

January 14, 1981

LB 185-192

roll call but we have to have everybody in their seats first. Senator Wesely, for what purpose do you rise?

SENATOR WESELY: Point of information, please. I was wondering if the Clerk would one last time explain the vote we are taking at this point.

SPEAKER MARVEL: Can we just simply read the motion? Is there a motion?

SENATOR WESELY: If that is sufficient, that would be fine.

CLERK: Mr. President, the motion pending before the body is to adopt the remaining permanent rules for the 87th Legislature, First Session, as now currently in our possession.

SPEAKER MARVEL: Roll call has been requested. Clerk will call the roll.

CLERK: (Roll call vote taken as found on page 174 of the Legislative Journal). 15 ayes, 27 nays, Mr. President.

SPEAKER MARVEL: Motion lost. The Call is raised. Senator Wesely, for what purpose do you rise?

SENATOR WESELY: If I could have an opportunity to explain the situation as it stands right now, Mr. Speaker, so they would understand where we stand with the rules. Would that be possible?

SPEAKER MARVEL: No, sir. The only motion the Chair will entertain is the motion to adjourn. The Clerk has got some items to read in and then we will adjourn.

CLERK: Mr. President, new bills: LB 185 (Read title). LB 186 (Read title). LB 187 (Read title). LB 188 (Read title). LB 189 (Read title). LB 190 (Read title). LB 191 (Read title). LB 192 (Read title). (See pages 174 through 176 of the Legislative Journal.)

Mr. President, I have a Reference Report from the Executive Board referring legislative bills 114 through 139, and rereferring LB 69. (See pages 176 and 177 of the Legislative Journal.)

Mr. President, your Committee on Retirement gives notice of public hearing for Tuesday, January 20 in Room 1520. That is it, Senator.

February 18, 1981

LB 15, 16, 92, 170, 185, 187,
190, 199, 238, 244, 269, 518

addressed to Senator DeCamp regarding LB 190.

Mr. President, Senator DeCamp asks unanimous consent to have his name added to 269 as coinroducer.

PRESIDENT: Any objections? If none, so ordered.

CLERK: Mr. President, I have notice from Senator Fowler designating LB 404 as priority bill and Senator Richard Peterson designating LB 269 as his priority bill.

Finally, Mr. President, I have...your Enrolling Clerk respectfully reports that she has yesterday at 2:13 p.m. presented to the Governor for his approval the following bills: 15, 16, 92, 170, 185, 187, 199, 238 and 244.

PRESIDENT: Thank you, Mr. Clerk. We would like to take this opportunity to introduce some guests of the Legislature. First, a very special guest of Senator Clark, a good friend of his from Bridgeport, Darrell Scheuler who is seated here under the south balcony. Mr. Scheuler, would you stand up. Welcome to your Legislature. And also under the south balcony we have some guests of Senator Goll, Everett Holstein from Blair, Nebraska, and Elvin Kruse from Bennington. Would they please stand and be recognized? We are ready then for motions, Mr. Clerk. Is Senator DeCamp here?

CLERK: Mr. President, Senator DeCamp moves to withdraw LB 518. The motion was presented yesterday and laid over pursuant to our rules.

PRESIDENT: LB 518. The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, very briefly. 518 was a bill introduced by myself and Senator Howard Peterson and has to do with the Soukup case over in Grand Island. Because we have an alternate procedure that is hopefully going to be more effective, we would rather utilize that other procedure, the claims procedure, than utilize the bill at this time, and we can process that near the end of the session.

PRESIDENT: Any further discussion to Senator DeCamp's motion to withdraw LB 518? If not, that will constitute the opening and closing of Senator DeCamp. All those in favor of the motion to withdraw vote aye, opposed nay. Have you all voted? Record the vote.

February 20, 1981

LB 17, 22, 86, 123, 151,
155, 169, 171, 190,
220, 247, 294, 482,
537-540, 175

and February 19.

Your committee on Urban Affairs reports LB 175 (sic. 171) to General File with amendments; LB 220, General File with amendments, (Signed) Senator Landis.

Government Committee reports LB 247 to indefinitely postpone; 29th indefinitely postponed.

Your committee on Miscellaneous Subjects report LB 482 indefinitely postponed.

The Appropriations Committee reports LB 155 advanced to General File with amendments.

Your committee on Revenue whose chairman is Senator Carsten reports LB 17 to General File with amendments; 169 to General File with amendments and LB 86 indefinitely postponed.

The Public Works Committee whose chairman is Senator Kremer reports LB 22 to General File with amendments; 190 to General File with amendments; 123 indefinitely postponed.

Your committee on Revenue reports LB 151 to General File with amendments. (See pages 612-615 of the Journal.)

Mr. President, Senator DeCamp makes a motion to withdraw LB 537, 538, 539 and 540 and cancel the public hearings on those bills. So in order to do that we will need to suspend rules to cancel those hearings which were scheduled for next week and I understand we are going to lay that motion over.

SPEAKER MARVEL: We will lay the motion over until next Monday. Senator DeCamp. Senator Marsh, for what purpose do you arise?

SENATOR MARSH: I have misplaced my black purse briefcase. Thank you.

SPEAKER MARVEL: Senator DeCamp, for what purpose do you arise?

SENATOR DeCAMP: Mr. President, members of the Legislature, you all heard what the motion was. Senator Marvel asked that we take it up next week rather than today and I would agree to that. I would simply point out that a couple of these hearings are set for next week and so I would hope that we could take it up right away Monday morning and at that time detail the future of the Task Force and so on and so forth.

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 6, 1981

LR 29, 30
LB 50, 75A, 190

CLERK: 25 ayes, 3 nays, Mr. President, on the motion to advance.

SPEAKER MARVEL: The motion is carried. The amendment is advanced to E & R for Review. Do you have some items to read in, Mr. Clerk?

CLERK: Yes, sir, briefly, Mr. President. I have a lobby registration report from February 27 through March 5.

Mr. President, new resolutions, LR 29. (Read.) (See pages 786 and 787, Legislative Journal.) Mr. President, that will be laid over pursuant to our rules. LR 30 by Senator Vickers. (Read. See page 787, Legislative Journal.) That, too, will be laid over.

Mr. President, finally, Senator Kahle would like to print amendments to LB 190 in the Legislative Journal.

SPEAKER MARVEL: Is that it?

CLERK: And, Mr. President, finally, a new A bill, LB 75A. (Read title.)

SPEAKER MARVEL: Senator Beutler, would you adjourn us until Monday at 9:30 a.m.

SENATOR BEUTLER: Mr. Speaker, I would move the Legislature be adjourned until Monday, March 9th at 9:30 a.m.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. The motion is carried. We are adjourned until Monday, March 9th, 9:30 a.m.

Edited by:

Marilyn Zank
Marilyn Zank

March 9, 1981

LB 190

SENATOR CLARK: Senator DeCamp, are you ready to take up LB 190?

CLERK: Mr. President, LB 190. (Title read.) The bill was read on January 14th. It was referred to the Public Works Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President, by the Public Works Committee.

SENATOR CLARK: Senator Haberman, for what reason do you raise your hand?

SENATOR HABERMAN: A point of personal privilege, Mr. President. I understand that Senator Koch has some very important amendments on this bill and Senator Koch couldn't be here today and I would like to ask that we pass over this bill until Senator Koch can be here to present his amendments and defend his amendments.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I would object to passing over it. This is, you know every session we have a dozen or so pretty important bills and I would have to say that this is one of the dozen and he will get his chance, assuming it advances to Select File, he will get his chance there. I will certainly accommodate him and I think those amendments are going to be brought up by somebody else anyway. There is the identical amendments up there by Senator Kahle. It ain't that bad, Rex. Are you going to pout?

SENATOR CLARK: Turn Senator Haberman up.

SENATOR HABERMAN: Mr. President, we have done this before in the Legislature and just because it is Senator DeCamp's bill I don't think we should have any special privileges. I would just like to request that we pass over the bill until Senator Koch is here.

SENATOR CLARK: Did you want to make a motion to that effect?

SENATOR HABERMAN: Yes, I will.

SENATOR CLARK: It has been moved that we pass over LB 190. All those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting no.

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

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LB 190

CLERK: 8 ayes, 14 nays on the motion to pass over, Mr. President.

SENATOR CLARK: We will take up LB 190. We have committee amendments by the Public Works Committee. Senator Kremer.

SENATOR KREMER: Mr. Chairman, members, there are two committee amendments. First of all, number one is a committee amendment that makes technical changes that correct the sectional references. That is all, just a technical change. Number two, it imposes an interest charge on any delinquent taxes. The amount of interest imposed on delinquent tax is a sectional reference and I believe that point is sixteen percent. Mr. Chairman, I move the committee amendments.

SENATOR CLARK: Senator Kahle, do you want to talk on the committee amendments? Senator Warner, your light is on. Did you want to talk on the committee amendments. All those in favor of the committee amendments vote aye, all those opposed vote nay.

CLERK: Senator Clark voting aye.

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

CLERK: 26 ayes, 0 nays on the adoption of the committee amendments, Mr. President.

SENATOR CLARK: The committee amendments are adopted. Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, I would like to start out by reading you a statement I made on this floor approximately one year ago. The statement was made in the following circumstances and situation. I proposed an amendment to delay the ton mile tax that we had successfully passed in this Legislature the year before, to delay its implementation for one year until July 1, 1980, in other words, or 1981, this year. Because I had pushed so hard to get the ton mile tax passed and was asking for a delay, I made certain promises and explanations on the floor and I would like to summarize those by reading what I said. "We said we will give you the benefit of the doubt", and I was talking about my talking to the railroads, "delay it long enough to try to work something out. I am willing to give them", the railroads, "the benefit of the doubt. Now I don't nibble at the railroad room or any of the other things. I don't have any obligations there and I am telling you this. I am putting myself on the line on this. I am willing to go for the delay because it is a chance to stand up publicly

and say, 'You really are in deep now', to the railroads, "unless you come up with an alternate solution." It is also a chance quite frankly to avoid a one or two or three week battle over repeal of that tax, the ton mile tax, which they will go for. I think it is a reasonable middle of the road solution that can be implemented, and Neil Simon, whether you are here or not, I am committing myself here publicly in front of God, man and ETV to do whatever is necessary to make sure there is a solution by next year or to tell the railroads, 'Look, you have got to go over the top of the Legislature and attempt to repeal the ton mile or you have got to come up with a better solution'." During the last six or eight months, I and a couple of other Senators have consistently worked with the railroads to come up with "a better solution". So in a sense, I am in a no lose position whether the bill passes or doesn't. I am urging passage. I am also saying if it doesn't pass, we will have the ton mile tax and the railroads would have to pay that although I personally believe they would try to fight that for two or three years in the courts and would delay any action in us getting funds immediately. The solution, the better solution we have or are offering is what we are calling the "train mile tax". The money specifically goes into a fund to be used for building overpasses. You may remember the thing that raised my ire and got me to push for the ton mile tax was the fact that we weren't getting overpasses built. We were getting dramatic increases in train traffic and the railroads were ignoring their responsibility and denying they had any responsibility. The train mile tax goes on the number of trains through the state times the number of crossings and amounts to, what, about seven cents per mile for every train going through the state. Unlike the ton mile tax, the train mile tax gets trains both ways, empty or full. Initially, initially, the train mile tax that I am proposing here will raise more money for the first couple of years than the ton mile tax. Long term unless we make some changes or increase the train mile, the one I am proposing here in the future, the ton mile will raise more in the future, let's say two, three, four, five years hence. Immediately, however, it would raise about two million dollars this year. Going with your federal funds and so on and so forth, that would mean about eight overpasses could be built with all the monies that are now available through 1982, at least, and hopefully before the funds are all dried up in 1982, Nebraska will be selected as one of the corridor states impacted so heavily by train traffic and will get additional input. So the bill does about four things. One, substitutes ton mile for train mile, and you may remember we were the first state in the United States to ever attempt a ton mile, the first ones to get it passed, and the first ones to have anybody say it is constitutional. Although

it hasn't been to the highest courts in the land or anything like that, I am satisfied that it would be. However, with the train mile the railroads in this state have reached agreement and stated publicly on the record before the Public Works Committee that if this is passed they will not challenge it in the courts and they will accept it. Now you say to yourselves as I did, why would the railroads do that? Why would these multibillion dollar empires do that? And I will tell you the very simple reasons. Because they are scared. Because nobody ever got a ton mile tax passed before and they are afraid if Nebraska does it, gets away with it, other states will do the same, and they can see it costing millions by tens of millions more. I am not worried about other states. I am worried about Nebraska. I am willing to give up ton mile, the thing that I pushed through, in return for train mile because that gets me money in Nebraska without a court fight immediately to begin building the overpasses, and if you have got your handout from the League of Municipalities, look at the front. They were the very arguments I used originally in getting ton mile. Have you waited for a coal train? You bet ya, we have. What about an ambulance? What about if your house were burning, so on and so forth? We need to begin building the overpasses. We need the railroads to start help paying for it. So I urge adoption of the...or advancement of the bill and adoption of this alternate proposal. You have received piles of information on the specific details. It will raise about two million this year, begin effective July 1st, start raising the money. We will have a tap of ten million in other words. Instead of just piling up money, it is going to force us to use it to start building things instead of just letting it pile up like it used to. It will repeal some existing statutes which I am sure there is going to be quite a bit of discussion here shortly about that deal with cities and towns and you have received some flak on that but we can discuss that separately when that amendment is offered. So I urge advancement of the bill.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Before we recognize Senator Kahle, it is my privilege to introduce 90 students, fourth graders from Miller Park, Omaha, Nebraska, and the teacher is Beth Hudson, Sue Cuva, Sally Louison and Loretta Johnson in the North balcony. Will you raise your hands so we can see where you are? We wish you "Good morning". Senator Kahle.

