

January 9, 1989

LB 58, 84, 98, 102, 140, 141, 241-266

CLERK: Mr. President, new bills. (Read titles for the first time to LBs 241-266. See pages 112-18 of the Legislative Journal.)

Mr. President, in addition to those items, the Rules Committee would like to announce that Senator Carson Rogers has been selected as Vice-Chair of the committee.

Mr. President, Revenue Committee will be or are...is conducting a meeting underneath the south balcony.

Mr. President, the Judiciary Committee will conduct an Executive Session upon recess on the south side of the Chamber; Judiciary upon recess. And Transportation will meet in the lounge upon recess...or, Senator...I'm sorry, Senator Lamb, do you want that this afternoon, Senator? I'm sorry, Transportation upon adjournment this afternoon in the Senators' Lounge; Transportation this afternoon.

Mr. President, Government Committee has selected Senator Bernard-Stevens as Vice-Chair.

Mr. President, Senator Conway would like to add his name to LB 140 as co-introducer; Senator Beck to LB 102 and to LB 141; Senators Smith and Hartnett to LB 58; Senator Hartnett to LB 98; Senator Rod Johnson to LB 84.

Mr. President, the last note is a Reference Committee meeting at two-thirty this afternoon in Room 2102; Reference Committee at two-thirty in Room 2102. That's all that I have.

PRESIDENT: Senator Emil Beyer, for what purpose do you rise?

SENATOR BEYER: Mr. Speaker, a point of personal privilege. I hope that the senators have noticed that we have a familiar face back in the Legislature and that's our Page Supervisor, Kitty Kearns. We're glad to have her back and we've missed her and we wish her good health from now on. (Applause.)

PRESIDENT: Thank you. Ladies and gentlemen, would you please listen as your Speaker speaks.

SPEAKER BARRETT: Thank you, Mr. President, and members, just a reminder to committee chairs, committee clerks, if you plan to have a hearing next week, I believe the first day would be the

February 13, 1989

LB 43, 80, 82, 106, 113, 158A, 166
171, 172, 194, 197, 200, 260, 263
296, 321, 322, 332, 340, 353, 433
481, 717, 729, 731, 772, 773, 804
LR 15

SPEAKER BARRETT: Shall LB 263 be advanced? Those in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. For the record, Mr. Clerk, on the President's desk.

CLERK: Mr. President, your Committee on Revenue, whose Chair is Senator Hall, to whom was referred LB 260, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; LB 332, General File with amendments; LB 729, General File with amendments; LB 197, indefinitely postponed; LB 433, indefinitely postponed; LB 481, indefinitely postponed; LB 717, indefinitely postponed; LB 731, indefinitely postponed; LB 804, indefinitely postponed; and LR 15CA, indefinitely postponed. Those signed by Senator Hall as Chair. (See pages 724-26 of the Legislative Journal.)

Urban Affairs Committee, whose Chair is Senator Hartnett, reports LB 772 and LB 773 as indefinitely postponed, both signed by Senator Hartnett. Your Enrolling Clerk did present to the Governor, as of ten forty-five, bills read on Final Reading, Mr. President. (Re. LB 43, LB 80, LB 82, LB 106, LB 113, LB 166, LB 171, LB 172, LB 194, LB 200, LB 296, LB 321, LB 322, and LB 353.)

Senator Warner has amendments to be printed to LB 340; and Senator Labedz to LB 158A. Mr. President, that's all that I have. (See pages 727-28 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, sir. Senator Robak, please.

SENATOR ROBAK: Mr. President, I move we adjourn until tomorrow at nine o'clock.

SPEAKER BARRETT: You've heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Ayes have it, motion carried, we are adjourned.

Proofed by:

Sandy Ryan
Sandy Ryan

January 23, 1990

LB 260, 769, 887, 902, 1113
LR 246

to have these questions come out, we love to answer them. The specific question...

PRESIDENT: Time.

SENATOR LINDSAY: ...is dealing with confidentiality. It does say they are confidential, it does say they are anonymous. I would challenge Senator Landis to obtain copies for me any juvenile court file he wants to see, or any Board of Mental Health commitment he wants to see, or any other child abuse case he wants to see. We have confidential cases right now in current law and we don't hear the objections to those. I think the procedures are there. I think these are the kinds of questions...I'd love to get into the meat of the bill, but unfortunately we're stuck in a quagmire of procedural problems. Those are the kind of things that we'd love to make that legislative history so that the bill can work properly, so that some of the problems that we're running into can be answered in advance. Returning it to a committee, that's another step to cause some more time to be used. I don't think it needs to be referred to committee. We had it there once. The....a lot of the testimony had nothing to do with the bill.

PRESIDENT: Time.

SENATOR LINDSAY: If we wa....Thank you, Mr. President.

PRESIDENT: Thank you. Senator Labedz, you're next, but the Clerk would like to put a couple of things into the record, please.

CLERK: Mr. President, Transportation Committee, to whom was referred LB 887, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; and LB 902 to General File. Those signed by Senator Lamb. (See page 473 of the Journal.)

New resolution, LR 246, offered by Senator Kristensen and a number of the members asking the Legislature to commemorate the bicentennial of the first meeting of the United States Supreme Court. (See pages 473-74 of the Journal.)

Senator Conway would like to print amendments to LB 260. And, Mr. President, Senator Chambers would like to add his name to LB 1113 as co-introducer. That's all that I have,

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

February 26, 1990 LB 164A, 260, 313A, 708, 736, 980A, 1032
1090, 1100, 1159, 1236
LR 241, 257

and nonsmokers have a right to resent it." I do hope that this resolution will receive all of the votes present on the floor, Senator Goodrich said he will not vote for it, so I'll say, with the exception of the one who has expressed opposition to what the resolution attempts to do.

SPEAKER BARRETT: Thank you. You've heard the closing. And the question is the adoption of LR 257. All in favor of that motion please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of LR 257.

SPEAKER BARRETT: LR 257 is adopted. The Chair is pleased to note that Senator Wehrbein has 15 guests in our south balcony from Elmwood High School. Fifteen seniors are visiting with us this morning along with their teacher. Would you people please stand and be welcomed by your Legislature. Thank you. We're pleased to have you with us. Proceeding to the record, Mr. Clerk. Have you anything to read in?

CLERK: Mr. President, I do. Thank you. Some amendments to be printed to LB 708 by Senator Chambers. Enrollment and Review reports LB 1090, LB 1032, LB 1236, LB 164A, LB 313A, and LB 980A to Select File some of which have E & R amendments attached. General Affairs Committee, whose Chair is Senator Smith, reports LR 241CA to General File; LB 736, indefinitely postponed; LB 1100, indefinitely postponed; LB 1159, indefinitely postponed, those signed by Senator Smith. That's all that I have, Mr. President. (See pages 979-80 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Item 6, Mr. Clerk, LB 260 on General File.

CLERK: Mr. President, LB 260 was a bill introduced by Senators Conway, Baack and Schmit. (Read title.) The bill was introduced on January 9, last year, Mr. President, at that time referred to the Revenue Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the Revenue Committee, Mr. President. (Standing Committee amendments are on page 724 of the Legislative Journal for the First Session, 1989.)

SPEAKER BARRETT: Senator Hefner, would you please handle the

committee amendments.

SENATOR HEFNER: Mr. President, members of the body, I move the committee amendments. The committee amendments, the first part of it, provides due process for persons violating the act. We thought we should put this in there so it would make it constitutional. Also, the committee felt that we should increase the tax on marijuana from the original portion of the bill. On marijuana it would be...it would go from \$10 an ounce to \$100 an ounce. On substance sold by weight, such as cocaine, in grams, from \$50 a gram to \$150 per gram. I move for the committee amendments.

SPEAKER BARRETT: Thank you. Any discussion on the adoption of the committee amendments? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I haven't had the opportunity to analyze this bill in detail, so I won't be offering amendments to it, but I'm going to oppose the committee amendments. I'm going to oppose the bill. Many times when we have a serious problem, such as we do with drugs, all kinds of ideas are presented for the purpose of trying to grapple with it. This idea...Senator Conway, generally, is not so cockamamie, or whatever the word is, in his legislative proposals, but this is one that I cannot take seriously in the sense of feeling that it's going to do anything toward dealing with the problem. It's another of those cosmetic efforts that gives the impression that the Legislature has evaluated and analyzed the situation and is really coming down hard with some effective laws that are going to diminish the sale and use of drugs. If I were out there selling drugs, and it came to my attention that I've got to pay taxes on it, then to me that is the state recognizing a certain amount of legitimacy in what I'm doing, and paying the tax is a cost of doing business. So, if your taxes that you levy against me, or choose to levy against me, raise the cost of doing business, I'd just do more business. It would be helpful, if people who bring these bills, would take the time to get a clear idea of what is going on out there where this kind of activity occurs. Nothing that the state does should stand as an affirmative encouragement to sell more drugs. That's what this bill will do. First of all, if you catch the nickel and dime marijuana sellers, they're not going to have any money on them. So you put a lien against their property, which means a shirt, a pair of pants, some running shoes, and maybe somebody lets them flop at their apartment, so there may be a

couple of pillows, maybe an air mattress, and the state takes that and sells it to get the taxes that have not been paid. The tax on illegal gambling, which the federal government imposes, has not diminished gambling to any extent at all. And it does give gamblers the feeling that the federal government does recognize some legitimacy in it. For the state to try to recognize or obtain profits from illegal activity is, in my opinion, a mistake. This bill is not imposing a criminal penalty on somebody for engaging in criminal conduct. It is imposing a tax. A tax is in the nature of a civil act by the government. The tax does not criminalize anything. The tax recognizes that money is being derived from an activity and the state is going to get a part of it. This bill, in my opinion, is not going to make any difference in the amount of drugs sold. It's not going to, in any way, intimidate people from selling drugs. But I think it will have the negative effect of giving an air of legitimacy to the sale of those drugs. The drug dealer can say, don't mess with me, I pay taxes. You don't pay taxes, you cheat on yours, I pay all of mine. I got my tax stamp right here. Senator Hefner, may I ask you a question. Is there a stamp or some indication that the...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...person has paid such a tax that is given?

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Senator Chambers, I couldn't answer that.

SENATOR CHAMBERS: Then I'll ask Senator Conway.

SENATOR HEFNER: Why don't you refer that to Senator...

SENATOR CHAMBERS: Yes, I will.

SPEAKER BARRETT: Senator Conway, would you respond.

SENATOR CONWAY: Yes, Mr. Speaker.

SENATOR CHAMBERS: Senator Conway, is there a tax, I mean a stamp or some indication that the person has paid taxes?

SENATOR CONWAY: Under the original bill there was a stamp. I have an amendment that will address it differently, and what you

will have is a receipt that tax has been paid on what you have in possession.

SENATOR CHAMBERS: Thank you. So the person is certified by the state to have paid his or her taxes on coke, on crack, on ice, on speed, on marijuana, and imagine what that can do to the youngsters that you want to sell the drugs for you. You go out there and say, see, this is from the State of Nebraska. I paid money to the State of Nebraska, so I can sell these drugs. Now I don't care what these people tell you, Chambers, the MAD DADs, these preachers, the mayor and all these do-gooders.

SPEAKER BARRETT: Time has expired.

SENATOR CHAMBERS: The State of Nebraska says I can sell this dope because I paid my taxes. Just kind of keep that in mind as you proceed with this bill.

SPEAKER BARRETT: Thank you. Senator Conway, please, on the committee amendments.

SENATOR CONWAY: Thank you, Mr. Speaker. I rise in difference relative to the committee amendments, because the committee amendments address the bill and some of the changes in the amendment that I offer coming up would somewhat negate any...those concerns, or add those concerns in and negate the need for the committee amendment. So the very fact that the committee amendments were raised at the time were pertinent, but with the pending amendment they would be somewhat indifferent. So they will not affect the bill because those will be changed in the amendment that is pending.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Hefner, would you care to close on the adoption of the committee amendments, please.

SENATOR HEFNER: Mr. President and members of the body, just briefly, the first part of it provides due process, and the second part of it increases the tax on marijuana and cocaine. And like Senator Conway said, he does address a few of these problems in the next amendment that he offers. So, at this time, I move for the advance...or the adoption of the committee amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of

the committee amendments to LB 260. Those in favor vote aye, opposed nay. Please record.

CLERK: 25 ayes, 1 nay, Mr. President, on adoption of committee amendments.

SPEAKER BARRETT: The committee amendments are adopted.

CLERK: Senator, you want to go to your amendment or the bill?

SPEAKER BARRETT: Chair recognizes Senator Conway.

CLERK: Mr. President, Senator Conway's amendment may be found on page 474 of the Journal.

