

escorted by Senator Wagner and Senator Labeledz will also be a member of that escort team. The item number four, Mr. Monen from Omaha, Senator Stoney. Senator Stoney, will you escort Mr. Monen for the inaugural ceremonies and yours is in item number four. Item number five, the Chief Justice will be escorted by Senator Fowler. We picked the people in the various districts for this. Justice Boslaugh comes from that infamous city, Hastings, and he will be escorted by me. Senator (sic) McCowan comes from Beatrice and he will be escorted by Senator Burrows. Justice Clinton will be escorted by Senator Clark. Justice Brodkey will be escorted by Senator Fitzgerald. Justice White will be escorted by Senator Dworak and Justice Hastings will be escorted by Senator Marsh. Now, Mr. President, do we have others? Does that complete the list?

PRESIDENT: I think that completes the list. We were going to have Senators Vickers and Hefner accompany Senator Stoney on the escort committee on the Workmen's Compensation Judges.

SPEAKER MARVEL: Sorry.

PRESIDENT: I believe that completes it, Mr. Speaker.

SPEAKER MARVEL: Anybody have any questions?

PRESIDENT: Any questions? This will be at two o'clock and we will come back at one-thirty, a little prior thereto. Go ahead, Mr. Speaker.

SPEAKER MARVEL: Mr. President, it has been pointed out that Martin Kahle is also in the district represented by Senator Payne so why don't we add Martin Kahle's name. Any other comments or suggestions? Is that all right? Yes. Any others? Okay.

CLERK: We've got about a half a dozen bills, Senator. Mr. President, if I may?

PRESIDENT: Proceed, Mr. Clerk.

CLERK: Read LB 31-33 by title for the first time as found on pages 83-84 of the Legislative Journal.

PRESIDENT: The Chair would like to take this opportunity to introduce a guest, Mr. Bill Snell, the city manager of the City of Sidney. Would Bill come out here and be recognized? Senator Clark is sitting with him. Welcome to the Legislature, Bill. Go ahead, Mr. Clerk.

CLERK: Continued to read LB 34, 35 by title for the first time.

Mr. President, I have a lobby registration report for the interim period covered by April 19, 1980, through January 6, 1981. That will be inserted in the Legislative Journal. (See page 94 of the Journal.)

Mr. President, I have a reference report from the Executive Board referring legislative bills 1-36. That is signed by Senator Lamb as Chairman. (See pages 94-95 of the Legislative Journal.)

Mr. President, I have in my possession proposed lease renewals as supplied us by the State Building Division. Those will be on file in my office. I also have a report from the Nemaha Natural Resources Districts regarding payment of attorney fees. (See page 95 of the Journal.)

Mr. President, Senator Hefner would like to announce that Senator Barrett has been elected as vice chairman of the Miscellaneous Subjects Committee.

Mr. President, Senator Labedz would like to announce that Senator Pirsch has been elected vice chairman of the Constitutional Revision and Recreation Committee.

Mr. President, Senator Marvel would once again like to announce a meeting or a chairperson's caucus for Monday, January 12 at 9:00 a.m. in Room 1520. It is a chairperson's caucus for Monday, January 12 at 9:00 a.m. in Room 1520.

PRESIDENT: The Chair will recognize Speaker Marvel once more for additional announcement concerning procedure.

SPEAKER MARVEL: I think, Mr. President, the first thing we need to note is the fact that we are using valuable time that we may wish we had at the end of this session. I guess I am going to repeat this every day for a while and so would you please put on the Clerk's desk whatever legislation you have so that we can once again begin processing this legislation which means that the Exec Board needs to meet and refer the bills as soon as they have been processed by the Clerk and, therefore, I remind you first of all, get the bills in and, secondly, that the Exec Board then will have to meet to refer the bills. Now this process has to go on even if we may only meet until noon. Now, Mr. President, is that the... Pat, is there anything else to say about the reference of bills?

CLERK: No, sir, not that I am aware of. I think Senator Lamb might want to make a...

February 6, 1981

LB 34, 211

print amendments to LB 211 in the Legislative Journal. I have a committee report, the Public Works Committee whose Chairman is Senator Kremer and Vice Chairman is Senator Beutler to whom was referred LB 34, and the committee would like to report LB 34 to General File with committee amendments, Mr. President. (See pages 463 through 465 of the Legislative Journal.)

SENATOR NICHOL: Mr. Chairman, I move that the Legislature adjourn until 9:30 Monday morning, February 9th.

SENATOR CLARK: All those in favor say aye. All those opposed nay. We are adjourned.

Edited by:


Mary A. Turner

February 12, 1981

LB 34

would like to print amendments to LB 34 in the Journal.
(See pages 522-523 of the Journal.)

SPEAKER MARVEL: Senator Hoagland, would you like to adjourn us until Tuesday, February 17 at nine-thirty.

SENATOR HOAGLAND: I would move, Mr. Speaker, that we stand adjourned until Tuesday, February 17 at 9:30 a.m.

SPEAKER MARVEL: All in favor of the motion to adjourn until Tuesday, February 17 at 9:30 a.m. say aye, opposed no. The motion is carried. We are adjourned.

Edited by Arleen McCrory.
Arleen McCrory

thought you wanted to vote. Senator Furrows is here. Senator Landis, Senator Vickers, Wiitala, Senator Wiitala, Senator Schmit, I think, didn't I see him? Senator Schmit. Senator Schmit is here then. Do you wish to have a roll call vote, Senator Marsh? All right. Senator Marsh requests a roll call vote. When Senator Schmit gets here we will have a roll call vote. Do you want to wait, Senator Marsh, until he gets here? Proceed.

CLERK: (Read the roll call vote as found on page 544 of the Legislative Journal.) 24 ayes, 22 nays on the motion to advance the bill, Mr. President.

PRESIDENT: The motion fails. All right, we will proceed then with the next bill on General File which is LB 34, Mr. Clerk.

CLERK: Mr. President, LB 34 was offered by Senator Tom Vickers. (Read title.) The bill was first read on January 8. It was referred to the Public Works Committee to General File with committee amendments. I now have pending, Mr. President, the committee amendments as offered by the Public Works Committee.

PRESIDENT: Senator Kremer. The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman, these committee amendments are purely technical. They have no impact whatsoever changing the intent of the bill. They are purely technical and I move they be adopted.

PRESIDENT: Yes, and there is no one else, I guess, is there anything...anyone further on the committee amendments? If not, all those in favor...do you have anything further, Senator Kremer? All those in favor of adopting the committee amendments on LB 34 vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries, the committee amendments are adopted.

CLERK: Mr. President, Senator Vickers now has amendments to the bill. His amendments are found on page 522, and he wants to amend those amendments that are printed in the Journal as follows: (Read the Vickers amendment as found on page 545 of the Legislative Journal.)

PRESIDENT: All right, the Chair recognizes Senator Vickers on an amendment to his own amendment.

SENATOR VICKERS: Yes, Mr. President and members, actually this amendment to the amendment printed in the Journal on page 523 is more of a technical nature also. If you will notice on page 523 on subsection 2 where we are amending 70-638, the words "or offers to negotiate" are inserted after bids up in about the middle of the paragraph. This has to do with advertising for bids or offers to negotiate. The bottom part of that section or that statute has to do with the plans and specifications that might be held at the office of the district and in order to clarify it and make this more...in order for the bottom part to be like the top part is, the words "or offers to negotiate" should also be included after bids on the next to the bottom line, and as I indicated it is a purely technical amendment to this amendment and I would urge the body's adoption.

PRESIDENT: Senator Wesely, do you wish to speak to the amendment to the amendment? Okay, any further discussion on Senator Vickers' amendment to the Vickers amendment? If not, all those in favor of the amendment to the amendment vote aye, opposed nay. Record the vote.

CLERK: 29 ayes, 0 nays on adoption of the amendment to Senator Vickers' amendment, Mr. President.

PRESIDENT: The motion carries, the Vickers amendment to the Vickers amendment passes. Approved, so we are going then to the Vickers amendment as amended. Senator Vickers.

CLERK: Yes, sir, that is on page 522 of the Journal.

