

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 5, 49, 72, 73, 74, 124,
128, 176, 279, 419, 462, 476.

to whom was referred LB 128 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File, LB 462 to General File. (Signed) Senator Fowler as Chair.

Your Committee on Business and Labor whose Chairman is Senator Maresh to whom was referred LB 176 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File, 279 General File. (Signed) Senator Maresh, Chair.

Mr. President, your Committee on Constitutional Revision and Recreation whose Chairman is Senator Labeledz to whom was referred LB 5 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 476 to General File with amendments; 49 indefinitely postponed and 419 indefinitely postponed; LB 72 General File with amendments; LB 73 indefinitely postponed, and LB 74 advanced to General File with amendments. (See pages 559 and 560 of the Legislative Journal.) (Signed) Senator Labeledz, Chair.

SPEAKER MARVEL: The next order of business is LB 124.

CLERK: Mr. President, LB 124 offered by the Miscellaneous Subjects Committee and signed by its members. (Read title.) The bill was first read on January 13. It was referred to the Miscellaneous Subjects Committee. The bill was advanced to General File. There are no amendments, Mr. President.

SPEAKER MARVEL: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I move to advance LB 124 to E & R Initial. This is a Miscellaneous Subjects Committee bill and this bill consists of four sections. The first section, if you are following along, establishes legislative intent in relation to liquor control. It also establishes that it is the Legislature's intent to control and regulate all liquor transported into the state with the same regulations affecting liquor produced within the state. The second section establishes conditions which must be met before a retail or a bottle club liquor license can be obtained from the Liquor Commission. An applicant must be fit, willing and able to provide the service proposed as described in the application. An applicant must conform to all provisions, requirements, rules and regulations. The premises for the proposed service are or will be required by present or future public convenience and necessity.

also to set up a procedure in our rules whereby a written request is made to the Speaker and then we wouldn't have the situation, if you wanted to avoid it, where somebody had to stand up on the floor and formally request a reading. A written request could be made to the Speaker and he would simply announce that we were going to have a reading at large. If the Speaker did not acknowledge the written note, then, of course, you would have to stand up and ask him what happened to my note. But basically, we could work our rules so that you avoided what some may feel is a potentially embarrassing situation. With that I will close and ask for your support. Thank you.

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

CLERK: 26 ayes, 6 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Senator DeCamp, do you wish to be recognized?

SENATOR DeCAMP: Mr. President, members of the Legislature, earlier we learned that this was Senator Sieck's birthday, actually not this day, but a Leap Year Day, February 29th. You recently received another piece of cake and I learned that this is Senator Fitzgerald's birthday also. Both Senator Fitzgerald and Senator Sieck were born in Leap Year and are both in the Legislature, of course, and the probabilities of having two leap year babies is something like 1,427 to 1.

SPEAKER MARVEL: They are both considered to be fifteen years of age. Congratulations. The last bill for the morning is LB 476.

CLERK: Mr. President, LB 476 was introduced by the Constitutional Revision and Recreation Committee and signed by its members. (Read title.) The bill was read on January 20 and referred to the committee, Constitutional Revision and Recreation Committee. It was advanced to General File. There is a committee amendment pending, Mr. President.

SPEAKER MARVEL: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Speaker. The amendment was adopted to give the political subdivisions protection by this summer and it was adopted by the committee and they believed at the time that because recreation facilities are

the busiest in the summer, that this should have an emergency clause. The bill will be explained fully after the amendment is adopted but perhaps I should say the bill would include political subdivisions of the state as owners for purposes of the Recreation Liability Act. Hence the same limited liability that is given the owners of land who make their property available to the public for recreational purposes would be extended to political subdivisions. I urge the members of this body to adopt the committee amendments to LB 476.

SPEAKER MARVEL: The motion is the adoption of the committee amendments. Senator Cullan, do you wish to be recognized?

SENATOR CULLAN: Yes, Mr. President, members of the Legislature, I guess I would ask Senator Labedz to explain what the limited liability is before I would be willing to make a decision as to whether or not the emergency clause should apply. If you could, Senator Labedz, I would appreciate it.