SENATOR KAHLE: Mr. Speaker, would the Clerk read the amendment or is that out of place at this time?

CLERK: Mr. President, Senator Koch had an amendment, and, of course, he is excused, so Senator Kahle now has an amendment that is found on page 787 of the Legislative Journal.

SENATOR KAHLE: Mr. Speaker, members, I am not against what Senator DeCamp has said about the way the tax is going to be collected. I am not sure which is the best method and I am sure the railroads are going to fight the ton mile tax and maybe on trains going both ways is more to our advantage than the other. The part that I am concerned about is Section 75-416 and also 75-415. Now 75-415 has not been eliminated from the statutes but 75-416 has and I will read a little statement here that I have and then try to explain them. The purpose of my amendment is to reinstate some sections of the statutes that LB 190 repeals. These sections can be reinstated without harming LB 190 and the train mile tax. The stricken sections provide a method for getting the railroads to sit down and negotiate to improve a grade crossing. Under these sections, cities may sit as a local board of equalization to determine the amount of money the railroads should pay to help with the project. For counties the statutes provide for the county board negotiating with the railroad for an amount, and if the parties fail to agree, the case is submitted to the Public Service Commission for a ruling. It is true that there is another statute that refers to the federal law which appears to say a railroad cannot be forced to pay more than ten percent of the project. Now the most important part is that these statutes provide a method for getting the railroads to sit down with local governments to determine grade crossing needs. In the many years these statutes have existed no local government has had to force a railroad through the entire procedure. It has been used by the cities and counties in many instances to reach a compromise. Without these statutes the locals will not have this bargaining point to get the railroads to take them seriously. The railroads have never been forced to pay five percent or any other amount under these statutes. However, they have voluntarily compromised when cities and counties operated under these statutes. Now, personally, I just don't feel that is unreasonable. We have the Public Service Commission that is supposed to handle these problems that come up between counties, cities and railroads and other entities of government. So I think it was a mistake to take this part out of the statute and I hope that you will vote to adopt this amendment and I think we can move this bill along. Thank you.

SPEAKER MARVEL: Senator Haberman, do you wish to speak? Senator Kremer, do you wish to speak on the amendment?

SENATOR KREMER: Mr. Chairman, I rise to oppose the amendment.

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LB 190

We talked about this very issue in committee. The response from the railroads were that they would go along, they were reluctant to go along with the train mile tax. However, with the provision that the bill would get favorable action as it was written, they would go along. Now if we strike or we accept or adopt the Kahle amendment, I think we have got a real fight on our hands by the railroads again. We will go back to the ton mile tax and then we will again have a fight and we will delay and delay. It is time we get started on the construction on these grade separation facilities. Many of us would like to have the whole loaf always. Most of the time we settle for a half loaf or it is a compromising situation. I, too, was reluctant in going along with the railroads in saying that the bill should be written this way and strike the sections that are addressed in the bill itself. Senator Kahle, I am very fearful if we adopt your amendment we will find ourselves in deep trouble in getting acceptance from the railroads, and if we do not, I question we are going to get anything at all. Therefore, I oppose the amendment and let's go with the bill. Senator DeCamp has worked diligently and for a number of years on getting something we have never had before. This grade crossing is becoming a real problem in many of our cities that are in route of the moving of the coal trains and my counsel at this point is let's take what we can get. We can have it and I would hate to see it fail.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President, members of the Legislature, I certainly support the amendments offered by Senator Kahle. When this bill was before the Public Works Committee, this concern was brought up primarily by Senator Koch, that the cities and counties were giving up some of their authority under the provisions of the bill and I certainly don't see the reason why we should do that. As was mentioned in the committee, we voted to bring the bill out but there was no agreement as to whether or not these sections should be eliminated and I, for one, voted to bring the bill out but I think everyone realized I was not in agreement with the elimination of these sections as Senator Kahle has mentioned. Now I don't think we should be all that afraid of what the railroads are going to do. After all, this is a reasonable bill and these amendments that Senator Kahle would like to keep in there have not been used all that much and they may never be used but they are there. They are sort of an impetus that will provide a little bit of a lever for the cities and counties to use and not unreasonable to leave them in there. I would urge the adoption of the amendment.

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SPEAKER MARVEL: Senator DeCamp, are you closing? Okay, you are recognized.

SENATOR DeCAMP: Mr. President, members of the Legislature, reluctantly I rise to oppose the amendment because I know the goal of Senator Kahle and Senator Lamb, and it kind of fits into my own techniques. Leverage, pressure, that is why those particular sections of the statutes want to be retained. Now the cities who came in and testified, the other people, I think Senator Lamb and Senator Kahle themselves would say, "Ya, it probably can't be legally done. We can't force somebody to involuntarily do something." You can't force somebody to negotiate and arrive at a predetermined thing. You can't legally do it and then you have other statutes that go in direct conflict. 18-602, grade crossing projects shall be undertaken on a basis that will impose no involuntary contributions on the affected railroads except as provided by Section 5 (b) of Public Law 521 enacted by the 78th Congress, blah, blah, blah. I would love it if it would work. So what is my fear? Why even care about it, if it doesn't matter that much? If it can't be, if it can't be imposed, why don't I let them have that little bit of leverage? Because I am scared. I am scared of the railroads. What am I scared they will do? They will use this, this as their excuse for saying ahhh, you see we offered a solution, we agreed to come up with a couple of million dollars a year to help pay for these and what did you legislature do? You came up with two systems and we just can't understand. Well they dog-gone well are going to know what it means. But it could be their basis to go into court and say we don't really know, are we supposed to follow law A or law B or law C? I'm saying that you repeal a very limited number of sections where there is just clear conflict and which go in conflict with what we did two years ago, LB 42 on grade separation crossings. Now when the Omaha City Attorney who wanted these sections repealed was alerted to LB 42, Herb Fitl and some of the other people out there, lobbyists, were alerted to it in the last little while, they didn't even know that they existed. They didn't take the time to check out the rest of the statutes on it. If you would adopt the bill in its form as offered, the railroads can not fight it, they are going to have to pay a couple of million dollars this year and millions more in the future and begin using that money for grade separations, and, take your North Platte's your Columbus' and your whatever, instead of you having to come up with a pile of money your amounts may be minimized to zero because we can use this money for your city contribution. Reluctantly again I urge you to not accept the amendment because it will not give anything and may risk taking away what we can get. That is the only reason I oppose it. I just think that we have got a pretty clean bill and a clean system and I want to keep it that way

because I want to start building these overpasses immediately, eight of them in the next couple of years, and quickly.

SPEAKER MARVEL: Senator Wagner, do you wish to speak on the Kahle amendment?

SENATOR WAGNER: Mr. Speaker and members, I rise to oppose the Kahle amendment and I do this kind of reluctantly, but I think probably in the sense we would be better to go ahead with this bill the way it is. If this is really a problem someplace down in the future, maybe we can come back and take a look at it. I think for the sake of getting things on and getting some crossings started I would oppose that amendment.

SPEAKER MARVEL: Senator Kahle, we are speaking on your amendment. You are closing on your amendment.

SENATOR KAHLE: Okay. Mr. Speaker, members, I really find it unique in a way that the railroads are using this to shove down our throat that they aren't....they are going to take their marbles and go home if we put this little bit of restriction on them so that there is some local control. It just seems to me like this is a small thing to ask and I for one as you all know have long and loud spoken for local control that has some community input into these things that happen. I still feel very strongly about it. If the railroads want to take their marbles and go home, I suppose they can find another excuse. I think Senator DeCamp made the best speech of all in favor of this amendment when he tells us that the railroads are threatening us. They aren't going to do this or they aren't going to do that if we don't play ball with them, just exactly the way they want it. I think that it has been stated that, boy, if you put one amendment on that bill we are done, we are going to take you and we are not going to do anything for you. Now that is not the way, that is not the attitude we should have in the State of Nebraska to get things done. I resent it. So I hope that we are not going to take a lot of time with this and I know that we can operate with this amendment on or off but it just seems to me that it is part of the system and it should work. The Public Service Commission is there to look over our shoulder and look over their shoulder if we do have an agreement, I don't see how in the world it could hurt us.. Now I just can't imagine this legislature being cowered by the railroads.

SPEAKER MARVEL: The motion is the adoption of the Kahle amendment to LB 190. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 9 ayes, 23 nays on the adoption of Senator Kahle's amendment, Mr. President.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, the next amendment that I have is offered by Senator Haberman. Read Haberman motion.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Nebraska Legislature, if we are going to have this bill, which I hope we don't, let's have it be worthwhile. All this does is increase it from 6.7 to 10.7. We know construction costs are going up very very rapidly and it is going to cost many many million dollars more to construct overpasses and underpasses, safety signals and I feel that if we set this to low, if we set it at six, we are going to run out of funds and we should look down the road, count on the inflation and make it 10.7. Thank you very much, Mr. President.

SPEAKER MARVEL: Senator DeCamp, do you wish to speak to the Haberman amendment?

SENATOR DeCAMP: Mr. President, members of the Legislature, again reluctantly, you think that I do everything reluctantly here, I rise to oppose the amendment. Let me explain why. Because I do not understand how it is going to change the numbers, what it is going to do and everything else. I just know that it is designed to increase something. The amounts of revenue. Okay, here is the problem. We are raising with the proposal that we have got, anywhere from \$200,000 to maybe \$500,000 more the first year and the second and third year probably than we would have with the ton mile tax. Why would they pay more? Because that was one of the concessions that they went along with in return for having something that only could be identified with Nebraska, rather than something that would proliferate across the United States. Second, the existing amounts in the formula, this first year, are all apportioned among the railroads themselves. Chicago-Northwestern is not the strongest railroad, they have got some problems financially, whereas Union Pacific and Burlington, they won't admit it are drowning in money. So we have tried to apportion very carefully, the cost among the railroads. If you do want to change the entire formula, which is what this does, I would suggest that we get it in place for a year. Raise our money so that you don't have to worry about court tests and everything else, I repeat again, they agreed on the record they would not fight this in the courts, they would accept it. After a year if you want to try to increase it, fine, I'll probably be helping you. But I wouldn't go for it just yet because there is another factor and that final factor is the Interstate Commerce Commission. If they make a finding, that the tax imposed is an unreasonable burden upon interstate commerce, then they can

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throw it out. Now I don't know that what Senator Haberman is offering that they are going to say it is because I don't know how much it changes it. But I do know this. When the railroads have agreed that this is not unreasonable what we are offering and they can live with it they have no basis to challenge it. So I urge you again reluctantly to adopt the..I mean to..I urge you to reject the amendment and advance the bill in the form we have it now.

SPEAKER MARVEL: Senator Haberman, you wish to close on your amendment?

SENATOR HABERMAN: Mr. President, fellow legislators, back in 1979 on page 5580 of the Daily Proceedings, I called LB 42 and the postponing of it a charade. I don't think Senator DeCamp went back far enough when he started reading the record. Now I remember back in 1979 we passed the ton mile tax. Greatest tax there is. Gotta have the ton mile tax, we gotta make the railroads pay. We gotta collect the money now. We gotta save lives and as we go through my amendments I will quote to you from the 1979 record quote, "don't delay the tax until July 1, 1980. It gives us time to study it to come up with a working solution. It lets LB 42 itself go into immediate effect so we can use that two million to start building railroad crossings that is already in the fund. That was in 1979. We were going to save lives in 1979 and 1980. We have stalled the bill for two years and fifty-three people have been killed in those two years. Why are the railroads so eager to accept this? Because they save money. Why wouldn't they? It has a limit on it of ten million. So anytime the railroads are so willing to accept something and are so eager then I say look out. Watch out! How does this change the formula? Senator DeCamp, it changes it one way. It raises more money. So that we can build better and more overpasses and underpasses. That is what it does. It raises more money. That is all it does. It is exactly the same formula that you used in the first place. It just increases it. The railroads are increasing the use of our state, the railroads are increasing the use of their railroads and they are growing and they are spending millions and millions of dollars to increase the rail lines and their net profit. So I say let's increase this. Let's look for the inflation. The same formula, it won't hurt a thing and I ask you to adopt the amendment.

