

January 20, 1981

LB 389-433

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. Chairman and Senator Chambers, I merely want to state the fact that your very presence here and the fact that we are listening to you is a contradiction of your remarks that you do not have freedom. Thank you, Mr. President.

SPEAKER MARVEL: Senator Burrows.

SENATOR BURROWS: Mr. Speaker, members of the body, I would like to request permission we lay over the resolution until the hostages are in the air.

SPEAKER MARVEL: Any objection? If not, so ordered. We will go to item #6 now, introduction of bills.

CLERK: Mr. President, new bills. (Read by title LB 389-432. See pages 271-280 of the Legislative Journal.)

SENATOR CLARK PRESIDING

SENATOR CLARK: Could I have your attention just a moment, please? The AP has reported that the American hostages will fly out of Iran in the next thirty minutes. (applause).

CLERK: (Read by title LB 433. See pages 280-281.)

SENATOR CLARK: Senator Nichol, for what purpose do you arise?

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I wanted to say something but I don't want to say it if we have urgent business to do. This will take about two or three minutes.

SENATOR CLARK: Continue, we don't have any business right now.

SENATOR NICHOL: Okay, Senator Marsh has a bill in having to do with mammals and I wanted to tell you the story of the three mammals if I may. May I do that, sir?

SENATOR CLARK: Go right ahead if it is funny.

SENATOR NICHOL: Well, I don't know about that but once upon a time there were three mammals who lived happily in Mammalary Land. There was a papa mammal that we called Pappy and mama mammal that we called Mama and baby mammal we called Babble and the reason we called baby mammal Babble was because he talked a lot and asked embarrassing questions.

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

May 1, 1981

LB 192, 411

body agree to consent calendar and agree to 15 minutes, then that is the way it should be for all bills that are on consent calendar. Now obviously three of us could have signed it and pulled it off, but we didn't. We didn't catch it in time. The rules say you are supposed to do it ahead of time. Now maybe you have all read them all and you knew what ones you wanted to pull off before we started today, but I didn't. So I don't apologize for putting up the motion and I don't apologize for taking the 15 minutes, and I don't apologize for opposing the motion to overrule the Chair.

SENATOR CLARK: Senator Kahle.

SENATOR KAHLE: Well, Mr. President, we got along pretty good today so far, and there were very few bills that did run over the 15 minutes, but I guarantee you that there isn't one of us in here that can't kill any one of these bills today by adding amendments whether they be good or bad, or arguing the bill for over the 15 minute period. It's no problem at all. I have gotten a lot of mail on 192 and I would like to see that bill moved and I think all Senator Maresh is asking is that you take a vote on overruling the Chair. The Chair has ruled, so that's fine. Let's do it.

SENATOR CLARK: Senator Cope.

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

SENATOR CLARK: That wouldn't be necessary, you are the last speaker. The question before the House is, should the Chair be overruled? Should the agenda be overruled, pardon me. All those in favor of overruling the agenda vote aye. All those opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Six people are excused. Once more, have you all voted? Record the vote.

CLERK: 11 ayes, 14 nays, Mr. President, on the motion to overrule the agenda.

SENATOR CLARK: The motion lost. The agenda is not overruled. We will go to 411.

CLERK: Mr. President, LB 411 was introduced by Senator Harold Sieck. (Read title.) The bill was first read on January 20. It was referred to Judiciary Committee for hearing, Mr. President. The bill was advanced to General File.

May 1, 1981

LB 411

There are committee amendments pending.

SENATOR CLARK: Committee amendments. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, the Judiciary Committee attached several amendments to LB 411. Several of these amendments are substantive in nature. As originally drafted, LB 411 would provide for interlocutory appeals by the prosecution from an order granting a motion to suppress confessions pursuant to criminal prosecution. An interlocutory appeal is one that is allowed during the course of the proceeding and the proceeding is staid pending the outcome of the type of appeal. Obviously, if the state loses the motion to suppress in trial court but feels that the motion is good, unless the state is allowed to appeal very frequently, they will have to dismiss the charge against the defendant. The committee agreed with the Attorney General's Association and acted favorably on the bill allowing such appeals. However, the committee also felt that if we are going to allow the state interlocutory appeals, we should also allow the defense to take such appeals. The substance of the committee amendments is to allow both the prosecution and the defense to take such appeals during the course of a criminal prosecution. I move for the adoption of the committee amendments.