SPEAKER BARRETT: Proceed.

SENATOR CONWAY: Mr. Speaker, and members, on, as the Clerk mentioned, page 474 is an amendment which is a white copy amendment that alters the original proposal enough that we thought it deemed proper to put it into a white copy, and that way we can work off one piece. It's AM2218. Senator Chambers raised some interesting points as he starts to address this whole topic. This is not a new topic to this body, or excuse me Chambers...is not a new topic to this body or at least for several of us who have worked on this bill. In 1987, I was a co-introducer of LB 701; in 1988, I introduced LB 1053; in 1989, I introduced LB 260, and LB 260 now is carried over and we've been working on it for that long, and I think rather diligently looking at some of the ramifications on some of the things that Senator Chambers has talked about. There are 17 other states that have already enacted similar legislation, including Minnesota, Kansas, Wisconsin, Ohio, Illinois, North Dakota. In terms of in this area, South Dakota was one of the first to introduce such legislation and their legislation was struck down dealing with, I believe, a due process concern that we may look at a little bit later. So we've got some history, we've got some good information relative to what constitutes a proper approach in dealing with this. I think the main thing we have to look at in this whole issue is the profitability that is associated with the entire drug trafficking situation. If we look at the whole question of the influx of gangs, drug distribution, what is it all about? It's economic territorial rights and economic activity that is going on. This bill does not change the criminal statutes and the criminal standards we

have affixed to the use of drugs and all that goes with it. What this bill does is recognize the fact that there is this economic activity, that this subterranean economy, if you will, is in force, that people are into it and in many cases are not even the users. It is purely an economic activity. They, as we travel around, as we discuss amongst one another, as we read in the media, as we attend meetings, we recognize the very, very high social costs that are coming upon us as policymakers and as state legislators and community people with respect to the activity that goes on. What this bill basically does is draw that economic activity and let them, for the first time, pay for some of that social cost that we are realizing associated with this activity. The criminal provisions, I'd like to reiterate, are not being changed one iota. Those are still in force. The entire drug activity is still a criminal prosecution. What this is simply is a civil charge as well as a criminal charge associated with trying to extract some of the economic gains from the distribution of drugs in such a way that we can then help pay for those. There are two handouts on your desk, one of them is a section by section of this white copy amendment, another one is somewhat more of a general statement relative to how the provisions work. If you'll notice, down at the very bottom you'll see that the funds collected are also being dedicated, with 50 percent of the funds that would be collected dedicated to the drug abuse education fund, and the other 50 percent to the Nebraska State Patrol Drug Control Cash Fund be used to try to and attempt to eradicate this particular problem that we are experiencing in the whole drug area. The way the bill basically works is that a person whose found with drugs in their possession, whether or not they are charged, whether they are convicted of the criminal activity, which is the whole separate side of this situation, is responsible for remunerating or giving to the state a tax that should have been paid on this particular drug. Now the tax on the drug is 50 percent of the retail market value of that particular drug, and for not having paid the tax in advance there is also a 25 percent penalty on top of that. So, in essence, you've got a 75 percent of the market value of the drug that is going to be collected in taxes, if they did not prepay the tax. Now, in order to make the whole process constitutional, the Department of Revenue needs to develop a system where people can pay the tax in advance and therefore have that in place, although, as we well know and as experience in the other states have proven, that has not been a heavily engaged in activity of going down and prepaying your taxes and having that certificate. So the

extent to which a drug pusher could show someone his tax certificate and try to make that a legitimate activity, one, it isn't going to happen and, two, that tax is only imposed at the transaction as he knows it. Once the drugs have been distributed to another person, the tax would be reimposed again at that point because you have a separate or a different transaction. I worked very closely with...and the original bill had a stamp process which was modeled after the Minnesota program and has since, by working with the Department of Revenue, they were not very excited about administering a stamp program, and we have since, in this white copy, changed it, rather than using stamps there would be a certificate issued for the payment of taxes as you contact the Department of Revenue. And it's literally the same bill as LB 260 was in its original form, other than the fact that we have locked in the due process, as Senator Hefner alluded to in the committee amendments, and also locked in the situation where rather than having the Department of Revenue develop stamps it would be simply an...an application would be filled out or an activity would then be established where a person would get a certificate proving that he had paid the tax on the particular substance he has in hand. If we look at the way the process would work, it works in such a way that upon an individual being identified, typically from the criminal side, would be the identification. We're not going to have revenue agents out running around looking for people that have paid their tax. But upon someone being found to have an illegal substance in their possession, the Department of Revenue is contacted as to whether or not the tax had been paid. And if, in fact, the tax had not been paid, then a lien would be established, a tax lien, which is a prior lien over all other liens, and at that point one could confiscate assets in the possession of an individual, the car, the airplane, the boat, the shotgun, the cash in hand. No one has to prove whether or not that cash, that car was involved in the activity, but simply the very fact that that's an asset and that asset then can be sold at a sheriff's sale to procure the financing necessary to pay the tax that is due to the state. So with the help of the Department of Revenue, support of the Governor's staff and the Governor, herself, supporting this legislation, I offer it to you for advancement.

SPEAKER BARRETT: Thank you. Discussion of the amendment offered by Senator Conway. Senator Chambers, followed by Senators Wesely, Hall and Wehrbein.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'd like to ask Senator Conway a question. Senator Conway, on page 478 of the Journal, in Section 9, I'll read the language so it's a matter of record. And this is from your proposed amendment, "In any criminal matter involving the unlawful sale, use, consumption, distribution, manufacture, derivation, production, transportation, storage, or possession of controlled substances before the courts of this state, the judge may consider the amount of the tax imposed by the Illegal Drug Tax Act in the setting of the bond for an individual or may require the posting of other security for the payment of the tax." Does this mean that when a person is charged with a criminal offense, this information about the tax will become a part of those proceedings, and that seems to be the case here because it's brought to the judge who is presiding over the case. Is that correct?

SENATOR CONWAY: It apparently would be obvious that the tax is also a...civil penalty or a civil provision is also part of those proceedings.

SENATOR CHAMBERS: If the person had paid the tax, would that be made known to the judge?

SENATOR CONWAY: I assume that that would be made known to the judge, therefore, the responsibility or the cost for fines later, and the judge would set bond accordingly, differently, knowing that there is also a major tax lien against the same activity.

SENATOR CHAMBERS: Is payment of the tax indication by the person himself or herself that he or she had possessed, manufactured, distributed or engaged in an illegal drug activity that is covered by this tax bill?

SENATOR CONWAY: I assume no one would pay it...prepay the tax, unless they were willing to admit that they were in possession of such a substance.

SENATOR CHAMBERS: We have to deal with what the bill provides, what the law will provide, should it be enacted. If a person had paid the tax, you said that information would be presented to the court. Is that correct?

SENATOR CONWAY: That would have to be presented to the court

after the fact that the individual was being charged with the criminal side of the activity, yes.

SENATOR CHAMBERS: What becomes of the Fifth Amendment to the U. S. Constitution protecting a person against self-incrimination? I know it's a trivial thing to those who are in the drug war, thank you, Senator Conway, but it is a very serious matter to me. Civil liberties can easily be trampled when we can convince ourselves that we're only dealing with the scum of the earth. But even somebody accused of being of the scum of the earth persuasion, the Constitution still has validity and must be applied. To require, by one law, that a person does something that acknowledges a violation of the law, then to mandate that that self-confession be used in a criminal proceeding guts the Fifth Amendment to the Constitution. First of all, you could say that the payment of the tax and the admission were coerced. So maybe it couldn't be usable for any purpose. But what this bill does is to create a lot of difficulties, it complicates the law. And, contrary to what Senator Conway wants to indicate, it does cast an aura of legitimacy around the selling of drugs. It's not too peculiar to me that the Orr administration now supports this pernicious legislation when in days past that administration opposed it. The Governor has now begun to lead the charge in the war against drugs in Nebraska. That terminology is not correct. Wars are fought against people. When you read statements by the police,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...they vent their spleen against individuals, not substances. What is really being recommended is a war against certain people. And the certain people who will be the casualties are not the drug dealers, but those who live in the communities and have no participation in this activity. They will be the ones set upon by the police, stopped for no reason, harassed, treated as criminals. I had to intercede just last week on behalf of a lady who had been stopped by the police supposedly for driving through a stop sign because her wheel hit some ice and she slid part way into an intersection before being able to stop. When I arrived on the scene, the officer had been there for a number of minutes and he was shouting at her telling her she had to stay in her car, and I asked was she under arrest. She said, no; I said, she doesn't have to stay in her car, and I told the lady she could exit her

car. At that time, Sergeant Conihan approached and he was as nice as pie when he saw that it was me. And the whole scenario changed.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: But, nevertheless, this was not a drug dealer, not a person engaged in drug activity, a woman who was being intimidated and was indeed frightened by the police.

SPEAKER BARRETT: Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. Speaker, members. I have followed this from a distance. The issue is one of great interest to everybody, obviously, concerned about drugs in our state and what's happening. But I guess in some ways it's a bit humorous. It's like with all the law enforcement personnel around our country and our state supposedly working on the drug issue, trying to enforce our laws and stop illegal drug activity, we finally send a message out, through this legislation, that we're really serious about it because now we're going to have the IRS get involved and we're going to sick the IRS on drug dealers and the Revenue Department, now we really mean business. It's kind of an interesting situation. We've been trying all along to deal with this through the law enforcement mechanisms that we've had in place, and odd that we need to take this step to maybe perhaps do what we need to do. The analogy would be something back to the Al Capone days, where Al Capone was able to murder and rob and wreak havoc on the City of Chicago, but it was on tax evasion that he was caught and prosecuted and sent to jail. While these individuals are able to deal in illegal drugs and do other types of illegal activity, it will be tax evasion, perhaps, on which we can most secure convictions. Pretty bizarre twist of fate, but, evidently, that is what people feel we need to do, interesting and odd.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. I rise to oppose Senator Conway's amendment to the bill. I apologize for being tardy. But the proposal, as it was introduced to the Revenue Committee last year, was one that, as others have mentioned, has been before the body on a number of different occasions, at least before the Revenue Committee I think on a number of different occasions. But the...LB 260 as it was

originally introduced by Senator Conway, I think, was probably the best proposal to date, because with the amendments that you've adopted already to the bill, I think it is in as good a form, although I'm not saying it could not be improved upon, as it has been at any time. And the concept is one of, as Senator Wesely mentioned it, it may be the only way that you can possibly deal with this type of an issue. It is kind of almost funny to think that you have to get them any way that you can at this point. And the proposal, in its original form, as Senator Conway brought in, I thought was a very good one. He had an individual from the Department of Revenue in the State of Minnesota come down and testify on behalf of the proposal and explain to the Revenue Committee that it does work, that it has worked. What Senator Conway does now with his amendment is strike the entire bill, and he puts in its place the amendment that you'll find on the Journal page as he stated, and it deals with subject matter that the Revenue Committee did not even deal with, but to say that it is exactly like the original form, or very similar to LB 260, is I think inaccurate. And the proposals particularly, the striking of the stamp, the changing of the fines from a dollar figure to a percentage of whatever the retail value is of the drug that happens to be on hand, I guess, puts into the hands of the State Patrol to determine what the street value is of that drug. Twenty-five percent of what? Do I then, as a drug dealer, get a break on my taxes because I sell my drugs at a lower rate? Because I decide that I'm going to sell an ounce of marijuana for \$50 instead of \$100, or whatever the going rate may be, do I get a break on my taxes? I mean you have to have....The bill, as it was originally brought in, if you heard and listened to the committee amendments, was a very minor tax, and we talked about that extensively. I read the transcript on the way down this morning with the folks from the Department of Minnesota, Revenue Committee of Minnesota, with Senator Conway who said he would endorse the concept of increasing the tax, and that was the reason for it is that we had to, in some form or fashion, affect these individuals who are in the business of selling illegal drugs, and the way to do it was through the pocketbook. And if we did it after the fact, Senator Wesely, I guess it was the thought of the committee that better then than never. And right now we're at a point of never. It just isn't happening. With the Conway amendments you're dealing with a number of things, you're dealing with removing the criminal penalty. You put in a jeopardy notice that I'm not very clear with, and I'll have some questions for Senator Conway when my light goes on next. But what also

happens is that you take the money and you direct it over to, basically, the State Patrol. There becomes a cash fund that was not dealt with in committee, was never discussed at the point in time that the bill was introduced last year. And, if this amendment is adopted, I'm going to move to ask that the bill be sent back to committee for another hearing, because the issues here are...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...substantially different than what was introduced before the Revenue Committee in LB 260. I appreciate the administration's move now to be supportive of these types of measures, it hasn't been there in the past, just through efforts to increase funding on the floor for chemical dependency and drug treatment type programs that I fought for that were vetoed once they were put into the budget. But to now come in, after the fact, once the bill is out here on the floor, finally, after a number of years of that happening, and I appreciate the situation Senator Conway finds himself in offering this amendment, but the bill is in good shape now. To offer this amendment to it, to virtually rewrite the bill and change the penalty provisions, the fines, the taxes that are in there and the collection process and where the direction of the funds will go is, I think, something that needs full public discussion,...

