

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....

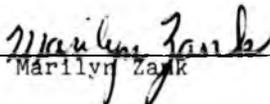
SPEAKER MARVEL: It will be in the Journal?

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

March 23, 1981

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

January 12, 1982

LB 131, 255, 341,
664, 797

CLERK: Mr. President, if I may right before that, I have notice of hearing for the Constitutional Revision and Recreation Committee for January 28 and 29. Your committee on Education gives notice of hearing for January 19. Your committee on Public Health gives notice of hearing for Monday, January 18, and Tuesday, January 19. Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 664 and find the same correctly engrossed.

Mr. President, new bill, LB 797 offered by Senator Vickers. (Read title). (See page 249 of the Legislative Journal).

Senator Wagner and Hefner would like to print amendments to LB 255 in the Journal, Mr. President. (See page 249 of the Legislative Journal.)

Your committee on Nebraska Retirement Systems whose Chairman is Senator Fowler to whom was reported LB 131 reports same to General File with committee amendments attached, Mr. President.

SPEAKER MARVEL: Are we ready for 341?

CLERK: Yes, sir.

SPEAKER MARVEL: Okay, LB 341.

CLERK: Mr. President, LB 341 offered by Senator Hoagland. (Read title). The bill was read on January 19 of last year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File with committee amendments attached, Mr. President.

SPEAKER MARVEL: Senator Nichol, do you want to take the committee amendments?

SENATOR NICHOL: Yes, Mr. Speaker. The Judiciary Committee adopted one amendment to the bill which reinstates language which was stricken in the bill. The language which is reinstated prevents claims from being filed under the political subdivisions Torts Claim Act when these claims occurred before January 1, 1970. I move for the adoption of the committee amendments.

SPEAKER MARVEL: All those in favor of the committee amendments as explained by Senator Nichol vote aye, opposed vote no. Have you all voted?

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

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

SENATOR HOAGLAND: Mr. Speaker and colleagues, this is a bill involving state government now as opposed to political subdivisions, and I think in order to explain the needs and the importance of this bill, all I can do is give the same example that I gave before. Imagine yourself as a small business heavy equipment contractor and you have a contract with the Department of Roads and the Department of Roads....you have executed your contract and you are all done and the Department of Roads refuses to pay you \$3000 you say you are entitled to. They turn their nose, turn their thumb up at you. So you have no alternative if you want your \$3000 but to hire a lawyer and go before the State Claims Board and you do that and that takes about six months, and your claim is either granted or denied. If it is denied you go to court and that takes another twelve months. Now what this bill allows is if you prevail before the State Claims Board or if you prevail in court, why the State Claims Board or the court has the discretion, if it wants, and these are state officials talking about spending state funds, the State Claims Board or the district court has the discretion if it wants to award you attorney fees over and above your \$3000 so you don't have to suffer that loss of litigation completely yourself. Now it seems to me to make eminent good sense to permit this sort of arrangement in state law whether it is a contract dispute or a state dispute. And again all I can say is put yourself in the business as somebody that has to sue the state and you know if you have got to hire a lawyer, you basically can't afford to proceed if your claim is not worth at least \$5000 because the lawyer is going to eat everything up. And again in response to the arguments that Senator Johnson made before, there is nothing mandatory about this. It is up to the discretion of the judge or the State Claims Board if it wants to award you your \$3000 to give you your costs over and above that. And I think it is a matter of good government. I think it is going to give the Department of Roads in a \$3000 suit the incentive to settle the thing and not stonewall you all the way through the courts because if they stonewall you now, the most their liability is ever going to be is what they owed you in the first instance so they have got absolutely nothing to lose, no incentive to settle, no incentive to try and work it out, and you as a small business man are simply left holding the bag. So I think this makes a lot of sense and I urge you to support it so we can give some relief to people that are caught up in these situations. Thank you, Mr. Speaker.

January 12, 1982

LB 341

SPEAKER MARVEL: Senator Vard Johnson, do you wish to speak to the bill?

