

January 10, 1989

LB 16, 17, 289-299

CLERK: LB 16, by Senator Labedz. (Read title.) The bill was introduced on January 5, referred directly to General File, Mr. President.

PRESIDENT: Senator Labedz, please.

SENATOR LABEDZ: Thank you. This is a bill which repeals a section that is no longer needed or is covered by other sections of law, thus it is now obsolete. I ask you to advance LB 16 to E & R Initial.

PRESIDENT: The question is the advancement of LB 16. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 16.

PRESIDENT: LB 16 advances. LB 17, please.

CLERK: LB 17, Mr. President, is a bill by Senator Labedz as Chair of the Executive Board. (Read title.) Introduced on January 5, referred directly to General File.

PRESIDENT: Senator Labedz, please.

SENATOR LABEDZ: Thank you, Mr. President. You'll be happy to know that LB 17 is the last of the revisor bills on the agenda today. It eliminates a reference to a repeal definition. I urge you to advance, to E & R Initial, LB 17.

PRESIDENT: The question is the advancement of LB 17. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays.

PRESIDENT: LB 17 advances. You have some things to read in, please?

CLERK: Yes, Mr. President, I do. An announcement, Mr. President. Senator Schellpeper has been selected as Vice Chair of the Retirement Committee. That announcement comes from Senator Haberman.

Mr. President...new bills, Mr. President. (Read LPs 289-299 by

February 3, 1989

LB 48, 92A, 116, 157, 250, 289, 325  
340, 342, 344, 360, 520, 603, 732

Legislative Journal.) 26 ayes, 14 nays, Mr. President, on the advancement of LB 116.

PRESIDENT: The bill advances. The call is raised. Mr. Clerk, for the record.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 342 and recommend that same be placed on Select File with E & R amendments and LB 344 Select File with E & R amendments. Those are signed by Senator Lindsay as Chair. (See pages 593-95 of the Legislative Journal.)

Education Committee reports LB 250 to General File with amendments. That is signed by Senator Withem. (See page 595 of the Legislative Journal.)

Health and Human Services reports LB 157 to General File, LB 360 General File, LB 520 General File. Those are signed by Senator Wesely as Chair. (See page 595 of the Legislative Journal.)

Government Committee reports LB 340 to General File with amendments attached. That is signed by Senator Baack as Chair. (See pages 595-97 of the Legislative Journal.)

New A bill, LB 92A by Senator Landis. (Read by title for the first time. See page 597 of the Legislative Journal.)

And, Mr. President, Senator Coordsen would like to add his name to LB 603 and to LB 289; Mr. President, Senator Smith to LB 325 and Senator Byars to LB 732. (See page 597 of the Legislative Journal.)

In addition to those items, Mr. President, I have a series of amendments to be printed to LB 48 from Senator Moore. (See pages 597-600 of the Legislative Journal.) And that is all that I have, Mr. President.

PRESIDENT: Senator Beck, would you like to say something to us?

SENATOR BECK: Yes, Mr. President, I would. I move that we adjourn until next Monday morning at nine o'clock and that is February 6.

PRESIDENT: Thank you. You've heard the motion. All in favor

March 13, 1989

LB 95, 140, 257, 280, 289, 311, 330  
336, 387, 395, 438, 444, 478, 561  
588, 603, 606, 643, 683, 705, 710  
721, 736, 739, 744, 761, 762, 767  
769, 780, 807

indefinitely postponed; LB 478, indefinitely postponed; LB 561, indefinitely postponed; LB 387, indefinitely postponed, all those signed by Senator Chizek as Chair of the Judiciary Committee. (See pages 1081-82 of the Legislative Journal. Journal page 1082 shows LB 721 as indefinitely postponed.)

Mr. President, a series of priority bill designations. Senator Hall would like to designate LB 762 as a committee priority. Senator Hartnett designates LB 95 and LB 444 as Urban Affairs priority bills. Senator Hartnett chooses LB 603 as his personal priority bill. LB 739 has been selected by Senator Hannibal; LB 606 by Senator Schimek; LB 761 and LB 289 by the Natural Resources Committee, and LB 807 by Senator Schmit, personally. LB 769 by Senator Labedz; LB 705 by Senator Ashford; LB 438 by Senator Wehrbein; LB 710 by Senator Scofield; LB 643 by Senator Bernard-Stevens; LB 588 by Senator Chambers; LB 739 by Senator Hannibal; LB 330 by Senator Pirsch; LB 767 by Senator Smith; LB 736 and LB 780 by General Affairs Committee; LB 395 by Senator Peterson. Senator Lamb selected Transportation Committee's LB 280 as a priority bill. LB 311 has been selected by Senator Landis as his personal priority bill; LB 683 by Senator Schellpeper.

Mr. President, I have a series of amendments to be printed. LB 744 by Senator Withem; LB 336 and LB 257, those by Senator Withem. (See pages 1083-88 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Haberman regarding an issue raised by Senator Haberman. (See pages 1088-90 of the Legislative Journal.)

Mr. President, Natural Resources Committee will have an Executive Session at eleven-fifteen in the senate lounge, and the Banking Committee will have an Executive Session at eleven o'clock in the senate lounge. Banking at eleven o'clock, Natural Resources at eleven-fifteen. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk. Proceeding then to Select File, LB 140.

CLERK: Mr. President, 140 is on Select File. Mr. President, the bill has been considered on Select File. On March 2nd the Enrollment and Review amendments were adopted. There was an amendment to the bill by Senator Chizek that was adopted.

March 14, 1989

LB 52, 289, 314, 621, 622, 761, 763  
795  
LR 28

SENATOR CHAMBERS: (Laugh.) All right.

PRESIDENT: Saved by the bell. Senator Warner, would you like to close on your resolution?