SENATOR VICKERS: Mr. President and members, the amendment that is being offered to LB 34 is to address some of the concerns raised by the public power districts in regard to the words "maintenance and repair" in section 2 of LB 34. Quite honestly, the words "maintenance and repair" do cause a problem for the power districts, I can understand that when we are talking about them offering putting out for bids a sealed bid, simply because in many instances when we are talking about repair and maintenance of a power plant or something of that nature, the exact amount of damage or the exact amount of repair needed, or maintenance needed is not known. In those instances, a sealed bid would therefore probably result in a much higher bid than necessary by

a contractor which would be detrimental to the rate payers of the State of Nebraska, which is certainly not my intention. This was pointed out to me before the hearing on LB 34 and because of the short period of time we had to deal with it, we were not able to come up with any language that would, in fact, answer their concerns and at the same time answer the concerns of some of the people, myself included, that we're having with the way that some of the contracts have been let at the present time. At the present time, some of the contracts have been let in more or less of a cost plus fashion which is definitely not in a very good fashion to do things. In instances, I assume that is probably the only way to do it, however, but what this amendment would do that I am offering to LB 34 would set up a procedure whereby the board of directors with a two-thirds vote of the board, after being certified by an engineer that it would be impractical or not in the public interest for the district to advertise for responsible bidders under a firm contract, then they could, in fact, negotiate a contract. In the past this negotiation has not been done by any advertising. It has been done simply by the district or districts contacting a contractor that they had work done with in the past and ask them what they would charge per hour, per day, or whatever to do this repair work. What we are suggesting with this amendment is that they, in fact, advertise that they are going to negotiate contracts after approval by the board of directors, after being brought to the board by the engineers that it isn't practical to do it, then they would negotiate only after advertising for those negotiations which would, in fact, give the district the ability then to probably negotiate with a number of contractors as to the maintenance and repair work that was needed to be done. This is, as I say, an attempt to clarify Section 2 of the bill with the concern of maintenance and repair. The other sections that we are adding to the bill simply are sections necessary because of the inclusion of the language with the amendment to Section 2 of the bill where we are putting in the words "to negotiate a contract". The second section that we are adding, the first section is the one that we just got through amending, that would put offers to negotiate in their advertisement section of the statute. The second section that we are adding is the section that gives them the ability to operate in cases of emergency such as damage from storms and so forth, sudden or unexpected damage, and puts in the same language that we have got back on Section 2 of the bill, just so it will

February 17, 1981

LB 34

make the statutes more uniform and use the....not be so confusing to the districts having to use it. I would urge the body's adoption of this amendment.

PRESIDENT: Any further discussion? Senator Wesely, do you wish to speak to the amendment? The Chair recognizes Senator Wesely, and the House technically is under Call, so if somebody would want to make a motion to raise the Call. Senator Haberman. The Call is raised, thank you.

SENATOR WESELY: Mr. President and members of the Legislature, the amendment which is now before you deals with two sections of the bill which I claim some responsibility for including in this legislation and I am very concerned about this issue and feel that the amendment provided to you by Senator Vickers is one which I think offers a reasonable compromise on some concerns that I have. Just to backtrack for one second, let me give you a background on the issue involved. The impetus for this change which would allow for maintenance and repair and other types of contracts like that to be required to be let for bid started with this summer's contract that was let by NPPD to Brown and Root Company. There was a great deal of concern at that time. I looked into the issue and found that, in fact, that this was a very substantial contract and that there were a number of companies in the State of Nebraska who could have perhaps done that work perhaps at a lower price that didn't even have a chance to negotiate on that contract. But, quite frankly, the law did not provide that the power districts would have to let those kind of bids for a contract and so they didn't. I thought that wasn't right. I thought that when we are letting for bids with public power we ought to provide an opportunity for all responsible bidders, an opportunity to bid on that contract and then take the lowest responsible bid so that the rate payers in the State of Nebraska are served in the best manner possible at the lowest cost possible, and I think that is what this bill attempts to do. Now, unfortunately, both the major power districts in the state have found that this restriction which is in the original LB 34 may be too tight and that, in fact, there may be rare and occasional times that they cannot, in fact, let a contract for bid because of a number of reasons. And I think Senator Vickers has recognized this fact and has drafted an amendment which I feel deals with that issue, provides for some flexibility but at the same time does not open up the door again so we could have a repeat of the situation we saw this summer. I do have one question

of Senator Vickers, if he would yield to a question.

SENATOR VICKERS: Yes, certainly.

SENATOR WESELY: Senator Vickers, concerning the amendment, in one part it says that...in the middle of the first section of the paragraph it says that any contract that would not be out for bid would still be advertised so that responsible bidders would have a chance to negotiate the contract, instead of bidding for the contract. But later on it says that after two-thirds vote of the board and an engineer's certification that they can't actually go to a bidding situation, would provide a negotiation of contract, but that would still be after advertising for the contract negotiations. Isn't that correct?

SENATOR VICKERS: Yes, Senator Wesely, the concern that you raise on the language, I think you need to read the entire section in the context, but you will notice that it says that a said engineer or engineers shall certify, and later on that if the engineer's certification is approved by a two-thirds vote of the board, then the sealed bid requirement...that the sealed bid requirement would be, improper and not in the public interest, then the district shall negotiate a contract. But it also says up above in the new language that the districts shall advertise for responsible bidders as defined in section 76-39 to negotiate a contract. So my intention here, quite honestly, and I think that is what this section says, is that the engineer has to recognize that it would be impractical to have a sealed bid on a specified amount, then the engineer has to bring that matter to the board of directors, the board of directors have to approve by a two-thirds vote that they are not, in fact, going to advertise for a specified amount, the sealed bid contract, then they will have to advertise before negotiations can be taken place with contractors, or contractor, so the intent quite clearly is that there has to be three different things take place. The engineer has to first of all certify that it is impractical, then the board of directors have to approve by a two-thirds vote that the engineer's assumption is correct and then they do have to advertise for negotiations on those bids.

SENATOR WESELY: Thank you, Senator Vickers. With that explanation, I can support this amendment because it still has the major provision, which is to say that before any negotiations start on contracts with power districts there will be an advertisement placed by the

power districts so that responsible bidders will have a chance to negotiate with the power districts for the best possible contract for the rate payers of that district. That seems reasonable to me because there was a great deal of concern when companies in Nebraska don't even know about potential contracts and haven't even an opportunity to bid on them. I am not saying, in fact, that simply because they are a Nebraska company they should have the bid, but, in fact, what I am saying is they should have a chance to advertise...to bid, to negotiate and to come up with the best possible offer that they can, and if they are responsible and capable then I think they should have that opportunity to make that effort. Now the wording in this amendment is not to the satisfaction of everybody, however, it is clear that the general intent is one which is agreeable to most everybody. We are going to work on the language specifically on this amendment later in the day to try and take care of everybody's specific problems, but I urge the adoption of the Vickers amendment and would encourage you that if there are any particular concerns you have, that perhaps on Select File we can deal with those concerns.

PRESIDENT: Any further discussion on the Vickers amendment to LB 34? Senator Beutler.

SENATOR BEUTLER: Senator Vickers, if I could, just one question. With regard to what is in the public interest, if they make a determination that it is not in the public interest to have sealed bids, then under the amendment they don't have to...they are not required to have sealed bids. Is that correct?

SENATOR VICKERS: If it is not....will you ask that question again, Senator Beutler?

SENATOR BEUTLER: If they make a determination that it is not in the public interest to have sealed bids, they are not required to have the sealed bids. Is that correct?

SENATOR VICKERS: That is correct.

SENATOR BEUTLER: Would a general philosophic belief that it is cheaper for the public to not have sealed bids in a specific situation be considered in the public interest?

SENATOR VICKERS: I think it would have to be impractical as well as not in the public interest, it would seem to me. Now impractical or not in the public interest would be if

there was a real possibility that the bidder would, in fact, inflate his bids tremendously because of unknown factors then obviously that would not be in the public interest, it seems to me. Now I do not think that philosophical...(interruption.)

SENATOR BEUTLER: Just the fact that NPPD feels or anybody else feels that it would be cheaper in a particular instance to do away with sealed bids and simply negotiate the contract, that in and of itself would not fall under the category of being in the public interest and allow them to do away with sealed bids?

