

January 8, 1982

LB 264, 710-726

Mr. President, the Ag and Environment Committee gives notice of hearings on gubernatorial appointments. That is offered by Senator Schmit. (See page 170 of the Journal).

New bills. LB 710 offered by Senator Wiitala. (Read title). LB 711 offered by Senator Nichol. (Read title). LB 712 offered by Senator Fowler. (Read title). LB 713 offered by Senator Schmit. (Read title). LB 714 offered by Senator DeCamp. (Read title). LB 715 offered by the Judiciary Committee and signed by its members. (Read title). LB 716 offered by the Judiciary Committee. (Read title). LB 717 offered by the Judiciary Committee. (Read title). LB 718 offered by the Law Enforcement Criminal Justice Advisory Committee. (Read title). LB 719 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 720 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 721 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 722 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 723 offered by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 724 by the Law Enforcement and Criminal Justice Advisory Committee. (Read title). LB 725 offered by the Judiciary Committee. (Read title). LB 726 offered by Senator Vickers. (Read title). (See pages 170 through 174 of the Legislative Journal).

SPEAKER MARVEL: We are ready for LB 264 on General File.

CLERK: Mr. President, LB 264 offered by the Public Health and Welfare Committee and signed by its members. (Read title). The bill was first read on January 16 of this year, or last year, excuse me. It was referred to the Public Health and Welfare Committee for hearing. At that time it was advanced to General File, Mr. President.

SPEAKER MARVEL: The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. Speaker and members of the Legislature, this bill was brought to the committee by the Department of Welfare in terms of trying to make a conformity with the present age of majority statutes. It is a rather small technical change. All it would do basically at this time lower it from the age of 20 to the age of 19 the age at which a guardian would be appointed for a mentally retarded individual and then the possibility of placing them in a Department of Welfare local mental retardation facility would take place. I don't see much of a problem with it. There was very little testimony as you can see from the committee statement, and basically it is a technical change.

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LB 590, 677, 705, 718,
719, 722, 724

Mr. President, your committee on Judiciary whose Chairman is Senator Nichol reports LB 590 to General File; LB 705 to General File; LB 718 to General File; LB 719 to General File; LB 724 to General File; LB 677 General File with amendments; LB 722 General File with amendments. Signed by Senator Nichol as Chair.

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LB 719, 724

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, LB 719 was introduced on behalf of the Nebraska Supreme Court and provides for a change in the method of payment for docket fees in cases filed in the Supreme Court and also increases that fee. Currently when a matter is filed in the Supreme Court, the party making the filing pays a docket fee of \$20. The opposing party when making their first appearance in the action is required to pay an additional docket of \$5. Incidentally, this \$5 ususally never gets paid. In order to ease the administration of docket fee collection, the bill provides the entire docket fee is to be paid by the party originally filing the action and the docket fee is increased from \$25 to \$50. Generally, the losing party gets stuck for these fees anyway and it takes about \$1500 minimum to take a case to the Supreme Court so \$50 isn't going to keep them out. I move for the advancement of the bill.

SENATOR CLARK: Is there any discussion on the advancement of LB 719? If not, all those in favor vote aye, opposed vote nay.

CLERK: Senator Clark vcting yes.

SENATOR CLARK: Record the vote.

CLERK: 29 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: 719 is advanced. We go to 724.

CLERK: Mr. President, LB 724 introduced by the Law Enforcement Criminal Justice Advisory Committee and signed by its members. (Read title). The bill was read on January 8 of this year, referred to Judiciary, advanced to General File. I have no amendments to the bill, Mr. President.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, LB 724 provides for the certification of questions of law in the Nebraska Supreme Court from the federal courts or other State Supreme Courts. Currently when a question arises in these other courts as to the interpretation of Nebraska law, the question is resolved by the foreign court guessing how the Supreme Court would decide the issue if it were before it. The bill will end situations like this by providing a procedure for the foreign court to request

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LB 724, 677

the Supreme Court to take the issue in dispute and make a determination. Mr. Chairman, I move for the advancement of the bill.

SENATOR CLARK: Is there any discussion on the advancement of 724? If not, all those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

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

CLERK: 30 ayes, 0 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: The bill is advanced. LB 677.

