

January 19, 1981

LR 6  
LB 311-356

read some bills in now, we will recess until 3:30 and come back and hopefully there will be more bills to process and then I would like to have a meeting with the chairmen in Room 1520 at 9:00 tomorrow morning. The Clerk now will....Senator Carsten.

SENATOR CARSTEN: Mr. President, I am hopeful to have a meeting of the Revenue Committee at 3:00. We may be a little late getting back in Exec Session, so I just wanted to alert you of that.

SPEAKER MARVEL: Okay. Senator Carsten is calling a meeting of the Revenue Committee for three o'clock this afternoon. In which room? 1520. Okay, Mr. Clerk, go ahead.

CLERK: Mr. President, first of all, Senator Marsh has an explanation of vote to be inserted in the Journal. (See page 244 of the Legislative Journal.)

New bills, Mr. President. Read by title LB 311-355 as found on pages 244 through 255 of the Legislative Journal.

Mr. President, new resolution. (Read LR 6 as found on pages 255 and 256 of the Legislative Journal.)

Mr. President, Senator DeCamp asks unanimous consent to have the names of all the members added as co-introducers to LR 6.

SPEAKER MARVEL: Okay, the motion before the House is the unanimous consent request that all names be added to the resolution which was just read. Is there objection to that motion? If not, the motion is so ordered.

CLERK: Mr. President, pursuant to our rules....

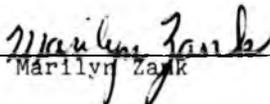
SPEAKER MARVEL: It will be in the Journal?

CLERK: Yes, sir, it will be taken up some time later.

Mr. President, LB 356. (Read title to LB 356 as found on pages 256 and 257 of the Legislative Journal.)

SPEAKER MARVEL: Okay, the motion by Senator Marsh to recess until 3:30 p.m. All those in favor of that motion say aye. Opposed no. We are recessed until 3:30 this afternoon.

Edited by:

  
Marilyn Zark

LB 9, 34, 51, 78, 91, 124,  
125, 133, 150, 178, 195,  
205, 223, 272, 273, 273A  
277, 317, 320, 321, 345  
363, 376, 409, 439, 459

March 6, 1981

PRESIDENT LUEDTKE PRESIDING

REVEREND GERALD LUNDBY: (Prayer offered.)

PRESIDENT: Senator Higgins, do you want to put your light on and then we will make sure we have got enough. Thank you. Record the presence, Mr. Clerk.

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

PRESIDENT: A quorum being present, is there any corrections to the Journal?

CLERK: I have no corrections to the Journal, Mr. President.

PRESIDENT: All right, the Journal will stand correct as published. Any messages, reports or announcements?

CLERK: Yes, sir, I do. Mr. President, first of all, your committee on Education whose Chairman is Senator Koch to whom was referred LB 78 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; LB 317 General File with amendments; 320 General File with amendments; 321 General File with amendments; 91 Indefinitely postponed; 223 Indefinitely postponed; 363 Indefinitely postponed; 439 Indefinitely postponed. (Signed) Senator Koch, Chair.

Mr. President, your committee on Banking, Commerce and Insurance whose Chairman is Senator DeCamp to whom was referred LB 376 reports LB 376 to General File with amendments; LB 133 Indefinitely postponed; and 277 Indefinitely postponed. (Signed) Senator DeCamp, Chair.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 51 and find the same correctly engrossed; LB 125 correctly engrossed; 150 correctly engrossed; 195 correctly engrossed; 205 correctly engrossed; 272 correctly engrossed; 273 correctly engrossed; 273A correctly engrossed; 409 correctly engrossed; and 459 correctly engrossed. (Signed) Senator Kilgarin, Chair.

Mr. President, LB 9, 34, 124, 178 and 345 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 9, LB 34, LB 124, LB 178, and LB 345.

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LB 321

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Okay, we will take up 321 and then we have an announcement and then that will close the day's activities.

CLERK: Mr. President, LB 321 was offered by the Education Committee. (Read.) The bill was first read on January 19. It was referred to Education. The bill was advanced to General File, Mr. President. There are committee amendments attached.

SPEAKER MARVEL: Senator Koch.

SENATOR KOCH: Mr. Speaker, members of the body, LB 321 is a bill that was brought to the Education Committee by the independent colleges of the State of Nebraska and it basically is a higher facilities educational act. This type of legislation has been adopted in a number of other states including Illinois, Iowa, Indiana, Tennessee, New York and several others and what it does is it would create a five member board to be appointed by the Governor and then it would allow the private independent colleges to use tax exempt bonds for the purpose of building. And of course each college would stand on its own merit and I want to make it very clear that we are not placing the credit of Nebraska behind this proposal. Each of the eleven independent institutions of the State of Nebraska are responsible for their bond raising, selling their bonds and the advantage to them would be that it would be tax exempt and would help them to defer some of the cost of building. My position is this, that we talk about the private sector of education. There are some states that deal with it in certain ways. I believe this is the way the State of Nebraska should approach and say to the independent colleges, here is a way we are willing to help you in trying to minimize your construction costs. So this is what LB 321 is about. It allows them up to four years to take care of the financing but that of course you know would be negotiated by the bonding agents and others in terms of selling those bonds and the last thing I remind you of is that this does not place Nebraska in line in terms of an obligation financially or morally or anything else. Each independent college, whether it be Hastings College, Dana, Midland, Doane, Concordia and several in the Omaha area, Creighton, they would look at that independently. They would assume full liabilities and they would be the ones who would suffer the risk and the bond owners would suffer the risk in case something happens to the institution. Knowing those institutions, I'm sure you know they have been around a considerable period of time. They have demonstrated the ability to withstand inflation high cost, diminishing enrollment and I have trust that they would be

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helped tremendously if we were to adopt LB 321 and I ask that you consider it very seriously. There is one committee amendment which is technical only and I ask for the adoption of that amendment.

SPEAKER MARVEL: Senator Warner.

SENATOR WARNER: Mr. President, I thought there was a committee amendment. I would speak after that is adopted.

SPEAKER MARVEL: Senator Koch, do you want to speak to the committee amendment?

SENATOR KOCH: I just asked for the adoption of it, Mr. Speaker. I move for the adoption of the committee amendment.

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

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of the committee amendments.

SPEAKER MARVEL: The motion is carried. The committee amendments are adopted. Senator Koch, do you want to advance the bill? Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I want to rise to make my position clear so it is not misunderstood. I have consistently opposed for some time and a number of senators have made speeches on the same basis of concern for expansion of the use of tax exempt bonded authority and I voted against, I think, every bill that has done that since the first one for housing which I did support. But I share the concern that others have expressed what the long term impact of this policy is going to go. I am tempted almost to go with some kind of amendment that allows all of us to borrow money for all purposes which the funding comes from tax exempt sources. I don't like high interest rates either but I think those who expressed a broader concern, a national concern, for this policy are dead right and because of that belief, I will vote against advancement or of the passage of 321, notwithstanding the purpose for which the funds are to be used. Thank you.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise also to indicate to the body the reason that I will oppose this bill.

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If you will notice in the committee I voted against the advancement of the bill basically for the same reasons that Senator Warner just pointed out. I have problems with the use of tax exempt revenue bonds. I have problems with those used, whether it be to create agricultural loans or many other uses that we are using them for. I especially have a problem with it when we are using it in the manner that 321 calls for. So, that is the reason that I opposed the bill in the committee and I will be opposing the bill here. I just wanted to indicate to the body why I would be voting the way I am on an educational bill that came out of the Education Committee. Thank you, Mr. President.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. President and members, I also rise to oppose the bill. As you will note from the committee statement I also voted against advancing the bill and really for about the same reasons that have been indicated by Senator Vickers and Senator Warner. I think we are really overdoing this tax exempt bond thing. It looks like the goose that laid the golden egg. I don't think it can be all things to all people. The original concept of the bill was good in a limited instance but as you broaden the thing, and if you will note, I voted against the bill which would provide the same type of funding for farmers and I have voted consistently against this kind of financing for the last several years on the various bills which have provided this sort of financing for a number of different purposes and I am convinced that this is the proper stance, that this sort of financing is really not sound in the long run and I urge the body to not pass this bill.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, Senator Lamb has really said everything that I would say and so I would withhold further comments except to urge the body not to vote for the bill. Thank you.

SPEAKER MARVEL: Senator Koch, do you wish to close on the motion?

SENATOR KOCH: Mr. Speaker, my motion would be to advance LB 321 to E & R initial. Obviously there are several individuals who have concerns about granting the opportunity again of a tax exempt bond but I would remind you that these institutions have served a considerable purpose to the State of Nebraska and they have primarily raised their money from student tuition and private sector. The nation presently is looking at tuition tax credits to postsecondary education.

