

January 20, 1981

LB 3, 278, 468-489

CLERK: Mr. President, new bills. (Read LB 468-489 as found on pages 291-297 of the Legislative Journal.)

Mr. President, your committee on Urban Affairs gives notice of public hearing for February 4, 11 and 18, 1981.

Mr. President, the Business and Labor Committee would like to meet underneath the North balcony at 2:00 p.m.

Mr. President, Senator Chronister would like to have his name added to LB 3 as co-introducer.

SPEAKER MARVEL: No objection? So ordered.

CLERK: Mr. President, Senator Warner offers proposed rules change which will be submitted to the Rules Committee for their consideration. (See pages 298-300 of the Journal.)

Mr. President, Senator Wesely gives notice of Rules hearing scheduled for January 27.

Mr. President, Senator Hefner and Howard Peterson want to add their name to LB 278.

SPEAKER MARVEL: No objection? So ordered.

CLERK: Mr. President, I believe that is all that I have.

SPEAKER MARVEL: Senator Rumery, do you want to recess us until three-thirty?

SENATOR RUMERY: One-thirty?

SPEAKER MARVEL: Three-thirty. The motion is to recess until three-thirty. All those in favor say aye, opposed no. The motion carried. We are recessed until three-thirty.

Edited by:


Mary A. Turner

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LB 50, 84, 89, 174, 475

Mr. President, Senator Richard Peterson offers explanation of vote.

Mr. President, your committee on Judiciary whose Chairman is Senator Nichol to whom we referred LB 84 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 89 General File; LB 174 General File; LB 50 General File with amendments; LB 475 to General File with amendments. That is all I have, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: We now turn to item #5 and the Chair recognizes Senator Lamb.

CLERK: Mr. President, Senator Lamb moves that appointment of Marshall A. Lux as Ombudsman and asks that the Legislature vote for its approval as required by Section 81-8,241.

SENATOR LAMB: Mr. President, members of the Legislature, after a long and involved selection process, the Executive Board has selected Mr. Lux to replace the retired Mr. McNeil as Ombudsman. This is a very important position. The process by which Mr. Lux was selected was extended probably more than it should have been partly because two Executive Boards were involved. Mr. Lux became the acting Ombudsman on July 31st upon the retirement of Mr. McNeil. The Executive Board then advertised in fifteen papers throughout the state and the distribution of the job availability notice was made to all the legislative staff. The job was advertised statewide with a closing date for applying of October 31st, 1980. One hundred and nineteen persons submitted resumes and/or applications for the position. The sixteen applicants were selected from this group of one hundred and nineteen. The interviews of these persons were held on February 4th, 5th and 10th of 1981. The Executive Board made their selection on February 18th, 1981. This requires a two-thirds vote of the Legislature. I move that the motion be approved.

SPEAKER MARVEL: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I am not sure where the report of the committee is but wherever it is you will find that I had passed on the vote for Mr. Lux and I want to explain that to you. Because of illness, I was not able to attend any of the interviews that were held on any of the candidates and that my abstaining was not in opposition to in any way, shape or form. The committee apparently, as I understand, were in strong agreement that Mr. Lux

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LB 9, 50, 257, 266,
313, 475, 508.

CLERK: Mr. President, I have a series of Attorney General's Opinions, the first to Senator Vard Johnson regarding LB 9; one to Senator Vard Johnson regarding LB 266; a third to Senator DeCamp regarding LB 508; one to Senator Wesely regarding LB 257, and one to Senator Hefner regarding LB 206. (See pages 794 through 804 of the Legislative Journal.)

PRESIDENT: Ready then for agenda item #4, General File. The first bill on General File this morning is LB 313, Mr. Clerk.

CLERK: Mr. President....

PRESIDENT: We will pass over the first two bills which are Senator Stoney's bills and come back to them. Starting out then with LB 50. Oh, that's off of there. All right, so then we are at 475.

CLERK: Mr. President, LB 475 was introduced by the Constitutional Revision and Recreation Committee and signed by its members. (Read title.) The bill was first read on January 20 of this year. It was referred to the Judiciary Committee for Public Hearing. The bill was advanced to General File. There is a committee amendment pending, Mr. President, by the Judiciary Committee to add the emergency clause.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. President and members of the Legislature, this is simply the emergency clause and the reason for it being that this should go into effect sooner so that we would have a Commission on Judicial Qualifications. I understand that at the present we don't have one and because of the voting of the public last November this should be done immediately. I move for the adoption of the E clause.

PRESIDENT: Any discussion on the....that is a committee amendment, Senator Nichol? A committee amendment which is to add the E clause. Any discussion? I guess that is your opening and closing, Senator Nichol. The question then is the adoption of the committee amendment to LB 475. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 27 ayes, 0 nays on the motion to adopt the committee amendments, Mr. President.

PRESIDENT: The motion carries. The committee amendment

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LB 475

is adopted. Any further amendments?

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

PRESIDENT: The Chair recognizes Senator Labeledz.

SENATOR LABEDZ: Thank you, Mr. President, and members of the Legislature. In the 1980 Session the Legislature passed LB 82 placing on the General Election ballot a proposed amendment to the Nebraska Constitution dealing with judicial discipline. The electorate overwhelmingly approved constitutional amendment number two. LB 475 would enact the legislative changes necessary to conform statutes to the changes in the judicial machinery enacted by Nebraska citizens in passing the constitutional amendment two. The bill closely follows the changes made in the Constitution. Some of the changes are the composition of the Commission and the new current constitutional provision and proposed statutory law will require ten members instead of eleven as the current statutory law. There will be one district court judge, one county court judge, one judge of any other court inferior to the Supreme Court, three attorneys instead of two, three lay persons instead of two, and the Chief Justice of the Supreme Court. Another change is the chairperson which would be the Chief Justice. And the sanctions for the removal or retirement include reprimand, discipline, censure, suspension without pay for a definite period of time not to exceed six months. The interim measures are disqualification without loss of salary when felony charge is pending or Commission recommends removal or retirement. Right now we have none. The grounds are, also adds conduct to the administration of justice that brings the judicial office in disrepute. And the standing for ordering Commission hearings, the old statutory law was at the discretion of the Commission but the new provision would be to require....that would require probable cause finding. The standard for recommending disciplinary action, the old statutory law was good cause and the new would be finding the charges as supported by clear and convincing evidence. There is also some changes on Commission reprimands, privileged communication and conflict of interest. I urge the members of the Legislature to advance LB 475 from General File to E & R Initial.

PRESIDENT: Any further discussion on the advance of LB 475? Seeing none, Senator Labeledz, I guess that is the opening and closing. The question then is the advance of LB 475 to E & R Initial. All those in favor vote aye, opposed nay. Record the vote.

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LB 155, 475

ASSISTANT CLERK: 35 ayes, 0 nays on the motion to advance, Mr. President.

PRESIDENT: Motion carries. LB 475 is advanced to E & R Initial. We are going to take up LB 155 at this time. It is Senator Marvel's bill, so the Chair will recognize Speaker Marvel.

CLERK: Mr. President, LB 155 was introduced by Senator Marvel at the request of the Governor. (Read title.) The bill was read on January 14, referred to the Appropriations Committee for public hearing. The bill was advanced to General File. There are committee amendments pending by the Appropriations Committee, Mr. President.