SPEAKER BARRETT: Time.

SENATOR HALL: ...hasn't had it to date.

SPEAKER BARRETT: Senator Morrissey, please, followed by Senators Chambers, Conway and Hall.

SENATOR MORRISSEY: Thank you, Mr. Speaker, members. Question of Senator Conway, please, if he would.

SPEAKER BARRETT: Senator Conway, would you respond?

SENATOR CONWAY: Certainly.

SENATOR MORRISSEY: In Section 4 of your amendment, on the lien, and you said that shall take precedence over all other claims on the property. Now if I'm driving a \$20,000 van, say, down the street and I've got a person in there with a couple of ounces of coke in their pocket and we get stopped, he tosses the two

ounces of coke over under my seat and the police find it, say I...the bank owns that van, after they confiscate the cocaine then who owns...then who has the first lien on the van? The bank, or the police, or...

SENATOR CONWAY: The first situation would be you would have to determine who was the owner of the drug.

SENATOR MORRISSEY: Say they determined it was mine, since it's under my seat.

SENATOR CONWAY: At that point, you would have a lien on all of your assets, and that lien would be...let's assume that would be the case, I think it would probably be very difficult to prove, but we'll assume that. At that point you, as the owner of the van, would have a priority lien placed upon that van.

SENATOR MORRISSEY: So the bank would become second.

SENATOR CONWAY: Correct.

SENATOR MORRISSEY: Same with my house. If my long-lost cousin, Joe, from Oklahoma came up, staying at my house, had a suitcase full of cocaine in the closet which would be worth well more than my house, and he took off, don't see him, for some reason the police come in and discover that cocaine, the same thing happens there, that house then goes to the police as opposed to the bank: who has loaned me the money on that house.

SENATOR CONWAY: If, in fact, you were knowledgeable of that suitcase he left, and the courts deemed you to be the possessor or the owner of that particular suitcase, you would run into the same situation, correct.

SENATOR MORRISSEY: So then it's up to me to prove that it's not my suitcase any way possible, and that I didn't have no knowledge of it, the contents of the suitcase, et cetera.

SENATOR CONWAY: Correct, and I would assume at the same time they would be prosecuting you criminally, and that same argument you would certainly want to raise, that that is certainly not your cocaine, and the criminal proceedings would follow suit then the same way you would style yourself at the civil proceedings.

SENATOR MORRISSEY: They make some presumptions earlier, Section 4, part 2 to these presumptions, it just applies to the payment of...or nonpayment of the taxes, I guess. The presumptions don't work throughout the bill?

SENATOR CONWAY: Correct.

SENATOR MORRISSEY: So they wouldn't presume it's mine, and I'd have to prove it different?

SENATOR CONWAY: Correct.

SENATOR MORRISSEY: Okay, was that section...or subsection (4) of Section 4, is that in the original bill?

SENATOR CONWAY: Yes, the procedure by which you establish jeopardy notice and deficiency and try to collect via the sale of the assets was part of the original legislation as well.

SENATOR MORRISSEY: Okay, thank you. This section bothers me in the fact that what we have read in the paper in the last couple of years of when the federal government got tough on drugs and started confiscating boats, yachts, houses, cars from people who had employees with a joint in their pocket, or similar circumstances such as I have described, and that the bill, the way it is now, would put that first lien on this property. And I'm sure the bankers would have a good argument against this bill, and I haven't heard from them yet, I expect maybe to in the future. But this is just one of many of the sections of the bill that bother me, and I think it's something you all should think about. The proof...and it can happen, these situations that I described, might seem far-fetched, but it can happen. And I think it's something we really need to think about in voting on the amendments and the bill itself. Thank you.

SPEAKER BARRETT: Thank you. Mr. Clerk, you have an amendment?

CLERK: Mr. President, Senator Chambers would move to amend Senator Conway's amendment.

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Clerk, that's the only copy I have, so would you read it in order that the body will be aware of what the amendment says.

CLERK: (Read Chambers amendment as found on page 981 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, since we are going to become as realistic as we can, I'm offering this amendment, and I'm going to vote for it. For a long time, I've halted between two opinions, whether or not increased enforcement measures will in any way affect the sale and possession and use of drugs. Years of experience throughout the country have indicated that that is a failed method. When I consider that people such as William F. Buckley, a noted conservative who is praised by everybody from Ronald Reagan to the man who played Ben Hur, has said that drugs should be legalized, there are numerous politicians, newspaper columnists, people who are experts in the drug field, including some law enforcement persons, who are convinced that the attempt to fight drugs, by spending more money, building more prisons, increasing the number of police officers, judges and further encumbering the justice system is doomed to failure. When you look realistically at the nature of the problem, some recommendations that at first blush seem unreasonable suddenly don't seem so when compared to the ineffectiveness of what is being done now and what is being recommended. For example, in Columbia, Peru and Bolivia, it would be far cheaper for the United States to buy the entire drug crop, not just the coca plants, but the drugs themselves at the going rate and destroy them. America pays far more in trying to fight these drugs than it would cost to purchase it outright. And that is not unreasonable, if the real aim is to stop this scourge. But there are a lot of institutions, a lot of agencies that gain from the existence of the "drug problem". Police divisions need the existence of a drug problem, they need a gang scare to push for increased officers, more overtime pay, better pension benefits, earlier retirement because of the stress created by these circumstances. Judges have made use of this supposed problem by asking for additional judges. The increase in activity in the courts, based directly on drug arrests, was used effectively to persuade the Legislature to create a new appellate court system. Now we're being asked to use the Revenue Department as an arm to fight the drug problem. This is an easy issue for any politician to run on, because who, other than myself perhaps, is going to stand up and consistently and vociferously oppose these

plans, as they're called, to fight drugs. I've seen too much, not only in the drug area, but when it comes to employment, housing, and education discrimination, all kinds of proposals that are put on the books that are doomed to failure from the beginning because there is no will to really alleviate or eradicate the problem. So what I'm doing is saying that we should go ahead and legalize these substances. One of the television stations in Omaha is going to run a series of programs called "West Omaha's Secret War". I suspect that it's going to deal with the greater amount of drug activity that exists in west Omaha than exists in north Omaha, but you don't have the police out there harassing and intimidating people, arresting a young white man because he wears a hat with a bill on it turned to the side. Yes, a young black man was arrested and charged with gang-related activity because he wore a baseball cap turned to the side. That is another gang-related arrest, it adds to the statistics, and it shows that the police are really out there doing it to death. I read, in yesterday's "Public Pulse", or maybe it was Saturday, where an Omaha police officer said you've got to hire more police, you've got to show these young Hitlers that they're not going to take over. He doesn't know what's going on in that community. They have a new police chief who is making a mockery of the community. Before Mayor P.J. Morgan will do anything affecting the business community, he sits down with them. He gives the black community an accomplished fact, then he calls in various people who work in jobs that he gave them, those who are receiving money through city grants, and has them to meet with the police chief and say, for public consumption, that he has done a great thing and the black community supports it. Rubbish. Poppycock. Those kind of things are again doomed to fail. And those black people who, under pressure, came to the mayor's gathering, sat at his table and echoed his words are going to have a great burden of guilt when this summer problems arise and the proposal of the mayor that they so strongly supported shows itself to be a phoney and a sham. The problems are not being addressed because the problems are not forthrightly and honestly described. Politicians play a good game with this issue, but the politicians don't live there. I have never moved from my community, don't want to move from my community, do not live on the fringe of my district but right in the middle of it. I know a lot of these young people who this cop would refer to as a young Hitler. And this cop's name was Garcia, a Latino sounding name, and he knows how his people are treated. So he's what we would refer to as Pio Taco which is the equivalent of Uncle Tom,

among black people. He will say the things that white officers put him up to saying, then he'll say I'm not white, so it's true when I say it. It's not true, it's more reprehensible and contemptible. They, themselves, have had to take legal action to try to get fair treatment within the Omaha Police Division, and in the meantime, my community is victimized, it is victimized by white marauders and black marauders. When we come forth with a program to offer the mayor and the chief that the community could support, the chief and the mayor scoff at it, and they send a white guy, named O'Donnell, whose father, I think, is a priest and that's probably why he got the job out in our community, against whom I had to file complaints when he was stationed there as a patrolman. He and his partner used to follow me around to try to intimidate me. So one time I drove to a phone booth and I called the then chief and told him to send somebody from internal security so he could see these cops sitting there when they should be patrolling. Naturally, he didn't send anybody, but they and I stayed there long enough for somebody to have come, had they been sent. And this is the sucker that P.J. Morgan and Chief Skinner have sent in our community to head what they called the "Gang Unit". It would be better not to have the unit at all than one which creates the impression that something is being done, when in fact it is not. It will be a provocative force, arresting kids because their hat is turned to the side. That's not the problem in our community. Or even somebody doing something with his or her fingers that can be called...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...gang signs, that is not the problem. The problem is that we are a possessed and occupied community controlled by people living outside of our community. The police force and the politicians who make the decisions relative to how the land is used, how absentee landlords can let these buildings and structures fall into disrepair and not be compelled to either tear them down or repair them. That cannot be done by those of us who live in the community because we don't own the problems. When has P.J. Morgan addressed that? When has Chief Skinner addressed it? They deal with the things that the media, being as lazy as they are, can easily use to make a story. Gang-related activity, threats, rumors, and they write their story without having to expend a particle of serious thought or analysis. My amendment...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...I offer in all seriousness.

SPEAKER BARRETT: Thank you. The Chair has just received a startling bit of information. It so happens that today is the birthday of our own John WeiHING, Gering/Scottsbluff. Happy birthday, Senator WeiHING. Discussion of the Chambers amendment? Senator Conway, followed by Senators Hall and Schmit.

SENATOR CONWAY: Thank you, Mr. Speaker. I rise, naturally, in opposition to Senator Chambers amendment which would really do nothing more than to legalize the drug activity in the State of Nebraska, but must say that I'm glad that he raised the issue, so that we can put into the record that in no way was this bill, from the very beginning, or any way throughout any of its activities, hearings, proceedings and discussions and the like ever directed towards that particular end. The criminalization of drug use and the situation as we know it, under the provisions of the legislation that I bring before you, has not changed, does not change, does not change attitude, does nothing more than try to, through the profiteers and the drug industry, to get them to help pay some of the social costs that we're paying from other means as we are taxing legal activities, and much of that tax dollar is now being dedicated towards law enforcement and many of the social ills. The social ills, as we know them, are becoming more evident. The continuation of going on through everything, from the health care costs of the crack babies and the sad state of affairs that many people are on who are tied up into the drug industry, we have a great deal of cost that is being dedicated. Hopefully, through this particular activity, it will do two things. One, it will extract, from those who are profiteering, some of those funds for the purpose of paying for some of those costs; and also I think there is a legitimate economic basis to consider, and that being that between the criminal side of the statutory base that we're living under now, as well as under the civil penalty, that would help pay those costs, the very cost of drug traffic... "trafficking" would be in a situation where it may be beyond the scope of the ability to find it profitable to operate in a state such as Nebraska. The density of the population is not here, the drug wars, the gang wars that we hear going on in Omaha are for territorial rights. At some point when the cost is there and it's not as profitable as it

once was, possibly it may have some effect on that. But the bottom line is to extract a certain economic base from this particular activity and dedicate it back to trying to address those problems in terms of rehabilitation, education and the like. The point made about the Revenue Department out enforcing the drug laws is not really the case at all. The Department of Revenue will simply collect the tax, it would be their role to collect the tax that is duly required for the individuals who are engaged in this activity to pay. The drug problem is ours. The drug problem, I'm sure ultimately, will be addressed via the criminal statutes to the best of our ability. But this is simply a revenue measure to try to raise money to help that cause along. I strongly object to the legalization and object to Senator Chambers amendment to my amendment.