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Frankly I don't buy that but I will support this type of effort at a state level. If we believe in the tenth amendment then that is where we should operate and this is an effort to give to the private sector, to public education, a chance to use these tax exempt bonds. If you are familiar with any of these institutions, and I am familiar with many of them including my own alma mater, Hastings College. The Board of Trustees and others are not irresponsible in their buildings and I submit to you that they will not be irresponsible in buildings now even though they may have this tool available to them. They will do it very frugally and they will do it only based upon enrollment and conditions of existing buildings. We have given this opportunity to a number of subdivisions and I see nothing wrong with saying to the private institutions of this state, we endorse your role and missions. We endorse what you are doing. You have performed a good service. We will provide you this opportunity to help to diminish the severe crush of inflation and other problems they have like any other public institution. I cannot see where this will open the door to great, great advantage to bond houses or anyone else because these institutions, if you pay attention to them, are not guilty of overbuilding. If anything, they probably do not have enough structures in terms of some of their needs and knowing that, I can accept the full responsibility of LB 321 with no concerns whatsoever that will be misused, abused and I submit to you that when these colleges and universities that are private, some of them, the liberal arts and others, most of them are liberal arts. Some of them like Creighton perform a considerable service to us in terms of doctors, dentists, lawyers, you name it. I think it is time to recognize them for the fine work they have done and offer them this opportunity to be able to take care of building costs, thereby I think, minimizing tuition costs to students and they are getting rather high out there in those institutions, and the least we can do is to help them to stay in business and doing a good job such as they are and help them to some advantages that might be available to them to financing public construction of their buildings through tax bond exemptions. I ask that the bill be advanced to E & R initial.

SPEAKER MARVEL: The motion is the advancement of the bill. All those in favor vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Koch.

SENATOR KOCH: Mr. Speaker, I would ask for a Call of the House and a roll call vote.

SPEAKER MARVEL: Shall the House go under Call is the first motion. All those in favor of placing the House under Call

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LB 321, 364, 394

vote aye, opposed vote no. Record.

CLERK: 26 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: All legislators are to be in their seats. You will record your presence. Senator Fenger, Senator Cullan, Senator Schmit, no, he is excused, Senator Lamb, Senator Hefner, Senator Vickers, Senator Chambers, Senator VonMinden. Senator Koch, everybody is accounted for except Senator Chambers. We have two absent. Okay, call the roll.

CLERK: (Read roll call vote found on page 2121 of the Legislative Journal.) 30 ayes, 15 nays, Mr. President, on the motion to advance.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The Clerk has some items to read into the record and then I have got an announcement to make.

CLERK: Mr. President, Senator Kremer would like to print amendments to LB 364. (See pages 2121-2122 of the Journal.)

Mr. President, Senator Johnson would move to reconsider the body's action in failing to pass LB 394 on Final Reading.

Mr. President, Senator Vard Johnson and Fowler move to override the Governor's line item veto of Program No. 305 relating to Local Transit Authorities. That is all that I have.

SPEAKER MARVEL: Is that all? We are going to talk about the work that we have yet to do in the session and this starts tomorrow so it is a short paragraph. I will read it. "Select File will be worked tomorrow which is Wednesday. The order will be changed from the work sheet order, that is priority bills will be handled first. Actual order will be Select File, A bills, an Appropriation bills, priority bills, special order bills, all other bills, namely bills advanced from consent calendar and the final item is that we possibly may go into the evening session if we can't somehow or other make a little more progress than we have in the last few hours. Thursday we will handle Select File again and then go back to General File on Friday." And if we are lucky and if we have cooperation we may get our work done before we adjourn sine die. Tomorrow morning we start at nine o'clock because the Exec Board has an important meeting at eight o'clock. Senator Nichol, do you want to adjourn us until nine o'clock? What is the matter? Senator Clark.

SENATOR CLARK: Mr. President, I just wonder if there is time to get anything off of General File on Friday. We would never be able to get it across, would we?

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LB 213, 243, 320, 321, 488

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is 213.

CLERK: Mr. President, if I may right before that, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 488 and recommend that same be placed on Select File; 320, Select File; 243, Select File; 321, Select File. All signed Senator Kilgarin, Chair. (See pages 2148 and 2149 of the Legislative Journal.)

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LB 321, 243, 551-554

SENATOR CLARK: The motion is withdrawn. We go to LB 321.

CLERK: Mr. President, if I may right before that, read some material in. A new resolution LR 189 by Senators Newell, Wiitala, Higgins, Vard Johnson. (Read LR 189 as found on pages 2282-2283 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports it has carefully examined and engrossed LB 243 and find the same correctly engrossed, 551, 552, 553 and 554, all correctly engrossed.

Mr. President, with respect to LB 321 I do have E & R amendments pending.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 321.

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

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

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Thank you, Mr. Chairman. Mr. Burnett has notified me that we have a problem in the bill on page 30 and this is a reference problem, a sectional problem and so in order to correct this and not have to bring it back from Final Reading then once it has been approved, I move that this technical amendment be adopted so that it harmonizes with the section and would not be inappropriate at a later time. I ask for the adoption of the amendment.

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

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on the motion to adopt the Koch amendment.

SENATOR CLARK: The Koch amendment is adopted. Senator Koch, what do you want to do with the bill? Do you have anything else on it?

CLERK: No, sir, nothing further.

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LB 321, 242, 494

SENATOR CLARK: Senator Koch.

SENATOR KOCH: I move to advance to E & R final as amended.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 242.

CLERK: Mr. President, LB 242, I have no E & R amendments but I do have an amendment from Senator Nichol to the bill, Mr. President.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Clerk, would you read that amendment?

CLERK: It is on page 1759, Senator.

SENATOR NICHOL: Yes, what does it say? It says something about....

CLERK: It is two pages long, Senator. The new language is...

SENATOR NICHOL: No, no, no, oh, yes, the new language just... what does that say?

CLERK: The county sheriff or the county Board of Corrections...

SENATOR NICHOL: Yes, Mr. Chairman, the only thing this does in some counties, namely Lancaster and Douglas, they have a commission or a committee, whatever it calls that that handles the money and this just includes them in the bill so that they can act in the same capacity that a sheriff acts in other counties. I move for the adoption of the amendment.

SENATOR CLARK: Is there any discussion on Senator Nichol's amendment? If not, all those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 30 ayes, 0 nays on adoption of Senator Nichol's amendment.

SENATOR CLARK: The amendment is adopted. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, I move for the advancement of the bill.

SENATOR NICHOL: The motion before the House is the advancement of LB 242. All those in favor say aye, opposed. The bill is advanced. LB 494.

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LB 12, 172, 242, 302, 321,  
344, 376, 411, 488, 494

SPEAKER MARVEL: The House is under Call. All legislators should be in their seats and record your presence. Senator Burrows, will you record your presence? Senator Koch, will you record your presence? Senator Schmit, will you record your presence? Senator Remmers. Mr. Sergeant at Arms, we have two excused and we need to find Senator Schmit. After we have completed this activity, will you please remain. We have an announcement to make. Senator Newell, are you ready for the roll call. Do you want a roll call vote? Okay, call the roll.

CLERK: (Roll call vote taken. See page 2313, Legislative Journal.) 23 ayes, 25 nays, Mr. President.

SPEAKER MARVEL: The motion lost. May I have the attention of the Legislature for just a moment. I would like to read a statement. "The Governor has notified us that he will act on all legislation by Friday, May 29th. Through the Governor's cooperation in taking this prompt action, it will enable us to meet on Friday, May 29, 1981, and adjourn sine die that day." It is now my recommendation that we continue with our original calendar and meet this Friday and adjourn that date sine die. I believe this accommodates most of the members desires. However, please understand that all bills not correctly engrossed at the start of business today, the 88th Day, cannot be considered on Final Reading until the final date, the 90th Day. This proposal allows us to accomplish all goals set forth for this legislative session. If you have questions, I would suggest that you talk either to Senator Lamb or to Mr. O'Donnell. Do you have something you wish to read in?

CLERK: Yes, sir. Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 172 and find the same correctly engrossed; 242, 302, 321, 344, 411, 488, and 494 all correctly engrossed. (Signed) Senator Kilgarin.

Mr. President, I have an Attorney General's opinion addressed to Senator Lamb regarding LB 376.

SPEAKER MARVEL: Underneath the South balcony, it is my privilege to introduce as a guest of Senator Jim Goll his daughter visiting from San Francisco, Mrs. Sarah Goll Haskell. Where are you located? Will you please stand up so we can see where you are? Welcome to the Unicameral. What is the next order of business, Mr. Clerk?

