

January 11, 1982

LB 753-763

EASE

PRESIDENT: The Chair recognizes Sergeant at Arms Ray Wilson.

SERGEANT AT ARMS WILSON: Mr. President, your committee now escorting his excellency the Governor of the Great State of Nebraska.

PRESIDENT: The committee will escort the Governor. The Governor of the State of Nebraska, Charles Thone.

GOVERNOR THONE: (Gave State of the State and budget address as found on pages 192-206 of the Legislative Journal.)

PRESIDENT: The committee will reescort the Governor out of the Chamber. The Speaker has recommended that we stand at ease for about ten minutes at this time. Then we will reassume our deliberation.

EASE

PRESIDENT: The Legislature will come back to order. The Clerk will read some matters into the record at this point.

CLERK: Mr. President, we've received some Attorney General's opinions, four to be exact. The first is from Attorney General's office addressed to Senator Haberman; the second addressed to Senator Beyer; a third addressed to Senator Haberman and a fourth to Senator Sieck. All four will be inserted in the Legislative Journal. (See pages 206-212 of the Legislative Journal.)

Mr. President, I have a report of registered lobbyists for the week of November 4 through January 8. (See pages 212-214 of the Legislative Journal.)

Mr. President, LR 201 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business I propose to sign and I do sign LR 201.

CLERK: Mr. President, I have new bills. (Read by title for the first time LBs 753-763 as found on pages 214-217 of the Legislative Journal.)

PRESIDENT: We are ready to take up agenda item #6 which involves motions to suspend rules on some revisor bills and I am advised by the Clerk that there is one additional bill if you will add to your agenda, LB 592 after 664. Senator Lamb, are you going to make a motion to....

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LR 220
LB 753, 760

SENATOR CLARK: Would you like to respond? Go ahead.

SENATOR DeCAMP: Mr. President and members of the Legislature, as you can see, Senator Nichol has done the other half of our show here. I was deliberately to leave it out so he could stand up and point out the Panhandle is involved as he has properly done and now he can offer the amendment that clarifies that as we had agreed earlier.

SENATOR CLARK: Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I rise to support the resolution and I would encourage anybody that had the time tomorrow to visit the veterans in these various hospitals across our state. I urge your support in adopting the resolution.

SENATOR CLARK: Is there any further discussion on the resolution? Senator Nichol, did you wish to amend it?

SENATOR NICHOL: Well, I don't know if I want to amend it. I am just I guess overcome with wonderment as to why we are doing this at this time. I love all the veterans. I love them that are in the hospital. I just wonder why we are doing this. I don't comprehend what we are doing, frankly.

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

CLERK: Senator Clark voting yes.

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

CLERK: 33 ayes, 0 nays on adoption of the resolution, Mr. President.

SENATOR CLARK: The resolution is adopted. We will now go to 604. We may be able to complete that before noon. Do you have anything to read in?

CLERK: Mr. President, Senator Lowell Johnson asks unanimous consent to add his name to 220 as co-introducer.

SENATOR CLARK: No objections, so ordered.

CLERK: Senator DeCamp would like to print amendments to 753 in the Journal and 760. (See pages 676 and 677 of the Journal.

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LB 589, 598, 614, 693, 741, 753,
757, 760, 821, 899, 908, 939

SPEAKER MARVEL: The bill is declared passed on Final Reading.

CLERK: Mr. President, if I may, I have a report from the Banking Committee on a gubernatorial appointment confirmation hearing.

Mr. President, I have explanation of votes from Senator Marvel and Senator Carsten.

Mr. President, your committee on Revenue whose Chairman is Senator Carsten instructs me to report LB 757 advanced to General File; 693 General File with committee amendments attached; 753 General File with committee amendments attached; 760 General File with committee amendments attached; 614 indefinitely postponed; 741 indefinitely postponed, all signed by Senator Carsten as Chairman.

Your committee on Urban Affairs whose Chairman is Senator Landis instructs me to report LB 899 indefinitely postponed; 939 indefinitely postponed; 821 indefinitely postponed; and 908 indefinitely postponed, all signed by Senator Landis as Chair.

SPEAKER MARVEL: Underneath the South balcony it is my privilege to introduce the daughter and son-in-law of Harry Chronister, Senator Chronister and the two people are Mike and Janet Casuscelli. Would you please indicate where you are so we can wish you "Good morning". And underneath the South balcony is a guest of Senator Barrett, Mr. Dale Kugler of Lexington representing the Northeast Stockgrowers Association. The next bill on Final Reading is LB 598.

CLERK: Mr. President, Senator Koch would move to return LB 598 to Select File for specific amendment, that amendment being to strike the enacting clause.

SPEAKER MARVEL: Senator Koch.

SENATOR KOCH: Thank you, Mr. Speaker, members of the body, occasionally there are certain kinds of bills that move across the Board with considerable ease and fortunately there was enough debate this morning I had a chance to look at what LB 598 intends to do. It appears to be rather innocent but I want to give you the history. Last year you will recall Senator DeCamp, Senator Wesely had a bill in here on weatherization and increasing the severance tax on oil and gas and that bill would have made everyone eligible for weatherization and grants including

the Legislative Journal.) That will be laid over, Mr. President.

SENATOR CLARK: Number 753.

CLERK: Mr. President, LB 753 was introduced by the Speaker at the request of the Governor. (Read.) The bill was read on January 11. It was referred to the Revenue Committee for hearing. The bill was advanced to General File, Mr. President. There are Revenue Committee amendments pending.

SENATOR CLARK: Senator Carsten, on the committee amendments.

SENATOR CARSTEN: Mr. President, here again is another one of the Governor's bills that was introduced to add four cents in the cigarette tax. We did advance the bill to the floor with the committee amendment to increase cigarettes two cents. Following that, March 10 a communication and visit from the Governor, we met again and voted to accept the Governor's original recommendation. So in light of that I would move that the committee amendments be rejected and that the bill then would remain in its original form. I would so move, Mr. President.

SENATOR CLARK: Senator Landis, on the committee amendments.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I am going to support the committee amendments and I am going to support 753 but I am going to do so with some reluctance and I want to talk to you about the reason for that. We just had the corporate tax increase and I supported wholeheartedly the language struck by the committee for exactly the reason that Senator Johnson indicated. LB 760 restored a balance that has always been there but because of recent conditions stemming from the mid-70s that balance in the equitable taxation of various parts of our economy has gradually fallen by the wayside and that situation, corporations in Nebraska, are the forty-fourth lowest in tax burden in the nation, whereas the general public in Nebraska suffers under about a twenty-fifth lowest burden of taxation and for property taxes have the tenth highest. So one can come to the conclusion that corporations in Nebraska have enjoyed a very low rate of taxation considering other parts of the tax paying public. This is not true with cigarette smokers in the State of Nebraska. LB 753 is not the restoration of some long existing fairness or equitable standard. 753 is here because we need money and we need it now. It is before us because we have to look to new revenue sources because of existing conditions which have come upon us in only the last year. You will see on your desks this piece of paper which I had passed out indicating the rates of taxation now enjoyed in Nebraska and the surrounding states on taxation. I had to alter it because

of price increases. The sales tax that you now pay on a cigarette pack is three cents, not two cents, making in Nebraska a seventeen cent tax obligation, fourteen cents cigarette tax, three cents sales tax. Compared to the surrounding areas, Wyoming with a total tax liability of eight cents, Colorado ten, Kansas thirteen, Missouri eleven at our present rate of seventeen cents. Given 753 with the committee amendments we are looking at twenty-one cent tax in Nebraska. There is a very real probability of bootlegging cigarettes and the driving across state boundaries to buy cigarettes at these lower tax rates. This hurts not only the state coffers but also Nebraska retailers. Again, not because of some past imbalance of our tax versus other states, not restoring some equitability but simply because we need tax money, we need revenues now. With respect to South Dakota and Iowa we are in the ballpark but twenty-one cents will place us above every one of our surrounding states. The potential for businesses on the perimeter of our state to lose money is very great. What I suggest to this body is that we pass 753 with the committee amendments at this stage but I hope that we do not delude ourselves into thinking that 753 has the same merit that LB 760 does, that with 753 we are restoring some longstanding equitable balance between various taxpayers. In fact, we are making a grab for some revenues for a short term problem and I would suggest to the body that we not for close the possibility of alterations in this bill, that we not stop looking for alternatives, that perhaps at the Select File stage we need to consider other methods of eliminating...

SENATOR CLARK: You have about thirty seconds left, Senator Landis.

SENATOR LANDIS: Thank you...the impact of this bill. Unfortunately we are now being called upon to set a delicate equilibrium and setting the scales in the middle of a wind storm. I don't think permanent solutions can be arrived at in these conditions. The times are unstable. Our answers should be short term in response to those conditions and for that reason I will support 753 but look for alternatives to maintain fairness and equity in these tax rates. Thank you.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Just a question, if I may, of Senator Carsten.

SENATOR CLARK: Senator Carsten, will you yield?

SENATOR BEUTLER: Senator Carsten. The first question I was interested in was answered in part by Senator Landis, that is the situation in surrounding states. The other question I was interested in that I have heard nothing on so far is, what has been the history of the cigarette tax increases in this state

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for say, the last five or ten years or is there any material that would be available to us to show the historical development of the tax?

SENATOR CARSTEN: Senator Beutler, as you are well aware, some of the increase in the cigarette tax the last few years has been earmarked for specific areas. I think it started off basically with the college over at the University and those have been some of the increases that have been imposed in the last few years. I think as I recall there is only nine, and I may be wrong, but I believe it is nine cents that goes into the general fund. The remainder of it goes into earmarked areas.

SENATOR BEUTLER: But the total amount of cigarette tax, say in 1970, how much was it and '75 and '80? How much has the total tax on cigarettes increased historically in recent history?

SENATOR CARSTEN: That I cannot tell you. I do not have that at my fingertips at the moment.

SENATOR BEUTLER: Okay, thank you, Senator Carsten. Thank you, Mr. Speaker.

SENATOR CLARK: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I rise to oppose the committee amendment and I voted for it, but the reason I voted for it was because we didn't know how much money we would eventually need for our state budget. The committee amendment calls for a two cent increase. If we reject this and go back to the original bill, well then we will have a four cent increase. A one cent per pack increase raises \$1.7 million a year and of course a four cent raise would raise approximately \$7 million. Now I am not a smoker so I don't feel I have a conflict of interest here. I can see where Senator Newell and some of the other smokers would have a conflict of interest here. I would like to ask Senator Landis a question if he would yield.

SENATOR LANDIS: Yes.

SENATOR HEFNER: Senator Landis, I noticed on this sheet that you passed out you had Nebraska cigarette tax fourteen cents, sales tax three cents.

SENATOR LANDIS: Right.

SENATOR HEFNER: That is on a package?

SENATOR LANDIS: Right.

SENATOR HEFNER: How do you arrive at the three cents sales tax per package?

SENATOR LANDIS: The cost of a package of cigarettes now is high enough in this state to trigger a three cent liability for paying that...for purchasing that package of cigarettes.

SENATOR HEFNER: Okay then, if I buy a pack of cigarettes out of a machine at sixty-five cents a pack that means that that vendor pays three cents sales tax. Is that right?

SENATOR LANDIS: Right.

SENATOR HEFNER: That would probably be true in Omaha or Lincoln but I doubt if whether it would be true in outstate Nebraska. Right?

SENATOR LANDIS: I don't smoke cigarettes, haven't bought a pack out there, but, Elroy, I defer to your judgment.

SENATOR HEFNER: Okay, thank you.

SENATOR LANDIS: My own experience in Lincoln is that there would be a three cent sales tax.

