

May 16, 1989

LB 653, 761A, 813, 815
LR 214

SPEAKER BARRETT: Thank you. Shall the amendment to 813 be adopted? All in favor vote aye, oppose nay. Record please.

CLERK: 29 ayes, 0 nays, Mr. President on adoption of the amendment as offered by Senator Warner.

SPEAKER BARRETT: The amendment is adopted. Mr. Clerk, for the record.

CLERK: Mr. President, I have two Attorney General's Opinions, one to Senator Haberman and one to Senator Scofield. (See pages 2401-2405)

Mr. President, Senator Schmit has amendments to LB 815 to be printed. A new A bill, 761A by Senator Warner, appropriates funds for 761.

Notice of Confirmation Hearing by Transportation Committee, it is signed by Senator Lamb as Chair.

And Mr. President, a new resolution LR 214 by Senator McFarland asking the Legislature to congratulate Mr. Ed Childress for his many years of fine service to the education of Lincoln's youth. That resolution will be laid over, Mr. President.

One last item, Senator Kristensen would like to add his name to LB 653 as co-introducer. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Lowell Johnson.

SENATOR SCHMIT: Mr. Speaker and members of the Legislature, I move that we recess until 1:30 p.m.

SPEAKER BARRETT: You heard the motion to recess until 1:30 p.m. Those in favor say aye, opposed no. Carried, we are recessed.

RECESS

SPEAKER BARRETT PRESIDING

May 17, 1989

LB 744A, 761A

be a need for a bill. This one would be positioned where it could be utilized. I don't have any plans for it myself, Senator Haberman. I have enough trouble with bills of my own that don't have to be amended into another bill. So I'm going to vote against the kill motion. And, if the bill were not killed, I would vote to advance it.

PRESIDENT: Thank you. Senator Scofield, please.

SENATOR SCOFIELD: Thank you, Mr. President. It's obvious I didn't offer to pay Senator Withem enough not to tell Senator Haberman about that. (Laugh.) But at any rate, there is one distinction here that I think needs to be made clear. And I'm going to....Senator Haberman, I appreciate your understanding here that I'm going to vote to mar your record and kill your bill. There is a difference between my bill and Senator Withem's bill in that my bill contains no substantive language, I just thought I'd make that point. Thank you.

PRESIDENT: (Laughter.) Senator Haberman, do you wish to close?

SENATOR HABERMAN: Well, Mr. President, members of the body, I think the difference between those two bills is Senator Scofield's is already gone. And poor old Senator Withem is still here suffering. I would ask you to vote to kill the bill, if we put it into the system it's just going to hold up the system at this late date. So I'd ask you to vote to indefinitely postpone 744A. Thank you.

PRESIDENT: The question is, shall LB 744A be indefinitely postponed? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 13 ayes, 6 nays, Mr. President, on the motion to indefinitely postpone.

PRESIDENT: LB 744A is indefinitely postponed. LB 761A.

CLERK: Mr. President, 761A was offered by Senator Warner. (Read title.)

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Mr. President, members of the Legislature, I signed the A bill after visiting with Senator Schmit on this

bill and turned it in. One of the reasons, of course, was that A bills, like other bills, still must meet the constitutional seven day limit. So, in order that that provision, in the event that funding was necessary, that the A bill needed to be introduced. As I understand, Senator Schmit will address the issue in more detail, but as I understood it there is perhaps some ambiguity at least, if not something more, in the words and the language in the one section of the bill which can possibly be interpreted more than one way, perhaps, or misinterpreted maybe is a more accurate statement to say. Obviously, if the amendment that was offered by Senator Weihsing the other day had advanced, it would have cleared up the issue. That amendment was not adopted at the time. But I think the issue needs to be established clearly by legislative intent on whether or not there is in fact a requirement under the legislation as it is proposed for costs to be incurred by the Conservation Survey Division, or if in fact their responsibility is one of consultation, technical assistance. And, if that is the case, then obviously the A bill is not necessary. But through the process of discussing the bill that issue can be resolved, or the bill could be advanced until everyone has had an opportunity to satisfy themselves and the decision of whether or not it needs to be considered could be addressed at either Select File or a later date. If I have any time left, I would relinquish it to Senator Schmit.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Senator Schmit, please. Senator Schmit, excuse me. Try it again.