SENATOR CLARK: On the committee amendments. Is there any discussion? If not, all those in favor of the committee amendments vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the committee amendments? 411. Once more, have you all voted on the committee amendments to 411? I hope they're not getting slaphappy. The committee amendments to 411, please. Record the vote.

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

SENATOR CLARK: The committee amendments are adopted. On the bill itself, Senator Sieck.

SENATOR SIECK: Yes, Mr. President and members of the body, as you noticed in your bill book there was quite a bit of opposition on the bill. The reasons for the committee amendments were because of the opposition, and the opposition then favored the bill after both sides came together, discussed the bill and this is one of the requirements of the Judiciary Committee that they get together and iron out

May 1, 1981

LB 411

their differences, and these differences were ironed out by the committee amendments. So the bill is in good shape at the present time, and we have complete support of the different defense attorneys. So I encourage you to advance the bill. I move for the advancement.

SENATOR CLARK: The motion before the House is the advancement of 411. Senator Johnson.

SENATOR V. JOHNSON: I have a question, Mr. Speaker, of my colleague and good friend, Senator Sieck, about the bill, and that is this, Senator Sieck, law right now says that we have to put a person to trial within 6 months after the charge is commenced. That is a law that was passed about 5 years ago, and it has been a pretty good provision. It is designed to ensure a speedy trial. I am a little nervous about the fact that you can appeal pending a trial to get some of these suppression questions resolved. What effect do you think your bill, 411, would really have on a defendant's right to go to trial within 6 months after the charge was commenced?

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: I am no attorney, Vard...Senator Johnson, so I...it's very difficult for me to answer that question. But I don't feel that this bill will have any effect, because I think it gives the individual a right to suppress evidence. That's what it is.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I am going to support the bill because I think Senator Sieck is dealing with an issue that is quite important, specifically getting a final court determination on some evidentiary rulings that are made prior to trial by the trial court. However, it may well be that on Select File I will offer an amendment to require the appellate court to entertain those suppression appeals before any other appeal that's pending before it just to ensure that the defendant does have his rights to a speedy trial honored rather than held in abeyance.

SENATOR CLARK: Any other discussion? Senator Hoagland.

SENATOR HOAGLAND: I would like to ask Senator Sieck a quick question, if I might.

SENATOR CLARK: Senator Sieck, one quick question.

SENATOR HOAGLAND: Senator Sieck, I have not had the opportunity to review this in detail, but as I understand from

May 1, 1981

LB 344, 411

reviewing the committee amendments, it gives the defendant a right to appeal to the Supreme Court a ruling on say his motion to suppress evidence if it is unsuccessful from the defendant's point of view. Now if we have a backlog of 14 months, let's say, in the Nebraska Supreme Court, and I understand that backlog is increasing because there are more appeals filed than there are cases decided every month, what would prevent a defendant from using that as a delaying tactic? In other words, filing a motion to suppress evidence, a confession or physical evidence of some sort, having that denied by the court then taking an appeal to the Nebraska Supreme Court and that way having his criminal trial delayed for 14 months while the Nebraska Supreme Court handles that?

SENATOR SIECK: I am going to refer that question to Senator Nichol, because I think he can more capably answer it.

SENATOR NICHOL: Well, Mr. Chairman, I would just say this, whenever you ask for an appeal you take your chance on whether you will get a speedy trial or not. If you don't want to ask for an appeal, why you can have it now. If you do, you may risk the chance of having a speedy trial, that's true.