SPEAKER BARRETT: Thank you. Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. I rise in opposition to Senator Chambers amendment, but I respect his opinion on it. I think he makes some very good points with regard to the issues that he raised, the fact of the matter is that there is a lot of money that is being made illegally, and that may be the biggest stumbling block to legalizing these types of drugs, period. And they're being made by individuals who are both what we would call legitimate and illegitimate business folks. Be that as it may, the issue in the Conway amendment, with regard to LB 260, and he talked about what the Department of Revenue would or would not do, if you look at the committee statement, you'll notice the Department of Revenue did not testify on the bill. A year ago they didn't come in. They have traditionally opposed these types of measures. The drug tax, and the marijuana tax, as it has been called, is something the department, for whatever reason, I think basically administration, partly the fact that there was...it was difficult to determine how to place the tax, at what point there administration capacity would kick in. Do we do it after we collect it? Do we do it through the stamp procedure that LB 260 would have put into place in its introduced form? LB 260, I think, took care of those provisions, but the department was not enamored with it. The department now, through Senator Conway's amendment, has put into place what they feel would be an appropriate measure. All of a sudden there is 180 degree turn on whether or not we should have a tax on marijuana or a tax on illegal drugs. I'm quoting from a letter from Commissioner Boehm to Senator Conway, January 17, 1989, says, Dear Senator

Conway: This letter is in reference to LB 260 which would impose a tax on marijuana and controlled substances. Nebraska Department of Revenue is very uncertain about the amount of revenue which this program will generate and the cost of administering it. The uncertainty regarding the amount of revenue generated by this tax program involves the requirement that dealers in marijuana and controlled substances purchase tax stamps. It is anticipated that the revenue collected will usually be performed by us in connection with the arrest made by law enforcement agencies and not through voluntary compliance. Another area of uncertainty is the cost of administering the program. It will be difficult for Nebraska to attach its tax lien against an alleged violator. The federal tax lien will have priority over Nebraska's tax lien, also other law enforcement agencies may have liens filed prior to the Department of Revenue, leaving the department with little power to collect a tax lien on unstamped drugs. I think, basically, the Revenue Department gives the best arguments against their amendment, because I don't even purport to think that this is Senator Conway's idea. His idea is in pretty good shape and it's in the form of LB 260 that we amended with the committee amendments. I would urge you to first reject Senator Chambers' amendment and then Senator Conway's amendment. I think Senator Chambers, as he always does, takes the very macro approach to things and cuts right to the quick in terms of dealing with the issue and a possible solution to it. Clearly, the idea of legalizing these types of drugs would then have with it its own set of requirements, taxes and other types of things that have been dealt with in the past. We see it in the form of alcohol, we see it in the area of cigarettes. It could be done, but that's a policy question I think that...although I appreciate the fact that it's discussed here today, has to be dealt with on the federal level first. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schmit. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, some things are more difficult to deal with than others, and I know that is a truism, but I have to state it. The reason I feel so much bitterness about the way things are being done in Omaha is because when we have committee hearings and the police show up and others show up, as they've done before the Judiciary Committee, they'll admit that there is probably more drug use in west Omaha, but they say, since drugs are not being sold on the streets, then you don't have the heavy police presence. Yet, if

you go out around West Dodge, if you go around some of the high schools, there is more drug activity in those locations than you could find in any other single location in north Omaha. But the police don't know whose children those are, so they're not going to be busting them upside the head, putting them in handcuffs, dragging them to jail and saying what they're doing is gang-related activity, although if you went by the objective evidence of what they're doing, you cannot distinguish one from the other. Every time you turn on television, every time you open the newspaper, we, who are black, can see how our objective representatives of the media portray us. Every time a door is broken in it's a black persons' door. Every time somebody is thrown down on the floor, on the ground with hands being cuffed behind his or her back, it's a black person. Whenever the cops decide to take television people along with them, you'd think they had more ethics, to break into the home of some woman with several small children, they are black people, and a good time is held by all, even, even when it turns out to have been the wrong house, because black people do not have rights in this country that white people feel a necessity of respecting when they're in positions of law enforcement and they get on their hobbyhorse. This kind of legislation titillates the white politicians down here. It gives the Governor the opportunity to go around the state and say, she's fighting drugs. Tell me, if you honestly can, that you think one single drug sale that was going to occur will not occur because of this bill. If we could take the time and expend the energy that is frittered away and wasted on these nonsensical bills, and direct them toward something that would be of substance, put some money in meaningful programs that attack the causes of these problems, then the Legislature could indeed say it's doing something and set a standard that the rest of the country could follow. Senator Conway can correctly tell you that a number of states have passed legislation such as this, but he cannot cite any statistics that indicate that this legislation, in any way, has impacted on the use, sale, possession, manufacture, derivation or whatever of drug. So why do it? Because it creates campaign issues for people who are running for office. Whenever there is a serious problem and actions that are supposed to be directed toward that problem miss the mark, the situation becomes worse. There are young people throughout the City of Omaha who watch television. They listen to the statements of the white experts, the media people, the station managers, the chief of police, the mayor talking about what is going to solve the drug problem, and they laugh. But sometimes people who try

to sound very naive, people in public office who try to sound very naive about the drug scene do so in order that people will say, well, this person knows nothing about drugs,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...rather than look at that person's finances, look at that person's activity, look at that person's junkets around the country, look at that person's connections. You tell me that there could be a black man who would load people on a jumbo jet and fly them over the ocean, and people would not wonder where he got his money from. And this same man can hire the head of the narcotics division of the Omaha Police Division to do private security work at his house when he's having parties. You let that be a black man and consider the kind of questions that would be asked. And let there be a black mayor and this black man is a friend of the mayor, you see what happened to Marion Barry in Washington, D.C. He's not the only mayor in this country who has connections with people who deal in drugs.

SPEAKER BARRETT: Time. Senator Schmit, on the Chambers amendment to the Conway amendment.

SENATOR SCHMIT: Well, Mr. President, Senator Chambers always deals directly with an issue which is refreshing in itself, even though I don't agree with what he's doing. I do not believe we ought to legalize drugs. I don't think it will work. I think it will, in fact, be a...it would be a major mistake. But I think we ought to listen to some of what he is saying because the selective enforcement of the law, whether it has to do with drugs or any other aspect of violation of the law, has been a most serious concern for people in this state for a long time. The selective enforcement of the law relative to drugs is well known. And one of the concerns we have had many times, as we've tussled and argued over these various issues dealing with drugs, is how do you address the issue of the weak and the folks who do not have influence, who are found involved in drug traffic, as opposed to the rich and powerful. There has never been, there has never been a major effort, as far as I'm concerned, to really stamp out the drug trade at the level at which it ought to be taken care of. There is a renewed emphasis now upon punishment of the user. But, ladies and gentlemen, if we're going to do that, you better go back to the budget committee and double, or triple, or quadruple the number of persons that work

for the Highway Patrol, you better do a lot of other things, you better double, triple, quadruple all law enforcement personnel because every individual out there is going to...is going to be suspect. Ladies and gentlemen, I learned a long time ago that you control weeds by controlling the plant. You do not allow the musk thistle to go to seed and then try to trace down, and trace down 30,000 seeds. You chop off the plant. The drug situation is exactly identical. You stop the multimillion dollar airplane that brings the dope in and you stop all those people who are getting it otherwise. You're not going to have the interest, I'm sure, because those persons have political connections, they have financial connections, and we know they exist. I have been told by law enforcement persons who are knowledgeable, who have fought it for years, that there is no way that drug traffic can exist in some of these areas without at least the acquiescence of a certain element of the official law enforcement community. Now that's a terrible indictment but, ladies and gentlemen, let me tell you, you don't have enough man power, you do not have enough resources to pick up every young person on the street that is smoking a marijuana joint. And I don't think it's very productive. But if you stop the source, I think you can do it. They'll tell you, well, we can't...we can't stop the source. If you can't stop the source then, ladies and gentlemen, you cannot stop it by abusing the kids that get on the stuff for one reason or the other. And so I oppose the Chambers amendment, but I'm saying very strongly that we have to recognize that you have got to make a major commitment to terminate the transportation and the trafficking of drugs by those individuals who are financially and politically powerful. If you haven't got the courage to do that, then we're just whistling Dixie.

SPEAKER BARRETT: Thank you. Any other discussion on the amendment to the amendment? If not, Senator Chambers, to close.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, when sweeps are made through communities to arrest the "druggies", they're poor communities, always poor communities, always nonwhite. The jails are filling up. The prisons are filling up, and they are being filled with people who are sick. You're rounding up junkies and addicts. You make alcoholism a disease, because it's a white people's addiction, and there are so many white people addicted to it that it's called a disease, not a defect in character. Drugs are viewed as a black person's problem, a black community's problem. I'm going to circulate

some articles, as we go on, which some of you will read. It demonstrates that there is a much higher use, numerically and proportionately, percentagewise, among white people than black people, a higher percentage of drug use among white students than black students. Then why all the knocking down of black people's doors and the filling of the jails with black people? Racism exists in this country, as it always has, and it will never be eradicated because it takes so many different forms. People will be discussing racism without using the term when they talk about legislation such as this, because we know where it's going to be enforced, selectively, as Senator Schmit correctly pointed out. I have seen it all the years of my adult life, the years before I became an adult. Police have never been viewed, by and large, as friends in the black community, they are occupying forces, and often they pose a greater threat than the ones they are supposed to be corralling. Do you think I would stand on this floor, coming from a community with a lot of problems, criticizing the police, if the police are doing their job? There is a black man who owns a McDonald's store in Omaha, he has a manager. There were a lot of young people on the lot, he wanted to clear them because they created a problem. Some of the people in the lot became very hostile and threatened him. Now a businessman is allowed to have a pistol. He pulled a pistol and ordered them off the lot and they left, because he had waited 25 minutes for the police to come when he dialed 911. When the police finally came, guess who they arrested? The black manager of McDonald's. And when the manager was trying to explain what happened, a white female cop came up to him, and at that point the owner intervened and told her, this is private property, leave my property. And he was threatened with arrest if he didn't be quiet. Now that's a black businessman, and this is the way people are treated by the police in Omaha. And who cares? I care, we care. When I told some of our friends in the media about Police Chief Wadman's son stealing credit cards and being caught dead to rights by the camera when he tried to use it, and how the World-Herald covered it up, they wouldn't print it. They wouldn't print it, but they'll print the names and ages of other young people who are accused of crimes. Then they want to strut and preen and present themselves as investigative reporters who print the truth fearlessly. I see these things, I store them away, and I don't forget. And when we face crisis situations, as confront my community now, it's necessary to bring them out, hoping that there are people in this body who have the power, through their votes, to help bring about programs that can deal directly with the problem. Maybe those

votes will come, and maybe they won't.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: But at least I will have presented the situation, then when the apples fall from the tree, people cannot say, we did not know, we did not understand. What they'll have to say is that we knew, we understood, but we didn't care. And a community must resort to self-help. So don't expect to do to our community what was done by the police to that manager of McDonald's, when he tries to protect his property he goes to jail. I'm going to try to help him. I'm going to talk to the city attorney and see if something can't be done about that. Mr. Chairman, recognizing that this amendment has as much chance of adoption...that this amendment which would legalize all drugs has as much chance of adoption as a snowball has of surviving in the nether regions, I'm going to spare everybody the time of a vote and withdraw it.

SPEAKER BARRETT: Thank you. It is withdrawn. Back to a discussion of the Conway amendment to LB 260. Senator Schmit, your light is on, would you care to discuss the Conway amendment? Senator Schmit, would you care to discuss the Conway amendment? Thank you. Senator Hall, please.

SENATOR HALL: Thank you, Mr. President, and members, again, I rise to oppose Senator Conway's amendment and I do that knowing that Senator Conway introduced LB 260 in good faith. We amended it with committee amendments. I think the bill, as has been amended by the committee amendments, is in good shape. I think it will provide not only a revenue source but will also provide a means for us, even though it would be probably not the most effective in terms of fighting the war on drugs, it will provide a means for that. And I would like to see it passed from General to Select File in the form that it has been amended to date. By adopting the amendment that Senator Conway brings at this point, you rewrite the bill, you totally rewrite the bill. You put in provisions that were not even discussed in front of the Revenue Committee last year. You change the entire concept from not only the penalty provision, you take away the criminalization, and you also change the fine, and, basically, what you do through the fine when you say 25 percent street value, is what I think it says, the estimated retail value of the controlled substance, what you do is you take and you allow the taxing authority, you abdicate it to the State Patrol

because it says that once the...if you can't determine what it would be, 25 percent, then that would be determined by the State Patrol. So what we are doing is by taking away a specific dollar figure, \$100 an ounce for marijuana, \$150 a gram for, say, cocaine, \$500 for 50 tablets of other types of drugs, narcotics, you would be, basically, allowing the State Patrol to determine, in the case of what the retail value would be, what the tax is going to be. I mean, we would be abdicating our authority with regard to the tax. You would just be saying, well, State Patrol, it's up to you to determine based on what the retail value is. Well, what happens when the...you read about it all the time, when either the market dries up or the market's flooded with drugs? The price fluctuates. Does then the tax fluctuate to match that retail value? I would think it would. I would think the way the amendment is drafted, 25 percent of retail value, to be established by the State Patrol, would mean that the tax will jump from one figure to another, depending on what the price is. Currently, what you do through the bill, as it's been amended with the committee amendments, you lock those figures in place. You know what the tax is. You know how it's going to be interpreted. You know that the stamp is also required. The bill is in good shape. The Conway amendment totally rewrites it. It deals with issues that were not addressed by the committee. If it's adopted, I'm going to make the motion to send it back to committee for a public hearing. Revenue Department did not even testify on this proposal last year. They did not come forward and talk about it. Matter of fact, they tried to deep six the bill and Senator Conway, in all his candor, would admit to that, because there was a million dollar fiscal note brought to the Revenue Committee by the Department of Revenue saying that, well, the way the bill reads we can't deal with it, we think that we're going to have to go out and try to run down these drug dealers. Well, that's nonsense. It's ludicrous on their part to even use that as an excuse against the bill, but it was their excuse for a million dollar fiscal note that they didn't have the courtesy to come and defend before the committee. I would urge you to reject the amendment that Senator Conway is carrying. I don't think it's his. The bill, as we have amended, is a good one.

