

January 15, 1981

LB 193-222

rules which the motion is before the desk.

SPEAKER MARVEL: Any further discussion? All those in favor of that motion vote aye, opposed vote no. Have you all voted? The motion is the Wesely motion. Have you all voted? Record the vote.

CLERK: 25 ayes, 10 nays on adoption of the permanent rules, Mr. President.

SPEAKER MARVEL: The motion is carried and the amendment is adopted. Senator Cullan wants to meet with the Public Health and Welfare Committee underneath the south balcony. Is that right, Senator Cullan? What is the next item?

CLERK: Mr. President, I have a series of matters to read in, if I may. First of all, Senator DeCamp offers a proposed rule change which will be submitted to the Rules Committee for their consideration. (See pages 180 and 181 of the Legislative Journal.)

Mr. President, new bills: LB 193 (Title read). LB 194 (Title read). LB 195 (Title read). LB 196 (Title read). LB 197 (Title read). LB 198 (Title read). LB 199 (Title read). LB 200 (Title read). LB 201 (Title read). LB 202 (Title read). LB 203 (Title read). LB 204 (Title read). LB 205 (Title read). LB 206 (Title read). LB 207 (Title read). LB 208 (Title read). LB 209 (Title read). LB 210 (Title read). LB 211 (Title read). LB 212 (Title read). LB 213 (Title read). LB 214 (Title read). LB 215 (Title read). LB 216 (Title read). LB 217 (Title read). LB 218 (Title read). LB 219 (Title read). LB 220 (Title read). LB 221 (Title read). LB 222 (Title read). (See pages 181 through 188 of the Legislative Journal.)

Mr. President, in addition your Committee on Business and Labor gives notice of public hearing for Wednesday, January 28. (See page 189 of the Legislative Journal.)

Mr. President, communication from the Chairman of the Executive Board which will be inserted in the Legislative Journal. (See page 189 of the Journal.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Beutler regarding deferred compensation funds which will be inserted in the Legislative Journal. (See pages 189 through 192 of the Journal.)

SPEAKER MARVEL: May I have the attention of the members of the Legislature for just a second. I think the last few days have been tough on all of us. I think we are all

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384, 483, 253

and support things for somebody else but don't mess in my little bird nest. So I'd just like to include us all in it if we are going to go. I don't like to see somebody excluded just because they are working on it. I can work on something between now and next year, too.

SPEAKER MARVEL: The motion is to advance the bill. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record.

CLERK: 25 ayes, 12 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced.

CLERK: Mr. President, if I may while we are waiting, Education reports LB 208 to General File with amendments.

Senator Labeledz would like to print amendments to LB 483; Senators Goodrich and Newell and DeCamp and Koch to LB 40; Senator Vickers to LB 384; and Senators Hoagland and Warner to LB 167.

SPEAKER MARVEL: The next business is LB 253.

CLERK: Mr. President, LB 253, (Read title). It was read on January 16, referred to Ag and Environment. On March 24 the committee amendments were adopted. At that time the bill failed to advance. There was also an amendment from Senators DeCamp, Hoagland and Wesely which was adopted at that time. Mr. President, Senator DeCamp has amendments found on page 1162 that I understand he wishes to withdraw. You want to withdraw those on 1162, is that right, Senator?

SENATOR DeCAMP: Yes, the longer page ones is the ones I want.

CLERK: Okay, and then, Mr. President, I have an amendment from Senator DeCamp that is on page 1177 of the Journal.

SPEAKER MARVEL: We are now on the DeCamp amendment, page 11, what?

CLERK: 1177.

SPEAKER MARVEL: 1177.

SENATOR DeCAMP: Mr. President, members of the Legislature, you may remember...this is the litter bill. You may remember Senator Fowler and Wesely and Vickers and Chambers and,

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LB 353, 208

CLERK: 26 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. The next order of business, LB 208.

CLERK: Mr. President, LB 208 offered by the Education Committee and signed by its members. (Title read.) The bill was first read on January 15 of last year. At that time it was referred to the Education Committee for public hearing. The bill was advanced to General File with committee amendments attached, Mr. President.

SENATOR CLARK: Senator Koch on the committee amendments.

SENATOR KOCH: Mr. President, I have an amendment on the desk and I would like to have that adopted prior to adopting the committee amendments.

CLERK: Mr. President, Senator Koch would move to amend the committee amendments: (Read Koch amendment found on page 306 of the Journal.)

SENATOR CLARK: Senator Koch, on your own amendment to the amendment.

SENATOR KOCH: What this does, that previously under free-holding when there is an action that was set aside in the transfer of property from an accredited school district to an unaccredited school district or nonaccredited district then it says shall be commenced within four years from this date of transfer, otherwise the transfer shall be valid as of the original date of the transfer. What we are doing is we are striking that and we are saying once a transfer has been made then that is it. The four year provision is deleted completely. So we are just taking that out. Once a transfer has been made, it is there and it is forever.

SENATOR CLARK: Is there any discussion on the Koch amendment to the amendment? Senator Kremer.

SENATOR KREMER: I think he said it plain enough. I should not even ask these questions, Senator Koch, but if the property would change hands, it is still forever. I mean if the ownership should change in the land, can you do something about it...no way at all.

SENATOR KOCH: Yes, sir. Even if the ownership should change, the property once the determination has been made by the proper authorities on petition then that land stays there.

SENATOR KREMER: That is the law of the Medes and the Persians.

SENATOR KOCH: Pardon?

SENATOR KREMER: That is the law of the Medes and Persians.

SENATOR KOCH: I may have to ask you a question.

SENATOR KREMER: That was their law.

SENATOR KOCH: Oh, okay.

SENATOR KREMER: Once a law was established, they will never (interruption).

SENATOR KOCH: That is the Persians. We haven't talked about Persia for so long in here I almost forgot it. Are you sure it wasn't the Babylonians?

SENATOR KREMER: I wasn't living back at that time so I wouldn't know.

SENATOR CLARK: Senator Remmers.

SENATOR REMMERS: I am sorry, I was visiting. Mr. Chairman and members of the Legislature, I would like to ask Senator Koch just a question or two on this. I believe, I was visiting here, I may be clear off the track but we are talking about transferring land, aren't we, on school districts.

SENATOR KOCH: We are talking about freeholding, right, transfer of land.

SENATOR REMMERS: Now I am not sure I understand this completely. I know that the old, the law in existence as far as transfers gets a little involved and we have no problem... I believe we have no problem of transfers from an approved district to an accredited district. I believe we have no problem as far as transfer from a Class II district to a Class III district but are we saying here in this bill, I will just use an example, we will say that Humboldt and Pawnee City, we have two Class III school districts, and I am living we will say in the Humboldt District and I am very unhappy with their program. So I ask the State Department, the State Committee, to a look in this, and if they decide that Humboldt's program is not adequate, I would be allowed to transfer to Pawnee, is that what it says?

SENATOR KOCH: This is what we are going to talk about in the whole part of the bill, Senator Remmers, and I appreciate that question because that is going to be raised and I will answer it.

SENATOR REMMERS: Okay, I am sorry (interruption).

SENATOR KOCH: I am just talking about right now an amendment to the committee amendments, get that adopted and then we will go to your question.

SENATOR REMMERS: Okay, I am sorry. I was visiting here and I wasn't paying attention. Thank you.

SENATOR CLARK: Is there any further discussion on the Koch amendment to the amendments? If not, all those in favor vote aye, all those opposed vote nay. This takes a simple majority. Record the vote.

CLERK: 21 ayes, 0 nays on adoption of Senator Koch's amendment to the committee amendments, Mr. President.

SENATOR CLARK: That amendment is adopted. Now on the committee amendments.

SENATOR KOCH: Thank you, Mr. Speaker. The committee after, and now I want to give you the background, we have been dealing with the issue of freeholding for at least three years. It seems like it is like a number of those things in education, it just never goes away. Sometimes we just ignore it and allow it to fester and so we held an interim study on freeholding and the committee has decided that we should try to correct the present laws in the best ways we can on the issue of some parent wanting to freehold property from one district, whether it be a Class I or Class II, to another district, particularly if they are unaccredited or nonaccredited. And so after our hearing on LB 208, then the committee decided we needed several amendments and they are as follows: What we did in subsection (1) of the amendment is to reinstate certain portions of the original subsection, namely, the portion which grants permissive authority to file a freeholder petition under this subsection. In addition to that we modified the original language by placing the filing with the State Board of Education. Prior to that time a great deal of filing went to three people in the county. We were advised by county superintendents and others this often-times became a very emotional issue and it couldn't be responsibly resolved without probably the party being hurt when probably they had the right to request that freehold and it should have been granted. In addition to this, we then amended another section which has to do with all proposed revisions related only to procedural matters by adding again it is how you go through the procedure of filing a petition. We set that out very clearly

so there can be no mistake, and another amendment deals with a repealer section and that is all we done with our amendments and I ask for the adoption of those amendments and then we will talk about the bill after it has been amended. We will get to the questions of Senator Remmers and others.

SENATOR CLARK: Senator Kremer, did you want to talk on this? All right. Is there any further discussion on the committee amendments as amended? If not, all those in favor vote aye, opposed vote nay. It takes 25 votes. Have you all voted? Record the vote.

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

SENATOR CLARK: Committee amendments are adopted. Senator Koch on the bill.

SENATOR KOCH: Thank you, Mr. Chairman. Before I get into the major aspects of this bill, I want to emphasize one thing. This is not an indirect way to reorganize school districts. I want that emphasized. It deals only with individuals, people with children in terms of educational issue so let's put that aside and talk about the value of the freeholding and some of the problems that have accrued over the past several years or longer than that, actually. What we did after hearing a considerable amount of testimony, and I want you to know if you look at your book, you will see that there were some opponents. By the amendments that we offered we removed the objections to the original proposal by Mrs. Quiring, and by John Brogan who is an attorney, by Galen Friesen, Susan Fredricks and the Devenys from around Ayr, Nebraska. They now are in favor of the bill as amended because those people have been around for a number of years visiting with the committee on how they can resolve some problems. Now what we are doing is we are saying when you freehold, you can freehold from a I to a II to a III and to a VI and we are also saying that you can freehold out of a II to a III. We are also saying that you can freehold out of a III to a III. Now we are talking about accredited. Now then we will get to the question Senator Remmers asked me a moment ago. If I live in a III, and he is using...well, in this case I think they are Class IIs, aren't they, Senator Remmers...a II and a III? All right, Humboldt and Pawnee? They are both IIIs, so if I am a parent living in Humboldt and I file a freehold, I am going to first of all have to make sure I file with the State Board of Education. That is the new part of the bill. And then the burden is on me as a parent. I am saying I believe that I can prove to you that Pawnee City has a better program and opportunities for my child or children than does

Humboldt and that is the way it has to be. The burden of proof lays with the parent or the guardian who is making the request and the petition. The State Board will hear this, the State Board will make the judgment based upon the best beneficial interest of education for the child. Now then if the filer is not happy with the State Board decision, they then can proceed to the District Court and we do have a court case, the most famous one is Friesen versus...I can't remember the last part, Clark, Friesen versus Clark and there the court did decide what they believed to be beneficial factors that should be considered in the business of, when you talk about beneficial educational interest of the child. In addition to this we said that when you freehold you just can't freehold your homestead to that district and then someday when your children's education is completed you will move it back again to where it was originally because the mill levy might be a little bit to your advantage. In other words we say once you freehold, you are there. That is it. I guess that is the law of Persia as Senator Kremer baffled me with a moment ago. And we also say that when you make this transfer, you also must transfer of all owned property up to 160 acres, up to 160 acres. If I live on a quarter, I can't just transfer that homestead anymore. That quarter has got to be transferred into that system where I want my children to be educated, lock, stock and barrel, but if I own a section, I will take the quarter which is contiguous and I will transfer that to that district where I want to go and again that remains there. So this is what we are doing in this bill. We are trying to resolve some issues that have been around, I have been on the Education Committee now eight years and this freeholding business has been around eight years just like Christian school issues have been around eight years, and a few other little items I could mention to you but I will do it at a little bit later time. So the major part of the bill is just as I have described it to you. That is what it is and that is what it does.

SENATOR CLARK: Senator Kremer on the bill.

SENATOR KREMER: Mr. Chairman, members, I would like to speak in support of LB 208 as amended and I think Senator Koch has laid it out very well that this committee has struggled and struggled with this issue for a long time and we have heard testimony that goes all the way from one extreme to say just let us do anything we want, jump around wherever we want, to the other extreme to make it so difficult no one can change districts and it goes to the other extreme, of course. Now I think the committee

in this bill as amended has come down the middle of the road and the people in my district that have been concerned on both sides of it have generally accepted the concept of the bill as we now have it and I think it would be on the part of wisdom for this Legislature to pass the bill now as amended. We hope it will quiet down and I am not sure I agree with this "forever" but until such a time that someone demands a change in the statutes, we can change the "forever" to four years, five years, ten years or whatever. I do support the bill as amended.

SENATOR CLARK: Senator Dworak.

SENATOR DWORAK: Mr. President, colleagues, I have a question of Senator Koch and I want the answer for the record. Senator Koch...