SENATOR HOAGLAND: Yes. But I mean...I don't want to take a lot of time, but in most situations the defendant is not locked up pending trial, so it's in his interest just to delay the thing as long as possible hoping a witness will move out of town or will pass away or something. Well, we can talk about this on Select File, perhaps.

SPEAKER MARVEL PRESIDING

SPFAKER MARVEL: The motion is to advance the bill. All in favor of advancing 411 to E & R for Review vote aye, opposed vote no. Have you all voted? Have you all voted? Record.

CLERK: 25 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is 344.

CLERK: Mr. President, LB 344 offered by Senators Landis and Koch. (Read title.) The bill was read on January 19, referred to Public Works, advanced to General File with committee amendments attached, Mr. President.

SPEAKER MARVEL: Senator Wesely.

SENATOR WESELY: Mr. Speaker and members of the Legislature,

May 7, 1981

LR 116  
LB 172, 216, 303, 322, 344,  
411, 529, 529A, 559, 160, 161

of the Chamber. That's the big thing. All right, we will proceed then, Mr. Clerk, with the reading of LB 559.

CLERK: (Read LB 559 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 559 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 1813 of the Legislative Journal.) 42 ayes, 1 nay, 6 excused and not voting, Mr. President.

PRESIDENT: LB 559 passes with the emergency clause attached. You may read some things in, Mr. Clerk.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 303 and recommend that same be placed on Select File; LB 216, Select File; LB 322, Select File with amendments; 411, Select File with amendments; 344, Select File with amendments; 172, Select File with amendments; LB 529, Select File, with amendments; LB 529A, Select File with amendments. (See pages 1815 through 1817 of the Legislative Journal.) Mr. President, new resolution, LR 116, offered by Senator Rumery. (Read LR 116 as found on page 1815 of the Legislative Journal.) Mr. President, that will be laid over pursuant to our rules. That's all that I have, Mr. President.

PRESIDENT: We will proceed then, Mr. Clerk, with LB 160.

CLERK: (Read LB 160 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 160 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 1814 of the Legislative Journal.) 43 ayes, 1 nay, 5 excused and not voting, Mr. President.

PRESIDENT: LB 160 passes with the emergency clause attached. The next bill on Final Reading is LB 161.

CLERK: (Read LB 161 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure

May 8, 1981

LB 303, 322, 411,  
529, 529A

SENATOR KILGARIN: I move we advance LB 303 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. LB 216? Okay, 322, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 322.

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 we advance LB 322 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 411.

SENATOR KILGARIN: I move the E & R amendment to LB 411.

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

SENATOR KILGARIN: I move we advance LB 411 to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. 529.

SENATOR KILGARIN: I move the E & R amendments to LB 529.

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

SENATOR KILGARIN: I move we advance LB 529 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 329A.

SENATOR KILGARIN: 529A, sir?

SPEAKER MARVEL: I am sorry, 529A, right.

SENATOR KILGARIN: I move we advance LB 529A to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. Motion is carried. The bill is advanced. Thank you, Senator Kilgarin. Now the Clerk has some items to read



LB 118, 129A, 165, 181, 224, 234, 234A,  
273, 273A, 303, 326, 336, 360, 394,  
396, 411, 459A, 485, 551 - 554

May 12, 1981

favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on the adoption of the committee amendments? Once more, have you all voted on the adoption of the committee amendments. Record the vote.

CLERK: 27 ayes, 4 nays, Mr. President, on adoption of the committee amendments.

SENATOR CLARK: The committee amendments are adopted. Now on the bill itself, Senator Maresh.

SENATOR MARESH: Mr. Chairman, I move that LB 118 be advanced to E & R Initial.

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

CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

CLERK: 25 ayes, 1 nay, Mr. President, on advancement of the bill.

SENATOR CLARK: The bill is advanced. The Clerk wants to read some things in.

CLERK: Mr. President, new A bill, 129A offered by Senator Nichol. (Read LB 129A for the first time.)