SENATOR WARNER: Well, Mr. President, members of the Legislature, Senator Scofield just handed me an article where the New York Times is in support of a 50 cent per gallon gas tax. So it could get pretty high. Again, the purpose of the resolution solely is one of expressing concern of placing this responsibility on one....Give you an idea of the impact on Nebraskans as opposed to other sources of revenue that might be available to reduce the federal deficit, according to the American Automobile Association, one of the charts that they put out indicated that an increase at the federal level of 9 cents, with a two house...a household with two wage earners and two...family of four could expect, on the average, in New York to cost \$293.28, on the average, per family, whereas in Nebraska it would be over...about 55 percent more per family, or \$460.54. That merely reflects the fact that in a sparsely populated state and with the heavy utilization of transportation and other fuel related expenses that...for much of our economy in this state that it can be a very major impact. And it seems unfair that that deficit be placed on such a smaller number of people, it ought to be shared on a broader basis. So I'd urge the resolution be adopted.

PRESIDENT: Thank you. The question is the adoption of the resolution. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: 35 ayes, 0 nays, Mr. President, on adoption of LR 28.

PRESIDENT: The resolution is adopted. Mr. Clerk, anything for the record at this time?

CLERK: Mr. President, your Committee on Natural Resources, whose Chair is Senator Schmit, reports LB 289 to General File with amendments; LB 761, General File with amendments; LB 52, indefinitely postponed; LB 314, indefinitely postponed; LB 621, indefinitely postponed; LB 622, indefinitely postponed; LB 763, indefinitely postponed; and LB 795, indefinitely postponed. Those all signed by Senator Schmit as Chair. That's all that I have, Mr. President. (See pages 1120-26 of the Legislative

April 12, 1989

LB 289, 586

Nebraska and their teacher. Would you people please stand and be recognized. Thank you. We're pleased that you could take the time to visit us this morning. Anything for the record?

CLERK: Mr. President, Senator Schmit has amendments to LB 289 to be printed. (Amendment printed separately from the Journal and on file in the Bill Room.) That's all that I have.

SPEAKER BARRETT: Thank you. LB 586.

CLERK: Mr. President, 586 was a bill that was introduced by the Judiciary Committee and signed by its members. (Read title.) The bill was introduced on January 18 of this year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Judiciary Committee, Mr. President.

SPEAKER BARRETT: Chairman Chizek, for the committee amendments.

SENATOR CHIZEK: Mr. Speaker and colleagues, LB 586 was designed to provide a temporary solution to the problems of case overload with the Supreme Court. The committee, of course, as you know, introduced the bill at the request of the court. As introduced, testimony at the hearings expressed concern that the temporary solution of LB 586 would become permanent. Consequently, the committee amendment, on page 1138 of the Journal, advances the sunset date in the bill to December 31, 1990. And I have a letter from Chief Justice William Hastings, who says that in the event the measures relating to the appeals process pass their final test before the full Legislature I, and other members of the court, have a job to draft satisfactory legislation for a permanent appeals court, as well as to construct an informative process to be sure that all people would be aware, because as this goes on it will require a constitutional amendment. And, with that, Mr. Speaker, I would ask for adoption of the amendment that just moves up the sunset date.

SPEAKER BARRETT: Thank you, sir. Discussion on the committee amendments? Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. I rise to support the committee amendment. Basically what the amendment does is, if you like the bill, you'll like the amendment even better. Originally this act is to go to December 31 of 1991, this would just move it back one year to

particularly the committee members and the staff of the various senators who have helped us with the bill. I only wish that a number of other bills on this floor would receive the same kind of scrutiny and attention. As was pointed out by Senator Elmer, I would hope that additional bills that address the needs of the environment and the protection of the environment will receive the same kind of support and interest that this bill has, and that when we bring those bills to this floor, whether they are to your liking or not, you will stand and address that issue. And when they need funding you will also support that very necessary expenditure. Protection of the environment did not happen over night, it's not going to be corrected in a day or two, it's not going to be cheap. And I would expect that those of you who have endorsed the concept of a good environment, a clean environment, will also endorse the concept that it must be paid for, therefore I hope that this bill will not be the last that we will address in this area, and that as we meet the needs of the people of the State of Nebraska that this Legislature will respond accordingly. Mr. President, I move the bill be advanced.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor vote aye, opposed nay. Have you all voted that care to? Record, Mr. Clerk, please.

CLERK: 40 ayes, 2 nays, Mr. President, on the advancement of LB 761.

PRESIDENT: The bill is advanced. Ladies and gentlemen, I would just like to say a word to you on behalf of your work the last day on this bill, approximately day, and that is that I compliment you and congratulate you on the way you have conducted yourself, the fine way you've debated this somewhat emotional and important bill for the State of Nebraska. I'm sure those observing you on our educational television system will be proud of you in the way that you have handled this bill. And I have appreciated and thank you very much. You have anything for the record, Mr. Clerk?

CLERK: Mr. President, I do, a new A bill, LB 544A by Senator Baack. (Read by title for the first time.) Mr. President, Senator Lamb would like to print amendments to LB 289. That's all that I have. (See pages 1759-60 of the Legislative Journal.)

SENATOR WARNER: Mr. President and members of the Legislature, this is a motion to place the four bills just introduced on General File. As I recall, the Speaker had indicated discussion of appropriation bills tentatively, at least, or likely as to begin...commence next Wednesday, and this, obviously, allows them to go to a hearing. Obviously, all the contents in these bills essentially have had public hearings.

PRESIDENT: The question is the suspension of the rules and put the appropriation bills directly onto General File instead of going to a committee. All those in favor vote aye, opposed nay. It requires 30 votes. Record, Mr. Clerk, please.

CLERK: 33 ayes, 1 nay, Mr. President, on the suspension of the rules and the placement of the bills directly on General File.

PRESIDENT: The rules are suspended and the appropriation bills are placed on General File. We will move on to LB 289, please, special order.

CLERK: Mr. President, LB 289 is on General File. (Read title.) The bill was introduced on January 10, referred to the Natural Resources Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Natural Resources Committee. Senator, I also...Mr. President, Senator Schmit would move to amend the committee amendments. Senator Schmit's amendment, Mr. President, is AM1341 and you will find it printed separately in your bill books.

PRESIDENT: Senator Schmit, do you wish to take up the amendment to the committee amendment first?

SENATOR SCHMIT: Mr. President and members, the amendment to the committee amendment strikes Section 27 of the bill. The bill has had a lot of work on it, needs some more work, and we just decided that Section 27 was too complicated for us to address. We're going to strip that section from the bill, and I move the adoption of that amendment.

PRESIDENT: Senator Coordsen, do you wish to speak about the amendment to the committee amendments, please?