SENATOR VICKERS: No.

SENATOR BEUTLER: Okay, thank you.

PRESIDENT: Any further discussion on the Vickers amendment to LB 34? Seeing none, Senator Vickers, would you close on your amendment as amended?

SENATOR VICKERS: Mr. President and members, I think the discussion here has been pretty thorough. I would just suggest that this is a very good compromise between the two parties involved and would ask the body's support for the adoption of this amendment.

PRESIDENT: The question before the House is the adoption of the Vickers amendment as amended to LB 34. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of the Vickers amendment.

PRESIDENT: Motion carries. The Vickers amendment is adopted. Anything further on the bill, Mr. Clerk?

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

PRESIDENT: Senator Vickers, would you care to discuss the bill further then?

SENATOR VICKERS: Mr. President and members, I think the first section, or the second section has been discussed at quite some length in the adoption of this previous amendment. The real meat of LB 34, if you will, is Section 3 on page 4, and this is an attempt on my part and it was an attempt on several peoples' part to define responsible bidder, to give the board of directors of the various power districts of the State of Nebraska a little bit more authority, if you will, legislative authority, to reject the low bidder if,

in fact, they didn't think they were responsible. It attempts to set in some...in the statute some language to give them some guidance as to what responsible is. All of the public power districts that testified at the hearing were in favor of this language. They seemed to think that this would, in fact, give the directors a little bit more authority as far as rejecting low bids if for some reason or other it would appear that the low bid was probably not in the best interest of the district. The best example I guess that I can give is what took place at Gerald Gentleman Station at Sutherland, Nebraska, and I think that many people were aware or had become aware that there was, in fact, a problem with Unit I, and I think if this language had been in the statutes at that point in time a lot of that problem wouldn't have come about and that the total amount of dollars expended would not have been nearly as much. The rest of LB 34 is simply language that I think is important to make certain that the board of directors are aware and it is set in statute that they are responsible for dollars expended. That is the intent of Section 4 of the bill. And, again, there was no opposition from the districts. Most of those directors I think feel that they are responsible already but I just think it is important that we clarify and make certain that they are, in fact, responsible and are, in fact, aware of all monies expended by the districts. I would just in closing mention the fact that as rates go higher in this state and obviously they are going to with energy costs getting higher and higher, the concern of the rate payer or the concern of the general public is going to increase right along with those rates and if we as the Legislature put in all the help that we can in the statutes in regard to the directors and their responsibilities, it seems to me that will be a help in the end. I would urge the body's adoption of LB 34.

PRESIDENT: The question before the House is the advance of LB 34 to E & R Initial. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 32 ayes, 2 nays, Mr. President, on the motion to advance the bill.

PRESIDENT: The motion carries and LB 34 is advanced to E & R Initial. Do you want to read some stuff in? Go ahead.

CLERK: Mr. President, if I may briefly intercede. New bill, LB 273A, offered by Senator DeCamp. (Read title to LB 273A for the first time.)

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LB 24, 34, 80, 104, 165,
167, 221, 236, 260

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Reverend Kalmer Knudson, St. Paul United Church of Christ here in Lincoln.

REVEREND KALMER KNUDSON: (Prayer offered.)

PRESIDENT: Roll call.

CLERK: Mr. President, Senator Kremer would like to be excused until he arrives.

PRESIDENT: Senator Landis, Senator Koch, Senator Wiitala, would you all show your presence so we can have a quorum. Thank you. Record the presence, Mr. Clerk.

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

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand as correct as published. Any messages, reports and announcements.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 34 and recommend that same be placed on Select File with amendments; 260 Select File with amendments; 80 Select File; 104 Select File with amendments; 236 Select File with amendments; 221 Select File. (Signed) Senator Kilgarin, Chair.

Mr. President, your committee on Banking, Commerce and Insurance gives notice of continuation of public hearing.

And finally, Mr. President, I have a report from the Nebraska Power Review Board. That will be on file in my office.

Mr. President, Senator Warner would like to print amendments to LB 167, 165 and LB 24, print amendments in the Legislative Journal.

PRESIDENT: We are ready then for Final Reading, agenda item #4. All legislators will be at their desks. All other personnel will leave the floor of the Legislature. The Sergeant at Arms will see to it that all others are off of the floor. The Legislature will be on Final Reading.

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LB 30, 34, 37, 43

CLERK: (Record vote read. See page 585, Legislative Journal.) 34 ayes, 8 nays, 3 excused and not voting, 4 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed with the emergency clause attached. The Clerk will now read on Final Reading LB 37.

ASSISTANT CLERK: LB 37 (Read on Final Reading).

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

ASSISTANT CLERK: (Record vote read. See pages 584 and 585, Legislative Journal.) The vote is 43 ayes, 0 nays, 3 excused and not voting, 3 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. Now we are going to run over the noon hour just slightly so bear with us. The Clerk will read, and this is the final bill this morning on Final Reading, the Clerk will read LB 43 on Final Reading.

ASSISTANT CLERK: LB 43 (Read on Final Reading).

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

CLERK: (Record vote read. See pages 585 and 586, Legislative Journal.) 41 ayes, 3 nays, 3 excused and not voting, and 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. A couple of announcements before we adjourn. There will be a Chairmen's meeting in Room 2102 tomorrow at 8:15 a.m. All chairmen are encouraged to be present. From Senator Hoagland's District, David Wilken is a member of the Board of Education of the Omaha Public School System. Mr. Wilken, where are you? Good morning. Senator Haberman, would you like to...I am sorry. The Clerk has got an item on the desk and then we need to adjourn.

CLERK: Mr. President, Senator Wesely would like to print amendments to LB 34.

Mr. President, you committee on Revenue whose Chairman is

February 23, 1981

LB 178, 109, 34

SPEAKER MARVEL: Senator Carsten, do you wish the floor?

SENATOR CARSTEN: Mr. President and members of the Legislature, I guess my only comment is the support of the Beutler amendment. What started out to be what we thought was a relatively simple and easy bill had some complications and through the amendment route and the cooperation of the Department of Revenue, it appears that it is now in much better form than it was in its original draft. So I support the amendments and would urge the body to do likewise. Thank you, Mr. President.

SPEAKER MARVEL: Is there any further discussion on LB 178? Senator Beutler, do you want to close on your amendment? No close. All those in favor of the Beutler amendment to LB 178 vote aye, opposed vote no. Record.

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

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

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

SPEAKER MARVEL: Senator Carsten, do you want to advance the bill?

SENATOR CARSTEN: I move the bill be advanced to E & R engrossing.

SPEAKER MARVEL: All those in favor of the advancement of the bill vote aye, opposed vote no. Say aye, opposed no. Motion is carried. LB 109. Senator Wagner, are you ready with that bill?

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

SENATOR WAGNER: Mr. Speaker.

SPEAKER MARVEL: Do you move advancement of the bill?

SENATOR WAGNER: I move the advancement of the bill.

SPEAKER MARVEL: All those in favor say aye, opposed say no. The motion is carried. The bill is advanced. LB 34.

CLERK: Mr. President, there are E & R amendments to LB 34.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendment to LB 34.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. Motion is carried. The amendment is adopted.