SENATOR CLARK: Senator Koch.

SENATOR DWORAK: Senator Koch.

SENATOR KOCH: Yes, sir.

SENATOR DWORAK: If a piece of property has been freehold and subsequently we have a new owner of the property, then it would be possible for the new owner to go through the same process if circumstances change moving the property back to the original district, I want that for the record.

SENATOR KOCH: Thank you, Senator Dworak. That now repeals the Persian law, but you are correct. If I were to buy the property and became the owner of it and I decided I wanted to move 160 acres back, I could providing I would go through the procedure again of filing a freeholding back to Humboldt.

SENATOR DWORAK: That new owner could?

SENATOR KOCH: That new owner, right, but I would have to go through the same procedures with the State Board, I would have to prove that again there was a benefit to me educationally and my children to go back to Humboldt so the burden would be on me to make that proof.

SENATOR CLARK: Senator Remmers.

SENATOR REMMERS: Mr. Speaker, members of the Legislature, there are some things in this bill that I certainly approve of. I do think that the local officials that before had to decide the issue was a mistake. It did often become an emotional issue and I think it is much better that the



State Department would take these issues but I still have a problem with one part of it and again I would like to be sure that I am interpreting this correctly if I could direct a question to Senator Koch.

SENATOR CLARK: Senator Koch, will you yield?

SENATOR KOCH: Yes.

SENATOR REMMERS: I only have problem with one part of this, Senator Koch, and that is I think that under this provision even though both schools were accredited there still could be a question of quality.

SENATOR KOCH: Yes.

SENATOR REMMERS: Okay, thank you. That is the only part that I am objecting to in this bill. I feel that the State Department recognizes quality of education by accreditation, and if a school has achieved accreditation, that should be an endorsement of its quality. Then we should no longer have to go to court again to establish what quality is. Now I know there has been some criticism that the State Department isn't doing its job. Now I don't know if that criticism is justified or not. In my experience, the State Department generally has done a pretty good job in this respect, but if that is the problem, why then I think we should address that to the State Department they do a better job of accreditation. But as long as we give them the authority, they have the power to accredit schools, and with accreditation, there are some very important issues involved in accreditation and nonaccreditation. Schools want to be accredited because there are problems if they are not accredited. So I object to the idea that a student in an accredited district can transfer to another accredited district because the program is better in one district than the other. Now if there might be some special needs of that individual, there might be such a thing that one school does a better job of addressing a particular interest that a student might have, now if that were the case, I would have no objection to a transfer so that this student could pick up maybe some special areas that his own district doesn't have. But just to leave it open and say that I don't like the quality of this school district, they are not offering good subjects, their teachers are not qualified, they don't pay their teachers enough and as a result they get poor teachers, the school board doesn't back the administration and as a result they have a poor school, I object to that type of a transfer and I would vote against the bill on that basis only. Thank you.

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LB 208

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Koch, I would have one simple question. Let's say that I owned a section of land and my homestead is not on that section but is across the road in a different section and it is a pretty nice house and we want to go, do I have to include the other section that is across the road that is in another section, or could I just wish to put my homestead in the new district? Have you addressed that in the bill?

SENATOR KOCH: You have to take up to 160 acres with it.

SENATOR NICHOL: Supposing I own two sections.

SENATOR KOCH: You can take it all if you want to.

SENATOR NICHOL: But, see, I don't want to take...I just want to take the homestead and leave the two sections in the district where they are because that is advantageous.

SENATOR KOCH: Senator Nichol, you can take no less than 160 acres.

SENATOR NICHOL: That is the minimum?

SENATOR KOCH: That is the minimum or you can take it all, if you want. You can take all your sections and put over there.

SENATOR NICHOL: But the 160 is the minimum?

SENATOR KOCH: Well, it could be 40 if that is all you had, if you had an 80, it could be 80.

SENATOR NICHOL: All right, that answers the question, thank you.

SENATOR KOCH: Or 10, in one case, as we had somebody at the hearing.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I think that I don't want so much to speak to the substance of the matter as to make a couple of, to me, important points on this matter. Every year that I have been in the Legislature, not so many, but for the last three, we have had people come in that have needed adjustments to the freeholder

section of the statutes. We have had a half a dozen families every year that needed some mechanism to transfer from one district to another because of the special needs of their child were not met, because of distance problems, because of a number of other things, and we have tried to address another problem and that is the transfer of property that is done for tax purposes as opposed to the best educative interest of the child and that has been a problem in this area. And the amount of land that can be transferred, whether a person should really have the right to pick the size of the chunk of land that can be transferred, and there are probably six or seven other different problems in this area that we have attempted to deal with in this bill in a comprehensive manner, all problems that are nagging, reoccurring problems. I think that even if you are not happy with all of the different solutions in this bill that you are going to be happy by and large with most of them and so I want to encourage you very strongly to pass the bill on to Select File and to come to Senator Koch or to myself with the portions that bother you and let's try to work those out or maybe even cut them out of the bill but keep the bill going because it really does address in an intelligent manner, I think, several of the freeholder problems that keep coming back to the Education Committee and, of course, then keep coming back to you. So that would be my plea. Thank you.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President, members, a question of Senator Koch.

SENATOR CLARK: Senator Koch.

SENATOR COPE: Senator Koch, just a quick example, assume that I have a section of land, I want the children transferred into another district across the road. I realize that the minimum is 160 acres, that is if the home is on that, but let's also assume, and I don't know how important it is but I would assume quite important, the mill levy is less across the road in the district in which I want to be transferred. Naturally I am going to transfer the whole section. Now that could hurt the district in which I am leaving. Does that district have any right to hold back part of that or the whole bit has to be transferred?

SENATOR KOCH: The courts have said "no" on your question. You cannot do it for a tax advantage. You have got to prove a special need for educational purposes, not for a tax advantage.

SENATOR COPE: I guess what I was getting down to, how important is the mill levy and how important is the education?

SENATOR KOCH: That is what you have to prove. You have to prove there is a distinct educational need and that is the only way you are going to get it. You can't do it because of the tax issue.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: I will call the question, Mr. President.

SENATOR CLARK: The question has been called for. Do I see five hands? I only see three. I see five hands. All those in favor of ceasing debate vote aye, opposed vote nay. The question is to cease debate. Have you all voted?

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has ceased. Senator Koch, do you wish to close?

SENATOR KOCH: I will be very brief, Mr. Chairman, but I want to clarify a couple of misunderstandings I believe. One is, when you talk about the property, if your homestead is one acre, you transfer it all out, but if you own a large amount of ground, then you must at least transfer 160 so there can be varying factors in there when you are talking strictly of the value of the property. Now to Senator Remmers concern, and I understand it, Senator Remmers, I have been out there in smaller communities, you talk about quality...anyplace, quality is hard to define. No way would you ever be able to move your child to another district because of personal issues, such as, school boards, administrators, teachers, that type of thing. You hit it when you mentioned the only way you can move out of there is because you can prove that there is a special need. Now the case of Friesen versus Clark, and I will give you an example, that whole decision was based on one special need. It was over a vocational educational program. That was a special need, and so when you closed in your remarks that concerned you when you said special needs should have to be proven, we all know and you know better than I do, Senator Remmers, as a former administrator, that when you get accredited, there is a wide number of issues the state can accredit you on. But there are a lot of schools that do not have vocational

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LP 208, 210A, 335, 824,  
846, 36

education, they are accredited, or other kinds of things, they are still accredited. So when that parent goes to move, he is going to have to prove there is indeed a very special needs that they can prove in order to get that favorable decision to do that job. And this is very specific, Senator Remmers. I would be happy, and Mr. Siefkes, we will be happy to sit down and visit with you. Move the bill, as Senator Beutler said. If there is some things that we feel reasonable, we will make those changes and I assure you of that. Thank you. That is my closing. I would move for the advancement of LB 208 as amended to E & R initial.

SENATOR CLARK: The question is the advancement of LB 208 to Initial. All those in favor vote aye, all those opposed vote nay. Record the vote.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. Next order of business is 36E. The Clerk would like to read in.

CLERK: Mr. President, Senator Marsh would like to print amendments to LB 335 in the Journal.

Mr. President, I have an announcement from the Speaker moving LB 359 from Passed Over to General File.

Mr. President, a new bill, LB 210A (read title); a new bill, LB 846 (read title). (See pages 307, 308, Journal.)

Your committee on Miscellaneous Subjects gives notice of hearing in Room 2230 for February 18 and 19. Signed by Senator Hefner as Chairman.

Mr. President, Senator Kilgarin asks unanimous consent to add her name to LB 824 as cointruder.

SENATOR CLARK: No objection, so ordered.

CLERK: Mr. President, LB 36 was a bill introduced by the committee on Agriculture and Environment. (Title read.) The bill was first read on January 8 of last year. It was referred to the Ag and Environment Committee for public hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending by the Ag and Environment Committee.

SENATOR CLARK: Senator Schmit, on the committee amendments.

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LB 36, 208, 212, 263, 267, 335,  
353, 370, 402, 448, 449,  
450, 525

LB 448 and recommend that same be placed on Select File with amendments; LB 449 Select File with amendments; LB 450 Select File with amendments; LB 263 Select File with amendments; LB 212 Select File with amendments; LB 370 Select File with amendments; LB 335 Select File with amendments; LB 353 Select File; LB 208 Select File with amendments; LB 36 Select File; LB 402 Select File; LB 525 Select File with amendments, all signed by Senator Kilgarin. (See pages 388-391 of the Legislative Journal.)

SENATOR CLARK: We are now ready for item #5, LB 267.

CLERK: Mr. President, LB 267 introduced by Senator Richard Peterson. (Read title.) The bill was read on January 16 of last year, referred to the Public Health and Welfare Committee for public hearing. The bill was advanced to General File with committee amendments attached, Mr. President.

SENATOR CLARK: Senator Wesely, do you want the committee amendments?

SENATOR WESELY: Yes, Mr. President, members of the Legislature, this bill was referred to the Public Health Committee, was heard last year and there was a concern at that time about the fact that it applied only to Dental Review Committee and the feeling was that by just limiting it to the Dental Review Committee there might be some special legislation constitutionality problems and so we thought that the concept was worthy of application across the board to all peer review committees and so the committee amendment would strike the fact that this is specifically dealing with the Dental Review Committee and make it applicable to all Nebraska peer review committees and again the concept is this in LB 267 that proceedings before a peer review committee would still take place and function as they have before. The question comes when court action is taken and some action is taken before a dentist or anybody associated with a peer review committee. They cannot then go to the committee records and use the committee action against the person or for the person for that matter who is being brought to court and being contested in court. So that you could still use materials and all that that would be brought before this peer review committee but the actual work of the committee would be kept out of the court process and decided that would be separated from the court action. That is what we are trying to do and we thought if it was applicable to dentists it ought to be applicable to others. So that is what the committee amendment does, Mr. President.

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LB 208, 274, 378, 628,  
636, 692, 731

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

CLERK: 13 ayes, 26 nays, Mr. President.

SENATOR CLARK: The motion lost. Senator Howard Peterson,  
would you like to adjourn us until tomorrow morning at  
nine o'clock? The Clerk wants to read something in first.

CLERK: Mr. President, Senator Landis would like to print  
amendments to LB 636 in the Legislative Journal. (See pages  
408 and 409 of the Journal).

Your committee on Urban Affairs reports LB 692 to General  
File with amendments. That is signed by Senator Landis.  
(See page 409 of the Journal).

Your committee on Education reports LB 628 to General File  
with amendments. (See pages 409 and 410 of the Journal).

I have a Reference Report, Mr. President, referring certain  
gubernatorial appointments to standing committees for  
confirmation hearings. (See page 411 of the Journal).

I have a hearing notice from Miscellaneous Subjects for  
February 11, February 25 and March 4. Hearing notice from  
the Education Committee for February 1 and 2.

Senator Remmers would like to print amendments to LB 208.  
Senator Remmers to print amendments to 274. (See pages  
411 through 274 of the Journal). And Senator Schmit to  
LB 731. (See pages 412 through 415 of the Journal).

SENATOR CLARK: Senator Peterson.

SENATOR H. PETERSON: Mr. Speaker, I would move we adjourn  
until nine o'clock tomorrow morning.

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

Edited by

  
L. M. Benischek

design standards than other highway classifications." The rule that was eventually adopted by the Board of Classifications and Standards turned solely on traffic patterns. Traffic patterns were the applicable standards used for scenic recreation roads, and we said that our legislation specifically said, you weren't to look at traffic patterns, you were to look at esthetic qualities. And so we said, your rules don't conform. Okay, so I ask you at this time to advance this bill, again not to discuss the policy behind LB 873 but more importantly to establish the continued legislative oversight of the rule making power in the Executive and to ensure that what our intent is will be fully and faithfully carried out. Thank you.

SENATOR CLARK: Senator Johnson was closing. The question before the House is 649 to E & R. All those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 30 ayes, 2 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced to E & R. The next bill is LB 571.

CLERK: Mr. President, while we are waiting, I have an explanation of vote from Senator Richard Peterson.