SENATOR LABEDZ: Well, maybe I could go into detail about what the bill is about. LB 476 would include the political subdivisions in the Recreation Liability Act. They would then be given the higher standard of protection which is already given to private owners of property who make their land available to the public for recreational purposes. Political subdivisions would then only be liable for negligence which is willful and malicious. This applies only to land, Senator Cullan, which is devoted to recreational purposes.

SENATOR CULLAN: Okay, thank you, Senator Labedz. I appreciate it. I guess I am not concerned too much whether the emergency clause gets adopted or not. I am not sure that it is wise of us to extend this limited liability to political subdivisions which I think should have some responsibility for ensuring that recreational facilities are not unnecessarily dangerous and I guess I am going to, so I don't have to duplicate it later on, say I don't care too much about the emergency clause but I don't think that I can support the bill unless there can be much greater explanation as to why we can justify limited liability. Thank you, Senator Labedz, and maybe when you get to the bill, you can give us some more information. Thank you.

SPEAKER MARVEL: The motion is the adoption of the committee amendments to LB 476. All those in favor of that motion vote aye, opposed vote no. Have you all voted? We are voting on the adoption of the committee amendments to 476. Have you all voted? Record.

February 27, 1981

LB 476

CLERK: 25 ayes, 1 nay on adoption of the committee amendments, Mr. President.

SPEAKER MARVEL: Motion is carried. The committee amendments are adopted. Now do you wish to advance the bill now?

SENATOR LABEDZ: Yes, Mr. Speaker, I move for the advancement of LB 476 to E & R for Initial. Senator Cullan, limited liability means that political subdivisions would only be liable for negligence that is willful and malicious. The bill is necessary because the financial stability of our municipalities and political subdivisions is being threatened by an increase in tort litigation against them. The shield of tort immunity which had protected governmental entities from lawsuits under the reasoning that the king can do no wrong was abandoned in Nebraska. This is why we must amend the Recreation Liability Act which was passed before the abandonment of government immunity to include political subdivisions. Again I say this is not complete immunity. Political subdivisions would still be liable for willful and malicious conduct and it applies only to land that is devoted to recreational purposes. The committee attached the emergency clause which we just adopted to make sure that if passed this protection would be provided by this summer when political subdivisions are very vulnerable to lawsuits and it is greatest at that time. So I urge you to advance 476 to provide this necessary protection for political subdivisions. Thank you.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I would like to ask Senator Labedz a question. How do you stand on the guest statute?

SENATOR LABEDZ: I voted the other day to repeal it.

SENATOR NICHOL: Now how is that being consistent with this when you will say, "Let's have it fair"? And then we want to exclude a certain section of government from liability. How is that in any way consistent or fair?

SENATOR LABEDZ: We are still making it a very high immunity by saying that it has to be the negligence that is willful and malicious.

SENATOR NICHOL: That is exactly what was in the guest statute before we were trying to repeal that.

SENATOR LABEDZ: Right. That is correct.

SENATOR NICHOL: But why is this fairer? We are going to have schools being responsible for ordinary negligence. We are going to have the Legislature responsible. Why should we not have recreational areas responsible for ordinary negligence?

SENATOR LABEDZ: Well, I believe what is happening in the City of Omaha, and we are talking about willful and malicious negligence, we are not talking about the accidents that happen. Say for instance a little child falls off of the slides or falls off of the swings, we are talking about willful and malicious negligence by the City of Omaha, by any city or governmental entity, rather, that obtains land from a private owner and that private owner does have the protection now. We want to also include governmental entities, but they will have a very strict standard of liability under the section that is willful and malicious and I believe that is what the committee decided that this bill was essential for further protection for governmental entities.

SENATOR NICHOL: Well, thank you, Senator Labedz. I just can't see us in the same year forgiving people who are guests in a car, but at the same time we are saying this subdivision of government shall be free of being responsible for ordinary negligence. I thought the trend was in the other direction. Now there is, if a governmental entity does not buy insurance, which many of them do not especially on the state level where you have spread of risk, but I still think that if we are going to have a guest statute, then we should not allow entities of government to be free of responsibility. Thank you.