SPEAKER MARVEL: Motion is the adoption of the Haberman amendment. Senator Haberman is closing. All those in favor of the Haberman amendment vote I, Opposed vote no. Have you all voted? Record the vote.

CLERK: Nine Ayes, seventeen Nays, Mr. President, on the adoption of the amendment.

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LB 190

SPEAKER MARVEL: Amendment is adopted. Or...amendment lost. Now what is the next...

CLERK: Mr. President, Mr. Haberman moves to amend the bill. Neither one of the two, Senator?

SPEAKER MARVEL: Have him read it..

CLERK: Mr. President the second Haberman amendment is on page two line twenty-one, strike six and insert eight.

SENATOR HABERMAN: Again, Mr. President and members of the Unicameral, I can see or I get the feeling right now that squeaky from Neligh, excuse me, Senator DeCamp has got all of his guns lined up on this and it is going to be fruitless to try to change it. I thought maybe if we tried ten we could compromise on eight so again I will repeat the same argument, all this does is includes some money for inflation, it doesn't hurt the formulas, it doesn't hurt a thing, it just merely goes from 6 7/10 to 8 7/10 and I ask your support. Thank you, Mr. President.

SPEAKER MARVEL: Senator DeCamp?

SENATOR DECAMP: Mr. President, members of the legislature, again Squeaky gets up to reluctantly oppose the amendment and my good friend Senator Rex is getting mad at me now and I hate that ever to happen. But I would like to point out something. Because I assume since this is basically the same amendment with a little slight change in numbers as last time, that the same arguments apply that he used on the last one. So I would say the quotations he read from 1979 in which I said we have got two million dollars, something needs to be done immediately and I think my good friend Senator Cullan can verify what I'm going to say next because it was his bill and we were opposing each other on it a good portion of the time. What I was talking about was completely separate from the ton mile, was a completely separate fund in which we had been building up millions of dollars and not getting it used and I wanted to change 42 to make it used quickly. So to use that conversation as applying to ton mile which I put on as an amendment to 42 later on is like apples and oranges. In fact the conversation he quoted I would say was 100 percent right. It did work. We did get that money out of the fund, we did start using it, so it was 100 percent successful. But that particular conversation had nothing to do with ton miles at the time. Again I urge you to reject the amendment only understanding this. We were the ones and Senator Haberman was the biggest helper I had on it enforcing..enforcing the railroads to be in a position where we could get money out of them and start ad-

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addressing the problem. By passing the ton mile tax, the first time in the history of the United States, we finally got a lock. We had no lobbyists helping, we had nothing. We just had a lot of Senators who had stopped at railroad crossings and waited for trains. At the time we passed it and even the next year you may remember, I said if you will come up with the same amount of money or more in a system that we can start building things in Nebraska, I will help you get it done..I am simply living up to a commitment I repeatedly made on the floor, repeatedly made everywhere. If you come up with an alternate system I will offer it and try to help you get it passed. Now when they first offered other systems, they were hokey ones. Things where they came up with junk language where they said, well, we will do this and this and this and blah-blah, but they never ever came up with any proposal for them to pay money. They always had to do with..well we will get something out of Washington and do this. I said no, you guys pay. You are running your trains, you help us pay. That is what we are doing with the train mile. I think you should reject the amendment and try to get the bill passed in its present form. I don't think I have lobbied two people on this bill. I don't know what lobbyists, I assume the railroad lobbyists are working on it, but I think the legislators know that this is the solution to get things going.

SPEAKER MARVEL: Senator DeCamp,..I'm sorry Senator Cullan. Your light is on..

SENATOR CULLAN: Mr. President, since Senator DeCamp mentioned my name I thought I would press my button and see what he was going to say about me and this was one instance where I can rise after Senator DeCamp has said something and say that this time I think he is telling you the truth.

SPEAKER MARVEL: Pat, what do we have next? O.k. Senator Haberman, do you want to close on this amendment? Then we are going to have to close up shop.

SENATOR HABERMAN: Mr. President, fellow colleagues, quote Senator DeCamp back in 1979, I don't know whether it was 200 or 240 million net profit and about 20, I think it was 20 or maybe 30 percent of their traffic is through this state. Somebody ought to be help paying a little. Well if their profit was forty million net profit, and thirty percent of their traffic was through this state, back in 1979, I don't think it is asking too much to raise it from 6 7/10 to 8 7/10, because we know their profit has increased. We know this. So therefore I ask that you support this amendment and John says he hasn't lobbied anybody, he doesn't have to. The railroad has hired big guns out there. I have been seeing

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LB 55, 114, 128, 190, 198, 217, 246,
271, 279, 297, 327, 388, 434, 462,
407, 258

fellows walk around lobbying for this bill. They say, we hear you are against our bill, Rex, we are going to...we have some lobbyists working against you. They are sure are. They have been working their heads off this morning. I don't mind standing up here all alone, I have done it before, but I would like to have you fellows stop and think, we are only raising it from 6 to 8. They had a profit, a net profit of forty million in 1979. Thirty percent crosses the state. So I will ask for you to think down the road, raise it the two percent and then we will go from there. Thank you.

SPEAKER MARVEL: Motion is the Haberman amendment to legislative bill 190. All those in favor vote Aye, opposed vote No. Have you all voted? O.K. Record the vote.

CLERK: Eight Ayes. Fifteen Nays, Mr. President.

SPEAKER MARVEL: O.K. The motion lost. Now do you have some items to read in?

CLERK: Yes, sir.

SPEAKER MARVEL: While you are bringing them up, the Chairmen of the various committees have received a note this morning that we will meet tomorrow at 8:30a.m. in Room 2102. We need to start talking about priorities. If you will look at the sheet, you will find that this is the 39th day. Okay.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 55 and find the same correctly engrossed; 114, 128, 217, 246, 279, 388, 434, 462, all correctly engrossed.

Mr. President, your Committee on Government reports LB 407 to General File. (Signed) Senator Kahle). LB 297 indefinitely postponed. Your Banking Committee whose Chairman is Senator DeCamp reports LB 271 to General File with amendments. (Signed) Senator DeCamp. (See page 809 of the Legislative Journal.) Miscellaneous Subjects Committee whose Chairman is Senator Hefner reports LB 258 to General File with amendments. (See pages 809 and 810 of the Legislative Journal.) (Signed) Senator Hefner. Your Banking Committee reports 327 to General File with amendments. (See page 810 of the Legislative Journal.)

Finally, Mr. President, Senator Warner would like to print amendments to LB 198 in the Legislative Journal. (See pages 810 through 815 of the Legislative Journal.)

SPEAKER MARVEL: Senator Peterson, will you adjourn us until 9:00 o'clock tomorrow morning. Howard Peterson.

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

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

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

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

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

CLERK: Mr. President, LB 190 was offered by Senator DeCamp. (Read title.) The bill was originally read on January 14. It was referred to the Public Works Committee. The bill was advanced to General File. It was considered by the Legislature yesterday. At that time there were committee amendments that were adopted, Mr. President. I now have a series of amendments pending. The first is offered by Senator Haberman. Do you wish to withdraw, Senator? Okay, the kill motion? No. Mr. President, the motion I now have is from Senator Warner. Senator Warner moves to amend LB 190: (Read Warner amendment as found on page 830 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, all this amendment does is change the one word as written. I understand that the tax would not be levied if the amount on hand, the cash balance, on January 1 of a given year is in excess...or less than, or rather in excess of ten million dollars. I would suggest that instead of the cash on hand it ought to be the unobligated amount. I only raise the question, while that seems like a substantially high figure, if it works well and there is substantial money collected and in view of the fact that the last estimate that I knew of, that it would cost around 207 million dollars to provide all the safety provisions at crossings where it was designated, desirable or necessary to do and because some of these structures where a grade separation is involved, it could run anywhere from 2 to 4 million dollars each and obviously it would take a couple of years to construct. I would think conceivably at some point you could have on January 1, which would be a peak period, a collection of funds and no funds being expended because of weather so that you could have a substantial balance built up, but still have obligations in excess of that. And it seems to me that it is the unobligated amount that one wants to discourage. I checked the figures as they are today and January 1 showed \$2.7 million of cash funds on January 1 of today, of this year. But a million-something of that was in the process of being obligated for projects underway and another million-seven was obligated for construction during the year. The year end balance is going to be like \$65,000 and so I think that for a policy matter the tax ought not to be levied only when there is an unobligated responsibility in excess of 10 million.

PRESIDENT: Before we take up, there is an amendment on the desk. Before we take that up the Chair would like to take great pleasure in introducing a former member of this body, Senator Lester Harsh, who represented District 38. He is a guest of Senator Vickers. There he is, over in the South balcony. Les, stand up and welcome back. We now have an amendment on the desk. Read the amendment, Mr. Clerk.

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CLERK: Mr. President, Senator Haberman moves to amend the Warner amendment, on page 3 by striking lines 15 through 21.

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LB 190

PRESIDENT: Haberman amendment to the Warner amendment.
Senator Haberman.

SENATOR HABERMAN: My Lord, members of the Unicameral, this amendment removes the lid. This amendment says the tax shall be collected period. I think Senator John DeCamp has gone too far in playing footsy with the railroads. In 1979 he played footsy with them, 1980 he played games with them and now he is playing games with them and us again. Whoever heard or show me another agency or show me somebody else that says, we are going to tax you but only so much, and then it stops. I never heard of this before. Senator Warner just said it costs from \$2 to \$4 million so we can say \$4 million it is going to cost, and how many are we going to build with a cap of \$5 million or \$10 million or \$15 million? We have to have the money if we are going to build these. They have to buy right of way and they have to have the money in hand so that they can commit it, so that they can get contractors to commit, so that we can move forward, so that we can get something done. The State of Nebraska is a funnel of the railroads. Our railroads are going to grow and grow and grow, and I don't think that they should be let off the hook when nobody else is let off the hook. Why put a cap? Somebody might say, well how do you know the money is going to be spent? That will be up to the Governor to see that the Highway Department does spend the money. It will be up to us to see that it is spent in Scottsbluff and North Platte, Sidney, Omaha, and the other towns that need overpasses and underpasses. So I don't think we should have a cap on it. Let's pass the bill, let's collect the tax and then go do the job. And I think when Senator DeCamp says he and several other Senators got together, I think this is wrong. I think we are the ones that should make this decision and why put a cap, why are they any different than anybody else? So I ask you, fellow Senators, to accept my amendment to the amendment and remove the cap and make it just like any other agency that is being taxed. They pay their tax when the tax is due. Thank you very much.

PRESIDENT: Senator DeCamp, do you wish to speak to the Haberman amendment to the Warner amendment?

SENATOR DeCAMP: Mr. President...Mr. President and members of the Legislature, reluctantly I rise to support Senator Haberman's amendment. I think it is a wonderful idea. We have given to the railroads in the legislation every single thing of a reasonable nature that they need to, first of all, set up the tax, collect the tax, put it into the

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LB 190

proper fund. The cap really has no bearing on that. I agree, eliminate it completely and I support it, and I am sure the railroad people who are interested in this are sitting out there worrying a little. The bill itself is in perfect form with this eliminated and Senator Haberman, my playing footsy with the railroad that you talked about is a little silly when I wanted to build the coal-slurry pipeline which they weren't too keen on. I put the ten mile tax on with no help from any lobbyist or anybody else which they opposed, and I forced on the floor repeatedly them to bring in a proposal such that they would have to pay some taxes to pay for these over-passes. So I guess I don't know where the footsy is other than always putting them in a position where they had to deal with us and had to help pay for things. But I do, indeed, support the amendment. I doubt if the railroads do, but it does not jeopardize the bill and I think, in fact, improves the bill and it solves Senator Warner's problem completely because instead of having to change language you are eliminating that whole part where they would have any ability to terminate the tax under any condition. So I support it.

PRESIDENT: Any further discussion on the Haberman amendment? Senator Kremer.

SENATOR KREMER: Mr. Chairman, I would like to ask Senator Haberman a question. Senator Haberman, I support your amendment. However, I want to know, does your amendment strike...is that in lieu of the Warner amendment?

PRESIDENT: Senator Haberman, will you respond?

SENATOR HABERMAN: My amendment amends his amendment so that there is no cap. His amendment said they had to come back and ask. Mine strikes that too. They just collect the tax.

SENATOR KREMER: But we need them both. Of course, if you take yours off, then we won't need his, would we?

SENATOR HABERMAN: You say we need them both?

SENATOR KREMER: Would not yours....if we adopt yours, we would not need the Warner amendment.

SENATOR HABERMAN: We would not need Senator Warner's amendment. That is correct.

SENATOR KREMER: This is right. Thank you.

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LB 190

PRESIDENT: Any further discussion on the Haberman amendment? Senator Haberman, you may close on your amendment to the Warner amendment.

