

January 9, 1989

LB 112, 202-240  
LR 3

LBs 202-240 for the first time by title. See pages 100-108 of the Legislative Journal.)

Mr. President, I have a notice of hearing by Senator Rod Johnson who is Chair of the Agriculture Committee for Tuesday, January 17.

Mr. President, Senator Hannibal would like to announce that Senator Conway has been selected as Vice-Chair of the Intergovernmental Cooperation Committee.

Mr. President, a new resolution, LR 3. It is offered by Senator Baack and a number of the members. (Read brief explanation. See pages 108-109 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, I have a request from Senator Smith to withdraw LB 112. That will be laid over. I believe that is all that I have, Mr. President.

PRESIDENT: Senator Lynch, are you ready to go back to work now? We will return back to adopting of permanent rules. Senator Lynch.

SENATOR LYNCH: Mr. President and members, I have one more proposed committee amendment, simple little amendment. It has to do with cloture. This change would adopt a cloture rule that would become effective after 12 hours debate at each stage of debate on any appropriation bill, and after 8 hours at each stage of debate on all other bills. To briefly explain it, and then Senator Moore will take it from there, let me give you a scenario. Some of you may be familiar with 428, the motorcycle helmet bill. It was my bill. An amendment, say, was offered under this rule by Senator Moore to the bill. As you know, sometimes amendments can take and need more time for discussion and debate than the bill, itself. After 8 hours of debate on Select File, I would move for cloture, or if that bill happened to be a committee bill, the chairman of the committee would move for cloture. The presiding officer then, under this proposal, would immediately recognize the motion and orders debate to cease on Moore's amendment. The vote on the Moore amendment would be taken without further debate. After that, a vote on the cloture motion without debate, 33 votes would be needed for that motion on cloture would be successful. If the cloture motion were successful, a vote on the advancement of the bill,

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LB 213, 250A, 340, 701  
LR 39

SENATOR WITHEM: I believe the A bill, as I looked at it this morning, is something like a \$5,000 A bill needed by the department to implement this bill. I move that it be advanced.

PRESIDENT: Any further discussion? If not, the question is the advancement of the A bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of 250A.

PRESIDENT: LB 250A is advanced. Mr. Clerk, anything for the record, please?

CLERK: Mr. President, I do, thank you. Government Committee reports LB 213 to General File and LB 701 indefinitely postponed, those signed by Senator Baack as Chair. A new resolution, Mr. President, by Senator Withem. (Read brief explanation of LR 39. See page 924 of the Legislative Journal.) And that will be laid over, Mr. President. That is all that I have.

PRESIDENT: We will move on to LB 340, please. Mr. Clerk.

CLERK: Mr. President, LB 340 was a bill introduced by Senator Chambers. (Read title.) The bill was introduced on January 11 of this year. At that time, it was referred to the Government, Military and Veterans Affairs Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the Government Committee, Mr. President. (See page 595 of the Legislative Journal.)

PRESIDENT: Senator Baack, do you want to take the committee amendments for starters?

SENATOR BAACK: Mr. President and members, this is an issue that has generated a lot of public debate and a lot of public discussion, and what I am going to do right now is I am simply going to explain the committee amendments, and what the committee amendments do to the bill, because they make some very dramatic changes. And then what I would like to do, I think the best thing that could happen is that the body would simply adopt these amendments, and then we will deal with the rest of the issues. I know that Senator Warner has an amendment and so does

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LB 143, 213

SENATOR LABEDZ: Is there any further discussion on the advancement of LB 143? Senator Baack, would you like to close? Senator Baack waives closing. We're now voting on the advancement of LB 143 to E & R Initial. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 25 ayes, 0 nays, Madam President.

SENATOR LABEDZ: LB 143 is advanced. Mr. Clerk, LB 213.

ASSISTANT CLERK: LB 213 was introduced by Senator Landis. (Read title.) The bill was read for the first time on January 9th, referred to Government Committee. They report the bill advanced to General File.

SENATOR LABEDZ: Senator Landis.

SENATOR LANDIS: Thank you, Madam Chairman, members of the Legislature. The Administrative Procedures Act is an act that establishes a standard set of practices for our administrative agencies, such as the Department of Banking, the Department of Insurance, Health and Human Services, to handle internal administrative issues in an adversarial relationship, one in which the department would have to make a ruling based on a hearing. Once that agency decision is made, those agency decisions can then be challenged in court by being taken to the district court. And the way we've worded our law now, when the issue goes to the district court, the issue is, did the administrative agency make a mistake, were they in error, were they arbitrary, were they capricious? And the court examines the record of the...that was before the agency, but it is reviewing that record to see whether or not there is evidence on the record of agency error. It does not redecide the basic issue that the agency heard and decided, it simply oversees what the agency did and say were they arbitrary in acting as they chose to act. When you then appeal the case from the district court to the Supreme Court, we now allow for a de novo on the record decision by the Supreme Court. The court at this level is saying did the administrative agency reach the right conclusion, not were they arbitrary or capricious, but were they right. And that is a much broader area. So, what happens is you have these administrative decisions going to the district court for a very minimal review, with a great deal of discretion and deference given to the agency, followed by a Supreme Court