SPEAKER MARVEL: The Chair has made note of those who wanted to speak on this issue. Since it is twelve o'clock, we will have to stop and then we can take this up on Monday but those of you who wanted to speak are listed so the record will be complete and the Clerk now needs to read in whatever he has on the desk.

CLERK: Mr. President, the Business and Labor Committee will meet in executive session, Monday, March 2, 1981 at nine o'clock in Room 1019.

Mr. President, Senator DeCamp would like to print amendments to LB 150 in the Journal.

Senator Hoagland asks unanimous consent to add his name to LB 99 as cointroducer.

really understands what we are doing here in this. Policies that are out today are not affected whatsoever unless you would agree to the higher interest rate. There is only one way that you would abrogate a contract is by both parties abrogating the contract. I mean, there is no other way you could do it. The only way that you would do would be a trade-off as Senator Dworak has said. If you have a \$10,000 policy and the company says we will give you \$11,000 worth of insurance for the same price, if you agree to go to the higher interest rate, fine. If you don't want to do that you don't have to do it. There is nothing in the books there that says you have to do anything. That is inviolate, that contract. You cannot abrogate that at all and this bill does not intend to do that, only from those policies written from now on. That is the only thing it does. The only other way you could do that would be to agree to the fact that you wanted a higher interest rate. I don't think anyone is stupid enough to do that unless they got something for it. The only way you could do it is to have the insurance company tell you that they are going to give you something for a trade-off to go to the higher interest rate. That is the only thing it would do. I urge you to vote against that.

SPEAKER MARVEL: The Chair would suggest that since we have to stop and move to General File that Senator Clark and Senator Dworak and Senator Kilgarin and anyone else who is interested in LB 355 get together and discuss the matter and it will be on the agenda for tomorrow. So we will now move to General File and the first bill is LB 476.

CLERK: LB 476 was introduced by the Constitutional Revision and Recreation Committee. (Read title.) The bill was read on January 20. It was referred to the Constitutional Revision and Recreation Committee. The bill was considered on the floor on February 27. At that time the committee amendments were adopted, Mr. President.

SPEAKER MARVEL: Motion on the desk.

CLERK: Mr. President, since we last considered the bill and you have had a motion filed by Senator Beutler, or Senator DeCamp to indefinitely postpone the bill. I'm sorry. Excuse me, Senator.

SPEAKER MARVEL: The Chair recognizes Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, in all my five years since Bernice has been here, I would never even dream of putting a motion to kill one of her bills because of the potentially high liability resulting

therefrom, however, oh, it's a committee bill, however, this particular bill is so ghastly that I felt that I had an obligation to ... well to throw a little murder up there, at least and discuss the bill. Maybe I misunderstand the bill but as I read it, and I hope some of the lawyers in the room would maybe look it over. As I read it, it basically takes us back about one thousand years to the principle that the king can do no wrong. It says basically there is no liability for anything the state does or...and the swimming pools the kids go in and the lifeguards say, well, we don't care, we are busy having chocolate cake or something. Five kids drown and they say, well, they should have swam. It says you've got to prove gross negligence essentially or intentional malicious misconduct. I think it is a dangerous precedent to ever set. We've got pretty well developed laws on the books right now in the area of how responsible the state should be, how responsible subdivisions of government would be and I think the very minimal goals they sought in this particular bill go way beyond...I mean are small compared to what the bill really does and I urge you to kill it and hope Bernice won't do the same to me.

SPEAKER MARVEL: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. Speaker. As chairman of the Constitutional Revision and Recreation Committee, of course I will have to oppose the kill motion that Senator DeCamp has introduced. I would like to explain further because I don't know whether you recall what I said the other day but LB 476 would include the political subdivisions in the Recreational Liability Act. They would then be given the higher standard of protection which is already given the Recreational Liability Act to private owners. Political subdivisions would then only be liable for negligence which is willful and malicious. This applies only to land which is devoted to recreational purposes. Again, I say this is not a complete immunity. Political subdivisions would still be liable for willful and malicious conduct. I think that probably the principal argument for LB 476 is that it is the taxpayer's money that is being used and expended on these growth of lawsuits against our political subdivisions and, therefore, the City of Omaha primarily asked that this bill be introduced. I urge you to reconsider and not vote to kill the bill until we have further debate. Incidentally, does this motion by Senator DeCamp mean that it has to be laid over for a day or can we take it up today? On General File, it can be taken up immediately?

