

January 20, 1981

LB 245, 452-467

Senator Schmit, I have to close with this, you mentioned surplus of teachers. You had better look at the record today. There is not a surplus, only in a very few fields. In fact, there are shortages developing and by mid 1980's there are going to be very severe shortages for a number of reasons, and the Education Committee does not control the number of people who matriculate in a standing college. That is only controlled by the Regents and you know that. If you want to talk about surpluses, my figures show there are eight hundred and some veterinarians in this state and the veterinarians tell me that is a surplus. So let's get down to the issue. Is it Education or isn't it, and I request that the bill be rereferenced to the Education Committee. Thank you.

CLERK: Mr. President, the motion is that LB 245 be rereferred from the Agriculture and Environment Committee to the Education Committee.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Call the roll, Mr. Clerk.

CLERK: (Roll call vote taken as found on page 287 of the Legislative Journal.)

SPEAKER MARVEL: Legislators, you are still supposed to be in your seats. The Clerk did not announce the vote.

CLERK: 19 ayes, 26 nays, Mr. President, on the motion.

SPEAKER MARVEL: Motion lost. I will raise the Call in just a minute. I want to make an announcement to the Chairmen. If you have hearings that are going to be heard next week, you have to get your notices in today. Okay, the Call is raised.

CLERK: Mr. President, new bills. (Read LB 452-467 by title. See pages 287-291 of the Legislative Journal.)

PRESIDENT: Senator Cullan, Public Health and Welfare Committee, Senator Cullan. Senator Cullan, the Public Health and Welfare Committee will meet at two o'clock. Senator Cullan, do you have a place? I can't get his attention. Senator Cullan, where do you want the meeting? I have already announced it at two o'clock. Do you want it underneath the...? Pardon? The Exec Board will meet in Room 1520 at two o'clock. Okay, 1517 for the Exec Board, two o'clock.

PRESIDENT: Okay, the Clerk will continue to read in bills for about ten minutes and then we will recess until about three-thirty.

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

SPEAKER MARVEL PRESIDING

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

PASTOR ERDMAN: (Prayer offered.)

SPEAKER MARVEL: Record your presence.

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

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

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

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

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

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

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

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

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

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

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

Finally, Mr. President, Senator Maresh asks unanimous consent

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LB 387, 460

bring in Senator Vard Johnson and Senator Schmit. Here is Vard. Here is Senator Johnson. Senator Johnson is within the Chamber. Senator Schmit is on his way and the minute Senator Schmit gets here we will proceed with a roll call vote on the motion to indefinitely postpone LB 387. For those of you who have just arrived, we are voting on Senator Howard Peterson's motion to indefinitely postpone. Here he is, Senator Schmit, voting on indefinitely postponing LB 387. And you may proceed now, Mr. Clerk, with the roll call vote.

CLERK: (Read the roll call vote as found on page 2255 of the Legislative Journal.) 23 ayes, 24 nays, Mr. President, on the motion to indefinitely postpone.

PRESIDENT: The motion fails. I take it, Mr. Speaker, the bill just stays where it is at this point then. All right, Senator Fowler.

SENATOR FOWLER: As long as we have come this far, why don't we just have a vote on advancement, no closing.

PRESIDENT: Mr. Speaker, do you want to just do that? He wants to vote on advancing without any closing. There is another motion...there is another motion, so I take it.... Mr. Speaker, you want to just pass it over to the next one then? Because now there is another motion on it, so....

SENATOR FOWLER: Could you read the motion, please?

CLERK: Mr. President, I have a motion on the bill which would move to....Senator Peterson would move to return the bill to the Retirement Committee.

SPEAKER MARVEL: Okay, pass it over.

PRESIDENT: All right, we will go on to the next bill then. Mr. Speaker.

SPEAKER MARVEL: I don't know how long this next bill is going to take, but we need to visit with the chairmen in 2102 before noon.

PRESIDENT: All right. We will go ahead with LB 460 then, Mr. Clerk.

CLERK: If I may, right before that, I have an Attorney General's Opinion addressed.....

PRESIDENT: All right, read that, go ahead.

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LB 12, 435, 460

CLERK:to Senator Howard Peterson regarding LB 12, and Senator Landis would like to print amendments to LB 435 in the Journal, Mr. President. (See pages 2255 through 2258 of the Legislative Journal.)

Mr. President, LB 460 was introduced by the Retirement Committee. (Read title.) The bill was first read on January 20, referred to Banking, Commerce and Insurance. The bill was advanced to General File. I have no amendments on the bill, Mr. President.

PRESIDENT: All right, the Speaker asked for all the chairpersons to meet with him in his office while we are taking up LB 460. The Chair recognizes Senator Fowler then for purposes of discussing the bill. LB 460.

SENATOR FOWLER: Mr. President, this is a fairly far-reaching and significant bill that changes the manner in which the State of Nebraska invests its fund giving broad discretion to the State Investment Officer and removing statutory authority. It was requested by the State Investment Officer, introduced by the Retirement Committee, sent to the Banking Committee for their expertise on this subject. I lay the matter in the hands of Senator DeCamp to explain the merits or deficits of this proposal.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, very briefly and very simply this adopts for the hundreds of millions of dollars that the State Investment Officer has control of, something called the Prudent Man Rule in the investment of these funds. As you know, tens of millions, maybe hundreds, I don't know how much at this time, have been lost in the principal value of the funds and the primary excuse, and it's accurate, that has been given is because there is no flexibility in the statutes that date back to when this thing was formed for adjusting to times of inflation and the realities of the world we live in today, and, therefore, the funds have been put into things that just guarantee they are going to be in trouble. There has been no flexibility. Very simply, it adopts the Prudent Man Rule. I urge the advancement of the bill.

PRESIDENT: Okay, Senator Fowler. Senator Fowler, anything additional? That will....Senator DeCamp, does that consist of the opening and the closing on this then, because I don't see Senator Fowler. Senator Beutler, did you wish to discuss the....?

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LB 460

SENATOR BEUTLER: I just had a couple of questions, Mr. Speaker and members of the Legislature, for Senator DeCamp, if he could....

PRESIDENT: All right, question. Will you respond, Senator DeCamp?

SENATOR BEUTLER: Senator DeCamp, I noticed that we have eliminated the language in the bill which says that the State Investment Officer shall not buy on margin, or buy, sell or engage in puts and calls, and then we replaced it in language that continues to prohibit the buying on margin and the buying of options and the buying of put options, but it says the State Investment Officer may write call options and put options. Now I don't understand enough about the mechanics of the stock market to know what that means, but could you tell us what that does mean?