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, LB 155 was introduced to only set up a cash fund that presently...for some receipts to the Department of Motor Vehicles which presently go into the General Fund. During the course of the hearing as indicated by the committee report, a representative of the Governor's office came in and offered an amendment dealing with the issuance of license plates themselves. The committee amendment strikes the issuance of...excuse me, strikes the reference to the bill for the purpose originally introduced, that of setting up a separate cash fund. I believe the majority of the committee felt that those funds ought to remain to be deposited to the General Fund and then appropriated from the General Fund for the operation of the Motor Vehicle Department. However, we did adopt an amendment which has some controversy which does not, it could be argued did not have a public hearing as such. What the amendment does and if adopted, that's all the bill will do, it would authorize that an individual could receive the same plate number on their license for their car as they previously had. Those of you who have worked with this issue for some time know that there has been a variety of alternatives suggested for the issuance of license plates, and while this does not address the broad issue of the issuance of license plates, it does put into the statute a procedure that would permit you upon request to have your original number back. If that number was not yet printed, recognizing that at the time this amendment was offered that it may take two years for all plates to be printed, if your number was not printed, you then would receive a sticker for an additional year until the sticker became available. Now the whole issue on license plates is more complicated because of the...in my opinion, at

March 11, 1981

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 50, 89, 89A, 194,
LB 500, 425, 475

SENATOR CLARK: All those in favor of advancing 425 say aye, all those opposed no. The bill is advanced. LB 194.

CLERK: There are E & Rs, Senator.

SENATOR BEUTLER: Mr. Speaker, I would move the E & R amendments to LB 194 be adopted.

SENATOR CLARK: All those in favor of the E & R amendments to LB 194 say aye, all those opposed no. The amendments are adopted. Senator Beutler.

SENATOR BEUTLER: No further amendments, Mr. Speaker?

CLERK: Nothing further, Senator.

SENATOR BEUTLER: I would move that LB 194 be advanced to E & R for engrossment.

SENATOR CLARK: All those in favor of advancing LB 194 say aye, all opposed. The bill is advanced. LB 89. Senator Beutler. Are there E & R amendments on this one?

CLERK: There are no E & R.

SENATOR BEUTLER: Mr. Speaker, I would move that LB 89 be advanced to E & R for engrossment.

SENATOR CLARK: The question is the advancement to E & R for LB 89. All those in favor say aye, all those opposed no. The bill is advanced. LB 89A.

SENATOR BEUTLER: Mr. Speaker, I would move that LB 89A be advanced to E & R for engrossment.

SENATOR CLARK: All those in favor of advancing LB 89A say aye, opposed no. The bill is advanced. LB 50.

CLERK: There are E & Rs, Senator.

SENATOR BEUTLER: Mr. Speaker, I would move that the E & R amendments to LB 50 be adopted.

SENATOR CLARK: The E & R amendments to LB 50, all those in favor say aye, all opposed nay. The amendments are adopted. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I would move that LB 50 be advanced to E & R for engrossment.

SENATOR CLARK: All those in favor of LB 50 being advanced say aye, opposed no. The bill is advanced. LB 475.

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LB 22, 171, 475

CLERK: -There are E & Rs, Senator.

SENATOR BEUTLER: Mr. Speaker, I would move the E & R amendments to LB 475 be adopted.

SENATOR CLARK: All those in favor of the E & R amendments say aye, opposed. The amendments are adopted.

SENATOR BEUTLER: Mr. Speaker, I would move that LB 475 be advanced to E & R for engrossment.

SENATOR CLARK: Those in favor of advancing LB 475 to E & R engrossment say aye, opposed no. The bill is advanced. LB 171.

CLERK: No E & R, Senator.

SENATOR BEUTLER: Mr. Speaker, I would move that LB 171 be advanced to E & R for engrossment.

SENATOR CLARK: The move is 171 to E & R. All those in favor say aye, opposed. The bill is advanced. LB 22.

CLERK: There are E & Rs, Senator.

SENATOR BEUTLER: Mr. Speaker, I would move that the E & R amendments to LB 22 be adopted.

SENATOR CLARK: All those in favor of the E & R amendments on LB 22 say aye, all opposed no. The amendments are adopted. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I move that LB 22 be advanced to E & R for engrossment.

SENATOR CLARK: All those in favor of advancing LB 22 say aye, opposed. The bill is advanced. LB 190. The Clerk has a motion on the desk.

CLERK: Mr. President, Senator Cullan moves to suspend Rule 5, Section 5 so as to permit the introduction of a new bill, Req. #915.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I ask your indulgence to suspend the rules and introduce a new bill which I hope the Public Works Committee could expedite. The bill, the statement of intent or a brief notice has been placed on your desk. The purpose of Req. #915 is to enact a uranium mining code for the State of Nebraska. The uranium mining code sets up a regulatory process for

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LB 328, 477, 35, 112,
245, 206, 206A, 22, 50,
74, 89, 89A, 171, 194,
425, 475, 500, 550,

SPEAKER MARVEL: The motion is the adoption of the Beutler amendment to the committee amendment. All those in favor of the motion vote aye, opposed vote no. Have you all voted? Have you all voted? Shall the House go under Call, all in favor of that motion vote aye, opposed vote no.

CLERK: 13 ayes, 2 nays to go under call Mr. President.

SPEAKER MARVEL: The House is under Call. All Legislators should be in their seats. Record your presence. Unauthorized personnel please leave the floor. Senator Fenger, Senator Koch, Senator Cope, Senator Kilgarin, Senator Kremer, Senator Schmit, Senator Vard Johnson, Senator Sieck, Senator Landis, Senator Newell, Senator Chambers, Senator Pirsch. Do we have them all now? Senator Vard Johnson and Senator Sieck. Will all legislators please be in their seats before we start the roll call. Senator Beutler everybody is accounted except Senator Vard Johnson. He is across the street. This is a roll call vote on the Beutler amendment to the committee amendment. Are you all in your seats? Okay, call the roll.

CLERK: Roll call vote. 15 ayes, 28 nays, 1 present and not voting, 4 excused and not voting, and 1 absent and not voting. Vote appears on pages 940-941 of the Legislative Journal.

SPEAKER MARVEL: Motion lost. Do you have another item?

CLERK: Mr. President, I have certificates and letters accompanying certificates regarding the overrides of LB 206 and 206A. (See pages 941-42 of the Legislative Journal).

Your committee on Enrollment and Review respectively reports we have carefully examined LB 22 and find the same correctly engrossed, 50, 74, 89, 89A, 171, 194, 425, 475 and 500, all correctly engrossed. (Signed) Senator Kilgarin, Chair.

Your Enrolling Clerk has presented certain bills to the Governor on this day. (See page 943 of the Legislative Journal).

Have a reference report referring LB 550.

Government Committee will meet in Executive Session on Thursday at 1:30 in Room 1113.

Judiciary reports 328 to General File as amended and 477 to General File with amendment.

Public Works reports 35 to General File and LB 112 indefinitely postponed. (Signed) Senator Kremer, Chair.

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LB 475

SPEAKER MARVEL: The bill is declared passed on Final Reading. The Clerk will now read LB 475E.

ASSISTANT CLERK: (Read LB 475 on Final Reading.)

SPEAKER MARVEL: Motion on the desk.

ASSISTANT CLERK: Mr. President, Senator Chambers moves to return LB 475 to Select File for a specific amendment. "On page 10 strike 'without loss of salary' in lines 10 and 11."

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature the language that I am concerned about will be found in Section 9 on page 10. I will go ahead and read the section so that the context of my amendment will be clear. "Upon order of the Supreme Court a justice or judge of the Supreme Court or other judge shall be disqualified from acting as a justice or judge of the Supreme Court or other judge without loss of salary while there is pending, (1) an indictment or information charging him or her in the United States with a crime punishable as a felony under Nebraska or federal law or, (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his or her removal or retirement." I think that if a judge has brought himself or herself into this set of circumstances whereby he or she has been disqualified from serving as a judge because of a pending indictment for a felony or an information or the recommendation that the person be removed or retired, there should not be a subsidization of this individual under those circumstances by the state. So I am saying that if a serious enough set of circumstances has arisen so that the person cannot function and discharge the duties of that office, that person should not be paid during that time, and if you would want to consider the possibility that a finding of not guilty could be brought in or that the person would not be retired or removed, there could be a provision that under these circumstances the salary that had not been granted would then be given to that person. But I don't think that a person who is under an indictment for a felony and cannot discharge the duties of his or her office should be paid by the state while not discharging those duties. The only other alternative would be this, that if they should keep their salary, they should continue to discharge the duties for which the salary is paid. They should continue functioning as a judge even if charged with a felony but my motion says that the person under indictment or under recommendation by the Supreme Court that he or she be removed from office should not receive a salary during that period.

