

for review by the membership. (See page 95 of the Legislative Journal.)

Mr. President, I received a report from the committee chair by Senator Lowell Johnson regarding a study of the Presidential Primary Study. That report is required pursuant to Statute 32-562. That will be on file in my office.

Mr. President, Senator Coordsen would like to announce that Senator Pirsch has been selected as Vice-Chair of the Business and Labor Committee.

Mr. President, two announcements, Senator Baack would like to have a meeting of the Government Committee for an organizational meeting, this morning at ten o'clock in the Senators Lounge; Government Committee, ten o'clock in the Senators Lounge. Mr. President, Senator Smith would like to have an organizational meeting of the General Affairs Committee at nine-thirty this morning underneath the north balcony; General Affairs, nine-thirty this morning, called by Senator Smith. Mr. President, that is all that I have at this time.

PRESIDENT: Thank you. We will move on to introduction of new bills.

CLERK: Mr. President, new bills. (Read LBs 190-201 for the first time by title. See pages 95-97 of the Legislative Journal.)

PRESIDENT: We will leave the introduction of new bills for a moment and move on to number seven, a motion on the election contest. Senator Warner. The chair recognizes Senator Warner.

CLERK: Mr. President, the motion offered by Senator Warner is found on page 34 of the Legislative Journal.

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Mr. President and members of the Legislature, I'd move adoption of the motion. You will recall that there was a protest filed at the beginning of the session on one of the seats, and that the Credentials Committee was selected, I believe I indicated that the report which was filed by the Credentials Committee presumed that this motion would be offered. It is written in such a way that the same individuals

January 30, 1989

LB 63, 104, 116, 193, 198, 209, 221  
294, 458, 459

county, school district and other governmental subdivisions, and then in the Section 2, we specify city or village and put them under the State Investment Office. Was there a reason why we didn't treat the school districts and the counties and the other subdivisions as we did the cities and villages.

SENATOR LANDIS: In fact, no one had the presence of mind to ask the League of Municipalities why they had drafted the bill that way. There were no county representatives and I think we looked at the new language, not the old language. You raise a fair question. On the other hand, the counties haven't asked to be in the bill either, so...

SENATOR PIRSCH: Okay, thank you. That answers my question. Thank you.

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: I will waive.

PRESIDENT: All right. Senator Weihing, would you like to close on the advancement to E & R Initial?

SENATOR WEIHING: In order to clarify what can be done with regards to the cities and villages in the use of their surplus funds, I request that this be advanced to, this LB 221 be advanced to the next stage of legislation here.

PRESIDENT: Senator Lynch, he was closing. Okay, the question is the advancement of LB 221. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 221.

PRESIDENT: The bill is advanced. Do you have anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Revenue, whose Chair is Senator Hall, reports LB 198 to General File, LB 209 to General File, LB 459 General File, LB 458 General File with amendments, LB 63 indefinitely postponed, LB 104 indefinitely postponed, LB 193 indefinitely postponed, LB 294 indefinitely postponed, all signed by Senator Hall. Judiciary Committee, whose Chair is Senator Chizek, reports LB 116 to General File,

February 3, 1989

LB 92, 198, 318  
LR 2-

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 92.

SPEAKER BARRETT: The bill is advanced. Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do, thank you. Your Committee on Banking, Commerce, and Insurance reports LB 318 to General File with amendments attached, signed by Senator Landis as Chair. (See pages 581-85 of the Legislative Journal.)

I have a report of registered lobbyists for this past week. Mr. President, a new resolution, LR 24 offered by Senators Coordsen and Hall. (Read brief explanation. See pages 586-87 of the Legislative Journal.) It will be referred to the Executive Board.

Mr. President, I have a confirmation report from the Retirement Systems Committee. That is signed by Senator Haberman as Chair. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Proceeding then to the next bill on General File, LB 198.

CLERK: Mr. President, LB 198 is a bill offered by Senators Schellpeper and McFarland. (Read title.) The bill was introduced on January 9 of this year, Mr. President, referred to the Revenue Committee. The bill was advanced to General File. I have no committee amendments.

SPEAKER BARRETT: Thank you. Senator Schellpeper, please.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members. I think this would be a fairly easy to understand. What it does is it exempts the sales tax on State Fair purchases. The State Board of Agriculture is actually the State Fair. We are talking about approximately 15 to 20 thousand dollars. I really don't think it would even be quite that much. Currently our race operation out at the State Fair Park is exempt. We do not pay any sales tax on any purchases that are associated with the races. With simulcast being conducted out there for about 10 months, you can see that we do not have much that we can put over into the actual fair part, and it is real hard to decide which goes to the fair, which goes to the races. We are talking about state-owned buildings on state-owned property, so I just

think that we need to look at this as something that will be a reduction of the sales tax and make it much easier for us at the State Fairgrounds to keep track as far as a sales tax. If there is any questions, I would sure be glad to answer them.

SPEAKER BARRETT: Thank you, sir. An amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Haberman would move to amend the bill. Page 8, line 15, after the comma, insert Natural Resources District.

SPEAKER BARRETT: Senator Haberman, please.

SENATOR HABERMAN: Mr. President and members of the body, at the risk of the wrath of Senator Schellpeper and not wanting to Christmas tree his bill, I respectfully withdraw the amendment.

SPEAKER BARRETT: So be it.

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

SPEAKER BARRETT: Thank you. Senator Hall, discussion on the bill.

SENATOR HALL: Thank you, Mr. President and members. The bill was before the Revenue Committee, as the Clerk has pointed out. Senator Schellpeper brought it to us. It does allow for sales tax exemption. It, I think, is somewhere in the neighborhood of 14 to 18 thousand dollars based on the fiscal note. It is not something that I would normally support but the argument that, basically, the state would be paying sales tax to the state was one that I could agree to specifically because the dollar figure was as low as it was. Now had there been another zero there, Senator Schellpeper, I am not so sure that I would have been as easily convinced that it was something that we needed to do but it was a very minor bill with regard to a reduction. The bill last year was on the floor, advanced out of committee, but did not come to a vote because of a lack of time. With that, it is not something that I would think the body should come to feel that sales tax exemptions will come running out of the Revenue Committee but, in this case, I think it was justified, and although there was some opposition of at least one member of the committee, the bill I think should be advanced and I would urge your support.

SPEAKER BARRETT: Thank you. Further discussion on the bill. Senator Schellpeper, would you care to close?

SENATOR SCHELLPEPER: Thank you, Mr. Speaker. I just want to thank Senator Haberman for withdrawing that amendment because I could see it opening it up to a lot of different amendments, and I think I want to keep this bill real clean. So with that, I would just move the bill. Thank you.

SPEAKER BARRETT: Thank you, and the question before the body is the advancement of LB 198 to E & R. Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 26 ayes, 1 nay, Mr. President, on the advancement of LB 198.

SPEAKER BARRETT: LB 198 is advanced. Proceeding to LB 209.

CLERK: LB 209, Mr. President, is a bill that was introduced by Senators Ashford, Schmit and Schellpeper. (Read title.) The bill was introduced on January 9, referred to the Revenue Committee, advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: Thank you. Senator Brad Ashford, please, on the bill.

SENATOR ASHFORD: Thank you, Mr. President and members. This bill, LB 209, was introduced by Senator Schmit and Senator Schellpeper and myself to deal with the problem that started about a year and a half ago with a decision by the Department of Revenue to start charging sales tax on access costs or access charges, which are charges that are made by local telephone companies to long distance companies to complete a long distance call transaction. Basically, this access charge problem started with the breakup of AT&T in 1984. Since that time, several states have taken a look at access charges. Most states have opted not to collect a sales tax or any sort of tax on that access charge for various reasons, and a couple of states have had some litigation or are in the process of having litigation over it. Basically, an access charge, as I said, is...an access charge is the charge that a local company would charge to the long distance company. The charge makes up approximately 60 percent of the cost of the call and is, in essence, a

February 6, 1989

LB 70, 155, 177, 195, 198, 209, 238  
254, 338, 357A, 773  
LR 25

CLERK: 5 ayes, 23 nays, Mr. President, on the motion to indefinitely postpone.

PRESIDENT: The motion fails. Do you have anything for the record, Mr. Clerk?

CLERK: I do, Mr. President. Notice of hearings from the Agriculture Committee. That's signed by Senator Rod Johnson as Chair.

New A bill, LB 357A, by Senator Nelson. (Read by title for the first time. See page 605 of the Legislative Journal.)