SENATOR DeCAMP: No. I had an explanation back when we had the bill and it has something to do with....why don't I explain it on Select File? I really will.

SENATOR BEUTLER: All right, let me ask you one other question that I have about the bill at this point in time, Senator DeCamp, just so we have it on the record right away. And I am sure this is probably something that I just have overlooked, but the standard that is being adopted now, the Prudent Man standard that is in 72-1246, is the Prudent Man standard as if the Prudent Man were dealing with the property of another, not his own property, but the property of another which is a higher standard, I think, than when he is dealing with his own property. And then in 72-1247 we retain some old language having to do with investments by the State Investment Officer which says that his investments shall be made with the exercise of that degree of care and skill under the circumstances then prevailing which a person of prudence would exercise in the management of his or her own affairs, not for speculation but for investment considering the probable safety of their capital as well as the probable income to be derived. Okay, the second standard then is a reasonable person in the management of his or her own affairs. What is the difference between the two standards and where they would apply? I assume that there is no contradiction there, but on the face of it there appears to be a slight contradiction and I am just trying to seek out the distinction that is being made in the bill here.

SENATOR DeCAMP: Okay, why don't we do this...and I hate to use this old phrase that I have made so many times here, why don't we advance the bill? Believe me, I think you understand

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the significance of the bill and how important it is. It does involve probably half a billion dollars or more of funds. By Select File I will read into the record the detailed explanation of all of these, because the puts and calls thing was kind of complicated as to why you could have it one place and not another, the Prudent Man Rule, and so on and so forth. I will get into the record everything, every aspect of it. We had two options on this legislation, one was the new concept developed by Alaska to handle their multibillions of funds, and the other one was the Prudent Man Rule which has been well established, as you know, and try to give some flexibility there. But by Select File I will have detailed answers on all of these things, if that is acceptable. I just, quite frankly, did not know this issue was coming up this morning. I knew somehow we had to get it done this year, and I am grateful that the Speaker and apparently Senator Fowler and some others did get it here, but I am not prepared this morning for a complete and detailed explanation. I will be by Select.

SENATOR BEUTLER: Okay, that's fine, Senator DeCamp. I did have one final question. Under this new rule, would investments in Krugerrands be allowed?

SENATOR DeCAMP: I will have that answer on Select.

SENATOR BEUTLER: Thank you.

SENATOR DeCAMP: Specializing in Krugerrands.

SENATOR BEUTLER: I did note that 134 has been amended to allow whatever investments are allowed by the State Investment Officer and now we are loosening up that rule and I just wanted to check that out a little bit.

SENATOR DeCAMP: We will definitely have an answer on that one.

PRESIDENT: All right....(interruption).

SENATOR DeCAMP: Why is everyone so obsessed with Krugerrands around here?

PRESIDENT: Do you wish to close? Does somebody want to close? None. All right, motion then is the adoption of the... let's see, wait a minute. We are advancing LB 460. All those in favor of advancing LB 460 to E & R Initial vote aye, opposed nay. Have you all voted? Senator DeCamp or Senator Fowler, I suppose you better call in the chairpersons to vote if you want to get this thing moved.

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LB 460, 218

SENATOR DeCAMP: Well, I hate to interrupt their meeting if we can get five votes here to advance it. We need 25. Senator Rumery is going to vote now.

PRESIDENT: Well, we need a couple more votes if that would work out we could save them from coming in but....

SENATOR DeCAMP: Yes, it will work. Schmit will vote.

PRESIDENT: Maybe Senator Schmit will vote. Nothing like being put on the spot, Senator Schmit, maybe you will vote. We will be very patient, but I think we better....have to have a Call if we don't get this. Record the vote.

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

PRESIDENT: The motion carries and LB 460 is advanced to E & R Initial. The next bill is LB 218, Mr. Clerk.

CLERK: Mr. President, LB 218 offered by Senator Sieck. (Read title.) The bill was first read on January 15 of this year, Mr. President. It was referred to the Education Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President.

PRESIDENT: Senator Beutler, will you take the committee amendments? The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, the committee amendments are basically technical amendments and also amendments which narrow the scope of the bill. So I think what I will do is briefly say that to you and explain a little bit, but give you the general thrust of the committee amendments which is to cut down on what Senator Sieck wants to do, and then when Senator Sieck talks about the bill, you can make up your own mind as to whether it is a good thing, although with these amendments the Education Committee felt that the bill was a good bill. The bill basically allows for the construction of certain types of facilities but we wanted to be sure that the school district, for example, or the community college, didn't own the facilities following their completion so that it wasn't used as a technique for getting around some of the fiscal restraints that we have put on the different political subdivisions. And the second thing that we wanted to do was to be sure that the buildings once constructed were in fact inspected by one regulatory body or another, and the bill in its original form wasn't entirely clear as to who would be responsible for the

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SPEAKER MARVEL: Record your presence, please. Okay, record.

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

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

CLERK: Yes, sir. Mr. President, very quickly, your committee on Enrollment and Review respectfully reports that they have carefully examined LB 460 and recommend that same be placed on Select File with amendments and LB 218 Select File with amendments, both signed by Senator Kilrarin as Chair. (See pages 2259-2260 of the Legislative Journal.)

SPEAKER MARVEL: I would like to read an announcement to you. It has to do with the next few days. A chairmen's meeting was called today to discuss the 90th legislative day. By a majority consent I now advise you that the 90th legislative day will be Friday, June 5. This is my first recommendation to deviate from our tentative calendar as set up in January of this year. This decision was made in fairness to all legislators. By meeting on June 5 the Governor will have sufficient time to return all bills presented to him this Thursday, however, any bills remaining on Select File tomorrow, Wednesday, May 27, the 88th day will not be read until June 5, the 90th day. It is important that we move all bills off of Select File today so that this material can be on Final Reading Thursday, May 28. Due to the volume of bills on file scheduled for Thursday, May 28, the 89th day, it is not feasible to expect the Governor to be in a position to return all this material by the 90th day if the 90th day were to be this Friday. By holding the 90th day until June 5 this allows the Governor the constitutional time limit Wednesday, June 3, midnight. The schedule allows the Governor sufficient time to act on the legislation and it allows us, the Legislature, sufficient time to react. This was presented to the chairmen and resulted in a recommendation which I have read to you on the part of the chairmen. The next item of business is item #6, Select File.

CLERK: Mr. President, I have E & R amendments to LB 406.

SPEAKER MARVEL: Senator Stoney.