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SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, I have some real questions about our deciding someone is guilty before a case is heard. I feel that we should be very cautious about removing that kind of protective language. If someone is removed from office they obviously do not receive compensation but if a false charge is brought and it is a possibility, that salary should not be stopped, in my estimation.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: I will waive. The point has been made.

SPEAKER MARVEL: Senator Maresh.

SENATOR MARESH: Mr. Speaker, a question of the Clerk. Isn't this carrying out the constitutional amendment that was voted on last fall and isn't this the language that was spelled out in that constitutional amendment? That is why we are passing it in this fashion? Is that correct? I think we better study that constitutional amendment before we vote on this to make sure that we aren't going against the wishes of the people because this was voted on last fall.

SPEAKER MARVEL: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, a question of Senator Chambers, please.

SENATOR CHAMBERS: Yes.

SENATOR HABERMAN: Senator Chambers, as I understand it, you also wish that if he is guilty he loses his pension rights and his salary, correct?

SENATOR CHAMBERS: Lose everything.

SENATOR HABERMAN: Yes, thank you.

SENATOR CHAMBERS: That would be in the case of the finding of guilty for the felony but removal could be for some infirmity so ...

SENATOR HABERMAN: And if he is removed he loses the side benefits also.

SENATOR CHAMBERS: Only if it is for conviction of a felony.

SENATOR HABERMAN: Thank you. I rise to support Senator Chambers as if you will recall, fellow legislators, when an attorney is disbarred and sometimes they are disbarred for things that are less than a felony, nobody guarantees any income for him. They just absolutely wipe out his income, absolutely, totally wipe it out. They take away his livelihood no matter if he had one children or a dozen children so I feel that the same thing should pertain to judges and I will support Senator Chambers in his motion to return the bill and change it. Thank you.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I strongly oppose the amendment and I guess the only more shocking thing than the amendment is maybe where the amendment came from. There has been no person probably in the eleven years I have been here that stood on this floor and talks about the rights of the individual, innocent until proven guilty, etc., etc., etc. Now what is Senator Chambers proposing to do? Judges are different. Judges, the moment there is even an indictment rendered or anything, he is ready to wipe them out. Judge Jones through circumstances, let's say, receives an indictment and now you wipe out his family income. You destroy him completely. I guess I just really have difficulty understanding this new approach of Senator Chambers, one standard for one class, you know, but a certainly different standard for the other, if you just happen to be a judge. And I would use a little example and we will call it a hypothetical, but I think I don't need to talk too long before you figure out what I am talking about. There was a case, let's call it Mr. X, not too long ago and he got a bunch of felony indictments. Let's just say for the purpose of discussion that he was a sheriff. Ultimately he was acquitted of everything. Let's say it happened over in "Sarpinion" County. A simple case like that would have completely destroyed this individual if you applied those standards. I think the language has been pretty carefully drafted. You are putting jurisdiction and control on the Supreme Court and I just guess I think you better not be adopting a different kind of approach on judges in our criminal justice system than you do on everybody else and basically you are saying, hey, the moment anybody makes an accusation for all practical purposes, the moment anybody tries to say anything, we are going to wipe you out. I oppose the amendment.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. President, I was questioning this amendment based on the language that was on the ballot and I think

Senator Hoagland has the ballot language with him and so I would yield the rest of my time to Senator Hoagland because he can speak directly from the printed material.

SENATOR HOAGLAND: Mr. Speaker and colleagues, I have here a copy of the constitutional provision that was approved last November as incorporated in LB 82, passed by us last spring, and Senator Maresh is correct. Section 9 of the bill that Senator Chambers would amend tracks exactly subsection 3 of Section 30 of Article V of the current Nebraska Constitution so we simply do not have the discretion as I see it to adopt the amendment that Senator Chambers is proposing. In other words, the Nebraska Constitution specifically provides that these judges are to continue to serve without loss of salary and we do not have the authority to provide otherwise and if we do, our act would be unconstitutional. So I think that this moots, really moots out Senator Chambers' amendment.

SPEAKER MARVEL: There is a change in the amendment. The Clerk will read the amendment.

CLERK: Mr. President, Senator Chambers moves to return the bill for a specific amendment. The amendment would read: (Read Chambers amendment found on page 1101 of the Legislative Journal.)

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, that new language would be added at the end of line 16, following "retirement". Now let's discuss just a moment what has been stated by Senator DeCamp, Senator Maresh, and, Senator Hoagland, come back, Senator Hoagland, I want to ask you a question. Senator Hoagland, that amendment which was passed, adopted by a vote of the people, is it a self-effectuating amendment? Is the language self-effectuating? In other words, does it immediately take effect, right now? Or does there have to be legislation?

SENATOR HOAGLAND: Well, any, it is in effect. The amendment has gone into effect now, Senator Chambers, and is part of the current Constitution of Nebraska and we cannot enact by legislation a provision that conflicts with that.

SENATOR CHAMBERS: Then, Senator Hoagland, what do we need a bill for? Why are we wasting time and money for a bill if the fact that the language has been incorporated into the Constitution makes it a part of the organic law of the state and is in place and operational right now?

SENATOR HOAGLAND: Well, that is a good question, Senator Chambers. I would guess that we have to do it for some

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reason or other but I can't tell you right now why.

SENATOR CHAMBERS: Thank you. For some reason or other there are two provisions in the Constitution which are self-effectuating, initiative and referendum. You don't even need a statute to allow initiative and referendum. Other provisions of the Constitution are given effect by virtue of a statute enacted by the Legislature but there is nothing in the Constitution which says that such a statute has to carry every word in it which the Constitution has in it. There are provisions in the Constitution right now which allow there to be fifty members of the Legislature. Why are there only forty-nine? Why? Because there has been no law passed to say that there will be fifty. There are a lot of things that can exist in a Constitution and a state constitution imposes limits on the state. It does not grant authority. It imposes limits. So since the supreme legislative power, as far as enacting bills, is in the Legislature aside from initiative and referendum where it resides with the people, the Legislature is free to enact any bill not prohibited by the Constitution. So here is the question. Would the fact that certain language is included in an amendment to the Constitution require that a piece of legislation enacted pursuant to that provision have to have every word of that constitutional provision? I don't think anybody can answer the question right now. So maybe what we ought to do, since no vote has been taken on the bill, is to pass over it at this point until we get an answer. I think that we are in a position as a Legislature to take whatever portions of that constitutional amendment that we want and maybe what ought to be done is to strike that entire Section 9 from the bill. Then, Senator DeCamp, and all those others who say that even though a judge is under an indictment, that the judge is really just like an ordinary citizen, which I think is preposterous. The function of a judge is entirely different. This is why they can put in the law, "brings the judiciary into contempt," or whatever it is. There is no such thing that would allow a punishment to be placed on a citizen for bringing the human race into contempt. Judges perform a specific and elevated function. That is what they are supposed to do. Because of the nature of their work certain actions can be taken against them under circumstances where similar action could not be taken against a citizen and would not even be recommended. But what I would be prepared to do, if you want to say that a mere indictment or a mere information charging the judge with a felony is not sufficient to imply anything wrong with that judge, let us strike Section 9 and not allow the Supreme Court to even suspend such a person. Why isn't Senator Maresh upset about that? Why isn't Senator DeCamp upset about that? Because they have not thought the thing

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through and they have had whatever they say fed to them. Let us deal with it on principle. If the Supreme Court of this state disqualifies a judge, that is an acceptance by the Supreme Court of this state that there is enough smoke around this judge to imply that there may be fire. So let me ask Senator DeCamp this question. Senator DeCamp, would you be willing to strike all of Section 9?