SENATOR SCHMIT: Yes, Mr. President and members, Senator Warner has accurately outlined the reasons for 761A, but we have discussed it and I just want to reassert that it was never my intent that Conservation Survey do more than provide technical assistance to the local monitoring committee. And it was not the intention that myself, nor do I believe any of the committee members, that any sampling, or analysis, or testing would be carried out by the Conservation Survey. And, of course, the local monitoring committee is not authorized to do that either, because to do so could possibly jeopardize the position of the contractor. The contractor has to do that. And it was our intention and it was the intent of the Weihsing amendment to make clear that those services, advisory and consulting services that could be provided by Conservation Survey would be provided

without charge to the local monitoring committee, but also definitely would not be a "compensable" factor to the conservation and survey. So it was very, very important, I believe, that we recognize that we do not want to receive any inquiry or any I guess any deficit appropriation bill for Conservation Survey relative to activity out there. The position that we are in today I think is one which probably requires that there be broad understanding between all of us relative to the responsibilities of conservation and survey, and I would I guess, if Senator Warner concurs, support the advancement of the bill to Select File. And, if there is any disagreement,...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...from conservation and survey as to the statements that Senator Warner and myself have made now, then we could debate it further on Select File. If not, then if we would kill LB 761 on Select File that should, in fact, be the sufficient intent of the Legislature that there be no monetary commitment in this regard. So, at this point, I guess, unless someone disagrees, I would allow or support the bill be advanced and with the understanding that it may be killed on Select File, if it's generally agreed that we do not need it.

SPEAKER BARRETT: Thank you. Senator Schmit, your light is the next light. Would you care to make any other comment?

SENATOR SCHMIT: Well, just to repeat again that it was not the intent of myself that the Conservation Survey do any more than to provide counseling and technical assistance to the local monitoring committee. Conservation Survey was not supposed to be actually involved in any sampling, coring or any seismographic work, any drilling, anything of that nature. They are not in a position to do so for the monitoring committee. The monitoring committee is not really...is not authorized to do that either. And the contractor is responsible for that. So, I just wanted to be sure that any activity carried on by the Conservation Survey not be considered to be a "compensable" service which would come back to the Legislature during the 1990 session in the form of a deficit appropriations bill. If this is the concurrence of Conservation Survey, then we can perhaps...we can definitely kill the bill on Select File. If it is not the concurrence, then we need to discuss it further, because there should be no expense relative to Conservation

Survey's activity with the local monitoring committee.

SPEAKER BARRETT: Senator Morrissey, followed by Senator Scofield.

SENATOR MORRISSEY: Mr. Speaker, members, thank you. I concur with Senator Schmit, there should be no expense. On General File I mentioned that had wanted to go to Conservation Survey early. And I went down and talked to them and they told me they just couldn't do it, they couldn't let a man go, let any people go to do the type of inspection that I wanted them to do on there. They told me they had commitments and they just couldn't release the people. I agree with Senator Schmit that no state money should be used on this type of testing, it should all come out of the compact fees. Very few people were listening then, as I don't think very few are listening now. I'm getting used to that. I was going to write you all a letter on a couple of my amendments, but I think I'll just take five minutes now and save some paper. My amendments the other day that I brought up on the license review, when another entity would take control of siting an operation of our waste facility, I thought was reasonable and simple. The question is, what is controlling interest? Maybe 10 percent isn't right, maybe. I guarantee you 50 percent isn't proper. In my amendment on the health study seemed to be pretty simple to me. We just simply wanted to find out what was going on now in the region so we could know if there are any drastic changes later, very simple. Made a lot of sense to me. We have a lot of problems with people being very fearful of this nuclear waste, and it was simply an issue of bringing in some trust, some more trust in the process. Get these people confident, give them some studies to show them nothing is going on, make them comfortable, give them some trust. But I was told many, many times after the debate that I made some good points, but they said, but we know where you got your information. Folks, I think it was those crazy zealots again, dangle paranoid, anti-nuclear zealots that were giving me all my information. But where my arguments were coming...where the arguments against my bill were coming from I was wondering. And I stood back and took a look the next day and I kind of saw a bizarre little circular argument forming. Senator Schmit said that the study wasn't needed, that the Department of Health would already do it. The Department of Health, I found out, lobbied against my specific amendment saying they couldn't do it, there's no accurate scientific way, because of microwave ovens and X-rays, et cetera, et cetera, they just couldn't do

it. So what they were telling me was there was no scientific way to tell what health problems are there now, no way to establish a base, no way to tell what's there later. In other words there is no way to prove that this facility will be safe, that's what they're telling me. Just no way to prove that scientifically, yet we're guaranteed that it's safe, they guaranteed us it's safe, but there is no way to prove it's safe. And I read in the paper that Mr. Harry Borchert, of the Department of Health, said, well, we can do that type of study if there is just a few people in the area, then a study would be simple. I asked, if we study just a few people, is that a scientific study? First they complain no scientific way to do it, but then they say, well, yes we can do it, if there is just a few people in the area, that would be scientific. I wonder, has anyone other than me heard of a control group or anything to that effect, a large sampling of people. And we talk about the paranoid anti-nuclear zealots, I mentioned to Mr. Borchert that there was a high incidence of colon cancer in that area, just to bring about a point, and as soon as I said there is a high incidence of colon cancer in that area Mr. Borchert said, but you can't prove that has anything to do...

SPEAKER BARRETT: One minute.

