

January 16, 1981

LB 95, 247-283

Mr. President, Senator Schmit would like to have a meeting of the Ag Committee underneath the North balcony now if he could, and it is Ag Committee underneath the North balcony with Senator Schmit, immediately if possible.

PRESIDENT: The Legislature will be at ease until Speaker Marvel determines that we will go back.

EASE

PRESIDENT: The Legislature will come to order just for the purpose of the Clerk reading some matters into the record. Mr. Clerk, you may proceed.

CLERK: Mr. President, Senator Clark would like to announce that Senator Goodrich has been selected as vice chairman of the Telecommunications Committee.

Mr. President, new bills. Read LB 247-265 by title as found on pages 205-209 of the Legislative Journal.

Mr. President, your committee on Appropriations gives notice of agency hearings for Monday, January 26, signed by Senator Warner as chairman.

PRESIDENT: The Legislature will continue to stand at ease until approximately 11:15 a.m.

CLERK: Meet in Room 1517 at eleven o'clock? The Executive Board in Room 1517 at eleven o'clock.

PRESIDENT: The Legislature will come back to order. The Clerk has some matters to read in.

CLERK: Mr. President, I have a reference report referring LB 172-205 and rereferring LB 95. (See page 213 of the Legislative Journal.)

Mr. President, I have new bills. (Read by title, LB 266-283 as found on pages 214-218 of the Legislative Journal.) Mr. President, that is all the matters that I have this morning.

PRESIDENT: Any other messages on the desk, Mr. Clerk?

CLERK: No, sir, I have nothing further.

PRESIDENT: In that case the Chair will recognize Speaker Marvel.

SPEAKER MARVEL: I move we adjourn until Monday, January 19, 1981, at 10:00 a.m.

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LB 3, 278, 468-489

CLERK: Mr. President, new bills. (Read LB 468-489 as found on pages 291-297 of the Legislative Journal.)

Mr. President, your committee on Urban Affairs gives notice of public hearing for February 4, 11 and 18, 1981.

Mr. President, the Business and Labor Committee would like to meet underneath the North balcony at 2:00 p.m.

Mr. President, Senator Chronister would like to have his name added to LB 3 as co-introducer.

SPEAKER MARVEL: No objection? So ordered.

CLERK: Mr. President, Senator Warner offers proposed rules change which will be submitted to the Rules Committee for their consideration. (See pages 298-300 of the Journal.)

Mr. President, Senator Wesely gives notice of Rules hearing scheduled for January 27.

Mr. President, Senator Hefner and Howard Peterson want to add their name to LB 278.

SPEAKER MARVEL: No objection? So ordered.

CLERK: Mr. President, I believe that is all that I have.

SPEAKER MARVEL: Senator Rumery, do you want to recess us until three-thirty?

SENATOR RUMERY: One-thirty?

SPEAKER MARVEL: Three-thirty. The motion is to recess until three-thirty. All those in favor say aye, opposed no. The motion carried. We are recessed until three-thirty.

Edited by:


Mary A. Turner

March 27, 1981

LB 535, 233, 245, 253, 278

CLERK: Mr. President, if I may right before that, Senator Lamb would like to print amendments to LB 245; Senator DeCamp to LB 253; Revenue reports LB 233 to General File with amendments and LB 278 to General File with amendments, (Signed) Senator Carsten, Chair. (See pages 1162-1163 of the Legislative Journal.)

Mr. President, LB 535 was offered by Senator Warner. (Read.) The bill was first read on January 29, referred to Constitutional Revision Committee. The bill was advanced to General File.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, let me first tell you what LB 535 does not do. LB 535 does not put the issue of biennial sessions on the ballot. As a matter of fact, it has no reference to biennial sessions. What it does do is two other things. It would permit the Legislature during the odd session, adopt a biennial budget, which then could be amended, altered just as we would do a bill now in the even number years. Budgets are already submitted on a biennial basis. They have been that way forever and there is no change there. The provisions of the Constitution would permit us to do that portion if we wanted to now but I think it would, personally I support on a program basis, biennial budget so that you give an agency clear instructions as to a policy matter decided by the Legislature, those programs that should be expanded over the two year or reduced in its scope over a two year period. You still make annual adjustments for inflation or whatever other factors you want to affecting salaries so it makes no change there. It would require 33 votes to do the second year funding just as it requires 33 votes now for every budget bill so there is no impact there. The purpose is solely one, in my opinion, to permit the Legislature for a longer period of time to indicate to an agency the programs that they want to expand or the programs we want to reduce. That brings greater efficiency and orderliness. The second part of the amendment permits an A bill or funding for a new program to be extended as far out as four years and I would suggest that if you adopt that portion that you will go a long ways, in fact, you will eliminate the problem we have had since we went to annual sessions in that if you want to pass legislation that has incremental increases in funding, this would allow you to enact and authorize expenditure for up to a four year period with the incremental increase such as we have had in a number of areas would be spelled out into the budget, into the appropriations. It would then be automatically be considered by the Board of Equalization for setting rates. If you remember the problem we have had with

these angles and I ask you to advance this bill.

SPEAKER MARVEL: Senator Sieck was closing. We now vote on the advancement of the bill. All those in favor vote aye, opposed no, 233.

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Have you all voted? There are five excused. Record the vote, Mr. Clerk.

CLERK: 15 ayes, 21 nays, Mr. President, on the motion to advance the bill.

SENATOR NICHOL: 233 does not advance.

CLERK: Mr. President, LB 278 introduced by Senators Goodrich, Hefner and Howard Peterson. (Read title). The bill was first read on January 16, referred to the Revenue Committee for public hearing. The bill was advanced to General File, Mr. President. I do have committee amendments pending by the Revenue Committee.

SENATOR NICHOL: Senator Carsten, are you going to handle the committee amendments, please?

SENATOR CARSTEN: Mr. President and members of the Legislature, LB 278 is a bill that provides for a sales tax refund if the sales tax rate is raised during the term of a fixed price construction contract. That was the basis for the introduction of the bill. And the refund would be equal to the amount of the additional tax that was imposed as a result of that increase. The committee had two amendments that they put to the bill, one was that the contractor shall refund to the Department of Revenue the sales tax savings if the sales tax is reduced during that same period of time. And the second amendment was that it exempt those areas, nonprofit organizations providing services primarily from home health care purposes. Now these are usually provided by hospitals which are exempt anyhow and it was in that light that these two amendments were provided and adopted by the committee, and we recommend and urge your approval of the adoption of the committee amendments.

SENATOR NICHOL: Senator Carsten, I believe Senator Beutler has an amendment to the committee amendments. Is that the way you wish to handle that, Senator Beutler?

SENATOR BEUTLER: I think....I didn't have an opportunity to talk to Senator Carsten, one way or the other, it doesn't matter to me. It would be appropriate because of some of the language in the committee amendments.

SENATOR NICHOL: Okay, Senator. Clerk, would you read in the Beutler amendment?

CLERK: Mr. President, Senator Beutler would move to amend the committee amendments. (Read the Beutler amendment as found on page 276 of the Legislative Journal.)