CLERK: LB 677 (read title). The bill was read on January 6 of this year. It was referred to the Judiciary Committee for hearing. The bill was advanced to General File. I do have committee amendments by the Judiciary Committee, Mr. President.

SENATOR CLARK: Senator Nichol on the committee amendments.

SENATOR NICHOL: Mr. Chairman, if I might ask your indulgence a minute and I asked Senator Pirsch if I might do this, on LB 722 I missed a little amendment. I was wondering if we could possibly go back and put that on at this time. If it is not acceptable, I will not do it, but I would ask to do that if I can.

SENATOR CLARK: You had better do it on Select. The bill is already advanced. On 724?

SENATOR NICHOL: Yes, let's just let it go, Mr. Chairman.

SENATOR CLARK: LB 722 hasn't come up yet. Do you take the committee amendments on 677, Senator Pirsch?

SENATOR PIRSCH: Thank you, Senator Clark. Members of the body, the amendment simply clarifies and puts the language correctly in the law which makes it clear....

SENATOR CLARK: (Gavel) Could we have it just a little quiet. We can hardly hear up here.

SENATOR PIRSCH: ...the main intent of the law. Registered or certified mail must now be used in mailing a jury summons and LB 677 allows for first class mail to be used as an alternative. The option of first class mail is not mandated,

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LR 214

LB 127A, 636, 724, 778, 823,834

SENATOR NICHOL: One minute left. Senator DeCamp.

SENATOR DeCAMP: I wasn't going to talk but it just occurs to me that you are all maybe going the opposite way on this. All the resolution says, if you read it, is exactly, precisely the opposite of what Ernie wants. The resolution says, look, we realize there are some touch economic times and we have already indicated support for this particular road, and if it gets into trouble, it is the intent...and that is all it says, the intent of the Legislature to try to continue it on. Well, that seems to me to make sense for those, I don't know, 40 or 50 that wanted the doggone road, and I guess they think it is a necessary road. I think Ernie is the one that is the winner. Everytime you vote against him you are voting against him without reading the resolution because the resolution is the last thing he ever wants. He wants a record that shows everybody opposed the state doing what they said they wanted, which was the road. So I suppose if you were smart, you would just pass the dumb resolution and he would be the only loser, it just occurs to me.

SENATOR NICHOL: Senator Chambers, did you wish to close? Senator Chambers, did you wish us to vote on your motion to reconsider, or do you wish to with...okay, he will withdraw. Is there any objection to Senator Chambers withdrawing his motion? Senator Haberman. The motion is withdrawn. Mr. Clerk, do you have some things to read in?

CLERK: Yes, sir. Mr. President, Senator Sieck would like to print amendments to 127A; Senator Vard Johnson to 724. (See page 606 of the Legislative Journal).

Mr. President, your committee on Miscellaneous Subjects gives notice of cancellation and resetting of a public hearing.

Senator Vickers would like to print amendments to LB 778 in the Journal. (See page 607 of the Journal).

Your committee on Urban Affairs whose Chairman is Senator Landis, reports 636 advanced to General File with committee amendments attached; 823 advanced to General File with committee amendments attached. Those are signed by Senator Landis. (See page 607 of the Journal).

Your committee on Public Health whose Chairman is Senator Cullan, reports LB 834 advanced to General File. (See page 607 of the Journal).

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LB 264, 309, 347, 403, 418, 542
563-66, 572, 579, 642, 659, 677
703, 705, 718, 719, 722, 724,
764, 774, 778, 779, 797, 852,
879, 606, 32, 229, 490, 492

SPEAKER MARVEL PRESIDING

RABBI BISMAN: Prayer offered.

SPEAKER MARVEL: Item #2, roll call. Please record your presence. Record your presence. Pat, do you want to record.

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

SPEAKER MARVEL: Do you have anything under #3?

CLERK: Mr. President, I have several items. First of all I have a reference report referring LR 218 to the Banking Committee for public hearing.

Mr. President, a communication from the Governor addressed to the Clerk. (Read communication re: 264, 309, 347, 403, 418, 563, 564, 565, 566 and 572 as found on page 613 of the Legislative Journal.)

A second communication. (Read re. LB 542.) And a third, Mr. President, from the Governor addressed to the Clerk. (Read re. 32, 229, 490 and 492. See pages 613-614 of the Legislative Journal.)