Mr. President, Miscellaneous Subjects gives notice of hearing for Tuesday, May 19 on LB 551, 552, 553 and 554. And that is signed by Senator Hefner as Chair.

Mr. President, I have a reference report from the Executive Board referring legislative resolutions for interim study. That will be referred to in the Journal. (See pages 1966 through 1973 of the Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 165 and find the same correctly engrossed; 181, 224, 234, 234A, 273, 273A, 303, 326, 336, 360, 394, 396, 411, 459A, 485, all those reported correctly engrossed, Mr. President. (See pages 1974 through 1977 of the Legislative Journal.)

May 12, 1981

LB 318, 118, 448, 411

CLERK: 25 ayes, 1 nay on adoption of the Koch amendment, Mr. President.

SENATOR CLARK: The amendment is adopted. The next motion.

CLERK: Mr. President, I don't believe I have anything further on the bill.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, I move that LB 318 as amended be advanced to E & R Initial.

SENATOR CLARK: You heard the motion, is there any discussion? All those in favor of moving the bill to E & R vote aye, opposed nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Have you all voted on advancing the bill? This is the last bill we are taking. Record the vote.

CLERK: 26 ayes, 0 nays on a motion to advance the bill, Mr. President.

SENATOR CLARK: The motion carried. The bill is advanced. Senator Sieck, we have got to read a few things in and then would you adjourn us until nine o'clock tomorrow morning.

CLERK: Mr. President, Senator Koch had amendments to 318 that he would like to withdraw.

Senator Maresh offers notice of hearing on the State Labor Contracts for next Wednesday at one o'clock. LB 118.

Mr. President, Senator Sieck has amendments to 411 he would like to print in the Journal; and Senator Lamb amendments to 448 he would like printed in the Journal, and that is all that I have.

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Mr. President and members of the body, I move that we adjourn until nine o'clock tomorrow morning.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. We are adjourned until nine o'clock tomorrow morning.

Edited by:

  
Mary A. Turner

May 19, 1981

LB 326, 394, 411

specific amendment. All in favor of that motion vote aye, opposed vote no. The motion is to return as specified by Senator Kremer. Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to return the bill.

SPEAKER MARVEL: The bill is returned. Now, Senator Kremer, do you wish to adopt the motion?

SENATOR KREMER: (inaudible).

SPEAKER MARVEL: Okay, the motion is to adopt the amendment. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 29 ayes, 0 nays, on the adoption of the Hoagland-Kremer amendment, Mr. President.

SPEAKER MARVEL: The motion is carried, the amendment is adopted. Now the motion is to rerefer the bill. All those in favor say aye, opposed no. The motion is carried the bill is rereferred. The next bill on Final Reading LB 394. The Clerk will read.

CLERK: Read LB 394 on Final Reading.

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass. Those in favor vote aye, opposed vote no. LB 394 on Final Reading. Have you all voted? Senator Maresh. Okay, record your presence please. Senator Schmit, Senator Lowell Johnson, Senator DeCamp, Senator Labedz, Senator Higgins. There are two absent Senator Maresh, Senator DeCamp and Senator Schmit. Okay, proceed with the roll call.

CLERK: Roll call vote. 22 ayes, 18 nays, 3 excused and not voting, 6 present and not voting. Vote appears on page 2103 of the Legislative Journal.

SPEAKER MARVEL: The motion fails. The next bill is LB 411.

CLERK: Mr. President, I have a motion on the desk. Senator Sieck moves to return LB 411 to Select File for a specific amendment. The amendment is on page 1982 of the Journal.

