

January 20, 1981

LR 6, 7  
LB 490 - 529, 144, 182

SENATOR BURROWS: I move the adoption of the resolution as amended.

SPEAKER MARVEL: Any further discussion on that motion? All those in favor of that motion vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 42 ayes, 1 nay on adoption of the resolution, Mr. President.

SPEAKER MARVEL: The motion is carried and the amendment is adopted. Members of the Legislature, it is my privilege to introduce to you a young lady who with her staff has put out at least 869 separate bills and I would like to have her stand, and if it is your will to acknowledge the work that is done. The Clerk will read.

CLERK: Mr. President, new bills: (Read title to LB 490 through LB 517, pages 305 - 311, Legislative, Journal.)

Mr. President, while we are waiting, new resolution, LR 7: (Read. See pages 212 and 213, Legislative Journal.) That will be laid over.

Mr. President, hearing notice is provided by the Business and Labor Committee for February 4.

Mr. President, Senator Labedz offers explanation of vote.

Mr. President, new bills: (Read title to LB 518 through LB 526, pages 314 - 316, Legislative Journal.)

Mr. President, Senator Burrows would like unanimous consent to have his name added to LB 144 as coinroducer.

SPEAKER MARVEL: Hearing no objection, so ordered. One last call, does anybody have any legislation that is buried someplace that you would like to dig up? Now is your chance. Last call for any legislation.

CLERK: Mr. President. (Read title to LB 527 and 528, pages 316 and 317, Legislative Journal.)

Mr. President, Senator Kremer would like to ask unanimous consent to have his name added to LB 182 as coinroducer.

SPEAKER MARVEL: Hearing no objection, so ordered.

CLERK: Mr. President: (Read title to LB 529, page 317, Legislative Journal.)

March 12, 1981

LB 63, 434, 462, 512

LB 434.

CLERK: (Read LB 434 on Final Reading.)

SPEAKER MARVEL: All provisions of all relative to procedure having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 434 on Final Reading.

CLERK: (Read the record vote as found on pages 881 and 882 of the Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. We now go to LB 462 on Final Reading.

ASSISTANT CLERK: (Read LB 462 on Final Reading.)

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. LB 462 on Final Reading. Have you all voted? Have you all voted? Clerk, announce the vote.

ASSISTANT CLERK: (Read the record vote as found on page 882 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. It is my privilege to introduce underneath the north balcony Scott Koch who is working the State Basketball Tournament. Scott, hold up your hand so we can see where you are. Welcome. He is the basketball player of the family. In the north balcony from Senator Beyer's District we welcome twenty seniors from Bryan Senior High School of Omaha, and Mr. Bitzes, the teacher. Will you raise your hand so we can see where you are. Are you up there? Welcome. Do you have any other items, Mr. Clerk?

CLERK: Yes, sir, I do. Mr. President, Senator Haberman moves that LB 63 be placed on General File notwithstanding the action of the committee. That will be laid over.

Mr. President, Senator Kilgarin asks unanimous consent to add her name to LB 512 as cointroducer.

SPEAKER MARVEL: No objections, so ordered.

March 27, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by the Reverend Royce Willerton of the Southview Christian Church.

REV. WILLERTON: Prayer offered.

PRESIDENT: Roll call. Has everyone registered their presence?

CLERK: Mr. President, Senator Vard Johnson, Beyer, Fenger and Chronister would like to be excused for the day. Senator Kilgarin, Hoagland, Chambers until they arrive.

PRESIDENT: Record the presence, Mr. Clerk.

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

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

CLERK: The Journal is all right, Mr. President.

PRESIDENT: The Journal stands correct as published. Any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 531 and recommend that same be placed on Select File; 291 Select File; 311 Select File; 111 Select File with amendments, (Signed) Senator Kilgarin, Chair. (See pages 1158-1159 of the Legislative Journal.)

Mr. President, your committee on Business and Labor reports LB 394 to General File with amendments, 410 General File with amendments, 470 General File with amendments, (Signed) Senator Maresh, Chairman. (See pages 1159-1160 of the Journal.)

Your committee on Judiciary reports LB 512 to General File with amendments, (Signed) Senator Nichol, Chair.

Mr. President, I have a Lobby Registration report for March 12 through March 26, signed by...on file in my office.

PRESIDENT: All right then, we will proceed then with agenda item #4, a resolution on LR 47, Mr. Clerk. Will you read it.

CLERK: (Read LR 47.) Mr. President, the resolution is found on page 1126. Senator Vickers would like to amend

April 2, 1981

LB 72, 181, 205, 284,  
284A, 512, 529, 556

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The morning prayer will be given by Pastor Jack Glass, of the First Assembly of God.

PASTOR GLASS: Prayer.

SPEAKER MARVEL: Will you please record your presence.

CLERK: Mr. President, Senator Burrows would like to be excused until he arrives. Mr. President, Senators Clark and Nichol would like to be excused for the day. Senators Cullan, Pirsch and Sieck until they arrive.

SPEAKER MARVEL: Record.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have any items under number three?

CLERK: Mr. President, Senator Warner gives notice of hearing scheduled on LB 556 by the Appropriations Committee.

Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 284 and recommends the same be placed on Select File. LB 284A Select File. (Signed) Senator Kilgarin, Chair.

Your Committee on Enrollment and Review respectively reports they have carefully examined and engrossed LB 72 and find the same correctly engrossed and 205 correctly re-engrossed. (signed) Senator Kilgarin.

Mr. President, I have a report of registered lobbyists for the week of March 27th through April 1st.

Mr. President, Senator Schmit would like to print amendments to LB 11. Senator Howard Peterson to LB 512. Senator Vickers to 181.

Mr. President, Senator Sieck and Kahle ask unanimous consent to add their names to LB 529 as co-introducers.

SPEAKER MARVEL: Hearing no objection so ordered.

CLERK: I believe Mr. President that is all that I have at this time.

April 8, 1981

LB 40, 105, 512, 547

cut bait. Now I would remind my colleagues from cities like Lincoln and Grand Island and North Platte and Hastings and Kearney and Fremont that as the Omaha city sales tax issue is used to whipsaw Omaha on issues like the distribution of the \$70 million in personal property tax exemption fund, why those cities are being hurt also, because those cities suffer proportionately like Omaha does when unfair distribution systems are set up by the Legislature. So it really doesn't help the taxpayers in those areas either to keep bringing this issue back session after session after session. Now, finally, let me bring to your attention an editorial that was in the Lincoln Journal on April 5th, and here is what the editorial writer states in the conclusion. He says, "One way or the other, however, this polka should end. Either the special taxing authority should be scratched or the Legislature should acknowledge that it has been permanently snookered and get on with it." Now one way or the other I would like to test this body and see whether or not there is not the sentiment for a substantial and lengthy extension of the Omaha sales tax because, frankly, as Senator Johnson has indicated and as Senator Landis has indicated, I am really tired of our getting whipsawed year after year after year. Now let's be fair to the City of Omaha. Let's vote it up or vote it down on the merits and not for other reasons. I urge you to adopt this amendment. Thank you.

PRESIDENT: The question is the Hoagland amendment to the DeCamp amendment. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 11 ayes, 25 nays, Mr. President, on Senator Hoagland's amendment.

PRESIDENT: The motion fails.

CLERK: Mr. President, if I may, right before the ceremony... yes, could I...

PRESIDENT: Go ahead, Mr. Clerk.

CLERK: Senator Howard Peterson would like to print amendments to LB 512. Your Committee on Ag and Environment whose Chairman is Senator Schmit reports LB 547 to General File with amendments and LB 105 as indefinitely postponed, both signed by Senator Schmit. (See page 1355 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Sergeant at Arms, Ray Wilson.

April 13, 1981

LR 58  
LB 11, 243, 296A, 512

SPEAKER MARVEL: All those in favor of advancing the bill vote aye, opposed vote no. Record.

CLERK: 27 ayes, 3 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: Motion carried. The bill is advanced. Have you got some items to read in.

CLERK: Mr. President, a few. A new resolution by Senator Maresh, LR 58. (Read. See page 1437, Legislative Journal.) That will be laid over, Mr. President.

A new bill, LB 296A by Senator Cope. (Title read.)

Mr. President, Senator Fowler moves to reconsider the action of the body in its failure to advance LB 243. That will be laid over.

And, Mr. President, Senator DeCamp asks unanimous consent to add his name to LB 512 as cointroducer.

SPEAKER MARVEL: No objection, so ordered.

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

SPEAKER MARVEL: Senator Kahle, do you want to recess us until one-thirty?

SENATOR KAHLE: Mr. Speaker, members, I move we recess until one-thirty this afternoon.

SPEAKER MARVEL: All those in favor of that motion say aye, opposed no. Motion is carried and we are recessed until one-thirty.

Edited by:

  
Mary A. Turner

April 27, 1981

LB 284, 512

The motion is to readvance the bill. All those in favor vote aye, opposed vote no. This is the motion to advance the bill. Have you all voted? Record the vote.

CLERK: 26 ayes, 15 nays, Mr. President, on the motion to readvance the bill.

SPEAKER MARVEL: The motion is carried. The bill is re-advanced. Are there any other motions?

CLERK: Mr. President, I have a motion on the desk. Senator Newell moves to return LB 284 to Select File for a specific amendment. The Newell amendment is found on page 1522 of the Journal.

SPEAKER MARVEL: The Chair recognizes Senator Newell.

SENATOR NEWELL: Mr. President, members of the body, I am going to withdraw the amendment at this time. If everybody is as tired of 284 as I am, I ought to be at least appreciated at this point in time. Maybe when it comes up next time this would be appropriate and maybe not but at this point in time I would like to withdraw it and I will place it on a little later.

SPEAKER MARVEL: The next order of business under General File is LB 512.

CLERK: Mr. President, LB 512 was introduced by Senators Carol Pirsch, Chris Beutler, Karen Kilgarin and John DeCamp. (Read title.) The bill was first read on January 20 of this year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File. There are committee amendments pending by the Judiciary Committee, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Nichol on the committee amendments.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Mr. Speaker, I would have a question of you to start with. While we are waiting for the Speaker to get off the phone I might say that LB 512 has to do with liens on real estate property. You will recall that last year Senator Beutler and Senator Pirsch had bills in the Judiciary Committee which were heard last year and as I recall they died on the vine because of lack of time in the session. They again came forth with three bills this year, 512, 513, 514 and one of these bills was chosen as a priority by Senator Kilgarin. Since this was a priority we did wish to get a bill out for her and did so. Now what has happened is this, that we inserted the contents of LB 514 into 512. I understand from Senator Kilgarin, Senator Pirsch, Senator Beutler that they will attempt to remove the committee amendments and insert the original contents of 512 into 512.

So, Senator Pirsch and I have been getting along for several years now and I fear this is the end of a beautiful relationship, but at any rate, she is a lady and so are the other ladies and gentlemen involved in this bill, but, Mr. Speaker, there is an amendment, at least one as I understand and I was wondering whether or not we should accept the amendment to the amendment or amendments to the amendment prior to my explaining the committee amendments or if you wish to have me explain the committee amendments first?

SPEAKER MARVEL: Do you want to repeat your request, Senator Nichol?

SENATOR NICHOL: My question was I think at least Senator Fenger has an amendment to the committee amendments and I don't know if there are others or not but I wondered if you wanted to take up that amendment to the committee amendment first or whether you wanted me to explain the committee amendments first.

SPEAKER MARVEL: Do you want to explain the committee amendments and then we will go to Senator Fenger.

SENATOR NICHOL: All right, I have passed out a three or four sheet explanation of LB 512. If you would like I could go through that with you. If you have read it, you probably would not like to but briefly 512 as amended by the Judiciary Committee strikes the original provisions of 512 as I pointed out a minute ago and inserted LB 514. The notice provision is required to be supplied by prime contractors and sellers of real estate to contracting owners and purchasers of real estate. The notice must state that those who perform labor and supply materials have a right to place liens on the property to secure payment for services provided. The recipient is advised to obtain lien waivers, title insurance or consult an attorney as to other possible alternatives. The first notice: The prime contractor is required to provide this notice to the contracting owner on or before the date of final payment or within five days of the commencement of work, whichever is earlier. Failure to timely provide this notice results in the prime contractor losing all lien rights for services or materials provided before the notice is given. The prime contractor is also made liable for any loss suffered by the contracting owner due to the failure to provide timely notice. The Judiciary Committee amendments removed a provision that stated subcontractors and material men also lost their lien rights for services



and materials provided before the notice when the notice was not timely provided. The second notice is, the seller of real estate is also required to provide the purchaser of real estate property the above notice. The notice must be provided to the purchaser when there exists against the property, a valid lien, a notice of intention to preserve lien rights. The failure to provide timely notice results in the seller being liable for any loss suffered by the purchaser due to their failing to receive timely notice. The third notice: Thirty days before a valid mechanic's lien may be filed under Section 52-102 or enforce subcontractors or material men must serve the record owner of property personally or by registered mail a written notice of intent to record a lien. This notice must provide the name of the claimant, work done or materials furnished and the amount of the potential claim. The Judiciary Committee amendments to LB 512 also add an information disclosure requirement upon owners of real estate, contractors and subcontractors when a contracting owner or purchaser of real estate requests the names and addresses of those they have contracted with to provide materials or labor or the improvement of the property. Such information must be provided within seven days of the request. The failure to disclose complete and accurate information is a Class IV felony now. This previously was a misdemeanor and perhaps was partially the reason why this was not adhered to. Now this is an important bill. I think what we are striving for perhaps is in the same direction but there is two schools of thought as to the way it should be done and I ask your indulgence to pay close attention to those who are speaking either for the committee amendments or pressing for amendments of those who are not in favor of the committee amendments. Mr. Chairman, I would move for the advancement of the committee amendments.

SPEAKER MARVEL: Senator Fenger, do you have an amendment to the committee amendments?

SENATOR FENGER: I have, Mr. Speaker. Members of the body, my mail has run heavier on this bill than any other piece of pending legislation that I have. According to those letters the consensus is simply, adopt the committee amendments and the problem still exists. On the other hand, reject the committee amendments and you create a severe case of overkill and further setbacks to an already troubled housing industry. This amendment that I have offered to the committee amendment merely mandates that any title insurance company offering title insurance in the State of Nebraska must include in the owner's policy protection against unknown and unrecorded mechanics liens. This will not be new ground. Homeowners policies in our state now have

requirements mandated in them. They include a pertinent private structures, personal property insurance and personal public liability insurance. These must be written into the homeowners. The amendment I ask you to consider now merely states that if a title insurance company sells in Nebraska, they must offer this protection. Currently it is optional. Some do and others don't. I don't think we can anticipate any large increase in premium as a result since title insurance companies the last I remember pay out about ten cents on every dollar of their premium. There is nothing in this amendment that is going to mandate any insurance purchase but it does offer an additional measure of financial protection to unsuspecting new homeowners and I think the letter that was sent out this afternoon would verify that. Mr. Speaker, I would urge the adoption of this amendment to the committee amendments. Thank you.

SPEAKER MARVEL: Now are there others who wish to speak on the Fenger amendment to the committee amendments?  
Senator Nichol.

SENATOR NICHOL: Mr. Speaker and members of the Legislature, I certainly do not object to the amendment. In fact, I welcome it. I think it may be what both sides are attempting to solve and it may be the answer. As far as I am concerned I would welcome the amendment and I think it would strengthen either the committee amendments or the other amendments that may be proposed later. So I would support the Fenger amendment and if you have other questions I am sure either he or I could answer them.

SPEAKER MARVEL: Is there any other discussion on the Fenger amendment to the committee amendments? The motion is the amendment of the Fenger amendment to the committee amendments. All those in favor vote aye, opposed vote no. Okay, record the vote.

CLERK: 21 ayes, 4 nays, Mr. President, on adoption of the Fenger amendment.

SPEAKER MARVEL: Okay, the motion is carried. The amendment is adopted. Okay, now who wishes to speak to the committee amendments? Senator Beutler. Let's see, may I see your hands again? Senator Beutler, Senator Pirsch, Senator DeCamp, Senator Kilgarrin, Senator Howard Peterson, Senator Goll. Anybody else? Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, I would like to speak out as strongly as I can against the committee amendments because the committee amendments are no better than a hoax. The committee amendments do not

solve the problem that Senator Pirsch and myself have attempted to solve for the last two years running. You may have heard that old phrase about I am from the government and I am here to help you, reflecting a strain of cynicism in American life with regard to our attitude towards our government because our government often comes up with solutions that are not solutions and which often-times only exacerbate the problem and I suggest to you that if you adopt these committee amendments that you will be simply fueling the cynicism of every homeowner of this state because they do not solve the problem. Having said that, let me back up for a moment and be sure that everybody on the floor of the Legislature is aware of what the current law is with regard to mechanics liens and homeowners. Presently every subcontractor and every material man who supplies goods that goes into a new home or that go into a home improvement, the persons that build the cabinets, the persons that bring in the lumber, every one of those persons has a right to file a lien within four months of the time that they last supplied goods and materials against the homeowner even though they have never dealt face to face with the homeowner but only with the prime contractor and even though they may have no idea whatsoever that that particular individual has supplied any materials or done any work on the project. Because they have that four month period and because a majority of new homes that are built and home improvements that are made take considerably less than four months if you have good weather, the occasion will often come up, most often comes up, where the homeowner has paid the prime contractor in full the contract price for the home or for the home improvement and then subsequent to that closing date, subsequent to that payment date, discovers that the prime contractor has failed to pay a contractor or failed to pay some material people, material suppliers and he discovers that there is a whole fistful of liens on his home and he has already paid the contractor, liens he is not able to discover under our law presently, hidden liens and this is what we have referred to as the hidden lien problem for the last year and a half and this is the problem we are trying to solve. How to as a minimum, give the homeowner notice that liens may be filed and who the persons are that may file the liens so that he can take action to protect himself or herself. If you reject the committee amendments then you will have in place, assuming no further amendment, LB 512 as originally introduced by Senator Pirsch and myself and now cosponsored by Senator Kilgarin and DeCamp. LB 512 in its original form is itself a compromise. The bill is a uniform bill that was drafted by the National Conference of the Commissioners of Uniform Laws...

