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LB 548, 549

PRESIDENT: All right, we will take that request. That is the first bill. All right, take them up separately. Any discussion on the first request for introduction of the bill by Senator Maresh's Business and Labor Committee on the claims bills? If not, all those in favor of introducing this annual claims bill vote aye, opposed nay. Have you all voted? Record the vote.

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

PRESIDENT: The motion carries. The first bill is introduced. Senator Maresh, do you want to take up...He wants to read in...

CLERK: We should read the title, Senator.

PRESIDENT: Read the title.

CLERK: Mr. President, (Read LB 548 by title for the first time as found on page 828 of the Legislative Journal.)

PRESIDENT: Now we will take up the...Senator Maresh, on the second bill.

SENATOR MARESH: Mr. President, members of the Legislature, now we are going to take up Request #907. One bill disallows the claims. The other one allows and we amend the bill to take some out from one and put them in the other so we need both bills at this hearing. So I move that this request be allowed.

PRESIDENT: All right, any discussion on the request to introduce, Request #907 to introduce the bill? Request #907. Hearing none, that will be Senator Maresh's opening and closing. All those in favor of the Business and Labor Committee's Request #907 for introduction, all those in favor vote aye, opposed nay. Record the vote.

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

PRESIDENT: The motion carries. The bill is introduced. Read the bill.

CLERK: (Read LB 549 by title for the first time as found on page 828 of the Legislative Journal.)

PRESIDENT: We are ready then for agenda item #6, Select File. Senator Chambers, will you handle Select File this morning since you are vice chairman technically of this committee? There is no E & R, Senator Chambers, on the first one.

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LR 72-75  
LB 548, 549, 134,  
160, 161, 179, 232

SPEAKER MARVEL PRESIDING

CLERK: Mr. President, Senator Johnson and Hoagland would like to be excused until they arrive.

SPEAKER MARVEL: We are on. . . . Okay, record the vote.

CLERK: Quorum present, Mr. President.

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

CLERK: Mr. President, your committee on Business and Labor whose chairman is Senator Maresh reports LB 548 to General File with amendments, LB 549 indefinitely postponed, both signed by Senator Maresh as Chair.

Mr. President, new resolutions LR 72 calling for an interim study by the Banking Committee regarding continuing study of LB 137, LR 73 offered by the Banking Committee regarding continuation study of LB 358 and LR 74 by the Banking Committee to study the Nebraska Investment Council's formulation of establishment of policies to govern its methods, practices and procedures.

Mr. President, LR 75 by Senator Beyer. Read LR 75. That will be laid over Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 134 and find the same correctly engrossed, 160, 161, 179 and 232 all correctly engrossed. (Signed) Senator Kilgarin, Chair.

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is to make sure that there is a company where if an employee chooses to do so, it would be available and I think that probably is available without jeopardizing the Blue Cross-Blue Shield bid in any fashion.

SENATOR CLARK: The question before the House is the adoption of the committee amendments to 556. All those in favor vote aye. All those opposed vote nay. Voting aye.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on the committee amendments? Once more, have you all voted on the committee amendments to 556? Record the vote.

CLERK: Mr. President, Senator Fowler requests a record vote. (Read the record vote as found on pages 1927 and 1928 of the Legislative Journal.) 14 ayes, 20 nays, Mr. President, on adoption of the committee amendments.

SENATOR CLARK: The committee amendments are not adopted. The motion failed. Do you have anything further on the bill?

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

SENATOR CLARK: On the bill itself, Senator Marvel. On the bill.

SPEAKER MARVEL: I think Senator Warner has covered the bill adequately. If there are no comments, I move that the bill be advanced.

SENATOR CLARK: The motion before the House is the advancement of 556 to E & R. Is there any discussion? If not, all those in favor vote aye. All those opposed vote nay. Have you all voted? Record the vote.

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

SENATOR CLARK: The bill is advanced. LB 548.

CLERK: Mr. President, LB 548 was a bill introduced by the Business and Labor Committee and signed by its members. (Read title.) The bill was first read on March 10th of this year. It was referred to the Business and Labor Committee for hearing. The bill was advanced to General File. There are committee amendments pending by the Business and Labor Committee, Mr. President.

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SENATOR CLARK: Senator Maresh on the committee amendments.

SENATOR MARESH: Mr. President and members of the Legislature, the committee amendments, first of all, are two claims by Eastern Airlines against the Department of Aeronautics which is a refund on fuel and this comes out of their fund, out of the Department's funds, and even though it was allowed by the Board, the committee felt that since it was sloppy bookkeeping by the Eastern Airlines allowing this to go on and on because of change of administration there, they weren't following up on this refund and so we went along with the Department and disallowed the two claims, one for \$63,148.10 and one for \$37,527.83. The second one was in the wrong bill and in your handout material it is on page 9, and it has to do with the Public Employees Retirement Board, pay to Sharon J. Dorman. The next one is on page 11 in your handout, the Board turned down Mr. Anderson's claim on some expired vouchers that he didn't cash and we felt that the Board seemed to have some problems with determining if Pamida should get a share of this since he was in their building, he was a druggist down in Nebraska City, and we felt that this was justified and we transferred this claim from the disallowed to the allowed claim. The next one is the Joseph J. Soukup Trust Fund. The Claims Board allowed this claim and they didn't have any recommendation for an amount. It came to us and we didn't know what to do with it, and I asked for an Attorney General's Opinion and he decided it was in the wrong...with the wrong Board, that it should not be handled by this Claims Board, so we sent it back to the Claims Board and they again allowed it without any amount and this time we decided to set up a trust fund of \$30,000, and figuring 13 1/2 percent interest this would bring in to Mr. Soukup about \$337 a month in addition to his \$220 a month Social Security, we figured this would be probably a reasonable amount for him to live on, so this is the amount we recommended to the Legislature to be allowed. This money will be invested with the Investment Council and we hope that they can make monthly payments to Mr. Soukup. This will be for the duration of his lifetime, and after his death, \$30,000 goes back to the general fund. The next is on page 8 in your handout against the Department of Health, pay to Grady Memorial Hospital. And the next one is to Crawford School District. These are all on page 9. There are two of those for Crawford City Schools. This is some federal and state fish hatchery property where the children come to Crawford Schools and this is tuition for those children from that property. The next one is the University of Nebraska to Lincoln to pay for sewer and water improvements, \$7,097, and the next one, Claim 181, is a problem that occurred at the prison where they found some

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syringes in one of the prisoner's cell. They put him into solitary confinement without a hearing, and the federal court has stated that this is not possible that he has to have a hearing so the two, Mr. Parratt and Mr. Nance were held personally liable. And the Attorney General feels that the state should, since they are carrying out their duties that the state should pick up this court costs and attorney fees amounting to \$2,103.50. They also had a claim for interest but since we do not know when they will get paid, we felt if they want to come for a payment of interest, it should be during the next session of the Legislature when they will determine the amount to be paid. The last one has to do with Mr. Donald Brunken of Denton. It is a Voc Tech refund of \$4.29. If there is any questions on these amendments, I will try to answer them.

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SENATOR CLARK: We have an amendment to the committee amendments.

CLERK: Mr. President, Senators DeCamp and Howard Peterson move to amend the committee amendments with respect to Claim No. 039, Joseph J. Soukup Trust Fund, strike \$30,000 and insert \$50,000.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, the Joe Soukup story has been told and retold, heard and reheard so many times that I do not want to expend any significant amount of time on it. Suffice it to say that in all of the settlements and discussions on this matter the minimum amounts we always talked about were either 80 or 100 thousand, something like that. Therefore, to make it \$50,000 does not seem even slightly unreasonable and maybe not reasonable enough. But it is an acknowledgement that here was a person that by every standard there is we did a lot of damage to him as a state, and I think we have to establish the precedent that we have to make up for these errors whether it be the LSD testing he was used for as a guinea pig, whether it be the damage to his feet that was caused, whether it be the illegal holding of him for any number of years after he should have been released, so on and so forth. As I say, I don't want to spend two hours or an hour reviewing the case because I think every member has had ample opportunity to review it. Do remember this, that in the past the Claims Board simply rejected it. When they finally had the facts and realized...and realized that we were serious, that there was something that needed to be corrected, the Claims Board finally came around and they said, yes, damages should be paid, something should be done, and they simply left up to the Legislature the amount. Now I am suggesting \$50,000 is a reasonable amount. I talked to Senator Peterson who has worked on this at great length. He can talk for himself, of course. He says it is maybe a little low, but it would settle the matter and I would urge you to adopt this amendment to the amendment. It is not that big a change.

SENATOR CLARK: Senator Maresh, did you want to talk on the amendment to the committee amendments?

SENATOR MARESH: Yes, Mr. President, I would like to call attention, in the handout material there was a typing

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error of \$5,000. That should read \$30,000 as the amendment in the book. I would oppose this amendment because the committee worked hard. We met many times for a long time each time to try to determine a reasonable amount and we agreed on this, so I hope that the Legislature abides by the committee's decision. Thank you.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I too rise to oppose the DeCamp amendment to the committee amendment. More specifically, of course, I am the one "no" vote on the committee for this particular claim anyhow, but I would remind the body that there was an Attorney General's Opinion dated April the 9th in reply to Senator Maresh in this Joe Soukup claim matter and the Attorney General's Opinion was that it is probably unconstitutional for the Legislature to pay Mr. Soukup through the miscellaneous claim procedure, and to be specific about it says, and I quote from the Attorney General's Opinion, "Payment of Mr. Soukup's miscellaneous claim would probably violate Article III, Section 18, Article I, Section 16, of the Nebraska Constitution". Now it is without a doubt that Mr. Soukup had some bad things happen to him, but it was my contention in the committee that the procedure should have been followed through the court procedure. I think the attorneys for Mr. Soukup are using us, leaning on our sensitivities, if you will, on our conscience, and I am sure the state did some thing that might have been bad, I don't know. I am not sure of it...I shouldn't say it that way, I am not sure, I don't know. That's been alleged, and if that is the case then I think the courts would probably award a generous payment. But I think we are being asked to be judge and jury in this manner and that bothers me. I think the court system in this nation is set up to answer these types of questions. I don't think the legislative body is the one to set up to do it. So I object strenuously to Senator DeCamp's motion to the committee amendments. And, quite honestly as I indicated, I am not in favor of the committee amendment in that regard, and I remind you once again we do have an Attorney General's Opinion that indicates that paying through the Miscellaneous Claim Act is probably a violation of our Constitution which we have all swore to uphold. So I oppose the DeCamp amendment.

SENATOR CLARK: Senator Nichol, did you want to talk on the amendment to the committee amendments?

SENATOR NICHOL: Yes, Mr. President. Here we go again.

What happens when anybody else has a claim? They go through the courts. Why hasn't this gone through the courts? Probably because they don't think they can win. Now we all have a bleeding heart for this poor man and it is pitiful. It's too bad, but let's look at the other side just a minute. Has he had any benefits from the state? Did he ever eat on the state? Did they ever pay for his lodging and clothing, food? You bet. And here we are brought in because the committee says, let's pay him a figure that they pull out of the hat, and Senator DeCamp is pulling a different figure out of the hat. If he really has the money coming, we are way under the money. If he doesn't have any coming, we are over the money, and we are making a decision here just out of nowhere, for no reason especially, nothing has been proved to us, we're not supposed to do that, just plunk out a bunch of cash, just plunk out a piece of money. And this doesn't seem reasonable for a body like this to act that way. I think we are more responsible than to be either softhearted or hardhearted just as our whims seems to guide us. If this is a legitimate claim, it should go through the courts. You can sue the state. You can win from the state, but why isn't this done? Because apparently he can't win that way. So we say, Legislature, be responsive, you know, do what you think is right. So somewhere what is right is between 30 and anything from there on up or to nothing. So I oppose the amendment.

SENATOR CLARK: Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman and members of the Legislature, I would rise to support the DeCamp amendment, and the reason that I do is that since becoming the State Senator from out in that area I have become acquainted with Joe Soukup and with the case. I read all the history on the case. It appears to me that the claim route was the right route. The only problem that I see is that this Legislature held up last year and the year before and that is the reason why we had a problem. Apparently the Claims Court this last year voted 2 to 1 to recommend to this body that a claim be allowed, then it was returned again to the Claims Court again this year. They just recently voted to allow it again 2 to 1 and said the amount ought to be set by the Legislature. I would just like to read you a letter that I received from Joe Soukup. Bear in mind this is a letter from a guy who supposedly has lost all his marbles, a fellow who was in the institution out here, I think abused, and really as John indicated was used as a guinea pig. This is what he says: "First, what options



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do I have after you Senators get through with my claim? Senator Peterson, I do not want further education or job training through the state. The state has already ruined my life enough. If I want any of them, it will be my choice. My claim is for a money amount. That is what I want. The state had me for 15 years plus years. For the most part they didn't follow through on their obligation as my guardian. Now that I am out here I am involved with the state. As one of your constituents it is an obligation for me to inform you just how I feel. Since my future rides on how this situation comes out, I am trying to work as close as I can with you. I want you to stay on top of my claim". The reason why I am suggesting \$50,000 rather than \$30,000, this man gets \$220 a month and it just seems to me in today's economy if you invest \$50,000, you are going to have to hustle to get enough for him to live on even at that kind of a figure.

SENATOR CLARK: Senator Kahle, did you want to talk to the amendment to the amendments?