CLERK: Mr. President, I now have an amendment from Senator Wesely and it is found on page 586 of the Legislative Journal.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Mr. Speaker, members of the Legislature, as I recall, LB 34 dealt with a number of issues concerning bidding statutes as they apply to power districts. We had an amendment which we adopted on General File offered by Senator Vickers which dealt with a number of concerns the power districts had on those restrictions that were placed by LB 34 in the original draft of the bill. We found, however, that the Vickers' amendment was not complete in its drafting and I sat down with representatives from the Nebraska Public Power District and with the staff from the Public Works Committee and we tried to get the wording properly drafted so that we would be sure of what we were accomplishing with this legislation. The result is the amendment which is found on page 586 of the Journal. It is an amendment agreed to by the Nebraska Public Power District, by the unions that were concerned in Nebraska about this loophole in our bidding statutes and I think that it is a compromise that I think deals with the issue in a fair way. Essentially what we would provide for is that reconstruction, remodeling, maintenance, repair would all still be covered under the bidding statutes through this bill that haven't before been covered but we do provide for when cases come up, the rare and exceptional cases, hopefully very, very, few of them would come up where they just did not feel they could come together in terms of drafting a contract proposal that would be a wise one to let out for bid. They could under those extreme circumstances with an engineer's assessment provided to the boards, then a two-thirds vote of the board would have to be required before they would be allowed to begin negotiation instead of bidding for these contracts, and even then, even then, if they would decide that they couldn't let this repair or maintenance contract out for bid, they would still have to advertise in daily newspapers and trade journals the fact that they were going to negotiate for this contract so everyone would be aware of the fact that this was available and could then contact the power district involved and offer an opportunity to negotiate a contract with them. I think this is a fair system because we would encourage, and I think almost in all cases we would have bidding on these repair-maintenance contracts where we have

never had before hardly but at the same time in those rare cases where there are some difficulties for the power districts we would provide them some flexibility with some checks and balances that would allow us to monitor the situation and ensure that no abuse would take place. There are also two additional changes that are more technical than anything to the amendment which help the power districts with some problems they have had with this statute for some time. First off we clarify the fact that when they do advertise on these bids or with negotiations, they would have to advertise in newspapers with seven days between issues instead of the present language which has three consecutive issues within twenty days which is kind of confusing to them and this clarifies that they would have essentially three issues that they would have to advertise in. If it was a weekly, that would take place in a matter of a two week period. Also the other changes that we would allow when a regulatory body makes an order that would not allow them to let for bids on contracts because of the time constraints a regulatory body has put on the power district, they would have an opportunity to use the emergency section and negotiate contracts immediately so they could meet that order and keep their power plant on line but presently they don't have that authority, and as you have seen with the nuclear regulatory commission in particular, there are times when they will give you twenty days to come up with some changes to a nuclear power plant and that is just not enough time with our bidding statute to let those out for bids. So in those particular circumstances where time constraints are too great to let for bids, they would have that flexibility but that would be, again, a very extreme case. So my feeling is that we have an excellent amendment here that deals with the concerns of the power district, and at the same time change this loophole so that it no longer allows the sort of activity which we have seen in the past and I think it is a very fair change and I certainly encourage your support for the amendment.

SPEAKER MARVEL: The motion is the adoption...we are working on the adoption of the Wesely amendment to LB 34. Senator Vickers, do you wish to be recognized on the Wesely amendment?

SENATOR VICKERS: Mr. President and members, I rise to support the Wesely amendment. As Senator Wesely described it to you, the amendment that had been worked out when this bill was on General File because of the shortness of time had not had an opportunity to be examined by all the various parties involved. The amendment that Senator Wesely offers to you is now a clarifying amendment, if you will, to the

amendment that this body adopted on General File. It makes it more clear of the intentions and also makes it so that the districts would be able to follow the intentions of the amendment we adopted on General File. In particular the advertising section has been clarified so that when the district advertises to negotiate a contract that it does not necessarily have to follow the procedures set forth in 75-637 which would seem to indicate that they did have to have a contract for a specified amount. So it does clarify that language. Also it clears up the language regarding advertising the three days over a twenty day period, and when you are advertising in perhaps a daily or a journal, that possibly could be the last three days of the twenty day period. This clarifies that also. The portion that Senator Wesely mentioned to you that also makes it clear that if it is by an order of a regulatory body which would prevent compliance with the previous sections requiring sealed bids, this makes it clear that in the case of the nuclear power plants when the nuclear regulatory commission issues orders that would be very difficult, if not impossible, for the districts to comply with through the sealed bid process, then they may, in fact, simply advertise for negotiations. This amendment I would point out to the body has been approved by the various sides involved, NPPD, OPPD, the various districts. Also I think it has had the approval of many of the labor unions that have been involved with this bill from the start. I would urge the body's support of Senator Wesely's amendment.

SPEAKER MARVEL: Senator Schmit, do you wish to speak to the Wesely amendment to 178 (sic)?

SENATOR SCHMIT: Senator Wesely, this amendment applies only to the power districts, is that right? Thank you. I would just like to point out that I received a phone call this weekend from an engineering firm. They happen to be, I believe, a disappointed bidder for the privilege of providing engineering estimates upon the construction of a dam for a Natural Resources District. It told me the engineering cost of that structure to be allowed is somewhere in the neighborhood of a quarter of a million dollars and that no bids are necessary for the Natural Resources District when soliciting a firm to do the blueprints on this type of a structure. Do you see any necessity, Senator Wesely or Senator Vickers, I would ask either one of you, in taking a look at the entire bid process because it is obvious to me that if an engineering firm can submit a bid for a quarter of a million dollars without any kind of competitive bidding, that there might very well be an opportunity here for the Natural Resources District to secure a construction cost which would not be in keeping with the lowest possible cost? Have you given this

any thought as to looking into that possibility of expanding your suggestions, Senator Vickers?

SENATOR VICKERS: Senator Schmit, I had not looked at the bidding statutes dealing with Natural Resources Districts so I am not familiar with what is required under those statutes. However, I would certainly be in agreement with you that perhaps they should be looked at. This, LB 34, however, deals only with public power districts and I would hope that the question or the problem that you bring forth, perhaps these sections here where we are dealing with where they can negotiate for contracts, if indeed the exact dollar figure is not able to be determined, I would assume that in many cases maybe the engineering contract would be of that nature. I would hope that this would allow them then to negotiate those contracts so that it wouldn't be just a simple matter of giving it to one particular firm, in the case of the public power districts, at least.

SENATOR SCHMIT: Thank you. I would just like to point out again the individual who called me stated that the cost of the engineering estimate to be awarded would be in the neighborhood of a quarter of a million dollars, that was being awarded without bid, and that they were not being given an opportunity to bid and, therefore, the implication was that the bid that would be submitted on the construction project in total could very well be not the lowest possible bid. So I think if we are going to limit the various types of contracts to a \$50,000 range, then we should take a look at it clear across the board and I will be glad to visit with you about that at a later time, Senator Vickers.

SPEAKER MARVEL: Senator Johnson.

SENATOR VARD JOHNSON: Mr. Speaker, members of the body, I have a question of Senator Wesely, if he would rush back to his microphone.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Yes.

SENATOR V. JOHNSON: Can you provide me the rationale, Senator Wesely, for requiring the advertisement of those transactions where sealed bids will not be sought, where the local power district decides very simply that under the circumstances that exist in that particular case, they will award a contract to somebody notwithstanding the absence of sealed bids? They are still required under your amendment to publish notice three times of their intention of doing exactly that. Can you provide the rationale for that particular disclosure

requirement.

SENATOR WESELY: Okay, the reason is that presently they don't have any requirement whatsoever to bid on maintenance-repair contracts, reconstruction or remodeling. This would put that in there. The present policy is that when they want to sit down and negotiate one of those contracts, they don't have to advertise for it, they don't have to do anything, and they, basically, can at their discretion pick out any companies that they would like to sit down and talk to and not have to solicit any sort of negotiations with any, say, Nebraska companies or any out state companies. What we are trying to do, essentially, Senator Johnson is say that if you are going to take this extreme step and not bid on a repair-maintenance contract, you have to at least give other companies an opportunity to know that you are going to not bid on it, that you are going to negotiate, and give them a chance to identify the fact that they could negotiate for this particular contract and contact the power district and offer to sit down with them and work out some sort of a bid on it. It is an attempt to get at the main problem that we have had, and that is Nebraska companies, Nebraska contractors who are capable and able to carry out some of the contracts that have been let by power districts on repair-maintenance have not even been informed about the fact that those contracts were going to be negotiated. This at least gives them a chance to know about it and then a chance to negotiate.

SENATOR V. JOHNSON: Okay, incidentally, Senator Wesely, what are the existing requirements right now even in the absence of LB 34 plus the amendments for advertising bids on construction work, do you know?

SENATOR WESELY: Yes, it is exactly the same requirements that are provided for in the repair-maintenance contracts. That is to say that they have to advertise in one daily newspaper of general circulation within the district for three consecutive issues within a twenty day period or so. And then they also are encouraged to use trade journals and other newspapers to advertise. That is their discretion though.

