

January 4, 1990

LB 881-957, 997-1010
LR 229

If I may, Mr. President, I have a Reference Report referring LBs 881-957, and LR 229. (See pages 175-77 of the Legislative Journal.) And, Mr. President, new bills. (Read LBs 997-1010 by title for the first time. See pages 177-80 of the Legislative Journal.) Mr. President, that's all that I have at this time.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Proceeding to the next item on...from the Rules Committee. Chairman Lynch.

SENATOR LYNCH: Mr. President, members, the next one is number nine identified on your list. It specifies that a motion to suspend the rules is not divisible. The reason for this, without reading it all but putting it hopefully in laymen's terms so we can understand it, is that when a motion to suspend the rules is attempted it's intended to accomplish only one thing. You don't suspend the rules to accomplish three, four, five or six different things. But, if the amendment that would accomplish one thing would, for example, suspend Rule 1, Section 2, Rule 2, Section 3, Rule 3, Section 4, because it's necessary to do that to identify those sections of the rules that serve that single purpose, you cannot divide the question and take any one of those three rule changes independently. I think, Mr. President and members, that explains the purpose and intent of this rule change and would suggest that we support it.

SPEAKER BARRETT: Thank you, Senator Lynch. Discussion on the proposal...proposed change number nine? Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, let me tell you what the real purpose of this rule change is. There have been attempts at various times to suspend the rules so that there can be no debate or discussion or amendment on bills, and I have indicated that I would divide that question. So the purpose of the rule is to prevent that from happening. So however many things are put into a rule suspension will have to be taken as a package. In some instances you may have a situation where people will think and believe that you should be able to suspend the rules for the purpose of taking a vote without any additional debate, amendment and so forth. And maybe that is all right. Naturally, I'm opposed to it because

January 8, 1990

LB 409, 958-1013, 1031, 1032
LR 235

SPEAKER BARRETT: Let's stand at ease until eleven-fifteen, Mr. President.

PRESIDENT: Okay, thank you.

EASE

CLERK: Three quick announcements. Reference will meet underneath the south balcony now. Referencing Committee, underneath the south balcony right now.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Microphone not activated immediately.) ...return to the Legislative Chamber. The Legislature will reconvene and continue our discussion on the adoption of our permanent rules. Please return to the Legislative Chamber. Mr. Clerk, would you read in new bills, please.

CLERK: (Read LB 1031 and LB 1032 by title for the first time. See pages 198-99 of the Legislative Journal.)

Mr. President, in addition to those items, I have a new resolution. (Read brief summary of LR 235. See page 199 of the Journal.) That will be laid over.

I have amendments from Speaker Barrett to be printed to LE 409. Mr. President, I also have a Reference Report referring LBs 958-1013, as well as certain gubernatorial appointments received. That's all that I have, Mr. President. (See pages 199-201 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, Mr. Clerk. Have you a motion, Mr. Clerk, to reconsider action taken last week?

CLERK: Mr. President, Senator Chambers would move to reconsider the vote on the Wesely amendment to the rules, which I believe the Legislature discussed on Thursday afternoon.

SPEAKER BARRETT: Thank you. The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this motion is designed to reconsider the vote that was taken on

January 29, 1990

LB 50, 109, 111, 143, 163, 210, 218
240A, 248, 328, 465, 475, 479, 667
802, 885, 900A, 915A, 921, 971, 978
1003, 1035, 1058

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 240A be advanced to E & R for engrossment.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. Thank you for that. Do you have something for the record, Mr. Clerk?

CLERK: I do, Mr. President. Mr. President, your Committee on Judiciary whose Chairperson is Senator Chizek reports LB 210 to General File, LB 921 to General File, LB 978 to General File, LB 111 to General File with amendments, LB 885 General File with amendments, LB 1003 General File with amendments, LB 1035 General File with amendments. LB 109 indefinitely postponed, LB 218 indefinitely postponed, LB 248 indefinitely postponed, LB 328 indefinitely postponed, LB 475 indefinitely postponed, LB 479 indefinitely postponed, LB 667 indefinitely postponed, LB 802 indefinitely postponed, LB 971 indefinitely postponed, and LB 1058 indefinitely postponed. (See pages 553-55 of the Legislative Journal.)

Mr. President, announcement, the Appropriations Committee will be conducting their hearings in Room 2114 the balance of this week, Appropriations Committee in Room 2014 for this week for their public hearings.

Amendments to be printed to LB 465 by Senator Chambers, Senator Baack to LB 143, Senator Dierks to LB 50. (See pages 557-58 of the Legislative Journal.)

Notice of hearing from Education Committee; and from Natural Resources.

Two new A bills. (Read LB 900A and LB 915A by title for the first time. See pages 558-59 of the Legislative Journal.)