SENATOR DeCAMP: No.

SENATOR CHAMBERS: Senator Maresh, may I ask you the same question? Would you be in favor of striking all of Section 9 so that the person could not be suspended? No? Senator Hoagland...

SENATOR HOAGLAND: No.

SENATOR CHAMBERS: ...pursuant to your request are you prepared to strike Section 9?

SENATOR HOAGLAND: No, and I have a reason...(interruption)

SENATOR CHAMBERS: Thank you, give the reason on your own time. What I would like to do then, is lay the bill over until we can get some answers. I think I have an answer that satisfies me in my mind. I believe there are others who have legitimate questions, sincere questions and they will not accept the answer that I will offer. So...

SPEAKER MARVEL: Do you want to ask unanimous consent to lay over the bill?

SENATOR CHAMBERS: That is what I would ask.

SPEAKER MARVEL: Okay, any objection?

SENATOR CHAMBERS: Senator DeCamp objects, so I move then.

SPEAKER MARVEL: There is a motion to lay the bill over. Clear the board so we can get a vote. All those in favor of laying over LB 475E vote aye, opposed vote no. The motion is to lay over the bill. Have you all voted? Okay, record the vote.

CLERK: 16 ayes, 21 nays, to lay the bill over, Mr. President.

SPEAKER MARVEL: The motion fails. Okay, Senator Higgins, we are on the Chambers motion.

SENATOR HIGGINS: ...amendment, Mr. President? On the Chambers amendment? Senator Chambers, would you answer a question?

SENATOR CHAMBERS: Yes.

SENATOR HIGGINS: On your amendment, if a judge was indicted or charged with a felony and later found not to be guilty, under your amendment then if they did not pay him during the time when he was charged and went to trial, would he then get paid for that time?

SENATOR CHAMBERS: Yes, that is what the new additional language would say, that any salary withheld would be paid over.

SENATOR HIGGINS: My only comments on this, and I had never thought about it until Senator Chambers brought the amendment up, is I have become so angry so many times when I have read in the paper and I apologize to my attorney colleagues today for this, where an attorney has committed a felony, perhaps he has absconded with somebody's life savings where he was named the guardian, and because of the position he holds of trust as an attorney and an officer of the court, judges say, well, we are going to take his license away from him. If Marge Higgins stole \$300,000 from somebody, I would get prosecuted and go to jail but attorneys it seems to me are like judges. They are given special treatment by the court and they are given that exception that, well, we will just take away their license now. Maybe that is something to take away their license to practice law but that does not keep them from getting a job for the rest of their life. So, I think I am in sympathy with Senator Chambers' amendment simply because I think it is giving special consideration to a person who is supposed to be an example of law to the rest of us and it always galls me when I read that attorneys got a slap on the hands, just because they are attorneys. For example, we had an attorney in Omaha who fifteen times was picked up for drunken drivingness and on the sixteenth time he finally went to jail but you know what? They did not even put him in our Douglas County jail. They sent him out to another county that was less filled and he would have special treatment. So I think that is why Senator Chambers has caught my ear this morning with his amendment and I would support it.

SPEAKER MARVEL: Before we continue, in the North balcony and from Senator Dworak's district, 30 eighth grade students from St. Francis School, Humphrey, Nebraska, and teachers, Mr. Ron Wright, Mrs. Maurice Wieser and Mrs. Ivan Beller. Where are you located? Will you hold up your hands please so we can... And in the North balcony are four visitors from Taiwan. Would you please stand? There were four visitors. I guess they are gone, from Taiwan. Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature. I think we are a little bit off the issue. The issue has nothing to do, Senator Higgins, in my opinion, with what may or may not happen to attorneys when they run into problems with the Bar Association or with having their right to practice law suspended or revoked. That of course is whether or not those individuals are prosecuted for problems that may have developed and acts that may have resulted in losing their license is a judgment that is made independent of that and as you may know, Senator Higgins, the judge does not have anything to do with making a determination as to whether or not an individual is charged with a criminal offense. So I guess that the issues, in my mind at least, are totally separate and I think that your reasoning, I guess, at least I didn't follow it and maybe I am a little shallow this morning or something, but I certainly did not see the connection that you tried to make. I guess I support the bill and I think that it would be wrong to attach the amendment. I agree with the comments that Senator DeCamp made this morning and that Senator Hoagland made and I think that we ought to proceed with the bill and pass it. The Judiciary Committee has given it a great deal of study, or excuse me, the Constitutional Revision and Recreation Committee has worked on the bill and I think that it would be inappropriate to withhold that individual's salary when no determination has been made as to whether or not the individual has actually committed an offense. So I would hope that we would move this bill along and adopt it.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature? I really didn't think that we had to put the wording "exactly as the people voted on it" in the legislative bill. I think we do have a little bit of leeway there but the thing that really convinces me that Senator Chambers has a point is this. It has nothing to do with legality or the attorneys that are speaking, but this would be one way to bring it to a head in a hurry. We are not penalizing the judge if he is found not guilty but I can foresee some time when this would be delayed, delayed and delayed, especially if the judge were trying to delay it so that he may obtain his salary as long as possible before he is kicked out. This, by withholding his pay pending his guilt or innocence, would bring the thing to a head soon so that if he were innocent it would be proven so and he would be returned the money that was withheld during the time of his litigation. So I support this amendment of Senator Chambers as he has presented it with the change in it, knowing full well that the judge would be reimbursed if he were not guilty.

SPEAKER MARVEL: Senator Haberman, then Senator DeCamp.

SENATOR HABERMAN: Mr. President, members of the Legislature, Senator DeCamp, judges are different. You made the remark, why treat them different than anybody else. They are different. They have their jobs for life. They are not elected like we are. They are different. They are treated different in other respects so, therefore, if we should come up with some harsher treatment for them, well so be it. They have a choice whether they want to be a judge or not and if they misrepresent or misform or do something wrong when they are in office, then I think they should receive the severest punishment that there is. So, due to they being different, treated different, I would again say that I support Senator Chambers in his motion.

SENATOR DeCAMP: Mr. President, members of the Legislature. Senator Chambers, let's you and I get something super clear. I did not get fed any information by anybody on this bill and have never talked to anybody about this bill. I can look at a bill. I can read it. I can reason it out myself and I have done it and I am going to answer every one of the questions you just raised but I am going to tell you about something that happened last year on this floor. On a particularly emotional issue when people were stampeding quickly for something that sounded like a simple solution, I put up there an amendment, a very proper germane amendment on a bill of Senator Haberman's and you may remember that bill. It had to do with crowd control and the amendment I put up there, the amendment I put up there was out of the Constitution of the United States of America, the Bill of Rights, and it was soundly defeated on this floor and condemned as Communism and every other doggone thing. That is right and that is what you are doing now. The same wild, silly, crazy, stupid emotionalism is taking over. Now do you want to distinguish between why a judge would not be maybe performing his duties or be suspended for that? And why he shouldn't receive his pay? I will distinguish for you. Number one, doing his duties has to do with the other people, protecting them in case there is something wrong, the same way a judge would agree for example to withdraw from a particular case because of conflict or something. It is for the protection of the public. The suspension of the salary which you want to accomplish is a premature, advanced punishment of the judge. Senator Haberman really hit on it good. He was totally wrong but he hit on it good. His exact words were, "If they do something wrong, I want to give them the severest punishment." Senator Haberman, I would submit to you that what Senator Chambers is offering is not if they do something wrong. He is saying, if somebody says they did something wrong, we will cream the rascals