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LB 285, 302, 321

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 285 pass. All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read record vote as found on page 2395 of the Legislative Journal.) 40 ayes, 9 nays, and all members were voting.

PRESIDENT: LB 285 passes. The next bill on Final Reading, Mr. Clerk, is LB 302.

ASSISTANT CLERK: (Read LB 302 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 302 pass. All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read record vote as found on pages 2395-2396 of the Legislative Journal.) The vote is 37 ayes, 10 nays, 2 present and not voting, Mr. President.

PRESIDENT: LB 302 passes. The next bill on Final Reading is LB 321.

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

PRESIDENT: Motion on the desk, read the motion.

ASSISTANT CLERK: Mr. President, Senator Beutler moves to bracket LB 321 to the time uncertain.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I am just going to get up a couple of times today and they are both on what I consider to be extremely important policy matters that have come to my attention just in the last day or two. With regard to this bill you may recall it is the bill that creates a Educational Facilities Authority which is allowed to issue tax exempt bonds on behalf of private institutions, both religious and nonreligious institutions for the purposes of helping them finance capital construction projects essentially. Today, this morning, I received from the Attorney General a reply to a request for an opinion which I had sent out last week. That reply has been passed around to you and it should be on your desk and the reply says two things. Basically it says that in the opinion of the Attorney General it would appear that Section 3 of Article VIII, of Article XIII of the Constitution of the

State of Nebraska is violated and that we are lending the credit of the state to private institutions and I think that I concur very strongly with that opinion. Let me give you just a little bit of history with regard to Section 3 of the credit of the state. It used to read simply, "The credit of the state shall never be given or loaned in aid of any individual association or corporation," and then when we wanted to explicitly make loans to students for example and distinguish the 321 situation. We are talking about loans to institutions, not to students, but when we wanted to make loans to students we asked specifically to go back to the Constitution and put in specific language exempting the loans to students from the credit to the state prohibition and I am suggesting to you that if we want to do what we want to do in 321 we are going to have to go back to the Constitution of the State of Nebraska and do the same thing for loans to the institution. So, in short, it would appear that the bill is in violation of that prohibition. In addition to that if you would look through the opinion you would see that the Attorney General raises questions with regard to the establishment clause of the Constitution, that is, the clause that has to do with the separation of church and state and points out that there are serious questions and possible violations to the Constitution with regard to that provision which would certainly put this bill into litigation and I think it is a problem we should look into more carefully and try to sort out more carefully before we pass the bill. So I just wanted you to have that information and I think that the problem is serious enough that we should vote to bracket the bill until these questions have been resolved. Thank you.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I agree with what Senator Beutler is attempting to do only because had I offered a motion, mine would have been to bring it back to strike the enacting clause, but if they are willing to bracket in this fashion the same purpose will be accomplished and if anybody has doubts about the validity of the Attorney General's opinion, and I do entertain considerable doubt about most of them, this is one subject that I have had occasion to study and I think he is absolutely right in what he is declaring here and that it would be an impermissible action by the state. So I am in support of Senator Beutler's motion.

PRESIDENT: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, I, too, would like to rise and support the motion to bracket.

I have, since this bill came up for General File discussion, looked into the matter more fully. Wesleyan University is in my district and I checked with them. Of course they would probably like the opportunity to use these sort of bonds, nevertheless, over the years they have had a very extensive building program at that university where they have solicited donations, private support for the construction program that they have initiated and they have been able to, through private contributions, I think build up a very, very fine campus with many new buildings, multimillion dollars worth of expansion and construction there all through private contributions and that is what private colleges are all about. So I guess this bill has got ramifications that are very important and I think Senator Beutler is right to raise some issues. I think perhaps in time there may be some good served by the bill and so I don't think we ought to kill it. Nevertheless, holding for a year is probably a wise thing to do and in that time we can probably learn more about the situation and correct some of the problems that Senator Beutler has identified and then pass a piece of legislation that we are sure will serve the state.

PRESIDENT: The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Mr. President, Senators, I know this is a losing proposition. I don't know how many times I have stood or sat in this body and listened to the Constitution this, the Constitution that. So many of these young lawyers, I sometimes wonder if they are speaking as attorneys or Supreme Court Justices. In my opinion, Senators, in my opinion, gentlemen, you know, I just wonder why we have got so many people in this Legislature that haven't been appointed to the United States Supreme Court. Anytime you want to defeat a bill go talk to Paul Douglas and say, "See what you can find." Now it looks to me like this bill is going to get held or killed and eventually you are going to close the private colleges because you aren't going to give them a chance to raise money this way, so eventually the good old University of Nebraska at Lincoln and at Omaha and our state supported schools will be educating these children and the taxpayers can pay more money to educate them. I see it as a grand design to close private schools. I see it as a grand design on the part of education to have an excuse for more tax dollars to raise the budget. If you want to vote to kill the bill, bracket the bill, hold it over for another year, go ahead. You've got all these Supreme Court Justices sitting here this morning telling you that it is constitutionally wrong and when the private schools close, who have been doing better on their own than our own universities have been doing with tax dollars when it comes to the cost of educating youngsters, then we will have nobody but ourselves to blame for again raising real estate taxes. Remember the little

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John F. Kennedy College. That closed. So if you want to sit here and listen to the Supreme Court Justices of the State of Nebraska and if you want to eventually close the private colleges so that we can have bigger and better state colleges, go ahead. Don't advance the bill but that is the way I see it. Thank you, Senators.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Well I want to thank Senator Beutler. He was in on this bill from the very beginning and had had its origin several months ago or more. In fact one of his friends in a law office is the author of it and I have known Mr. Johnson for quite some time and I have always admired his integrity in law. I would remind you that this bill is modeled after bills in about eight other states including the neighboring states of Iowa, Indiana, New York and several others and I give a speech once in a while on the art of legislative diplomacy and how you can place a bill in limbo. One of the first things you do is you get an Attorney General's opinion which says it may be or by analogy it could be or by some other degree it could be. Senator Beutler brings up students. We are not talking about students. We are talking about brick and mortar and buildings. Now if the authority is lending its credit, the state's credit, to the private sector that is difficult for me to be able to stretch my imagination that far. The authority of five individuals selected by the Governor who when the private colleges approached them and said that they wished to sell revenue bonds for construction of a facility and those bonds have been approved by a bond agent and counsel which means that that individual university or college, his credit has been checked, their ratings is good, that then the bonds can be sold. In no way does the state, are they held responsible for those bonds. The private institution itself is held responsible. If those bonds go into default that institution is responsible. Its endowment funds or whatever sources they have and those who buy the bonds will be left holding the bag. But again by this late moment, and I am sorry Senator Beutler, knowing his concerns about this bill from the very beginning, did not seek a question at that time rather than waiting to this last moment. I am terribly disappointed and Senator Beutler will tell you this. He had some concerns a long time ago but, no, one more time, the last day, the last moment, you cloud the issue with an opinion written by a man I have watched write numbers of opinions. A few years ago we had one on transportation of private students by public buses and immediately that same proposal came down constitutionally suspect. Recently Lincoln schools challenged it and what did Lincoln schools find out? Yes, you will transport those children to a point which is normally on a bus route and

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there they will get off and walk to their private school but that same person who wrote this opinion wrote an opinion on the same issue a number of years ago but rather than jeopardize the bill I can wait until January. Then I want Mr. Mosher and I want Mr. Beutler and I want a few other of the young, bright, sharp attorneys to sit down and tell me specifically how an authority of this state is lending its credit or its financial qualities to the private institutions for the purpose of selling bonds, for the purpose of building dormitories or other kinds of academic institutions. So, Mr. Speaker, I will accept the motion to bracket, not uncertain, but to January of 1982 and I amend that motion to that effect.

PRESIDENT: Before we call on the next speaker the Chair would like to introduce some guests of Senator Howard Peterson, 5 students from District 28 in Hall County. They are up here in the North balcony with Jean Birth, teacher. I believe they are back up there. Would you wave to us if you are up there in the balcony yet? Maybe they have already gone. Anyway they were here from Senator Peterson's district. Okay, the next speaker is Senator Howard Peterson. Oh, there is an amendment on the desk. Senator Koch, are you still....?

SENATOR KOCH: Well I would like to make one additional statement.

PRESIDENT: All right, go ahead. You still have....

SENATOR KOCH: I have had a chance to rethink my position. I am not going to accept the bracketing. I am willing to take the risk. Run the bill. I want to find out whether Mosher is right or somebody else is right.