Enrollment and Review reports LB 195, LB 198, and LB 209 to Select File with E & R amendments attached on each. Those are signed by Senator Lindsay. (See page 606 of the Legislative Journal.)

Transportation Committee would offer LB 155 to General File with amendments. That's signed by Senator Lamb. (See page 608 of the Legislative Journal.)

LR 25, Mr. President, is offered by the Appropriations Committee. (Read brief description of the resolution. See pages 607-08 of the Legislative Journal.) That will be laid over.

I have amendments to be printed to LB 70 from Senator Hall; Senator Moore to LB 177; Senator Coordsen to LB 238, and Senator Baack to LB 254. That's all that I have, Mr. President. (See pages 609-10 of the Legislative Journal.)

PRESIDENT: Senator Dennis Byars, would you step to your microphone and say something about adjourning tomorrow, February 7th, until nine o'clock, but wait just a minute, the Clerk has something.

CLERK: Excuse me, Senator. Mr. President, I have amendments to be printed to LB 773. That's offered by Senator Korshoj.

PRESIDENT: Are you ready to adjourn now? Now, Senator Byars.

SENATOR BYARS: I would move that we adjourn this body until nine o'clock on February the 7th, 1989.

February 9, 1989

LB 195, 198, 209

SENATOR LINDSAY: Mr. President, I move that LB 195 as amended be advanced.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 198.

CLERK: LB 198, Senator, has E & R amendments pending.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 198 be adopted.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay.

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

PRESIDENT: They are adopted. Now on the advancement.

SENATOR LINDSAY: Mr. President, I move that LB 198 as amended be advanced.

PRESIDENT: Okay, we have a request for a machine vote on the advancement of the bill of 198. All those in favor vote aye. Opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 1 nay, Mr. President, on the advancement of 198.

PRESIDENT: LB 198 is advanced. LB 209, please.

CLERK: Mr. President, 209, I have E & R pending, Senator.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 209 be adopted.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Nothing further, Senator.

February 13, 1989

LB 43, 195, 198, 209, 342  
LR 25, 29

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day, Reverend Duane Voorman of the Trinity Lutheran Church of Lincoln. Would you please rise for the invocation.

REVEREND VOORMAN: (Prayer offered.)

PRESIDENT: Thank you, Reverend Voorman. We appreciate it. Roll call, please. Record, Mr. Clerk, please.

CLERK: I have a quorum present, Mr. President.

PRESIDENT: Thank you. Any corrections to the Journal today?

CLERK: No corrections, Mr. President.

PRESIDENT: Do you have any messages reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 195 and find the same correctly engrossed, LB 198 correctly engrossed, LB 209, LB 342, all correctly engrossed, that is signed by Senator Lindsay as Chair. (See pages 705-06 of the Legislative Journal.)

I have a report, Mr. President, from the...revenue distribution from the Highway User Fund from the Department of Roads. That will be filed by statute. That will be on file in my office, Mr. President. And last, Mr. President, LR 25 and LR 29 are ready for your signature. That is all that I have, Mr. President.

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and do sign, LR 25 and LR 29. We are about ready to begin on Final Reading, so if you will take your seats please, we will begin here in a moment. Final Reading on LB 43, Mr. Clerk.

CLERK: (Read LB 43 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 43 pass? All those in favor vote aye, opposed nay. Have you all voted?



May 17, 1989

LB 182A, 198, 540

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 182A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See page 2469 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 182A passes. LB 198, please.

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Hall would move to return the bill to Select File for a specific amendment.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President. I think the amendment is Senator Lindsay's. I co-sponsored it with him but I think it...I would yield to Senator Lindsay for the opening.

SENATOR LINDSAY: Thank you, Mr. President. Thank you, Senator Hall. This amendment is an amendment that was previously argued on, I think, last Thursday, time when it's my understanding that it reached a point when about a third of the Legislature wasn't here. I was not here. It was an amendment that I had previously offered. Senator Hall carried it for me on that day. What it would do, for those of you who were here you would remember it, it was the amendment that would exempt corporations holding a certificate under 501C3 of the Internal Revenue Code from paying sales tax on their memberships. If...the membership also would gain them admission to the particular facility. As I mentioned, this was debated before. It is my understanding that 14 to 16 members were not here at the time. I think I would give a little background on it first. The bill...it was originally offered as a bill, LB 540, to...it came out of committee six to nothing. The Department of Revenue is not opposing the bill...or, excuse me, well, the amendment now, but they are not opposing it. They did not testify at the hearing. They contacted me later and asked that an amendment be offered to the bill which was...excuse me, they contacted me before the committee hearing and that amendment simply changed the language from...we had the description of 501C3, the language from that federal statute, and just instead put in that they wanted the term 501C3, anybody holding the certificate. And that was put

in there. Without that, because of the fact that it was...came out six to nothing and could have been actually without amendments it could have been a consent calendar bill and was not for that reason. As you might remember, the bill was brought to me by the Omaha zoo and I think that's pretty common...commonly understood. But I don't think it can be...it should be seen as a zoo bill nor is as an Omaha bill. I don't know if it's...if it impacts your districts or not and that would depend on what type of organizations would be in your districts. We have done...tried to make some calls to some different organizations seeing if it would apply. The one that we, I guess, found that they think it might apply to them is a Western Arts Museum in Gering. I think Senator Scofield had talked to me earlier about that to see whether it would apply to other organizations. The term...or the definition in the statute deals with holders of the 501C3, the exempt organization certificate from the Internal Revenue Service. It's not defined as zoo or anything like that. It's defined to those charitable organizations if they get voting rights in the corporation by becoming members. If...in addition to this, they are entitled to admittance, the Department of Revenue recently...they have not started enforcing it, but if you look at 540, the fiscal note, it does not...they can't calculate a fiscal note because it has not yet been enforced. This is a reinterpretation of rules that the Department of Revenue has recently come up with and so we don't know how far that's going to extend, whether it's going to stop at the zoo, whether it will extend to some of the other organizations who may fall within it. I put it out there I guess to you as a policy decision. With that, I would urge that the...that you vote to return it to Select File and that we adopt the amendment. Thank you.

PRESIDENT: Thank you. Senator Hall, followed by Senator Moore and Senator Chambers. Senator Moore...Senator Hall, please.

SENATOR HALL: Thank you, Mr. President. As Senator Lindsay has stated, the amendment is one that I offered the other night. There were, I think, 16 members of the body had gone. There were 18 votes on behalf of the amendment. The bill that was introduced by Senator Lindsay to the Revenue Committee was LB 540 and it was like a number of other bills that came before the Revenue Committee, LB 209, which is a bill that deals with the telecommunications and the access charge tax. The genesis of the bill is the fact that there has been a determination by the Department of Revenue that they are going to take a

different approach or a different interpretation with regard to the way the statutes read on this particular issue. There has been no tax collected prior to January 1 of 1989 and none collected for January 1, 1989 or the balance of the year, through May 17th, for this particular provision. The Revenue Department is awaiting the determination of the Legislature with regard to this issue. Should this issue not be resolved this year through the...I would guess this is the last opportunity we will have to address it, an amendment to Senator Schellpeper's 198, then the Revenue Department will begin to collect tax on memberships that include not only admissions to, for example, the zoo but also voting rights. They wanted, they being the Department of Revenue, clarifications for their purposes as to what the intent of the Legislature was. We can vote this amendment up or down and send the message...send the direction to the Department of Revenue. As Senator Lindsay clearly pointed out, this was advanced six to nothing out of the Revenue Committee. There was no opposition to the bill during the public hearing. There was no testimony from the Department of Revenue. They basically told us that we don't care, we just need some direction because we feel that the way it's traditionally been handled we're not necessarily sure that that was an appropriate interpretation. In other words, they changed what they declared was the interpretation of the statutes and began to say we want to collect tax on this provision. Senator Lindsay's amendment clearly just spells out the way that the Department of Revenue has traditionally handled this provision with regard to these types of memberships and it spells out that they only apply to memberships that have voting privileges. In other words, it's not just an annual pass, if you will, to an attraction. It is a membership in an organization that includes abilities, responsibilities, voting rights as well as an admission to that attraction but it...that is the point at which the Department of Revenue makes the distinction. And they are asking the Legislature, through this amendment or through LB 540, which will...because it's on General File and got bogged down, will not be able to be addressed this year, to make clarification. They have no stance on it. If you will open your bill books to 540, look at LB 540A, the fiscal note or the A bill says minimal, which means that it is minimal and probably very little if any revenue is (a) lost, or, (b) to be collected, should the bill fail. I would urge the body to support Senator Lindsay in his efforts.