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LB 213

review with a much more expansive area of decision making by the court. That reverses the normal pyramid that you want in jurisprudence. What you want is a system that reduces the amount of review so that the issues grow narrower and narrower as you proceed up the ladder of courts, so that courts at the top are not burdened with issues that should have fallen out some place lower on the pyramid. Unfortunately our existing system promotes appeal to the Supreme Court because that is when a person can get a chance to overrule an agency and find the agency reached a mistaken conclusion as opposed to an arbitrary conclusion. LB 213 reverses the standards of review, and it says district courts will review the agencies based on de novo on the record. They'll take a look at the same body of facts, the same record, but the court will come to an independent conclusion as to what the right answer is. That's the broadest latitude, and that should take care of most of the appeals. Then the Supreme Court will overhear the case based on error. And in that case, the Supreme Court should be faced with fewer cases because the district will have answered the decisions, and in that case I hope we have had a more sensible form of administrative appeal and reduced the work load of the Supreme Court. With that, I would urge the adoption and advancement of LB 213.

SENATOR LABEDZ: Thank you, Senator Landis. Is there any further discussion on the advancement of LB 213? Senator Landis, you're in luck again.

SENATOR LANDIS: (Inaudible response.)

SENATOR LABEDZ: We're voting now on the advancement of LB 213 to E & R Initial. All those in favor vote aye, opposed nay. Have you all voted? Please vote, if you care to. Senator Landis.

SENATOR LANDIS: It couldn't be that the body would force me into making a call of the house to get us on record to support what is clearly a meritorious measure that came out unanimously from the committee. Oh, I guess they wouldn't. Okay, you're right.

SENATOR LABEDZ: Very good, Senator Landis. Record, Mr. Clerk.

ASSISTANT CLERK: 25 ayes, 0 nays on the advancement of the bill.

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LB 213, 381, 423

SENATOR LABEDZ: LB 213 is advanced. LB 381, Mr. Clerk.

ASSISTANT CLERK: LB 381 was introduced by Senator Rod Johnson. (Read title.) The bill was read for the first time on January 12th, was referred to the Agriculture Committee. They advanced the bill to General File.

SENATOR LABEDZ: Senator Elmer, are you going to take care of LB 381?

SENATOR ELMER: Senator Labedz, yes, thank you very much. LB 381 was brought before the Agriculture Committee and changes a provision in the tractor testing requirement for marketing agricultural tractors in the State of Nebraska. Previously any agricultural tractor that was marketed was required to be tested at the University of Nebraska testing station. This change would exempt agricultural tractors, of 40 horsepower or less, from the arduous testing at the University of Nebraska testing station. Many small garden type tractors that are marketed by agricultural equipment companies are used in urban areas and places like this. There are a number of very high quality type small tractors of this description that are not marketed in Nebraska because of the costly testing. Therefore, we are asking to exempt those small tractors from the testing procedure, since they are not the type that are used normally by agriculture in their business of planting corn, and cutting wheat, and those kinds of activities. That basically, ladies and gentlemen, is the bill. I would ask for its advancement to Select File.

SENATOR LABEDZ: Is there any further discussion on LB 381? Seeing none, Senator Elmer, would you like to close? Senator Elmer waives closing. We're now voting on the advancement of LB 381. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 25 ayes, 0 nays on the advancement of the bill.

SENATOR LABEDZ: LB 381 is advanced. Mr. Clerk, LB 423.

ASSISTANT CLERK: LB 423 was introduced by Senator Landis. (Read title.) The bill was read for the first time on January 13th, was referred to the Banking Committee, which

April 6, 1989

LB 77, 99, 135, 143, 206, 213, 228  
228A, 247, 323, 324, 371, 381, 423  
486, 487, 487A, 488, 488A, 508, 509  
566, 592, 605, 627, 643, 669, 714  
722, 756, 781, 793  
LR 70

PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day Dr. Paul Lundell of the Dundee Presbyterian Church in Omaha. Would you please rise.

DR. LUNDELL: (Prayer offered.)

PRESIDENT: Thank you, Dr. Lundell. We appreciate your message this morning. Roll call, please. Record, please.

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

PRESIDENT: Thank you. Do we have any corrections to the Journal?

CLERK: No corrections, Mr. President.

PRESIDENT: Good. Any messages, reports or announcements?

CLERK: Mr. President, Enrollment and Review reports LB 77, LB 371, LB 592, LB 643, LB 714, and LB 781 as correctly Engrossed. Enrollment and Review also reports LB 99, LB 323, LB 143, LB 213, LB 381, LB 423, LB 509, LB 793, LB 605, LB 135, LB 324, LB 756, LB 206, LB 669, LB 486, LB 487, LB 487A, LB 488, LB 488A, LB 228, LB 228A, LB 627, LB 508, LB 722, and LB 566 to Select File, some of those having Enrollment and Review amendments attached. (See pages 1533-40 of the Legislative Journal.)