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LB 512

SPEAKER MARVEL: You have a minute left.

SENATOR BEUTLER: ...the same group that brought you a whole number of uniform laws that are in effect in the State of Nebraska and it is a bill that has been approved by the American Bar Association and the attorneys in the Bar Association who work in this area and it has been gone over by a number of attorneys in this state to be sure that the Uniform Law complies to the law of Nebraska or comports with the law of Nebraska. What does 512 in its original form do? It does simply this. It says basically that the homeowner is going to have a way of protecting himself against paying twice. No homeowner pays twice for any goods or materials except in one possible circumstance. Under LB 512 the subcontractor of material can send a notice to the homeowner and that notice can say, I have supplied goods and material. At the point in time that the homeowner gets that notice...

SPEAKER MARVEL: Time is up.

SENATOR BEUTLER: ...he is obligated to withhold those funds for the payment of the subcontractor but if at that point in time when he gets the notice he has already paid the contractor, then he is home free. He does not pay twice. That is the basic mechanism of LB 512. Mr. Speaker, since these amendments are very complicated I would ask unanimous consent to take another couple minutes.

SPEAKER MARVEL: Okay, is there any objections? So ordered. Go ahead.

SENATOR BEUTLER: Under LB 512 in its original form the subcontractors and the material men still have an opportunity to protect themselves. They still have that opportunity. If they want to protect themselves they should send the homeowner notice immediately that they supplied goods and materials and in the event the homeowner hasn't paid the contract and in most cases he will not have if they send the notice right away, he is protected. Or in a situation where the contractor owns the house, if he wants to protect himself against the contractor selling the house to another buyer, then he can simply file the lien. If he is worried about the contractor, if he is worried about getting paid, he should simply file the lien. Nothing prevents him from filing the lien the day after he supplies the goods and materials. So the point I am trying to make is that LB 512 is not a radical solution. It does not do away with all subcontractors or material men's rights. It gives them a means of protecting themselves. It is itself a compromise solution. The

committee amendments, what are the flaws with the committee amendments? The committee amendments are dangerous because, one, they don't solve the problem and, secondly, they even mislead the consumer into thinking he may have a solution to the problem. Let me give you an example. The committee amendment says, alright, if you want to protect yourself one thing you can do is go out and get lien waivers but, ladies and gentlemen, lien waivers do not protect you. In fact, many many of the cases that have arisen in the last couple of years is because people thought they were protected by lien waivers but they were not and the basic fundamental reason why you cannot be protected by lien waivers is because you cannot know under the current law who has supplied goods and materials. The only way you find that out is from the contractor and if for one reason or another the contractor is not truthful with you, then you only get the lien waivers from those he tells you about and from those he does not tell you about, you do not get lien waivers and you are, therefore, not protected. And you can have the best lawyers in the state and you can have a dozen of them altogether and they won't be able to protect you with lien waivers because they, too, must rely on the contractor to know who must give a waiver. That is one of the basic misleading flaws of the committee amendments. Secondly, it is my opinion that the notice provided for in the committee amendments, the notice to the homeowner if there is a lien law problem, it is my opinion that in most cases that will never be given and let me tell you why. Ask yourself, what is the penalty for not giving the notice? What is the penalty for not giving the notice? The penalty is that the prime contractor, prime contractor loses his lien rights but the subcontractors and the material men, they don't lose their lien rights if the notice isn't given. They don't lose a thing. Now if you are the prime contractor, in many cases if not in most cases, you could probably care less if you lose your lien rights. In many cases you simply won't hand over the property if you don't get your money so you don't need lien rights. In most other cases you are dealing with substantial people. You are not concerned about lien rights.

SPEAKER MARVEL: You have fifteen seconds.

SENATOR BEUTLER: There is no mechanism in the committee amendments to even ensure that that notice is given, much less that it is observed or that it is effective. The other notices provided by the committee amendments do not come before the time of payment by the homeowner. They come after the time of payment by the homeowner and are, therefore, ineffectual. I think I will hold off and make

one final comment, Mr. Speaker. Those of you who believe in the free enterprise system, those of you who believe that the most efficient form of economic organization is a free enterprise system should be voting a hundred percent against these committee amendments and in favor of LB 512 as it is because I suggest to you that credit is too loose in the industry and that the most efficient system would be to let each and every subcontractor and supplier make his credit judgement with regard to the different prime contractors and rely on the normal characteristic remedies that every businessman relies upon and to give him no special remedies such as he now has. This law as it is now in effect is a departure from the free enterprise system and a departure which I submit to you works to the unfairness of homeowners and to everybody's added expense. Thank you.

SPEAKER MARVEL: Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker, members of the Legislature, I realize that since Senator Beutler and I introduced a bill last year contemplating a modest change, a notice provision as a matter of fact in our mechanics lien law, that you and we have experienced many pressures. You have read many articles and I am sure you have received many letters both pro and con. At first if you will remember, those who benefit by the present lien law denied there was a problem. There was no problem. When the Judiciary Committee last year amended our bill to completely eliminate the mechanics lien altogether, and they sent it to General File, then suddenly the industry was willing to meet through the interim to discuss the situation and as the Judiciary Committee held hearings across the state and publicity brought more and more people forward who had indeed been hurt and hurt badly by our present unjust law, many senators and even the subcontractors and suppliers themselves at least admitted that there is a problem. Every week more names are added to our list of citizens who have been hit financially by the unfair 100 year old law and now the question that we face is how do we relieve that very real problem. These committee amendments are not the solution. They were offered at the eleventh hour in our committee and they do not protect the homeowner or the buyer and that is the bottom line. The amendment you put on which has called for mandatory lien insurance is not the solution. Although you have received a letter from State Title Services signed by David Hunter, who incidentally has come to every hearing and opposed any change in the mechanics lien law, who comes from a two person office, while we have heard from other title insurance companies around the state who say that title insurance is not the answer and I have a resolution by the Nebraska Land Title

Association which I will copy and pass around to you which said that on March 12, 1981, "the Board of Directors of the Nebraska Land Title Association convened for the purpose of examining the pending mechanics lien legislation. By unanimous vote we passed a resolution to support in full LB 512 and that is without amendments. As the trade association for Nebraska's Abstractors and Title Insurance Agents we deal in the examination and underwriting of mechanics lien problems continually. We felt that relaying our position on this legislation to the Judiciary Committee was essential. May we urge you to support this bill with your utmost efforts." Now who needs this protection? And I think you have to agree that it is the homeowner who needs the protection and this homeowner has little or no knowledge whereas those involved in the industry should. The original LB 512 without these amendments still offers lien protection to all who have an interest in the construction but not at more than the contracted price between two informed parties, the prime contractor who contracts with the homeowner or homebuilder. Now in the amendments to 512 it increases the penalties to a Class IV felony and increasing the penalties is always seemingly an admirable way to deal with the problem and, in fact, sometimes an easy way for this Legislature to deal with the problem but it doesn't necessarily solve it. In the cases of mechanics lien, present law....

SPEAKER MARVEL: Thirty seconds.

SENATOR PIRSCH: ...which the committee amendments still retain, there is according to the Douglas County Attorney in Consumer Fraud Division, absolutely no way to accomplish this criminal sanction for two reasons. The courts are reluctant to give criminal sanctions in something they believe is a civil matter and the intent to defraud which is required now and will continue to be under these new amendments, is almost impossible to prove as established by past courts decisions. Bankruptcy or mismanagement is not intent to defraud...

SPEAKER MARVEL: Your time is up.

SENATOR PIRSCH: ...even if fraud is clearly obvious, it is the homeowner who carries the burden of attorneys fees and those are astronomical.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature,

I rise to oppose the committee amendments and to suggest that the Legislature take a new step and adopt the bill as written essentially and I tell you that normally for about eleven years, ten years, I have stood up and been on the other side of this proposal and said, look, the law is good, let it work. But we have continued to have problems and I think maybe the law does need a change and a chance to try the alternate system. Now why have I, so to speak, switched? I will tell you very simply. Senator Kilgarin and Senator Beutler came to me and asked me what my position was on the proposal and I told them I am likely to be leading or participating in leading the opposition to you and they said to me, will you at least really honestly before you do that, forget a lobbyist, forget anybody involved, forget your personal interest and really study it objectively. And I have always stated in here that there is not an issue that I won't at least sit down and examine my position on, examine everything, and if it really does have a case, I will try to listen and I did on this. And I did with a lot of knowledge, I think, in the area, having been involved in construction, having been involved in mechanics liens, having been involved in the litigation on both sides, at all comes of it and it became eminently clear to me that at least as the system is functioning now it is a failure, at least a failure in the minds of the public and let me use a simple example which some of you may even have thought about to compare the two systems. One hundred years ago or whenever we developed the law that is on the books now, if Carol Pirsch built a house, Carol Pirsch knew who the carpenter was, if there was electrical or something comparable, she knew who that was and the painter. Shoot, they probably were the next door neighbor or the guy down the street. As other things have evolved, so has the construction system and today, one hundred years later, construction of houses is essentially the same, essentially the same as the automation of the automobile assembly line or anything else. When you walk in to Jim Goll's place and you say, "Jim, I like that Chevy sitting there on the floor that costs \$8,500," and Jim says, "Fine." You write Jim Goll out a check and you take that car and you don't have a labor union guy coming and saying, "Look, Chrysler," oops, I think I blew the wrong company here, "Ford, didn't pay me my wages" or you don't have somebody else coming along and B.F. Goodrich and saying, "We didn't get paid enough for the tires. Ford still owes us some money." Sounds hilarious, doesn't it? It sounds ludicrous and it is but that is the system, a hundred years old, maybe older that we are saying is okay for mass produced houses. We are saying, you the buyer, you go in and buy it just like you would a car basically today but unknowns to you, whoever the painter, plumber,



carpenter, supplier of toilets, whatever in that house is they may or may not have been paid. They may or may not have a claim and for me to argue as I have in the past and say, well look, they get a little piece of paper from the lawyer and it says, you should make yourself aware of anything that has been done in the last ninety or hundred and twenty days or whatever to make sure that there are no unpaid bills, doesn't really mean very much. Because you got it from the lawyer you think everything is settled and I say you think and the evidence for it is, it has happened....

SENATOR KAHLE PRESIDING

SENATOR KAHLE: One minute left.

SENATOR DeCAMP: ...time and time and time again. So I say it is time to test this new idea and I understand the arguments against it. I understand that it may cut out some financing and may make people have to pay cash and may alter the system a little and it may develop problems that have to be addressed in the future but for now, I do believe the time has come to try this system as opposed to what we've got and for that reason I respectfully urge you to reject the committee amendments and support the bill in essentially its original form.

SENATOR KAHLE: Senator Kilgarin, you are next.

SENATOR KILGARIN: Mr. President and colleagues, I would just like to say a few words. I will keep it very brief, but during the committee hearings I got very interested in a lien law. As a realtor I had had some experience with problems arising from our present law with customers of mine and it is really a sad, sad commentary on our system of justice to have someone pay for a house once and be very very happy and have lien waivers and they thought everything was all taken care of and they had an attorney look at it and they got title insurance, you know, and then turns around three months later, they find out that someone has a \$15,000 lien on their home. They have just put every single hard-earned penny into that home and now they have to come up with another \$15,000 or lose their house. It just seems so totally unfair to me that I really don't see how we have let this antiquated statute remain on our books for as long as it has. My father was a subcontractor for many many years, he was a roofer, and he worked for prime contractors and he roofed houses for many years and he had occasions twice where he worked for a contractor who didn't pay him for his work and he had occasion twice to file a lien and collect his money on homes that he had supplied material for and put the roof

on and you know, I was talking to Dad about this bill the other night and I said, "What is your experience with it, Father? You have been a subcontractor." And he said, "Karen, you know, I had occasion twice and I really just could not bring myself to file a lien on those people's home because I know that they intended to do right that they already did pay the contractor so I just could not do it because it wasn't fair." So Dad lost out on some money but I will tell you one thing, the people were very appreciative and they were trying to do right and Dad was trying to do right but he felt the responsibility for collecting that money was on his back from the contractor. It was not on the homeowner's back and he felt that the contractor is the one who should be paying him even though he did have the right to collect the money from the people. So, I just think it just goes to show that if you have any sense of good will or any sense of honesty and fairness, there is really no way you can adopt these committee amendments which really do nothing to protect the homeowner. They are really a sham, one of the favorite words of this Legislature. They are really just a sham. They don't do anything. I would urge you to consider rejecting the committee amendments and adopting 512 in its original form and let's solve this problem. Let's not make these people suffer any more. Thank you.

SENATOR KAHLE: We have an amendment to the committee amendments. Senator Goodrich.

CLERK: Mr. President...

SENATOR KAHLE: Okay, the amendment to the amendment is withdrawn. We will go back to the committee amendments and Senator Peterson is next.

SENATOR H. PETERSON: Mr. Chairman, members of the Legislature, all of you know that Grand Island had a tornado last June 3rd. We were highly involved in reconstruction. This matter of lien laws has been of vital interest in Grand Island. I have passed out to the members of this Legislature the action of the State Affairs Committee of the Chamber of Commerce, supporting the committee amendments and I might say that on that State Affairs Committee are representatives, not only of contractors but of people who lost their houses and the people who were involved in the lien law and it just appears to me that what we are disregarding is that the committee amendments actually change the present statute. Now we ought to give it an opportunity to function. Let me say further that I have passed out to you also from the Spelts-Schultz Lumber Company, a copy of an ad, that the various suppliers in

Grand Island provided during the time of the storm. They spent \$2,000 of their own money in order to advertise to people that there is such a thing as a lien law. I think that is probably why our experience has been as good as it is. It is a part of what is a part of this committee amendment and I would just say this, that I want to share with you the experience in Grand Island as I got it from the Credit Bureau and then contrast for you what would happen if we go to 512 without the committee amendments. Number one, in Grand Island there was \$60,000 lost on lien law. In other words there was \$60,000 paid by people the second time, total for all of the construction that took place in Grand Island after the storm. There was \$115,000,000 of contracts, a \$115,000,000 of contracts. Now if you can tell me that .0005 is a very high percentage of construction cost, I will put in with you but eliminate the lien law and pay cash if you are a subcontractor to every supplier when he delivers your goods, borrow the money and then take 1% only of the total construction in Grand Island and see the number of dollars that you spend. It is more likely to be 5% in my estimation and I don't see why this Legislature wants to put on an additional cost to everyone who wants to build a home in this state in order to eliminate the lien law. It just isn't fair to all the people who take the time to study the law nor is it fair, in my estimation, for us to say to people, "you don't have to look at the contractor you do business with, you don't have to worry about the subcontractors, you don't have to worry about the source of your raw materials for your house." Everyone of us know we have a responsibility when we build a home and I personally believe that what the committee has suggested here is a good amendment and that we ought to support it and that it ought to pass into law and we ought to let it function and see how it operates. I think the original bill, 512, will increase the cost of housing in the State of Nebraska no less than 2% and 2% in this economy is certainly a lot more than what most people can afford.

SENATOR KAHLE: Senator Goll, you are next.

SENATOR GOLL: Mr. Speaker, members of the Legislature, first of all I would like to reprimand Senator DeCamp for alluding to the wrong brand. I would appreciate it if my colleagues in the future would please take that into consideration. I need all the advertising I can get, Senator John, thank you. I wish to speak to LB 512 and particularly in opposition to the amendments as presented which I feel waters down a bill that even now is not tough enough to fully protect the ultimate consumer. As a small independent businessman I was personally involved with a contractor who had been born and

reared in my home town with a man in whom I had implicit trust and frankly, unquestioned confidence. I engaged the contractor, who incidentally did an excellent building job, who submitted buildings for the work that he performed and who was paid. I am sorry to say that not all of the subcontractors or suppliers were paid. At a \$20,000 plus figure these subcontractors filed liens against my property and these bills had to be paid. They had to be paid in full before the liens were released and before I could consummate a small business administration loan. The contractor subsequently filed bankruptcy and as I understand it, is now doing quite well in another part of the United States. So it is with a very personal experience that I hold the opinion that no one should have to pay more than once and these private or commercial owners must be protected by whatever kind of laws that we enact, contractors, subcontractors, suppliers, should run their business without that lien law wedge against homeowners and business people. As far as I am concerned let the homeowner or the home buyer or the commercial owner pay just once. Thank you.

SENATOR KAHLE: Senator Hoagland.

SENATOR HOAGLAND: I would like to call the previous question, Mr. President.

SENATOR KAHLE: The question has been called. Do I see five hands? I do. Those that wish to cease debate vote aye, those opposed no. Please vote. Record.

CLERK: 18 ayes, 14 nays to cease debate, Mr. President.