SPEAKER MARVEL: The Chair recognizes Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, you recall when this was on Select File we had a couple of attorneys here that objected to the bill because it would load up the courts. What happened to us was that a group of attorneys got together to sort of rewrite the bill in hearing and one of them tried to pull a fast one on us. This happened to me and I didn't catch it, not being an attorney. So I'm asking that the bill be brought back and that we correct this language. The language that is to be corrected is that if a defendant will not be able to get an interlocutory appeal. This is where the courts would be loaded and it will allow the county attorney to have the right for an interlocutory appeal. So I move that we bring this back with this amendment.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I don't think a fast one was pulled on anybody, it was a situation where we were dealing with a technical bill related to technical aspects of the law and it might be a situation where Senator Sieck simply didn't understand. But, I think there is a difference between saying you don't understand something and saying that somebody pulled a fast one. Now these lawyers did get together and they produced the items on which they had agreed. I saw and received a copy of the letter sent to Senator Sieck by the County Attorneys Association and in that letter he mentioned that there were certain propositions that they had all agreed on and some others they left to, as he stated it, the whim of the legislative process. The amendment was adopted by the committee and added by the legislature as a part of the committee amendment. In order that you all understand what we are talking about an interlocutory appeal is something like at a midway point in a proceeding, somebody can appeal something they don't like. Well the county attorneys want to be able to appeal in this particular set of circumstances but they don't want the defendant to be able to appeal the same thing. It is related to suppression of evidence. So, if the suppression is granted the prosecutor would want to be able to appeal. If it is not granted, he does not want the defendant to be able to appeal. For some reason they feel that an appeal by the prosecutor will not tie up the courts but an appeal on the other side by the defendant will tie up the courts too much. So, if the issue is too difficult for people to understand, and I'm not going to say that it is not, then perhaps what we ought to do is assign this matter for a study. I feel that I understand it. I know what I voted for. But, if the group

as a whole feels like it doesn't, then we should just indefinitely postpone the bill, let those lawyers who claim they understand it, including the County Attorneys Association, get together and then present exactly to every member of the Legislature what they say it is they agree on. But I don't think the Legislature is bound by an agreement that the county attorneys have worked out. If they are saying that they want this proposition to make it "fair". In other words that each side has the same opportunity, how is that arrived at by allowing the prosecutor to appeal in a set of circumstances where on the opposite side but the same circumstances the defendant does not. I would object to the bill being returned and I think that it ought to either go forward or you should go ahead and kill it. It is not one of those kind of issues that is hindering the operation of the criminal justice system or the judicial system. Once the bill was offered a number of lawyers representing different interests did begin to deal with the bill. So I, as a member of the Judiciary Committee, will not say that a fast one was worked on me or that I didn't know what I was voting for, and I'm only speaking for myself. But, in any case, I don't think the body should accept the concept, or notion, that a fast one was pulled by anybody. That was not the case.

SPEAKER MARVEL: Senator Sieck, do you wish to close on the motion to return the bill?

SENATOR SIECK: Senator Chambers says there wasn't a fast one pulled as far as he was concerned and I think that is correct, because I do feel that he understood it. But, I do feel that we do not want to load the courts. We should recognize that the courts need assistance and that we need further evidence and we find the further evidence, then we should be able to use it. The defendant has right to go to any court. He can go to higher courts and he has the right to appeal at any time. So, I don't feel that we are degrading the defendant with this particular piece of legislation. So I would sure encourage you to pull this back off of Select File and attach this amendment. Thank you.

SPEAKER MARVEL: The motion is to return the bill for a specific amendment. All those in favor of the bill being returned vote aye, opposed vote no. Have you all voted?

SENATOR SIECK: I'll ask for a Call of the House....a roll call vote, not a Call of the House.

May 19, 1981

LB 411, 459

SPEAKER MARVEL: Record your presence. All legislators must be in their chairs before we can proceed. Senator Koch, Senator Beutler, Senator Maresh, Senator Fitzgerald, Senator Marsh, Senator Landis. Okay, call the roll.

CLERK: Roll call vote. 25 ayes, 16 nays, 4 excused and not voting, 4 present and not voting. Vote appears on page 2104 of the Legislative Journal.

SPEAKER MARVEL: Motion is carried, the bill is returned. The motion now is the adoption of the Sieck amendment. The motion is to return the bill for a specific amendment. The motion is to adopt the amendments. Senator Nichol, do you wish to speak to that motion to adopt the amendment.