SENATOR STONEY: Mr. Speaker, the recommendation that you just made, are we going to discuss this at all or are we to accept it without debate?

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doing by adopting this amendment to the A bill is providing a net reduction in general fund expenditures in this area by about \$60,000 so you are saving the state about \$60,000. I urge your adoption of the amendment.

PRESIDENT: The motion is the adoption of the Wesely amendment to LB 487A. All those in favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: 27 ayes, 9 nays on the Wesely amendment.

PRESIDENT: Motion carries. The Wesely amendment is adopted. Any further amendments now to 487A?

ASSISTANT CLERK: I have nothing further on the bill.

PRESIDENT: Senator Wesely, do you wish to move LB 487A forward.

SENATOR WESELY: I move it be advanced.

PRESIDENT: Motion to advance to E & R for engrossment. Any discussion? All those in favor signify by saying aye, opposed nay. LB 487 is advanced to E & R for engrossment. We will go to the next bill on Select File, LB 460.

CLERK: Mr. President, I have E & R amendments on LB 460.

PRESIDENT: Senator Kilgarin on 460.

SENATOR KILGARIN: I move the E & R amendments to LB 460.

PRESIDENT: Motion to adopt the E & R amendments to LB 460. Any discussion? All those in favor of adopting the E & R amendments to LB 460 signify by saying aye, opposed nay. The E & R amendments are adopted on LB 460.

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

PRESIDENT: Do you want to move it forward, Senator Kilgarin. Senator Kilgarin moves to advance LB 460 to E & R for engrossment. Any discussion? Senator Beutler, did you wish to discuss the motion to advance?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, you may recall that this is the bill that gives broad new powers to the State Investment Officer with regard to the investment of state funds and liberalizes to a considerable extent his ability to invest the funds in whatever type of investment a prudent man would invest them in and we had

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absolutely no discussion on the General File on this bill because the information was not available and I think there was to be information available to us on Select File. So I hope that at some point in time there is some detailed discussion of some of the more significant points on this bill. Otherwise we are going to get to Final Reading on a very significant bill with no discussion whatsoever as to the meaning. Maybe Senator DeCamp could comment on that.

PRESIDENT: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I am having my file brought up and if Senator Beutler would state on the floor the specific questions he has, I will try and get him the answers. If you wanted to pass over this bill for five minutes and do one of the others, I could have this information ready to read into the record. I think that is primarily what you want, some information in the record, is that correct? And some answers.

SENATOR BEUTLER: I would like to know if it is a good bill?

SENATOR DeCAMP: It is a wonderful bill. I will get some information and try to read it into the record here. Why don't you pass over it for five minutes.

PRESIDENT: Is that agreeable, Senator Beutler, that we will pass over and come back to it, and, Senator Cope, I think you are the only other one so we will just hold the speaking order for when we come back.

SENATOR DeCAMP: I am ready to go...I have got the information.

PRESIDENT: All right, we will proceed then. Senator Beutler, do you propound the questions for response or do you want to just present the bill, Senator? If you have specific questions, go ahead?

SENATOR DeCAMP: I think the specific question that he said was, what is a prudent man? What does it all mean? Okay, I am going to read information that was prepared by the State Investment Office and by the Banking Committee and try to get it into the record. "What is a prudent man? What can he invest in? Language similar to that in LB 460 was first stated in this country by a Massachusetts Court for Harvard College in 1830. A prudent man is expected to use all his skill as he would for his own investments. He has a duty to obtain knowledge for the purpose of the fund, who the beneficiaries are and their needs. He is

expected to exercise care and caution, keeping in mind that the funds and the income belong to someone else. A prudent man is not expected to be a pioneer for new investment concepts. He does not invest in new enterprises or speculative and uncertain assets. He does not buy on margin. What is considered prudent changes over time and is dependent on the type of economic activity of the state? The prudent man rule was not very necessary in Nebraska in 1830 when Massachusetts adopted it. The changes in investment thinking over time are illustrated by the investments authorized by the Legislature for the permanent school fund which began with the state. Year, 1899, investments authorized, none of said funds shall be invested or loaned except on United States or state securities, state warrants and registered county bonds. 1909, we changed it, and school district bonds and municipal bonds of cities and villages in the State of Nebraska and bonds of drainage districts organized under the drainage laws of the State of Nebraska. 1917, was added, and in the bonds of the Federal Land Bank. 1931, we changed it, and not to exceed five percent of said funds in bonds issued according to laws for financing the construction of buildings for dormitories at the University of Nebraska and at state normal schools." I am going through this to show you the history of how, well, anyway. "1933," we restricted it, we changed it and tightened it up. "If such cities or villages have no bonded indebtedness or if such cities or villages having bonded indebtedness shall have not been in default of payment of interest or principal if any for a period of ten years prior to the date of the order of investment", so you can see the effects of the depression coming in and how we reacted to protect those funds. 1937, we restricted it more, "Provided the said dormitory bonds so issued shall be serial and optional at any time after five years from the date of their sale" and it goes on and lists all kind of things here. It is very long but it shows 1937 was restricted even more. 1951, we added again, "Nebraska State Teachers College, for state normal school, maximum in dormitory bonds raised from \$150,000 to \$500,000. 1959, was added, bonds and debentures of twelve Federal Land Banks, twelve intermediate credit banks, thirteen banks for cooperatives. 1969, we added into the law, ~~board may elect to have fund invested by State Investment Officer~~", so you see we have the State Investment Officer coming into play for the first time. "1971", we changed it, "Investments to be made by the State Investment Officer. The investment officers and the board now have a duty to be prudent. An investment law that lists authorized investments", which is what ours does, by the way, "in effect says everything not included is not prudent and not authorized." And that has been their excuse why they say that they have only

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put it in certain things because that is what we put in the statutes way back when. Economic conditions have changed and they say, "We can't invest in anything else because that is what is listed in the statutes". Okay, LB 460, passes the responsibility for determining what is prudent from the Legislature to the board, the Nebraska Investment Council. It does not give it to the Investment Officer. The Council will have a list of authorized investments which the Investment Officer is restricted to. The practical advantage is that the Board can more easily adapt to technical and other changes that come. Also, not all trusts are invested the same. In my opinion, and this is the investment office speaking, the policy should not be the same for the permanent school fund and the school retirement plan. They are two different kinds of trusts. LB 460 is needed for the trust funds which have doubled in size in five years and which are growing at about thirty million annually. Increased flexibility is needed now and for the future growth. LB 460 will have little effect on the short term investments for the general fund and cash funds. The bank deposit program is not affected by LB 460. There are safeguards for the Legislature. Most important, I am almost done, is that the Board, the Nebraska Investment Council, does have the legal authority to hire and change the investment officer and to establish investment policy. The Council has and does function much like the board of a bank or insurance company. Last year the Retirement Committee of the Legislature began and will likely continue a review of investment performance. The Public Employees Retirement Board observes our investments for retirement plans. The State Treasurer has physical custody or arranges for it for all assets, so it is interested. We are audited by the State Auditor. LB 460, if LB 460 becomes law, and later the Legislature wants to make some specific limitation and/or to give some specific direction, that can be done. 72-1247 is an example of that. It prohibits buying on margin, buying call options, and buying put options. It authorizes selling call options, selling put options and lending securities, all of which permit us to earn some fees to add to the investment income. I hope that answers most of your questions.