Mr. President, your committee on Education whose chairman is Senator Koch reports LB 642 advanced to General File; LB 774 advanced to General File; LB 797 advanced to General File with amendments. Those are signed by Senator Koch.

Your committee on Public Works whose chairman is Senator Kremer offers a corrected statement to LB 852. (See pages 614-615 of the Legislative Journal.)

Mr. President, your committee on Government, Military and Veterans Affairs whose chairman is Senator Kahle reports LB 879 advance to General File with committee amendments attached. That is signed by Senator Kahle. (See page 615 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 606 and recommend that same be placed on Select File; 579 Select File; 703 Select File with amendments; 705 Select File; 718 Select File; 719 Select File; 724 Select File; 677 Select File; 722 Select File with amendments; 659 Select File; 764 Select File with amendments and 778 Select File with amendments and 779 Select File with amendments, all signed by Senator Kilgarin as Chair. (See pages 615-616 of the Legislative Journal.)

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LB 719, 724

announce there are 15 ladies and 1 gentleman from Northwestern College at Roseville, St. Paul, Minnesota. They are merely on a tour. They are in the North balcony visiting the Unicameral. Welcome to the Unicameral. We will go to 719.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 719.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 724.

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

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 724.

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

CLERK: Mr. President, Senator Vard Johnson would move to amend the bill. The amendment is found on page 606 of the Legislative Journal.

SENATOR CLARK: Senator Johnson.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, this is a very simple amendment. As you may recall, LB 724 allows the Nebraska Supreme Court to decide whether or not it will receive from another court a question of law and will then decide the question of law. When I read the bill over, the only...I only had two misgivings with the bill and the first misgiving dealt with some kind of time limitations because as a lawyer I know how tough it can be to have a case in the federal district court and the opposing counsel says to the judge in the federal district court that this case involves a state law question and what I would like to do, Mr. Judge or Your Honor, what I would like to do is to have this case certified in the Nebraska Supreme Court so the state law question can be resolved, and as the lawyer for my client, I go to the judge and I say, Judge, you don't have to do this, you shouldn't do this, it is a bad thing to do, and it is going to take a lot of time to get it done. The judge disagrees with me and he certifies the case down to the Nebraska Supreme Court for resolution of the state law question.

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LB 724

And now the case is filed under LB 724 in the Nebraska Supreme Court and it just kind of languishes there, and so my client...so far no court has ever decided my client's case. So I say what I had better do is I had better put some time limits in here because I can appreciate the need to at least allow the Nebraska Supreme Court to look at some of these state law questions. So I said...what I do is I give the Nebraska Supreme Court sixty days. They have got sixty days after another state court, either another state court or else the federal district court certifies a question to the Nebraska Supreme Court, they have sixty days to decide whether they are going to take the question. Okay, and at the end of sixty days if they have not acted, then their not acting is deemed to have been a decision not to take the question. So that means the case then proceeds in whatever court it was originally in. So that is one portion of the amendment. The other portion is that with respect to these certified law questions the Supreme Court shall affect what I call an expedited briefing and hearing process, meaning simply that they will tell the litigants to work quickly to get their briefs written and they will set up a quick oral argument so that people won't be stuck in the court processes too long by virtue of the case being certified to them. Finally the amendments say that this procedure, the certification procedure is a fine procedure with respect to federal actions being certified to the Nebraska Supreme Court but not in respect to actions from other state supreme courts being certified in the Nebraska Supreme Court. Now the reason I did that is because by and large most federal cases that are being certified will be federal cases in Nebraska being certified back down to the Nebraska Supreme Court, whereas obviously other state court cases being certified could come from New Jersey and New York, Massachusetts, California, what have you, certified into Nebraska, that means that New Jersey, New York, Massachusetts and California lawyers have got to come to Nebraska and have got to take care of the case. We have a body of law known as the conflicts of law. The function of that body of law is essentially to enable courts of other states to figure out what law to apply to a question from other states and go ahead and decide the case. So I felt that it was not good policy to allow questions to be certified in from other state courts. It is a good policy to allow them to be certified in from the federal system but not from other state courts. So my amendment does three things: It removes the language allowing the certifying of cases in from other state courts. It requires the Supreme Court to act at least in deciding whether or not to take a certified case within sixty days

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LB 724, 677

after the case has been filed. And it requires the Supreme Court to establish and expedite a briefing and hearing schedule, and that is it. I would move the amendment.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, having looked at these, I would agree that Senator Vard Johnson this time is doing a good thing and I would urge for the adoption of his amendments.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I also agree with Senator Johnson, and since there has been no opposition expressed, I don't need to prolong this discussion.