Mr. President, Senator Landis would like to print amendments to LB 208 in the Journal.

Mr. President, hearing notice from the Revenue Committee and that is signed by Senator Carsten.

Senator Remmers has amendments to LB 208, Mr. President. (See pages 512 and 513 of the Legislative Journal.)

Mr. President, LB 571 introduced by Senator Clark. (Read title). The bill was read on January 6 of this year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Clark.

SENATOR CLARK: Mr. President and members of the Legislature, I introduced this bill for the Oil and Gas Commission. What would happen in the law today is that it is unclear if corporations that are aliens such as Canadian corporations could



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LR 237  
LB 522, 208, 626, 765

SENATOR V. JOHNSON: Let's wait for them to show up and then we will do a roll call vote, Senator Clark.

SENATOR CLARK: All right, Mr. Sergeant at Arms, can you get everyone back in their chairs now so we can go ahead with the roll call. Senator Haberman, would you get back please. You have permission to rope and tie that one. The Clerk will call the roll. I think the others will be here by the time they get in.

CLERK: (Roll call vote taken. See page 957, Legislative Journal.) 21 ayes, 24 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The motion failed. The Call is raised. And Senator Marvel, would you like to excuse us until tomorrow morning at nine o'clock? Oh, we have to read some things in first.

CLERK: Mr. President, very quickly, Senator Wiitala would like to print amendments to LB 765; Senator Schmit to 626; and Senator Koch to 208.

Mr. President, there will be an executive session of the Business and Labor Committee tomorrow morning at ten thirty in the William H. Hasebroock Memorial Hearing Room. That is Business and Labor at ten thirty.

Mr. President, a new resolution, LR 237 by Senator DeCamp. (Read.) (See pages 962 and 963, Legislative Journal.) That will be laid over, Mr. President.

SENATOR CLARK: Senator Marvel.

SENATOR MARVEL: I move that we adjourn until Thursday, March 4, 1982 at nine o'clock.

SENATOR CLARK: You heard the motion. All those in favor. We are adjourned. Administrative Rules will meet under the North balcony here right now.

Edited by Arleen McCrory.  
Arleen McCrory

March 4, 1982

LB 208, 359

SPEAKER MARVEL PRESIDING

ASSISTANT CLERK: Mr. President, there are E & R amendments on LB 208.

SPEAKER MARVEL: Senator Koch.

SENATOR KOCH: Mr. Speaker, I conferred with you a moment ago about the possibility of laying over 208 until next week due to several amendments that some people would like to review. I respectfully request to lay it over.

SPEAKER MARVEL: You want to lay over the bill?

SENATOR KOCH: Yes, sir.

SPEAKER MARVEL: Any objection? Hearing no objection, so ordered. The next item is LB 359.

ASSISTANT CLERK: Mr. President, there are E & R amendments to LB 359.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 359.

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

ASSISTANT CLERK: Mr. President, the next amendment I have is offered by Senator Landis. That amendment is found on page 464 of the Journal.

SPEAKER MARVEL: Okay, the Chair recognizes Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker. My recollection is we did this on General File but I have a copy of the amendments here and they are available from the Clerk. The purpose of LB 359 is to transfer authority to control the election process in SIDs from the SID to the election commissioner's office. The idea comes from Douglas County. And the problem is this. SIDs cannot pay people in cash for their services. By law they can only remunerate with warrants and those are negotiable or redeemable at the call of the SID, and those depending on which SID you are talking about can be two, three and four years after the date of issuance. Election workers which are recruited by and supervised by the election commissioner are then paid by

March 10, 1982

LB 208, 573, 587, 568,  
626, 647, 807, 875

SENATOR DeCAMP: Mr. President, just to say that in the interest of saving time I will not attempt my amendment today. I do repeat that I will attempt it if and when, and I do believe these conditions will occur, the State Patrol, alcohol people, agree to support that amendment. I think they have been studying it and they think it may be a workable approach and if it is, I am going to offer it on Select File. I urge you to take the time to read it. It has been in the Journal quite a while, and I think it is a little different approach that may be more workable.

SENATOR CLARK: The question before the House is the advancement of LB 568. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on the advancement of the bill? Have you all voted? Record the vote.

CLERK: Mr. President, Senator Kilgarin requests record vote. (Read the record vote as found on page 1097 of the Legislative Journal.) 34 ayes, 4 nays, Mr. President, and 10 not voting.

#### SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The Clerk has some items to read into the record.

CLERK: Mr. President, Senator Vickers would like to print amendments to LB 647. I have a Reference Report on gubernatorial appointments. Senator Schmit and DeCamp to print amendments to LB 626; Senators Wesely and Kremer to LB 573; Senator Koch to 208. (See pages 1098 through 1104 of the Journal.)

I have a gubernatorial appointment letter appointing Mr. Roy Smith to the State Highway Commission. (See page 1106 of the Journal.)

Your Committee on Education whose Chairman is Senator Koch instructs me to report LB 587 as indefinitely postponed, Mr. President.

Mr. President, Senators Landis and Remmers would like to print amendments to LB 875, and Senator Landis to 807. (See pages 1106 and 1107 of the Journal.)

SPEAKER MARVEL: At this time I would like to welcome the

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LB 577, 208

get it through the voters, you can implement it next year and then you can worry about paying for it later, and that is what has gotten our country and our government into problems time and again. You don't go into debt just because it sounds good and the project is worthwhile. You think carefully about that commitment and you think carefully about how you are going to pay for it. You don't worry about it in the future, you worry about it today when you pass the legislation. I sound as fiscally conservative as can be and I think there is a lot of you that claim to be that way but a lot of you are going to turn right around and vote for this bill. And the key point is this, consider it in the context of other legislation that we have. If anything, I would suggest it go back to the Public Works Committee and consider it along with those other bills that we have in that committee where we worked hard on this issue, and we have tried to do some different things and we have had difficulty. Maybe this is the only thing that will pass in the Legislature, but as I said, the reason it will pass is because it is easy, you don't have to pay for it right now. You don't have to go back to your constituents and say, we are doing a number on water projects and we are going to increase your sales tax a penny. That makes it a lot easier, doesn't it, and that means that this bill is probably going to pass. Because of that, I am going to ask that my motion be withdrawn at this point and just again suggest that the questions I have asked are legitimate and that you ought to be asking them yourselves.

PRESIDENT: Motion to indefinitely postpone has been withdrawn. It is withdrawn. So we are ready then, any other motions, Mr. Clerk?

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

PRESIDENT: All right, we are ready....Senator Koch, do you want to make the motion to advance?

SENATOR KOCH: Thank you, Mr. President, I move to advance LB 577 to E & R Final.

PRESIDENT: Motion is to advance LB 577 to E & R for Engrossment. Any further discussion? All those in favor signify by saying aye. Opposed nay. LB 577 is advanced to E & R for Engrossment. LB 208, Mr. Clerk.

CLERK: Mr. President, there are E & R amendments to LB 208.

PRESIDENT: Senator Kilgarin.

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LB 208

SENATOR KILGARIN: I move that we adopt the E & R amendments to LB 208.

PRESIDENT: Motion to adopt the E & R amendments on LB 208. Any discussion? All those in favor of adopting the E & R amendments or LB 208 signify by saying aye. Opposed nay. The E & R amendments are adopted. Motion, Mr. Clerk.

CLERK: Mr. President, the next amendment I have is from Senator Remmers.

PRESIDENT: Senator Remmers.

CLERK: Senator, your amendment is found on page 411 of the Journal.

SENATOR REMMERS: I would like to withdraw those amendments.

PRESIDENT: Senator Remmers has withdrawn his amendments. Are there more than one, Senator?

SENATOR REMMERS: There is one that follows a few pages down. I have forgotten the page.

PRESIDENT: You want both of them withdrawn?

SENATOR REMMERS: Yes.

PRESIDENT: Have you got both of them, Mr. Clerk?

CLERK: Well, I will.

PRESIDENT: Take his other one out. Senator Remmers withdraws both of his amendments. They are withdrawn. The next amendment, Mr. Clerk.

CLERK: Mr. President, Senator Vickers would move to add the emergency clause to the bill.

PRESIDENT: The Chair recognizes Senator Vickers. All right, you are asking that it be withdrawn, Senator Vickers? All right, the amendment is withdrawn. The next amendment.

CLERK: Mr. President, the next amendment I have is from Senator Koch. It is found on page 959 of the Journal. I understand he wishes to withdraw that...Senator?

SENATOR KOCH: I want to go to page 1100.

PRESIDENT: Senator Koch, you are withdrawing that particular amendment?

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LB 208

SENATOR KOCH: Yes.

PRESIDENT: The amendment is withdrawn.

CLERK: Mr. President, the next amendment is from Senator Koch. It is found on page 1100 of the Journal.

PRESIDENT: All right, now, Senator Koch.

SENATOR KOCH: Thank you, Mr. President and members of the body, you will find as Mr. O'Donnell indicated the amendment on page 1100. It looks to be rather extensive but basically what it does is the following things: It has been brought to our attention that there are some concerns by various members of this body as well as others outside of the body and what we have attempted to do here is to resolve some of these issues, and they are as follows: First of all, what the amendment does it adds language which defines best educative interest criteria. What we have done is we have taken from the past legislative intent in case law the examples. This will make sure the law is used only for educative reasons and best interests of the child, not for tax advantages nor for best athletic program. Some people are afraid there might be some recruiting going on. Having coached once, I know that we are not proselyting that often. We are not that big league. Secondly, it adds language in subsection 1 which provides that the receiving district has a voice in a decision. In other words, the receiving district is going to take that freeholder.....that child or children, would have to give their majority approval. This provision exists in subsection 2 and makes the parties and provisions comparable and a fair approach on both sides of the issue. And thirdly, it adds language which restricts the transportation requirement of a receiving district when the tract of land attached is not contiguous. For instance, if you had a freeholder from a considerable distance away from the district they want to go to, that district would not be bound by law to transport that child or children extensive distances. That parent in that case would no doubt have to transport their children to the line of the existing district where a bus might be available. From there on they could use the transportation so you get away from a problem. And it also removes the repeal of the temporary transfer. This provision has been used very minimally and it is felt that it could be removed from statute. It is being used very beneficially in several areas and should be retained. So I ask for the adoption of the amendment.

PRESIDENT: Amendment on the desk, Mr. Clerk. Read the amendment.

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CLERK: Mr. President, Senators Vickers, Remmers and Lamb would move to amend the Koch amendment.

PRESIDENT: The Chair recognizes Senator Vickers on the Vickers-Remmers-Lamb amendment to the Koch amendment.

SENATOR VICKERS: Mr. President and members, the amendment... I apologize, it's not in the....wait a minute, which portion of the amendment are we on, Pat?

CLERK: Senator, we are dealing with an amendment that you are offering to Senator Koch's Request 2772, the one that is in the Journal on page 1100.

SENATOR VICKERS: Okay, this is not the amendment that we already had in the Journal...that I already had in the Journal?

CLERK: No, sir, this one is not in the Journal, Senator, yours is not.

SENATOR VICKERS: Okay, thank you. Yes, I am having the amendment passed around right now. I apologize for not having it in the Journal but it makes a change in the definition as Senator Koch pointed out. The amendment that he is offering attempts to define best educative interests and I just felt that that definition was a little bit too broad. Since the State Board of Education is the one that is going to be making this determination, and since it will be freeholding petitions from one accredited district to another accredited district, both districts having met the State Board of Education's definition, own definition of quality or own definition of best educative interests, it seemed to me that what we should do is define best educative interests as being a difference in that accreditation and not anything more than that since the State Board of Education Department itself does not require other different qualities. Now that is, I know, narrowing down much tighter than probably Senator Koch would like to do, but it is my contention that district boundaries should have a considerable amount of integrity and that a district that is doing its best to meet the quality guidelines of the State Board of Education should not have freeholding petitions out of their district done very lightly. So it is with that reason that I offer, and Senator Lamb and Senator Remmers, offer this amendment to the Koch amendment. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members, I rise to support

the amendment which Senator Vickers, Remmers and I have introduced, and I would just invite you to turn to page 1100 of the Journal. I think it will be much easier to explain what we are trying to do. If you will look down there on line 25 of Senator Koch's amendment...down there, it says that the...in order for the petitioner to prove that the petition is in the best educational interest of such children, he, she or they shall show the differences in accreditation, teaching staff, management, total curricula and efficiency. But what we are saying is that is impossible, that's impossible to determine all those things, and it leaves it strictly in the hands of the State Board of Education to determine those things so the net result is that the State Board of Education will have the power to change school district boundaries all over the state. Now Senator Vickers and Remmers and I are merely trying to narrow the scope under which the State Board of Education can act, that they should be limited. Otherwise, with this unlimited power which this amendment gives them nobody knows where your school district boundary will be from day to day because you can make all kinds of cases about an efficiency of a school, how do you determine the efficiency of a school, and teaching staff. Well, that is certainly subjective. Which school has the best teaching staff? Which school has the best management? Very, very difficult to determine. So with this amendment we would readily accept Senator Koch's amendment to the bill which is really the bill, but it is very necessary that this amendment be adopted to tighten up the restrictions under which people can petition to be transferred into another school district.