PRESIDENT: Senator Beutler. We have actually, the time, the original time is up, but we can consider that Senator DeCamp was using his own time for speaking to the issue if that is agreeable. Do you have any further questions?

SENATOR BEUTLER: I do, Mr. Speaker.

PRESIDENT: All right, proceed.

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SENATOR BEUTLER: First of all, Senator DeCamp, what is the remedy if the council or if the state investment officer happens to invest in investments which are not altogether prudent? I mean, we set a standard up. There is no absolute prohibition. What happens if they ignore it and simply invest in speculative type of investments?

SENATOR DeCAMP: Then they would be exceeding their authority, they would be breaking the law. If you want to talk about unwise investments, what we have ordered them to invest in (interruption) the only unwise one.

SENATOR BEUTLER: Senator DeCamp, when you have a "prudent man rule", there is no absolute, there is no absolute determination as to what is prudent and what is not prudent. It is a matter of judgment to some extent, is it not?

SENATOR DeCAMP: Yes, and that is why you have an entire Investment Council with supposedly experts on it and, yes, there is a judgmental factor and that is what we are saying is needed in these times.

SENATOR BEUTLER: This new law represents a tremendous liberalization of the investment law, is that not correct?

SENATOR DeCAMP: That is...I don't know that it is a tremendous liberalization. I guess I would say it is a tremendous change. I will go along with that but that is a judgment on my part. By the way, this...

SENATOR BEUTLER: Do you feel comfortable, Senator DeCamp, that if a depression type situation occurred again, the state would be protected? Obviously, I mean, in good times the state doesn't benefit to the extent that more speculative individuals benefit in good times, but in bad times, are we protected?

SENATOR DeCAMP: Okay, you said if a depression occurs, in terms of our funds, and the things they were invested in, a depression has already occurred and I am sure you are aware of that. They were invested in, for example, low interest bearing long term bonds, and as far as that segment of the economy, as you know, it has had its depression. We are in it right now. If you are talking about a depression of inflation or of a depression of deflation, that is why we are giving the flexibility to be trying to use some judgment rather than have an absolute law that doesn't adjust.

SENATOR BEUTLER: I guess what bothers me a little bit is

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that there has been no statistical evidence presented to us as to the types of losses that we are experiencing. I mean you would think that with the request for a tremendous change like this that there would have been evidence presented to us of a problem, which I assume there is, but there has been no such evidence presented to us. Now I would ask you this question. The "prudent man rule", is that the rule now in effect in substance by either statute or common law for trust departments, bank trust departments, throughout the state?

SENATOR DeCAMP: It is my understanding that is basically the policy of most trust departments unless a specific trust says specific things.

SENATOR BEUTLER: Right.

SENATOR DeCAMP: You know you can write a trust instrument, as you well know, I am sure you have written them.

SENATOR BEUTLER: Okay, if that is the policy of trust departments in the state, why can't we make a comparison between how well they have done the last ten years and how well the State Investment Officer has done the last ten years? Wouldn't that be a rather simple comparison to show us that there is a problem, if there is, in fact, a problem?

SENATOR DeCAMP: Okay, this is a retirement committee bill. They do have a study. I would make that study available to you, and under item #23, I would just read you the conclusions of that study. "The statutes should allow the flexibility to pursue an investment policy which will maximize investment yields consistent with sound investments principles. Four avenues should be available to all retirement systems: The Nebraska Investment Council, insurance companies, trust companies, and professional investment managers. The decision concerning the investment medium should be based on competent professional advice and not on political considerations." Now in answer to your other question, I do, going through my file, have an example of one fund, State of Nebraska Permanent School Fund. \$61 million has been put into it. As of July 1, 1980, and it has got a lot worse since then, I don't have...I had them but I would have to go to my office and get them...as of July 1, 1980, I could buy that \$61 million that had been put in, I could physically go out and buy it for \$49 million, to show you an example of...

SENATOR BEUTLER: Some trust company, bank trust company funds

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have not done well in a particular yearseither, Senator DeCamp.

SENATOR DeCAMP: I am aware of that. I am aware of that. I am not....

SENATOR BEUTLER: So the absolute statement of statistics on this (interruption).

PRESIDENT: I am going to...your time...Senator Beutler, maybe you could...

SENATOR BEUTLER: Could I ask one more question.

PRESIDENT: Well, is that all you have got is one more question? Otherwise, I was going to suggest maybe that you let some of the other speakers speak and then come back.

SENATOR BEUTLER: I will do that, thank you.

PRESIDENT: I will put your light on. I think that will be well to give somebody other a chance. Senator Cope, and then Senator Schmit, and then we can come back, Senator Beutler. Senator Cope.

SENATOR COPE: Mr. President, members, at the present time, I am going to oppose it. Maybe Senator DeCamp can answer some questions eventually that would change my mind. Now I can see why the investment officer and the board, they make more brownie points if they create more interest on the investments, and I certainly realize that they are probably heavy in bonds, conservative, and the bond market today isn't good but at least it is there. I guess the point, John or Senator DeCamp, that bothers me most is the explanation of what a prudent man is. One of them was "invest money as if it were your own". Now everyone invests money differently and that is as his own. Some are speculators. Some are ultraconservative and so forth. I guess that is why in funds they have different types of funds. They will have conservative funds, speculative funds, half a dozen different type for the people who want to invest in that way but the State of Nebraska is only one sort of fund, really, and I think it should be pretty conservative. Now I am sure the pension funds that are invested or our...the investment officers take care of are unhappy because they are not getting the rate of return they can on money market funds at the present time and that is too bad but at least their money is safe and I think that is something you have to look at. I

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guess the question, Senator DeCamp, that I would like to have you answer, the question is, Senator DeCamp,...