SPEAKER BARRETT: Thank you. Senator Wehrbein, on the Conway amendment, please.

SENATOR WEHRBEIN: Yes, Mr. Speaker and members, I would like to ask Senator Conway a question if he would...

SPEAKER BARRETT: Senator Conway.

SENATOR WEHRBEIN: Do you have any knowledge of what surrounding states have had in terms of success with this and, specifically, what kind of money has come in? Has this worked at all to anyone's satisfaction?

SENATOR CONWAY: Senator Wehrbein, the primary state that I worked with originally was looking at Minnesota and their success. Minnesota had their chief enforcement officer down here last year to testify on behalf of this particular procedure. There is quite a bit of variation by virtue of how far they stand in line and possibly how successful other techniques have been. Minnesota, I believe at that time, had about eight months worth of experience and I believe it was around the \$600,000 figure. Part of the situation at any given point in time is how much is assessed versus how much is collected. The assessment, I believe, went over a...well over \$3 million at the initial stage, but at that point in time they had only collected like 600,000. Each and every year I know that Minnesota has been in that it was...far exceeded what their costs were associated with collecting it. But those numbers, like I say, vary depending on whether your...whether it's assessed, whether it's collected and where are they in the stages of process.

SENATOR WEHRBEIN: One more question then leading to...if it is assessed and not collectable, what is the status of that particular amount of money? Is that...does that go on and on, or is that just written off in time, or is that another problem?

SENATOR CONWAY: Well, it really shouldn't be a problem any different, any more of a problem than how smooth your process in the state is for collecting any other form of tax lien to the extent to which you have a sheriff's sale, the extent to which the individual who has broken the law has an asset that is salable to the extent of the amount of dollars that are there. If, in fact, you were to come across a situation where there was an individual that was, let's say, in transporting the drugs and had a valuable automobile or some other asset that you could attach to, then your value would be there accordingly and then the extent to which your state laws allow for a smooth system of collection. But I think Nebraska's system is relatively smooth relative to a sheriff's sale and we could expect to at least

extract the assets to the extent to which the perpetrator has those assets.

SENATOR WEHRBEIN: Okay, thank you.

SPEAKER BARRETT: Any other discussion? Senator Conway, would you like to close on the adoption of your amendment?

SENATOR CONWAY: Thank you, Mr. Speaker. I understand Senator Hall's concerns. We have discussed these privately and we discussed these in previous years. One of the main reasons for the amendment is the Department of Revenue. The Department of Revenue was not very fond of the idea of creating a tax technique, or, excuse me, a stamp technique for proof of payment of those taxes. They were...came to me and the reason for this amendment, really, is working out with the Department of Revenue a technique that is used and we refer to it as the Florida technique, where we have an assessment and a receipt situation, rather than the Department of Revenue printing up a particular stamp that would be affixed to the particular product and that's why this amendment really has come to pass is to get around their concern relative to the printing of the stamps. Minnesota has a stamp system, and to date, or the last I communicated with them, I think they had only sold three stamps and they believe that all three of those were probably to stamp collectors rather than individuals actually prepaying the tax. The Department of Revenue had a concern about the cost in the process of stamps and wanted to follow through another process. Senator Hall also described this variable situation relative to affixing the tax as a percentage of the market value. That is the way we handle literally all of our sales tax in this state. It is that value and a percentage of that value at the point of sale or at the point of a transaction that is a taxable transaction, and whatever that value of that transaction is then is a percentage and so, therefore, this is not particularly different than the way we handle other taxes. I think if you look at the amendment itself, one of the points that's particularly valuable I think, to me, is that in the very beginning of Section 2 they talk about this unlawful activity and they talk about that unlawful activity being the sale, use, consumption, distribution, manufacture, derivation, production, transportation, storage or possession of the particular drugs. And I think as we look at Nebraska being a well-known route between major cities, there is a great deal of drug activity that crosses our state, that upon the discovery of such activity would be a taxable situation just

as if we're...and we're not just talking about the users. I think we need to be very careful to protect ourselves from being a haven for the processing, for the growing, the storage. Some of these parts in the channel of the drug distribution could very easily see Nebraska, by not having such a tax standard like we see in our neighboring states, to be somewhat of a place that at least the cost of doing business would be cheaper in Nebraska for some of those larger activities as well as simply the use and the consumption of the drug. I think it would be extremely important there. We had a criminal bust a year or two ago that was of very large proportions. We had criminal provisions on board and probably the only criminal activity was the confiscation of the drug in terms of what we can do, the criminal confiscation of the drug and the criminal charges that were directed towards the person who was driving the car and the U-Haul trailer that was connected with that transportation, at a point where we may find that the transportation system may not want to cross Nebraska with large volumes, when, in fact, there would be such a tax connection. And if we can prove ownership across that spectrum or across those vehicles or anything else that is taxable, we would then generate additional revenue for them using our state as their means to produce, store or to transport the drug. I think that's where a great deal of the value of this particular proposal comes in. And this happens regardless of whether or not you have been able to successfully have a criminal prosecution. The very fact that it was in their possession, if it was...ownership is proven, then the tax is due to the State of Nebraska.

SPEAKER BARRETT: One minute.

SENATOR CONWAY: So I think with those kinds of concerns, this bill or this amendment is not drastically altering the concept. The concept is to tax the drug and the amendment as it was developed was basically in part to appease the Department of Revenue and some of what their concerns would be in trying to administer this law. The concept is still there. We're going to charge a...have a civil penalty, charge a tax for all of these various activities associated with drug trafficking in the State of Nebraska. So, with that, I urge the adoption of the amendment that is in front of you, 2218.

SPEAKER BARRETT: Thank you. You have heard the closing. The question is the adoption of the Conway amendment to LB 260. Those in favor vote aye, opposed nay. Voting on the Conway

amendment to LB 260. Have you all voted? Senator Conway.

SENATOR CONWAY: Due to the reluctance of the members to get to a vote on this, I would call a...have a call of the house and a roll call vote. Regular order, please.

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

CLERK: 18 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your desks and record your presence. Those members outside the Legislative Chamber, please return and record your presence. Senator Kristensen, please. Senator Elmer, Senator Goodrich, Senator Bernard-Stevens, Senator Lynch. Senator McFarland, please. Senator Moore, the house is under call. Senator Chambers, would you record your presence, please. Senator Landis. Senators Moore and McFarland, the house is under call. Senator Conway, may we proceed with the roll call. The question is the adoption of the Conway amendment to LB 260. Mr. Clerk, proceed with the roll call.

CLERK: (Roll call vote read. See page 982 of the Legislative Journal.) 18 ayes, 16 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The motion fails. The call is raised. Have you anything further on the bill, Mr. Clerk?

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

SPEAKER BARRETT: Back to a discussion of the advancement of the bill. Senator Landis, your light is on.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, the bill now being in the form that it advanced from the Revenue Committee, a bill that I voted for, I intend to support Senator Conway's LB 260. This was basically the method that was used in Minnesota for which we had testimony in recent years of the success of this particular approach in obtaining the confiscation of profits and of drug related materials in Minnesota and, since it has been proven to be an effective tool there and since this is the model from which Senator Conway

draws LB 260, I will be supporting the advancement of the measure in this form.

SPEAKER BARRETT: Senator Conway, followed by Senator Schmit.

SENATOR CONWAY: Thank you, Mr. Speaker. I rise in support of LB 260. Like I say, I have worked on LB 260 for approximately four years now and I still believe in the concept of taxation of these particular activities even though they are illegal activities, but to try to extract a certain amount of income from individuals with respect to the social cost that this particular activity is causing us, and extracting a certain amount. The original bill, LB 260, and my previous amendment was designed to better accommodate the Department of Revenue. I was somewhat indifferent in terms of the particular process, or I shouldn't say indifferent, I supported the amendment. But it is really a change in the process by which the Department of Revenue and others would be involved and engaged in the process. The committee amendments have raised the amount of dollars that would be generated specifically in terms of the naming of the taxes. I expect, with this technique, we will from time to time have to review those prices to make sure that they are generating the kind of income that is supportive of the concept, whereas before as under the amendment, it would have been a percentage base. But we are back to my original concept and it would be somewhat ludicrous for me to negatively react to LB 260 in its original form. The amendment was designed to be an accommodation for those who have to administrate this law rather than changing of the concept. The 260, in its current form, has been tested in the Minnesota Supreme Court. I believe that it meets the constitutional demands upon it, as we have considered those concerns with Minnesota, with the privacy, with any Fifth Amendment concerns Senator Chambers had, and the like, and it is working in Minnesota. It's been pointed to as somewhat of a model. Again, the amendment that was advanced by the Department of Revenue people was really an adjustment to the concept of administration, not the concept of what we're trying to do with this bill. It, in no way, attempts to legalize these drugs but simply provides a mechanism by which the drug trafficking does generate an income for the state to be dedicated. And if you will notice, it's still a dedication of those funds to fight the social costs that are associated and attributable to the drug activity. So, with that, I do support the advancement of LB 260.

SPEAKER BARRETT: Senator Schmit, please, followed by Senators Chambers and Hall.

SENATOR SCHMIT: Mr. President, I support the bill as it's amended. It leaves a lot to be desired but it does set a pattern and a precedent. It sets a precedent which I think we ought to...we ought to take a look at. And after reviewing some of the concerns that I have heard expressed by members of the Revenue Committee and members of the Appropriations Committee relative to the need for funds, lack of available funds, plus what I am sure will be a terrifying lack of funds after about this time next year, I think we ought to take a look, Senator Conway and Senator Hall, to see if we couldn't expand this tax on illegal drugs to a tax on illegal gambling. If you were to be able to collect a tax on all illegal gambling that takes place in this state, as Senator Chambers tried a couple of times to tax the bookies, but if it could be done, it would be sort of an admission, sort of like the federal government says, you know, we don't condone it, we don't believe it's there, we don't like it, but just in case you do it, we're going to tax you a little bit. That's what we're doing here. This is illegal, we shouldn't be doing it, but in the event you're going to do it, we're going to make you tax it, pay some taxes on it. If you were to be able to put a tax on all the illegal equipment and all the illegal gambling activity out there, you could finance a really serious war on drugs, you could do a really good job. I don't know that anyone is ever going to have the courage to do so but, at some point in time, when we get our tail in a crack tight enough and the revenue comes short again, we're going to look around for new sources of revenue and I predict that will be one that we'll look at. This is a small step and it isn't really that significant but it's some indication of something we can do and I suppose we ought to do it.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to ask Senator Conway if he...oh, he's still here, a couple of questions about the operation of this. Senator Conway, when you talked about the success in Minnesota, were you speaking terms of a diminution in the amount of drug traffic?

SENATOR CONWAY: That, I don't know whether it's been analyzed, what success, meaning degeneration of revenue, that then could be dedicated to addressing the problem in whatever fashion that

state deems possible.

SENATOR CHAMBERS: If you have a legitimate business and the tax is raised on that business, what do you do as far as the price you charge to customers?

SENATOR CONWAY: Typically, any increase in cost is going to be passed on to the customer.

SENATOR CHAMBERS: So in this business, which is the way drug dealing is being considered, what will happen if there is an increased cost of doing business that the pusher must pay?

SENATOR CONWAY: There is two things that will happen when you go to pass on the cost. If the cost cannot be absorbed or will not be absorbed from a profitability perspective, there is a possibility of diminishing the activity or you could pass it on and the individual who is charged with that is going to end up having to incur that cost.

