

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

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

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

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

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

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

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

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

PRESIDENT: Senator Warner, please.

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

January 30, 1989

LB 56, 90, 127, 167, 184, 185, 195  
342, 344

SENATOR R. JOHNSON: Mr. President, members, during the past weekend I was in Aurora and addressing a group and received some information on a former colleague of ours, in fact, my predecessor, Senator Maurice Kremer. He is fighting a rather serious battle with cancer and has been undergoing chemotherapy treatments and is in rather poor health, and I am sure he would appreciate any calls or letters or cards that you might send to him to wish him well because he was a man of great integrity in this body, and I think those that had a chance to serve with him would echo my thoughts that he was an institution in himself and I think he would appreciate anything, any kind gesture we would send along to him.

PRESIDENT: Do you have his address or is he in the hospital or...

SENATOR R. JOHNSON: I can get it for those who would like it. He is home. He has been driving back and forth to receive his treatments at Hastings Memorial...or Mary Lanning Hospital but he is home at this particular time.

PRESIDENT: Okay, we could get that address from your office.

SENATOR R. JOHNSON: You sure can.

PRESIDENT: Fine, thank you for the announcement. We appreciate it. Now back to you, Mr. Clerk.

CLERK: Series of notices, General Affairs offers notice of hearing, signed by Senator Smith as Chair. Committee on Natural Resources, whose Chair is Senator Schmit, reports LB 56 to General File, LB 127 General File, LB 167 General File, LB 185 General File, LB 90 indefinitely postponed, those signed by Senator Schmit. (Legislative Journal shows LB 184 to General File. See page 491.)

Health and Human Services Committee, whose Chair is Senator Wesely, reports LB 342 to General File with amendments, LB 344 to General File with amendments, those are signed by Senator Wesely as Chair. Natural Resources Committee, whose Chair is Senator Schmit, reports LB 195 to General File with amendments. That is signed by Senator Schmit. (See pages 491-92 of the Legislative Journal.)

Mr. President, Senator Bernard-Stevens would like to print

would be returned to these people if they searched for a birth certificate and didn't find it. Nonprofit nursing homes would be represented by two instead of one people on the Board of Examiners Nursing Home Administration. Changes to make sure the department is the licensure agency for Medicare/Medicaid are included in the bill and then the WIC program is also clarified in terms of federal implementation by the department. And, again, I mentioned before the changes in the Nursing Home Advisory Council and the Public Water Supply Advisory Council and would ask for the advancement of the bill, Mr. Speaker.

SPEAKER BARRETT: Thank you. Any discussion on the motion to advance the bill? Seeing none, those in favor of the advancement of 344 please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of 344.

SPEAKER BARRETT: LB 344 is advanced. LB 195.

CLERK: LB 195, Mr. President, offered by Senators Conway and Hefner. (Read title.) The bill was introduced on January 9, referred to Natural Resources, advanced to General File. I do have committee amendments pending by the Natural Resources Committee, Mr. President.

SPEAKER BARRETT: Chairman Schmit, on the committee amendments.

SENATOR SCHMIT: Mr. President and members, the committee, acting on the time honored bureaucratic principle, if a little regulation is good, twice as much is twice as good, decided to strike a blow for temperance and include sailboats in this bill, along with motorboats. Now, my good friend, Senator Conway, insisted there is no definition in the bill of a sailboat but I was raised a long ways from the water and I never thought of that. But I would suggest that if a boat has a sail on it, it's a sailboat. If it doesn't have a sail on it, it's not a sailboat. Now, I don't know whether we were doing the right thing or not but we were just trying to improve Senator Conway and Hefner's bill a little and I guess Senator Smith and I discussed it a little bit and we felt that if it's improper for a drunk to be operating a motorboat that it probably ought to be improper for a drunk to be operating a sailboat. I had a friend who had a sailboat one time and he told me it took a lot more

skill to operate the sailboat than the motorboat. So those are my arguments and I move for the adoption of the committee amendment but I'm sure there will be a little bit of discussion.

SPEAKER BARRETT: And there is discussion. Senator Conway.

SENATOR CONWAY: Mr. Speaker and members, I rise in opposition to the committee amendment. It appears to be one of those amendments that they felt they had to do something and they couldn't find much of anything to do so they stuck the word "sailboat" in the middle of it. This bill I think maybe at this point will probably lead into really the discussion on the bill in terms of my opposition to the amendment. The real intent of this particular piece of legislation was to address itself towards the rather dangerous potential of people that are out on our waterways under the influence of alcohol who are engaged in a vehicle that is powered in such a way that it's really a concern for the endangering of other people. I don't think that by virtue of the nature of the recreational fashion of boating that people who are sitting out in a rowboat or without the motor engaged to be fishing and drifting along on a waterway that's happened to have one or two beers in the course of an hour and would not test out while operating a motor vehicle and this is patterned after motor vehicle legislation by virtue of the testing and the standards and the like. But that person is not endangering anyone but himself, at best. In many cases, most of us may have engaged in that particular practice before and we didn't even feel we were endangering ourselves. If you look at the definition of motorboat, as it's defined in our current statutes, it does include sailboats if, in fact, that sailboat is equipped with any other form of mechanical propulsion device. So you would pick up the sailboat, as we know it, for those who actually put it under power and are in that particular capacity. Without it defined, you very easily could have an inner tube and a stick and a flag hanging on it and have some overzealous law enforcement officer deeming it to be a sail craft when, in fact, that person is probably not endangering anyone other than himself, at best. And so I think that it's not really needed. What we're dealing with here is really focusing on the person who is out there ramrodding around in our waterways who is creating that kind of difficulty and endangering other people and that was really the intent of the legislation. So I think that...I don't think that "sailboat" adds anything. I don't think that it's of particular value but does open up the door for the potential of people offering

