

January 12, 1990

LB 422, 520, 1012, 1050, 1124, 1125

five minutes and we've cleaned it up a little bit and we moved it on. We didn't have to go to Select File and wait, and we can do these things. It's possible to be done and I appreciate the members. Thank you.

SENATOR LABEDZ: Senator Abboud, there are no further lights on, would you like to close on the advancement of LB 422?

SENATOR ABOUDD: I think we've had a good discussion and I would just move the bill.

SENATOR LABEDZ: Thank you. We're voting on the advancement of LB 422 as amended. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Madam President, on the advancement of 422.

SENATOR LABEDZ: LB 422 is advanced to E & R Initial. Do you have anything to read in, Mr. Clerk?

CLERK: Madam President, I do. New bills. (Read LB 1124 and LB 1125 by title for the first time. (See pages 305-06 of the Legislative Journal.)

Madam President, I have amendments to be printed to LB 520. That is offered by Senators Dierks and Schellpeper. (See pages 306-09 of the Legislative Journal.)

Madam President, a motion from Senator Wesely to withdraw LB 1012. That will be laid over pursuant to Legislature's rules. (See page 309 of the Legislative Journal.)

I have a report of registered lobbyists for the week of January 9 through January 11.

And, Mr. President, hearing notice from the Government, Military and Veterans Affairs Committee. It is signed by Senator Baack as Chair of the committee.

And finally, Senator Bernard-Stevens would like to add his name to LB 1050 as co-introducer.

SENATOR LANDIS PRESIDING

January 17, 1990

LB 163, 821, 822, 823, 824, 825, 826  
827, 828, 829, 1102-1135, 1158-1161

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Microphone not activated) ...pastor at UN-L, and now is pastoral associate at Trinity Lutheran Church here in Lincoln. Would you please rise for the invocation.

DR. NORDEN: (Prayer offered.)

PRESIDENT: Dr. Norden, thank you for being with us again, we appreciate it. Come back again. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Do you have any messages, reports or announcements this morning?

CLERK: Mr. President, Reference Report referring LBs 1102-1135, as well as three gubernatorial appointments to the appropriate standing committees for hearing. (See pages 348-49 of the Legislative Journal.)

Received a report from the Department of Roads filed pursuant to statute, Mr. President. That's all that I have.

PRESIDENT: Would you like to introduce any new bills, or would you not like to?

CLERK: Mr. President, I'm sorry, I do have some other items. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 821 and recommend that same be placed on Select File; LB 822, LB 823, LB 824, LB 825, LB 826, LB 827, LB 828, and LB 829, all on Select File, some of which have E & R amendments attached, Mr. President. Now, that's all that I have, Mr. President. (See pages 350-51 of the Legislative Journal.)

PRESIDENT: New bills, please.

CLERK: Mr. President, new bills. (Read LBs 1158-1161 by title for the first time. See page 352 of the Legislative Journal.) That's all that I have at this time, Mr. President.

PRESIDENT: We'll move on to General File then, LB 163.

January 24, 1990

LB 369, 855, 1124, 1161, 1213, 1231

reports LB 855 to General File. (See page 491 of the Legislative Journal.)

Mr. President, I have hearing notice from Natural Resources signed by Senator Schmit as Chair. (LB 1213 and LB 1231. See page 491 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Kristensen.

I have amendments to be printed, Mr. President, by Senator Lamb to LB 369, and, Mr. President, the last, I have requests from Senator Smith to add her name to LB 1124 and Senator Hefner to LB 1161 as co-introducers. That's all that I have, Mr. President. (See pages 492-93 of the Legislative Journal.)

SENATOR LAMB: The motion is to adjourn until tomorrow morning at 9:00 a.m. All those in favor say aye. Those opposed. We are adjourned until tomorrow morning.

Proofed by:

  
LaVera Benischek

February 1, 1990

LB 37, 81, 240A, 409, 422, 465, 543  
678, 678A, 863, 953, 1004, 1124

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber on this the 20th day of the Second Session of the Ninety-First Legislature. Our Chaplain this morning, Dr. John Wagner, President of Union College. Mr. Wagner.

DR. WAGNER: (Prayer offered.)

SPEAKER BARRETT: Thank you, so much, Mr. Wagner. We hope you can come back again. Roll call.

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

SPEAKER BARRETT: Thank you. Any corrections to the Journal?

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any announcements, reports or messages?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they've carefully examined engrossed LB 37 and find the same correctly engrossed; LB 240A, correctly engrossed; LB 409, LB 422, LB 465, LB 543, LB 678, LB 678A, all of those reported correctly engrossed, all signed by Senator Lindsay as Chair of the E & R Committee. (See pages 612-16 of the Legislative Journal.)

Mr. President, Senator Smith has designated LB 1124 as her personal priority bill this session. Senator Haberman has selected LB 953 as one of the Retirement Systems Committee's priority bills. Senator Smith has designated LB 863 as one of the General Affairs Committee priority bills. And Senator Carson Rogers selected LB 1004 as his personal priority bill. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The Chair has a very special announcement at this point. Today, February 1st, is the birthday of Senator Carson Rogers. Senator Rogers has provided the treats on each of the desks this morning. Happy birthday, Senator Rogers. Mr. Clerk, to Item 5, on General File, 1990 priority bill.

CLERK: Mr. President, LB 81 was a bill introduced originally



March 5, 1990

LB 163, 163A, 542, 571, 880, 953, 953A  
1019, 1019A, 1124, 1184, 1184A, 1210  
LR 258

SENATOR LINDSAY: Mr. President, I move that LB 953A be advanced to E & R for engrossment.

SPEAKER BARRETT: Thank you. Any discussion on the advancement of the A bill? Senator Haberman.

SENATOR HABERMAN: Mr. President, and members of the body, I would like to advance the A bill as we may need it towards the tail end of the session. I will repeat to you again, there is no cost to this legislation. It will not come back on LB 953 but we may need an A bill on Final Reading later on in the session, and for those reasons, I ask you to advance the A bill.

SPEAKER BARRETT: Thank you. Any other discussion? If not, those in favor of the advancement of LB 953A please say aye. Opposed no. Carried. The bill is advanced. Any matters for the record, Mr. Clerk?

CLERK: Yes, sir, I do. Thank you. Mr. President, I have amendments to be printed to LB 571 by Senator Hefner. Mr. President, a Reference Report referring LR 258, signed by Senator Labedz as Chair of the Reference Committee. (See pages 1149-52 of the Legislative Journal.)

The Revenue Committee reports LB 1124 to General File with committee amendments attached. That is signed by Senator Hall as Chair of the committee. Appropriations Committee reports LB 1210 to General File. That is signed by Senator Warner as Chair of that committee. Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 163 and find the same correctly engrossed, LB 163A correctly engrossed, those signed by Senator Lindsay. Enrollment and Review reports LB 1019 to Select File, LB 1019A, LB 1184, LB 1184A, and LB 880, all to Select File, some of which have E & R amendments attached. That is all that I have, Mr. President. (See pages 1052-55 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Moving on to LB 542, Mr. Clerk.

CLERK: Mr. President, excuse me, LB 542, I have Enrollment and Review amendments, first of all.

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the

difficult, sometimes when I sit down and you read the language, you think of additional reason why this is improper. I will just state, basically, my initial reaction reasons for believing that this is inappropriate. A motion to bracket has the same effect of indefinitely postponing it, unless you want to unbracket the bill. There...the intent, again, of Rule 7, Section 6, I believe, is to limit continuous series of motions to bracket, whether they be a motion to bracket to a date certain, or a motion to bracket to an indefinite time, or a motion to, in effect, I guess to indefinitely postpone, or what have you. With that intent, I think, that is clearly a part of Rule 7, Section 6, I don't think it is appropriate to allow a whole series of motions to bracket and, therefore, I believe that Senator Chambers motion to bracket is out of order and he should not be allowed to make a series of motions to bracket just to delay a debate and a vote on an issue. When we talk about our rules, the whole purpose of the rules are to make sure that everyone gets a chance to be heard and to have an issue decided by a fair vote. We don't want to limit debate, so that we have a full...so that we do not have a full and robust debate. I think this bill has been debated fairly and robustly for, what, going on 12 days now. I think it is time to call a halt to all these procedural manipulations, consider the intent and overall intent of the rules, and that intent is, I believe, to allow debate but not to allow a filibuster and a delay of this type and of this nature and, therefore, I would move to overrule the Chair on that particular issue. Thank you.

SPEAKER BARRETT: Thank you. Mr. Clerk, you have a priority motion.

CLERK: Mr. President, Senator Dierks would move to adjourn until Monday morning at 9:00 a.m.

SPEAKER BARRETT: A motion to adjourn until Monday at nine o'clock. Have you anything for the record?

CLERK: One item, Mr. President, amendments to be printed to LB 1124 by Senator Warner. (See pages 1780-82 of the Legislative Journal.) That is all that I have.

SPEAKER BARRETT: Thank you. You have heard the motion to adjourn until nine o'clock, Monday morning. All in favor vote aye, opposed nay. Have you all voted? Record, please.

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LB 866, 1124

under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 23 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber and record your presence. Unauthorized personnel, please leave the floor. Smith, would you check in, please. Thank you. Senator Labedz, would you check in, please. Thank you. We're all here. The question is the reconsideration. Roll call vote has been requested. Would you please hold it down so the Clerk can hear your response, please. (Gavel.) Would you hold it down, please, so the Clerk can hear your response. Roll call vote. Mr. Clerk.

CLERK: (Roll call vote taken. See page 1788 of the Legislative Journal.) 23 ayes, 18 nays, Mr. President, on the motion to reconsider.

PRESIDENT: The motion fails. Move on to special order, LB 1124.

CLERK: Mr. President, LB 1124 was a bill originally introduced by Senator Schmit and Senator Smith. (Read title.) The bill was introduced on January 12 of this year, Mr. President. At that time, it was referred to the Revenue Committee. The bill was advanced to General File. I do have Revenue Committee amendments pending, Mr. President. (See AM2758 on page 1152 of the Legislative Journal.)

PRESIDENT: Senator Schmit, are you going to handle the...oh, Senator Hall on the committee amendments first, all right.

SENATOR HALL: Thank you, Mr. President. The bill, as stated by the Clerk, was heard on February 14, only a week ahead of LB 866, and it deals with establishing a tax credit for ethanol producers of 30 cents a gallon, in its original form, and it would also, excuse me, and deals with a production credit. The producer must produce the ethanol in a Nebraska plant which ferments, distills, and dehydrates the product. No more than 25 million gallons can be claimed, so that would be the ceiling on the bill as it was introduced. Credit must be claimed within 84 months of the first credit certificate. It would also sunset in the year 2000. It has a...the flip side of the bill, with

allowing for the 30 cents a gallon, the bill would also eliminate the 3 cent reduction in the motor vehicle fuels, which is currently in place until 1993. What the committee amendments do are touch those two issues, the one of the 30-cent production credit as well as the 3-cent retail credit, and the committee amendments would lower the production credit from 30 to 20 cents per gallon, and it would allow for 1 cent of the retail side of the tax credit to be retained. So it would take it from 30, zero, as it was introduced to 20 and one. Currently, there is no production credit and there is a 3-cent retail benefit for the production of ethanol. With that, Mr. President, I would move the adoption of the committee amendments.

PRESIDENT: Mr. Clerk, do you have an amendment to the committee amendments?

CLERK: Mr. President, Senator Warner would move to amend the committee amendments. The Warner amendment may be found on page 1780 of the Journal.

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Mr. President, and members of the Legislature, what this amendment does, it would not have an immediate effect because, at least as I understand the committee amendments, initially at least, the change in revenue to the Highway Trust Fund would actually...as an amount of deduction, would be decreased by the committee amendment initially. What the amendment does is that it puts a cap, in effect, upon the amount of exemption dollars that goes into the gasohol and retains it approximately at its current level which is around seven and a half, almost \$7.8 million per year. And the way the amendment would work, it leaves that amount of exemption even with the different way of calculating it as proposed by the committee amendment and, eventually, then as the reduction of revenue would increase above that cap, if it did, why then it would permit...it would require that the fuel tax on all sources of motor fuel would go up to make up for a loss of revenue. Now this has absolutely no impact on the state, because the state, whatever the Legislature sets its budget, the variable gas tax would make up the difference in revenue. It does, however, make a difference for the cities and counties because the cities and counties get their...part of their funds for roads from the Highway Trust Fund, and as the Highway Trust Fund would go down, in the event that should happen, why they would not receive any

replacement for those lost revenues. So what the amendment does, it, in effect, puts a cap at the current level of exemption in terms of dollars, and even though the distribution will be different under the proposed committee amendment, at some point, it is estimated to be at least '92, '93, at some point in the event that the allowance under the bill is a further reduction beyond the 7.8 million, why the fuel tax would be adjusted in tenths of 1 percent in order to make up that loss and, again, it primarily only impacts cities and counties because the state loss of revenue from gasohol could just as easily be made up through the variable that is set or is determined, rather, by the level of appropriation that the Legislature makes for the State of Department of Roads. So I would move adoption of the amendment.

PRESIDENT: Thank you. Senator Schmit, did you wish to talk about the Warner amendment?

SENATOR SCHMIT: A brief question for Senator Warner.

PRESIDENT: Senator Warner, please.

SENATOR SCHMIT: He indicated that...Senator Warner, you indicated that the initial impact of the committee amendments would be that it would actually reduce the drain on the funds from the Highway Trust Fund, and then later on your amendment would prevent that there be any loss of Highway Trust Funds. Are we going to carry the original reduction and impact upon the fund forward under your amendment or is that just money which will accrue to the Highway Trust Fund?

SENATOR WARNER: As drafted, it does not take effect until there is an actual reduction.

SENATOR SCHMIT: Oh, I see.

SENATOR WARNER: It would maintain the 7.8 as it is now. It is pure speculation as to when it would take effect. I suspect if production expanded rapidly, it could be much sooner than two years. I think this assumes two to three years before there would be more full utilization of the bill as it is drafted.

SENATOR SCHMIT: Mr. President, and members, I am going to support the Warner amendment and I only saw it this morning but I have no real quarrel with what Senator Warner is trying to do.