PRESIDENT: Senator DeCamp, would you respond?

SENATOR COPE: ...is in the bill where it says, "The State Investment Officer may write options and put options", now would you tell me exactly what this means?

SENATOR DeCAMP: Do you want me to explain (interruption)...

SENATOR COPE: I want you to explain, yes, they can write options, what do they do and, well, it says, "write options and put options", they can do that. That is at the top of page...

SENATOR DeCAMP: I read it. I read it. Without going into a very complicated explanation of "puts" and "calls", and God help me be right on this.

SENATOR COPE: I hope so.

SENATOR DeCAMP: It gives him the right to set absolutely the price he would sell something for which is not speculative, whereas, buying these things can become highly speculative. The one gives you the absolute right to control what you are going to get from something, if somebody wants to pay that much, whereas, the other (interruption).

SENATOR COPE: (Interruption) allowed on call option, let's see, on...

SENATOR DeCAMP: He is prohibited from doing it (interruption)...

SENATOR COPE: (Interruption) but not on call options, is that what you are telling me?

SENATOR DeCAMP: I will read it, exactly, the explanation from the investment....let me...what you are talking about amending is 72-1247. He would be prohibited from buying options. Okay, however, the change would permit him to give someone else for a fee an option to buy a stock he already owns and is willing to sell if they meet his price.

SENATOR COPE: I understand that.

SENATOR DeCAMP: Okay, it would give someone for a fee an option to sell a stock he already has committed or is willing to buy. Can I send this back to you and maybe you can read this section.

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SENATOR COPE: Well, here is...the concept I think is all right (interruption)...

PRESIDENT: Thirty seconds, Senator Cope.

SENATOR COPE: ...to broaden the powers but I think we are broadening them too much until I know more about it so I am going to oppose it at the time.

SENATOR DeCAMP: Okay, in answer to one of the other questions you raised, real quick, it is not investing as if it were his own money. He has to use his best intelligence but he has to invest it with the understanding as if it were somebody else's...let me read that again.

PRESIDENT: Saved by the bell, Senator DeCamp. Time is up but you can come back, Senator Cope, if you want to continue this. We will go on to Senator Schmit.

SENATOR SCHMIT: First, Mr. President, if Senator Cope has a few questions to ask yet, I will yield some time to him.

PRESIDENT: All right.

SENATOR SCHMIT: If not, Senator Beutler, do you have a question or two? I'd yield some time to you.

PRESIDENT: He has more time coming.

SENATOR SCHMIT: I would like just a couple of quick questions of Senator DeCamp.

PRESIDENT: Senator DeCamp.

SENATOR SCHMIT: If we can ball and chain him to his microphone. Senator DeCamp, LB 460 deals primarily with the pension funds, is that right? It does not deal with short term surplus funds.

SENATOR DeCAMP: No. As you know, you sponsored legislation that deals with most of those. We have got different legislation.

SENATOR SCHMIT: And we really do not interfere with that (interruption)?

SENATOR DeCAMP: We are talking primarily, I guess, about the retirement funds, permanent school funds, these kind of things.

SENATOR SCHMIT: You are dealing with, principally, the longer

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term obligations, is that right?

SENATOR DeCAMP: Yes.

SENATOR SCHMIT: And you are not dealing with the overnight money, the short term surplus money?

SENATOR DeCAMP: No.

SENATOR SCHMIT: The short term money is still available to the bank depository program that we established several years ago?

SENATOR DeCAMP: We are not changing anything there.

SENATOR SCHMIT: Okay, thank you, Senator. That is all I wanted to know.

PRESIDENT: All right, now back to Senator Beutler.

SENATOR BEUTLER: Senator DeCamp, let me ask you about two standards set out in the bill that are confusing to me and I mentioned this to you on General File. The standard with regard to the type of investments that can be made is the "prudent man" dealing with the property of another, and then over on page 5, the standard as far as the investment officer is concerned as to the degree of care and skill that he should exercise, it is the "prudent man" managing his own affairs. Why is it that we have two different standards, apparently a lower standard as to his skill and care, and yet we are letting him invest in investments as if he were handling the property of another as opposed to his own property? I don't understand how those two concepts relate?

SENATOR DeCAMP: Senator Fowler said he would answer that question.

PRESIDENT: Senator Fowler, you will answer that question, right.

SENATOR FOWLER: Mr. President, the bill was brought to the Retirement Committee by the State Investment Officer and I don't think that Senator DeCamp should be obligated to try and answer all the questions here nor I. If the State Investment Officer has not been able to convince this Legislature the value of this legislation, I certainly think that it could be held for a year. Now I think the Legislature should understand that there are problems with the investment of our dollars, that there may be...there is a desire

by the State Investment Officer for more discretion and what we have written in the statute is fairly limiting, particularly within the current financial community. However, this is an area where I think caution should be exercised, and if people are not satisfied with this legislation, I would think Senator DeCamp would feel agreeable that if the State Investment Officer is not able today to answer some of the questions that people have, that the bill be laid over until next session. The Retirement Committee has put in a study that the Exec Board is considering to look at the question Senator Beutler proposed and that is, is there a difference in the return on investment? That was something we were hoping to do last year and did not get done, and if the Executive Board authorizes the financial resources, we would hire an outside investment analyst to review the performance that exists on investments. This bill covers the long term obligations, as Senator DeCamp indicated. Some of the pension funds are directly contracted with like Bankers Life and Traveler's Insurance which have their own limitations but there are some pension funds invested by the State Investment Council plus the trust funds that Senator DeCamp indicates. Again I would say that if someone wants to put a motion to bracket it or whatever, I, as Chairman of the Retirement Committee, am not going to object or we could pass the bill over. I do think the State Investment Officer should be available to answer questions. It was a bill that he requested and, again, I would say that Senator DeCamp does not need to be the one to have to try and defend these changes.

PRESIDENT: Before we go on to the next speaker, the Chair would like to introduce a guest of Senator Wagner, Don Blaha from Ord, Nebraska. Would Don stand and be recognized? Welcome to the Legislature, Don. We have a motion on the desk. Read the motion, Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Beutler moves to amend LB 460. (Read Beutler amendment found on page 2311, Legislative Journal.)