SENATOR COORDSEN: I will pass on this.

PRESIDENT: Okay, Senator Elmer, do you wish to speak about the

amendment to the committee amendments? All right, so the question is the adoption of the Schmit amendment to the committee amendments? Senator Pirsch, did you wish to speak to that? All right, Senator Pirsch.

SENATOR PIRSCH: Mr. President, I put my light on rather quickly because I couldn't find Section 27 or I couldn't see that Section 27 was that complicated, but then I found the amendment, and it is all new language, so I will sit down. Thank you.

PRESIDENT: Senator Schmit, did you wish to close on the amendment to the committee amendments?

SENATOR SCHMIT: I have no close, Mr. President.

PRESIDENT: Okay, the question is the adoption of the...Senator Smith, on the amendment

SENATOR SMITH: I am sorry, I need a little explanation of what is the amendment to the committee amendments. I didn't...

PRESIDENT: You were asking Senator Schmit?

SENATOR SMITH: Yes, I would like to ask Senator...

PRESIDENT: All right.

SENATOR SMITH: ...Schmit if he would explain his amendment to the committee amendments?

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Yes, the Section 27, first of all, requires sellers of property who have used the fund to pay for remedial action on their property, to reimburse the fund an amount dependent on when the property was sold; the idea being that if, for example, I owned a station and it had to have a \$50,000 cleanup on it, and the property became sold, someone bought it, and then used it for some other purpose, if I sold that property immediately after the state had invested a considerable amount of money in that property, we were going to require a certain amount of that money to be repaid to the fund, the second year a lesser amount, the third year a lesser amount. There are obvious problems with that type of an idea, although the idea had some merit, and very frankly, Senator Smith, it was felt

that we had better just strike that portion of the bill.

SENATOR SMITH: Thank you, Senator Schmit.

PRESIDENT: Senator Pirsch, did you wish to speak again on this, please?

SENATOR PIRSCH: Yes, a question of Senator Schmit also. I have got my act together here, Senator Schmit, and this deals with the repayment by the person who sells or transfers the site, is that what this deals with?

SENATOR SCHMIT: Let me read to you, Senator Pirsch, the actual language of the existing amendment, which I want to strike. "Section 27. If within three years of receiving payment or reimbursement from the fund for remedial action at a tank site the responsible person sells or otherwise transfers his or her interest in the site, the responsible person shall reimburse the fund as follows:"

SENATOR PIRSCH: Yes, and I can read that. Is there any other place in the bill where it deals with that person who does sell or transfer their interest?

SENATOR SCHMIT: No,...

SENATOR PIRSCH: Are they let off the hook or how is that dealt with then otherwise in the bill?

SENATOR SCHMIT: It is not addressed, Senator, and it will no doubt will need to be addressed, but that will have to be done on Select File. I just did not think that this was a proper amendment and, therefore, didn't even want to bring it in at this time.

SENATOR PIRSCH: But this completely eliminates, then, any provision for someone who sells or transfers?

SENATOR SCHMIT: Yes, it does, Senator, and that is going to be one of many changes that will have to be made in this bill before it moves off of Select File, or before it moves off of this, off of General File. It may not even move here.

SENATOR PIRSCH: So you do intend to deal with that?

SENATOR SCHMIT: Oh, yes, I certainly...

SENATOR PIRSCH: It is that you want to strike this now?

SENATOR SCHMIT: I certainly do, yes.

SENATOR PIRSCH: Okay, thank you.

PRESIDENT: You didn't wish to close, did you?

SENATOR SCHMIT: No, thanks.

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

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Schmit's amendment to the committee amendments.

PRESIDENT: The Schmit amendment to the committee amendment is adopted.

CLERK: Mr. President, Senator Lamb would move to amend the committee amendments. Actually, Senator, you are amending the amendment we just adopted, I believe?

SENATOR LAMB: Yes, that is correct, but at this point, I might explain. This is a \$100 fee on all tanks, a one-time \$100 fee, and it seemed to me that there should be a graduated charge here, that all tanks regardless of size should not have the same fee, and that is the reason that I introduced this amendment. However, I am informed that there may be a technical problem with the amendment that I have offered here and so I will withdraw it and in all probability reintroduce it on Select File. I would withdraw.

PRESIDENT: All right, it is withdrawn. Senator Schmit, now would you like to take up the committee amendments?

SENATOR SCHMIT: Well, Mr. President and members, if I could do what I really would like to do, the first thing I would do would be ask permission to take my name off the bill and turn it over to Senator Lamb because I worked on this bill for a long time, as have most of the other committee members. And I will be very frank and honest with you, the second thing I need to do would

be to apologize to all of you whom I have criticized for bringing a bill to this floor that wasn't in proper condition, and this bill is not in the condition, in any condition to be passed into law at the present time, I will be very honest with you. There are a multitude of questions that are going to be raised, and Senator Pirsch and Senator Smith raised a couple just on trying to remove an amendment to the amendment. But, anyway, I think that is a little bit of a prediction of things to come, and so I want you to know that this bill, although it is one of those, another one of those bills which we are under some pressure to enact into law because of mandates by the federal government, it is one of those instances where we have a lot more pressure than we have counsel and advice, and it is a lot easier to say pass the bill than it is to pass a bill in an equitable manner, and then to enforce the bill is going to be certainly another most serious kind of problem and perhaps even a liability. The enforcement is dual between the Fire Marshal's Office and DEC but, as you can see as we go through the bill, there will be many, many questions which you will raise, and I will be very honest with you again, some of them I am not going to be able to answer. I wish that I were more adept at this but I, frankly, do not have the answers to a number of questions that have been raised by some of you in personal conversations and other questions that have been raised by businessmen, some of whom want the bill very much, but who, of course, have discovered some of the problems that you and I have discovered as we have worked with the bill. I would encourage you very, very much to read the bill carefully, to read the bill from start to finish, and then I will tell you very plainly that before the bill...if the bill moves off of General File, and before it moves off Select File, it is going to need a considerable amount of work, and to do otherwise is going to create a lot of problems for all of us as we move the bill across the board and as it becomes law. It reminds me a little bit somewhat of our experience with the chemigation bill when we thought we had to rush a bill into the statute books only to find that it was much more preferable for us, as Senator Rod Johnson will remember, as he took the bill and did a interim piece of work on it and brought back a bill which we think then turned out to be pretty good, but had we passed it in its first form, or second, or third form could have certainly caused us lots of difficulty. Sections 1 through 14 are generally the definitions that are used throughout the entire act, and even those definitions may require some cleaning up, but they are the definitions. Section 15 states that a responsible person may