SENATOR KAHLE: Mr. President and members, of course this issue has been before us I guess ever since I have been in the Legislature, at least while I was on the Business and Labor Committee in the last two years. I guess the fears that I have and I know we can all get a soft spot in our heart and Mr. Soukup was in the Chamber the other day and perhaps melted my heart a bit, but I don't know how many thousand people we have had in our institutions since the beginning of Nebraska's statehood, I doubt that very many of them ever thought that they were treated exactly perfectly, and many of them, I am sure, thought that they were abused in one way or another. So, I think if we... I guess I would go along with the \$30,000 if that is what the rest of you want to do. But I still think we are setting a precedent in whatever we do and Senator Nichol was probably right that if there is a case here it should go through the courts because I just feel that we are going to have an enormous amount of claims if we make this amount very big. As I said before, I just doubt if you will find anybody that's been in an institution that thinks they haven't been abused in one way or another, and I don't know if we know whether Joe Soukup was abused when he, for instance when he was out at Kearney. He says he was. But perhaps the treatment that was given at that time was proven to be wrong and there is nothing to say that the treatment that we are giving the people in our institutions today is going to be right ten years from

now or fifteen years from now or twenty years from now. So if we are going to take that obligation upon ourselves, especially as State Senators rather than through the courts, I think we are going to be judge, jury and the whole bit for many, many cases which we have no business dealing with. I just wonder too...I don't want to ask Senator Maresh, I guess he is gone now, but I understood there was lawyer fees involved at one time in this case when they were asking for the larger sum. Perhaps Senator DeCamp can answer. What happened to those bills for the lawyers? Are they still...if we pay any amount or set up any kind of a trust, will we be obligated for those lawyer fees? I will not ask you to answer now, John. You can do it when you are closing. But it is...I think we are opening ourselves up for something we have no business getting into, and I have felt that way all along, and I hope I am not considered a hard heart because I think we need to be careful of what we do. But to have the claim come through the Legislature for someone that claims that he has been abused, I don't believe is the way we should be going with this funding. Thank you.

SENATOR CLARK: Senator DeCamp, do you wish to close on your amendment.

SENATOR DeCAMP: Mr. President, I am thrown into a state of stupor at some of the statements. Here you poor dumb clod, go to court, except we have laws that say, no, you have to go through the claim system. Finally he uses the system, he follows the system, he goes to the Claims Court, he gets approval. Now you say, hey, dummy, go to court. The court said, go through the claim system. How much Catch 22 do you want to play with people's lives? Now this bad guy, let me tell you his crime. Let me tell you Joe Soukup's crimes so you know why we locked him up for twenty years. Joe Soukup created the unforgiveable crime of being a neglected seven year old kid. Yeah, can you imagine anything so heinous, so evil? Joe Soukup was a neglected seven year old kid who got into the system and once in the system he was used for LSD experiments. He was kept contained and locked up because we shoved him from one thing to another, from one institution to another because we didn't want to take care of him, we didn't know what to do with him. As a result of the Joe Soukup study, we have changed law after law after law in this state. So if it has done nothing else it has been one heck of a laboratory to examine our system, to repudiate what Senator Kahle just said, we've got no business looking into this. No business, my derriere, it is exactly our business to see

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how our systems function, see how our institutions function. If there is any forgotten institution, if there is any forgotten institution, it is our mental and penal institutions. They are the ones we don't want to look at. They are the ones we don't want to examine. If there is something wrong, golly, we want to cover it up. We have learned one heck of a lot out of the Soukup case. He has followed the system all the way and about those attorney's fees, there is something called pro bono. It means lawyers, whoever, who believe that wrong has been done and simply donate their time. In this case I think Paul O'Hara and Del Rasmussen, Phil Reilly and some others donated their time because they said, this just ain't right somebody should do something about it. That's what it is all about. Now I don't think we are asking an unreasonable amount. To any of those, including my good friend, Senator Vickers, would you let us lock you up and stick LSD into you for twenty years for \$50,000? I doubt it. I am not going to go through the history of this entire case. For those of you who had an interest, baby, it's been there repeatedly, and so I urge you to adopt the amendment, and I think Senator Vickers and Senator Nichol are right with one respect. It is too little. I regret that I am offering this amendment at that amount, but I think it is a reasonable settlement of this issue done all through the procedure that you, the lawmakers, set out which is using the claim system and he has been approved by the claim system even though it took about four years to do it. That's the system you wrote and set out. Now at least follow it once somebody has gone through the loops and hoops. I urge you to adopt it.

SENATOR CLARK: The motion before the House is the adoption of the....he was closing. Senator Maresh.

SENATOR MARESH: Can I correct the record? This never was in court. Can I correct the record by saying it never was in court? Could I speak on that issue, or not?

SENATOR CLARK: No. The motion before the House is the adoption of the DeCamp amendment. I am going to rule that all it takes is a simple majority because it's an amendment to the committee amendments. All those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting no.

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

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all voted? How many are excused, Pat? There is two excused. Have you all voted? Record the vote.

CLERK: 23 ayes, 21 nays, Mr. President, on adoption of the Decamp amendment.

SENATOR CLARK: The amendment is adopted. Now on the committee amendments, Senator Goodrich.

SENATOR GOODRICH: Mr. President, I just wanted to divide the question so that we vote on Soukup separately from the rest of the claims included in the bill.

SENATOR CLARK: I will rule that it is divisible. We will divide it that way. Soukup will be separate from the other claims. We have a motion on the desk. Senator Goodrich, do you want to sign this? We will take the Soukup part of it first. We have amendments for that.

CLERK: Mr. President, Senator Koch moves to amend the DeCamp-Peterson amendment striking \$50,000 and insert \$75,000.

SENATOR CLARK: Senator Koch. Senator Nichol, for what purpose do you arise?

SENATOR NICHOL: Mr. Chairman, just for clarification, how many votes does it take to pass this amendment?

SENATOR CLARK: It's an amendment to an amendment so it would take a simple majority.

SENATOR NICHOL: Well, are we going to split the question, then wouldn't it take 25?

SENATOR CLARK: Let me check with my legal beagle here. Senator Warner. Senator Warner.

SENATOR WARNER: Well, I guess I wanted to raise the same question that I gather Senator Nichol is raising. I was of the impression that Appropriation bills which the title says it's an Appropriation all amendments or amendments to amendments require 25 votes and I don't raise the issue relative to what you just....to the issue before us, but the precedent.

SENATOR CLARK: Well, Senator Warner, the title of the bill says it's an Appropriation bill so we will rule it will take 25 votes for anything.

SENATOR WARNER: Thank you, Mr. President.

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SENATOR CLARK: Are you in agreement with that? Are you in agreement with that?

SENATOR WARNER: It would be 25 votes for amendments to an amendment?

SENATOR CLARK: Yes.

SENATOR WARNER: Any change in the....yes, sir, I would agree with that.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, then would your last decision be the other way? Just curious.

SENATOR CLARK: In order to play safe on this one, Senator Nichol, we are going to take another vote on the last one. Senator DeCamp agrees to that. So the question before the House at the present time is the adoption of the DeCamp amendment. Senator DeCamp.

SENATOR DeCAMP: Well, Mr. President, if at first you don't succeed they change the rules and you start over, but that's okay, what the heck. I would ask for a Call of the House. You have heard the arguments, and try a board vote. As I say, I don't think the guy is being unreasonable, so a Call of the House and.....

SENATOR CLARK: You want a vote?

SENATOR DeCAMP: Pardon?

SENATOR CLARK: Do you want a roll call vote?

SENATOR DeCAMP: Well, I was hoping we could just get it with just a Call of the House and see what happens on the board.

SENATOR CLARK: We will have a Call of the House. All those in favor of a Call of the House vote aye, opposed vote nay. It is kind of a sticky issue but I think we ought to do it properly if we are going to do it. Record the vote.

CLERK: 23 ayes, 1 nay to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All unauthorized personnel will leave the floor. Senators will all return to their seats and everyone will check in, please. If everyone is sitting at their desk, will you please

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check in. Senator Newell and Senator Haberman. Senator DeCamp, did you want to wait for the other two or have the vote?

SENATOR DeCAMP: Are they around?

SENATOR CLARK: I wouldn't have any idea, sir.

SENATOR DeCAMP: Are they excused?

SENATOR CLARK: No. The only one that is excused is Senator Chambers.

SENATOR DeCAMP: Well, hell. You don't know where Haberman is? You don't care, do you? Aw, let her rip.

SENATOR CLARK: Do you want a roll call?

SENATOR DeCAMP: Tell Haberman he should come up here. He is in his office on his phone. And so is Newell. Oh, he voted red. Well, tell him to stay on his phone. Go ahead, let it go. I'll have a roll call or whatever.

SENATOR CLARK: All right, so you will know what we are voting on, we are voting on the DeCamp amendment to the Soukup which has been divided, and we are voting on that portion of the committee amendments. Do you want a roll call vote? Raising it from \$30,000 to \$50,000. Do you want a roll call, John? All those in favor....clear the board. All those in favor of that amendment vote aye, opposed nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Senator Haberman, we are under Call, if you would get in your seat, please, so you could vote. Stay away from mother. Have you all voted? Record the vote.

CLERK: 25 ayes, 22 nays, Mr. President, on adoption of the DeCamp-Peterson amendment to the committee amendments.

SENATOR CLARK: The amendment is adopted.

CLERK: Mr. President, Senator Koch now moves to amend that portion of the committee amendments dealing with Joseph J. Soukup by altering the DeCamp-Peterson amendment changing that from \$50,000 to \$75,000.

SENATOR CLARK: We are still under Call. Senator Koch.

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SENATOR KOCH: Mr. Chairman, it is obvious that the Legislature and the state's conscience has been taxed unduly at the present time when you look at the vote. Rather than undo what we have just accomplished I will withdraw my amendment.

SENATOR CLARK: The next amendment.

CLERK: Well, Mr. President....all right, Mr. President, I have nothing further on the Soukup claim.

SENATOR CLARK: The motion before the House is the adoption of the Soukup amendment. Is there any discussion on it? Senator Fitzgerald, did you want to talk? On the Soukup amendment.

SENATOR FITZGERALD: Mr. Chairman and members, I have a bill here for the attorneys and I think everybody in the committee has it, William Reilly and James Livingston, hours, 250 hours at \$60 an hour, or a total of \$15,000; out of pocket expenses, \$867.80; mileage, 3300 miles at 22 cents a mile, and it comes up to \$860, for a total of \$16,727.80. At the hearing I said I would never vote for a bill that would not have a separate bill for the attorney fees. So this here bill here was submitted to me for the attorneys. So I don't know...we never have acted on it in committee to the effect, they said let's do something for Joe and let the attorneys do something in Grand Island. So they never did act on anything on the bill but this is the bill they did submit.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, I guess I am really baffled at this point. As I understand it, I have to muster 25 votes again now. I guess it's a crazy question but just how many times do I have to try this?

SENATOR CLARK: Five.

SENATOR DeCAMP: Okay, because that's kind of what it's looking like, Senator. What are the rules of the game at this point? I really would like to know in all fairness. Where are we on this issue?

SENATOR CLARK: We adopted your amendment.

SENATOR DeCAMP: Okay, so what have we got before us then?

SENATOR CLARK: It's that portion of the committee amendments as amended because it has been divided.

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SENATOR DeCAMP: Aw hell, they just keep us having it going until they get tired here. Okay, Senator Fitzgerald, I know what you are trying to do and with all due respect I would say definitely there is no mood to pay any attorneys' fees and the attorneys indicated to me they would do this work pro bono. I think we will find out if they are telling the truth and I would suggest you withdraw the amendment only so it doesn't jeopardize the balance of it. Does that make any sense?

SENATOR FITZGERALD: I never put an amendment up there, Senator.

SENATOR DeCAMP: Oh, okay.

SENATOR FITZGERALD: All I did was just a point of information that I did get a bill from them.

SENATOR DeCAMP: Yes, well, I wouldn't pay it yourself, if that helps, and there is no money in there for the attorneys' fees and once again I move adoption of wherever we are on this issue.

SENATOR CLARK: It's the adoption of that portion of the committee amendments to the Soukup amendment as amended. Senator Maresh, did you want to speak on it?

SENATOR MARESH: I will speak on the Fitzgerald amendment, but that isn't pending, right?

SENATOR CLARK: No, that's not an amendment. Senator Higgins.

SENATOR HIGGINS: Point of clarification, Mr. President. We have passed the amendment that is going to pay this Joe Soukup, right?

SENATOR CLARK: Right.

SENATOR HIGGINS: We haven't had an amendment offered to pay the attorneys anything, right?

SENATOR CLARK: That's right.

SENATOR HIGGINS: Then that's what I wanted to know. We don't have to make an amendment to pay the attorneys, right?

SENATOR CLARK: Well, if you wanted to pay them, I suppose you would, yes.

SENATOR HIGGINS: But if you don't want to pay them, you



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don't have to make an amendment.

SENATOR CLARK: They are not involved, no.

SENATOR HIGGINS: Thank you.

SENATOR CLARK: The question before the House is the adoption of the first portion of the divisible amendment of the Soukup amendment. All those in favor vote aye, all those opposed vote nay. It takes 25 votes. We are voting on the adoption of that portion of the Soukup amendment. Record the vote.

CLERK: 26 ayes, 11 nays on adoption of the committee amendment as amended, Mr. President.

SENATOR CLARK: It is adopted. Now the first part of the amendment. The Call is raised.

CLERK: Mr. President, I have a motion to the first part of the committee amendments.

SENATOR CLARK: Read the motion.

CLERK: Mr. President, Senator Vard Johnson moves to amend the first part of the committee amendments by deleting lines 20 and 24 on page...that's page 2, is it not, Senator? Okay, thank you.

SENATOR CLARK: Senator Johnson.