PRESIDENT: All right, the Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, the new power given to the State Investment Officer in the bill, as we have been discussing, allows him to invest as if he were a prudent man dealing with the property of somebody else. That is a slightly higher standard than a prudent man dealing with his own property. That is with regard to the type of investments that he can choose. Now

apparently in another part of the bill it says that he is also obliged to exercise the degree of care and skill. Now that care and skill is exercised in a number of ways and I suppose one of them is the investments that he chooses but the standard that we are setting up as to the exercise of care and skill is not as high as the standard that we are setting up as to the type of investments that he should invest in. It says with the regard to the exercise of care and skill that it should be exercised as if he were managing his own property. What my amendment does, what my amendment does is to say that the skill and care that he should exercise should be the same as what we are requiring with regards to the type of investments that he can invest in. In other words, that it should be that of a prudent person who is managing the affairs of others, the business of others, so that the two standards that we have in the bill would then be the same. They would both be the prudent person investing as if he were dealing with the property of others. So I am asking you that because we are giving the investment officer more power, much, much more power, that at least holding to the higher standard, holding to the higher standard, and that is what the amendment would do, holding to the same standard that we have created with 460, the prudent person managing somebody else's property. Thank you.

PRESIDENT: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, let me give you a little more history on the bill. First of all, we are talking about big dollars. We are talking about something that probably had we had the legislation in effect three years ago or two years ago when we intended, we would be twenty, thirty, fifty, I don't know how many millions better off today. But as to the amendment itself, I brought up that very question to the State Investment Officer in committee. I said I would rather have this higher standard or the council did than the hybrid one you are offering. His explanation was, as I recall, something about, no, and everybody in the room agreed with him, all the wise investment people, somehow that it made sense to do it the other way. I disagree and I am going to suggest you accept the amendment. It makes it absolutely clear to me what standard we are using rather than the, as I say, hybrid one. I do support the amendment and I think that is the way to go.

PRESIDENT: Any further discussion on the Beutler amendment? Senator Beutler, you may close. Motion then is the adoption of the Beutler amendment to LB 460. All

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LB 460

those in favor vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the amendment.

PRESIDENT: Motion carries. The Beutler amendment is adopted. Any further amendments?

CLERK: No, I have nothing further, Mr. President.

PRESIDENT: Any further discussion on the bill? The Chair recognizes Senator Beutler.

SENATOR BEUTLER: I would only like to say that I would like to see before we vote on this on Final Reading some figures showing us what the problem is, because if there isn't a problem, then I certainly have problems giving this vast new authority to the Investment Officer and to the Investment Council. Checking the statutes, it does appear to be the same authority that a private trust company would have dealing with trust property that is not otherwise specified as to how it is to be dealt with. Some years they have very bad years in trust companies in the last ten years. I don't really know how that compares to how the Investment Council and the Investment Officer has done but this is a terrible bill to be asked to vote blind on and we are, in fact, being asked to vote blind on it. So I just hope that before we pass it into law that we have a better idea and a more substantial basis upon which to base such a significant decision. Thank you.

PRESIDENT: All right, who wants to handle the...Senator Fowler, who wants to move the bill? I believe we have all the discussion on the bill.

SENATOR FOWLER: Okay, I would move that it be advanced. I would urge those that have questions on the bill to contact the State Investment Officer and I think Senator DeCamp and I will work to try and provide information that Senator Beutler requests. It is a major change. I think there is a need for it. In any case the laundry list of investments we have is fairly out of date and there needs, if someone has a better suggestion for a laundry list, that certainly would be appropriate, but I think some sort of change in the discretion we are allowing the Investment Officer should be made. This is one suggestion. Again if you have concerns, I would urge you to contact State Investment Officer, State Investment Council or perhaps a person in investment you know or a banker or whatever. There are a

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LB 460, 487, 487A,
218, 385

lot of bankers in the rotunda lately. Maybe you could talk to them. And with that, I would move the bill be advanced and we would commit ourselves to providing more information before Final Reading.

PRESIDENT: The motion is to advance LB 460 to E & R for engrossment. All those in favor signify by saying aye, opposed nay. LB 460 is advanced to E & R for engrossment. Next bill on Select File is LB 218. Yes, Mr. Clerk, you may read in or do any announcements.

CLERK: Very quickly, Mr. President, Senator Schmit would like unanimous consent to add his name to 487 and 487A as coinroducer.

PRESIDENT: 487, any objections? If not, so ordered.

CLERK: Mr. President, then I move to 218. I have E & R amendments pending, Mr. President.

PRESIDENT: All right, E & R amendments. The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 218.

PRESIDENT: Motion to adopt the E & R amendments on LB 218. Any discussion? All those in favor of adopting the E & R amendments to LB 218 signify by saying aye, opposed nay. The E & R amendments are adopted. Anything further on LB 21, Mr. Clerk?

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

PRESIDENT: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 218.

PRESIDENT: LB 218, motion is to advance to E & R for engrossment. Any discussion? All those in favor of advancing LB 218 to E & R for engrossment signify by saying aye, opposed nay. LB 218 is advanced to E & R for engrossment. The next bill is LB 385.

CLERK: Mr. President, there are E & R amendments to LB 385.

PRESIDENT: The Chair recognizes Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 385.

PRESIDENT: Motion to adopt the E & R amendments to LB 385.

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LB 548, 460, 218, 385

SENATOR CLARK: The next bill is 548.

CLERK: Mr. President, if I may, right before that, the committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed LB 460 and find the same correctly engrossed; 218 correctly engrossed and 385 correctly engrossed, (Signed) Senator Kilgarin, Chair.

Mr. President, with respect to LB 548 Senator Nichol would move to return the bill for a specific amendment. The amendment would read as follows: (Read amendment found on page 2,35 of the Legislative Journal.)

SENATOR CLARK: Senator Nichol. Senator Nichol, on 548.