PRESIDENT: One minute.

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LB 198

SENATOR HALL: The...again, the issue here is one of legislative intent in clarifying or basically by adopting the Lindsay amendment putting into place in the statute the practice that has been in place or been historic with regard to this issue. So I would urge, first, that it be returned to Select File and then the adoption of Senator Lindsay's amendment to LB 198. Thank you.

PRESIDENT: Thank you. Senator Moore, please, followed by Senator Chambers and Senator Landis.

SENATOR MOORE: Yes, Mr. President, and members, you remember Thursday afternoon we debated this last time. Senator Landis and myself both got up and opposed the amendment and, speaking for myself, I said, you know, Senator Hall, I don't what the zoo and Joslyn are going to get next year after we've given them so much this year. But part of that was a little misunderstanding on my part and that's because, once again, when you amend things like this on the spur of the moment it's awful hard to get the right information out. But I think Senator Hall and Senator Lindsay made some good points. I guess I'm going to ask these questions to Senator Lindsay if Senator Lindsay will yield to a couple of questions.

PRESIDENT: Senator Lindsay, please.

SENATOR MOORE: Senator Lindsay, now the way the defi...now I'm reading 540, the same definition, but to your knowledge, to your knowledge, how many organizations does this apply to?

SENATOR LINDSAY: Well, I don't...I wouldn't know the numbers as far as on the 501C3. It's got a three-prong, I guess, approach to it. Number one, it can only apply to the nonprofits that hold the 501C3 certificate that...that's the first step. The second step is it has to gain them voting rights in the corporation, the person who buys the membership. And the third step is that it's got to be...this deals with the exemption only on the admissions.

SENATOR MOORE: Okay, and so...but you're...now, I mean, you're talking more than five, less than a 100. Do you have any idea?

SENATOR LINDSAY: I...I would guess, yeah, I'm sure...well, less than a 100.

SENATOR MOORE: Okay, well...

SENATOR LINDSAY: I'm aware of two. That's...

SENATOR MOORE: Okay, you're aware of two and then the possibility of the museum in Gering. Now do your...the way I understand it, we have not collected tax yet on these type of memberships.

SENATOR LINDSAY: Right.

SENATOR MOORE: Correct?

SENATOR LINDSAY: That's correct.

SENATOR MOORE: And so to keep the status quo, we need to pass this amendment and bill?

SENATOR LINDSAY: That's correct.

SENATOR MOORE: Well, that...given that new light on what the actual situation is, understanding that to really keep the status quo in place this should be adopted and since LB 540 was introduced and a hearing has been held, now that I know, have a better understanding of this whole bill, I will support it today.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Weihing, Senators Hall and Lindsay may see this as a little sugar to sweeten the circumstances for the zoo but it may turn out to be that we're pouring salt on Senator Schellpeper's bill. So I would like to ask Senator Lindsay a question.

PRESIDENT: Senator Lindsay.

SENATOR CHAMBERS: Senator Lindsay, Senator Hall is very testy. He always want me to ask him questions on bills but I choose the one I will question. Senator Lindsay, why is it necessary to do this?

SENATOR LINDSAY: I'm thinking maybe I should have Senator Hall come back and take my microphone. It's necessary because I

think there has been a reinterpretation of the rules by the Department of Revenue which has resulted in basically a change in the sales tax structure without the Legislature's involvement. There are organizations which have...historically, which have traditionally, I guess, had not paid the sales tax because that was always the understanding that...that...how the system was supposed to work are going to be hit now for sales tax because of a new reinterpretation.

SENATOR CHAMBERS: Do you root out these kinds of issues whenever they might occur to make sure that there is a rectification, as in this particular case?

SENATOR LINDSAY: Do I root out the issues?

SENATOR CHAMBERS: Do you hunt for them? Seek them out? Search for them, quest after them?

SENATOR LINDSAY: Senator Chambers, where there is injustice, I follow in your footsteps and go looking for the justice.

SENATOR CHAMBERS: Thank you, Zorro. I'm going to ask Senator Hall a question. I'm going to ask Senator Hall a question.

SENATOR HALL: Sure.

SENATOR CHAMBERS: Senator Hall, who is hurt if this amendment is not adopted?

SENATOR HALL: The...as far as I know, Senator Chambers, the only folks that would be hurt would possibly be the people who buy annual passes and belong and have voting rights at the zoo. I mean, and I say that purely on a parochial nature because it happens to be in my district.

SENATOR CHAMBERS: I'm glad you straightened out what you meant by parochial because I didn't want you to start us discussing something else.

SENATOR HALL: Well, you know, a week ago if...we could read about that in the paper as well too if we got into that issue.

SENATOR CHAMBERS: But I want it noted that he and I are both laughing and smiling. But, Senator Hall, here's what I'm really trying to get to. If this amendment were not adopted, are there

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LB 198

people who buy these memberships who probably wouldn't buy them anymore?

SENATOR HALL: Senator Chambers, quite honestly, I doubt it. What would happen is that the...there would be an increase in those memberships to cover the cost of the tax, that's all.

SENATOR CHAMBERS: You mean an increase in the price of them rather than the number sold?

SENATOR HALL: Right, an increase in the cost. Possibly there might be some people but I doubt it. It would just be an increase overall in the cost in order to cover the cost of the tax.

SENATOR CHAMBERS: And how much does the membership cost?

SENATOR HALL: I bought mine and it was \$30 for 1989.

SENATOR CHAMBERS: And your tax was how much...would be how much?

SENATOR HALL: Tax on that would be 5 1/2 percent in the City of Omaha so whatever that would equal to and there would be...based on that, there would be 4 percent that would be owed to the state, so 4 percent of \$30, whatever that might be, you know, maybe quarter, buck fifty.

SENATOR CHAMBERS: They're all saying \$1.20.

SENATOR HALL: Well, you know, I'm the Revenue Chairman, I don't know, ask them.

SENATOR CHAMBERS: Right. Right. Senator Hall deals with millions. These trifles are for us to contend about. I'm not sure how I'll vote on this because there might be something more here than just \$1.20 on the membership. There might be a policy issue that does need considering. So I will listen to what whoever else speaks will say and then, for what it's worth, I will make up my mind, Senator Hall.

PRESIDENT: Thank you. Senator Landis, followed by Senator Elmer and Senator Warner. Senator Landis, please.

SENATOR LANDIS: I will pass.

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LB 198

PRESIDENT: Senator Elmer...Owen Elmer, please.

SENATOR ELMER: Thank you, Mr. President. I wonder if Senator Hall would answer a couple of questions.

PRESIDENT: Senator Hall.

SENATOR HALL: Yes.

SENATOR ELMER: Senator Hall...

SENATOR HALL: Uh-huh.

SENATOR ELMER: ...how many memberships does the Henry Doorly Zoo have, approximately?

SENATOR HALL: Senator Elmer, it's my understanding...and I very well could be wrong, but I thought that they sold over...they went over 30,000 this year.

SENATOR ELMER: I understand each person that buys this membership is entitled to free admission for that year...

SENATOR HALL: That's right.

SENATOR ELMER: ...and participates in the operation by coming to the meetings and voting what transpires at the zoo.

SENATOR HALL: That's correct.

SENATOR ELMER: People that are not members that come to the zoo have to pay for an admission. Is that correct?

SENATOR HALL: They pay admission and that admission is taxed and that has always been the case and there has never been any misunderstanding with regard to the interpretation in the statutes with regard to that, that portion of the admission, or on a daily basis. That is correct. You are absolutely right.

SENATOR ELMER: So everybody that comes...that goes to the zoo that's not a member buys an admission and pays the tax and this would not change that.

SENATOR HALL: It does not. If I walked up to the door with



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LB 198, 540

Annie, Gus and Mitch and I had left my pass at home, I, clearly, would pay to get in the door rather than accept the wrath of those three kids of mine and I would pay sales tax on that admission. That's correct.

SENATOR ELMER: Thank you, Senator Hall. I, like Senator Moore, had some misunderstandings about how this would work and given the clarifications and explanations I can certainly support this amendment. Thank you.

PRESIDENT: Thank you. Senator Warner, followed by Senator Abboud and Senator Langford. Senator Warner, please.