PRESIDENT: Okay. Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman, members of the Legislature, I would rise to correct statements that Senator Wesely made. Having been a member of the Board of Trustees at Midland College for eighteen years and having been well acquainted with the church colleges around this state, many of the buildings that have been built on those campuses have been built with the aid of the federal government, not by all subscription as far as gifts are concerned. Many times we have to have front end money and those came from gifts but certainly I think this body ought to understand that the federal government has been supportive of private education in this state in many, many ways and I don't believe it would be right for us to have the statement on the books that everything that has happened at Wesleyan and

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everything that has happened at Midland and everything that has happened at Hastings and everything that has happened at Concordia, everything that has happened at Creighton, etc., happened all from gifts of people in this area. I just wanted to make that statement.

PRESIDENT: The Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. President and members, I rise to support the Beutler motion and I would remind Senator Higgins that I am not an attorney and I have no desire to ever be a member of the Supreme Court of this state or any other state or the United States for that matter. I would also remind Senator Higgins that we all stood at one point in time when we first came to this body and swore to uphold the Constitution of the State of Nebraska and the Constitution of the United States. Now, not being an attorney, if the Attorney General tells me it is unconstitutional or is constitutionally suspect I think I should look at that questioningly. I don't think I should just ignore that. I don't think any of the other members of this body should either. I would also remind this body that if you will look at your green bill book I was opposed to this bill at the start. I guess I really didn't need an Attorney General's opinion to tell me that there was something screwy going on here but here we are again, one more time, ridiculing the public schools. Well I have three children and all three graduated from college and all three went through the public schools, went through the public's higher institutions of learning and I have got nothing against the public schools and I don't think anybody else should either. I would remind this body of one thing. There is one tiny bit of difference between the public schools and the private schools. The public schools cannot turn people away. The public schools have to take them all, good, bad and indifferent. The private schools do not and then we stand here and say, look at all the terrible things that are happening in the public schools. Well it makes me a little bit sick. They can't turn them down. We would not want them to turn them down and it makes me a little bit sick when we are the representatives of the public that are not supporting public education but are instead, ignoring the Constitution that we swore to uphold and I will remind you again. Sure, this is not tax dollars out what about the fact that these bonds, these revenue bonds are tax exempt. Who is making up the difference? I have heard many people in this body stand and say, we don't want to give any more tax exemptions because when we give a tax exemption we know somebody else has to make up the difference but we ignore it when we get to tax revenue bonds. We passed several bills this year. We have got

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another one coming up later today issuing tax exempt revenue bonds but we all ignore that. We don't realize that somebody else is going to have to make up the difference for those people that happen to be wealthy enough to invest in tax revenue bonds. I guess the mood of this nation is the same mood we have got right here in the Nebraska Legislature. Kick the teeth out of public education and at the same time help those that are rich, very rich, to have more tax exemptions. I don't think that is what we are here to do, either that or ignore the Constitution. I intend to vote yes on this and if it doesn't succeed I will intend to vote no on the bill as I have ever since it was first introduced in the committee.

PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, before I discuss LB 321 I would like to say two things. I really and sincerely and honestly hope that neither Senator Higgins nor Senator Vickers make it on the Supreme Court of the State of Nebraska and we really don't want either one of them on the Supreme Court. Mr. President and members of the Legislature, I rise to support Senator Koch and to oppose the motion to bracket LB 321. I have scanned briefly the Attorney General's opinion and I have not had time to do any research in this area because the Attorney General's opinion was just placed on our desk and that I think is unfortunate. It also is interesting to me though, in scanning the Attorney General's opinion that several times, at least twice in the course of the opinion, it says that time does not permit me to fully develop this argument or time does not permit me to fully analyze this argument and I guess I am a little concerned that when the Attorney General's opinions come to us this quickly under the pressure of time that maybe we haven't had as...maybe the Attorney General's office has not had sufficient amount of time to research this issue as well as we would like and I guess rather than be in a position where they do not have time to fully respond to the concerns raised by Senator Beutler, I wish they would simply let us know they have not had time to fully analyze it rather than give us an opinion that says time simply will not permit an extended discussion. I know of Mr. Johnson who Senator Koch said was very involved in the drafting of this legislation. He is an individual who has done a lot of work, as I understand, in bonding and I imagine that he probably has had time for an extended amount of work on this particular bill. So I guess I believe that... in the purposes of LB 321. I do not believe that the expert counsel who participated in the drafting of this legislation would simply throw us a poorly drafted ill-conceived measure. The Attorney General's opinion by its own admission did not

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fully discuss the constitutional issues that could be raised by this bill. I think it is worth the risk of having this tested in court and I intend to support Senator Koch. The only last point I would like to make is that Senator Higgins spoke of this bill as if it would make the life or death of the schools in the State of Nebraska. Well the private schools in the State of Nebraska are going to survive and they are going to survive very well because they do something in many areas that perhaps we should strive to do more in our public institution and that is strive for excellence and that is why you can see some of these institutions that have tuition levels that are very very high, continue to attract students and that is an example I think we should follow. But the private schools are going to survive and so are the public schools and we need both of them and we shouldn't hopefully see any conflict between the two systems. But LB 321 is a logical proposal. It is one that will assist the private institutions and again, I think Senator Koch has laid out why it is not extending the credit of the state to those private facilities. So I do urge you to support LB 321, to vote against the Beutler motion and let us consider this bill today.

PRESIDENT: The Chair recognizes Senator Lamb.

SENATOR LAMB: Mr. President, members, since Senator Cullan is compiling a list of persons that he does not want on the Supreme Court, I think his list includes Senator Higgins and Senator Vickers at this point, I would like to expand that list by one and place Senator Cullan's name on that list also, but to get back to the bill, I have opposed this bill from the beginning and the other people outvoted Senator Vickers and I. So I opposed this bill on principle from the beginning in that it has tax exempt funding and there again, we have been expanding this sort of thing in every direction and I have opposed that in every instance. We have tax exempt funding in the last few years. We have established that method for funding homeowners, blighted areas and in this session, farmers. I think maybe there is one or two more but this is another example of using this method of financing. I think you are going to kill this goose that lays this golden egg before too long. I don't think it is a sound method of financing so I oppose the bill and I support the Beutler motion.

PRESIDENT: The Chair recognizes Senator DeCamp. Senator DeCamp, where are you? Well, Senator Clark, I will call on you then.

SENATOR CLARK: Mr. President, I call the question.

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PRESIDENT: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, opposed nay. Record the vote.

CLERK: 29 ayes, 5 nays to cease debate, Mr. President.

PRESIDENT: Debate ceases. Senator Beutler, you may close on your motion to bracket.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, Senator Higgins, I have tried to be conservative when I stand up here and tell you there is a constitutional problem. I try to be very conservative. In fact, I think that you will recall that I have only done this five or six times in the three years I have been in the Legislature. So far the record has been perfect. I am going to miss once in a while too because all these things are a matter of judgment but I think that there is a real problem here. The Attorney General has given you an opinion. He has said that time does not permit a thorough discussion of the establishment clause portion of the opinion. He did not say that with regard to the lending of the credit portion of this opinion. Similar legislation to this may be in other states but those states do not have the Nebraska Constitution and it is the Nebraska Constitution against which we have to measure LB 321. Lawyers draft bills for clients and if a client comes in and says that I want a bill that permits the issuance of tax exempt bonds to help with construction of private colleges, the lawyer says, yes, I will draft that for you. And if the client asks him if there is a constitutional problem, he will give him advice but they may well choose to try the statutory method until they are forced to try the constitutional method because the constitutional method obviously is much much more difficult and much much more expensive, and let me give you an example of exactly how this happens. There was a time not too many years ago when we decided we were going to have industrial development bonds and they drafted a very complete, much like 321, Industrial Development Bond Act and they came into the Legislature and the arguments were made and it was said it was unconstitutional. They ignored them. We passed it and sure enough, it was declared to be unconstitutional, a violation of the Constitutional amendment, came back another year and passed the bill again and now we have industrial development bonds in this state, but my point is this. Just because they came in with a bill and just because Mr. Johnson is a good lawyer, and he is a very good one, doesn't mean that he has exercised the judgment that it is constitutional. All it means is that his clients have decided they are going to try this route first. So I hope that argument is not persuasive with you. Surely

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common sense indicates to you that the private colleges are getting a benefit, otherwise they wouldn't be in here asking us for the bill. The lower interest rate that accrues the tax exempt financing is a substantial substantial benefit and it is there because the state is issuing, a state agency is issuing the bonds. It is based on what the state does and, therefore, there is a real argument that the credit of the state is being lent. Well, at least you have the policy decision before you. I think it should be delayed while we look into this further. If you don't think so, that is fine, but I think the issue is clear. Thank you.

PRESIDENT: All right, the question is the bracketing of LB 321. All those in favor vote aye, opposed nay. Have you voted? Everybody is supposed to be here. Record the vote.

CLERK: 20 ayes, 27 nays, Mr. President, on the motion to bracket.