SENATOR NICHOL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, the Revenue Committee obviously did a good thing in giving balance to this bill when it added the amendment that provided that when the sales tax goes down during the fixed price contract period, that the contractor should pay in to the Department of Revenue the difference. That is in return for the benefit he gets when the sales tax goes up. In theory that all sounds very nice, and obviously in terms of the contractor recovering his money when the sales tax goes up, he is going to make a point to do that because those are dollars in his pocket. On the other hand, when it goes in the other direction there is no way that I can see that the Department of Revenue is going to have information that it is owed money by the contractor. In other words, as a practical matter probably, in my opinion, most of the contractors are not going to pay that amount in to the Department of Revenue. I don't know how you correct something like that. If you are going to have something like this in your law, I am really not sure you should have anything altogether on this situation since there are a lot of different kinds of fixed priced contracts in our society other than construction. But if you are going to have this kind of a law, at least it seems to me you should try to do something to encourage them to abide by the law and to pay in the amount when they benefit by virtue of the law. And so all I am asking is that a provision being put in making it a misdemeanor in the event that they do not pay in that amount so that should they ever be audited it will come to light and they can be penalized, and so that those who wish to take the risk of not paying in that amount know that there is, in fact, some penalty for not doing so. And I made the penalty a two-stage penalty so that it is a one class of misdemeanor if the amount is over \$300 that is involved, and a small misdemeanor if the amount is less than \$300, \$300 being a figure that is in our statute with regard to larceny statutes, a distinction we make in the larceny law. So this simply represents my best effort to albeit probably not an altogether...it is not going to be an altogether effective method of encouraging the people to pay in when they owe the Department of Revenue money. Senator Carsten, my apologies for not having a chance to talk to you about this beforehand, but I just saw it. Thank you.

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SENATOR NICHOL: I have four lights on. Do any of you wish to speak to the amendment to the amendment? If not, Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I have no objection to the amendment. The refund, the change to pay is probably an error that should be corrected. I have no problem there. The penalty, I have no problem with that, and as you say, it would be picked up on an audit and there should be some...if it is intentional, there should be some penalty for it and I see nothing wrong with that as far as I am concerned. Senator Goodrich's bill, and he may want to speak to it, I don't know, but as far as I am concerned, I accept it. Thank you.

SENATOR NICHOL: Okay, Senator Goodrich or Senator Kahle, do either of you wish to speak to the amendment to the amendments? Senator Goodrich, do you?

SENATOR GOODRICH: I will.

SENATOR NICHOL: Okay.

SENATOR GOODRICH: Just to say that I have no objection to this amendment at all. If we owe it, we should pay it.

SENATOR NICHOL: Senator Kahle, you didn't want to speak to the amendment to the amendment, did you? Or did you?

SENATOR KAHLE: Well, Mr. President and members, I don't know what this amendment does to the bill exactly but make it more complicated. I voted to get this bill out of committee and I am trying to figure out why because it looks to me like it is a bucket of worms. If we change the sales tax, I don't see how you are going to tell whether the contractor bought before or after the sales tax went up or down. And if we are going to move the sales tax in increments of a quarter percent which we can do now, I can't really believe it is going to hurt a contractor that much, and it looks to me like he would probably use that much more in bookkeeping if we pass this bill, especially this amendment. Thank you.

SENATOR NICHOL: Senator Beutler, did you want to close on your amendment to the amendment?

SENATOR BEUTLER: I would just make one brief comment. The more I think about what Senator Kahle said, the more I was thinking about the fact that so many of these contracts are

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oral, and you get in a situation where somebody says the contract started at some point in time and I don't know how you ever do prove it, but that is not really to the amendment to the amendments, and, Mr. Speaker, I would say no more on that. Thank you.

SENATOR NICHOL: We are now voting on Senator Beutler's amendment to the committee amendments. All those in favor vote aye, opposed nay.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Have you all voted? Record, Mr. Clerk, please.

CLERK: 30 ayes, 0 nays on the motion to adopt the Beutler amendment, Mr. President.

SENATOR NICHOL: Now we are back to the committee amendments. Senator Carsten, do you want to speak to it?

SENATOR CARSTEN: Now, Mr. President, I move the committee amendments as amended be adopted.

SENATOR NICHOL: I had Senator Kahle and Senator Goodrich on the committee amendments. Senator Kahle, you were first. Did you want to speak to the committee amendments?

SENATOR KAHLE: Well, Mr. President and members, I am still wondering if this bill is really that earthshaking. And I am afraid that even with the committee amendments, especially the committee amendments, where if we lower the sales tax that there is a fee that has to be paid back, and I think this is a fair thing. I think when we talked about it in committee it sounded fair, but since I have had time to think about it, I just wonder how much bookkeeping we are putting upon the contractor and also upon the Department of Revenue in trying to keep up with this thing. I wonder how... I guess I would kind of like to know maybe from someone that might know how big a contract we would be talking about where you would have an appreciable amount of difference, especially if we are only moving let's say a quarter percent in sales tax. It looks to me like maybe we are creating a problem here bigger than we are solving. Thank you.

SENATOR NICHOL: Senator Kahle, did you want to address that question to somebody in particular?

SENATOR KAHLE: Perhaps Senator Goodrich or someone that

might be in the know on construction.

SENATOR NICHOL: Senator Goodrich, you are up next so you might answer the question and continue with your own testimony.

SENATOR GOODRICH: I would be happy to, Senator Kahle. This would cover all contracts whether they be for a \$100 or \$100 million, and believe me no contractor in his right mind is going to cheat on sales tax on any contract because if you get audited by the State Department of Revenue you are going to get a real solid whack if they catch you not paying your sales or not remitting the tax you owe that you have collected to the state. The penalty is terrific on that and this could be in a \$100 contract, as I say, or a \$100 million contract, and there is no problem with the committee amendments on this thing. The arguments you bring up pertain to the bill itself and if we would adopt the committee amendments, then I will be glad to explain the bill.

SENATOR NICHOL: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, as I recall the discussion we had on this particular point that Senator Kahle has raised was that there had to be presented documents to prove the date of the purchase of the equipment and I agree, Senator Kahle, without any question there is going to be some paper work involved but without documented proof either way I think that there could be some problems. But I think that that is understood or it appeared to me at least at the hearing that that was understood by both the Department of Revenue and also the contractors. Thank you.

SENATOR NICHOL: Senator Carsten, was that your closing?

SENATOR CARSTEN: Yes, that would conclude my closing.

SENATOR NICHOL: We are now voting on the committee amendments to LB 278. All those in favor vote aye, opposed nay.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Have you all voted? Record, Mr. Clerk.

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

SENATOR NICHOL: The committee amendments are adopted as amended. Senator Goodrich, do you want to go on the bill?

SENATOR GOODRICH: It is four o'clock, it's up to you.

SENATOR NICHOL: Yes, please do, we want to go ahead and finish this bill.