SENATOR HABERMAN: I guess about the only thing...Mr. President and members of the Unicameral, I guess what I have to say is that with Senator DeCamp's support I have to take my words back and say, playing footsies, and I have to say that he has probably been doing a good service and I hate to eat my words but I will. And I ask you to support my amendment and to support John DeCamp and that if we are tied to the railroad tracks, I hope he is on the track that the train and I am on the one that the train just went by. So, thank you, Mr. President.

PRESIDENT: The question then is the adoption of the Haberman amendment to the Warner amendment on LB 190. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 31 ayes, 2 nays on adoption of Senator Haberman's amendment, Mr. President.

PRESIDENT: Okay, the motion carries and the Warner amendment is amended. Senator Warner, anything further? All right, the motion then is the adoption of the Warner amendment as amended. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

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

PRESIDENT: The motion carries and the Warner amendment is adopted. Any further amendments?

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

PRESIDENT: Senator DeCamp.

SENATOR DeCAMP: Mr. President, just to summarize, I really believe that this is the right approach to start getting something done about overpasses, underpasses, and the ever increasing train traffic in this state. We are imposing a new tax, no two ways about it, and the public doesn't like to hear it that you are imposing a new tax, but I think the railroads in this state are using Nebraska very extensively with minimal benefits, that's not to say they aren't benefiting the state by having employees and everything, but minimal benefits for all those

trains going through. We are the corridor. We are the main shoot for all the coal traffic, and it is going to impact upon the lives of every farmer, every citizen, every person in this state. It is going to impact upon you when you have to sit waiting there for 20 or 30 minutes with a loadfull of school children with your car running in the middle of winter and burning an extra quarter of a gallon of gasoline. It is going to impact upon the farmer when he has got a ten ton truck loaded with grain and he has to sit for 20 minutes. It is going to cost millions and millions of dollars to the citizens of this state for the benefit of having coal passed through here to be delivered in South Carolina and North Carolina and places like that. The railroads will pass this tax on. There is no two ways about that. They will pass it on to the buyers of that coal, and those people should be helping to pay in their energy costs for the inconvenience they are causing us and the additional cost. So the new tax upon the railroads is really a tax upon the citizens of southern states who are receiving the benefit of Nebraska's geography and the trains' tracks running through this state. I urge you to advance the bill and support it all the way on Final Reading with the E clause.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, a question of Senator DeCamp.

PRESIDENT: Senator DeCamp, will you respond?

SENATOR DeCAMP: I suppose.

SENATOR SCHMIT: I apologize for not having been here yesterday when all the rhetoric took place, but I would like to ask you, Senator DeCamp, how do you base the revenue charges on the various trains?

SENATOR DeCAMP: Okay, Senator Schmit, it works something like this. About 7 cents a mile for every train per mile going through the state, so let's assume a train goes 300 miles through the State of Nebraska...7 cents is a rough figure, I think it is 6.7, but let's say it is 300 miles, that train pays \$21 tax, special tax, that it is not paying now for the benefit of going through the state and possibly causing inconvenience of cars waiting and so on and so forth.

SENATOR SCHMIT: Okay, if the train is ten cars long or

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125 the tax is the same.

SENATOR DeCAMP: Same. That is correct, sir.

SENATOR SCHMIT: Okay, how many of those trains are going to be ten car trains and how many are going to be 100 and 125 in the coming years?

SENATOR DeCAMP: From the information I have been able to get, Senator, the bulk of the trains are going to be the 80 to 110 length or car lengths, the bulk of them are going to be coal trains and this taxes them going or coming. In other words, empty or loaded, when they come back through they cause just as much inconvenience, we are taxing them too.

SENATOR SCHMIT: And how does this compare with ton mile tax which the Legislature enacted last year which was supposed to take effect July 1st of this year.

SENATOR DeCAMP: Senator Schmit, we dealt with that a little bit yesterday, but I will give you a real quick summary...(interruption).

SENATOR SCHMIT: (inaudible).....I want to ask the question again.

SENATOR DeCAMP: I know. I know. It will raise more money this first year, the second year and probably the third year than the ton mile tax would have based upon our projections of the quantity of coal and traffic and so on that is going through the state. About the third or fourth year the ton mile would begin to raise more per year than this train mile tax. By about the tenth year, assuming there are no changes whatsoever, everything being equal between the two taxes, by about the tenth year the ton mile would substantially raise more. The reasons the railroads finally accepted this alternate tax is that for another state to duplicate it, they would have to tailor it, design it, make it fit their particular state, whereas, the ton mile, and we were the first state to pass this in the United States, the ton mile is very easy to draw, draft and implement and they were fearful of it spreading to other states. This particular tax is, so to speak, peculiar to Nebraska. They have voluntarily stated in the committee hearings that they will not challenge it in the court and they will accept it, and we get additional money at the front.

SENATOR SCHMIT: Okay, thank you. Thank you. Just want to say right now that I am opposed to the bill. I don't

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care how much you sweeten it up, I am opposed to the bill. I think any of us know that it is going to be inevitable that the length of the trains will increase, the size of the cars will increase, the rate of train traffic across the state will increase, the number of those small trains will decrease, and the railroads, and I have never been categorized as anti-business, but I think that the cost to the individuals, to the cities, and the counties are going to increase much more dramatically than you can believe. Now a year ago we sat on this floor and we passed a bill which the railroads said they would support even though it would result in increase in taxes for their communities. Let me tell you what happened to one of my counties. Saunders County had been collecting \$267,000 from taxes on railroad revenue, one major railroad. That decreased to \$7,000. That is a pretty substantial decrease. A similar event happened in Butler County only the decrease there was 98 percent. As a result of an agreed upon bill which the railroads said was going to treat everyone equitably and which they insisted would result in additional taxes being paid by the railroads, the facts were the railroads paid less taxes. They paid substantially less taxes at a time when everyone else's tax bill went up, went up about 25 percent. I ask you now in view of the track record how you can stand here today and buy this proposal. I know Senator DeCamp has worked on it long and hard. I know he has said if we go the other route we will be in the court. I know he has a lot of good arguments in support of the train mile tax, but I suggest to you that some of you were terribly embarrassed last year when you got back to your home country and found out what happened as a result of 103 and 105. You had better take another good look at this because the time will come when you are going to have been embarrassed by the passage of LB 190. It may well be that the ton mile tax will be challenged in the courts.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: You have 30 seconds.

SENATOR SCHMIT: It may well be that it will be held unconstitutional. It may well be that it will be unenforceable. But I will tell you one thing about it, it is a lot more equitable than the present proposal. I am opposed to 190 and I don't care how much you sweeten it, I don't care how much you alibi for it, it is not the kind of bill we ought to be considering at this time because you are going to wind up with additional

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cost to the local subdivisions and it is going to be paid by the property tax owner and you just as well know it today as to know it a year from now, two years from now, or five years from now.

SPEAKER MARVEL: Senator Cope.

SENATOR COPE: Mr. President and members, a question of Senator DeCamp. Just a matter of curiosity, where are they going to check these trains that go through Nebraska, and how?

SENATOR DeCAMP: Okay, Senator, under federal law various other things, they have a detailed count not only of every train but of every car, the quantity in that car, very detailed information.

SENATOR COPE: I was just thinking. They come in from the west and stop at North Platte. They come in with three or four trains maybe and at North Platte at the hump they put two or three of those trains together, they take one on through the east and vice versa and it's curious, I am sure they have a way of doing it and I am just wondering how.

SENATOR DeCAMP: Senator, I will get you additional information, but there is probably more extremely accurate records kept on some of those things than just about anything else, a variety of other laws.

SENATOR COPE: Well, it isn't that important, but I was just wondering.

SPEAKER MARVEL: Senator DeCamp, do you want to close?

SENATOR DeCAMP: Just very briefly. Senator Schmit raised the issue of LB 103 and 105 and the massive loss of money to his area. You may remember I and Senator Schmit were the ones that opposed 103 and 105, but that is a separate issue and a separate question. I have a bill in the Revenue Committee now to undo the damage done by 103 and 105 and it is signed by 13 or 14 Senators in this body, including Senator Schmit, and I am very hopeful that the Revenue Committee will see fit to put that proposal to the floor, and indeed everything Senator Schmit said about that particular issue and that particular proposal is absolutely correct. We did get massive loss of money. The railroads do pay fewer taxes under those proposals, and as I say, I opposed them at the time. That is a separate issue from this particular proposal, which I repeat again,

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LB 190, 220

this is a tax on the railroads which is then passed on by the railroads to the citizens in the south receiving the coal for their generating plants in the southern states because those citizens in the south are benefiting by using Nebraska as their coal corridor and we feel they should help pay for the overpasses that are going to be occasioned and made necessary as a result of this increased coal traffic. With regard to the increasing the length of the train to avoid the tax, there are practical impossibilities there because of the existing structure of the tracks. They can have about so many cars. They can have about so much weight, or they can build new railroads. They have chosen at this point to use about so many cars and about so many trains. If we, in fact, saw the other route being attempted, we have a simple solution. We increase the tax. We alter it, and we will have the information to know that. I urge you to advance the bill and when the other issue comes up on 103, 105, I will be asking your support to recover that tax money that was lost through no fault of mine certainly.

SPEAKER MARVEL: All those in favor of advancement of 190E vote aye, opposed vote no. Record the vote.

CLERK: 26 ayes, 6 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion carried. The bill is advanced. The next bill, 220.

CLERK: Mr. President, LB 220 was introduced by Senator Richard Maresh. (Read.) The bill was read on January 15, referred to the Urban Affairs Committee for public hearing. The bill was advanced to General File. There are committee amendments pending by the Urban Affairs Committee, Mr. President.

SPEAKER MARVEL: Senator Landis, the committee amendments to LB 220.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, LB 220 introduced in behalf of the League of Municipalities by Senator Richard Maresh, it allowed and empowered the purchase or financing of buildings and allows for a bond issue to be utilized...I'm sorry, if financing other than a bond issue is utilized, that there is a certain amount of building that can be done without an election and the bill originally provided for totals of a petition and we reduced the amount of the petition necessary to have the signers for an election from 30% of the electors of that city or village to 15% of the electors of that city and we put a maximum on

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

SPEAKER MARVEL PRESIDING

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

REV. TOM HUXTABLE: Prayer offered.

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

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

SPEAKER MARVEL: Senator Dworak.

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

SPEAKER MARVEL: Record the vote.

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

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

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

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

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

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

Your Committee on Banking reports LB 403 to General File

LB 51, 63, 74, 94, 106, 113A, 150, 154,
190, 195, 225, 261, 272, 281, 284A, 351,
409, 418, 421, 426, 466, 229

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Mr. President, some items to read in, LB 113A by Senator DeCamp. (Read LB 113A for the first time by title.) LB 284A by Senator DeCamp. (Read LB 284A for the first time by title.)

Your Enrolling Clerk respectfully reports that she has on this day presented to the Governor LB 51, 150, 195, 272, 409 and 154.

Your Committee on Education reports 63 indefinitely postponed. (Signed) Senator Koch.

Your Committee on Public Works reports 229 to General File and 94 General File with amendments. (Signed) Senator Kremer.)

Your Committee on Banking reports 421 to General File with amendments. (Signed) Senator DeCamp.

Your Committee on Public Health reports 261 and 466 to General File with amendments.

Mr. President, Senator Nichol would like to print amendments to LB 74 in the Journal. Banking, Commerce and Insurance Committee sets hearing. Senator Koch would like to print amendments to LB 190. Senator Kilgarin asks unanimous consent to be excused tomorrow. I have notice of priority bill designation of the Speaker. Your Committee on Banking, Commerce and Insurance reports 426 to General File with Amendments. (See pages 882 through 896 of the Legislative Journal.)

Mr. President, Senator Schmit would like to have the Ag and Environment Committee tomorrow morning at eight o'clock in Room 1520, Ag and Environment Committee tomorrow morning.

Mr. President, your Committee on Government, Military and Veterans Affairs reports 281 to General File with amendments; LB 351 General File; LB 418 to General File; LB 106 as indefinitely postponed; and LB 225 as indefinitely postponed. Those are all signed by Senator Kahle as Chairman.

Mr. President, the Business and Labor Committee will have an Exec Session at 1:00 p.m. today in Room 1019; Business and Labor at 1:00 p.m. today.

Mr. President, Senator Vard Johnson asks to be excused tomorrow.

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SPEAKER MARVEL: No objection, so ordered.

CLERK: Mr. President, Senator Koch to print amendments to LB 311; Senator Wesely to LB 361; Senator Koch to LB 245; Senator Chambers to LB 273; Senator Newell to LB 47 and Senator Koch and Burrows to LB 190. (See pages 997-1002 of the Legislative Journal.)

Mr. President, Senator Kilgarin offers explanation of vote. Finally, Mr. President, two new resolutions, LR 43 by Senator Marvel as Speaker: (Read.) That will be laid over. LR 44 by Senator Koch: (Read. See pages 1002-1003.) That too will be laid over, Mr. President.

SPEAKER MARVEL: Now before we proceed to LR 26 which is on the agenda, today is the celebration of Agriculture Day. There will be a signing of a proclamation in the rotunda and the members of the Legislature are invited. The celebration begins around eleven-thirty and I assume those of you who want can check on the rotunda. Meanwhile we will continue with LR 26.