SENATOR KAHLE: The motion fails. Senator Nichol, you are next.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I think a few things ought to be said in answer to some of the statements that have been made. First of all, when a contractor takes out bankruptcy there is a loss. When anybody takes out bankruptcy there is a loss that somebody else picks up. Now when we think of contractors as big contractors such as the big one out in Grand Island that went broke and I really believe as Senator Peterson said a little bit ago, it was true. Had not people been warned several times, many times, the loss ratio would have been much higher. Now the point I was really getting at in regard to this is, not everybody is a big contractor. There are a lot of small contractors. There are a lot of small suppliers and subs who are not big people. It also should be said that some people do not pay their bills, and not only poor people. People who are well to do do not always pay

their bills. Senator Goll, it is a little different when you repossess a car or when you try to get plaster out of a house. There is a lot of difference. It can't be done with many materials that are put in a house. This is why the lien law in the first place was adopted, to protect some small people who could not go back and get the material, get their material or work out of a house that they had put in. There are two sides to this question. Now simply because I, as a home buyer, do not wish to pay attention, even though I am putting my life savings up to now and perhaps my savings for many years hence into this house, I can just be willy-nilly about anything that happens and say well I am anxious to get into that house. I don't care what it takes. When is the first day I can get in there and how much are my payments with utter disregard for anything else and hopes that some subcontractor will forget about being paid for the things that he has in that house. There are two sides to this, not only the person who is buying a house must be protected regardless of what he or she thinks they must do. If you are buying a house and putting a chunk of money into it and obligating yourself for many years, for goodness sake, you must pay attention to a few details. Simply because the financing company or the mortgage company says, well there may be liens against it, you may even not know what a lien is but in honesty and support of lending institutions, they attempt to draw your attention to the things that you should be wary of and leary of when you go into such a contract. I don't think that this Legislature should be saying to all of the home buyers, the homebuilders in the future, you be stuck for the loss for those that don't choose to pay attention. You pay attention when you buy your house but simply because somebody else doesn't want to, then you make up the loss because somebody is going to make up the loss. Senator Fenger has an amendment on this bill at the moment that will attempt to take up that loss. We all do the same thing for fire insurance on our home. My goodness, if Senator Johnson's house burns down, we don't take the loss. If it burned down when it is halfway built does he expect those subcontractors to take the loss? Heavens no, he is covered with loss insurance. This kind of loss can be covered with a minimal payment, hundred and a quarter, hundred and seventy-five dollars, something of this nature. As was pointed out a little while ago, the abstractors don't want this bill. Would you if it were about to put you out of business or take a fourth or a half or three-fourths of your business away? Heck no, you would be against the bill. We are not in favor of bills that take business away from us and I don't think we should pay much credence to that statement. So, what I am saying is that even though there may be

unscrupulous contractors who go broke, who deliberately defraud you, you have ways and means especially with this 512 as amended to protect yourself. If you want to find out who has money coming from this house it is very easily found out. All you have to do is ask and they have to tell you. If you want to protect yourself by way of insurance, you can. Now it was brought up by Senator DeCamp...

SENATOR KAHLE: Thirty seconds.

SENATOR NICHOL: Yes, sir, thank you. Senator DeCamp brought out maybe we are too loose with the credit laws, with the credit in this state. Maybe so. Let's tighten it down a little more and make house building a little tougher, shall we? It is tough enough with the price of money, with people going out of business, with the lending companies not giving you the loans. Let's make it tougher and lastly, let's make everybody run to the Register of Deeds twice to file the liens that don't and shouldn't be filed and make them run back later to cancel the liens and make the home buyer pay for it all simply because somebody else doesn't want to pay attention to what they are doing when they are making a large purchase.

SENATOR KAHLE: Senator Sieck.

SENATOR SIECK: Yes, it is a pleasure to say, Mr. President, and members of the body, I, too stand opposed to this amendment. This was...the committee amendment was one that I steered and got across in the committee. I feel that we cannot go all the way. If we do we just as well repeal the mechanics lien law altogether and go on a completely credit basis because as I read 512 in its original form, it is going to be very very difficult and most of our people that is out there are going to ask for cash. This will mean that a lot of small contractors and people that want to get into business, it is going to be very very difficult for them to get started. Now in calling many of my people in my area I asked them, how often have you used the lien law? And I can assure you that very little and very seldom have any of my people, the building trade, have used the lien law. I think the one at Seward said he used it once and the purpose of it was that somebody would not pay his bill. Well I think once you got the equipment in there you should pay for it. I got a note here and said I was against the committee amendments. I meant I was for the committee amendments but I am against the amendments that is going on the committee amendments or the original 512. I am for the committee amendments because I was the one that got them to go as far as they did. But talking about the individual

at Seward, he had to use it once and that was because the individual refused to pay. It was almost impossible to get his material out of that home and after he had applied the lien, then the material was paid for and it was not paid twice. The same thing happened in York. It never was abused and I think if we go through our state as a whole you will find that the lien law is not abused but we did have some contractors that were shoddy, so to speak and I think we have had several of them in Lincoln and we really heard it and I really received a lot of letters complaining about the committee amendments, but I feel this is one step in the right direction. We are telling the people what to do. I don't feel they have to have title insurance if they just watch their business. Look at the credit ratings of their different people. That is all you need to do. You don't have to have title insurance. That is something I would not buy personally. I would look at the individuals who is building my home. Look at their background. And I am sure that I would be protected. Now there is a lot of people involved, the building trade, the realtors, the finance company and the homeowner. They should all be involved and I think the committee amendments do this and I surely endorse the committee bill instead of the original 512. Thank you.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Senator Barrett.

SENATOR BARRETT: Mr. Speaker, I wasn't going to speak on this issue but in light of some of the conversation which has transpired I would be remiss if I didn't. I have been building, selling, trading, buying homes in my business for nearly twenty-five years. My office has been involved for three generations. I must rise in opposition to the committee amendment. I would like to share just a couple of paragraphs from a letter. We have all received tremendous amounts of mail on this issue. This one happens to come from Charles Peters, your vice president of N.P. Dodge in Omaha, one of our larger, one of our more respected real estate offices in the State of Nebraska, just a couple of paragraphs. "I see innocent families deprived of most of their wealth. Their only error was in buying a new home in the ordinary course of business. The present law permits a subcontractor to enter an innocent family's home and take their money without recourse," et cetera, et cetera. He of course, is also speaking for 512 in its original form against any amendments. He concludes, "Home builders, realtors and most of all the innocent public all need a break. 512 as originally proposed to the committee will

accommodate all three groups. The builder who pays his bills will do more business, the realtor will no longer be embarrassed by seeing his clients victimized, and the innocent public will no longer fear for his financial life when he dares to buy a new home. LB 512 will not be difficult to live with. It may be difficult for those who wish to continue to extend credit carelessly. Again, I speak in opposition to the amendments to 512. Thank you.

SPEAKER MARVEL: Senator Dworak.

SENATOR DWORAK: Mr. Speaker, colleagues, I have listened closely to the debate on this issue. This issue, like many other issues this session was heavily lobbied. I was heavily lobbied in Columbus this summer, this fall, through the winter until today. I have had subcontractors in my office one right after another saying that the existing law is just fine. We don't need any change. I think this viewpoint was expounded by Senator Peterson. He indicated that we have a small percentage of the amount of construction in the State of Nebraska that becomes subject to liens. I concur that it is probably a small percentage and I think you would have to agree with me that it is probably a relative small percentage of people in the State of Nebraska that get murdered each year but that doesn't make the problem any less serious if you are one of the people that have been had. If you have lost your life, you have lost your home, I don't care if it is only one. I don't care if the percentage is half of what the percentage is right now. The fact is that individual people have certain basic protections. Oh, yes, Senator Sieck can very thoroughly and very completely check the credit reports in Pleasant Dale and I imagine that doesn't take too much effort on Senator Sieck but if you live in Lincoln or if you live in Omaha or if you live in Columbus or in Grand Island or Hastings, that may be a little bit more difficult task than in Pleasant Dale or in some community with a population of a hundred and twenty-five. It seems that the arguments are the traditional arguments, do social values, are they paramount over individual rights? And in my opinion, as commendable as the social values are, the rights of that individual are still paramount. It is easy to gloss over numbers and statistics. That is an easy thing to do and say it is .005 percent but .005 percent becomes significant if I am the .005 percent. Then it is very doggone significant. Sure, my chances of catching or of getting some type of serious illness may be small and I always used to play this game when I looked at life insurance tables statistics. The chances of losing your life if you are under age 30 are insignificant compared to if you are age 80 and that is just great until I am the one under 30 and then it suddenly becomes a very significant statistic.



Now I think, truly, fellow legislators, in a spirit of fair play, in a spirit of balancing that individual concern and that individual consideration against the social concern and the social consideration, it is no contest and the contest even becomes more significant if you happen to be that individual. So I strongly urge the rejection of these committee amendments that make this bill a facade. I think the construction industry has had ample time to sit down and work out a legitimate, realistic compromise and I think LB 512 in its existing form was that compromise...

SPEAKER MARVEL: You have thirty seconds.

SENATOR DWORAK: ...and then suddenly the old concept, the old spirit of greed steps in and we are going back for the whole hog. Incidentally, if you were listening to public radio this morning, a whole hog, that is what they used to call a coin in England. I thought that was an interesting bit of trivia that I would share with you. Fortunately we don't all have access to public radio, but they are going back to whole hog again. I think the amendment should be rejected. Senator Beutler, Senator Pirsch spent many hours in forging a workable, reasonably acceptable bill. We ought to accept it and get on about other serious matters facing this Legislature.

SPEAKER MARVEL: Senator Maresh.

SENATOR MARESH: Mr. Speaker, I call for the question.

SPEAKER MARVEL: The question has been called for. Do I see five hands? Okay, all those in favor of ceasing debate vote aye, opposed vote no. Record.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate is ceased. Senator Nichol, you are recognized to close on the committee amendments.

SENATOR NICHOL: Mr. Speaker, just briefly, I think there are two sides to this. I don't think it is necessary that we throw everything out the window, start all over, attempting to set law, attempting to make law by starting with a situation that was drawn up by a group of eastern lawyers which has not been adopted by any state yet, not at all, not a one state has it, and we are going to attempt to do this. We are the guinea pig. I think the committee amendments are reasonable, sensible, will maintain some of the credit across the state that has been established. We will continue to have people working, having some trust

in each other rather than everybody running to the courthouse to the Register of Deeds to file liens before the work is complete so that they know they will not be shut out. I think this bill without the amendments would seriously curtail the credit in the state, the young builders, the young contractors. I don't think they would have a chance to get started. They would not have a chance to establish the credit with contractors that are legitimate. I think we are getting very emotional about a situation that can be handled with the committee amendments. I think that not all the culprits are the subcontractors that come in slyly at the end, slap on liens for people who should have been a little bit careful in the first place. I urge for the adoption of the committee amendments.

SPEAKER MARVEL: The motion is the adoption of the Nichol amendments as presented, committee amendments. All those in favor of the adoption of the committee amendments vote aye, opposed vote no. Have you all voted? Senator Nichol.

SENATOR NICHOL: How many are excused?

SPEAKER MARVEL: Two. Two excused.

SENATOR NICHOL: I have heard that it is okay to swim upstream but don't try to swim up a waterfall so....

SPEAKER MARVEL: Record.

CLERK: 16 ayes, 24 nays, Mr. President, on adoption of the committee amendments.

SPEAKER MARVEL: The motion failed. The amendments are not adopted. Senator Beutler, do you wish to explain your bill?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, in order for us to save time I believe there are another set of amendments before the Legislature if they have not been withdrawn, Senator Peterson's amendments, which are very similar to the committee amendments and it might be well simply to take them rather than to divert our attention to the bill itself.

SPEAKER MARVEL: Senator Howard Peterson.

CLERK: Mr. President, Senator Peterson moves to amend and the amendments...(interruption.)

SENATOR H. PETERSON: Mr. Chairman, I would like to ask unanimous consent to remove my amendments at this time.

I do think we need to put something in there on spec houses and I will present my amendment on Select File.

SPEAKER MARVEL: You have heard the motion. Is there any objection? If not, the amendments are withdrawn.

CLERK: Senator, you had two of them. Both? Okay. Mr. President, I have nothing further on the bill.

SPEAKER MARVEL: Senator Beutler, do you wish to advance the bill?

SENATOR BEUTLER: Mr. Speaker, I would move that the bill be advanced. Let me reiterate and simply and oversimplify for the members of the Legislature just a little bit what LB 512 says now. 512 says, that if the subcontractor or material man wants to have the right to file a lien under the present law, if they want to have that right, then they have to send to the homeowner a notice that they have supplied goods or materials. At the point in time that the homeowner gets that notice, if he has not already paid the prime contractor then he has to set aside the amount of money necessary to pay the subcontractor. He has to set that aside. The homeowner under 512 has an affirmative obligation to hold money for the subcontractor once he gets that notice, once he knows that the subcontractor is owed money. But if at the point in time that he gets that notice, he has already paid the prime contractor, then he doesn't have to pay twice. He doesn't have to pay twice. That is the basic idea. The subcontractor as material men have had an unusual remedy, very unusual. Let me give you an example that I think illustrates how unusual the remedy is. Let's say you are a farmer out near North Platte someplace and you go to town and you buy a TV set and you come home with it and a couple weeks later somebody knocks at your door and says, "I represent the manufacturer of that TV set and the retailer who sold that to you went bankrupt and he didn't pay us and I am here to tell you that you owe us money for that TV set now." And I say to you, "But I didn't deal with you. I dealt with the retailer. It was between he and I. I don't know about you." And he says, "Tough luck, that is the law, buddy." That is precisely what has happened right here, what is happening right here with the homeowners and the lien law. The homeowner says, "I didn't know who the subcontractor was. I didn't deal with them. I don't know who they are." And they are saying, "Tough luck. That is what the law says." In no other area of business is there this kind of a right. The most beguiling argument that I have heard today is that somehow by doing away with this law, we are feisting

some additional tremendous expenses on the industry, when the truth is, in my opinion, that this very law has made the industry more expensive than it should be. It has made it more expensive because it has allowed subcontractors and material men to pay no attention to whom they give credit. Every other businessman has to pay attention to that but these do not because they will collect anyway from the homeowner. So they are the ones who are creating the additional expenses, the present system that is expensive. The least expensive system would be relying on the private enterprise system, relying on the thousands of decisions of each plumber, each subcontractor and deciding whether or not to give credit. One last point that I would like to address, they say that this is a small problem. They don't really believe that but they say that but just in this year there have been 766 liens filed on residential property in Lancaster County and 399 so far this year. Now that is compared to 775 houses constructed, 766 liens on 775 houses. That is more liens than houses. Obviously there are more liens than one on many houses but that is just to give you an idea. But the point made by Senator Dworak bears repeating. The one individual that is hurt can be hurt bad. Mr. and Mrs. Taylor purchased a home. Thirteen liens were filed against them in March and April totalling over \$20,000. Now to them the mechanics lien is not a small problem. Mr. and Mrs. Silvey purchased a house in October 1980, four liens filed totally \$3,184. Now to them the lien law is not a small problem and the Sacketts lost \$18,000, \$18,000 in liens filed against them. It is not a small problem to them. Mrs. Robbins lost twice. She thought a lawyer could protect her the second time so she got a lawyer but she lost another \$13,000 that time. This law is making lawyers look awfully bad. So to the individual homeowner it is a catastrophe. It is not a small problem. It absolutely destroys them. In all fairness with regard to the looseness of credit aside, the subcontractors and material men are a relatively innocent group. I will admit that but it is also true that the homeowner is an innocent group and the way I analyze the problem is simply this. As between two innocent groups if you can't protect them both, and I am willing to listen to anybody who says that they can protect them both but as between the two, if you can't protect them both, you protect the least sophisticated party. You protect those who cannot protect themselves. You protect those who do not know the construction industry, who do not know the individuals and corporations working in the local construction industry who have no likely means of knowing whether if somebody is solvent

or insolvent. Who has a better chance of protecting themselves, the subcontractors and material men who deal on a day in and day out basis with the contractors, they have a chance of protecting themselves. Let them take the risk like all other businessmen take the risk. I think that the loose extension of credit is illustrated by a recent case we have here in Lincoln dealing with Bounty Homes. Now although I have not been able to verify this yet, the information I get from a good source is that one lumber company in this town had credit outstanding to Bounty Homes at the time that they went bankrupt of a quarter of a million dollars. Consequently, you can imagine how many liens went out over that amount of money. The problem is not small. It has to be solved. The minds of myself and the cotroducers of this bill are still open to protecting both parties if that is possible. For a year and a half we have searched for that solution and we haven't found it. 512 comes as close to protecting both parties as anything we have found and I would urge that you adopt it. Thank you.