SENATOR NICHOL: Mr. Chairman, I don't know who is confused or if anybody is confused, I don't know that any trick was pulled but I would like to have one day worth to have a look at this. I'll take my share of responsibility since I was gone at that time, the day of the hearing. Nevertheless that is no excuse. So, Mr. Speaker, would it be possible to do this, in the first place, I don't want to prejudice the bill and would it be acceptable to you, with you if we would do that rather than accepting the amendment and passing it along and perhaps having to bring it back for reprinting again

SPEAKER MARVEL: Are you asking unanimous consent to pass over the bill for one day? Is that your request?

SENATOR NICHOL: If it is agreeable with Senator Sieck, yes I would ask that.

SPEAKER MARVEL: Is there any objection? If not, so ordered. Next bill is LB 459.

ASSISTANT CLERK: Read LB 459.

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass. Those in favor vote aye, opposed vote no. LB 459. Have you all voted? LB 459 on Final Reading. Have you all voted? Record the vote.

ASSISTANT CLERK: 41 ayes, 0 nays, 5 present and not voting, 3 excused and not voting. Vote appears on page 2105 of the Legislative Journal.

May 26, 1981

LB 172, 411

SENATOR BEYER: Mr. Speaker and colleagues I certainly support Senator Carsten's amendment. It would be a tremendous help to a lot of the carriers that are on computers and that run their purchases through on a monthly basis in reporting. Smaller carriers would benefit more by the quarterly reporting, but the larger ones would be better off and I would certainly support it. Thank you.

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

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Carsten's amendment.

SENATOR CLARK: The Carsten amendment is adopted.

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

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: I move the advancement of 172 as amended.

SENATOR CLARK: You heard the motion, all in favor say aye, opposed nay. It is advanced. LB 411. The one we have been looking for. Is someone going to handle Sieck's amendment on this bill? Senator Hoagland.

CLERK: Mr. President, LB 411 was on Final Reading. On Final Reading Senator Sieck made a motion to return the bill for a specific amendment. That specific amendment is found on page 1982 of the Journal.

SENATOR CLARK: Senator Hoagland.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'm going to take for Senator Hoagland while we prepare an amendment to this bill. LB 411 was introduced by Senator sieck and has to do with interlocutory appeals in criminal procedures. The amendment that is offered appears in the Journal on page 1982, and in essence strikes references to the use of this procedure by defendants. The reason being defendants have at the end of a trial the opportunity to appeal all of the evidentiary matters in the trial. It is only necessary really for prosecutors to have immediate appeals when a judge has ruled against their motion to allow certain evidence. If a judge has ruled that they can not allow that evidence, it's possible there would be a serious flaw in the prosecutions case. They need this

May 26, 1981

LB 411, 216, 320, 352,  
406

interlocutory procedure whereas a defendant will have an adequate chance to appeal at the conclusion of a trial and loses no substantive rights. If defendants are allowed to use this mechanism, it is quite possible that they can use this mechanism as a delaying tactic. For that reason in the middle of a trial take up one of these kinds of appeals use three months, six months or whatever until an answer comes back before the case could proceed, or also in the alternative it is possible for them to make an appeal based on certain of the evidence of the prosecution, whereas even without that questionable evidence there would be enough to convict and yet the trial would come to a halt while this barely relevant and perhaps non-material evidence was ruled on by a higher court. In other words, the defendant can use this mechanism if it is allowed to be utilized as a delaying tactic where as the prosecution will not. For that reason I would urge the adoption of Senator Sieck's amendment as found on page 1982 of the Journal to LB 411.

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

CLERK: Senator Clark voting yes.

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

CLERK: 26 ayes, 1 nay, Mr. President, on the motion to adopt Senator Sieck's amendment.