SENATOR V. JOHNSON: Yes. Mr. Speaker and members of the body, my amendment deletes lines 20 through 24 on page 2 of the committee amendments. My amendment raises what I think is a very interesting and important policy question for the State of Nebraska. I was going over the handout presented to us by the Business and Labor Committee on this particular claims bill, and on page 9 I came to a description of one of the claims, Claim #181 to Warden Robert Parratt and Deputy Warden A. V. Nance, and the claim is for \$2,903.50. My amendment would eliminate the allowance for this claim. Now, according to the description the claim is for indemnification against a judgment that was taken against the Warden and Deputy Warden, a judgment rendered by the U.S. District Court for the District of Nebraska. According to the description, in this particular case the plaintiff who was an inmate of the Nebraska State Penitentiary and was transferred to the Adjustment Center for discipline purposes when a guard allegedly found a needle and syringe in the plaintiff's cell. The court

found that the defendants, Parratt and Nance, had violated the plaintiff's due process rights since the plaintiff was held in the Adjustment Center for 69 days without a hearing. Now here is the policy issue. The court found that the defendants were deliberately indifferent. There was deliberate indifference to the plaintiff's complaint about being held in the Adjustment Center without a hearing and that contributed to the deprivation of plaintiff's due process rights. The policy question is this, at what point in time does the State of Nebraska not indemnify its employees who obviously are acting as employees for the state and it seems to me that when the employees demonstrate through their conduct deliberate indifference to people in their hands that the state ought not to indemnify them against judgments that ultimately are taken against them for their harms to the others. Now we have just dealt with the Joe Soukup claim, and in the Joe Soukup case what we have had operating here are state employees who obviously were indifferent to the well-being of a young man who spent a lot of time in regional centers in this state, who, as Senator DeCamp points out, was deemed to be a neglected child at the age of seven and over a twenty year time period was subjected to LSD experiments and other kinds of treatment. The end result was that he was left a different individual than he ought to have been. Our U. S. District Court has said that two of our own officials were "deliberately indifferent" to the rights of an inmate in our penal complex. Now I recognize that virtually everybody who is an inmate in our penal complex is a criminal. They would not be there but for the fact they got convicted of some offense and were sentenced to the penal complex, but just because they are in our penitentiary does not mean that they are devoid of rights and they do have rights. And, of course, our employees have got to protect their rights and they have got to be conscious of what their rights are. If you and I end up indemnifying our employees who are deliberately indifferent to the rights of our inmates, we, in a sense, condone, we, in a sense, condone mistreatment of persons who are held in our institutions because we are prepared to pay the piper when our employees do wrong. Now when I saw this in the handout, I went back to Senator DeCamp's LB 273, which we talked about a bit this morning, his risk management bill, because that bill sets a standard as to when we shall compensate and we shall indemnify employees who commit some wrong and a judgment is taken against them and that bill says that we shall compensate an employee if the employee was acting in the scope of the employee's employment and it says if the employee was not guilty of willful or wanton neglect of duty. There is the standard there, "willful or wanton neglect of duty".

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So the committee that heard 273, and, of course, this body has approved 273 on General File and on Select File, have said we shall indemnify our state employees acting within the scope of their employment for harm that they do so long as they don't act willfully or wantonly. Now it seems to me when a U. S. District Court has said that our warden and deputy warden were deliberately indifferent, they were deliberately indifferent, to the rights of an inmate, that that conduct is tantamount to a willful or a wanton neglect of duty. And we are about to set a policy for the State of Nebraska that those kinds of employees and those kinds of acts will not be compensated and I think if we are going to be consistent with that which we are attempting to do with 273 we should not allow Warden Parratt and Deputy Warden Nance's claim for indemnification. Instead we should say to these gentlemen, as hard as it is, as hard as it is, this is a claim that you, yourself, have to satisfy out of your own pockets. It is a \$3,000 claim. It is no small amount and none of us would want to have to do it but one of the effects that that kind of action has is its instructional effect, and the instruction simply is that we say to people who happen to be our employees, "You have got to be careful in what you do. You can't go beyond the bounds of propriety and of constitutional law, because if you do, you may well end up paying the piper. We are not going to hold your hand everytime. So you have got to be careful with the people who are in your care". Just as we ought to have said that to the people who were caring for Joe Soukup. So it seems to me that the better policy in this instance is to reject the claim because it will continue a policy that I think that you and I are about to adopt when we pass 273.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Johnson, how did you vote on that amendment, 273, this morning?

SENATOR V. JOHNSON: Which amendment was that, Senator?

SENATOR NICHOL: That was the amendment that has to do with us picking up the fee when a public employee is, shall we say, "indifferent". How did you vote on that?

SENATOR V. JOHNSON: I voted for the amendment.

SENATOR NICHOL: Okay, thank you. My point is this. We are going two ways at the same time. If we are going to do this and say that somebody by being indifferent is willful and wanton, then why don't we say that the people who

caused Joe Soukup harm, why don't we collect the money from them? They have done the wrong. But, no, we have already passed a law that says, "Public officials, you are responsible when you do something wrong", and now we are coming right up behind and say, "Public officials, you are not really responsible. The governmental entity for whom you work will pick up the tab and you are not responsible for a thing". When Mr. Sieck does something wrong, he is responsible. Nobody stands behind him. Unless he has covered himself with insurance, he pays through the nose. Nobody else protects him. Why should we say to public employees, it is okay to do anything you want because we are picking up the tab. Really my point here is, I don't think we really realize what we have just done a few minutes ago by picking up a tab with no lawsuit, no nothing. We have just picked up something and done it without any reason and I think that will haunt us for years to come. I oppose Senator Johnson's amendment to not pay this. If we are going to be consistent, I think we should pay the people who have done this, not because they were willful and wanting, because that is not what it said they were. It said they were indifferent and I think there is a big difference.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, would Senator Johnson yield to a question? On this claim sheet it says, "A claim for indemnification against a judgment by the Federal District Court for Nebraska. \$739.50 for damages." Is that what the inmate would get?

SENATOR JOHNSON: Yes.

SENATOR HIGGINS: And "\$2,164.00 for court costs including attorney fees for the plaintiff's attorney", is that what the attorneys would get?

SENATOR V. JOHNSON: Yes.

SENATOR HIGGINS: He sat 69 days in the hole and he gets \$739 and the attorneys get \$2164?

SENATOR V. JOHNSON: Yes.

SENATOR HIGGINS: Can we split the question on this?

SENATOR V. JOHNSON: No. If you would like, I can elaborate on it. I mean the judgment is already a judgment. Incidentally, the \$2164 is for court costs. For all we know,

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Senator Higgins, there was some discovery fees, you know, court reporter fees, deposition fees and the like, and in addition, there was an attorney fee. That is a judgment. That judgment already exists against the warden and the deputy warden and all we are doing with this particular claim is making certain that the warden and deputy warden are reimbursed for money they have got to pay in satisfaction of the judgment.

SENATOR HIGGINS: Let me ask you this. Did the judge set the amount that the inmate is to be paid or is that what the attorneys asked for?

SENATOR V. JOHNSON: The judge set the amount.

SENATOR HIGGINS: That the inmate was entitled to \$739?

SENATOR V. JOHNSON: Yes.

SENATOR HIGGINS: But that the attorneys' fees, they were entitled to \$2,164?

SENATOR V. JOHNSON: The whole cost allowance was \$2,164.

SENATOR HIGGINS: Okay, thank you, Senator.

SENATOR CLARK: Senator Fowler.

SENATOR FOWLER: I guess I would have a question of Senator Johnson.

SENATOR V. JOHNSON: Yes.

SENATOR FOWLER: Now, if I understand what you are saying is that before we pay a claim such as this we ought to have some understanding of maybe the level of malfeasance, if you want to use that term, by the person we are picking up the cost for?

SENATOR V. JOHNSON: Yes.

SENATOR FOWLER: Okay, what are some of the...is "deliberate indifference" great malfeasance, small malfeasance? How is it in the scale of violations?

SENATOR V. JOHNSON: I would say it is great malfeasance. In my opinion, it is something more than negligence.

SENATOR FOWLER: Okay, so this is beyond negligence. It is a deliberate action. It is something that the person

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should not have done, should have been aware of, and so on, right?

SENATOR V. JOHNSON: Yes, I would say so.

SENATOR FOWLER: Would you think that those are grounds for firing an employee?

SENATOR V. JOHNSON: Yes, I would think they would be grounds for firing an employee.

SENATOR FOWLER: Would you suggest that perhaps there seems to be both a problem if the employees were not dismissed that we didn't go further and the state picks up all their legal cost, and that is what we are picking up, right, the employees legal cost, is that correct?

SENATOR V. JOHNSON: No, we are going to indemnify the employees against the judgment that was taken against them.

SENATOR FOWLER: Okay, what about their own legal cost, is that...?

SENATOR V. JOHNSON: It may well be that the Attorney General defended them. I would guess that the Attorney General did so we have already picked up their legal costs.

SENATOR FOWLER: Okay, the Attorney General defended them and then we are picking up...okay. I guess I would ask a question of Senator Maresh of the Labor Committee.

SENATOR MARESH: Business and Labor.

SENATOR FOWLER: Business and Labor, sorry. I am still used to the old Labor Committee. For your committee's criteria in deciding when to pick up these types of costs for an employee, what standard of malfeasance do you believe the state is responsible for and at what point do you believe that it becomes the employee's responsibility? What kind of legal standard did you use to decide that this claim (interruption)?

SENATOR MARESH: Senator Fowler, we were advised by Paul Douglas that we should pay it. He personally came to see me and advised that the committee allow it. That is all we had to go on.

SENATOR FOWLER: Okay, do you know if we have ever been asked to pick up the legal cost before for an employee who has been

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involved in indifference or malfeasance in office or deliberate indifference to...has there ever been a claim like this before?

SENATOR MARESH: Not to my knowledge.

SENATOR FOWLER: Okay.

SENATOR MARESH: I don't remember any like this before.

SENATOR FOWLER: Okay. Well, I think we are setting, as Senator Johnson indicates, a precedent, and maybe it is a worthwhile precedent, maybe not, but I think we should be very careful as to the standard. If, in fact, the deliberate indifference that the court indicates here would be grounds that an employee should be dismissed and perhaps since it is the warden and not just a guard, there was no dismissal of the employee. If, in fact, it is that serious of an offense, then I don't think that we should add to the injustice by us picking up the cost and I think that Senator Johnson raises a very good question. I think that we are setting a major precedent here and I think it is one that not to say that we could not pay this claim at some later date but I think it needs more study and I would think that perhaps we should follow Senator Johnson's amendment, strike this from this year's claim bill, have the Business and Labor Committee look at some standards to use with regards to this, since this is the first time that we have had this claim, and maybe next year award it or maybe not. But I think without some sign of overall guidelines and overall policies, we may be setting a precedent that can create problems because I do not think that we could deny other employees who have been deliberately indifferent to other citizens rights this same sort of protection if we decide to do it in this case. So I think Senator Johnson is advising we go on the side of caution with this claim, not to say that it could not be reintroduced next year, but to say that let's have some standards and some clear legal guidelines before we do this.

SENATOR CLARK: Senator Johnson, do you wish to close?

SENATOR V. JOHNSON: Yes, Mr. Speaker. I would like to make just a couple of quick points in closing. The first point is this is that without any question the conduct that the court found, now we didn't find it, the court found it, the warden and deputy warden were guilty of, specifically, deliberate indifference to the Constitution and protected rights of the inmate is fairly serious conduct. I mean it was not as though it was a simple oversight

on their part. It was not as though it was an act of negligence. And as we all recognize, our employees are going to be negligent from time to time in the way they conduct state business just because it is almost human from time to time to be careless and a little sloppy and the like but deliberate indifference is a far more serious breach of rights and protocol and treatment than is a simple act of negligence. Now by the same token, I guess the court didn't find that the warden and deputy warden themselves, personally, committed an act such as an assault of an inmate or brutalize an inmate or what have you, and I think if he found the direct act, you would say that was a very egregious act, but when I saw the deliberate indifference concept in here, it just, in my opinion, raised a serious question as to the propriety of the state allowing the claim, and then when I went back and looked at Senator DeCamp's bill, 273, on those kinds of indemnifications that the state was going to allow with respect to state employees and saw specifically that we were not going to allow for indemnification those claims that were the product of willful or wanton neglect of duty by an employee, willful or wanton, it seemed to me that the deliberate indifference reached that standard and we wouldn't allow the claim under a bill that you and I probably are going to pass. So I think that Senator Fowler is right. We ought to disallow the claim at this time. I assume if on reflection we conclude that maybe deliberate indifference is still within the area that we ought to allow..ought to protect our employees later on, we can go back and repossess the claim and the Legislature can allow it. But in my opinion, the better part of caution at this time is to disallow this particular claim. It is better for us to be cautious about those employee claims that we are going to pick up than for us to be extravagant because along to the extent that we are extravagant we continue to countenance and condone acts that are unconstitutional, that are improper, and that have a detrimental effect on the people in the care of our employees. I, therefore, move the amendment.

SENATOR CLARK: The question before the House is the adoption of the Johnson amendment to the bill, to the committee amendments. All those in favor vote aye, all those opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: We are voting on the adoption of the Johnson amendment to the committee amendments. We are doing pretty good, we have got half of them voting anyway. We are voting on the adoption of the Johnson amendment to the committee



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amendments and it takes 25 votes. It will take 25 votes. This is an appropriation bill. We decided that.

SENATOR V. JOHNSON: In that case, Mr. Speaker, I was just being very cool. I will not be so cool. I would like to request a Call of the House.

SENATOR CLARK: The uncool Senator Johnson wants a call of the House, we will have it. All those in favor of a Call of the House will vote aye, those opposed vote no. Record the vote.

CLERK: 12 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All Senators will return to their seats and check in please. Will you all check in please? Will everyone please check in so we can get this vote over with? We have three excused. Senator Von Minden, will you check in please? We are looking for eight people. Senator Kilgarin and Senator Koch, will you check in please? Senator Goll, will you check in please? That is all of them. Do you want call ins or do you want a roll call vote? Senator Johnson.

SENATOR V. JOHNSON: I had better ask for a roll call vote, Mr. Speaker.

SENATOR CLARK: Call the roll. (Gavel.) Let's have it somewhat quiet so the clerk can hear the response please.

CLERK: (Roll call vote commenced.)

SENATOR CLARK: Tell them what we are voting on.

CLERK: Mr. President, Senator Vard Johnson would move to amend the committee amendments: (Read Johnson amendment found on page 1930, Legislative Journal.)

SENATOR CLARK: Call the roll.

CLERK: (Roll call vote continued. See pages 1930 and 1931, Legislative Journal.) 23 ayes, 19 nays, Mr. President.

SENATOR CLARK: Motion failed. Is there any other motions on the bill?

CLERK: I have nothing further on this portion of the committee amendments, Mr. President.

SENATOR CLARK: The question before the House is the adoption

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of the second part of the committee amendments as they have been divided. Is there any discussion? If not, all those in favor vote aye, all those opposed vote nay. Record the vote.

CLERK: 31 ayes, 2 nays, Mr. President.

SENATOR CLARK: They are adopted. The committee amendments are adopted. Is there anything further on the bill?

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

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. Chairman, members of the Legislature, I am open to any questions on any other claims if anybody wants to ask any questions at this time.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Now we are back on the bill including both part one and part two.