SENATOR V. JOHNSON: All right. So actually these amendments don't represent any significant change to existing practices?

SENATOR WESELY: No, essentially it would be exactly the same practice applied to the repair-maintenance contracts which now are covered which weren't before.

SENATOR V. JOHNSON: All right, thank you very much.

SPEAKER MARVEL: There is an amendment on the desk.

CLERK: Mr. President, Senator Rumery moves to amend the Wesely motion by striking the provision of 2/3 of the Board members voting and inserting a majority of the members of the Board.

SPEAKER MARVEL: Senator Rumery.

SENATOR RUMERY: Mr. President, members of the Legislature, we have drifted into this system of providing for elections and so forth in our republic and we brag about how the majority rules in all areas of this government of ours and yet we will put on these restrictions of more than a majority which in most cases provides the fact that the minority actually rules. Therefore, I move that we strike the two-thirds requirement of the Board and insert the provision for a majority of the Board.

SPEAKER MARVEL: We are about to discuss the Rumery amendment to the Wesely amendment to 178 (sic). Senator Haberman. Senator Haberman, do you wish to address yourself to the Rumery amendment to the Wesely amendment?

SENATOR HABERMAN: I will address myself to the Rumery amendment, Mr. President, members of the Legislature. Senator Vickers, would you yield to a question?

SENATOR VICKERS: Yes.

SENATOR HABERMAN: Senator Vickers, the reason for the bill, doesn't the amendments proposed undo some of the reasons for the bill?

SENATOR VICKERS: No, the Wesely amendment as drafted doesn't, Senator Haberman. The reasons for the bill were to make sure that contracts or monies expended by the districts were expended only after a serious attempt was made to get the best possible use of those monies and I think the amendment as proposed by Senator Wesely is in good conscience offering an amendment that would, in fact, strengthen the bill.

SENATOR HABERMAN: Doesn't the amendment cut out the local contractors because the board can go ahead and do this on their own? In your bill, they couldn't?

SENATOR VICKERS: No, the amendment doesn't.

SENATOR HABERMAN: Very well, thank you. I will rise to oppose the amendment of Senator Rumery's to put a majority in and I would like to see the two-thirds majority remain with the bill. Thank you, Mr. President.

SPEAKER MARVEL: Senator Wesely, do you wish to speak to the Rumery amendment?

SENATOR WESELY: Yes, Mr. Speaker. I would like to oppose the Rumery amendment, quite frankly that if this amendment is put onto this...my previous amendment, I would like to go back to the original bill and just forget all about any sort of effort to compromise and come to a reasonable position on this legislation. My original position, keep this in mind, was to not allow any sort of flexibility of the power districts and they would always have to let for bids any contract on repair, maintenance, reconstruction or remodeling if it was over \$50,000 and I don't think that is unreasonable, quite frankly. I feel I have given in too much as it is perhaps with this amendment. I would rather go back to the original bill than allow the Rumery amendment. My feeling is that what we did was we said, okay, all right, in extreme cases, we will allow you a little bit of flexibility but we want to, number one, be assured by an engineer that this is a case where you cannot let it for bid, and they have to certify to that, and then, number two, we place the two-thirds restriction on the board so that they have to be extra certain that the supermajority of the board thinks that, yes, we shouldn't let this for bid, that it is in the public interest to not do this and it is better for the district and the ratepayers to go ahead and negotiate this contract. And so we put that extra barrier there specifically because we want to make it hard for them to not let for bids on these contracts. I think we want to have that sort of a policy in the State of Nebraska, when a public entity is serving the State of Nebraska, is in line for a contract that is going to be over \$50,000, we are talking about a lot of money, and they should let that for bid if at all possible, and I think that has been the big problem we have seen here. This bill allows them some flexibility but the Rumery amendment I think would let them have too much flexibility and I think we ought to go back to the original bill, if we are going to do that, because the whole point is we have put up some barriers, we allow them some flexibility, and if there is a supermajority in support of the bill and there is some evidence by the engineer that there is a need not to let it for bid, then, okay, in that extreme case, ya, you can go ahead and negotiate it. But we want to make it hard for them to do it and that is why we have the two-thirds vote on there.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. President, members, I also arise to oppose the Rumery amendment. It seems to me that there are times when a simple majority is not enough. I think this body has agreed to that in the past just with our own rules. It takes more than a simple majority of this body to change our rules. It takes more than a simple majority to overrule our rules. It takes more than a simple majority to pass an appropriations bill, for instance. It seems to me that what we are dealing with here is an instance where an elected board of directors is in a position to expend a tremendous amount of money belonging to the ratepayers of this state, and before that decision is made to circumvent the bidding statutes and go to instead an advertising for negotiation on a contract that it should have some checks and balances. One of the checks as written in LB 34 would, as amended, would require the engineer's certification that it was impractical and not in the public interest to put out for sealed bid. The other check is that it would require a two-thirds of the elected board. It seems to me that that check should stay there. If we have decided in this body that there are instances when it takes more than a simple majority, it seems to me it is no more than right that we should extend that to some of our subdivisions, in particular when we are talking about expending huge amounts of dollars, that their decision should definitely require more than a simple majority. I urge the body's rejection of the Rumery amendment to the Wesely amendment.

SPEAKER MARVEL: Senator Wesely, do you have any more to present before we go to Senator Rumery to close? Okay, the Chair recognizes Senator Rumery to close on his amendment.

SENATOR RUMERY: Mr. President, members of the Legislature, just because we have made mistakes in the Legislature requiring these more than a majority rules is no reason why we should continue the practice. The way we are doing in the Legislature and other places is we are allowing minorities to control the votes and I think we ought to stick with what the founding fathers talked about was the majority rules. Thank you.

SPEAKER MARVEL: The motion is the Rumery amendment to the Wesely amendment. All those in favor of the Rumery amendment vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Rumery. Record the vote.

CLERK: 5 ayes, 23 nays on adoption of Senator Rumery's amendment.

SPEAKER MARVEL: The motion lost. We now are addressing the Wesely amendment to the Vickers...to the bill, LB 34. Is there any further discussion? Senator Wesely, do you want to close on your amendment?

SENATOR WESELY: Thank you, Mr. Speaker. Again, and I appreciate the support on the opposition to the Rumery amendment which I think would have really hurt the amendment which is now before you. What we are trying to do is to provide some flexibility to the power districts but we are in a situation where we're compromising and both sides don't like it and that is probably the best kind of compromise you can have. It is a situation where we really don't want to allow these maintenance contracts to be negotiated any more in the way they have in the past. It is just obviously there has been some serious problems with it, but at the same time the power districts evidently do have a problem with some of these particular maintenance and repair contracts, they don't feel they can let for bid and truly serve the ratepayers by doing that and they want the chance then to negotiate. Well, if they are going to do that, then we say, number one, an engineer has got to certify the fact that they can't let it for bid and, number two, a two-thirds supermajority of the board would have to agree with that fact they can't let it for bid and then they would have to advertise and allow people to negotiate, so that everybody had a chance to get their bid in. Well, now there is still concern that despite the safeguards in this proposal that there may be abuses by some of the power districts and that there still may be some problems that we have seen in the past with this situation. Well, let me just pledge to you right now, with the adoption of this amendment and hopefully the passage of the bill, I will certainly be monitoring the situation and I think Senator Vickers and others on the floor who have been interested in this will as well. And I also think the contractors of this state and the labor unions of this state, who have been involved with the construction and maintenance-repair of power district activities, will also keep on top of the situation. And just as a warning to the power districts of Nebraska, if they think that this amendment and this flexibility which we are providing to them in good faith is abused, they will have a price to pay, that there will be changes and the original bill which would have allowed them no flexibility will be the first thing introduced and I will pledge that right now, if there are any abuses to this flexibility we provide them. But at this time I, in good faith, feel that they do have some concerns that are legitimate and we ought to adopt the amendment and advance the bill and take care of a problem in a fair manner.

February 23, 1981

LB 34, 80, 104, 260

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

CLERK: 27 ayes, 2 nays, Mr. President.

SPEAKER MARVEL: The motion is carried. The Wesely amendment is adopted. And now what do we do with the bill?

CLERK: Mr. President, the motion is to advance the bill.