interpretations that maybe isn't what was really necessary, the extent to which, you know, it's known and without question that the use of alcoholic beverages in conjunction with various recreational and family recreational environments such as this is very common and I think that sailboat would add a great deal of confusion. We only apply the motor vehicular drinking while driving statutes and standards relative to a motorized vehicle in that sense and so I think that the boating category fits very, very similar. So I would oppose the inclusion of the committee amendment which is simply one word "sailboat", and, like I say, it isn't defined. This bill originally was introduced a year ago. It said "vessel", "water vessel". If you look at the definition of water vessel, that could include an inner tube. So that's why I moved it to "motorboat" and I think the motorboat definition encompasses all of those people that we're concerned with. A typical sailboat of any consequence that would endanger people typically has an outboard motor as an auxiliary power device on that and so these people would fall under the law anyway. To include simply sailboat without any motorized connection to that would include a Sunfish or a Day Fisher (sic), a little Hobie Cat or things of that nature and I don't think that's who we're after at all under this particular type of provision. So, with that, I hope the body would reject the committee amendment.

SPEAKER BARRETT: Thank you. Senator Hefner, on the committee amendment.

SENATOR HEFNER: Mr. President, members of the body, Senator Schmit, I applaud you for running your committee in a good way, good informative way, and also I commend the committee members for trying to make this bill a little better, but I don't think in this particular case that you're making it better, because it's real hard to define a sailboat out there. Like Senator Conway said, if that sailboat does have a motor on, which sometimes a sailboat needs, well, this would cover this bill. But in talking to law enforcement people in my area, they really don't see a reason for having it on sailboats. They do see a very good reason for having it on motorboats because a lot of times we get people out there that get to speeding, driving wreckless and under the influence of alcohol. And so this is the reason that we introduced the bill. We introduced the bill last year but we ran out of time so we didn't get it passed. So I would urge this body to reject the committee amendment.

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

SENATOR SCHMIT: Well, Mr. President and members, this is the 20th legislative day and this is the first time this year that Senator Hefner and I have disagreed so that's not too bad. I would just suggest that a sailboat can be identified easily enough. I would suggest that I wouldn't be too concerned about an inner tube with a stick and a flag. But I will say this that if anyone has a particular grudge against the Natural Resources Committee or me, personally, and you want to take it out on me by voting against this amendment, this is a good place to do it. So, otherwise I would suggest you vote for the amendment. Thank you.

SPEAKER BARRETT: You have heard the closing and the question remains the adoption of the committee amendments. All in favor vote aye, opposed nay. Voting on the adoption of the committee amendments. Have you all voted? Have you all voted? Please record.

CLERK: 14 ayes, 15 nays, Mr. President, on adoption of the committee amendments.

SPEAKER BARRETT: The committee amendments are not adopted. Anything further?

CLERK: Nothing further, Mr. President.

SPEAKER BARRETT: Senator Schmit, would you care to try again?

SENATOR SCHMIT: I'll have to turn it over to Senator Conway. He's whipped me on this one already, so...

SPEAKER BARRETT: I'm sorry, you're correct. Senator Conway, please, on the bill.

SENATOR CONWAY: Mr. Speaker and members, I appreciate the vote or lack of vote on that last amendment. What the bill really intends to do, and I think there is a great deal of concern on the part of many states and many law enforcement people and the like to address a situation that is dangerous. It's a sport that is enjoyed by many people in Nebraska and many non-Nebraskans that come into Nebraska to be out on our

waterways and engage in fishing and boating and the skiing and the various things that go in conjunction with our water sports. But, by the same token, it is very dangerous. People assume a certain degree of responsibility of what happens on our waterways. But the intent of this bill really is not to eliminate alcohol per se from that particular recreational sport but to make sure that it's handled in a proper way, to be in a situation where if, in fact, you are ramrodding around out on a boat, you've had too much to drink under our same standards that we apply to our motor vehicular process, that one should be subject to two laws. And, under that provision, we have adopted those same standards that we do for...that have been tested in courts and the like relative to the motor vehicles. What this is intended to do is if an individual is, like I say, out and not under power, out on the waterway, floating around fishing, happens to have had one or two beers in too short a period of time and would not have tested out ordinarily, they're not bothering anybody, they're just engaging in that particular sport, they're no problem. But if someone who is truly intoxicated, is in a situation where he's endangering other people by being under power and speeding around on our waterways, then that person does need to have some sanctions applied to them. So I think this is a very rational, appropriate approach to dealing with the problem and as years go by or time expires and we have better information that more needs to be done, we could do that at that time. But at this point I think it's a nice message to send to the people on Nebraska waterways that we expect them to comply with safety standards, not be endangering other people and allowing alcohol to enhance that potential danger that already exists. So, with that, I would strongly urge the body to adopt this legislation and move it on to Select File.