PRESIDENT: The motion fails.

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

PRESIDENT: Read the motion.

CLERK: Mr. President, Senator Warner would move to return LB 321 to Select File for a specific amendment. (See pages 2396-2401 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, this is somewhat of a tongue in cheek amendment. I will tell you that at the start but I don't know how else to address the issue. I have had the amendment in my desk for some weeks, I think, as a matter of fact but in view of the conversation we have had on the previous amendment I feel compelled to use this route to explain my no vote on the bill. Without exception every time these tax exempt bonds comes up, it is the purpose that is always worthy, and without exception, they always are. It is worthy to build buildings for private schools. It is worthy to help lower interest rates for young farmers. It is worthy for conservation. It is worthy for building homes. I don't know anything that is not worthy. So the amendment I have filed up there expands, extends that worthiness to everybody and it merely says that we can issue tax exempt bonds by state agency and that that state agency will provide those funds

to any financial institution in the state which in turn can be loaned to anyone for business or personal reasons and in all cases that financial institution will have a 1% markup over the rate that the issuing agency has paid for those bonds. Now I think that is really getting fair. It ought to have broad support. Every special interest group, every worthy purpose is covered by this proposal. I am not striking the specific one for the private colleges. This will be a new and additional board with broad policy and it starts out as all the other bills have started out recognizing the concept which I certainly strongly believe and as a matter of fact can tell you have very much more personal experience than I like because it started out recognizing basically that credit is tight and the cost of money is too high and I will tell you that is damn well true. So, I would recommend that you vote for this amendment. We have issued a lot of comments on the floor this session on a number of bills that we really haven't done enough to help everyone and I can't imagine anything that would be more helpful than to get those interest rates down to where we can all live with them and certainly if we are going to have...we even have multibank holding companies that is going to increase interest rates 2% so we've got to provide a vehicle to stop that too and I guess we could go on and on to the number of problems that this amendment could relieve. So I would hope the body would recognize the broad merit. Personally I think the policy is totally wrong of the use of tax exempt bonds but I recognize the impossibility of fighting that approach on a piecemeal basis because the vote against the policy inevitably is interpreted to vote against the special interest group that is asking for it and that is unfortunate but that is how you are made to look and so that being the case, I am ready to throw in the towel, say, by golly, this is a good concept and it is so good that it should be shared by all so I move that the bill be returned to Select File for the specific amendment.

PRESIDENT: The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Mr. President, Senators, Senator Warner, I never had the opportunity to meet Senator Terry Carpenter but I think I just heard words like his. I have always heard that Terry said, if you want to kill a bill, just keep trying to amend it to death. I still say, if you don't want to give these private colleges the opportunity to continue by allowing them to issue these tax exempt bonds, then accept the fact that when those colleges close and I know Senator Cullar said they won't but I will remind you there was once a little college in Wahoo called John F. Kennedy College. They closed. But if those

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colleges close where the people themselves are paying for them, where the tuition rates are horrendous compared to what the state charges and those youngsters are going to go to school some place. They are going to go to Nebraska U. but they are going to go to a state supported school and everybody's taxes are going to go up and when you talk about tax exempt bonds, you know, Senators, I voted for LB 3 to give business tax exemptions. I didn't hear any hooting or hollering then. That was because they said, this is going to be good for the state. This is going to provide employment. This is going to bring business into Nebraska. What do you think these bonds are going to do? They are going to put up some new buildings that they need. That is going to provide employment. That is going to mean construction materials are going to be sold so I can use the same argument for these tax exempt bonds for the private schools that are educating children and they are giving people the right to educate their children the way they want, to teach them the things they want. I could use that same argument that we all heard on LB 3. It is good for business. So remember, when we pass this bill and these bonds go through, we are going to have construction going again perhaps in Nebraska. We are going to increase employment. We are going to have more sales of construction materials and all those things we are going to pay tax on, Senator Warner. They are going to pay sales tax on those supplies and all those employees are going to be paying state income taxes. So I urge you to support this bill on the basis of the same way we supported LB 3. It is going to bring tax dollars into the state. It is going to create more business for the state and it is going to create more jobs. Thank you, Senators.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. President, members of the body, I appreciate Senator Warner's tongue in cheek concerns and his magnificence and philanthropic efforts to make it fair for all. I would remind Senator Warner that in terms of his tenure here mine is still sort of a neophyte. I was not one of the masterminds of our tax system in the State of Nebraska. I was not here when it all began. I was not here to vote for the first exemptions on tax bonds. I was not here for a lot of things. So once the precedence is established I think if it is a good precedence then it should be allowed for specific purposes and the purpose that this bill deals with is a very specific purpose. That is to allow the private universities and colleges of the State of Nebraska some type of help. It is very indirect. I would remind you again it is only based upon an institution's ability to get a bond rating and a credit

and if their credit is not good they will not get tax exempt bonds. You know as well as I people who buy those bonds are not going to buy high risk bonds and I would also suggest that Senator Warner's amendment that it really should be in the form of a bill placed in an appropriate committee so if we want to provide this exemption of this type of issues for many, then this body could make that determination at a later date. I noticed Senator Beutler has a real concern about tax exempt bonds and several others do too and this has been in this bill, in a way it has never been hidden and I guess I am at the nintieth day of this session, just damn mad and I excuse that expression, but I will take 321 either in its present position or nothing at all and I remind you the only way you are going to find out whether it is constitutional is pass it. Let somebody challenge it. Then if we have to go to a constitutional amendment we can build that amendment and go to the people and that is the way I would like to see it happen and I would oppose Senator Warner's amendment.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I also support Senator Warner's amendment. Since people with the feeling like Senator Higgins don't care about the Constitution when it gets in the way, we may as well add this provision so that everybody can get into the act. I don't think the amendment will make the bill any more constitutionally objectionable than it already is. Now it is one thing to look at the issue of whether or not what we do conforms to the Constitution and what the purpose of what we are doing is, but before you can talk about a lofty purpose you do have to look at the procedure that is being employed and whether the Constitution allows the state to do such a thing. Now I hate to say because I am supporting Senator Warner's amendment, but when I used to be on the Executive Board I would ask them, Senator Higgins, to take away the Chaplain's salary and they refused and I would say well I would have to go to court and I think Senator Warner was one who said, "Go to court then," and I went to court and the court said, yes, it is excessive state entanglement and he can't be paid. He can pray if he wants to but it was also stated that even if he is not paid, having the same preacher all the time can give the appearance of the state favoring one religion over another so as a result we have had a multiplicity of different types of individuals up there praying or whatever they do because I understand Senator DeCamp was up there one day too. So that whole lawsuit served a wholesome purpose, but I think what it really should do is bring us face to face with our obli-

gation to review what we are doing against the requirements of the Constitution. So, if some people feel strongly enough about church schools to say, forget what the Constitution says about not passing a law for the establishment of a religion nor anything to prohibit the free exercise thereof, if we are going to ignore it with reference to these church schools, let's certainly draw in all of the human beings to whom these church schools might administer. So, I am supporting Senator Warner's amendment and I think it might serve to mitigate some of the very severe financial pinches that people experience as a result of actions at the national level and the state level. So if we can do anything at all that will mitigate those difficulties I am certainly in favor of it. So, I will support this bill and I would like to throw one other thing out to Senator Higgins since she likes to make observations about various things. She said LB 3 was enacted with the argument that it is good for business. Senator Higgins, business is godless, so the state can support business. The only problem is when you try to marry the state to God and that is what this bill is attempting to do so, therefore, it cannot be done. If you can convince us all that these are godless institutions even though they masquerade as being the contrary, then I think we can get it through.