SENATOR V. JOHNSON: Mr. Speaker and members of the body, the argument that I would make on this bill is pretty much the same argument that I made in the previous bill. The previous bill did affect tort claims that an individual files against a local subdivision. This bill affects tort claims that an individual files against the State of Nebraska. I was quickly checking the Nebraska Claims Board Act to see if there are contract claims that are fileable under the State Claims Act. It appears that there are only tort claims. Now the Nebraska State Tort Claims Act is a hair different from the Political Subdivisions Tort Claims Act in that the Nebraska Tort Claims Act does allow an attorney's fee to be recovered from the avails. In other words, if someone is injured by a state employee and that person who was injured files a claim with the State Claims Board for compensation for the injury and if that individual is successful, under existing law the State Claims Board may allow the attorney for that individual a fee, but that fee is to come from the ultimate award. It is not over and above the award. I don't think that exists under the Political Subdivision Tort Claims Act. Traditionally attorneys' fees are negotiated with the litigants themselves at the outset and the litigant understands that some portion of his or her avails will have to be set aside to the use of the attorney to compensate the attorney for the work done. But again it seems to me that there is no solid policy reason for the state in the respondeat superior concept with the state really standing as a private party because that is all this amounts to, to be treated differently as a defendant from any other private party as a defendant and under Anglo-American law private party defendants even when they lose cases are not responsible for the attorney fees of successful private party plaintiffs, and unless we want to change the law that applies to private party defendants, I don't think we should change the law that applies to the state defendant sitting almost as a private party under the State Claims Act. And for that reason I would ask that this bill not be advanced.

SPEAKER MARVEL: Okay, Senator Hoagland, do you want to close on your bill?

SENATOR HOAGLAND: Let me just close briefly, Mr. Speaker, by saying first of all that any awards that are made by the State Claims Board, of course, are approved by this body, and if award which this body determines is excessive in the attorney fee area comes in that bill we have every

January 12, 1982

LB 341

year approving all those, why we can always disapprove it. Now secondly, Senator Johnson is essentially correct when he says it is our traditions that our attorney fees are not awarded, but there are exceptions to that that run all the way through federal and state law. They exist in suits against the federal government. They exist in suits against state governments where there is good reason for doing it. Indeed, we just advanced a bill not twenty minutes ago, LB 192, that allows that. Senator Burrows sponsored a bill we passed last year, mandamus actions, which allows that. There are many other exceptions in existing laws in the State of Nebraska, the Nebraska Deceptive Trade Practices Act and other provisions where attorney fees under special circumstances are allowed. And I think that I have made a case here to show why in this situation in this area the court ought to have the discretion to award attorney fees if in the exercise of that discretion thinks it is proper. So I would again ask that the body advance this bill. Thank you, Mr. Speaker.

SPEAKER MARVEL: The motion is the advancement of the bill as explained by Senator Hoagland, 341. All those in favor vote aye, opposed vote no. Have you all voted? Senator Hoagland.

SENATOR HOAGLAND: I have some more votes on this one than the previous one, Mr. Speaker, so let's have a Call of the House and I will accept call in votes if anybody is interested.

SPEAKER MARVEL: Shall the House go under Call is the issue. All those in favor of placing the House under Call vote aye, opposed vote no.

CLERK: 19 ayes, 2 nays, to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats, record your presence. Unauthorized personnel please leave the floor and please record your presence. Okay, Senator Wiitala, will you please record your presence. Is Senator Newell here? Senator Schmit. Senator Landis. Okay, everyone is here except Senator Newell and Senator Chambers. Excuse me?

SENATOR HOAGLAND: Could we take call in votes first?

SPEAKER MARVEL: Yes. Senator Vickers, for what purpose do you arise....does your thumb arise?

SENATOR VICKERS: Are you accepting call in votes?

SPEAKER MARVEL: Yes.

January 12, 1982

LB 231, 341

CLERK: Senator Vickers voting yes. Senator DeCamp voting yes. Senator Kilgarin voting yes. Senator Warner voting no. Senator Haberman changing from yes to no. Senator Pirsch voting yes. Senator Barrett voting no. Senator Wesely voting yes. Senator Chronister voting no. Senator Fenger voting no. Senator Schmit voting no. Senator Cullan voting yes. Senator Newell voting yes. Senator Marvel voting no.

SPEAKER MARVEL: The Clerk will call the roll.

CLERK: (Read the roll call vote as found on page 250 of the Legislative Journal). 22 ayes, 23 nays, Mr. President.

SPEAKER MARVEL: The motion lost. Okay, the next bill is LB 231.

CLERK: Mr. President, LB 231 offered by Senator Fowler. (Read title). The bill was first read on January 16 of last year. It was referred to the Judiciary Committee. It was advanced to General File with committee amendments attached, Mr. President.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Speaker, Senator Fowler is very capable and I would like to have him take the amendment too.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: Okay. Mr. President and members of the Legislature, LB 231 was introduced to allow in county jails, correctional facilities that the concept of time off for good behavior, also known as good time. The bill as introduced said that once a prisoner had earned that time it could not be revoked. The Judiciary Committee felt, and I concur with this amendment, that if an inmate somehow after they have earned time off for good behavior, their behavior deteriorates, that previously earned good time could be revoked. So I would move that committee amendment, then I wish to discuss the bill and talk about some other amendments that may deal with concerns some county sheriffs may have with the bill. But I would move the Judiciary Committee amendment.

SPEAKER MARVEL: The motion is the Judiciary Committee amendment. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

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