SENATOR HEFNER: Okay, thank you.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Thank you, Mr. Chairman, members of the body, it is always easy to add on another sin tax. No one is going to say too much. I remind Senator Hefner, if I were in here today with a bill wanting to increase the gasoline tax by four cents he would have a conflict of interest and I think that is probably what we ought to do and see how willing Senator Hefner would be to buy that argument. I know the state is hard up and I'm sure that if we added four cents to the gasoline tax and put it in the general fund we could pay the state patrol and that is maybe what we ought to do because probably we would raise more money with four cents on a gallon of gasoline and diesel fuel than we would by taxing that great sin, cigarettes. I smoke. Since I have been here I've redoubled my effort because I want to get the building award at the University of Nebraska some day because of the tax I pay to support and build buildings. I don't mind paying that tax because that is for structures that are used for public purposes. When we start using tax on cigarettes to increase our general fund, that is going a little bit too far. I agree with Senator Landis. You start taxing cigarettes at the point that we are

about to do it, you are going to encourage illicit trade in the tobacco industry. If you don't think that is not true, you probably saw Sixty Minutes a year or so ago when they showed you illicit trade around New Jersey and New York by the semitrucks. I understand the state's financial problem but those are not new. Those financial problems have been looming on the horizon for the last three years. The indicators were all there. So here we are again. We're going to tax cigarettes because that is easy and not many people, including the smokers, are going to argue very much. A question of Senator Carsten. He smokes a pipe and cigarettes I noticed. Senator Carsten, when we put taxes on cigarettes why didn't we ever tax tobacco, snuff, pipes and other paraphernalia that you use in the tobacco industry?

SENATOR CARSTEN: Why didn't we?

SENATOR KOCH: Why didn't we?

SENATOR CARSTEN: As I recall....

SENATOR KOCH: Had too many cigar smokers in here?

SENATOR CARSTEN: I beg your pardon?

SENATOR KOCH: Did we have too many cigar smokers in here that we couldn't get them?

SENATOR CARSTEN: As I recall when we attempted to do that it was at a time when they were stamping the packs of cigarettes and the cigarette industry, even though we tried to do it on pipe tobacco and others, but the stamping process was not adapted to the stamping of the other tobacco materials.

SENATOR KOCH: Oh, it is impossible to stamp a can of Prince Albert or Club 69 or Cherry 69 or whatever those exotic tobaccos are?

SENATOR CARSTEN: That is what the tobacco industry was telling us at that time, Senator Koch.

SENATOR KOCH: Oh, I will take your word for that. But I am serious when I am saying this body I believe is taking some very indiscriminate action in an attempt to increase our general revenue fund. We added a penny tax last year on cigarettes for cancer research and health related researches to the Med Center. Now here we are again coming back, going to ask this time not for just a penny but a rather significant increase and I am opposed to it and I hope most of the body would be opposed to it as well. I agree with what was said by Senator

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Vickers and others. If we are going to have to increase the revenue of the state then we ought to be straight up about it and do it through sales, income and corporate tax because that is where that should be generated and not do it, pick on an industry indiscriminately even though some of you may not smoke but for those of us who do and for the tobacco industry...

SENATOR CLARK: You have one minute left, Senator Koch.

SENATOR KOCH: ...this is a bad way to try to generate the money. Senator Newell wants to say a little bit about that since he is a smoker as well.

SENATOR CLARK: Senator Haberman. The question has been called. Did you yield to him? You only have about twenty seconds so go ahead. All right you can take the twenty seconds, you bet.

SENATOR NEWELL: Well let me say simply this, is that in terms of my conflict of interest I want to assure the body that I am not buying cigarettes any more. I haven't quit smoking but I am not buying them. That is right. Senator Koch is supporting my habit now but the proposal today, I support the committee amendments which raise the cigarette tax to two cents. I think frankly that is as much as we should ask cigarette smokers to pay in this state.

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

CLERK: Senator Clark voting yes.

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

CLERK: 25 ayes, 12 nays to cease debate, Mr. President.

SENATOR CLARK: Debate is ceased. Senator Carsten.

SENATOR CARSTEN: Then I would move that the committee amendment be rejected, Mr. President.

SENATOR CLARK: All right the question before the House is the rejection of the committee amendments. All those in favor vote aye, opposed vote nay. He wanted the committee amendments rejected so I put the question that way. All those in favor of rejecting the committee amendments will vote aye, opposed will vote nay. That could be backwards but it will work either way.

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CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on rejecting the committee amendments? Record the vote.

CLERK: 25 ayes, 11 nays on the motion to reject the committee amendments, Mr. President.

SENATOR CLARK: The committee amendments are rejected. I grant you that was backwards but at least he had to have 25 votes. Senator Carsten.

SENATOR CARSTEN: Are there any more amendments, Pat?

CLERK: Mr. President, Senator DeCamp had one amendment but he wants to withdraw that so I have nothing further on the bill, Senator.

SENATOR CLARK: It is withdrawn.

SENATOR CARSTEN: Then I would move LB 753 to E & R initial, Mr. President.

SENATOR CLARK: The question before the House is the advancement of the bill, 753. Is there any discussion? Senator Burrows, did you want to talk on the advancement?

SENATOR BURROWS: Yes, Mr. Chairman, members of the Legislature, I think you should study these little charts that are put out for you and what this will do when you add four cents which we have got in the bill right now since the committee amendments were rejected. I oppose the advancement of this bill. We are moving to a dollar thirty a carton difference between Nebraska and Wyoming to a dollar ten difference in tax per carton from Colorado. And you look at Missouri down there, about a dollar difference if we go with four cents on top now, a dollar difference from Missouri. We are inviting, if we move this far, bootlegging of cigarettes into Nebraska and a loss of the revenue from what the projections are, a loss of retail sales in the state which are simply going to be shifted to other states around us. I think it is time you look at realism as to what we can take and how much we can go beyond these other states and still not lose the sales to our Nebraska retailers of cigarettes. I'm talking about carton sales generally. It is not going to happen a pack at a time. But to move up where you make a difference of a dollar thirty a carton from an adjoining state is an open invitation to people going out of state and picking up large amounts of cigarettes and selling them back in the State of Nebraska because of the difference of cigarette tax. There are some other reasons I oppose this. I think it is really a cheap shot to

get so hung up on the general revenue system of the state to shift to a regressive tax and we are doing that in this bill. Because we've got an idea that everybody should pay the same tax regardless of income it seems to be dominating in the moves in this legislative body when we shift to what is a product tax, although it is cigarettes, going out beyond what is reasonable in relation to other states and moving to a regressive tax to protect the highest income taxpayers of the state. I think it is a real disappointment to see the movements, the general movements in revenue source that are being made in this Legislature to go after the little guy for the bucks to protect the highest income sources of the state. We just gave away all the bucks in the corporate income tax where they would come from the wealthiest sources in the state and now we are going to tack it on the cigarette smoker and force some of them to be buying outside the state. I urge the body to reject this bill. I think we could have bought a couple cents but to go four cents on it is a very unreasonable figure.

SENATOR CLARK: Senator Newell. All right, Senator Vard Johnson. We are on the advancement of the bill.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I think this is a fairly difficult issue because we are asking cigarette smokers to pay a pretty good hike. Without any question, there will be an increased amount of bootlegging of cigarettes across state lines. I think that Larry Ruth, I believe, testified to the Revenue Committee that when the State of Iowa increased its tax by four cents last year they anticipated increased receipts in the neighborhood of \$35 million and it turned out they only received \$20 million and it also turned out that the number of reported sales are down in Iowa so the suspicion is simply that there has been a fair amount of bootlegging of cigarettes across the state line. Now our own tax commissioner testified that Missouri is taking a hard look right now at increasing its cigarette tax very substantially and the same thing is being considered in Kansas, though not Wyoming and if you look at Senator Landis' chart you will discover that Wyoming is by far the cheap tax state on cigarettes so I suppose out in the panhandle, Senator Clark, we will find some bootlegging going on when we increase the tax rate. But the real question is, what is the right thing to do? Senator Beutler asked early on what the historic figures were on cigarette taxes and Senator Peterson and I passed out a chart which you have on your desk which was prepared by Larry Ruth who is the lobbyist for the tobacco institute because we had asked him this question during the course of the revenue hearing and that is, what has been the historic relationship between the prices of cigarettes and the level of taxes. And as you can see from the chart starting in 1955 about 51% of the price of a package of cigarettes represented taxes with the remaining 49% representing cost of production plus profit and so on and that

relationship tended to run all the way through the mid-1970s, when in the 1970s the level of taxes on a package of cigarettes declined dramatically in relationship to the overall price. Now my recollection is we have only had two tax changes on cigarettes in the last ten years, the most recent one being in 1981 when we increased the tax on cigarettes by one cent a package and that was to fund certain kinds of research and in addition the Governor took some of that money and put it in the general funds's operation and the preceding one was in the early 1970s when we increased the price, I believe, by five cents a pack. I think that was the level of tax increase and the purpose of that was to finance the Bob Devaney Sports Complex and since that time we have used the money for other capital construction projects. So what has happened is that our basic activities in taxing cigarettes occurred in the '50s and '60s and in the very early '70s but since that time we have really not done very much. Now I would think that other states would be looking at somewhat similar figures. Other states are going to be looking for revenues also by virtue of federal tax changes, by virtue of a slowing economy and the like and it strikes me that the problem we foresee today of bootlegging will tend to diminish as other states likewise make similar adjustments to their own cigarette prices. Though this is a very healthy tax and it is a very heavy tax, a very hefty tax on a commodity...I mean when you think about taxing a commodity at 50% of its cost which is what it used to be and now it is about 35% of its cost, that is a very hefty tax...

SENATOR CLARK: You have one minute left.

SENATOR V. JOHNSON: ...nonetheless, it is a responsible tax. It is clearly a tax on a commodity that is of very little value to people including myself. It is a tax that I don't think is unjustified and even though I know that there will be a lot of smokers that will be unhappy with this particular bill, I think that it is in order and I think we ought to advance the measure.

SENATOR CLARK: Senator Labeledz.

SENATOR LABEDZ: Thank you, Mr. President and members of the Legislature, the increase of course I will be against. I checked with the Department of Revenue. It is going to be... right now it is nine cents to the general fund. A four cent increase would put thirteen cents per pack in the general fund, one cent I think we appropriated some time ago to the Games and Parks, and four cents is earmarked for capital construction, research and a few other programs. I also checked out at Offutt Air Force Base. I don't know what the total population is at the base but I'm sure at one time I heard there was between thirteen and fifteen thousand. They do not pay any sales tax

on cigarettes or anything that they purchase at the base. Now living in Omaha I know this is true, that there are friends of people at the base that will be asking them to obtain cigarettes from them from the Commissary and not pay the city or the state any sales tax or any cigarette tax to the state. Eighteen cents per pack or eighteen cents tax per pack if this bill goes through does not include the 4.5% sales tax that we pay in Omaha. On an eighty cent package of cigarettes that is an additional 3.6 cents. So you add eighteen plus the 3.6, it is 21.6 cents per pack that we will be paying or otherwise about \$2.20 a carton for tax for the State of Nebraska and some of that of course to the City of Omaha or the City of Lincoln. But let me assure you because the base is so close and Iowa is so close, I have neighbors now that tell me they go over to Council Bluffs to buy their groceries. Groceries are cheaper there. The sales tax is cheaper. There is no sales tax on food. They fill up their gas tank. They will buy their cigarettes and they will buy their groceries and come back to Omaha. There will be bootlegging done at Offutt Air Force Base. There will absolutely be no sales tax and no Nebraska tax on a package of cigarettes that is purchased at the base. Thank you very much. The reason we don't receive any sales tax or cigarette tax from the base is because it is federal property. Thank you.

SENATOR CLARK: Senator Haberman. The question has been called for. Do I see five hands? I do. Shall debate now cease, that is the question. All those in favor vote aye, opposed nay.