SPEAKER MARVEL: Senator Hoagland, then Senator Pirsch, then Senator DeCamp. Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker, members of the body, I am sorry, in order to preserve my integrity I must correct a statement that I misstated in my first testimony where I said that Mr. Hunter represented a two man office. It is really a ten person office and I apologize to Mr. Hunter for that error. My information was incorrect. Senator Beutler and I will be brief because you have all gotten much information from us and it has been touched that what is a small percentage perhaps to the industry is a really very big problem to the individual. We do not infer that subcontractors and suppliers as Senator Nichol would suggest comes slyly in to put on a lien and this is why when others suggested that we abolish the mechanics lien completely I said, no. We cannot do that. We have to provide some protection for those small business people, sometimes large business people who need that lien right and LB 512 in its original form does give that right. But should not those businesses who work together constantly and contract with one another constantly have that innate ability to know who is trustworthy and who is responsible within their own business world and I don't blame the opponents to the original LB 512 to challenge the change. When one has had their bets covered for a hundred years, their bets covered so to speak by the property of an unsuspecting, unknowing third party, why would that favored one want to change? I can understand that but no other industry has that ability. I am involved in a small

business also. We have to do business with the people we contract with and no innocent third party has to pick up the tab. Think. Has the hundred year old mechanics lien law led perhaps to irresponsible credit extension, sloppy business practices and even sometimes hints of collusion? I urge your support for LB 512 and I thank you for defeating the amendment.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, I would like to address a couple of issues raised against the bill in its present form and the reason I would like to address them is I had to satisfy my own self internally. I had to believe in my own mind that these were not legitimate problems before I quite frankly could support this bill. Senator Beutler described for you how the new system would work and Howard Peterson and some others said that could add costs, would be expensive and you know something, I am in agreement. But I also believe the new system described by Senator Beutler is very likely, almost certainly not going to come into play at all. Now, why? Because it is expensive and it is cumbersome to the supplier and they are businessmen and we are talking free enterprise system. They are simply going to do efficient business practices and so when Johnny DeCamp goes in there to, let's say his good friends at Capitol Supply or wherever, they are going to take a little additional step maybe. They are going to put a little burden more on Johnny or whoever. They are going to say, hey look, we don't have these lien law rights now that we used to have, kind of it was an absolute backup system so we want a personal guarantee from you or we want so much down now or we are going to make sure that we get paid within thirty days or whatever other business practices. Rest assured, there is the strong probability that this will cut costs just as much of a possibility that it might increase and I repeat, the reason is simple. Businessmen, given the option and knowing what the system is, given the option of having various alternatives as to how to make sure they get paid, are going to make sure that they get paid. And so the system that Senator Beutler is offering, sure it is a backup system, but why take a Model T so to speak when you can just use simple good business practices which is what they are going to do and so I think if you give this a chance you may discover it has precisely the opposite effect. It might eliminate some interest. It might make the supplier a little more cautious and the guy that is purchasing, deal for that extra one or two percent that he gets from cash payment or payment within thirty days. You may see exactly the opposite of what you have been warned against. I have seen it work in other states. I've participated in it and it makes you a little better businessman in many respects. You have to make sure

you don't buy one thousand boards when you only need nine hundred maybe but that ain't all bad. The other thing my good, good friend Senator Howard Peterson used the example of the Grand Island tornado. The example of the Grand Island tornado is the best example of why you should pass this bill. Yes, now think about it a minute. What was the Grand Island tornado? It was a freak circumstance in which a whole bunch of people in a particular location lost their home and were rebuilding and were dealing with individual contractors, exactly the system you had about a hundred years ago when it all worked so good. It was the exact opposite of the traditional system where you have mass produced houses, the new addition in Cherrywood or Valley Hill or wherever. It was the system of a hundred years ago and fine, under those circumstances she works pretty good but in the traditional economy of today for the traditional home buyer he is buying just like you buy the car and the lot or wherever, that is standard rather than the type of situation that existed in Grand Island. The situation that existed in Grand Island is the aberration and fine, the system worked pretty good then but it is the exception rather than the rule...

SPEAKER MARVEL: Thirty seconds.

SENATOR DeCAMP: ...The new system is designed, I think, for the average and I would support an amendment that eliminates the commercial later on because I think that is a separate type of situation but overall, I think you are going to find this new system may work a lot better than even the suppliers think and they may be the happiest ones with it a year hence.

SPEAKER MARVEL: Senator Peterson, do you wish the floor?

SENATOR H. PETERSON: Mr. Chairman, I would just raise a few questions. Number one, the thing that I think we haven't talked about at all this afternoon and that is I am a subcontractor. I put a roof on a house and under this bill the new owner of the home when he gets kind of all through he says, I'm not going to pay you that \$8,000 for that roof because you didn't put it on right and so I have passed the period when I can file the lien under this particular 512. What do I do? Do I give an attorney a new job? How do I answer that question without the lien law?

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: Yes, Mr. President and colleagues, Senator Peterson, did you want me to respond? Was that a question you wanted an answer to? Okay, first of all you are talking

about a defective roof. Is that not correct?

SENATOR H. PETERSON: Not necessarily. I just think it is defective. In fact, we had that happen during the tornado and fortunately we had a committee the fellow could before and the committee said we've had another contractor go out and look at my roof and it looks alright to us and if you don't want to pay for the roof then we will just have the contractor file under the lien law against you and in two days he was out and paid his bill.

SENATOR KILGARIN: Okay, well obviously the owner felt, at least in the beginning that he had a legitimate objection to the way the roof was placed on the home.

SENATOR H. PETERSON: He was just that kind of a homeowner and there are that kind of homeowners and we can recognize it in this state.

SENATOR KILGARIN: And there is also some contractors who really are not worthy of being in the business and....

SENATOR H. PETERSON: Well, I agree, but I think we have to protect the honest ones.

SENATOR KILGARIN: I would like to get back to the basic premise or the bottom line of LB 512 which is, do you honestly believe that a homeowner who has already paid for work that has been done on his house should have to pay again for that work? Is that fair? Is that right? I don't think it is and if you don't think it is right that people have to pay twice for the same work then you should vote for LB 512 as it stands now in its original form. Thank you.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. President, Senators, I just can't help myself. I have to get up and make these few remarks about the bill. So far I have heard Senator DeCamp, an attorney, Senator Beutler, an attorney, and Senator Hoagland, an attorney talk about protecting the homeowner and the people. Now if any of you have ever been in a serious auto accident and retained an attorney, that is known as a negligence claim where you are going to sue the other party that did bodily injury to you or damaged your property. Maybe you get a hundred thousand dollars settlement but you know who the insurance check is made out to? If Johnny DeCamp is your attorney it is made out to you and John DeCamp. You can't cash it without his signature or if Chris Beutler is, you and Beutler or if it is Peter



Hoagland, you and Hoagland. You see the attorneys make darn sure they get paid. That is a built-in protection for them and yet, they have not paid one penny of premium on your insurance. Just think of that. It is easy for attorneys to get up and defend something like this because they have had the greatest built-in protection there is. They hauled the money in their fat little hands until you sign because you need that money to pay the hospital and the doctor bills and the automobile repair. They can sit back and wait until hell freezes over. That check is going no place until you sign, even if you think they have overcharged you and try to find another attorney that would sue them for overcharging you. You know that story. That is like trying to find a doctor that is going to sue another doctor or testify against another doctor. And then Senator Goll is in the automobile business and he is for protecting the homeowner. What he didn't mention is that every automobile dealer in the State of Nebraska has to post a surety bond with the state because of crooked automobile dealers that sell people cars and don't give them a title to it. We had a dealer in Omaha on Saddle Creek and Cummings a few years ago that the Aetna Life and Casualty had to pay out the entire sum of their automobile dealer's bond because they sold so many cars to the public and didn't deliver a title. They just folded up their tent and left town and the bankers kept the title. They were protected. So you see we have laws protecting attorneys, we have laws that will protect the public against unscrupulous automobile dealers and the suppliers and the construction industry, if we pass this bill, we're not going to have a surety bond that is going to protect the supplier. We are not going to have title insurance that is going to protect the supplier who gives credit in order to keep the cost of your home down but I think it is interesting for you to reflect upon the fact that the people that are defending this the most are the ones that insist that they get their money first also. Thank you, Senators.

SPEAKER MARVEL: Senator Hoagland and then we go to Senator Beutler.

SENATOR HOAGLAND: I would like to call the question please, Mr. Speaker.

SPEAKER MARVEL: There are no other lights on so we can revert to Senator Beutler. Do you wish to close?

SENATOR BEUTLER: Mr. Speaker, it seems very hot in here today. I don't know if I just feel the heat or if everybody is feeling the heat. I would make just two quick comments in closing. First of all, with regard to and basically these are in response to some comments that

have been made on the floor and first of all, in response to the defective roof situation. If the prime contractor does a job for you and you say as a homeowner that the roof is defective and you get into a dispute about that, under LB 512 you can still file a lien against the homeowner. What 512 addresses itself to is not to parties who have dealt directly with one another, but with parties who have not dealt directly with one another. Homeowners and people in the second and third and fourth tier in the construction industry, the subcontractors and the suppliers of the subcontractors, so this has nothing to do with defective roofs and even if the lien law didn't apply, the contractor has the right to go to court and sue the homeowner. That is the traditional way we settle things in this society and they can do it in that situation too. Senator Higgins, if you really want to do dirt to the attorneys, I suggest you vote to advance the bill because the attorneys are getting more out of this law the way it is right now than anybody, believe me. The law is unclear. They are suing people right and left, liens being filed all over the place. It is a heyday for attorneys. If you want to do damage to the attorneys, make the law clear. Make it concise and there will be a lot less litigation and a lot less attorneys fees. Again, Mr. Speaker, I would just close by asking the body to advance the bill and I reiterate once more that for those of you who are concerned about additional protection for the subcontractors and material men but who are not satisfied with anything we have presently, our minds are open. We will sit down and have a couple of conferences and see if some additional protections for subcontractors can be worked out but I am firm that if both groups cannot be protected, it really in all fairness should be the homeowner who is protected. Thank you.

SPEAKER MARVEL: The motion is the advancement of the bill. All those in favor of that motion vote aye, opposed vote no. Record.

CLERK: 27 ayes, 5 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Do you have some items you want to read in first?

CLERK: Yes, sir, if I may. Mr. President, Senator Schmit would like to print amendments to LB 529. Senator Kahle would like to print amendments to LB 529, Senator Goodrich to LB 512, Senator Koch to LB 560. (See pages 1594-1596 of the Legislative Journal.)

April 29, 1981

LR 62, 66  
LB 132, 249, 296, 327,  
331, 499, 512

SPEAKER MARVEL PRESIDING

REVEREND JAMES C. COUSER: (Prayer offered.)

CLERK: Mr. President, Senator Vard Johnson would like to be excused until he arrives; Senator Hoagland would like to be excused for the day; and Senator Beyer, Pirsch and Labedz until they arrive.

SPEAKER MARVEL: Will you record your presence please? Record.

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

Mr. President, first of all, I do have a correction to the Journal. (Read. See page 1620, Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 512 and recommend that same be placed on Select File with amendments; LB 499 Select File with amendments. Both signed by Senator Kilgarin, Chair.

Your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 296 and find the same correctly engrossed; 327 correctly engrossed; and 331 correctly engrossed. (Signed) Senator Kilgarin, Chair.

Mr. President, a new resolution, LR 66 (read). Mr. President, that will be laid over pursuant to our rules.

Mr. President, LBs 132 and 249 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 132 and LB 249. Item #4, resolutions, the first resolution #62.

CLERK: Mr. President, LR 62 (read). It is found on page 1551.

SPEAKER MARVEL: Senator Kahle.

SENATOR KAHLE: Mr. Speaker and members, if you paid attention to the reading of the resolution, you know that Kenneth Bowen passed away on April the 18th. He was a resident of the 37th District until his death, the District that I represent. You also know that he was a State Senator from '59 to '67 and he was Speaker in '65 of this body. Later he was appointed to the Farmers Home Administration and was Executive Secretary of the League of Nebraska Municipalities.

April 30, 1981

LR 67  
LB 559, 560, 512

SPEAKER MARVEL: Shall the House go under Call? All those in favor of placing the House under Call vote aye, opposed vote no. Do you want to accept call ins, Senator Schmit? Okay. Record the vote.

CLERK: 21 ayes, 0 nays, to go under Call, Mr. President.

SPEAKER MARVEL: Okay, the House is under Call. All legislators should be in their seats. Please record your presence. The Clerk is authorized to take in call in votes.

CLERK: Senator Labeledz voting yes. Senator DeCamp voting yes.

SPEAKER MARVEL: Senator Goodrich, Senator Hoagland, Senator Kilgarin, Senator Newell, Senator Wagner, Senator Wesely.

CLERK: Senator Cullan voting yes.

SPEAKER MARVEL: Senator Wesely, Senator Goodrich, Senator Newell. Mr. Sergeant at Arms, we are looking for Senator Wesely and Senator Goodrich. Here comes Senator Goodrich. We are looking for Senator Wesely.

CLERK: Senator Nichol voting yes.

SPEAKER MARVEL: Okay, record the vote.

CLERK: 25 ayes, 16 nays, Mr. President, on the motion to adopt the Schmit amendment.

SPEAKER MARVEL: The motion carried. The amendment is adopted. Are we ready for the next....?

CLERK: Mr. President, the motion now is to advance the bill.

SPEAKER MARVEL: The motion is to advance LB 559. All those in favor of that motion say aye. Opposed no. The motion is carried. The bill is advanced. LB 560.

CLERK: Mr. President, if I may right before we get to that, I have some items to read in. Senator Vickers would like to print amendments to LB 512. (See page 1668 of the Legislative Journal.)

Senator Lamb wants to have a meeting of the Executive Board tomorrow morning, Mr. President, at 8:00 in Room 2102.

Study resolution, LR 67, offered by Senator Beutler. (Read

May 4, 1981

LB 163, 512, 541, 562  
LR 77

advancement of 163 is the motion. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

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

SENATOR CLARK: See that doesn't take so long if you get at it, does it. The bill is advanced. LB 562.

CLERK: Mr. President, if I may, right before we get to that I have some matters to read in. Legislative Resolution 77 offered by the Public Works Committee. The purpose of the study calling for. . . read LR 77.

Senator Howard Peterson would like to print amendments to LB 512 and Senators Nichol and others to LB 541.

Mr. President, LB 562, there are no E & R amendments to the bill. The first amendment that I have is from Senator Koch, the amendment is on page 1611 of the Journal, Mr. President.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Clerk, will you please read the amendment.

CLERK: Read Koch amendment.

SENATOR CLERK: Senator Koch.

SENATOR KOCH: Thank you Mr. Clerk. For those of you who may not be familiar with LB 562, the Governor in his request did have in there the \$500,000 for the capital construction money. A year ago we approved the planning money for the purpose of studying this issue to determine whether or not we should indeed proceed with renovation of this facility. I would remind you that the building formerly was an orthopedic hospital structurally sound but rapidly deteriorating and the heating and cooling system is almost in a total state of disrepair. Not too long ago we were talking about weatherizing buildings and we are going to get back to that before very long. Now, here we have a state agency, where we spend the planning money and the estimate was \$500,000 to bring it in compliance to some degree so that we could have a totally efficient facility

May 8, 1981

LB 451, 512

CLERK: Mr. President, the amendment is on page 1773.

SENATOR CULLAN: Mr. President, these amendments are also of a technical nature just drafting amendments to take care of some drafting problems.

SPEAKER MARVEL: Okay, the motion before the House is the adoption of Cullan amendment number two. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

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

SPEAKER MARVEL: The motion is carried, amendment number two is adopted. The motion is to advance the bill. All those in favor of advancing the bill say aye. Opposed no. The motion is carried. The bill is advanced. Do you have another one? Pat, are we out of stuff? The Clerk has an item to read in.

CLERK: Mr. President, Senator Burrows would like to print amendments to LB 512 in the Journal. That's all that I have. (See page 1897 of the Journal.)

SPEAKER MARVEL: Senator Goll, do you want to adjourn us?

SENATOR GOLL: I certainly would like that very much, Mr. Chairman. I herewith move that the Legislature adjourn until Christmas. No, I move that we adjourn until 9:30 on Monday morning.

SPEAKER MARVEL: All in favor....I think the....okay, all those in favor of that motion....there will be some Final Reading on Monday and we will try to do it over the noon hour, but we will announce it ahead of time. We are going to try....will you try nine o'clock on Monday and see if it goes through?

SENATOR GOLL: Mr. Speaker, how about eight o'clock on Monday morning?

SPEAKER MARVEL: No not...no, not yet. Try nine o'clock.

SENATOR GOLL: I move we adjourn until nine o'clock on Monday morning, Mr. Speaker.

SPEAKER MARVEL: All those in favor of that motion say aye. Opposed no. The motion is carried. We are adjourned until nine o'clock.

Edited by

*L. Vera M. Benischek*  
LaVera M. Benischek

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May 18, 1981

LB 158, 158A, 197, 197A,  
LB 352, 204, 204A, 245,  
245A, 292, 292A, 383, 512

take your seats and the Sergeant at Arms please get those who are not in the Chamber. There are none excused. I take it back, Senator Higgins is excused. Senator Koch and Senator Fowler, would you punch in please? Senator Maresh, Senator Wiitala, Senator Warner, Senator Lamb, Senator Hefner, Senator Newell, Senator Landis, Senator Hoagland, Senator Pirsch. Senator Koch, did you ask for a roll call vote? Okay.

CLERK: Mr. President, while we are waiting, your committee on Public Works reports LB 383 to General File with amendments.

Senators Peterson, Nichol, Burrows, Lowell Johnson, and Sieck would like to print amendments to 512; Senators Beutler and DeCamp to LB 352.

Mr. President, a communication from the Governor addressed to the Clerk. (Read. Re: LBs 158, 158A, 197, 197A, 204, 204A, 245, 245A, 292, 292A. See page 2090, Legislative Journal.)

SENATOR NICHOL: Senator Lamb and Senator Carsten are the two that are not here yet. Senator Koch.

SENATOR KOCH: Mr. Chairman, can we take call in votes and speed this up?

SENATOR NICHOL: If you would like.

CLERK: Senator Chronister voting yes. Senator Hefner voting yes. Senator Hoagland voting yes.

SENATOR NICHOL: Record, Mr. Clerk.