SENATOR CLARK: Senator Johnson, do you have to close? The question before the House is the adoption of the Johnson amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on the Johnson amendment? Have you all voted? For the benefit of the visitors up there, we have two committees out on committee hearings right now and that is why we are short on the floor. We do need 25 votes for the amendment though. I would hope that we don't have to have a Call of the House. That is very disturbing to the Budget Committee. The other committee will be up here in about ten minutes anyway. Record the vote.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Johnson's amendment.

SENATOR CLARK: The amendment is adopted. Senator Nichol.

SENATOR NICHOL: Mr. Chairman, I move for the advancement of LB 724.

SENATOR CLARK: The question before the House is the advancement of LB 724. All those in favor say aye, opposed. The bill is advanced. LB 677.

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

SENATOR CLARK: Senator Kilgarin.

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PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Roll call. Record the vote, Mr. Clerk, or the presence, I mean.

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

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

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand as published. Are there any other messages, reports or announcements?

CLERK: Mr. President, I have a report from the Department of Roads. That will be on file in my office.

The Committee on Business and Labor whose chairman is Senator Barrett instructs me to report LB 967 advance to General File with committee amendments attached; LB 968 as indefinitely postponed, both of those signed by Senator Barrett.

A new resolution, LR 248 offered by the Administrative Rules Committee calls for an interim study into the feasibility of employing an independent hearing examiners system for state agencies in Nebraska. (See page 1149 of the Journal.)

Your committee on Enrollment and Review respectfully reports we have carefully examined and engrossed LB 69 and find the same correctly engrossed; 359, 428, 571, 623, 659, 705, 724, 779 all correctly engrossed, those signed by Senator Kilgarin as Chair. (See page 1151 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 652 and recommend that same be placed on Select File with E & R amendments attached; 522 E & R amendments attached; 568 E & R amendments attached. Those are signed by Senator Kilgarin as Chair. (See pages 1150-1151 of the Legislative Journal.)

Your committee on Public Works whose chairman is Senator Kremer reports LB 785 advance to General File and LR 212 advance to General File. Those are signed by Senator Kremer. (See page 1152 of the Legislative Journal.)

I also have a committee on Public Works report on a gubernatorial confirmation hearing.

And, Mr. President, Senator Beutler would like to add his name to LB 577 as cointroducer.

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LB 724, 779, 774

SENATOR CLARK: The bill is declared passed on Final Reading. The Clerk will now read 724.

ASSISTANT CLERK: (Read LB 724 on Final Reading.)

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

ASSISTANT CLERK: Senator Clark voting aye.

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

CLERK: (Read the record vote as found on pages 1293 and 1294 of the Legislative Journal.) 42 ayes, 0 nays, 6 excused and not voting, 1 present and not voting, Mr. President.

SENATOR CLARK: The bill is declared passed on Final Reading. The Clerk will now read 779 with the emergency clause.

CLERK: (Read LB 779 on Final Reading.)

SENATOR CLARK: I skipped one bill but we will go back to that in a moment. All provisions of law relative to procedure having been complied with, the question is, shall the bill pass with the emergency clause attached? All those in favor...pardon? 779E. We will go back to 774E in a moment. 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. The mistake was mine, not yours. I would like to announce to you that the Kiwanis Club members from all over the state are here for Legislative Day. They are in both balconies. Would you stand and be recognized, please? Welcome to your Legislature. I would like to explain to you that we are on Final Reading at the present time. The Constitution says that all bills must be read in their entirety. It is not very interesting, but that is what the Constitution says, and then the Senators vote. If you stick around later, you may get more action. The Clerk will record the vote.

CLERK: (Read the record vote as found on pages 1294 and 1295 of the Legislative Journal.) 39 ayes, 3 nays, 6 excused and not voting, Mr. President, 1 present and not voting.