SPEAKER BARRETT: Thank you. Discussion on the bill itself? Senator Wehrbein, followed by Senator Hefner and Elmer.

SENATOR WEHRBEIN: Mr. President and members, I would like to ask a question. I didn't see this, in scanning the bill, Senator Conway. As a self-propelled water ski, how is it defined under this bill?

SENATOR CONWAY: What I probably should do is take you back to motorboat defined. It says, "motorboat shall be any water craft propelled in any respect by machinery, including water craft temporarily equipped with detachable motor", so a jet ski would

fall under that category.

SENATOR WEHRBEIN: Okay, that's what I wanted to be sure of. Thank you.

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I would just like to state a few facts to you. Senator Conway explained the bill very good but let me cite a few facts that I received from the National Transportation Safety Board. They say that more people are killed while involved in boating than any other mode of transportation except highways. Two-thirds of all boating fatalities...or of all boating fatalities involve alcohol and one-third of those had a blood content of .10 or higher. Ninety percent of the recreational boating fatalities are the result of drowning and alcohol has been present in 67 percent of all drowning victims. There are two other important factors involved in drinking and boating and one factor concerns the effects of alcohol in your body when you are in the water. The second concerns general stress factors involved in boating and water recreation. There is a tendency to become disoriented when you are in cold water. This disorienting factor can be greatly magnified when you have alcohol in your blood. The effects of alcohol on your balance are increased when cold water comes into contact with your inner ear. Good swimmers have not survived the shock and the panic of a sudden plunge into cold water. Alcohol seriously adds to this dilemma. People who boat for recreational purposes usually do so for several consecutive hours. They are exposed to extra noise, wind, glare, vibration and bouncing around on the water, becoming oriented to being in a boat on water and so on. These factors alone cause stress and may lower a person's normal functions. Again, alcohol greatly increases these effects especially if the person has been drinking under these circumstances for a few hours. On water, there are no traffic signals. There are no lanes of traffic, no stop signs, no crosswalks and no speed limit on lakes. And Lewis and Clark Lake is located along the 19th District, also the Missouri River borders my legislative district. These factors are greatly...these factors that I talked about greatly increase the safety problems in boating and I just feel that this bill is a reasonable protection for people who enjoy water sports on Nebraska lakes and rivers. And one additional point about the bill, the bill also states that it is against the law to operate



a boat under the influence of drugs and the provisions are the same as we have for DWI. So I would urge you to support this bill.

SPEAKER BARRETT: Thank you. Senator Elmer, followed by Senators Wesely and Hannibal.

SENATOR ELMER: Thank you, Mr. President, and members, my legislative district contains more major lakes than any other district in the state. And I have had the opportunity to be present at recreational activities at several of those lakes at various times. Sometimes I have observed, during water skiing and various related activities, behavior that is very inconsistent with safety, mostly contributed to by the consumption of alcohol by the operators of those crafts. I would strongly support this legislation and I would hope the Game and Parks would be able to, through their wardens, enforce it rigorously. I would invite your support to advancing this to Select File.

SPEAKER BARRETT: Thank you, sir. Senator Wesely.

SENATOR WSELY: Mr. Speaker and members, a couple things in LB 195. First off, it is already illegal to operate, if you look at the stricken language, operate motorboat vessel, etcetera, under the influence of narcotic drug or marijuana or whatever, so I guess evidently that isn't working and we need a more comprehensive approach to this problem. Sounds like another bill we discussed earlier this morning. But what I was wondering is, Senator Conway, having been on the Transportation Committee with Senator Lamb and maybe Senator Lamb can answer this too, I have seen time and again when you get into any sort of DWI legislation you have got hoops to jump through and court actions that have limited what we can and can't do and if there is not a "t" crossed or an "i" dotted in this bill, somebody will find a way to get out of it. And I assume you have taken currently acceptable statutes that are over in other sections and brought them under this. And if you have done that, probably everything should be fine. But I'm just wanting to be sure that that's what's happened and you've checked out the legal questions because we have had to go through so many changes in our DWI statutes that were based on different court actions that I wouldn't want you to pass the bill and have all of this come back once again. Is that the case?

SENATOR CONWAY: To the best of my knowledge and the best of the skills of our legal counsel and the like that was...the process was to draw over the history and the knowledge and the statutes associated with DWI and simply the same testing technique, the same standards...

SENATOR WESELY: Okay.

SENATOR CONWAY: ...and so forth to follow through with that.

SENATOR WESELY: And different things, like I saw in here about the court being able to commit to alcohol rehabilitation program and everything, that's what we now have over in some other section...

SENATOR CONWAY: Same as DWI, yes.

SENATOR WESELY: Okay, that's all...it sounded like we almost were setting up a separate system. We've already got one in place, I didn't want to see it duplicated. Doesn't sound like that's a problem and I appreciate that.