SENATOR WARNER: Well, the question that I was wondering about, I guess, was asked by Senator Smith but I have...I have a little difficulty in rationalizing why you would exempt the sales tax from the membership and yet require those who perhaps are unwilling or are perhaps unable to buy a daily ticket, charge them the tax. If anyone ought to be able to buy, it would be somebody who felt they could pay \$30 as opposed to the admission just to go in. In any event, it would seem to me the policy ought to be the same, whether you bought on a daily basis or if you bought the what in essence is a season ticket.

PRESIDENT: Senator Abboud, please, followed by Senator Langford. Senator Langford. The question has been called. Do I see five hands? I do. And the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Lindsay, are you going to close?

SENATOR LINDSAY: Yes, I am. Thank you, Mr. President.

PRESIDENT: All right.

SENATOR LINDSAY: Members, I would like to reemphasize just a couple of things here, questions that have come up, people come back and asked about. Number one, this is not in any manner intended as an end run or anything like that with the bill...or with the amendment. This did originate as LB 540. The language is the same. LB 540 is in your bill books and did have a

committee hearing, a public hearing. It did...the committee did vote on it and did vote six to nothing to advance the bill. The Revenue Department did not oppose the bill, offered what they wanted as far as their amendments on it. The amendment is brought to you, like I say, after having basically the same thing that the bill has had, including, I think, the amount of the debate. Number two, there had been a question about it as far as whether Ak-Sar-Ben could be involved. Ak-Sar-Ben cannot, in any manner, be affected by this. That is dealing with a completely different type of corporation because we're dealing only with 501C3 which is under the Internal Revenue Code, deals with a charitable nonprofit corporation. It is not dealing with Ak-Sar-Ben and I'm not sure what subsection it would be under but they cannot be involved in this. So that is...they do not...are not involved. Again, there are...several of you have asked about particular institutions within your districts and we had tried to...we had a list of potential organizations that might be covered by the bill or subsequently by the amendment and we tried to check those out when we telephoned them to find out. Most of the people we were able to get in contact with didn't...weren't sure of the corporate structure. A lot of these deal with the legalities of it and they didn't know the technical aspects, whether they would fall under it or not. I wish I could give you a better answer on that but if they are the nonprofits that are charitable, that are 501C3s and meet the other criteria, then, yeah, they would be too. We're not, I don't think, dealing with a great number of institutions but I think that we are dealing with very worthy institutions. Again, I would reemphasize that this is something that is not occurring right now. We are not collecting tax right now. This is resulting from a reinterpretation of the revenue rules and that is what is requiring that this amendment...this bill even come forward. With that, I would urge the adoption of the amendment, returning to Select File for an amendment and I would yield the remainder of my time to Senator Hall.

PRESIDENT: You have a minute and a half, Senator Hall.

SENATOR HALL: Thank you, Mr. President, and Senator Lindsay. The only issue that I would like to express is that the issue of the, for example, the western Nebraska Art Center that Senator Lindsay mentioned earlier in his opening, that's located out in Scottsbluff, is a facility that does not collect an admission fee but there are members who belong. It falls under the 501C3 provision but yet they would have to pay sales tax if we did not

adopt Senator...return the bill and the adopt Senator Lindsay's amendment to the bill but yet, traditionally, that has not been the case. And that's what this clearly is, it's an issue of just basically placing into statute what has been traditionally the happening with regard to the Department of Revenue, the practice that they have held over a number of years and I would urge that we reinforce that through returning the bill and then adopting Senator Lindsay's amendment. Thank you, Mr. President.

PRESIDENT: Thank you. The question is, shall the bill be returned to Select File? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 27 ayes, 12 nays, Mr. President, on the motion to return the bill.

PRESIDENT: The bill is returned. Now we're back on the amendment. Senator Lindsay or Senator Hall, did you wish to speak further on it? Senator Lindsay.

SENATOR LINDSAY: Mr. President and colleagues, I think what...we have had a good discussion, I think, on the motion to return and rather than, I guess, taking additional time what I will do is if there is questions that remain on it, I would be happy to try to give a shot at answering them for you.

PRESIDENT: Thank you. Senator Ashford. Senator Schellpeper, did you wish to speak?

SENATOR SCHELLPEPER: Thank you, Mr. President, and members, I guess I rise with mixed emotions. I don't want to do anything to hurt 198 in its present form. And I really don't know what this amendment all does. I think there is a lot of questions that are left unanswered. I don't know how many organizations, we don't know the fiscal impact and things like that. But I just, like I say, I have mixed emotions, I don't know what...really what we're really talking about here. So, at the present time, I really haven't made up my mind whether this is a good amendment or not. Thank you.

PRESIDENT: Thank you. Senator Hefner, please, followed by Senator Chambers and Senator Landis. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I rise to support this amendment. I am a member of the Revenue

Committee and we heard the testimony on it. I thought that it was the fair way to go. We had not been charging sales tax on those memberships to nonprofit organizations before and I really didn't see any reason to start at this time. I realize that there is sales tax charged on individual admittance tickets but, as I understand that, they made that decision when they passed the sales tax law. So all this bill would do would clarify that standing on memberships to nonprofit organizations. I don't think that we have to go that low to charge sales tax to those people that want to help a nonprofit organization. Certainly, these nonprofit organizations do a lot of good in our state. And so I would urge you to support this amendment and then advance the bill.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Warner touched on an issue that does make it a matter of principle for me and Senator Hall and I were just kind of batting it back and forth but not on the mike. If no tax is to be charged in order to help these nonprofit organizations, as well as the people who are going to buy the memberships, what about the individual or the family which cannot, say, afford to buy a membership but could go to the zoo once or maybe twice in a year? They have to pay the tax. So if the principle is that nobody should be taxed who is going to do something that redounds to the benefit of these nonprofit corporations, let the benefit go to everybody who is going to be in that position. But the way I break it down in my mind and perhaps it's an overstatement in this particular instance, is that the benefit will not accrue to those who may not be well off enough to lift themselves into the category where they can afford to purchase a membership. So at the time the tax law was being put into place, determining who would pay a sales tax, those individuals who were not that well off would never have a voice. Put the tax on them but those who can purchase these memberships, maybe it's a corporation, maybe they will purchase it for all the members of their organization. They don't pay a sales tax because they're big, they're important and they should be given that slack that they are always given but the individual is left out in the cold. The issue has been presented to us at this time in this fashion and, because the equities being what they are, I can't vote in favor of Senator Lindsay and Senator Hall's amendment.

PRESIDENT: Thank you. Senator Landis, please, followed by Senator Weihing.

SENATOR LANDIS: Thank you, Mr. Speaker, and members of the Legislature, I was going to make the same point that Ernie just did. Two years ago we let Ak-Sar-Ben out. They're making money at this point but paying no state taxes. Ak-Sar-Ben was a good thing. We created a tax exemption and now they don't pay taxes. This year we have already passed a \$200,000 tax exemption for Joslyn. It's already on the books. We have a lodging tax passed for the arts in Omaha, passed by this session. This is a tax put on lodging but to pay for and assist in tourism and the arts in Omaha. We have a \$200,000 tax exemption for bingo in Omaha because of the charities up there. And in this situation now when you and I go to the museum and pay tax, as any other ticket holder would, we'll pay the tax but the patron will not. We don't know how much money there is, to whom it applies or how much. It seems to me that we have done quite enough this year. It is also a source of an irrational, I confess, but nonetheless real frustration that we won't discuss Commonwealth a second time but we will discuss this issue a second time and the Omaha elite will send down the word to do this and do this until it passes down here and the Legislature does what the Omaha community wants us to do. Frankly, I have very little taste to do so. I am voting red again.

PRESIDENT: Thank you. Senator Weihing, please, followed by Senator Langford.

SENATOR WEIHING: Mr. President and members of the Legislature, Senator Lindsay, will you rise to a question, please.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Yes.

SENATOR WEIHING: When this came to your attention did it realize that there were other areas, other museums that would suddenly fall under this that had not been paying any tax?

SENATOR LINDSAY: No, as I mentioned in my opening, it was brought to me by the zoo and, obviously, their concern was the zoo.

SENATOR WEIHING: I want to speak with regards to that of the

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Scotts...that is of the west Nebraska Arts Council. There is no charge on that museum. If you...any one of you going there will be able to go into that museum.

PRESIDENT: Senator Weihing, excuse me a minute. (Gavel.) Could we hold it down, please, so we can hear the speaker. Thank you, Senator Weihing.