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

SENATOR NICHOL: The bill is advanced.

CLERK: Mr. President, finally, the last item I am going to read in is a new resolution offered by Senators Kremer, Haberman and Rumery. (Read. See page 2092, Legislative Journal.) That will be laid over, Mr. President.

And, Mr. President, I have notice of hearing from Senator Warner regarding a meeting of the special committee regarding Federal-State-Local Fiscal and Program Policy.

SENATOR NICHOL: You will recall that Speaker Marvel announced

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LB 252, 317, 317A, 512

Mr. President, Senator Koch moves to override the Governor's veto of LB 317, and a motion to override the Governor's veto of LB 317A.

Finally, Mr. President, Senator Warner would like to print amendments to LB 252. (See pages 2144 and 2145 of the Legislative Journal.)

Mr. President, Miscellaneous Subjects will have an Executive Session today at 4:00 p.m. underneath the north balcony.

Mr. President, with respect to LB 512, I have a series of amendments, the first I have E & R amendments to be adopted.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 512.

SPEAKER MARVEL: All those in favor of that motion say aye. Opposed no. The motion is carried. The E & R amendments are adopted.

CLERK: Mr. President, then I have a series of amendments. The first is offered by Senator Peterson, on page 12. I understand you wish to withdraw those, Senator.

SPEAKER MARVEL: Are they withdrawn?

CLERK: Yes, sir. Mr. President, the next is an amendment from Senator Peterson, 1355. That is to be withdrawn. Mr. President, I now have one from Senator Goodrich that is on 1595. I understand he wishes to withdraw that. Mr. President, I now have an amendment from Senator Vickers and Goll. It is on page 1668 of the Journal.

SPEAKER MARVEL: Senator Vickers.

SENATOR VICKERS: Mr. President, I would like to just lay that back until the last one, if I may lay it over for a moment.

CLERK: I then have an amendment from...again from Senators Peterson, Nichol, Sieck and Johnson. That is to be withdrawn as well, Senator? Okay. Mr. President, I then have an amendment from Senator Burrows. The Burrows amendment is on 1897. Senator, did you wish to withdraw that? You did? Okay. Mr. President, the next amendment I have is then offered from Senators Pirsch, Kilgarin and Beutler.

SPEAKER MARVEL: Senator Beutler.

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



May 20, 1981

LB 512

we are back on the construction lien law, and as you may recall, on General File the committee amendments were rejected and we ended up with 512 in its original form which is a bill that gives good but not absolute protection to the homeowner. It is a bill conceptually, as you may recall, that provides that the homeowner will never pay twice except in some certain circumstances where he refuses to give notice or to pay attention to a notice which he has sent. Let me update you a little bit on where we have been and where we are going so you will have some perspective on the amendments before us and what you might expect in terms of debate today. First of all, there has been a very recent change here in the sense that the original Peterson amendments, both sets have been withdrawn, all amendments have been withdrawn now, except one last set of amendments by Senator Peterson and some others. In addition to that set of amendments which will come up immediately after these amendments, you have the amendments before you which do two things, one of which is unimportant and the other of which represents a major, major concession from those of us who are proponents of LB 512. The committee amendments are, first of all, technical amendments which drop out of the bill some language that was complained about by the opponents of the bill, and which we felt that was ultimately unnecessary because of court interpretation and other language in the statutes. That is the unimportant part. The second part of the amendment restores to those who build commercial and industrial buildings, restores to them their original rights, that is the same rights that they have under the law currently they will continue to have under LB 512 as it would be amended with this amendment. Basically, with regard to commercial and industrial construction, there will be no necessity for sending a notice to the homeowner or to the contracting owner of the building, and their lien rights will not be limited to the unpaid contract amount but will rather be what they are now the amount that is unpaid in its full amount. So I think probably that there is no objection to these amendments since they go in the direction that even the opponents of the bill would like to go, and so rather than bend your ear now, the real discussion will be on the upcoming Peterson amendments, and I will address those at the appropriate time. I would be glad to answer any questions. Thank you.

SPEAKER MARVEL: Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman, I would like to ask Senator Beutler if he would yield to some questions, please. Senator Beutler, my understanding is that the general purpose of your amendment is to extend commercial construction...

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LB 512

to exempt commercial construction from the burdensome requirements of 512. Is that correct?

SENATOR BEUTLER: The intent of the amendment is to restore to commercial and industrial contractors their original rights, yes.

SENATOR H. PETERSON: And your amendment to Section 15 will allow for a claimant in a nonresidential construction situation to get a lien for the full amount unpaid to him or her. Is that correct?

SENATOR BEUTLER: That is correct.

SENATOR H. PETERSON: Then how does your amendment affect the situation that Senator Goll had? Senator Goll, as a contracting owner in a commercial construction would still have to pay twice. Is that right?

SENATOR BEUTLER: That's right. Would you prefer, Senator Peterson, that I did not amend it so?

SENATOR H. PETERSON: Let me just say this, that I am rather unhappy that I am the individual who had to send around the amendments that you and your fellow Senators have put on today on 512. I would ask the body to look at those rather carefully. I think it is rather unfair that those amendments have not been passed around previously. And I have got a few more questions I would like to ask you. Now what about those burdens lifted by your amendment under Section 24? We now have a notice of commencement, as I understand it, this is used to determine priorities of claims. Is that right?

SENATOR BEUTLER: That is right in certain instances.

SENATOR H. PETERSON: Under Section 13 a lien filed by a commercial contractor would cover back to the earlier of one, visible commencement of the construction or the filing of the lien. Right?

SENATOR BEUTLER: Yes.

SENATOR H. PETERSON: But if that same situation the owner or someone else files a notice of commencement, then the lien only relates back to the date such notice was filed. Is that right? That's section 16-3.

SENATOR BEUTLER: That's right.

SENATOR H. PETERSON: So in other words, a commercial contractor

or a subcontractor, or a supplier, is going...either going to file a commencement of notice or run the risk of someone else filing one and run the risk of someone else filing and cutting his lien. This is not the removal of a burden from the shoulders of the contractor, it is, in fact, is misleading to say that he has any protection unless he files a lien or notice of commencement right after he improves the property, as I see it. Is that correct?

SENATOR BEUTLER: That's, the alternatives that we had, Senator Peterson, were one of two. Either we could have two forty-page construction laws, one applying to commercial and industrial and one applying to residential. Or we could within the context of 512 restore to industrial and commercial their rights, that is, the right to file a lien, the right to the unpaid amount of the contract, their right not to file a notice ahead of time. They are still protected and the notice of commencement, if it is filed, would give them equal rights with all other parties who file construction liens.

SENATOR H. PETERSON: But isn't it possible under your amendments, for example, that unless that contractor files that notice, that you might get down to where you would have, let's say only 30 days of the lien. In other words, he could be cut out of the first part if somebody else filed the notice.

SENATOR BEUTLER: The scenarios that you could construct are endless, Senator Peterson. Let me say this, that the effect of LB 512 is the same ultimate effect that exists in our statutes combined with our common law right now to the best of my knowledge.

SENATOR H. PETERSON: Okay. What you are saying is that you want to do away completely with commercial construction as far as you are concerned. And you...(interruption).

SENATOR BEUTLER: I'm not sure what you mean by that.

SENATOR H. PETERSON: You're saying...you are saying you don't want to protect Senator Goll.

SENATOR BEUTLER: I want to protect Senator Goll. But I want the homeowners protected first and if giving up the protection of commercial people is necessary in order to get the homeowner protected, I am willing to do that, and that is why I am submitting this amendment.

SENATOR H. PETERSON: Okay.

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LB 512

SENATOR BEUTLER: But commercial and industrial people are more sophisticated and in addition most of those jobs are bonded, as you well know, so there are a couple of very important distinctions that can be made.

SPEAKER MARVEL: Time is up. Senator Hoagland, do you wish to speak?

SENATOR HOAGLAND: I would like to move the previous question, Mr. Speaker.

SPEAKER MARVEL: Do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Shall debate cease? Record.

ASSISTANT CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. Senator Beutler, do you wish to close on your motion?

SENATOR BEUTLER: Just to mention again, Mr. Speaker, that I think this amendment is a compromise amendment. It is not one I am happy about, but it is one a lot of people were interested in, and thought important. The major problem is with homeowners, with the unsophisticated homeowners and not with commercial and industrial contracting owners. So I am willing to go along with this major concession and I hope the body will. Thank you.

SPEAKER MARVEL: The motion is the adoption of the Beutler amendment. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 27 ayes, 7 nays, Mr. President, on the motion to adopt.

SPEAKER MARVEL: Okay, it is adopted.

CLERK: Mr. President, I now have an amendment from Senators Howard Peterson, Nichol, Burrows, Lowell Johnson and Sieck. It is Request 2428 and you will find it in your bill books, Mr. President.

SPEAKER MARVEL: Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, you will find as the Clerk has said a copy of these amendments to 51, Request 2428, in the bill book. You have

had it for several days contrary to what Mr. Beutler has said, and what we have done is to combine the amendments that were offered by different individuals on this floor, to 512 into one solid amendment. I would say this, that I believe the amended bill that is before us is a much stronger bill, a much fairer bill than the 512 that we are amending. It is a comprehensive substitute for that bill, the proposal is a combination of amendments to LB 512 which have been circulated and placed in the Legislative Journal. It includes, number one, a requirement that a contractor, subcontractor, or supplier, file of record a notice of preservation of lien rights in order to be able to file a lien after final payment or after the property is sold. Number two, the provision for the owner of a piece of property to obtain costs and attorney fees in clearing title after a fraudulent or frivolous mechanic lien has been filed. Number three, a requirement that a lending institution financing construction give notice to the borrower that a review of the Register of Deeds should be made to determine if a contractor, subcontractor, or supplier has filed of record a notice to preserve the lien rights. And, four, a requirement that a title company include lien coverage in the owner's title insurance policy. Now the effect of this amendment would be to strike the current provisions of 512 and substitute them with a simple and effective means for a homeowner to find out who has a lien and an effective means for a homeowner to find out who has a lien right before the final payment is made or the home is sold. A homeowner or a home buyer need only check the record in order to assure himself or herself that a lien should not be filed after final payment or sale of a house. Additionally, final payment is defined to allow the contracting owner to withhold five percent of the contract obligation in order to ensure performance while still triggering the requirement for a contractor or subcontractor, or supplier to file a notice of preservation of lien rights. Additionally, this proposal addresses an area of the consumer concern which is also currently addressed in 512, and that is to allow a homeowner who wants to clear his title of a fraudulent mechanic's lien to recover from the claimant's cost of such action and attorney's fees. Those of you who have the handout copy, that is a typographical error. It should be which is also currently. The approach in Request 2428 uses our present system of notice of record for homeowner protection, instead of upsetting the entire chapter on mechanic's lien as done by 512. This proposal is a major step forward of providing consumer protection. Various segments of the construction industry, consumer protection, various...of LB 512 have agreed to this proposal, even though this means that they must file a notice in order to assure themselves of

the right to file a lien after final payment or transfer of title. Specifically, the proposal is summarized as follows: Section 1, a lien against residential property is only good if notice is given pursuant to the latter subsections if required by them. Section 1 (2) sets forth what must be in a notice filed by a lien payment, mainly that it must contain the name and address of the lien claimant and the legal description of the property. Section 1 (3) and (4) allows the subcontractor and supplier to request that the general contractor file this notice of preservation of lien right and to obtain the legal description from the contractor. This assures that the subcontractor and the supplier will be able to gather the information and file the required document in order to protect themselves. Section 1 (5) and (6), this gives teeth to the law for the consumer. These subsections require that in order for a lien claimant to be able to file a lien after a homeowner has final payment or after the home buyer has obtained title, that the lien claimant must file a notice as set forth in subsection (2). This assures that a contracting owner or home buyer has the means to find out who can file a lien and to cut off those from filing a lien who have not filed a notice by the time of final payment or transfer of title. Section 1 (7), (8), (9), (10) and (11), these subsections provide additional explanatory and definition material. However, (11) specifically defines final payment to mean 95 percent of the total contract price. Sections 2 and 3 conform to other sections of the law to changes made by Section 1 of the proposal. Sections 4 and 5 allows the court to award reasonable attorney fees and costs to the owner of a piece of property if a frivolous or fraudulent lien has been filed. This gives some protection to the homeowner against a false claim and would deter an unscrupulous claimant from filing a claim that is not reasonable. Section 6, lending institutions are currently required to give a basic notice to a borrower regarding the lien law when the lien is for the construction of improvements on real estate. Section 6 would expand that notice to specifically inform the borrower that the borrower should review the record of the Register of Deeds in order to determine if a notice of preservation of lien rights has been filed, and that the review should be undertaken before final payment on a construction contract or before transfer of title. This notice will bring attention to a substantial number of contracting owners of the way in which they can protect themselves. In the customary situation where a loan is made for the purchase of a home, the lender would ordinarily review the record before closing to protect himself, and through such review would automatically protect the purchaser. Section 7, this section requires a title insurance company which issues an owner title insurance policy to include mechanics

lien coverage in such policy. This would ensure as title insurance grows in popularity and owners obtain such policies that the likelihood for a homeowner paying twice will be substantially reduced. In the final analysis, this provides for the balancing of interest so necessary for good legislation. The consumer has an easy and dependable method of obtaining full protection, and the supplier of goods and laborers can obtain protection but must do so in such a way as to not jeopardize the unsuspecting consumer. Sections 1 through 10 and Sections 2 and 3 are verbatim of 514 introduced by Senators Beutler and Senator Pirsch. I just would call your attention, members of the legislature, to items that I have passed out to you today. I particularly call your attention to the opinion expressed by Dalton, Bruckner, O'Gara and Keating and Marti. It so happens that I used this firm when I was in business. I have a great respect for them, and I believe that if you read what Buzz Dalton says, that you will find that he is not very happy with 512 as it is being presented today. I have given you back again the copy from the folks in Omaha, the law firm there, which says the same thing. And I just would encourage this body to seriously consider passing a reasonable bill this session. I would say that if we do not, I think we will find that we will be back in this legislature next year hoping that we can get a bill through that will be reasonable to both groups. I believe the bill as it has been amended does that very thing.

SPEAKER MARVEL: Before we go to Senator Burrows, it is my privilege to introduce as guests of Senator Nichol underneath the south balcony from Scottsbluff, first of all, Senator Chuck Davey. Chuck, will you stand up so we can say "hello"? Former Senator Hank Kosman, also of Scottsbluff. Hank. And from Gering, Nebraska, Lou Armstrong. Okay. Fred Lockwood and Joe Huckfeldt. The Chair recognizes Senator Burrows.

SENATOR BURROWS: Mr. Speaker and members of the Legislature, I would strongly urge the membership of the Legislature to look seriously at these amendments. I compliment the introducers of this bill for going at a problem that we really need to deal with in this session, but I have had tremendous problems when I looked at this bill originally a month or two ago on the complexity of the bill and the idea that I was faced at that point with a choice really of dumping the consumer or dumping the subcontractor. And I am talking about a lot of very small people assetwise that are really dumped to going out of business, to that effect, if they completely lose the lien law. And I think the green bill, the original bill really forgets to point back at the major contractor and just bypasses and rather dumps that

subcontractor, that little person in the construction industry without much assets. I have felt all along that there was a way of doing this, that we could give the consumer adequate protection in a simplified version and give him some real adequate protection without dumping that subcontractor and placing more responsibility within the bill back on that major contractor. I think we have done this in several ways. For one thing, we have made that contractor in instances where the major contractor has sometimes maybe skimmed the corporation and personally taken it out in an account, which is really fraudulent action but very difficult to prove on verbal transactions, we have made that contractor now personally, or the individual involved in the bill, personally responsible if he incurs damages on that subcontractor or a loss to him. We have given the consumer the ability with just any reasonable judgment whatsoever, and we have given him advice with the bill as to checking at the courthouse and absolute protection if he just uses a little bit of discretion in following the advice that is mandated in the bill. We have provided one thing that the original bill does not provide. We have provided attorney fees in the case of a frivolous or fraudulent lien action, which is something that I think has long time been overdue for the homeowners, for the people in this state, that somebody could maybe negotiate a higher settlement than the actual amount of cash due to get around the court proceedings where it would cost them attorney fees and put that edge of that lien law back on a reasonable basis by providing attorney fees in the case of a fraudulent or a frivolous action where the lien law can very easily or has been very easily and frequently abused across the state. I beg of you to look at this and read it. It is written in such a way that I know I can sit down and in a very few minutes understand the bill, and this is important in law because the people that obey the law have to understand the law. The original copy is so complex, it is going to force anyone that wants to go with a lien to hire an attorney to set them up with that lien. We have a reasonable version here that is simple, readable and effective. I am very pleased to have this chance to vote for an amendment that does not dump the consumer and does not dump that subcontractor that we need in competition in the home building industry...the young man that is starting out with maybe a set of tools and needs the lien law to procure the supplies from the supplier to carry him through with assurance he can pay back that supplier. The original bill does not hurt the contractor who has significant assets. The man with the 100...200,000 or more assets is not hurt by that green copy. You can abolish the lien law and it doesn't hurt him a bit. He will carry it on cash transactions, but if we pass the original copy, we are destroying many of the subcontractors



that are good, honest people wanting to do a job that just don't have the assets to carry it without a lien law. I strongly urge your support of this compromised amendment that finally in the last stages this last week that we have been able to work out that I think adequately takes care of the homeowner and the subcontractor alike. Thank you.