in advance and that is what he is offering and then he is saying, and if they are successful somewhere along the line whether it be three months, six months, nine months, a year, two years, if they are successful in going through the gauntlet and winning and proving they did not do anything wrong, then we will say, okay, now we will give you your money. But remember there is something else about judges since you want them to be different. Judges only have one source of income. They can not be going out and doing a lot of other things. They are very limited. Now that is not to say they can't have investments and so on and so forth but the average judge is pretty well limited to getting an income from his job. Now, Joe Judge has a family. You see, judges are not that freakish. They have children, they have wives, they have houses and house payments and cars and car payments just like everybody else. They are humans and you want to say now suddenly because somebody accused them and you, Ernie Chambers, have seen more than anybody what damage can be done by a simple accusation. You want to say as soon as they are accused we will launch into them and deny them their income. How do they, then, survive during that period of time? I urge you to reject the amendments. I would submit one more thing, Senator Chambers. You said, why is the bill necessary? If it is in the Constitution, why is the bill necessary? I will tell you. Number one, read the bill. Do do that. It helps on a lot of bills here if you read them and you will discover that there were laws in existence before the constitutional amendment was passed and so now that the constitutional amendment is passed, we are bringing things into coordination with that. We are making corrections and codification there. So in a sense you can argue, no, the constitutional amendment is controlling. We do not need statutes. Why have a statute that says one thing, a constitutional amendment that says something else? We are merely coordinating them. I urge you simply to pass the bill. It was not that major a bill up until you decided to suspend the Constitution. I just don't think that is the right way to go, Senator Chambers, and I have a sneaking suspicion that you are playing us all for suckers here today, that you never intended to do this, that you are trying to highlight the fact, for example, that within certain groups of people that we may indeed have systems or standards or procedures that do the equivalent of what you are trying to do to the judges. I acknowledge that. There are things in existence and systems in existence to do that. To expand those injustices to the area of judges is not the solution. The solution is to correct the others.

SENATOR CLARK PRESIDING

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SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. Chairman, I guess I knew what was going on because I had several meetings in my district last fall discussing the constitutional amendments and the people questioned this provision and wondered what I thought about it and I said I would vote against the constitutional amendment because of this provision but I don't think this is the place to discuss this. If we are going to change it we will have to have a constitutional amendment to get it back the way Senator Chambers is saying and this was discussed in the bill that put this on the ballot last year. That was the time we should have struck this language and not now when it is already in the Constitution, voted by the people. So to remove that we would have to get it back on the ballot and we can't do that by law now. Thank you.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Call the question.

SENATOR CLARK: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, all those opposed nay.

CLERK: Senator Clark voting aye.

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

CLERK: 24 ayes, 11 nays to cease debate, Mr. President.

SENATOR CLARK: Hold the phone. Debate does not cease. Senator Cullan is next.

SENATOR CULLAN: Mr. President, members of the Legislature, I think...I did not want to speak twice on this issue but I do think that I would like to point out some of the language in LB 82 which was a constitutional amendment that was adopted by the voters last year. Section 3 of that bill does state that the proposed amendment if adopted, shall be in force and take effect immediately upon completion of the canvass of the votes at which time it shall be the duty of the Governor to claim it as a part of the Constitution of the State of Nebraska. That language, I think in addition with the language in subsection 3 on page 3 of LB 82 which does make it clear that the judge of the Supreme Court or other judge without loss of salary while there is pending an indictment and so forth. So that language is exactly as it is now. I think it is clear that to that extent it is a self-effectuating constitutional amendment and it is, in my opinion at least, impermissible for the State Legislature to deny that judge compensation

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for that period of time. Now whether or not we pass a law in conflict with LB 82 or not I suppose is immaterial. What it will do, of course, if they ever do deny a judge compensation during that period of time is set up a lawsuit and it is my opinion that it is very clearly in conflict with the Constitution, the amendment that was adopted recently. So whether or not we pass this bill or not I suppose is of no effect because in my opinion the Constitution makes it very clear that a judge will not be denied compensation during that period of time. So I think Senator Chambers amendment is in error and I would urge you to vote against it and then adopt LB 475.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, Senator Cullan is absolutely correct and I would like to incorporate by reference without repeating the remarks that he made and the latter half of the remarks by Senator DeCamp. We simply do not have any discretion in this matter. This is what the Constitution provides. If we attempt to change those provisions in any way, our act is unconstitutional. Now the only purpose for passing the statute in the first place is to bring the underlying legislation into conformity with the Constitution but again, this whole issue is moot. We do not have any discretion. There is no point in debating it as I see it. We should simply reject Senator Chambers' amendments and pass this bill on Final Reading and be done with it.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Did you call me, Mr. Speaker?

SPEAKER MARVEL: Yes, you are on the list to speak.

SENATOR HIGGINS: I just want to ask one question of Senator DeCamp. First of all, I intend to vote for LB 475 but on the amendment you made the statement about Senator Chambers' amendment, denying the judges compensation just while their case is pending or just because they have been accused. In the case of an individual, say Marge Higgins is accused, and I have my hearing and the judge says bond is \$50,000 and Marge Higgins can not post a \$50,000 bond. So I go to jail and I sit there until my case comes up. I don't get any salary. My employer cuts me off or my insurance agency does not make any money. I lose my income. Now when I go to court I am found not guilty. Is there anything in the law right now that gives me back my loss of income while I sat in jail waiting to go to court?

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SENATOR DeCAMP: Well, Marge...

SENATOR HIGGINS: I think this is a valid question, John.

SENATOR DeCAMP: I think it is a valid question too, so I am going to short circuit and answer your question real simply. There is a guy named John Goc. He is one of the sharpest young lawyers around and any time...(interruption)

SENATOR HIGGINS: A good issue, I didn't hear you.

SENATOR DeCAMP: John Goc, he always comes up with something that nobody knows about and he just called me and told me to look at Section...Article III, Section 19 of the Constitution and I think it is going to settle the whole issue here pretty quick. It says, the Constitution says that we cannot increase or diminish the salary of any public officer while they are in office. Well the guy is still going to be in office until such time as that decision is rendered so you can pass forty-seven of those amendments like that. They are just going to make the bill itself unconstitutional. So that settles that. In your case, they lock you up with a \$50,000 bond, Marge, you are still going to get your \$400 a month from the Legislature...

SENATOR HIGGINS: But as a private individual...

SENATOR DeCAMP: However, your private business is another matter. If you are locked up and you cannot post bond, obviously you can't perform for your employer.

SENATOR HIGGINS: And then I am found not guilty and I am not going to get compensated for my salary if I am a plumber's helper or whatever, the point is...

SENATOR DeCAMP: You are oversimplifying the matter, Marge. You are saying a \$50,000 bond is going to be posted or put up for example...

SENATOR HIGGINS: No, I do not have the money for it.

SENATOR DeCAMP: Right, I am accepting that fact. The bail and bond system has other federal constitutional provisions too. The bail cannot be unreasonable. It has to be related to the matter and reliability and so on and so forth. You are only going to have a \$50,000 bond if the interests of society so far outweigh things that....

SENATOR HIGGINS: But, John, I spent two years with women in jail who could not post a \$100 bond and 60% of the cases in Douglas County, when they finally came to court, they were

dismissed and yet those people sat there and lost their jobs, not only their income but lost their jobs. So I guess what I am trying to do, John, is just make the point that our society does say judges are different and given special treatment because judges usually are not said, you go to jail until your trial comes up because of the position you hold in society we are going to let you go on your own recognizance and this is where I am coming from. We are putting judges and attorneys above the law and one other reason that has compelled me to support the amendment more than I originally had intended to is because so many attorneys are against it on this floor. So I am going to support the amendment. It is probably going to fail but I am going to support the bill.

SENATOR DeCAMP: I don't think attorneys are necessarily against the amendment. I think you are seeing some of the attorneys say they are for the Constitution which some days in here is awful difficult.

SENATOR HIGGINS: I agree they are for the Constitution. I think all forty-nine senators are. Thank you.