SPEAKER MARVEL: All those in favor of advancing the LB 34 as amended say aye, opposed no. Motion is carried. The bill is advanced. The next bill is LB 260.

CLERK: There are E & R amendments to 260, Mr. President.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 260.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The E & R amendment is adopted.

CLERK: Mr. President, I have no amendments to LB 80. I am sorry, we didn't advance it.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 260 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried and the bill is advanced. LB 80.

CLERK: I have nothing on the bill, Senator.

SENATOR KILGARIN: I move LB 80 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. LB 104.

CLERK: There are E & R amendments.

SENATOR KILGARIN: I move the E & R amendments to LB 104.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The E & R amendment is adopted. Senator Kilgarin.

February 23, 1981

LR 20
LB 34, 38, 77, 197A,
290

CLERK: There are E & R amendments, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 77.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The E & R amendment is adopted.

SENATOR KILGARIN: I move LB 77 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion carried. The bill is advanced. LB 38.

CLERK: There are E & R, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 38.

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

SENATOR KILGARIN: I move LB 38 be advanced to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced. Do you have anything else on the desk, Mr. Clerk?

CLERK: Yes, sir, I have several things to read.

Mr. President, first of all, a new A bill, LB 197A. (Read title.)

Mr. President, a new resolution, LR 20. (Read) That will be laid over, Mr. President.

Mr. President, Senator Wesely would like to have his name added to LB 34 as coinroducer.

Mr. President, Senator Burrows wants to remind the body that the tour of the Beatrice State Developmental Center is for tonight. Vans will leave the west door at 4:00 p.m. today for those planning to attend. Please let Senator Burrows' office know if you plan on going.

Mr. President, I have Committee on Committees confirmation reports from the Miscellaneous Subjects Committee and the Constitutional Revision and Recreation Committee.

I have an Attorney General's opinion addressed to Senator Clark regarding LB 290.

February 27, 1981

LB 34, 58, 114, 125, 144,
195, 205, 246, 272, 273,
273A, 325, 355, 359, 388,
409, 491, 546

the motion is the suspension of the rules to introduce a bill as explained by Senator Newell. All those in favor of suspending the rules vote aye, opposed vote no. Record the vote, Mr. Clerk.

CLERK: 30 ayes, 11 nays to suspend the rules and offer introduction, Mr. President.

SPEAKER MARVEL: The motion is adopted.

CLERK: Mr. President, a new bill, LB 546. (Title read.) While we are waiting, your committee on Urban Affairs whose Chairman is Senator Landis to whom we referred LB 58 reports the same back to the Legislature to General File with amendments; 359 General File with amendments; 491 General File with amendments. (Signed) Senator Landis.

Senator DeCamp would like to print amendments to LB 34 in the Journal.

Mr. President, your committee on Enrollment & Review respectfully reports they have carefully examined and reviewed LB 205 and recommend that same be placed on Select File with amendments; 409 Select File with amendments; 195 Select File; 272 Select File; 273 Select File with amendments; 273A Select File; 355 Select File with amendments; 114 Select File; 246 Select File, 325 Select File, 388 Select File with amendments. (Signed) Senator Kilgarin, Chair.

SPEAKER MARVEL: May I have your attention to discuss item #6 and item #6 has to do with the continuation of the discussion on LB 125. There is a request that the bill be laid over until Monday. I have contacted two of the introducers. They are amenable to laying it over until Monday. If we do this, I think we must do it with the understanding that we are not establishing a precedent. But anyway, is there objection to laying over 125 until Monday? Senator Higgins.

SENATOR HIGGINS: Mr. President, who requested that we lay it over?

SPEAKER MARVEL: Senator Haberman.

SENATOR HIGGINS: Thank you.

SPEAKER MARVEL: Any other discussion? Okay, the bill will be laid over until Monday. We now move to General File, LB 144, Mr. Clerk.

March 2, 1981

LB 9, 34, 110, 124, 178,
214, 345, 547

opposed nay. Record the vote.

CLERK: 31 ayes, 1 nay, Mr. President, on the motion to introduce the bill.

PRESIDENT: The motion carries. The bill may be introduced. Read the bill.

CLERK: Mr. President, LB 547 introduced by the Ag and Environment Committee. (Read LB 547 for the first time.)

PRESIDENT: Senator Landis, did you wish to....thank you. I thought you might want to speak. Ready for agenda item #5, Final Reading. The Sergeant at Arms will see that all unauthorized personnel are off the floor of the Legislature. All legislators are to be at their desks. We are ready to proceed with Final Reading. As soon as everyone is at your desk we will commence with LB 110.

CLERK: Mr. President, while we are waiting, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 9 and find the same correctly engrossed; 34 correctly engrossed; 124 correctly engrossed; 178 correctly engrossed, and 345 all correctly engrossed. (Signed) Senator Kilgarin, Chair.

PRESIDENT: All right, we are ready to proceed then with Final Reading. Mr. Clerk will proceed with the Final Reading of LB 110.

CLERK: (Read LB 110 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 110 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 704 of the Legislative Journal.) 35 ayes, 8 nays, 5 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 110 passes. The next bill on Final Reading is LB 214.

CLERK: (Read LB 214 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 214 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

March 4, 1981

LB 30, 34, 532

The Call is raised. Do you have any items to read in?

CLERK: Mr. President, one item, Senator Lamb would like to print amendments to LB 34 in the Legislative Journal. (See page 745 of the Journal.)

Mr. President, Senator Koch moves that LB 30 be enacted into law notwithstanding the objections of the Governor.

Mr. President, Senator Koch moves to withdraw LB 532.

SPEAKER MARVEL: Is that it?

CLERK: Yes, sir.

SPEAKER MARVEL: Senator Newell, do you want to adjourn us until tomorrow at 9:00 o'clock.

SENATOR NEWELL: I so move.

SPEAKER MARVEL: The motion is to adjourn until Thursday, March 5th, 1981, 9:00 a.m. All those in favor of that motion say aye. Opposed no. We are adjourned until tomorrow.

Edited by:

Marilyn Zank
Marilyn Zank

March 5, 1981

LB 9, 34, 59, 69, 206,
206A, 308, 331

(Recorder malfunctioned. Following are the proceedings taken from the Journal.)

SPEAKER MARVEL PRESIDING

G. BRUCE CURRIER: Prayer offered.

ROLL CALL

CORRECTIONS FOR THE JOURNAL

MESSAGES, REPORTS, ANNOUNCEMENTS: LB 331 placed on General File as amended. (See pages 746-747 of the Journal.)

Message from the Governor. (See page 747.)

Executive Board report. (See pages 747-748.)

Attorney General's opinions re LB 59, LB 308, LB 69 as found on pages 748-752.

Speaker Marvel signed LE 206 and LB 206A.

FINAL READING: LB 9 read and passed on Final Reading. Final vote 33 ayes, 12 nays as found on pages 752-753 of the Journal.

Senator DeCamp moved to return LB 34 to Select File for a specific amendment.

Senator DeCamp asked unanimous consent to withdraw his motion.

SPEAKER MARVEL: The Chair recognizes Senator DeCamp and then Senator Vickers. Senator DeCamp.

SENATOR DeCAMP: Mr. President, this bill of course deals with bidding by public power districts and primarily the areas of concern had to do with maintenance contracts. A similar bill or a bill embodying many of these concepts last year reached Final Reading and I requested of Senator Vickers at that time that he allow an amendment on because I felt the amendment was necessary to make the bill workable. Through misunderstanding or whatever, we didn't reach agreement and that bill failed as I couldn't support it and a number of others didn't support because they felt it did have technical problems. This year this similar bill came into the committee. I happen to be a member of the Public Works Committee. I voted to put the bill to the floor. My amendment returned or restored the bill to its original form. I put the amendment up there quite a while ago on the theory that indeed there is any problem been enumerated pretty well and I felt that the amendment would compel or force or create pressures if you would, for the power industry, particularly Nebraska Public Power, and those interested in this particular problem to negotiate resettlement, reach something that would cause bidding on maintenance contracts in most average circumstances and indeed Nebraska Public Power was one of the big concerns in the bill originally and the sponsors of the bill, Senator Vickers and Senator Wesely reached an understanding and an agreement and they adopted an amendment that I think is very workable that in private conversations and in public statements now I see on my desk, from NPPD say they can live with and, in fact, in my private conversations with them last night they indicated the bill actually benefits them, gives them some ability to determine what is a responsible bidder. So as I say to summarize, the purpose of the amendment was to force the negotiations and an acceptable amendment. That has occurred and NPPD if not supporting the bill at least does not oppose it and says they can live with it and as I say, they told me it would actually be good public policy. So I am asking unanimous consent to withdraw the amendment and I am publicly stating that with the understanding that I have had from NPPD and others and I think everybody in here has to rely on the information from the various entities that are involved in legislation. The information I have is they think it is good public policy and they are not opposing the bill and for that reason I support the bill and withdraw the amendment.