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LB 1124  
LR 396, 397

There may be a little fine tuning that needs to be adjusted but I will support the Warner amendment.

PRESIDENT: Thank you. Senator Smith, your light is on but it was on before. All right, thank you. Senator Hall, did you wish to talk about the Warner amendment?

SENATOR HALL: Thank you, Mr. President, and members. My only question, I am sure that the amendment is germane to the bill, the question is, I guess, whether it is germane to the committee amendments, but I don't see any...and they both deal with the tax. The one...the committee amendments don't deal with the issue of the trust fund or the commissioner in terms of the estimates, but it is Senator Schmit's bill and I don't have any problem with the amendment, whether it be to the bill or to the committee amendments. So I would support the adoption. There was this issue touched on in the Revenue Committee when the bill was brought up, impact that the change in the retail credit would have on the Highway Trust Fund. It was debated but determined by both, I think, the proponents and the opponents as well as the committee that it could be worked out. I think Senator Warner's amendment is clearly just that, so I would urge its adoption as well.

PRESIDENT: Thank you. Senator Warner, did you wish to close on your amendment?

SENATOR WARNER: Only to say, Mr. President, if there is a problem about the amendment, I am perfectly...if it becomes controversial, I will be perfectly willing to have it go to the bill rather than the committee amendment. I think it just was drafted that way, but if it is noncontroversial, well, I would just move its adoption.

PRESIDENT: Fine, thank you. The question is the adoption of the Warner amendment to the committee amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Warner's amendment to the committee amendments.

PRESIDENT: The Warner amendment to the committee amendments is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 396 and LR 397. We are back to the committee amendments. Senator

Smith, on the committee amendments.

SENATOR SMITH: Thank you, Mr. President. The committee amendments, it is my understanding, would retain 1 cent of the current 3-cent excise tax exemption in gas...in ethanol, blended gasoline, and establish then a 20-cent production credit, and we have already talked a little bit about the importance of this, but I just wanted to make sure that everybody here understands that this is Senator Schmit's bill, my priority, and, of course, I have a great interest in this because of the plant that we have existing in Hastings at this point in time. Nebraska's current 3-cent excise tax exemption was designed in order to encourage ethanol sales and market development in the state, and this incentive has been successful in achieving that goal. Nebraska leads the nation in market penetration of ethanol fuels and has set new sales records in 11 of the last 12 years, but Nebraska currently has to import two-thirds of the ethanol it uses. The producers in Nebraska are at a competitive disadvantage and any new development would be at a competitive disadvantage because a number of surrounding states have granted production credits to their producers, which is similar to the production credit that we are proposing in LB 1124, as the committee amendments would purport to do. These production credits, then, coupled with Nebraska's current 3-cent excise tax exemption allows producers in surrounding states to sell their ethanol in Nebraska, as I have already said, at a cheaper price than we can produce in Nebraska. So, as amended then, its intention is to correct this situation by creating a production incentive to encourage construction and expansion of plants and to the existing plant in the state and I would like to support the committee amendments.

PRESIDENT: Any further discussion on the committee amendments? If not, the question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

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

PRESIDENT: The committee amendments are adopted. Now back on the advancement of the bill. Any discussion? Senator Schmit.

SENATOR SCHMIT: Mr. President, and members, the committee amendments plus the Warner amendment pretty well become the

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LB 1113, 1124

bill. It has been indicated, Senator Warner, there may need to be some adjustments, if so, we will take a look at it on Select File, and that is all I have to say at this time.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

ASSISTANT CLERK: 29 ayes, 0 nays on the advancement of the bill, Mr. President.

PRESIDENT: The bill is advanced. We will move on to LB 1113.

ASSISTANT CLERK: With respect to 1113, Mr. President, the bill was introduced by Senators Wesely, Schimek and Chambers. (Read title.) The bill was read for the first time...was referred to Judiciary Committee. They report the bill to General File, Mr. President.

PRESIDENT: Senator Wesely, did you wish to begin.

SENATOR WESELY: Yes, Mr. President. Let me begin on the bill, and then there is an amendment to clarify some provisions of it. LB 1113 is a bill Senator Schimek, Senator Chambers and I have introduced to deal with a couple, three items dealing with housing, first the Nebraska Fair Housing Act would be established. Essentially, all we're doing here is implementing what the federal government has already passed in terms of amendments to Title VIII of the Civil Rights Act. This amendment, adopted about a year and a half ago, something like that, changed discrimination provisions in the federal law, which the states must comply with, to include two additional items that had previously been not part of discrimination action. First deals with handicaps, and this would apply to mental and physical handicaps. So those that are mentally ill could no longer be discriminated against in terms of housing, the mentally retarded as well, or the physically handicapped, those that are disabled physically would no longer be able to be discriminated against by individuals in terms of housing. In addition, family status would be added to the list of those items which no longer could be discriminated against. And family status, what we're talking about there would be discrimination against children, for instance, has been a problem where individuals would not allow a family with children to come into a rental unit, for instance, that would no longer



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LB 272A, 431, 1059, 1090, 1124  
LR 239

please. Senators Abboud, Lamb, Lynch. Senators Peterson and Coordsen. Senators Scofield, Weihing, Wesely, Abboud, the house is under call. Senators Abboud, Lamb and Coordsen, the house is under call. Members, please return to your seats. Senator Chambers, did you ask for a roll call?

SENATOR CHAMBERS: Yes.

SPEAKER BARRETT: Thank you. The question is the adoption of the Chambers amendment to LB 239 (sic). Roll call vote. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See page 1800 of the Legislative Journal.) 32 ayes, 7 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. The call is raised. Mr. Clerk, have you items for the record?

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports LB 1124 to Select File, that is signed by Senator Lindsay as Chair. Mr. President, a communication from the Governor to the Clerk. (Re: LB 272A.) Mr. President, I have amendments to be printed to LB 1090 by Senator Hall; Senator Haberman to LB 1059; Senator Wesely to LB 431. And that is all that I have, Mr. President. (See pages 1801-07 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Have you anything further on LB 239 (sic)?

CLERK: Mr. President, Senator Schimek would move to amend the resolution. (See AM7187 on page 1807 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Schimek.

SENATOR SCHIMEK: Thank you, Mr. President, and members of the body. My amendment is really quite simple. It addresses something that Senator Chambers raised on the floor a little while ago regarding the appointed members to both the Board of Regents and the Board of Trustees, and the wording on page 3 of the amendment says, "No more than three of the appointed members initially appointed shall be of the same political party." My amendment simply changes that to say, "No more than three of the

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LB 431, 854, 976, 1054, 1055, 1062, 1090  
1124, 1221  
LR 239

unusual thing yesterday. We went ahead and moved nine or so bills without any debate and without any further amendment, controversial bills at that on General File, moved them to Select File, and I think we all knew what was going on that day. But what we did yesterday, in essence, I think as a body was decided that we could do this to the rules because of the situation that we are in in order to get some things done, and I want to try to give the body at least a chance to do the same thing today. I am not trying to do as others, I am not trying to say I don't want an abortion fight today. I am ready for an abortion fight today. I am ready for it now. I am ready for it an hour from now. I am ready for it at four o'clock, and I am ready for it at 11:59 tonight. It doesn't bother me when we are going to have that fight and I want to have that fight. What I am also suggesting, though, is that we have a chance now in the beginning to say as we did yesterday that there are some things we, as a body, can do that will not jeopardize the fight that is to come, but we can do these things today. I am suggesting to you that I am not trying to put off the fight. I am, in fact, trying to give the body an opportunity to at least say when the fight is going to take place. What my amendment would do, what my motion would do, excuse me, would change the agenda in the following way, and it is not a major change so it's easy to follow. If the motion is agreed to, we will simply jump to item six and item seven on the agenda. Those are bills on Final Reading that need to come back for specific amendment. I know Senator Hall has an interest in LB 1090. I know on item seven, if I understand that motion correctly, it is on the low-level nuclear waste, LB 1054, that needs to come back for a specific amendment. After we take care of item six and seven, which will take some time, I am then proposing that we go back to Select File, right at the top of Select File. I am also going to suggest, and actually it is not a suggestion, it is in my motion, I want you to know also what I have done. I have also said that if you look at Select File, we have got LB 431, which, Senator Wesely, regardless of what we do today, that will be the first bill up and there is going to be an attempt and an amendment on that one, I know. LR 239CA, I don't know what is going to happen. Originally I had heard from Senator Withem that there is a motion filed, and I believe it was filed, to have a discussion whether or not the body wants to bracket LR 239CA. If you go down with me on the Select File list, LB 1055, LB 1221, LB 1124 are gone. We passed them yesterday. Which brings us to LB 976 and LB 854. Beneath LB 854 is a bill, LB 1062 which I, myself, in discussion with Senator Lynch, I

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LB 431, 1124, 1141  
LR 422

bill, Senator Warner.

SENATOR WARNER: Mr. President, and members of the Legislature, just briefly, I would hope that the bill be advanced. I do not want to take more time. Senator Owen Elmer, I think, made a very excellent point earlier, much earlier this afternoon on the issue of public hearing. Obviously, a constitutional amendment, should it be placed on the ballot, provides the only real public hearing and real public input exists in that is where the voters get to directly consider a proposal, and I think this is...I hope is important enough that we will get some sense between now and next Monday between the two options. And, finally, I do want to make it clear if anywhere in my comments that I inferred that the total Board of Regents were in support of this as opposed to Chairman Blank expressing his own opinion, as Senator Scofield has pointed out, I think it is very indicative, in fact, he very pointedly stated he was speaking for himself and I would not want that impression to be misunderstood. So with that, I would ask that the bill be advanced and that we move on to other matters.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 1141. Those in favor say aye. Opposed no. A machine vote has been requested. Those in favor of the advancement of the bill vote aye, opposed nay. Voting on the advancement of the bill, have you all voted? Record vote has been requested. Record, please.

CLERK: (Record vote read. See page 1886 of the Legislative Journal.) 37 ayes, 6 nays, Mr. President, on the advancement of LB 1141.

Mr. President, items for the record, explanation of votes for Senator Haberman. New resolution, LR 422, by Senator Crosby asking the Legislature to send its congratulations to the Southeast High School Symphonic Band to be laid over (See pages 1886-87 of the Legislative Journal). Enrollment and Review reports LB 431 is correctly engrossed. It's signed by Senator Lindsay as Chair (See page 1887 of Legislative Journal). And I have an Attorney General's opinion, Mr. President, to Senator Crosby (LB 1124, see pages 1888-90 of Legislative Journal). And that's all that I have at this time.

SPEAKER BARRETT: Senator Bernard-Stevens, for what purpose do you rise?

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LB 272A, 1055, 1124, 1141A, 1221

hope that we would be able to continue the work. We ought to be able to pass over LB 1141A and try to make the thing work whichever way the body chooses and continue our work whether...

SPEAKER BARRETT: Senator Schmit, excuse me.

SENATOR SCHMIT: Surely.

SPEAKER BARRETT: (Gavel.)

SENATOR SCHMIT: Thank you, Mr. President. So I'm not offering it as a motion, but I'm offering as a suggestion in the interest of expediency and cooperation that we pass over the bill at this time and let the principals get together while we work on LB 1055, LB 1221, LB 1124 and a number of other bills, Mr. President. I believe it's a reasonable suggestion. And Mr....I don't know who to ask, Senator Landis.

SPEAKER BARRETT: Senator Landis, would you respond?

SENATOR LANDIS: Ask me the question.

SENATOR SCHMIT: Senator Landis, is there a problem with the use of LB 1141A at this time on this day because I recall years ago on a Christian school...

SPEAKER BARRETT: Senator Schmit, would you please speak into the mike.

SENATOR SCHMIT: Years ago on the Christian school bill I believe you challenged the introduction of a bill in this manner in the last few days. Would you respond please.

SENATOR LANDIS: Yes. And there is a potential flaw, you are correct in that. The suggestion that I would make to the body is that they proceed on two tracts, one being a legislative act, the second being a legislative resolution and do them both at the same time, trying to make sure that we have workable language. Senator Schmit, you're exactly right. There's a problem with five day language should it be challenged. And I'm not sure whether you can argue that LB 272A, having been passed this session, would authorize us to do this. I am far enough out on the legal limb to say...to acknowledge that there is trouble on that area. I'm just trying to nail down the hatches as best I can.

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LB 1124, 1141A

did no longer needed an A bill. The A bill went on the agenda. And it was my assumption that that was what was going to happen with LB 1141A. I understand I can withdraw or I can do a variety of things. My assumption is if there's 30 votes, it doesn't make any difference what I might try to do. And I guess I'm inquiring if the bill is still on the agenda by the Speaker because the practice has been not to allow A bills to become a vehicle for other amendments this session. Certainly that was not true in the past, or at least in recent days I believe that's been the ruling, and I don't know if the Speaker has done that or not.

PRESIDENT: The Clerk will go see. I think he's nearby, Senator Warner, if you'll just hold tight a minute. Senator Warner, Senator Warner. (Gavel.)

SENATOR WARNER: Yes.

PRESIDENT: The Speaker has visited with...the Clerk has visited with the Speaker and it is the Speaker's wish that LB 1141A is not on the agenda anymore.

SENATOR WARNER: That would be consistent with the rulings earlier.

PRESIDENT: That's correct.

SENATOR WARNER: I would concur in that.

PRESIDENT: What did you say?

SENATOR WARNER: I said that's been the rulings all the time and I have no problem with that. I agree with that.

PRESIDENT: Yes, okay.

SENATOR WARNER: That it would no longer be on the agenda.

PRESIDENT: All right, thank you. We'll move...we'll go to LB 1124 please, the ethanol bill.

CLERK: Mr. President, LB 1124 is the next bill on Select File. First item, Senator...Senator Lindsay, I have E & R amendments, Senator.

PRESIDENT: Is Senator Lindsay there? Senator Moore, can you handle that for us--E & R amendments?

SENATOR MOORE: I move the adoption of the Enrollment and Review amendments for LB 1124.

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

CLERK: Mr. President, the next amendment I have to the bill is by Senator Schmit. Mr. President, Senator Schmit would like to withdraw his pending amendment and substitute AM3369.

PRESIDENT: Is there an objection? If not, you may proceed, Senator Schmit.