CLERK: Senator Clark voting yes.

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

CLERK: 27 ayes, 9 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has ceased and Senator Carsten will close.

SENATOR CARSTEN: Mr. President and members of the Legislature, I think that probably Senator Johnson's passout that he gave to you tells the story quite plain. I would hope that you would take a look at that before you vote. I do think that as far as bootlegging is concerned, it has been frankly admitted that bootlegging now is in operation and I don't think that it makes much difference, another four cents is going to increase that tremendous amount and you always find that on the fringe areas of a state that possibility and that activity. We were so worried, some were so worried about the gas tax and I don't believe that we are severely being hurt by going across the borders for gas. Relative to

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Wyoming I think you have to bear in mind that some states have different resources for their tax structure than we do. We have to look to those that are at hand and that we can use and this is one of them that we have used. Whether it is proper or improper we have used it and again are using that source once more. I would like to, if I may, Mr. President, give Senator Landis an opportunity. As I understand he misunderstood the motion to begin with on this and I would yield to him for the rest of my closing time for his comments, Mr. President. Thank you.

SENATOR CLARK: Go ahead, Senator Landis.

SENATOR LANDIS: Thank you very much, just another one of the commonly gracious things that Senator Carsten does. In fact, when I was making my remarks about the committee amendments I misunderstood the way that the motion was placed before us. I support the four cents tax. I support what the Revenue Committee ultimately suggests to us. I do continue to look for alternatives and will do so on Select File but at this point, I support that and I wanted to make that clear for the record that I had misunderstood how the motion was placed but that I support the recommendation of the Revenue Committee for a four cent tax increase for cigarettes. I support LB 753 in its current form and I hope that it will be moved to E & R initial.

SENATOR CLARK: I would like to introduce 37 students from Monroe High School, Monroe, Nebraska, seventh through tenth graders. They are in the North balcony. Will you stand and be recognized, please. Welcome to the Legislature. The question before the House is the advancement of the bill. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: Mr. President, Senator Newell requests a record vote. (Read record vote as found on page 1408 of the Legislative Journal.) 25 ayes and 12 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. Motion on the desk.

CLERK: Mr. President, Senator Haberman would move that we adjourn until nine-thirty, Monday, March 29.

SENATOR CLARK: You have all heard the motion. All those in favor say aye, opposed...a machine vote has been requested. All those in favor of adjourning until Monday morning at nine-thirty vote aye, opposed vote no.

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LB 522A, 605, 714, 753,
754, 760, 761, 942,
966, 967, 970, 970A

SENATOR CLARK PRESIDING

SENATOR CLARK: The Legislature will come to order. The prayer this morning by Father Edmund Placek of the Sacred Heart Catholic Church, Burwell.

FATHER PLACEK: (Prayer offered.)

SENATOR CLARK: The state officers of the Knights of Columbus are here for the occasion of the centennial of the Knights of Columbus. I think they are going to see the Governor and have him declare it that. We also have three visitors from Australia. They are under the South balcony. David McConnell, Helen McConnell, and Marilyn Handley. Would you stand and be recognized please. Senator Lamb has 7 students from Newport, Nebraska grade school, Pam Peterson, the teacher, and they are in the North balcony. Would you stand and be recognized please? Welcome to the Legislature, all of you. Roll call. Could we all check in, please. We have the Benson Republican Women's Club in the North balcony. Would you stand and be recognized please? Welcome to you to the Legislature. The Clerk will record.

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

SENATOR CLARK: Are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR CLARK: Do you have any messages, reports, or announcements?

CLERK: Yes, sir, I do, a series of things. Mr. President, your committee on Enrollment and Review respectfully reports they have examined and reviewed LB 754 and recommend that same be placed on Select File; 522A Select File; LB 942 Select File with amendments; LB 966 Select File with amendments; LB 970 Select File; LB 970A Select File with amendments; LB 761 Select File with amendments; LB 967 Select File; LB 760 Select File; LB 753 Select File. Those are all signed by Senator Kilgarin as Chair, Mr. President.

Mr. President, your committee on Public Health and Welfare offers a report on gubernatorial confirmation hearing.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 605 and find the same correctly engrossed; and LB 714 correctly engrossed.

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LB 208, 408, 602A, 753,
760, 761, 953, 953A

SENATOR CLARK: No, not that I know of.

SENATOR HIGGINS: Thank you.

SENATOR CLARK: I think we will stop right here. I think Senator Wiitala...well, he already announced the vote though. He was excused. The Clerk has some things to read in.

CLERK: Mr. President, new A bill, 602A offered by Senator Cullan. (Read LB 602A title.) 953A by Senator Schmit. (Read 953A title.)

Senator Schmit would like to withdraw his name as co-introducer of an amendment to LB 760. That is Request 2842, Mr. President.

Mr. President, Senator Schmit would like to print amendments to LB 953; Senator Koch to 761; Senator Landis to 753. (See pages 1458 and 1459 of the Legislative Journal.)

Mr. President, there will be inserted in the Journal a communication to the Governor from the Clerk regarding the delivery of LB 208. (See pages 1457 and 1458 of the Journal.)

SENATOR CLARK: Senator Wiitala. Senator Wiitala. Senator Wiitala, would you like to adjourn us until tomorrow morning at nine o'clock.

SENATOR WIITALA: Yes, Mr. President. I move that we adjourn until nine o'clock, March 30th, with reluctance.

SENATOR CLARK: You heard the motion. All those in favor say aye. Opposed. We are adjourned. I had to check the date to be sure he hadn't set it up a day.

Edited by:

Marilyn Zank
Marilyn Zank

March 30, 1982

LR 277, 278
LB 408, 753, 755, 756, 761,
816, 933

why you shouldn't. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think what Senator Beutler is trying to get the Legislature to do is what a group of philosophers known as the School Men used to do. They were renowned for being able to split a philosophical hair between the North and the Northwest Side. Now when you find a subject which is related to another subject but you say they are different because they are found in different portions of the statute books, I think that is straining at a gnat while maybe at another point swallowing a camel. From my experience with traffic citations, I had to do research in the statutes and there is legislation dealing with citations found in Chapters 39 as well as Chapter 29. They overlap. They supplement each other. And if one provision were amended, then I am certain that the amendment could be made to apply to the other part also despite the fact that they are in different chapters. So I want that statement into the record and I will not make a formal challenge of the Chair because the Chair has ruled consistently on this point despite the fact that I disagree. I also learn, and I saw what happened yesterday, Mr. Chairman, so I will not make a formal challenge.

SENATOR CLARK: Senator Beutler. All right, we will go to the next amendment. The Clerk wants to read some things in first.

CLERK: Mr. President, if I may very quickly, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 755 and find the same correctly engrossed; 756, 933, all correctly engrossed.

Senator Koch would like to print amendments to LB 761; and Senator Chambers to 761.

Mr. President, new resolutions, LR 277 (read). That will be laid over. LR 278 (read). (See pages 1489-1491, Legislative Journal.)

Mr. President, Senator Cullan would like to print amendments to LB 753.

And I have an Attorney General's opinion addressed to Senator Vickers regarding LB 816.

Mr. President, the next motion I have on LB 408 is a motion to indefinitely postpone the bill. That is offered by Senator Wesely.

SENATOR CLARK: Senator Wesely.

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LB 942, 626, 753, 799

SENATOR CULLAN: Okay, thank you, Senator Higgins.

SENATOR HIGGINS: Okay, Senator.

SENATOR CLARK: The question before the House is the advancement of the bill. No further discussion? All those in favor vote aye, opposed vote nay. While you are voting on that, I would like to tell you what I have kept track of up here. You were fifteen minutes late coming in this noon. You had forty minutes on a Call of the House only which is one hour's time on Call of the House and being late. So if you are going to save time, that is a good way to do it. Record the vote.

CLERK: 26 ayes, 4 nays, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. Motion on the desk. Yes, read in first.

CLERK: Mr. President, Senator Wesely would like to print amendments to LB 753; Senators DeCamp, Haberman, and Schmit to LB 799.

And, Mr. President, Senator DeCamp, would like to withdraw a motion that he filed this morning on LB 626.

SENATOR CLARK: Motion on the desk.

CLERK: Mr. President, Senator Haberman would move to adjourn until 9:00 a.m.

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

SENATOR NICHOL: Mr. Chairman, I was wondering if Senator Lamb had any instructions as to how long we are going to be going tomorrow night or the rest of the week so we can plan our (interruption) accordingly?

SENATOR CLARK: Senator Lamb, do you have any instructions on how late we are going to go tomorrow night?

SENATOR LAMB: I would suggest about four-thirty.

SENATOR CLARK: Four-thirty tomorrow night. All right. Senator Haberman, you motioned to adjourn? You heard the motion. All those in favor say aye, opposed. We are adjourned until tomorrow morning at nine o'clock.

Edited by:

Marilyn Zank
Marilyn Zank

April 5, 1982

LB 760, 753

to follow that and we have tried to work with some individuals and some businesses and they have been supportive of the concept. It has come up rather quickly because we weren't able to spend a lot of time on it preparing it, but I will tell you that we have tried to develop an amendment and that would provide for some incentive that I think is an important area right now in our present hard economic times. That is the proposal. I would ask your support. Understand the concerns and the questions but I think at this time we need to try to move forward and provide an incentive in an area that is so important to our state and that is to create jobs.

SENATOR CLARK: The question before the House is the adoption of the amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

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

CLERK: 3 ayes, 23 nays, Mr. President.

SENATOR CLARK: The amendment is not adopted.

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

SENATOR CLARK: Senator Kilgarin, to move the bill.

SENATOR KILGARIN: I move we advance LB 760.

SENATOR CLARK: The motion is to advance 760 to E & R Final. All those in favor say aye, opposed. The bill is advanced. 753.

CLERK: Mr. President with respect to...I have no E & R Mr. President. The first amendment I have to the bill is offered by Senator's Landis and DeCamp. It is on page 1459 of the Journal.

SENATOR CLARK: Senator Landis, amendment to 753.

CLERK: 1459, Senator.

SENATOR LANDIS: And if the Pages would pass this out if you don't want to find it in the Journal you can just take a look at this language here. This is a one year sunset for the cigarette tax. A one year sunset on the 4¢ and an admission

that there is some need for some cigarette tax increase so that at the end of one year we come back 3¢ but not all the way, we come back to one permanent cent increase but a 4¢ increase for this one coming year. On General File you might remember that I made the discussion points that we are in remarkable times and we have been looking at the cigarette smoker as a temporary source of revenue. However in fairness I don't think we can say cigarette's have been taxed at an unreasonably low figure. If anything we find that by comparison Nebraska taxes its cigarette smokers at a relatively high rate. High enough that it can promote perhaps the prospect of bootlegging between Nebraska and other states which in our surrounding area tax at lower rates almost without exception. To add 4¢ more on a permanent basis will only be to exacerbate that difference and increase the likelihood of bootlegging. The amendment that Senator DeCamp and I offer then is a middle road. It seeks to gain that revenue that the Governor is so certain that we need for this one problem year but at the end of which time withdraws the authorization for three of the four cents of tax increase. In one years time we will know about bootlegging. In one years time we will know about new revenue projections. In one years time we will know about the reaction of cigarette smokers in this state. I would suggest that this is a reasonable amendment to a bill designed to limit to the short term consequences a tax increase which we can not say in all fairness has to be deserved because of some long standing impropriety in our tax policy. This distinguishes LB 753 from the corporate tax increase, LB 760, which simply corrects a historical imbalance between various tax payers that has developed over time. There is no such body of evidence with respect to cigarette smokers in this state and for that reason I move the adoption of the Landis-DeCamp amendments to 753 and hope the body will attach a reasonable one year sunset period to this 4¢ increase. Thank you.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, just to say that I think it is a good idea to go only a year since we are humping this tax so heavily. I don't smoke myself, but I noticed every time we get ready to raise some additional revenue from the first day I got whether it is building an auditorium or civic center or whatever, we immediately look around and look to some group that has some habit, whether it is drinking or smoking or whatever and then we try to tax them for it and that is okay, I suppose, but you can get excessive and out of hand and I think we are very close

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to being out of hand on the cigarette tax particularly when most of the cigarette tax goes to things like, not related to smoking in any way. So, recognizing the two things, one a shortage of income and a necessity to raise money and two, that the cigarette smoker just because he smokes shouldn't be particularly punished financially, I think the one year sunset makes eminent sense and hope you will support our amendment.