SENATOR MORRISSEY: ...with the nuclear power plant, and I agree, and that's not what I was getting at, I said southeast Nebraska. So we've got a little paranoia here on all sides, folks. And forward we continue to move in this process. Folks, I worked real hard on these amendments. They were not delaying amendments, I thought they were good ideas, very good intentions, and I failed on them. I didn't work hard enough. I failed and I failed badly on these amendments, didn't make my point. Well our representatives in this compact, early on, they worked hard, they worked diligently with good intentions and they failed, they simply failed. As a host state we have no control. All we have to do is look at the California compact. As the host state California has...

SPEAKER BARRETT: Time has expired.

SENATOR MORRISSEY: ...complete control over their compact. We have no control, California has complete, same company, what's the difference?

SPEAKER BARRETT: Senator Scofield, please. A gentle reminder

May 17, 1989

LB 761A, 761

that the subject is the advancement of LB 761A.

SENATOR SCOFIELD: Thank you, Mr. President. I just want to comment as far as the...some of the problems that I think we need to be aware of here as far as a need for an A bill. While it is true that the local monitoring committees are not authorized to perform on site testing and so forth themselves, if my memory serves me correctly, I think they are authorized to contract for that, and that was the rationale for allowing Conservation Survey to get involved in this. My concern would be at this point, I guess, that I don't want Conservation Survey to find themselves in trouble here down the road as far as providing services and then not knowing how to recover their costs. There are a couple of ways this could be dealt with. We could amend the language in LB 761 that would allow them then to go back, Conservation Survey to go back to the cash fund and that money then, of course, would be billed back essentially to the money that is being generated through this whole compact process, or otherwise you could have an A bill. My preference, obviously, would be to have it come out of cash funds rather than out of General Funds, but I think it's important that we make it clear here that as I read, and I think as all of us understand, currently 761, Conservation Survey could be an entity that could be contracted for to provide certain services. And it is important that we have it clear how they are ultimately going to be reimbursed for their activities. I suppose the other option is they could come in for a deficit. Here again my preference would be to have access to cash funds rather than General Funds picking this up. I might suggest at this point that if this A bill is withdrawn, or if it is not advanced, that it would be important perhaps for us to ask that there be some kind of memorandum of understanding be developed between Conservation Survey and DEC and perhaps local monitoring committees so that we understand how this process works. And ideally, so that Conservation Survey, or any other contractor that local monitoring committees might choose to use would have access to cash funds. So it might be wise, at this point, to keep the A bill alive until we resolve that. Thank you.

SPEAKER BARRETT: Senator Schmit. Thank you. Senator Korshoj. Thank you. Senator Langford.

SENATOR LANGFORD: Call the question, please.

SPEAKER BARRETT: Question has been called. Do I see five

May 17, 1989

LB 761A, 762A, 817A

hands? I certainly do. Those in favor of ceasing debate please vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: Debate ceases. Senator Warner, anything further? The question is then the advancement of 761A to E & R Initial. All in favor vote aye, opposed nay. Record, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 761A.

SPEAKER BARRETT: LB 761A is advanced. LB 762A.

CLERK: LB 762A was introduced by Senator Coordsen. (Read title.)

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker, members of the body. LB 762A is an \$11,000 A bill that's been estimated, by the Department of Revenue, to cover the possible homestead exemptions that would result from the amendment that was placed on 762 last week. So I would be open to questions and would move the advancement of 762A.

SPEAKER BARRETT: Are there questions? If not, shall LB 762A be advanced? All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of 762A.

SPEAKER BARRETT: LB 762A is advanced. LB 817A.

CLERK: 817A, by Senator Conway. (Read title.)

SPEAKER BARRETT: The member from Wayne, Senator Conway.

SENATOR CONWAY: Mr. Speaker, members, 817A has been brought to me. LB 817, as you may remember, was the bill that will transfer the 1,400 acres of Nebraska property into the State of South Dakota. There was some discussion previously about surveys and the like to identify that. We, at this point, really don't know whether or not the A bill would be necessary in the sense that South Dakota did not also pass an

May 17, 1989

LB 137A, 525, 761A, 762A, 815A, 817A

SENATOR SCOFIELD: Thank you, Mr. President, and I've moved in the bracket motion we do it, we bracket this bill until Friday at 1:30 p.m. Hopefully by that time we'll be through with everything else. This is the trailer bill and maybe by that time we can have sorted out some things. This bill obviously has too much money in there to be a legitimate trailer bill. It's more like a stone around all our necks rather than a trailer bill at this point, and so that's the rationale behind the motion. I'd urge you to accept it.

PRESIDENT: Senator Lamb, please. Senator Warner. Senator Abboud. Senator Lindsay. Senator Conway.

SENATOR CONWAY: I'll call the question.

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

CLERK: 27 ayes, 1 nay to cease debate, Mr. President.