SENATOR CLARK: The motion before the House is the advancement of 548.

SENATOR NICHOL: So, Senator Maresh, for the record, in cases in the future that have not been through the courts and when claims are made because our institutions have done wrong, regardless of the status of the arts, that institution is liable for the damage whether or not they are proved and whether or not they complied with the status of the arts at the time of the treatment, regardless of time lapsed between the treatment and when the claim is made, is that correct?

SENATOR MARESH: I guess those that voted for the amendment, Soukup amendment to be increased, I guess feel that way but I feel that this was a case by itself because of the uncertainties that we had. We decided to give a modest increase but the Legislature went farther and adopted almost double of what we had proposed, and Senator DeCamp said that he had no chance to go to court. The Attorney General told us that if he could prove that he was incompetent enough not to realize that the statute of limitations has lapsed that he could still go to court. So there was a chance, if the court would have allowed it to be heard because of his mental state, that he could have been heard in court. So that is something I wanted to clarify when Senator DeCamp said that he had no chance

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in court but I wasn't able to clarify the record at that time.

SENATOR NICHOL: Okay, thank you, Senator Maresh. Mr. Chairman, the only point I want to make and I feel so strongly about this point, more strongly than any bill we have passed up to now, as to what we have done today, not because I begrudge the man any money, whatever he can get is fine, but the precedent we have established today I feel is a very serious one, and regardless of what treatment we give to inmates of our institutions or clients of our institutions or clients of anything that this state or counties or cities run from now on, whether the treatment is right or wrong and whether or not the treatment is found out to be wrong ten years later, they have a claim in this Legislature. I think it is very serious and I cannot vote for this bill as long as that stays in it. I hope that some of us realize what we have done before this bill passes. I really think we have made a bad mistake.

SENATOR CLARK: Senator Wiitala.

SENATOR WIITALA: Mr. President, members of the Legislature, I rise in support of this bill for opposite reasons that Senator Nichol gave. I feel that we are establishing a very good precedent. I want you to think for a moment the type of precedent that we are setting. We are addressing, in particular I am referring to the Soukup case, the problem of the man that spent the greater portion of his life in an institution, not by his own volition but because the institution wished and desired to keep him there, not only to confine and take care of him in the personal way that institutions do so but also to experiment upon this individual with a dozen or more electroshock therapy treatments and the use of LSD, LSD in an experimental fashion. I am not worried about the precedent that we are setting here if it leads to justice, if it stops this type of incarceration and mistreatment of people who are being serviced by our institutions. I think it is the proper way to go about it. It is not really penalizing the state. It is not really penalizing the taxpayers of Nebraska but it is allowing this person not to receive a full measure of the grievances that have been dished out to him but it is a means where this man can conduct the rest of his life with some financial security, not a giveaway program where we are giving a large sum to him to use at his own pleasure, but setting up a trust fund for him where interest accrued on the fund may be dished out in payments together with his social security payments

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will enable this man to achieve some level of economic security. At the time of his death, the trust fund will revert back to the state. Some questions have been raised that we have no business getting into this area but we certainly do. This is not a case in isolation. It happens every day, every year, not only in this state but in this nation. We have had movies that address this situation such as One Flew Over The Cuckoo's Nest and really the Joe Soukup case could be straight out of that book. We have had cases where the Armed Services have experimented with soldiers exposing them to radiation. We have had cases where people who are hospitalized as terminal cancer patients were exposed to high doses of radiation so we could have radiation researched in the case of a nuclear catastrophe but without their permission and all the other things like programs like 60 Minutes has brought to our nation concerning these events, concerning those people who live in those institutions. I think the thing that we need to address more than anything else is to have a landmark type decision where everyone that is responsible for institutions and everyone who is working within them will realize that they will be held accountable for their actions and this is the only way we can do it and it is the only way that a person such as Joe Soukup could do it. He has tried just about every avenue to address his grievances and now it is in our lap, and with that closing, I would hope each of you could find in your conscience to support LB 548. Thank you.

SENATOR CLARK: Senator Kahle, the advancement of 548.

SENATOR KAHLE: Mr. President and members, I am sure this is a lost cause but I want to get something on the record, too. I think we are letting our emotions get away with us today and I want to repeat something I said a bit ago. I don't know how many thousands of people we have in institutions in Nebraska today. There are several thousand I am sure. Probably a lot more than we would like to admit we have there. And when you and I go to the doctor, we know that he is practicing on us. That is what they call it. He has a practice and you go to two or three doctors and you are liable to get two or three opinions, and what I am saying, and I want you to listen, and I want you to remember, is that the treatment that is given in our institutions today may be proven false in five to ten years or less, and what we are saying here now with this bill is that everyone of those cases has a right to put a claim against the State of Nebraska, and I just think we are making a big mistake. Whether that LSD was right or wrong, it may have been proven right. But when you go to your doctor, he is practicing on you. What do you suppose they

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do to the inmates in our institutions, they practice on them. Sure they do. There is no direct science that says you can cure the ailments of mankind. They work on us in different ways. I just feel that we are making a big mistake. Thank you.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I, also, want to rise to make a little bit of a statement into the record. Senator Wiitala indicated his feelings in this regard. He indicated that those with a conscience needed to vote for the advancement of 548. I am going to tell you quite honestly I am going to vote for the advancement of 548 because there is some necessary claims in that bill that need to be paid and it was the decision of the majority of this body that Joe Soukup's claim should be part of those. Therefore, I will vote for the advancement. But I think for the record it needs to be stated, I serve on that committee and we are being asked, as I said earlier, to be judge and jury. Mr. Soukup's attorneys came before us, and as you will notice in the description that Senator Maresh sent around, there were many allegations made, many things that supposedly happened, including the LSD, including being held against his will and many other things, and we heard from that one side of the issue but we didn't hear from the other side. The doctor that supposedly administered the LSD, as I understand it, is dead. That is very good. He cannot defend himself. I don't know whether he is guilty or not. I don't know personally whether the state is guilty or not. As Senator DeCamp pointed out a little bit ago, there has been so many studies as a result of this and I think there is a lot of good things that come from it. I will remind this body that if you have a child that you mistakenly correct, perhaps spank for something that you found out later that the child did not do, buying the child a bag of jelly beans does not make everything right. Trying to work and listen to the child more closely next time so that doesn't happen is what is the best positive action that can come from that. I think what we are trying to do is to salve our conscience by putting some dollars to a gentleman that may or may not been mistreated by the State of Nebraska but I believe, as a member of that committee, we should have heard from both sides before we made that decision but I am going to vote for the advancement of 548 because I think there is enough good in the bill and I think that the majority of this body has indicated that Joe Soukup should be paid so, therefore, the majority should rule. But I do think that the body needs to be aware of exactly what we are doing. Thank you, Mr. President.

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SENATOR CLARK: Senator Maresh, did you want to talk on it?

SENATOR MARESH: Mr. President, I, too, will vote for advancing the bill but I think on Select File we should take another look and we have a whole file on this case and anybody that has doubts about the amount we should pay, if it should be lowered down to \$30,000 or not, well, you are welcome to come and see the file. We will make copies for you if you are interested in reading more about this case. Senator Vickers says we haven't heard from the other side but we did hear from a nurse that was at the regional center at that time and she wrote, "Dear Senator Maresh: I am writing about LB 548, and particularly one person named in that bill for compensation, namely, Joe Soukup. I believe if his claim is recognized the State of Nebraska will be setting a precedent for perhaps thousands of claims. I remember electric shock treatments were particularly cited as damaging him. I am sure that thousands of people in Nebraska have received shock treatments, not only in the Regional Center but all private hospitals in Nebraska. As a nurse I have assisted with as many as twenty-five shock treatments a day and many of these in private city hospitals. Shock treatments were recognized as effective in large mental hospitals as Menningers. As you remember from Joe's history, he was cared for at Boys Town and was sent from there to Kearney Boys Training School. Boys Town goes the third mile with their youth so you know there was a reason they did not keep him. I believe Joe also complained of neglected physical problems but I can assure you this was also untrue. I was a nurse who assisted the doctors with the clinics for the patients physical care. These clinics were held every afternoon from one to five and patients were brought from all the buildings who had any physical complaints. I often remarked that I wished we people who have to have private care could get appointments half as promptly as our patients in the Regional Center care. I know Joe well and I feel that if he receives compensation then every patient who has ever been in a hospital is entitled to compensation. I wanted to be sure of my feelings so while I was in Phoenix this winter I visited with the nurse who was supervisor of the building where he lived at the Regional Center. She has the same feelings about him. Please consider the impact this may have on taxpayers of Nebraska if this claim is recognized." And I will not read the name. If anybody wants to have her name, they are welcome to come and see the letter. Thank you.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker and members of the body, I agree with Senator Wiitala and I agree with most of what everybody else has said but I think we are overlooking one point. We have got a Department of Public Institutions. We have got a Department of Corrections. We have got a Department of Welfare. What do we pay these people? How much do we look into their background before we hire them? How many of them get a job because they are good old Uncle Joe's nephew and they are not really qualified? We read last year about a couple of doctors at Hastings that resigned because they were addicted to drugs or rather at Norfolk. I understand one of them is now practicing, as Senator Kahle said, practicing, again, only this time he is practicing at the Hastings Regional Center. Maybe we need to take a long hard look at everything that this state is running, Department of Public Institutions, Corrections, Welfare, and maybe we had better take a look at the applications. Are we hiring just anybody that walks off the street? I know in Omaha, if you want to be a houseparent to four or five retarded children, the requirement is a high school diploma, period. So maybe the fault lies with us. We don't pay enough money to attract people who want to support their families the same as we want to support ours, and maybe we just will take anybody that walks in off the street and not really look too closely at their applications. But I think we have got to let the buck stop here and we ought to do some studying and we ought to come up with some results for next year on how to prevent these claims from occurring, and if we have to do some firing, do some firing, and if we have to raise some wages, let's raise them. I am not talking about the high-priced directors and assistant directors, et cetera. I am talking about the people that work day to day with the convicts, with the retarded, with the handicapped, with the elderly, the ones that are out there really working. These people are the lowest paid and these people have the hardest part of the job and I can see where they become disgruntled and dissatisfied and sometimes they take it out on the very people they are supposed to be taking care of. So I am going to support LB 548 and I hope that we all think about our own consciences and how much are we responsible for the way these institutions are being run right now. Thank you, Senators.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: I am not going to talk at this time, I guess. I will wait until Select when they try to take it off.

SENATOR CLARK: The question before the House is the advancement of 548. All those in favor vote aye, all those opposed

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LB 548, 11A, 146, 179, 316,  
318, 322, 361, 366, 478A  
545

vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Have you all voted on the advancement of 548? It takes 25 votes. Record the vote.

CLERK: 27 ayes, 11 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. The Legislature having completed all its work that it is going to complete for today, we are now going to have a little reading in by the Clerk and then we will adjourn.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 11A and find the same correctly engrossed; 146 correctly engrossed; 316, 322, 361, 366, 545, all correctly engrossed, and those are signed by Senator Kilgarin as Chair.

A new A bill, 487A by Senator Wesely. (Title read.)

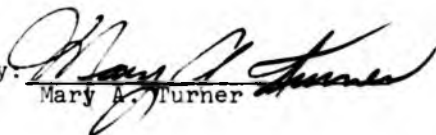
And finally, Mr. President, Senator Koch would like to print amendments to LB 318; and Senator Dworak would like to print amendments to LB 179.

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

SENATOR STONEY: Mr. President, I would be pleased to. I move that we be in adjournment until May 12th at 9:00 a.m.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed nay. We are adjourned until nine o'clock tomorrow morning.

Edited by:

  
Mary A. Turner



May 12, 1981

LB 427, 427A, 556, 548

SENATOR CLARK: The bill is declared passed with the emergency clause attached. The Clerk will now read LB 427.

CLERK: Mr. President, if I may right before that, I have explanation of votes from Senator Warner. (See pages 1948-49).

Mr. President, your committee on E & R respectfully reports they have carefully examined and reviewed LB 556 and recommend the same be placed on Select File, and LB 548 Select File. Both signed by Senator Kilgarin, Chair.

SENATOR CLARK: Clerk will read LB 427.

CLERK: Read LB 427 on Final Reading.

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall the bill pass. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

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

CLERK: 46 ayes, 2 nays, 1 present and not voting. Vote appears on pages 1949-50 of the Legislative Journal.

SENATOR CLARK: The bill is declared passed. The Clerk will read 427A.

CLERK: Read LB 427A on Final Reading.

SENATOR CLARK: All provisions of law according to procedure having been complied with, the question is, shall the bill pass. All those in favor vote aye, all those opposed vote nay. It takes 30 votes.

CLERK: Senator Clark voting yes.

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

CLERK: 45 ayes, 2 nays, 2 excused and not voting. Vote appears on page 1950 of the Legislative Journal.

SENATOR CLARK: The bill is declared passed. LB 292, with the emergency clause.

May 14, 1981

LB 22, 22A, 144,  
LB 144A, 138, 188A,  
LB 207, 207A, 253,  
LB 466, 253A, 376, 548

SENATOR NICHOL: The amendment fails. Mr. Clerk, do you have anything else?

CLERK: I have nothing further, Mr. President.

SENATOR NICHOL: Senator Labedz, would you like to speak to the bill?

SENATOR LABEDZ: Thank you, Mr. President. I move for the advancement of LB 466 to E & R engrossing, and unless there is going to be some debate, I will offer further comments on my closing.

SENATOR NICHOL: Senator Cullan.

SENATOR CULLAN: Mr. President, just one thing for the record and that is I want to state for the record that I voted against the Marsh amendment, not because I believe that the concept of hospitalization is a bad one, but because we did not have adequate chance to review that amendment thoroughly and sufficiently at this point in time. We may very well sponsor some similar legislation in future years. Thank you.

SENATOR NICHOL: We are now voting on the advancement of LB 466. All those in favor signify by voting aye, opposed nay. Record, Mr. Clerk.

CLERK: 28 ayes, 9 nays, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: Motion carried. The bill advanced.