CLERK: Mr. President, LR 26 is found on page 673 of the Journal. It is offered by the Public Works Committee and signed by its members. (Read.)

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Chairman and members of the Legislature, LR 26 was brought to the Public Works Committee by some of the subdivisions of government in the southwestern part of the state, namely tri-county interests and some of the NRDS in that area of the state. The resolution was signed by a number of the members of the Public Works Committee and then was held up for several days in order to learn if we could, how this project would be of benefit to Nebraska and if there were any disadvantages, what they would be. You have heard the resolution read and I have had the Pages lay a map on your desk, on each one of your desks, to show you where this proposed project is as related to Nebraska. You will note on the map that the dam would be close to Ft. Morgan, Colorado, and it would provide irrigation waters on and along the South Platte River almost to or to the Nebraska state line. Now I am trying to explain to you what the advantage would be to the State of Nebraska. I would like to make five important points why I think Nebraska should support this resolution. Some ask the question, why should Nebraska get involved in a project that is not in the state itself and it is a good question and I will try to answer that as I make these several points. First of all, if Nebraska does take a positive action on the

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LB 174, 190

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LR 26, LR 28, LR 30, LR 31, LR 32, LR 35, LR 36, LR 37, LR 38, and LR 39. Proceed, Mr. Clerk.

CLERK: Mr. President, finally I have an item from Senator Higgins, a note of appreciation for passage of LR 33. That will be inserted in the Journal.

PRESIDENT: Rather than proceed with agenda item #4, Speaker Marvel will be here directly. In order to save time, the Chair is going to move ahead to agenda item #5 and we will at least make a beginning, start with Select File.

CLERK: Mr. President, LB 174 does have E & R amendments.

PRESIDENT: The Chair recognizes Senator Kilgarin. That is LB 174, Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 174.

PRESIDENT: Motion to adopt the E & R amendments to LB 174. Is there any discussion? All those in favor of adopting the E & R amendments to LB 174 signify by saying aye, opposed nay. A little weak but I heard it, I guess. Motion carries and the E & R amendments are adopted.

CLERK: Mr. President, I now have a motion to indefinitely postpone the bill offered by Senator Hoagland. Pursuant to our rules, that will lay the bill over.

PRESIDENT: That will be held over then. We then go to LB 190.

CLERK: Mr. President, with respect to LB 190, there are E & R amendments first of all.

PRESIDENT: The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 190.

PRESIDENT: Motion to adopt the E & R amendments on LB 190. Any discussion? All those in favor signify by saying aye, opposed nay. The E & R amendments on LB 190 are adopted. Mr. Clerk.

CLERK: Mr. President, I now have an amendment from Senator Koch.

PRESIDENT: He is not here, is he? Is Senator Koch available?

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LB 190 , 220

CLERK: He has not arrived. Okay. Mr. President, I then have a motion to indefinitely postpone the bill offered by Senator Schmit. Again pursuant to our rules that would lay that bill over.

PRESIDENT: It will lay over. So that will lay over anyway. So 190 also lays over. We will go to LB 220. We will proceed with LB 220.

CLERK: Mr. President, there is nothing on LB 220.

PRESIDENT: All right. Senator Kilgarin.

SENATOR KILGARIN: I move LB 220 be advanced to E & R for engrossment.

PRESIDENT: Motion to advance LB 220 to E & R for engrossment. Any discussion? All those in favor of advancing LB 220 to E & R for engrossment signify by saying aye, opposed nay.

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LB 190

SPEAKER MARVEL: The next item, 190.

CLERK: Mr. President, LB 190, the E & R amendments were adopted by the membership on March 19 of this year. There was a motion by Senator Schmit to indefinitely postpone the bill. That laid the bill over. We are now prepared to take up that motion, Mr. President.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President, are there amendments offered to the bill?

CLERK: Yes, sir, I have several.

SENATOR SCHMIT: I guess that I would like to say that I am not really anxious to kill the bill if the bill could be amended properly but I guess at this time, without knowing what those amendments are, that I would speak to the kill motion. Mr. President, members of the Legislature, I offered this kill motion on LB 190 because I think it is important that we recognize and do so at this time the situation in which we are projecting ourselves, not only for the next year but many years to come after that. The State of Nebraska is a unique state in that it is a sort of funnel for many of the trains which carry coal to the other states east and south of us. Those trains are of course, necessarily going to pass through many Nebraska communities. The fact that this coal traffic is going to increase dramatically for the next number of years is well known. We also know that the production of grain in Nebraska is going to continue to increase and with the continuing increase and the exports of Nebraska grain, we are going to find an increased number of those grain trains heading west to the western gulf ports rather than south as has been the case in the past. All of this is going to result in a lot of additional traffic through towns such as Columbus which is one of the towns which Senator Dworak and I represent, Schuyler, Senator Chronister represents and many other of the cities along the main lines. What we are doing on this bill here is that we are repealing the ton mile tax provision which we enacted last year and we are substituting for it the so-called "train mile tax." Senator DeCamp has explained for you and I think fairly, the amount of revenue you can expect to receive from the imposition of the train mile tax. I just want to say this, that as time goes by the length of the trains will increase. The tonnages will increase. We can expect fewer and fewer of the small trains which we have experienced in the past and the problems to the cities along those main lines are going to increase also. In the past we have expected about 80% of the money that went to provide grade crossings would come from the federal government. I think if any of you have contacted members of Congress lately you know what is going to happen to those funds. They are just not going to be there. 1

think I can assure you that there will be no funds of any substantial amount whatsoever coming to the State of Nebraska to provide for grade crossings from the federal government. This means that the million and half or two million dollars that we raise from the train mile tax annually will be the only funds available to provide for grade crossings. And I would guess that would probably build about one grade crossing per year. Given the number of cities that lie between Omaha and Scottsbluff I think you can recognize that many of those cities are going to be waiting a long, long time before they get a grade crossing. We are going to have our own Department of Roads establish a priority system as to how those crossings will be established and I would suggest that some of the small communities which may be most adversely affected will be the ones that will be the last to be served in regard to getting a new grade crossing. I just visited last week with some people from Columbus, Nebraska. I understand that the City of Columbus has volunteered to assist a major railroad by providing \$300,000 to move the switching yard out of the city limits of Columbus because it is a real problem in Columbus as it stands today. Now there are things that can be done to improve the entire situation but the train mile tax bill as it stands now will not do it. I believe that the ton mile tax is a fair tax. I believe that it more accurately represents the amount of revenue that should be returned to the state and I think that we ought to stick with it and give it a chance. I find it a little unfortunate that only last year we went through the lengthy debate and were able to establish the ton mile tax and today we are being pushed to the other direction and being told that the train mile tax is a better and more fair method of assessment for the railroads in the State of Nebraska. I know that there is a threat that the railroads will challenge the constitutionality of the ton mile tax but very frankly, I have visited with representatives of the cities who have told me that they are willing to take that chance and to face that test. I am not anti business and I think you all know that. It is not my intent to try to soak the railroads. I have always been probusiness on this floor and I continue to be so but I must stand here and ask for equity for many of our communities in the State of Nebraska that are going to be in very serious straits unless we find some method of providing funds to build these overpasses other than the present method which has been suggested. If we were to try to build these overpasses locally and in the town of Schuyler for example, where about twenty-five hundred people I think, reside there. It would have to be done in such a way that it would not have an adverse impact upon the homeowner. I really don't know how you can do that. As I said earlier, I was reluctant

to try to kill the bill and I am willing to make any kind of agreement that would be equitable but at the present time, unless Senator DeCamp and other persons who have worked on the bill can find a more equitable method, then I am going to ask that the bill be indefinitely postponed. I think that we should have some assurance that the funding that we ask for and the funding that we need is going to be there. We all heard what happened last year when we changed the method of assessment of railroad property within the State of Nebraska. I will give you two examples. Butler County suffered a 98% loss in tax revenue from the railroads and Saunders suffered a 94% loss in revenue from the railroads. This sort of an impact cannot be tolerated if we further aggravate the situation without a really equitable method of assessment of the train mile tax. I would hope that others would speak on this and will address the issue and that they can give me some assurance that the train mile tax is not going to severely handicap the cities, then I will withdraw my objections. But if they cannot give me that assurance, then I am going to pursue the kill motion and ask that you support me.

SPEAKER MARVEL: Okay, the motion is to kill the bill. The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, rather than spend a great deal of time again which we have already spent on so many bills here and this one in particular, I would just say, I think the bill has been well argued. I think my arguments document the reasons I am pushing the bill, the reasons I think it is necessary and maybe the best way to approach things and I think it will be an effective way of raising money immediately without court litigation that can be used for the rightful purpose. So, I am not really very strongly in favor of killing the bill, in fact, I am opposed.

SPEAKER MARVEL: Before we introduce the next speaker, in the North balcony from Senator Carsten's district, 23 students, eight adults from the First Ward School, Plattsmouth, Nebraska. Mrs. Forrest is the teacher. Where are you located. There you are over there, okay. Welcome. And from the finest Legislative District in Nebraska it is my privilege to introduce 8 students from Central Tech Community College, Hastings, Nebraska, advisor, Dr. Dan Kinney. Will you raise your hands so we can say good morning to you. Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Speaker and members of the Legislature, I just would rise to support Senator Schmit on this particular kill motion. My own feeling is that we will get

more money in the long run out of the tax mile as presently set up in the statute. I know the railroads don't want to put any more money in than is necessary but I think those of us who represent communities where you have tremendous coal traffic and that is one that I represent, Grand Island, where we have both the Burlington and the Union Pacific crossing each other and where we have all the coal cars from the west coming through that community, we just have to have some overpasses or underpasses. We have to have the local city involved in making the decision in where those ought to go and I just believe it would be a mistake for us to pass the legislation as it has been offered.

SPEAKER MARVEL: Senator Koch.

SENATOR KOCH: Mr. Speaker and members of the body, I am going to support the indefinite postponement and I am going to tell you a couple reasons why. First of all, I think that what the industry has been telling us about the constitutionality of the ton mile tax is in question and I am willing to have that question answered at the right place which is the Supreme Court. In looking at the proposed bill, even though it does offer some support in terms of the problems that railroads sometimes create in helping us all economically, I don't believe it is going to generate enough money to take care of too many crossings or overpasses or whatever we need. If you build one good overpass it is 10 million dollars almost immediately and it will take us, in my mind, a long time to get there in order to build one overpass and the Speaker should know better than I do because he lives in a city where the railroads have constantly caused some problems in terms of traffic flow. I believe we should let the courts decide whether the ton mile tax is appropriate. Then if it is not appropriate, then we can come back to the train mile tax which is what we are talking about, 190, and make certain that it generates a sufficient sum of money so that indeed, some of these problems can be solved, not only in the best interests of the industry I think and in public relations, but in terms of safety, in terms of other kinds of transportation. So, I will support Senator Schmit and we might as well take a test right now to see whether or not we are willing to leave the original legislation, ton mile tax, versus train mile tax and I would hope you would support Senator Schmit's indefinite postponement. Thank you.

SPEAKER MARVEL: The Chair recognizes Senator Wesely. The question has been called for. Do I see five hands? Do I see five hands? For what purpose do you arise, Senator Haberman?

SENATOR HABERMAN: A point of order, Mr. President. You had one person speak against the kill motion and you had four speak for it and I don't think that is fair. I think you ought to let some of us who wish to...

SPEAKER MARVEL: Are you asking to speak, is that what your reason is for arising?

SENATOR HABERMAN: Yes.

SPEAKER MARVEL: Okay, go ahead. I'm sorry. Just a minute. Senator Haberman, if I recognize you it is because the debate has not been full, no other reason. So you may proceed. I like to have you know what the reason is and not the fact that we are playing a numbers game.

SENATOR HABERMAN: Mr. President, members of the Legislature, I rise to oppose the kill motion. Let's go back to 1979 when we passed the original ton mile tax. Some of those people who are standing up here today opposing killing this, voted for the ton mile tax then. 1980, these same people voted to put it off. They said, let's take another look. This isn't the proper tax. Let's wait another year. Some of these same people have now done a hundred and eighty degrees. So for two years we have collected no tax, not a penny. So now we come up with a bill and they want to start playing Mickey Mouse again. Under the ton mile tax I will call to your attention, you don't get any money on the empties, just on the fulls and half of the coal trains that leave and go back to the western part of Nebraska are empty so you collect no money on those. So, if it is a constitutional suspect, Senator Koch says he wants to go to the courts. This could take a couple of years, three years, maybe four. The railroads still wouldn't pay any tax. You are still not going to get anything built, underpasses, overpasses, cross arms or what have you. I will admit that probably in the long pull the ton mile tax would raise more money but you are going to have problems with it. You are not going to have any problems with this bill. So, I say after stalling for two years, do not support the kill motion. Let's go ahead and advance 190 and we can always change it on down the road if it isn't working out. Thank you, Mr. President, for the privilege of letting me speak.