SPEAKER BARRETT: Senator Hannibal, please.

SENATOR HANNIBAL: Thank you, Mr. Speaker, members, I also have just had a chance to look through the bill and I would like to ask Senator Conway some questions as well. I'm somewhat dismayed I guess that Senator Schmit started off the conversation with it being a fairly light and frivolous bill, which is nice to do on a dreary morning like we have, but some questions like Senator Wesely had jump into my mind also. You are trying, Senator Conway, as I see it, to make DWB...DWI become a DWB situation, driving while...oh, driving while intoxicated of a boat though instead of a vehicle. Who is...and I understand that we already have laws on the books that say it is illegal to be operating a boat while under the influence of drugs or alcohol. Is that correct? Could Senator Conway respond, please?

SPEAKER BARRETT: Senator Conway, please.

SENATOR CONWAY: Yes, that is correct.

SENATOR HANNIBAL: What happens under...when...you lose a license, I believe, under DWI for a certain period of time. Now

there is no license involved under operating a boat. What happens there?

SENATOR CONWAY: Under the boating provision, it's a Class II misdemeanor which would be up to a \$1,000 fine...600 to a \$1,000, I believe, and also you are instructed by the court not to operate a boat again for a six-month period. Now, the enforcement of that is different than a license situation would be but if one was picked up again and the courts were to check that record, then that would be that additional infraction or felony for operating outside of the court's instruction.

SENATOR HANNIBAL: Who is going to be the law enforcement body in this particular case?

SENATOR CONWAY: For the most part, Game and Parks would be the primary because they do operate, I believe, 18 water vessels patrolling our waterways and the like, as well as any other Game and Parks, as well as any other law enforcement officer who may be charged with enforcement on a given situation.

SENATOR HANNIBAL: But on the waterways it's going to be Game and Parks officials, wardens?

SENATOR CONWAY: Wardens.

SENATOR HANNIBAL: Wardens?

SENATOR CONWAY: Yes, law enforcement officers.

SENATOR HANNIBAL: There will be law enforcement officers only that will be able to enforce this thing? Or, well, as it is on the highways, law enforcement officers predominantly are the enforcement officials. You have citizen arrest possibilities, I suppose.

SENATOR CONWAY: Correct. Under this and in many cases in many counties their sheriffs' departments have boats that do go out on the waterways and do enforcement as well as the enforcement wardens within Game and Parks. So anybody who has that authority. But you add Game and Parks beyond...Game and Parks probably doesn't do a whole lot of highway work but you get the reverse. You do get a lot of sheriffs' departments, highway patrol and the like that do merge with Game and Parks for various enforcement provisions of the game law and water laws.

SENATOR HANNIBAL: Do you know whether state patrol, official law enforcement officers, city police, county sheriffs, do they take training for purposes of enforcing the law on DWI?

SENATOR CONWAY: I believe they do.

SENATOR HANNIBAL: Do you know whether the Game and Parks wardens take that same kind of training?

SENATOR CONWAY: Yes, they do. Under this bill they will. There is a training provision there.

SENATOR HANNIBAL: Under this bill, they are going to be...and what's involved? Costwise, how many people are we talking about?

SENATOR CONWAY: I shouldn't...and I hate to use up some of your time because there are some things... (interruption).

SENATOR HANNIBAL: Okay, I'll do it again if I have to.

SENATOR CONWAY: But I would let you back into my closing if I need to get you back in. And you will notice in the fiscal note there is some discussion relative to training, about a \$2,400 training program which I believe is directed the same as they would any other law enforcement entity in the state to go through the training for this specific technique of what they can and can't do under the testing and the like. What I would object to in the fiscal note is providing the Game and Parks people with analyzers and the like. I think that they are in constant contact with other law enforcement people and I would resist and I would like to see that in the intent of our discussion, to say the intent is not to have each Game and Park warden have a breathalyzer and be equipped like our highway people are, but coming across some situation, call in an adjoining law enforcement entity and let that testing go through that particular technique, but be trained to the extent that they recognize, identify and know what procedures they are allowed to do.

SENATOR HANNIBAL: Don't you have also in the fiscal note that the Game and Parks will have to have breathalyzers with all their wardens?

SENATOR CONWAY: It's in the fiscal note. It wasn't my intent in the bill, that's why I'm getting it on record now. I would like to think that through...our discussion is saying, no, we don't want to purchase breatholyzers and the like. We would like to have them trained, though.

SENATOR HANNIBAL: You don't want them to be equipped with their own equipment.

SPEAKER BARRETT: Thirty seconds, please.

SENATOR CONWAY: I do not want to spend \$27,000 to have 18 additional breatholyzers dispersed amongst people that would use them so seldom, seasonally, and the like, as the Game and Parks people. But if they came in contact with it by the training, they could have a patrolman there or a county sheriff there usually within four or five minutes from the time of the infraction when they called them in. So I don't think there is any need to have this equipment spread all over through Game and Parks but simply let them know what procedures and have that form of training but do not purchase all these additional breatholyzers. I don't think those are necessary at all.