SENATOR CHAMBERS: If these drugs are being sold to addicts, do you think a higher cost is going to stop an addict from using drugs?

SENATOR CONWAY: I think the availability may not be there because the drugs will not be brought in in large quantities for fear that they would be tapped for this tax and the tax is going to be at the point of sale, so that person, at that time, under the criminal provisions, would lose the drugs out of the system as well as having a higher cost extracted from them.

SENATOR CHAMBERS: Senator Conway, that is not realistic because even with all the attempts to interdict the drugs, and they cannot do that, certainly the fear of paying a tax which may or may not be collected is not going to dry up the movement or the quantity of drugs available. But if the cost is increased to the addict and the addict is intent on getting his or her drugs and the addict does not work, what is the addict likely to resort to in order to get the money to purchase the drugs?

SENATOR CONWAY: Let's say that the addict might try to negotiate a lower cost on his own behalf.

SENATOR CHAMBERS: And if that doesn't work and the addict must pay the cost, what is the addict going to do?

SENATOR CONWAY: I think that's obvious.

SENATOR CHAMBERS: Well, tell me because there are some of us who are naive. What is the addict going to do? What kinds of things?

SENATOR CONWAY: When you have an individual who is an addict, as research points out, there is nothing that gets in their way of trying to procure the drug.

SENATOR CHAMBERS: Might they commit crimes?

SENATOR CONWAY: As they do now, yes.

SENATOR CHAMBERS: Might they commit crimes of violence?

SENATOR CONWAY: I imagine they would.

SENATOR CHAMBERS: Might they enter persons' homes to obtain things of value that can be sold to a fence or traded for the drugs?

SENATOR CONWAY: I imagine they will continue that, yes.

SENATOR CHAMBERS: Might there be some addicts who formerly were able to get enough money one way or another to purchase the drugs who, if unable to do that, might be in a position to have to sell drugs in order to get enough money now to purchase drugs? Is that possible?

SENATOR CONWAY: I think, Senator Chambers, that the addict as known at this point, the true addict is no longer typically in an economic mainstream and so all money that he receives to buy the drug and trade with the drug is probably obtained illegally.

SENATOR CHAMBERS: But might it produce people who will now sell drugs in exchange for the drugs if they cannot afford them otherwise?

SENATOR CONWAY: Could you restate that?

SENATOR CHAMBERS: Will...let's say that your bill works and there is going to be a tax imposed and it will result in a higher cost of drugs to the addict and the addict formerly could

get enough money, stealing, whatever, but hadn't become a seller, now the only way open to get the drugs or the cost of drugs is to sell. Is it possible that people could become sellers who are not now sellers?

SENATOR CONWAY: I think that would have to be speculation in that regard.

SENATOR CHAMBERS: Okay, thank you. That is very likely and it has happened and one of the favorite tactics that the sellers use, the dealers, is to get a person in a position where they use the drugs but cannot afford to pay the cost of them, then they become sellers. And Senator Conway knows that to be the case but with this bill, as with so many other things, there is no concern...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...about the impact it's going to have in the communities where drugs are a serious problem. So you're going to pass this cosmetic bill. I'm kind of disappointed that Senator Schmit and Senator Hall are supporting it. They don't have the same kind of problem in Lincoln so maybe that accounts for Senator Landis and others supporting it, who surprised me. But this is what I'm going to accept because we must believe that this time next year there will be a smaller amount of drugs sold. There will be fewer pushers because this tax is going to run them out of the state when no other method can do it and the problem is going to be diminished in Omaha. And when I come back next year and that turns out to be the case, I'm going to thank you all for being much more wiser than I am, for understanding the problem much better than I think that I understand it and showing that despite my protestations you put in place a law, as I say again over my protestation, that did more good to solve the drug problem than anything that I ever thought of recommending.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: But since I am unconvinced, I still will vote against it.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senator Landis.

SENATOR HALL: Thank you, Mr. President, and members, I rise to support LB 260 as has been amended by the committee amendments. And I really appreciate Senator Chambers' comments because, Senator Chambers, I clearly don't want to leave the impression that I think that this is going to be a godsend with regard to the drug war. Clearly, it is nothing more than a fly, I guess, on a horse's backside, but it is that much and it is one more fly than we currently have in place. Your questions...your exchange with Senator Conway, I think, was a good one but the fact of the matter is that tax is going to be imposed on the individual who is selling those drugs and will that affect the rate of exchange, the price? I don't know. I don't think there is any way anybody can tell that. I think there are other influences out there in that marketplace that would directly impact what the sale price is going to be as opposed to a tax that we impose here if that individual is caught would have on the transaction. So I don't think that would have probably much of any impact on what the street price is going to be. What I would tell you is that when they...I think it was Mr. Sanft, who came down from Minnesota and testified in front of the committee, said was that the proposal did work and that it paid for itself in the first year. And the first year I think they raised approximately \$67,000, and the second year it was somewhere in the neighborhood of \$300,000 that was raised through this tax and that it still allowed for the local subdivisions of government to seize the property, the car, for example, that the drug was being transported in, and sell that, keep those monies at the local level, whereas a tax was imposed on that individual who was in possession and was selling these drugs. So it was over and above that, allowed for another little gnat to bother that drug dealer, to use an analogy that Senator Chambers likes to use at times when he feels something isn't as effective as it should be. I would...I guess I would just say that, unfortunately, at this point in time we don't have an effective measure that would, even to my liking, be able to curtail the use of drugs that we have in 260. I think, as I have stated a number of times, education and prevention are the best form of defense against this kind of an enemy and it will continue to be a problem. All LB 260 purports to do is attempt to take away some of that ill-gotten gain from those individuals who traffic in this area. The tax will do that. It will hit them where it hurts, so to speak. They're in it for one reason and one reason only, for financial gain. We take a little bit of that away in LB 260, not as much as I would probably like but a lot more than the bill would have as it was originally

introduced. I would urge its advancement. Thank you, Mr. President.

SPEAKER BARRETT: The gentleman from the 46th legislative district, Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker. Just a note to add, you must remember that the tax code has been used for criminal investigation purposes. It's, for example, illegal not to report your gambling successes and your winnings even though it may be illegal to gamble. That strange seemingly oxymoronic result is because we tax income whether it is from ill-gotten gain or legal gain under our income tax code. You will recall, for example, that Al Capone was caught and imprisoned not for a violation of the Volstead Act but because he had failed to record all of his income. We do get to some strange results in which the tax code winds up reenforcing in different ways the illegality of certain transactions and provides another way in which wrongdoers may be caught and punished. This is another way of doing that with respect to the transaction for drugs over and above the already existing problems of income tax violations that undoubtedly are occurring since I don't think anybody files a 1040 claiming their drug profits either as a corporation or as an individual on their tax forms. But that result of taxing ill-gotten, illegal gains does exist elsewhere in our law and this is a specialized mechanism to do that for drugs. And I just wanted the record to reflect that.

SPEAKER BARRETT: Thank you. Additional discussion? Senator Warner, followed by Senator Schmit.

SENATOR WARNER: Mr. President and members of the Legislature, I have a question, I guess, of Senator Conway.

SPEAKER BARRETT: Senator Conway, would you respond?

SENATOR WARNER: Actually, Senator Conway, it's just to clarify in my own mind. I was looking initially at this bill, at the concept at least, of not much interest and then I began to look at it from the measure that as I think it was just discussed by Senator Landis as another measure to control the...in effect, control the sale of illegal drugs. And then I began to hear conversations now that is a revenue measure which certainly would not be of much interest to me, that it is going to result in higher price for drugs which isn't of much interest to me

either. Is the purpose of this legislation to enforce government or to enable government to better enforce the use of...illegal use of drugs and to penalize those who are selling them? Is that...or is there some other purpose? Because if it's some of these other things, it doesn't make any sense to me.

SENATOR CONWAY: Senator Warner, the primary purpose of this legislation is to extract from the profits that are being generated in the subterranean economy that is developing in great amount of social cost to us, an opportunity to extract from that particular business a recouping of some of those costs by virtue of having a taxing revenue generating technique in order to accomplish that.

SENATOR WARNER: But its purpose is not to reduce the availability and utilization? It's to raise money to correct the other social ills?

SENATOR CONWAY: Should those other benefits ultimately come to pass, we would certainly gladly accept them because we recognize the fact that we have criminal provisions and, therefore, find that particular activity somewhat contemptible from a criminal perspective. But the primary purpose of this is to create a situation that we have a profitable activity going on in the State of Nebraska that should be helped...should help pay some of its way for the social ills that it is causing the state.

SENATOR WARNER: Well, it's very difficult for me to legitimize an otherwise illegal act on the basis of providing a collecting of tax if it's for purposes of correcting the ills that an illegal activity is causing. That doesn't really make any sense to me. I guess I will probably support the act but I want to make it clear the only reason I'm doing it is I perceive this as another penalty that can be invoked upon those who are selling the drug for illegal use, or that is illegally not paying their income tax and I would tend to think it is not even justified to argue that you're using it as a revenue measure. But I certainly have no problem supporting it for the sole purpose of providing another expanded additional penalty on those who are selling.

SPEAKER BARRETT: Senator Schmit, Senator Hall next.

SENATOR SCHMIT: Mr. President and members, if you read the tax

and you read the penalty and you read the rest of the summary on LB 260, and in answer to some of Senator Warner's concerns, I don't think that there is any intent that it be a revenue measure but it is, in fact, a revenue issue. And it's kind of an ironic situation Senator Chambers points out, you have increased the tax, increased the price, increased the revenue, so then you come back and you start the round robin situation again and, at some point, you hope you have some revenue out here to combat the traffic in drugs. The facts are these. In the State of Nebraska the last year or two everybody has gotten hot on drugs, want to stop the traffic in drugs, going to do something to stop the traffic in drugs. The public wants to do something about drugs. The Governor was quoted in the paper several days ago, the public is fed up with the attitude toward drugs and I think that's...to paraphrase what she said, I agree. I agree that the public was fed up 10 years ago and 15 years ago, but we didn't do one heck of a lot on this floor insofar as putting a crimp in that activity. Oh, yeah, we chased the kids up and down. About three or four months ago, coming down to Lincoln, I heard one morning the good news, I guess, terrifying, depending upon where you were, that arrests had been issued for 82 persons in the Grand Island area and all the hoopla that went along with it, going to put a real crimp in the war on drugs. To the best of my knowledge, ladies and gentlemen, there is probably more marijuana growing on the average farm and along the fence lines in Nebraska than was confiscated in that entire major episode. I have not heard nor I don't know if anyone else has of how many convictions or how many years of sentences were handed down for that major crackdown on drugs. The major benefit, if any, from it was that it might have slowed a few people down or shifted a few people around, but insofar as stopping the drug traffic in Nebraska, you just as well try to add salt to the ocean, didn't do much at all, reorganized a little bit. At some point in time, we're going to be faced on this floor, sooner rather than later, with a shortage of revenue again. When that happens, as has been pointed out many times by the Appropriations Committee Chairman and others, our expenditures here are locked in in many areas, not much we can do about most of them. So we have to then cut other areas that have some flexibility. The war on drugs will be one of the first to go. The war on drugs reminds me somewhat of other activities and I had a very good friend who was dying of cancer and he was telling me, he said, you know, Loran, there are more people living off of cancer than are dying from it. And he was totally serious. He said we have spent so much money on

research and we do so many things that those who are afflicted with the disease suddenly do not even rank among the principal priorities of activity. And it comes back to what I said earlier, bureaucracy after bureaucracy. We set them up, we're going to fight this, fight that, and the bureaucracy only tends to administer themselves and forgets about the problem they were set up to control. I don't...I am not enamored with this bill. I put my name on the bill principally to call some attention to it, and we know...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...that there will be a few instances where the bill...the law, if it is passed, will be enforced. I don't know that it's going to raise much money. I don't know that it's going to do much to discourage the traffic of drugs. It's probably going to put some people out of business and put some people into business, but until this state has a broad overall tax or overall policy where it's well known that drug traffickers are not going to be tolerated, you're going to have drug traffic in Senator Chambers' district, in my district and in every other district. Ladies and gentlemen, I don't think that this Legislature is going to do anything of substance to stop the drug traffic. I don't think the Governor is going to do anything of substance because to do so is going to require a commitment of funds which we are not willing to make. And so then the public bears the cost. The public bears the cost of the crime wave that is required...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...to support the drug wave. And, ladies and gentlemen, it's one...this bill comes very close to those requirements that I usually cite where it does very little, nothing, helps no one, hurts no one, etcetera, but it is something. And I don't know what else to do because we're not going to appropriate the money to law enforcement and demand that they enforce the war on drugs. We're not going to do it.