SPEAKER MARVEL: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I, as well as the other introducers of the bill, strongly oppose the amendment because it goes right back again to putting the homeowner at jeopardy. Before I talk specifically about the Peterson amendment, please keep in mind again the broad perspective. No other businessman has this kind of a right. Nowhere else in the law can an unidentified third party who you have never heard of and never dealt with, no place else can they come in and file a lien on your property. So just keep that in mind when you are considering the whole situation. Now with regard to the Peterson amendment, the basic provision, the core provision of the Peterson amendment requires that in order for a subcontractor or for a material man to file a lien under the present law they first have to file with the Register of Deeds a notice. Last summer and last fall we played around with this solution and a bill I had in last year suggested that solution, and the subcontractors and the material men came to me in droves and they said, you are going to inundate the Register of Deeds with notices on notices on notices. It is going to be more money on everyone of the 93 counties with the Register of Deeds. It is going to be burdensome. It is the most expensive solution to the problem, don't do that. And now here they come trotting right in here and telling you to file these things with the Register of Deeds. They told me there would be thousands and thousands and tens of thousands of these. Maybe they are right. I assume they are right, and that is what they are asking you to do now, is file all these notices with the Register of Deeds. But even with the notices filed, all that means is that there is a place to go to find out about a lien law problem if you know to go. And in another part of the bill they provided for a notice to be given by the savings and loan associations telling them that there might be a lien law problem. But in addition to the burdensome problem of all these filings, don't forget that not everybody borrows money in order to construct. A lot of people build houses without borrowing money, but more importantly, many, many people make home improvements.... Siding on houses is a characteristic problem in this lien law situation, make those improvements without borrowing money, without going to the S & Ls and taking out a mortgage,

and these same people will have the same problem that they always had because they don't know about the lien law, because it never occurs to them that some unidentified third party can file a claim on their property, and so the S & L notice does not solve the problem. And I might mention to you that even when you are given notices, in many, many instances these notices are shown not to be effective. Notices are given at S & Ls now. There are one of...I don't know how many notices that are given at the time of closing. Imagine the situation that the homeowner is put into. He comes to the closing. Here are all these notices, and he says, what's this one? And they say, well it's something about you have to go down to the Register of Deeds office and check this out here. And the contractor says, hey, today we agreed on closing today, now what do you mean you are going down to the Register of Deeds office? And the guy says, where is the Register of Deeds office? Who is the Register of Deeds? And it is a big mess, the homeowner doesn't know. There is a way he can protect himself, he can have a lawyer there. You know, when I was in law school, I worked one summer in Connecticut, and in Connecticut every residential transaction has a lawyer. The lawyer is there for the transaction. The lawyer looks over all the papers. The lawyer does this and the lawyer does that. The lawyer checks the title, and in the end the lawyer is well paid. That is the way it is done in a lot of places in the United States. But in Nebraska, generally speaking, we do not have lawyers involved....

SPEAKER MARVEL: You have 30 seconds.

SENATOR BEUTLER: ....in the final transaction at the S & L on residential transactions, and I think that is good, and I think it should stay that way. But if we are going to continue to rely on these rights that have to be taken up and effectuated right at that moment of closing, then we are going to create a situation where a lawyer has to be there to protect people and that is the direction in which we are we are moving, and that is the direction that this amendment will cause us to move into. I have some other comments that I would pick up at a later point in time. I might say by way of answering Senator Burrows, his question with regard to attorney's fees, that LB 512 does provide for attorney's fees on fraudulent and frivolous claims. Thank you, Mr. Speaker.

SPEAKER MARVEL: Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker. To try not to cover some of the ground that Senator Beutler has just covered, I do want you to keep in perspective that last year,

all last year, we had hearings and the bill required notices filed with the Register of Deeds. And at that time we heard from the Register of Deeds. We had letters of Registers of Deeds and I would like to read you from the Lancaster County Register of Deeds, who summed it up very well. "This office is concerned the way LB 512 has been amended." This is when the committee put on the amendments. "We do not see any protection for the homeowner, in fact, this will add to the cost of purchasing a home. As we see it, all contractors and suppliers will increase their overhead to take care of any liens that might be filed. Also, the costs will be increased by the notices required by the amendments. The bill as originally presented did offer protection in that the homeowner only paid once. This is something like buying a car from a General Motors dealer, then having General Motors collect from you because the dealer did not pay for the car. By far the easiest solution would be to strike everything in LB 512 except Section 40 and that all debts be settled in the courts. I hope you will give this due consideration when this legislation is debated. Remember that you are representing all the people and not just the business interests that are putting the homeowners in double jeopardy." Signed the Deputy Register of Deeds. You were passed out a copy of the comments of Bill Brunson who is the President of Peterson Construction Company, who testified against LB 514 saying, "I asked each of these individuals"...he is talking about he visited suppliers, subcontractors, and has since visited with some credit managers..."I asked each of these individuals or their representatives to estimate the cost of filing the so-called notice. The estimates are received. The estimates attempt to put a cost on the needs for an accurate legal description, so you don't put a lien on the wrong property. The secretarial time and effort involved in preparing the document, travel time to and from the courthouse, time spent in the actual Register of Deeds office filing, economy is the scale which may benefit those with a higher volume of business and the variations between counties concerning distance to the counties. See population, and so forth." And then he goes on to say, "The high side of estimates at \$40 in 75 filings you are talking about \$3000." Okay, then he goes down to say, "The costs will be born by the subcontractors and suppliers in addition to the burden of the paper at the County Register of Deeds". To speak to the amendment, Senator Burrows said that 512 is complex and long. I ask you, how many complex bills have you looked at this session? And I wish that some of you would read our present mechanics lien laws. They are so complex that they are very difficult to deal with and offer no protection for the homeowner. Remember, they were done a hundred years ago and a lot of things have changed in a hundred years. Someone said

that our credit extension will be curtailed. Well, I hope it is and that the curtailment of business will happen. Well, hopefully when the credit is extended carefully and responsibly, then those good solid responsible contractors, subcontractors, will have more business and not let the fly-by-nights grab their business. I am concerned about the title insurance provision. If you are going to force title insurance companies to include mechanics lien coverage, I believe there is a danger. You can force them to include the mechanics lien coverage but you cannot enforce them to issue title insurance, and I think that this will be a very difficult thing to get if you mandate that. Michigan, in December, I have a letter from the Michigan Consumers Council... said, "Enclosed is a copy of the mechanics lien revision legislation passed in Michigan last December. The new law completely revamps the mechanics lien system, and you will note that in Part 2 beginning on page 12 a special section addresses itself to the problem of residential homeowners. A number of Michigan homeowners have lost several thousand dollars in recent years due to insolvent or dishonest contractors. We hope this legislation will take the burden off the individual homeowner and spread the costs among all persons building or improving their homes". Iowa is contemplating a change and part of their law is, "In the case of an owner occupied dwelling, a mechanics lien perfected under this chapter is enforceable only to the extent of the balance due from the owner to the principal contractor at the time written notice is served on the owner."

SPEAKER MARVEL: You have 30 seconds.

SENATOR FIRSCH: This notice may be served by delivering it to the owner or to the owner's spouse personally or by mailing it to the owner by certified mail with restricted delivery and return receipt, or by personal service". I remind you that a certified letter with return receipt requested is about \$1.50. To file a notice with the Register of Deeds is \$3.25. I hope that you do not vote for this amendment.

SPEAKER MARVEL: Senator Landis.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, I rise to support the Peterson amendments on behalf of LB 512, and although I can't say that either side of the coin at this point is ideal, for example, the lien notice does not at this point state how much the lien is for, the amount that the subcontractor is due. It does not provide for actual notice in the form of a registered letter, both of which I think would be satisfactory improvements. I have to say that of the two, I support as public policy the Peterson amendment

as opposed to the present form of LB 512, a bill I voted for on General File in the hopes that it would prompt a more adequate response from the industry, which it has, and which I now intend to support. It seems to me that this body should not adopt a policy of destroying a remedy like the lien to solve the problem but to more adequately balance the responsibilities of those people who enter into a commercial agreement, a real estate transaction, the purchase of a home. What we want to promote are knowing buyers and knowing sellers. It's not that we want to load the dice and destroy remedies that either party might want to use or should be entitled to in some given situations and to slam the door forever on either one of those two people with respect to their right to bring about an action to recover monies that they are entitled to. It seems to me that we cannot do away with every evil nor can we relieve the home buyer of all responsibilities to protect themselves. The present situation certainly is not adequate. The home buyer not only has a difficult time protecting themselves, they cannot protect themselves against hidden liens and unknown sources of responsibility and obligation. Even the hard working home buyer who wants to know that would have a difficult time tracking that down under the current situation and the current situation is intolerable. To that end, I congratulate the introducers of 512. However, even though we have rejected the concept of caveat emptor, buyer beware, even though we have done away with that idea, we should not do away with the idea that everyone should enter the marketplace with some responsibility to guard and protect their own interests. The state need not protect against every possible evil regardless of its magnitude. What LB 512 would be with the adoption of the Peterson amendments is a bill that seeks to balance responsibilities and to place on the home buyer one central responsibility to guard themselves and that is prior to closing to check with the Register of Deeds. It gathers up all the potential claims, all the potential liens that might survive, and at that point they will know whether or not they exist. It ends hidden liens. It ends the tracking down of a subcontractor. It ends the kind of labyrinthine problems that a home buyer today would have if he tries to break through the contract with the seller and find those subcontractors. It allows the home buyer to act responsibly by placing in one simple location all the information he needs to know with respect to making a knowing purchase of that house, and if at the time of closing there is a list of unsatisfied liens, he doesn't have to enter into the closing, he doesn't have to buy the property. As a matter of fact, there is an obligation on the seller at that point to make sure that there is lien waivers, because otherwise you are not selling a property free and clear, you

are not selling with full title, you are not selling in fee simple, in fact you are selling the property with an encumbrance and there, of course, you may have the possibility of title insurance providing some kind of adequate mechanism to the home buyer. I again indicate to the body that I see this as a policy choice between the destruction of a fair remedy, that remedy being a lien, at least in some instances, and that is an inadequate and unfair response because it is too broad brush. It is a shotgun approach to a rifle problem.

SPEAKER MARVEL: You have 20 seconds left.

SENATOR LANDIS: I just simply indicate to the body that I think the Peterson amendments offer an attempt to balance responsibilities more fairly than they are now balanced but at the same time does not do away with what at least in some instances may be a fair, rational remedy and that remedy may be the application of and adjudication of lien rights by a wrongfully defrauded subcontractor, and so I intend to vote for the Peterson amendments to 512.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: Thank you. Mr. Chairman and members of the Legislature, I rise to oppose Senator Peterson's amendments to LB 512 and I just want to keep it brief and tell you some of the problems that I see in Senator Peterson's amendment. With regard to the lending institutions or the S & Ls giving notice to the buyer, you have a real problem there as Senator Beutler pointed out with cash transactions and now with the tight money market you are looking at many other ways of financing that does not include savings and loans or banks. You have got wrap around mortgages and carry backs and many, many other land contracts and things of this nature. Therefore, the S & L provision would not be applicable or helpful in any of those circumstances. With regard to a mandatory provision in title insurance policies that would cover any liens filed that is going to cause the price of title insurance probably to skyrocket and once again the homeowner is going to be the one to pick up that cost. Also, some buyers don't buy title insurance, they just have an extension on the abstract done by an attorney and there you wouldn't have that insurance protection that Senator Peterson's requirement seeks to impose upon the title insurance companies to give to the home buyers. So there again there are loopholes in that provision in the law. Also, you are looking at a tremendous burden on your county officials. Your Register of Deeds will have supposedly thousands and millions of these liens or notices of liens filed

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in their office. Now I know at the committee hearing which lasted a good eight hours, one of their major objections was that the county officials, the Register of Deeds, could not handle all this tremendous amount of paper work. So in the handout that Carol and I had the Pages hand out to you, you will note that the industry even opposes this type of notice because of the burden on their county officials. The original version of LB 512 as we have amended it requires only that a registered letter be sent directly to the homeowner and thus eliminating this burden on our county officials. With regard to Senator Burrows saying that we are dumping the subs and suppliers, that is not our intention. We are merely trying to force them to accept the responsibility that they undertake when they give an extension of credit. It is not the homeowner's responsibility. The homeowners are not the one extending the credit, it is the suppliers and the subcontractors. I would like to remind you of a group called Citizens for a Fair Lien Law, some of the work they have done. They have gone to 105 towns that have responded to their petition. It was a one month drive and they received over 3000 signatures from homeowners across the states. We are seeking a change in this law to make it fair. I think LB 512 in its original form has a very fair way of trying to correct the problem that we find ourselves dealing with year in and year out, and I would urge your support of LB 512 in its original form and the rejection of Senator Peterson's amendments. With regard to Senator Landis' comments about the subcontractors and suppliers, collecting the money they are entitled to, I agree, except that the homeowner has already paid that debt once, why should he pay again? That is the basic premise to LB 512. I would urge your support for the original 512 and urge your defeat of Senator Peterson's amendments. Thank you.

SPEAKER MARVEL: Senator Hoagland, we are still bogging down.

SENATOR HOAGLAND: I would move the previous question, Mr. Speaker.

SPEAKER MARVEL: The previous question has been requested. Do I see five hands? All those in favor of ceasing debate vote aye, opposed vote no. Shall debate cease? Record.

CLERK: 28 ayes, 2 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. The Chair recognizes Senator Howard Peterson to close on his motion.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, let me say first of all that I want to be sure

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that you understand that what we are trying to do here is to give a balanced approach to a problem that confronts the consumer, number one; number two, the contractor and the subcontractor. And I believe that we have accomplished that in this particular amendment to 512. I believe we have treated the subject fairly. I think we have outlined it in a very specific manner, in a simple manner, one that even a layman like myself can understand, and I defy any of you who are on this floor who are layman to take the original 512 and read it and tell me what it says. I don't believe you can. Let me emphasize that a contractor, the major contractor, can file for himself and all subcontractors so there is no need for a lot of fees to be paid. That I would emphasize and I think if the amendment becomes law, that is the basis on which most of the lien filings would take place. So I would just urge this body to seriously consider the importance of our adopting a law in this session that can stand the test of time and that will stay on the books for some time and that will be fair to all. I would urge your adoption of the amendment, and I would repeat that this is not my amendment alone, that it was signed by Senators Nichol, Senator Sieck, Senator Lowell Johnson, Senator Bill Burrows. All of us have consented to this amendment.

SPEAKER MARVEL: The question is the adoption of the Peterson amendment. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman, I would ask for a Call of the House, please, and a roll call vote.

SPEAKER MARVEL: The first motion is, shall the House go under Call? All those in favor vote aye, opposed vote no. Record.

CLERK: 20 ayes, 3 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators return to your seats. Record your presence. Unauthorized personnel please leave the floor. Okay, everybody is supposed to be here. Senator Fenger, Senator Burrows, Senator Wiitala, Senator Warner, Senator Schmit, Senator Lamb, Senator Lowell Johnson, Senator Howard Peterson, Senator Sieck, Senator Pirsch, Senator Haberman. Do you want a roll call vote? Okay, everyone is present. Call the roll.

CLERK: (Read the roll call vote as found on pages 2147 and 2148 of the Legislative Journal.) 20 ayes, 27 nays, Mr. President.



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SPEAKER MARVEL: The motion lost.

CLERK: Mr. President, I now have the Vickers-Goll amendment pending, on page 1668.

SPEAKER MARVEL: Okay, the Chair recognizes Senator Vickers.

SENATOR VICKERS: Mr. President and members, the amendment that Senator Goll and I offer to LB 512 is a very short amendment but one of quite a bit of substance. To be very honest about it, what it does is strictly eliminate the lien law from the statutes of the State of Nebraska. I think a little bit of discussion needs to be made as to what we are doing, the policy statements that we are making with the lien law to start with. I think it is rather unusual that some of the people that are in this body that are the most adamant against regulations imposed by the government on the industry of the State of Nebraska are those that stand up and support the provisions that make the lien law more uniform, they say, as it applies to subcontractors, suppliers and so forth. There are a number of lien laws in the statute in Chapter 52. Many of them, as a matter of fact most of them, I think there are like nine or ten various lien laws, the only one that allows a third party to enter into the lien proceedings is the mechanics lien law, where that a supplier or a subcontractor that is not in direct contact with the individual paying the bill can file a lien. All of the other lien laws that we have do not have that third party involvement, as a matter of fact, one of them I was rather amused to find out that there is a thresher's lien law, and we...that is to say that if I hire somebody to run a combine to combine some of my wheat and that I don't pay that individual, that individual can then put a lien on the grain. But we expressly in statute say that the grain that belongs to the landlord, that portion of the grain cannot have a lien filed against it. So we expressly keep out the third party. Let me give you an example, we also have a veterinarian's lien. Now I understand that sort of a situation. If I have an animal that gets sick and I call a veterinarian in, the veterinarian can put a lien on that animal if I don't pay him for it, but by the same token, the supplier of the pharmaceuticals that supplies the drugs to the veterinarian that the veterinarian uses on my animals, if he doesn't pay for those drugs, that drug company cannot put a lien on my animal. And I cannot see where there is any difference in that than I can the suppliers of various products whether it be for houses or whatever. It seems to me that the...what is the function of government? It gets down to the basic issue, is part of the function of government to intervene and interject itself in business dealings

between business men, and let's not kid ourselves, that is exactly what we are doing. I think the point needs to be made that the provisions in the lien law are wrong. Now Senator Beutler with LB 512 is attempting to address that situation somewhat, but the basic premise is still wrong. So I offer this amendment in order to point out that probably what we should do is simply eliminate it, let those individuals that want to extend credit to a supplier or a supplier to a contractor, let them make sure that they know that individual that they are extending credit to like all other business men do. If I go into Ron Cope's shoe store and ask him for a pair of shoes on credit, if he doesn't want to give me credit, he doesn't have to, but if he gives me credit, he does so because he understands and thinks that I am good for it. It seems to me that we should operate that way in all business. But because of the political realities of it, I realize that the votes are not here and I don't want to take up the time to get into a long discussion of the merits of whether or not we have this lien law on the books, so with that, Mr. President, I would ask for unanimous consent to withdraw this amendment.