SENATOR HANNIBAL: I think my time is going now.

SPEAKER BARRETT: Ten seconds.

SENATOR HANNIBAL: I'll put my light back on.

SPEAKER BARRETT: Thank you. Senator Wehrbein, followed by Senator Hefner.

SENATOR WEHRBEIN: Yes, Mr. Speaker and members, Senator Conway, I have another question and I, again, can't find it quickly. How does this impact upon private lake developments?

SPEAKER BARRETT: Senator Conway.

SENATOR CONWAY: I believe that if it's totally private and private ownership all the way around the lake, which does not provide any public access, that this would not impact at all.

SENATOR WEHRBEIN: Now, could...

SENATOR CONWAY: That, I would have to clear with the legal...

SENATOR WEHRBEIN: Okay, I would be interested...I know of several and the problem there appears to be almost the same as it is in the public's. The question is a lot of those allow private security officers but they, many times, are law enforcement officers on their own time or they're deputized. So I assume from that standpoint they probably would have a reason to do that, if they had full law enforcement credentials.

SENATOR CONWAY: I would have to get you some technical legal explanation of that, but, by the same token, I would assume that when something is totally private, much as a pond on your farm and you're sitting down there in a rowboat or doing whatever, you have to comply with certain Game and Parks provisions relative to game protection. Now whether this carries over into your behavior, I'm not sure and I would have to get that answer for you at a later date.

SENATOR WEHRBEIN: Okay, thank you.

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, maybe I can answer a couple of those questions. Getting back to Senator Hannibal, the reason that we introduced this bill and hope to get it passed is because right now the law enforcement officials, and this includes game wardens and county sheriffs, deputies, state patrolmen, they cannot hold that person and not force him to take a test, where this bill forces them to take either a breath test or a blood test and, therefore, they can get a conviction in the courts. If they can't do this, so many times the judge will dismiss the case. I think that answers one of your questions. As to Senator Wehrbein's question, I believe that private waters in Nebraska are considered waters of the state and my aide, Ron Schroeder, tells me that it does, so this bill would cover private lakes.

SPEAKER BARRETT: Thank you. Senator Hannibal, please.

SENATOR HANNIBAL: Well, Mr. Speaker, I realize that the time is getting away from us and we're coming close to the lunch hour and I would be very willing to just stop here if the introducers want to, but I have some concerns about the bill I do want to address and I'm not excited about going to a vote right now just to get it past General File. Do you want to continue or do you

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LB 195  
LR 23

E. Evans was accidentally rammed by an Australian aircraft carrier in the South China Sea. Seventy-four sailors were killed including the three Sage Brothers, Gregory, Gary, and Kelly, and they were from Niobrara, Nebraska, which is in the 19th Legislative District which I represent. These brothers served our country honorably during the Vietnam War era. They deserve to have their names listed on the Vietnam Memorial in Washington, D.C. Our Congressional delegation has expressed interest in getting these names placed on the Vietnam Memorial, and so I would urge you to adopt this resolution. If we adopt it, a copy of this resolution would be sent to each member of our Congressional delegation encouraging them to take action to see that all the names of those killed on the U.S.S. Frank E. Evans be placed on the Vietnam War Memorial. Also a copy of this would be sent to the parents of Gregory, Gary, and Kelly Sage. Their parents names are Ernest and Eunice Sage. There is a memorial erected in Niobrara, Nebraska, in honor of these three sailors. Also their names are included on a memorial in front of the Knox County Courthouse at Center, Nebraska. I move for the adoption of this resolution.

PRESIDENT: Thank you. Senator Dierks, please.

SENATOR DIERKS: Mr. President and members of the body, I rise to support this resolution. I don't know how many of you have visited Washington, D.C. or the Vietnamese Wall, Memorial Wall, but I have and it is a very moving experience. I just would like to offer my support for the motion. Thank you.

PRESIDENT: Thank you. Senator Hefner, would you like to close on your motion? The question is the adoption of the legislative resolution. Would you please, those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of the resolution.

PRESIDENT: The resolution is adopted. We will move on to General File, LB 195.

CLERK: Mr. President, LB 195 was a bill introduced by Senators Conway and Hefner. (Read title.) The bill was referred to the Natural Resources Committee. Yesterday, Mr. President, the bill was considered along with committee amendments. The committee amendments failed. I have nothing pending on the bill at this

time, Mr. President.

PRESIDENT: Senator Conway, are you going to handle this? Okay.

SENATOR CONWAY: Mr. President and members, LB 195, as we discussed yesterday, is dealing with the boating while intoxicated. We had at least began some relatively thorough discussion yesterday associated with this legislation. Basically, what it is dealing with is to provide the standards by which we can provide enforcement for anyone who is deemed to be under the influence of alcohol while operating a motorboat. I think at this point, since we went through it yesterday, I am not going to spend a great deal of time on the opening and to make myself available for any questions or interact with any of the discussion that comes about. So I would offer LB 195 for your consideration and ask for you to advance it to Select File.

PRESIDENT: Thank you. Senator Hannibal, please.