SENATOR WEIHING: I want to point out that that's totally subsidized by the dues of the members and contributions. There is absolutely no charge. There is no sale. There is no sale there. I don't see how that can possibly be...have sales tax when you're just, in essence, you are making a contribution to a foundation when you are purchasing your membership, because there is no transaction as far as someone coming in. Anyone can come in. The public can come in. It's totally free. I thank you.

PRESIDENT: Senator Langford, please.

SENATOR LANGFORD: Call the question.

PRESIDENT: The question has been called. Do I see five hands? I do. And the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Lindsay, did you wish to close, please.

SENATOR LINDSAY: Yes, thank you, Mr. President. Could I have a gavel, please.

PRESIDENT: Yes, you may. (Gavel.)

SENATOR LINDSAY: Thank you, Mr. President, and colleagues, again, I will touch on some of the issues that have been brought up and try to answer some of those questions. One of the issues that was raised was not sure what the fiscal impact is and that's difficult to refute because, as you can tell from the fiscal note, when this was offered as a bill and had a committee hearing the fiscal note indicates that it would only be a prospective fiscal impact and that is because we are not currently charging or collecting sales tax on these

transactions. It's...it would be...the question is, how much can we charge or how much will we collect if we impose sales tax there? Because that is, in effect, what we're doing is affirming a reinterpretation and affirming the department ruling. So, yeah, that's the problem. We can't come in here. It's like it's the projections with we have with any other revenue projection. You would have to do some studying. You would have to do some investigation and your figures may not be accurate even then. So it's difficult to answer that but I guess I would point out that it's not going to result in a loss of revenue from what we're already collecting because we just are not collecting it. Number two, with regards to other institutions...and it's my understanding as far as with the situation, as Senator Weihing presented, that there is if you are paying a membership to...which among other things gives you the voting rights in the corporation but it also will also give you admission and it's my understanding from talking to them out at Gering was that that membership also allows you into the museum that, even though others may not have to pay, if you have to pay, it doesn't...I guess it doesn't matter are exempted from that, you are still purchasing a privilege of entering into it and that would be the interpretation of the admittance tax. Again, I think it's been debated well. I have tried to answer and I guess I will continue to be here to try to answer questions that I can. With that, again, I would urge that the amendment be adopted and the bill be readvanced. And I would give the remainder of my time to Senator Labeledz and what remains after that to Senator Hall.

PRESIDENT: Senator Labeledz, please.

SENATOR LABEDZ: Thank you. Thank you, Senator Lindsay. I apologize because I don't...I wasn't here for the first part of the debate but South Omaha was declared capital for a day this morning so from early morning until two o'clock I was in South Omaha. Senator Chambers, for the second time this session, and I think you know what the first time was, you're wrong again because you mentioned the fact that there are corporations, big business and wealthy people that buy the memberships. I have three daughters in my family that each have a membership. Neither one of the three hold jobs. Their husband is working. One has four children, one has three and the other one has two. The reason they buy a membership, they go to the zoo quite often and it's cheaper for them to buy the membership than it is to pay the admission charges for the family every time they go to

the zoo. So there are many, many families that I know of in Omaha that buy the membership strictly because it is cheaper to do so to buy a membership than to pay the daily admission for every member of the family. So it's not...and I don't happen to have one but if I had children living with me at home, I certainly would buy a membership because it would be a lot cheaper than paying the daily admission. When I walked in Senator Haberman mentioned the fact that he is voting against it because it's lost revenue.

PRESIDENT: One minute.

SENATOR LABEDZ: So I mentioned back to him, how can you lose something you never had in the first place? So it cannot be lost revenue if you never had it in the first place. So, Senator Haberman, you are wrong for the first time this session. Thank you very much. I urge the adoption of the amendment to LB 198.

PRESIDENT: Now it's your time to speak, Senator Labedz. You were closing. Okay. Thank you. The question is the adoption of the Lindsay amendment. All in favor vote aye, opposed nay. Have you all voted?

SENATOR LINDSAY: Mr. President.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I guess...we're on Final Reading now so I guess people are supposed to be here already.

PRESIDENT: Yes.

SENATOR LINDSAY: That's what I thought. I guess it looks like we're one vote shy. Never mind.

PRESIDENT: Record, Mr. Clerk, please.

CLERK: 25 ayes, 18 nays, Mr. President, on the adoption of Senator Lindsay's amendment.

PRESIDENT: The Lindsay amendment is adopted. Senator Lindsay, did you wish to advance the bill?

SENATOR LINDSAY: I move the bill be readvanced.



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PRESIDENT: You have heard the motion. Senator Warner, please.

SENATOR WARNER: I have another motion.

PRESIDENT: Oh, all right. All in favor say aye. Opposed nay. Okay. The question is, shall the bill advance? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 25 ayes, 12 nays on the motion to readvance the bill, Mr. President.

PRESIDENT: The bill is advanced. Now you have something on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Warner would move to return the bill.

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Mr. President and members of the Legislature, this is an equity issue at this point. The motion...and, admittedly, I am assuming what I sent up to the desk can be the direction to E & R appropriately addressed but it would exempt all ticket sales from an organization that...whose memberships are exempt by virtue of the adoption of the amendment we just did. I see no rationale that those who buy a daily ticket pay sales tax and those who buy a season ticket do not. That just is policy that's beyond me. So I would move the bill be returned for the adoption of such an amendment. I have no idea what the fiscal impact is.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I strongly support Senator Warner's amendment. And for those who say that the aim of the prior amendment is to help these nonprofit organizations, this may help them even more by putting them in a position to promote the fact that you do not have to pay a sales tax if you purchase the ticket on a daily basis in the same way that those who buy the memberships don't have to pay the sales tax. So I am in favor of this amendment. Oh, and one other thing. Senator Labeledz, I didn't say big corporations do buy them. I said big corporations can buy memberships. But let me ask you a question. Does the zoo have a policy against

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selling memberships to corporations?

PRESIDENT: Senator Labedz.

SENATOR LABEDZ: Not that I know of. I'm not a member of the board. I don't know anything about their process.

SENATOR CHAMBERS: Oh, that's okay. So then they would sell them to corporations if they would want to buy them though?

SENATOR LABEDZ: Oh, certainly.

SENATOR CHAMBERS: Could a big corporation buy these memberships?

SENATOR LABEDZ: I don't know. I'm sure they do.

SENATOR CHAMBERS: Could they buy them and give them to their employees?

SENATOR LABEDZ: Yes...I know they do for Ak-Sar-Ben. Some corporations buy memberships to Ak-Sar-Ben and give them to their employees.

SENATOR CHAMBERS: So, based on my saying that big corporations could buy these memberships, are you willing to retract your statement that I am wrong?

SENATOR LABEDZ: No, I'm not going to retract it because I told you it was cheaper for families to buy a membership.

SENATOR CHAMBERS: That's all right, I don't want to argue with you.

SENATOR LABEDZ: I'm talking about my four children.

SENATOR CHAMBERS: I don't want to argue, Senator Labedz, I'm trying to be nice. And I heard Senator Hall up there coaching anyway but the reality is that I favor the amendment and I think it will bring equity into this situation.

PRESIDENT: Thank you. Senator Hall, please, followed by Senator Crosby.

SENATOR HALL: Thank you, Mr. President, and members, I rise in

opposition to Senator Warner's amendment because it clearly is not an issue of equity. The issue here...if there was equity across the board, traditionally there would never have been a question with regard to what was taxable and what was not. What has happened is that the Department of Revenue, through an administrative interpretation of the statutes, have said that in order to allow for this exemption there has to be something other...something other than just admissions on a daily basis to whatever the attraction might be. No one has ever disputed that. No one has ever argued that. No one has ever said that there is any problem with that. Across the board, up and down the line, everyone agrees, concurs on that. The difference lies and the equity disappears when you talk about purchasing membership in an organization that allows you more than the flat admissions to an attraction, something over and above, something over and above to the extent of the right at attendance at an annual meeting, the right to vote on rules and regulations, the right to vote on motions with regard to the issues that are presented by the Board of Directors. There is a clear and distinct difference. It is not equity at all. Equity does not...we treat everybody who walks in the door and pays on a day to day basis equally. And what we are saying here, through the adoption of Senator Lindsay's amendment, is that everyone who becomes a member of this organization, who becomes a member of the Fraternal Order of Eagles, who becomes a member of the Shrine, who becomes a member of whatever, those are treated separately and distinctly different than basically user's fee. They have an interest and an interest in that organization over and above just viewing it on a daily basis. There are a number of individuals, just like Senator Weihing pointed out with regard to the museum out in Gering in the Scottsbluff area that do not have any per...on a daily basis, a fee to enter. But yet they belong to that organization and they have been tax exempt because they support that organization. And there are a number of individuals who support the zoo, for example, through purchase of a membership on an annual basis and they have voting rights with regard to the Board of Directors. But they don't even attend it. They don't go. They don't use it but they support that organization and they get those rights and privileges that go along with that. Those who choose not to have those rights and privileges use it on a daily basis, basically visitors, folks who travel in and out of the state and visit the zoo which is, you know, one of the biggest attractions, if not the biggest attraction in the state, on a transit basis, pay a tax. It happens every place else. We

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treat all those folks alike. There is no equity issue here. The issue is clear and distinct. It has to be spelled out so that...because what we had was...