PRESIDENT: Senator Scofield, would you like to close, please? The question is...

SENATOR SCOFIELD: (Mike not activated immediately.) ...the bill.

PRESIDENT: ...the bracket motion by Senator Scofield. All in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 23 ayes, 5 nays, Mr. President, on the motion to bracket the bill.

PRESIDENT: The bill is bracketed until, what was that, one-thirty, Friday?

CLERK: It was bracketed until May 19, Mr. President.

PRESIDENT: Okay, the bill is bracketed. Do you have some things to read into the record, Mr. Clerk, please?

CLERK: Mr. President, Enrollment and Review reports LB 137A to Select File, LB 761A, LB 762A, LB 817A and LB 815A all reported to Select File, all signed by Senator Lindsay.

May 18, 1989

LB 355A, 761A, 762A

SPEAKER BARRETT: The question is the adoption of the amendment. All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Wesely's amendment.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 355A be advanced to E & R for Engrossing.

SPEAKER BARRETT: The question is the advancement of LB 355A, as amended, to E & R Engrossing. Those in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. At this point I'd like to continue with four or five additional bills that we can handle at this point. These are bills to catch up with the parent bill, specifically 761, 762, 817, 815, all A bills. Mr. Clerk, proceed.

CLERK: Senator, I have on LB 761A, I have no amendments to the bill, Senator.

SPEAKER BARRETT: LB 761, Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 761A be advanced to E & R Final.

SPEAKER BARRETT: The question is the advancement of LB 761A. All in favor say aye. Opposed no. Carried, the bill is advanced.

CLERK: The next bill I have, Senator, is LB 762A, and I have no amendments on that bill.

SPEAKER BARRETT: LB 762A, Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 762A be advanced to E & R Final.

SPEAKER BARRETT: Shall the bill be advanced to E & R? All in

May 18, 1989

LB 89, 137, 137A, 211, 215, 228, 279
289, 289A, 352, 639, 651, 651A, 761A
762A, 815A, 817A

Teachers buy books. Teachers buy supplies for kids that don't have them. They take money right out of their own pockets and give it to kids. And so it's...I guess that's one of the reasons why I feel very strongly about giving the money directly to teachers. Senator Warner's remarks struck a chord with me and reminded me of all the contributions that I know that individual teachers make to kids. And so I would urge us to get on with it. Let's pass this bill. It's time we did something for teachers.

SPEAKER BARRETT: Senator Schellpeper.

SENATOR SCHELLPEPER: I will give my time to Senator Moore.

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: Yes, Mr. Speaker. just to say I guess it's time to withdraw this. I apologize to the...to the original supporters of this bill, at least, because I think some of them wanted to read it tonight and because if my amendment was adopted, they couldn't, but I think it makes it a better bill, obviously, a bill that I can now support and I think there has been some fights among some varying entities on this bill. I think now we've got a bill that really does help education in the state. And, with that, I withdraw the amendment. The last things I will say on LB...the last things that all of us will say on LB 89 and come Monday we'll pass the bill over to the Governor.

SPEAKER BARRETT: Thank you. It is withdrawn. Anything further, Mr. Clerk?

CLERK: Nothing further on that bill, Mr. President.

SPEAKER BARRETT: Yes, for the record.

CLERK: Mr. President, amendments to be printed, Senator Scofield to LB 761A; Senator Chizek to LB 279. (See pages 2546-47 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 137, LB 137A, LB 211, LB 215, LB 228, LB 289, LB 289A, LB 352, LB 639, LB 651, LB 651A, LB 761A, LB 762A, LB 815A and LB 817A, Mr. President. (See pages 2548-50 of the Legislative

May 19, 1989

LB 651A, 761A

what was substituted. So I would move the bill to be returned.

SPEAKER BARRETT: Thank you. Discussion on the motion to return? If not, those in favor of the adoption of the motion vote aye, opposed nay. Record.

CLERK: 34 ayes, no nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: Motion adopted. The bill is returned. Senator Warner.

SENATOR WARNER: Move the amendment be adopted.

SPEAKER BARRETT: Any discussion? If not, the question is the adoption of AM1945 on page 2537. All in favor vote aye, opposed nay. Record, please.

CLERK: 29 ayes, no nays, Mr. President, on the motion to adopt the amendment.

SPEAKER BARRETT: The amendment is adopted. Senator Warner.

SENATOR WARNER: Mr. President, I move the bill be readvanced.

SPEAKER BARRETT: The question is the readvancement of the bill. Those in favor say aye. Opposed no. Ayes have it. The motion carried. The bill is readvanced. To LB 761A, Mr. Clerk.

CLERK: Mr. President, Legislative Bill 761A has a motion. Senator Scofield would move to return the bill for a specific amendment. (The Scofield amendment, AM1946, appears on page 2546 of the Legislative Journal.) Senator, I have a note that you want to withdraw and substitute, is that right?