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

SPEAKER MARVEL: Okay, the motion is to advance the bill. Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman, I would move to indefinitely postpone this bill. The reason why I am making that motion, it appears to me that I was the one who had to pass out the amendments on 512. I think it is only fair that the members of this body have the opportunity to know specifically what they are voting on rather than proceeding today.

SPEAKER MARVEL: Senator Peterson, your motion is not in writing, so we take Senator Hoagland's motion first and then yours.

CLERK: Mr. President, Senator Hoagland moves to suspend Rule 6, Section 5 and Rule 7, Section 3, and vote without further debate and without further amendment on the advancement of LB 512.

SPEAKER MARVEL: Senator Hoagland.

SENATOR HOAGLAND: I think my motion speaks for itself, Mr. Speaker. We have been debating this bill for a long period of time. We have six days left in the session. I think people have made up their minds. I think Senator Peterson's concept has gotten a full and fair hearing today. I would

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urge that we suspend the rules at this point and take a vote on the bill and move onto the next bill in the agenda. I really have nothing to add to that. Thank you.

SPEAKER MARVEL: Okay, Senator Chambers, do you wish to be recognized? We are voting on the Hoagland amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I am in favor of this bill, but again I am not in favor of suspending the rules in this fashion to move the bill without debate. I don't think it is necessary and since we are going to be here all night anyway, what difference does it make if we spend the early portion of the evening on this bill or the posterior portion of the evening on this bill? We are where we are because of all of the things we did from the beginning of the session until now. This circumstance didn't just happen. I have debated on bills, Senator Hoagland has debated on bills, all of us have. There are some bills that I think Senator Hoagland has probably offered, so to speak, a thousand amendments on before. So despite the anxiety that people may begin to face as we go past four o'clock, there are many people who work in kitchens and other unpleasant places for ten or twelve hours every day. So I think it is not going to hurt us if there are legitimate issues that are being raised relative to the bill. If it becomes clear that harassment type of amendments are being offered, and I am not aware that another one is up there other than Senator Peterson's kill motion, I don't see the reason for this at all, and I am totally opposed to it, although I like the bill and I will vote to support it all the way across.

SPEAKER MARVEL: Senator Pirsch. The motion at the moment before the House is the....

SENATOR PIRSCH: I am sorry, Mr. Speaker. I do support Senator Hoagland's motion. I feel that this is what we were talking about earlier in the day, that this is a harassment. We have discussed this bill quite thoroughly on two occasions, General File and Select, and this is a form of harassment and I would urge you to vote to suspend the rules. Thank you.

SPEAKER MARVEL: Senator Schmit.

SENATOR SCHMIT: Mr. President and members of the Legislature, I support Senator Hoagland's motion. I think that it is sort of what we talked about. I believe that, you know, I may have a little bill come up, 243, that I would like to have acted upon and I am just being very frank with you that I think

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you all are. We'd just as well call them as we see them and we just as well do it today as tomorrow. And I don't think that anyone is going to find very much fault with that. It is a courtesy that I think we ought to extend to Senator Beutler whether we agree with him or not. I hope that the same thing is reciprocated when my bill comes up or when someone else's bill comes up.

SPEAKER MARVEL: Senator Higgins, your light is on.

SENATOR HIGGINS: Mr. President and Senators, I just want to remind you that the people that have stood up and spoken against Senator Peterson's motion to kill are the very people that spent three to four different times putting a motion up to kill Senator Labedz's LB 466, and it was finally figured out that it was done as a delaying tactic. Now they say, that was all right for us to do to Senator Labedz, but now we are on the other side of the fence so we don't like to play the game the same way. I just want to remind you that this is what happened to Senator Labedz's bill. Thank you.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I think Senator Peterson has brought out some interesting things about lien law. I think the close votes indicate that the Legislature has decided this year to do something with respect to the lien laws and maybe we will be adjusting it again in January, whether it be a Peterson version or a Vickers' version, or whatever. But I think at this time I am going to follow a practice I have for eleven years solid and I think you will find this in the record anywhere you want to check it anytime no matter whether I am totally in favor or totally opposed, I will not, have not used the delaying tactic and I will try to do anything I can to make sure even the most ardent opponent gets their shot as quick as possible if that is what they want. So I am voting to go ahead and suspend the rules and let the issue make its way whether it be, as I say, this issue or any other, I just think that is the way we should handle each other in here and common courtesy requires that if we are going to live with each other and get along, we don't delay. Of course, you know what I am pleading for later, don't you.

SPEAKER MARVEL: Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, let me just say, number one, I think there is good

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reason to delay passing this particular legislation today. I believe that it is important legislation, it is very important legislation. We need to understand what we are doing. I want you to know that I have prepared a letter to the Attorney General to ask for an Attorney General's opinion on this particular bill. Personally, as I read 512, I believe it is unconstitutional. I think it gives unequal treatment to two different situations, and I would just say that I believe we would a mistake moving the bill today, and that is the reason why I asked for my motion and I would hope that you would turn down Senator Hoagland's motion so that you could take action on mine and indefinitely postpone so we can have an opportunity to talk with the Attorney General.

SPEAKER MARVEL: Senator Hoagland, do you wish to close?

SENATOR HOAGLAND: Let me close just briefly, Mr. Speaker.

SPEAKER MARVEL: I am sorry. Okay, go ahead, we thought your light was off.

SENATOR CHAMBERS: I am sorry. Mr. Chairman, I have to ask Senator Peterson a question.

SENATOR H. PETERSON: Yes, Senator.

SENATOR CHAMBERS: Senator Peterson, did I understand you to say that your desire is not to get to the kill motion today but to hold the bill up until tomorrow or whenever it would be considered?

SENATOR H. PETERSON: The reason I made the kill motion was to give us a day's layover so that we can get a letter to the Attorney General and see if we can't get an opinion, and I will ask him to go posthaste.

SENATOR CHAMBERS: Thank you. Senator Peterson just cut the ground out from under my very principled position that I took in my opening remarks. I thought he really wanted an opportunity to test the strength of the bill by suspending the rules and getting this kill motion today, but if all he wants to do is delay it, then I think everybody will know how to vote appropriately and I won't try to influence you, I will leave that to your conscience.

SPEAKER MARVEL: Okay, Senator Hoagland.

SENATOR HOAGLAND: (Microphone not on)...and colleagues, let me just summarize quickly by saying that when this bill was

debated on General File three or four weeks ago, we had a full and extensive and lengthy debate on the committee amendments, which at that time was the industry's response to LB 512, and those committee amendments were rejected after a full and complete discussion here on the floor and the bill went on to Select File. Now today we have had a full and complete discussion on the second industry version, the industry fall back compromise position in the form of Senator Peterson's amendments. We have a full and complete discussion of that and those amendments were rejected. Now there was also another approach to dealing with this issue a non-LB 512 approach in the form of Senator Vickers and Senator Goll's recommendation that we simply repeal the lien law, and that has been circulating around for several weeks and we have thought about it and a lot of us have looked into that issue, and that was discussed at a limited extent today and the sponsors of that motion decided to withdraw it. Now I think we have had two long full sessions debating the first industry response and the second industry response. Now Senator Peterson quite candidly has admitted that he is putting this motion to kill up in order to delay the vote on the bill, to have it laid over so he can seek an Attorney General's Opinion. Now the form of the bill that we have now is the same bill as was virtually introduced with the exception of the commercial projects having been taken out. That Attorney General's Opinion could have been requested as early as January. I think if this motion to suspend the rules fails and Senator Peterson files his motion to kill, we are going to have another motion to suspend the rules to take up the motion to kill. So I think it really makes sense to suspend the rules now and advance the bill because all we are going to do is get tied up in procedural knots for another half hour or forty-five minutes on this bill if we don't. So I would so move, Mr. Speaker, so we can move onto the other business on the agenda today. Thank you.

SPEAKER MARVEL: Okay, the motion is to suspend the rules and vote on the bill without further debate. All those in favor of suspending the rules vote aye, opposed vote no. Have you all voted? Have you all voted? Record the vote.

CLERK: 31 ayes, 6 nays, Mr. President, on the motion to suspend the rules and vote on advancement.

SPEAKER MARVEL: The motion now is advancement of the bill. All those in favor vote aye, opposed vote no. This is the advancement of the bill. Okay.

CLERK: 26 ayes, 5 nays, Mr. President, on the motion to advance the bill.

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LR 188  
LB 179, 181, 252, 273, 273A, 303, 322,  
346, 376, 381, 384, 389, 441, 451, 470, 472A  
485, 497, 501, 543, 512, 552, 545, 553, 554.

Senator DeCamp. All those in favor vote aye. All those opposed vote nay. It takes 30 votes.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Senator DeCamp.

SENATOR DeCAMP: How many are excused? Eleven?

SENATOR CLARK: Two.

SENATOR DeCAMP: Two? Okay, we still stand a shot, so I would ask for a Call of the House and take call in votes if that would be okay. But I would ask for a Call of the House first.

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

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

SENATOR CLARK: The House is under Call. All Senators will return to their seats, and if all Senators will check in, please. The Clerk would like to read some things while we are trying to get everyone registered in here.

CLERK: Mr. President, while we are recording our presence, I have a communique from the Governor addressed to the Clerk. Engrossed LBs 181, 252, 303, 381, 441, 451, 470, 485, 497, 543, 179, 346 and 384, 273, 273A, 501 and 545 were signed by me May 22 and delivered to the Secretary of State. Sincerely, Charles Thone, Governor.

Mr. President, I have an Attorney General's Opinion addressed to Senator Barrett on 376; one to Senator Hefner on 552. (See pages 2228 through 2233 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined 406 and recommend that the same be placed on Select File with amendments; 551 Select File; 552, 553, 554 all on Select File with amendments. (See pages 2233 through 2234 of the Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 322 and find the same correctly engrossed; 376, 389 and 512 all correctly engrossed.

Mr. President, new resolution, LR 188 by Senator Wagner.

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LB 316, 352, 360, 448,  
477, 477A, 512

PRESIDENT: LB 360 passes and that will conclude Final Reading for today. Do you have any matters to read in, Mr. Clerk, at this point?

CLERK: Very quickly, Mr. President, I have two Attorney General's Opinions, the first addressed to Senator Beutler regarding LB 352, and one to Senator Howard Peterson on LB 512. Both will be inserted in the Journal. (See pages 2250 through 2253 of the Legislative Journal.)

Mr. President, I have a letter from the Governor addressed to the Clerk. (Read letter regarding LBs 477, 477A and 316 as found on page 2254 of the Legislative Journal.)

PRESIDENT: We are ready then, Mr. Clerk, for General File. Thirty minute limit. Mr. Speaker, do you want to say anything at this time about the limits on General File and General File position. I recognize Speaker Marvel.

SPEAKER MARVEL: I think that this is to encourage people to understand that we are practically down to the end of the line and that they should treat things accordingly. That's....in other words, we can't force that issue but we can encourage it.

PRESIDENT: All right, we are ready then, Mr. Clerk, for LB 448.

CLERK: LB 448 was introduced by the Performance Review and Audit Committee and signed by its members. (Read title.) The bill was originally read on January 20 of this year. At that time it was referred to the Public Health and Welfare Committee for hearing. The bill was advanced to General File, Mr. President. There are committee amendments pending.

PRESIDENT: The Chair recognizes Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, first of all I guess I would not believe that this is a piece of legislation that has to be enacted in this session of the Legislature and I was quite surprised to see that the bill was place on the agenda. I personally would hope that we would simply pass over the bill until next year, and I guess at this point in time I would simply offer....well, I guess we will process it and see. But I really see absolutely no reason to process LB 448 in this session of the Legislature. But I should address at this point in time what the committee amendments do. The committee amendments to the bill delete the 16 hours of



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pass? All those in favor vote aye, opposed nay. This will require 40 votes. Well, we are not going to leave the board open much longer, got a long day. Record the vote.

CLERK: (Read the record vote as found on page 2363 of the Legislative Journal.) 40 ayes, 8 nays, 1 excused and not voting, Mr. President.

PRESIDENT: LB 138 passes with the required constitutional majority to place on the ballot. The next bill... now there are a number of bills that were either taken up or moved back yesterday. Mr. Clerk, maybe we ought to give them those bills up here. Would everyone look at your agenda and strike off the bills we have already handled, so you will know why I am calling the next bill? Mr. Clerk, do you want to read those?

CLERK: Mr. President, I will read the ones that we will not consider today.

PRESIDENT: That we will not consider, right.

CLERK: LB 213, 234, 234A, 318, 322, 389, 389A, 531, 352, and 552.

PRESIDENT: Okay, did everyone get those? That means the next bill on Final Reading then this morning is LB 512.

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

PRESIDENT: Read the motion.

CLERK: Mr. President, Senator...well...Mr. President, Senator Howard Peterson would move to return the bill to Select File for a specific amendment. The amendment would read as follows: (Read the Peterson amendment as found on page 2364 of the Legislative Journal.)

PRESIDENT: Motion to return. The Chair...

CLERK: Oh, you want the bracket one. I'm sorry, Senator. Mr. President, Senator Peterson would move to bracket LB 512.

PRESIDENT: The motion is to bracket?

CLERK: Yes, sir.

PRESIDENT: All right, the motion is to bracket. The

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Chair recognizes Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, I hope you have had an opportunity this morning to read the material that has been placed at your desk. LB 512 is a bill that in my opinion is legislative overkill and by now that should be apparent to all of us. The problem has been demonstrated to be the hidden lien. That problem was appropriately addressed by my amendment on Select File, which received 20 votes. The hidden lien problem is now being solved by a comprehensive redraft of the entire lien law. Now we have notices of commencement, notice of termination of commencement, notice of lien liability and various other changes to priorities, attachment of liens, waivers of liens, all of which go far beyond the initial problem, the hidden lien. LB 512 is exceedingly complex. I have distributed legal opinions from lawyers who will be having to use the law. Let me just quote from two that I have placed at your desk this morning. Nelson and Harding, written by Christy Schwartzkopf: "The amendments do muddy the waters. The quagmire of notices is now complicated by a dual system, one applying to commercial and one applying to residential, even more convoluted than LB 512 as introduced. The lien rights of most of ABC's members appear to be further eroded." And from the Vestecka firm and Tegtmeier firm: "I have spent many hours reading and rereading this bill, and I might add that even though I have had considerable training and experience in interpreting legislation, I find several parts of this legislation to be very complex and confusing, and I am not alone. It is very unfortunate indeed that what is intended to be a simplification of the law will require an attorney to figure it out. If you think for one minute this is not going to increase the cost of every transaction, you are mistaken. There will be attorneys involved in all stages of construction for years to help understand and learn how this bill is to work." It is far more complex than we have been told here on the floor. The problem has been so well explained and detailed that this body has lost sight of the need for a simple to understand solution for the consumer and the tradesman to use. Number three, LB 512 is supposed to give the consumers some peace of mind. Basically, based upon having to pay twice, I would like to direct your attention to a letter from the Millard Lumber Company indicating the steps that it will take. These include giving notice to the homeowners, and as that letter points out, Section 25 requires the homeowners to do four things. This bill

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is going to put an additional burden on the homeowner if the contractor, subcontractor or supplier does decide to protect their lien rights. LB 512 does not...repeat, I repeat, does not restore a commercial contractor's rights he or she had before passage of LB 512. The attorney's opinion handed out coming out from the local firm of Nelson and Harding points out that there are at least three significant adverse effects on the commercial contractor. Senator Beutler made the statement to me on the floor under questioning that the purpose of this amendment was to exempt commercial construction from the burdensome requirements of LB 512, and, in fact, restore him to his full rights. This just is not accurate, and your commercial contractors have been sold out in my estimation. And you will hear from them in the future. If there is a good chance that LB 512 will under some circumstances allow a lien field after a mortgage filed before the lien, I do not have any particular problem with this, but I know that this is not generally known by the financial community, and if it is, it will not be well liked. Once again, this is an example in my opinion of a complicated piece of legislation not being thoroughly reviewed by this body and another reason why the bill should not be enacted. Finally, LB 512 just does not make sense from the standpoint of the cost of housing in Nebraska. With LB 512 we are giving the consumer almost complete protection from a lien ever being filed. To the extent a builder or supplier does not have a reasonable ability to file a lien, that supplier is taking on a greater risk. This risk can only be translated into additional cost to the consumer, costs of the goods and services and eventually the cost of the home. This increased cost will be born by every consumer. Then finally let me address just a few words to the comments that Senator Beutler has put out on the floor, the one page sheet that you received yesterday. One need to go no further than the first paragraph to find a contradiction with reality. The paragraph states that the commercial contractors will follow approximately the same system they currently follow. If they do, they will have a hard time protecting themselves. Read the Nelson-Harding letter. A commercial... and I quote, "A commercial contractor can be bumped in priority without notice from the owner. Now, two, the lien rights from the commercial contractor entitled Equity Priority under present law may have different priorities under 512. Three, not all commercial contractors have the same rights under the Beutler-Pirsch-Kilgarin amendment." The second paragraph states that a sub or a supplier will take one or two paths in a residential construction depending on whether the construction is a

custom or a spec home. What if it starts out as a custom and turns into a spec home? Or more likely, what if it starts as a spec house, is sold and turns into a custom situation? These are questions that are not answered in the bill. And while we are on the subject changing from one to the other, what about transition sections in this bill? What happens to those poor contractors who have done work before January 1, 1982 and have a right to file a lien? Along comes January 1, 1982 and what must the contractor do to protect himself? Must the contractor file a notice of commencement? May the contractor give a notice of lien liability? Who knows. There are no provisions in the bill for transition. Three, this just concludes the first two paragraphs. What do the next five paragraphs say? They explain the maze that a contractor must go through to make certain that he has a lien even though limited in amount. And if you can read this and understand it even in this simplified version, then I congratulate you. I cannot accomplish that feat. It is for this reason, members of the Legislature, that I request that you vote to bracket LB 512.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, obviously this is equivalent to a kill motion on the bill, and I don't know quite how to address it except to suggest to you that I think that the most accurate way to characterize it is as last minute blitz scare tactics. Let me tell you the quality of information you are getting here, just to give you an idea of what they are trying to do to you. This letter from Tegtmeier, for example, says in Sections 10 and 16 that we are reducing the lien period from 90 days to 120 days. Well, he either can't read or he didn't have the latest version of the bill, because it is still 120 days which is what it always was. It is just patent misinformation. With regard to Section 19, it is two years just as it has always been, not one year as claimed in the letter. That is patent misinformation. These letters I only have received this morning so I haven't had a chance to review them in detail. The Millard Lumber letter, looking at that on the face, the homeowner is not required to file notice of termination. That is patently untrue to protect his rights. There is other misinformation in here, and some of the other information I don't even know if it is true or not because I don't understand what they are talking about. But I suggest to you that the lawyers that they are paying their big hourly fees to probably should be spending a

little more time on it before they write letters like this. I suggest to you to hold firm because it is a good law and you will like it. Thank you.

