or we are not going to get anything done this session and I think there is some middle ground on everything in here and so I suggest we forget about 76 for awhile and any of the other motions and get on with the balance of Final Reading.

PRESIDENT: Alright. Is there any objections? So ordered. We will move off of 76 and we will proceed then with the Speaker's instructions, proceed with Final Reading. I would remind everybody technically you are still on Final Reading. You are supposed to be at your desks. There is no way to raise any Call. You have got to be there and we are going to take up LB 179 at this point. Motion on the desk. Read

the motion.

CLERK: Mr. President, if I may, before that, Senator Koch would like to print amendments to 284.

PRESIDENT: All right, go ahead.

CLERK: Mr. President, I have a series of motions on LB 179. The first is offered by Senator Hoagland. Senator Hoagland, you had one on 1238 that I understand you wish to withdraw, is that right?

SENATOR HOAGLAND: I would like to withdraw that motion, Mr. President.

PRESIDENT: The motion now before us. The motion is withdrawn, Senator Hoagland. Anything else?

CLERK: Yes, sir. Mr. President, the next motion I have then is by Senator Marsh. It is a motion to return. It is found on page 1333. I understand Senator Carsten is going to handle that.

PRESIDENT: Is that Marsh? She is not here, is she?

CLERK: Senator Carsten is going to handle it.

PRESIDENT: Oh, Senator Carsten. All right. Senator Carsten is handling the Marsh motion. Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, Senator Marsh had to leave this morning. I was aware of her amendment for ~~two~~ time and would move that we return LB 179 to E & R for a specific amendment. Her amendment is found on page 1333 of the Journal and it adds two additional provisions to the bill. The first regards the sales tax in situations where two private individuals exchange motor vehicles. The law would be amended to apply the sales tax to the difference in value, that is the amount of money actually paid after the trade. This would make the law the same as in situations where an individual buys a motor vehicle from a dealer and trades in an old vehicle. The value of the trade-in vehicle is deducted from the purchase price and the sales tax applies to the amount of money paid to the dealer after the trade-in allowance. Under the present law, if two private individuals exchange automobiles, the sales tax applies against the entire valuation of the transaction including that car that is traded in. No trade-in allowance is permitted. There was an Attorney General's opinion and it has been printed on

page 1225 of the Journal if you care to refer to that. It does provide for that apparent discrepancy that we do have. The second provision is added to permit a certain married individual income taxpayers to amend their joint Nebraska returns to married filing separate returns and this would affect only those married taxpayers where the spouses were residents of a different state during the year, for example, certain cases of spouses in the military. The State Board of Equalization upheld a denial involving two amended Nebraska returns claiming that the refunds based on amending from joint to separate returns. The Board members upheld the denial because our law did not permit the filing of such amended returns in this type of case but some members of the Board expressed a desire to see the law changed to correct this situation. The Department of Revenue had responded to our request on this and certainly brought this amendment to us that clearly defines the situation and a recommendation that it be changed. With that explanation and it is quite brief but I think the points that are addressed are there and I would move for the return of the bill for the adoption of that amendment, Mr. President.

PRESIDENT: The Chair recognizes Senator Koch...okay, I guess that is your opening and closing, Senator Carsten. Any further discussion? The question then is the return of LB 179 for the Marsh amendment as explained by Senator Carsten. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 27 ayes, 1 nay on the motion to return the bill, Mr. President.

PRESIDENT: Motion carried. The bill is returned. The Chair recognizes Senator Carsten for purposes of adopting the motion.

SENATOR CARSTEN: Now, Mr. President, I move the amendment be adopted as explained.

PRESIDENT: Motion to amend now is in order. Any further discussion? All those in favor of adopting the Marsh motion to amend as explained by Senator Carsten vote aye, opposed nay. Record the vote.

CLERK: 28 ayes, 1 nay on the adoption of the Marsh-Carsten amendment, Mr. President.

PRESIDENT: Motion carries. The amendment is adopted. Senator Carsten, do you wish to move it back?

April 30, 1981

LB 179

SENATOR CARSTEN: Now, Mr. President and members of the Legislature, I move that LB 179 be advanced to E & R for engrossing.

PRESIDENT: Motion to advance LB 179 to E & R for engrossment. Any discussion? All those in favor signify by saying aye, opposed nay. LB 179 is advanced to E & R for engrossment. Anything further on LB 179, Mr. Clerk.

CLERK: Mr. President, Senator Carsten moves to return LB 179 to Select File for specific amendment and the amendment is on page 1359 of the Journal.