SENATOR SCOFIELD: Mr. Clerk, I'd ask unanimous consent to substitute 1961 for that amendment. (The Scofield amendment, AM1961, appears on pages 2602-03 of the Legislative Journal.)

SPEAKER BARRETT: Any objections? So ordered. Senator Scofield.

SENATOR SCOFIELD: Thank you. Mr. President and members, you will recall when this came up the other day, and I apologize for not catching this bill on Select. It just went zipping on by

yesterday before I got language drafted and offered it. I see Senator Schmit has offered a...is intending to offer a kill motion on that bill, but, as I read this right now, I would encourage you to adopt my language here and I think it takes care of what is apparently a pretty ambiguous situation anyway. I'm looking at the handout Senator Schmit has distributed here with a letter to Dr. Wigley at Conservation and Survey that Senator Schmit had sent, apparently, over to him just today with a response back today with Dr. Wigley suggesting that there isn't a need for an A bill. I would...I would question that, but you will recall yesterday I raised some questions about not only the problem we might create for Conservation and Survey here if they had to come in for a deficit, depending on what progresses here, or the possibility of, obviously, the expenditure of General Funds. And so I think the amendment that I'm offering here takes care of that problem and assures that Conservation and Survey will not in any event need to come in for a deficit and, at the same time, it keeps them out of our General Fund and allows them access to cash funds. I indicated yesterday generally what the intent of my amendment would be, or the day before, I believe it was, actually, and so the substitute amendment is the same one as is printed in your Journal. Mr. Clerk, if you could reference that page. Do you happen to know the page number that the amendment was on that I'm replacing here? This is essentially the same amendment. I withdrew the...

CLERK: The first amendment, Senator?

SENATOR SCOFIELD: Yes.

CLERK: It was on page 1883, I believe, Senator.

SENATOR SCOFIELD: Page 1883. That amendment...

CLERK: Senator, no, no.

SENATOR SCOFIELD: ..is substantial...

CLERK: No. Senator, excuse me, that's not correct. It was on page 2546.

SENATOR SCOFIELD: Page 2546. Thank you, Mr. Clerk.

CLERK: Uh-huh.

SENATOR SCOFIELD: The amendment I'm substituting is identical except for those four precious little words, "and there is hereby appropriated", I guess there are five words, which were left out in the original draft and we all remember what kind of trouble you get into if you don't put those words in. My amendment simply says that the State Treasurer is directed to transfer \$146,250 from the Low-Level Radioactive Waste Cash Fund for July 1, 1989 to June 30, 1990, and \$72,760 from that...from the Low-Level Radioactive Waste Cash Fund for July 1, 1990 to 1991, to the University of Nebraska for the University of Nebraska IANR Program 799, to carry out provisions of LB 761. Any unexpended balance at the end of that time shall be returned to the Cash Fund. And Section 2 makes an intent statement that there will be a memorandum of understanding between the Department of Environmental Control and the University of Nebraska IANR regarding how the university will account to the department for the expenditures. That may be unnecessary, but I want to make it absolutely clear that we want to know how those funds were used and if, in fact, it was proper. The Section 3 talks about it is the intent of the Legislature that the Conservation and Survey Division of the University of Nebraska shall utilize funds transferred from the Low-Level Radioactive Waste Cash Fund to provide services to local monitoring committees for both preoperational and postoperational monitoring, testing and other services required by Legislative Bill 761, and that's all it does. And I think that could head off some problems next year and, again, as I mentioned, primarily, my desire here is to head off the possibility of Conservation and Survey coming in for a deficit appropriation. I think it's only appropriate that any services, in fact, be paid out of Cash Funds and, because of the ambiguity that is apparently still there that Senator Schmit cites, I think this is just prudent that we take care of this right now and I would ask you to return the bill. Thank you.

SPEAKER BARRETT: Thank you. And, Senator Scofield, I'm going to ask something as well. I know the hour is late. We're rapidly approaching the bewitching hour, but the noise level is just too much. I ask you to cooperate, please. Discussion on the motion to return? Senator Warner. Senator Ashford. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, LB 761A was introduced, and you all have on your desk a letter which I sent