SENATOR SCHMIT: Well, Mr. President and members, LB 1124 is a bill which has advanced to this point on the board and we have had a number of consultations between myself, Senator Smith, other individuals who are interested in the bill and others who have a very deep interest in what happens to the bill. And we have an amendment at this time which is a condensed version of the amendment which was handed out to some of you yesterday upon request. The amendment that you have here today and I believe there are copies being made now and I will have them out to you very shortly, the amendment does several things. First of all, it reinstates the requirement that members of the Ethanol Authority be confirmed by the Legislature. Second, it provides for a direct reimbursement to the producer of ethanol, just a moment. Would the Page get me a copy of the amendment please? A direct reimbursement to the producer of ethanol of twenty cents per gallon. And it also provides that this shall apply to a plant which does not produce less than two million gallons of alcohol annually nor more than twenty-five million. And that it may be claimed only for a period of time of 84 months. And it also provides that there shall be a two cent subsidy of the...there shall be a tax credit of two cents less on ethanol blended fuels than there is on non-ethanol blended fuels. That is down from three cents. It also provides that there shall be...that this amendment includes the Warner amendment which was adopted and I don't know, Senator Warner, if you'd like to explain that portion of it better than...I'm sure you can explain that portion of it better than I can, the idea being that any time that additional revenue would come from the excise tax there would have to be an adjustment that would raise the

tax on motor fuels so that it would not be a depletion in the funds. I want to point out that the manner whereby we are doing this now provides that for the next several years there will in fact be less of a drain on the ethanol...on the excise tax fund than there is at the present time. I think that it may be about two and a half million dollars per year less. I'm not sure. Senator Warner may want to comment on that. There will be also a provision that reformulated gasoline which is sold in Nebraska after January 1, 1992, shall contain an oxygen content equal to or greater than three and one-tenth percent and shall contain a maximum or aromatic content of not greater than 20 percent. I'm not a technician, ladies and gentlemen, but I understand that this is an attempt to be consistent with the Clean Air Act of the federal government and one which would give us an opportunity to participate in an expanded market for blended fuels that would be...that would be developed as a result of the Clean Air Act. It also allows for the Ethanol Authority to purchase shares of stock or make an investment in a facility or to purchase outright a facility. It also requires that if they make an investment in a plant, such as they have with American Eagle Fuels at the present time, that it be on a dollar for dollar basis. There was some concern that in the past perhaps there might be a dollar investment by the Ethanol Authority and an in-kind investment, so to speak, from the cooperator. It was felt that there ought to be a dollar for dollar offset. I believe that just about concludes the explanation of the amendment. If there are questions, I would try to answer them. And if you have questions relative to Senator Warner's portion of the amendment, I would prefer that you would ask Senator Warner those questions.

PRESIDENT: Thank you. Senator Hall, please. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. President. Members of the body, I just stand to support this amendment. This amendment has been revised a couple of times in the last day with everything else that has been going on around here. Basically all that we've done is address the concerns of the different boards that was in the original, the other amendment. And so what we've done is just revised it to eliminate that concern for those boards. The wheat and sorghum boards are removed from it. And it does change the dates. We hope to make it be acceptable by those that are concerned about the monies in the highway trust funds. And I think that if you were listening to what Senator Loran

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Schmit said to you, laid out for you on the amendment, that is exactly what the amendment itself has in it. And I wish we had a handout for you, but really that is what the amendment consists of; and I would ask your support for this amendment.

PRESIDENT: Thank you. Senator Pirsch, please, followed by Senator Morrissey.

SENATOR PIRSCH: Thank you. Just a quick question for Senator Schmit. Senator Schmit, we're talking about a 20 cent per gallon production credit which we are not now giving. Is that correct? And this then will come from what? What are we giving them a credit from?

SENATOR SCHMIT: This comes from the Ethanol Fund, Senator Pirsch. It does not come from the Excise Tax Fund.

SENATOR PIRSCH: Well, is it a rebate back to them?

SENATOR SCHMIT: It is a...I don't want to call it a rebate because there may be some question there, but it is a...it is a payment from the Ethanol Authority Fund which is now in excess of \$18 million right to the producer of the...of the alcohol.

SENATOR PIRSCH: I see.

SENATOR SCHMIT: And I might add there are other states that do that, which places Nebraska alcohol in a very difficult position. For example, Kansas has this kind of a provision; and the producers of ethanol in Kansas can collect that 20 cents then come across the border with their alcohol and take advantage of the 3 cent excise tax credit which they have in this state.

SENATOR PIRSCH: I see that. And it will give the consumer then a reduction from 3 cents to 1 cent per gallon...

SENATOR SCHMIT: To two cents. The saving to the consumer will, instead of being three cents, will be two cents. If you want me to explain that further I can or I can do it on my own time, Senator.

SENATOR PIRSCH: Okay, thank you. That helped clarify it for me.



PRESIDENT: Thank you. Senator Morrissey, please, followed by Senator Schmit.

SENATOR MORRISSEY: Yes, Senator Schmit, a question. On the...you mentioned a confirmation of the Ethanol Board members by the Legislature. Could you expand on that a little bit?

SENATOR SCHMIT: Under LB 587, I took away the confirmation of Ethanol Authority members by the Legislature. This reinstates that language and at one time we did have in here language similar to the confirmation by Mr. Thorson that we used for the DEC where if no one was confirmed within 10 days the Governor had to appoint someone new. We removed that language.

SENATOR MORRISSEY: You removed that language so if...and the language you put back in is if they aren't confirmed by the Legislature then what?

SENATOR SCHMIT: Then you remain just the way they are today, Senator. And the reason I took that language out was that Senator Coordsen told me that his committee was going to do research this coming year on all such appointments and try to make them all consistent and compatible with each other and so I took it out.

SENATOR MORRISSEY: Okay, thank you. That's all I have.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Well, Mr. President and members, as you know, the plant at Hastings has been a very, very deep concern of all of us, particularly of Senator Jacklyn Smith, whose district it is located in, and it is an area where we feel it is very important that we try to do something to encourage the sale of that plant. The plant, as you know at the present time, is an asset of FSLIC and we feel that this type of amendment will encourage that plant to get into private hands and get back into the mainstream so that they can, once again, hedge the purchase of their grain and the sale of their alcohol. It ought to encourage the expansion of the plant. We hope it will encourage the utilization of the new techniques, perhaps, in distillation, new techniques in the use of raw materials, new techniques in the use of distillers wet grains versus dry grains, many other aspects which we feel are very important if ethanol production is going to be profitable and economically feasible in the years

to come. I want to say this. There is some concern and some justifiable concern about depletion of the ethanol funds. But I feel, and I think that Senator Jacklyn Smith and other members of the body feel, that we are at the stage where, after many years of waiting for something to happen and trying to encourage ethanol development, that if we do not do something soon, ladies and gentlemen, nothing is going to happen. We know there are great strides being made in the development of ETBE and its competitor, MTBE. We know there are going to be other competitors in reformulated gasoline and I believe, as I have said earlier, when President Bush came to this state, almost a year ago, he laid down the gauntlet, either ethanol will get out and compete for its share of the marketplace, or it's not going to get a share of the marketplace. We feel that this bill will give some additional impetus to that kind of competition. Very frankly, I would have liked to have extended the tax credits to the year 2000, the year 2002. At this time I don't believe that is politically possible and, therefore, we're not proposing it. We think that if the industry shows some initiative and reacts to this bill, and we think that this is an attractive enough that they should, then they could come back to this Legislature and make their case for extensions of tax credits, extensions of other kinds of assistance and that, if it makes sense, the Legislature will go along with it. I've spoken to the corn growers and the wheat growers, and they have indicated to me they want to see something happen. I would suggest, and I've suggested that if, in the event this works, that it may even be possible to reinstate a small check-off on feed grains and wheat again to encourage additional construction. If this system doesn't work, ladies and gentlemen, I will tell you very frankly that after 20 years I'm going to have to concede that maybe I don't know if we can develop the industry or not. This is about as far as we can go, it is about as generous as we can be. It is about as much encouragement as we can offer anyone to bring this industry to full-fledged development. I hope it will do so and I pledge my cooperation, and I know that members of the committee do theirs, and I think the Legislature has, in the case of ethanol development, been most constructive and helpful. And I hope that this amendment will be adopted and become law.

PRESIDENT: Thank you. Senator Smith, please, followed by Senator Rod Johnson.

SENATOR SMITH: Thank you, Mr. President. I've had a lot of people asking questions about what the bill does. And I think

what I'll do real quickly, and I hope I'm going to remember this correctly, is just remind you that originally when we had this bill the other day we adopted the committee amendments, and we basically were saying we gave a 20 percent...or 20 cent production credit and a 1 cent excise tax is retained. Okay, since that time we adopted the Warner amendment that would be increments of one-tenth of a cent, which would kick in whenever there were a deficit to increase the gas tax so that the money is put back into the Highway Trust Fund to fund this. And what we're doing now in this amendment is saying now we want to increase the excise tax to 2 cents. We keep the...we maintain the current 20 percent production credit that we talked about the last time, except now we're talking about splitting the production credit so that 10 percent of it is paid from the Highway Trust Fund, 10 percent is now paid from the Ethanol Authority Fund, and the dates have been changed to 1992 only now, so we've shortened the date up. Okay, then so basically that is the big change, except that we've also then, we're adding in this amendment we're talking about the Ethanol Authority Board, we've eliminated the other boards in talking about their appointments. And I think Senator Spence Morrissey was asking questions about that earlier. So that's what this...the bill would now become with this amendment. There was a handout that you all received the other day, I don't know if you still have it or not, LB 1124, and it had a map which shows the states surrounding Nebraska. And I would just like to tell you all that, remember when I talked with you about this the other day I talked about the fact that Nebraska is at a disadvantage right now because we don't provide a production credit to our producers, making it so that actually what we're doing is importing fuel rather than exporting it, which is what we'd like to do. We'd like to produce enough so that we can export it, and that would then be of a benefit to our farmers, the corn growers, the wheat, those other people that have grains, putting us on a level playing field with other states. We right now have six states with production credits. And those states are Montana, North Dakota, South Dakota, Minnesota, Kansas and Missouri, those states all surround us, so that that's why it's so difficult for us to produce our product and be competitive. And the purpose of this bill is to allow us in Nebraska to become competitive with those other states and export our product. That's the basis of what we're trying to do here. If you still have that handout, we're trying to put together again, has it been around? It will be passed out and it will show you on there, and it will also talk about what

we're doing with the bill itself now. Thank you.

PRESIDENT: Thank you. Senator Rod Johnson, please, followed by Senator Emil Beyer.

SENATOR R. JOHNSON: Mr. President, members, I just was reading the amendment, since I don't have a copy on my desk here, to see what this amendment does. But I have been receiving, I guess, some mixed signals because there are, at least it was earlier in this week, corn growers had one particular...one particular aspect or attitude toward this bill, especially giving up the 3 cent exemption, and some of the ethanol folks wanting the production credit in order to entice some companies to come to Nebraska. And the feeling was, well, the tax credit hasn't really done anything to help generate the interest that we need to get plants here, and so maybe this production credit idea might be better. I guess the question I would ask is, what part of the equation is the best for us in Nebraska? I guess they've come up with this sort of compromise plan saying let's use a little combination of both, the 2 cent...the 2 cent tax and also the 20 percent tax credit. And so I...producer credit I should say. I guess I'm getting mixed reactions. The question I have, and I know Senator Schmit is working right now, but maybe when he comments again, I understand, and again I haven't had much of a chance to read the amendment, but I was informed that this language will also allow the Ethanol Authority to buy a plant. And I guess the question I have to him, and he can answer on his time, is, if they can buy a plant, what are they going to use, once they buy the plant, for operating capital, because, as I understand, the Ethanol Fund was set aside specifically for the purposes of capital construction monies, not for cap...not for operating expense money. So that is one of the concerns I have. And I'm going to continue to read the amendment, as Senator Smith has brought me a copy now, and I'll maybe have further comments later. But you know I feel kind of caught in the vise here, because I want to do what is best for the corn growers of Nebraska, but I also want to help the Ethanol Authority develop this industry, which everyone seems to agree needs to be developed in Nebraska, but we just haven't had a chance to really get the Ethanol Fund to work the way we'd like it to. And so I guess we're all kind of scampering around here saying what's this amendment do, what's this amendment do? And so, until I have further opportunity to look at the amendment, I'm going to reserve any further comment and try and quickly glance through it before we vote on the amendment.

PRESIDENT: Thank you. Senator Schmit. No, Senator Emil Beyer, excuse me, and then Senator Schmit.

SENATOR BEYER: Well, Mr. Speaker and colleagues, I'd like to have a couple questions of Senator Schmit, if he would answer.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Yes, Senator.

SENATOR BEYER: Senator Schmit, several years ago, I think since I've been in the Legislature, there was kind of a deal was made between the highway users and everything that there would be no attempts to lower the tax as long as you'd gone along with the federal phase-out in 1993. Now you want to extend it to 1997?

SENATOR SCHMIT: Pardon me, Senator?

SENATOR BEYER: You're asking to extend the tax to 1997?

SENATOR SCHMIT: No, we're not, Senator. We discussed it, but it is not...the time frame is the same as earlier. I'm saying that there was discussion relative to extension of the time, and that we discussed it, discussed it with Senator Warner, and I made a decision I will say by myself that we would go without any extensions at this time. And if, in fact, this added impetus to the fund and the added carrot, I guess you might say, to the purchaser of the Hastings plant or to a new producer, if that wasn't sufficient to bring them into the marketplace then I don't know what is going to do it. If it is sufficient, then I said come back to the Legislature, make your case at another time and take your chances at another time. That's where it stands now, Senator.

SENATOR BEYER: So you'll live with the 1993 phase-out?

SENATOR SCHMIT: I will live with it. And very honestly, Senator Beyer, the reason that I went along with it several years ago was because there was a general consensus that in some instances the three cents that was just a loss to the Highway Trust Fund and was not, in fact, being passed along to the consumer. And under this proposal there will actually be a net gain to the Highway Trust Fund at least the first several years.

SENATOR BEYER: Okay, that was basically our understanding. Thank you.

PRESIDENT: Thank you. Senator Schmit, please, followed by Senator Korshoj.