PRESIDENT: And the Chair recognizes Senator Carsten.

SENATOR CARSTEN: Now, Mr. President and members of the Legislature, I move to bring LB 179 back to E & R again, this time to strike Section 12 of the bill. This section is now in the form of an amendment to LB 273 and it was mutually agreed by the subdivisions that this was the proper place for it so it should be taken out of the bill and that amendment to 273 is printed in the Journal so that you can have an opportunity to work on it there. With that explanation, I again renew my motion to return for this specific amendment, Mr. President.

PRESIDENT: Any further discussion on the Carsten motion to return? I guess, Senator Carsten, that is your opening and closing. The motion then is the return of LB 179 for the Carsten motion to amend. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 27 ayes, 1 nay on the motion to return the bill, Mr. President.

PRESIDENT: Motion carries. The bill is returned to Select File. The Chair recognizes Senator Carsten for purposes of adopting the amendment.

SENATOR CARSTEN: Now, Mr. President, I move for the adoption of the amendment as explained.

PRESIDENT: Motion by Senator Carsten to adopt the Carsten amendment to LB 179. Any further discussion? All those in favor then signify by voting aye, opposed nay. Record the vote.

CLERK: 29 ayes, 1 nay on the motion to adopt the Carsten amendment, Mr. President.

April 30, 1981

LB 179, 284A

PRESIDENT: Motion carries. The amendment is adopted. Senator Carsten, will you move it back?

SENATOR CARSTEN: Now, Mr. President, I move that LB 179 as amended be advanced to E & R for engrossing.

PRESIDENT: Motion to advance LB 179 to E & R for engrossment. Any discussion? All those in favor signify by saying aye, opposed nay. LB 179 is returned to E & R for engrossing. Any further amendments on the bill, Mr. Clerk?

CLERK: Mr. President, Senator Hoagland moves to return LB 179 to Select File for specific amendment and that amendment is on page 1468 of the Journal.

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: I would like to withdraw that amendment, Mr. President.

PRESIDENT: All right. Senator Hoagland has withdrawn his amendment. Any further amendments?

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

PRESIDENT: We will move on then to LB 284 on Final Reading, 284A, yes. and is there a motion on this?

CLERK: Yes, sir, there is.

PRESIDENT: Would you read the motion?

CLERK: Mr. President, Senator Carsten moves to return LB 284A to Select File for specific amendment and the amendment is on page 1608 of the Journal.

PRESIDENT: The Chair recognizes Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I move to bring 284A back to E & R for a specific amendment and that specific amendment is this, to strike some language and reinsert some. When we passed 284 the other day on line 3 after the word "the", "political subdivision property tax relief fund" was stricken and "local government revenue fund" was inserted. Now we did not do that with the A bill so we need to bring it back. In order to be in compliance and make it compatible to 284 we also need to change the program numbers. In the original bill of 284A, it was for program 142 but the proper program is now 145 so those are just technical

May 4, 1981

LR 72-75
LB 548, 549, 134,
160, 161, 179, 232

SPEAKER MARVEL PRESIDING

CLERK: Mr. President, Senator Johnson and Hoagland would like to be excused until they arrive.

SPEAKER MARVEL: We are on. . . . Okay, record the vote.

CLERK: Quorum present, Mr. President.

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

CLERK: Mr. President, your committee on Business and Labor whose chairman is Senator Maresh reports LB 548 to General File with amendments, LB 549 indefinitely postponed, both signed by Senator Maresh as Chair.

Mr. President, new resolutions LR 72 calling for an interim study by the Banking Committee regarding continuing study of LB 137, LR 73 offered by the Banking Committee regarding continuation study of LB 358 and LR 74 by the Banking Committee to study the Nebraska Investment Council's formulation of establishment of policies to govern its methods, practices and procedures.

Mr. President, LR 75 by Senator Beyer. Read LR 75. That will be laid over Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 134 and find the same correctly engrossed, 160, 161, 179 and 232 all correctly engrossed. (Signed) Senator Kilgarin, Chair.

May 11, 1981

LB 548, 11A, 146, 179, 316,
318, 322, 361, 366, 478A
545

vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Have you all voted on the advancement of 548? It takes 25 votes. Record the vote.

CLERK: 27 ayes, 11 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. The Legislature having completed all its work that it is going to complete for today, we are now going to have a little reading in by the Clerk and then we will adjourn.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 11A and find the same correctly engrossed; 146 correctly engrossed; 316, 322, 361, 366, 545, all correctly engrossed, and those are signed by Senator Kilgarin as Chair.

