

January 19, 1982

SENATOR CLARK: The motion lost. The next amendment is amendment number two of Senator Vickers to Section one. He wants to read a few things in first.

CLERK: Mr. President, very quickly, new bills: (Read by title for the first time, LBs 895-914 as found on pages 343-347 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Public Works Committee for January 29, February 10, 11 and 17. That is signed by Senator Kremer as Chair.

Mr. President, Retirement sets hearings for Wednesday, January 7 and Revenue sets hearings for January 25, 26 and 27, signed by the respective chairmen.

I have a reference report referring LBs 848 through 880.

Mr. President, your committee on Enrollment and Review reports that 511 be reported to Select File with amendments, 192 Select File with amendments, 231 Select File with amendments, 454 Select File, 304 Select File, 69 Select File with amendments, 139 Select File, 139A Select File, 305 Select File, 239 Select File with amendments, 410 Select File with amendments, 278 Select File with amendments, 126 Select File with amendments, all signed by Senator Kilgarin.

SENATOR CLARK: We are now ready for the second Vickers amendment to Section one.

CLERK: Mr. President, the amendment reads as follows: On page 2, line 13, strike the word "life" and insert "safe yield."

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, since that is more of a technical one there the following amendment on Section two would be more applicable to take up and I think the Clerk has other amendments on Section one so if you would want to skip over this and go to the other amendments that are on Section one, that would be fine with me. You have other amendments and I think Senator Beutler and some other people might have amendments on Section one if you want to go ahead and take those up at this time.

CLERK: So are you withdrawing. . .you don't want this one then, Senator?

SENATOR VICKERS: That one is more of a technical one. It

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cameral. LB 525 is the next motion.

CLERK: Mr. President, before that if I may, an Attorney General's opinion addressed to Senator Wesely and your committee on Revenue reports that LB 903 advance to General File with committee amendments attached. That is signed by Senator Carsten as Chair. (See pages 1008-1014 of the Legislative Journal.

Mr. President, I have a motion on LB 525. Senator Chambers would move to return LB 525 to Select File for a specific amendment, that amendment being to strike the enacting clause.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I've handed around to you a copy of the statement of intent prepared by Senator Sieck on this bill and you can read the entire statement but the last few sentences are significant. "There are two basic reasons for the introduction of LB 525. First, the current law, Section 29-2011.01 provides broader immunity to witnesses and criminal prosecutions then is necessary. Secondly, a witness granted immunity under the current statute may not be prosecuted for any criminal transaction about which he testifies. If it is discovered that the immunized witness participated in a criminal act to a greater degree than originally known, the prosecutor is foreclosed from prosecuting that immunized witness even though he may be able to prove guilt independent of the immunized witness' testimony. The proposed statute would permit later prosecution of a witness under the same circumstances." The key to this whole discussion is that a person has the right under the Constitution to avoid incriminating himself or herself in a criminal prosecution. This statute would enable the state to offer a grant of immunity and compel that person to give testimony which could be incriminating. The testimony would be given against another person. Based on this statute and the statement of intent, this proposed change, the person could later be prosecuted in that same situation. Now we all know that should a second prosecution occur or should a prosecution occur, a denial would be made that it was based on what this person had said. But had there been enough evidence to convict that person anyway, then a plea bargain would have been struck rather than a grant of immunity. The person would have been told that in exchange for your testimony, then we'll reduce the charges on you, but not if you testify, then you cannot be prosecuted. Immunity is granted when not enough evidence would exist to convict the person who is being asked to testify in most cases. Now there was some testimony during the hearing on that bill and I am going to read you this pro-

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Gasohol Commission. The money goes to the identical point, the University, to complete the program that was started last year. Senator Koch wants to know why we run it through them. That was kind of to make Senator Schmit happy, make the Gasohol Commission at least still alive and in existence even though the money just passes through them. So I would urge you to adopt the amendment. That is it.

SENATOR LAMB: The motion is the advancement of LB 799A. Those in support vote yes, those opposed vote no.

CLERK: Senator Lamb voting no.