not avoid responsibility for a cleanup by transferring title or by insurance. However, a responsible person may insure for coverage to pay the person for the liability of cleanup and that is one of the things we are trying to do with this bill. Section 16 states that other requirements of law on the owner or operator of a tank are not altered by the Petroleum Release Remedial Action Act. It also states that payment from the act's fund will not be allowed to compensate a third party for bodily injury or property damage resulting from a release. Section 18, the Environmental Control Council is given the authority to adopt the rules and regs. Section 19 creates the Petroleum Release Remedial Action Cash Fund to receive fees and pay a responsible party for part of the remedial action expenses. Section 20 requires owners of underground tanks to pay a fee of \$100 on or before August 1st of 1989 and to pay \$25 per year thereafter on or before each January 1st, and you heard that Senator Lamb has raised a question about this portion of the bill, and he is correct, and he has some justifiable concerns there, and we will attempt to try to work on those concerns of Senator Lamb's and to attempt to try to resolve them and, hopefully, make the bill workable in this area. Section 21 causes a fee of 3/10th of one cent per gallon to be paid on gasoline and 1/10th of a cent per gallon to be paid on diesel and other fuels beginning October 1st of 1989 by the first distributor, importer, or refiner who sells, uses or distributes petroleum in the state. Section 22 causes a fee as set forth in Section 21 to be collected until the fund reaches \$10 million and then the fee is stopped until the fund drops to \$8 million when the collection again resumes. There have been some senators who have questioned whether or not we need a \$10 million fund, and, in fact, there is an amendment, I believe, being prepared to drop that maximum fund to 5 million and to have it allowed to be depleted to 2 1/2 or 3 million, when it then again kicks in the collection feature to build it back up again. I want to point out that for those of you who are really going to become concerned about the soundness of fund, and someone asked me, is the fund actuarially sound? Want to emphasize that this is not an insurance fund, this is not an insurance fund, and I will tell you again, it is not designed to be actuarially sound. It is a unique fund in the fact that those of us who pay the tax do not directly benefit from the tax. In other words, we all will be paying that tax, in many cases, but the fund will be distributed to the entities who own the institutions, the facilities, where there will need to be remedial action taken, and so I want to point out, it is not an

insurance fund. We need to be sure the fund is adequate and we don't know what that is. We do not know what the needs may be. There is an insurance company at the present time, I am told, that have spent an average of \$57,000 per cleanup thus far on a number of cleanups, and we don't know, of course, how much greater or less those will be. It depends upon a lot of instances. We don't even know how serious the problem is. I couldn't help but think when I was back on the East Coast here awhile back where the water table was high and there was a lot of salt water in some of the underground water that if we have a problem here in relatively arid Nebraska, that certainly they must have a more serious problem in the highly populated areas of those eastern states and they, of course, are concerned also, but I have not really sat down with any of those eastern legislators to determine if they are following the same course of action that we are. But I want you to be aware that these are concepts. We are here to get additional help from you and your input. Section 23, the responsible person is totally responsible for the first \$10,000 of the remedial action, and then is responsible for 25 percent of the remedial action beyond the first 10,000,...

PRESIDENT: One minute.

SENATOR SCHMIT: ...but not to exceed an additional \$15,000. The fund will pay or reimburse the responsible party for the remaining cost of remedial action up to \$975,000, assuming the responsible party can get insurance or guarantee payment for the 25,000 which the responsible party must pay. This will then provide \$1 million coverage for remedial action cost. Section 24, the State of Nebraska is not liable for payment of any amount to a responsible party if there is not sufficient money in the fund to make the payment. Section 25, releases first properly reported after the effective date of this act may apply to the fund. Applications for payment or reimbursement from the fund may be made on or after October 1st, 1989. It requires that laws and regulations applicable to the tanks have been followed in order to receive reimbursement from the fund. It requires that notice of the release was made as required by the Fire Marshal and DEC. It requires that the responsible person reasonably cooperate with the Fire Marshal...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...and DEC and pay his share of remedial action cost before the fund pays any cost. Mr. President, I am almost finished. With the indulgence of the body, I would like to just take another minute. It further requires that DEC must first approve a plan for remedial action before any cost of the plan will be reimbursed. Section 26 ensures that payment to a responsible person for remedial services provided by a person who has cleaned up a leak cannot be attached by a creditor or the responsible person. Section 28 requires the Department of Environmental Control to cooperate to obtain federal funding to carry out the Petroleum Release Remedial Action Act, and Section 29 integrates the Petroleum Release Remedial Action Act into current law. Mr. President, it would also carry the emergency clause. That roughly explains the amendments and which is, of course, at the present time the bill, and we can now attempt to try to answer any of the rest of your questions.

SPEAKER BARRETT: Discussion? Senator Coordsen, followed by Senators Elmer, Smith, Hartnett.

SENATOR COORDSEN: Thank you, Mr. President and members of the body. My name is on this bill. Senator Smith addressed a number of the concerns that have been expressed by people on the language of the bill, but let's not let that detract us from the importance of the issue that is facing us with regard to problems that may exist in underground storage facilities across the State of Nebraska and how that may well impact all of the people that we represent. The Environmental Protection Agency, when they issued their regulations requiring the financial responsibility of all owners of underground tanks, made an estimate that the regulations would, in fact, close 45 percent of the service stations in the United States. There was recently a news article in the paper where the Environmental Protection Agency had upped that estimate to 80 percent of what we would call filling stations in the State of Nebraska, or in the United States, not the State of Nebraska. I have had a personal experience of having our community filling station close through financial problems, not from any contamination reason, but it brought home to me the importance of a service station in a small community, whether that community is out in rural Nebraska, or whether it is the corner filling station in the area of what we fondly refer to as urban Nebraska. Most of these people do not have the gallonege to cover the cost of providing the financial responsibility that is going to be

required under federal law. Whether the wording in 289 is exactly right or not is somewhat moot. This is an issue that we need to keep before us, we need to keep alive, we need to pass on and allow the opportunity to be there for amendments. If it is not in shape for final passage by the end of this session, fine, but it is something that is going to impact each and every person that we represent in some way. It is probably one of the more serious issues with regard to the quality of life in Nebraska that we will be addressing this session, and I think that it is incumbent upon us as individuals to have an input into the development of 289 in a proper, workable form, and to share with Senator Schmit, and whoever else is directly interested in this bill, our suggestions as to how it might be made more workable or perceive problems that we might see in it. So I would encourage at this time the advancement of LB 289 over to Select File to further try to amend it into a form that will allow us to have a local site station that will provide the services that we have come to accept in our communities in a way that is affordable to the person who is operating that station. Thank you.