SENATOR KAHLE: Senator Newell, you are next.

SENATOR NEWELL: Mr. President, I rise neither to support or oppose the motion, but I would like to answer some points that Senator Schmit brought about Butler County and I called for some information but that hasn't gotten back to me at this point and I just want to say, Senator Schmit, very

simply, that, you know the history of this whole question of distribution of railroad dollars is one that will come up later in the session but one that you address every time the railroad, anything related to railroads come up. I would like to make one simple little point, Senator Schmit, for the body which you probably are well aware of. That this whole question of distribution of dollars was changed a little bit with 103 and 105 of three years ago, but frankly, Senator Schmit, Butler County has fluctuated greatly during this whole process. One year of Butler County when they stopped doing the density factor, Butler County's increase was nearly 60%. That was not accompanied by any great cries from Butler County or even yourself. The next year, however, when they factored back in the density factor, which most of us agree is, in fact, an important factor, Butler County did lose considerably and that year we heard great screams and cries from Butler County and Senator Schmit. I just offer that information because frankly, too many times in this Legislature we do analyze things in terms of their impact. We seldom say, gee, golly, I got away with a whole lot when we benefit but we do hear tremendous screams and cries when, in fact, we are the losers. And I think that point ought to be made from time to time so that everyone understands fully that it is the good days we complain a little about. It is the bad days we yell and scream and the same things are true with figures and distribution of railroad tax dollars.

SENATOR KAHLE: Senator Beutler, you are next. The question has been called for. Are there five hands? I do see five hands. Senator Schmit, would you like to close?

SENATOR SCHMIT: Yes, Mr. President. Members of the Legislature, again we pass a bill of major implication upon local subdivisions of government and I think that again, very few people realize or care to take the time to determine what that impact will be. Now some of you listened very carefully or not so carefully a year ago when Senator Newell was explaining to you what the impact would be of LB 103 and 105 and you believed him when he told you that it was going to be minimal. There would not be much of an impact upon your local communities. If you go back to your own home county and you did go back last summer and you said, well, I believed what they told me and it turned out to be not true. You can get away with that once but if you go back home this year, Senator Haberman, and find that they have carved your place right out of the table and you are sitting there all by yourself and you tell your people I believe somebody else, I believe Senator DeCamp this time, and he told me it was going to be all right. They are going to ask you, Senator Haberman, how many times are you going to have to be told to do your own figuring? Look at your own books and your own numbers. Senator Peterson touched

upon the impact it will have upon his community. He is a former mayor of the City of Grand Island. I suggest that if Omaha were residing where Grand Island is at today, that Senator Newell would not be a supporter of this bill because he would recognize the adverse impact that it would have upon his community and I think that every single city which is dissected by a major railroad is going to have major property tax increases eventually because there will not be enough money from the train mile tax to build those overpasses. Senator Kilgarin will be an old lady before that is done clear across the State of Nebraska and I would suggest that by the time they get to Hemingford, Senator Cullan will be retired from the practice of law because it is not going to happen, ladies and gentlemen. There are not enough dollars there. You have not built enough dollars into the train mile tax to do the job that you are saying you are going to do. And we sit here like a bunch of dummies and we get pushed one way one year and the other way the next year and we think it is all going to come out all right. But it is not going to come out all right and when your local cities begin to ask you for an explanation, tell them that Johnny said it was going to be all right and I am sure they will understand. The facts are that by that time Senator DeCamp will probably have worked out a better method and I think he will. I have discussed with Senator DeCamp some of the alternatives we could work on in this bill but the facts are as Senator Haberman was lamenting, that we were not collecting any tax now for two years. What is the effective date of this bill, Senator Haberman? I believe the effective date is March 1, 1982. I think if you will take a look at the thing, you will recognize that a few communities are going to bear the burden. It is relatively easy for those of us who are not on a major line to sit back and say, well, we are going to get something out of the railroads. As I said earlier, I am not antirailroad. I would suggest that the \$21 per train that Senator DeCamp says will be assessed for travelling through the State of Nebraska is not going to have a major impact on the approximately seventy-five hundred tons of coal hauled by that train. I think it will be a negligible effect. I think the people who live in the east who will get that coal ought to expect to help our cities pay for those overpasses.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: You have forty-five seconds.

SENATOR SCHMIT: And that is how it will be. The railroads will not have to pay it. We know they have to pass it on. That is the only way business can survive is to pass the

cost on but I would suggest that they can pass that cost on and it can be picked up on the other end a lot easier than it can be picked up by Schuyler or Columbus, Silver Creek, Kearney, Grand Island or any of those cities. I suggest you support the kill motion. If you do not, I suggest you go back and do your homework and do it diligently because you will be called upon to answer for the effect upon your community within a year.

SPEAKER MARVEL: Senator Cullan, for what purpose do you arise?

SENATOR CULLAN: Mr. Speaker, I rise for a point of personal privilege.

SPEAKER MARVEL: State your point to the Chair.

SENATOR CULLAN: Mr. Chairman, Senator Schmit made some comments about the accuracy of some information that was put out with respect to LB 103 and LB 105. I think it would be inappropriate of me at this time to comment on this bill and I will not but I will say this about the accuracy of that information and there have been some general comments made about that information several times. I put that information on the floor of the Legislature and I assume full responsibility for putting that information on the floor of the Legislature and I will tell anyone who asks me. That information was prepared by the Fiscal Office of the Legislature. It was prepared at my request. That information so far as I know is accurate. It had to do with the impact of LB 103. It did not have to do with the impact of LB 105 and for those of you who are interested in the legislative history of that, you will know that LB 105 is the bill that had the great impact because that is the one that required updating traffic density information and as some of you may know, that information we were using was more than twenty years old and there was no way for us to estimate how up, requiring that we use current information would affect the distribution of rail taxes in this state. And I did not intend the kind of drastic shifts in revenue that did occur. For that reason I am supporting Senator DeCamp's bill but I will state this for the record. The information on the effect of LB 103 was accurate as far as we know, as best as the Fiscal Office of this Legislature could determine and that nobody outside the Legislature, outside myself or the employees of the Legislature affected the accuracy of that information and I take full responsibility for it. And it was accurate to the best of my knowledge.

SPEAKER MARVEL: Thank you. The question is, shall the bill be indefinitely postponed? All those in favor vote

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aye, opposed vote no. You are voting on the indefinite postponement of the bill. Have you all voted? Have you all voted? One last time, two excused, okay. Senator Schmit.

SENATOR SCHMIT: I ask for a Call of the House and a roll call vote.

SPEAKER MARVEL: Okay, the first issue is shall the House go under Call. All those in favor vote aye, opposed vote no. Record.

CLERK: 21 ayes, 5 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats. Unauthorized personnel please leave the floor. Record your presence. The sooner we can do this the sooner we can proceed. The Chair has let several minutes on the agenda go in order to try to reach a decision on this particular matter. Senator Fenger, Senator Cope, Senator Schmit, Senator Maresh, Senator Chronister, Senator Pirsch, Senator Chambers. Senator Schmit, there are two excused absences and Senator Chambers. Do you want to proceed with the roll call? The motion you are voting on is the indefinite postponement of the bill. All those in favor vote aye, opposed vote no. Call the roll.

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CLERK: Roll call vote. 15 ayes, 28 nays, Mr. President. Vote appears on pages 1125-26 of the Legislative Journal.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, the next.....

SPEAKER MARVEL: The Call is raised.

CLERK: Mr. President, Senator Koch had an amendment to the bill I understand that he wishes to withdraw, he has two or three that I understand that he wishes to withdraw.

SPEAKER MARVEL: Chair recognizes Senator Koch.

SENATOR KOCH: Mr. Speaker and members of the body. I had amendments printed in the Journal on page 625 an amendment dealing with Section 18-602 as well. In my absence recently Senator Kahle offered an amendment to place the cities, counties back into the LB 190. There has been...an agreement has been reached that the railroads accept this, the counties and the cities as well. This is a good faith amendment and I am offering a substitute amendment which is as follows, asking Senator...Mr. O'Donnell if you would read that I would appreciate it. The substitute amendment.

CLERK: Yes sir. Just so I would know, Senator, everything else that you had on the bill with the exception of this one has been withdrawn.

SENATOR KOCH: That is correct.

CLERK: Mr. President, Senator Koch moves to amend the bill. Read Koch amendment as it appears on page 1126 of the Journal.

SENATOR KOCH: Mr. Speaker and members of the body for your edification originally the bill repealed those provisions under law that presently allow the cities and counties certain privileges to negotiate with the railroads in regards to the conditions that exist in either subdivision. The municipalities felt as though they were losing some advantage as same as the counties in sitting down with the railroads and negotiating good faith certain kinds of improvements that would have been made for safety purposes and other conditions. So what I am doing is I am merely striking the repealing part and reinserting the sections that deal with the cities and the counties as I have advised you this has been talked over with the railroads and the cities and counties and they have reached the consensus and to further support

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this, and I'll ask Senator DeCamp if that is his understanding because Senator DeCamp as you know is the prime mover of LB 190. Senator DeCamp, would you yield to a question?

SPEAKER MARVEL: Senator DeCamp.

SENATOR KOCH: Do you have any objection to this amendment as a substitute to other amendments that I had in the Journal?

SENATOR DeCAMP: Will you agree to kind of support the bill then if you get this amendment?

SENATOR KOCH: Certainly. I just want it to apply to railroads for awhile to make sure that they were going to be with us.

SENATOR DeCAMP: Okay, it is lent and they have to give up something.

SENATOR KOCH: Thank you. I move for the adoption of the amendments, Mr. Speaker.

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

SENATOR KREMER: Mr. Speaker, members of the Legislature, I'm not going to take long. I support the amendment that is before us. This is one of the points of contention in committee and the bill barely got out of committee not. . . .accepting the language that Senator Koch is talking about here. Now we have reached an agreement between the cities and the railroad and I have been informed of that. This will improve the bill. I hope that the rest of you will join us in voting to support the amendment at this time.

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

CLERK: 37 ayes, no nays on the adoption of the Koch amendment, Mr. President.

SPEAKER MARVEL: The Koch amendment is adopted.

CLERK: Mr. President, I now have an amendment from Senator Kremer.

SPEAKER MARVEL: Senator Kremer.

SENATOR KREMER: Mr. Speaker, I wish to withdraw that amendment. It is not really relevant to the bill and I have called the

Department of Roads that wanted this amendment and we have agreed that we will drop the amendment at this time. I ask unanimous consent.

SPEAKER MARVEL: Hearing no objections, so ordered.

CLERK: Mr. President, Senator DeCamp moves to amend the bill.

SPEAKER MARVEL: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, I think that it is fair to say that this is a technical amendment. You may remember that we changed the interest rates on delinquent taxes. Basically I am just making sure that if a railroad is delinquent in paying this tax we charge them the same wonderful interest that we are charging everybody else and hopefully they will not be delinquent. But as long as I have got the floor and the amendment I would just like to touch on the legislation a little because I think that some of you may not be getting the entire picture of what the bill does. Number one it goes into effect exactly the same date and begins collecting taxes on exactly the same date as the ton mile tax. Okay, so there is no lag there. You get your money effective the same date. Number two, it will raise more money for sure the first several years. Whether that is two, three or four years it will raise more money than the ton mile tax, I don't know. It may raise more money long term. It depends on a lot of facts. But for sure for the foreseeable future...anybody that is here now, it is going to raise more money than what you would get with the other one. Number three, it is tailored specifically to Nebraska and therefore the railroads are realizing that they are in a bind, we have got them in a box so to speak. If ton mile goes into effect they think that it will spread to other states, it is that simple. This can go into effect and they don't have to fear it, because you would have to design something for each state. Therefore they know they can't beat the ton mile, I think. I think that it is Constitutional, I claim that it is Constitutional and we passed it on that argument that I gave, but, they will tie it up in litigation for two, three or four years, and we are needing money. We need to start getting it now. They have agreed publicly and I repeat that agreement here again not to attempt to litigate this. They will accept it and begin paying it. If you want to change it in the future, that is up to a future legislature. You might increase it and having once accepted it and paid it, it is highly unlikely that they would be able to do much in the future. In other words once we get them paying they can hardly say later, well, we didn't know what we were doing. As far as it not raising enough money to build all of the 70-80 overpasses that are needed, about all I can tell you is that if anybody in the whole place inside, outside in the whole State of Nebraska has a magic

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solution to reach in and get a billion dollars or five hundred million dollars to start building things immediately, you tell me, I'm ready. All I am offering is a solution to get started. There are federal funds up until 1982. Okay? We don't even have the matching funds. This will get us the matching funds our ten percent for a local community. I have got no magic solutions on it but I do think that it is time to start raising some money and get this into effect. I urge you to adopt the amendment and advance the bill and get this tax in effect July 1st, start getting money. The March date that Senator Schmit mentioned is when we make a tax collection. But we start the taxes effective July 1st.