to you which explains the confusion over the statutory duties of the Conservation and Survey Division of the University of Nebraska. Now, there is correspondence on your desk from Mr. Perry Wigley, who is the Director of Conservation and Survey, and I ask you to look at it because it is very critical. And I want to emphasize that he states, very emphatically, that all of this can be done without the passage of LB 761A and, furthermore, with the clarifications provided in my letter to him, he states please disregard the fiscal note previously provided. Want to emphasize that the disagreement over the...what was called the Weihing amendment to LB 761 was as to whether or not Conservation and Survey ought to be, number one, even involved in on-site testing and sampling and et cetera; number two, if in fact the local monitoring committee ought to be involved in those activities. Facts are that neither of them should be. Those responsibilities properly belong with the contractor. Secondly, for anyone else to be involved in that type of activity could very well damage the credibility and the contractual responsibility of the contractor. In other words, the local monitoring committee has no authority to sample and to do seismograph studies and the rest of that type of work, sampling analysis. They may observe, they may check, but they are not...it is not the intent, and I guess when it comes right down to it, it was not my intent that they should be doing technical work. We were told time and again that they were...they needed outside assistance just in order to answer questions or ask questions. Therefore, I do not want to confuse you as to who is responsible here for this type of activity. The Conservation and Survey will provide, without charge, those services which they are in position to provide, but it is not their position to do any testing. They do not need any money. Mr. Wigley agrees they do not need any money and, therefore, the bill should die. You should vote red on this bill on Final Reading and I just would encourage you that you not adopt Senator Scofield's amendment. Senator Scofield has had tremendous success this year in wrangling money out of you folks and I congratulate her for it, but I would suggest that maybe you've got to draw the line somewhere, Senator Scofield, and we really don't care so much as long as you don't get into any mischief, but, from time to time the money that you provide here in this instance can actually cause difficulties for the entire process. I do not support the Scofield amendment. In fact, I oppose it very vigorously and I ask you to oppose it also.

SPEAKER BARRETT: Thank you. Any other discussion on the motion

to return the bill? Seeing none, Senator Scofield, would you like to close?

SENATOR SCOFIELD: Yes, Mr. President. Thank you. I must respectfully disagree with Senator Schmit, ladies and gentlemen, and this doesn't have anything to do with wrangling money out of the state. Far from it. This has to do with protecting the General Fund and also, I might add, protecting innocent, I believe innocent, Mr. Wigley from maybe drawing conclusions that aren't warranted. I don't...the last time I looked, he's never sat in the Appropriations Committee, and the last time I looked...I'm not sure that he understands the whole process here and this bill, by both Senator Schmit's admission and Mr. Wigley's, says it has ambiguous language which is cited in both of their letters, and I could foresee a circumstance where Conservation and Survey, unwittingly, finds themselves eating expenses through actions that are our responsibility, not theirs, and I would suggest that Mr. Wigley should not be put in a kind of position where he has to come in and ask for a deficit at some point because there were costs incurred that were unforeseen. I see no need to put the Institute of Agriculture and Natural Resources in this position. We do, from time to time, argue against A bills in this body because we are afraid that will jeopardize our bill. I don't see that as a problem with this instance and, frankly, I'm a little confused at Senator Schmit's objections because all this does, simply, is I think covers IANR in the instance that they find themselves incurring costs that come about as a result of what both of them say is ambiguous language. I think the Weiing amendment that Senator Schmit referenced to, if I'm...there may be one section that Senator Weiing referenced that I believe he called an E & R amendment and so I think maybe that's where...where...I think that's one of the pieces that he's talking about. And as I look at this language that's attached that Senator Schmit has passed out here, it seems to me that it might be unreasonable to ask Conservation and Survey to perform these functions without charge. This is a way that should become necessary for them to be reimbursed that they don't have to come back in and ask for a deficit and put themselves in an embarrassing situation. It allows them to use Cash Funds, which isn't General Fund money, obviously, and so I think this is a prudent amendment. I...it's certainly not my intent to harm this bill, as you can well appreciate, Senator Schmit, but I think an A bill is appropriate and I think this takes care of any potential problems that might be down the road. So I would respectfully ask you to return the

May 19, 1989

LB 761A, 761

bill. Thank you.

SPEAKER BARRETT: Thank you. You have heard the closing and the question is the return of the bill. All in favor vote aye, opposed nay. Voting on the motion to return. Have you all voted? Senator Scofield?

SENATOR SCOFIELD: Could we have a roll call vote, please? Maybe a little check in?

SPEAKER BARRETT: Thank you. Roll call vote has been requested. Please record your presence. Members, return to your seats. Senator Byars, please. Senator Pirsch. Senator Lindsay. Senator Chambers. Senator McFarland, please, the house is under call and please record your presence. Senator Scofield, may we proceed? We've had a request for a roll call vote in reverse order. (Gavel.) Mr. Clerk.

CLERK: Senator...

SPEAKER BARRETT: Reverse order.

CLERK: Excuse me, Mr. President. (Roll call vote read as found on pages 2603-04 of the Legislative Journal.) 19 ayes, 19 nays, Mr. President.

SPEAKER BARRETT: Motion failed.