SPEAKER MARVEL: Yes, it can be taken up. Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, somewhat like Senator DeCamp it is rarely that I rise to support a kill motion, understanding the ultimate significance of that, but yesterday as I was studying over LB 476 recognizing that it was coming up on General File, I began to realize what this bill meant and it seemed to me that what this bill means is something that you and I really would not want to have happen. The City of Omaha has a number of municipal swimming pools. I know because I use them and as I understand this bill, if I use a municipal swimming pool and if, in fact, one of the rungs on a ladder is missing a bolt and a nut and therefore the rung is loose and if I am walking up the ladder and if I fall and injure myself on the cement below in the pool, I won't be able to collect 10¢ from the City of Omaha for my injury under this bill unless I can show that the city acted in a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity. Now it seems to me that it would be very difficult to translate what is a simple act of negligence into that extraordinarily high standard of care and frankly, when I pay by seventy-five cents to go swimming in a pool in Omaha, I want to make sure at least that some ordinary standards of care apply in that pool, or when I send my children over there, I don't want them to come home with chlorine poisoning because somebody carelessly pumped too much chlorine in the water but it goes on. A lot of our smaller communities have historical societies. They have buildings that they have dedicated to public use for historical purposes or archaeological purposes. I know I have been to Willa Cather Museum in Red Cloud and I have seen a lot of other facilities throughout the state that our small communities have, and again, this bill defines that kind of an activity as a recreational activity, i.e., enjoying historical, archaeological, scenic or scientific sites, and it seems to me that this bill would provide an extraordinarily high... I should say it would provide a very low standard of care on the part of those municipalities and, therefore, if I was injured in looking at the Willa Cather facility in Red Cloud for example, if I fell down a rickety stair that ought to have been repaired but the City of Red Cloud carelessly failed to get repaired, I would have no recovery against the city. Now I say, why should that be the case? If any business, Harold Warp, when he runs his Pioneer Village in Minden, Nebraska, I assume that is a private operation, the standard of care there is a fairly high standard of care. He owes every guest that comes into that property a pretty high duty to make certain that his conditions are safe and if they are not, by golly, and we get injured, we can turn around and recover against

Pioneer Village. Well the same surely ought to be true for the City of Omaha or the City of Minden or any other place that is operating something for our recreational and informational purposes. LB 576 (sic) would, in effect, take away that right and obviously the city would like to do that simply because the less exposure they have to the public then the less fear they have of lawsuits or, in the alternative, the less their insurance premiums will be but I think you and I as members of the public are entitled to a fairly high duty of care. I remember reading an article in the Atlantic Magazine several years ago about the National Park Services sloppiness in terms of the park facilities and an incident occurred, for example, out at Yellowstone, Wyoming, where an eleven year old boy was walking on a little boardwalk and he just disappeared. Literally fell off a boardwalk into a mudpot and was gone. That was it. They never could find...the body never even came back and the National Park Service said, well we had no obligation to put railings up. You know we had no obligation to look after those children and yet they knew thousands and thousands and thousands of children were coming through. Well the truth of the matter is if you and I don't at least insist on there being some degree of care by our recreational facilities and all 476 applies to is local subdivision, they can get away with that kind of sloppiness which can come home to hurt ourselves and our children and our loved ones and our folk will have no means of recovering. So it seems to me this is a bad bill and it is the kind of bill that we ought to kill. I suspect that the Constitutional Revision and Recreation Committee probably only heard from proponents, mostly because, you know people that have been injured or hurt are not likely to come forward.

SENATOR CLARK PRESIDING

SENATOR CLARK: You have thirty seconds.