PRESIDENT: The Chair recognizes Senator Remmers.

SENATOR REMMERS: Mr. Speaker and members of the Legislature, I also rise to support this amendment. I think that if you were out there where these transfers are taking place, you would recognize that there are very few of these transfers that actually are a result of desiring a better educational interest, that there are other factors that almost invariably create these problems that we have had. I think to continue under the present rule that we have where the courts are trying to decide what is in the best educative interest of the children, I think you could examine the cases that we have had, I believe you would agree that it has been a farce. We just cannot determine the best educative interest according to the terminology that we have in the amendment that we are trying to amend, and by restricting this we are putting the burden on the State Department of Education. If they say an accredited school is accredited, I believe they are putting their stamp of approval on that school and are



saying that we have quality education in that district. I believe it is a function of the State Department of Education and this is why I approve the change to remove the jurisdiction from the local community committees that generally respond to these requests for transfers. I think it is very important that this part of the bill be preserved in the original Koch bill that the State Department of Education make this final decision. But if they have given accreditation to a school, I think they are saying there is quality education. And when we start talking about these other things that Senator Landis mentioned, we're talking about a better staff, more efficiency, you are getting into an area that no one can define, and for that reason I would urge you to support this amendment.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. President, first of all before I speak to the amendment I would ask for a division of the question. I think this should be treated as two separate amendments. You have amendment one and you have amendment two and are we just dealing with amendment one only?

PRESIDENT: Senator Lamb, would you respond to that?

SENATOR LAMB: I would only point out, Mr. President, that the second one really is only clarification and that if you will read in the Koch amendment that it is somewhat unclear over on the second part of his amendment whether the State Board of Education's jurisdiction refers back to what is described as educative interest on the first part, and that we are only trying to clarify the language there, and really they both go together. They are not saying different things. I don't think...we are not treating it as two separate ones, they are both doing the same thing and the second part only clarifies the language somewhat.

PRESIDENT: Senator Koch, you were asking to have a division?

SENATOR KOCH: A division, yes.

PRESIDENT: Of the two?

SENATOR KOCH: Yes.

PRESIDENT: There isn't any reason why it can't be divided, so I would see no objection.

SENATOR KOCH: Thank you, Mr. President. I am going to oppose the amendment offered by Senator Vickers and Senator

Lamb and Senator Remmers. I have been on the Education Committee for eight years and I have heard this issue so often that I just don't feel as though I want to hear it around here too much longer if we can resolve it. I believe it is important that when you start talking about accreditation that you understand what accreditation is about because there are still schools accredited that can have a certain number of demerits and they are still called accredited. So when you are talking about accreditation of schools in this state, you are talking about accreditation most of them have but there are also certain degrees as to how high that accreditation might be, and I think it is imperative if you want to help people who want to freehold and they are going to do this permanently, you want to remember, then you have to maintain the present amendment that I am talking to which gets down to the issue of the standard that an accreditation school holds and there are standards and Senator Remmers knows this having been a school administrator for a number of years. We also know that when you get down to teaching staff there is differences in teaching staff and don't think there aren't. We also know that in the management of public schools there are degrees of management in terms of how they are managed and in terms of policies, administrative management in the system. And we also know that there is a difference in curricula being offered in this state, a great difference in curriculum. There are some schools that have a minimal curriculum, and their children, of course, are the ones who suffer. That is one of the reasons this bill is here because there are a number of parents out there that realize that their young people are not getting the quality of education in terms of curriculum offerings that are being offered not too far away. I suggest to you that if this is going to be misused, there must be some schools out there that are not offering an appropriate curriculum or the parents wouldn't be willing to pay taxes where they now live and pay a high tuition to a school they want to get to. There is just no reason they would want to make this decision, but in many of those cases those people are captive within a system that is indeed inefficient, does not have much vision otherwise they would be offering the courses that the parent would have to prove is beneficial to their child. And I would remind you one more time, the parent who petitions must prove that there is a beneficial advantage to that child and the burden is on them.

PRESIDENT: One minute, Senator Koch.

SENATOR KOCH: And I would remind you one more time, the State Board of Education is a constitutional body. They look over the public schools of this state and why shouldn't

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they make decisions? They should. And the Commissioner should make them along with them. So, therefore, for us to adopt the Vickers-Lamb-Remmers amendment, you are crippling the bill to a considerable degree and I hope you would not adopt that amendment because as I said before there are differences in accreditation and indeed there are differences in staff and there are differences in curriculum, there are differences and I know that Senator Remmers knows that having been a school administrator.

PRESIDENT: Senator Remmers, did you wish to further discuss either one or both of these amendments? We are going to divide them only for the purpose of the vote. Senator Lamb, did you wish to further speak to the two although we will take them separately and you can discuss both of them at the same time?

SENATOR LAMB: Just very briefly, Mr. President. I feel very strongly about this. The superintendents all over the state feel very strongly about this because if this amendment does not go on the bill, there is going to be a lot of people in here complaining about it. Because, as I stated before, it is just a blanket authority by the State Board of Education to redraw the school district boundaries in this state, and I don't think that is what we want. I know the superintendents and school boards in the state are very much concerned about this issue. We have had a lot of mail over the last few days about the bill, telephone calls, and it certainly is a very important issue and I just ask that you put on the amendments so that it is a workable situation.

PRESIDENT: Senator Remmers, did you wish to speak?

SENATOR REMMERS: Just briefly, Mr. Speaker. I just want to say again as I said a while ago, I think that if you will look closely at most of the requests for transfers, there are other reasons besides quality education that are involved, generally there are other reasons, and they can be disguised as a request for certain educational advantages. There probably are not any two schools where you would find that one school would not have a certain type of course that the other one wouldn't whether it is big schools or small schools. And so you can always make an issue that this is what you want to do. For instance, you can decide that an elementary student wants to be a farmer. I don't know how many elementary students really know they want to be farmers and so maybe the other school has a little bit more vocational education in the agricultural area than the other, but when

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It comes right down to quality it is very seldom the reason. Many reasons are a matter of athletic recruiting or the desire to play on a very successful athletic team and it can be disguised as another reason. Again, the quality education, in this case the State Board does have some leeway because if there are demerits, in other words, if the accreditation is not equal, I think the State Board can take this into consideration.

PRESIDENT: Senator Koch.

SENATOR KOCH: Mr. President and members of the body, I have to remind you that the petition is the burden of the parent to prove. If there are hidden agendas, those hidden agendas will be brought forth. They have to be for best educational interest and that is what we are trying to do is define it. An accredited school in this state can have anywhere from 300 hours up to a 1000 hours that the state will accept as accreditation. Now you tell me that there is not a difference. There is a difference. We all know what it is. So, therefore, I ask you not to adopt the amendment that we are speaking to at the present time.

PRESIDENT: Okay, who is going to close? Senator Vickers, are you going to close for the group? Speak for all of you, or however you want to handle it.

SENATOR VICKERS: Briefly, Mr. President....

PRESIDENT: Go ahead.

SENATOR VICKERS: ....and then I will offer the opportunity to some of the cointroducers if they would like.

PRESIDENT: All right, go ahead.

SENATOR VICKERS: I would like to make first of all my position very clear on this issue and this issue is one that as Senator Koch indicated the Education Committee has dealt with at quite some length and have wrestled with, the members of it, for quite some period of time now, and I will admit it is certainly not an issue that is easy to address. But my position is simply this. It seems to me that school district boundaries should have as much integrity as possible. It is pretty similar to state boundaries, I guess. If somebody in the Panhandle of the state doesn't like Nebraska and wants to jump over in Wyoming, I don't think we should make it too easy for them to do so. I feel a little bit the same way about school district boundaries,

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but we have to remember we talk a lot and we have discussed it here today the children that feel trapped in a school district and we are attempting to make a method so that they can get out of the school district that they might feel trapped in to go to another one for better educational interests and that, of course, is what we are trying to define. But I submit to you that we should take a little bit of consideration about the children that are left in the school district. Many times you will see a district that might be struggling as far as total tax base is concerned, as far as total numbers are concerned, and then when somebody begins to get upset about the way their district is operating and if we make it too easy for them to get out of that district and go someplace else instead of working within their district to make their educational facilities better, then you just make it that much worse for the ones that are left because the tax base leaves, the numbers go down and the opportunities are even less there. I think it is important that they try to work as much as possible within the district that they are in. Now, the issue of how we define best educative interests, Senator Koch indicated himself that there are differences in accreditation and that is what we are trying to put in the statutes, that the State Board of Education should examine those differences in the accreditation of the schools involved and take that into consideration in their approval or denial of the petition based on educative interest. It is that simple. I will admit that it does make it tighter. I will also admit that that is my intention for many of the reasons I just outlined to you. Mr. President, I would like to give the rest of my time in closing to Senator Lamb or Senator Remmers if they would choose to use it.

PRESIDENT: We have about two minutes left. Senator Lamb, do you wish to....Senator Remmers, you wish to....

SENATOR REMMERS: I will just take a minute of it, Mr. Speaker.

PRESIDENT: Okay.

SENATOR REMMERS: I just want to say that if some of you have looked at a map of what has happened to many of these areas because of freeholder transfers, you could see that we have to do something to guarantee the integrity of those boundaries. There are places in the state where the school buses from three different school districts will run over the same routes because of the freeholder transfers that we have had, and this type of transfer, if it goes on, we'll have much more of it. Again, it takes 360 hours of credit

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for accreditation, and I believe the accreditation rules say that you need 180 for graduation, so the number of credit hours that a school has to offer is double the amount that is required for graduation. Again, I believe a school district can be accredited with five demerits, or I believe that is the limit. That could be taken into consideration by the State Department of Education under this provision, and that is why I am also willing to let the State Board of Education be the...those that make the decision in the final analysis.

PRESIDENT: Senator Lamb, do you wish to say anything further? All right, the motion is...we have divided the amendment. As you find it on the amendment itself, it is divided into number one and number two. We will first take the vote of the number one portion of the amendment and then number two. So all those in favor of voting for identified as the number one amendment of Vickers, Remmers and Lamb will vote aye, opposed nay. It requires 25 votes. Have you all voted? Record the vote.

CLERK: 25 ayes, 9 nays, Mr. President, on adoption of the first Vickers-Remmers-Lamb amendment.

PRESIDENT: The motion carries and the first of the Vickers-Remmers-Lamb amendment is adopted. Now the question before the House is the adoption of the second amendment identified as number two of the Vickers-Remmers-Lamb amendment. All those in favor vote aye, opposed nay. Senator Koch, did you...yes, it is already....they have closed on both of them, so....record the vote.

CLERK: 30 ayes, 0 nays on adoption of the second amendment, Mr. President.

PRESIDENT: Motion carries, so the second of the Vickers-Remmers-Lamb amendment is adopted. Okay, now, Senator Koch, we are on the amendment as amended, so, Senator Koch.

SENATOR KOCH: Mr. President, I would move to adopt the amendment as amended.

PRESIDENT: All right, any further discussion? The question then is the adoption of the Koch amendment as amended. All those in favor vote aye, opposed nay. Record the vote.

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

PRESIDENT: Motion carries. The Koch amendment is adopted. Any further amendments?

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LB 208, 672

CLERK: Nothing further on the bill, Mr. President.

PRESIDENT: Senator Koch, do you want to advance the bill?

SENATOR KOCH: Not with a great deal of enthusiasm but I will move to advance it as amended to E & R Engrossing.

PRESIDENT: Okay, motion to advance LB 208 to E & R for Engrossment. Any discussion? All those in favor signify by saying aye. Opposed nay. The bill is advanced to E & R for Engrossment. Senator Goodrich, I understand you have just one amendment. Is that...are there agreed to amendments on this, did somebody tell me?

SENATOR GOODRICH: Yes.

PRESIDENT: Well, why don't we go ahead and see if it doesn't take too long, we will try and get this next one out of the way.

CLERK: Mr. President, 672....

PRESIDENT: LB 672.

CLERK: Yes, sir, I have E & R to it.

PRESIDENT: E & R amendments. Senator Kilgarin.

SENATOR KILGARIN: I move we adopt the E & R amendments to LB 672.

PRESIDENT: Motion to adopt the E & R amendments to LB 672. Any discussion? All those in favor of adopting the E & R amendments on LB 672 signify by saying aye. Opposed nay. The E & R amendments are adopted. Motion on the desk. Read the motion.

CLERK: Mr. President, Senator Vard Johnson would now move to amend the bill.

PRESIDENT: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I have had my amendment on file but I neglected to have it printed in the Journal and it is being passed out now. No, I have one here...it's on your desk. It's really a very simple amendment. LB 672 calls for an amendment to Section 12 of Article VIII of the Nebraska Constitution, and Section 12 of Article VIII of the Nebraska Constitution presently

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LB 202, 953, 761, 208, 720, 591,  
796

We have six excused. Will the Clerk please call the roll.

CLERK: (Read the roll call vote as found on page 1225 of the Legislative Journal.)

SENATOR CHAMBERS: (Microphone not activated)....changing to not voting.