CLERK: Mr. President, a few items to read in, if I may. I have an appointment letter from the Governor. That will be referred to the Executive Board for reference, Mr. President.

Mr. President, a communication from the Governor addressed to the Clerk. (Read: Re: LB 22, 22A, 144, 144A, 188, 188A, 207, 207A, 253 and 253A. See page 2049, Legislative Journal.)

Mr. President, Senator Maresh would like to print amendments to LB 548 in the Legislative Journal; Senator Dworak to print amendments to LB 376 in the Legislative Journal.

Your committee on Retirement gives notice of hearing on gubernatorial appointments for two, Thursday, May 12 (sic).

May 20, 1981

LB 396A, 556A, 548

the program. It would not be received until January of 1983 or fiscal year '82-'83, therefore, the general funds will need be to supplement the license fees until the per ton inspection fees are received. We find that it is necessary to amend the A bill to meet this requirement and I move for its adoption, Mr. President.

SPEAKER MARVEL: The motion is the adoption of the Carsten amendment as explained and the amendment is to 396A. All those in favor of that motion vote aye, opposed vote no. Record the vote, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the Carsten amendment. Mr. President, I have nothing further on the bill.

SPEAKER MARVEL: The motion is to advance the bill. All those in favor say aye, opposed no. The motion is carried. The bill is advanced. Before we proceed, it is my privilege to introduce underneath the south balcony, the following newly elected Omaha City Council members who we will be looking forward to meeting you over lunch today. David Stahmer, Steve Tomasek, Connie Findlay, Sylvia Wagner, Fred Conley, Walt Calinger and Bernie Simon. Would you please stand so we may welcome you to the Unicameral. Also underneath the same balcony we welcome Mary Cornett, the City Clerk, Lou Anderson, administrative assistant to the Council, Betty Coble, secretary. In the north balcony from Senator Sleck's district, 31 eighth grade students and one adult from the Centennial Consolidated School in Utica, Nebraska, Mrs. Linda Petricek, teacher. And you are in the north balcony. Would you raise your hands so we can see you. Welcome to the Unicameral. Senator Kilgarin, Senator Wesely, oh, there you are. Senator Kilgarin, do you want to move the advancement of 556A.

SENATOR KILGARIN: I move we advance LB 556A to E & R for engrossment.

SPEAKER MARVEL: All in favor of that motion say aye, opposed no. The motion is carried. The bill is advanced.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Kilgarin, do you want to move the advancement of LB 548 or did you have...how many? A lot of amendments.

CLERK: A lot of amendments. Mr. President, there are no E & R to LB 548. The first amendment I have is from Senator Vickers, Maresh and Kahle. Would you like me to read it, Senator? (Read amendment as found on page 2139 of the Journal.)

May 20, 1981

LB 548

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. President, members of the Legislature, this would entirely remove the Soukup claim from the claims bill. We, as a committee, allowed \$30,000 to be set up as a trust fund and here on the floor it was increased to \$50,000. A group of us feel that since this is beyond the committee's proposal that we should take it off entirely. So I move that this amendment be adopted.

SENATOR CLARK: Is there any discussion on the Maresh amendment? Senator Koch.

SENATOR KOCH: Mr. Chairman, a question of Senator Maresh if he would yield.

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Yes, Senator Koch.

SENATOR KOCH: When you say "a group of us," Senator Maresh, were you speaking about the committee or others?

SENATOR MARESH: No, Senator Vickers, Senator Kahle and myself. There are others that are interested in this too.

SENATOR KOCH: What is the official position of the committee?

SENATOR MARESH: Well the official position of the committee was \$30,000.

SENATOR KOCH: Well you know as well as I do once a bill gets to the floor it becomes the property of almost everyone. So, therefore, I would object to that amendment and we maintain \$50,000. I think that that is a minimum. In fact, if this gentleman as you know, underwent I think some severe conditions, for us to go back to \$30,000, probably better off to go to zero because at least you are trying to treat it and ignore it that way. So I would reject Senator Maresh's proposal, leave it at \$50,000.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, well, Senator Koch pointed out exactly what we are doing as a matter of fact. We are attempting to go back down to zero and as a member of the committee I voted against this proposal in the committee. It seems to me that what we are doing is setting a precedent that can be very dangerous in the future. Now I am not going to dispute at all the fact

that the state might be in fault as far as this individual is concerned, however, I am not sure of that. I do not know. I was not there. We did not have, at least this year in the committee, we did not have the benefit of hearing from the other side. I am not in a position to make that judgement whether or not the state is guilty but if it is, I am sure that it wouldn't be too difficult to find throughout the State of Nebraska in the penal systems that we have, perhaps in some of the orphanages that have operated in the State of Nebraska, many individuals that have been mistreated in one way or another and probably would be able to file a claim against the state. Now I think that what we are setting here is a precedent that could open the door wide open and I would also point out to this body that Senator Maresh did ask for an Attorney General's opinion on this issue before it was addressed by the committee and the Attorney General's Opinion indicated that it should not be paid through the miscellaneous claims portion. So, therefore, I urge the body's adoption of this motion to simply reject that claim for Mr. Soukup. Thank you, Mr. President.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President, members, I would support this amendment on the grounds that you just heard. The precedent that we are setting I think can be unbelievable. In the testimony that we heard the last time around, the shock treatment was ridiculed, that he was mistreated. I remember well when this treatment was the accepted and not in institutions but United Stateswide, maybe worldwide, I don't know. In fact, I think it was brought up that the Menninger Clinic even used it. With treatments changing as much as they are I think we are just...it is going to make an attorney's paradise without any question because it would be pretty difficult to sort out who was mistreated, received the wrong treatments thirty years later or twenty years later or forty years later. I am wondering, too, let's assume that the state did not step in and take care of Mr. Soukup, if he had no care whatsoever from the state, where would he be now? No one knows, of course. Certainly, I feel sorry for him. Everyone does, but I just can't believe that we are leaving ourselves so liable for suits in the future that we could even...I did not vote for the bill before, the \$30,000, for that reason only.

SENATOR CLARK: Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman, members of the Legislature, I have handed out to you a summary as prepared by Joe Soukup's attorney and I would ask that you read it rather carefully.

What it specifically answers is all of the questions that have been raised here this morning and it seems to me that it is time for us to recognize that when a state institution does a wrong the state has a responsibility. We have the responsibility of supervising those institutions as members of this Legislature and from all that I can gather and I have only come into this situation, as you all you know, this year. But I have listened very carefully before I made up my mind on which side of the issue I would be on this particular case and I can say to you honestly that I believe the state really did do a great deal of damage to this individual, that he has a right to this claim, that he has followed the procedure that he was told to follow and for us to come now and say, hey, you went the wrong route, when the Claim Board twice has said that this is a legitimate claim, it appears to me that we are really in the wrong ballpark. And what I would ask you to do is to read carefully this item that I am passing out to you concerning what has happened to Joe Soukup.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, we have hashed this issue so much and I really hate to take additional legislative time so I have tried to summarize answers to every argument in the handout I have given you. I never complained, nor did anybody else that was really into this case, complained about the shock treatment or anything else. What we said was that there were certain illegal acts committed, things that should not have been done, that everybody freely acknowledges and that some of these things caused some damage. One of the things was they did not release him as he should have been released, acknowledged by the institution, it was an error, whatever, they acknowledged that. There is no denying that. They kept him in there basically locked up for a number of years. Another thing was certain medical treatment he should have gotten to make him have the right kind of feet or the wrong kind of feet or something, he did not get and he ended up with the wrong kind of feet. As I say, I am not going into all of this. I think you are familiar with it but let me tell you some of the things that we did resolve as a result of this one little case. We learned, and these have been stopped without additional legislation, without a lot of things, things that have saved this state maybe millions in the future, massive drug experiments provided, I mean, with drugs provided by drug companies, Eli Lilly, so on and so forth, to doctors and the doctors paid to use the drugs on patients so that they could get testing for drugs without the patient ever knowing. In return for this the institution got all kinds of free drugs that they were, therefore, able to bypass the Legislature, not a good process. We got that stopped. You can read the

rest. I am not going into it. As I say, we have done it a number of times, but there is half a dozen major things, bad, bad practices that were occurring that we have corrected. We talk about precedent. Okay, you have got two matters here. There used to be the old theory of the king, in other words, the state can do no wrong. We have deliberately changed that and we have a system, claim system, so on and so forth so that if a state does make a serious error, does commit something against the individual, they have a right to collect damages, at least to a degree they have a right. That is all we are doing here. The precedent that you are suggesting we reestablish is that the king can do no wrong which is rejected by every single state. Now about the thousands of cases, over the three or four or five years this has been going on, we have uncovered about twenty-two, twenty-five cases of a similar nature. Each one of them had some distinguishing characteristic that would settle it, that has been settled so that it did not cost the state any money. Maybe it helped us correct something. The cases that have resulted have already resulted. So about all we are doing is we are saying, indeed, we have created a problem. Let's correct it to the degree that we can. He has used the process, the claims process. I suggest you go ahead and not return the bill. I suggest you just let the bill go on to Final Reading with all the other claims and we get this matter taken care of. If the Attorney General's thing, we have followed the identical process, identical to the trooper that was killed. Now if it is unconstitutional it is certainly unconstitutional there. I don't think it is but I am sure if the claims bill gets over to the Governor and for whatever reason he decides to veto it, that would probably settle the issue. But I think it should get to the Governor and that is all I am suggesting.

SENATOR CLARK: Senator Wiitala.

SENATOR WIITALA: Thank you, Mr. President. Mr. President and members of the Legislature, the chief arguments being raised in the Soukup case is, and it has been sort of a litany as we have argued this issue on the floor, is that precedent is being set that is going to be very dangerous to the state in the future. I don't think that is a very good argument. The argument that I am worried about is the precedent that we are going to establish if we do not address this situation. The question is you know, in this matter, are we interested in protecting the state or are we interested in protecting the individuals who belong to the state. In the Joe Soukup case, nearly all of his remedies are exhausted. Certainly, maybe at an earlier stage in

In the history of this problem, maybe a suit should have been launched against the principal parties that afflicted him but I would like to advise you that those principal parties, the major ones that inflicted this harm on this individual have deceased. There is no case. The question was raised about shock treatment being normal fare during the 1950s and '60s. Well that may be so but the question that has not been addressed is whether this individual was deserving of shock treatment. Was he mentally ill? Was he of deviant behavior? I don't think that any of those questions could be answered in the positive. When it comes to LSD used in experimental fashion on individuals there is no precedent established as that being normal fare for the treatment of the state's citizens in its institutions. The issue is proper care, not the fact that the state just cared for him but they did so in a proper fashion. In the Joe Soukup case we cannot hold the state harmless on this issue. To do so is to endorse the same type of behavior that have been experienced by several citizens in our institutions. To address it right now, straightforward, is to admit that wrong has been done. The state recognizes it and recognizes the fact that this is the only remedy that we have left to address the situation. I would sincerely oppose the Vickers motion. Thank you.

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. President, members, I think something that has not been brought out in previous discussion that John Thompson who is the legal counsel for the Claims Board told the committee that there could still be a chance that this man could go to court if he could prove that he was incompetent and could not realize that there was a time period of two years that he would have to file this claim. That is on the state level. Then in federal court he would have three years that would be the time that he would have to file this and so all is not lost. If he wishes he could still try to go that avenue and then if he failed he could still come back to the Claims Board. I think this is the case that we might have thousands of cases in the future. I had a hard time to go along with the \$30,000 and now where it has been expanded, I just can not go along with it so I hope that the members of the body turn this claim down at this time. I will let Senator Vickers close on this issue when the time comes.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I really hope that we will not do what is being attempted



by this amendment. Mr. Soukup has been in the halls of the Legislature for what seems to me an interminable period of time. I don't know when he actually first started coming through but if you have ever talked to him you can see what the experiences that he suffered can do to a person. He impressed me despite his size as being very childlike, very trusting, believing that the Legislature, his final hope, is going to do justice by him. As a matter of fact, I was on a call-in radio program in Hastings the first part of this week or Friday I think it was and he called to talk to me and he said he felt like he was one of the family. Do you know who he was referring to when he used the term "family?" He was referring to this Legislature. How decent they had finally decided to conduct themselves toward him. He said that he may not ever come to the Legislature or see any of us face to face again but he hoped that we would still consider him to be a member of the family. Now for somebody to use a word like family and to open his heart in that fashion on the radio before the entire community who may have been listening, expresses not only a certain degree of naivete, but an almost childlike innocence and if this man, in fact, still looks at the world through the eyes of a child, the state does have a responsibility and we should not do as some cruel parents will do which is to take an object which is pretty and attractive and let the child be drawn to it and really it is a container of acid and when their child takes the container and begins to deal with it in the way a child could be expected to deal with it, the acid spills on the child and we consider that to be a joke. This is a human being who was practically destroyed by the state. When the state commits a wrong it should provide a remedy. There was a black man named Thornwell who was a member of the United States army and for some reason which has not been disclosed to this day, experiments with LSD and torture of various psychological types were practiced on him. Fortunately he had "60 Minutes" who would present his case to the entire country and because of the publicity, rather than any motives of compassion, Congress voted to give him several hundreds of thousands of dollars which could not nearly compensate him for what he had suffered but it was a way for the country to acknowledge wrong and buy a measure of public relief. This, Senator Maresh, I think is not an issue that ought to be determined by the amount of money but on the basis of the principle that we are dealing with. Here is an individual who was wronged, not a criminal being punished but an individual who was unfortunate enough to have wound up in the State of Nebraska, a state whose Constitution and laws are designed to protect and take care of its citizens. This state, it put in practice, programs that destroyed this man practically. It allowed

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machinery to move into operation that almost destroyed him and now that he has been bounced back and forth like a Ping-Pong ball which to me is a form of cruelty, we have the opportunity to buy a measure of justice for him. I don't think we can ever undo what has been done but this is certainly the smallest thing that we can do...(interruption.)

SENATOR CLARK: You have one minute left.

