

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....

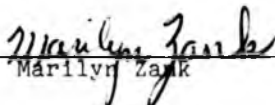
SPEAKER MARVEL: It will be in the Journal?

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

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LB 197A, 40, 192, 231,
340, 341, 411, 541

consideration of 197A and advancing it also. Thank you.

SENATOR CLARK: Senator Marsh. The question before the House is the advancement of 197A. All those in favor vote aye, opposed vote nay. Have you all voted? The advancement of 197A. Record the vote.

CLERK: 27 ayes, 2 nays on the motion to advance the A bill, Mr. President.

SENATOR CLARK: Motion carried. The bill is advanced. We will now take up LB 40.

CLERK: Mr. President, if I may right before we get to that, Banking, Commerce and Insurance gives notice of gubernatorial appointments as approved by the committee.

The committee on Judiciary reports LB 541 to General File with amendments; 192 General File with amendments; 231 General File with amendments; 411 General File with amendments; 340 General File with amendments; 341 General File with amendments. (Signed) Senator Nichol, Chair.

Mr. President, LB 40 was a bill introduced by Senators Koch, DeCamp and Goodrich. (Read title.) The bill was first read on January 8, referred to the Revenue Committee. The bill was advanced to General File. There are committee amendments pending by the Revenue Committee, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I move for the adoption of the committee amendments. The committee amendments to LB 40 would require that the tax could not be continued, the Omaha city half-cent sales tax could not be continued after December 31, 1981 unless the majority of those voting in an election approved of the extension. I think the philosophy of the committee after we heard this bill realizing full well that the people of the City of Omaha did vote to accept the half-cent sales tax for a specific period of time, now this bill as it was presented is a permanent tax that would be put on. The committee felt that it was improper, I believe I am speaking for the committee, for this Legislature to impose upon the people of the City of Omaha a permanent half-cent sales tax without their consent or rejection and it was in that light that this amendment

unless the state is found to be wrong. So it would seem to me that if there are very many fees or very many dollars paid out that somebody from this body, the Appropriations Committee would be the appropriate place, better be questioning those people why they are getting in a situation where they are trying to impose regulations or whatever on individuals that are wrong to start with. That is the issue. I think we need to make it clear to our state agencies that if you are going to impose regulations on the individuals or the corporations of this state that fall under this act that you had better be sure you are on solid ground and don't go around harassing people. It is that simple. So I would urge the body's advancement of LB 192 to Select File.

SPEAKER MARVEL: The motion is the advancement of LB 192. All those in favor vote aye, opposed vote no.

CLERK: 29 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried, the bill is advanced. Are you ready for 231?

CLERK: Yes, sir. Mr. President, LB 231 offered by Senator Fowler. (Read title).

SPEAKER MARVEL: The motion before the House now is the.... LB 340.

CLERK: Mr. President, LB 340 is a bill introduced by Senator Hoagland. (Read title). The bill was first read on January 19, referred to the Judiciary Committee for public hearing. The bill was advanced to General File, Mr. President, and there are committee amendments pending by the Judiciary Committee.

SPEAKER MARVEL: The Chair recognizes Senator Nichol for the discussion on the committee amendments.

SENATOR NICHOL: Mr. Speaker and members of the Legislature, the Judiciary Committee has adopted two amendments to the bill. The first returns the period for which the statute of limitation runs to one year rather than two as provided in the bill. The second amendment reinstates stricken language regarding claims which accrued before January 1, 1970. While it was thought to be obsolete language, the committee felt that while remote there might be individuals who with this language removed might be able to present a claim which did arise before 1970. I move

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LB 340

for the adoption of the committee amendments.

SPEAKER MARVEL: Okay, the motion before the House is the adoption of the committee amendments to LB 340. All those in favor of that motion vote aye, opposed vote no. Record the vote.

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

SPEAKER MARVEL: The motion is carried. The committee amendments are adopted. Senator Hoagland, do you wish to explain the bill?

SENATOR HOAGLAND: Mr. Speaker and colleagues, I addressed this bill and the subsequent bill indirectly in my remarks about LB 192. These bills are all following one another on the agenda and they all basically deal with the same issue, and that is if you are put in the position, if you are an individual or a business man or anyone put in the position of being sued or having to sue the government, the prevailing thought these days is that the court should have the authority to award attorney fees so that you will be able to recover if you are successful not only the out of pocket loss but also the attorney costs you have incurred in bringing the case through to trial. This bill was voted out by the Judiciary Committee. I would ask its... I would ask this body to move it over to E & R Initial at this time and I would be pleased to try to answer any questions any of you might have.