SENATOR GOODRICH: Okay, fine. Mr. President and members of the body, Senator Carsten pretty well explained the bill but I will repeat it just in case anyone did not catch what he had said. What the bill does is it provides that if a contract exists, say, for example, I, as a contractor am going to build a building for Senator Nichol, and we know the tax rate, we know everything on it before we sign the contract, then after the contract has been signed, the construction is in the process, the state changes the sales tax rate, the rate goes up. Then I have to pay more sales tax on the material that I bought than I had planned on when I signed the contract. That would literally be cutting into my profit off of the job. We did this once before when we raised the sales tax rate but we did it for a specific period of time and what this bill would do is just put it on the books as an established policy that if the sales tax goes up after the contracts are signed and in effect and the contractor is penalized as a result of having to pay an extra sales tax, extra percentage point of sales tax, then he is entitled to a refund of that. By the same token, the reverse side of this coin is that if the contractor...if the contract is signed and the sales tax rate goes down, without this bill the contractor would get a windfall that really belonged to the state. So, consequently it behooves the state, in other words there is no loss or gain either way...the state...all we are doing is establishing a policy to the effect that if the rate changes after the contract is signed up or down, the state gets it if it goes down, the contractor gets it back if it goes up because he did not plan on that money having to be spent at the time he figured his cost on the contract. Now, the Department of Revenue does nothing in regard to this particular thing because of the fact that the contractors all have to keep track of this amount that they have paid on sales taxes and they have to make sure that those sales taxes that are collected by them are remitted on to the state in the event that they have collected them and if the rate went down, that sort of thing. So the contractor does the paper work for you...for the state rather. The Department of Revenue just has the right to go in and audit any time they want to. They can do that right now. So, consequently, all we are doing is establishing a policy that if the rate changes after the sales tax goes into effect...I am sorry, after the contract goes into

effect, either the contractor gets the unexpected expense back or he remits back to the state in the event he is receiving a windfall. It is just as simple as that. We are not...there is no fiscal impact, no particular... there is nothing wrong with this, having this particular policy on the books. Now as far as what Senator Kahle said, for example, if it is an oral contract which any contractor that enters into a construction contract on an oral basis is crazy in the first place, but his records would reflect what invoices he had in his file, and he has to keep track of those. It would reflect what purchase orders, for example, and what dates they were. You can establish a written record right there even on an oral contract which there are, you know, no contractors enter into an oral contract for a construction of a project if they have got their heads screwed on right. So, consequently, there is no paper work for the state to speak of at all. It is all done by the contractor for the state, and having this as a policy for the state, on the books rather as a policy for the state, there is nothing but avoid having to go through this same procedure we did some six or seven years ago when we had to do this but on a temporary basis. For that reason, I would recommend we advance the bill.

SENATOR NICHOL: Mr. Clerk, do you have something on the desk?

CLERK: Mr. President, I have a motion to indefinitely postpone LB 278 offered by Senator Warner. Pursuant to our rules, that would lay the bill over unless the introducer wishes to take it up at this time.

SENATOR NICHOL: Senator Goodrich, what do you want to do?

SENATOR GOODRICH: Heck, let's take it up now.

SENATOR NICHOL: Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, I signed the thing and sent it up a little bit ago. Quickly, three or four reasons. The one obvious one, of course, is the revenue problems we are under at the current time but that is really incidental to my position. In visiting with a couple of the attorneys in the body I am told that this is another one of those areas where the problem could easily be solved without a law if, in fact, there is a problem, and all you simply would have to do on these fixed contracts is have a provision that allowed for increase or a change in the sales tax should it occur during the time of the construction,

which would seem to me no great problem, certainly would not be a disadvantage to any of the bidders all under the same position. But what really concerns me...well, a minor item, there is bound to be some expense in administering just to make sure that it is all correct. But what really bothers me is what it will lead to is a whole series of other exemptions. It would be just as logical for me to introduce a bill at the request of a constituent that is going to buy an \$80,000 combine, however, he will not get it delivered because it takes a while, for three months, so the sales tax ought to be paid at the time you sign the contract at a fixed price, by the way, for that machine and you can go on and on as far as your imagination wants to carry you to where this concept can be carried. I think it is a poor concept, a poor policy, and ought to be indefinitely postponed and particularly because everyone has...if the contractor is the one we are protecting, already has the option of having the contract carry that provision and I see no other need for the law to be enacted. So I move that it be indefinitely postponed.

SENATOR NICHOL: I have five lights on that were on prior to the kill motion coming on. If any of you would like to speak to the kill motion, please indicate and you may speak on the kill motion. Okay, Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Speaker and members of the Legislature, I would just say this that it seems to me that the big major contractors perform in that manner, Senator Warner, but what would concern me is that we really would end up with people who are contracting in other manners actually saying, well, I am going to put an extra half percent in my bid just to be doggone sure that I am covered in case the sales prices go up and so we end up with additional costs for construction across the whole state or whatever the bid may be on. And I just think that we ought to get it into the statute to provide for either the refund or the additional payment.

SENATOR NICHOL: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I would just like to speak briefly on the kill motion. I don't think we should indefinitely postpone this bill. The contractors came to the Revenue Committee with this proposal. We amended it. The body saw fit to adopt this amendment, and this is that if the sales tax rate goes down, well then the contractor would pay for the refund. I think that this bill is fair and just. I realize that if

a farmer goes out and buys a combine and signs a contract, well he certainly does have to pay that sales tax, but I think this is a little bit different. These contractors bid many months in advance. On the large contracts construction runs for many months, many months, and sometimes several years. And so I think that they should have some way to protect themselves. If we don't give this protection to them, they are going to add a little to that original contract and it is going to cost the consumer a little more money. Therefore, I would hope that you would vote to not indefinitely postpone this bill.

SENATOR NICHOL: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to support Senator Warner in his motion to IPP LB 278. Here we go again, down the same path making exemptions in the sales tax and guess who is going to have to pick up the difference. We all know that we are under some very severe financial restraints in this Legislature and this state, so when we start giving specific exemptions to specific individuals or specific businesses, no matter how noble those exemptions are, I think we all need to recognize that the average citizen of this state is going to have to make up that difference. Now I don't see where there is any problem with a contractor building into his contract, into his bid, the language that if the sales tax is increased, that that increase then is passed on to the other party involved in the contract. I don't see any problem with that at all. There are those types of things built into a lot of contracts. So it seems to me that this body should be very careful before we grant these types of exemptions, or as Senator Warner indicated to you, I am sure there could be good cases made for all kinds of exemptions. You know, I recognize that the contractors of this state are in a situation right now where they are fighting some very severe financial difficulties but they are not the only ones. They are not the only ones, ladies and gentlemen. As an individual that has got an operating note coming up here pretty quick, I am going to have to borrow the money to pay the interest on it. I think agriculture is facing that same sort of problem, so it is not just the people out back of those glass doors that are representing specific contracting groups that are facing this problem but those of us that attempt to represent the agriculture in this body are also representing a large group that is facing a large severe financial problem. And as Senator Warner pointed out, agriculture pays their share of sales taxes too. If you don't believe it, go buy an \$80,000 or \$100,000 combine. I urge the body's approval

of Senator Warner's motion.

SENATOR NICHOL: Senator Newell.