SENATOR CLARK: The bill is declared passed on Final Reading with the emergency clause attached. The Clerk will now read 774E.

LB 520, 577, 591, 604A, 623, 629, 629A,
634, 651, 659, 697, 705, 716, 724, 759,
774, 779, 784, 792, 839, 877, 931, 941,
951, 626, 961, 962

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626 up to the point where it was the other day before this misunderstanding occurred. I thank you very much.

PRESIDENT: Any further discussion? Senator Rumery, do you have any closing on the advance?

SENATOR RUMERY: Just this, Mr. President, there has been reference made to sinister moves by a lobbyist and I would like to say that Mr. Paul O'Hare worked with us and I can truthfully say that we have not considered that he was doing anything underhanded at all, and I would like to have that for the record. I ask you to move the bill.

PRESIDENT: Did I hear a request for a record vote? I figured I would. Okay, Senator, we will go to the board then. All those in favor of advancing LB 626 to E & R for Engrossment vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 25 ayes, 9 nays on the motion to readvance the bill, Mr. President.

PRESIDENT: Motion carries. LB 626 is advanced to E & R for Engrossment. You may read some things in.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined LB 591 and recommend that same be placed on Select File; 520 Select File with amendments; 629 Select File with amendment; 629A Select File, and 759 Select File. (Journal page 1305.)

Mr. President, Senator Warner would like to print amendments to LB 604A in the Journal. (Page 1304 of the Journal.)

Mr. President, the bills that were read on Final Reading this morning are now 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 577, 601, 623, 634, 651, 659, 697, 705, 716, 724, 779, 774, 784, 792, 839, 877, 931, 941, 951, 961, and 962.

PRESIDENT: Before we go into the next matter, the Chair takes the privilege of introducing 41 Seventh Grade students from Sandy Creek District from Fairfield, Nebraska. They are up here in the south balcony, Mr. David Nienkamp, their instructor. Would they kind of just wave to us. It is so crowded up there, let's see where you are up there. Welcome to your Legislature, to the Unicameral. Ready, Mr. Clerk, on LB 870.

LR 270

LB 127, 259, 601, 611, 623, 642, 644,
647, 651-2, 659, 678, 696-7, 700,
716, 724, 757, 767-7A, 774-776,
779, 784, 792, 816, 828, 839, 845,
877, 931, 941, 951, 961-2, 705

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Mr. President, three communications from the Governor addressed to the Clerk. (Read. Re: LBs 775, 776, 601, 623, 651, 659, 697, 705, 716, 724, 774, 779, 784, 792, 839, 877, 931, 941, 951, 961, 962, 259, 642, 644, 678, 696, 828, 845, 767, 767A. See pages 1415 and 1416, Legislative Journal.)

Mr. President, I have a series of Attorney General's opinions. The first is to Senator Vickers regarding LB 647; one to Senator Wesely regarding LB 700; a third to Senator Hefner regarding LB 611; a fourth to Senator Haberman regarding LB 127; and a fifth to Senator Carsten regarding LB 816. All of those will be inserted in the Legislative Journal.

Mr. President, a new resolution, LR 270 offered by Senator Newell. (Read. See pages 1424 and 1425, Legislative Journal.) That will be laid over pursuant to our rules, Mr. President.

Finally, Mr. President, Senator Wiitala asks unanimous consent to remove his name as cosponsor from an amendment to LB 652, Request 2652.

SENATOR CLARK: Is there any objection? So ordered.

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

SENATOR CLARK: All right, is Senator Koch here? I think we will go ahead and pass over Senator Koch's request here until he arrives. We will go to item #5 on General File, the priority bills, the revenue priorities, 757 is the first bill.

CLERK: Mr. President, LB 757 introduced by the Speaker at the request of the Governor. (Read title.) The bill was read on January 11 of this year, referred to the Revenue Committee for public hearing. The bill was advanced to General File, Mr. President.

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, in the absence of Senator Marvel I suspect that I should take the bill. The bill is very straightforward. There is no committee amendment. It is in its original form to reduce the minimum of the overlevy or cushion from 3% to 2%. It was a recommendation from the Governor in a bill that he had introduced by Senator Marvel and I would move that it be moved from General File to E & R Initial.

SENATOR CLARK: We have a motion on the desk.