SPEAKER MARVEL: Senator Schmit, your light is on do you wish to speak?

SENATOR SCHMIT: Mr. President, since Senator DeCamp spoke to the bill I probably could also, but I will wait until the amendments are acted upon and then I'll speak on the bill.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker, I'll make it real short and sweet. I had concerns about the amendment that was just passed that Senator Koch reintroduced that I was involved in. I'm not sure that the train mile tax or the ton mile tax either one is going to bring in the kind of money that we need, but I'm going to support the bill at this point. Thank you.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: (no response)

SPEAKER MARVEL: I think first of all in fairness we need to recognize Senator Schmit and then we will call the question. Senator Schmit, we are leaving it open now, the question was called for and I indicated in fairness to you we would let you speak first and then we will take the vote.

SENATOR SCHMIT: Mr. President, members of the Legislature, once again Senator DeCamp has given you a complete explanation of the bill and I do not dispute that explanation. He said that if you have a formula whereby you are going to find a billion dollars he would be glad to buy it. The point blank truths are these. You are setting out to shingle the roof and you have got only one square shingle and you need ten. You are to delude the people in the State of Nebraska into thinking that they are going to get the money for the railroad crossings and they are not going to get them. Senator DeCamp says the

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LB 190

the funds are there through '82, well if he can guarantee those he is very fortunate because there have been some strange things happening in Washington the last ninety days. I would guarantee that there will be some additional costs come out of that city before another ninety days roll by. When you have been relying upon the federal revenue for 80% of the funds to build these overpasses and those funds are gone, that means that you are left with 20%. That means that the local subdivision is going to have to pick up the difference, if you want to have an overpass. Now we refer to the negotiation between the individual cities and the railroads. I support the amendment. I think that it is fine that that should be back in there. But I want to call your attention once again to the small community, for example, of Schuyler, Nebraska sitting down to negotiate a railroad crossing with the railroad. Not a very equal match. I think that you will agree. I think that you can be assured of another thing when you are assessing a charge upon a train, regardless of load, regardless of length, you can be assured the length of the train will increase, which is going to add further to the causes of the problems that exist within the communities. I think that it is interesting, of course, that we find ourselves in a situation here where we say we are going to get a few bucks for the railroads, they won't contest this, they said that this is fine. I'm not one of those who says time after time after time that the railroads can handle the load, handle the tax load that is. I recognize the problems that all businesses have. But the principle outcry that you have today from the local subdivisions is the property tax. If the local subdivision is called upon to bear more than they are the present time, they are having to negotiate 30-40-50% of the cost of building an overpass, that is going to be a cost assessed against the homeowner. Now you might say that this is the best deal that you can get, but it a heck of a note ladies and gentlemen when the railroads through threat of litigation can cause this legislature to cower to the extent that they refuse to buy the proposal which is most beneficial to the public as a whole. There is no reason why the homeowner in Columbus, Nebraska should have to subsidize the homeowner in Arkansas, Ohio, or any of those other states where this coal goes to. It causes problems for the local homeowner and it causes problems for the businessmen and it causes problems for the community. The railroads recognize their responsibility to relieve that and a part of that cost should be assessed not only to the coal but to the grain that is moved. I can assure you that the small portion that it would cost me, the producer of grain. . . .

SPEAKER MARVEL: One minute.

SENATOR SCHMIT: . . . to pay the ton mile tax enroute to the west coast is not going to bother me, the producer of grain. I do not think that it would bother the people who are the consumers of the coal in the east. The bill may well pass. But, I suggest to you that it will not be the last you hear of it because the problem will not go away and there will be many cities coming to this Legislature asking for relief because of the fact that they do not have the tax base to build the overpasses that are going to have to be built.

SPEAKER MARVEL: Chair recognizes Senator DeCamp for a technical amendment.

SENATOR DeCAMP: Close, Mr. President?

SPEAKER MARVEL: Yes, you are closing.

SENATOR DeCAMP: Okay, you know I really feel like I am behind the eight ball. . . .

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: I really feel like I am a little bit behind the eight ball. Let me explain why. You know there is no other state in the United States that was ever able to pass a ton mile tax. There is no other state in the United States that has a train mile tax. There is no other state in the United States even taxing railroads in this area to attempt to build overpasses. So, I guess I feel a little bit funny when you say "cowering to the railroads". Holy mackrel, I'm trying to raise a couple of million dollars a year at least for openers to start building the overpasses and they crawl all over me because I am not raising enough. I guess the smart thing would have been to do nothing and use that same old refrain that you always have heard about the federal government will do it. Senator Schmit raised the question, well Johnny, can he promise you that the federal government is going to give us additional money. I can't promise you anything about the federal government. In fact, on the Vet School about the only thing that I can promise you is that you probably won't get that money. You probably won't get that money. There is no indication that after 1982 that there is going to be a magic pot there either the way things are going. We may have to look at it in a year with our two million and figure how we are going to raise more. Holy mackrel lets at least start, lets do something. That is what the bill tries to do. So I urge you to adopt the amendment and advance the bill.

SPEAKER MARVEL: The motion is the adoption of the technical

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LR 47
LB 190, 298, 50, 73, 104,
171, 194, 425, 475, 500

amendment to LB 190 as explained by Senator DeCamp.
All those in favor of that motion vote aye, opposed vote
no. Record the vote.

CLERK: 31 ayes, 0 nays on the adoption of Senator DeCamp's
amendment.

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

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

SPEAKER MARVEL: Senator DeCamp. The motion is to advance the
bill to E & R for Engrossment. All those in favor of the motion
to advance vote aye, opposed vote no. Have you all voted?
Record the vote.

CLERK: 35 ayes, 1 nay on the motion to advance the bill, Mr.
President.

SPEAKER MARVEL: The motion is carried the bill is advanced.
Before we proceed, underneath the North balcony it is my
privilege to introduce Miss Cindy Pace who is a teacher from
Millard and her friend from Ralston who is here under the
auspices of Senator Koch. Cindy, will you stand up so we can
welcome you to the Unicameral?

CLERK: Mr. President, I have a few matters to read in.
Revenue Committee is going to meet in executive session
upon adjournment today in Room 1520.

Your Enrolling Clerk respectfully reports that she has
presented to the Governor LB 73, 104, 50, 171, 194, 425, 475,
500.

I have a Reference Report referring LBs 551 through 555.

A new resolution by (Read LB 47. See pages 1126 and 1127,
Legislative Journal.) That will be laid over, Mr. President.

Mr. President, LB 298 was introduced by Senator Vard Johnson.
(Read title.) The bill was first read on January 19. It was
referred to the Urban Affairs Committee for public hearing.
The bill was advanced to General File. There are committee
amendments pending by the Urban Affairs Committee, Mr. Presi-
dent.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: Mr. Speaker and members of the Legislature,
the committee amendments narrow the impact of the bill and
indicate that, first, the City of Lincoln is exempt and,

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LB 174, 190, 401

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Prayer given by Pastor James Hoke from the Trinity Lutheran Church, Madison, Nebraska. He is Senator Richard Peterson's pastor.

PASTOR JAMES HOKE: Prayer given.

SPEAKER MARVEL: Record your presence, please. While we are waiting for a quorum it is my privilege to introduce, first of all from Senator Richard Peterson's district, 7 students from Norfolk High School. Their teacher is Jim Kubik, in the North balcony. Will you raise your hands so we can see where you are. We welcome you this morning. Also in the North balcony arranged by Senator Sieck we welcome 55 foreign exchange students from Nebraska high schools. The area representative is Betty Koch, K-o-c-h, in this Legislature is Koch...is Koch right or...? Okay, and I would like to explain that Senator Sieck has a present from the foreign exchange students, a boutonniere, a white carnation which has been given to him by the students and by the Youth for Understanding. So we appreciate all of you. Will you raise your hands and show us where you are.

CLERK: Mr. President, Senator Chronister would like to be excused today and tomorrow.

SPEAKER MARVEL: Do you have any other items? Okay. Then you do have other items. Have you all recorded your presence? Okay, record.

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

SPEAKER MARVEL: While we are fixing the machine up here I would alert the Legislature to the fact that this afternoon we will send you a copy of the proposed consent calendar and the consent calendar would be presented for action tomorrow over the noon hour. So we would meet over the noon hour and adjourn early. Okay the Clerk will read in some reports, item #3.

CLERK: Mr. President, the committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 174 and find the same correctly engrossed; LB 190 correctly engrossed, (Signed) Senator Kilgarin, Chair.

Your committee on Public Works to whom is referred LB 401 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments, (Signed) by Senator Kremer.

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LB 174, 190, 17

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. Voting on LB 174 on Final Reading. Have you all voted? Have you all voted? The Clerk will record the vote.

CLERK: Read record vote. 41 ayes, 2 nays, 6 excused and not voting. Vote appears on page 1271 of the Legislative Journal.

SPEAKER MARVEL: The bill is declared passed on Final Reading with the emergency clause attached. Next bill on Final Reading LB 190. Senator Warner, do you wish to be recognized?

SENATOR WARNER: Mr. President, I guess I would have to ask unanimous consent to pass over for a few minutes. I have an amendment I would like to offer which I don't have up here yet from the bill bill room.

SPEAKER MARVEL: To what. . .

SENATOR WARNER: LB 190. from the bill drafter.

SPEAKER MARVEL: Is there any objection? Okay, if not proceed with the next bill LB 17.

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

SPEAKER MARVEL: Read the motion.

CLERK: Mr. President, Senator Koch moves to return LB 17 to Select File for a specific amendment. The amendment Mr. President is found on page 1210 of the Legislative Journal.

SPEAKER MARVEL: Chair recognizes Senator Koch.

SENATOR KOCH: Thank you Mr. Speaker. During the course of action on LB 17E on Select File, a late amendment was offered by Senator Pirsch and it was to strike one section of the bill that pertained to special elections. In reviewing that it gave an advantage to certain people the fact that it only allowed the people who wanted to carry a petition to use a special election and others are denied the privilege and in equity in terms of what we are trying to get to in this bill I can not accept that amendment and I'm asking that 17E be returned to

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LB 125, 190

for the specific amendment. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Johnson.

SENATOR V. JOHNSON: Well, I guess we are on Final Reading. If we are under Call, Mr. Speaker, I don't think there is much I can do about this so the vote may be recorded.

SPEAKER MARVEL: Record. Okay, record.

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

SPEAKER MARVEL: The motion fails. Okay, read the bill.

CLERK: (Read LB 125 on Final Reading.)

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

CLERK: (Read the record vote as found on page 1276 of the Legislative Journal.) 34 ayes, 11 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. We will revert back for a moment to LB 190. There is a motion on the desk. If you will recall we passed over it temporarily.

CLERK: Mr. President, Senator Warner and DeCamp move to return LB 190 for specific amendment.

SENATOR WARNER: Mr. President, I would ask for unanimous consent to pass over the reading of the amendment, the Final Reading, have it pending in that I also have a thing up there, I think, to have my amendment printed in the Journal.

CLERK: Yes sir.

SENATOR WARNER: I would ask unanimous consent Mr. President to pass over the....the taking up of 190 on Final Reading for the reason that we should check specifically on the wording of the amendment that I have prepared. I can tell you it does two things. There is a question as to whether the collection of the funds should be designated as a tax or an assessment and maybe or may or may not be a significant difference, but I think there is. The other portion of the amendment deals with how the funds can be used and on what

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LB 190, 5, 39

road systems and I think the body needs to know exactly how it is and if we print it in the Journal we can get everybody the correct information prior to the time it is taken up. So I would ask unanimous consent to pass over the bill on Final Reading.

SPEAKER MARVEL: Any objections? If not, so ordered.

CLERK: Mr. President, Senator Warner would like to print amendments to LB 190 in the Journal and LB 5 is ready for your signature Mr. President.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign LB 5. I would like to suggest to the members of the Legislature if we could continue until about 2:00 then there wouldn't be any problem of anybody coming back. Does anybody object?

SENATOR MARSH: I object.

SPEAKER MARVEL: You object, okay. Anybody else? The only way I can do it is try to get a feel. Those who will stay to 2:00 to process some of this legislation vote aye on the board. Those who are opposed just vote no and we will see where we are. Yes maam, you are recognized.

SENATOR MARSH: Thank you. We did this last week but we had a days warning. Last weeks activities were juggled but we had a day to make the change of plans. Many of us have made commitments for this noon, it does not seem fair to ask someone who has been juggled and juggled when I am willing to come back and work this afternoon to do this at the last minute when it is now 11:00 a.m. That is less than an hour till noon. I am willing to put the time in, it does not seem fair to do that change at this hour.

SPEAKER MARVEL: Okay, Mr. Clerk do you want to read on Select File.

CLERK: Mr. President, LB 39 was last considered by the membership on March 30th of this year. At that time the E & R amendments were adopted. Also, Senator Warner made a motion on March 30 to indefinitely postpone the bill. That is now pending Mr. President. The motion by Senator Warner to indefinitely postpone LB 39.