PRESIDENT: The Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I oppose the Warner amendment. I assume that in due course Senator Warner will withdraw it because you can only keep your tongue in your cheek so long. It is probably over-extended at this juncture. Senator Warner says that it is difficult for us to weigh good purposes, each purpose of a tax exempt measure seems extremely good and for that reason we go ahead and we approve that particular tax exempt measure. For example, we have approved Industrial Development Bond Act financing which is a tax exempt measure of financing. We do it essentially to encourage industrial growth. I think that is a very valid purpose. A couple of years ago under Senator Labeledz's direction and guidance we established the Nebraska Mortgage Finance Act which is another tax exempt measure for home construction and home ownership. Inasmuch as this nation has had a long-standing commitment to home construction and home ownership, I see nothing improper with that purpose and I think that is a good purpose. This session we went and passed the Agricultural Land Act bill sponsored by Senator Schmit which is essentially designed to assist starting farmers and others into the business in owning their own land and their own equipment and I think it is important that we assist young people in getting well established in farms, but now we come to a bill which essentially

would allow tax exempt financing for private education, for higher private education and the real question is this. Are we able to say that this purpose is so good and so high and so proper and so noble that we should pass the bill? Now my opinion, if we really look at this thing very closely we would say no. Let me tell you what I think. Are we all fully aware of current demography in this country? What has happened quite simply is that the number of children being born has declined dramatically since the late 1960s. Public schools, elementary schools, have reached their zenith in enrollees in 1971 and since that time the decline of children in public schools has been quite dramatic. By the late 1980s the decreasing birth rate will manifest itself in our schools of higher education, both public and private. In fact, demographers indicate that by 1890 (sic) we can reasonable expect 25% less students seeking positions in our colleges and universities whether they be public or private. So what will be happening in the early 1990s is a mad scramble by both private and public institutions competing for student bodies literally to fill the positions to fill the building. Now what this particular bill does is it encourages more construction on private campus. In my opinion this purpose is not so good, particularly in light of the declining populations for higher education in the next decade. Those buildings can well sit empty or half empty and it may well be that there will be some private institutions closing. It is hard to believe there will be any public institutions closing, incidentally. I think public institutions clearly have a life of their own. Witness the fact that both John F. Kennedy College and Wahoo closed in the 1960s and witness the fact that Hiram Scott College in Scottsbluff closed in the same period of time but no public institution closed. I suspect it is very difficult for lawmakers in the end to close any public institution and it is not likely to occur. So the closings will take place in private institutions. It seems to me we really would be economically foolish at this time to commit...

PRESIDENT: Thirty seconds.

SENATOR V. JOHNSON: ...our finite investment resources to buildings on private campuses knowing, truly knowing, that within the foreseeable future those private campuses will be in deep financial trouble. I would much rather have our very finite investment resources committed to industrial growth and productivity changes in this country. That, in my opinion, is a much more appropriate use of tax exempt financing. I urge you to vote against the bill after Senator Warner withdraws his amendment.

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PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. President, I call the question.

PRESIDENT: It won't be necessary, Senator Kremer, because you are the last speaker so...oh, wait a minute, it is too. I have just been advised of a couple lights had come on while I was chatting, so the question has been called for. Do I see five hands? I do. The question is, shall debate cease. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 28 ayes, 4 nays to cease debate, Mr. President.

PRESIDENT: The motion carries and, Senator Warner, will you close on the motion to return.

SENATOR WARNER: Mr. President, members of the Legislature, I appreciate the prudent suggestion of Senator Johnson to withdraw the amendment but I am not going to because the discussion demonstrated exactly what I was trying to say. My amendment does not strike the provisions of 321 as it now stands. It is in addition to. It is impossible, as I said, to talk about the issue of tax exempt bonds every time because the cause for which they are to be issued is the issue that we are all faced with. That is the only thing we are voting for or against and I am suggesting to you as has been attempted time and time again as these have come up, this is a much broader principle that I am concerned with and it is not the purpose of a particular bill but this broad concept of extension of tax exempt bonds for unlimited but worthy purposes as they come to us. I was pointed out that this concept was started in the '50s and that is correct. It was the IDA bonds. I wasn't here then, Senator Koch, but I was opposed to the concept at that time but we were told that if we did it then that that was going to be the great salvation to bring industry in the state just as LB 3 was told this year, the great salvation to bring industry in the state. Virtually all of us are aware that Congress apparently is moving in the direction to put limits on the use of tax exempt bonds. The traditional use that we have had for tax exempt bonds in this country have been for governmental subdivisions. Traditionally it has been recognized that in those cases tax exempt bonds really was reduced taxes to the people who had to pay those bonds off and there was a total different concept of saving taxes by not having to pay taxes on the bonds that were used for public structures. I have a very genuine concern that we begin to expand this concept as we seem to

be compelled to do every session, this session three or four of them, that the only net result, the only net result of Nebraska doing it together with all other states is the fact that the market that is available for the purchase of these bonds is going to be so overloaded the interest rates only go up and the end result is obvious when the local governmental subdivisions, the ones that traditionally use...have the benefit of tax exempt bonds, the ones that traditionally has justification for tax exempt bonds are going to find their rates going up because the demand is limited to those who can justify their purchase. So the issue is what I am trying to talk about. The conversation demonstrated clearly that it is almost impossible to talk the issue. I did not say one word in my amendment nor in my presentation that it was bad for private schools. I freely acknowledge it is great. It is good but I think that at some point we have got to begin to look at this broad policy issue that has been brought up each time these issues have been before us but at some point we begin to look at it and the amendment merely says that I recognize that these are good for each individual thing that comes along and as a result I think it ought to be a benefit to everyone. I move that the bill be returned for the specific amendment.

PRESIDENT: The question is, the motion to return LB 321. All those in favor vote aye, opposed nay. I will remind everybody you are supposed to be at your desks. We are on Final Reading believe it or not. All of you are supposed to be here. Record the vote.

CLERK: 18 ayes, 25 nays on the motion to return the bill, Mr. President.

PRESIDENT: The motion fails. Any other motions on the desk?

CLERK: Mr. President, Senator Chambers would move to return the bill, the amendment being to strike the enacting clause.

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the reason that various people oppose this bill, the reasons are different. Some are concerned about the manner of financing. I am concerned about the entanglement of the state with church matters which is in violation of the U.S. Constitution and the state Constitution and the establishment clauses it has been referred to was drafted

primarily by James Madison who is considered to have been one of the founding fathers. He was short also which my words will not be and he was also President of the United States and here is one thing, a comment made about Madison, and Senator Higgins is not looking but if she would figure what I am reading from, I am reading from a law book, "Madison opposed every form and degree of official relation between religion and civil authority. For him religion was a wholly private matter beyond the scope of civil power either to restrain or to support. Let the two be separate." And here is a little bit further, "In no phase was he more unrelenting absolute than in opposing state's support. Not even three pence contribution was thus to be exacted from any citizen for such a purpose." Their objection was not to small ties, it was to any ties whatsoever. In those days Virginia and some of the people there who had fled England because they did not want to be oppressed by the church began to try to exact taxation from the citizens to support an organized church in Virginia and Madison said, "No good in England, no good here," but even beyond that it is not the amount but the principle of assessment which was wrong. In this field the authors of some people's freedom would not tolerate the first experiment on those people's liberties or wait till usurp power had strengthened itself by exercise and entangle the question in precedence. Now that is Madison long, long ago so we will come up to a more recent individual, U.S. Grant, who was a President of the United States and a general for the United States in the Civil War and in order to get some of your attention I will tell you something that Lincoln said when he was told that Grant was a drunk. Grant won a lot of battles so the other generals were not as successful when an individual came to Lincoln complaining about the fact that Grant was a drunk. Lincoln said find out whatever it is he is drinking and send a barrel to the rest of my generals. Now after this man became president, let me read you what he said in Des Moines, Iowa. "Encourage free schools and resolve that not one dollar appropriated for their support shall be appropriated to the support of any sectarian school. Leave the matter of religion to the family altar, the church and the private school," get this, "supported entirely by private contributions. Keep the church and the state forever separate." Now no matter what form support takes when it goes for a religious purpose it entangles the state with religion in a way that is prohibited by the Constitution. Now it would seem to me that people could understand that and I know Senator Koch may have a lot invested in this bill in terms of time. He said he is mad. Being an educator he meant to say "angry" but he was using that word mad for emphasis and in the vernacular it does stand for angry too, but remember whom the Gods would destroy they

first make mad. So Senator Koch meant angry. Senator Koch, I was angry yesterday and I still have some simmering residue of that in me today. So, our being angry certainly is not going to carry the day for us. The rightness of our cause will not. So certainly when a cause is wrong the day should not be carried by that cause. No matter how many church schools have brought pressure to bear on senators for the introduction of 321, no matter how many preachers say they might go to jail unless their violations of the law are sanctified by a change in the law, some of us are going to look at what the Constitution says and since our job is a secular and not a religious one, we are to deal in terms of what the Constitution says is allowable. Those are the conditions we accepted when we came to the Legislature. Nothing could be more clear than that church and state are to be kept forever separate. There is to be a wall placed between them which should certainly not be breached by a Legislature which considers itself responsible. The church schools can take care of themselves, Senator Koch. Wherever Senator DeCamp is, the preachers can take care of themselves and of the Attorney General who issued this opinion that we are talking about today about no entanglement of church and state will not enter into any unsavory deals whereby individuals violating the law will not suffer the same fate as anybody else violating the law and there is precedence which establishes that if a preacher is doing what he is supposed to do, even if they put him in jail, the jail cannot hold him. Senator Kremer can verify that. I think it was Peter who went to jail and all of a sudden he woke up one night and the door was open. Somebody had mysteriously and miraculously unlocked that jail door and Peter walked out of the jail. So if these preachers say they are patterning themselves after the Apostles and they take the positions they do because of what the Bible tells them, then let them follow their principles even if it means going to jail and the one who has the keys to all the jails can open those doors. Senator Kremer, not only can he lock the jaws of lions as he did with Daniel and the den, he can unlock the jails that are built by ungodly men to hold the servants of the Lord, so we can discount all of it and forget about it but what we are concerned with this morning is a similar issue. Let us not, despite pressure, be prevailed upon to disregard our duty under the Constitution. These church people are trying to discharge what they see as their duty. We have to discharge what we understand is our duty and because the two duties cannot come together without a clash, either one is going to predominate over the other, they must be kept separate. Madison said, not only was he concerned that the church not dominate in political matters, but that the political arena not infringe on anybody's right to freely exercise their religion. So if there are certain