SPEAKER MARVEL: Before we go to another speaker, in the North balcony from Senator Wiitala, Senator Stoney and Senator Koch's district, 12 adults from Omaha, Nebraska, representing the South West Omaha Republican Women, President Mrs. Frieda Reed. Where are you located? Would you hold up your hands, please. Okay. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, first of all there were two words that have to be struck from the amendment as offered. "Loss of" will have to be taken out so that it says "without salary". That is the intention of the amendment so that it is clear for everybody what we are talking about. Now, if the proposition that was mentioned by Senator DeCamp that one of these constitutional officers cannot have his or her salary reduced while in office for any purpose, we passed an unconstitutional bill last session which placed requirements on sheriffs to take continuing training and for every month they do not take the training, they forfeit that month's salary. So maybe that bill is unconstitutional and everything else in it then would be unconstitutional which was LB 428. So there are a lot of things about the Constitution which I think senators, judges and lawyers will not come face to face with until an issue is sharpened and defined in terms of that constitutional provision so that it can be examined. When Senator Cullan read from LB 82 last year that said, "after the completion of the canvass" then, and the Governor's certification, this proposition would become part of the Constitution, I do not question that. But I still say

that does not say that it takes the place of statutory law. Senator DeCamp only repeated what I had said earlier that even though measures are in the Constitution, statutes are necessary to put them into operation. You are amending existing statute with LB 475. That is what you are doing. So, if you have to amend an existing statute, that would establish that the statute is necessary to carry into operation the constitutional provision. If the statute is not needed, then you ought to just kill this bill and quit wasting time because any statute on the books which contradicts with the Constitution has no force in effect anyway. The Constitution does prevail but if you are going to enact a statute pursuant to a constitutional provision, you are not required to incorporate into that bill every word in that constitutional amendment. It simply means that if you are going to touch on that specific area then there are certain limits that are imposed by it. This is not a complete taking away of the salary of a judge. It is suspending the judge and you ought to get the language of this provision that we are talking about in Section 9. There is not a mere accusation by some disgruntled citizen. There is not a mere accusation by some litigant who lost a case in a judge's court. There has already been action by the Supreme Court of this state which has disqualified a judge from doing anything related to his judicial function. The State Supreme Court has taken action. So maybe what you ought to do is say that the State Supreme Court is the one which is arbitrary which is being pushed along to take precipitate action before the time that it is justified in doing so. Therefore, if you defeat this amendment, and I know you get irritated when things do not go the the way you want them to go, in a very smooth fashion where your brain is not stretched and you do not get headaches from thinking, I have another amendment that I am going to offer and I may have another one after that. So if you are angry you may as well get it out on this amendment because that is not going to stop a discussion of the serious issues contained in this bill and to the issue relative to how statutory law impacts on constitutional provisions. If, as Senator DeCamp told you, what I am offering is not correct and the reason it is not correct is because it changes some words in the constitutional provision, my next amendment will be to strike all of Section 9. Then we will say nothing is to be done to a person simply because he or she has been indicted.

SPEAKER MARVEL: You have one minute.

SENATOR CHAMBERS: The Supreme Court will not be able to suspend such a person or disqualify such a person from functioning as a judge. If we are going to deal in pure principle this morning and say that even when we are talking about a judge,

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there must be an absolute presumption of innocence which there must be as far as the criminal accusation is concerned. No punitive action of any kind can be taken until guilt on that charge is proved in a court beyond a reasonable doubt and that issue is not finally resolved until it is fought all the way up to the U.S. Supreme Court and even then should a conviction be sustained and the judge be imprisoned, there are people who have gone to jail before on convictions and the conviction subsequently was overturned. So what we will have is a situation where a judge can be sitting in a penitentiary drawing a salary. But let's not put the judge in a penitentiary. Let's just have a judge going on and on through the appeal process for years, getting a salary from the state. If that is what you want, defeat the amendment but if you defeat it I have got another one. So I think you ought to go ahead and accept this one and if the Constitution is supreme and if this amendment is unconstitutional you will still have the language of the Constitution. So what do you have to lose?

SPEAKER MARVEL: Senator Vickers and then Senator Stoney.

SENATOR VICKERS: Mr. Speaker and members, several times it has been mentioned here this morning that the constitutional amendment that was passed by the voters contained a section such as Senator Chambers is attempting to amend but I would remind the members that the voters did not vote on LB 82. The voters voted on the constitutional amendment that was offered to them and the constitutional amendment that was offered to them as written in LB 82 simply said that the constitutional amendment is to change the membership of the commission on judicial qualifications and to provide additional disciplinary measures and an additional ground of discipline applicable to a justice or a judge of the Supreme Court or other judge. That is what the voters voted on. The voters did not vote on Section 30 of LB 82. The members of this body did last year. Senator Chambers and I have both raised questions on LB 82 last year when it was going across. We were the only two at that point in time if I remember correctly that questioned some of the provisions of LB 82. The fact of the matter is we are representing the people. We are the ones that are looking at LB 475. We are the ones that were looking at LB 82 and I understand the concern of the people that say we can not do something that is unconstitutional, that is said in the Constitution, but I think the point needs to be raised and we need to be aware of the fact that the voters voted on some of these sections, not knowing what those sections said. I would like to ask Senator Chambers a question, however, if he would yield.

SENATOR CHAMBERS: Yes.

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SENATOR VICKERS: Senator Chambers, on pages 8 and 9 of LB 475 where the new language indicates that they can be reprimanded, censured, suspended without pay for a definite period of time not to exceed six months on both, in two places, on page 8 and one place on page 9, can you explain to me how they can be suspended at one instance without pay but over here in the section you are attempting to amend it says, "without loss of salary?"

SENATOR CHAMBERS: You mean, how, if the Constitution prohibits the taking of a salary from an official or what?

SENATOR VICKERS: Yes. On one instance it says they are going to get suspended without pay. They are not going to get any pay and then on the section on page 10 in Section 9 it says "without loss of salary." Isn't that a contradiction in terms?

SENATOR CHAMBERS: Well what they are doing is setting up two different categories, a situation where there has been a finding by this commission and then pursuant to whoever makes the final decision, a part of the punishment can be a suspension without pay for the six months. We objected to that.

SENATOR VICKERS: In other words, what it is saying is that the commission cannot withhold any of their salary until they make their decision and once they make their decision then the only length of time they can suspend them without pay is for six months. Six months is the limit.

SENATOR CHAMBERS: That is right, based on the language here that is the limit.

SENATOR VICKERS: Thank you, Senator Chambers.

SENATOR CHAMBERS: But the one we are dealing with on page 10 relates to an indictment, not a final determination of a complaint or a grievance against a judge. So they are saying in that instance, he should continue to be paid.

SENATOR VICKERS: Thank you, Senator Chambers. It seems to me what we are saying is that we are going to continue to pay you until we find out for certain, that is as far as the commission is concerned. Then if the commission finds out that it should be suspended, the maximum sentence they can put on them is only six months. I think that is rather minor myself. I am going to support Senator Chambers amendment. It seems to me that we are...first of all, I disagree that judges are not different. I think they are different. I think they have got different responsibilities and should be more aware of

the laws and uphold the laws that they are, in fact...

SPEAKER MARVEL: You have forty-five seconds.

SENATOR VICKERS: ...a little bit different, therefore, to say that while you are under indictment we are going to continue to pay you is, I think is wrong and if the people of the State of Nebraska had realized that last year, I don't think they would have approved that constitutional amendment.

SPEAKER MARVEL: Senator Stoney.

SENATOR STONEY: Mr. Speaker, I would call the question.