SENATOR CLARK: I would like to announce 78 fourth graders from Lake View Grade School in Lincoln, Senator Fowler's district. They have six teachers with them and they are in the north balcony. Will you stand and be recognized please. Welcome to the Legislature. Senator Warner is next.

SENATOR WARNER: Mr. President, members of the Legislature, I had an amendment that I just quickly drafted to send up which would amend the one year to two years. I understand and appreciate the argument offered by Senator Landis and DeCamp and I understand the adverse, the possible adverse effects of a variety of ways, reasons, but the reason I offer two years is should this three cents be discontinued one year. . .

SENATOR CLARK: Senator Warner, why don't you just talk to the amendment to the amendment now.

SENATOR WARNER: Talking to my amendment to the amendment?

SENATOR CLARK: Yes, that would be the easiest thing to do now.

SENATOR WARNER: That is what I am talking. . .

SENATOR CLARK: All right, fine.

SENATOR WARNER: What the amendment does is put it within two years rather than within one year. The reason is very simple that that three cents times one point seven million be roughly five more million that the Board of Equalization would have to take into account to make up the difference when they meet next November and my opinion, we are going to be in difficult revenue period for some months and certainly not out of it next November and I would have a lot of reservations of adding another five million pressure on sales and income tax rates, which is what it will amount too, if it is only run for one year. I think it ought to have the sunset for two years, hopefully to get out of... if the economy comes back by then to get out of some of revenue problems we are going to have. That is the purpose of the amendment to extend it to two years instead of one.

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SENATOR CLARK: Senator Newell, do you want to talk on the Warner amendment? Senator Carsten, on the Warner amendment.

SENATOR CARSTEN: Mr. President and members of the Legislature, I would rise in support of Senator Warner's amendment to the Landis amendment. I agree that one year is probably without any question, not going to get us out of this problem, I would hope that Senator Landis, being in a cooperative mood would see fit to accept this amendment. In two years I'm sure that, or at least hopefully we are going to be out of a problem that we now have and would cause further concerns if we sunset it in one year as the Board of Equalization does meet in November and look down the road. I would support Senator Warner and his amendment and would hope that this body would too. I would agree with that.

SENATOR CLARK: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I rise to support the Warner amendment. I agree that we probably should have a sunset clause on this bill and...but I do think one year is too short. Of course, with the Warner amendment we extend that another year for a total of two years and I think this would give everybody a little more time to make that decision. Therefore I would urge the body to support this amendment.

SENATOR CLARK: Senator Landis, do you want to talk on the Warner amendment.

SENATOR LANDIS: I appreciate Senator Carsten's statement that I was a reasonable man. However there is an end even to my reasonableness and my good nature and we've just struck it. I oppose the Warner amendment for a couple of reasons. What this says is that the Legislature is not going to take a look at the problem next year. That we will simply write this two year version of this cigarette tax and ignore it in the coming session. Now frankly that puts us out of the business of reviewing economic times and the appropriate tax doubles and I'm not prepared to foreclose consideration. I think we should be looking at this. If what we are doing is protecting the Board of Equalization I would suggest to Senator Warner and Senator Carsten that we are now doing the Board of Equalization's work. Haven't we repeatedly at Senator Warner's suggestion been asked to increase income tax levels and to make recommendations which the Board of Equalization should be doing. Do we not have, and doesn't

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Senator Warner have a half cent sales tax proposal? Which we are going to be seeing in the next several days. Isn't that what the Board of Equalization supposed to be doing? And, the corporate tax increase which we just now moved to Final Reading. The Legislature sets tax rates. The Legislature de facto sets tax rates and we have to look at the appropriate mix between those rates. Now, Senator Carsten says we are not going to be out of the thick of this in one year. On the other hand, I don't think it is fair to say that the cigarette smokers have to see us all the way to the end of the economic problems. I would suggest that we give this a year, come back and see if the current tax rates in sales, corporate, income, excise taxes all are equitable compared to each other. By making this a two year sunset we have simply thrown in the towel and say regardless of what economic conditions occur, regardless of how much recovery there is, regardless of how much of a penalty or how punitive this kind of a tax increase is on a portion of the public, we wash our hands of doing our job which is setting appropriate tax rates. As far as I am concerned this is where the buck stops and if these are difficult times, then I wonder if we don't need to make decisions as far ahead as we reasonably can see but not that far into the future where we tie our hands. I would suggest that Senator Warner is no better seer than the rest of us as to what economic conditions we are going to have two years from now. If that is the case I'm hard pressed to see that we need to extend this authorization a second year. The Governor has talked to us about inter-fund cash transfers. Now, does Senator Warner want to sell that as a two year package? Does he want a sunset that doesn't go from now until the end of our problems, which is roughly in August or in September, or is he looking to have this be some permanent kind of authority? I think not. The Governor asked us personally, for short term fiscal tools to solve short term fiscal problems. That is what 753 is in the hopper to do and by putting a two year sunset on it, we are simply saying we are going to continue to gouge the cigarette smoker for a longer period of time because there is a potential for the need for this revenue which may or may not come about in a years time. I oppose the Warner amendment, I hope the body will as well. It is our obligation to review the equity of these various tax levels in the coming legislative session and I don't want us to sit on our hands and simply say, we are not going to look at this for another two years.

SENATOR CLARK: Senator Dworak.

SENATOR DWORAK: Mr. President and colleagues, I think this whole exercise is or this whole debate is an exercise in futility

because once we put this tax on, regardless of whether we say one, two, three or four year sunset we are never going to take it off. I'm going to vote for one year but again I really think it is an exercise in futility. You know one thing harder to eliminate than government program is government revenue sources. I think we had a classic example of that this year, in fact in the eight years that I have been a legislator I was totally amazed that we eliminated the inspection program. But you notice we didn't eliminate the fee. This is going to work out the same way. Once this tax is on it is going to stay on. I just as a matter of principle am going to vote for one year. But I really think that we are going to find out that ten years down the road that tax is still going to be on.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Thank you Senator Clark and members of the Legislature. I will support Senator Warner's amendment. There is nothing that would stop Senator Landis from coming in next year with a piece of legislation to look at this item or any other item in revenue or appropriations. The fact that it does not have a sunset at all on it does not preclude anyone from coming in with a proposed piece of legislation to look at the funding on it. It does not even need a sunset clause in order to have someone look at this particular funding. I am aware that we are looking at at least a two year period when we are making appropriations this year for the future cost. With this one year amendment on the bill it would force, in my estimation an additional charge to the people of Nebraska that would be unnecessary if it had a two year sunset. Therefore I shall support the two year sunset proposal.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I too don't think that it makes much difference whether we are going to do this one, two or indefinitely, but I would like to get the show on the road, so thank you.

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

SENATOR WARNER: Mr. President, members of the Legislature a couple of things that have been said, one is the \$3.75 fee that was referred to has been eliminated, as most of you will recall it was done the other day on the motor vehicle inspection. My reasons for offering the amendment, no one has talked to me in case that is the thought, is

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pure and simple that when the Board of Equalization meets in November, if the tax is to go down will mean roughly 5 million less in anticipated receipts to the miscellaneous than would otherwise be there and that means that you adjust the sales and income tax to make up for that five million. If the Legislature wants to reduce it next time and the economy is better there is nothing that would preclude that. Or, if you want to extend it next time you could do that but you would already have raised the five million through the sales and income tax, potentially, and it seems to me that money management is just...it is better off if you do not sunset this within one year and force that increase next November or December of five million dollars additional money to come from sales-income tax. I think a two year short...is still short term and it is a more appropriate way to go.

SENATOR CLARK: The question before the House is the adoption of the Warner amendment. All those in favor vote aye, opposed vote nay. Have you all voted on the Warner amendment? Record the vote.

CLERK: 25 ayes, 17 nays, on adoption of Senator Warner's amendment.

SENATOR CLARK: The amendment is adopted. Senator Landis.

SENATOR LANDIS: Thank you. Having been instructed as to the view of the body, by the last vote, actually I was thinking it was a good idea, I wasn't sure it was a good idea, but now that I see the vote total I'm sure that the two year sunset is the wiser of the policy choices. Being so instructed by "Brother Warner" I would now move my amendment as having been so lucidly amended by Senator Warner to be attached to LB 753.

SENATOR CLARK: Senator Newell did you want to talk? The question before the House is the adoption of the amendment. All those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 31 ayes, 5 nays, Mr. President on the adoption of Senator Landis and Senator DeCamp's amendment.

SENATOR CLARK: The amendment is adopted. Any further amendments?

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CLERK: Yes sir, there are. If I may right before that I have an Attorney General's opinion addressed to Senator Beutler. (See page 1617-19 of the Legislative Journal).

Senator DeCamp would like to print amendments to LB 799.
Senator Hoagland would like to print amendments to LB 761.

Mr. President, the next amendment I have to the bill is an amendment offered by Senator Cullan.

SENATOR CLARK: Senator Cullan.

SENATOR CULLAN: Mr. President, has that been printed in the Journal, Mr. Clerk?

CLERK: Yes sir it has, on page 1493.

SENATOR CULLAN: Mr. President, members of the Legislature, I would ask you to support this amendment. This amendment simply adds the following language to the current cigarette tax statutes in the state. It says, "beginning July 1, 1983 the equivalent of one cent of such tax, that being the cigarette tax, shall be used to fund and carry out the provisions of Section 81-637 to 81-640", that is all the new language. Now those sections that it refers too are the sections which we put in the statutes last year through LB 506, which is the cancer research program that we established. Now the cancer, as I understand it the cent on the cigarette tax raises about 1.7 million dollars. I also understand that Senator Warner is proposing to cut the funds last year that were designated for the cancer research funds after the Governor's veto from \$400,000 to \$200,000. The net effect of that is that the one cent which this legislature enacted last year for the specific purpose of cancer research is now being spent as follows. \$700,000 for cancer research and a million dollars to the General Fund, that is what the Appropriations Committee or at least Senator Warner is suggesting. I understand the cash flow problems that we have now. In light of that, what I would propose is that next year, July 1, 1983, we designate that the full 1.7 million dollars be designated for the purposes of that one cent increase in the cigarette tax, namely cancer research. So that really is the jest of the amendment. I think it does what we tried to do with LB 506. I would urge you to support me, I guess I want this language in the statutes because I'm tired of fighting the same fight for the same funds in the regular session and the special sessions and then again in this session. So I would urge you to support placing the full one cent of what would now be an 18¢ cigarette tax

at least a penny of that ought to go for smoking related research and cancer related research. So I would ask you to adopt this amendment.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. President, members of the Legislature, I would support Senator Cullan in his attempt. It does get frustrating when we allocate certain amount of taxation for a certain problem and then have it diverted. I have no big thing about cancer research but I think the principle that he is talking about is important. I think it is important that this body continue to do what we say we intend to do in the first place. So I support his amendment.

SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Senator Cullan, just a question if I may Mr. President. As of the amendment that we just passed now with being in effect for two years, are you saying that one cent or the equivalent thereof or approximately that that out of this money we are going to be using for General Fund money go for your research project, is that what you are saying?