religious institutions that branch off into education and they are aided in any way by the state, in pushing their religious views the state has become entangled and to some degree there can be an interference with the free exercise of religion. Because you belong to a poverty stricken religion should not keep you from getting certain benefits that the state makes available which means that unless you belong to a religion that has enough money to start a school, the things that are being offered by 321 are not available to you. So, for a multitude of reasons and the Attorney General was correct when he said he could not touch on all of them in the short time he had. This bill should not be passed. My motion is to return it to Select File to strike the enacting clause and, Senator Kremer, one more quote. Had I sat still and not made every effort that I could in the way that I am doing to kill this bill, "My tongue would have cleaved to the roof of my mouth and my right arm would have lost her cunning." I ask that you support this amendment.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. Speaker and members of the body, Senator Chambers brings up the great American, Madison, but we have also got to remember when Madison lived. That was a considerable period of time and I respect Madison's views for that time but I would submit to you if we kept those views that those gentlemen had there would be no need to change any law because we would live by that at all times. Secondly, I want to point out to you in this Attorney General's remarks on page 2, and if you will follow with me what the gentleman had to say, he talks about certain provisions in here. I submit to you in the second paragraph if you read that, those are so nebulous that for us to hang our hat on those today I think is not appropriate. Individuals who are interested in this piece of legislation have indicated to me that they are ready to go to court. If the court states that this is unconstitutional then they will seek a constitutional amendment but how can you do that until you find out for certain whether or not this opinion holds water. I doubt that it does because you also look at Section 3 of Article XIII, that article was written many many years ago. That, again, has a nebulous position. So I submit to you we should not indefinitely postpone this bill, we should pass it. Let the test take place to find out whether or not it is unconstitutional. Then, if necessary, we can come with a constitutional amendment to try to correct any problems we may have. And getting back to some other comments that were made, the private colleges do not overbuild. Most of them have a very keen sense about the number of students they will enroll. They are very keen about the kinds of buildings they are going to build and they only build them when they are absolutely neces-

sary. Senator Johnson talked to me privately about Peru State College. That is another issue. That is apples and oranges. If we want to change the role and mission of Peru let's do it. About six years ago I proposed that but it didn't get by first base and that is an issue but that is separate. These private colleges and institutions of universities are not going to misuse this piece of legislation under any conditions because they are still going to be responsible for the action individually and not collectively nor is the state going to lend any of its credit to it. The state is only indirectly, this authority, setting up an authority that would be a part to help administer those bonds if and when they have been approved by private institutions on their own campuses. I oppose Senator Chambers motion to indefinitely postpone.

PRESIDENT: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would like to support the motion. I don't want to go back over again the Attorney General's opinion and the constitutional problems that have been mentioned but for some of you let me throw out an argument which I think is significant and should be significant in your minds. There was a point in time when many of you in here, not so long ago again, voted for the exemption of certain taxes, taxes on inventories and taxes on equipment and part of the reason you did that and one of the major arguments against that was that, look, these are hidden taxes. We should be right up front about taxes. Those taxes are just passed on to the consumer. We should be up front about taxes, sales taxes, income taxes, taxes that the people can see. Let's not kid the people with these hidden taxes on inventories and on equipment and on other items. And on the basis of that, on a broad scale across this state the majority in this Legislature voted to exempt those taxes. Now you are being faced again time after time with hidden taxes and instead of saying, let's be up front about these taxes, you are saying, all right, we will hide them and it is not just one hidden tax that you are hiding with these tax exempt bonds, you are hiding two. You are hiding the additional tax that people pay when they pay higher interest rates on municipal bonds because of the flooding of the market with bonds. You are hiding that from them and you are hiding also the tax that is paid by the middle class when you exempt the rich from taxation because you are issuing tax exempt bonds. Be consistent. If you are really against hidden taxes, then be against tax exempt bonds. If you want to finance private schools, let's put it in the Constitution and flat out appropriate money for the financing of those schools. We are doing it just the same but we are kidding people. Give that some consideration. Thank you.

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PRESIDENT: The Chair recognizes Senator Hefner. Is he here? He is not in the telephone booth, is he? Senator Hefner. Senator Higgins.

SENATOR HIGGINS: Mr. President, I would like to call the question but I have to answer a couple of things. If I get a pain in the neck like I've got this morning I go to a doctor for advice. If I get a sore tooth, I go to a dentist. The last person, Senator Chambers, that I would take advice from when it comes to religion is an atheist. So, when I consider your arguments about church and state I have to remember these arguments are coming from an atheist who quotes the Bible quite frequently but like Shakespeare says, "The devil may quote Scripture for his own purposes." I do kind of after these many months get the feeling that your Bible is the Constitution. I go by the Bible of Moses, the Old Testament and Mathew, Mark, Luke and John, the New Testament. Now the Old Testament and the New Testament have never been amended but your Bible, the Constitution, there has been twenty-six times they had to change it so there must have been something fundamentally wrong with it when it was written and we are still anticipating changing it. Also, I would like to remind you, Senator Chambers, since you are the most concerned about equal rights, and because you do worship the Constitution, the Bill of Rights was not added to the Constitution until twelve years later. So how great were those men that wrote your beloved Constitution? They left you out of it for twelve years and longer, and longer. They left whites and blacks out of it when they left the Bill of rights out for twelve years. So, I am not one of those that stands here and says, the Constitution is an inspired word of God. I take the other Bible and believe in it. You want to talk about separation of church and state. Senator Chambers, we get government money to feed children in parochial schools as well as in public schools and I think you ought to get that corrected. I would like to remind you too, that in Omaha, Sacred Heart Church and St. Benedict's Church twenty-five years ago were parochial schools that were teaching black children and we were feeding them out of our own pockets. It was the parochial schools that looked out for the poor blacks and fed them and we did it with donations. So, a lot of black children today that are lawyers like Senator Chambers might not have survived the depression if it hadn't been for the parochial schools, not only teaching them for free but also providing free food and at that time, we didn't have federal subsidy except I think maybe we did get milk from the government. So, you've already got government schools and church related whether you like it or not and whether you believe it or not. Do you know that according to law parochial schools can borrow

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State textbooks? We don't have true separation of church and state and I hope we never do and I hope the ugly head of prejudice is dead in the State of Nebraska and that we consider the rights of parents to give their children an education, whether it be in public school or parochial school but when you talk about subsidizing them through these bonds, we subsidize a lot of things that are not as near and dear as the right to educate our own children if we see fit. So I would have to ask you, Senators, to vote against Senator Chambers amendment and then let's readvance this bill and pass it. Thank you.

PRESIDENT: The Chair recognizes Senator Hefner.

SENATOR HEFNER: Mr. President, I call the question.

