

April 4, 1989

LB 188

SENATOR WITHEM: One minute, okay. Well, I've got my...oh. I've got my light pushed.

SPEAKER BARRETT: Senator Withem, I'm sorry, four minutes.

SENATOR WITHEM: Oh, okay, thank you.

SPEAKER BARRETT: Starting now.

SENATOR WITHEM: Okay, thank you very much, Mr. Speaker. Members of the body, Senator Schmit and I brought this motion for you today for your consideration. Some people have asked me why Senator Schmit has a personal priority bill out there that sells education lands, why do we need LB 188 out there? Simply because there are two separate issues. One of them is the sale of the lands, the other is, is the in lieu of tax formula a constitutional provision. It's blatantly obvious if you have read either of the two Attorney General's Opinions that our current in lieu of tax formula is completely and totally unconstitutional. When you have an unconstitutional statute on the books, it is incumbent upon us to change it. If we don't, in this case, as Senator Schmit has pointed out, we may, as a Legislature, have some very serious appropriation responsibilities for reappropriating the funds. Senator Schmit accurately described the history of LB 188. He had another bill, went through Revenue Committee, Revenue Committee advanced it to the floor. When the hearing date on LB 188 came in, he said we suggest to the Education Committee that you use LB 188 to repeal the unconstitutional in lieu of taxes distribution of the proceeds from the Educational Lands and Funds. At that time, the Education Committee did not have in our hands an Attorney General's Opinion on the in lieu of taxation. The committee, unwisely, I might add, to some of the members of the committee who are listening here, unwisely killed the bill. After the bill was unceremoniously indefinitely postponed, both Senator Schmit and I asked for an AG's Opinion on...the basic question was is anything other than a direct rebate back to the common schools constitutional? Both of us got an Attorney General's Opinion that says...says the law is well settled. The grant by Congress of land to a state for the benefit of the common schools is an absolute grant, vesting title for a specific purpose. Hence, Section 7 of the enabling act and Section 9 of Article VII of the the Constitution of Nebraska mandate that the income from the unsold school lands be...and