SENATOR LAMB: Have you all voted? Have you all voted? Senator DeCamp. Have you all voted? Record.

CLERK: 25 ayes, 6 nays, Mr. President.

SENATOR LAMB: The bill is advanced. The next bill is LB 903.

CLERK: Mr. President, LB 903 was a bill introduced by the Revenue Committee and signed by its members. (Read title.) The bill was read on January 19th, referred to Revenue. The bill was advanced to General File, Mr. President. There are committee amendments pending. In addition, Senator Carsten, you had an amendment to the committee amendments. Did you want to take that up at this time, Senator, do you think?

SENATOR CARSTEN: Yes.

SENATOR LAMB: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, LB 903 is a special fuels tax, one that has been before our committee for consideration from time to time and a very difficult one to implement. It has become an increasing problem and we have made an attempt this year to at least get something on the books to start working with and to go from there, and thus we have introduced 903. In the original bill that we had drafted and at the hearing there were numerous questions, objections and suggestions which we have taken under advisement and did try to incorporate them into some amendments. However, even with those amendments we still find some further problems. So we have attempted to amend those amendments and they are still being processed. We had hoped that they would be here today but are not, but I would tell you that they will

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be ready by Select File and that we will do them on Select File. What the amendment to the committee amendments would do is to strike the committee amendments Sections 6 through 9. These are the areas that we have had problems with and that we have general agreement from those that are vitally concerned with it to be worked out with the amendments to be submitted later. I guess the only thing I can tell you at this point is that we will only adopt the first five of the committee amendments with a commitment to you to bring on Select File those further detailed amendments that are absolutely necessary to even get the bare minimum of a special fuels tax in place. Now rather than go into discussing the bill at this point, I would only ask you that you support striking Sections 6 through 9 of the bill... of the amendment. And then after that I will go into the rest of the bill.

SENATOR LAMB: Senator Hefner on the amendment to the committee amendment. Senator Sieck. Senator Kahle.

SENATOR KAHLE: I want to talk on the rest of the bill, too, but I support what Senator Carsten is trying to do. We have worked hard trying to get this in shape in time and the importance in my mind at least is so great that I think we need to work this through if we possibly can this session. So I certainly approve of what Senator Carsten has just said that we eliminate those sections that we are not going to use.

SENATOR LAMB: Senator Carsten to close on the amendment to the committee amendment.

SENATOR CARSTEN: Only to renew my motion to strike the committee amendments 6 through 9, Mr. President.

SENATOR LAMB: The motion is the adoption of the Carsten amendment to the committee amendment. It takes a simple majority. Those in support vote yes. Those opposed vote no.

CLERK: Senator Lamb voting yes.

SENATOR LAMB: Have you all voted? Record.

CLERK: 20 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendment.

SENATOR LAMB: The amendment is adopted. Senator Carsten.

SENATOR CARSTEN: Now, Mr. President, I would move that the

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committee amendments as amended would be adopted. The rest of the bill contains, number one it is an administrative penalty for violations of the special fuel tax laws of \$1000. The penalty may be reduced or even waived by the Tax Commissioner if he sees fit. But there is a violation penalty clause that can be used, if it is found that there are violations in it. Secondly, it requires that Motor Vehicle Registration Certificate indicates the type of fuel used by the vehicle, that special fuel of diesel, propane or whatever it might be so that the vehicle can be identified with a special sticker, and that is supplied then at the time that the registration is made or the renewal is made. Another thing...one other thing that it does it allows a one-time amnesty, period. It will not go into effect until January 1 of 1981 (sic) so that a person that now may be in violation will have an opportunity to pick up his tax responsibility if he feels that he should. It would encourage persons to be honest rather than to continue evading the responsibility. That basically is what is left in the bill at this point and I suggested to you that on Select File we will have more detailed amendments for the implementation of it. It is really a very bare bill at this point but we certainly have reached the point where there are quite a few violations in the state that we are really aware of and that we will be trying to add to this bill in a minimal sort and hope we can get it in operation for one year at least and then work from there. I would move, Mr. President, for the adoption of the committee amendments as amended.