SENATOR V. JOHNSON: That is why you don't get any opponents to this thing so you don't get both points of view and I know if this committee would have both points of view it would have killed the bill but in the absence of both points of view it just...it negligently advanced the bill to General File and we want to take care of that kind of negligence by killing the matter.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I rise to support...gee, I think this is probably the first time this year...I rise to support Senator DeCamp in something. I think the Legislature would be very inconsistent

if we would repeal the guest statute which had applied a gross negligence standard as far as tort action is concerned and implement a bill that provides for a willful or malicious failure standard which really is probably considerably more difficult to establish than gross negligence and I guess Senator Chambers has some information or told me about a particular case in Omaha and I believe I am not familiar with this case other than what Senator Chambers related to me about some children playing in a park with some flammable materials there near the fourth of July and a firecracker igniting some drums of this flammable material located in a park where you expect children to be, the children being burned severely and then the City of Omaha losing of course in a negligence case. And I guess I am one individual who think that the city should be more intelligent than to put flammable materials in parks but under this particular bill you would have to show that the city willfully or maliciously placed those drums there and that is what resulted in the injury and that of course is impossible to prove. So what you are really doing here is you are establishing total immunity as far as the political subdivision is concerned and because it is almost impossible to prove this malicious standard that is set out in this particular bill. So I think it would be wise for us to quickly indefinitely postpone LB 476, the doctrine of sovereign immunity as Senator DeCamp indicated earlier should be dead in the State of Nebraska and I hope that we can kill this bill quickly and move on with more substantive issues.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would like to echo the sentiments expressed by my colleagues in support of Senator DeCamp's motion. Now if any of you have any hesitance about what to do, why pull out your statute books right now and take a look at Section 37-1002 which is on page 663 of Volume 3 because that will give you an idea, unlike this bill, unlike the green copy's, do exactly what we are doing. Now let me read some provisions out of 37-1002 to give you an idea as to the law that would apply to swimming pools in Omaha and a lot of other public facilities if this particular provision attaches and let me just read a little bit out of this so you will fully understand what we are doing. Now that section states, "An owner of land owes no duty of care to keep the premises safe from injury or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes." Now do we really want that to be the law? I mean do we really want the City of Omaha not to have an obligation to owe a duty of care to keep their premises safe from injury.

I mean seems to me one of the most fundamental principles in law is that if the City of Omaha is going to open up a swimming pool and invite the public to come in and use it, they have a duty to keep it safe and they have a duty to give warning of dangerous conditions. Now again if you read that section I think you can fully appreciate the impact of this statute and after reading that I am confident you will agree to support Senator DeCamp's kill motion as I do. Thank you.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this bill is an indication of why more than just the title of a bill should be looked at when it is referred. A bill dealing with liability of this kind probably should have gone to the Judiciary Committee, and if you look at the makeup of the Constitutional Revision and Recreation Committee, you can see that there are people on that bill who had no legal training and it would be easy for people to bring a bill like this and not deal specifically with what all the bill does. As Senator Hoagland pointed out, if you just read the words of the green copy there is no way for a lay person to comprehend what all the evil is that is concealed within the borders of this bill. So I think Senator DeCamp has done a very wholesome and beneficial thing for the entire state by saving Senator Bernice Labedz from a fate worse than death. They never would have approached me in Omaha with a bill like this or anybody else who understood it but they knew that they were dealing with a highly technical legal point of law and they gave it to somebody who would not comprehend that point of law. If somebody brought to me something that dealt in great detail with agriculture I might not understand and the words themselves seem innocent. So I don't think that anybody is condemning the Constitutional Revision Committee for having advanced this bill. Let me tell you what it reminds me of and then I will sit down. Oklahoma was playing against Florida State and Oklahoma had been driven deep into their territory as often happens and the punter who is the one who kicks the ball, had the ball snapped, he dropped it, it rolled in the end zone and then instead of trying to pick it up he ran and tried to kick it all the way out of the end zone but he did not succeed. The other team fell on the ball in the end zone, a touchdown was scored and it put them ahead of Oklahoma. Well as Oklahoma often does also, they came back in the last part of the game, scored enough points to win. When that game was over the coach, Barry Switzer said to that punter who had muffed that kick and did not recover the ball, you should kiss everybody on this team because they saved your rear end or hind end or something to that effect but he made it clear what part of