SENATOR SCHMIT: Mr. President, members, again I want to apologize because you have not seen the amendment in its final form. It's been kicked around a lot and I know that there are some questions, and Senator Rod Johnson raised a question as to where, if the authority bought a plant, that they would find the money to operate it. What I'm saying, Senator, is that there has been a history of a great many ethanol plants that have gone broke for a variety of reasons. Many of those facilities are available as salvage, they are available to be moved, some of them are available to be operated in the present condition. I'm not aiming this provision merely at the Hastings plant. The Ethanol Authority would have to make the decision as to whether or not they had the resources to buy a plant, and then, if so, what they would do with it, and how they would operate it. I would assume, given their conservative nature, that they would not be inclined to get into a situation over their head. I wanted to make that option available to them to clarify in law a question as to whether or not they could, in fact, purchase a plant. I think that it's pretty obvious they can purchase equipment, they can purchase other resources. They have purchased a 49 percent investment, I believe, in American Eagle Fuels, and they had a chance, as I was told, to sell that out to another entity, but that entity would have moved it out of the state. They have since chosen to remain with it, and it may require an additional investment. That investment hopefully will be made in Nebraska. I believe at the present time it is planned to be made in the Omaha area, it is not inconceivable to me. I believe the original investment was somewhere in the neighborhood of a half a million dollars. I believe they proposed to invest another 3 million dollars in that operation. It is not impossible, Senator, that at some point the Ethanol Authority might find it wise to take over the ownership of that plant. It ought to be an option, I believe, for them to do so, if they choose to do so. They're going to be involved with the University of Nebraska in experiments that are related to that plant. And to the extent that they need to have control I want them to have it. As you know and I know, I have had my differences with the Ethanol Authority, it's sort of, as I have said earlier, a little bit like a wayward son. I had a major

part in creating them. And today the son is much more wise than the father, but so be it. You still love your son no matter how many errors they might make along the way. And I hope that....And I've had some very excellent communication with some members of the Ethanol Authority in recent days and weeks. And I do not, as I said earlier, doubt their sincerity in any way. I hope that they will be successful, and I would encourage them to use the full resources of the law to make them successful. To the extent that this bill helps them operate, I hope that they will be successful. Most of all, if the Ethanol Authority is successful, the Nebraska farmer wins. If the Ethanol Authority is not successful, the Nebraska farmer and the State of Nebraska is not going to win. I told you earlier, one cent increase on the commodity prices in Nebraska is \$9 million, \$9 million. A dollar on the per hundred on the livestock prices translates into somewhere nearly the same amount of money.

PRESIDENT: One minute.

SENATOR SCHMIT: You can see where, if we ever develop the industry to the point that we can use 10 or 15 percent of our commodity production in the production of ethanol or ETBE, that we stand in a very good position of increasing the gross income of the State of Nebraska, not by millions of dollars, not by tens of millions, but by hundreds of millions of dollars. I want to point out also that we are really in the kingpin seat from the standpoint of providing this product to the southwest area of the United States and Nebraska, which is an area where many of the cities today are presently having trouble because of air pollution. Nebraska ought to try to take advantage of that. I am trying to, with this amendment and the cooperation of Senator Smith and other members of this body, to sweeten the cake, so to speak, to the point where someone is going to keep this industry going.

PRESIDENT: Time.

SENATOR SCHMIT: Thank you, Mr. President.

PRESIDENT: Thank you. Senator Korshoj, please. Senator Smith.

SENATOR SMITH: Mr. President, is there anyone else to speak?

PRESIDENT: No, you're the last one.

SENATOR SMITH: Then I would just call the question. No, there's no one else I'll go ahead and speak then, if there is no one that wants to talk.

PRESIDENT: Okay.

SENATOR SMITH: I just want to say one thing.

PRESIDENT: Shall we let Senator Schmit close? Okay, you want to close for him?

SENATOR SMITH: All right, thank you. I would just like to say one thing in closing, and that is in response to Rod...Senator Johnson's question regarding do you provide for operating expenses. And that's the purpose of the amendment itself and the purpose of the bill, you know, is that we provide them with the provisions, the production credits, the excise tax, they won't have any debt to service that way. And if they're not able to operate, then they really pro...and they're going to have to depend upon operating income, in other words, to be successful. And that is...I guess that's my understanding of the bill itself. Then you remember what the purpose of the bill originally was. So, with that, I would just say we think this is very, very important, not only to my district but to the whole State of Nebraska and for all the farmers in the state. This is something that has...And we're sorry that this amendment just as revised came out a little bit ago again. And that's because there has been finally one more time an agreement among those different people that are out there that are concerned, the different boards and so on. And we would ask for your support for the amendment, thank you.

PRESIDENT: Thank you. The question is the adoption of the Schmit amendment. All in favor vote aye, opposed nay.

SENATOR SMITH: Mr. Speaker, I'd like to ask for a call of the house, because I was told to do that. Other people are eating their dinner right now.

PRESIDENT: All right, very good. Question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 7 ayes, 0 nays to go under call, Mr. President.



PRESIDENT: The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber and record your presence so that we may continue. Please record your presence, ladies and gentlemen, so we can take this vote. We're looking for Senator Lamb, Senator Hannibal, Senator Beyer, Senator Pirsch. We need Senator Labedz and Senator Wesely. Senator Hannibal is excused. We need Senator Lamb, Senator Labedz, and Senator Wesely.

SENATOR SMITH: Mr. President, we could go ahead and start.

PRESIDENT: All right, thank you. The question, ladies and gentlemen, is the adoption of the Schmit amendment. A roll call vote has been requested, so, Mr. Clerk.

CLERK: (Roll call vote taken. See page 1893 of the Legislative Journal.) 36 ayes, 0 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The amendment is adopted. Anything further on the bill, Mr. Clerk?

CLERK: Yes, there is, Mr. President.

PRESIDENT: The call is raised.

CLERK: Mr. President, the next amendment I have is by Senator...Senator Schmit, I understand...Senator Schmit, everything else of yours? Okay. Senator Lindsay would move to amend, Mr. President. Senator Lindsay. (Lindsay amendment appears on page 1893 of the Journal.)

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Thank you, Mr. President. I have discussed this amendment with Senator Schmit and Senator Smith. If it gets too controversial, I've agreed that it would be withdrawn. It's an amendment which would amend into the bill LB 540 from last year. That is the bill that would exempt from sales tax those organizations holding a certificate, under 501C3 of the Internal Revenue Code. The intent of it is to exempt admissions, and that is the sales tax, the sales tax on admissions for organizations holding those certificates. If, by holding such...or by being a member of such organization that they would obtain voting rights in the organization. The bill

was originally brought around because of a reinterpretation by the Department of Revenue, holding that such admissions are subject to sales tax. They had previously not been until, I believe, it was last year the reinterpretation took place. With that, I would urge the adoption of the amendment and would be available for any questions.

PRESIDENT: Thank you. Senator Rod Johnson, please, followed by Senator Moore.

SENATOR R. JOHNSON: Mr. President, I'd simply ask for a ruling from the Chair whether this amendment is germane to the bill.

PRESIDENT: Senator Lindsay, would you like to comment on the germaneness of this situation or not?

SENATOR LINDSAY: I believe both...I think it is germane. (Laughter.) Both....This has been phrased as throwing myself on the mercy of the Chair. Both of them deal with tax policy.

PRESIDENT: Senator Lindsay, I have a little different opinion. I'm going to rule that it's not germane. Did you wish to speak further?

SENATOR LINDSAY: At this point, judging from the laughter, I don't think so.

PRESIDENT: Thank you, I appreciate that. Do you have anything else on it, Mr. Clerk?

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

PRESIDENT: Senator Schmit, did you wish to visit about the advancement of the bill? Senator Smith.

SENATOR SMITH: Thank you, Mr. President. Senator Schmit is going to allow me the privilege of asking you to advance the bill.

PRESIDENT: Senator Moore, did you wish to speak about the advancement of the bill? Senator Hall, about the advancement of the bill. Senator Rod Johnson, on the advancement of the bill.

SENATOR R. JOHNSON: Mr. President, members, I just have a

question again, it's relative to the amendment we adopted from Senator Schmit. There are several references to the Legislature, the majority of the Legislature approving confirmation of those who are appointed by the Governor to the...both the Gasohol Committee and the Ethanol Authority. Maybe, Loran, when you close you might mention why that has changed. Maybe it's just a technical change, I'm not sure. But I just was curious about that and I didn't get a chance to ask that question during the debate on the amendment. But that's all I have.

PRESIDENT: Senator Schmit. Would this be your closing, Senator Schmit? You're the last light.

SENATOR SCHMIT: I'll just answer Senator Rod Johnson's question, then let Senator Smith close on the bill. Senator Rod Johnson, I inadvertently took away that requirement last year, under LB 587, and did not intend to do so on some of those appointments. And so today, with this amendment, they are all subject to confirmation by a majority of the Legislature again, so that they are uniform, both with the Gasohol Committee and with the members of the Ethanol Authority.

PRESIDENT: Senator Smith, would you like to finish closing or do the closing?

SENATOR SMITH: Well, Mr. President, members of the body, as you all know, this is the ethanol production credit that we're offering to producers in the State of Nebraska. The purpose for that is so that we can be competitive with other states surrounding us. A number of other states in this area have provided that kind of production credit to their producers. And Nebraska, being at a competitive disadvantage is now importing ethanol. We're hoping that by providing this production credit we are placed on the same level as other states surrounding us are and that instead we can, in the end, sell more grain or buy more grain. The producers could buy more grain, we can have more development of plants. This can only benefit the farmers and in the end the economy of the State of Nebraska, and we can export our products rather than importing what we use here in the state. We ask your support in the adoption of the...or in the...I guess it's to move the bill. Thank you.

PRESIDENT: Thank you. The question is the advancement of 1124. All those in favor vote aye, opposed nay. Oh, all those in

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favor say aye. Opposed nay. It is advanced. Very good. We're going to skip 976, LB 976 at the suggestion of Senator Pirsch, and we'll go to LB 854.

CLERK: Mr. President, 854 is on Select File pursuant to action taken yesterday by the Legislature. The first motion I have on the bill is one by Senator McFarland. Senator McFarland, this motion, Senator, was filed to require that LB 854 be voted on on General File without consideration or amendments or any other motions.

PRESIDENT: Senator McFarland, please.

SENATOR MCFARLAND: I'd withdraw that amendment.

PRESIDENT: It is withdrawn.

CLERK: The next motion I have is by Senator McFarland. Senator McFarland's motion is to suspend the rules to require that LB 854 be vetoed...or voted on for Select File without consideration of any amendments or any other motions.

PRESIDENT: Senator McFarland. Okay, may come up. Mr. Clerk, please.

CLERK: Mr. President, I have a priority motion. Senator Bernard-Stevens would move to bracket LB 854...Senator Bernard-Stevens would move to bracket LB 854 until April 9, 1990.

PRESIDENT: Senator Bernard-Stevens. Senator McFarland, for what purpose do you rise?

SENATOR MCFARLAND: Point of order. The....I requested to withdraw the second motion I had. The next motion, I believe, says that we vote to advance LB 854 to Final Reading without any amendment or motions whatsoever. I would ask for a ruling from the Chair whether the bracket motion is in order as a priority motion.

PRESIDENT: Senator McFarland, a bracket motion is a priority motion and it would come ahead of your motion.

SENATOR MCFARLAND: I move to overrule the Chair on that ruling.

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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

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LB 1055, 1124

emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote taken as found on pages 2000-01 of the Legislative Journal.) The vote is 39 ayes, 0 nays, 4 present not voting, 6 excused and not voting, Mr. President.

PRESIDENT: LB 1055 passes with the emergency clause attached. LB 1124.

ASSISTANT CLERK: (Read LB 1124 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1124 pass? All those in favor vote aye, opposed nay. Have you all voted? Senator Schmit.

SENATOR SCHMIT: Mr. President, could I have a roll call vote, please?

PRESIDENT: Yes. Roll call vote is requested. Please be in your seats if you have strayed.

SENATOR SCHMIT: Would you request them to check in, please, also? Would you have them check in, please, Mr. President?

PRESIDENT: Please record your presence. Please record your presence. All senators must be in their seats at this time, please, and please record your presence. It's necessary that you record your presence. Senator Conway and Senator Haberman, you must check in, please. Senator Haberman, would you record your presence, please, so we can continue? Thank you. A roll call vote has been requested on Final Reading, Mr. Clerk.

CLERK: (Roll call vote taken as found on pages 2001-02 of the Legislative Journal.)

SENATOR SCHMIT: Schmit changing from "yes" to "not voting", Mr. President.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: (inaudible) reconsideration.

CLERK: Senator Schmit changing from "yes" to "not voting".

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LB 1124, 1153, 1153A, 1221

21 ayes, 24 nays, Mr. President.

PRESIDENT: The bill fails to pass. LB 1153.

CLERK: (Read LB 1153 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1153 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote taken as found on page 2003 of the Legislative Journal.) 44 ayes, 0 nays, 1 present not voting, 4 excused not voting.

PRESIDENT: LB 1153 passes. LB 1153A, please.

CLERK: (Read LB 1153A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1153A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote taken as found on pages 2003-04 of the Legislative Journal.) 44 ayes, 0 nays, 2 present not voting, 3 excused not voting, Mr. President.

PRESIDENT: LB 1153A passes. May I introduce some guests, please. Under the south balcony, Senator Rex Haberman has two guests, Eddie Nichols of Max, Nebraska, and Phyllis Gardner from Max, Nebraska. Would you folks please stand and be recognized? Thank you. Senator Scott Moore has guests under the south balcony, Mr. and Mrs. Carl Geis of Seward, Nebraska. Would you folks please stand? Thank you. Mr. Clerk, LB 1221.

CLERK: (Read LB 1221 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1221 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote taken as found on pages 2004-05 of the Legislative Journal.) 45 ayes, 0 nays, 1 present not voting, 2

Mr. Clerk, I hear you have a priority motion on your desk.

CLERK: I do, Mr. President. Senator Schmit would move to reconsider the vote on final passage of LB 1124.