SENATOR CLARK: The amendment is adopted. Is there anything further on the bill? It is now the advancement of the bill. It was returned for a specific amendment. All those in favor of readvancing say aye, all those opposed, the bill is readvanced. Pat, do you have the bills back from Emory?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined and reviewed LB 216 and find the same correctly engrossed, 320 correctly engrossed, 352 correctly engrossed, 406 correctly engrossed. Those are signed by Senator Kilgarin as Chair.

SENATOR CLARK: Senator Haberman, I do believe we are ready for your motion.

SENATOR HABERMAN: Mr. President, members of the Legislature, I move we adjourn until 12:00 tomorrow noon.



May 27, 1981

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

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

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

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

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

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

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

May 27, 1981

LB 39, 39A, 411, 544

Mr. President, Senator Vickers offers a rules change. That will be referred to the Rules Committee. (See page 2329 of the Legislative Journal.)

Mr. President, I have in my possession letters as well as accompanying certificates from the Secretary of State regarding receipt of LB 39 and LB 39A. Both will be inserted in the Journal, Mr. President. (See pages 2330-2332 of the Legislative Journal.)

Mr. President, Senator Dworak would now move LB 544 to Select File for a specific amendment.

PRESIDENT: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. Speaker, based on the previous discussion with Senator Cullan and Senator Marvel's inclination I ask unanimous consent to withdraw this amendment.

PRESIDENT: All right, the amendment is withdrawn. Thank you, Senator Dworak. That takes care of...anything further on LB 544? Well then it just remains where it is. There is no motion to return so we will go on to the next one which is LB 411.

CLERK: Mr. President, Senator Hoagland would move to return LB 411 to Select File for a specific amendment. (See pages 2332-2334 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, you will remember that last night between 8:15 and 8:30 p.m. LB 411 came up. It is Senator Sieck's bill and Senator Sieck was off the floor and Senator Landis handled the bill for Senator Sieck and we worked out an amendment which incorporated Senator Sieck's amendment and made one other change but we were unable to get the amendment up here in time to have it attached and Senator Landis indicated that we would offer that today. Now what this amendment does basically is it does away with the requirement in Nebraska law that a motion for new trial necessarily be presented to trial court as a prerequisite to appealing a case and in doing that it makes Nebraska procedure consistent with that of the federal courts in many other states around the country and does away with a relatively antiquated rule in Nebraska that a lot of trial lawyers feel is unnecessary, going back within ten days to the trial court to remind him of all those same areas you reminded him of during the trial and that he turned down and relieves trial lawyers of that burden, relieves the courts of necessarily having to consider motions

May 27, 1981

LB 411

for a new trial before appeals. We all had agreed upon that motion, this amendment last night but we were simply unable to get it prepared in time and with that I will yield the rest of my time to Senator Sieck who is the sponsor of this bill and I believe has something to say about this.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Yes, Mr. President, members of the body, after visiting with Senator Hoagland and with the attorney who was promoting this bill they seemed to be all in agreement so I am going to support the amendment and I want to also take this opportunity to thank Senator Landis for carrying the bill while I was gone. I do appreciate that. Thank you.

SENATOR CLARK: The motion is to return LB 411. Senator Hoagland. Senator Beutler, do you want to talk on it? Senator Beutler, did you want to talk on this bill? Do you want to close?

SENATOR HOAGLAND: I will waive closing unless there is some questions, I would be happy to try and answer them, otherwise I will waive closing.

SENATOR CLARK: Well there is no other lights on. The question before the House is the return of LB 411 for a specific amendment. All those in favor vote aye, opposed vote nay. Have you all voted? Have you all voted on the return of 411? Have you all voted that want to vote? Record the vote. Senator Hoagland.

SENATOR HOAGLAND: Perhaps we could take call-in votes, Mr. President.

SENATOR CLARK: You can't take call in votes unless you go under Call.

SENATOR HOAGLAND: I would ask for a Call of the House and then ask if the Chair would accept call-in votes.

SENATOR CLARK: All right, fine. A Call of the House has been requested. All those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 15 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call if everyone will return to their seats and punch in, please. The Clerk will take call-ins.