the anatomy was involved. So what I think Senator Labeledz ought to do is step across the aisle to her good friend John DeCamp and show some expression of appreciation for him having rescued her in the same way that Oklahoma's team rescued that punter. I support his motion and I would say this. Those who are trying to defend this bill on the Recreation Committee ought not let their egos become so involved in a matter that they obviously did not completely understand so that they will support something that is not good. The case as Senator Cullan mentioned is correct and that is what produced this bill. Omaha did not want to have to pay for this severely burned child and I don't think any subdivision ought to be allowed to get the Legislature to join in that type of attitude toward the public and the children and others who are invited onto the premises.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Bernice Labeledz, may I ask you a question? You wanted to say something.

SENATOR CLARK: Senator Labeledz.

SENATOR LABEDZ: Well what I wanted to do, Senator Nichol, is read to Senator Chambers, and as you know most of the attorneys here on the floor have opposed the bill, some of the cases we are talking about. We are not talking about....

SENATOR NICHOL: Well, Senator Labeledz, wait a minute.

SENATOR LABEDZ: Okay, go ahead.

SENATOR NICHOL: I will give you some time but I wanted to say something first. Now I have a question for you. Was the purpose of entering this bill to get the City of Omaha out of the claims business?

SENATOR LABEDZ: Oh, absolutely not. There will always be claims when there is willful and malicious neglect.

SENATOR NICHOL: Let me say it this way. Was this entered for the City of Omaha principally?

SENATOR LABEDZ: Principally, yes.

SENATOR NICHOL: Okay. Thank you. I will give you the mike in a minute. Let me just say that, Senator Labeledz, governmental immunity went out the door a long time ago and we no longer defend ourself because we have governmental immunity and that includes the City of Omaha. Now there is a cure

for your problem just the same as there is a cure for all the rest of us across the state and that is a simple liability insurance policy which I would believe that Omaha would carry anyway. So, I do support the kill motion, much as I like you but I don't like your bill. Now I will give you the mike back and let you read to Senator Chambers.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you, Senator Nichol, for the opportunity. I believe after I read some of the cases that we are talking about, we are not talking about children drowning in swimming pools or having drums explode when they were using illegal fireworks in the first place, but some of the recent claims which have been made against the City of Omaha were for a football player who ran into a flagpole which was and as has been for many years located adjacent to the fence around such softball field or another softball player who ran into the fence and another one who ran into the seats adjacent to the field. Another was by a park patron who was chasing a frisbee and claimed to have stepped into a depression on the ground which was hidden by grass or weeds. We also have a series of claims from individuals who have stepped in holes. Tree limbs falling also present a problem. Gross negligence constitutes a legal and wanton or callous disregard for right of another. In other words, should a municipality create a condition or discover a condition and allow that same to continue to exist knowing that such condition is reasonably certain to cause or result in injury to a user, the failure to cure the condition within a reasonable time a court could well construe those circumstances as constituting gross negligence. And there are many, many more cases that we are talking about. Another case, an eighteen year old girl who was a trespasser at one-thirty in the morning when the park was supposed to be closed at eleven o'clock has sued the city because she was injured on a slide which had been closed and the entryway was secured with a wire but the wire was removed. And this happened at one-thirty in the morning. These are the types of cases we are talking about and a lot of them should not be even instigated against the City of Omaha and this would protect them against such cases but I certainly would not want to do anything to hamper or even to jeopardize the protection of children in the parks when there has been gross negligence or malicious negligence on the part of the City of Omaha. We are only talking about cases and such where...oh, there was a lot of testimony brought up where....

SENATOR CLARK: You have thirty seconds left.

SENATOR LABEDZ: ...there is vandalism in the parks and before that can even be repaired, the children come into the park before it is even discovered, say a railing is taken off of the slide. The child goes up and through no fault of the City of Omaha, falls down and is hurt. I believe that we are talking about two different situations. We are not eliminating the ability or the possibility of anybody filing suit against the City of Omaha if there is malicious and willful neglect. Thank you.