PRESIDENT: One minute.

SENATOR HALL: ...based on the argument that the Revenue Committee made...Revenue Department made, was a statute that was vague, in their opinion, with regard to where the tax applied and where it didn't. They drew the line as to where they felt the tax did not apply. And that's what we adopted in Senator Lindsay's amendment and that's what I would urge you to support because it has been the traditional approach with regard to the Department of Revenue and where no equity was ever raised in the past with regard to this. So I would urge you to reject Senator Warner's amendment because it does not play in this equation. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Crosby, followed by Senator Labeledz and Senator Hefner. Senator Crosby, please.

SENATOR CROSBY: Thank you, Mr. President, and members, I am confused by this amendment. I am not confused by Senator Warner's but I was confused by the prior amendment and I think that there is some misunderstanding all the way around on memberships and voting rights. I belong to the Community Playhouse in Lincoln. I pay a membership every year. For the total amount that I give for that membership, part of it is designated for the price of the tickets, sales tax is paid on those tickets. I have voting rights at the annual meeting, Senator Hall. I see you turning on your light because you think I'm wrong. I am not wrong. I have belonged to that for years. I have a whole book of cultural and historical and arts organizations here in the State of Nebraska, a lot of them are membership organizations. Some of them charge admission, some of them do not. And I...I just don't see why the Doorly Zoo in Omaha is any different than any of the rest of these. So I...I didn't vote on the prior amendment. I think I'm going to vote for Senator Warner's because I think the whole thing...I hate those two words, "interim study", but this certainly needs a study of some kind. It needs an in depth study with the right people sitting down and straightening it out for the whole state. I feel the same way as Senator Landis did about some of these things that if you are having a problem with Doorly Zoo, it seems to me you could have figured that out without bringing

it to the floor of the Legislature and bringing it into LB 198. So I am not angry with you. I think I sound a little angry but I think it's very confusing and especially this...right now in these last five days...five and a half days of the Legislature. We are arguing again about something that we talked about last week. So I will support Senator Warner.

PRESIDENT: Thank you. Senator Labedz, please, followed by Senator Hefner and Senator Landis. Senator Labedz, please. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I believe I will oppose Senator Warner's amendment because this is a little bit different issue. I know some of them are making it sound like it's the same issue but it's really not. And this does not single out just the Henry Doorly Zoo because this would apply...the sales tax exemption on memberships would apply to any organization that is exempt under the Internal Revenue Code as long as a membership obtains voting rights in the organizations of the member. And the reason this is different is because a lot of these people that buy memberships probably don't attend...don't go to the zoo. They just buy the memberships to help support a nonprofit organization which is a lot different than those that actually buy a ticket to attend a function. And I believe it was in 1968 when this Legislature considered the sales tax on tickets that you buy to attend or go to a nonprofit organization's function, whether it be handling the zoo or...or any others. And so, Senator Warner, I would propose to you that you withdraw your amendment and then why don't you introduce a bill next session and we'll certainly...the Revenue Committee will have a public hearing. We'll hear both sides of the issue and then make a decision. And, by the way, Senator Landis and Senator Haberman did support voting this bill out of committee. So, at that time, they must have thought it was the right thing to do and now they're voting against the amendment. I guess I don't quite follow that thinking.

PRESIDENT: Thank you. Senator Landis, followed by Senator Ashford and Senator Langford. Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker, and members of the Legislature, at the time we had not shown the largess that we had to a great many Omaha factions of the charitable organizations and the like, including \$200,000 for Joslyn, which

I voted against on the floor, voted for in committee, the lodging tax and the others so that there is a cumulative story here. Senator Warner makes a good intellectual point and that is that there is an argument to be made by analogy. Unfortunately, it's an expensive point and the Warner amendment has to be rejected because it does simply ram a big hole in the hulk of state revenues. But that's the problem. As a matter of fact, it's the problem with the Lindsay amendment where you argue by analogy in the granting of tax exemptions. The reason is this. Any circumstance that you have has a circumstance that's just a little to the left and a little to the right, a little clearer to be covered by the general rule and maybe a little less clear that is covered by the general rule. And every time you argue from that point that you should move the line of exemption from where it is to this new point, it simply creates then another matching analogy on the other side. Senator Warner now shows us the analogy on the other side of the Lindsay amendment. He shows us where this line of thinking goes. Now, if Senator Lindsay argues that the existing rule is irrational, what I would argue with him is that every rule is somewhat arbitrary in the drawing of exemptions but that if there is a general rule, it should be to protect a base, for God's sakes, protect a base. Now Senator Hefner, other years, has had a little tighter conviction with me on that point about protecting the base. On the other hand, while he used to be ready to vacate the base for business interests, he has now added charitable interests to whom he is ready to write large multizero checks. Unfortunately, the Warner amendment draws in clear relief the arbitrariness of the Lindsay amendment but it does cause us harm from a revenue standpoint. The better cause of action is to reconsider the Lindsay amendment and simply not adopt it. My guess is the votes aren't here to do that. I would counsel that the Warner amendment be withdrawn and that the bill lay over and that on another day either that we ought to reconsider or bracket or just vote against the bill if we think it's a mistake, as I intend to do now, and vote against LB 198.

PRESIDENT: Thank you. Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President, and members, I really don't think that it...I understand Senator Landis's argument and I understand Senator Warner's argument but I don't...I don't think that we are hitting exactly what has occurred here and that is that all we are doing...all we are

doing here is in our state law, as it relates to sales tax, is recognizing the differentiation which exists in the Internal Revenue Code. The Internal Revenue Code...and there is a good public purpose for this and it does not just apply to the zoo but it has statewide application so I guess I don't see the opposition to this that the public purpose is that these organizations rely to a great extent upon memberships rather than admissions. Now it so happens that the zoo also has admissions and does collect revenue through admissions but it also depends, to a great extent, upon the membership fees that it gets. The Internal Revenue Service recognizes that a membership fee can include an admission. A 501C3 corporation provides for a membership...membership which includes admission to a particular facility. There is a...there is an over...could I have a gavel...could I have a gavel, please.

PRESIDENT: Yes, sir. (Gavel.) Please, let's hold it down, especially under the balconies it's awfully noisy and comes out here and we can't hear the speakers. Thank you, Senator Ashford.

SENATOR ASHFORD: There does seem to be an overriding public purpose here to encourage individuals to buy memberships as well as seek admission because...because it encourages those individuals to put money into the facility whether or...or into the nonprofit whether or not they use the facilities. That's a good thing. That's a public policy that's a positive because the government has already made the determination that it's...that it is a public...it is a corporation set up for a public purpose. So if we assume, on the bottom line, that we're talking about a public purpose corporation, we're encouraging people to take out memberships whether or not they go there. It seems to me that we, as a state, can be consistent with the federal policy and exempt the membership fee from sales tax because it is not really a transaction or a sale transaction.

PRESIDENT: Senator Ashford, I'm going to interrupt you again. (Gavel.) Please, let's hold it down. (Gavel.)

SENATOR ASHFORD: I...I...

PRESIDENT: (Gavel.) Let's hold our conversation down, it's getting terribly difficult to hear. I'm sorry, Senator Ashford.