Mr. President, a request from Senator Beck to add her name to LB 163 as co-introducer. (See page 559 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: Thank you. Senator Schimek, would you like to say something about adjourning until tomorrow at nine o'clock, please.

February 16, 1990 LB 163, 164A, 226, 260, 457, 571, 838
846, 866, 880, 958, 1003, 1019, 1028
1039, 1062, 1103, 1106, 1113, 1184, 1205
1215, 1229

Senator Hartnett. (See pages 846-48 of the Legislative Journal.)

Judiciary reports LB 838 to General File; LB 880, General File; LB 846, indefinitely postponed; LB 1103 and LB 1205, indefinitely postponed.

I have amendments to be printed to LB 866 by Senators Lamb, Haberman, Rogers and Crosby. (See pages 848-50 of the Legislative Journal.)

Mr. President, priority bill designations. Senator Labeledz has selected LB 457. Senator Hartnett for Urban Affairs has selected LB 1106, LB 1229; Senator Conway, LB 260; Senator Bernard-Stevens, LB 1062; Senator Beck, LB 958; Senator Rod Johnson, LB 1019; Senator Haberman, LB 1039, as one of the Retirement Systems priority bills. Senator Hall's Revenue bills are LB 1028 and LB 1215; Senator McFarland, LB 226; Senator Hefner, LB 571; and Senator Chizek's personal priority, LB 880, and Judiciary Committee's, LB 1003 and LB 1113.

Mr. President, Revenue Committee gives notice of hearing. And one new A bill, LB 164A by Senator Ashford. (Read by title for the first time as found on page 850 of the Legislative Journal.)

And, finally, Senator Scofield has amendments to LB 1184 to be printed. (See page 851 of the Legislative Journal.) That's all that I have, Madam President.

Madam President, when we left LB 163, the Enrollment and Review amendments had been adopted. Senator Johnson had an amendment to the bill that had been adopted. Senator Morrissey had amendments. Senator Hefner had his first amendment adopted. The bill was bracketed, Madam President. I now have pending Senator Hefner's amendment. Senator, this amendment is on page 599 of the Journal. I believe...it's AM2141, Senator, the biodegradable. Right. Okay.

SENATOR LABEDZ: Senator Hefner, on the amendment.

SENATOR HEFNER: Mr. President and members of the body, you will find this amendment on page 599. And what this would do, this would add a tax or a fee on disposable diapers...on nondegradable disposable diapers at the rate of 10 cents per dozen. The tax would be collected by the Department of Revenue

printed to LB 1141 (See Warner amendment AM3226 as found on pages 1863-64 of the Legislative Journal), and to LB 281 (See Abboud amendment AM3343 as found on page 1861 of the Legislative Journal). That's all that I had, Mr. President.

SPEAKER BARRETT: Thank you, sir. I'd like to revert, at this time, to the original agenda, General File committee priority bills and work a few of those General File committee priority bills, with your cooperation, starting with LB 1003. Mr. Clerk.

CLERK: Mr. President, LB 1003 was a bill originally introduced by Senators Elmer, Lindsay and Schmit. (Read Title). The bill was introduced on January 4 this year, referred to the Judiciary Committee. Bill was advanced to General File. I do have committee amendments pending by the Judiciary Committee.

SPEAKER BARRETT: Chair recognizes Senator Chizek for the committee amendments.

SENATOR CHIZEK: Speaker and colleagues, LB 1003 is a bill which allows the recovery of attorneys fees and other costs if an individual is prosecuted under a law which is declared unconstitutional during the appeal. Senator Elmer will address the bill later, but the committee amendments are on page 556 of the Journal and they are technical amendments to make clear that the Supreme Court shall determine the fees to be awarded, if any. The Judiciary Committee unanimously voted to move LB 1003 to the body with that simple amendment. I would urge the adoption of the committee amendments and the... later, the passage of the bill, Mr. Speaker.

SPEAKER BARRETT: Thank you. For discussion purposes, Senator Chambers on the committee amendments, followed by Senator Elmer.

SENATOR CHAMBERS: No, not on the committee amendments.

SPEAKER BARRETT: Thank you. Senator Elmer.

SENATOR ELMER: Thank you, Mr. Speaker. I think that Senator Chizek explained the committee amendments pretty well. I'll address the bill when we get to the bill. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion on the adoption of the amendments? Senator Chizek. Senator Chizek

waives closing and the question is the adoption of the committee amendments to LB 1003. All in favor vote aye, opposed nay. On the adoption of the committee amendments, have you all voted? Please record.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the committee amendments.

SPEAKER BARRETT: Committee amendments are adopted. To the bill, Senator Elmer.