SPEAKER MARVEL: Senator Vickers. Senator Lamb. Senator Wesely. Okay, the motion before the House is the adoptionoh, we first have to return the bill and then adopt the

March 5, 1981

LB 34

amendment. So the motion first of all is to return LB 34 to E & R for engrossment. All those in favor...I'm sorry. What did I miss?

SENATOR MARSH: The Senator asked to withdraw his amendment.

SPEAKER MARVEL: All right, I missed it. I am sorry.

CLERK: Mr. President, I have another motion to return the bill. Mr. President, Senator Lamb moves to return LB 34 to Select File for a specific amendment. I believe the amendment has been distributed on the floor.

SPEAKER MARVEL: Senator Lamb.

SENATOR LAMB: Mr. Speaker and members of the Legislature, I am requesting that this bill, LB 34, be returned for a specific amendment but first I had the amendment in the Journal on page 745 but there are a couple of words that need to be changed and so this morning I had placed on your desk the corrected amendment which I would like to offer. First, though, I believe, Mr. Speaker, it would be in order for me to withdraw, ask unanimous permission to withdraw the amendment which is printed in the Journal and substitute the other amendment which I have placed on the Clerk's desk.

SPEAKER MARVEL: Okay, your first amendment is withdrawn, Senator Lamb, so we are ready for the second one now.

CLERK: Would you like me to read it, Senator? Would that be beneficial? Okay. Mr. President, Senator Lamb's amendment would read as follows: "On page 2, line 24 before the words 'before' insert a number '1'. On page 3, line 21 strike the word 'and the' insert . After line 21 insert 'and any district operating and owning lines in more than thirteen counties in the state such' and in line 27 after the word 'or' insert 'of such district'. Page 4, lines 1 and 2 after the word 'issues' insert , and in line 8 before the word 'with' insert the number '3' and start a new paragraph.

SENATOR LAMB: Mr. Speaker and members, the reason for this amendment is very simple. The agreement arrived at between NPPD and Senator Wesely and Senator Vickers is an agreement which NPPD can support but some of the other power districts are saying that this is going to cause problems and if you will refer to the bill you will see that the amendment takes these other power districts out of the advertising requirements on page 3 of the bill. Down towards the bottom of page 3 of LB 34 you see that there is new language there which affects the advertising that has to be done in regard to maintenance contracts. I ask that this amendment be adopted.

I consider it a friendly amendment although I am not sure that the sponsors of the bill agree to that because I think that as was brought out at the hearing and as Senator DeCamp mentioned this morning the concern has been primarily with NPPD in regard to some of these contracts, that the other power districts have operated in possibly a more open manner and that since the agreement was made with NPPD since the other power districts have not been a part of the problem, I am attempting by this amendment to take these other power districts out of the requirement which is sort of cumbersome in regard to the advertising for some of these contracts. I would welcome comment by Senator Vickers and Senator Wesely in this regard. I'm not sure they are supportive of this amendment but I do consider it a friendly amendment because, as you well know, some of the other power districts are making an attempt to kill the whole bill. I don't think this whole bill should be killed. There are some things in there that are beneficial to the districts and Senator DeCamp alluded to those this morning and they refer to the situation where the bids can be rejected. I think this is basically a good bill. I think parts of it are applying to more power districts than need to be and so I offer this bill in that regard, this amendment.

SPEAKER MARVEL: We are speaking to the proposed Lamb amendment, Senator Vickers.

SENATOR VICKERS: Mr. President and members, well first of all I think I should indicate that I appreciate Senator Lamb's offering his friendly amendment, however, in private conversations with Senator Lamb, as he well knows, I do not necessarily consider it a friendly amendment. I think perhaps there have been some misunderstandings as to what LB 34 does and particularly what Section 2 of LB 34 does. Section 2 of LB 34 in the Final Reading copy simply says that if a district is going to enter into a contract or have any work done for maintenance repair, reconstruction, remodeling, building, alteration, construction and so forth, that a procedure needs to be followed and that procedure is simply this. If a sealed bid can be let, if a known amount as far as dollars to be expended is known or can be certified to you by engineers, then the sealed bid process should be used and the rest of the...if it is over \$50,000. Now remember we are spending public funds. Another section of the bill, Section 4 on page 5, gives some determination as to how they determine what a responsible bidder is. Now if the engineers indicate to the Directors that a known amount, a set dollar figure is impossible to come up with, then another procedure can be followed. Then by a two-thirds vote of the Board of Directors that agree with the

engineer that it is possible to come to a set dollar figure and in many many case that is true, then you can enter into a contract procedure whereby you can negotiate with those people that are going to do this type of work and it would be a contract probably by the hour or by the unit, not knowing what the total amount is going to be and the reason for this is so that you won't get into a situation where perhaps management and a contract will be scratching each other's back. It is just really that simple. Quite honestly it has been happening out there in the past. One of the entities that has been working very hard to kill this particular section and as you have on your desk as was pointed out by Senator DeCamp, a letter saying that NPPD can get along with this. NPPD I will remind you is the largest power district in the State of Nebraska, would have many more of these contracts let than anybody else. One of the entities that has been battling this is primarily an irrigation district. This irrigation district says, and it is in my area also, this irrigation district says that because of a twenty day period that we have to wait before we can enter into these maintenance contracts we just can't live with this. They are telling you that if a ditch breaks out and the water is running down across the farm ground that you can't wait for twenty days while you negotiate with some dirt movers to come in and fix the ditch. It is not part of the bill but Section 70-642 of the Nebraska statutes says this. I wish you would all listen. "In the event of sudden or unexpected damage, injury or impairment of such plant, work, system or other property belonging to the district the Board of Directors may in its discretion declare an emergency and proceed with the repairs, alterations, extensions, additions or other work without first complying with the provisions of Section 70-637 to 70-641." So they can get the job done if there is an emergency if they can't wait the twenty day period. What they can't do...

SPEAKER MARVEL: You have one minute left.

SENATOR VICKERS: Thank you, Mr. President. What they can't do is decide we're going to have some work done this winter while we are shut down. We know we are going to have to but we are going to go out here and we are going to pick a dirt mover. We're going to pick the dirt mover without advertising to all the other dirt movers in the area, so everybody has a chance to tell us what they are going to charge per hour. We want to do it ourselves. They can't do that under LB 34. They have been in the past. That is one reason they don't like it. Now I'm telling you Senator Lamb's amendment would put it so it would make it only applicable to the largest public power district in the state, NPPD. You had all the real small public power districts.

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LB 34

Senator Lamb was the director of one. I have been a director of one. The rural electric public power districts have no problems with LB 34 in any way, shape or form and there are thirty some rural electric public power districts in the State of Nebraska but of all the public power districts in the State of Nebraska there are only two that tell us they have a problem with this. I think that is rather strange. If all the rest of them can live with it, the very largest to the very smallest, why can't these two that are in the middle? I believe they can. I think I understand this issue fairly well and I will tell you, I think they are blowing smoke. I totally reject the Lamb amendment and I urge you to do also.

SPEAKER MARVEL: Senator Haberman, then Senator Higgins. Before we go to Senator Haberman, underneath the South balcony is a guest of Senator Nichol, former Senator Tom Kennedy. Tom, where are you? Good morning. Now, Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, a question of Senator Lamb. Senator Lamb, from visiting with you just minutes ago is it correct when you explained to me that your amendment exempts all the public power districts except NPPD?