SPEAKER BARRETT: Senator Hall, followed by Senators Kristensen and Chambers.

SENATOR HALL: Thank you, Mr. President, members, the only reason I stand and speak is that this is very similar to what currently takes place at the federal level. The drug

enforcement agency, currently, when they seize a shipment, I guess in those cases, it's their practice to take 20 percent right off the top. Their tax is basically 20 percent of whatever the value is of that shipment. And what we do here is put a dollar figure in there but they go after the major players and that's what the purposes of that act is. What the purpose of LB 260 is is to do virtually the same thing only on a smaller scale here in Nebraska and it is to provide those kinds of opportunities, as was pointed out by Senator Conway, to attempt to stifle the continuation of the drug trade in Nebraska through, although it is minor, a tax on illegal drugs. But once you are able to get in and tax those individuals who are trafficking, you can then get in and look at other areas, as was pointed out by some of the comments and questions that Senator Warner raised. It does allow for the ability to open up and find out what those individuals are doing, look at the assessment with regard to the income tax evasion there that possibly could lead to prosecution. But it starts us down that road. I think that over the years the tax has always been looked at as something that, well, just meant that we were trying to legalize the use of these types of substances. That is not the case at all. The case is that the tax comes on once a seizure has been made and it eats away at those profits that these individuals are basically in the business to achieve. All we try to do here, through LB 260, I think is to limit those, extract monies that will allow for the fight to continue, if you will, and nothing more than that. It is not an attempt, I think, to correct society's ills and the revenue that will be raised will be far from the amount necessary to battle the drug war. But it does allow us an opportunity at another point through the pocketbook of these individuals to attack the problem.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you. Mr. Speaker and members, I rise to support LB 260. Much has been said this morning about the purposes and are we trying to encourage drug use? Nothing could be further from the truth. This is just another weapon in our search to try to get a handle on this activity. I would be the last one who would stand up here and try to tell you that we ought to try to fill the courts fuller, full of prosecutions. I have also been the one who has stood up here and tried to tell us that our courts are full and we need to try to give them some relief. However, this is a unique way to go about attacking the

drug trade and traffic on a different approach and that is to regulate it economically, to try to take some of the profit out of it and also to try to put into it some further hurdles and some further difficulties for the drug trade, that we're going to go after them criminally and we should do so. We should put more money into enforcement. We should put more money into education. We should do a lot of the things that Senator Chambers tells us we should do in some of the other areas. But one of the things that has brought this to my attention with great interest was I went back and read some of the cases that had thrown these laws out in South Dakota. Then I went back and read some of the cases that had left it in in Minnesota. And I believe our law is a constitutional law after reading both of those cases. In South Dakota, quite frankly, they passed this law so that drug dealers and drug traders would have to tell the revenue people who they were and what they were doing, and that way then the revenue people would go out, we got the information legally, and then they would pass it on to the authorities and, in effect, it violated the Fifth Amendment something fierce, and because of that violation of the Constitution, that statute was thrown out. What Minnesota did was went back and said, look, that's not our purpose in doing this activity. It is not a method of drawing in names, addresses and telephone numbers of drug dealers so we can turn them over to the State Patrol. In effect, what this is is economic regulation and the Minnesota statute is drawn very, very similar to LB 260. And Minnesota upheld this law I believe back in 1988, if I remember right, early '88, saying that this was not violative of the Constitution, that there wasn't an infringement on the right of incrimination and that there was some opportunity for the people who were purchasing the stamps to do so in anonymity and not to reveal their status, their address or anything that would be used to aid a criminal conviction. In fact, in reading through Senator Conway's LB 260, I don't believe that is true. I think, after reading the cases, it appears to me that that is a workable provision and one that we should support. No, it's not going to do away with all drug abuse and drug use in this state, that's foolhardy. Is it going to help? Yes, I think it will. And, with that, I would urge the passage of LB 260. Thank you.

SPEAKER BARRETT: Senator Chambers, followed by Senator Byars.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, sometimes I get so frustrated I don't know what to do down here. I guess I do know what to do because I press right on. But a

way to avoid all this is just pay off another government agency. If you pay off the Revenue Department, you don't have to worry about them, so that's in line with what drug dealers do. They pay off the police, now pay off the Revenue Department and they're home clean again. I listen to all the stuff people talk on this floor and just shake my head at how little they know. It reminds me of a comment that a rhetorician made, Senator Kristensen, talking about a guy. He said, he speaks most learnedly on the wrong side of a question about which he is profoundly ignorant than anybody I have ever heard and that's this Legislature. What is revealed here is the profound ignorance but good intentions of people who are standing up here talking about the good that this is going to do. It's not going to do anything, so you might wonder why I oppose it in the way that I do. I'm tired of seeing laws put on the books, telling people that we've put something there that is going to fight drugs and it's not going to do anything; tired of seeing the Legislature, by formal enactments signed by the Governor, showing how ignorant the officials are of the underground activity out there; tired of seeing politicians beat their little chests, strut around at how they're fighting the drug problem when the people who are in the drugs know that these people know next to nothing and that they don't have anything to worry about. As one person also indicated, it's best to hold your peace and let people think you a fool than to open your mouth and remove all doubt. It would be better to let people think that the Legislature knows what is going on. Let law enforcement give the impression that they could do something if they were of a mind to do it. Nothing is ever as bad in reality as the threat of it. Nothing is ever as bad in reality as the threat of it. What the Legislature does by enacting this kind of legislation is to show that there is really nothing to worry about. The Legislature is so inept, so impotent, so powerless that it says that a cornerstone of its effort to fight drugs is to tax the drugs. That is so pointless, such a waste. Fifty years from now they will be doing what I heard them doing on the radio this morning, reading inane laws that are on the books and this will be one of them. Now the Revenue Committee, which was in a position to put a very modest tax on spirits and could raise some money for treatment, didn't advance that bill. But here they go run out there and send the Revenue Department, which is not the drug enforcement agency, which does not have an army of investigators or enforcers, to catch drug dealers and get money from them so that they can fund treatment. Silly. I just wish that some of the legislators would go into various

communities and explain to them this stuff that they talk about on the floor and watch the blank looks on people's face or the incredulous stares. These are the elected officials? These are the ones who are solving the problem? And they tell me they're going to fight drugs by taxing illegal drugs. This is what I have to look forward to in terms of help in solving this problem.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: That's why I try, in some cases, to save the Legislature from itself. You're not going to raise any money. You're not going to fight any drugs but some of you can go out on the campaign trail and say that you're really in there fighting the drugs because you're going to tax it. And what I will tell them, well, they tell that to you but that's the first step toward legalization, because the state has acknowledged it, has said that those who sell drugs can purchase immunity by paying this tax and the Revenue Department won't bother them, and it's the first step toward legalization. And they will believe me quicker than they will believe you because they don't think anybody could be dumb enough to think a bill like this is going to do anything to stop drugs, it has to be a part of a long-range scheme to legalize them. I will vote against it...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...no matter what reason is given for enacting it.

SPEAKER BARRETT: Senator Byars, please.

SENATOR BYARS: Question, please.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 45 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Conway, would you care to close on the advancement of the bill.

SENATOR CONWAY: Thank you, Mr. Speaker, and members, LB 260, as we now know it is in the original form, the way it was passed

out of the Department of...or the Revenue Committee and now as amended by that committee enhancing the specific dollar amounts on the tax that's associated with the handling of those drugs. Again, I think the greatest value...we spent a lot of time looking at and talking about the user and the impact it would have on them, but in most cases in terms of even passing on that cost, they are not going to have the drug in their possession to even pass on the cost. They're going to be nabbing the individual at whatever stage in the cycle that he is in, if he is a transporter, if he's someone who is storing, someone who is processing, somebody has a backyard lab, that's the point where you're going to be stepping in and possibly raising the costs of making it very difficult for them to engage in any larger activity. And the extent to which you catch a user, you have the proportionality in terms of the number of dosage units or the number of ounces that they have in their possession, I don't think is going to drastically alter. I think when I initiated this legislation it was really to make sure that Nebraska did not become a haven. In fact, when we first initiated it, I think there was a major bust out on a farm out in western Nebraska where they were growing it under pivot irrigation units. That was a Kentucky outfit and, when they caught them from the criminal side, they literally abandoned the operation, leaving warehouses, leaving tractors and other forms of agriculture equipment behind that they were using. It dawned on me at that time that Nebraska should not be in a position where they are going to even be perceived to tolerate such large activities that may go on in this state. We have seen very large transfer activities crossing the state in terms of busts on the interstate and in many cases this is independent of the criminal charge. The criminal charge is still there. There are times when an individual by virtue of the way the investigation and/or the arrest was conducted that a person may be freed from the criminal obligation and go scot-free. At this point, even though they were not convicted, possibly were not convicted of the criminal activity, we can still extract a certain amount of economic value from that activity because of the civil side of it. The civil side is also considerably easier to prove than the criminal side. The civil side of that activity is such that if it's in their possession and they can't prove they paid the tax, they owe the tax. It's a pretty simple process but I think would have a significant impact on generating income from the drug trafficking activities in Nebraska and then, hopefully, use that money and dedicate it towards helping those people who are addicted, who have a problem and who we, as a society, need to

provide education, training and other forms of rehabilitative support for those people to try to see if we can't help them off of their addictions and then ultimately eradicate the particular use of the drugs that are in the state. So I think this is a proper step and movement forward, an opportunity to be very serious about the fact that we're not going to allow the business of drug trafficking in the State of Nebraska. And, with that, I offer LB 260 for advancement to E & R.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 260 to E & R Initial. Those in favor please vote aye, opposed nay. Have you all voted? Please record.

CLERK: 27 ayes, 3 nays, Mr. President, on the advancement of LB 260.

SPEAKER BARRETT: LB 260 is advanced. Before proceeding to the A bill, the Chair is pleased to note that Senator Lynch has a brother, Phil, and Phil's wife, Mary, visiting today under the north balcony. Would you folks please stand and be recognized. Thank you. We're pleased to have you with us. Mr. Clerk, the A bill.

CLERK: Mr. President, LB 260A offered by Senator Conway. (Read title.)

SPEAKER BARRETT: Senator Conway, please.

SENATOR CONWAY: Mr. Speaker and members, LB 260A is simply an appropriation bill requesting a \$32,800 General Fund appropriation for this coming July and another \$31,200 after that. The expenditures are dedicated for any permanent or temporary salary necessary to initiate this particular activity through the Department of Revenue. So, with that, I offer the 260A.

SPEAKER BARRETT: Thank you. For purposes of discussion, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I guess you've got to spend money to make money. And if you're going to be out there dealing in the drug underworld just like the drug dealers, the Legislature has got to appropriate some money and get on out there and do it too. I have had some good recommendations of other things that ought to be taxed,

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the George W. Norris Legislative Chamber and this the 36th day in the life of the Second Session of the Ninety-first Legislature. Our Chaplain of the day, Pastor Scott Pixler, Campus Minister of the Independent Christian Churches at the University of Nebraska, Lincoln. Pastor Pixler.

PASTOR PIXLER: (Prayer offered.)

SPEAKER BARRETT: Thank you, Pastor Pixler. We are pleased to have you with us. Roll call.

SENATOR WEIHING PRESIDING

SENATOR GOODRICH: Mr. President,

SENATOR WEIHING: Record, Mr. Clerk. Senator Goodrich, are you requesting the attention of the Chair?

SENATOR GOODRICH: I sure am. I fully realize the Chair hasn't made any rulings yet, but we want to challenge the Chair anyhow. This is pick on John day.

SENATOR WEIHING: And what do you challenge the Chair on?

SENATOR GOODRICH: We haven't figured that out yet. We are just going to challenge the Chair anyhow.

SENATOR WEIHING: I move that you are out of order, Senator Goodrich.

SENATOR GOODRICH: Okay.

SENATOR WEIHING: Are there any corrections to the Journal?

CLERK: Mr. President, I have no corrections this morning.

SENATOR WEIHING: Any messages, reports, announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 260 and recommend that same be placed on Select File, LB 260A Select File, and LB 799 Select File, those all signed by Senator

March 5, 1990

LB 260, 1032, 1236

CLERK: I have E & R on 1032, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 1032 be adopted.

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the E & R amendments to 1032, please say aye. Opposed no. Carried. They are adopted.

CLERK: I have nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 1032 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Any discussion? If not, the question is the advancement of 1032 as amended. All in favor say aye. Opposed no. Carried. The bill is advanced. LB 1236, Mr. Clerk.

CLERK: LB 1236, Senator, I have E & R amendments pending.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 1236.

SPEAKER BARRETT: Any discussion? Those in favor of the adoption of the E & R amendments to 1236, please say aye. Opposed no. Carried. They are adopted.