SENATOR NICHOL: Mr. Chairman, this is a reconsideration of something we did the other day which has to do with a claim for Mistern Nance and Parratt and I feel that this has far-reaching implications that we may not perceive and contrary to the information given to the Legislature the other day, they committed no intentional acts of wrongdoing and I would just like to tell you what happened. On December 23, 1976, Booker Robinson was placed in the adjustment center at the penitentiary for possession of narcotic paraphernalia and contraband. This placement was on the order of the Deputy Warden David Watson. On December 29, 1976, the penitentiary's principal hearing officer, John Tyrenerry met with Robinson and notified him of the disciplinary charges being brought against him, lodging those charges on the proper forms. However, no formal misconduct report was prepared concerning Robinson's disciplinary violations and no hearing was held. Then, as now, the deputy warden and the principal hearing officer were assigned the responsibilities of enforcing inmate discipline and coordinating procedural due process. Unfortunately, due to the staff changes, Robinson's case did not receive the procedural attention that it warranted. David Watson resigned on January 27, 1977, and John Tyrenerry left the employ of the penitentiary on February 26, 1977. Mr. Vance (sic.) replaced Watson in acting deputy warden until late February 1977. Tyrenerry papers were left in a state of chaos and Robinson's status did not come to the attention of Warden Parratt until shortly after the present Deputy Warden Tom Mason assumed the position at the end of February 1977. Neither Warden Parratt nor A.V. Nance knew that Robinson was in the adjustment center without benefit of the proper procedures. As soon as warden discovered the matter he ordered Robinson's release into general population. That was on March 2, 1977. No evidence of Robinson vs. Parratt case showed any intentional wrongdoing on the part of Parratt or Nance, however,

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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

an agreement with somebody that at a time certain in the future I am going to sell it to him at \$30 a share. That is a call option. The call option is used in pension planning quite a bit as I understand it to cover some particular losses that are possible when you are buying shares of stock. All right, now, there are two kinds of call options. There are two ways you can do it. One is what I have just described to you where you buy the shares at \$27 and you agree to sell at say \$30 with this option. Now the other way you can do it is not buy the shares in the first place. You don't buy anything. You can still sell an option... sell a call option without actually buying the shares. So let's say, for example, that you look in the paper and you see that Kennecott Copper is \$27 a share, but you don't buy it. You don't cover. It's not a covered call option. You go ahead and make the agreement and at a time in the future you are going to sell it to somebody at \$30 a share. All right, let's say that before that time in the future happens, before that time comes, Kennecott Copper is suddenly bought out by an oil company, a large oil company, and the shares go from \$27 to \$62 a share. Now when you have to sell on that call option at \$30 a share, you are going to have to go out on the market and buy those at \$62 a share and sell them at \$30. This kind of a call option, an uncovered call option, is one of the most highly speculative types of transactions in the securities market. This is allowed under the law that we are about to pass. All right, I just had passed out to you a sheet called State Investment Survey. I hope you will take a look at that. If you look across the top, you will see a category called "Covered Call Options". They picked out 22 states. Why 22 out of the 50, I don't know, but 22 states have been surveyed and you will see that most of those do not allow covered call options. They certainly do not allow speculative call options, options where you have not purchased the stock at the time that you enter into the option agreement. Okay, so much for call options. Put options, I am not entirely familiar with all of the implications of put options, but I again want to point out to you that our law, if we pass it, would allow that. If you look at the State Investment Survey again, at the categories across the top, you will see the category "Writing Put Options". Not one single state allows the writing of put options, and maybe someone can explain the significance of this to me, but what it does indicate to me is that every place else in this country they have not found that that is something that they should allow the government to do with the state's pension funds. So my amendment would say that you cannot write call options

and put options. Elsewhere in this bill there is what is called the "prudent man rule", and the argument can be made that the prudent man rule would regulate the writing of call options and put options anyway, but I think that the more likely statutory interpretation because the ability to write call and put options is explicitly stated, is that the ability to write call and put options would be in addition or an ability to act beyond the prudent man rule. So the bottom line of what I am telling you with regard to the bill as you have it in front of you now, as you would vote on it today without amendment is that you would be voting into law in our conservative State of Nebraska probably the most liberal public investment law on the books in the country, and I think that that deserves a little more public debate today than we have had heretofore. This bill, as you remember on General File, was passed on General File on Senator DeCamp's promise that there would be some minimal discussion on Select File and there was, in fact, some very minimal discussion on Select File, and now here we are in Final Reading with a major policy decision in front of us, and I hope you will consider this bill again very seriously. Thank you.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, I would oppose Senator Beutler's motion to return for this amendment. I had distributed to you a letter from our State Investment Officer indicating why he felt that this bill would be significant, a significant improvement in terms of the investment practices of the state. The substitution of the language about that investments would be as a person of prudence would invest rather than the specific itemized list we have will give it more discretion and should provide a better rate of return on overall investments. Now in visiting with the Investment Officer this morning, Senator Beutler and I, the question of this call option came up. The Investment Officer indicated that probably the language should have said, "covered call options" rather than just all call options because there can be, as Senator Beutler said, highly speculative investment. That is something that I would be glad to introduce as a legislative change next year if there is a concern that our current Investment Officer or future Investment Officers might be overly speculative in the investment. I do not think it is as big a fear as Senator Beutler indicates. Certainly I do not think it would be a fear over the next six months between the time this bill comes into effect in the next session

of the Legislature. But if there is a desire to tighten that language up a little, I see really no problem with doing that next year. The Investment Officer feels that the language on the "puts" and "calls" would increase the return at one extra percentage point to the return that the state would get. Since we are dealing with investments of very large sums of money, one percentage point can be millions of dollars in extra return to these state pension funds. I think that the bill is important to have passed. I think the point that Senator Beutler raises is a small one that could be corrected next year as far as inserting the word "covered" in front of call if there is a concern about our current Investment Officer or Investment Council becoming...getting involved in too speculative an investment. Having met the Investment Officer, talked to him several times, he seems to me a fairly cautious person and would not be the type that would be involved in speculative ventures with these funds, and I would also say that there is a five-member Investment Council appointed by the Governor and reviewing their investment history, it again seems that they are a cautious group as far as investing and I don't think would abuse the authority that this bill calls for. So I think the amendment is too limiting and unnecessary and I think the bill should pass this year.

PRESIDENT: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, let me start by saying I want to thank Senator Beutler for providing a lot of assistance and help here in recent days on this bill, and it is an important bill, and I think he answered his own objection when he said, they will say this is covered by the "prudent man rule", and that is precisely what I am saying. That is the answer to his question. He said these investments he's talking about are highly speculative, agreed completely one hundred percent. One hundred and fifty years of litigation would make sure that these would never fall under the prudent man rule. But let me give you a little more information. Senator Beutler asked to have more information on the record. I have passed out three sheets of information. I think you saw some of the stuff on Senator Beutler's.... I would like you to turn to the last page. I'm going to surprise you a little. I introduced this bill, or Senator Fowler and I did about, I don't know, the last time do you remember when Stevie had an emergency appendectomy, we introduced the bill that session. At that time...at that time we had about 270 million. I pretty