SENATOR NEWELL: Mr. President and members of the body, I would like to speak to the kill motion. I would like to support the kill motion. I would like to tell this committee that basically the arguments that are being presented here are...they are fair arguments. They are saying, hey listen, it takes a while to build a building and you know what happens in that time is the sale tax can go up, or it can go down, I mean the original bill the first three times it appeared before the Revenue Committee they never had this new proposal in here to go up or down. The last two times it appeared before the Revenue Committee it did have the proposal that it could go down so you could deal with that fairness question the committee asked. But basically over the last five years that we have heard this bill they say, look, it takes a long time to build a building, and I have this philosophy, I say, well I don't think that is the way we ought to deal with this because it is a precedent, it is a precedent that could be applied to other sorts of things. Now let's just deal with that one for a moment. Let's deal with machinery, farm machinery, farm equipment people, and they say, you know, tractors aren't selling right now, and they are not. And combines aren't selling right now, and they are not. And you know some of these combines we have had in our stock for two years, and what basically has happened is that when we sell it we have a situation where the income tax could have gone up and we don't think that we ought to be paying those taxes. Now the situation is simply this, and that was a bad example the more I think about it. What a damn fool I am. Sometimes you want to not be talking over here and preparing your arguments when you speak on the floor, which I was not doing and that excellent example was not one that I would normally use. The situation....I think what I ought to do is say that I don't believe that we ought to be reducing revenues in these hard times especially when the possibility of tax increases are very likely and the loss of revenue is very potentially great, and I apologize for the mistake I made earlier and basically be opposed to this proposal.

SENATOR NICHOL: Senator Goodrich.

SENATOR GOODRICH: Mr. President and members of the body, to respond to Senator Warner in his comments, he said, for example, that this could be solved without a law. Well, that

is simply not quite right. When you sign a contract according to the law of the State of Nebraska, when you sign a contract, if it is a tax paying party not a tax exempt contract, in other words, the amount of rate of the contract is determined at the time you sign the contract. Take a million dollar contract, for example, half of it is material. You buy that material. If the rate changes one percent that means \$5000, for example, that the contractor would be penalized if the rate went up during the process of the contract. By the same token, if it went down the state could get back \$5000, and as far as putting a provision in to the effect that you could pass it on to the owner in the event of a change then you are doing nothing but penalizing the owner of the building that you are building. He then has to pay \$5000 extra to get his building beyond what he anticipated and what he mortgaged for and what he prepared his money for, he was caught with having to pay \$5000 extra. Now as far as expense of administration, that is so insignificant that it's pathetic because of the fact that the Department of Revenue doesn't do anything now. The contractors do all the bookkeeping. Anytime the Revenue Department wants to they can go out and audit any contractor they want to, but that is not an extra expense. That is the normal course of business where the Revenue Department is concerned. As far as the combine is concerned, if I go out and buy a combine today, the tax rate in effect today is based on the price I agreed to pay today regardless of when the combine is delivered. It can be delivered six months from now. The amount of tax I owe and I am going to pay is based on the sales price that was in effect today that I agreed to. The rate of tax is based on that amount and that is what I have to pay. It doesn't make any difference when the combine is delivered. In the construction project it does because of the fact that you are not buying the material for maybe a year to a year and a half later. And it is for that reason, you know, there just wasn't a legitimate argument brought up against this particular bill that would give a legitimate reason for killing it. For that reason I ask you not to kill this bill.

SENATOR NICHOL: Senator Warner, did you wish to close?

SENATOR WARNER: Just briefly, Mr. President. I suspect there may at least be some, I don't know anybody that orders the \$80 and \$100,000 combines and then pays for them the day of the order. Almost without exception I think they are paid for on delivery, if then. But that would be the tax rate that would be...that we would pay. Again, my concern is the precedent, it can easily be expanded. You can make a logical case for other like examples.

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There is a remedy without this bill as a boilerplate provision of any contract that protects the contractor and that what I understood was the original problem. I have gathered from the conversation that this is a proposal that has been before us three or four times in the Revenue Committee or in the Legislature, and I would just suggest to you that some horses won't sell or ought not to sell no matter how many times they run through the ring, and I think this is one of those kind of horses, and I hope you would vote to indefinitely postpone it.

SENATOR NICHOL: That was the close on the kill motion. We are now voting on the kill motion. All those in favor vote aye, opposed nay. Have you all voted? Senator Warner, there are 7 excused. Now you are on.

SENATOR WARNER: Mr. President, in fairness to all sides I guess I will ask for a Call of the House because a simple majority of those voting as I would understand it kills it on General File, right, Pat?

SENATOR NICHOL: That is correct.

SENATOR WARNER: So I hate to do that at this time of day that we spent the time on the bill, so...

SENATOR NICHOL: The question is, shall the House go under Call? All those in favor vote aye, opposed nay. Now you may vote. Record the vote, Mr. Clerk.

CLERK: 24 ayes, 0 nays to go under Call, Mr. President.

SENATOR NICHOL: The House is under Call. Will all unauthorized people please leave the floor, and Sergeant at Arms, will you round up those that are not excused? Those that are excused are Senators Clark, Dworak, Barrett, Haberman, Richard Peterson, Fenger and Cullan. Senator Goll, would you check in, please. Senator Kilgarin, would you check in, please. Senator Kremer, would you check in, please. Senator Schmit, would you check in, please. Senator Lowell Johnson, would you check in, please. We are looking for Senator Apking, Senator Wesely and Senator Rumery, Senator Higgins. Senator Chambers, too. Senator Warner, we are still missing Senator Apking, Senator Chambers, Senator Higgins and Senator Wesely. Do you want to proceed?

SENATOR WARNER: Mr. President, I...if the Health Committee gets here, then I assume they have been notified and are on their way.

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SENATOR NICHOL: Okay, we will wait then. Thank you.

SENATOR WARNER: I don't like to see bills killed with half the body voting, so, even though I would win that way.

SENATOR NICHOL: We are looking for Senator Newell also. We are missing only Senator Chambers at the moment. Senator Warner, would you like to tell what the....the members that came in late, what we are voting on?

SENATOR WARNER: Mr. President, the motion is to indefinitely postpone LB 278, and I will ask for a roll call vote. That will be quicker than waiting for call ins.

SENATOR NICHOL: Okay, proceed, Mr. Clerk. We are voting on the kill motion by Senator Warner on LB 278. All those in favor vote aye, opposed nay, and we will have a roll call vote.

CLERK: (Read the roll call vote as found on pages 276 and 277 of the Legislative Journal). 20 ayes, 20 nays, Mr. President, on the motion to indefinitely postpone.

SENATOR NICHOL: The kill motion failed. Senator Goodrich, what do you want to do?

SENATOR GOODRICH: I move to adjourn until nine o'clock tomorrow morning.

SENATOR NICHOL: Well, before you do that, may we read some things into the record.

SENATOR GOODRICH: If you so wish.

SENATOR NICHOL: Let's do that, Pat.

CLERK: Mr. President, I will be very brief. I have a Reference Report from the Reference Committee referring LB 795 through 819. (See pages 722 and 278 of the Legislative Journal).