May 27, 1981

LB 411

CLERK: Vard Johnson voting yes. Senator Beyer voting yes.  
Senator Fitzgerald voting yes. Senator VonMinden voting yes.

SENATOR CLARK: Record the vote.

CLERK: 25 ayes, 0 nays on the motion to return the bill,  
Mr. President.

SENATOR CLARK: The bill is returned. Senator Hoagland.

SENATOR HOAGLAND: I would move the adoption of the motion,  
Mr. President.

SENATOR CLARK: The motion before the House is the adoption  
of the Hoagland amendment. All those in favor vote aye. All  
those opposed vote nay. Have you all voted? Record the vote.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of  
the Hoagland amendment.

SENATOR CLARK: The amendment is adopted. Senator Hoagland,  
do you want to move the bill. The question before the House  
is the readvancement of LB 411. All those in favor say aye,  
opposed. The bill is readvanced.

RECESS

LB 396, 396A, 411

May 29, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Record the presence.

ASSISTANT CLERK: Quorum present, Mr. President.

PRESIDENT: All right, the Speaker has recommended that we....in order to get the Final Reading out of the way, that we continue on where we left off before lunch, this time with LB 396. Would the Sergeant at Arms please prepare the...secure the Chamber. All members be at your desks. As soon as you are, we are ready for Final Reading on LB 396. As soon as all members are at their desks we will start with LB 396. Will the Sergeant at Arms please get everyone at their desks so that we can. The Speaker's point about the day coming to and end rather late is certainly going to be true if we don't get started. Okay, let's go. LB 396, Mr. Clerk.

CLERK: (Read LB 396 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 396 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 2410 of the Legislative Journal.) 39 ayes, 6 nays, 2 excused and not voting, Mr. President, and 2 present and not voting.

PRESIDENT: All right, LB 396 passes. The next bill on Final Reading is LB 396A. And members would you please be at your....there is such....we are going to have an awful time finishing this day if you don't, and Sergeant at Arms, will you please enforce the rules and see to it that all members are at their desks. Continue with the reading, Mr. Clerk, of LB 396A.

CLERK: (Read LB 396A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 396A pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 2411 of the Legislative Journal.) 37 ayes, 7 nays, 2 excused and not voting, 3 present and not voting, Mr. President.

PRESIDENT: LB 396A passes. The next bill on Final Reading is LB 411.

CLERK: (Read LB 411 on Final Reading.)

**6107**

May 29, 1981

LB 411, 460

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 411 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 2411 and 2412 of the Legislative Journal.) 44 ayes, 2 nays, 2 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 411 passes. The next bill on Final Reading is LB 460.

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

PRESIDENT: Read the motion, Mr. Clerk.

CLERK: Mr. President, Senator Beutler would move to return LB 460 to Select File for a specific amendment. The amendment would read, "By adding the word 'not' after the word 'may' in line 2 on page 5".

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, this is the second important policy matter that I wanted to discuss with you today. And I hope you will get out 460 and follow along with me because there is an admitted mistake in the bill. And the question is whether you think the significance of the mistake along with the significance...and...and the significance of the change in philosophy, whether those together...whether considering those together you would still want to pass the bill this year. So if you would turn to LB 460 and turn to page 5, you will see in lines 1 and 2 a sentence that reads: "The state investment officer may write call options and put options." Okay, in that sentence what I am doing, I am saying the state investment officer may "not" write call options and put options. Let's talk a little about what this is that we are doing here. First of all, when it says that the state investment officer may write, as I understand it that means sell, and when you are talking about selling, you are talking about selling a call option. Now as I understand that, that means you are contracting with somebody else to sell them a security at a stated price at a particular point in time in the future. Let's say, for example, that I look into the paper and I see the Kennecott Copper Company is selling for \$27 a share today, and let's say that I buy it at \$27 a share. Now I can make

May 29, 1981

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

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

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

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

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

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

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

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

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

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