A new A bill, 487A by Senator Wesely. (Title read.)

And finally, Mr. President, Senator Koch would like to print amendments to LB 318; and Senator Dworak would like to print amendments to LB 179.

SENATOR CLARK: Senator Stoney, would you adjourn us until nine o'clock tomorrow morning?

SENATOR STONEY: Mr. President, I would be pleased to. I move that we be in adjournment until May 12th at 9:00 a.m.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed nay. We are adjourned until nine o'clock tomorrow morning.

Edited by:


Mary A. Turner

May 12, 1981

LB 113A, 179

must be read before they are voted on, and Final Reading takes up about 25 percent of the total business time of the Unicameral. There have been at least half a dozen attempts to change the Constitution in regard to this and the people continue to vote down any attempt to change the way that we read as far as the bills are concerned. So this is a part of the Constitution and the Legislature, of course, has to abide by the Constitution. Now we are on LB 113A with the emergency clause. The Clerk will read.

ASSISTANT CLERK: (Read LB 113A on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. Have you all voted? The Clerk will record the vote.

ASSISTANT CLERK: (Read the record vote as found on page 1964 of the Legislative Journal.) The vote is 40 ayes, 4 nays, 3 excused and not voting, 2 present and not voting, Mr. President.

SENATOR CLARK PRESIDING

SENATOR CLARK: The bill is declared passed. The Clerk will read LB 179E. Mr. Clerk, before you read that, I would like to announce that there is two students from Christian Liberty Academy at Columbus, Nebraska, Dick and Pat Gaylor the teachers. They are in the north balcony. They are in Senator Dworak's District. Where are you? Welcome to the Legislature. There is also eight students, 10th and 11th Grade, 8 adults, from Omaha Christian School, Lawrence Wesberg is the Principal. They are in the north balcony. Where are you? Welcome to the Legislature to you also. The Clerk will read 179E.

ASSISTANT CLERK: Mr. President, I have a motion on the desk from Senator Dworak.

SENATOR CLARK: Read the motion.

ASSISTANT CLERK: Senator Dworak moves to return LB 179 to Select File for the specific amendment on page 1933 of the Journal.

SENATOR CLARK: Senator Dworak, motion to return.

SENATOR DWORAK: Mr. President, I move we return LB 179 to Select File for a specific amendment.

SENATOR CLARK: Do you want to explain the amendment?

May 12, 1981

LB 179

SENATOR DWORAK: Okay, I've made the motion. The amendment essentially is an oversight when we initially passed 284, the \$70 million, a section was inadvertently taken out which allows for the counties to have a 1 percent distribution fee and this was not the intent. I talked to Senator Schmit this morning. I talked to Senator Carsten this morning. It was brought to my attention by Jack Mills, Executive Secretary of the County Officials. It is not a new concept. It is not additional money. It is within the 70 million itself. It amounts to 1 percent that the counties take to handle the expense of administration and distribution of these fees. It is a housekeeping function and I would urge the adoption of the amendment.

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I concur with Senator Dworak, it certainly was not anything intentional in our concern for the proper formula of distribution. We completely overlooked this provision which has been in effect and that the counties do use for the calculation and the disbursement of these funds to governmental subdivisions. I urge you to support the return of this bill since 284 has long gone by and this is the one that we need to do it. I second his motion.

SENATOR CLARK: The question before the House is the return of 179E. All those in favor vote aye. All those opposed vote no. Senator Dworak. Record the vote.

CLERK: 34 ayes, 0 nays on the motion to return the bill, Mr. President.

SENATOR CLARK: The bill is returned. Senator Dworak.

SENATOR DWORAK: I move the adoption of the amendment.

SENATOR CLARK: You have heard the motion. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

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

CLERK: 32 ayes, 1 nay on the motion to adopt the amendment, Mr. President.

SENATOR CLARK: The amendment is adopted. Senator Dworak.

SENATOR DWORAK: I move that LB 179 be advanced to E & R Final.

May 13, 1981

LB 39, 39A, 179, 213

body is supposed to be at their desks anyway. The House is still under Call so we are now on Final Reading and you may read matters in while everybody is getting to their respective desk.

CLERK: Mr. President, Senators Pirsch, Hoagland, Cullan, and Hefner would like to print amendments to LB 213 in the Journal.

Your committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 39 and find the same correctly reengrossed; 39A reengrossed; and 179 correctly reengrossed. All signed by Senator Kilgarin as Chair.

PRESIDENT: There is a motion on the desk before we start Final Reading. Read the motion, Mr. Clerk.