SENATOR NICHOL: Senator Goodrich has moved to adjourn until tomorrow morning at 9:30....nine o'clock...nine o'clock. All those in favor say aye. Opposed nay. We are adjourned until nine o'clock tomorrow morning. Thank you for your patience this afternoon. We have run a little longer than we anticipated, but you have been very patient and we appreciate it.

Edited by

L. M. Benischek
L. M. Benischek

January 14, 1982

LR 205

meantime I think it is highly necessary that we pass this resolution and at least put our Attorney General in a position so he can hire someone and defend our good people of Nebraska that are losing their property.

SPEAKER MARVEL: The motion is the adoption of LR 205. All those in favor of the resolution vote aye, opposed vote no. Have you all voted? Have you all voted? Clerk, record the vote.

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

SPEAKER MARVEL: The motion is carried. The resolution is adopted. Do you have any other items in there before we go to General File?

CLERK: Mr. President, new bills. (Read by title for the first time LBs 834-836 as found on pages 287-288 of the Legislative Journal.)

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign engrossed LB 664. Okay, the Clerk will read LB 278.

CLERK: Mr. President, LB 278 was a bill offered by Senators Goodrich, Hefner and Howard Peterson. (Read.) The bill was first read on January 16 of last year. It was referred to the Revenue Committee for public hearing. The bill was advanced to General File. The Legislature considered the bill yesterday, Mr. President. At that time there was a motion to adopt committee amendments. That was approved and a motion to amend offered by Senator Beutler that was also accepted. I now have, Mr. President, a motion to advance the bill.

SPEAKER MARVEL: Senator Goodrich.

SENATOR GOODRICH: Yes, Mr. President and members of the body, this is the bill that you will recall that we left off with yesterday. Just to reiterate to refresh everybody's memory, the bill provides that if a contractor and an owner sign a contract to build a particular building and the contract is going to extend over a two year period, the contractor doesn't buy the material he is buying for that project until possibly a year later. If the sales tax goes up he can apply for a refund from the Department of Revenue for the amount of the increase only. If the rate of tax goes down, he must then refund to the State of Nebraska the difference between what the contract provided for in the form of the rate or the rate that was in effect at the time of the signing of the contract and the lower

rate he must refund that back to the state. It is just a policy statement to set in the statutes so that the contractors can plan it accordingly. The owners can know what they are going to pay in the future for a building that is going to take two years to build or something like that and the Department of Revenue can then know how to handle this particular thing. We have done this twice before in the past, once when we originally set up the sales tax in Nebraska and again, when we put the sales tax in effect in Omaha. We put this same provision in both times and it was handled very well by the Department of Revenue and all the contractors and all the owners. So it is for that reason, all we're doing is setting into the statutes a policy so the Department of Revenue can plan accordingly. The owners and the contractors can plan accordingly, no fiscal impact whatsoever. I would urge your advancement of the bill.

SPEAKER MARVEL: Senator Howard Peterson.

SENATOR H. PETERSON: Mr. President, members of the Legislature, I would just rise again to support Senator Goodrich on this bill. Some of you in this Legislature have never had the opportunity to work with contractors and to issue sizeable contracts. A couple, three years ago I built a sizeable building in Grand Island, a half a million dollar building and of course you don't build that kind of a building in one year's time. And so as I see the economy now it is very possible and with some of the bills that are before the Legislature, we may be increasing the sales tax. We may be increasing it now and maybe a year or two from now we may be decreasing it. It appears to me that it would be very fair to make this kind of an approach. The question was raised yesterday how do we know that somebody won't do some reneging on this thing. I think all of you should know that when a product is delivered to a site the person who does the delivery also brings along a ticket and you also get from the contractor a copy of the ticket and on that ticket at that time is the sales tax. So the thing that would appear to me is it is very definitely something that will appear on the invoice at the time the contractor takes the delivery and it just doesn't seem to me that as long as the Revenue Department has the opportunity to go in and audit these if there is any possibility anybody can do any finagling.

SPEAKER MARVEL: Senator Hefner.

SENATOR HEFNER: Mr. President, members of the body, I rise to support Senator Goodrich's proposal and am a co-sponsor of it. When the Revenue Committee heard this bill there was nobody opposing it. In fact, most of them thought

it was it was just a fair, just bill. Contractors, if this bill advances or passes, contractors may receive a sales tax refund if the sales tax is raised during the time of construction. However, if the sales tax decreases, then the contractor would have to pay the state more. Contractors bid many of these projects months ahead and after they receive the bid, then sometimes it takes a long time to finish the project and so I think this is only fair that we give them a little leeway. I feel that perhaps some of the contractors would bid a little less if they knew this. Senator Warner mentioned to us yesterday that farmers that buy large equipment should be subject to the same thing if this bill passes. I think that is a little bit different because when the Board of Equalization meets, if they have to adjust the sales tax rate, they usually let us know a month or two or three ahead of time and so that way the farmer could adjust his buying to the different conditions. Therefore, I would urge you to support this measure.

SPEAKER MARVEL: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, two or three things I think you need to keep in mind. Go back and look at the fundamental sales/income tax law. The concept is very plain, plainly stated in that statute that the sales tax should be imposed upon the consumer and that a retailer cannot absorb that tax unless there is an exception for that and in a real sense you can argue that a contractor is merely the agent for the eventual consumer and you are relieving them or under existing law you are requiring him to, the contractor, to absorb that tax increase should it occur. My response to that is that the problem, if it does exist, that I don't question it is, is that it can be readily resolved without a change in law and it is readily resolved by having the contracts provide for that in the event it should occur which places this situation in the same basis that anybody else is and still is consistent with that original concept that you didn't manipulate the price by absorbing the sales tax and that is really what you are asking in effect to do. For comparison I use farm equipment for a like analogy. Let me use automobiles. That maybe affects more people. Now if you go down and buy a car off the lot, true when you license it, you pay the sales tax in effect that day. You sign the contract though, it may be done all in one day but if you made a special order on a car which some people do, you could well order when the new model came out and that might be in October and you may well be in the position of not being able to...you aren't going to

pay for it that day but you sign a contract with a known amount. Most of you, I would assume, know you are committing yourself to a 3% sales tax if it is outstate but if by January 1 the Board of Equalization has increased the, by virtue of appropriations of the Legislature, increased the rate to 4%, your car is delivered on January 2nd and that is the day you would pay for it, that is the day you would pay the additional 1% in sales tax too, the identical same position that the contractor is involved here and I see no logic to separate this one instance out and then pretend that it is not comparable or similar to a whole host of citizens can find themselves in throughout the state when a sales tax rate is in effect. And I particularly see no point in this law when there is a remedy without a new statute and I would think that it is ill-advised to do. Finally, I also suggest that maybe this is only the step for some other. Yesterday evening I went down and was reading my mail. I was rather struck by the fact that here was a letter from a group suggesting that 278 was a good vehicle for some other exemptions that they had in mind and I suppose I could think of a dozen things that might be good to put on 278 too, all justified unto themselves but when you look at the total picture then, I think it is poor public policy and I would hope the body would see fit not to advance this bill to become law because if there ever was a bill introduced that is not needed, this is it because a remedy is available in the contract as it originally is signed and it would be consistent that that remedy is consistent with the intent of the legislation of sales and income tax when it was originally introduced and for that matter, still stands. I would urge the bill not be advanced.