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President, and members, LB 1124 moved off of Select File, I believe, with very few dissenting votes, and it had adopted at that time a substantial amendment which Senator Smith and I prepared and presented to you. We discussed it with many individuals prior to the time that we offered it on the floor and the bill, as I said, moved with very little difficulty. Since that time, there has been an extreme amount of concern from several quarters relative to the bill. There is upon your desk or has been for several days, mine is dated the 6th of April, a letter from the Nebraska Petroleum Council, and since that seems to be a very critical issue that many have spoken to me about the bill, I will address that, but first I would like to address the Attorney General's Opinion which questioned the feasibility as to whether or not we could make the direct tax, the direct production credit. I just want to say that the reason we offered that was because it is a feature of the language of a number of state statutes in surrounding territory. The State of Kansas, for example, does have a 20-cent credit. The producers of ethanol in Kansas can produce ethanol in that state, ship it across, and get the 20 cents credit, ship it across the border into Nebraska, and then get the 3-cent excise tax credit in this state which puts a Nebraska producer at a distinct disadvantage. There may be...there may well be a federal problem with the federal constitution relative to interstate commerce in this regard, but it has never been challenged on the federal constitutional level. The State of Nebraska's Constitution, if it should come into play, would not necessarily harm the rest of the bill because the bill carries the severability clause. Secondly, it is not going to happen for a time although we do have a plant at Hastings which we are trying to get into private hands and, very frankly, if that would encourage the transfer of that institution from the FSLIC management to private ownership, I believe that would be a very strong plus for the passage of this bill. I do not believe that anyone needs to be reminded of the miserable record of the FSLIC in the past several years. We are now...we started out with a \$30 billion proposed loss in the FSLIC operation, then it went to 60, then to 20, then to 166, when the Congress passed their



bill. Now we were told 325 billion, and the most recent estimate, \$500 billion. So for anyone who would say that it is better to leave the plant in the hands of FSLIC than to encourage its transfer to private ownership, you have got to be looking through mighty rose-colored glasses. Enough for that. In getting back to the letter from the Nebraska Petroleum Councils, it has been 30 years or more since I have been working from time to time in cooperation with them, mostly in opposition to the petroleum industry of this country relative to the development of ethanol. In 1971, when we passed the first bill, we were told there would never be such a thing as unleaded gasoline. We were told there were all sorts of obstacles to the use of ethanol in gasoline. We know that all of those statements were plain lies. We know that the industry knew better. We know that they know better now. The reference to the aromatic content in the final paragraph on page 1, none of that takes place until 1992, ladies and gentlemen. I feel Senator Smith feels, others who are involved in this feel very strongly that we need to indicate how Nebraska feels about this problem. It is evident to me, and I believe it is evident to everyone, that there is a strong movement by the petroleum industry...Mr. President, could I have a little less noise, please.

PRESIDENT: You certainly may. (Gavel.) May we please have it more quiet so that we can hear the speaker. It is awfully noisy. Incidentally, we are on Final Reading. You should really be at your seats. (Gavel.) Please return to your seats.

SENATOR SCHMIT: Thank you, Mr. President.

PRESIDENT: Thank you.

SENATOR SCHMIT: The portion of the bill that mandates a reduction of aromatics to not more than 30 percent by volume in '92 can, if necessary, be changed the next session. But I believe it is important to let the people know and to let the industry know what direction we want to go. There isn't any reason why we should not indicate and have a strong voice in what happens relative to the development of this industry. The top paragraph on page 2 says the Senate Clean Air bill mandates oxygenate levels of 2.7 for the nine worst polluted areas. The corn growers all over the Midwest enthusiastically supported this as a government mandated market for their product. That is a lie, ladies and gentlemen, a plain outright lie. The corn

growers wanted 3.1. The reason for 2.7, ladies and gentlemen, is because it allows for the use of MTBE, which is produced by the petroleum industry, principally from natural gas which is, of course, a derivative of coal. When you opt for the 2.7, you are fronting for the petroleum industry which is what, of course, some people want to do, hopefully, no one on the floor of this Legislature. I would hope that you would recognize that there is a major, there is a major contest going here. If you go for the 2.7, you are, in all practicality, ruining the market for ethanol. There will be no ethanol development and you are misled if you believe otherwise. And, secondly, when you get to the second paragraph from the bottom of the page, reference to a review of the impressive history of the growth of the ethanol industry in Nebraska, ladies and gentlemen, the petroleum industry had nothing to do with that. The reason you have the industry in Nebraska today is because this Legislature, in 1971, passed LB 776, signed into law by Governor Exon. On the floor of the Congress, Congressman Thone carried legislation for years which made it possible for the federal government to get involved in this. The petroleum industry has fought it all of the way. They continue to fight it today, and they do so very effectively. Ladies and gentlemen, if you are going to listen to this letter and change your vote in a matter of several days, based upon this letter, then I wish you would listen to what I am saying here today. Many of you are relatively new on this floor. You do not know the history of the ethanol industry in this state. In 1971, it was soundly and roundly argued and opposed by the petroleum industry. In '73, four and five, when they were short of fuel, they embraced ethanol and bragged about their ethanol blended fuels because there was a shortage of it and they were in deep trouble. Then as they came along and developed a glut of petroleum again, thanks to the Sixth Fleet protecting the Gulf of Hormuz, we find that they now discover that ethanol is no longer necessary to them and they are on a crash course to develop MTBE and other types of what they call "reformulated gasolines", which means no ethanol. The last paragraph says it would appear that the bill would preclude the use of ETBE as an additive. Ladies and gentlemen, once again, do not be misled that the petroleum industry gives a darn about the development of ETBE. They want to develop MTBE, not ETBE. The ETBE industry is a long way from having a marketable product. Once again, Nebraska is in the forefront of that development. The Nebraska Ethanol Authority has made an investment in an ETBE plant and probably will do another one, but it will be years, several years, at least, before we have

ETBE on the market as a marketable commodity to the extent that is necessary.

PRESIDENT: One minute.

SENATOR SCHMIT: If there is a problem there, we can take care of that. Ladies and gentlemen, one more thing, the second paragraph on the last page, should this bill become law, gasoline prices could increase dramatically. For God's sake, that is what they said back in 1971 when gasoline was 30 cents a gallon. They said, if you pass this bill, it will raise the price of gasoline 3 cents a gallon. Instead, it went up 300 to 400 percent and still going. We know what happened to the price of propane and other fuels when we had four cold days in December. They doubled, tripled without any relation to the actual need for those price increases. The federal investigation that is going on now to determine what happened is going to have a report by June. A lot of help that will do the consumer here in Nebraska. Ladies and gentlemen, the petroleum companies control the Congress. I would hope they would not control this floor. One more thing, we have in this bill the Ethanol Authority which has lending authority for \$18 million. We have seen the scandal that has erupted because of inadequate supervision of the Commonwealth industry, the Savings and Loan, the State Securities, Franklin, and in addition to that, we now understand there is a problem with NIFA, Nebraska Investment Finance Authority. Ladies and gentlemen, there are \$18 million of funds to be loaned by the Ethanol Authority. We have all kinds of controls over banks that loan a third of that kind of money, but the Ethanol Authority has no control at the present time. One of these days we will need to be held accountable because we have enacted into law agencies which become lending institutions without any qualifications as lenders. We may well be held accountable, ladies and gentlemen, for the losses that are going to be accrued to NIFA because we have now paid off Commonwealth. Let me say at this time that if we do the same kind of foolish activity with Ethanol Authority money, we may once again be held accountable to a taxpayer for those losses.

PRESIDENT: Time.

SENATOR SCHMIT: I have more to say on this issue but I guess I am out of time. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Smith you are next but, (gavel)

ladies and gentlemen, let's please hold it down. It is awfully hard to hear and we'd appreciate it if you would hold it down. Senator Smith, please, followed by Senator Hefner, and Senator Elmer.

SENATOR SMITH: Thank you, Mr. President. Members of the body, I rise to also ask you to support the reconsideration motion, and I would just add a little bit to what Senator Schmit has already provided to you, and if I have some time left over, he can have the remainder of my time, but what I would like to do is just talk a little bit about the letter, which, by the way, I just received on the floor from someone else and hadn't even had the opportunity to see until this morning when the bill was being read. And I guess I take exception a little bit to those kind of tactics so that a person doesn't even have a chance to know what in the world is going on until you see the red lights going up there when, in fact, you had had green on Select File and thought that if there was going to be an attack, at least you could have discussed that before the vote came. But what I would like to do is just talk a little bit about the bottom of page 1, where they talk about the amendment which mandates that gasoline contains no more than 20 percent aromatic content, and then they go on to talk about it being made of the basis for crude oil, and so on and so forth. Okay, I just would like to remind you of something. In this State of Nebraska, no city will be affected by that mandate, no city in Nebraska will be affected by this, because none of our cities fall in the category that they are talking about here as far as that content is concerned. We are all what are considered to be, it is a category that is called "nonattainment" cities. In other words, we have not attained that level. None of our cities will be impacted by this. So keep that in mind as one of the reasons they have given for your not supporting this piece of legislation. The other thing, I would just like to talk a little bit about some of the things they have said on the Attorney General's Opinion, and we have been working hard in the last days trying to come up with a response to that Attorney General's Opinion which Senator LaVon Crosby requested, and I understand that, and I appreciate that, Senator Crosby. But what we have come up with is this kind of information, and I hope that we have some other people on the floor who can substantiate what I am trying to say here. We found that, in fact, you know, for our understanding is that the Legislature may enact law and appropriate funds in order to accomplish any proper public purpose. It is in the province of the Legislature

to determine matters of policy and to appropriate public funds, and it is for the Legislature to decide, in the first instance, what is and what is not a public purpose. And the absence of public purpose must be so clear as to be immediately perceptible to the reasonable mind. A public purpose has, for its objective, the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all inhabitants. And when we are talking about using the ethanol blended fuel, we are talking here about our environment, and I guess I would consider that to be for the public welfare. You have a letter, which I have had passed around, which came to us from the Omaha Tribe of Nebraska, and it is my understanding they would be interested in coming up with an ethanol plant at some time down the line, and that could be a means of income for those people there in that tribe, and they remind us, I would like to have you look at that letter going down where it talks about tax credit certificates. "The credit referred to in the Constitution, obviously refers to a state guarantee which could be utilized in the manner of obtaining loans or issuing bonds." According to their general counsel, under the interpretation of the Attorney General's office, if tax credits are suspect, then so too would be welfare payments and grants to individual researchers. And then they go on to say what I have already mentioned to you that the state does have the right and the ability to promote the general good of the citizens of the State of Nebraska. And if cleaner burning fuel is the objective and is the outcome of that, then also that is the economic and the health and welfare benefits for the people. The Legislature has already found encouragement in the promotion of ethanol to be a public purpose. We have already done that. We are doing it right now. Section 66-1302 of the Ethanol Authority Development Act provides in part, and this is what I am going to read to you now is a quote from that act.

PRESIDENT: One minute.

SENATOR SMITH: "The Legislature finds that Nebraska should immediately develop a program to process, promote, market, and distribute products derived from grain or from ethanol or ethanol components, coproducts and by-products to provide for (1) expanded use of Nebraska agricultural products, (2) efficient and less polluting energy sources and reserves, which will make Nebraska more independent energywise and which will retain Nebraska dollars in the Nebraska economy to achieve a pyramid effect, thereby generating additional jobs and tax

income to the state, rather than the export of Nebraska dollars." So you see we are already doing some of these things. All we are doing is making a little change to enhance what we are doing for the producers so that we can produce more and keep...bring that grain...use the grain in the state and export it for the economy, the benefit of the State of Nebraska. I guess I am running out of time but I would like...I may put my light on again, and I am sorry, Senator Schmit, you didn't get any of my time. I would ask you to reconsider, please listen to the arguments we are making. Don't just look at a letter that came out of your files, which I just saw for the first time a little bit ago, and use that for a reason to change your vote. Thank you.

PRESIDENT: Thank you. May I introduce a guest, please, under the north balcony of Senator Dierks. We have Mr. Bob Sweet of Oshkosh, Nebraska, who is a senior at the UNMC in Omaha. Bob, would you please stand so we may recognize you. Thank you, and good luck to you in the future, Bob. Senator Hefner, please, followed by Senator Owen Elmer and Senator Rod Johnson.

SENATOR HEFNER: Mr. President, and members of the body, I guess I am thoroughly confused now. Senator Schmit, would you care to answer a couple of questions I have.

SENATOR SCHMIT: Yes, Senator, I will be glad to.

SENATOR HEFNER: Okay, the amendment that we adopted on Select File, I believe that mandates that gasoline contain no more than 20 percent of aromatic content. Is that correct?

SENATOR SCHMIT: The letter from Vince Brown, Senator, says it makes a reduction, or it makes it not more than 30 percent.

SENATOR HEFNER: Okay, what did that amendment do that we adopted the other day?

SENATOR SCHMIT: The amendment that we adopted attempted to coordinate Nebraska legislation with the Clean Air Act passed by the Congress but with the exception that we are trying to include the 3.1 of oxygenated fuel language which is helpful to the industry, the commodity industry here in Nebraska. The petroleum industry would like to have 2.7, because 2.7 is easier for MTBE and for other reformulated gasolines to comply with. Nebraska corn farmers and milo farmers need the 3.1. It has

also been indicated that it is desirable to have 3.1 in areas of high pollution.

SENATOR HEFNER: But, Senator Schmit, I believe that the amendment mandates that gasoline contain no more than 20 percent aromatic content and the bill that the U.S. Senate passed mandates that it does not have more than 30 percent by volume in 1992, and then 28 percent, 1993, and 20 percent by 1994. So it looks to me like, on the state level, we are trying to achieve that quite a little quicker, is that correct?

SENATOR SCHMIT: That is right, Senator. We are trying to move into...we are trying to move ahead of the Senate because the Senate in Washington, as you know, comes under the powerful influence from the petroleum industry, and they are opting for time so as to give the industry more time to develop their reformulated gasolines, which, of course, then will retain for that industry a larger portion of the petroleum market. They are in no way at all amenable, I have been told in blunt language many times, to surrendering any portion of their market to any industry other than the petroleum industry.

SENATOR HEFNER: Mr. President, I can hardly hear his answer. Mr. President, Mr. President...

PRESIDENT: Senator Hefner, just a moment, please, just a moment.

SENATOR HEFNER: I can hardly hear Senator Schmit's answer.

