

January 8, 1981

LB 37-48

RECESS

PRESIDENT: The Legislature will come to order and register your presence.

CLERK: Mr. President, Senator Higgins and Beutler would like to be excused this afternoon.

PRESIDENT: Record the presence, Mr. Clerk.

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

PRESIDENT: Quorum being present, do you have any messages on the desk, anything to read into the record?

CLERK: Yes, sir, I do. Senator Maresh would like to announce that Senator Fitzgerald has been elected as vice chairman of the Business and Labor Committee. Senator Marvel would like to announce a chairperson's caucus for Monday, January 13, 1981, at 9:00 a.m. in Room 1520. It is a chairperson's caucus at 9:00 a.m., Room 1520, Monday morning.

Mr. President, Senators VonMinden, Senator Hoagland would like to be excused all day tomorrow.

PRESIDENT: We are ready for the introduction of new bills, Mr. Clerk, proceed.

CLERK: Mr. President, new bills: Read LB 37-48 by title for the first time. (See pages 85-88 of the Legislative Journal.)

Mr. President, Senator Hefner would like to have the Miscellaneous Subjects Committee meet upon adjournment this afternoon underneath the South balcony. That is the Miscellaneous Subjects Committee upon adjournment underneath the South balcony.

Mr. President, I have the communication from the Secretary of State addressed to the Speaker and members of the Legislature regarding the bonds and oaths for the following elected officials: Public Service Commissioner, Eric Rasmussen, Jack Romans; Treasurer of Workmen's Compensation Court, James Monen; Regents: Robert Simmons and John Payne; State Board of Education, Frank Landis, James Monahan, Walter Thompson, Helen Greene; and for Judge of the Nebraska Supreme Court, Lawrence Clinton, Hale McCown and C. Thomas White. That will be inserted in the Legislative Journal. (See pages 88-90.)

January 30, 1981

LB 7, 20, 28, 42,
43, 46, 81, 429.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Reverend Henry Bradshaw, Ralston United Church of Christ, Ralston.

REVEREND BRADSHAW: Prayer offered.

PRESIDENT: Roll call. Have you all registered your presence? Record the presence, Mr. Clerk.

CLERK: 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 printed. Any other messages, reports or announcements?

CLERK: Yes, sir. Mr. President, your Committee on Judiciary whose Chairman is Senator Nichol to whom we referred LB 28 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 429 advanced to General File with amendments; LB 42 to General File with amendments; LB 43 to General File. (Signed) Senator Nichol, Chairman. (See pages 368 through 370 of the Legislative Journal.)

Mr. President, your Committee on Public Works whose Chairman is Senator Kremer to whom we referred LB 7 instructs me to report the same back to the Legislature with the recommendation it be indefinitely postponed; LB 46 reported to General File with amendments; LB 81 General File with amendments. Those are signed by Senator Kremer. (See pages 371 through 375 of the Legislative Journal.)

Mr. President, your Committee on Business and Labor whose Chairman is Senator Maresh to whom was referred LB 20 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments. (Signed) Senator Maresh, Chairman. (See page 375 of the Legislative Journal.)

Mr. President, hearing notices: Your Committee on Public Works gives notice of public hearing for March 11. That is signed by Senator Kremer as Chairman. Your Committee on Banking, Commerce and Insurance whose Chairman is Senator DeCamp schedules a hearing for February 9, and your Committee on Government, Military and Veterans Affairs schedules public hearings for

February 3, 1981

LB 42, 43

member would like to attempt to I would be most happy that they come forward but I don't think so.

SENATOR DWORAK: Are you telling me that the committee is putting a bill before us and the reason for the bill is that we now have hidden traps in the appellate process and that no one on the committee knows what those hidden traps are, what the remedies are?

SENATOR NICHOL: Have you ever heard of the term "Trust Me"?

SENATOR DWORAK: I don't. Okay. Senator Nichol, have you ever heard of the term "Show Me"?