SENATOR CHAMBERS: I doubt that there is a person in this Legislature who listens to the Chaplain every morning would deny somebody who is thirsty a drink of water, who would deny a hungry child a crust of bread. That is the situation which Mr. Soukup faces and I think to deny this claim is worse than denying the water or the bread because there is another way to obtain that. This may be the only recourse that the individual has and I hope we will not do as Alexander Pope mentioned the lamb doing in one of his poems, "The lamb will lick the hand which is raised to shed its blood." Mr. Soukup thinks of this as his family. Let it be not like the Cain and Abel variety of family relationship but one where the parents do indeed look out for the welfare of the children.

SENATOR CLARK: Senator DeCamp, will you recess us until one-thirty. We will come back at one-thirty and come on this same bill. There is a luncheon this noon.

SENATOR DeCAMP: Do you want me to call the question or recess?

SENATOR CLARK: Recess until one-thirty, then we will come back at one-thirty, otherwise we will get tied up later.

SENATOR DeCAMP: Okay, recess until whenever, I guess.

SENATOR CLARK: All those in favor say aye, all opposed. We are recessed until one-thirty.

Edited by Arleen McCrory  
Arleen McCrory

May 20, 1981

LB 548

SENATOR WESELY: Yes. Mr. Speaker....Mr. Speaker and members of the Legislature, this is where we are at. Speaker Marvel had made the motion to suspend the rules concerning the delay on Select File on a motion to indefinitely postpone. It was decided that it would probably be best. Senator Beutler made a suggestion that we suspend it in the sense that you can...if the introducer of a bill wishes to take up that kill motion immediately, he has the choice of doing that. So now the motion is essentially this, that if you put up a motion to indefinitely postpone on Select File, if the introducer of the bill wants to take up that kill motion immediately, it is his right to take it up immediately and not delay one day. That is essentially what this motion would allow for the balance of the session. So this is the new motion. Senator Marvel has agreed to it, and it is Speaker Marvel's motion to adjust the rules so that no motion to kill on Select File will delay that bill for one day unless the introducer of the bill agrees to it. So what we are trying to do is for the balance of the session deal with the problem we talked about before, putting up a kill motion and another kill motion and another kill motion, and without any chance to even consider the issue, delaying for the rest of the session that bill. And I think that it is important that we realize that there is a rule change from Senator Beutler and myself to make this a permanent part of the rules to get back to where we started from when this original section was adopted a couple years ago. And I think we have to realize that what we are talking about is protection of the introducer of the bill so that he isn't surprised by a kill motion on Select File, and I think it is incumbent upon us to not allow a situation where we abuse that protection for the introducer by turning it against him and actually killing his bill by delaying it over, and I think that is very important that we do that with six days left to process bills on Select File. So it is the Speaker's motion. It has been amended by Senator Beutler and that is the point at which we are at to vote on.

SPEAKER MARVEL: Okay, Senator Wesely has closed. All those in favor of the motion vote aye, opposed vote no. It takes 30 votes. Have you all voted? Have you all voted? Senator Wesely, record the vote? Okay, record the vote.

CLERK: 23 ayes, 23 nays, Mr. President, on the motion.

SPEAKER MARVEL: The motion lost. Okay, we are ready for item #6. Wait a minute, I am sorry, 7, LB 548.

CLERK: Mr. President, we last considered LB 548 this morning. When we left it there was an amendment pending by

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Senators Vickers, Maresh and Kahle.

SPEAKER MARVEL: Senator Vickers, I have a note here that says you are to close. Is that right? Okay. The Chair recognizes you. I'm sorry, Senator Koch. Pass. Senator Vickers.

SENATOR VICKERS: Mr. President and members, this was debated to quite some length before we recessed for lunch. I don't think very much more needs to be said. I think everybody understands the issue. The issue very simply is, shall we or shall we not pay the Joe Soukup claim? Is the state at fault? Senator DeCamp made an eloquent plea in behalf of not paying it, I thought, when he described the many benefits that have derived since the Joe Soukup situation was brought to the attention of the Legislature and the State of Nebraska, some of the changes that have been made in the system. I suggest to you that that is the way that it should work. When the state does wrong, we should change it...change the system so that we do not do wrong again. But I am not so confident that paying a sum of money, whatever the amount, is going to satisfy our conscience, or satisfy the conditions that brought about the alleged wrong. Now as a member of the committee that heard this testimony, as I indicated earlier this morning, I don't know whether the state was right or wrong. I didn't get a chance to cross-examine anybody else. We heard one side of the issue. It has been pointed out by some of the members that this might be a precedent. Some other members have pointed out that we set precedents in here all the time, and that is true. But I do think we need to be aware of the fact that there are probably many hundreds of other people out there that have been mistreated or could have alleged that they have been mistreated in certain institutions of the state, and I would simply remind this body of one thing. Those of you that have children if you correct a child and then find out afterwards that what you corrected the child for that you were wrong in that, and that the child was right, buying them a bag of jelly beans does not make it better. You attempt to keep from doing that, making that same mistake the next time. That is what makes it better. If you simply buy them the bag of jelly beans, and then continue to correct them when they are not wrong, that doesn't satisfy anything. So it seems to me that this is not a good public policy for the State of Nebraska, and I would urge the body's adoption of this amendment to remove that section from LB 548. Thank you, Mr. President.

SPEAKER MARVEL: Senator Kahle, do you wish to speak before we go to another matter?

SENATOR KAHLE: I call the question.

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SPEAKER MARVEL: You are the last one. The motion before the House is the adoption....okay, the motion is the adoption of the Vickers amendment to LB 548. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Have you all voted? Senator Vickers.

SENATOR VICKERS: In order to save time, Mr. Speaker, I think I will ask for a Call of the House and a roll call vote.

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

CLERK: 23 ayes, 1 nay 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, Senator Fenger, Senator Warner, Senator Schmit, Senator Wesely, Senator Beutler, Senator Hefner, Senator Richard Peterson. Senator Warner, Senator Wesely, Senator Richard Peterson. Senator Richard Peterson and Senator Wesely. Senator Vickers, we are down to one.

SENATOR VICKERS: Go ahead, let's start the roll.

SPEAKER MARVEL: Okay, call the roll.

CLERK: (Read the roll call vote as found on page 2142 of the Legislative Journal.) 17 ayes, 29 nays, Mr. President, on adoption of the amendment.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, I have a second amendment from Senator Maresh. It is on page 2050 of the Journal.

SPEAKER MARVEL: Senator Maresh.

SENATOR MARESH: Mr. Speaker, this was called to my attention by Senator Warner. Do you want to take this, Senator Warner, or should I? Oh. These are three claims that were charged to the General Fund and Senator Warner suggested that these should be to the Cash Fund for each agency. One is the Examining Board with the Department of Health. Another is the University of Nebraska Medical Center, and the third one is also with the Nebraska Medical Center. So I move that these amendments be adopted so the transfer would be made to the Cash Fund instead of the General Fund.

SPEAKER MARVEL: Senator Warner, do you wish to speak to the

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motion?

SENATOR WARNER: Yes. Mr. President, only to indicate this, all three of these are traditionally currently cash funded operations. Those agencies that are affected or that department of an agency, they are all relatively small amounts but I think in keeping with what the appropriate funding has been it ought to remain as a Cash Fund which is the way these particular departments are functioning in any event, rather than the General Fund.

SPEAKER MARVEL: The motion is the adoption of the Maresh amendment to LB 548. All those in favor of that motion vote aye, opposed vote no.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of the Maresh amendment.

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

CLERK: Mr. President, the next amendment I have is from Senators Fowler and Johnson. (Read the Fowler-Johnson amendment as found on page 2143 of the Legislative Journal.)

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: This amendment is to fully fund the Public Transit Program, something that is funded at about an 85 percent level for next year. In a way it is a claim against the state because we have not provided the full funding for this program. So I would move for adoption of the amendment.

SPEAKER MARVEL: The motion is the adoption of the amendment as explained by Senator Fowler. All those in favor....Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, I guess I will ask the Chair for a ruling I guess if this would be germane to the claims bill. It may well be, I am not questioning it, of course. It's a matter of precedent that I am thinking only. It pains me to do it.

SPEAKER MARVEL: Senator Warner, if I understand your question, in looking at the amendment to LB 548, I would indicate that the second column or the second paragraph is not germane to the first. They don't jibe. Was that your question? And the amendment also is not germane to the bill itself.

SENATOR WARNER: Does that mean that you are ruling that the

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amendment is not germane to 548?

SPEAKER MARVEL: Yes.

SENATOR WARNER: That was the question I was wondering.

SPEAKER MARVEL: Okay. Did you get the answer you wanted?  
I couldn't hear the first part of it.

SENATOR WARNER: No, I was just seeking clarity, Mr.  
President.

SPEAKER MARVEL: Okay.

SENATOR WARNER: That's very clear.

CLERK: Mr. President, the next amendment I have would be then from Senator Vard Johnson. Senator Johnson would move to amend LB 548 by striking claim 181 found at lines 20-24 of the committee amendments.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, the particular claim that I am seeking to strike is the claim of Warden Parratt and Deputy Warden Nance for \$2,903 to cover the judgement that they now have to pay out of their own pocket. When they got sued by Booker Robinson in the United States District Court for the District of Nebraska for failing to honor Booker Robinson's rights, constitutionally protected rights while Mr. Robinson was an inmate in the Nebraska penitentiary. I have placed on your desks a copy of Judge Schatz's decision in that case. Judge Schatz held that our state warden and our state deputy warden were guilty of deliberate indifference to the rights of Mr. Robinson and as a result of their indifference, their deliberate indifference to his rights, he had sustained constitutional denials and damages. The court entered a judgement against the two individual defendants for seven hundred and some odd dollars for the damage issue and in addition require the two defendants to pay the attorney fees and courts costs of the plaintiff. Now, I offered a similar amendment to this bill on General File and when I offered that amendment I did it very hastily because I had only had an opportunity a few minutes earlier to even note that this was in the claim matter. Since that time I have had occasion to do a little more research on this case to understand precisely what is at issue here. What very simply we have is we have two state employees charged with the responsibility of caring for one of our inmates who the court said were not just negligent in the way they cared for that inmate but were deliberately indifferent to the rights of the inmate and the inmate exercised his constitutional right by going to the United States District Court in Omaha, incidentally, before a very tough judge and the judge said without any question, this inmate spent twenty-eight days, he spent more time than that, but twenty-eight days in the "hole" when the warden and the deputy warden were aware of his condition. They failed to take any action to rectify his condition and they knew better and their conduct amounted to deliberate indifference of the right of that plaintiff and so the judge found for the plaintiff. Now, when that happens in one of these cases, the plaintiff under federal law is entitled to his attorney's fee. So what happens is that our Attorney General who defends the defendants comes into the court and says, see, judge, keep that attorney fee really low because in the end these two defendants have got to pay that fee out of their own pockets since the state doesn't have any reimbursement policy. So the judge takes that into consideration and keeps the fee at a very nominal level and then in this case, in this case, the Attorney



General comes before our Business and Labor Committee after the public hearing on the claim bill, after the public hearing, not before the public hearing, and says, hey, we really ought to help these two fellows out and get their court costs and attorney's fee paid. So there was never any public hearing on this point. He obviously convinced enough members of the Business and Labor Committee to put this in the committee amendment so that this would be allowed. But the policy question here is whether the State of Nebraska should compensate, should make whole anyone of its employees that engages in conduct that amounts to deliberate indifference to the rights of an inmate. Now you and I have just gotten through approving a \$50,000 claim for Joe Soukup whose rights year in and year out were very clearly violated by one, if not more, than our state employees and it seems to me that one of the ways that we can help ensure more devotion to duty on the part of our state employees, more diligence in ensuring the protection of persons in their care and custody is to say, look, if you are negligent in the way you conduct your work, that is one thing, we will help you out, but if your conduct is so ~~serious~~ <sup>serious</sup> that some court says that you were guilty of deliberate indifference to their needs, then we are not going to bail you out. You have got to be careful in what you do. Now, ladies and gentlemen, it is not up to you and I to supervise the day to day work of our state employees but it is up to you and I to set important state policy on who is reimbursed and who is not reimbursed and I think we make a serious mistake if we say simply that the warden and the deputy warden or the head of the regional center or the head of the community based programs or what have you shall be bailed out when they flagrantly disregard the rights of some individual that we have reposed in their care because what that will do if we make that kind of a policy statement is we, in effect, will be saying to our employees, don't be careful. You can go ahead and be careless and we will bail you out. I think this is a very serious and a very important policy question and it is for that reason I bring it back to you again for a second consideration and a second examination. I also bring it back knowing that this point never had a public hearing before the Business and Labor Committee. It was done in the last minute affair. It was done after the fact and it was at the bequest of our Attorney General. I ask the adoption of the amendment.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Johnson, what you are attempting to do is to pay for the attorney fees that are due so that the employees will not have to pay that out of their pocket. Right? Okay, thank you. I would just say one thing and I know

that time is precious and that is this. If every employee has to pay out of his pocket every time he takes a chance, we are not going to have many employees or that employee is not going to enforce his duties or do his duties very implicitly and enforce them. I think we should pay the bill for the attorneys and I am usually not one to support attorneys too strongly or to pay their bills for them but here again, if we are going to start this business I certainly think it ought to have a hearing rather than quickly doing this just out of our hip pocket. I oppose the amendment.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think Senator Nichol totally misunderstands this issue or is totally misconstruing it. We don't have a situation where employees acted in good faith. We have a situation where the evidence proves that these, the warden and the then acting deputy warden knew that an inmate had been confined to the "hole" without a hearing, without following the rules of the institution itself. So what Senator Nichol is saying is that the warden and these others, and we have serious problems at the pen now and the Judiciary Committee is trying to deal with them. The Legislature should tell these officials, you can forge documents although you know you violate your own rules and the Legislature will pay any costs that that entails. You can put people in the "hole" without a hearing which your rules and the law requires and the Legislature will pay out of its pocket to subsidize that kind of misconduct. I can't understand this. Let me read you what the judge said. "The failure of the warden or the acting deputy warden to take any action for twenty-eight days after having knowledge of the plaintiff's complaints amounted to deliberate indifference and significantly contributed to the deprivation of the plaintiff's right to due process." They knew for twenty-eight days. This is Watergate except Senator Nichol is saying, reward the warden and the deputy warden. Pay the damages and pay the lawyer fees. The state should subsidize violation of the law by its employees. Here is another comment from the judge. "Where a prison official has knowledge of complaints of serious constitutional violations and neither investigates the complaints himself nor forwards them to appropriate subordinates, that official may be held liable for any constitutional deprivations which occur as a result of such deliberate indifference." Now those of us on the Judiciary Committee are always talking about obeying the law but Senator Nichol wants to say that because they work for the state and they are in charge of these people who have been sent there for violating the law, the example that should be given to these convicted people is that an employee

of the state can violate the law and the state will not take any corrective action. I don't read that these individuals were reprimanded. They were not fired and as a result of this pussyfooting and dealing with their violations they have been copying mail. They have forged documents. They have done a host of things and some of the senators are beginning to get complaints and the reason you are getting them is because these administrators out there feel they can do anything they want to and get away with it. I think it is a serious matter that we have before us today and what we ought to remember is the purpose of the legislation, the federal legislation that allowed this suit in the first place. It is designed to correct the conduct of misbehaving public officials. They are in a position to do wrong because they have certain authority due to their position. When they act in violation of that authority then there must be responsibility placed on them. Remember, members of the Legislature, we are not talking about an employee who misunderstood a rule and therefore misapplied it. We are talking about employees who acted in direct and knowing violation of the rules of the institution and you are going to say, pay them? I don't know what is the matter with the Attorney General but if this is the kind of message he is sending out there maybe I understand now why there can be contraband gotten into the prison and I am talking about narcotics and alcohol. If the administrators know the Attorney General is not going to do anything, he is encouraging it. I thought we were concerned about law violators wherever they are found but all they need to do is become an employee for the State of Nebraska and they are exempted from the responsibility of their violations of the law. Remember this federal decision was handed down by a judge who heard all of the evidence and Judge Schatz is not a bleeding heart judge for those of you who don't know anything about the man. I might call him Judge Stoneheart.