SENATOR CULLAN: No, Senator Carsten. What I am saying the equivalent of one cent of the cigarette tax, and that would be the cent that we taxed last year for this specific purpose, go for the purpose of that bill. So, it would be one cent of the existing tax which we already, which we already passed last year. So one cent of the total cigarette tax, not necessarily the four cents, would have nothing to do necessarily with the additional tax.

SENATOR CARSTEN: Was that tax last year for one year?

SENATOR CULLAN: No, that was a permanent tax. And, this amendment would be a permanent amendment.

SENATOR CARSTEN: Then why are you...if we have got a permanent amendment for...that we passed last year, why are you doing it again this year?

SENATOR CULLAN: Because last year we didn't designate specifically that that...the equivalent of that amount of money be appropriated to this fund. We had an A bill that had that amount of money, part of it was vetoed and we didn't attempt to override, but the intent of the Legislature was never fulfilled, in my opinion.

SENATOR CARSTEN: Okay, thank you.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, I would rise to oppose the proposal for the same kind of reasons, two or three, the basic one being to tie up the money at this time seems to me, and earmarking it is ill advised knowing the situation that we may well be in in the future. Certainly if Senator Cullan would not be precluded from doing that kind of earmarking next session if the funds are available and finally I think it would be ill advised in any event, even if we didn't have the revenue problems to lock in the money in that fashion. Future sessions ought to have the flexibility of appropriating money where in that particular session their judgment it can be best used. I think earmarking is a bad feature in any event. I would hope that you would turn it down primarily because of the need to have as much flexibility for the next session as we can.

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

SENATOR CULLAN: Mr. President, members of the Legislature, last year we increased the tax on cigarettes for one purpose. We passed an A bill for the equivalent of one cent on the cigarette tax for one purpose. That purpose was for cancer research. Then in the special session the Governor tried to take a good piece of that away again. This legislature again reaffirmed its position to support the cancer research program. Now I understand Senator Warner is going to try to cut that in half. So I guess that I think it is necessary to earmark this because people always see as an easy source of money to take away. I think it is only fair that of all the millions of dollars that cigarette smokers pay into the fund that a cent of it, a small percentage of it, just a cent of it be designated to cancer research and for smoking related diseases, research related smoking related diseases. So, I would urge you to adopt this amendment and set that fund aside so we don't continually have to fight the battle over the legislative intent, which I think was crystal clear when we enacted LB 506. I would ask you to support this amendment to LB 753.

SENATOR CLARK: Question before the House is the adoption of the Cullan amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: We have 36 seniors from Dodge Public Schools from Dodge, Nebraska, Senator Chronister's district, Mr. Rex Anderson and Mr. Bill Koll are the teachers. Will you stand and be recognized please. Welcome to the Legislature. Have you all voted? Record the vote.

CLERK: 27 ayes, 8 nays, on adoption of Senator Cullan's amendment, Mr. President.

SENATOR CLARK: Amendment is adopted. Next amendment please.

CLERK: The next amendment Mr. President is offered by Senator Wesely. It is found on page, the first Senator? The Wesely amendment Mr. President is on page 1550 of the Journal.

SENATOR CLARK: Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, the amendment is a simple one. You probably don't need to refer to it in your Journal but...all it will do is reduce the discount now provided to cigarette wholesalers from 5% to 4% as to how much they can hold back to cover the cost of handling the tax stamping operation for cigarettes. We are reducing the discount from 5% to 4% for a number of reasons and I would ask you to please consider these carefully. I have a handout that I provided to you, each of you should have on your desk, which would show, I think, the impact of the change that would be a very positive one for the State of Nebraska. At the present time when we are talking about a 4¢ increase in the cigarette tax it seems that it would be appropriate to consider as well the question of the discount that is provided to the wholesalers with such an increase in the cigarette tax. This increase from 14 to 18¢ will provide about 370 some thousand dollars to the wholesalers for the work that they are doing. They won't do any more work and they won't do anything more differently but they will make another third of a million dollars additional tax revenues that they will keep rather than sending to the State of Nebraska. It would seem to me that the situation is one that needs to have some attention paid, so I did some research and if you will look at the handout you will see quite clearly that the situation with the increase from 13¢ to 18¢ has provided quite a bit of money, additional money going to our wholesalers that I think would probably be better sent to the State of Nebraska as tax revenues which have resulted from the tax increases that we provided. We are looking for every dollar that we can to help meet our budgetary needs and it seems to

me when we are going to have an increase in our cigarette tax and still send about 300 and some thousand dollars back to the wholesalers as increase compensation for the job they do in affixing the tax stamps, then I think we really have to ask some questions. So what the point is that if we are going to increase the tax from 14 to 18¢ lets not at the same time provide this extra boom to the wholesalers of about 300 and some thousand dollars. Lets cut the discount from 5 to 4% which would still provide about \$37,000 more dollars going to the wholesalers but then about at the same time mean about 300 and some more thousand dollars coming into the state treasury where we could put it to good use. I really think that the questions that have been raised by the wholesalers, I know that they are concerned and I've met with some of them and have seen their operation, probably legitimate, I know that they pay for the stamps up front and they do have some costs involved, but I also feel that they are probably over estimating the cost they incur in trying to assess the stamps that we are talking about and I have done some research as far as other states and there were only seven states that we could find that paid in 1979 a higher discount than we did to the wholesalers. Now that may be apples and oranges because some of these other states don't have the wholesalers pay up front on the taxes, but nevertheless there are very few states that are as generous to the wholesaler as the State of Nebraska is in terms of the cigarette tax. So, it is not as though we are not being fair in the terms of the amount of money we provide to them to cover their costs in carrying out our taxation on cigarettes, but I think we are being extremely generous, extremely generous if we would increase by 4¢ the cigarette tax and not adjust the discount rate at this time. Keep in mind the fact that we did increase the cigarette tax from 13 to 14¢ just last year. so when you count that factor in you are talking about a great deal of increase in money that goes to the wholesaler. The research I think is clear, I think is fair in terms of our compensation to cover their cost to keep a discount at about the same rate they got in the past and not provide them with 300 some thousand more dollars. I think it is one of the things we haven't done much when we talk about the different tax questions, revenue budget questions, that we haven't talked about tax loopholes, tax expenditures as much as we ought to. It seems to me that there are a lot of different areas in which we are spending money or losing revenue that needs some attention. Tax loopholes that are causing problems that we are not receiving the revenues we ought to be receiving and not getting much for those incentives that we provide. So it seems like one of the

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things that we haven't spend a lot of time on is this area and I thought we ought to take a look at this as one example of it. Here is an expenditure of money, it is a hidden expenditure because we really don't see it. It is money that we don't get. It is not money that we spend actually, but it is a significant amount of money. Keep in mind that we are spending, right now, about one million, three hundred some thousand dollars on this revenue that we leave with the wholesaler for the job they do in affixing the tax stamps on cigarettes. That would go up to a \$1,600,000. That is a lot of money we are talking about here. It seems as though we ought to discuss a little bit about the fairness and providing such an increase in just this past year to the wholesalers. I think if you go through the projections that they have, I see Senator Peterson has passed them around, I can't speak specifically about the proposal that they have as to their cost, but I also have send around or will be sending around a letter from an individual who worked for one of the wholesalers, has since retired, and who claims we probably could get by at a cost of about 32¢ per case to do the job that is now being, or will be proposed to pay about \$5.00 a case. That is quite a difference. Perhaps, I'm pretty sure that the 32¢ is going to be low, but if one person claims 32¢ will cover the cost and another is claiming that \$5.40 is going to cover the cost, then I think we are being a little remiss if we don't challenge the question about how much money we are paying to the wholesaler for the job that they do. Are they justified in terms of the money that they are now claiming from the treasury of the state for the job that they do. Senator Nichol would like to have a chance to talk on this. I could go ahead and close. I think in terms of fairness that it is only right that we take a look at this. There aren't people lobbying for this amendment. There aren't a lot of tax payers out there that realize even that there is a problem in this area, but I for one want to call it to your attention and speaking on behalf of those tax payers, who are concerned about the fact that we should receive the revenue that we are trying to raise and if there is an expenditure of taxes or a loss of revenue we have to try and determine whether that is fair and in my estimation this is really not a fair thing to do at this time, to increase our cigarette taxes substantially and not adjust the discount rate to wholesalers.

SENATOR CLARK: Senator Marsh.

SENATOR MARSH: Senator Wesely, as I am looking at your figures, it seems to me that if your figures are accurate at the 13% rate, and that is where we are today, is that

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correct? That is what it was a year ago.

SENATOR WESELY: Yes.

SENATOR MARSH: So we are already at the 14% rate with that cost being \$1,309,000 and what you are offering to the body by your amendment is moving that from one \$1,346,000 am I correct?

SENATOR WESELY: That is right.

SENATOR MARSH: So it is a slight increase to the wholesalers but moving it from 5% to 4%, rather than having it be an additional cost for no additional work.

SENATOR WESELY: That is right.

SENATOR MARSH: I believe I understand what you are trying to do, thank you.

SENATOR WESELY: Thank you.

SENATOR CLARK: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the Legislature, I rise to oppose this amendment. I want to go back just a few years and tell you about our experience we had in the Revenue Committee. I think we had a bill or an amendment such as this three times in the last six years. Of course it did draw a lot of people to testify both pro and con. But I think some of the things that we need to realize is that the wholesalers, the wholesale tobacco people pay a state license fee, they pay a city and county fee or license, they bond themselves and they purchase these stamps before they affix them to the cigarette package. So they have a lot of money invested in these stamps and of course with the interest rates now at 16, 17, 18 or even 19%, this means that they need to borrow a lot of money to put these stamps in their inventory. Then after they have the packages stamped they keep these cigarettes in inventory. They also have some on the trucks when they deliver them to the dealers. Then of course when they sell them to the dealers they don't get cash right on the spot they usually give you 30 days credit. In addition to that it usually takes ten days to pay the bill so that means that they have their money tied up 40, 50 or even 60 days. Okay, then some of them said that once in awhile a few of these stamps are lost, which they take the loss. They also encounter bad debts, I don't suppose Senator Wesely would know about this, but you do from time to time

have some people that don't pay their bills, also from time to time you have people give you a bad check and of course this eats up quite a little of your profit. Also, there are over due accounts and you sometimes have to hire a collection agency to collect these. When you do this they take a percentage of what they collect. But the one thing that stood out in my mind more than anything else was when our state tax commissioner testified and his name was Bill Peters, this was two or three years ago or maybe four years ago, but the state tax commissioner figured that it would cost the state from 7 to 8 percent to do this job and here we are asking the businessman, we are asking the wholesaler to do it for less than what the state can do it for. I think this is unfair. Senator Wesely says we can stand to pick up a little over \$300,000 more. Well, this is probably true, but at the expense of who? I just don't think it is fair. I realize Senator Wesely that we need to try and get every dollar we can get our hands on but I don't think this is...this is not the way to do it. The state loses not one cent from the cigarette wholesalers because they are bonded. If they renew the bonding company picks it up. So I would just like to say to this body this morning the cigarette wholesalers cost go up too. They pay more for interest on their money. They pay more for their labor, they pay more for trucks to deliver their products. so, I would like to see this amendment defeated this morning and go on from here.

SENATOR CLARK: If I could have your attention for a moment we have a communication on the desk the Clerk would like to read.

CLERK: Mr. President, I have a letter from the Speaker. (See page 1621 of the Legislative Journal).

SENATOR CLARK: Senator Howard Peterson.