PRESIDENT: (Gavel) Thank you, Senator Hefner, and please, ladies and gentlemen, let's hold it down. I am sorry I didn't recognize you sooner, Senator Hefner, because I can't hear either.

SENATOR HEFNER: Okay.

PRESIDENT: Thank you, ladies and gentlemen, if you will please hold it down.

SENATOR HEFNER: I have one more question for Senator Schmit. Okay, as I understand...does the Ethanol Board support this bill now with the amendment that we adopted the other day?

SENATOR SCHMIT: The Ethanol Board is divided on the bill. I

have talked to several of them, but I have not talked to many of them. Very frankly, Senator, the Legislature should set the policy and the board should follow the policy. I happen to be a little old-fashioned. I think the boss sets the policy for the hired help, not the other way around. If you believe differently, I don't think you run your businesses that way.

SENATOR HEFNER: No, I agree with you. We set...

PRESIDENT: Senator Hefner, again, (gavel) ladies and gentlemen, please, let's hold it down. We really can't hear up here. There are several pockets of you talking and we just can't hear. Senator Hefner, I am sorry to interrupt you again.

SENATOR HEFNER: Okay, thank you. I kind of lost my train of thought here, but...

PRESIDENT: And one minute.

SENATOR HEFNER: Senator Schmit, as you said, the Legislature sets the policy and then it is up to the Ethanol Board or any other boards or agencies to follow what we set. So you truly believe that this is the right way to go?

SENATOR SCHMIT: I do, Senator.

SENATOR HEFNER: Okay, and as I understand it, it isn't a full agreement of the Ethanol Board. There are just several members of the Ethanol Board that doesn't like the amendment and the bill.

SENATOR SCHMIT: Senator, I have only spoken with several members of the board. I can't tell you how the rest of them feel. The ethanol management...the staff people at the ethanol office do not speak to me anymore.

SENATOR HEFNER: Okay, thank you, Senator Schmit, and I would also like to have Senator Smith continue on the constitutionality of this bill. I know she talked briefly about it but I believe she ran out of time. How much time do I have left?

PRESIDENT: You don't have any left. You just ran out, but thank you.



SENATOR HEFNER: Senator Smith, I wish you would address that a little bit more in detail. Thank you.

PRESIDENT: Thank you. Senator Owen Elmer, please, followed by Senator Goodrich and Senator Schmit.

SENATOR ELMER: Thank you, Mr. President, and members.

PRESIDENT: Senator Elmer, a moment, (gavel). Please, let's hold it down. Senator Owen Elmer has a weak voice and we can't hear him, so please hold it down.

SENATOR ELMER: I can speak up pretty good if you want me to. Anyway, the main problem I had when I voted red on this bill is the requirement that we formulate our gasoline differently than anywhere else in the United States, and that is beginning in January 1st of 1992. The rest of the bill I can understand and support. Senator Schmit, would you work with me and the other portions of the petroleum industry and the agricultural industry in resolving this so that we can, before 1992, have an agreement on the formulation of the fuels?

SENATOR SCHMIT: Are you asking me, Senator?

SENATOR ELMER: Yes, Senator Schmit.

SENATOR SCHMIT: Senator, I will work with anyone. I have worked with my opponents on this bill for 20 years. I am not going to stop now, but I will not guarantee that we can be successful. I will, nonetheless, work with them.

SENATOR ELMER: I have...you know, I don't think that we can have a single state requiring a formulation different than the states surrounding us, and still have an adequate supply. This is the reason for my red vote, and if we can work out this portion prior to that 1992, I would go ahead and support this bill. And maybe, Senator Schmit, you could address this particular problem on what we could do when you speak next. Thank you.

PRESIDENT: Were you asking the question now?

SENATOR ELMER: No.

PRESIDENT: No, okay. Senator Goodrich, please, followed by

Senator Schmit.

SENATOR GOODRICH: Mr. President, and members of the body, my problem with the legislation was also the 20 percent aromatic content portion of the bill. The rest of the legislation I have got no problem with. But I just have a problem, Senator Schmit, of us having a 20 percent requirement when everybody around us or the rest across the country are at different percentages, such as, 30 percent in 1992 according to the feds, and the 28 percent in '93, and 25 percent in '94. This puts us out of step with the rest of the world, the rest of the country, at least, and the fact that we, then, would be in a position of where everyone that is a blender would have to put a special blend together for Nebraska. And separate...keep it separate from other blends for the rest of the United States, and I don't see the blenders or the producers, for example, keeping separate tanks, for example, separate lines, separate everything for Nebraska when the requirements for the rest of the United States are different. It is for that reason, for example, that I voted no, and I was wondering if Senator Schmit would respond to that in the balance of the time. Thank you.

SENATOR SCHMIT: Thank you, Senator Goodrich. I will be glad to respond and you have a valid concern. As I said earlier in response to Senator Hefner's question and as I was going to respond to Senator Owen Elmer's question, if that becomes a real problem, it can be changed next year. I believe it is important that Nebraskans continue to take a leadership role in establishing standards. If it were not for the fact that Nebraska took this role 20 years ago...

PRESIDENT: Senator Schmit, I am going to have to interrupt you again. (Gavel.) Please. Thank you.

SENATOR SCHMIT: Thank you, Mr. President. It is difficult enough to understand me when I mumble through these without having competition. But anyway, I just want to say this. There would not be an ethanol industry in the United States today had it not been for Nebraska. It is unfortunate that there is a difference of opinion between some of us, particularly myself, and the existing Nebraska Ethanol Authority. Let me explain this. A great portion of that difference of opinion is due to the fact that you have eight brand new members on the board, with less than a year of service on that board. They have not gone through the war, so to speak, that I have gone through for

35 years. I have heard all of the arguments. I have heard all of the excuses. I have heard all of the alibis. I was told and you were told, and Senator Warner will remember, the testimony before the Revenue Committee in 1971 when Mr. George Waters, now deceased, said there will never be such a thing as unleaded gasoline. We must have leaded gasoline in order to lubricate the valves on the modern day engines. He also said, as I said earlier, if Schmit's bill becomes law, it is going to increase the price of gasoline. Ladies and gentlemen, you can start on 10th and "O" and drive to 84th, and I will guarantee you today you will find 15 cents variation in gasoline prices, the same type of gasoline, on that trip alone. Thirty years ago we used to drive clear across the county to save a cent or a cent and a half. I don't know why we have that insulation against pricing today but it is there. The people of the nation paid for the Exxon Valdez spill because the price of petroleum nationwide went up due to the shortage caused by the Exxon Valdez spill. If you can believe that, you can believe anything. There isn't anyway in the world that we can continue to allow the petroleum industry to be the guiding light behind the ethanol industry. They are not compatible. They have different goals. Petroleum is designed to take ethanol out of the market, and they have done a pretty good job of it in many areas. They have done a good job in the area of the Congress. Senator Coordsen made a comment, I would hope, Senator Coordsen, you might repeat it when you speak. I hope you will because I agree with you totally about how the \$18 million in the ethanol fund could be used most effectively. But we are not going to use it that way because we don't believe in that kind of activity. But, ladies and gentlemen, millions, tens of millions, hundreds of millions of dollars are going to be spent to maintain the control of the petroleum industry with that industry. I was told 20 years ago, we will never surrender the raw material base for the petroleum industry to agriculture. We are not going to give away 10 percent of our market. They have done so very grudgingly and we have made some progress here in Nebraska, once again, ladies and gentlemen, not because of cooperation...

PRESIDENT: Senator Schmit, you have five minutes of your own time now.

SENATOR SCHMIT: Thank you. I want to get back to something else. We have drafted a bill here which has several sections which have some concern. There are concerns about the references to how the ethanol or the Ethanol Authority can

handle their money. I want to emphasize again, ladies and gentlemen, that the Ethanol Authority has been established and has the ability, has the ability to invest up to \$18 million worth of funds. That is more money, that is three times the amount of money in the Bank of the Valley at Bellwood.

PRESIDENT: (Cavel.) Ladies and gentlemen, please, it just continues to be noisy. If you must talk, please talk softly so that we can hear what is being said. Thank you.

SENATOR SCHMIT: Mr. President, are we still on Final Reading?

PRESIDENT: Yes, sir.

SENATOR SCHMIT: Would you ask the members then, without taking any of my time off of the clock, to please return to their seats. That is not...

PRESIDENT: That is a reasonable request. Point of order. State your point, Senator Withem.

SENATOR WITHEM: Yeah, the rule was changed some years ago when we are considering motions on Final Reading, I believe, to allow us the freedom to move about the floor. And, Senator Schmit is correct in saying we ought to be showing a little more courtesy and not be as loud as we are, and I will grant that, but I believe freedom to move around the floor in considering motions is a change in the rules that was made a couple of years ago.

PRESIDENT: Senator Withem, you are correct in changing the rules so that you could wander around while we are discussing bills while on Final Reading. However, I would really recommend that we show a little respect, not only to Senator Schmit, but to anybody else who is speaking, because up here with the reverberations, it is very difficult to understand, and those who wish to listen, it certainly ought to be quiet enough so that they can hear.

SENATOR WITHEM: And I certainly agree with that, and we have been discourteous to Senator Schmit and we should be paying a little more attention, but remaining absolutely frozen to your seat while motions are being considered is not part of our rules.

PRESIDENT: Senator Withem, you stated it better than I could

have. Thank you. So let's hold it down. Senator Schmit, we didn't take that away from your time.

SENATOR SCHMIT: Thank you, Mr. President, and, Senator Withem, discourtesy on this floor is not anything new and I doubt that it will cease after the debate on the bill this morning, and that is not of any great concern to me. What is of concern to me, Mr. President, and, ladies and gentlemen, is that people understand this bill, understand where you are, how you got there, and where you are going. It has not been an easy course. There have been a multitude of obstacles to overcome in the last 20 years. You are here today because this Legislature fought adversity from day one. Governors, Congressmen, Senators assisted us at the national level and we have been very fortunate. This is one of the few bipartisan efforts that have ever been exerted on this floor. There are those who are critical of me because I have chosen to disagree with the institute which I created under LB 1230, the Ethanol Authority. Ladies and gentlemen, we just paid \$16 million in liability, which probably wasn't enough, to a group of depositors because we adopted the NDIGC Act in an attempt to help them. We accepted some responsibility there. There are \$18 million in this fund. There isn't a banker in the staff. There is a banker now on the Ethanol Authority, a very fine lady, I am told, who has years of experience, one out of 11. Ladies and gentlemen, this has now become, in effect, a lending institution. It is kind of interesting that the Governor or the Attorney General worries about the constitutionality of the 20 cent grant to Hastings. They do not worry about the way we invested money in diesel fuels. They do not worry about the guarantees which were made to other entities. They do not worry, did not worry, did not show any concern whatsoever when NIFA issued \$200 million worth of bonds which then were invested with an insurance company which put the entire 200 million into junk bonds, which are now selling for something like two-thirds of a dollar on the dollar. Had we made that kind of loan to agriculture, ladies and gentlemen, and had to write off \$70 million, we would have never heard the last of it. We would never have heard the last of it. Ladies and gentlemen, I suggest we may be doing that. We may have to pick up the tab on more than that because why? We didn't look at it close enough. Oh, yes, I questioned the NIFA many times over the last four years as to why they did not loan money to agriculture. They always had some fast talking, loud talking answer. Ladies and gentlemen, today we have got our neck in our noose and our tail

in the crack.

PRESIDENT: One minute.

SENATOR SCHMIT: And do you know what? The pressure is going to get tighter. If we do not exercise some oversight on the Ethanol Authority funds, we have no one to blame but ourselves. Ladies and gentlemen, I am willing to go on record in that regard. If the rest of you do not care to do so, let me tell you that when the time comes, when it comes, I don't say if it comes, when the time comes that a problem develops, I will remind you, ladies and gentlemen, I will remind you, and I would guess that just as you do not like to be reminded today of the debacle that is existing with NIFA and you do not like to be reminded today of our errors in the past relative to industrial loans, ladies and gentlemen, you will not like it any better in a year or two when something develops with the Ethanol Authority funds. I would suggest that we ought to pass the bill. If there are problems with the bill and you want to be amenable to Vince Brown, our former Clerk, fine man that he is, you can talk to him all summer long, and you can come whistling down the pike next fall and put something on the floor. In the meantime, Vince will probably get a raise for having done the best job he can, and that will make everybody happy. Thank you very much.

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

SENATOR CROSBY: Thank you, Mr. President, and members. I am not going to speak to the technical side of this bill because I think that I may have some other people in company with me who do not understand all the technical side of it. But there are just two or three things I would like to say about it in defense of my own vote on the bill. If you look in the Journal, you will find the other day I did not vote on that amendment because at that time here we are in practically the last three days of the session and a whole new amendment is being run in on this bill which evidently came after the Attorney General's Opinion which I asked for at the request of people who wanted to find out what the Attorney General would think about that particular question. I didn't feel competent to vote for that amendment, one way or the other, so I did not vote. No, I haven't been here as long as you have, Senator Schmit, but that is one thing that really irritates me, when people say that on the floor of this Legislature that because you haven't been here, you don't

understand what is going on. That is not true. I have paid attention to the ethanol question over the years. I happened to work on the Congressional staff in Washington, D.C., when the questions first started really surfacing. So I do think I have a little background and a little knowledge to at least know what is going on. From that point of view, and I don't feel that I am a captive of the petroleum industry. I do buy gasoline for my car. That is about the extent of what I do with gasoline. I use it in my car. And when I listen to what you say about economic development and so on and needing the plant in Nebraska and all of that, I understand what you are saying, but I just do not like the idea of all of this coming so quickly at the end of the session, and when this happens, we are always handed this specter, as, well, if we don't do this, everything is going to fall apart. So all I am doing is telling you why I am voting the way I am because of my own personal feelings. I just do not feel...I don't like to hurry on something this big. And I know, you say, well, we aren't hurrying, it has been 25 years. Well, but this particular bill it seems is going a little fast. So I have paid attention to everything that you and Senator Smith have said. I have read all the handouts, and I'm still not going to vote for the reconsideration simply because of my own feelings about the whole thing. Senator Hefner, or someone else, if you want the rest of my time, you may have it.