SENATOR LAMB: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the Unicameral, I rise to support the committee amendment as amended now. I think you realize that we did strike Sections 6 through 9. And, of course, most of us realize that we do need a new law concerning the special fuels and the way we tax special fuels. With the greater use of diesel cars and diesel pickups, many people converting to propane power, we feel that we just need to tighten up the way we tax these special fuels. I know there is abuse out there and I think many of the rest of you know that there is abuse out in the area. I feel that we could be losing up to a million dollars and maybe two million dollars in gasoline and diesel fuel tax revenues, and I think we need to close this hole, or at least try to close it. Vehicle owners and users are using fuel for their over the road vehicles that is coming out of the tanks that contain fuel that are tax free. And just let me give you a few examples. Take the sand and gravel contractors, or other contractors, they have tanks that a petroleum jobber

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delivers tax free fuel into these tanks. They can go ahead and use some of this fuel in their vehicles. Also, persons that heat their homes, for example, they can have a little pump on there or siphon and fill their diesel cars with it because it is practically the same fuel. Number 2 heating fuel can be used for diesel fuel, or the person that heats their home with propane, you can have a pump on that tank to fill your car or pickup. There are many people that are converting vehicles from regular gas to propane, especially since propane gas is quite a little cheaper than your regular or unleaded gasoline. Also I feel we have some abuse coming from farmers and, of course, these farmers have tanks that have diesel and propane fuel in them. And so the Revenue Committee feels that this is quite serious and we should try to do something about it and this is why we have come up with a bill to try and answer some of the questions that we have. We are working on an amendment now that we will present to the body on Select File. I feel that those vehicle owners who fill their vehicles from bulk tanks should have to buy a ticket or a sticker and this would be mandatory and this sticker would cost...and the cost would vary according to the weight of the vehicle. We have also set a penalty at a \$1000 and I think this is the way it should be because if we have a penalty great enough well then people will not use tax free propane or diesel fuel in their vehicles. I feel that we need to work on tightening up our special fuels tax laws.

SENATOR LAMB: One minute, Senator.

SENATOR HEFNER: And I realize that this bill will perhaps not be a perfect bill but we need to start someplace. The Petroleum Association has told me that they will work with us in trying to implement a new law. There has also been proposals talked about like taxing all the propane, taxing all the middle distillates like we do gasoline. But this is a terrific problem because any more we use so many gallons of fuel. Take for instance a homeowner that heats his home with fuel oil. If he uses a thousand gallons and we tax him on it, that means that he would have \$179 tied up. A farmer that uses ten thousand gallons a year would have \$1,790.

SENATOR LAMB: Your time is up, Senator.

SENATOR HEFNER: Okay, thank you. I urge you to support this amendment.

SENATOR LAMB: Senator Sieck.

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SENATOR SIECK: Thank you, Mr. President, and members of the body, first of all I would like to congratulate the Revenue Committee for bringing this bill forward. I think it is long overdue. The first year I was in the Legislature I had farmers coming up to me asking me to do something about this. It was almost impossible for them to pay the tax, and I thought this was ridiculous. Impossible to pay the tax because of the regulations that were required to do this, they had to go through too much red tape. When red tape makes our people abuse some of the finances that are coming into the State of Nebraska, it is wrong, and I know that it can be cleared up. This bill is going to start curing that position. I know that there are a lot of people abusing it but they are not abusing it because they want to, because they don't know how to do it. They go by their tank. It has diesel fuel in it. They have a diesel car today which as you all know many of our people have these automobiles. They fill their tank up and don't think anything of it, but if they have to register their car as a diesel automobile and get the sticker, they will begin to realize that they are...and should pay to the State of Nebraska for the use of their roads. I really believe that the State of Nebraska is going to lose over \$2 million if we don't correct this situation because as it goes along one man says, well, here I took advantage of it and tells his neighbor, he says, well, if he is taking advantage of it, I just as well, too. This we have to correct. I have a son that drives a diesel automobile. He deliberately drives to the station because he doesn't want to cheat, but we have many, many other people that don't do this. I am sure, Johnny said he goes deliberately to the farm tank. Well, I am sure that there are a lot of them....his neighbor, we'll correct it, Johnny. But this is a good bill and I would like to have you support it. Thank you.