CLERK: Senator Chambers changing from no to not voting. 25....do you want to change, Senator? Senator Newell changing from no to yes. 26 ayes, 16 nays, Mr. President, on the motion to indefinitely postpone the bill.

SENATOR LAMB: The motion prevails. LB 202 is indefinitely postponed. The Clerk has some items to read in.

CLERK: Mr. President, Senator Vickers would like to print amendments to LB 953, Senator Fowler to 761. Your Committee on E & R respectfully reports that they have carefully examined and engrossed LB 208 and find the same correctly engrossed, 720 correctly engrossed, 796 correctly engrossed, all signed by Senator Kilgarin.

Again, Mr. President a reminder, the Revenue Committee will hold an Executive Session at noon today in Room 1517. That is offered by Senator Carsten, Chair.

SENATOR LAMB: LB 591

CLERK: Mr. President, LB 591 offered by Senator Landis, (read title). The bill was read on January 6th, referred to Revenue, Mr. President. The bill was considered yesterday by the Legislature. At that time there was an amendment from Senator Howard Peterson that was adopted to the bill. I now have pending Mr. President, an amendment offered by Senator Vickers. I think Senator Vickers wants to withdraw the amendment he had yesterday. Temporarily withdraw it, Mr. President.

Mr. President, Senator Vickers would now move to amend the bill by striking the Peterson amendment adopted yesterday.

SENATOR LAMB: Senator Vickers.

SENATOR VICKERS: Mr. President, members, the Peterson amendment adopted yesterday expanded the one-half percent additional sales tax to all first class cities in this state. As you know, the amendment that I just got through laying back until after this one would expand that to all



March 22, 1982

LR 262, 263, 264, 265  
LB 933, 942, 208, 568,  
898,

SENATOR CLARK: The committee amendments are adopted. Now, on the bill, Senator Warner.

SENATOR WARNER: Mr. President, I move that LB 933 be advanced. As I pointed out it will repeal the necessity for an expenditure that we have not yet made.

SENATOR CLARK: Question before the House is the advancement of the bill. All those in favor vote aye, opposed nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 28 ayes, 0 nays Mr. President on the motion to advance the bill as amended.

SENATOR CLARK: 933 is advanced. We go to 942. (Read some things in.)

CLERK: Mr. President, a series of resolutions, LR 262 by Senators Wagner and Sieck. (Read LR 262.)

Mr. President, Senator Labedz would like to print amendments to LB 942. Senator Haberman, Hoagland and Nichol to 568.

A study resolution LR 263 by the Miscellaneous Subjects Committee. (Read title of LR 263.) LR 264 by the Miscellaneous Subjects calls for a review of the Political Accountability Disclosure Act and conducting of an examination of the statutes regulating political action committees. LR 265, by the Miscellaneous Subjects Committee. (Read title of LR 265.) Attorney General's opinion addressed to Senator DeCamp regarding LB 898. (Letter appears on pages 1355-56 of the Legislative Journal).

Mr. President, Senator Koch would like to print amendments to LB 208.

Mr. President, with respect to 942, it was a bill introduced by the Appropriations Committee. (Read title.) The bill was read on January 19th of this year. It was referred to the Appropriations Committee for hearing. The bill was advanced to General File, Mr. President, there are committee amendments by the budget committee pending.

SENATOR CLARK: Senator Warner, on the committee amendments.

March 23, 1982

LB 127, 208

the adoption of the motion to adopt the Kahle amendment on LB 127. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 35 ayes, 2 nays, Mr. President, on adoption of Senator Kahle's amendment.

PRESIDENT: The motion carries. The Kahle amendment is adopted. Senator Kahle, do you wish to readvance the bill?

SENATOR KAHLE: Mr. President, I move that we readvance LB 127 to Final Reading.

PRESIDENT: Motion to readvance. All those in favor signify by saying aye. Opposed. What did you say? You want a machine vote on the advance? All right, machine vote has been requested. All those in favor of advancing LB 127 to E & R for Engrossment vote aye, opposed nay, and clear the board. Record the vote.

CLERK: 35 ayes, 3 nays, Mr. President.

PRESIDENT: Motion carries. LB 127 is advanced to E & R for Engrossment. I presume 127A is to be held over then to wait for the....so we will proceed on then. That is passed over. We will go then to...on Final Reading. I remind all members to be at your desks, we are on Final Reading, and we will commence then, Mr. Clerk, with LB 208 on Final Reading.

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

PRESIDENT: Read the motion.

CLERK: Senators Koch and Beutler would move to return LB 208 to Select File for a specific amendment. The amendment is found on page 1355 of the Legislative Journal.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Thank you, Mr. President, members of the body, last time that we discussed LB 208 there was an amendment offered by Senators Remmers, Vickers and Lamb which virtually destroyed any criteria in which you would determine whether or not a freeholder who petitions to remove their homestead or residence from one system to another system of education would in all practical purposes, when we adopt that amendment, there would be very little likelihood of a freeholding situation because there is no

criteria in there and I want to remind you that the burden of freeholding rests with the parent who petitions to go from one system of education to another system. Senator Beutler and I are offering this amendment to place into the statutes where it says that there shall be a substantial difference in the curriculum offering. To me this has meaning and would help the State Board of Education and others who make a final determination to make the decision whether or not for the beneficial interests of the child that there is an educational offering in the other system which has greater benefits to the child in terms of his or her educational future. So that is the amendment and some of you probably visited with a lady out here in the rotunda yesterday and that lady is pretty well known to the Education Committee along with others. So Senator Beutler and I agreed, Senator Beutler really drafted the amendment and I will yield the rest of my time to Senator Beutler to speak to the issue.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, let's talk a little bit about what we have done with 208, the freeholding bill. I think generally speaking in the Legislature we have reached the consensus now that a person ought not to be allowed to freehold into another district for tax reasons and 208 is a good bill because it virtually eliminates all transfers for tax reasons. I think we've all reached a consensus that there should be no transfers for frivolous educational reasons, that is no transfers because of personality conflicts between board members and individual parents and that type of thing and 208 as it presently reads is good in that it clearly does not allow for those kinds of transfers. Third, I think that the third consensus that we have reached in here and perhaps not as broad a consensus as the first two items but we've also agreed that in the best educational interests of the child you should be allowed to transfer from an approved school to an accredited school, looking at the accreditation system used by the State Department of Education. So those three things are contained in 208 right now. It is a good bill and I think we should pass it but I want to talk about what we are doing with it with this amendment. When 208 originally passed, not only could you look at differences in accreditation but you could look at differences in teaching staff, management, total curricula and the efficiency of the school system. You could look at all those things and see if there were any substantial differences and on the basis of those items, possibly transfer your children to a different school district. Then Senator Vickers and Remmers amended it to eliminate all those criteria except accreditation. Accreditation only would be the reason for which you could transfer. It seems to me that we're going a little too far back and the amendment would still allow transfers by accreditation because of accreditation differences.

It would add one more accreditation level, that is basically the north central accreditation, and allow transfers based on north central accreditation and then it would allow transfers in the best educational interests of the children of course, always, for substantial differences in total curriculum. The word "substantial" is put in there to preclude frivolous claims to make clear that personality conflicts and those types of situations are not adequate reasons for transfers. We put in the language "total curriculum" because we wanted to make clear that simply because a school doesn't have one course in one area is not going to be a reason for transferring. You have to look at the total program and if there are substantial differences in the total program, that should be in those conditions, you should allow a child to transfer to a different school district if his parents so choose. Now this is not a Lincoln problem and really the only reason that I am involved is because I sit on the Education Committee and each year I have been on the committee we've had the very sad experience of having parents come before us, parents who feel trapped in particular school districts, and there is nothing they can do about it. The only thing they can do is try to transfer out. Maybe they don't have a good administration, maybe they have a school board that is really tightfisted with the money and does not believe in broad curricula, a number of reasons and it is really very difficult to talk to people who want education, who want their children to be educated and have absolutely no means of getting that education for their children even though they are willing to pay for it, even though they are willing to travel long distances for it, even though they are willing to make a whole number of sacrifices for it. So the amendment basically gives a little bit more leeway to the parents and to the Board of Education in deciding whether the best educational of the interests of the children should dictate or would dictate or be reason enough for a change, a freeholder change. Thank you.

PRESIDENT: Before I go to the next speaker the Chair would like to take the privilege of introducing from Senator Kremer's district, 23 senior students from Nebraska Christian High School at Central City, teacher Pat Johnson. They are up here in the North balcony. If they will kind of wave to us we'll see where they are and welcome to your Legislature. We also have visiting some guests of Senator Cope. They are under the North balcony, some seven students from Kearney State. They are with Dr. Arnds their teacher. They are under the North balcony and we welcome you to your Unicameral Legislature. The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President and members of the Legislature, I rise to vigorously oppose the Beutler-Koch amendment to LB 208. First of all I'd like to draw your attention to the

low number, LB 208, you can readily see was introduced early in the last session. It's been around here most of last session and all of this session. Here we are down on Final Reading and they come in with a substantial amendment at this point. I think we have the bill in its best possible shape now and we should pass it as it is. Now just exactly what would this amendment do to the schools in the state? Well for one thing it is a lawyers dream. You know, what is substantial difference in curriculum? Who is going to determine that? It is going to be some court some place. In effect, if this amendment is adopted then the courts will be rewriting the school district boundaries all over the state. Then you're going to have the situation that if it is in the best educative interest of one child to transfer into another school, what does that do to the educative interest of the remaining children in that school where in many cases you already have a small school which is struggling to survive and then you have one or more families transfer out of that school, then that dilutes the effectiveness of the school to deal with the rest of the children in that area. So you should not only consider the best educative interest of the child that is transferring out but also the best interest of those children who are remaining. I urge you to look at the amendment and it is on page 1355 in your Journal and it says, I quote, "or substantial difference in the total curriculum of the schools involved." It is not definitive. It leaves it all up to the courts to decide because eventually that is where it is going to wind up. We have a bill that has been around here and been debated many times before, both in committee and on the floor. I suggest very strongly we reject this amendment, pass the bill as is or else kill the bill.

PRESIDENT: The Chair recognizes Senator Remmers.

SENATOR REMMERS: Mr. President, members of the Legislature, this amendment is not a minor change. It is major surgery. It gets it back to where it was here some time ago. As Senator Lamb just said, this opens it up for the courts to decide what substantial differences is. The state accreditation is one thing that we have recognized as designating quality education. We do have a problem with trying to define quality education. We really have never come up with a very good formula. Maybe if you were going to do this we should include something that would say that if the school total achievement on standardized testing was less in the other school, then you could transfer and I think you would find that these transfers would take an entirely different direction. This transfer bit reminds me a little bit of the discussion we had some time ago about the panhandle of Nebraska

wanting to transfer out into Wyoming. Sure we have some dissatisfaction with districts but I think we have to respect the integrity of district lines. This type of transfer creates tremendous dissention within school districts. It turns one neighbor against another and I say that most of those cases of transfer, if you could get to the real reason, they are not a matter of academic excellence because I think the records will clearly show that the students from the small schools, when they attend the University of Nebraska that their scores hold their own with the largest and supposedly best schools, double A accredited schools in the State of Nebraska. So if you're going to use some of those standards, let's put something like that in. If your school doesn't rate, if the records of the student attending the University is bad, if the standardized test scores are low, then maybe you have something to change, a good reason to change districts, but this simply creates chaos. I believe the whole idea of the transfer originally was the idea to close some of these schools. Now if that is the purpose, be up front about it. Let's bring out some legislation to close them rather than having this kind of a civil war in every small school district in the State of Nebraska. This amendment is not a friendly amendment. It is not minor surgery. It is major surgery and I ask you to defeat it.

PRESIDENT: The Chair recognizes Senator Kahle.

SENATOR KAHLE: Mr. President and members, I have a lot of small schools in my district. They've all been consolidated, or not all or them, but a great many of them. They are struggling. They are struggling under the 7% lid. They are trying their best to keep up their curriculum and provide the programs that the parents think they need and that they think are good for the students. What this would do, I'm all for consolidation if that is what you are after, but to do it on a piecemeal basis to divide the community and conquer, is about what Senator Remmers just said, I think is wrong. And school boards are certainly having enough of a burden trying to survive in these times without us giving them that kind of a headache to go along with it. Thank you.

PRESIDENT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, my mail, my input has been the same as the other three gentlemen that spoke before me. At this late time for somebody to come up with such a substantial amendment when a bill is on Final Reading and use the word substantial difference and not explain it in black and white and force it into the courts, I don't think is fair and is right and I think we just ought to leave it the way it is and if we can't, let's just kill the bill. Thank you, Mr. President.

PRESIDENT: Senator Koch, you may close then on your motion to return.