CLERK: Mr. President, I do have a second motion on LB 761A. Senator Schmit would move to return the bill, purpose being to strike the enacting clause.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President, I wish that you would read the language in the letters which I sent around to you. I guess I'm at a loss from time to time to understand when an issue is decided. We fought the battle on LB 761 in the trenches and in the hedgerows and around the corners and everything else. The one issue that seemed to be in doubt was the Weihing amendment, and it's the same old story that we have from time to time, the good old boy theory--you got to give them something. And every once in awhile blind hogs will find an ear of corn. You've heard me tell that story before, and you sometimes give away something which you shouldn't be doing. I'm going to maintain

my composure here, but I get a little bit fed up from time to time with people saying, well, this isn't going to mean anything. Ladies and gentlemen, unauthorized fooling around in the area of testing and seismograph sampling and et cetera can cause the contractor to have problems that might affect liability, that might affect guarantees, might affect an entire new area of responsibilities. Now there comes a time, ladies and gentlemen, when you accept certain premises. You accept the premise that the individual, the company, the entity with which you've contracted is competent. We have had all those other allegations, and I am disappointed that we continue to drag that same old bag of bones across the podium here and attempt to scare people, to intimidate people, and Senator Scofield is dead wrong. She is just plain wrong. Now she is maybe right about a lot of things, but on this issue she is wrong. And there is no reason why the compacts should be called upon under this kind of a guise to provide money to Conservation and Survey or to provide money to the monitoring committee for sampling. Therefore, ladies and gentlemen, you are incorrect if you pass this bill. I appreciate the fact you did not adopt the Scofield amendment, but once in awhile...once in awhile it's like a kid riding in an airplane, you press the wrong button and something's going to pop and go wrong. You better not be doing it unless you know what you're doing. We oftentimes on this floor, myself included, cast a vote on which I'm not totally informed. When that time comes, if I don't know what I ought to be doing entirely, I try to follow the leadership of those individuals who usually we vest the most responsibility with. A whole host of education bills that I'm not very familiar with, it's not my forte, and traditionally I follow the leadership of those individuals who are with the Education Committee. General Affairs, I follow the leadership, even though I sometimes disagree 'cause I understand they've done the work and they did the research. I may have personal feelings, but I follow that leadership, and I am disappointed that the Natural Resources Committee is at least divided on this effort, to say the least. If the Natural Resources Committee members are uncertain about this then speak to me, if you will, please. If the rest of you have a question, speak to me about it. If you want to harass the bill, then speak to somebody else. But you've got a bill. I don't know how many times, ladies and gentlemen, during the course of the debate on LB 761, I was tempted to say take the amendments, pass the bill, take all the trash that somebody piles on it. If you want to listen to the senators who have those amendments, fine. Turn them loose with it. Let them live

with the garbage in the wreckage.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: I don't like to do that. I have never done it. But the temptation, ladies and gentlemen, is strong. We are here at 9:07 on a Friday night when we have serious work to do, each and every one of us have pulled amendments that were important to us on various bills because of the constraints of time and we are wasting time on a bill which was only introduced as a self-defense measure and which, when it was suggested that it wasn't needed, ought to have been indefinitely postponed or struck...the enacting clause ought to have been stricken like that, and we are hustling around with it. Ladies and gentlemen, I suggest you strike the enacting clause and get on with the business of this Legislature at this late hour.

SPEAKER BARRETT: Thank you. Obviously, this will be the last issue handled this evening before going to Final Reading. There is discussion on the motion. Senators Scofield and Morrissey, your lights are on. Senator Scofield.

SENATOR SCOFIELD: Mr. President and members, I don't want to drag this out because we have lots of work to do, but I don't want to just sit here and have this be construed as somehow, somehow of harassing this bill, because it isn't. It is simply a way that I thought was a reasonable way to propose to avoid any costs being incurred, first by the General Fund, which Senator Schmit is telling us won't happen and won't be necessary, but I still think that that could happen. It's happened before. I've sat on the Appropriations Committee now for long enough to know that every once in awhile an issue comes back that was unforeseen, sometimes deliberately and sometimes not deliberately, but nevertheless it shows up, and the amendment was simply to try to cover IANR, frankly, in the event that that happens because it apparently isn't clear at all what is and isn't, based on both Senator Schmit's letter and Mr. Wigley's letter here that you have right in front of you. And so it's getting a little late, Senator Schmit, and you're getting a little testy about this, but it's certainly not intended as any kind of attempt to attack this particular bill and doesn't have anything to do with who's leading what here. It has to do with some...what I think is a reasonable attempt to try to protect both IANR and to make sure that the appropriate parties pay for any costs should they be incurred. Obviously,

May 19, 1989

LB 761A

that cash fund proposal was rejected and if people decide to kill this bill, I guess we'll see what happens next year. Thank you.

SPEAKER BARRETT: Senator Morrissey.