SPEAKER BARRETT: Thank you. Senator Moore announces some guests in the north balcony. We have 28 fifth graders and their teacher from Seward, Nebraska. Would you folks please stand and be recognized. Thank you. Glad to have you. And from North Platte, Nebraska as guests of Senator Bernard-Stevens we have seven boy scouts and two adults from Troop 29 with Mike Rumery as the Assistant Scoutmaster. Would you people please stand. Thank you. We are glad you could spend some time with us as well. Senator Elmer, additional debate on the committee amendments.

SENATOR ELMER: Thank you, Mr. Speaker and members. This bill mainly addresses the current and past sins we have committed against the environment in our petroleum industry. The problems are there. We know they are there. We need to take care of them. Most of the tanks in the rural areas of Nebraska that are underground are going to have to be replaced, removed, and when these are being replaced or removed, we will find those sins that we didn't really realize were there. The regulations that we now work with, mandated by the federal government, as Senator Schmit has so aptly said in his opening comments, are ones that have liability assigned to them. Insurance availabilities are such that a rural service station owner, a mom and pop type of an operation that are the bulk of these kind of facilities and

services available, will not be able to meet this liability, hence the closures that we are talking about. As time passes and these tanks are taken out of the ground and the problems are mitigated, the needs for this type of a bill will diminish down the road, whether it is five, ten, or fifteen years. The need for this bill will probably not exist any longer, but in the meantime, we, as Nebraskans, need to face the responsibilities that we have. This is just one facet of the environmental problems we face with our small towns and our open landfills and dumps, and various other environmental problems. They must be faced and I would say that when this bill comes to the end of its usefulness, one of the things we are going to have to address is what will we do with this fund when it is no longer needed, and, perhaps, we should do that on Select File also. I would heartily support the committee amendments and intend to be a part of the working process getting the bill ready for Select File and the debate we will have there. I would urge the passage of LB 289 to Select File today. Thank you.

SPEAKER BARRETT: Thank you. Senator Smith, followed by Senator Hartnett.

SENATOR SMITH: Thank you, Mr. Speaker. Members of the body, I hope that you realize that this is a very, very important, in fact, a very crucial issue that we deal with, and that we take the time to deal with this. We did in the committee. We worked with this issue, and worked with it, and worked with it. No matter what we did, we felt like we still were in a total new area which is going to be so important for the future of Nebraska and for Nebraskans, but at the same time, we want to be sure that we are doing some things that will be right. As has already been mentioned here, you know that we have EPA requirements regarding financial responsibility of station owners regarding technical matters and insurance, and if they can't get their insurance, which is absolutely prohibitive at this time, by a certain date, and I don't know exactly what that is, probably about a year and a half, maybe not even that long now, many of them will have to go out of business, and as you know, many of the small business, owners of small gas stations are located in the little towns across Nebraska, and it has been estimated that approximately 80 percent of these little gas stations will be forced to close if we can't come up with something that will help them to meet EPA's requirements. At the same time, we had such frustration in committee because of the fact that we didn't want to give powers to the Department of

Environmental Control which would make them become almost I guess economists. They would not...we wanted to be able to keep...take control of what it was they were going to be doing with these folks when they were looking at cleanup out there. I have a concern about third party liability, which is, to me, not at all addressed in this bill, for those innocent parties who, let's say that someone says there is a leak...in someone's gas station that there was a release. They go out there and check and then they also say, well, it has gone over to this other person's property. What about that third person? Do they have the responsibility for the cleanup? Why should they have to pay for it? Those are some of the questions that we have had that we really can't get answers to. I was just visiting with Senator Schmit. He is very, very frustrated and is in a much better position of trying...of understanding the issue than myself, for sure, and feels that we simply have not got the answers to this issue yet, and still we are in a position where we must do something, and that is the dilemma we are faced with right now. So I want to address the third party liability issue before we move this bill on Final Reading, but I just want to alert you to the fact that this is no small matter we are dealing with here, and yet there is a need for us to do something because we must do something to help those small station owners to survive. If we don't, we can create another Great American Desert in rural Nebraska, and rural Nebraska, as you know, is nearly all of the state because we have little communities even within our own areas here, but it would be even harder on those folks out in the really rural parts if their little one station closed in their community and there was no access to...in fact I know of places where that is true even in here where I am at right now, down towards the Kansas border, where, for instance, their school buses have to go to another community to get their gasoline and they have to have storage of gasoline. So these are the kinds of problems that we are facing, and the requirements that are being placed on these little gas station owners right now for how they have to...let's say they have to worry about digging up those barrels, the gas barrels, the huge storage tanks. The cost of reinstating them which meets the regulations and the requirements that have been placed upon them is so much that, in many cases, they will never recoup the money that they are going to have to put in that replacement, and so, again, this is going to cause some of them to have to close. So it is really...it is just a really frustrating problem but we have to all in here put our wits together and get some good input from everyone. Don't just let

this bill pass on the floor, don't just vote against it because someone asked me a little bit ago, why did you put the bill out...

SPEAKER BARRETT: One minute.

SENATOR SMITH: ...if it is not in order to be passed on the floor? I don't know whether you heard Senator Schmit say that he knows it is not in the proper order but yet we have to deal with the issue, and that is where we are at right now. So please don't just everyone leave the floor, visit among yourselves, provide us some input, and see if you can help us on this. Thank you.