SENATOR ELMER: Thank you, Mr. Speaker. This bill is really very simple. What it says is that if an individual is prosecuted under... on a criminal matter, it has nothing to do with civil things like divorces or child care or any of those kinds of things, unless it's a criminal matter and the Supreme Court finds that the rule or regulation, ordinance, or law under which this individual has been prosecuted is unconstitutional, then the person who has had to defend himself against this unconstitutional regulation or law may apply to the Supreme Court to pay his defense. Now, as time passes and as we sat on the Natural Resources Committee and the Ag Committee and the various committees we are finding that the federal government is requiring higher and higher fines and more and more regulations, and some of them have become criminal in the area of the environment. And if a small businessman, for example, finds himself being prosecuted for 10 or 20 thousand dollars which is in a criminal area, he defends himself to the Supreme Court and finds that the rules and the regulations under which he's been prosecuted are unconstitutional and this... and the individual has spent most of his resources in order to defend himself, this would allow him some way to recover for being aggrieved unnecessarily by an irresponsible government putting into effect unconstitutional rules, regulations and laws. That's basically what it is, and I'd ask your support in advancement of the bill. I would yield the remainder of my time to Senator Lindsay.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Thank you, Senator Elmer. Thank you, Mr. President. This bill is designed to just correct I think what is a fundamental unfairness in the system, and that is that if an individual is prosecuted, that's the threat of jail time, losing your liberty, or paying a fine to the state, and that prosecution is based on an unconstitutional bill or an

unconstitutional act of the Legislature, this bill would simply make that person whole; would put them, while we can't give them their reputation back which they would have lost through the criminal proceeding, we know they're generally printed in the newspaper or on the media of some sort, we can't give them their reputation back but the least we can do is put them financially back where they were before they were prosecuted under an unconstitutional bill. There were some concerns brought up, I believe by Senator Pirsch, in the committee Exec Session. Those concerns were addressed by the committee amendments. The amendments that we adopted would simply make this a discretionary award with the Supreme Court. It does not mandate that an award be made for any prosecution. It would be left up to the Supreme Court. This simply allows that someone who is prosecuted in that manner can make that application to the Supreme Court and if the Supreme Court feels that payment of costs of defense are... would be proper in that situation, the court can make a determination of an amount to be awarded to that person. I think it's a bill that certainly was a committee priority. It certainly is a priority that, if possible, we'd like to move over and hopefully get passed this session. I'd urge you to support LB 1003.

SPEAKER BARRETT: Thank you. Any other discussion? If not, any closing, Senator Elmer?

SENATOR ELMER: Just very briefly, I thank Senator Lindsay for his comments. I think that the bill is straightforward enough for everyone to understand. It's permissive. I would ask for its advancement. Thank you.

SPEAKER BARRETT: The question is the advancement of LB 1003 to E & R Initial. All in favor vote aye, opposed nay. Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to advance LB 1003.

SPEAKER BARRETT: LB 1003 is advanced. Mr. Clerk, you have a motion on the desk?

CLERK: Mr. President, Senator Langford would move to adjourn until tomorrow morning at 8:00 a.m.

SPEAKER BARRETT: Anything to read in, Mr. Clerk? The question

done before we get bogged down, and I am simply giving you a choice, I think, to decide if you want to get that material done, and then we will fight forever or for a minute, however long it might take, on LB 854 when that would come up, and it would come up, and I ask the body to try to get some work done as well today or to use your best judgment. Thank you.

SPEAKER BARRETT: Thank you. The question is the Bernard-Stevens motion to overrule the agenda. All in favor please vote aye, opposed nay. Have you all voted? Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you. I think this really is important. I will need 30 votes, so that we can get that work done before we do get bogged down and I would ask for a call of the house and a roll call vote, please.

SPEAKER BARRETT: Thank you. The question is, shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 19 ayes, 10 nays to go under call, Mr. President.

SPEAKER BARRETT: The motion prevails and the house is under call. Members, please return to your seats and record your presence. Those members outside the Legislative Chamber, please return. The house is under call. Senator Peterson, Senator Scofield, Senator Smith, Senator Hall, Senator Kristensen, the house is under call. Senator Hall, the house is under call. Members, return to your seats, please. Members, return to your seats for a roll call vote and we have had a request for a roll call in reverse order. Proceed, Mr. Clerk.

CLERK: (Roll call vote taken. See pages 1870-71 of the Legislative Journal.) 23 ayes, 20 nays, Mr. President, on the motion.

SPEAKER BARRETT: Motion fails. The call is raised. Have you any items for the record?

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports LB 1003 to Select File, signed by Senator Lindsay as Chair of E & R.

SPEAKER BARRETT: Next motion.