CLERK: (Read Warner motion found on page 1990, Legislative Journal.) That is signed by Senator Warner.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I offer the motion once again to once again emphasize my concern that we cannot under our system have any kind of orderly presentation for considering priority of funding of programs, because of my concern that the operations of the...continuous operations of existing state responsibility should have first priority and resolved before we start new and expanded programs or expanded aid.

PRESIDENT: Could we have a little bit of order? It is just very difficult to hear up here even.

SENATOR WARNER: I freely acknowledge that I have some satisfaction and because the Governor is a friend of mine I have some satisfaction from that that the Legislature gives him both the privilege and the responsibility and the good PR of setting those priorities because of our inability or unwillingness to do it or to accept a system that permits it, but notwithstanding the fact that I like that, my prime concern is that that is a legislative responsibility and I think a responsibility that we should have and it is one I think we ought to jealously guard. I offered the motion again today. The statement has been made, and I am not going to pursue the motion, as is pointed out when you have lost you have lost, and from that point on, vote your conviction and let it go and the decision, in fact, was made Monday. Certainly it was made yesterday, and the Speaker is gone to defend the agenda, I will not pursue it further but

May 20, 1981

LB 39, 39A, 179

SPEAKER MARVEL: The motion before the House is the bracketing of the bill until the '82 session. Is that right, Senator Dworak?

SENATOR DWORAK: Yes, Senator Marvel.

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

CLERK: 13 ayes, 31 nays, Mr. President, on the motion to bracket the bill.

SPEAKER MARVEL: The motion lost. Okay, the Clerk will read on Final Reading LB 39 (E).

CLERK: (Read LB 39 on Final Reading.)

SPEAKER MARVEL: All provisions of law 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 the vote.

CLERK: (Read record vote as found on page 2129 of the Legislative Journal.) 36 ayes, 10 nays, 1 excused and not voting, Mr. President, 2 present and not voting.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The next, LB 39 A with the emergency clause.

CLERK: (Read LB 39A on Final Reading.)

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

CLERK: (Read record vote as found on pages 2129-2130 of the Legislative Journal.) 37 ayes, 10 nays, 1 excused and not voting, 1 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The Clerk will now read on Final Reading LB 179 with the emergency clause.

CLERK: (Read LB 179 on Final Reading.)

SENATOR CLARK PRESIDING

SENATOR CLARK: All provisions of law according to procedure

May 20, 1981

LB 179, 252, 451, 499

having been complied with, the question is, shall the bill pass with the emergency clause attached. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

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

CLERK: (Read record vote as found on pages 2130-2131 of the Legislative Journal.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President.

SENATOR CLARK: 179 is declared passed with the emergency clause attached. The Clerk will now read LB 252.

CLERK: (Read LB 252 on Final Reading.)

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall the bill pass. All those in favor vote aye, opposed no. Have you all voted? Once more, have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2131-2132 of the Legislative Journal.) 40 ayes, 8 nays, 1 excused and not voting, Mr. President.

SENATOR CLARK: 252 is declared passed. The Clerk will now read 451 with the emergency clause.

ASSISTANT CLERK: (Read LB 451 on Final Reading.)

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall 451 pass with the emergency clause attached. All those in favor vote aye, opposed nay.

ASSISTANT CLERK: Senator Clark voting aye.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Have you all voted? Okay, Clerk, record the vote.

ASSISTANT CLERK: (Read record vote as found on page 2132 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached, LB 451. The Clerk will now read LB 499.

May 20, 1981

LB 39, 39A, 179, 252,
451, 499, 506, 529

RECESS

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Record your presence, please. Okay, record.

CLERK: There is a quorum present, Mr. President. Mr. President, the bills that were read on Final Reading this morning 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 reengrossed LB 39, reengrossed LB 39A, reengrossed LB 179, engrossed LB 252, engrossed LB 451, engrossed LB 499. Do you have anything to read into the record, Mr. Clerk?

CLERK: Mr. President, one other item. Senator Chronister moves that the Legislature reconsider their action on the final passage of LB 529.

SPEAKER MARVEL: What was that announcement again?

CLERK: Mr. President, I have an Attorney General's Opinion addressed to Senator Lamb regarding LB 506. (See pages 2140 and 2141 of the Legislative Journal.)

SPEAKER MARVEL: From Senator Wesely's District we welcome forty-five students from Northeast High, Lincoln, Nebraska. Melvin Berka is the teacher. In the north balcony. Will you hold up your hands so we can see where you are? Welcome to the Unicameral. From Senator Sieck's District nineteen 4th Grade students and 2 adults from York Edison Elementary School, York, Nebraska, Mrs. Sue McDaniel, teacher, also in the north balcony. Where are you located? Welcome to the Unicameral.