SENATOR CLARK: Senator Vickers and then Senator DeCamp to close.

SENATOR VICKERS: Mr. President, I would like to ask Senator Labedz a question if I may, please.

SENATOR CLARK: Senator Labedz, will you respond?

SENATOR LABEDZ: Yes.

SENATOR VICKERS: Yes, Senator Labedz, I am a member of your committee as you well know and I also missed the hearing on this bill so I am a little bit of at a loss as to understand exactly what is going on. Could you explain to me how this affects land operated by the Game and Parks in rural areas in the State of Nebraska as far as if hunters would go on that land? What is the liability then?

SENATOR LABEDZ: Well, if they would go on the land of an owner, the landowner?

SENATOR VICKERS: No, the land owned by the Game and Parks.

SENATOR LABEDZ: Okay, land owned by the Game and Parks. If they should step into a hole you mean as they were walking along the field with a gun?

SENATOR VICKERS: Yes, does this change the liability of the Game and Parks at all?

SENATOR LABEDZ: Yes, yes, it would be for all political subdivisions.

SENATOR VICKERS: In other words, if somebody is out there and damages themselves, is that different than it would be on privately owned land then or would that be the same as on privately owned land?

SENATOR LABEDZ: No, I have to take that back because I believe the Games and Parks is a state agency. This is government subdivisions so it would not affect the state

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Games and Parks division. It would be the city and municipalities.

SENATOR VICKERS: It is not a political subdivision, is that what you are saying. It doesn't affect...?

SENATOR LABEDZ: That is right. It just affects them, not the Games and Parks.

SENATOR VICKERS: Okay, then what is the liability of the Game and Parks? Are they liable now?

SENATOR LABEDZ: On their grounds?

SENATOR VICKERS: Yes.

SENATOR LABEDZ: Yes.

SENATOR VICKERS: You are sure about that?

SENATOR LABEDZ: Well I am almost sure they are.

SENATOR VICKERS: And we are not changing that?

SENATOR LABEDZ: No, we are not changing that for the Games and Parks.

SENATOR VICKERS: Then I guess my next question is if they are not going to be affected, then why should we change it for the political subdivisions? Was there some evidence come out at the committee hearing why that should be?

SENATOR LABEDZ: If anyone is hurt on grounds that are owned and operated by Games and Parks they would have to go in front of the State Claims Board. This just pertains to the municipalities, the cities, counties, whatever that have grounds donated to them by a landowner for use only for recreational purposes, no other type.

SENATOR VICKERS: Okay, thank you, Senator Labedz, I appreciate that explanation. I am not sure, however, that it satisfies my concerns. I did have some concerns over this bill and as I indicated I was not able to be at the hearing. Thank you very much.

SENATOR CLARK: Senator DeCamp, do you wish to close and we will take a vote before we adjourn?

SENATOR DeCAMP: Mr. President, members of the Legislature, I don't want to kill this bill unless I can honestly convince Bernice and some of you others that that is what should be done and to do that I need to give you a bit of a history,