PRESIDENT: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: The motion carries. Debate ceases. Senator Chambers, you may close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, it is clear that Senator Higgins understands nothing about the Constitution and that Senator Koch has surprised me by saying that Madison lived a long time ago. Well, we know that and that the Constitution was written a long time ago and I know that and the Constitution is not perfect and I certainly know that and the fact that it made me less than a human being, I know that, but do you know how I have to be cagey? I have to present the Constitution based on what it actually is supposed to do as the fundamental document on which the laws of this country are based. If I were to attack the Constitution as Senator Higgins attacked it, then that old neo-McCarthyism would come out and I would be the radical against traditional values of the country. I am condemning the Constitution. I am saying it is not perfect but what she said is true and I agree with her, but nevertheless, until the Constitution is amended you are going to be held as a legislative body to the requirements of the Constitution whether you like it or not. There is another provision and it troubles me that I have to assume this posture with reference to a document that as Senator Higgins said, did not even view me as a human being and from the vote here yesterday on an issue that would destroy my community, the Legislature, a majority obviously, don't view me and my kind as human beings either but, nevertheless, the reality of the matter is this. Any

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state law or Constitution to the contrary notwithstanding, the laws and Constitution of the United States are the supreme law of the land and you can like it. You can dislike it. It makes no difference whatsoever. Reality exists objectively. That means independently of how anybody feels about it. Senator Higgins attaches the word atheist to me. A lot of other people that I don't agree with attach the same word. They can attach any label they want but I don't attach those labels to myself. If I am an atheist in Senator Higgins' opinion, so be it. If I am an infidel in somebody else's opinion, so be it. If I am whatever, a reprobate, it makes no difference. The idea that is important is this. We are confronted by a bill which is attempting to break down that wall of separation between the state and the church which a man named Elihu Root who was not a writer of the Bible or a character in the Bible, Senator Higgins. He said, "That separation should be eternal," and it ought to be, not only to prevent certain church schools from taking benefit that all taxpayers have to contribute into to produce, but to prevent the state from being in a position to shackle and control the churches and their schools. You know that if you accept certain benefits from the state, and when I say state that can mean the federal government or the state government. There are rules and regulations that must be complied with. The hand that feeds is the hand that controls and it is true that Satan quotes the Scripture for his own purpose, as do all the preachers, but one thing I have found, that when Satan or a minion of Satan quotes the Scripture it is quoted correctly. There is not an attempt to ad hoc the Bible and say well it says this but it means something else when that particular provision is uncomfortable or inconvenient. But then when they want to be in a position as religious people to force their views on others they become unyielding, uncompromising and want to take every word of the Bible literally when they are dealing with the provision that they think puts them in a position to lord it over other people. So, I am going to maintain my position on this issue. I am going to maintain the position that has been established by the U.S. Constitution even though it was written a long time ago and for Senator Higgins information...

PRESIDENT: Half a minute, Senator.

SENATOR CHAMBERS: ...the Old Testament was not written in English. The New Testament was not written in English and what you have that you call the Bible are the productions of scribes who did a lot of copying and sometimes interpolating, leaving out and changing the meaning. So the Bible has been amended, mutilated and fabricated more than the U.S. Constitution because, just one thing, then

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I am through, Mr. Chairman. We could all pick up a Constitution of the United States from whatever source and they will all say the same thing. Now I could find you twenty or thirty things that have on it, "Holly Bible" and all thirty of them are different, I mean Holy Bible.

PRESIDENT: The question is the motion to return to strike the enacting clause on LB 321. All those in favor vote aye, opposed nay. Record the vote.

CLERK: Mr. President, Senator Cullan requests a record vote.

PRESIDENT: A record vote has been requested. So ordered.

CLERK: (Read record vote as found on pages 2401-2402 of the Legislative Journal.) 19 ayes, 25 nays, 4 present and not voting, Mr. President.

PRESIDENT: The motion fails. Any further motions on the desk, Mr. Clerk?

CLERK: Nothing further, Mr. President.

PRESIDENT: All right, I guess we are finally ready to read the bill. Let's make sure that all the members...Sergeant at Arms, will you see that all members are back at their desks because we have allowed a certain amount of flexibility and moving around during this debate so we would appreciate it if you would see that all members get back to their desk while we are reading this bill. So go ahead, Mr. Clerk, and read LB 321 or Final Reading.

CLERK: (Read LB 321 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 321 pass with the emergency clause attached. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2402-2403 of the Legislative Journal.) 28 ayes, 20 nays, Mr. President.

PRESIDENT: LB 321 fails to receive the constitutional majority required by the Constitution to pass the bill with the emergency clause. The question now is, shall LB 321 pass without the emergency clause attached. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on page 2403 of the Legislative Journal.) 30 ayes, 19 nays, Mr. President.

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LB 318, 321, 344, 389, 389A, 401

PRESIDENT: LB 321 passes without the emergency clause attached. Messages may be read in at this time.

CLERK: Mr. President, I have two veto messages from the Governor. (Read veto messages from the Governor Re. LB 389A and 389. See pages 2403-2404 of the Legislative Journal.)

Mr. President, I have a second veto message addressed to Dear Mr. President and Senators: (Read. Re. LB 318.)

Mr. President, I have explanation of vote from Senator Howard Peterson.

Mr. President, Senator Wesely asks unanimous consent to add his name to LB 404 as cointroducer.

PRESIDENT: No objections, so ordered.

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

PRESIDENT: All right, we are ready then for the next bill on Final Reading, is LB 344, Mr. Clerk. We might ask... Speaker Marvel, there have been some questions about when we want to break for lunch. Do you wish to give some indication so that they know we are?

SPEAKER MARVEL: I think it would be a good idea if we broke at noon and then recess until one-thirty. The way we are going this morning, we are going to have trouble meeting the deadline.

PRESIDENT: All right, thank you.

SPEAKER MARVEL: The deadline when we get out of here. When you get whatever business you have I would appreciate it if you would recognize Senator Newell. He has a proposal that he wants to make.

PRESIDENT: Senator Newell, do you want to...? What is this? Senator Newell, we recognize you for whatever purpose. Okay, go ahead, Senator Newell.

SENATOR NEWELL: Mr. President, members of the Legislature, the Omaha delegation has asked me to present this plaque to Senator Fitzgerald for his tremendous sacrifice, primarily giving up his legislative district, which is important so that I could still serve in the Legislature next year and, very important as you can well understand. Senator Fitzgerald, if you would come forward the delegation would like to present you this for your hard work and your sacrifice. (Applause.)

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want to take one more bill then? Okay, fine. Have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2406-2407 of the Legislative Journal.) 37 ayes, 8 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 352 passes with the emergency clause attached. The next bill on Final Reading before the break for lunch is LB 385.

ASSISTANT CLERK: (Read LB 385 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 385 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 2407-2408 of the Legislative Journal.) 29 ayes, 14 nays, 2 excused and not voting, Mr. President, 4 present and not voting.

PRESIDENT: LB 385 passes. If you would read some matters in and then we will get ready for recess.

CLERK: Mr. President, a letter from the Governor addressed to the Clerk. (Read. Re. LB 406, 548, 389 as found on page 2409 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 321 and find the same correctly enrolled.

Mr. President, I have a veto message from the Governor addressed to Dear Mr. President and Senators. (Read. Re. 129A. See page 2408 of the Legislative Journal.)

Mr. President, finally LB 95, 95A, 172, 218, 234, 234A, 235, 302, 389A, 318, 344 and 352 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LB 95, LB 95A, LB 172, LB 218, LB 234, LB 234A, LB 285, LB 302, LB 318, LB 344 and LB 352. Well, let's let somebody... Senator Marsh, do you wish to recess us until one-thirty.

SENATOR MARCH: I move we recess until one-thirty.

PRESIDENT: The motion is to recess until one-thirty. Any... All those in favor to recess until one-thirty signify by saying aye, opposed nay. We are recessed until one-thirty.

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LB 321, 385, 396, 396A, 411, 460,  
487, 487A, 494, 544, 552, 561.

health when they reach there. I ask you to support the motion to reconsider the previous motion.

PRESIDENT: All right, motion is suspension of the rules, which will require 30 votes also. Those in favor of the Schmit motion on LB 561 vote aye, opposed nay. Sorry you can't do it. There is three excused. They are all back, okay, I'm sorry, they are all back. So you have all the people here now. So you want a Call of the House?

SENATOR SCHMIT: Let's have a Call of the House and a roll call vote.

PRESIDENT: All right, erase the board, and all those in favor of a Call of the House vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries. The House is under Call. Sergeant at Arms will see that all members are returned to the Chamber. All members will return to your desks. All members will register your presence. While we are waiting, while the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 385, LB 552, LB 544, LB 494, LB 321, LB 396, LB 396A and LB 411, LB 460, LB 487 and LB 487A. Looking for Senator Cullan, Senator Kremer, Senator Lamb, Senator Sieck, Senator Nichol, Senator Labeledz, Senator Higgins... oh, there she is. Senator Pirsch. Senator Kremer, Senator Lamb, Senator Pirsch, Senator Sieck. Do you want to wait until they arrive, Senator Schmit? All right, we will wait. Then do you wish a roll call vote? All right, sir. It will be done. Senator Kremer is here. Senator Lamb is on his way. All right. Senator Pirsch. Does anybody know where she is? Oh, okay. One more and we can go. Proceed, Senator Schmit. All right, proceed with the roll call, Mr. Clerk. The question is the suspension of the rules on LB 561 for purpose of the override.

CLERK: (Read the roll call vote as found on page 2419 of the Legislative Journal.) 22 ayes, 24 nays, Mr. President, on the motion to suspend the rules.

PRESIDENT: The motion fails, so therefore the second motion is not possible. What is the next motion on the desk, Mr. Clerk? Okay, the next motion.

CLERK: Mr. President, the next motion I have is offered