SPEAKER MARVEL: Do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 28 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate ceases. The Chair recognizes Senator Chambers to close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, so that you will understand clearly what the amendment does, in line 10, the two words "loss of" would be stricken. So it would read, "without salary while there is pending." Then after the word "retirement" on line 16 would be the language that indicates that should the judge be found not guilty or not retired or removed from office, any salary withheld would be paid over. Now in the interest of total candor I would have to explain a bit further how the language on pages 8 and 9 can be offered without conflicting with anything in this bill or with anything in the Constitution right now against reducing an officeholder's salary during his or her term of office. Anything in the Constitution can be modified by a later action of a constitutional nature. So there could be a blanket statement in the Constitution against reducing salary while in office. Then a later amendment could be offered which said, "with the exception of" and then list the circumstances under which such reduction could occur but it would be a matter of constitutional provision dealing with constitutional provision or modifying it. The two provisions that are in the bill itself relate to the first instance where the State Supreme Court under the conditions laid out in the bill would find that a judge has comported himself or herself in such fashion that a six months suspension should occur and a part of that suspension would be the denial of salary for the six months. Since that language is in the Constitution it would not be

improper for that to be done based on any constitutional considerations. When we get to Section 9 which I am talking about, there has not been a final determination of guilt or innocence on whether the person should be removed or retained. So we are dealing with an instance where a judge does stand accused but it is more than a mere accusation in the popular sense of the term. There has been legal action taken. There has been a probable cause hearing if it is a felony and enough evidence has been produced to show that a crime was committed and that this judge probably, there is probable cause to believe that this judge committed that crime or the judge could waive a preliminary hearing and go straight to trial on the charge brought. So what we are dealing with in Section 9 is a judge whose conduct has caused him or her to become entangled in the criminal justice system by means of formal action by a prosecutor or a grand jury. If it is a violation of state law, then they can just bring the action against the person. If it is a violation of federal law that can only be brought in by means of a grand jury indictment. So all of that aside, the issue that I am dealing with is that if the State Supreme Court has found enough basis to disqualify a judge from functioning as a judge, the salary ought to also be withheld. That is the amendment and I hope you will adopt it.

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

CLERK: 5 ayes, 28 nays, Mr. President.

SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, Senator Chambers moves to return LB 475 to Select File for a specific amendment. "Page 10, lines 7-16, strike all of Section 9."

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is the 'polygraph' amendment and I put polygraph in quotes. I am going to determine if those who purely want a principle in its pure form, I want to find out if that is what they mean or if they are just being herded along to follow and accept this statute because it tracks the language of that constitutional amendment that was adopted as a result of a vote by a misinformed public. As Senator Vickers pointed out, when that bill was trying to move its way across the board I raised issues about a lot of factors in that bill, factors which showed that judges are given favored treatment and it can only be because of their status as a judge, and by the way, members of the Legislature, whoever is the chief introducer of a motion has ten minutes to open, so set your caps

for a long afternoon. I am not sure that I will offer any amendments after this one, however, but this is what you could do. If you have questions this bill could be returned to Select File and allowed to stay there and that would be time to get answers to questions that you may have. If the answers do not satisfy you regarding the validity of my attempt to amend the bill, then you can advance it after you get your answers back to Final Reading without any amendment being added. There won't have to be any modification of this Final Reading copy and there will not be that much delay of the bill. It only takes 25 votes. You would probably have them anyway if I can't persuade you but on the other hand there are some issues which often have to be raised by a less than majority. That is because the majority will not consider an issue which seems technical or difficult and especially if it seems to involve a relatively small portion of the populous. But this bill involves not just the judges. It involves the criminal justice system and its administration. It involves all of the citizens who may have any contact, directly or indirectly, with the judiciary. The judges have, as a matter of fact, been placed upon a pedestal. I am wondering how many citizens would support such a proposition as this if they knew that a judge could have been caught and handcuffed right after fifty people saw him walk into a place where his wife worked and blew her brains out. He still is entitled to go to trial. He will be charged but he gets a salary. The state continues to support and subsidize him. Maybe it will be found that he is innocent by reason of insanity and if he is, maybe he could stay on the bench and continue to draw a salary because the judicial qualifications system may decide not to remove him for that basis. Every judge has a bit of insanity about himself anyway. That makes his rationality just a bit more to the point. Now if you really believe that until a person is convicted by evidence there should be no punishment, you should take away from the State Supreme Court the power to disqualify a judge from functioning as a judge. Let's say that the matter does drag on through the courts for five years or three years or just six months. Here is a judge who has publicly been stripped by the State Supreme Court of all judicial functions because he or she was charged with a felony or a crime of moral turpitude and then a court finds the judge not guilty. You know what everybody is going to say, don't you? Judges, watch out for judges. We had a prosecutor who was willing to risk his or her career by bringing the charge. Then the judges all flocked together and protected the scoundrel and now he or she is going to be sitting up on the bench judging me and calling me wrong for having done something and sentencing me to the penitentiary when what I did was less serious than what he did but I don't have any friends among the judiciary. There is nobody to come and stand up for me and say, it will

be a reflection on the whole system if we convict him so let the rascal go. Are some of you unaware that judges can commit crimes? There was one who was the Governor of Illinois, Otto Kerner, who sat in jail. He had to do with some corruption relative to a race track in Chicago and while he was sitting in the penitentiary he was continuing to draw his salary as a judge. That is nice when you can be in a position like that. The judges in Nebraska won't be able to draw their salary while they are sitting in the penitentiary but while they are on the way to go they will collect several \$200, go to jail and pass go. They continue to collect all the way to jail and of what value is a system like that to the upholding of the integrity and dignity of the judicial system? It serves no worthwhile purpose so I think you ought to look at this amendment and consider it. We are dealing with a pure principle. If you want to say that only after conviction should a judge be punished, then strike Section 9 and do not allow the State Supreme Court to disqualify this person from being a judge when at a later date the Supreme Court may have to reverse itself and restore that person to full judgeship with all privileges and prerogatives of sending people to the penitentiary for things that the judge may have done but didn't have to go to jail for it because he or she had friends on the judiciary. I know some drunken judges. There are some in Omaha. I know a judge who was drunk and ran into a car and she was allowed to go to some school so there would be no points off of her license. The last Chief Justice of the Supreme Court was a drunk and I pointed it out while he was on the bench and people thought that was terrible but he did not mind doing things to citizens who came before him. Now we start to cut close and people become nervous. Why? Does the fact that somebody wear robes make him or her immune? The chairman of the Parole Board has been caught drunk driving. Nothing is done about that and he will deny people furloughs or parole because they have an alcohol problem. So those in the higher echelons take care of each other, don't they? And you wonder why the citizens have contempt for a system, why there is more crime in the street? Because those whose job it is to enforce the law show that the law means nothing, not even a pop of the finger and they take care of each other and we know that will be the case. So let's just strike Section 9 altogether and do away with the hypocrisy. Let's say that until a judge has been convicted then there can be no action of a punitive nature imposed. Let us act on the principle that a person is innocent until proven guilty beyond a reasonable doubt, and remember, a finding of probable cause at a preliminary hearing is not a finding of guilt. There can be mistakes by eye witnesses if that is what the information is based on. There could

have been technical errors in the serving and issuing of warrants or the seizure of evidence or the admission of statements that ought not be issued. Every right of an accused that exists for an ordinary citizen should exist for a judge and such being the case, let us act on that principle this morning and hold the judge clear. Maybe if somebody in the auditor's office was suspected of having done something that is a violation of the law, that person would not be suspended without salary so why suspend the judge. Senator DeCamp, I am buying what you said for the purposes of this amendment. An accusation even in the form of an information or an indictment is not the same as a finding of guilt. So you should strike Section 9 and let us move forward in purity, Senator Marsh and Senator Hoagland, but the reason you will not do it is because those who want this bill said, leave it just like it is. That is what we are talking about now, not the principles at all and I think what I am saying will read far better than it sounds because there are principles involved in this instance. This can be a learning experience for all of us...

SPEAKER MARVEL: You have one minute.