SENATOR KOCH: Mr. Chairman, members of the body, Senator Lamb says that LB 208 has been around a long time. I submit to you LB 127 has been around longer than that. This is not a substantial amendment. The other day when we were discussing 208 Senator Lamb, Senator Remmers and Senator Vickers offered an amendment which was substantial. What they did is they took part of 208 which is in case law right now in the court of the State of Nebraska on beneficial interests of children for educational purposes. We had that in that bill. The Education Committee spent a lot of hours on freeholding and transfers. 208 when it came out of the Education Committee had a considerable consensus of support. Again, there are people here who think 208 is a reorganization bill and that is not true. It is not reorganization at all. I remind you the burden of proof has to rest with the parent who is petitioning to leave the system where they are to go to another system because they think the beneficial interests are of greater opportunities for their children. I remind you also when they freehold now they have to stay there until they sell that property and someone else buys it who then might freehold back to where they came from originally. Whether we like it or not, there are some school systems that offer a bare minimum and I talked to you the other day about accreditation and the hours that you can offer and curriculum offerings from anywhere from three hundred to a thousand, you can still be accredited. If you really want a role and mission for public schools I suggest we ought to get LB 383 off of General File. Then you've got a role and mission for public schools of what the minimal standards should be but this body did not see fit to move 383 earlier this year when we discussed it. Yet we have a role and mission for the postsecondary schools of the State of Nebraska. I think that is odd. We have a role and mission for post-secondary, no role and mission for the public schools, yet the Constitution says the public schools are our responsibility of the state legislators and policymakers. So what Senator Beutler and I are attempting to do with this amendment is place back into the law, a reference which says there shall be a substantial difference in curriculum offering. That will take away the nitpicking and they won't go to the court. They go to the State Board of Education for a final determination and then I suppose if the State Board doesn't satisfy it they can then go to the court. That is the parents' last redress. I would remind you also the receiving school system must approve that freehold. They must approve it. If they don't approve it then of course, the person stays where they are. So what Senator Beutler and I are attempting to do, and I'll yield the rest of my time to

Senator Beutler. We're trying to put the bill back in shape that the committee brought it out in after long and tedious study. We haven't discussed 208 near as much as we have 127 over little surveyors paper where we were going to reposit. So I ask you to adopt the Beutler-Koch amendment. Senator Beutler, will finish it up.

PRESIDENT: Senator Beutler, you may finish the closing.

SENATOR BEUTLER: If I could just make a couple of quick points, Mr. Speaker. This amendment has nothing to do with school consolidation. In fact, I would argue to you that if you give the parents within a district a little more flexibility, that basically what you are doing is defusing any feeling there might be within districts for consolidation, that, in fact, it's an anticonsolidation bill because you are allowing them to express their frustrations and solve their own individual problems a little bit better when they feel there is a substantial difference between the educational qualities, the educational offerings of contiguous schools. So that is a complete red herring and, in fact, it has the opposite effect. Secondly, the educational interests of the remaining children in the school was mentioned and I would suggest to you that the administrators of a particular school will pay a little more attention to how well they are doing with their children if they know that there is some flexibility there for the parents to transfer the student to another school, that in fact, it will have the beneficial effect of improving the education for the remaining children because the school will not want to lose more children. So I can see nothing but beneficial effects from building into the statute, a little more flexibility for these trapped children and these trapped parents who have no other alternative, absolutely no other alternative. It does not wipe out completely the Vickers-Remmers amendment which went on by the way on Select File. This is the first opportunity we've had to address it. It does not wipe it out completely. It moves back to some place, to a compromise position about halfway between what the bill originally was...

PRESIDENT: Time is about up, Senator.

SENATOR BEUTLER: ...and where the Vickers-Remmers amendment took it on Select File. So I think it is a reasonable compromise and I would ask your approval.

PRESIDENT: The motion then is the Koch-Beutler motion to return LB 208. All those in favor vote aye, opposed nay. I remind you that we are on Final Reading so everyone should be at your desks. There are two excused, Senator Koch, so that you know. Otherwise everyone else is here, or should be. Have you all voted? Senator Koch.



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LB 208

SENATOR KOCH: Well we're on Final Reading aren't we, Mr. President?

PRESIDENT: Yes. You only have one other thing you can do.

SENATOR KOCH: In that case I will ask for a roll call vote, if I can, please.

PRESIDENT: All right let's check in first to make sure everyone is here and then we will have a roll call vote. So would everybody please show your presence. Would everyone please show your presence so that we know who the Sergeant at Arms has to go bring into us. Senator Schmit, Senator Chambers. We're all here now, Senator Koch. You are ready to...

SENATOR KOCH: Mr. President, would Mr. O'Donnell read the motion and the amendment one time before we take this record call?

PRESIDENT: Yes. The motion is to return. Would you read the motion to return and the amendment.

CLERK: Mr. President, Senators Koch and Beutler would move to return LB 208 to Select File for a specific amendment. The amendment is found on page 1355 of the Journal and would read as follows: (Read Read Koch-Beutler amendment as found on page 1355 of the Journal.)

PRESIDENT: Okay, we're ready then for the motion to return, a roll call vote. The Clerk will proceed with the roll call vote.

CLERK: (Read roll call vote as found on page 1368 of the Legislative Journal.) 24 ayes, 19 nays, Mr. President, on the motion to return the bill.

PRESIDENT: The motion failed. Any further amendments, Mr. Clerk?

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

PRESIDENT: Before we read LB 208 on Final Reading, the Chair would like to introduce from Senator Apking's district, 19 ninth graders from Friend High, Shirley Gautreaux, teacher. They are up here in the North balcony. Would they please let us know where they are up there? Welcome to your Unicameral Legislature. And we also have some visitors from Snyder, Nebraska, from Senator Chronister's district, 15 seniors from the Government Class at Snyder High School, teacher, Alan Harms. They are up here in the North balcony.

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LB 208, 573, 633, 668, 693,  
739, 751, 766, 790, 816,  
869, 875, 892, 952

Would they also be recognized and welcome to your Nebraska Legislature to you. Yes, the Clerk will now, before we commence Final Reading, read some matters in.

CLERK: Mr. President, Senator DeCamp would like to print amendments to LB 816; Senator Carsten to 693. (See pages 1368-1369 of the Legislative Journal.)

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 573 and find the same correctly engrossed; 633, 668, 739, 751, 766, 790, 869, 875, 892 and 952 all correctly engrossed.

PRESIDENT: All right, we're ready then if all the members are at your desks, we're still on Final Reading. Mr. Clerk, will you commence on Final Reading, LB 208.

CLERK: (Read LB 208 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 208 pass. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read record vote as found on page 1370 of the Legislative Journal.) 30 ayes, 17 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 208 passes. The next bill on Final Reading, Mr. Clerk, is LB 383.

ASSISTANT CLERK: (Read LB 383 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 383 pass. All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read record vote as found on page 1371 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 383 passes. Before we go to the next bill, I notice that we have some rolls being passed out. If you want to know what that is for, why we'll have to all recognize Senator Howard Peterson's birthday. It was March 22, Howard, and we say "happy birthday" to you and join in. Happy birthday, Howard. The next bill on Final Reading while you're celebrating Senator Peterson's birthday is LB 421.

ASSISTANT CLERK: (Read LB 421 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure hav-

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LR 256, 267  
LB 208, 383, 421, 577, 631,  
634, 677, 720, 796, 827

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer this morning by Senator Rumery.

SENATOR RUMERY: Prayer offered.

PRESIDENT: Roll call. Have you all registered your presence? Record the presence, Mr. Clerk.

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

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

CLERK: I have no corrections, Mr. President.

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

CLERK: Mr. President, two letters from the Governor. The first addressed to the Clerk. (Read letter regarding LBs 631 and 827.) The second, Mr. President, addressed to the membership. (Read letter regarding LBs 577 and 634.)

Mr. President, new resolution, LR 267 offered by Senator DeCamp. (Read LR 267 as found on pages 1392 through 1395 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, the bills that were read on Final Reading yesterday are now ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LBs 796, 720, 677, 421, 383, and 208. Anything further, Mr. Clerk?

CLERK: I have nothing further, Mr. President.

PRESIDENT: We are ready then for agenda item #4, resolutions. There is a 15 minute limit. Commencing with LR 256.

CLERK: Mr. President, LR 256 was offered by Senator Nichol and many of the members. It is found on page 1280 of the Journal. (Read LR 256.)

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. President and colleagues, the purpose of LR 256 is to call on the federal government and the

March 24, 1982

LR 268  
LB 761, 208

CLERK: (Continued reading the roll call vote.) 21 ayes, 24 nays, Mr. President.

SENATOR CLARK: The motion lost. Senator Haberman....or do you have anything to read in?

CLERK: Yes, sir, I do.

SENATOR CLARK: After he reads in, would you like to recess us until 1:30.

CLERK: Mr. President, Senator Koch would move that the Clerk be directed to request that the Governor return LB 208 to the Legislature for further consideration. I have received from the Enrolling Clerk her announcement of presenting bills to the Governor for his consideration.

Mr. President, new resolution, LR 268 offered by Senator Chambers. (Read LR 268 as found on page 1403 of the Legislative Journal.) That will be laid over, Mr. President.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President, I move that we recess until 1:30 p.m. this afternoon.

SENATOR CLARK: You have heard the motion. All those in favor say aye. Opposed. We are recessed until 1:30.

Edited by:

  
Mary A. Turner

March 29, 1982

LB 757, 208, 568, 928, 948

to feed all the Senators. Welcome to the Legislature. The next speaker is Senator Cope.

SENATOR COPE: Mr. President, members, I was going to call the question.

SENATOR CLARK: Well, you won't have to do that. You were the last speaker. Senator Carsten, do you wish to close? No closing. The question before the House is the advancement of 757. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

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

CLERK: A record vote, Mr. President. (Read record vote. See page 1426, Legislative Journal.) 26 ayes, 13 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. We will now come back to #4 with the motions. Senator Koch. Yes, the Clerk would like to read in first, Senator Koch.

CLERK: Mr. President, very quickly, Senator Chambers has amendments to LB 568 and 948 to be printed in the Journal.

Your committee on Appropriations whose Chairman is Senator Warner instructs me to report LB 928 advanced to General File with committee amendments attached, Mr. President.

SENATOR CLARK: Senator Koch, on your motion, a time limit of fifteen minutes on this.

SENATOR KOCH: Would the Clerk please read the motion.

CLERK: Mr. President, the motion offered by Senator Koch is to direct the Clerk...Senator Koch would move that the Clerk be directed to request the Governor to return LB 208 to the Legislature for further consideration.

SENATOR KOCH: Thank you, Mr. Chairman. Mr. Chairman and members of the body, last week we passed LB 208 after considerable discussion and amending procedures. My motion is to return it from the Governor for some technical amendments to clarify some problems that have been brought to our attention and you all have handouts on your desks, particularly the one from the attorney who represents freeholders of a number of years, and we feel as though if we are going to put a bill to the Governor that is going to try to correct some of the problems with freeholding, it is important we bring it back for technical amendments and that is my motion.

SENATOR CLARK: Senator Remmers.

SENATOR REMMERS: Mr. Speaker and members of the Legislature, I really have a hard time understanding why we should bring this bill back. We passed it last week 30 to 17. It seems to me we have a few things undone yet in this Legislature without bringing something back that we have passed. I question the intent of bringing back for technical clarifications. The rules, Rule 7, does indicate that a bill can only be brought back for technical or clarifying amendments. I am not sure what the amendments are going to be but I have a feeling that they are going to be more than technical or clarifying. I did read the handouts that were handed out this morning. I really can't see that there is anything new there. I want to read another decision that we had last year on a bill that drew a lot of attention which was 376, and in that court case, the Supreme Court ruled that the Nebraska Constitution does not give the Governor the power to return a bill to the Legislature as a clerical function. It seems to me that even if we do ask for it, it is still a clerical function on the part of the Governor to return that bill. I think the Constitution clearly gives the Governor three prerogatives in this situation, one is to sign it, one is to veto it, and the other is to let it become the law after five days without a veto. The Constitution, in this decision it said, "The Constitution clearly provides that if the Governor returns the bill to the Legislature with his objections the bill shall be reconsidered and become the law if it is repassed by a vote of three-fifths of the members elected." But just to return it for clerical purposes I believe the court ruled on 376 last year that the Governor does not have that authority. So even though maybe by 25 or 30 votes it has been said many times this Legislature can do anything, I think in this case it is a question whether they can do anything. I think the Supreme Court decision speaks to this. This bill was debated at length. I think most of us understand the merits, and to come back at this time with all the legislation that we have before us, it seems just a little bit absurd. I would ask you to not bring this bill back.

SENATOR CLARK: Are you asking for a ruling on that?

SENATOR REMMERS: To have a ruling, yes.

SENATOR CLARK: Senator Koch, did you wish to respond?

SENATOR KOCH: Yes, I will, Mr. Chairman.<sup>1</sup> If you turn to page 48 in your Rule Book under Rule 7, Section 3, (d), and I will quote to you, "For a bill on General File, no

motion to reconsider shall be in order until the bill has failed to advance three times; for a bill on Select File, no motion to reconsider shall be in order until the bill has failed to advance two times; for a bill passed on Final Reading, no motion to reconsider shall be in order except by the introducer of the bill, for technical or clarifying amendments." Now the Supreme Court has also said, and you all know this, has stated the Legislature operates under their own rules and that is our rule, so therefore, I am not out of order. The argument Senator Remmers presents to you is not germane to the subject of returning from the Governor to Final Reading for the purpose of a technical amendment and I will give that to you later on.