SENATOR LAMB: Yes, and if you will see, exempted from the provisions on the bottom of page 3 there in regard to the advertising, the three times they have to advertise. The other provision in there that the board has to meet and by a two-thirds vote of the

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LB 34

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would just like to make a few short remarks. We spent a great deal of time in the Public Works Committee on the hearing on this bill and in working out the amendments in committee and subsequently the amendments that were passed on the floor. It is a very important bill in terms of guaranteeing a bidding procedure for contracts of over \$50,000 and where it is impractical to put those contracts out for sealed bids why then it guarantees a notice and advertising procedure. Now it is very important that these contracts not be let on an informal procedure to their friends without either sealed bids or without extensive advertising. What I am afraid is going to happen is if this Lamb amendment attaches, why the entire bill is going to wind up being defeated and if that would happen, it would be a major setback for open and honest and bidding by power contracts in the State of Nebraska. I think it is important for us to hold firm with this bill that has now become a consensus bill that is agreed upon by the industry that essentially in the Lincoln Journal in its editorial has indicated is a fundamental good government measure consistent with the public bidding traditions of the state statutes of the State of Nebraska and so it is important to resist any eleventh hour changes at this point. Thank you for your attention.

SENATOR CLARK: Senator DeCamp. The question has been called for. Do I see five hands? I do. The question is shall debate now cease. All those in favor vote aye. All those opposed nay. Have you all voted on ceasing debate? Record the vote.

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

SENATOR CLARK: Debate is ceased. Senator Lamb, do you wish to close?

SENATOR LAMB: Mr. Chairman, members of the body, Senator Hoagland said this bill was agreed upon, the Wesely amendment was agreed upon by the industry and that is not true. It was agreed by one segment of the industry. The other arguments are that power districts can live with this. That is correct. They can live with this because even though it is cumbersome, even though it does not serve any purpose they can live with it because they just pass the addition cost on down to you and me. What I am saying is this goes farther than we need to go and if you look at Senator Wesely's page 4 of his handout, only to those situations where bidding appears not (inaudible). There are still

yet (machine malfunction) of approach. One of them is the emergency which is not changed by this as has been pointed out by Senator Cope. That part of it is not changed. Also the normal bidding procedure is not changed. These are those more or less housekeeping sorts of things that power districts handle on an ongoing basis but what this forces those power districts to do is to first they have a board meeting. They have to have it certified by the engineer of the impracticality of going for bids first. Then they have to wait until their board meeting. Then they have to have a two-thirds vote of the board to approve the engineer's certification that it is not worth going to bids for and then they have to advertise three times in the paper. Well the only power district which there has been any indication that has been abusing this sort of thing that is not being making known what, to the people that are interested, that there is work to be done has been NPPD and Senator Wesely very properly has come up with a procedure which NPPD should follow in these cases because they have not been responsive to the contractors in this area. This is an effort really to save the bill. I think with this amendment the bill can go forward, can do what was indicated at the hearing that was necessary and proper, will not put an undue burden on other smaller power districts which should not be affected. I ask you to adopt this amendment.

SENATOR CLARK: The question before the House is the return of LB 34 for an amendment. All those in favor vote aye, opposed no.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on returning LB 34? Have you all voted? Senator Lamb.

SENATOR LAMB: Mr. Chairman, I will ask for a Call of the House.

SENATOR CLARK: A Call of the House has been requested. Technically we are under Call. Everyone should be in their seats at the present time. Do you want a roll call vote?

SENATOR LAMB: I will have the roll call vote but I think, Mr. Chairman, we should see that all the people on Final Reading are supposed to be in their seats so I would ask that before the roll call we would see that all the people are present.

SENATOR CLARK: Everyone will check in please. Senator Haberman, for what reason do you arise?

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LB 34, 124

SENATOR HABERMAN: A question of the Chair, please. During debate on Final Reading, does the rule say that you have to remain in your chair? When there is an amendment on the bill and there is debate?

SENATOR CLARK: Technically, yes because you are not supposed to debate on Final Reading.

SENATOR HABERMAN: That was a good answer.

SENATOR CLARK: Thank you. We have thirty-four checked in out of forty-nine. Would you please check in? Senator Haberman, would you check in, please? Anyone else that is in your seat will you please check in. We have to have one more. We have two excused. Senator Warner. Do you want to proceed with a roll call without Senator Warner? Senator Lamb, do you want to proceed with a roll call without Senator Warner or do you want to wait for him?

SENATOR LAMB: Let's proceed, Mr. Chairman.

SENATOR CLARK: All right, the Clerk will call the roll.

CLERK: (Read roll call vote as found on page 754 of the Legislative Journal.) 19 ayes, 26 nays on the motion to return the bill, Mr. President.

SENATOR CLARK: The motion fails. Is there any more motions on the desk?

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

SENATOR CLARK: The Clerk will read LB 34.

CLERK: (Read LB 34 on Final Reading.)

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

CLERK: (Read record vote as found on page 755 of the Legislative Journal.) 26 ayes, 19 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

SENATOR CLARK: The Chair declares the bill passed. The Clerk will now read LB 124.

ASSISTANT CLERK: (Read LB 124 on Final Reading.)

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 9, 34, 50, 74, 89,
89A, 124, 174, 178,
194, 345, 425, 500

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: I take great pleasure in introducing my own pastor, Pastor Harold Hamilton from First Lutheran here in Lincoln.

PASTOR HAROLD HAMILTON: (Prayer offered)

PRESIDENT: Roll call. Senator Marsh.

SENATOR MARSH: Mr. President, for all who are within my range of my voice, I would like to give notice that tomorrow I am going to ask for a recorded vote on those who are here by 9:05 a.m.

PRESIDENT: Thank you, Senator Marsh. Senator Nichol.

SENATOR NICHOL: Mr. President, I will make sure to be here tomorrow but I wonder if that is going to be an occurrence every day, Senator Marsh. I am sorry, she is talking. I was just curious about what the rule would be.

PRESIDENT: Have you all recorded your presence? It is now 9:05 a.m. Has everybody recorded your presence? Record the presence, Mr. Clerk.

CLERK: A quorum present, Mr. President.

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand correct as published. Any messages, reports or announcements.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports that we have carefully examined LB 74 and recommend that same be placed on Select File with amendments; LB 500 Select File with amendments; LB 425 Select File with amendments; LB 194 Select File with amendments; LB 174 Select File with amendments; LB 89 Select File with amendments; LB 89A Select File with amendments; LB 50 Select File with amendments.

Mr. President, your Enrolling Clerk respectfully reports that she has presented to the Governor at 2:10 p.m. yesterday LBs 9, 34, 124, 178, and 345.

Mr. President, your committee on Enrollment and Review

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LB 4, 9, 22, 24, 34, 38,
54, 124, 171, 178, 275,
276, 288, 292, 345,
368, 460, 475, 517

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Pastor David L. Erdman, Plains Baptist Church.

PASTOR ERDMAN: (Prayer offered.)

SPEAKER MARVEL: Record your presence.

CLERK: Mr. President, Senator Vard Johnson would like to be excused until he arrives; Senator Goll, Barrett and Waitala until they arrive.

SPEAKER MARVEL: Have you all recorded your presence? Record the vote. Yes. Senator Marsh, for what purpose?

SENATOR MARSH: I ask for this to be a recorded vote for those who are here at 9:05 a.m.

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

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

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 475 and recommend that same be placed on Select File with amendments; 171 Select File; 22 Select File with amendments. (Signed) Senator Kilgarin, Chair.

Mr. President, your committee on Government reports 292 to General File with amendments; LB 460 to General File; LB 276 Indefinitely postponed; 517 Indefinitely postponed. (Signed) Senator DeCamp, Chair.

Mr. President, LB 288, 275, 54, 38, and 24 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LB 24, LB 38, LB 54, LB 275, LB 288.

CLERK: Mr. President, a communication from the Governor addressed to the Clerk. (Read. Re: LB 9, 34, 124, 178 and 345.) (See page 844, Legislative Journal.)

Two Attorney General's opinions, a first to Senator Koch regarding LB 368. The second to Senator Beutler regarding LB 4. They also will be inserted in the Journal, Mr. President.

Finally, Mr. President, Senator Maresh asks unanimous consent