SPEAKER MARVEL: Senator Vard Johnson, do you wish to speak to LB 340?

SENATOR V. JOHNSON: Mr. Speaker and members of the body, as much as it hurts me to speak against a measure brought by my office mate, to speak against a measure which benefits my own profession, I have to do so and I certainly hope you will listen to why I am doing it. What this bill does very simply is it says that if the defendant in an action is a local government i.e. a city or a county or a school district, and if it has to account in damages for some harm which its employee has negligently caused somebody i.e. a school bus driver carelessly drove the school bus and some other automobile driver was injured, and if the other automobile driver has to bring a claim against the employee and against the local school district under the political subdivisions tort claims act, then when the other driver is ultimately compensated our local school boards shall be responsible for the other driver's attorney's fees. Now if

we pass this into law, we in effect are saying that all public bodies have got to answer in attorneys' fees for their torts which is not true for private bodies. In other words, if that bus had been driven by a private owner and the private owner was negligent and he hurt the other driver, when the other driver brought the law suit against the private owner of the bus and ultimately prevailed, that private owner of that bus would not have had to pay an attorney's fee of the other driver. And I will be truthful with you, even though the State of Nebraska and its political subdivisions have got a deep pocket i.e. what they can collect through those tax dollars, I can't see any good reason for us in effect to say that the fat cat State of Nebraska and the fat cat school districts and the fat cat county boards and the like shall be answerable for attorneys' fees when nobody else is ever answerable for attorneys' fees in these cases. Just because we have got the ability to spend tax dollars to pay the attorney's fee doesn't in my opinion, should not make us responsible for the attorney's fee issue. If you and I want to overturn Anglo-American jurisprudence and make the losing party always pay the attorney's fee of the prevailing party, then let's do it, let's do it, and in that case then the State of Nebraska or a local subdivision should have to pay the attorney's fees because the rule applies across the board. But why should we separate out local governments of the State of Nebraska for special treatment on what truly is an ordinary claim and the only reason the state is getting sued, the only reason local governments are getting sued is because they happen to be the employer as opposed to a private employer, why should we treat them differently? I can't think of any reason to do so. And for that reason I oppose this legislation. Incidentally, this will have a high cost in the end to local subdivisions and the next bill to the State of Nebraska by virtue of their having to meet the attorneys' fees for those claims that they unsuccessfully litigate.

SPEAKER MARVEL: Senator Beutler. Okay, the Chair recognizes Senator Hoagland to close on LB 340.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I think that we have been over this ground not only on this debate on 340 and the debate on 341 which I assume will follow, but also the debate on LB 192. And let me just say in response to Senator Johnson's arguments that similar provisions have been enacted by a number of states and at the federal level by the United States Congress, and the theory is that when people are sued by the government or have to sue the

government, they ought to be able to recover the actual amount of their loss, and the actual amount of their loss as all of us well know whether it is in a small business context or in another context, is not only what you have lost or what the government has refused to pay you, but what your costs of collection are. Now as I indicated before, the Governor's conference on small business has endorsed this theory in our laws contrary to Senator Johnson's, the inferences of his remarks, these awards are purely discretionary by the court. If you all will read the bill why you will see that it is awardable purely at the discretion of the court. The court is not mandated to dig into the deep pocket and I am sure the courts in the State of Nebraska won't do so unless they feel that the small business that is up against the wall by the government or has to sue the government or the individual is justified in recovering his costs. Now let me just say in closing that the idea for these two bills, one involving political subdivisions and one involving the State of Nebraska, was first brought to my attention by the Contractors Association in Omaha, the large roadbuilders contractors who are frequently involved in disputes with the Department of Roads, and they want more leverage than they have right now in attempting to settle those disputes, because right now a political subdivision or the State of Nebraska can simply stonewall a complaint all the way through and after two years of litigation their exposure is the same \$3000 that it was before the suit was started, and frankly it puts the small business men and other people at a terrible disadvantage in dealing with government when if government refuses to pay a \$3000 claim, after two years of litigation all you can still get is \$3000. You can't recover any of the costs it is taking you to get there. Again it is in the discretion of the courts. Many states have adopted this approach. The federal government has adopted this approach. This approach has been talked about at the Governor's conference of small business and I think it makes a great deal of sense to enact. It was reported out by our Judiciary Committee and I would ask that this bill be advanced to Select File. Thank you.

SPEAKER MARVEL: The motion is the advancement of 340 to Select File. All those in favor of the motion vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Hoagland. Record the vote.

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

SPEAKER MARVEL: Motion lost.