SPEAKER MARVEL: Senator Marsh. Is Senator Marsh in the room?

SENATOR MARSH: I had an inquiry I wish to address to the introducer.

SENATOR GOODRICH: Yes.

SENATOR MARSH: Is there a minimum? In other words, if there are just a few dollars involved are we going to go through the paper work? Most of the time I would assume that these would be a number of dollars involved if someone would, but would there be a minimum of say \$20 or so so that we don't have to go through a lot of paper work for a very small amount? \$10, whatever?

SENATOR GOODRICH: Senator Beutler and I were just talking about this particular thing and we were talking about adding the word "written" for example so that the contracts would have to be written, number one. I have no objection

to that. The only question on the minimum is that, does that discriminate among contracts? Can we do that if... I have no objection to it if we can avoid a constitutional question.

SENATOR MARSH: I am simply thinking about we round out dollar figures on our income tax. We try not to have the Department of Revenue return when this amount is a minimum figure because it costs so much to issue a check and to do the paper work involved. I don't know that this is a big item but I just would like to be aware that if it is twenty-eight cents being requested and it costs us five dollars and fifty cents to process the paper work, that is not quite fair to the State of Nebraska.

SENATOR GOODRICH: I would agree with you, Shirley, and I would agree to a thousand dollars as a minimum contract or something like that.

SENATOR MARSH: All right, I don't think...it doesn't need to be a specific figure because I don't know how much of a contract would be involved with sales tax cost for instance, but I am thinking about the refund of the sales tax. Perhaps a minimum figure could be put in and maybe that could be ten dollars, maybe it could be....

SENATOR GOODRICH: Fine. I would have no objection to that. In fact, the good part about this, Shirley, is, Senator Marsh, is that the contractor does all the paper work. They are the ones that are asking for the bill just so that they can set the policy.

SENATOR MARSH: Well, not entirely, because when we're refunding dollars there is a certain amount of paper work that still has to take place at the state level although I see your point about the contractors being the one involved with the larger amount of paper work. Thank you very much.

SENATOR GOODRICH: Thank you.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. President, Senators, I rise in support of this bill. If you consider the millions of dollars that we spend in highway construction and repair, when a contractor bids that job, it might be a year before it is completed. If there is bridges involved, it could take two to three years before the contractor that is building the road actually gets to lay the pavement. Maybe he has to wait until the...I'm sorry, I'm hearing things in the background. I lost my train of thought. The taxpayers ultimately are going to be

paying a higher cost because when a contractor bids a job it is going to take him, especially if it is a road building thing, perhaps one to two years before he actually gets that road laid. The materials, concrete particularly, has been going up in price every year. Now when a contractor bids based on the price of the concrete today and he is figuring 3% sales tax in some counties and cities, or 4½% sales tax in other cities such as Omaha and Bellevue, then....I'm sorry, Senators, I keep getting all this background noise and losing my train of thought. Once they pay for the materials and they get that added sales tax added on, they are going to lose a great deal of profit because they bid the job at a 3% tax or a 4% tax and perhaps by the time they actually get to buying the materials, the sales tax has been increased. So now contractors, when they bid state jobs and county road repair or when a homeowner, home builder is going to give you a bid on building you a new home or a garage, they are going to put a little cushion in there just in case we legislators, Senator Stoney, in case we legislators might decide to increase the tax or in case the city in which the contractor is doing the buying might decide to increase the tax. It isn't fair to a contractor. It isn't fair to the taxpayers if we are going to force these contractors to build in a little higher bid to protect themselves from losing their profit. They don't operate at a 10% margin of profit or even 5%. So a sales tax increase could actually take their profit away so they are going to have to do something to protect themselves if we don't and that is why I urge the passage of this bill. And I'm sorry that I lost my train of thought so many times. Thank you.

SPEAKER MARVEL: Senator Warner, do you wish to be recognized?

SENATOR WARNER: Only to point out a couple of things. I wanted to talk about construction done by a governmental subdivision. Either they are exempt from sales tax or the provisions of law is such that their sales tax is refunded so that is not the issue in this bill whatsoever. It is one we have dealt with on this floor some of you will recall the last two or three years primarily with the University who uses, by law, uses the refund concept but any change in tax has no effect. And finally, two other things, you know, some of the discussion has brought concerns to my mind that I hadn't thought about, the issue of a verbal contract or not. It would be pretty neat if we could always just use the verbal contract, I must say. It is not legal to require it to be written. Certainly you are creating a whole new problem, the problem of the job, the material for the job is brought out and there is a notation made of what is brought out and kept track of and I've never seen a construction project of any size that didn't go both ways. I have seen those loads hauled back which obviously they bring

more than is needed. So then you've got another job to check to make sure that the material that they say was used in Building A, in fact, all was so then you've got another auditing cost if this thing gets to any...at that period of time to any extensive amount to deal with. Again, the problem can be readily, easily solved without a law. And how many times have I heard some of you who are advocating this stand on the floor and say, what we need is fewer laws. We don't need to have a law for everything. If there was ever a situation where you don't need a law, this is it because the vehicle is there in the contract that is originally signed and doing it that way is consistent with the concept that is now in the law that the consumer must pay the tax that the retailer or in this case, you are requesting the agent as the contractor to absorb the tax completely in violation of the intent of the sales tax law. I would urge the bill not be advanced.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker, Senator Warner covered most of what I had in mind but I was surprised to find that we have in statute that a retail dealer cannot include the sales tax in his price. I'm talking about especially farm machinery. I think many of you that are farmers know that when the sales tax issue first came up, at least I did and I assume others did, when we made a deal with the implement dealer we sometimes say, well you pick up the sales tax and you've got yourself a deal. And of course they quoted this statute to us that it was illegal for them to do that. That was not used very long. They found out it wouldn't work so I guess I wonder why you couldn't write contracts the same way. It isn't hard. It doesn't take a mathematician to figure out what that sales tax amounts to on a contract. Of course you have so much labor and so much material involved so you might have to make a determination there but you are putting the burden then on the person that is getting the construction done for the sales tax. That is what we have out on the farm is that the burden is on us to pay the sales tax. Thank you.

SPEAKER MARVEL: Senator Goodrich, do you wish to close?

SENATOR GOODRICH: Just briefly. I have been talking with Senator Beutler and Senator Marsh and I have agreed that we advance this bill to Select File and then we will be working on an amendment to apply to it, to adopt on it on Select File. It will provide two things, one, the contract must be written and number two, that a minimum amount must be incorporated so that the Department of Revenue does not process a twenty-eight cent check and spend three or four or five dollars

processing a twenty-eight cent check. I would be perfectly agreeable to accepting those amendments. I think they are good amendments and I would suggest we move it to Select File and we will put those amendments on it. Then you can still make your mind up on the Final Reading. Thank you.