SENATOR LAMB: Senator Kahle.

SENATOR KAHLE: Mr. President and members, I think everything has been said. We haven't had anyone talk against the bill. I think our city, the people that live in the urban areas it is not going to affect you. If you have a diesel car or know someone that does and they buy their fuel at the station and pay the tax on it, there is no problem at all. And those of us out in the rural areas can see this happening. It is not just farmers either, it is the construction site people and, of course, there is a lot of fuel used as was mentioned for heating that there can be skullduggery going on. We have the thing pretty well worked out. We worked with the Revenue Committee. We wanted



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to make it as simple as possible. There will be a sticker involved that will cost so many dollars depending on the weight of the automobile the way I understand the bill will come out now. We have not decided completely how and if there will be a refund if you do buy your fuel at the station after you have the sticker. That is one of the things we are still talking about but it will certainly get us in the right start. The penalties are there. We need to pass this bill now. That is the reason I asked the other morning at the chairmen's meeting that we prioritize this bill and put it on special order. We cannot start immediately the way the bill will be drafted. At the present state the program will start January the 1st, 1983. That will not mean that we won't try to collect the tax on diesel fuel and propane before that time because we already have that authority. But it is going to take some time to put it in motion. So I hope you will support what we have of the bill. It's too bad it isn't complete but it will be before Select File and I guarantee that. Thank you.

SENATOR LAMB: Senator Carsten to close on the committee amendment.

SENATOR CARSTEN: No closing other than I think everything has pretty well been covered. We will before we go to the amendments on Select File have a summary of those passed out to you with a full explanation so that you can have plenty of time to look those over. But I would move then for the adoption of the committee amendment to LB 903.

SENATOR LAMB: The motion is to adopt the committee amendment. Those in support vote yes. Those opposed vote no. Have you all voted? Record.

CLERK: 27 ayes, 0 nays on adoption of the amended committee amendments, Mr. President.

SENATOR LAMB: The motion is adopted. Senator Carsten on the bill.

SENATOR CARSTEN: Now, Mr. President, I would move that LB 903 as amended be advanced to E & R Initial. I know that there are some questions as to why this bill came up. I am sure there are questions in some of your minds but I want to remind you that there is a revenue producing potential in this of a good many hundred thousands of dollars that we are now losing, and it is from that standpoint as well as the increasing use of special fuels that has prompted this bill to come before you. I would urge you to support the bill and look at the amendments on Select File when we get to them. Thank you, Mr. President.



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SENATOR LAMB: Senator DeCamp, did you want to speak?

SENATOR DeCAMP: Yes, Mr. President. Very, very briefly. Senator Carsten said this is a big problem. I would not only say it is a big problem, I would say it is an even bigger problem. Last time I was up home...I hope none of them are listening to this one, I couldn't believe the number of pickups that have converted over to propane and so on and so forth, and I told them, a couple of them, good friends of mine, I said, you know, we are going to have to get some system so that you don't forget to pay that tax. Well, they explained to me that they just as soon I didn't do that, in fact, they were talking about lynching and things like that if we did. But I really believe this is important. In fact, I believe it is important enough that by Select File I would like to offer a recommendation to Senator Carsten. Senator Carsten, I would suggest that the system you have got here ain't going to get her done, that if you want to do it you have got to be upfront and like just have a flat permit system, \$100 or \$150 or whatever, if you want it \$150 a year or something like that, some you will be overcharging maybe a little, some you will be undercharging, but it is about the only way to make it cost efficient and to make sure you get them all. They would have to have a permit just like on the window if they are going to run on propane or these other things, because that is about the only way you are going to be able to absolutely make sure you collect that tax. I know on propane everybody and his brother has a tank they can automatically fill from and I am just guessing if you would actually check what percentage are paying the tax that I could count that percent on these two hands and hold one hand folded. It is a serious problem that amounts to hundreds of thousands, millions of dollars. I suggest that by Select File you think about a permit system.