PRESIDENT: The Chair recognizes Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. President. I, like Senator Beutler, have not had a chance to go over this. I think that suddenly we have a barrage of papers on our desks which say things which some of them are not true and I will point them out to you. On one particular letter from a lawyer from Vestecka, Gorham and Tegtmeier they say at the bottom of the page in paragraph three, it appears to exempt large developers, provides residential real estate shall mean relation to a protected party real estate improved or to be improved containing not more than three acres. Well, we took that out. I have a feeling that many of these letters are based either on previous bills or have not been read carefully despite the great abilities of the writers. We have added, if occupied by owner, or to be so occupied. They do not include that in that language. The intent of this bill is to protect the residential homeowner and we have taken out the three acre limitation. On the first page of that letter, evidently they are not aware of that. Also, on paragraph four, the lien arises only if claimant records a lien within 90 days. Well, that has been amended to four months, as Chris pointed out, as Senator Beutler pointed out. Section 19, they point out, that's been amended to two years. They didn't take that into consideration. On six, subparagraph one, they say...they point out if the lien is for materials, they must be supplied with the intent that they be used in the construction of the project or incorporated therein. This would at least require the supplier to list the particular property on the sales contract delivery order or whatever similar type of instrument is used, or to actually deliver the materials to the job site. Why shouldn't that have to be true? Why should they take issue with that? If you claim a lien liable to foreclosure on property, why shouldn't you have in there the particular property that is involved? In our hearing, in our testimony, these people would perhaps have a contractor with six job sites and they just indiscriminately applied a lien to a job site because they really didn't know, they didn't have that on their job ticket. Why shouldn't they have to have that on their job ticket? Subparagraph two. Okay, the critical importance of this notice...this is the written notice of lien liability, is that in the event the claimant is not paid, the

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owner will be liable to the claimant only to the extent money is paid to the contractor after the owner receives the notice of lien liability. Delays in giving the notice may result in reduction or complete loss of lien rights. And that is true, but the notice need only to be mailed, not filed. You recall, we have talked about this that the notice just has to be mailed, not the complicated filing at the Register of Deeds, which the contractors and subcontractors objected to in our first hearing. The procedure...oh, it went on to criticize the procedure. This on page four. The procedure outlined in paragraphs one to three may be affected in the commercial construction situation or where a landowner contracts for the construction of a residence or improvement thereon and from that perspective a notice of commencement is more relevant. And that is probably the only place it will be used, and it will promote the second mortgage market. Liens may still be recorded....

PRESIDENT: One minute, Senator Pirsch.

SENATOR PIRSCH: ....after 30 days, but they will not have priority over the second mortgage, that's true. I guess I will just close by saying that when you get a barrage like this, I know it is alarming to you. I am sorry that you have had to go through the pressures that I know the lobbyists have put you under. I have been obliquely threatened. It is a hard decision to make, but remember, this is the only industry that has this ability. Why should they not have to go by the same standards of business that other businesses have to do, and deal with the party they contracted with? Thank you.

PRESIDENT: The Chair recognizes Senator Marsh.

SENATOR MARSH: Mr. President and members of the Legislature, I have been very quiet on this issue and I think it is time to cease being quiet. We have had a great deal of pressure from both sides presented to us, and I told people from the beginning that I expected to vote for a lien bill this year, and I intend to vote for a lien bill this year. The facts are, there has been a protected industry and it has had such protection that the consumer in many instances has been the category of individual to be hurt. This is not a perfect bill and I am not standing up to say LB 512 is perfect. But I am standing up to say, I believe it ought to have a chance to try to work. I will expect

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to vote for 512. I think the industry will be surprised to find it is not the nightmare they have in many instances tried to indicate it would be. I think it may work surprisingly well while giving some protection to the consumer, the individual who is buying the home, and that was what it was intended to do. Again I say, it is not a perfect piece of legislation, but it is the only piece on Final Reading for us today, and I am committed to vote for a piece of legislation which will make some step forward in protection for the potential homeowner. I want to have a chance to fulfill that commitment, so I will vote against bracketing LB 512 and I hope to vote for 512 on Final Reading. Let's give it a chance. The fact that both factions are unhappy ought to indicate it is a fair compromise at this stage. Let's try it.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: I call the question.

PRESIDENT: All right, the question has been called for. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries. Debates ceases, and Senator Peterson, you may close on your motion to bracket.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, let me first of all point out that the very fact that there is disagreement between Senator Beutler and the law firms which you have heard from this morning is an indication that this is not a good bill, that there is a disagreement on how it will be interpreted and that this will then mean that every homeowner and every contractor will be ending up with legal advice and additional costs, and I just call your attention to that disagreement. Number two, you will notice that no one addressed the commercial contractor. And I call your attention again to the fact that the commercial contractor is not protected under this bill. This is one of the main reasons why I feel it ought to be bracketed. It seems to me that if we bracket the bill, we have the opportunity to come back another year and develop the kind of a bill that Senator Marsh is talking about. I thought we had such a bill in the

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amendment that we offered to this body which seemed to me to be a balanced one, that I believe that this particular bill as it is before us now will cause us nothing but problems, and I would predict that if we pass the bill, we will be back here next year trying to correct all the errors that we have in the bill, and that certainly is not good legislation. So I would urge this body to bracket the bill.

PRESIDENT: The motion is to bracket LB 512. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 10 ayes, 27 nays, Mr. President.

PRESIDENT: The motion fails. Any other motions?

CLERK: Mr. President, Senator Peterson would move to return the bill for a specific amendment. The amendment would read as follows: (Read the Peterson amendment as found on page 2364 of the Legislative Journal.)

PRESIDENT: All right, the Chair recognizes Senator Peterson.

SENATOR H. PETERSON: Mr. Chairman, I believe the reason for this particular amendment is quite obvious, that actually that will give this body an opportunity to come back into session and take a look at this bill and really have the opportunity of creating the kind of a bill that I know the body is capable of creating. For this reason I would ask for the change in date of operation.

PRESIDENT: The Chair recognizes Senator Beutler.

SENATOR BEUTLER: I think I should complain, Mr. Speaker, that it is a motion to reconsider because it has the same effect. If the amendment is adopted, you have killed the bill this year. And I don't want to go on at length, but let me just make one more comment, and it really has to do with the good faith with which the subcontractors and material men have dealt with this whole problem. I feel quite honestly that they made a very honest and forthright attempt to find some solution to this problem which did not hurt their interest. It turned out that there was no such solution, and they made the decision that they were going to fight it all the way. That is simply what happened. 512 was adopted on General File and I didn't hear from their lawyers then about this little thing or that little thing that they wanted corrected, that would make the



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law better, and it went on to Select File and I didn't hear from the lawyers about this little thing or that little thing that we could do to improve the bill. And all of a sudden it is up here on Final Reading and the whole thing is a mess. Remarkable, isn't it? I would ask you to please reject this amendment as you did the last one and have a lien law that will protect the homeowner. Thank you.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: I would call the question.

PRESIDENT: The question has been called for, do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record the vote.

CLERK: 29 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: The motion carries, debate ceases. Senator Peterson, you may close on your motion to return.

SENATOR H. PETERSON: Mr. Chairman, let me just say first of all that I don't believe Senator Beutler has quite stated the facts. Number one, the bill that was reported out by the committee was not this bill, it was an amended bill. I think we discussed that rather carefully. Secondly, a group of us did present to this body a wholly new bill with amendments by Senator Burrows, amendments by a number of people on this floor, to try to make this a good bill. So I think in good faith these people who are interested in this bill have tried their very best to make a good bill out of it. Number two, I would say you will notice that Senator DeCamp has not spoken on this bill. He told me earlier on, I can't support you, Howard, but I can't talk against you. I really believe that we will be back in here next year writing a new bill. I think he is right. And Chris Beutler...Chris, you know full well that you told me that you would like to have the new bill that we had introduced but that you was too far over the dam that you couldn't back up now. So what I am saying, here is an opportunity for us to back up. Here is an opportunity for us to delay the operation of this bill until July 1, and I would plead with the body to just give us that possibility.

PRESIDENT: The motion is to return for a specific Peterson amendment. Those in favor vote aye, opposed nay. Record the vote.

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LB 322, 412, 512, 548

CLERK: 10 ayes, 25 nays on the motion to return the bill, Mr. President.

PRESIDENT: The motion fails. Any further motions?

CLERK: Nothing further, Mr. President.

PRESIDENT: Everybody be at his or her desk, we are ready to read on Final Reading LB 512. Mr. Clerk, you may proceed.

CLERK: (Read LB 512 on Final Reading.)

PRESIDENT: All provisions of law relative to law having been complied with, the question is, shall LB 512 pass? All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read the record vote as found on pages 2364 and 2365 of the Legislative Journal.) 41 ayes, 7 nays, 1 present and not voting, Mr. President.

PRESIDENT: LB 512 passes. Before we take up the next bill, there are some guests of Senator Nichol in the north balcony, Clint Morrison, Joe Huckfelt, Fred Masek and Bill Cannon, all from Gering and Scottsbluff. Would you welcome these gentlemen to the Nebraska Unicameral Legislature. Welcome, gentlemen. The next bill on Final Reading, Mr. Clerk, is LB 412.

CLERK: Mr. President, if I may read a couple of items.

PRESIDENT: Yes, you may.

CLERK: Your enrolling clerk has presented to the Governor for his approval, Mr. President, LB 322 and 548. I have a report from the Rules Committee regarding the proposed rule changed offered earlier. (See page 2365 of the Legislative Journal.) Mr. President, Senator Newell, offers a proposed rule change. That will be referred to the Rules Committee. (See page 2366 of the Legislative Journal.)

Mr. President, explanation of vote offered from Senators Kilgarin and Koch. (See page 2366 of the Journal.)

PRESIDENT: The Chair recognizes Senator Warner.

SENATOR WARNER: Mr. President, I have a motion to return 412 pending but I would ask unanimous consent to pass over

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LB 138, 216, 320, 376,  
406, 466, 512.

PRESIDENT: All right, would you verify the vote?  
Proceed to verify the vote.

CLERK: (Reread the roll call vote as found on page  
2370 of the Legislative Journal.) 24 ayes, 23 nays,  
2 present and not voting, Mr. President.

PRESIDENT: The motion fails...the bill fails on Final  
Reading.

ASSISTANT CLERK: (Read LB 320 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure  
having been complied with, the question is, shall LB 320  
pass with the emergency clause attached? All those in  
favor vote aye, opposed nay. Record the vote.

ASSISTANT CLERK: (Read the record vote as found on pages  
2370 and 2371 of the Legislative Journal.) The vote is  
37 ayes, 12 nays. All members were voting.

PRESIDENT: All right, LB 320 passes with the emergency  
clause attached. The next bill on Final Reading is  
LB 406, Mr. Clerk. And again I would urge all members  
to please stay at your desks as much as possible. It  
is very confusing to see everybody running around and  
politicking on the floor. It just shouldn't be and the  
people that sit there would like to have those others  
sit there too. Thank you.

CLERK: Mr. President, may I read some material in?

PRESIDENT: Yes, you may.

CLERK: Mr. President, I have a proposed rules change  
offered by Senator Wiitala, and, Mr. President, the  
bills we read this morning are ready for your signature.

PRESIDENT: Okay, while the Legislature is in session  
and capable of doing business, I propose to sign and I  
do sign LB 138, LB 512, LB 466, LB 376, LB 216. Proceed  
then, Mr. Clerk, with the reading of LB 406.

CLERK: (Read LB 406 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure  
having been complied with, the question is, shall LB 406  
pass? All those in favor vote aye, opposed nay. Record  
the vote.

CLERK: (Read the record vote as found on pages 2371

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LB 138, 216, 376, 466, 512

CLERK: Mr. President, one item. Your enrolling clerk has presented to the Governor LBs 138, 512, 466, 376 and 216.

PRESIDENT: The Chair recognizes Senator Hefner for purposes of an announcement.

SENATOR HEFNER: Mr. President and members of the body, since we are going to adjourn tomorrow and will not be here in June, I want to make this announcement today. If you remember, June in Nebraska is Dairy Month and I am going to give you just a few facts and figures about Nebraska's dairy industry. There are 13 cheese plants in Nebraska located in all parts of Nebraska. Seventy million pounds of cheese are produced in this state each year. Fourteen million pounds of ice cream are produced...were produced last year. And would you believe this, there are 120 thousand dairy cows in the state. Cash receipts from dairy products were approximately \$165 million last year. The dairy industry is a very important and competitive industry in Nebraska. It adds much to the economy of the state. And right now I am having some of the Pages pass a little package of cheese to you and you can have your choice...I think there is six different varieties, and these are complements of the new cheese company in Hartington, Nebraska, located in the heart of Nebraska in good old Cedar County in northeast Nebraska. Thank you very much.

PRESIDENT: The Chair at this point....Senator Cope, just a moment, I have some guests to introduce and then I will recognize Senator Cope. The Chair would like to introduce on behalf of Senator Labeledz some guests from the great State of California, Paul Kalmanovitz, Jack Miller, Bernie Orsi and Marv Bowerman, all from the Falstaff Brewery. Would those gentlemen stand with Senator Labeledz back there and be recognized. Welcome to this nation's only Unicameral Legislature, gentlemen. Now, Senator Cope, I recognize you.

SENATOR COPE: Mr. President and members, if we would have just known this a little ahead of time, we would have had cheese from the Ravenna Cheese Company which is in District 36, my District, one of the 13.

PRESIDENT: The Chair recognizes Senator Rumery.

SENATOR RUMERY: Mr. President and members of the Legislature, I am glad to see two non-cowmilkers supporting the dairy industry. Some of us have known this for some time and I am glad they have taken the leadership to

LR 146, 180, 188, 189,  
191, 194-196

LB 111, 118, 138, 213, 216,  
320, 472, 506, 506A, 512,  
523, 551, 556, 556A

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PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer this morning by the Reverend John Schmeltzer, Associate Pastor of First Plymouth Congregational Church here in Lincoln.

REVEREND SCHMELTZER: Prayer offered.

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

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

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

CLERK: One little one, Mr. President, on page 2378, insert the contents of LR 194.

PRESIDENT: All right, the Journal will stand published as corrected. Any messages, reports or announcements?

CLERK: Mr. President, I have a series of items. Mr. President, I have several communications from the Governor addressed to the Clerk. (Read. Re.: LB 320, 472, 111, 118, 213, 216, 512, 523, 551, 553, 554, 556, 556A, LB 138, LB 506. See pages 2383-2384.)

Mr. President, I have a veto message from the Governor. (Read. Re.: LB 506A. See page 2385 of the Journal.)

Mr. President, I have an Attorney General's opinion addressed to Senator Beutler regarding LB 321; an opinion addressed to Senator Hoagland on LB 213. See pages 2385-2387 of the Journal.)

Mr. President, new resolutions, LR 195 by Senator Koch. (Read. See page 2387-2388.) And Mr. President, LR 196 offered by Senators Wesely, Hoagland, Fowler and Beutler. (Read. See pages 2388-2389.) Mr. President, finally LRs 146, 180, 188, 189, 191 and 194 are all ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 146, LR 180, LR 188, LR 189, LR 191, LR 194. Anything further, Mr. Clerk?

CLERK: I have nothing further, Mr. President.

PRESIDENT: We will proceed then with agenda item #4, Final Reading on this final day of the 87th Legislature, first session. The Sergeant at Arms will secure the Chamber.