SENATOR NICHOL: Yes, that is exactly what I would like to do, Senator Dworak, and why I mentioned it in my opening statement for anyone who is interested, we would be most happy to spell these out in detail so that you would know what we are doing. We are not trying to hide anything. We are not trying to do anything shady and we would be most happy to have you have that.

SPEAKER MARVEL: The motion is the advancement of the bill as amended. All those in favor, excuse me, Senator Nichol, do you want to close? He waives closing. All those in favor of advancing LB 42 vote aye, opposed vote no. Record.

ASSISTANT CLERK: 28 ayes, 0 nays on the motion to advance, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Next bill, LB 43.

ASSISTANT CLERK: LB 43 was introduced by the Judiciary Committee in January of 1981. (Read title.) The bill was first read on January 8, 1981, and referred to the Judiciary Committee. It was advanced to General File with no amendments pending.

SPEAKER MARVEL: Okay, Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, LB 43 was introduced by the Judiciary Committee as an outgrowth of part of the committee's interim activities. Last session LR 266 was introduced by the Judiciary Committee which called for cooperating with the Nebraska Bar Association in conducting several public hearings on recent national amendments to the Model Business Corporation Act. These hearings were held throughout the State of Nebraska and a great deal of testimony was received from various practicing attorneys, bar associations and individuals with regard to the current

February 3, 1981

LB 43

state of corporate practice in Nebraska. A final recommendation of LR 266 was the Judiciary Committee introduce legislation incorporating several of the national amendments to the Nebraska Corporation laws. Much of the language itself was refined by the Nebraska Bar Association Committee on Corporate Practice. All the provisions in LB 43 were adopted by the Nebraska State Bar Association at their House of Delegates meeting last fall. The thrust of the entire bill is permissive in nature in that it will allow Nebraska corporations to modify several aspects of their practice and procedures to keep Nebraska current with other states as to the way we allow corporations to function in Nebraska. As many of you realize the corporations are a creature of statute and can function only as the laws of the state under which they are incorporated allow them to function. Nebraska's Corporation Act has not been substantially amended for approximately ten years, and during that time changes have been made and amendments have been adopted to the Model Business Corporation Act upon which Nebraska modeled its corporation laws. I would like to highlight some of the proposed changes for you. Number one, Sections 21-2002 (7), 21-2022, 21-2023 and 21-2080 are amended by the bill to modify the definition of shareholder and to provide for creation of uncertified shares. It has become a common practice for persons purchasing stock to have the shares registered in the street name of a broker-dealer or other financial institutions for several reasons, principally in order to facilitate transfer by eliminating the need for the beneficial owner's signature and delivery. This system has been developed on more or less a national level. In this system, financial institutions deposit securities held of record by them with the depository which becomes a record owner of the shares. Transfers between depositors are then accomplished by book entry of the depository. The purpose of this proposal is to facilitate direct communications between the corporation and the beneficial owner by authorizing a procedure for bypassing the immediate record holders. The adoption of this procedure would be discretionary with each corporation and would require authorization in the Articles of incorporation or the bylaws. Number two, Section 21-2004 (15) is amended to clarify corporation power to indemnify directors, officers and employees. Current Nebraska statutes are unclear as to the degree of care upon which the legal basis corporations can act to indemnify its directors, officers and employees. The purpose of this provision is to eliminate that confusion. Section three, Sections 21-2035 and 21-2042 are amended and relate to qualifications of the Board of Directors, the standard of conduct required for directors and authorize telephonic meetings of the Board of Directors. One of the most discussed provisions in LB 43 is the authorization for telephonic meeting of the Board of Directors.