SPEAKER MARVEL: The motion before the House is the advancement of LB 278 to E & R for review. All those in favor of that motion vote aye, opposed vote no. The motion is to advance the bill. Have you all voted? Record the vote.

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

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is 349. Senator Haberman is absent so the bill will be temporarily laid over. Senator DeCamp, 126.

CLERK: Mr. President, LB 126 offered by Senator John DeCamp. (Read.) The bill was first read on January 13, 1981. The bill was referred to the Judiciary Committee for public hearing. It was advanced to General File, Mr. President. There are committee amendments pending by the Judiciary Committee.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. President, members of the Legislature, as originally drafted LB 126 redrafted the definition sections of the criminal code to provide various provisions related to shoplifting. The original draft also contained mandatory and enhanced penalty sections which were not consistent with the penalty sections in the criminal code. The Judiciary Committee has adopted amendments which substantially redraft the bill. A new theft section entitled "Theft and Shoplifting" has been created with definitional sections which are consistent with current definitions in the criminal code. The amendments also strike all inconsistent penalty clauses in the original bill and insert penalty clauses which are consistent with the existent penalty provisions of the criminal code. I would ask for the adoption of the committee amendments.

SPEAKER MARVEL: All those in favor of the...I'm sorry. Okay, there is an amendment on the desk to the committee amendments.

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments by striking subsection (2) of Section 3.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

January 19, 1982

SENATOR CLARK: The motion lost. The next amendment is amendment number two of Senator Vickers to Section one. He wants to read a few things in first.

CLERK: Mr. President, very quickly, new bills: (Read by title for the first time, LBs 895-914 as found on pages 343-347 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Public Works Committee for January 29, February 10, 11 and 17. That is signed by Senator Kremer as Chair.

Mr. President, Retirement sets hearings for Wednesday, January 7 and Revenue sets hearings for January 25, 26 and 27, signed by the respective chairmen.

I have a reference report referring LBs 848 through 880.

Mr. President, your committee on Enrollment and Review reports that 511 be reported to Select File with amendments, 192 Select File with amendments, 231 Select File with amendments, 454 Select File, 304 Select File, 69 Select File with amendments, 139 Select File, 139A Select File, 305 Select File, 239 Select File with amendments, 410 Select File with amendments, 278 Select File with amendments, 126 Select File with amendments, all signed by Senator Kilgarin.

SENATOR CLARK: We are now ready for the second Vickers amendment to Section one.

CLERK: Mr. President, the amendment reads as follows: On page 2, line 13, strike the word "life" and insert "safe yield."

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, since that is more of a technical one there the following amendment on Section two would be more applicable to take up and I think the Clerk has other amendments on Section one so if you would want to skip over this and go to the other amendments that are on Section one, that would be fine with me. You have other amendments and I think Senator Beutler and some other people might have amendments on Section one if you want to go ahead and take those up at this time.

CLERK: So are you withdrawing. . .you don't want this one then, Senator?

SENATOR VICKERS: That one is more of a technical one. It

January 26, 1982

LB 278

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer this morning by the Reverend Gale Baldrige, First Baptist Church here in Lincoln.

REVEREND BALDRIDGE: Prayer offered.

PRESIDENT: Roll call.

CLERK: Mr. President, Senator Clark would like to be excused for the morning.

PRESIDENT: Have you all registered your presence so we can get started? 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 this morning, Mr. President.

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

CLERK: Mr. President, I have hearing notices for the Business and Labor Committee. That is signed by Senator Barrett. One for the Public Health Committee signed by Senator Cullan, and a third from Senator DeCamp for the Banking, Commerce and Insurance Committee.

Mr. President, Senator Goodrich would like to print amendments to LB 278 in the Legislative Journal. (See page 417 of the Legislative Journal).

some member of the appeals tribunal you can only bring in a lawyer. I don't think that was our intent when we passed the law initially. I don't think that should be our intent today. So I offered the amendment to tell the appeals tribunal and anybody else, look, you can bring in any person to help you out if you want to do it and that is the function of the amendment.

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

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the Johnson amendment.

SENATOR CLARK: The amendment is adopted. Are there any further amendments?

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 410.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed no. The bill is advanced. LB 278.

CLERK: Mr. President, there are E & R amendments to LB 278.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: (Mike not on.) ...278.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted.

CLERK: Mr. President, Senators Goodrich and Beutler now move to amend and the amendment is on page 417 of the Legislative Journal.

SENATOR CLARK: Senator Goodrich.

SENATOR GOODRICH: Mr. President, members of the body, this is the amendment that Senator Marsh and Senator Beutler requested that I agreed to on General File. I did agree to it so we are putting it on now. It provides that the contracts in question shall be in writing and the other provision is that if the amount, this is what Senator Marsh wanted, if the amount of the refund was less than \$10 they wouldn't have to fool with it in the Department of Revenue. I move the adoption of the amendment.

February 10, 1982

LB 278, 126

SENATOR CLARK: Is there any discussion on the Goodrich amendment? If not, all those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The amendment is adopted.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: (Mike not on.)

SENATOR CLARK: You heard the motion to advance the bill. All those in favor say aye, opposed. The bill is advanced. LB 126.

CLERK: Mr. President, LB 126, there are E & R amendments to 126, Mr. President.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 126.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted. Anything further on the bill?

CLERK: I have several, Mr. President. The first is by Senator Beutler found on page 289 of the Journal.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Pat, I have a second amendment up there, do I not?

CLERK: Yes, sir.

SENATOR BEUTLER: I would withdraw the first amendment then.

CLERK: Mr. President, Senator Beutler would then move to amend. The amendment is on page 472 of the Journal.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, to refresh your memory, this bill has to do with shoplifting. It is the shoplifting bill. It more explicitly defines the different shoplifting offenses and then it allows for photo-

February 16, 1982

LR 222
LB 126, 137, 139, 212,
212A, 215, 278, 304,
353, 410, 417, 421

PRESIDENT: Any discussion on the motion to appoint a committee of five to escort the Chief Justice into the Chamber? Hearing none, all those in favor then of the motion to appoint the committee signify by saying aye, opposed nay. Motion carries and the Chair appoints the following committee to escort the Chief Justice; Senator Nichol, Senator Vard Johnson, Senator DeCamp, Senator Cullan, and Senator Beutler. Those members would please follow Senator Nichol up the aisle and go to escort the Chief Justice. And now the Chair will read some matters in.

CLERK: Mr. President, new resolution, LR 222 by Senator Chambers. (Read.) Pursuant to our rules, that will be laid over, Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 215 and find the same correctly engrossed; LB 304 correctly engrossed; LB 410 correctly engrossed; LB 278 correctly engrossed; LB 126 correctly engrossed; LB 212 correctly engrossed; LB 212A correctly engrossed; LB 353 correctly engrossed; LB 417 correctly re-engrossed; LB 139 correctly engrossed; LB 421 correctly engrossed; all signed by Senator Kilgarin.

Mr. President, your committee on Banking whose Chairman is Senator DeCamp instructs me to report LB 137 advanced to General File with committee amendments attached, Mr. President.