SENATOR H. PETERSON: Mr. Chairman, members of the Legislature, you will find at your desks a handout that I passed out on the Nash-Finch Company, Grand Island and the Nash-Finch Company here in Lincoln. I don't know how many of you would like to operate the Lincoln operation at a loss of \$541 a month, this last year, but that is apparently what it costs Nash-Finch to distribute cigarette's for the State of Nebraska in Lincoln. They fortunately made \$54 a month in Grand Island. This type of data is the kind of thing that Senator Hefner was referring too, it came before our committee, the Revenue Committee, last year and we asked for that kind of data from all of the whole-sale distributors in the state. The story is about the same.

I just would urge you to vote against the Wesely amendment. I think in fairness we need to let these people at least break even in handling a product of this kind for the State of Nebraska.

SENATOR CLARK: Senator Kahle, Senator Kahle.

SENATOR KAHLE: Mr. President and members, everything has been said I think, Senator Hefner said it well, and I also served on the Revenue Committee last year when we heard this issue and the people that came in and gave us their figures on what it actually cost. One of the things that has been mentioned is the wholesalers, we talk about bootlegging and we are going to be high in Nebraska, the only way in the world you are going to stop bootlegging on a big scale is that the wholesalers are going to watch, because if there is a profit in there for them well they are going to see that cigarette's are not bootlegged into Nebraska in large quantities. I think that is a point we should think about. Their costs of course have gone up the same as everybody else's but I would think that, I would be willing to give them a bit more profit because they are like the goose that is laying the golden egg, if they don't collect these taxes for us well we are not going to get them and if they don't get an incentive to watch that they are not bootlegged into Nebraska and that they are sold legitimately we are going to lose a lot more than what we are going to gain by taking this one cent away from them or one percent. Thank you.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President, and members, Senator Wesely here is where we part company. I'm not in business, I have never been a wholesaler, but I was in business and I can understand the cost of business, wholesaling, any part of it and we say we are talking about a profit for them. It isn't a profit, it is just expense and lets don't charge them for doing collection for the State of Nebraska. Certainly this is going to be an increase but the cost increase we talked inflation for years in this place and their costs do increase. I, Senator Wesely, I would ask the people not to put too much stock in the report that a retired employee said that it could be done for 32¢. You know employees sometimes don't have a very good idea of what it cost to run an operation so I wouldn't think that testimony or shouldn't think it would carry too much weight with this group. I would ask you not to support Senator Wesely's amendment.

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SENATOR CLARK: Senator Goodrich.

SENATOR GOODRICH: Mr. President, members of the body I too rise in opposition to the Wesely amendment and I would like to bring the information to you to the effect that the largest distributor in the State of Nebraska will lose \$5,000 on this particular operation of his and that is principally because of the fact that the cost of money the interest rates in other words are extremely high right now, his cost of money, the money he has to advance to the state each month is what he has to borrow and advance to the state before he can collect it back and that is what is throwing him into a lost category. Now Senator Wesely indicated for example that other states are doing it differently, that is true. Minnesota for example lets them do it and then they bill the state and the state refunds the money to them. If Senator Wesely for example would take that approach to this thing then there might be some validity to what he says. But he is taking the wrong approach and we are still requiring those vendors to advance the money ahead of time and that is where it costs them their shirt in this operation. So if Senator Wesely would then come back next year with a different approach, if he wants to do something like this, but to let them put the stamps on and bill the state, then he would have a better approach at this, but the way he is doing it now is just says take some of their operating money and force them even into a deeper loss than some of the people would be taking right now. For example, the one in Lincoln, for example, was mentioned loses \$541 a month, that is a little over \$5,000 a year. The one in Omaha for example loses \$5,000 a year also. That is the biggest one in the state and he loses \$5,000 a year on this operation already. So, I would urge you to reject the Wesely amendment and let him come back next year with a different approach such as the Minnesota approach.

SENATOR CLARK: Senator Koch.

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

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

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

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

SENATOR CLARK: Debate is ceased. Senator Wesely, do you wish to close?

SENATOR WESELY: Mr. President and members of the Legislature, I can understand the concerns for the wholesalers, I think we all want to be fair to them but nevertheless the research I have done shows that we have been fair to the wholesalers in the state, that we have provided them with more than an adequate discount in the years past and we are now talking about a windfall of almost half a million dollars that they are going to have in increased revenue as a result of the increases in the cigarette tax as of last year and what is proposed this year. That is a pretty hefty increase in their discount and it seems to me questionable. In looking at other states in 1979, which is the latest year we could compare we find again that only seven states had a higher per case discount than Nebraska. We found that the average state per case discount was about \$2.42 and yet we were \$3.90, which is a substantial amount greater than the average state discount. At the same time we are now talking about raising that to \$5.40. Now I don't know what the average state discount is, this year, but nevertheless it is undoubtedly less than that as was the case in the past. So what I am talking about is fairness to the tax payer, that is really what I am talking about and I know this issue has come before the Revenue Committee and I know they rejected it in the past but that doesn't mean that that is the right thing to do for this Legislature to take a look at, the circumstances are different. At that time we weren't talking about an increase in the cigarette tax of 4¢. We are not talking about an increase in the discount of about a half a million dollars, a windfall going to the wholesaler. Now it seems to me that this is a legitimate time to raise some of these questions. It seems also clear to me if you ask yourself, okay, they do have these costs involved but these are costs that are not going to change because of the increases in taxes, the volume is going to be the same. They are going to be doing the same sort of work where they are going to be making a half a million dollars more out of it over last year for the same sort of work. Now I understand that there is an increase in cost but lets not talk about that sort of an increase in cost due simply to inflation. I had done about a year ago, actually two years ago, a study on tax exemptions. I was concerned about tax exemptions and one of those exemptions that was pointed out to me was this area. I was concerned every since that time about it. But we have all kinds of tax exemptions that we in our laws that we haven't been looking at this session as we talk about the

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revenue needs of the state. I thought it was important to point out one revenue, one tax exemption that seemed to be highly questionable and I'm sure that there are more that we should be and should be looking at to try and deal with the revenue problems that we have. Are these exemptions fair? Are they adequate compensation for the purposes they are intended to be? In this case, I don't think that it is probably fair to allow for this...for such a great increase and I'm not sure that we aren't already adequately compensating them. As Senator Marsh talked about it we are really talking about, we are providing them with an increase in their wholesale discount from last year. They will be getting about a \$150,000 for doing the same work that they did last year so that is not being, I don't think, inconsequential. But what we are talking about if we don't adopt this amendment is a half a million dollars more they are going to be making over what they did last year and that doesn't seem fair to me.

SENATOR CLARK: You have one minute left.

SENATOR WESELY: When we are talking about trying to find dollars here and dollars there, we are raising fees and we are doing other things to try to come up with the money we need to balance our budget, how can we possibly at this time reject something as questionable as this wholesale discount that we provide for cigarette dealers. It seems to me in the research that I have done that the issue has to be raised and I would urge your support for the amendment, that we would still be fair to the wholesaler, they would still be making more money than they did last year and this year but they would not be making a half a million dollars more money that I think the tax payers ought to be receiving instead of having it syphoned off and staying with the wholesaler for doing the same job they did last year this year. I ask your support for the amendment.

SENATOR CLARK: Question before the House is the adoption of the Wesely amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CLARK: Have you all voted? Record the vote.
A record vote has been requested.

CLERK: Senator Wesely requests a record vote, Mr. President. Read record vote as it appears on page 1620 of the Legislative Journal. 10 ayes, 31 nays, 6 present and not voting and 2 excused and not voting.

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SENATOR CLARK: The motion lost. The next amendment.

CLERK: Mr. President, Senator Chambers would like to move to amendment the bill. (Read Chambers amendment).

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this amendment deals with generic, in a sense, tobacco products. It doesn't limit itself to cigarettes. It is drafted in the fashion that it is so that it will be clear no attempt is being made to repeal or alter in any way the taxes on cigarettes. Since that is done on a pack or per number of cigarette basis, it would have to require a different procedure for taxing cigars, chewing tobacco, snuff, and the other, pipe tobacco, the other family, the other members of the tobacco family. Cigars are sold individually, pipe tobacco in pouches, cans and other containers, so the only way to have a uniform tax would be to touch it at the wholesale level. Since the tax on cigarettes comes to roughly 20% of the total cost this 18% tax on the other products can not be said to be unfair from the standpoint of the amount of the total being taxed. Whatever the rationale is for taxing cigarettes that same rationale will apply to the other smoking, chewing, dipping, and other types of tobacco products. So the amendment is being offered in all seriousness. I have had the issue raised to me by other people. As a non-smoker I'm not aware of how much tax there is on any of these products until we come to a discussion of the cigarette tax such as we are doing today. I was not aware that these products that I am mentioning in this amendment are not currently taxed. If they are taxed I would stand to be corrected and would withdraw the amendment. But, if the information that I have is correct in that they are not taxed, I think consideration should be given to this. When you deal with alcoholic beverages, whether they are described as liquor, spirits, wine, beer's or whatever, there are varying amounts of taxes on all of these. So we are dealing with a family of products, one of which has been taxed, some people feel excessively. The decision of a policy nature is already been made by the legislature down through the years that cigarettes will be taxed. I'm now trying to cover the waterfront, so I hope you will consider this amendment and adopt it.

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

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CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Voting on the Chambers amendment. Record the vote.

CLERK: 25 ayes, 0 nays, Mr. President on the adoption of Senator Chambers amendment.

SENATOR CLARK: The amendment is adopted. The next amendment.

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

SENATOR CLARK: Senator Kilgarrin. Do you wish to move the bill.

SENATOR KILGARIN: I move we advance LB 753.

SENATOR CLARK: The motion is to advance LB 753. All those in favor say aye, opposed. The bill is advanced. The next bill is 575 and that is a mistake. It should be 757.

CLERK: Mr. President, I have no E & R to 757. The first amendment I have offered to the bill is by Senator Beutler.

SENATOR CLARK: Is Senator Beutler in the room? There he is. You have an amendment on this bill. The amendment is withdrawn. The next amendment.

CLERK: Mr. President, the next motion I have is from Senator Beutler to indefinitely postpone the bill. That would lay it over unless the introducer would agree to take it up this morning.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I wish to withdraw that one also.

SENATOR CLARK: All right, that is withdrawn.

CLERK: Mr. President, the next amendment I have is from Senator Warner. That is on page 1500 of the Journal.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Amendment on 757. Which one? Which one is it?

CLERK: On page 1500, Senator. Its the one that says (Read Warner amendment).

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LR 362 thru 366
LB 761, 708, 753, 757, 928,
933

able to pass a number of bills yet this evening. I intend to make that motion in a little while, but if you want to discuss it, I don't want to foreclose that by making the motion now since a motion to recess is nondebatable.

SENATOR CLARK: All right, next motion. He has got some things to read in first.

CLERK: Mr. President, Senator Warner would like to print amendments to LB 753, LB 757, LB 933.

Mr. President, a series of study resolutions, LR 362 by Senator Wesely calls for examination of the possible establishment of uniform licensing, taxes, and weight/size restrictions. LR 363 by Senator Wesely calls for the Department of Roads base the design life of roads on the amount of heavy truck traffic. LR 364 by Senator Fowler calls for a study of the quality of education offered by the University of Nebraska. LR 365 by Senator Wesely calls for a study of the feasibility of developing a waste rubber processing plant. LR 366 offered by Senators Wesely, Landis, Fowler, and Beutler, a study of the feasibility of providing authority for the Nebraska Public Service Commission to regulate natural gas rates. (See pages 1727 - 1731, Legislative Journal.)

Senator Nichol and DeCamp would like to print amendments to LB 708; Senator Warner to LB 928; and Senator Warner to 928, second set, Mr. President.

Mr. President, Senator Chambers would move to return the bill to Select File for a specific amendment.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I can state what this amendment would do. It is to restore the renovation money for the Legislative hearing rooms. I am not going to repeat all of the things that I have said several times but I have got to make a generalized statement about why I am doing this. It will benefit the building as I said before but what I would like to see us do just one time this session, and if we don't do it again next year, I will have had what I think the Legislature should give me as a member of the Legislature, that is to see it one time over the opposition of what you might feel the public's inclination is take a vote for something in behalf of the Legislative branch. Don't think of it in terms of your colleagues. Look at the Legislature, what I am trying...