SENATOR CLARK: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, someone said once that he who does not learn from history is condemned to repeat it, and I well recall one time when Senator Moylan sat in the seat occupied by Senator Kahle now, he had a bill that had traveled a rather tortuous path through the Legislature, we had had about four or five Final Reading copies of it printed, found its way over to the Governor's Office and was resting upon the Governor's desk and Senator Koch asked to have it returned for a technical amendment and the bill died an ignominious death over here once it returned. I think Senator Remmers is touching upon something which needs to be explored a little further. I think that, Senator Koch, you could probably explain briefly to us just what is the technical amendment that you would like to take care of.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Senator Schmit, there are a couple. One is we put in this bill "contiguous to the freeholding area" and it has to do with transportation. Another thing was that we tried to put in for the State Department of Education to make appropriate judgment that there shall be a substantial difference in curriculum offerings. Now according to attorneys who deal with freeholdings, they say there is no flexibility and for all practical purposes nothing can happen. That would be the technical amendment. It lost by one vote here one day when a number of people were absent.

SENATOR SCHMIT: But that would be a substantial change to the bill, would it not? There was a very good argument made for the "contiguous" nature of the amendment, and if you remove that, then you have a wide open situation again, do you not?

SENATOR KOCH: No, I intend to clarify that particular part of the bill was offered by amendment under...I think it was Senator Remmers and others who wanted that. But what happened to 208 in the process, Senator Schmit, you know as well as I do that in trying to satisfy all of the different interests, many times you offer things in a piece of legislation that in the end probably have made it of no substantial value.

SENATOR SCHMIT: Senator, I think at this time I would suggest that if we are going to have to suspend the rules to bring the bill back, and without the amendment right before us, it would be most difficult for the body to make a decision as to whether or not the amendment was technical in nature or whether substantive and I think that as you describe it it is more substantive than it is technical.

SENATOR KOCH: Senator Schmit, all I am requesting right now is 25 votes to bring it back to Final Reading, place it back up here. Then there is a motion to reconsider and I know it takes 30 votes. If I am successful at that time I will leave the bill on Final Reading until those amendments can be drafted and printed in the Journal. We will not take any further action today except those two actions.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I guess I would just like to ask a ruling from the Chair on Rule 7, Section 7, (d), and the reason I am asking for that, Mr. President, is the language that is in (d) was put in the rules at my suggestion a year ago because we do seem to spend so much time on reconsideration motions and it was my intention that technical or clarifying amendments only be considered for reconsideration and I suggest that this is not, so I would like to ask for a ruling from the Chair on this motion.

SENATOR CLARK: What Senator Remmers is talking about is a court decision coming down saying that the Constitution does not give the Governor the power to send it back for clerical function. However, the court has always stated that the Legislature operates by their own rules, and under Rule 7, Section 3, (d), it says "No motion to reconsider shall be in order except by the introducer for technical or clarifying amendments." Now, I am going to have to agree both ways. I think Senator Koch is right in bringing it back from that point. However, I really do not think that it is probably a technical or clarifying amendment. So I am going to rule that it is not a technical or clarifying amendment but it is in order to bring it back. Now if Senator



Koch wants to overrule that, he is more than in his right to try that.

SENATOR KOCH: Mr. Chairman, when I say a clarifying amendment, I am going to clarify accreditation because accreditation has entered the high and low and Senator Remmers knows that, and if we expect the State Board of Education to make any kinds of decisions based upon some kinds of substantive decisionmaking, then we might as well forget the whole issue of freeholding. It is a clarifying amendment on an amendment that we tried before and it is on accreditation because right now it is like the Platte River, a mile wide and an inch deep and has no meaning whatsoever and all we are going to do is we are going to be in the courts with litigation on that issue.

SENATOR CLARK: The question before the House now is the return of the bill. As to whether it is a technical or clarifying amendment or not would have to be up to the body when it comes back. However, I have ruled he has a right to bring it back. Senator Remmers.

SENATOR REMMERS: Well, I just wanted to speak to that technical and clarifying amendment. Senator Koch has...

SENATOR CLARK: Well, that really isn't before us yet.

SENATOR REMMERS: Okay, so I will pass.

SENATOR CLARK: Is there anybody else who wishes to speak? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, because of some things that have happened during this session, I am even more keenly sensitive to the Constitution and its requirements, the necessity to maintain it as an inviolate document as much as possible. Now I have no interest in this bill one way or the other. I voted for it on Final Reading. If you asked me everything that the bill does, I could not tell you. It is one of those that did not seem to cause any great amount of harm, so considering that it was one that the Legislature was going to pass, I tagged along. So I am clearing the air on that issue. I wrote a few comments, because my opinion had been asked about the propriety of bringing a bill back once it had been passed by the Legislature, so to save time I am going to restrict myself to what I wrote, and then if you have any questions of me, I will answer them. But what I would say first of all is this is not a reconsideration motion. This is an attempt to get a bill back from the Governor and that is not a motion to reconsider. So the particular rule that was

discussed cannot be applied to this situation. We are not even in a position to reconsider. But the first comment that I made is that after a bill has been passed pursuant to law and delivered to the Governor, the legislative function is completed. There is nothing more for the Legislature to do on that bill. Two, the Governor's powers and duties relative to the handling of a bill are set by the Constitution at Article IV, Section 15. Number three, no rule of the Legislature can supplant or alter the Constitution or take priority over it. Number four, the Constitution lists specifically only three courses of action open to the Governor respecting a lawfully passed bill; one, he can sign it into law; two, he can veto it, and that is done by returning it without his signature and with his objections; three, he may hold it five days with the exception of Sunday, in which case if he does not sign it or veto it, it becomes law without his signature. The fifth proposition, completion of the legislative function lawfully passing a bill and delivery of the bill to the Governor causes the bill to become the "property" of the executive branch. Number six, when the conditions contained in number five above are met, the provisions of the Constitution are triggered and no legislative act can nullify constitutional requirements. Number seven, the Nebraska Supreme Court in *Center Bank against the Department of Banking*, 210 Nebraska 227, 1981 ruled that "The Nebraska Constitution does not give the Governor the power to return a bill to the Legislature as a 'clerical function'". That is found on page 232 of that case. Number eight, any bill returned by the Governor, therefore, must fit into one of the three categories established by the Constitution at Article IV, Section 15. There are no ifs, ands, and buts about it. The Constitution gives three possibilities of action for the Governor. The State Supreme Court has clarified that by saying there is no such thing as a "clerical function" for the Legislature in returning the bill. In order to deal further with a bill that has been lawfully passed by the Legislature, the only legislative alternative open is to use another bill to amend that other one, because if the Governor sends it back here without his signature, even if he says it is because the Legislature asked for it, he is stating an objection or a reason as to why he sent it back without his signature and without signing it. So if the bill comes back even at the request of the Legislature, I think the bill will have been vetoed.

SENATOR CLARK: Now for your edification what I ruled was that the Governor is not sending the bill back. I am ruling on a section of our rules stating that we are asking to have it back for clerical functions, not the Governor. Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, I think, although I have questions about the decision of the Chair about allowing this motion to return, I think that probably it is fine to go ahead and bring the bill back and will vote for that but I do think that unless there is a motion to suspend the rules on this clarifying amendment, the rules would be circumvented by the amendment Senator Koch is proposing, so if the sequence that has been outlined is proper, at this point it seems to me a motion to return the bill to take a look at it again, we have done it before. Senator Schmitt and others have done that so evidently there is precedence, and secondly, I think in order to reconsider the bill we do have to have the motion to suspend the rules and I understand that is the second motion, so with that sequence, I think we can proceed at this time.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. President, I would like to ask the Chair a question for clarification. I just wanted to know, and I will, if we bring this to a vote, I will vote to bring Senator Koch's bill back, but as a matter of clarification, if you had a bill on Final Reading and it passed Final Reading and then it went to the Governor, could any one of us Senators then file a motion to have your bill returned for a clarification or a technical amendment? In other words, once a bill gets past Final Reading, it goes to the Governor, any Senator could then do the same thing and say "Can I have that bill back for clarification?"

SENATOR CLARK: We have done this in the past for a clarifying amendment.

SENATOR HIGGINS: Only for a clarification...

SENATOR CLARK: That is the bad thing about this rule. If I say it cannot happen, it could never happen again. I don't want to make that ruling so that it could never happen again.

SENATOR HIGGINS: So, what you are saying, Senator, just for clarification is what we bring a bill back for?

SENATOR CLARK: The introducer has to do it.

SENATOR HIGGINS: Nobody else could do it?

SENATOR CLARK: No.

SENATOR HIGGINS: Okay, that is all I wanted to know.

SENATOR CLARK: Only the introducer, according to the rule.

SENATOR HIGGINS: Thank you.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, members, the comments in the discussion between Senator Higgins and Senator Clark just a minute ago that indicated that only the introducer can file a motion to reconsider and bring a bill back, I would point out to you that LB 208 was a committee bill, and Senator Koch, of course, as the Chairman of the committee has the right and the privilege to act as the introducer of that bill, but as a member of the Education Committee, I can also tell you that not everybody on the Education Committee is in favor of bringing this bill back. So for whatever that means to the members of this body, I think you should consider that. I think once again we are in a position where we have four distinct stages of debate, General File, Select File, we debate many times on Final Reading, and then now we are debating again once a bill has even been passed from Final Reading. So it means that...and this bill has been much debated on all three of those previous stages. Now we are in a position where we are debating again. If you don't win or don't get your way on the first three times, then you try it the fourth time and that is the procedure that is being used. Now if Senator Koch gets enough votes, then obviously that is as Senator Remmers indicated earlier 25 votes in this body and you are right. But I just suggest to you that we have got according to the calendar up there ten days left. There are a number of bills ahead of us that we haven't even debated yet once, let alone three times, that this bill has been around two years as you can tell by the low number on it, that it has been discussed at length, not only in the committee but out here on the floor, and here we are one more time taking up time debating this issue when we should be talking about something else it seems to me. If the people that are opponents of LB 208 at this point in time feel that strongly about it, then they should have been over in the Governor's office and got the Governor to veto it, and if the Governor sent it back with a veto message, I don't believe there is enough votes in this body to override his veto. It seems to me that is the procedure that the opponents back there behind the glass doors of this piece of legislation should have used and I, for one, am a little bit tired of them using us as pawns in trying to one more time come around to their way of thinking. So I oppose the Koch motion to reconsider LB 208.

SENATOR CLARK: Senator Hefner.

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SENATOR HEFNER: Mr. President, my agenda says a fifteen minute limit. Would you care to rule on that?

SENATOR CLARK: Well, it is either a matter of taking it up now or taking it up tomorrow and I would hate to see it go back on the agenda tomorrow. It just takes that much more time and a repetition of what we are doing right now. That is the reason I want to take a vote on this.

SENATOR HEFNER: Okay, thank you.

SENATOR CLARK: We will do that unless I am overruled. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I wish you had been in the Chair the other day and a very embarrassing situation could have been avoided but I also agree that this ought to be disposed of. But I want to make it crystal clear what I have said in a very brief statement. I am concerned about constitutional considerations. Many times in the hectic last few days of the session, the body can be stampeded into doing things hastily as it did on a bank bill. I stood on the floor, Senator Johnson and one or two others, showing how that bill had in effect been vetoed and nobody paid attention because the constitutional requirements were not at issue in anybody's mind except a few of us, it was who could railroad a bill through. So what I am asking that you consider that I have said is that the Constitution determines what is to be done with any piece of legislation. There is nothing in the Constitution that I saw which allows the Legislature to ask for a bill to be returned in this fashion but I suppose the Legislature can ask the Governor to veto a bill if it chooses, and to my way of thinking that is what is being asked. There is no rule in the Legislature that I know of other than the one that says, "Any situation not covered by the rules of the Legislature can be handled by 25 votes" or something to that effect. So I think what the Legislature is doing limiting it just to a consideration of the rules is saying that there is no rule that authorizes this. So it is implementing by a vote of 25 a stopgap measure to allow the Legislature to do what it wants to do. I agree that the Chair has ruled on the application of a rule but I think something more important than that rule is involved here. The Legislature can ask the Governor to do anything it wants to do but I hope that the Governor is aware of the discussion this morning and will realize that a rule of the Legislature cannot change the Constitution, and if that bill is sent back by him without his signature, then it is vetoed but I want to get a question to Senator Koch

for the record and, Senator Koch, here it is and I will sit down, and whatever time of mine you need to answer you can. Would it be your understanding that if the Governor does send the bill back without his signature pursuant to the request of the Legislature, he has in effect vetoed the bill because he did not sign it into law, he did not hold it five days without vetoing or signing it?

SENATOR CLARK: The question before the House is the return of the bill. Senator Koch.