PRESIDENT: While we are waiting for the committee to come back, the Chair takes pleasure in introducing Bill Hefner, son of Senator Elroy Hefner. He is under the North balcony. Will Bill stand up and be recognized. Bill, where are you? Welcome to the Unicameral, Bill. The Legislature will be at ease until the committee returns. The Chair recognizes Sergeant at Arms, Ray Wilson.

SERGEANT AT ARMS: Mr. President, your committee now escorting his honor the Chief Justice of the Supreme Court of the State of Nebraska.

PRESIDENT: The committee will escort the Chief Justice to the podium. Chief Justice Norman Krivosha.

CHIEF JUSTICE NORMAN KRIVOSHA: (Gave the State of Judiciary Message as found on pages 689 - 703, Legislative Journal.)

PRESIDENT: The committee will escort the Chief Justice

April 14, 1982

LB 115, 278

I can't deny a point of personal privilege. Go ahead.

SENATOR HIGGINS: Mr. President, I just want to point out on this LB 115, I have here in my file a memo from the Professional Insurance Agents of Nebraska saying they support this bill. Now I can understand why they would, because it gives them an excuse to raise insurance rates and then they can say the Legislature did it to you but we are going to reap it. I just want you to know the Professional Insurance Agents, I am not one of them, they are for the bill.

SENATOR CLARK: The Clerk will read the bill.

ASSISTANT CLERK: (Read LB 115 on Final Reading.)

SENATOR CLARK: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? All those in favor vote aye, opposed vote nay.

ASSISTANT CLERK: Senator Clark voting no.

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

SENATOR FOWLER: I would like a roll call.

SENATOR CLARK: All right, a roll call has been requested. The Clerk will call the roll.

CLERK: (Roll call vote taken. See pages 1921 and 1922, Legislative Journal.)

SENATOR CLARK: Senator Wiitala, for what reason do you arise?

SENATOR WIITALA: (Mike off) I wish to change my vote from yes to no for purposes of reconsideration.

SENATOR CLARK: All right.

CLERK: Senator Wiitala changing from yes to no for purposes of reconsideration. 19 ayes, 27 nays, Mr. President.

SENATOR CLARK: Motion lost. The bill did not pass. The Clerk will read LB 278.

ASSISTANT CLERK: (Read LB 278 on Final Reading.)

SENATOR CLARK: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? All those in favor vote aye, opposed vote nay.

April 14, 1982

LB 278, 590, 604

ASSISTANT CLERK: Senator Clark voting yes.

SENATOR CLARK: I would like to announce that we have 78 fourth graders from Montclair Grade School at Millard. They are in the North balcony. Would you stand and be recognized please. Record the vote. Welcome to the Legislature. Have you all voted? Record the vote.

ASSISTANT CLERK: (Read record vote. See pages 1922 and 1923, Legislative Journal.) The vote is 35 ayes, 12 nays, 2 excused and not voting, Mr. President.

SENATOR CLARK: The bill is declared passed on Final Reading. The Clerk will now read LB 590.

ASSISTANT CLERK: (Read LB 590 on Final Reading.)

SENATOR CLARK: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? All those in favor vote aye, opposed vote nay.

ASSISTANT CLERK: Senator Clark voting no.

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

SENATOR BEUTLER: How many are missing, Mr. Speaker?

SENATOR CLARK: Pardon?

SENATOR BEUTLER: How many are missing? Could I have a roll call vote please?

SENATOR CLARK: Yes. A roll call vote has been requested. The Clerk will call the roll.

CLERK: (Roll call vote taken. See page 1923, Legislative Journal.) 20 ayes, 26 nays, Mr. President.

SENATOR CLARK: The bill fails. It did not pass on Final Reading. The Clerk will now read LB 604.

CLERK: (Read LB 604 on Final Reading.)

SENATOR CLARK: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass with the emergency clause attached? All those in favor vote aye, opposed vote nay. Have you all voted? Record the vote.

April 14, 1982

I mean a roll call vote.

SENATOR CLARK: (Interruption) a record vote and a roll call vote.

SENATOR NEWELL: You know, I have changed my mind. I would like to have people vote for this resolution. The more I think about it, Senator Chambers has a good point.

SENATOR CLARK: Well, we are talking about a roll call vote. The Clerk will call the roll if he don't want anyone else in here.

CLERK: (Roll call vote taken. See page 1937, Legislative Journal.)

SENATOR CLARK: We can't hear anything up here at all, gentlemen, please. I just say gentlemen because the ladies are not talking. When you quiet down, then we will go ahead and call the roll. (Gavel) That helped some. Go ahead and call the roll.

CLERK: (Roll call vote continued.) 16 ayes, 12 nays, Mr. President.

SENATOR CLARK: The motion lost.

CLERK: Mr. President, the bills read on Final Reading this morning are now ready for your signature.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 89, 714, 714A, 669, 669A, 609, 609A, 604, 604A, 278, 629, 629A, 480, 568, 909, 854, 854A, 835, 757, 753, 708, 688, and 966.

LR 212, 266, 268, 269, 272, 274, 277,
278, 287, 292, 293, 295, 298, 304,
313, 316, 331, 359, 380, 388, 389
LB 278, 378, 378A, 480, 568, 602A,
604, 629, 629A, 669A, 688, 693, 708, 760,
835, 909, 967, 522, 212, 212A, 255, 255A

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RECESS

PRESIDENT LUEDTKI PRESIDING

PRESIDENT: Has everybody recorded your presence?
Record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President. Mr. President, I have a reference report from the Executive Board referring a gubernatorial appointment. (Page 1971 of the Legislative Journal.)

Mr. President, new resolutions. LR 388 offered by Senators Cullan and Newell. (Read LR 388 as found on pages 1973 and 1974 of the Legislative Journal.) Mr. President, 389 offered by Senator Wesely. (Read LR 389 as found on page 1974 of the Legislative Journal.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Koch. That will be inserted in the Journal. (See pages 1974 through 1976 of the Legislative Journal regarding LB 602A.) That is on LB....Bingo, that is right, senator.

Mr. President, I have a message from the Governor addressed to the Legislature. (Read message. Pages 1976-77 of the Journal regarding LB 669A.)

Mr. President, two other communications from the Governor addressed to the Clerk. (Read communications regarding LBs 278, 378, 378A, 480, 568, 604, 629, 629A, 688, 693, 708, 760, 835, 909, 967. Page 1977 of the Journal.) A second letter to the Clerk, Mr. President. (Read letter regarding LBs 609, 609A, 669, 714, 714A, 854, 854A. Page 177 of the Journal.)

Mr. President, I have a gubernatorial appointment of Mr. Robert Borgmann to the Motor Vehicle Industry Licensing Board. (See page 1978 of the Journal.)

Mr. President, the bills that we have read on Final Reading this morning are now ready for your signature as well as the resolutions that were passed Wednesday of this week by the Legislature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LR 212, LR 266 and LR 268, 269, 272, 274, 277, 278, 287, 292, 293, 295, 298, 304, 313, 316, 331, 359, and 380. And the LBs are engrossed legislative bills 522, 212, 212A, 255, and 255A. Okay, as I understand it we