SPEAKER MARVEL: The Chair recognizes Senator Warner.

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LB 11, 190

Senator Warner would like to print amendments to 190 and Senator Kahle to LB 11, Mr. President.

SPEAKER MARVEL: Okay, Senator Beutler, do you want to move that we recess until one-thirty?

SENATOR BEUTLER: Mr. Speaker, a couple senators have requested a recess until one-forty. Is that agreeable to the Speaker?

SPEAKER MARVEL: Try it.

SENATOR BEUTLER: Mr. Speaker, I move we recess until 1:40 p.m. today.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion lost. Do you want a machine vote? All those in favor of adjourning until...what did you have? Recess until when? Okay. This is the one-forty vote. Next comes the one-forty-five vote and then the two o'clock vote. Okay, record the vote.

CLERK: 11 ayes, 8 nays, to recess, Mr. President.

SPEAKER MARVEL: Okay, we recess until one-forty. We have already had a Call of the House, Senator Koch. It is now time for you and I to study the Battle of Hastings. Okay. We are recessed.

Edited by:

Marilyn Zank
Marilyn Zank

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LB 327, 331, 190

PRESIDENT: As soon as everyone gets to their desk, we will commence with Final Reading. All right, Mr. Clerk, I guess we are about ready. We can commence on the first bill on Final Reading today is LB 327.

CLERK: (Read LB 327 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 327 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See page 1702, Legislative Journal.) 36 ayes, 4 nays, 7 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 327 passes. The next bill on Final Reading, Mr. Clerk, is LB 331.

CLERK: (Read LB 331 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 331 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See page 1703, Legislative Journal.) 43 ayes, 0 nays, 5 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 331 passes. Next bill on Final Reading is LB 190.

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

PRESIDENT: Read the motion.

CLERK: Mr. President, first of all, Senator Warner had amendments on page 1276 that I believe he wishes to withdraw.

PRESIDENT: Senator Warner. The Chair recognizes Senator Warner.

SENATOR WARNER: Withdraw the first one, it had a reference in it that is in error. The next one is a identical amendment except it has the reference that is correct.

PRESIDENT: So the first one is withdrawn, Senator. It shall be withdrawn. Read the second motion then.

CLERK: Mr. President, Senator Warner moves to return LB 190 to Select File for specific amendment. The amendment is

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LB 190

found on page 1487 of the Journal.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, the amendment does two things. First, the bill when it reached Final Reading referred to the collection of revenue from the trains going through the state as an assessment and changes the wording in all those places, it refers to it as a tax collection. Some concern on my part that since there is some reference federally that assessments are limited to what the railroads can pay, I think it ought to be called a tax and I think everybody agrees that is what it was intended to be. The other part of the amendment, the wording was such that it could have been interpreted, and I believe the railroads agreed it could have been interpreted of limiting the use of these funds only for the five percent of the cost of an overpass that they can be assessed and it was not intended to be that way. It makes it clear that whatever is correct it can be used for grade separations in their entirety. The reference that I mentioned that was in error on the first one was relative to delinquent tax payment by the railroad. The bill as originally written had the same reference as to the maximum usury rate and the amendment changes it for consistency to be the same as LB 167 for that uniformity. So I'd move the bill be returned for the amendment.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I rise to wholeheartedly support the amendments. They are clarifying things. They don't change one penny of money raised or one penny of money in terms of the goal which is overpasses. What they do do is clarify two areas where in the future assuming a tragedy happened and neither Senator Warner nor I were here to clarify what's really intended, they clarify that this is a tax in case anybody ever said otherwise and they clarify that we are using the money as basically we see fit to build overpasses.

PRESIDENT: Any further discussion on Senator Warner's motion to return LB 190 for specific amendment? The Chair recognizes Senator Higgins.

SENATOR HIGGINS: I just want to ask Senator DeCamp a questions.

PRESIDENT: Senator DeCamp, will you respond?

SENATOR DeCAMP: Well, I don't know coming from Marge but go ahead.

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LB 190

SENATOR HIGGINS: Well, I know you will give me an honest answer, John. There isn't any possible reason that the reason we are changing this to the word "tax" is because it would be beneficial to the railroads from a tax standpoint, that it would be more deductible than if we left it the way it is?

SENATOR DeCAMP: No, quite the contrary. There is a possibility that somebody might say sometime, "Well, this is an assessment. It is not a tax." The record is replete with indications that it is a tax, so on and so forth. We want to make sure. They would get the same deductions either way. That is not a problem.

SENATOR HIGGINS: Are assessments tax deductible by the federal government?

SENATOR DeCAMP: These particular assessments would be tax deductible. They would handle these identical to the way they are handling them now, handling it otherwise. There won't be any change there.

SENATOR HIGGINS: In other words, railroads will still be able to, whether it was called an assessment or a tax, it would be a tax deductible item of the federal government or the State of Nebraska's income tax.

SENATOR DeCAMP: Yes.

SENATOR HIGGINS: Okay, thank you.

PRESIDENT: Any further discussion then on Senator Warner's motion? Senator Warner, you may close. No closing, waives closing. The question then before the House is the motion to return LB 190 for the Warner specific amendment. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 42 ayes, 0 nays on the motion to return, Mr. President.

PRESIDENT: Motion carries and LB 190 is returned. Senator Warner, do you wish to move to adopt?

SENATOR WARNER: Mr. President, I move the amendment be adopted.

PRESIDENT: Motion is to adopt the Warner amendment. Any further discussion. If not, all those in favor of adopting the Warner amendment vote aye, opposed nay. Record the vote.

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LB 190

CLERK: 42 ayes, 0 nays on the motion to adopt the Warner amendment, Mr. President.

PRESIDENT: Motion carries. The Warner amendment is adopted. Senator Warner, do you want to move?

SENATOR WARNER: I move that the bill be readvanced.

PRESIDENT: Motion to advance LB 190 to E & R for engrossment. Any discussion? All those in favor signify by saying aye, opposed nay. LB 190 is advanced to E & R for engrossment. I guess that completes Final Reading today, Mr. Clerk. Anything else you want to read in before we proceed to agenda item #5.

CLERK: I have nothing.

PRESIDENT: We will proceed then to agenda item #5 to Select File and the first bill on Select File this morning is LB 11, but before we do that, Speaker Marvel has some remarks. Speaker Marvel, could I call upon you at this time?

SPEAKER MARVEL: I would like to refer to the green sheet for a moment, and if some of you have additional questions after we get started with this green sheet, please let me know or check in the office whichever is more convenient. If you note we are on Select File and we are talking about a specific priority at the moment on Select File and we have thirty of these issues. Now there is no basic way that I can force anybody to try to assist in confronting these issues and get them moved on but I can assure you that it is going to take more than Drano to keep the communication lines open so that we can continue to add to these bills, and if we get into extended debate on thirty bills, then the rest of the bills that are pending will simply not be considered this time so anything any of you can do, any suggestions you can make at the moment to confront these issues which we have already discussed before, if you confront these issues so we may proceed, it is just possible that some of the bills that would either die or flounder may come alive again. So I would appreciate anything you can do to keep things going, and if you have questions, please let us know, and, Mr. President...

PRESIDENT: Yes.

SPEAKER MARVEL: ...that completes the lecture for the morning.

PRESIDENT: All right. Any questions? There is somebody

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LB 190

that wants to ask a question. Senator Carsten, did you have a question?

SENATOR CARSTEN: Mr. President, members of the Legislature, I rise in response to the Speaker's short oration this morning. I do think that he speaks very truthfully with us, and as we look at this green sheet, and particularly on Select File, we fully realize that much of our work has been left to Select File, and as we recall our Final Reading even this year, we have failed to do that which we should have done before we get to these stages it appears to me. I would suggest that if there are differences of opinion on these bills that those that do differ on a bill, that they might get together and iron out their differences before the bill comes up so that our time might be spent on other things, other than the one bill and we get into lengthy discussion. I am sure that the Speaker or anyone that is directly or closely associated with any of these bills would be glad to mediate that meeting and perhaps through that course we could get through them a little more rapidly and be able to address some other measures that may be of the utmost importance to us. With that, I thank you, Mr. Speaker, for letting me make these comments.

PRESIDENT: Okay, anything further then? Before we proceed, Senator Lamb has an announcement, Chairman of the Exec Board.

SENATOR LAMB: Mr. President, members, just a reminder that study resolutions are to be submitted by this next Friday, May 8th, as per resolution by the Executive Board. This is similar to the situation we have used in previous years whereby these resolutions are submitted and then they are referred to the proper committee and the committee makes its recommendation as to the choices of preference in regard to these study resolutions. So my purpose in being here this morning is to remind you that this next Friday, May 8th is the deadline set by the Executive Board for the submission of the study resolutions for the interim. Thank you.

PRESIDENT: Anything further then? We will proceed then, Mr. Clerk, with Select File, LB 11.

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LR 109 - 111
LB 146, 190, 334, 334A,
463

CLERK: (Roll call vote taken. See pages 1792 and 1793, Legislative Journal.) 19 ayes, 13 nays, Mr. President.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, while we are waiting, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 190 and find the same correctly engrossed; LB 334 correctly engrossed; LB 334A correctly engrossed; and LB 463 correctly engrossed. All signed by Senator Kilgarin.

Mr. President, LR 109 calls for a study by the Administrative Rules Committee to study the processes followed by state government in securing federal funding for various projects. LR 110 by the Administrative Rules calls for a study of the administrative practices of agencies, boards and commissions. LR 111 by the Administrative Rules Committee calls for a study to investigate two statutory procedures under which to litigate a claim against the State of Nebraska.

SPEAKER MARVEL: We have seven amendments to this bill. The Clerk will read the first amendment.

CLERK: Mr. President, the first amendment is offered by Senators Beutler and Hoagland. Would you like me to read it, Senator?

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I will try to be brief. This amendment does not have broad implications but I think it is although small an important amendment and I think it can be best explained by giving an example. Remember now that our Natural Resource Districts are divided into twenty-four districts and that geographically they are divided based on surface water divisions. Now when one NRD establishes a control area, it may very well be that the boundaries of that control area will be adjacent to and contingent to the boundaries of some other NRDs and it is also very likely that the aquifer underlying that control area will also underlie those adjoining NRDs and the result that you can have is that one NRD can establish a control area and control the taking out of water in its particular part of the aquifer but right across the jurisdictional boundary in the same aquifer there may be no control area and the result is that you are punishing and giving a disincentive for the establishment of a control area because they will say, "Well,

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LB 190, 334, 334A

I did offer the motion for the reason that in a few days I trust we will be discussing a proposed rule change that was offered in the form of a bill in the 1979 session and it is now before the Rules Committee because I didn't pursue it as legislation, being that it was more appropriate rule rather than law, but I think it is exceedingly important that we develop a system for the consideration of expenditures of general fund money by the time it reaches Final Reading that we can develop a priority for limited funds, and so with that, Mr. President, not to pursue or take more time, I will ask unanimous consent to withdraw the motion.

PRESIDENT: Motion is withdrawn. Thank you, Senator Warner. We are now ready then for Final Reading, commencing, Mr. Clerk, with LB 190.

CLERK: (Read LB 190 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 190 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See pages 1990 and 1991, Legislative Journal.) 44 ayes, 0 nays, 3 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 190 passes with the emergency clause attached. The next bill on Final Reading is LB 334.

CLERK: (Read LB 334 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 334 pass with the emergency clause attached. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Record vote read. See pages 1991 and 1992, Legislative Journal.) 44 ayes, 0 nays, 3 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: Motion carries and LB 334 passes with the emergency clause attached. The next bill on Final Reading is LB 334A.

CLERK: (Read LB 334A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 334A

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LB 248A, 318, 334, 334A,
LB 184, 118, 129, 190, 248,
LB 463, 487

at Arms will secure the Chamber. All members who are not at their desks will return to their desks. All members will record your presence. The House is under Call. The House is under Call. Senator Goodrich, Senator Wagner. Senator Haberman is right here. Senator Labedz, Senator Pirsch. We can take call in votes, Mr. Clerk, yes.

CLERK: Senator Fowler voting yes. Senator Kremer voting yes. Senator Marsh voting no. Senator Wagner voting no. Senator Labedz voting yes.

PRESIDENT: All right, record the vote.

CLERK: 25 ayes, 14 nays, Mr. President, on the motion to advance the bill.

PRESIDENT: All right. The motion carries and LB 184 is advanced to E & R Initial. You want to read some material in, go ahead, Mr. Clerk.

CLERK: Mr. President, Senator Schmit would like to print amendments to LB 487 in the Journal.

Mr. President, LBS 190, 334, 334A, 463, 248 and 248A are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 190, LB 334, LB 334A, LB 463, LB 248 and LB 248A.

CLERK: Mr. President, an announcement from the Public Works Committee regarding an executive session to discuss interim study resolutions.

Your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 129 and recommend that same be placed on Select File with amendments; LB 118 Select File; and LB 318 Select File with amendments; all signed by Senator Kilgarin as Chair.