Telecommunications equipment has been so improved that conference calls can be speedily arranged whenever there is need. In these circumstances, consultations may be effectively had despite any intervening distance. It was argued at committee hearings that top management for corporations should be free to utilize these potentials to enjoy the same speed of action that is often necessary in modern conditions and enjoyed by all lower levels of management. The provision contained in the bill substitutes the electronic communication for personal presence but it does not change any of the other requirements for a meeting. Specifically the notice requirements and the quorum requirement are unaffected. Full flexibility is maintained by the permitting of the new privilege to be restricted by the articles incorporation or the bylaws that is desired. Section 4, Section 21-2062 and 21-2065 contain a provision which would authorize deferring the effective date of amendments to the articles of incorporation to a date not more than thirty days after filing with the Secretary of State. Under current laws such amendments are effective upon filing. This can create uncertainty as to filing date especially those dealing with the Secretary of State through the mails. Section 5, Section 21-2071, 21-2072, 21-2073, 21-2075, 21-2076 and 21-2079 simplify merger proceedings. These sections establish a procedure whereby a direct exchanges of shares in corporate combinations may be affected utilizing the same safeguards, notice requirements and shareholder voting rights required for comparable mergers and similar transactions and resulting in the same binding effect upon a shareholder. It is often desirable to affect a reorganization or combination in such a way that the corporation to be acquired does not go out of existence and after the transaction becomes a subsidiary of the acquiring corporation or a holding company. These provisions provide a direct straightforward procedure for a corporation transaction while preserving the same safeguards and procedures that now apply generally to mergers and similar transactions. Six, Section 21-20105.7 is amended to amplify the provisions regarding the activities of foreign corporations borrowing and lending money within the State of Nebraska. Present language is ambiguous to lending institutions. In order to remove doubt this section makes it clear that a corporation which creates indebtedness or security interest either as a borrower or a lender does not thereby engage in an activity which requires qualifications of the corporation in the state to do business. This section deals only with the problems of whether a foreign corporation which engages in the activity set forth in this section is required to qualify in the state in which the activity takes place. Section 7, Section 21-2046 proposes to make some minor changes in the Directors Liability Act. In recent years a growing

February 3, 1981

LB 43, 46

number of jurisdictions have introduced in their Business Corporation Act an affirmative statement in the standard of care for Directors. Recognizing this trend the Nebraska Bar Association determined it is desirable to provide a standard in the Nebraska Corporation Act which would promote uniformity in the development of the statutes to provide the basis on which a Director's performance should be judged. This section incorporates the good faith concept which has been viewed by the courts as a fundamental precept for many decades. I think I have provided you with a fair overview of LB 43. If you have any technical questions that I can't answer, I will get you the answer in short order. For those who feel a little nervous voting on this large a bill which contains many highly technical provisions, I would remind you, first of all, the vast majority of changes in this piece of legislation are permissive in nature. The corporations don't have to use many of these provisions if they do not wish to do so. LB 43 merely provides them the option of doing so if they desire. Secondly, I would remind you that all the public hearings held on the interim study resolution and the public hearings on LB 43 not one person appeared to oppose any of the changes suggested by LB 43.

SPEAKER MARVEL: You have twenty seconds.

SENATOR NICHOL: I have four lines. These provisions were adopted unanimously by the State Bar Association House of Delegates meeting. They are noncontroversial and in so far as I know have generated no opposition whatsoever. I move LB 43 advance to E & R Initial.

SPEAKER MARVEL: The motion is the advancement of LB 43 as discussed. All those in favor of advancing the bill vote aye, opposed vote no. You are voting on the advancement of LB 43. Have you all voted? Record.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to advance.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Next bill, LB 46.

CLERK: Mr. President, LB 46 was offered by Senator Myron Rumery. (Read title). The bill was first read on January 8. It was referred to the Public Works Committee for public hearing. It was advanced to General File. The Public Works Committee does have committee amendments pending, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Kremer.

February 6, 1981

LB 1, 2, 43, 46, 57, 60,
70, 81, 141.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT LUEDTKE: Prayer by Dr. Edward Kolbe, Pastor of First Christian Church here in Lincoln.

DR. EDWARD KOLBE: Prayer offered.

PRESIDENT: Roll call.

CLERK: Mr. President, Senator Marsh would like to be excused until she arrives. Mr. President, Senators Dworak, Carsten and Newell excused for the day. Senators Burrows, Hoagland, Fowler and Pirsch until they arrive.

PRESIDENT: Have you all registered your presence?

CLERK: Senator Labeledz and Senator Vard Johnson would like to be excused until they arrive.