SENATOR ASHFORD: Well, I think...I think that if we vote

against this, I think we're doing it for reasons other than what's trying to be accomplished here in a very sensible way and that's probably why this particular measure came out of the Revenue Committee without any opposition. Now I think we all show our biases here and maybe there has been a lot of money go to Omaha civic organizations but Omaha is an urban area and it relies to a great extent on those organizations. I...I think if there was...I'm still waiting for someone to give me a good reason based on sound tax policy why we should not exempt these sales tax...the sales tax for membership because the government...federal government already recognizes the differentiation and I have not heard a good reason other than we have already done some things for Omaha civic organizations. That really isn't a reason to be consis...not to be consistent in tax policy especially when we're doing something that is...that is beneficial. So I think though...I understand Senator Warner's amendment. I really think we're okay here and we have got a good, solid basis for making this decision and I hope we do. Thanks.

PRESIDENT: Thank you. Senator Langford, please, followed by Senator Hall.

SENATOR LANGFORD: Mr. President, may I call the question, please.

PRESIDENT: You may. The question is, shall...do I see five hands? I do. And the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

ASSISTANT CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Warner, would you like to close on your amendment?

SENATOR WARNER: Mr. President, the motion is to return.

PRESIDENT: That's right.

SENATOR WARNER: And this is not Omaha versus whatever issue with me. As I listened to Senator Crosby, it appeared to me, or at least there is a concept where a portion of the fee or the membership could be designated as admission, if that's possible.



I don't know, but I gather that occurs some places. And that could be designated as \$5 or whatever amount. Certainly, if that's possible, that would reduce the collections significantly. I still find it very difficult to rationalize to buy a season ticket to have an exemption and if you do not, you pay the tax, and that's how it comes down to me. I have no difficulty at all with the argument that donations should not be taxed but that portion that constitutes admission it seems to me ought to be treated the same as...as anyone else who does not. I think I will go ahead and allow the motion to be made...or vote to return the bill to see if there is interest in the concept.

PRESIDENT: The question is, shall the bill be returned? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please. Well, we're on Final Reading, Senator Chambers. All right, please, we'll do that. Would you please return to your seats and record your presence, please. (Gavel.) Please return to your seats promptly and record your presence so that we may move on. Senator Hefner, would you like to record your presence, please. Thank you. Senator Hannibal, would you record your presence, please. Senator Wesely, would you record your presence. Senator Moore. Senator Schellpeper. Senator Ashford, record your presence, please. Senator Pirsch and Senator Wesely are not here at the moment. Senator Chambers, did you...

SENATOR CHAMBERS: I must ask for a roll call.

PRESIDENT: Roll call. All right. Senator Chambers, we're still lacking a couple. What do you say? Shall we wait for them? We're lacking one. All right. I understand Senator Pirsch is on her way. We'll begin. The question is, shall the bill be returned from Select File. Roll call vote has been requested. Mr. Clerk. Wait a minute. (Gavel.) Please return to your seats so we can start. Mr. Clerk.

ASSISTANT CLERK: (Roll call vote taken. See page 2471 of the Legislative Journal.) Mr. President, the vote is 20 ayes, 20 nays.

PRESIDENT: Motion fails.

CLERK: Mr. President, I now have a motion from Senator Smith. Senator Smith would move to return LB 198 to Select File for

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LB 198

specific amendment. (Smith amendment 1: on page 2471 of the Journal.)

PRESIDENT: Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Chairman, members of the body. I have to admit to the fact that this has been very complicated for me. I thought it was a very simple issue when it was presented to me as a matter of the fact that there was no tax collected before this time, and that what we were doing is exempting tickets from being taxed at the Henry Doorly Zoo. And based on that, I said, yes, I could support that. And after I sat here and the arguments that Senator Warner advanced for the fairness of the issue, if we're going to exempt memberships from being taxed I guess we ought to also include tickets, and that was not adopted. So for that reason I will, as a person who supported the first amendment, rise to ask that you return the bills to Select File. And I would like to have a reconsideration vote on that first amendment.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. Would Senator Schellpeper respond to a couple of questions.

PRESIDENT: Senator Schellpeper, please.

SENATOR SCHELLPEPER: Yes, please.

SENATOR LANDIS: Senator Schellpeper, you're the introducer of the underlying bill, 198?

SENATOR SCHELLPEPER: Right.

SENATOR LANDIS: The subject of that one is agricult...tax exemption for agricultural boards?

SENATOR SCHELLPEPER: It deals with the State Fair, on purchases of the State Fair.

SENATOR LANDIS: All right, thank you. Do you have an understanding with the introducer of the resolution, Senator Lindsay, about the use of LB 198 as the basis upon which to make his amendment?

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LB 198

SENATOR SCHELLPEPER: I was approached this morning whether they could put an amendment on by Senator Hall and Senator Lindsay. The understanding was that if there was any problem with the bill that the amendment would be withdrawn.

SENATOR LANDIS: At this point would you regard there as being a substantial question of controversy? (Laughter.)

SENATOR SCHELLPEPER: It seems that there is a substantial problem with the amendment, yes.

SENATOR LANDIS: If you had your preference, at this point, given that your bill may have its fate hanging in the balance, would you as soon see that the Lindsay amendment be withdrawn?

SENATOR SCHELLPEPER: Definitely.

SENATOR LANDIS: Would Senator Lindsay respond to a question?

PRESIDENT: Senator Lindsay, please.

SENATOR LANDIS: Senator Lindsay, what do you say?

SENATOR LINDSAY: Well, first of all I guess to clear it up I was approached on this amendment, we'd tried it on another bill. I didn't talk to Stan because Tim had already talked to him about it. As far as pulling the bill, we were deep into it before I heard that. I want to make that clear first. As far as...

SENATOR LANDIS: Let me interrupt a minute. Would you agree that we are at a point of some controversy?

SENATOR LINDSAY: Oh, sure, yeah. It's.... (Laughter.)

SENATOR LANDIS: Then perhaps you'd like to renew your light and make your own case. I intend to support the Smith amendment. It's problematical, don't you think, that we invite this to happen to us over and over again by simply not being able to say no, by not convincingly being able to say no to a special interest group who has a lobbyist out there working hard. That's why they win, because they out-wait us, because they changed...wait for a different time, wait for a different body, different feeling. They're very good, no doubt about it. One

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LB 198

of the reasons we see these things and these kinds of things succeed is because there is somebody out there watching, carefully, to be able to make these kind of connections. Frankly, these are the ones that come back a second time. Time changes, the vote comes in because the tumblers all fall into place. The other night we said no, today we say yes. I'm not sure it's a great message to send. We ought to be able to stick by our no's just a little better.

PRESIDENT: Senator Hall, please, followed by Senator Moore.

SENATOR HALL: Thank you, Mr. President and members. And I'm going to rise and support Senator Smith's motion to return the bill and then pull Senator Lindsay's amendment. But, Senator Landis, you are a horse's ass.

PRESIDENT: Pardon me, sir, let's...we don't use that kind of language.

SENATOR HALL: Excuse me, I will withdraw that,...

PRESIDENT: Okay.

SENATOR HALL: ...and I would take a censure motion. I would be happy to do that, Mr. President. But, Senator Landis, I take great exception to the fact that you stand up here on the floor and talk about what has happened with regard to the City of Omaha and all the benefits that they have derived over this legislative session, when yet they send down 40 percent of the tax dollars and not...the sum total of everything that is passed this session would equal one capital construction project in the City of Lincoln. I take great exception to that, and I take great exception to the fact that you stand up here, after you voted to advance the damn bill out of committee, and say, we should say no. And because of the lobby we should stick to our no's. Well, Senator Landis, stick to your yeses stick to your yeses as you did when we advanced the bill out of committee. With that, I intend to support Senator Smith's amendment, intend to support my commitment to Senator Schellpeper when I said if the bill gets into trouble I will pull the amendment, and I'll do that.

PRESIDENT: Thank you. Senator Moore, please, followed by Senator Wesely.

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LB 198

SENATOR MOORE: Well, on a lighter side, like I said this morning, this is one of those amendments, you run the cow through the sale barn, now if we bought it, we bought it, we got it home, we didn't like the cow, we're bringing it back to the auction. Let's reconsider it and get rid of it.

PRESIDENT: Thank you. Senator Wesely, please, followed by Senator McFarland.

SENATOR WESELY: Question.

PRESIDENT: Pardon me?

SENATOR WESELY: Question.

PRESIDENT: Question has been called. Do I see five hands? I do, and the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: Senator Smith, please, would you like to close?

SENATOR SMITH: I think everyone here knows you know what the question is. I really don't have anything more to say, except for the fact that I would like to have you favorably consider returning to Select File. With that I would give the remainder of my time to Senator Landis, because I believe it is only fair that he ought to have an opportunity to respond. Thank you.