SENATOR HANNIBAL: Thank you, Mr. President and members. Since we started yesterday talking about LB 195, I have had a chance to discuss with Senator Conway the goal and the purposes of the bill, and I am somewhat satisfied that the goal and the purposes of the bill are quite laudable. I am still fairly hesitant, however, about the bill because it does open up an area of potential harshness in some people's eyes and may be putting that harshness in the hands of people that aren't typically used to dealing with those situations. So if I may, I would like to ask Senator Conway a few questions, if he would respond.

PRESIDENT: Senator Conway, please.

SENATOR HANNIBAL: Senator Conway, I think as we talked yesterday that the goal, of course, of this bill is to have in law more clearly some things that are already in law, that is, that it was already against the law for a person to operate a motorized water vessel, a motorboat, if you will, under power and it is prohibited for them to be doing that while under the influence of alcohol, is that correct?

SENATOR CONWAY: That is correct.

SENATOR HANNIBAL: And one of the problems in the past has been that while it is against the law currently, there hasn't been a major mechanism to determine, in fact, whether they were under



the influence, such as, the use of a breathalyzer test.

SENATOR CONWAY: It is clear if you follow through and you will notice the old language that was crossed out, it referenced down to 39-669 sections of the statutes, and if you go to 39-669, it talks about any duly authorized law enforcement officer, and it does send you into there but it is not a smooth transition, so it is there. It is just kind of cobbled up as you move through the statute books to do that.

SENATOR HANNIBAL: So in reality, the Game and Parks wardens, if you will, if they had breathalyzers on their, in their possession, they could already invoke this situation?

SENATOR CONWAY: That is correct.

SENATOR HANNIBAL: Then I am going to leave for you to answer on your own time why we need this, and I will ask you, instead, a different question, and that question is, we are talking about a motorboat under power in motion, is there any restrictions on the size of the motor?

SENATOR CONWAY: No, there is not.

SENATOR HANNIBAL: So we have a fishing boat, for example, that has a 3 horsepower trolling engine that is maybe a 15 foot wooden or aluminum boat, and you have two fishermen out on a lake, private or public lake, or a private lake or a federal waterway, because it is against the law to drink on state lakes already, but if you are on a private lake or a nonstate lake where alcohol on the premises is legal, you have two fishermen out there and they are trolling around the lake at 1-mile per hour or less fishing and they are going to be camping at that lake site that night, and they aren't going to be in a vehicle, if their blood alcohol content is tested and it tests over .10, they would be guilty of a Class III...Class II misdemeanor, is that correct?

SENATOR CONWAY: That would be correct if, in fact, they were identified as being operating that motorboat while under power, and when tested out, they tested above the .10 level, that is correct.

SENATOR HANNIBAL: Okay, thank you, and, members, I guess that points out, and maybe we already have that situation. Maybe we

are not making a change in law, I am not entirely clear on that. Maybe we do have that possibility already at hand, but if we don't, I think it is important that we understand the potential...

PRESIDENT: One minute.

SENATOR HANNIBAL: ... for abuse in this situation by some authorities, and I understand that we have to place that potential in law enforcement officials at times, and I don't necessarily disagree with it, and I am concerned about this situation. I am also concerned if the goal is not to put breatholyzers in the hands of the Game and Parks wardens and have them there, why is this law needed and what is different about this law than what we already have on the books. And if it is our goal to put this equipment and this training in their hands, then we ought to be up front about it and talk about the cost that it is going to be and be in the form of an A bill.

PRESIDENT: Thank you. Senator Conway, would you like to close on the advancement of the bill.

SENATOR CONWAY: Thank you, Mr. President and members. I will use probably the majority of my closing to address some of Senator Hannibal's concerns. What we are doing, really, is, like you say, not changing drastically the standards or the concept of boating while intoxicated. What this bill really does is makes it much cleaner and clearer because the current law really sends us into the motor vehicular sections of the statutes in terms of the testing and so forth techniques, and in some cases, it somewhat doesn't make sense. You run the same standards against motor vehicle, it talks about revocation of your license, in boats you don't have licenses. So it cobbles this whole thing up. In fact, in some cases I suppose one who would be identified as infringing upon this law may end up losing his driver's license or something. It is just not clear how that transitions. So what we have done, really, is take the concept, take the particulars of the testing and the urinalysis and those kinds of things and rewrote that particular language so that it fits the operation of a boat rather than the operation of an automobile. So one could possibly fall under this right now and, again, like you say, your individuals in the fishing boat could fall through that and I suppose be in a situation where they would have their driver's license taken away. Now, under this provision, we give them a fine. As far