PRESIDENT: Thank you. You have two and a half minutes. Senator Smith.

SENATOR SMITH: Thank you, Mr. President, and thank you, Senator Crosby. I will...what I will do is go ahead.

PRESIDENT: Senator Smith.

SENATOR SMITH: I will just go ahead and explain a little bit more about the Attorney General's Opinion and our interpretation that Senator Hefner asked us about. Okay, Senator Hefner, basically, what I was saying is that the Legislature does, in fact, have the power to enact law and to appropriate funds to accomplish what is considered to be a proper public good or purpose. And then I went on and talked about the fact that if we have as an objective the promotion of the public health, safety, welfare, economy, prosperity, contentment, those kinds of things, and then I showed you a letter that I had received, we had received, and I sent a copy of that around, from Mr. Morris who represents the Omaha Indian Tribe, and his

argument that if, in fact, we can't do this kind of thing, then how can we even do welfare or grants or bonds, that sort of thing, for people, for groups, individual groups. And then I go on to say that the Legislature has already done this sort of thing in the fact that we passed legislation prior to this regarding ethanol, and I will read to you from the Ethanol Authority Development Act which says, "The Legislature finds that Nebraska should immediately develop a program to process, promote, market, and distribute products derived from grain or from ethanol or ethanol components, coproducts, or by-products, to provide for (1) the expanded use of Nebraska agricultural products, (2) efficient and less polluting energy sources and reserves which will make Nebraska more independent...

PRESIDENT: One minute.

SENATOR SMITH: ...energywise, and which will retain Nebraska dollars in the Nebraska economy to achieve a pyramid effect, thereby generating additional jobs and tax income to the state rather than to export the Nebraska dollars." In other words, we are already doing this. Why all of a sudden now are we saying that we can't do it? And the other thing that I would bring to your attention, I passed you a handout on the floor before this time and now we have another copy that I sent out a day today, look at the states around us that are providing production credit. None of these states have ever argued that case. So those states are doing the same thing we are talking about doing in the production credit. With that, I would just go on to say that when we talk about doing those kinds of things, we are doing about the public purpose to attract new ethanol facilities to Nebraska, to enable existing production to expand; that is to the good, the benefit of the public welfare. And then I was going on to say that due to changing times, what may have been not been public purpose 85 years ago when...

PRESIDENT: Time.

SENATOR SMITH: ...that test they are talking about, the Oxnard Beet Company case was decided, that was 85 years ago.

PRESIDENT: Time.

SENATOR SMITH: We have done these other things since that time and they haven't been contested. Thank you.



PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Labeledz and Senator Smith.

SENATOR NELSON: Mr. Speaker, I, too, sometimes am confused in all of the amendments and some of the very rapid actions in the last week or so. And I originally looked at it as too many entities coming in and seeing an opportunity on \$18 million to get their fingers into it whether or not they were knowledgeable on the ethanol industry or not. And as we all know, the price of gasoline fluctuates so much and, of course, the price of corn, so what is economically sound one day doesn't apply to the next day. I certainly understand why the petroleum industry would not like this bill to pass. After all, they do sell fuel and on the other side of the coin of which I very much support the ethanol industry is that we don't want to be tied to the whims of the foreign market, or hot or cold weather, or so on and so forth. So I can understand that but I would hope that some of the senators would reconsider because, as usual, the interest of the industry, which I don't blame them. With that, I would like to give either Senator Smith or Senator Schmit the balance of my time, or a minute to Senator Smith, and I doubt if she will shut off in a minute, so Senator Schmit, you are probably lost but maybe you had better take your minute first, Senator Smith.

PRESIDENT: Senator Smith, you have about three and a half minutes. Were you giving her time? Yes, three and a half minutes of time.

SENATOR SMITH: Okay, thank you. Thank you, Senator Nelson, my good friend, Senator Nelson. Thank you for giving me your time but you didn't have to say that.

PRESIDENT: That took twenty seconds.

SENATOR SMITH: What I would like to do, what I would like to do is go ahead because a lot of people have approached me saying we don't even know what was in the amendment that was adopted the other day. What I have now done is had passed around on the floor a summary of LB 1124 as it was amended the other day for your perusal. And what I would do is just go through a section by section account of what the bill now becomes. So if you wanted to see what it became when you added that amendment, you could look in the final form of the bill. Section 1 now creates a 20 cent production credit per gallon of gasoline, or ethanol,

excuse me, produced in Nebraska. Not less than 2 million and not more than 25 million gallons of ethanol produced annually at a plant shall be eligible for the credit, and that credit will be available through December 31st of 1997, but it can't be claimed any more than an 84-month period. Then going on, Sections 2 and 3 talk about the reduction in the current excise tax exemption from three down to two cents, and that would be available through December 31st of 1992. Section 4 requires that appointments to the Nebraska Gasohol Committee have an approval of a majority of the Legislature. That is the only committee that is now included in here, the Gasohol Committee. The Warner amendment, if you remember that the other day, what it did, it attached the requirement that if, in fact, a deficit came up in the Highway Trust Fund, it would kick in in increments of one-tenth of a cent to cover any kind of deficit over time. So there would be an increase in the gas tax after that other money ran out, if there were a need to do that, so there would not be any additional new money taken from the Highway Trust Fund. Section 6 directs the Revenue Department to collect the tax. Section 7 just harmonizes statutory provisions, and Section 8 requires that reformulated gasoline, which is sold in Nebraska after January 1 of 1992, shall contain an oxygen content equal to or greater than 3.1 percent and shall contain a maximum aromatic content of not greater than 20 percent, and we have already talked about that, and remind you that I have said to you that none of the cities in Nebraska at this point in time, would be my understanding, have any concern about that, would have any concern. Section 9 requires appointments to the Ethanol Authority and Development Board to have approval of a majority of the Legislature, we already said that once. Why do we have it twice? It does it again, okay. Section 10 allows the Ethanol Authority and Development Cash Fund to be used to acquire an ethanol or agriculture production facility. Currently, the Ethanol Authority only...

PRESIDENT: One minute.

SENATOR SMITH: ...has the authority to purchase shares of stock or otherwise make an investment in such facilities. In addition, Section 10 requires the Revenue Department to credit one-half of the 20 cent production credit to the Ethanol Authority and Development Fund, and then the other 10 percent to the Highway Trust Fund and that is why we won't kick in money over and above what we already are doing with the 3 cents in excise tax from the Highway Trust Fund. There will be no new

dollars coming from the Highway Trust Fund. And we have the provision, as I have already told you, from the Warner amendment to kick it in over time in the years coming if that should occur, that we would end out of the money that we are talking about, so that none of the money, no new money will be spent from the Highway Trust Fund for this. And then it talks about the fact that the Ethanol Authority may use the Ethanol Authority and Development Fund to be used to acquire an ethanol plant, and that investments, other than acquisitions, to be matched dollar for dollar by any other investors in a project. What we are talking about is making use of some of those millions of dollars that the Ethanol Authority presently has on hand.

PRESIDENT: Time.

SENATOR SMITH: We will be using it for production credit and also for the opportunity to in part acquire an existing facility. Then there is a severability clause which is added should any part of this bill should be considered to be invalid or unconstitutional. Thank you.

PRESIDENT: Thank you. Senator Labedz, please. You give your time to Senator Schmit. Senator Schmit, please.

SENATOR SCHMIT: Mr. President, and members, I regret the taking of this much time on Final Reading on this bill. It is, however, I believe an important bill. I want to ask you to reconsider very carefully your vote on this bill. I think Senator Smith has made some excellent arguments. There have been some questions raised and they were legitimate questions. I do not mean to offend anyone by referring to my length of service on this floor, Senator Crosby. I do think, however, that if you do not learn or we do not learn from the experience of the past, then we are making a serious mistake. I have heard these arguments so many times and I would have to just say that I think that there is a reason why Nebraska needs to continue leadership in this area. Reformulated gasoline is a method of blending fuels to reduce the aromatics. The petroleum industry must reduce and remove the benzines from gasoline, whatever that is. There is probably some chemist on the floor who can explain that much better than I can. I am not a chemist. I am a farmer. The point that we are trying to make with this bill is this. What is wrong? Just suppose that we said we are not going to allow the use of methanol blends in Nebraska. We know

that at this time problems have been caused by the use of methanol blends. If you will check the handbook in your automobile, you will find that virtually all of them will refer to the fact that they can use ethanol blended fuels, but they cannot use methanol blended fuels. What is even more important, ladies and gentlemen, is that there is no methanol-based production in Nebraska. You make methanol out of natural gas. You make methanol out of coal. You do not make methanol from agricultural products. Every state in the Union has its own drum to beat, so to speak. We, in Nebraska, are producers of commodities. That is the business of this state. It is a multibillion dollar business. A billion bushels of commodities are produced in this state annually, and it is a substantial business. We are trying to encourage an industry that will utilize a part of that production, a part of that capacity to produce. We need to do more in that area. We need to be the leaders of this area, not the followers. We need to be the head of the cat, not the tail and, ladies and gentlemen, we have been there. We have brought the United States of American kicking and screaming, against their objections, into the business of cleaner petroleum fuels. When I introduced 771, 776 in 1971, I would like to have it here today to read the preamble. I said because there would one day be unleaded gasoline, we can increase the octane of gasoline by the use of ethanol blends and we can provide a better, cleaner product. Ladies and gentlemen, that was a long time before there was ever any indication that there would be a shortage of gasoline and that there would be unleaded gasoline, that there would be a major concern with clean air. But in 1971, this Legislature started down the road toward a program today which is accepted by all parts of the United States. We have been in the forefront. Why today should we knuckle under, bow down, and scrape and kiss the boots of the petroleum industry who have been our opponent these past 35 years? They have succeeded, they succeeded in the twenties, they succeeded in the thirties, they succeeded in the forties. They were able to close down a 90,000 gallon per day ethanol plant in Omaha, Nebraska in the forties and sell it for junk...

PRESIDENT: One minute.

SENATOR SCHMIT: ...because they had the political muscle to do so. They didn't want the competition, ladies and gentlemen. Today they are doing the same thing to you now based upon technicalities which I can't explain, shucks no. I make no bones about that. But, ladies and gentlemen, let me tell you

this, over the years the Nebraska Legislature has been right. I think we are right today. We may have some problems. We have had a bill every year on the ethanol thing. We are going to have one for the next 20 years. We are going to have to do it. It is like taxes. It is like every other bill we have here. Reference to the major amendment in the last few days of the Legislature, ladies and gentlemen, it is a 21-page amendment. That is not a large amendment. Large, massive substantive amendments have become routine on this floor. I don't know how many times I have watched as a member brought to us a large 100 page amendment. We trust the individuals who bring them to us. Sometimes there are mistakes, sure.

PRESIDENT: Time.

SENATOR SCHMIT: Every bill that has moved across this floor, ladies and gentlemen, has been, is, and will be in the future subject to amendment to improve it, clarify it, repeal it. I don't have any worry about that. What I am saying is that if we do not pass this bill, I can understand the concerns of some of the urban legislators. What I cannot understand is the no vote from the rural legislators. They have everything to gain and...

PRESIDENT: Time.

SENATOR SCHMIT: ...nothing to lose by voting for this amendment. And, ladies and gentlemen, I can assure you that the farmers of the State of Nebraska understand that, if no one else does. Thank you very much.

PRESIDENT: Thank you. I still have nine speakers lined up. Senator Smith, followed by Senator Coordsen and Senator Schmit. Senator Smith.

SENATOR SMITH: Thank you, Mr. President, and members of the body, I would just like to talk to you a little bit and remind you about the reasons why this bill is so important to us. You remember that Nebraska does...is a leader already in the nation in market penetration of ethanol fuels, and it has set new sales records. But also remember when I told you that currently we have to import two-thirds of the ethanol that we use. Nebraska producers are at a competitive disadvantage among the states surrounding us who are providing production credits to their producers, similar to what we are asking for in this bill, and these production credits, then, coupled with Nebraska's current

exemption, the three cents that we already have allowing producers in surrounding states to sell their ethanol fuels in Nebraska at a price which is lower than we can, as our producers produce it, match. So that is the problem that we are in right now. LB 1124, as amended, is intended to correct this situation and put us on a level playing field with those states around us, helping us to create strong local markets and expand into the states around us and in the nation. We believe that it is really important because it is going to impact directly on the economy of the State of Nebraska. It is going to place our ethanol producers on that level playing field. It is going to increase the use of the product. So it can do only nothing but good as far as the products, the corn, the grain cereals that we are talking about here so of a benefit to our producers. When I talk about producers, I talk about producers, I guess, in two ways, the plant producer we are talking about, but on the other hand, the grain producers. So all will benefit, and then to expand our markets. Remember that Nebraska is at a critical juncture in its efforts to establish a viable ethanol industry. We can't afford to lose this opportunity because decisions are already being made right now, literally being made about bringing in and developing, building new plants in Nebraska. With a favorable tax incentive that we are talking about here which puts us at a same level as other states around us, its central location and abundant feedstocks, Nebraska can become a leader in both production and marketing of ethanol fuel. I would like to give the remainder of my time to Senator Kristensen, and he will talk a little bit about the Attorney General's Opinion. Thank you.

PRESIDENT: Thank you. Senator Coordsen, please. Oh, Senator Kristensen, excuse me, yeah about three minutes left, almost.

SENATOR KRISTENSEN: Thank you, Mr. President, and members. Thank you, Senator Smith for allowing me a couple of minutes. A lot of discussion has been held this morning about the Attorney General's Opinion, and I kind of wanted to touch on that, and I feel somewhat compelled to speak on why the Attorney General ruled the way he did, or why I perceive that he ruled this way, and how that may fit into this. Article VIII or Article XIII, Section 3, of our Constitution says the credit of the state shall never be given or loaned in the aid of any individual, association, or corporation, and thus with that you make the distinction and say, look, the state is not going to become the guarantor or, in effect, are not going to be the bank for

someone's loan in the future or they are not going to bind themselves. There are cases in the past in this state, in fact, one of them dealing almost directly with ethanol plants that occurred back in the late 1970s, and there the court talked about the purpose of the constitutional limitation of indebtedness was to prevent anticipated revenue for the creation of obligations to be paid in the future. In other words, if we are going to make obligations here, we are going to bind the state for years down the road with credit or to become, in effect, a guarantor if something goes bad, we will bail you out, the state can't do that. However, there is a big difference here, and as I went back and looked at some cases dealing with the credit of the state, we do that, in effect, in a variety of ways, and you have to look as to whether there is a legitimate public purpose to do so. We have a statute that I think probably legitimizes the ethanol public purpose that Senator Smith and Senator Schmit have already spoken about. One of the things that it brought to my mind was the tax credits and sorts of things we do with LB 775, the sort of industrial incentives to keep...