PRESIDENT: Thank you. The question is, shall the bill be returned to....I'm sorry, I couldn't hear you and I'm sorry. Senator Landis.

SENATOR LANDIS: Thank you. Each of us can profit from the instruction of a colleague, and I will take those thoughts to heart. I will try to do better. I accept the admonishment and I will try to comport my floor votes to my committee votes better. That's a fair characterization and a fair comment, and I will be instructed by that. Thank you.

PRESIDENT: Thank you. Now the question is, shall the bill be returned to Select File? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 34 ayes, 1 nay, Mr. President, on the motion to return the bill.

PRESIDENT: The bill is returned. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Chairman. Members of the body, I ask for your vote on the amendment. Thank you...reconsideration of the amendment.

PRESIDENT: Fine, thank you. The motion is to strike, is it not, not reconsider, as I recall. Okay. Senator Ashford, you wish to speak? Senator Chambers, your light is on.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, usually at this time of the session I am the one who will kind of break through the monotony. I feel usurped this afternoon, but I couldn't have been usurped by a better one, so I will accept that and sit down. (Laughter.)

PRESIDENT: Senator Chambers, does this mean you're friendlier and kindlier or something like that?

SENATOR CHAMBERS: (Response inaudible.)

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Just for the record, I do join in the recon...I guess we're striking it, striking the amendment, and I'm going to be voting for it, too.

PRESIDENT: Senator Elmer, Owen Elmer.

SENATOR ELMER: Thank you, Mr. President. Seems as though we're spending a lot of time to just continue to do something that we've been doing all along, but I'll support this. Thank you.

PRESIDENT: Thank you. Senator Hall, please.

SENATOR HALL: Mr. President and members, I apologize to Senator Landis and to the body for flying off the handle, but it's part of my nature. (Laughter.) There is no good excuse for it. The issue here is clearly...I would never have brought it, never gone to Senator Schellpeper had I not thought that it was basically putting into statute what has traditionally been, and I think that clearly could be pointed out by the Department of

Revenue that this is an issue that was a clarification process. We've done that three or four times this year on other bills. It was not my intent to try to carve out something different, I don't think it was Senator Lindsay's to do that either. This was just a matter of clarifying the statutes so that what has traditionally been done would continue to be done. I'm going to support Senator Smith's amendment because my word is good to Senator Schellpeper. And that bill is a bill that affects the State Fair grounds, only the City of Lincoln, Senator Landis. And I will support Senator Smith's motion.

PRESIDENT: Thank you. Senator Smith, would you like to close? No close. The motion is to strike the Lindsay amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 37 ayes, 3 nays, Mr. President, on adoption of the amendment as offered by Senator Smith.

PRESIDENT: The Smith amendment is adopted. Now we need to return the bill to Final Reading. Senator Lindsay.

SENATOR LINDSAY: I move to readvance the bill.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. Okay, now we need to return to our seats, please, so we can continue. (Gavel.) Let's return to our seats so we can continue with Final Reading, please. Okay, Mr. Clerk, finally LB 198.

CLERK: (Read LB 198 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 198 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 2472-73 of the Legislative Journal.) 43 ayes, 4 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 198 passes. LB 228, please.

ASSISTANT CLERK: (Read LB 228 on Final Reading.)

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LB 44, 44A, 49, 49A, 134, 137A, 158  
158A, 162, 162A, 175, 175A, 182, 182A  
198, 228, 228A, 305, 815, 816, 816A

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on pages 2473-74 of the Legislative Journal.) The vote is 47 ayes, 0 nays, 1 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228 passes. LB 228A.

ASSISTANT CLERK: (Read LB 228A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 228A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 2474 of the Legislative Journal.) The vote is 45 ayes, 1 nay, 2 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 228A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 44, LB 44A, LB 49, LB 49A, LB 134 with the emergency clause attached, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228, and LB 228A. Anything for the record, Mr. Clerk?

CLERK: Mr. President, yes, thank you. Your Committee on Enrollment and Review reports LB 305, LB 815, LB 816, and LB 816A as correctly engrossed, all signed by Senator Lindsay as Chair of Enrollment and Review. (See pages 2475-76 of the Journal.)

I have a confirmation hearing report from Health and Human Services Committee signed by Senator Wesely as Chair. That's all that I have, Mr. President.

PRESIDENT: We'll move on to LB 137A.

CLERK: Mr. President, 137A is a bill introduced by Senator Warner. (Read title.)



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LB 44, 44A, 49, 49A, 134, 158, 158A  
162, 162A, 175, 175A, 182, 182A, 198  
211, 228, 228A, 308, 309, 309A, 362  
377, 429  
LR 88

Mr. President, bills read on Final Reading today have been presented to the Governor. (Re: LB 44, LB 44A, LB 49, LB 49A, LB 134, LB 158, LB 158A, LB 162, LB 162A, LB 175, LB 175A, LB 182, LB 182A, LB 198, LB 228 and LB 228A. See page 2482 of the Legislative Journal.)

Mr. President, amendments to be printed, Senator Hall to LB 211, Senator Ashford to LB 362, Senator Weihing to LB 377, Senator Lynch to LB 377. (See pages 2482-88 of the Legislative Journal.)

Enrollment and Review reports LB 308 as correctly engrossed, LB 309 and LB 309A as correctly engrossed.

And, Mr. President, I have a communication from the Chair of the Reference Committee rereferring study resolution LR 88 from the Banking Committee to the General Affairs Committee. That is signed by Senator Labedz as Chair. And that is all that I have, Mr. President.

PRESIDENT: We'll go to Final Reading on number 9. We'll start with LB 429, but we need to get into our seats and get ready for Final Reading, please. Mr. Clerk, LB 429.

CLERK: The first motion...I have motions on 429, the first is by Senator Wesely. Senator Wesely would move to return the bill, the purpose being to strike the enacting clause.

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: I will withdraw that amendment at this time.

PRESIDENT: All right, it is withdrawn.

CLERK: Mr. President, Senator Moore and Lindsay would move to return the bill for a specific amendment. (Moore-Lindsay amendment appears on page 2489 of the Journal.)

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Well, it's another one of those cows to the ring and see who bought her this time. This time it's one of my old rangy old cow. This one I believe in. This is the Bergan Mercy amendment. Now 429 is a bill dealing with certificate of need, 429 introduced by Senator Baack and the intention of this bill I

May 24, 1989 LB 95, 132, 134, 158, 158A, 175, 175A, 182, 182A  
183, 183A, 198, 228A, 228, 261, 261A, 280, 283  
285, 285A, 302, 303, 303A, 305, 309, 309A, 310  
312, 312A, 335, 335A, 340, 340A, 469, 525, 566  
588, 651, 651A, 695, 706, 727, 781, 816, 816A

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us on our closing day as our Chaplain, Reverend Harland Johnson. Would you please rise for the invocation.

REVEREND HARLAND JOHNSON: (Prayer offered.)

CLERK: I have a quorum present, Mr. President.

PRESIDENT: Do we have any corrections this morning?

CLERK: Mr. President, one small correction. (Read correction found on page 2719 of the Legislative Journal.)

PRESIDENT: Okay, do you have any messages, reports, or announcements today?

CLERK: Mr. President, I do. I have a series of communications from the Governor. First of all, Mr. President, the last few bills read on Final Reading yesterday afternoon have been presented to the Governor as of 2:48 p.m., yesterday. (Re: LB 525, LB 566, LB 588, LB 651, LB 651A, LB 695, LB 706, LB 781. See page 2720 of the Legislative Journal.)

Mr. President, a series of communications from the Governor. (Read. Re: LB 228A.) A second communication to the Clerk. (Read. Re: LB 134, LB 158, LB 158A, LB 175, LB 175A, LB 182, LB 182A, LB 198.) A third communication. (Read. Re: LB 95, LB 261, LB 261A, LB 280, LB 283, LB 303, LB 303A, LB 312, LB 312A.) A fourth communication, Mr. President, to Mr. President, and Senators. (Read. Re: LB 183, LB 183A.) A fourth, Mr. President, to the Clerk. (Read. Re: LB 132, LB 285, LB 285A, LB 302, LB 305, LB 309, LB 309A, LB 310, LB 335, LB 335A, LB 340, LB 340A, LB 469, LB 727, LB 816, LB 816A.) The last letter I have received, Mr. President, with respect to signing of bills. (Read. Re: LB 228. See pages 2720-22 of the Legislative Journal.)