PRESIDENT: Record the presence.

CLERK: Quorum present, Mr. President.

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

CLERK: I have no corrections.

PRESIDENT: The Journal will stand correct as printed.

CLERK: I'm sorry, I do have....(See page 451 of the Legislative Journal for correction.)

PRESIDENT: Any messages, reports or announcements, Mr. Clerk.

CLERK: Yes, Mr. President, there are.

PRESIDENT: Proceed.

CLERK: Mr. President, your Enrolling Clerk respectfully reports that she has on this day at 1:58...on February 5 at 1:58 presented to the Governor for his approval the following bills: 1,2, 60, 71, 57, and 141.

Your Committee on Enrollment and Review respectfully reports that we have carefully examined and reviewed LB 43 and recommend that same be placed on Select File with amendments; 46 Select File with amendments; 81 Select File with amendments. (See pages 453 and 454 of the Journal.)

February 9, 1981

LB 42, 43, 46, 81

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

CLERK: Right, the motion is to advance, Senator.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move LB 42 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 as amended. LB 43.

CLERK: There are E & R amendments, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 43.

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 43 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. Next bill, LB 46.

CLERK: There are E & R amendments, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 46 be adopted.

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 LB 46 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. Next bill, LB 81.

CLERK: There are E & Rs, Senator.

SENATOR KILGARIN: I move the E & R amendments to LB 81 be adopted.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The amendment is adopted. Do you want to move the advancement of the bill?

February 11, 1981

LB 1, 2, 18, 41, 43, 46, 45,
57, 60, 71, 81, 141.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: (Microphone not on)...this is by the Reverend Gale R. Baldrige, First Baptist Church, Lincoln, Nebraska.

REVEREND GALE R. BALDRIDGE: Prayer offered.

SPEAKER MARVEL: Record your presence, please.

CLERK: Mr. President, Senator Witala, Kilgarin, Kremer, Vard Johnson, Stoney, Labeledz, Higgins, Sieck, Carsten, and Chambers until they arrive. Quorum present, Mr. President.

SPEAKER MARVEL: Okay, item #3, messages, reports, announcements.

CLERK: Mr. President, communication from the Governor addressed to the Clerk. (Read communication relating to engrossment of LB 1, 2, 57, 60, 71 and 141, as found on page 491 of the Journal.)

Mr. President, Attorney General's Opinion addressed to Senator John DeCamp regarding LB 45. (See pages 492 through 494 of the Legislative Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 43 and find the same correctly engrossed, 46 and 81 correctly engrossed. (Signed) Senator Kilgarin, Chair.

SPEAKER MARVEL: Senator Nichol, do you want....Senator Nichol, do you want to follow Select File for us? Item #4 is Select File and the first bill is LB 41.

CLERK: There are no E & R amendments.

SENATOR NICHOL: Mr. Chairman, I move the advancement of LB 41 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 18.

CLERK: No E & R amendments, Senator.

SENATOR NICHOL: Mr. Chairman, I move LB 18 be advanced to E & R for Engrossment.

SPEAKER MARVEL: All those in favor of that motion say aye. Opposed no. The motion carried. The bill is advanced. LB 121.

February 19, 1981

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 20, 1981

LR 17, 18
LB 9, 20, 21, 27-30, 37, 156,
38, 42, 43, 67, 77, 124,
186, 206, 206A, 244, 345, 354

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Father Dale Harges, Sacred Heart Catholic Church here in Lincoln.

FATHER DALE HARGES: (Prayer offered).

PRESIDENT: Roll call. Record the presence, Mr. Clerk.

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

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

CLERK: Mr. President, the Journal is without error this morning.

PRESIDENT: Ah, that is good news. The Journal stands correct as published. We go on to any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports it carefully examined and reviewed LB 21 and recommend that same be placed on Select File with amendments; 186 Select File with amendments; 124 Select File; 206 Select File; 206A Select File; 67 Select File; 77 Select File with amendments; 9 Select File with amendments; 38 Select File with amendments; and 345 Select File. Those are signed by Senator Kilgarin as Chair.