SPEAKER BARRETT: Senator Hartnett, followed by Senator Morrissey.

SENATOR HARTNETT: Mr. Speaker and members of the body, I agree wholeheartedly with Senator Smith because I attended a conference, a legislative conference, about a couple of months ago, and this was the topic of all the people that were there from different states. How do we deal with this particular issue, the underground thing? And it is something, you know, we are kind of tied as a state that the federal government has put something on and it has got to be done by a certain...they have started the clock and they have really put us kind of behind the...maybe behind the eight ball because they have given us such a very short period of time. There is no other states...other states are dealing with this in a similar manner that we are doing it. Maybe we are kind of groping, I think, as the people on the Natural Resources Committee has been doing with this. If I could ask Senator Schmit a question, please.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Yes, Senator.

SENATOR HARTNETT: When you made your opening remarks and so forth, and I was probably like a lots, when you first started with this, and I realized the area that you were talking about, you said...from talking to some of the other state legislators that they have kind of set up an insurance fund, and I know that we don't want to get anything like we did with the Commonwealth and so forth, but, you know, you said this is not...this money and so forth is not an insurance fund. I guess my question to

you from your expertise and knowledge and so forth in starting this, should we have, you know, or can the small companies that, you know, Senator Smith alluded to, the small gas companies, can they get enough funds and so forth, will there be insurance that they can guarantee their underground storage or should we do something in the area of insurance? I am simply asking a question.

SENATOR SCHMIT: What we are trying to do with this fund, Senator, is to make it possible for the smaller operator to stay in existence and to draw upon this fund, and with the design of the fund so that the operator is responsible for no more than the first 25,000 out of million dollars, and the fund responsible for the money above that up to \$1 million, then we have been told by the industry, that the insurance industry will then come in and be able to pick it up after awhile and will insure above a million. We have also been told, and I have no proof of this, and there is no reason for me to know whether it is accurate or not, but we have been told that as the problems are resolved and the leaking tanks are cleaned up, that the industry will then be able to come in and accept more and more of the responsibility, and that, eventually, the need for the fund will disappear. At that time, hopefully, Senator Owen Elmer and I were discussing this morning what is going to happen to the money that is in the fund, whether the fund is 5 million or 10 million, and I thought it ought to go to the Water Development Fund, but Senator Owen Elmer thought it ought to go to the Highway Trust Fund. And so we actually I think, Senator Elmer, we agreed to get an amendment ready to hopefully when that fine day comes that we are no longer needing the fund that we don't just allow the fund to lie there and be dissipated, that it will then, in fact, revert...it probably should go back to the Highway Trust Fund.

SENATOR HARTNETT: What you are saying is that they can get...what the industry has told you is they can...there are different companies that can write insurance policies beyond the million dollars, is that what you are saying?

SENATOR SCHMIT: Yes, what I am saying is that...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...we should be able, the industry should be able to purchase insurance for that portion which is not covered

by the fund.

SENATOR HARTNETT: Okay.

SENATOR SCHMIT: The industry will have to take the heat the first 25,000 maximum, then 975,000 could be covered by the fund. Hopefully, obviously, that would not happen to that size of a claim against the fund. As I indicated earlier, one insurance company has paid off a number of claims with an average clean-up cost of about 57,000, and I don't know, Senator, if that is...I guess that is the total cost to the insurance company. I do not know if there was a deductible on those or not, if that was the total cost, but the premise of the industry is that if the fund will take care of the responsibility for the first 1 million, that we can then be assured that there will be insurance available for that amount above the million.

SPEAKER BARRETT: Time

SENATOR SCHMIT: Then as we take care of the leaking tanks, we can assume the full responsibility. I do not know when that time will come.

SPEAKER BARRETT: Senator Morrissey, followed by Senator Nelson.

SENATOR MORRISSEY: Thank you, Mr. Speaker and members. I want to just reemphasize what some of the other members have said, starting with Senator Coordsen, that we do need this act. We all need to work hard on this because we all will benefit from this. This is another example, and we, in the Natural Resources and the Ag Committees, experience this on a daily basis during committee hearings. It is another example of the federal government saying there is a problem, here is our answer to it. They dump it down on the states and say you handle it. They don't take into any consideration that the small operators will not be able to do what the federal regs mandate that they do. In the committee hearing, the insurance industry came in and stated that they simply could not provide affordable insurance for these small companies so they would be covered to meet federal regulations, and this problem isn't a problem of great neglect on the part of these small dealers. You have to consider the type of measuring and recordkeeping that has been done. It was not required to have an intensive recordkeeping, and those that did, when you are measuring volumes in a large gas tank, that volume moves up and down in inches, and those

inches can be hundreds of gallons. When you measure it nightly, when you stick your tank nightly, and compare it to your pumps, it is hard to tell if you have got a pinhole leak in one of these huge tanks that has been leaking year after year after year and slowly filtering out into the earth and contaminating large amounts of soil. At times, it is just impossible to tell if this is going on. So this is something that we must do to provide this insurance that these people need to stay in business, and we might have to work late night and extra hours to get it done, but we must all work on this problem, because if we don't start in 1990, some of these older tanks are affected immediately. So we need to put out the effort to get this bill into shape, and as Senator Smith said, this is new. A lot of the other states, Iowa for one, they are all starting to work on it right now. So we really need to work hard on this, get this done, because it definitely is needed. And whether the fund will not be needed in the future there, that question is really up in the air. The industry is working hard now replacing all their tanks. This has come in the last few years that all this has come about. I can tell you for fact that the industry is out there replacing their tanks when they can do it. They are working on it and they are working on it hard, but whether or not the insurance industry will provide affordable insurance later on when all these new tanks are in the ground is what will affect whether this fund will be needed. If they can provide affordable insurance when all these new tanks are in the ground with all their extensive monitoring systems, well, maybe then this fund will be able...we will be able to let it lapse then and indeed put the money into the Highway Trust Fund. But that is the question, if this insurance...if the federal law remains the same, if insurance is available at an affordable rate, well, then we will be able to let this fund lapse. But if it is not affordable and the federal regulations stay as they are, this fund will have to be there as long as that situation exists. So I, again, ask the body to help us out on this bill and work hard because it is something that everyone in your district and every district in the state is going to be affected by.