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well remember what our value was, and that was when I was beginning to be concerned about what was going to happen. Since that time we have, according to the people that wanted the information on these funds, we have lost about 75 million. In other words, what we bought for 270 million, hard earned dollars, I can walk out this door, go down town and if you give me 197 million, actually it's even less than that now, \$197 million of today's cash which isn't worth as much as those dollars were back then, I can buy everything we own, I can buy it for \$75 million less. Now that's quite a hunk of change. If somebody came in here with a \$75 million bill, how about a \$70 million one.....you know how much heat that generates and so on and so forth. Well, here we literally lost, and you can say it's on paper and so on and so forth, but I can go out and physically buy the assets that we own that we paid \$270 million for, for \$190 million. The Veterans Aid Fund that they think they have got \$11 million in, I can buy that fund. I can buy what is in it, the assets, for \$7 million today. Now how much of this would have been able to be prevented had we passed this bill a couple of years ago? I don't know. I am sure many, many...well, I am sure tens of millions. Now there are arguments that there were errors made elsewhere, even since that time in some of their investing policies. Overall I am suggesting that it is time to try to give some flexibility to these Investment Officers and this Investment Council, or next year when I propose this, I will say now I can buy everything that we could have bought last year for \$197 million, I can buy it for \$150 million or something. I don't want to do that. So I suggest we pass the legislation. The problem that Senator Beutler alleges is not even existent, could not come into play under the prudent man rule, and so I would really ask Senator Beutler, I think it would be a good idea to withdraw the amendment, help us get the bill passed. The Banking Committee is going to make a study of all investments this summer, practices, the whole thing. What you are talking about is one of the things we will be really looking into, and I would hope that you could participate as actively in that entire thing, maybe even more so than somewhat, and if we got some ideas in January we could.....no, that isn't a "trust me" one, we could add or make changes, but at this time I would like to get the bill passed.

PRESIDENT: One minute.

SENATOR DeCAMP: I think the saying by the Investment Officer was which I really wasn't going to quote, but I

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think I will quote most of it, was, yes, do whatever you want we can wait until next year and it's your money, you lose millions. It scares me, but I think we ought to get this done now.

PRESIDENT: The Chair recognizes Senator Koch.

SENATOR KOCH: Mr. President, I move the previous question.

PRESIDENT: All right, the question has been called for. Five hands. All those in favor of ceasing debate vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: Debate ceases. Senator Beutler, you may close.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, if you want to leave that into the law, you certainly can, but don't for a minute buy the argument that the prudent man rule is going to take care of that, because all you have to do to show that that is not true is to ask why they put into the bill the language that the Investment Officer may invest in those things. If the prudent man rule says he couldn't, then there is no need of putting that language in there, is there. It's as simple as that. They put it in there because that is something that they want them to be able to do regardless of what the prudent man rule says. I guess I have been disturbed at a number of things about this bill. You know, one is that there has been absolutely no indication given to us as to what the prudent man rule means. This is a rule that has been in effect for trusts and banks for a long, long time. I am sure there are lots and lots of court cases on it, tells you the principles, what's involved, what they can do and what they can't do in different circumstances, yet nothing, nothing has been said to us in here about what the prudent man rule means. We have a rule now that not more than 25...I think it's \$25 million can be invested in common stocks. What does the prudent man rule mean with regard to that? Can we switch over to a high degree of investment in common stock? The evidence has been nonexistent now as to what the record of the State Investment Officer has been vis-a-vis private trusts and investment companies. Why hasn't it been brought into here and shown to us what the private trusts and investment companies have done under the prudent man rule and why haven't we been shown a comparison of what the State Investment Officer

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has done under the existing rule so that we could see the difference, so we could see what is happening to us. No one has shown us or bothered to prove to us that there is, in fact, a problem. I, personally, think that there is somewhat of a problem, that more flexibility is needed, but I am not sure that we should go all the way to the prudent man rule and let me tell you one reason why. The banks and the trusts when they use the prudent man rule, if bad times come and they lose all the money or do very poorly with it, well that is neither here nor there to them, they don't have to reach into some other pocket and pay the beneficiaries. It's just gone. So long as they followed carefully the prudent man rule, a broad rule, in one sense they have nothing to lose. But if the government does that and the money is lost, wouldn't you bet a lot that there would be people coming in here wanting that money made up with supplemental appropriations, with direct appropriations? Wouldn't they find us all responsible for it regardless of the fact that we followed the prudent man rule, and wouldn't they want that money from some other source? So I don't think it is quite the same situation. You just can't say, I don't think that, well, we're letting all the private banks do it, why shouldn't the government do it? It is curious to me that we guard so closely our legislative prerogatives in some very minute details in different areas. For example, in Public Works the width of trucks and what kind of vehicles can go down our roads and whether they can be 25 percent overloaded for ten days of the year. Boy, we go into hopeless detail on these things that, in my opinion, should be left to the agencies. And yet here we are in this particular area turning over completely to the Investment Officer and that Board really everything that has to do with the investment of millions and millions of dollars. And I suggest to you that maybe we want to do this and maybe there should be more flexibility but we are hardly consistent in the way that we handle the overall picture. I think there is some middleground between what we are doing today and what is in the current law, and I think that at some point very soon we should examine that whether we pass this bill or not.

PRESIDENT: One minute, Senator.

SENATOR BEUTLER: Thank you.

PRESIDENT: The question before the House is the Beutler motion to return LB 460. All those in favor vote aye, opposed nay. Have you all voted? Three are excused.

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LB 460, 487

Record the vote.

CLERK: 19 ayes, 22 nays on the motion to return the bill, Mr. President.

PRESIDENT: The motion fails. Any other motions on LB 460?

CLERK: No, Mr. President, I have nothing further.

PRESIDENT: Proceed then with the Final Reading of LB 460.

CLERK: (Read LB 460 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 460 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on page 2413 of the Legislative Journal.) 27 ayes, 18 nays, 3 excused and not voting, 1 present and not voting, Mr. President.

PRESIDENT: LB 460 passes. The next bill on Final Reading is LB 487, Mr. Clerk.

ASSISTANT CLERK: (Read LB 487 on Final Reading.)

PRESIDENT:(microphone not on)....stop.

SENATOR KOCH: Mr. Chairman, in the interest of equity for the members of this body, how close are we going to adhere to the rules of how far we can stray from our chairs?

PRESIDENT: Well, we have been allowing on longer bills a little bit more flexibility and that....(interruption).

SENATOR KOCH: Well, I think we ought to have it very simply put, stay within one stride of them or you are able to wander a considerable distance.

PRESIDENT: Well, some have been wandering further than I would have them wander and that is why I told.....

SENATOR KOCH: Well, the Redcoats....I wanted to go to the restroom a little bit ago and I had to hold up one finger and you didn't recognize me, so I want to know under what extreme conditions we can move.

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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