Mr. President, I have an Attorney General's opinion addressed to Senator Haberman regarding delegation of legislative authority; and one addressed to Senator Beyer regarding LB 354.

Mr. President, I have a report from the Department of Administrative Services, State Building Division regarding the Request for Program Statement/Preliminary Plan Approval. It will be on file in my office.

Mr. President, a communication from the Governor. (Read: Re 244. See page 593, Legislative Journal.)

Mr. President, LBs 28, 42, 156, 20, 27, 29, 30, 37, 43, LR 17 and 18 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 28, LB 42, LB 156, LB 20, LB 29, LB 30, LB 37, LB 43, LR 18 and LR 17. We are ready then for agenda item #4, Final Reading. The Sergeant at Arms will make sure that all unauthorized personnel

LB 14, 18, 20, 27, 28, 29, 30
37, 41, 42, 43, 45, 46, 81
110, 121, 125, 130, 140,
143, 155, 164, 188, 188A,
207, 207A, 214, 234, 82, 64
234A

February 20, 1981

SENATOR DWORAK: I wish to close, Mr. President. I just reiterate that LB 125 be advanced to E & R initial.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Okay, record.

CLERK: 33 ayes, 9 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The Clerk has some items on the desk before we adjourn.

CLERK: Mr. President, before we leave Senator Kremer would like to remind the Public Works Committee that they have a hearing at noon today in Room 1517 on Gubernatorial appointments for the public roads classification for motor vehicle licensing board. That is in Room 1517.

Mr. President, I have legislative bills ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and I do sign LB 121, LB 64, LB 41, LB 18, LB 14 and engrossed LB 140, engrossed LB 130 and engrossed LB 82, engrossed LB 81, engrossed LB 46 and engrossed LB 45. Okay, Mr. Clerk.

CLERK: Mr. President, I have an Attorney General's opinion addressed to Senator Goodrich. It will be inserted in the Journal. (See pages 608-610.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 110 and find the same correctly engrossed; 188, 188A, 207, 207A, 214, 234 and 234A, all correctly engrossed.

Mr. President, your Enrolling Clerk respectfully reports she has at 10:37 a.m. presented to the Governor for his approval the following bills: 28, 42, 156, 20, 27, 29, 30, 37 and 43.

Mr. President, Senator Chambers moves to reconsider the action in voting to indefinitely postpone LB 143. That will be laid over.

I have explanation of votes from Senator Haberman and Senator Sieck. (See page 611 of the Journal.)

I have a report of registered lobbyists for February 12

February 23, 1981

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Reverend Palmer of the Westminster Presbyterian Church.

DR. PALMER: (Prayer offered).

SPEAKER MARVEL: Roll call.

CLERK: Mr. President, Senators Hoagland and Beutler would like to be excused until they arrive. Senator Beutler has arrived, Mr. President.

SPEAKER MARVEL: Record, Mr. Clerk.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have items under #3?

CLERK: Mr. President, first of all, I have a correction in the Journal.

Senator Sieck offers an explanation of vote.

Communication from the Governor addressed to the clerk. (Read. Re: LBs 20, 28, 29, 37, 42, 43, and 46. See pages 619 and 620, Legislative Journal.)

Mr. President, your Enrolling Clerk respectfully reports that she has on this day at 1:30 p.m. presented to the Governor the following bills: 45, 46, 81, 82, 130, 140, 14, 18, 41, 64, and 21.

Mr. President, your committee on Enrollment and Review respectfully reports it carefully examined and engrossed LB 65 and find the same correctly reengrossed. (Signed) Senator Kilgarin, Chair.

SPEAKER MARVEL: The next item is #4, Final Reading. Will all legislators please take your seats. The first order of business is LB 24.

CLERK: Mr. President, I have a motion on the desk. Senator Haberman moves to return LB 24 to Select File for a specific amendment. That amendment is to add the emergency clause to the bill, Mr. President.

SPEAKER MARVEL: Okay, you have heard the motion. Senator Haberman.