SENATOR LAMB: Senator Koch.

SENATOR KOCH: I move the previous question.

SENATOR LAMB: That will not be necessary. Senator Carsten to close.

SENATOR CARSTEN: Mr. President and members of the Legislature, to comment on Senator DeCamp's suggestion and so forth, Senator DeCamp, relative to your suggestion, that will be a part of the amendments that will be forthcoming. We had some details in there that were not quite worked out. It has taken a long time. But I agree with you the enforcement part is going to be a problem but we are trying our

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best to find those answers and in the amendments we hope we will have at least a good start on it. So that will be forthcoming in the amendment. I again renew my motion, Mr. President, to advance LB 903 as amended.

SENATOR LAMB: The motion is to advance LB 903. Those in support vote yes. Those opposed vote no.

CLERK: Senator Lamb voting yes.

SENATOR LAMB: Have you all voted? Record.

CLERK: 35 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SENATOR LAMB: The next bill is LB 903A.

CLERK: Mr. President, 903A offered by Senator Carsten. (Read title.)

SENATOR NICHOL PRESIDING

SENATOR NICHOL: Senator Carsten.

SENATOR CARSTEN: Mr. President and members of the Legislature, I move to advance LB 903A to E & R Initial. You will notice in your bill book 903A has a fiscal note for \$27,500 on it...\$27,500. I want to tell you that that is strong. That was based on the original assumption of LB 903 and with the amendments and the implementation thereof as we understand from the Department of Revenue now with the permits and stickers and so forth that are going to be provided, that figure is going to be down to somewhere around \$7500 and we will have an update on that fiscal for a definite amount when those amendments are finally in, but it will be substantially less than the \$27,500 that is in the original. I move for the advancement.

SENATOR NICHOL: The question is the advancement of the bill. All those in favor vote aye, opposed nay.

CLERK: Senator Nichol voting yes.

SENATOR NICHOL: Have you all voted? Record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance the A bill.

SENATOR NICHOL: The bill is advanced. I have been asked to announce that Ray Wilson is having a 65th Anniversary

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All those in favor signify by voting aye. Opposed nay.  
The bill is advanced. Would you like to read in something,  
Mr. Clerk?

CLERK: Yes, sir, I would. Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 799A and recommend that same be placed on Select File; 903 and 903A, all placed on Select File, Mr. President. (See page 1776 of the Legislative Journal.)

Mr. President, Senator Marsh would like to print amendments to LB 89A in the Legislative Journal. (See pages 1775 and 1776 of the Journal.)

SENATOR NICHOL: We will move on to LB 480. Senator Hoagland, are you going to take this?

CLERK: Mr. President, we have E & R amendments to the bill.

SENATOR NICHOL: Senator Kilgarin.

SENATOR KILGARIN: I move we adopt the E & R amendment to LB 480.

SENATOR NICHOL: All those in favor signify by saying aye. Opposed nay. They are adopted.

CLERK: Mr. President, Senators Hoagland, Beyer and Sieck would move to amend the bill and that amendment is on page 1314 of the Journal.

SENATOR NICHOL: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, Senators Beyer, Sieck and myself are moving to make a couple of final changes in LB 480 before we advance it, before we hope the body advances it to Final Reading. Let me say at the outset that these amendments have been agreed upon substantively by the County Attorneys' Association and we have also had some representatives of the Bar Association that have given these amendments technical approval. What the amendments do basically is rewrite the current provision of the law which provides that interspousal transfers shall not be subject to the inheritance tax in Nebraska. That is Section 1 of the amendments. The other two sections of the amendments take out the lien on real property for situations where two spouses are living and jointly own a home and one spouse dies and all of the interest in property goes to the surviving spouse. In circumstances of that sort, there is no lien either under the county inheritance tax or the