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LB 761, 942, 753

SENATOR CLARK: Senator Chambers, you had better look at me instead of him.

SENATOR CHAMBERS: I wasn't looking at anybody. I was trying to think but I will tell you what the amendment does, it attempts to restore the renovation money. I will close.

SENATOR CLARK: Is there any discussion? If not, the question before the House is the return of the bill. All those in favor vote aye, opposed vote nay. Have you all voted? Record the vote. Senator Chambers, I am going to record the vote. All right.

CLERK: 5 ayes, 14 nays, Mr. President.

SENATOR CLARK: Motion lost. Next motion.

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

SENATOR CLARK: The bill is on E & R for engrossment. We will now go to LB 942.

CLERK: Mr. President, Senator Warner would move to return LB 942 to Select File for specific amendment.

SENATOR CLARK: Senator Warner.

SENATOR WARNER: Mr. President, I would ask unanimous consent to withdraw that. That was the amendment that Senator Koch had put on 933 this morning so it is not necessary now.

SENATOR CLARK: Is that all you have on the bill?

CLERK: Yes, sir, that is all I have on this bill.

SENATOR CLARK: All right. LB 928. Senator Warner.

SENATOR WARNER: Mr. President, LB 928 shouldn't be up there for a motion. It is down when you get to Select File.

SENATOR CLARK: He says that is a mistake on the agenda. LB 953. LB 753.

CLERK: I have a motion from Senator Carsten to return LB 753 to Select File for specific amendment, that amendment being to strike the Chambers amendment adopted yesterday.

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SENATOR CLARK: Senator Carsten.

SENATOR CARSTEN: Mr. Chairman, members of the Legislature, yesterday or the day before, I am not quite sure when it was, when Senator Chambers' amendment was attached to...no, wait a minute, this isn't the one. Which one is this? 753.

CLERK: 753, Senator.

SENATOR CARSTEN: Okay, I saw the other number up there and it confused me. Anyhow, I at that time was not in the Chamber. There were some words of proposals that Senator Chambers put to the body. Philosophywise I think most of us agree there should be some equity in the taxing of the tobacco products. As I returned to the Chamber yesterday, I discovered that the vote had been taken and there were no "no" votes and it was put on. Had I been here I would have spoken against the amendment for several reasons. As we visited with the Department of Revenue afterwards asking if there was any consideration to putting all of the tobacco products in this bill, they informed us that they started as early as last fall looking at this proposal and after several attempts to try to work it in reached the conclusion that it could not be done. There were several reasons that were given for it and I guess probably to start with it was an economical problem. Their budget has been cut as many others have. To institute this program for the other tobacco products, as we understand their projection on estimates of cost, it would be somewhere in the area of \$100,000 which would provide for stamps and, of course, the biggest item being the computer program that they would have to get in order, the forms, the licensing, and then on top of that, following the installation of this new process would be the processing of those returns which is time consuming as well as the staff being needed, and then on top of that for a continuation, the auditing part for which they have no people to delegate to this responsibility would be a very serious problem. It was for this reason in addition to some other things that they were concerned about, about the legality and the implementing of this regulation without a hearing, as I understand that the requirements of the...

SENATOR CLARK: You have one minute.

SENATOR CARSTEN: ...Administrative Procedures Act there needs to be a hearing, and if this bill went into effect with the emergency clause on it, May 1st would probably be the effective date, and that in that length of time it would be impossible to get everything in order to

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accomplish this. It is for that reason that they dropped the consideration and continue to have those same objections to it. For that, I have asked that the bill be returned and that we strike the Chambers' amendment and leave the bill in its original form. I guess that is all I have time for for the moment. Thank you very much.

SENATOR CLARK: You have more time if you need it. He just gave you five minutes and you had ten to open. Did you need more time? All right, fine. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think what Senator Carsten has said should give everybody pause and we should consider whether the reasons that have been given by the Department of Revenue are valid, and when I say whether they are valid, I mean are they valid reasons for striking this amendment and not placing these taxes on other tobacco products than cigarettes. If you agree with what Senator Carsten has said the Department of Revenue gave him, you will return the bill and you will strike the amendment. If you don't agree, you will not return the bill, the amendment will stay in place, and the Revenue Department will pursuant to statute carry out the directive, establish the means and the machinery for collecting this tax, and put the money in the general fund. It is not often that you find a Legislature and a Department of Revenue turning its back on revenue. It would be somewhat disappointing to me to see this amendment, pardon the pun, go up in smoke but I know that the tobacco lobby does have some influence. I know they have been calling a lot of you. Why even in my office there are a lot of messages from anonymous retailers of tobacco products emphasizing from your district who don't like this amendment, talking about me, but they don't leave their names, and some guy called me today from someplace and told me his name, but I didn't remember, it didn't make any difference, told me how upset all the people are in my district, and I didn't know there is as many chewers, dippers, and spitters of tobacco in my district as this man indicated, but if there are, they could drown me in tobacco spit, in tobacco juice, for doing what they don't like me to have done. I don't have any great amount of my ego or my spirit wrapped up in this amendment, so if you return the bill and strike the amendment, I won't even say it is because of the tobacco lobby. I didn't hear one statement from Senator Carsten as a justification for what he is doing based on anything that the tobacco lobby has told him. However, they did make a paper available to some people and they acknowledged that this type of tax does exist in 20 states or so and that in about 15 of them it covers as broad a

spectrum of tobacco products as this one. So if the amendment is stricken this time, I think that in the future if a tax is going to be left on cigarettes serious thought should be given to extending it to these other products. And it is not often that a Revenue Department will express its lack of competency to carry out additional work of the kind that it is already doing, to talk about the inability to deal with a computer program which it is already dealing with, talking to members of the Legislature as though they are magicians and we are an awe-struck group of little children who can be distracted with a left hand while they do the trick with the right hand. Frankly I believe that the Revenue Department can implement this tax. Although I don't believe Senator Carsten was influenced by the tobacco lobby, I think there are people in other divisions of the government, notably the Executive Branch, who have been influenced by the tobacco lobby. I don't even think Senator Schmit would care that much if this tax stayed on. He smokes a lot of cigars. One of his cigars would make a lot of cigars for the average person and I don't think this tax would stop him from smoking those cigars. Senator Schmit sees his cigar as an extension of his personality. He is a fiery, smokey individual, or however way you would want to say it, but in all seriousness...

SENATOR CLARK: You have one minute.

SENATOR CHAMBERS: ...you have to consider whether or not you believe the Revenue Department is incapable of implementing this tax which is similar to taxes that they are taking care of now, whether or not they can program their computers which they already are programming, and whether they are as incapable as they indicated that they are. If you think they are incapable, you have no choice other than to return the bill. Frankly I think they can do it and my vote is going to be an expression of confidence in their ability.

SENATOR CLARK: Senator Hefner, and then Senator DeCamp.

SENATOR HEFNER: Mr. President and members of the body, I rise to support the Carsten motion. I think Senator Chambers was rather surprised himself yesterday when it passed. Anyway he had a big smile on his face and we don't see that too often. But anyway getting back to business, well, I did not vote for this amendment yesterday and I don't feel that it would be fair to put an 18% tax on tobacco. I feel that we would have a lot of problems. Who would pay it? Would the manufacturer pay it? Would the dealer pay it? Would the retailer pay it or who would pay it? I think that if Senator Chambers really wants this

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amendment on this bill we ought to send it back to a public hearing, let both sides come in, present their facts, and then go from there. As a member of the Revenue Committee for the last six years, I have heard proposed amendment or a proposed bill such as that several times, and from the testimony that I have heard, well, they tell me it is very hard to enforce. Some of the other states do have a tax like this but they say it costs nearly as much to enforce it as they receive in tax receipts. And so, therefore, I would just like to urge you to support the Carsten motion to bring this bill back and then strike this amendment that Chambers was fortunate to get onto the bill yesterday.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I just want Senator Chambers to know one thing. The fact that a half a dozen people from my district drove 300 miles down here to talk about this didn't influence me one bit. The fact that 24 of the 25 people that voted for that amendment yesterday including myself couldn't have told you what the amendment was immediately thereafter doesn't have any bearing on this whatsoever. The fact that I think it can be administered by the Revenue Department if they were really pressed doesn't have any bearing. Senator Chambers wanted a reason. We have got to have a reason because the votes are arranged so let's get the reason. The reason is legitimate and I go back to when I was in the Army down at Fort Benning, Georgia taking airborne ranger training, ya, that was when I was skinnier. Anyway one of the great occupations among some of the troops down there was bootlegging. That was one of the big moneymakers. You had a lot of borders close by, different states had different rates of taxation, and anytime you get one pretty much out of balance, all you do is create a whole economic system revolving around the bootlegging of something that everybody is going to utilize, or a good portion of the population is going to utilize, and in this case I think that is exactly what you would get if you tried to do it. So Senator Chambers, I am voting for the proposal to take off the amendment because of this noble reason and none of those other factors, of course, influenced me or anybody else.

SENATOR CLARK: Senator Kahle.

SENATOR KAHLE: Mr. President, members, most everything has been said again on this issue but I was part of that committee hearing several years ago when we had the bright idea that when we raised cigarette tax that it was just only natural to go ahead and raise the tobacco tax, it

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would be chewing tobacco, cigars, and whatever, snuff. At that time after looking into it, and it wasn't the tobacco industry that we were looking at, the Revenue Committee or the State Revenue Department decided that or told us that it was about a breakeven situation, that there really wasn't that much income to be derived from this type of product, smoking material or chewing material. So yesterday I reached for my button before the vote was taken and it was a little late or else I would have spoken against it yesterday. You have a lot of problems with this type of material, this product, that you don't have with cigarettes and it comes from a very varied number of sources and one of the things that would really flourish if we do this in Nebraska would be the mail order business and you can certainly order cigars from a number of places to supply yourself along with all kinds of other products such as this. The stores do not receive them all from one place like they do from a wholesaler. They get it from the various assorted places so the collecting of the tax would not be as simple as it is on cigarettes. So I guess what I am saying is that if it is going to work, we would need to work with a bill that would tighten up the way we would tax this material, otherwise it would be a farce. It could come in from just about anywhere and no one would be able to collect the tax. So if you want to do this, I think Senator Hefner had the good idea that perhaps we should have another hearing on it. We had one a number of years ago and at that time I think we decided it wasn't practical. So perhaps we should look at it one more time if that is what you want to do. As I watch the big league baseball players, it would seem to me that there is a lot of chewing tobacco being sold and either that or paraffin or bubble gum. I don't know, some of them claim it is one or the other but they have sure got a chunk in their jaw and I have a neighbor that gets so much in there he can't see out of one eye. So I think we need to look at this a little more seriously than we did yesterday. Thank you.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: I call the question.

SENATOR CLARK: The question has been called. Do I see five hands? I do. Those who want to cease debate will vote aye, opposed no.

CLERK: Senator Clark voted yes.

SENATOR CLARK: Have you all voted on ceasing debate? Record

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the vote.

CLERK: 24 ayes, 5 nays to cease debate, Mr. President.