SENATOR KOCH: Thank you, Senator Clark, members of the body. I am merely using the rules of our Legislature and we establish those and I am not going to quote the rule again. Senator Clark did that. It is my understanding that this body can request that the Governor return this bill and it takes 25 votes to do that, and at that time, once we get the bill returned under this action under our rule, then there has to be a reconsideration motion which takes 30 votes. And then there has to be a motion to return the bill to Select file for a clarifying amendment which I intend to do. That is the issue before us right now and I would request that this body allow this to happen. I remind you when I was a freshman in this body in 1975, I did the same thing with LB 126 and there wasn't that much argument about it at all. And so I am attempting to do the same thing that I exercised that time and I think the rule is still the same rule, that as the introducer of the bill on behalf of the committee, as Chairman of the committee, I am asking to bring it back for a clarifying amendment and then we will follow the procedures according to our rules, and that is my request right now. Thank you, Mr. Chairman.

SENATOR CLARK: The question before the House is the return of the bill from the Governor for a clarifying amendment. All those in favor vote aye, opposed vote nay. Have you all voted? Once more, have you all voted? Senator Koch, I am going to call the vote.

SENATOR KOCH: How many are excused, Mr. Chairman?

SENATOR CLARK: Four, I think.

SENATOR KOCH: Four?

SENATOR CLARK: Senator DeCamp, Senator Wagner, Senator Marvel, Senator Apking.

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

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LB 208, 693

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

CLERK: 14 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. If all Senators will check in immediately please, all unauthorized personnel will leave the floor, all Senators will take their seats including Senator Haberman. The Sergeant at Arms will chain him into the seat please. I would like to announce 60 students from Centura High School, from Boelus, Dannebrog, and Cairo. It is a consolidated school with Donna Eriksen as the teacher. They are in the North balcony. Would you stand and be recognized please by the Legislature. Welcome to your Unicameral. Senator Schmit, Senator Wesely, Senator Kremer, will you all check in please. Senator Von Minden, Senator Lamb, Senator Newell. Senator Newell, would you check in please. Senator Marsh is the last one here so we are all in. Asked for a roll call vote on returning 208 from the Governor. It takes 25 votes. Roll call vote. The Clerk will call the roll.

CLERK: (Roll call vote taken. See pages 1441 and 1442, Legislative Journal.) 25 ayes, 20 nays, Mr. President, on the motion to direct the Clerk to request the Governor to return the bill to the Legislature.

SENATOR CLARK: The bill is returned. The first thing we have to do is go get the bill. We are going to take up LB 693 at the present time.

CLERK: Mr. President, LB 693 (read title). The bill was read on January 7, referred to the Revenue Committee for public hearing. Mr. President, the bill was advanced to General File. There are Revenue Committee amendments pending.

SENATOR CLARK: Senator Carsten, on the committee amendments. 693.

SENATOR CARSTEN: Mr. President, members of the Legislature, I move for the adoption of the committee amendments. The committee amendments increase first the number of days when a change is made for the Board of Equalization to meet from 15 to 60. It not only gives time for the examination of the impact then for recommendation to be made to the Board of Equalization for action, it changes it from 15 days after that approval by the federal level to 60 days. Then also it reinstates the stricken language that was a drafting error on page 6 and, third, in view of LB 454 that is a

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this morning. According to Senator Lamb he wanted to take that up and finish the bill. I think we have an amendment on that bill. That would require suspension of the rules.

CLERK: Mr. President, if I may, the first item is a communication from the Governor addressed to the Clerk. (Read communication as found on page 1454 of the Legislative Journal.) Mr. President, I now have a motion from Senator Labeledz to suspend Rule 7, Section 7 and reconsider the Legislature's action on final passage of LB 208.

SENATOR CLARK: Yes, what is your point?

SENATOR CHAMBERS: Mr. Chairman, I am not going to argue this but I want it into the record. The Governor did send a communication to the Clerk explaining that he was returning the bill. Obviously, he did not sign it and the reason he did not sign it is because the Legislature has to consider it further. I think this is a veto and the only motion which would be in order is one to override the veto or to pass the bill notwithstanding the action of the Governor in returning it without his signature and with his objections. So I am stating for the record I believe a veto has occurred and the only motion in order would be one to override and in that case the bill would have to be voted on in the form it was in when it passed. No amendments would be allowed. And that is my point of order and I am putting it to the Chair.

SENATOR CLARK: Well, I am going to overrule it and I will tell you why. It is going to take 30 votes either way. It is going to take 30 votes to suspend the rules to put the amendment on. It will take 30 votes to override the veto.

SENATOR CHAMBERS: But, Mr. Chairman, here is the crucial point. If it is a veto then the bill cannot be amended. The only vote that can be taken is on the bill as it was passed and that is why I made my order and I am not going to seek to overrule the Chair either.

SENATOR CLARK: Okay, thank you. Senator Koch. All right, Bernice, go ahead.

SENATOR LABEDZ: It is my motion but I was voting on the prevailing side so I put the motion up there and Senator Koch is going to take the opening because I wanted to hear more debate on it. Senator Koch will take my time.



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SENATOR CLARK: All right, Senator Koch.

SENATOR KOCH: Mr. Chairman, before I get into the remarks I want to make I am going to yield to Senator Warner who knows the Constitution better than most anyone else. He has a little tidbit that might clarify the question Senator Chambers just put to you, Mr. Chairman. Senator Warner. You maintain, Senator Warner, that it is an Attorney General's Opinion, that even if the Governor on a veto returns it to us that we can change certain language in the provision?

SENATOR WARNER: That is the contention of Senator DeCamp, I believe, as I recall, that he had an Attorney General's Opinion to that effect. Did he not? I just made the comment as I recalled that Senator DeCamp used to say he had an opinion that a bill that was brought back from a veto could be amended and changed. I don't particularly agree with that as a philosophy but if that is true why either way we could take up LB 208.

SENATOR KOCH: Mr. Chairman and members of the body, I disagree with Senator Chambers' interpretation because as I read our rules and the Supreme Court has stated and the Attorney General has stated at least that the Legislature establishes its rules and they live by those unless they are blatantly unconstitutional, and that rule has been in our rule book for quite some time. I will state very quickly to you why I would like to have this reconsidered and it takes 30 votes, so that I can suspend the rules to bring it back and then 25 votes to return it to Select File for a clarifying amendment, and the clarifying amendment which I would offer would be that since the subject has been raised that unless we allow the State Board of Education some flexibility in determining the best educational needs of a child, that for all practical purposes 208 does not establish any kind of evidence that would give them that flexibility they need. And I have talked to you before about accreditation. Accreditation is granted to schools throughout the state but I want you to know it is not always on the same level nor the same caliber. And the amendment that Senator Beutler and I offered the other day was to try to place into law the fact that there would have to be a substantial difference in the curriculum that is offered before that transfer could be made as far as a freeholder is concerned. I would remind you also that schools can have several significant violations but still be accredited and so the State Board would be powerless to effectively rule that there is a difference that exists between and among the schools. So this in turn as you see could cause

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a considerable amount of litigation that would go on in terms of freeholding. So the issue before us today is shall we try to correct this? I need 30 votes. I request 30 votes to return to suspend the rules and then proceed with the effort and try to move this bill one way or the other and save time that Senator Carsten is concerned about and so am I. So I request 30 votes to suspend the rules.

SENATOR CLARK: The question before the House is suspension of the rules. Senator Labedz. Senator Remmers, on the suspension of the rules.

SENATOR REMMERS: Well, I am probably out of order, Mr. Chairman, but I wanted to say I would still like to address the question that the bill can only be brought back for corrections or clarifications, and the snake oil that Senator Koch is offering is not clarification, it is an entire different rewrite of the bill.

SENATOR CLARK: Senator Remmers, what we are doing right now is suspending that particular rule, so that is why it takes 30 votes. I will agree with that. It is not a clarifying amendment but what we are doing right now is suspending that rule so that we can take it up if they want to take it up, and it takes 30 votes to suspend the rules. Senator Newell. All right, Senator Koch, did you have any closing? On the suspension of the rules.

SENATOR KOCH: Mr. Chairman, I guess you and I will argue about whether or not the amendment would be clarifying but I think it does clarify the conditions under which a freeholder petitions and the possibility and opportunity to place a child in an educational environment that is more suited than that amendment we adopted prior to the time of passage of LB 208. I ask for the reconsideration and 30 votes to reconsider.

SENATOR CLARK: The question before the House is the suspension of the rules. It takes 30 votes. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted on the suspension of the rules? We have three excused. We have four excused. So there is 21 against right now. Have you all voted? Senator Koch.

SENATOR KOCH: I took Illinois math. It's called modern math and I can understand that pretty well without solving X. Thank you.

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LB 208, 408

SENATOR CLARK: Record the vote.

CLERK: 20 ayes, 20 nays, Mr. President, on the motion to reconsider and suspend the rules.

SENATOR CLARK: The motion lost. Senator Koch.

SENATOR KOCH: For what I have committed myself to it, at least it should be a matter of a record vote in the Journal. I think some people committed themselves other ways or my way.

CLERK: Mr. President, a record vote has been requested. (Read the record vote as found on page 1455 of the Legislative Journal.) 23 ayes, 19 nays, Mr. President.

SENATOR CLARK: Senator Haberman, for what purpose do you arise?

SENATOR HABERMAN: Point of order, Mr. President.

SENATOR CLARK: Pardon?

SENATOR HABERMAN: A point of order.

SENATOR CLARK: What is the point of order?

SENATOR HABERMAN: Information, sir. Did the Governor return this bill?

SENATOR CLARK: We asked him to return it and he returned the bill.

SENATOR HABERMAN: And now what happens to the bill?

SENATOR CLARK: He is going to deliver it back to the Governor.

SENATOR HABERMAN: Okay, thank you.

SENATOR CLARK: We will now take up 408.

CLERK: Mr. President, LB 408 was a bill offered by Senator John DeCamp. (Read title.) The bill was read on January 20th of last year. At that time it was referred to the Public Works Committee. The bill was advanced to General File, Mr. President. There are Public Works Committee amendments pending.

SENATOR CLARK: Senator Kremer on the committee amendments.

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LB 208, 408, 602A, 753,  
760, 761, 953, 953A

SENATOR CLARK: No, not that I know of.

SENATOR HIGGINS: Thank you.

SENATOR CLARK: I think we will stop right here. I think Senator Wiitala...well, he already announced the vote though. He was excused. The Clerk has some things to read in.

CLERK: Mr. President, new A bill, 602A offered by Senator Cullan. (Read LB 602A title.) 953A by Senator Schmit. (Read 953A title.)

Senator Schmit would like to withdraw his name as co-introducer of an amendment to LB 760. That is Request 2842, Mr. President.

Mr. President, Senator Schmit would like to print amendments to LB 953; Senator Koch to 761; Senator Landis to 753. (See pages 1458 and 1459 of the Legislative Journal.)

Mr. President, there will be inserted in the Journal a communication to the Governor from the Clerk regarding the delivery of LB 208. (See pages 1457 and 1458 of the Journal.)

SENATOR CLARK: Senator Wiitala. Senator Wiitala. Senator Wiitala, would you like to adjourn us until tomorrow morning at nine o'clock.

SENATOR WIITALA: Yes, Mr. President. I move that we adjourn until nine o'clock, March 30th, with reluctance.

SENATOR CLARK: You heard the motion. All those in favor say aye. Opposed. We are adjourned. I had to check the date to be sure he hadn't set it up a day.

Edited by:

*Marilyn Zank*  
Marilyn Zank

April 5, 1982

LR 293, 294, 295  
LB 208, 428, 571, 633, 790, 924,  
970, 520A, 970A,

CLERK: Mr. President, a few items. The Rules Committee offers a report regarding rule changes previously offered to the Rules Committee. (Page 1605 of the Journal).

I have a gubernatorial confirmation hearing from the Education Committee. (Page 1606 of the Journal).

Senator Vard Johnson would like to print amendments to LB 924. (Page 1606-07 of the Journal).

Attorney General's opinion addressed to Senator Chambers. (Page 1607-08 of the Journal).

A communication from the Governor addressed to the Clerk regarding LB 208, 633, 790, 428, and 571. (See page 1609-10 of the Legislative Journal).

Mr. President, your Committee on E & R respectfully reports we have carefully examined and engrossed LB 970 and find the same correctly engrossed. 970A correctly engrossed.

Mr. President a new resolution LR 293 (read title). LR 294 (read title). LR 295 (read title). All were laid over.

SENATOR LAMB: If I could have your attention for just a few minutes. As you probably know we have a number of priority bills that have not been considered at this point. We have a number of revenue bills and appropriation bills that need further work and so our time is pretty short. In order to consider this whole situation we are scheduling a meeting of the chairmen at noon today in Room 2102, so we can discuss the whole situation and come up with some possible solutions.

SENATOR CLARK PRESIDING

SENATOR CLARK: The first bill we are going to take up under item number four, General File, will be 520A.

CLERK: Mr. President 520A was a bill introduced by Senator Vard Johnson. (Read title). I have an amendment from Senator Johnson to the bill, Mr. President.

SENATOR CLARK: Senator Johnson.

SENATOR JOHNSON: Mr. Speaker, members of the body, LB 520 is a bill that deals with child care and licensing thereof. During the first round debate on LB 520 Senator Cope asked me what I thought this bill would ultimately cost. I indicated