SPEAKER MARVEL: You have forty-five seconds.

SENATOR CHAMBERS: But nevertheless, after reviewing all of the evidence that was presented, placing the best possible construction on the action of these prison officials, he was forced by the facts and the testimony to find that these officials knowingly acted in direct and deliberate violation of the rules of the institution and violated the rights of an inmate. So, I am supporting Senator Johnson's amendment.

SPEAKER MARVEL: Senator Marsh.

SENATOR MARSH: Mr. Speaker and members of the Legislature, originally I had intended to oppose Senator Johnson's amendment until I started reading some of this material which was presented to us. "The court finds that the plaintiff orally complained to the guards in the adjustment center and sent

written requests for interviews regarding his status to both Warden Parratt and Acting Deputy Warden Nance. Deputy Warden Nance was also contacted on behalf of the plaintiff by an inmate legal advisor. The court finds that the plaintiff has established both Warden Parratt and Deputy Warden Nance knew of the complaint. I, too, want protection for a state employee who is doing his or her job and expecting to have support from the state. I do not expect to pick up legal fees when someone has deliberately disregarded the rules of an institution and knowingly continues over a period of days and weeks to continue in that stance. In no way should we be picking this up. I personally am very disappointed to find that our Attorney General brought this in after the public hearing. I do not like that. I do not like the implication it makes to this kind of legislation when there is a public hearing where the facts can be brought out. Senator Johnson has brought to us this court case which is from federal court. As I said, I expected to vote against it until I learned what the true facts were. I urge you to join me in supporting Senator Johnson's amendment.

SPEAKER MARVEL: As we proceed, may I once again alert you to the fact that we are going to move through Select File today and we've got several of these bills that are quite voluminous so anything you can do to speed up the process the better it will be for everyone. Senator Koch.

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

SPEAKER MARVEL: The previous question has been called for. Do I see five hands? Let's try it again. Are there five hands? Okay. Shall debate cease? Okay, record.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate is ceased. The Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I know the time is short so I am going to be very quick in closing. All this amendment does simply is it strips away the claim of Warden Parratt and Deputy Warden Nance for some \$3,000 to, in a sense, exonerate them or hold them harmless or reimburse them for judgement that was taken against them when they were sued by a prison inmate because in the eyes of the court they had been willfully indifferent, or I should say, deliberately indifferent to the rights of that inmate. This particular amendment reflects a very serious policy question for the State of Nebraska and the question is this. To what extent will we hold our employees harmless for their misconduct? I have

no difficulty in holding our employees harmless when they are careless or negligent. I have every difficulty in the world in holding our employees harmless when they engage in deliberate acts to harm our people because they ought to know better. And what we have in this case is a finding by a tough United States District Judge in Omaha looking at all the facts saying that these people were deliberately indifferent to the needs of an inmate at the penitentiary and to that inmate's constitutional rights, i.e., the due process of law. They should have known better and they didn't act. Now the best way that you and I can ensure our employees will be faithful to our statutes and to our Constitution is to tell them that we will not bail them out. We will not bail them out when they act in flagrant disregard, in effect, to our Constitution and to our statute and I think it is only appropriate that we not pay that judgement but rather that the warden and the deputy warden pay that judgement out of their own pocket and that is what this amendment would do. I ask your support.

SENATOR WESELY PRESIDING

SENATOR WESELY: The motion is the Johnson amendment. Those in favor vote aye, those opposed no. The motion is the Johnson amendment. Record the vote.

CLERK: 26 ayes, 6 nays, Mr. President, on the adoption of the Johnson amendment.

SENATOR WESELY: The Johnson amendment is adopted.

CLERK: Mr. President, the next amendment I have is from Senator Warner. (Read Warner amendment as found on page 2143 of the Legislative Journal.)

SENATOR WESELY: Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, I raise this amendment more I think to call your attention to an issue because I have some reluctance to pursue it but there is one claim included in this which involved a case where an estate had no heirs and under the statutes it goes to the state and it is put in the permanent school fund as I recall which under the Constitution cannot be removed. However, in this case subsequent to the time of the finding of no heirs and the money being placed in the fund, it is only in the amount of \$13,000. An heir was found and so we are asked to replace that with general fund money. What my amendment does is would require the money to be paid out of cash funds from the Board of Educational Lands and Funds that they have on hand. I'm not

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LB 39, 39A, 179, 252, 451,  
LB 548, 499

sure that they would do that, but I don't want to, because of equity the reasons I guess I don't want to create a problem but I am concerned about it because it is my impression that there are those groups that go around the country looking for these kinds of instances and I assure that the attorneys doing it probably have a fifty-fifty or something better share. I do not know on this particular case that that is true, but I can well imagine that there well may be other examples that could be significantly greater than \$13,900 that is involved in this issue today. And I think it...there is a great deal of reluctance on my part to establish a precedent of picking up with General Fund money those funds that were erroneously as it turned out or illegally as it turned out placed into this fund, and I think it is even hard for me to imagine that they couldn't file a suit on an equity basis and maybe have some basis as to when inasmuch as the money was not placed in the fund originally correctly. But again, as I have indicated, I probably...I guess I will withdraw the amendment, having called attention to it, but I have a great reluctance to see this precedent started and I think that certainly by next session we need to establish by statute some clear policy so that this does not result in some future substantial amount of funds being charged to the General Fund because of an error somewhere along the line on property that was escheated back to the state. So with that comment and because of my reluctance to for equity of the individual attempt to stop the payment entirely, I will withdraw the amendment, Mr. President, but I do so very reluctantly.

SPEAKER MARVEL: The motion is the advancement of LB 548. All those in favor vote aye, opposed vote no. All those in favor say aye. Opposed no. The motion carried. The bill is advanced. Okay, we are ready for 512. We are ready... yes, go ahead, and then we will take up 512.

CLERK: Mr. President, a few items to read in if I may. Mr. President, Public Works would like to have a meeting with the Natural Resources Commission at Noon on May 27 in Room 1517. Any Senators are invited to attend. That announcement is offered by Senator Kremer.

Mr. President, LBs 39, 39A, 179, 252, 451 and 499 have been presented to the Governor for his approval.

Mr. President, I have a proposed rules change offered by Senators Wesely and Beutler. That will be referred to the Rules Committee for their consideration. (See page 2144 of the Legislative Journal.)

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LB 389, 396A, 548, 556A,  
257, 257A, 273, 273A,  
346, 477, 477A, 497,  
529, 529A, 541, 541A, 561

389 and find the same correctly engrossed, 396A correctly engrossed, 548A correctly engrossed, 556A correctly engrossed. All signed by Senator Kilgarin.

Mr. President, your legislative bills 273, 273A, 346, 257, 477, 541, 541A, 497 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I'm about to sign, and do sign, LB 273, re-engrossed LB 273A, re-engrossed LB 346, re-engrossed bill 257, engrossed LB 257A, engrossed bill 477, engrossed LB 477A, engrossed LB 541, engrossed LB 541A, engrossed LB 497, engrossed LB 529, engrossed 529A.

We are still under item number five, motions, and the Clerk will read the next motion.

CLERK: Mr. President, Senator Newell has the next motion, but he has not yet arrived.

Mr. President, Senator Fowler and Vard Johnson have a motion I understand they want to withdraw.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: There will be an effort to return the claims bill so I think we will try that avenue again. So, I'll ask unanimous consent to withdraw this motion to override the veto on public transit.

SPEAKER MARVEL: Hearing no objections so ordered.

CLERK: Mr. President, the next one I have then is from Senator Chambers. Senator Chambers would move to override the Governor's line item veto of the ADC appropriation contained in LB 561.

SPEAKER MARVEL: Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature this is an issue which we have discussed from time to time this session. It is one of those highly emotional matters and it is difficult to handle an emotional manner in an unemotional fashion. But on the chance that I may get carried away in trying to maintain my cool, I'm having sent around to you a one sheet statement of what it is that I am attempting to do. The amount of money which is involved and the

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LB 548, 460, 218, 385

SENATOR CLARK: The next bill is 548.

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

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

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

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



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Federal District Court Judge Albert Schatz concluded that Parratt and Nance should have been aware of Robinson's plight. I believe that the term, "deliberate indifference" was used in this case as a legal term of art and should not be construed to mean that Parratt and Nance intentionally committed any wrongful act. Ladies and gentlemen, I also believe that a failure to indemnify Parratt and Nance would be a gross injustice to these two men and would cause extremely serious personnel problems for this department as a whole. As you know, offender litigation is increasing in volume and correctional personnel are frequently named as defendants in lawsuits alleging damages of many thousands of millions of dollars. I urge your reconsideration of this matter.

SENATOR CLARK: Senator Maresh.

SENATOR MARESH: Mr. President and members of the Legislature, I voted to pay this court cost and attorney fees for these two people and I think we should reconsider our action. I have known Don Best for a long, long time and he is an honest person and he is real concerned about these people. Their homes are on the line because of this action and anybody who works for the Department of Corrections could be held accountable just like these two people and it is going to cause a problem as far as the workers there and the hiring of additional staff. So I think we should reconsider this at this time. I think the court action has got the attention of everybody and I think that we are going to find that there will be fewer cases such as this in the future. I think we should abide by the wisdom of our Attorney General who told the Business and Labor Committee to consider this when we held a hearing and then took action on these claims against the state that we do pay these. So I hope that the body reconsiders our action and pays these claims against the state.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, as I was coming in I saw Paul Douglas, the Attorney General, out there skulking in the halls and I think what we ought to do, again, is decide that neither the Attorney General or anybody else is going to persuade us to go along with misconduct by state employees. Now either whoever wrote this letter, Mr. Best signed it, but whoever wrote it, either that person is a liar or Judge Schatz is a liar. Now the only reason he limited the amount that these people were responsible for was for twenty-nine days was because from that point on, they were in a position to know what had happened and refused to take corrective action. Now that is in the court opinion. If you are going to allow

state employees to violate the rules and regulations of the department for which they work, knowingly violate those rules and have a court determine that they knowingly violated those rules, then the state pays for the wrong that they caused, the state is underwriting deliberate violation of the rules and regulations of that department. For Mr. Best, who is acting like the Director of the Department of Correctional Services, to ask the Legislature to cover over the wrongdoing of two employees indicates that he either lacks the will or the strength to properly administer that department. He is saying that despite the fact that the warden and the then acting deputy warden violated the rules and regulations of the institution and the law, he wants them not to be held accountable for it. Yet these are the ones who are to discipline inmates. If you want to maintain discipline in a paramilitary organization, which they like to say police divisions in penal institutions are, those people who commit wrongs have to be held accountable for the wrong that they do and this is why the federal law, under which the lawsuit was brought, holds the individual who commits the infraction personally liable and responsible. The State of Nebraska did not approve of this man being held without the proper hearing. For your information, if you did not read the judge's opinion, the misconduct report on which all of this supposedly occurred was never found. Parratt and Nance knew. They want to be able to run the penitentiary in disregard of the law and the rules and regulations of the department itself. Yet they can in an ad hoc fashion promulgate any rule that they want and without informing the inmates hold them accountable if they violate a rule or an order that they didn't even know existed. And on page 2 I see interesting language which is becoming very hackneyed when we talk about problems in the institution. In the second paragraph, "Senator, I also believe that a failure to indemnify Parratt and Nance would be a gross injustice to these two men and would cause extremely serious personnel problems for this department as a whole." A few days ago we were being told with the concurrence of some of the senators, I guess, or they were being duped, that the deputy ombudsman for corrections is the cause of the most serious personnel problems out there. So, since that word or phrase that they conjure by seemed to get the senators attention so much, anything they want to put across now is based on it being a serious personnel problem. And I believe the Attorney General's hand is involved in this like it has been in the other matters and it is time for somebody to call his hand. He is a politician before he is a lawyer and he has done things and written things and taken positions that I think are highly questionable and this is one of them. He should not stick his nose in this at all, nor

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should the acting director of corrections. I will tell you what you are going to do while you sit at this table and do these things...

SENATOR CLARK: You have one minute left.