SPEAKER BARRETT: One minute.

SENATOR MORRISSEY: And I would like to give the remaining time to Senator Hartnett.

SENATOR HARTNETT: Mr. Speaker, I lost some of my time with Senator Schmit's reply and I would advise the people in the

Natural Resources District not to sunset this fund in about two years because it is my feeling from talking to people and so forth that this problem is not going to go away in five years, so I don't think we have to worry about the Highway Trust Fund right away getting a big windfall of money. I think it is going to be with us for a long period of time. I simply wanted to add that to the record is that I think this is a problem that we are facing today, kind of under the gun, but I think we are going to face it in the future.

SPEAKER BARRETT: Senator Nelson, followed by Senator Elmer.

SENATOR NELSON: Mr. Speaker, members of the body, I don't serve on the Natural Resources Committee but I certainly have had a lot of firsthand experience and I guess that I can almost tell you one of the horror stories that every one of these small towns will be running into. And I want to commend Senator Schmit and the Natural Resources Committee for trying to tackle this problem. This is firsthand experience, a small town right close to me, they discovered gasoline down in the first water. How it started is last January a resident of a rental housing thought that she smelled gas in her basement, and the local fire department as well as the Fire Marshal's Office, it is like being a cop, be darned if you do and be darned if you don't, they moved in there. They closed off the area, thought that there could be a possibility of gas following a line in from the service station close into the basement. As it turned out after about eight months time, it was determined that that was not true and the flow of the water, but let me give you the scenario that every one of these small towns and possibilities are in. The farmer or the person that owned the actual service station ground leased it to another party for about 15 years, which I am guessing the tanks probably leaked a considerable amount of time during that time. Then another young fellow purchased that lease from the original lessor and operated the station for about two years, and he was in the process of not being able to make it financially. So along came his good-natured or father-in-law then purchased the service station from him in order to help his son-in-law. Who do you suppose was responsible, and it was caused by a law that we passed here in the Legislature. That father-in-law, then, was responsible for that gasoline down in that first water. They drilled any number of tests, and as we worked it out, I personally know the town. It is close to Grand Island, Doniphan, I will tell you, and we found five different old service stations in town, a service

station across the street that is now loading police bullets, ammunition there, and no one knows whether those tanks are buried there or not, but there is gasoline in the water down in that station. There is gasoline or it is a sour sewer smell across the highway in the farmer's cornfield, but those tanks may be buried and cemented across on the top. The whole bottom line is, is this good...I can't say good-natured, kind father-in-law purchased the service station, and lucky enough a few people in town took some pictures of them coming in and dismantling it. There were five tanks that may or may not have been leaked. What they did is they left three tanks and replaced two of them. So, technically, he was responsible. I made more trips to Lincoln last fall on this issue, and summer, than I probably have any other issue in the Legislature, and I can tell you firsthand, this \$5 million fund is not even a smell in the woods when it comes to cleaning up these situations, and I am sure that there is a thousand other towns just exactly like Doniphan in the State of Nebraska. Now the concern is, and it has to be watched, it is about 1,100 feet from the municipal well, hopefully that that water will not move. But should that small town have to replace their municipal water system, just think of the cost of that.

SPEAKER BARRETT: One minute.

SENATOR NELSON: And so I want to commend the committee and I hope that everyone can honestly work through it. The third party, as I say, is a real concern. This gentleman just really got hammered for it and he replaced and started to those tanks almost as fast as he could. I think this fund will be needed far longer than Senator Schmit or myself or Senator Hartnett will ever need to worry about it. So it is a monumental problem and, in fact, actually when I met with the trucking industry and so on, I don't think they really even at the time of the meeting that I was at, they realized how serious or the monumental implications that we are running into, and I do think, though, in about four or five years people will become more aware in what we have been doing, and the problem will ease up and go away or be corrected to a certain extent. Thank you.

SPEAKER BARRETT: Senator Elmer, followed by Senator Weihing.

SENATOR ELMER: Thank you, Mr. Speaker. Could I ask Senator Schmit a couple of questions, please?

SPEAKER BARRETT: Senator Schmit, would you respond?

SENATOR ELMER: Senator Schmit, in the committee amendments has a change from the original bill, 3/10ths of one cent are assessed on motor fuels, just as the motor fuel tax is assessed now, while 1/10th of one cent is assessed on all refined petroleum products that are distributed in the state, do you have an estimate of how long it would take for the fund to reach the maximum of \$10 million with this type of an assessment on fuels?

SENATOR SCHMIT: This should raise between five and six million dollars per year, Senator, nearly as we could calculate.

SENATOR ELMER: Thank you, sir. It has also been a fear of individuals around the Legislature and in the Capitol that this type of a fund could turn out to be a second NDIGC fiasco, and since the way it is being funded and the various things that are in the bill, would you have any comment about that particular fear?

SENATOR SCHMIT: Yes, Senator, and I am glad you raised the point again because I am sure, although it has been mentioned earlier, I want to emphasize that this is not intended to be an insurance fund. This is titled a Release Remedial Action Act, and a fund that goes along with that same kind of designation, and we, of course, want to point out the fact that the individuals who pay the money into the fund who are charged with the cost of supplying the fund are not, in most instances, the people who will benefit from the fund. It is going to be taxed on at the jobber level and then, of course, the jobber will have to pass it on to the ultimate consumer, and if there are withdrawals from the fund, those withdrawals are made for the benefit of the tank...or the station operator. So I don't know how you could call it an insurance fund because the beneficiary is not the same individual who, in effect, pays the premium, and I don't even want to call it a premium because I don't want to give any inclination of it being an insurance fund. It is a fund which is built up by set-aside on the fuel and it is replenished in the same manner, but the beneficiaries of the fund are the tank owners and the reason, the thinking behind it has been that those of us in rural areas will probably be the beneficiaries ultimately because without this kind of ability to sustain the tanks...the stations in those areas, we may very well lose, as one person indicated here today, a large

percentage of the small stations in the rural areas. I am not sure...

SENATOR ELMER: Thank...

SENATOR SCHMIT: ...this will guarantee, Senator, that we will keep them there, but it does help some.