PRESIDENT: One minute.

SENATOR KRISTENSEN: ...existing programs going or to build new facilities. I dug through and found an Attorney General's Opinion done back in late 1987 at the end of the session which basically says that those are legitimate things to do. You can use exemptions or tax incentives for the creation of production of existing facilities or for new ones, and that the reason that that is important, and there is a distinction, is because of the public purpose doctrine in there, and there are certainly legitimate legislative purposes for doing what Senator Schmit would do with his ethanol. Now whether you believe in ethanol or not, that is the policy you ought to do your voting on. I don't believe that the Attorney General's Opinion is on point. I think that it misses the mark here in several respects, but, certainly, I think that it is a legitimate thing for the state to do. Now whether it is good policy, you are going to have to decide that when you vote, but the Attorney General's Opinion I don't believe is accurate. I think there are certainly some similarities with the tax incentive programs through 775 that would do the same things. Just because we have...

PRESIDENT: Time.



SENATOR KRISTENSEN: ...to use the word "credit", it isn't analogous here and thus, in my opinion anyway, it would be a permissible thing to do. Thank you.

PRESIDENT: Thank you. Senator Coordsen, please.

SENATOR COORDSEN: Thank you, Mr. President, and members of the body. I had originally put my light on to call the question but I found that there was someone else that needed a little time yet to make another point, so I will say several things in the first couple of minutes. One, Senator Schmit alluded to something I told him, I think it has probably been several years ago already, Senator Smith. Comment probably made a little bit humorously but nonetheless serious, and the comment was that if we wanted to really get some good for agriculture with \$18 million, we would use that \$18 million to contribute to select members of Congress as a lobbying effort in order to effect a national ethanol plan, and probably would have had quite a great much amount more input on the ethanol use from agriculture than some of our current efforts.

PRESIDENT: Senator Coordsen, a moment. (Gavel.) Could we have it a little quieter, especially along over here on the north side, please. Thank you, Senator Coordsen.

SENATOR COORDSEN: And I had supported the 1124 as it was amended in and actually through Select File and advancement to Final Reading, until a person got a copy of what we had exactly did. There are many things in the Schmit amendment to 1124 that are beneficial. The clarification of the language to allow the Ethanol Development Authority Board to fund construction, to participate as an investor in other construction, but I guess the part that gave me the most problem was, and although I realize it is a two-year sunset, was the use of the Ethanol Development Authority Board Funds to reimburse the Highway Trust Fund for the amount of money that they were going to expend in ethanol credits, whether they were producers credits or for the blenders tax credit, and quite frankly I didn't think that this was a good use for those funds because, as the bill was written, the exposure to the Highway Trust Fund would be less under the terms of the Schmit amendment than what is currently refunded on the three cent per gallon ethanol tax credit that we currently have that is due to sunset in 1993. So all things taken in context, though I am a strong supporter of ethanol, I felt that perhaps at this point in time we needed to regroup and come in



the next year with something that might work a little bit better because I had the fear that the money that we, as producers, contributed into the fund would ultimately be transferred to the petroleum industry as part of the ethanol tax credit and we would have, in fact, no enhanced production in the State of Nebraska. With that, I would give the rest of my time to Senator Elmer.

PRESIDENT: Senator Elmer, please.

SENATOR ELMER: Thank you, and thank you, Senator Coordsen.

PRESIDENT: Two minutes.

SENATOR ELMER: The point I want to make is that the section of the bill that we have a real problem with is Section 8, on page 11, and it says reformulated gasoline which is sold in Nebraska after January 1 of 1992 shall contain these things. Senator Smith has said that reformulated gasoline is not necessary except in certain cities. I want you all to know that virtually all the gasoline that is sold in this state is reformulated. It doesn't matter where it goes and who is burning it. Reformulated means an additive has been put in after the refinement process is completed. That is reformulating. Virtually all the gasoline sold in this state currently, and virtually...and more so in 1992, so that means that section applies to virtually all the gasoline sold in the state, whether it is a targeted area or not. I want everybody to understand that.

PRESIDENT: One minute.

SENATOR ELMER: Thank you.

PRESIDENT: Thank you. Senator Schmit, followed by Senator Dierks.

SENATOR SCHMIT: Mr. President, and members, you have been very generous with your time this morning. I do not like to call the question, otherwise I would do so, because there may be someone that wants to speak yet. I will save most of my remarks for closing. I just want to say that in regard to Senator Owen Elmer's remarks, petroleum fuels, as we know them, are not uniform from coast to coast, nor from north to south and east to west. They need to be designed for specific areas relative to

the type of an area, the altitude of an area, the temperature, the humidity. There is a lot of variation in gasoline and, ladies and gentlemen, when someone says if Nebraska produces or lays down criteria for a bill which is different than anyone else that we are not going to get gasoline, don't you believe it for a minute. There may be a major company or two which says, nuts, we are not going to do it, but someone will move in and take advantage of the Nebraska market. And someone says, well, that is going to be more expensive. Ladies and gentlemen, look up and down the road and check your fuel prices, as I have said earlier. We have got all kinds of variation now and, in fact, it will vary from day to day and from hour to hour within the day, and they get away with it. So, ladies and gentlemen, do not be misled by that. I will not say anymore at this time. I will save my time for closing.

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

CLERK: 23 ayes, 0 nays, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Schmit, you are closing, please.

SENATOR SCHMIT: I want to give Senator Smith some of my time and I will take the balance.

PRESIDENT: Did you say how much? Okay, Senator Smith, you are free.

SENATOR SMITH: Thank you, Mr. President, members of the body. I will make a commitment to Senator Owen Elmer that Section 8 that he is talking about, that we have been discussing here a little bit off and on, if there is a concern about that, and, in fact, we are impacted by that, remember that it does not take effect until 1992, so there is time to make a change, and I will pledge myself, I don't know whether Senator Schmit will or not, but I would pledge myself to working with Senator Owen Elmer or anyone else in here or all of you, 47 other people sign on, and change that so that, in fact, we are not impacted by it. With that, I will give back the time to Senator Schmit. Thank you.

PRESIDENT: Senator Schmit, you still have four and a half

minutes.

SENATOR SCHMIT: Thank you, Mr. President, and Senator Smith. I just want to say again, Senator Coordsen was on target with his remarks. We know that most of the ethanol game and the petroleum game is being played in the Congress at the congressional level. We have been fortunate here in Nebraska that our Congressional delegation has been, and I am sure always will be, very protective of Nebraska production and Nebraska efforts in this area. We are the ones here, ladies and gentlemen, who produce large volumes of grain, we in the Midwest. Senator Smith has pointed out to you that production credits are not anything which are new. Many of our surrounding states are in that position now, which places Nebraska ethanol producers at a disadvantage. We have done about everything we can do to encourage the development of an industry here. It is of no great benefit to Nebraska citizens if we must import all of our ethanol and it is certainly no benefit to Nebraska citizens if, in fact, methanol takes over the market. When President Bush was here almost a year ago, he threw down the gauntlet, in my opinion. Many individuals thought that the President came out here and said I am going to open the door for ethanol. If you read his speech and read it carefully, he didn't say that at all. He said there will be a place in the market for ethanol fuels but you are going to have to compete for it. There will be many other industries that will be trying to take over that market. If Nebraska farmers, Midwestern farmers want that, they are going to have to work at it. Ladies and gentlemen, the Nebraska Gasohol Committee, the Nebraska Ethanol Authority, and the Nebraska Legislature are going to have to be in the forefront to get that done. There are going to be differences of opinion, and again I want to say this, you have got to look at the past in order to know where we are at today, and you have got to be able to look into the future if you realize that...if you want to realize the success of what we started many, many years ago. It is not easy today to stand here and debate on Final Reading a bill which should not have been debated this extensively at this point. But I apologize for not having had the amendment to you earlier. It didn't work out. So here it is today. I am just going to say at this time, Senator Kristensen, I think, made a good point with the AG's Opinion. I am not concerned with the AG's Opinion. The AG has other things to worry about right now, I am sure, other than whether or not LB 1124 is constitutional. If it becomes unconstitutional, that portion of it, the rest of the bill

stands, and that portion is very important. If the portion on reformulated fuels is a problem and it is definitely convincing to me and to Senator Smith and others, as has been pointed out by some of you, Senator Goodrich, Senator Crosby, and Senator Owen Elmer, we will work with you on it. But, ladies and gentlemen, do not throw the bill out the window because of a particular section (a) or any other portion of the bill. The bill is a step in the right direction. It is a long way, ladies and gentlemen, from what I wanted, a long, long way. I have compromised a long way...

PRESIDENT: One minute.

SENATOR SCHMIT: ...every time this bill has been brought to the floor. I have compromised every year that we have introduced the bill. We have seen all sorts of arguments but we have overcome them. We have an industry today and, ladies and gentlemen, it is the only really new industry that has been developed in this state in many, many years, in many years. And I think we are making a mistake if we do not reconsider our action on this bill. I ask you to give us a vote to reconsider the bill and, hopefully, to give it enough votes to pass on Final Reading. I think that you will find, in the total analysis, that you've made the right decision. Thank you very much.

PRESIDENT: Thank you. And the question is, shall the bill be reconsidered? All those in favor vote aye, opposed nay. It requires 30 votes. Record, Mr. Clerk.

CLERK: 37 ayes, 2 nays, Mr. President, to reconsider the vote on Final Reading of LB 1124.

PRESIDENT: Okay, thank you. The question is, shall the bill pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2007-08 of the Legislative Journal.) 30 ayes, 14 nays, Mr. President, 5 present and not voting on the final passage of 1124.

PRESIDENT: LB 1124 passes. Senator Crosby, you asked for permission a little while ago to say a word, and I offered that at the end of Final Reading, but we kind of have a break here, would you like to say it now?

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LB 431, 1031, 1055, 1059, 1109, 1124, 1141  
1153, 1153A, 1221, 1246, 1246A  
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retarded in our state. But let's do so in a fashion that makes sense, that is accountable, and we understand exactly what we're getting for our money. And, so these could have been met, both of these goals could have been met with language the Appropriations Committee put out, but that language was rejected. Instead money was added and language deleted, and so that is what's put me in this quandary. I hope, as we work through this issue, and I think we should take some time, it's a 2 million dollar issue, we should try and understand what we hope to accomplish through this change. And I would like to see, on the part of those particularly promoting this amendment, a commitment to deal with this problem and correct these problems, and that might ease my concerns and allow me to vote for this. I need to hear from supporters of this that they know there is a problem and want to deal with this...

PRESIDENT: Time.

SENATOR WESELY: ...problem, otherwise we simply get ourselves into a cycle and a Catch 22 that will not ever end and continue down the road with further problems.

PRESIDENT: Thank you. While the Legislature is in session, and capable of transacting business, I propose to sign and do sign LB 1109, LB 431, LB 1055, LB 1124, LB 1153, LB 1153A, LB 1221, LB 1246, LB 1246A, LR 11, and LB 1141. Senator Warner, please, followed by Senator Hannibal.

SENATOR WARNER: Mr. President, members of the Legislature, again, I indicated earlier that as we go along I would at least inform you of the status of the reserve fund as we go. And, as indicated earlier, LB 1059, and that's the only thing we can key to on this because it does make a difference, if this amendment is adopted, and if 1059 is overridden, why there will be a million four left that could be overridden this year and still maintain the 3 percent reserve. However, if this is overridden, if you look out beyond into the next biennium, we would be in a two and a half million deficit situation. But that is no legal requirement to observe that. But it is something that one needs to keep in mind, that assuming that the growth is something less than 6.5 percent in each of the two years in the following biennium, why we would certainly have a problem. On the other hand, if 1059 is not overridden, why then there is something like 3.6 million left, even though this is overridden. And that then is not so tight. But you should keep in mind that as we go

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1246, 1246A  
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LB 1055, LB 1124, LB 1153, LB 1153A, LB 1221, LB 1246, and  
LB 1246A.)

I have an explanation of vote by Senator Landis and a study resolution by the Banking Committee, that is offered...signed by its membership, Mr. President. (LR 427. See page 2032 of the Legislative Journal.)

Mr. President, the first motion I have with respect to overrides of legislation is LB 163. Senator Rod Johnson would move that 163 become law notwithstanding the objections of the Governor.

SPEAKER BARRETT: Senator Rod Johnson, please.

SENATOR R. JOHNSON: Mr. Speaker, members, my comments will be short and, hopefully, to the point. I guess LB 163 is a substantial policy choice question this Legislature is going to have to make. I know that you have been lobbied heavily on both sides of this issue, and I can appreciate that, and I hope that you've made up your mind. I'm not sure that the debate will add much to the vote that you're about to cast, but I wanted to get some things in the record nonetheless. You know as we all get these notices from the Governor as to why she vetoed the bill, I'm not sure they serve any service other than to piss us off. But I'm at the point right now where LB 163 has three points in it, her veto message, that tell us how she feels about LB 163. The first is she says the first is that LB 163 fails to build upon the work commissioned by the Legislature, past work. Then she mentions a bill I passed in this Legislature a few years ago to commission a study to look into the solid waste problems that Nebraska has. That study pointed out we have a substantial number of solid waste or landfills in Nebraska that have really some substantial environmental and health risk problems to Nebraskans. I realize that, that's what the purpose of this bill has been from the beginning is to begin the process of moving ourselves forward to deal with solid waste. Granted, it doesn't help clean up the contamination that is there, but we have other programs that are designed to help, walk in and start the process of looking at water contamination problems that exist with SPAs or special protection areas. Senator Schmit and I carried a bill this year, LB 1099, which did not make it through the process, but again is a bill that would have helped us deal with some of the contamination problems that exist. What this bill does is basically say we recognize that EPA is going to be coming down in this state very soon, within probably