as the Game and Parks people having a breathalyzer and that, Game and Parks people are almost constantly always in contact with a local sheriff or the State Patrol or people of that nature. We have no intention of them all having breathalyzers, going through all that procedure, but simply being able to identify that questionable situation, identifying and taking that person to a local courthouse, as most sheriffs or highway patrol people do now, take them into that more refined operation where you have got a breathalyzer or urinalysis equipment on board and test them out there. There is no intention for them to have their own breathalyzing systems and do their own testing, and so forth. I conducted a drunken driving, I don't want to say entrapment, a period where the State Patrol, I had a roadblock and we went through a procedure one night. Every one of the individuals who after a field test question was taken to the county courthouse where they went through more formalized testing. To my understanding, that is really the formal technique, the way that it is typically done. That is what we would assume would happen on this, if we had someone particularly that was identified after an accident or was certainly behaving in a recognizable manner as probably being intoxicated, that the Game and Park person could certainly stop that person, but at that point, take it into those people who are specially trained and have gone through this process and that like, rather than try to perform all this out in the back end of a boat somewhere. We don't expect that to be the case, but to take it through that formal process. So this bill really probably does more to the codification of the liquor standards and the enforcement standards in the name of operating a boat on our waterways than it does change the concept of what we had, that is already on board the way it is. So with that, I would offer this bill and ask you to advance it.

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

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 195.

PRESIDENT: LB 195 advances. LB 92.

CLERK: Mr. President, LB 92 is a bill introduced by Senator Landis. (Read title.) The bill was introduced on January 5, Mr. President, of this year, referred to the Banking, Commerce,

February 6, 1989

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

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

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

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

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

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

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

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

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

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

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

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

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

February 9, 1989      LB 184, 185, 195, 342

PRESIDENT:    You have heard the motion. All in favor say aye.  
Opposed nay. It is advanced.    LB 185.

CLERK: No amendments to 185, Senator.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the bill be  
advanced.

PRESIDENT:    You have heard the motion. All in favor say aye.  
Opposed nay. It is advanced.    LB 342.

CLERK: On 342, Senator, I have E & R amendments pending.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R  
amendments to LB 342 be adopted.

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

CLERK: Nothing further, Senator.

SENATOR LINDSAY: Mr. President, I move that LB 342 as amended  
be advanced.

PRESIDENT:    You have heard the motion. All in favor say aye.  
Opposed nay. It is advanced.    LB 195.

CLERK: On 195, Senator, I have E & R amendments pending.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R  
amendments to LB 195 be adopted.

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

CLERK: Nothing further, Senator.

PRESIDENT: Senator Lindsay, on advancement.

February 9, 1989

LB 195, 198, 209

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

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

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

PRESIDENT: Senator Lindsay.

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

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

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

PRESIDENT: They are adopted. Now on the advancement.

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

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

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

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

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

PRESIDENT: Senator Lindsay.

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

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

CLERK: Nothing further, Senator.

February 13, 1989

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

PRESIDENT NICHOL PRESIDING

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

REVEREND VOORMAN: (Prayer offered.)

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

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

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

CLERK: No corrections, Mr. President.

PRESIDENT: Do you have any messages reports or announcements?

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

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

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

CLERK: (Read LB 43 on Final Reading.)

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

February 16, 1989      LB 184, 185, 195, 366

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 184 become law? Those in favor vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: (Record vote read. See pages 772-73 of the Legislative Journal.) The vote is 36 ayes, 0 nays, 2 present and not voting, 11 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 184 passes. LB 185E.

ASSISTANT CLERK: (Read LB 185 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 185 with the emergency clause attached become law? Those in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: (Record vote read. See pages 773-74 of the Legislative Journal.) The vote is 37 ayes, 0 nays, 1 present and not voting, 11 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 185E passes. LB 366, Mr. Clerk.

ASSISTANT CLERK: (Read LB 366 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 366 pass? Those in favor vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: (Record vote read. See page 774 of the Legislative Journal.) The vote is 36 ayes, 0 nays, 2 present and not voting, 11 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 366 passes. LB 195.

ASSISTANT CLERK: (Read LB 195 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 195 become law? Those in favor vote aye, opposed nay. Have you all voted? Record, please.



February 16, 1989      LB 165, 195, 209, 615

ASSISTANT CLERK: (Record vote read. See page 775 of the Legislative Journal.) The vote is 39 ayes, 0 nays, 10 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 195 passes. LB 209.

CLERK: Mr. President, I have a request to bracket LB 209 until March 1, 1989. That request comes from Senator Hall.

SPEAKER BARRETT: Is there an objection to the bracketing of 209 until March 1? Senator Schmit.

SENATOR SCHMIT: Mr. President, members, Senator Ashford is not here and he is the principal introducer of the bill. I was asked a few questions about the bill and I'm sure those questions are going to be resolved favorably, but in the absence of Senator Ashford, Senator Hall, I have no objection to bracketing the bill at this time with the provision that we will take it up on March 1st.

SPEAKER BARRETT: Any other discussion? If not, it can be handled by unanimous consent. It is bracketed. Anything for the record, Mr. Clerk?

CLERK: Mr. President, a couple of items, thank you. Report of registered lobbyists for this past week and Agriculture, whose Chair is Senator Rod Johnson, reports LB 615 as indefinitely postponed. That report is signed by Senator Johnson as Chair of the Agriculture Committee. (See pages 775-76 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The call is raised. Thank you for your cooperation. Proceeding to item 6 on the agenda, Mr. Clerk. I am reminded that we are technically still on Final Reading with the consideration of this motion, so I would suggest to the body that the call is not raised. We are still under call.