SENATOR MORRISSEY: Yes, Mr. Speaker and members, it...I didn't see Senator Scofield's amendment, but looking at it, it seems fairly simple to me who's going to pay for what the Conservation and Survey does. It says in Senator Schmit's letter from Mr. Wigley that they will do something. They will help the monitoring committees. If they're going to do something, if they are going to help these monitoring committees, they will be incurring a cost, simple as that, because if they weren't helping the monitoring committees, they'd be doing something else. So if we...Senator Scofield was simply attempting to put that cost on the proper people--the compact. All five states should pay for any costs. The State of Nebraska should simply not incur any costs on their own. Senator Scofield was simply trying to spread that cost of the Conservation and Survey, who they say they will be doing something and if you do something with hired people that are drawing a salary, it does cost. Either they're going to absorb the costs or we go with Senator Scofield, what she attempted to do, and spread the cost out over five states, simple as that. Thank you.

SPEAKER BARRETT: Senator Schmit. I believe this represents your closing.

SENATOR SCHMIT: Mr. President and members, I appreciate the explanation of Senator Morrissey and Senator Scofield. All I'm telling you is if you read the letter, this last sentence of the second paragraph, it says all of this can be done without the passage of LB 761A. The last sentence of the letter reads: "With the clarifications provided in your letter, please disregard the fiscal note previously provided." Senator Scofield, I appreciate your concern about fiscal responsibility. I would suggest that you have a full-time job to watch out for those problems you have developed at the University of Nebraska relative to the greenhouses and the Pharmacy College, and with the Medical School being built I suggest you spend a little more time down there and watch that thing being built, and let the compact worry about this. I'm telling you what you are doing here if you allow the Scofield amendment to be adopted, which you decided against, but if you don't just kill the bill, you're

encouraging someone to get their dipper in the bucket. It's not necessary. Every time that you set up a fund, every time...one of the reasons why in some other instances around here this year I have discouraged the establishment of huge funds. I have discouraged the establishment of additional fees, large fees, because I believe it encourages the expenditure of money. It encourages individuals to shoot for that money, to work for it. It encourages the growth of budgets. We are going to have plenty of difficulty and, to this extent, Senator Scofield and Senator Morrissey are both correct. There will be much, much controversy about this project before it is completed. To the extent that we can reduce that controversy by responsible action on this floor, I think we should do so. And I can't predict without...with 100 percent certainty what will happen in any instance, nor can any members of the Appropriations Committee or anyone else on this floor. I can only take the best advice that I have before me today and that advice is we don't need the bill. And I would hope that you would vote to indefinitely...or remove the...return this bill for the purpose of striking the enacting clause.

SPEAKER BARRETT: The question is the return of the bill to Select File to strike the enacting clause. All in favor vote aye, opposed nay. Record, please.

CLERK: 29 ayes, 3 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: Motion prevails. The bill is returned. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I move the adoption of the amendment. (The Schmit amendment, FA293, appears on page 2604 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Morrissey.

SENATOR MORRISSEY: Quickly, Mr. Speaker, now the way I understand it, in case you're wondering, if we don't...if we strike the enacting clause, in my opinion, the university will absorb a little bit of costs; if we don't strike the enacting clause, it will come out of General Funds. We're paying for it either way. I support Senator Schmit's motion.

SPEAKER BARRETT: Thank you. Any other discussion? If not, the

May 19, 1989

LB 177, 187A, 209, 279, 285, 285A, 289A
362, 362A, 651A, 761A, 781

question is the striking of the enacting clause. Those in favor vote aye, opposed nay. Record.

CLERK: 35 ayes, 0 nays, Mr. President, to strike the enacting clause.

SPEAKER BARRETT: Thank you. Motion is adopted. The amendment is adopted. The enacting clause is stricken.

CLERK: Mr. President, if I may, your Committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed Legislative Bill 177 and fine the same correctly engrossed LB 187A, LB 279, LB 289A, LB 362, LB 362A, LB 651A, and LB 781, all signed by Senator Lindsay as Chair.

Mr. President, the Enrollment Clerk has presented to the Governor LB 285 and LB 285A read earlier this evening on Final Reading.

SPEAKER BARRETT: Mr. Clerk.

CLERK: Mr. President, I have one final item. I have a unanimous consent request to unbracket LB 209, which has been pending on Final Reading.

SPEAKER BARRETT: Thank you. If there are no objections, so ordered. I have just been advised that E & R, the Bill Drafters, have done an amazingly good job and they are to be congratulated. They've been working hard on all of the bills. They've been processed and have been returned to the floor in order that adjournment might be possible should it be the will of the body. With that announcement, we can proceed into Final Reading now if that is the body's desire. We can adjourn until Monday morning at nine o'clock. Monday will be dedicated to Final Reading in its entirety, Final Reading all day. I think we need to say thank you to the Bill Drafters for the work that they have done. It is up to the body. Senator Hall.

SENATOR HALL: Mr. President, I would move that we adjourn until Monday morning at 9:00 a.m..

SPEAKER BARRETT: You've heard the motion to adjourn until Monday morning at nine o'clock. Those in favor please vote aye, opposed nay. Record, please. Members take your seats for Final Reading. Motion fails. (See vote of 7 ayes, 31 nays, as found