SENATOR CHAMBERS: ...without thought and being aware of the background, You're going to help generate the very violent explosion they are trying to foment out there at the penitentiary right now. Then they want to drop the blame on somebody else. But after talking with an agent of the F.B.I. today I was asked to go on record with them as to my concerns so when and if it happens the Justice Department has been informed. Then when I make a request for a federal investigation the question can be asked, why were these conditions allowed to fester and develop into these terrible problems? I think you ought not bring this bill back. The ones who knowingly violated rules and regulations and were found to have done so by a federal judge should be personally responsible for their conduct in the same way that any of us and any other employee ought to be personally responsible.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I wonder if I might be able to ask Senator Nichol a question if he is available. I heard his presentation and it left me...

SENATOR CLARK: Senator Nichol, will you respond to a question from Senator Cullan?

SENATOR CULLAN: I guess I didn't quite, Senator Nichol, understand what you were saying. You indicated that in the decision Judge Schatz used the phrase, "deliberate indifference" and then you said, if I recall, that the phrase "deliberate indifference" was a legal term of art and that he used that phrase in lieu of the phrase, "willful misconduct," and I guess I fail to understand the difference between willful misconduct, intentional misconduct and deliberate indifference. I have always thought deliberate kind of meant intentional or willful and I really guess maybe I am kind of simple but I don't understand the differences between those phrases.

SENATOR NICHOL: I don't know that deliberate indifference is a legal term. The way I took it to mean was that what they had done was not definitely deliberate, willful doing of the act, rather it was somewhat not knowing what they were and being somewhat negligent in not pursuing their duties as strictly as they ought to. That is the way I took it.

SENATOR CULLAN: So you are trying to tell the Legislature that we should interpret the phrase, "deliberate indifference" as meaning negligent.

SENATOR NICHOL: That is right.

SENATOR CULLAN: Okay, thank you, Mr. President. Now I think I understand and I can see the reason for some of this confusion. Now, negligence means you fail to use reasonable care or fail to exercise caution. It means that you didn't exercise the kind of discretion that you should have but it doesn't imply intentional doing of anything. It doesn't imply deliberate and so I guess from Senator Nichol's explanation that we should interpret deliberate to mean negligent would simply be incorrect and I can understand that and that is probably one of the reasons for the confusion, but deliberate is deliberate, is intentional, is whatever other synonym you want to use and the judge did not say that these people were negligent. He said that they were deliberately indifferent. Now that is not negligence. That means that they knew and they ignored it. That implies intent and that is significant. I don't think we should pay these individuals when they were deliberately indifferent. That is significant. That doesn't mean that they just were not aware. It is not negligence. I urge you to oppose Senator Nichol's motion.

SENATOR CLARK: Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I want to call to your attention an important fact. You and I passed LB 273 the other day and the Governor signed the bill so the bill is now the law of the state and this bill establishes the state's policy on reimbursing employees for tortious acts that they commit. This bill says that we will not reimburse a state employee for a tortious act which the employee commits if, number one, the act was not committed within a scope of employment which is irrelevant here but, number two, if the act amounted to willful or wanton neglect of duty. Now let me ask you, when Judge Schatz said that these two gentlemen's activities were deliberately indifferent to the constitutional rights of Mr. Robinson, I submit that that concept, deliberate indifference, already falls within the ambit of a policy decision you and I have made. To be deliberate is to be willful. To be indifferent is to be negligent. That is equivalent to willful neglect of duty. Now what the acting director of corrections, Mr. Best, asks here is that he wants to relitigate this case. He wants to relitigate it right here in the body. He wants to say simply that this concept, "deliberate indifference" was just kind of a legal term and besides these two gentlemen really were

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not guilty of any wrongdoing and we should all go ahead and pay them. But you and I have already set a policy decision in this area and I think it is a good policy decision that we are not going to reimburse employees whose activities amount to a willful or a wanton neglect of duty. We happen to know what the facts are in this case. Judge Schatz elucidated those in his opinion. He said that he found, he specifically found incidentally, that the warden and the deputy warden had notice of Mr. Robinson's plight twenty-nine days earlier than the release date. Mr. Best does not mention that in this letter. Judge Schatz says, in a footnote in his opinion he says, "Their conduct was a lot more than simple negligence." Mr. Best does not mention that in his letter. The truth of the matter is he says, "These gentlemen had a duty. The duty was to ensure the constitutional rights of an inmate and not only did they neglect to carry out the duty, they were deliberately indifferent to the duty." They were deliberately indifferent to it which in my book is the equivalent of willful neglect of duty and you and I have decided that we are not going to reimburse, we are not going to hold harmless state employees who go that far beyond the pale and these two gentlemen went that far beyond the pale and they ought not to be reimbursed. It is a sound policy decision that you and I made when we approved 273 the other day and the Governor signed it into law. It is a sound policy decision that you and I made not to allow this claim and it will be a sound policy decision that you and I make when we reject the Nichol amendment.

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President and members, I also rise to oppose the Nichol amendment. If you will notice in the letter that Senator Nichol is referring to and passed around, excuse me, Senator Maresh I guess passed it around, it indicates on the second page that there is probably going to be an increase in the number of litigations, that more and more of these people are being named as defendants in lawsuits and that is supposedly a reason for us to honor this claim. Now I am a member of the committee that heard this claim at the outset and if I remember correctly the largest majority of the dollars that are being paid in this claim goes to the attorneys. Now it seems to me that if, in fact, the penitentiary is going to be in a position where more and more of their employees are going to be named as defendants, then they certainly should have an attorney either on the staff or use the Attorney General's office or something but I don't like the idea of us paying for attorneys willy-nilly that are supporting people that fail to do their duty and their jobs. I think this body, as

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Senator Johnson said, made a sound policy decision and I think that this body should stick with that decision. I think we were right and should stay right. Thank you, Mr. President.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President and members, I am going to support Senator Nichol's amendment. I voted on the other side the last time. I think I made a mistake. I got to thinking, how many people in this room would take a job at the penitentiary if they knew that they were going to be liable, that is in dollars, for any error that they made, and I am talking about instances such as this. I doubt very much. I know I would not. I would not think of it and I think we are asking the employees at the penitentiary that very same thing. I think it is going to cause a morale problem. I think there is going to be... I think we could do more harm than good so I am going to support his amendment.

SENATOR CLARK: Senator Nichol, would you like to close?

SENATOR NICHOL: Just briefly, Mr. Chairman, by saying I think if we continue this sort of practice, that most likely it would result in difficulty in getting people to assume the responsibility of handling prisoners and the problems connected with prisoners.

SENATOR CLARK: The motion before the House is the return of 548 for a specific amendment. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? There are three excused so you have all voted but fifteen. Did you want a Call of the House? A Call of the House has been requested. All those in favor of a Call of the House vote aye, opposed nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 15 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All senators will return to your seats and check in please. Senator Beutler, Senator Burrows, Senator Marvel is in. Senator Kremer, Senator Lamb. Senator Hoagland, are you here? Senator

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LB 548, 352

Kremer, Senator Schmit. Senator Schmit, Senator Burrows and Senator Kremer. Senator Nichol, did you want a roll call vote? We are short Senator Kremer and Senator Schmit.

SENATOR NICHOL: Let's go.

SENATOR CLARK: Call the roll.

CLERK: Senator Barrett.

SENATOR NICHOL: Do you want to tell them what we are voting on?

SENATOR CLARK: Yes, go ahead and tell them what we are voting on.

CLERK: Mr. President, Senator Nichol has moved to return LB 548 to Select File for a specific amendment. (Read amendment as found on page 2335 of the Legislative Journal.) (Read roll call vote as found on page 2335.) 19 ayes, 23 nays, Mr. President, on the motion to return the bill.

SENATOR CLARK: Motion failed. The next bill is LB 352. Senator Carsten.

CLERK: Mr. President, Senator Carsten would move to return LB 352 to Select File for a specific amendment. The amendment would add the emergency clause.

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I move to return LB 352 to add the emergency clause. This amendment that Senator Koch had put on the other day was overlooked, the emergency clause was overlooked and because of the varying time frame that various subdivisions make their budget statements and requests vary so much, in order to be sure that everybody has ample time to get their job done it does appear that the E clause should be added, and with that explanation, Mr. President, I would again move that the bill be returned for that amendment.

SENATOR CLARK: Is there any discussion? Senator Newell, did you want to discuss this? The motion before the House is the return of LB 352 for a specific amendment, add the emergency clause. It takes 33 votes. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting yes.

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

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LB 396, 523, 548

amendment drafted that will take care of that problem and it has not come to me yet. I would hope that you would bear with me that we may pass over it at least for awhile until we get that amendment.

SENATOR CLARK: All right, we will pass over it. LB 523.

ASSISTANT CLERK: (Read LB 523 on Final Reading.)

SENATOR CLARK: All provisions of law having been complied with, the question is, shall the bill pass. All those in favor vote aye, all those opposed vote nay. Voting aye.

ASSISTANT CLERK: Senator Clark voting aye.

SENATOR CLARK: Record the vote.

ASSISTANT CLERK: (Read record vote as found on page 2341 of the Legislative Journal.) The vote is 37 ayes, 6 nays, 5 excused and not voting, 1 present and not voting, Mr. President.

SENATOR CLARK: The bill is declared passed. The Clerk will now read LB 548 with the emergency clause.

ASSISTANT CLERK: (Read LB 548 on Final Reading.)

SENATOR CLARK: All provisions of law having been complied with, the question is, shall the bill pass with the emergency clause attached. All those in favor vote aye, opposed vote nay.

ASSISTANT CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? We have five excused. Have you all voted? Have you all voted? Record the vote. Senator Wesely, for what purpose do you arise?

SENATOR WESELY: I think you need 30 votes on this, don't you?

SENATOR CLARK: No, it needs 33. It has the emergency clause on it.

ASSISTANT CLERK: (Read record vote as found on page 2342 of the Legislative Journal.) The vote is 29 ayes, 15 nays, 5 excused and not voting, Mr. President.

SENATOR CLARK: The bill having failed to receive a constitutional majority is declared not passed with the emergency clause attached. We will now vote on the bill without the emergency clause attached and I would ask Senator Warner, does this take 30 votes? It's not in the Governor's budget. All those in favor



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LB 548, 556, 556A

vote aye. All those opposed vote nay. It takes 30 votes.

ASSISTANT CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Record the vote. Senator Marsh.

SENATOR MARSH: Mr. Speaker, I am going to request a roll call vote and the reason I am going to request a roll call vote is that this is necessary to pass if some of you do not wish to be called back into a special session.

SENATOR CLARK: A roll call vote has been requested. Call the roll. Everyone will be in their seats. We are going to have a roll call vote please. Call the roll.

CLERK: (Read roll call vote as found on page 2342 of the Legislative Journal.) 30 ayes, 14 nays, Mr. President, on final passage of LB 548.

SENATOR CLARK: The bill is declared passed. The Clerk will now read LB 556 with the emergency clause.

ASSISTANT CLERK: (Read LB 556 on Final Reading.)

SENATOR CLARK: All provisions of law having been complied with, the question is, shall the bill pass with the emergency clause attached. All those in favor vote aye. All those opposed vote nay.

ASSISTANT CLERK: Senator Clark voting aye.

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

ASSISTANT CLERK: (Read record vote as found on page 2343 of the Legislative Journal.) The vote is 43 ayes, 0 nays, 6 excused and not voting, Mr. President.

SENATOR CLARK: The bill is declared passed with the emergency clause attached. Is Senator Marvel in the room? The Clerk will now read 556 with the emergency clause attached. It is an A bill.

ASSISTANT CLERK: (Read LB556A on Final Reading.)

SENATOR CLARK: All provisions of law having been complied with, the question is, shall 556A pass with the emergency clause attached. All those in favor vote aye. All those opposed vote nay. It takes 33 votes.

CLERK: Senator Clark voting yes.

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LR 192  
LB 111, 118, 129, 129A, 213, 318, 322,  
389, 389A, 472A, 523, 540, 548, 556, 556A

PRESIDENT LUEDTKE PRESIDING

DR. ROBERT PALMER: Prayer offered.

PRESIDENT: Would you all register your presence? We would like to get started. Senator Carsten, would you give us a green light and then we will start. Thank you, you got us under way. Record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President.

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand as published. Any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined LB 540 and find the same correctly enrolled; 322 correctly enrolled.

Mr. President, your enrolling clerk has presented to the Governor for his approval the bills that were read on Final Reading yesterday. (See page 2356 of the Journal regarding LBs 111, 118, 129, 129A, 523, 556, 556A, 213, 318, 389, and 389A.)

Mr. President, I have an Attorney General's Opinion addressed to Senator Beutler regarding LB 472A. (See pages 2356 through 2358 of the Journal.)

Mr. President, I have a report from the Department of Administrative Services regarding lease approval.

Mr. President, new resolution, LR 192, offered by Senator Rumery. (Read LR 192 as found on pages 2358 and 2359 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, LB 548 and 322 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 548 and LB 322. Before we get started with today's activities, the Chair would like to introduce fifteen students from across the whole State of Nebraska,

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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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want to take one more bill then? Okay, fine. Have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2406-2407 of the Legislative Journal.) 37 ayes, 8 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 352 passes with the emergency clause attached. The next bill on Final Reading before the break for lunch is LB 385.

ASSISTANT CLERK: (Read LB 385 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 385 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 2407-2408 of the Legislative Journal.) 29 ayes, 14 nays, 2 excused and not voting, Mr. President, 4 present and not voting.

PRESIDENT: LB 385 passes. If you would read some matters in and then we will get ready for recess.

CLERK: Mr. President, a letter from the Governor addressed to the Clerk. (Read. Re. LB 406, 548, 389 as found on page 2409 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 321 and find the same correctly enrolled.

Mr. President, I have a veto message from the Governor addressed to Dear Mr. President and Senators. (Read. Re. 129A. See page 2408 of the Legislative Journal.)

Mr. President, finally LB 95, 95A, 172, 218, 234, 234A, 235, 302, 389A, 318, 344 and 352 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LB 95, LB 95A, LB 172, LB 218, LB 234, LB 234A, LB 285, LB 302, LB 318, LB 344 and LB 352. Well, let's let somebody... Senator Marsh, do you wish to recess us until one-thirty.

SENATOR MARCH: I move we recess until one-thirty.

PRESIDENT: The motion is to recess until one-thirty. Any... All those in favor to recess until one-thirty signify by saying aye, opposed nay. We are recessed until one-thirty.