CLERK: Mr. President, Senator Hannibal would move to reconsider the Final Reading vote on LB 165. The bill was read on February 13, I believe, Mr. President. Senator Hannibal filed his motion that same day.

SPEAKER BARRETT: Senator Hannibal, please.

Chambers, Hefner, Wesely and Lynch, the Chair is very pleased to recognize some guests in the north balcony, Dr. Jim Horner from the Ag College has a UN-L leadership class of 30 as our guests. Would you please stand and be recognized by your Legislature. Thank you. We're very glad to have you with us today. Also, some very special guests of this Legislature today under the north balcony, we have Virginia Thrall, the Director of the Midwestern Office of the Council of State Governments and also Stacie Alexander, a staff associate, also with the Midwestern Office of the Council of State Governments. After the call is raised, I would hope that members will have an opportunity to say hello to these people and visit with them. Would you ladies please stand and be recognized. Thank you. We're delighted to have you here.

While the Legislature is in session and capable of transacting business, I propose to sign and I do sign engrossed LB 195, LB 366, LB 184, LB 167, LB 127 and LB 56 and, finally, engrossed LB 185. (See page 777 of the Legislative Journal.) Discussion on the Schimek motion, Senator Moore, Senator Chambers on deck.

SENATOR MOORE: Mr. Speaker and members of the body, I rise to support Senator Schimek's motion to return this bill to Select File and, by returning this bill to Select File, we would have the opportunity to strike the portion of the bill that I, personally, find objectionable. When this bill was on Select File I voted against the bill and I voted against it on Final Reading and I think it would be wise for us to strike this portion out of the bill. Now Senator Chambers and Senator Chizek and others have wondered why a senator from greater Nebraska, like myself, and Senator Lamb would dare have the audacity to question what the Omaha City Council is telling us they want. I guess I, personally, as I did on Select File, have a problem with having all these people elected at once. I just think you're better off having staggered terms. It is a simple, personal view I have and because I'm that way, I'm voting that way. I don't think I am here, just like neither is Senator Chambers here to serve as a rubber stamp for the Omaha City Council. I have the...it's my job to question and my job to exercise my right, to exercise my judgment. In my judgment, it's bad policy to elect the whole city council at once. For that reason, and not only...I don't care if it was the York City Council asking for it or the Omaha City Council asking for it, I'd still be voting no on this and I am sorry if I am not cowering and licking the boots of the Omaha City Council like

February 16, 1989      LB 56, 127, 140, 167, 183-185, 195, 366  
520, 582A

pages 786-88 of the Legislative Journal.)

I have a new A bill. (Read LB 582A by title for the first time.  
See pages 788-89 of the Legislative Journal.)

Madam President, bills read on Final Reading this morning are now presented to the Governor for her review. (Re: LB 56, LB 127, LB 167, LB 184, LB 185, LB 366 and LB 195.) Senator Schellpeper would like to print amendments to LB 520; Senator Chizek has amendments to LB 140. And, Madam President, Senator Elmer would like to add his name to LB 183 as co-introducer. (See pages 789-91 of the Legislative Journal.)

SENATOR LABEDZ: If there are no objections.

CLERK: I have nothing further, Madam President.

SENATOR LABEDZ: Thank you, Mr. Clerk. Senator Lowell Johnson, would you like to adjourn us until Tuesday, February 21st.

SENATOR L. JOHNSON: I would. Madam President and members of the Legislature, I move that the Legislature adjourn until 9:00 a.m., Tuesday, February 21.

SENATOR LABEDZ: Thank you, Senator Johnson. We are adjourned until Tuesday, February 21st, 9:00 a.m.

Proofed by: Arleen McCrory  
Arleen McCrory

February 22, 1989      LB 48, 56, 127, 158A, 165, 167, 184  
185, 195, 277A, 298, 366  
LR 31, 33

PRESIDENT NICHOL PRESIDING

PRESIDENT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our chaplain Reverend Harlan Johnson. Would you please rise for the invocation.

REVEREND JOHNSON: (Prayer offered.)

PRESIDENT: Thank you, Reverend Johnson. I was waiting for the line, on time to be here for the morning invocation. Thank you very much for being with us and your thoughtful prayer. Roll call, please. Record, Mr. Clerk. please.

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

PRESIDENT: Thank you. Any corrections this morning?

CLERK: Mr. President, I have no corrections.

PRESIDENT: Do you have any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 48 as correctly engrossed; LB 158A, correctly engrossed; LB 277A, correctly engrossed; and LB 298, correctly engrossed, those signed by Senator Lindsay as Chair. (See pages 817-18 of the Legislative Journal.)

Notice of hearing, Mr. President, from the Transportation Committee, that's offered by Senator Lamb as Chair. Communication from the Governor to the Clerk. (Read communication regarding LB 56, LB 127, LB 167, LB 184, LB 185, LB 366, LB 195, and LB 165. See page 819 of the Journal.)

Mr. President, that's all that I have.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 31.

CLERK: Mr. President, I do have another item, forgive me. LR 33, offered by Senator Beyer. (Read brief synopsis of the resolution. See pages 818-19 of the Journal.) That will be laid over.