the origins of the bill itself. Can everybody in the back hear or not? Okay. Because it is kind of important you understand the origins and how it came about and then I think you yourself, Bernice, would want to kill the bill. This bill is like apples and oranges. Now what am I talking about? In 1965 the Legislature, concerned about developing and getting private people to allow hunting and fishing and other things on their private land, passed a law that said, look, Mr Landowner, don't be afraid to let the guy cross your land to hunt the pheasant or look at the fish or go look at Smith Falls because you are afraid of immediately being sued if they happen to stumble or fall or break a leg or anything. We are going to pass a law and protect you, the private individual, not a government now, a private individual out there from lawsuits from just accidental things when people come on there, not paying, but just coming on so that you will develop fishing. You will allow people to cross your land to hunt so that we don't close all the private land in the state to people that want to visit. That was what the original Recreation Liability Act was passed in 1965. So you see, it had a purpose. It was very clear and it dealt with the private landowner. Okay, in 1969, four years later, after court decisions and different developments in other states, this state passed the Political Subdivisions Tort Liability Act and what it did, it stated what the standards of care were supposed to be by the political subdivisions. In other words, you were supposed to use ordinary care, so on and so forth and that system has worked pretty good. Now, what the bill purports to do is say, okay, we are going to undo everything and we are going to say to all the political subdivisions, government is now under this concept that we passed back in '65 for the private landowner just to encourage him to let some people come on his property and hunt and fish and open up the properties. But government is not in that same situation. Government is there, for example, they build the swimming pool, they charge the people to go in. It is a completely different situation. Now the vandal problem that Bernice talks about and I am sure they have got some legitimate vandal problems in Omaha. All you are going to do is basically encourage vandalism. You are going to say, hey, look, you don't have to worry about whatever the vandals do anymore. Tough luck, you are not going to have...you are going to encourage the very thing you want to stop. I think there are other ways to address it. I think maybe if you want to deal with the Tort Liability Act and do some refining there that is fine, but believe me, this does things that I don't think even...I don't think Omaha would ever want to do. I really don't. I don't think Bernice would. So, I encourage you to kill this bill and I am sure that every lawyer in this room and everybody that really cares about the issue and the problem of vandals

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will work with Bernice and try to work something out on a separate bill, on a separate addressing of the Tort Liability Act but I don't think you ever would want to pass this.

SENATOR CLARK: The question before the House is the indefinite postponement of LB 476. All those in favor vote aye, all opposed vote no.

CLERK: Senator Clark voting aye.

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

CLERK: 27 ayes, 6 nays to indefinitely postpone LB 476, Mr. President.

SENATOR CLARK: The bill is indefinitely postponed. Senator Nichol, would you like to...? We have something to read in first.

CLERK: Mr. President, I have a motion from Senators Carsten, Newell, Fowler, V. Johnson and others that LB 390 be placed on General File pursuant to Rule 3, Section 19(b).

Senator Landis would like to print amendments to LB 354. Senator Burrows would like to print amendments to LB 355. (See page 735 of the Legislative Journal.)

SENATOR CLARK: Senator Nichol, would you like to adjourn us until nine o'clock tomorrow morning?

SENATOR NICHOL: Mr. Chairman, I can't think of anything I would rather do. I move to adjourn until tomorrow morning at nine o'clock.

SENATOR CLARK: All those in favor of adjourning say aye, all those opposed nay. We are adjourned.

Edited by

La Vera M. Benischek
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April 13, 1981

LB 58, 476

Mr. President, Senator Landis would like to print amendments to LB 476 in the Journal.

PRESIDENT: Ready then for agenda item #5, Final Reading. The Sergeant of Arms will clear the Chamber. All members will return to your desks. All unauthorized personnel will leave the floor of the Legislature. We are on Final Reading. So all members will get to your desks. All right, Mr. Clerk, I guess we are ready.

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

PRESIDENT: Read the motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Sieck moves to return LB 58 to Select File for specific amendment. (Read amendment offered by Senator Sieck on page 1427, Legislative Journal.) That is offered by Senator Sieck.

PRESIDENT: The Chair recognizes Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, this is a technical error that the bill drafter made. The actual title should have been as it is reading...as the Clerk read to you. So I move that we take it off of Final Reading and back to Select File to correct the error.

PRESIDENT: Any further discussion on the Sieck amendment to return for the specific amendment to correct the error. If not, Senator Sieck, I guess the motion then is the return of LB 58 to correct this matter. It is returned for that specific amendment. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 33 ayes, 0 nays on the motion to return the bill, Mr. President.

PRESIDENT: Motion carries. LB 58 is returned. We will now take care of the amendment. Senator Sieck, will you move the adoption.

SENATOR SIECK: I move that we adopt the amendment.

PRESIDENT: Motion to adopt the amendment which Senator Sieck spoke of. Any further discussion? Anything further, Senator Sieck, then? All right, the motion then is the adoption of the Sieck amendment to LB 58. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 35 ayes, 0 nays on adoption of Senator Sieck's amendment.