CLERK: I have nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 1236 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Thank you. Discussion? Seeing none, those in favor of the advancement of 1236 as amended, please say aye. Opposed no. Carried. The bill is advanced. Mr. Clerk, to LB 260.

March 5, 1990

LB 260, 260A, 594

CLERK: LB 260, Senator, I have E & R amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 260.

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the E & R amendments to 260, please say aye. Opposed no. Carried. They are adopted.

CLERK: I have nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 260 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Any discussion? If not, those in favor of the advancement of LB 260, please say aye. Opposed no. Carried. The bill is advanced. LB 260A, Mr. Clerk.

CLERK: LB 260A, Senator, I have E & R amendments pending.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 260A.

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the E & R amendments, say aye. Opposed no. Carried. They are adopted.

CLERK: Nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I'd move that LB 260A as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Any discussion? Shall LB 260A be advanced? Those in favor say aye. Opposed no. Carried. The bill is advanced. LB 571 is removed at this point in time. The last bill is LB 594, Mr. Clerk.

March 5, 1990

LB 260, 594, 923, 953A, 955, 1059, 1080
1094, 1222, 1238

CLERK: I have E & R, Senator, to 594.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 594.

SPEAKER BARRETT: Any discussion? Shall the E & R amendments to 594 be adopted? All in favor say aye. Opposed no. The ayes have it. They are adopted.

CLERK: I have nothing further, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I'd move that LB 594 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Thank you. Is there discussion? Seeing none, those in favor of the advancement of LB 594 as amended, please say aye. Opposed no. The ayes have it, carried. The bill is advanced. Mr. Clerk, have you matters for the record?

CLERK: I do, Mr. President. I have amendments to LB 1238 by Senator Dierks; Senator Landis has amendments to LB 953A; Senator Withem, amendments to LB 1059; Senator Conway, LB 1094; Senator Coordsen to LB 1080; Senator Byars to LB 1222. (See pages 1161-67 of the Legislative Journal.)

Mr. President, Government Committee gives notice of hearing, signed by Senator Baack. The Appropriations Committee reports LB 955 to General File, that is signed by Senator Warner as Chair of the committee. And Senator Abboud would like to add his name to LB 260 as co-introducer, Mr. President. And, Mr. President, a motion to reconsider adoption of the Wesely amendment, AM2825, to LB 923. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Wesely.

SENATOR WESELY: Yes, Mr. Speaker, I would move that we adjourn until tomorrow morning at 9:00 a.m.

SPEAKER BARRETT: You have heard the motion to adjourn until

March 8, 1990

LB 164, 164A, 259A, 260, 260A, 313, 313A
348, 542, 594, 642, 678, 843A, 855
855A, 953, 953A, 965, 980, 980A, 1032
1136, 1236
LR 239

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of 843A.

SPEAKER BARRETT: LB 843A is advanced. Have you matters for the record, Mr. Clerk?

CLERK: I do, Mr. President. Amendments to be printed to LB 1136 by Senator Landis. (See page 1289 of the Legislative Journal.)

Your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 164 and find the same correctly engrossed; LB 164A, LB 259A, LB 260, LB 260A, LB 313, LB 313A, LB 348, LB 542, LB 594, LB 678, LB 855, LB 855A, LB 953, LB 953A, LB 965, LB 980, LB 980A, LB 1032 and LB 1236, all of those reported correctly engrossed. (See pages 1289-92 of the Legislative Journal.)

I have an explanation of vote from Senator Barrett, Mr. President. (See page 1292 of the Legislative Journal regarding LB 642.)

That's all that I have.

SPEAKER BARRETT: Thank you. The Chair is pleased to note that Senator Ashford had some fourth graders from Christ the King School in Omaha, District 6, with their teacher. Are you folks still with us in the south balcony? Apparently they have just left. Mr. Clerk, LR 239CA.

CLERK: Mr. President, LR 239CA was a resolution introduced by Senators Withem, Warner, Lindsay, Barrett and Weihing. It proposes an amendment to Article VII, Sections 10 and 13 of the Nebraska Constitution as well as Article XIII, Section 1. The resolution was introduced on January 16 of this year. At that time, Mr. President, it was referred to the Education Committee for public hearing. The resolution was advanced to General File. I do have Education Committee amendments pending.

SPEAKER BARRETT: The Chair recognizes the Chairman of the Education Committee, Senator Withem.

SENATOR WITHEM: Yes, Mr. Speaker, members of the body, this is the time of year when you would rather not have your personal

March 29, 1990

LB 259, 259A, 260

SPEAKER BARRETT: LB 259 passes. LB 259A.

ASSISTANT CLERK: (Read LB 259A on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 259A pass? All in favor vote aye, opposed nay. Have you all voted? Record, please.

ASSISTANT CLERK: (Read record vote. See page 1699 of the Legislative Journal.) The vote is 37 ayes, 7 nays, 4 present and not voting, 1 present and not voting, Mr. President.

SPEAKER BARRETT: LB 259A passes. Members will return to your seats, please. LB 260, Mr. Clerk.

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Chambers would move to return the bill to Select File for a specific amendment, that being to strike the enacting clause.

SPEAKER BARRETT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, there are a lot of undercurrents and issues going on this morning and I'm not going to get what I would consider a fair vote on this bill, so I'm just going to put it up there, take the vote, then be excused for the rest of the morning.

SPEAKER BARRETT: Anything further? Any discussion? If not, the question is, shall the bill be returned to Select File? Those in favor vote aye, opposed nay. Have you all voted? Record, please.

ASSISTANT CLERK: 6 ayes, 21 nays on the motion to return the bill, Mr. President.

SPEAKER BARRETT: Motion fails. Mr. Clerk, read the bill, please.

ASSISTANT CLERK: (Read LB 260 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 260 pass?

March 29, 1990

LB 260, 260A, 272A

Those in favor vote aye, opposed nay. Have you all voted? Record, please.

ASSISTANT CLERK: (Read record vote. See pages 1700-01 of the Legislative Journal.) The vote is 36 ayes, 8 nays, 3 present and not voting, 2 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 260 passes. LB 260A.

ASSISTANT CLERK: (Read LB 260A on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 260A pass? Those in favor vote aye, opposed nay. Record.

ASSISTANT CLERK: (Record vote read. See page 1701 of the Legislative Journal.) The vote is 39 ayes, 6 nays, 2 present and not voting, 2 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 260A passes. LB 272AE.

ASSISTANT CLERK: Mr. President, I have a motion on that bill. Senator Haberman would move to return the bill to Select File for a specific amendment, that being to strike the enacting clause.

SPEAKER BARRETT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the body, I intend to withdraw the amendment but I wanted the opportunity to make a few remarks. At the present time, \$10.5 million has been returned to the Commonwealth depositors, another \$2 million is on tap to be returned in the near future. So that would make a total of \$12.5 million. Now one of the reasons I am so opposed to the State of Nebraska refunding these funds is that the arguments of the proponents are that the state failed these people, that they did not follow through and do their job from the NGI (sic) board or the Department of Banking, or whoever. But I would like to call to your attention, fellow senators, back in 1984 when we had the Commonwealth problem we had many, many, many grain elevators go defunct and go under. Hundreds and hundreds of farmers lost their total grain income. Why did this happen? It's because a state agency, a state agency did not do their job proper. They did not do enough inspections. They did not see that the grain elevators were properly insured

March 29, 1990

LB 187, 187A, 259, 259A, 260, 260A, 272A
313A, 313

Journal.) 29 ayes, 19 nays, 1 excused and not voting,
Mr. President.

SPEAKER BARRETT: LB 272A passes. Senator Landis, for what
purpose do you rise?

SENATOR LANDIS: Could I rise for a point of personal privilege
for just a moment, Mr. Speaker?

SPEAKER BARRETT: Proceed.

SENATOR LANDIS: On behalf of a great many people, I would like
to thank this body for its statesmanship and its compassion. I
recognize it's done with political cost but with a sense of
responsibility. And on behalf of many people, I want to say
thank you.

SPEAKER BARRETT: Thank you. While the Legislature is in
session and capable of transacting business, I propose to sign
and I do sign, LB 187, LB 187A, LB 259, LB 259A, LB 260, and
LB 260A. Have you anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: Thank you. Proceed to LB 313.

CLERK: (Read LB 313 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure
having been complied with, the question is, shall LB 313 become
law? All in favor vote aye, opposed nay. Have you all voted?
Record, Mr. Clerk.

CLERK: (Read record vote. See pages 1704-05 of the Legislative
Journal.) 46 ayes, 1 nay, 1 present and not voting, 1 excused
and not voting, Mr. President.

SPEAKER BARRETT: LB 313 passes. The A bill.

CLERK: (Read LB 313A on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure
having been complied with, the question is, shall LB 313A become
law? Those in favor vote aye, opposed nay. Have you all voted?
Please record.

March 29, 1990

LB 163, 163A, 164, 164A, 187, 187A, 259
259A, 260, 260A, 272A, 313, 313A, 338
488, 488A, 503, 503A, 520, 520A, 536
567, 567A, 662, 898, 899, 1031, 1125
1126, 1170, 1220

morning visiting in the south balcony. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 520, LB 520A, LB 567, and LB 567A. Senator Lynch, please check in. Senator Byars. Senator Schimek, please. Senator Labedz. Members will return to your seats for a roll call vote. Mr. Clerk.

CLERK: (Roll call vote taken. See pages 1713-14 of the Legislative Journal.) 14 ayes, 33 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: Motion fails. Mr. Clerk, have you a priority motion?

CLERK: I do, Mr. President. May I read some items?

SPEAKER BARRETT: Proceed.

CLERK: Mr. President, amendments to be printed to LB 338 by the Health and Human Services Committee. (See pages 1714-17 of the Legislative Journal.)

Messages that bills read on Final Reading this morning have been presented to the Governor. (Re: LB 1031, LB 1125, LB 1170, LB 536, LB 1220, LB 1126, LB 898, LB 899, LB 163, LB 163A, LB 164, LB 164A, LB 187, LB 187A, LB 259, LB 259A, LB 260, LB 260A, LB 272A, LB 313, LB 313A, LB 488, LB 488A, LB 503, LB 503A. See page 1714 of the Legislative Journal.)

And LB 272A has been reported correctly enrolled, Mr. President. That is all that I have.

SPEAKER BARRETT: To the motion.

CLERK: Mr. President, the first motion, Senator Hall would move to recess until one-thirty, Mr. President.

SPEAKER BARRETT: You have heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Carried. We are recessed.

RECESS

April 4, 1990

LB 260, 260A, 313, 313A, 488, 488A, 520
567, 567A, 663, 663A, 854, 899, 1124
1125, 1141
LR 239

SENATOR BERNARD-STEVENS: It'd be a fascinating turn of events to have that happen. But the bottom line is all of this debate is about a bill that's unconstitutional. Bottom line is in some cases in western Nebraska, by the way the bill is, it may not be possible to get the kind of counseling that they need in order to get the permit signed on the informed consent. Bottom line is some people in western Nebraska who don't have a counselor or someone that fits the definition that's in LB 84 (sic), which I'll again bet that 90 percent of the people in this body still have no clue of what that definition is, nor care, that a lot of people in the rural part of our state have to go elsewhere to find somebody who fits the qualifications that are in the bill. I took the time to call counselors throughout western Nebraska and ask if they felt they qualified under the bill. They stated, the way the bill is written, probably not.

SPEAKER BARRETT: Time has expired.

SENATOR BERNARD-STEVENS: But if we'd a been allowed to make some (inaudible).. improve that situation. Thank you.

SPEAKER BARRETT: Thank you. Senator... excuse me, Mr. Clerk, you have a motion on the desk?

CLERK: Mr. President, Senator Chambers, I understand you want to offer a motion to adjourn until nine o'clock tomorrow morning, Thursday, April 5.

SPEAKER BARRETT: Have you anything to read in, Mr. Clerk?

CLERK: Mr. President, I do. I have your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LR 239CA and find the same correctly engrossed, LB 1141 and LB 1124. (See pages 1902-04 of the Legislative Journal.)

Mr. President, I also have three communications from the Governor regarding signed bills addressed to the Clerk: Engrossed LB 663, LB 663A, received in my office March 30 and signed by me on April 4. (See pages 1905-06 of the Legislative Journal.) A second communication: Engrossed LB 1125, LB 899, LB 260, LB 260A, LB 313, LB 313A, LB 488, LB 488A, LB 520, LB 567, LB 567A, received in my office on March 29 and signed by me on April 4 and delivered to the Secretary of State, Sincerely, Kay Orr, Governor. (See Page 1905 of the Legislative