SENATOR CHAMBERS: ...and I think it would be a good opportunity to move this bill back to Select File and let it sit there and find out whether or not a statute which is enacted to carry into effect a constitutional provision has to contain every word that that constitutional provision carried. I think it does not. I think that puts a limit on what the Legislature can say. It cannot go beyond that but it does not have to go all the way to that in the same way that we don't have to authorize fifty members of the Legislature though the Constitution provides for it. My motion is to return this bill to Select File for the specific amendment.

SPEAKER MARVEL: There are two speakers and after they are finished I would like to meet the chairmen underneath the North balcony for about between five and ten minutes. Senator Maresh. The question has been called for. Do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Senator Chambers, do you wish to close before the vote? Will you please record in. Senator Fitzgerald, do you want to record your presence. Senator Hefner, Senator Cullan, Senator Hoagland, Senator Kahle, Senator Schmit, Senator Nichol, Senator Stoney. Senator Schmit,

March 24, 1981

LB 475, 17, 168, 253, 334A, 500

Senator Kahle, Senator Cullan. Okay, call the roll. What is the motion now?

CLERK: Mr. President, the motion is to return LB 475 to Select File for a specific amendment, that amendment being to strike all of Section 9 of the bill. (Read roll call vote as found on page 1102 of the Legislative Journal.) 6 ayes, 32 nays, Mr. President, on the motion to return.

SPEAKER MARVEL: The motion lost. What is the next order of business?

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

SPEAKER MARVEL: All provisions having been complied with, the question is, shall the bill pass. All those in favor vote aye, opposed no. It has the emergency clause. Record the vote.

CLERK: (Read record vote as found on page 1103 of the Legislative Journal.) 36 ayes, 4 nays, 9 excused and not voting, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is passed on Final Reading. LB 500, the Clerk will read.

ASSISTANT CLERK: (Read LB 500 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass. Those in favor vote aye, opposed vote no. Record the vote.

ASSISTANT CLERK: (Read record vote as found on page 1103 of the Legislative Journal.) The vote is 36 ayes, 2 nays, 2 present and not voting, 9 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. Now we will...Senator Sieck.

CLERK: Mr. President, if I may before, a few items to read in. LB 334A. (Read by title for the first time as found on page 1104 of the Journal.)

I have an Attorney General's opinion addressed to Senator Stoney regarding Section 7 of LB 17.

I have amendments to be printed in the Journal by Senator Carsten and Senator Hoagland, Senator Carsten's to LB 168 and Senator Hoagland's to LB 253.

March 25, 1981

LR 46
LB 39, 39A, 50, 72, 73,
104, 167, 171, 194, 197,
197A, 252, 425, 475, 500

SPEAKER MARVEL PRESIDING

SENATOR BEYER: (Prayer offered.)

SPEAKER MARVEL: I have a note here that indicates that today is the 35th birthday of Senator Howard Peterson and this occurred on the weekend, March 22, and there will be rolls served in his honor and we wish Senator Peterson the best for the year to come. Have you all recorded your presence? Record.

CLERK: A quorum present, Mr. President.

SPEAKER MARVEL: Do you have items under #3?

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 252 to General File with amendments. (Signed) Senator Kremer.

Your committee on Enrollment and Review respectfully reports that they have examined and reviewed LB 39 and recommend that same be placed on Select File with amendments; 39A Select File; 167 Select File with amendments; 197 Select File with amendments; 197A Select File. All signed by Senator Kilgarin as Chair.

Your committee on Enrollment and Review respectfully reports we have carefully examined LB 72 and find the same correctly reengrossed. (Signed) Senator Kilgarin.

Senator Wagner would like to be excused for the day.

And, Mr. President, LB 73, 194, 50, 171, 194, 425, 475, and 500 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 73, LB 104, LB 50, LB 171, LB 194, LB 425, LB 475, LB 500. Item #4, resolution.

CLERK: LR 46 is offered by (read LR 46.)

SPEAKER MARVEL: Senator Lamb, this is your resolution.

SENATOR LAMB: Mr. Chairman and members of the Legislature, this is a resolution which honors Senator Nichol's mother who recently passed away. The fine lady has been a long time credit to the State of Nebraska. I urge the adoption of this resolution.

March 25, 1981

LR 47
LB 190, 298, 50, 73, 104,
171, 194, 425, 475, 500

amendment to LB 190 as explained by Senator DeCamp.
All those in favor of that motion vote aye, opposed vote
no. Record the vote.

CLERK: 31 ayes, 0 nays on the adoption of Senator DeCamp's
amendment.

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

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

SPEAKER MARVEL: Senator DeCamp. The motion is to advance the
bill to E & R for Engrossment. All those in favor of the motion
to advance vote aye, opposed vote no. Have you all voted?
Record the vote.

CLERK: 35 ayes, 1 nay on the motion to advance the bill, Mr.
President.

SPEAKER MARVEL: The motion is carried the bill is advanced.
Before we proceed, underneath the North balcony it is my
privilege to introduce Miss Cindy Pace who is a teacher from
Millard and her friend from Ralston who is here under the
auspices of Senator Koch. Cindy, will you stand up so we can
welcome you to the Unicameral?

CLERK: Mr. President, I have a few matters to read in.
Revenue Committee is going to meet in executive session
upon adjournment today in Room 1520.

Your Enrolling Clerk respectfully reports that she has
presented to the Governor LB 73, 104, 50, 171, 194, 425, 475,
500.

I have a Reference Report referring LBs 551 through 555.

A new resolution by (Read LB 47. See pages 1126 and 1127,
Legislative Journal.) That will be laid over, Mr. President.

Mr. President, LB 298 was introduced by Senator Vard Johnson.
(Read title.) The bill was first read on January 19. It was
referred to the Urban Affairs Committee for public hearing.
The bill was advanced to General File. There are committee
amendments pending by the Urban Affairs Committee, Mr. Presi-
dent.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: Mr. Speaker and members of the Legislature,
the committee amendments narrow the impact of the bill and
indicate that, first, the City of Lincoln is exempt and,

March 26, 1981

LB 50, 73, 138, 194,
292, 425, 475, 500.

two o'clock on Friday instead of four or five o'clock. If you have any questions on this, you can check with the Clerk's office, or you can check with our office. Now does anybody have any.....Senator Kahle.

SENATOR KAHLE: Mr. Speaker, really no comment on what you just said but I wonder if we wouldn't be ahead if you scheduled some of the real heavy bills on Friday and Friday afternoon instead of the consent calendar. Maybe people would stay here. In the going on five years now that I have been here, I have never left on a Thursday or a Friday when we were in session, and I resent the fact that many of you do leave for the last day no matter when it is, and I just really feel that you are not being very responsible and perhaps if we would handle some of those real tough bills on Friday, you would stick around. Thank you.

SPEAKER MARVEL: I think that we, Senator Kahle, in answer to your question.....well, we are going to adjourn. Okay, Senator Howard Peterson, would you adjourn us until nine o'clock....I'm sorry, Pat, go ahead.

CLERK: Excuse me. Mr. President, a communication from the Governor to the Clerk. (Read communication regarding LBs 50, 73, 194, 425, 475, 500.)

I have a....your Committee on Business and Labor reports regarding gubernatorial appointment. (See page 1156 of the Legislative Journal.)

Senator Vickers would like to print amendments to 138. (See pages 1156 and 1157 of the Journal.) And Senator Kilgarin asks unanimous consent to add her name to LB 292 as co-introducer.

SPEAKER MARVEL: Senator Peterson, would you adjourn us until nine o'clock tomorrow morning. I am sorry. Senator Kremer.

SENATOR KREMER: Mr. Chairman, I would like to remind the Public Works Committee for a very short meeting below the north balcony immediately upon adjournment.

SPEAKER MARVEL: Today?

SENATOR KREMER: Yes.

SPEAKER MARVEL: Okay.

SENATOR H. PETERSON: Mr. Speaker, I would move we adjourn