SENATOR NICHOL: Senator Marvel.

SPEAKER MARVEL: Somebody says be kind. This is the time for action. I would like to read two or three paragraphs to you to emphasize the fact that we either get off of dead center, stop amending so many bills, stop putting discussion on certain pieces of legislation when we could do with maybe one-tenth of what has been offered. And I have indicated it is perfectly all right with me from a selfish standpoint if you want to continue the debate, if you want to continue to clog up the machinery, and it is clogged up, believe it or not, you can do that and you are going to lose some important legislation that practically everyone has, including reapportionment as an example. Now let me

May 20, 1981

LB 39, 39A, 179, 252, 451,
LB 548, 499

sure that they would do that, but I don't want to, because of equity the reasons I guess I don't want to create a problem but I am concerned about it because it is my impression that there are those groups that go around the country looking for these kinds of instances and I assure that the attorneys doing it probably have a fifty-fifty or something better share. I do not know on this particular case that that is true, but I can well imagine that there well may be other examples that could be significantly greater than \$13,900 that is involved in this issue today. And I think it...there is a great deal of reluctance on my part to establish a precedent of picking up with General Fund money those funds that were erroneously as it turned out or illegally as it turned out placed into this fund, and I think it is even hard for me to imagine that they couldn't file a suit on an equity basis and maybe have some basis as to when inasmuch as the money was not placed in the fund originally correctly. But again, as I have indicated, I probably...I guess I will withdraw the amendment, having called attention to it, but I have a great reluctance to see this precedent started and I think that certainly by next session we need to establish by statute some clear policy so that this does not result in some future substantial amount of funds being charged to the General Fund because of an error somewhere along the line on property that was escheated back to the state. So with that comment and because of my reluctance to for equity of the individual attempt to stop the payment entirely, I will withdraw the amendment, Mr. President, but I do so very reluctantly.

SPEAKER MARVEL: The motion is the advancement of LB 548. All those in favor vote aye, opposed vote no. All those in favor say aye. Opposed no. The motion carried. The bill is advanced. Okay, we are ready for 512. We are ready... yes, go ahead, and then we will take up 512.

CLERK: Mr. President, a few items to read in if I may. Mr. President, Public Works would like to have a meeting with the Natural Resources Commission at Noon on May 27 in Room 1517. Any Senators are invited to attend. That announcement is offered by Senator Kremer.

Mr. President, LBs 39, 39A, 179, 252, 451 and 499 have been presented to the Governor for his approval.

Mr. President, I have a proposed rules change offered by Senators Wesely and Beutler. That will be referred to the Rules Committee for their consideration. (See page 2144 of the Legislative Journal.)

May 22, 1981

LR 188
LB 179, 181, 252, 273, 273A, 303, 322,
346, 376, 381, 384, 389, 441, 451, 470, 472A
485, 497, 501, 543, 512, 552, 545, 553, 554.

Senator DeCamp. All those in favor vote aye. All those opposed vote nay. It takes 30 votes.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Senator DeCamp.

SENATOR DeCAMP: How many are excused? Eleven?

SENATOR CLARK: Two.

SENATOR DeCAMP: Two? Okay, we still stand a shot, so I would ask for a Call of the House and take call in votes if that would be okay. But I would ask for a Call of the House first.

SENATOR CLARK: Call of the House has been requested. All those in favor of a Call of the House vote aye, opposed vote nay. Record the vote.

CLERK: 19 ayes, 3 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All Senators will return to their seats, and if all Senators will check in, please. The Clerk would like to read some things while we are trying to get everyone registered in here.

CLERK: Mr. President, while we are recording our presence, I have a communique from the Governor addressed to the Clerk. Engrossed LBs 181, 252, 303, 381, 441, 451, 470, 485, 497, 543, 179, 346 and 384, 273, 273A, 501 and 545 were signed by me May 22 and delivered to the Secretary of State. Sincerely, Charles Thone, Governor.

Mr. President, I have an Attorney General's Opinion addressed to Senator Barrett on 376; one to Senator Hefner on 552. (See pages 2228 through 2233 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined 406 and recommend that the same be placed on Select File with amendments; 551 Select File; 552, 553, 554 all on Select File with amendments. (See pages 2233 through 2234 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 322 and find the same correctly engrossed; 376, 389 and 512 all correctly engrossed.

Mr. President, new resolution, LR 188 by Senator Wagner.