SENATOR CLARK: Debate does not cease. Senator Lowell Johnson. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, all I can say about what Senator DeCamp offered is that a bootlegger has to have an honest way to make a living, too, Senator DeCamp. I have to look out for everybody's interest and I will say this, because I can read the writing on the wall, and I tell you again I don't have any blood, sweat or tears in this particular proposition, but I must tell you that it gave me more pleasure than anything that has happened this session to know what the adoption of this amendment did out there in the rotunda and wherever the people that deal in these products congregate or whatever they do. So I am going to accept my crushing defeat much more graciously today than I have in the past. I expect this vote to be very similar to the types of votes that I have become accustomed to receiving this session but I tell you there is no rancor in my heart whatsoever. I don't really even feel any disappointment. It is not often that you have the opportunity to receive a reward so soon after having accomplished a certain feat. Yesterday I had my reward. I can't milk this for any more. So, Senator Carsten, you don't even have to close if you don't want to. I am not going to oppose it, but since it is an offspring, in a manner of speaking, and Senator Labeledz, you will understand this, I can't participate in the abortion of my own child.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, one technical correction to Senator Kahle's remarks about baseball players. Today they are chewing shredded bubble gum and gauze with water. That's a 'snuff, isn't it?

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

SENATOR CARSTEN: Mr. President and members of the Legislature, very briefly, Senator Chambers, I admire you and have for a long time and will continue to do so. You are always so gracious at times and which is your true self I know and that I do appreciate. I really do. But I am serious in this amendment from the words that I have said before and the words of those that have spoken in support of the amendment. For the revenue that we would derive from this if we did implement it would not be worth the cost. It is just

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not there. Someway, somehow, I hope that we can figure out a way that it can be done because I would be the first to recognize there is inequity in the taxation of the tobacco products. But for the moment, I would hope that you would join me and return this bill and adopt this specific amendment to strike the Chambers amendment. Thank you.

SENATOR CLARK: The question before the House is the return of 753. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Voting on the return of 753. Record the vote.

CLERK: 29 ayes, 5 nays to return the bill, Mr. President.

SENATOR CLARK: The bill is returned. Now on the amendment.

SENATOR CARSTEN: Mr. President, now I move for the adoption of the amendment.

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

CLERK: 28 ayes, 3 nays, Mr. President, on the motion to adopt the amendment.

SENATOR CLARK: The amendment is adopted. Now the bill to return. The motion before the House is to readvance the bill. All those in favor say aye, opposed. The bill is readvanced. For what purpose do you arise, Senator Landis?

SENATOR LANDIS: Mr. Speaker, members of the Legislature, as promised I intend to make a motion with this understanding that when we return at seven o'clock we will go to Select File to bill 928, that introducers will have the option of taking up the measure. If they choose not to take up the measure, it will hold its position on tomorrow when we discuss Select File and we will take up those measures that we are capable of doing. So I would defer just a moment of time to Senator Lamb to ask him if that is acceptable to the Speaker and then I will make the motion to recess for an hour.

SENATOR CLARK: Senator Lamb.

SENATOR LAMB: I have no problem with it if that is what the body wants to do.

SENATOR LANDIS: I will now move to recess until seven

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o'clock with the understanding we will go to Select File and that we will move those bills that the introducers choose to take up, those bills that they choose not to will hold their position for the next consideration of Select File.

SENATOR CLARK: I would also like to say that one hour's time to eat in the evening is not going to be enough and you will never be here at seven o'clock I don't think but I will be back because I am not going any place. I can't go anywhere and eat in an hour so I will be here anyway.

SENATOR LANDIS: I would go to Wendy's for anybody who wants a Wendy burger, I will bring it back to you.

SENATOR CLARK: Senator Koch. The question before the House, we will take a machine vote on it, the question before the House is to recess until seven o'clock. All those in favor vote aye, opposed vote nay. I do hope that those that are not coming back will get excused before they leave so we will know who is going to be here when we come back. Record the vote.

CLERK: 23 ayes, 7 nays to recess, Mr. President.

SENATOR CLARK: We are recessed until seven o'clock. Senator Stoney, for what purpose do you arise? Would you speak into your microphone? I can't hear you.

SENATOR STONEY: I ask unanimous consent to be excused at 7:00 p.m.

SENATOR CLARK: Anyone that would like to get excused can come up and do it at the desk up here.

Edited by Arleen McCrory.
Arleen McCrory

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LB 127, 127A, 408, 602A,
605, 753, 755, 756, 816

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer this morning by the Reverend Eddy Hallock, Southview Baptist Church here in Lincoln.

REVEREND HALLOCK: Prayer offered.

PRESIDENT: Roll call. Senator Goodrich, would you push the button and then we can get going. Thank you. Record the presence, Mr. Clerk.

CLERK: There is a 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 stands correct as published. Any messages, reports or announcements?

CLERK: I have an Attorney General's Opinion addressed to Senator DeCamp. (See pages 1755 and 1756 regarding LB 816 in the Legislative Journal.) Senator Labedz would like to print amendments to 602A; Senator Beyer to 408. (See pages 1757 through 1760 of the Journal.)

Mr. President, the bills that were read on Final Reading yesterday 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 LBs 127, 127A, 605, 755, and 756. Anything further, Mr. Clerk?

CLERK: Nothing further, Mr. President.

PRESIDENT: We are ready then for agenda item #4, motions, commencing with LB 942.

CLERK: Mr. President, I don't have any motions on LB 942 this morning.

PRESIDENT: Senator Warner....no motions, all right, so 942 is out. What about 753?

CLERK: Mr. President, Senator Warner would move to return LB 753 to Select File for a specific amendment. That amendment is found on page 1727 of the Legislative Journal.

PRESIDENT: The Chair recognizes Senator Warner.

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LB 753, 757

SENATOR WARNER: Mr. President and members of the Legislature, that is the one to two?

CLERK: Yes, sir.

SENATOR WARNER: The other day on 753 you will recall we extended the sunset for two years and I wrote the amendment here at my desk striking and I missed one place and there was one other one that should have been made two, meaning two years, and this makes that correction so that it is consistent throughout the bill where I missed the one.

PRESIDENT: Any discussion on Senator Warner's motion to return for that correction? Seeing none, Senator Warner, the motion then is to return LB 753 for that specific amendment. All those in favor vote aye, opposed nay. Voting on LB 753, a motion to return for a correction amendment as explained by Senator Warner. Record the vote.

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

PRESIDENT: Motion carries. LB 753 is returned. Senator Warner, you may go ahead with your motion to adopt.

SENATOR WARNER: Mr. President, I move that the bill be... or the amendment be adopted. As indicated, it corrects one of the numbers that I left out on when the sunset was to occur.

PRESIDENT: All right, motion is to adopt the Warner amendment as explained by Senator Warner. Any discussion? Hearing none, all those in favor will vote aye, opposed nay, on adoption of the Warner amendment. Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of Senator Warner's amendment.

PRESIDENT: Motion carries. The Warner amendment is adopted. Senator Warner, do you want to just move to readvance the bill?

SENATOR WARNER: I move 753 be readvanced, Mr. President.

PRESIDENT: Motion is to readvance LB 753 to E & R for Engrossment. Any discussion? If not, all those in favor signify by saying aye. Opposed nay. LB 753 is readvanced to E & R for Engrossment. The next bill, Mr. Clerk is LB 757.

RECESS

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LB 688, 708, 753, 757,
835, 854, 854A, 933, 568

SENATOR LAMB PRESIDING

SENATOR LAMB: Record your presence. Have you all recorded your presence? Record.

CLERK: Mr. President, we have a quorum. Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 568 and find the same correctly engrossed; 688; 708; 753; 757; 835; 854; 854A and 933, all correctly engrossed.

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LB 708, 753, 757

SENATOR CLARK: The bill is declared passed on Final Reading. The Clerk will now read 753. Senator Nichol, for what purpose do you arise?

SENATOR NICHOL: I don't have some of these bills in my bill book and I wonder if anybody else is short of them too. I haven't had the last two. I just wondered if anybody knows about this. If I am the only one...

SENATOR CLARK: Does everyone have them? Does anyone else not have them?

SENATOR NICHOL: Okay, thank you.

SENATOR CLARK: We will get a copy for anyone who doesn't have it. Sometimes they make a mistake putting them in. They put them in the wrong location. The Clerk will continue reading.

CLERK: (Read LB 753 on Final Reading.)

SENATOR CLARK: 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 vote aye, opposed vote nay. Have you all voted? Once more, have you all voted? Record the vote. Senator Stoney. A roll call vote has been requested. The Clerk will call the roll. We must have quiet. There is no way to hear up here.

CLERK: (Roll call vote taken. See page 1912, Legislative Journal.) 34 ayes, 12 nays, Mr. President.

SENATOR CLARK: The bill passes with the emergency clause attached. LB 757E please. I guess it has been too long.

CLERK: (Read LB 757 on Final Reading.)

SENATOR CLARK: 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 vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Senator Warner.

SENATOR WARNER: Mr. President, I guess I would ask for a roll call vote on this one, too.

SENATOR CLARK: A roll call vote has been requested. The Clerk will call the roll.

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I mean a roll call vote.

SENATOR CLARK: (Interruption) a record vote and a roll call vote.

SENATOR NEWELL: You know, I have changed my mind. I would like to have people vote for this resolution. The more I think about it, Senator Chambers has a good point.

SENATOR CLARK: Well, we are talking about a roll call vote. The Clerk will call the roll if he don't want anyone else in here.

CLERK: (Roll call vote taken. See page 1937, Legislative Journal.)

SENATOR CLARK: We can't hear anything up here at all, gentlemen, please. I just say gentlemen because the ladies are not talking. When you quiet down, then we will go ahead and call the roll. (Gavel) That helped some. Go ahead and call the roll.

CLERK: (Roll call vote continued.) 16 ayes, 12 nays, Mr. President.

SENATOR CLARK: The motion lost.

CLERK: Mr. President, the bills read on Final Reading this morning are now ready for your signature.

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 89, 714, 714A, 669, 669A, 609, 609A, 604, 604A, 278, 629, 629A, 480, 568, 909, 854, 854A, 835, 757, 753, 708, 688, and 966.

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LB 753, 757
LR 385, 292, 293,

President, I have a communication from the Governor addressed to the Clerk. Engrossed LB 753 and 757 were signed by me on April 14th and delivered to the Secretary of State. Sincerely, Charles Thone, Governor. (See page 1941 of the Legislative Journal).

Mr. President, LR 292 is offered by Senator Barrett, Remmers and Lamb. It is on page 1585 of the Journal.

SENATOR CLARK: Senator Barrett.

SENATOR BARRETT: Mr. President and members, many of you have probably noticed the series of six prints which are on permanent display in the Moses P. Kinkaid hearing room number 1520 Senator Koch. These, this series of print is entitled "From Sea to Shining Sea", and is made possible by Mr. John Falter the artist the former native of Plattsmouth, Nebraska, born in Plattsmouth in about 1910 now living with his wife in Philadelphia and still actively painting. The gift, this outstanding gift was made possible on the occasion of the 50th Anniversary of the State Capitol Building by Mr. Cliff Hillegass of Lincoln, Nebraska. So this resolution simply is an official thank you to Mr. Hillegass for his most generous contribution to the State of Nebraska, also recognizes Mr. Falter the artist for his talent and the beautiful prints which are now permanently a part of the state property. So I'm pleased to join with Senators Remmers and Lamb in the introduction of this resolution. I move the adoption.

SENATOR CLARK: Question before the House is the adoption of the resolution. All those in favor vote aye, opposed vote nay. Voting aye. Record the vote.

CLERK: 27 ayes, 0 nays on adoption of the resolution, Mr. President.

SENATOR CLARK: The resolution is adopted. LR 293, by Senator Higgins, is she here?

CLERK: Mr. President, Senator Labedz and Higgins move to offer 293, it is on page 1610.

SENATOR CLARK: Senator Labedz.

SENATOR LABEDZ: Thank you, Mr. President. LR 293 is a very brief resolution to commend and congratulate the Forensics Team of the University of Nebraska at Lincoln for their outstanding season, especially the teams first place finish last month in the Delta Sigma Rho-Tau Kappa Alpha