Mr. President, Senator Warner would like to print amendments to LB 247 in the Legislative Journal. That's all that I have, Mr. President. (See page 1540 of the Journal.)

PRESIDENT: Okay. We'll move on to LR 70.

CLERK: Mr. President, LR 70 has been offered by Senators Ashford and Moore. It's found on page 1476. (Read brief summary of resolution.)

PRESIDENT: Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President and members. Last year we passed legislation which authorized the profession of

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LB 213, 566, 695

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 213, please.

CLERK: Senator, on 213 I have E & R amendments first of all.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 213.

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

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

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 213 as amended be advanced to E & R for Engrossment.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 566.

CLERK: Mr. President, on 566 I have E & R amendments first of all, Senator.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I would move the adoption of the E & R amendments to LB 566.

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

CLERK: Mr. President, I now have an amendment by Senator Lindsay. Senator, I have a note you want to withdraw.

PRESIDENT: Is that correct? It is withdrawn.

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

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 566 as amended be advanced to E & R for Engrossment.

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LB 84, 213, 525, 695

needs to be made to the bill and it takes two minutes, it would be helpful, I suspect, if those could be handled some time during the course of the day. I'm not suggesting to do it now, but you might have someone just check to see what kind of amendments are pending because I know there is one or two, they are just a technical amendment that needs to be done, there is nothing controversial about them.

SPEAKER BARRETT: Thank you. These are bills presently residing on Select File or...

SENATOR WARNER: Either Select File or there might be some on Final Reading, I don't know.

SPEAKER BARRETT: On Final as well.

SENATOR WARNER: It's just a case that we won't want a flawed appropriation because a technical amendment had not been adopted, that's all I'm talking about.

SPEAKER BARRETT: Thank you. We will take a look, thank you, appreciate that. Mr. Clerk.

CLERK: Mr. President, if I might, one quick interruption, LB 213 and LB 695 were reported correctly engrossed. (See page 2575 of the Legislative Journal.)

Mr. President, the Legislature last considered LB 525 on May 17. At that time, Senator Withem had an amendment pending. The Legislature was considering that. Senator Scofield then moved to bracket the bill, Mr. President. That motion prevailed. Consequently, Senator Withem's amendment that is on page 2497 is now pending. Senator, this amendment would strike 18 million and insert 98 million.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Yes, we will...let me talk about that just a second. This amendment was filed the other day when LB 84 was still property of the Legislature and was...the number \$98 million was in that bill so under the theory that a little state aid does a little bit of good, I filed this amendment that a lot of state aid would do a lot of good and see where people were coming from on that whole thing, and maybe it makes as much sense that there is \$98 million out in the budget as opposed to



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LB 187, 187A, 213, 258, 272

acceptable solution to this problem.

PRESIDENT: Thank you. Senator Korshoj, please.

SENATOR KORSHOJ: Question.

PRESIDENT: Thank you. You were the last one so it won't be necessary, but thank you anyway, Senator. The question has been asked for unanimous consent to bracket. Is there any objection? If not, it is bracketed. Senator Lynch, you meant that to apply to LB 187 and LB 187A?

SENATOR LYNCH: Mr. President and members, I think we have to consider both separately since they're two separate bills.

PRESIDENT: Okay. The question is, unanimous consent to bracket LB 187A. Is there any objection? If not, it is bracketed also. LB 213 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 213 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 213 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read as found on page 2689 of the Legislative Journal.) 49 ayes, 0 nays, Mr. President.

PRESIDENT: LB 213 passes with the emergency clause attached. LB 258 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 258 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 258 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read as found on page 2690 of the Legislative Journal.) Vote is 49 ayes, 0 nays, Mr. President.

PRESIDENT: LB 258 passes with the emergency clause attached. LB 272 with the emergency clause attached.

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LB 213, 258, 272, 279, 289, 289A, 355  
355A, 357

may recognize you. Thank you for visiting us today. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 213, LB 258, LB 272, LB 279, LB 289 and LB 289A. Move on to LB 355 with the emergency clause attached.

CLERK: (Read LB 355 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 355 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2697-98 of the Legislative Journal.) 41 ayes, 0 nays, 7 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 355 passes with the emergency clause attached. May I introduce a couple of guests, under the north balcony, of Senator Scofield. We have Kathy Andersen and her son, Jason, from Lakeside, Nebraska. Will you folks please stand so that we may welcome you. Thank you for visiting us today. LB 355A with the emergency clause attached.

CLERK: (Read LB 355A on Final Reading.)

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 355A with the emergency clause attached pass? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Record vote read. See page 2698 of the Legislative Journal.) 44 ayes, 0 nays, 4 present and not voting, 1 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 355AE passes. LB 357.

CLERK: (Read LB 357 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 357 become law? Those in favor vote aye, opposed nay. Have you all voted? Record, please.