SENATOR ELMER: Thank you, Senator Schmit. I also understand that this bill applies to not only buried tanks but also those that are aboveground or not buried and also the piping that would connect them if a spill or a leak would result and, thereby, contaminate the environment.

SPEAKER BARRETT: One minute.

SENATOR ELMER: That is true, isn't it, sir?

SENATOR SCHMIT: Well, it is generally true. For example, my tank on the farm would now be covered under, if I had a spill out there, as a result of this act.

SENATOR ELMER: And, of course, the deductible, if a \$10,000 deductible as I assume that that is, would be first paid by the current owner of the tank and insurance would take up part of that, and if the cleanup got more expensive, then the fund would kick in. It is important that everybody realize that the spill or the cleanup would have to be fairly significant before we would suffer liability to this fund, and I continue to support the adoption of the committee amendments.

SPEAKER BARRETT: Thank you. I am pleased to take a moment to announce that Senator Nelson has 30 fourth grade students from Knickrehm Elementary in Grand Island with their teachers in the north balcony. Would you people please stand and be welcomed. Also visiting in the north balcony as guests of Senator Peterson, 42 fourth grade students from Madison Elementary in Madison with their teacher. Would you folks please stand. Thank you. We are glad to have you students with us this morning. Hope you can come back again. Additional discussion, Senator Weihing, followed by Senator Wesely.

SENATOR WEIHING: Mr. Chairman and members of the Legislature, the first time I was made aware of this problem was one of our local station, that is supplier, gasoline station who had been

in business 30 years or more called with alarm because as he read the law, and he had read it rightly as that would be instituted, there would be no way in which this service station would be able to continue on, and what he was reflecting was that of rural Nebraska. If one leaves the interstate at Grand Island on Highway 2, there are very few locations that are going to have service installations that could even consider the amount of the cost of insurance that would be required by the federal government in taking care of this problem. Now the point of this is that one would travel several hundred miles on Highway 2 if we do nothing. It would take out the service stations along this very vital route because the towns are relatively small, the service stations are small. They would not...they would certainly not have the capital to be able to purchase the insurance that would be required by our federal government. This instituted LB 289. True, it may have flaws at this time but what we must recognize that it is necessary that we create the mechanism by which we can retain these vital service stations which are family operated and are so much a part of the community and our well-being throughout much of the geographic area of our state. The problem that has been caused has been caused by all of us. We required the gasoline and oil and diesel fuel. We had the people make their investments. It has been going on for a number of years. Leaks have occurred unknowingly. We are now being told that this will have to be cleaned up. Where these accidents have occurred we don't even know, and it is necessary that we create within our state a means, and this fund of which we are talking about, is one way. We must work upon LB 289. If it has flaws, let's correct them as much as we can, and as to the worry about what we will do with the money in the future, I am sure that this legislative body will have numerous, multitudinous ideas and ways of handling it as that time approaches, but we must take care of what is imperative now, and that is those many, many service stations that we have serving us here in Nebraska at this time. I thank you.

SPEAKER BARRETT: Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. Speaker. I am going to have a couple of questions of Senator Schmit. First let me just state, though, before I ask Senator Schmit some questions, I am very concerned, obviously, about the environment and problems with the environment and this bill is an attempt to deal with that very important issue of underground storage tanks and its

- leaking into our groundwater and causing some environmental damage, but the concern I have that I would like Senator Schmit to address, if he would, I see a handout from Senator Hefner that says "Small towns face loss of gas stations" and, it is really a compassionate story about the small gas station operator in the small towns, it doesn't have to be a small town, it could be in Lincoln. I know there are some small operators in my district. They are the guys that have the lower cost gasoline. They are the ones that are the cut-rate individuals that keep everybody else's gasoline prices down, and they just don't operate on much of a margin of profit, and I am just kind of wondering, Senator Schmit, if you could...there is the big guys and the little guys in this operation, how do they come out on this deal and are we going to force out the small operators? And this is not this bill doing it, but, federally, are we charging the same to both the small and the big? How about the small operator in Bellwood or even in my district, and how do they come out on this deal, and can we do anything to help them?

SENATOR SCHMIT: I am really glad you asked that question, Senator Wesely, about as glad as I am to hope for a hailstorm really because, obviously, the little guy is not going to come out probably quite so well as the big guy, and we have discussed this to a certain extent, and as you well know, \$25,000 of maximum contribution can be a tremendous burden for a station operator, Mr. Hammel in Clatonia or Mr. Rehm in Clatonia, whoever he is, or for someone in Bruno or Abie, whereas it might be just a very small portion of the day's receipts for some other company, and that is a question which legitimately needs to be asked on this floor, and we ought to I suppose address it because there was some concern as to whether or not the amount of the responsibility per leak ought to be based upon the volume of business, for example, as opposed to just a flat \$25,000 maximum, and the counterargument of that is, well, if you get a bad leak, it can be just as bad from a 1,000 gallon tank in Abie as it is from a multithousand gallon system in Fremont, Nebraska, where Senator Lowell Johnson has some very large establishments. But the thing that concerns me is that we may, even with this bill, force out of business, and I think Senator Hefner can touch on that, too, a number of small operators, and we don't want to do that. We hope we're helping to preserve them. I'm not sure that we're doing it the way we want to, Senator Wesely.

SENATOR WESELY: Well, Senator Schmit, I know we don't have time

at this point. We should probably move on the committee amendments and then on the bill, but would you anticipate being able to work on that particular issue I've raised on Select File, for instance?

SENATOR SCHMIT: I can assure you, Senator, now that you've raised it that we will address it because there are, as I said when I opened on the committee amendments, many, many questions which will come up on the floor and we will then attempt to address them. I just hope that we uncover all those questions like the ones you've raised.

SENATOR WESELY: Thank you, Senator Schmit, I do look forward to working with you on this and would support the committee amendments and the bill and hope that we can deal with the particular problems I've raised about the smaller operators in the smaller towns and how this would affect them.

SPEAKER BARRETT: Thank you. The Chair is pleased to advise that Senator Morrissey has some guests in the south balcony, 28 third and fourth grade students from Nemaha Valley School in Talmage and Cook with their teacher. Would you folks please stand and be recognized. Thank you. We're pleased to have you with us. Additional discussion on the committee amendments, Senator Hefner, followed by Senator Smith, Schmit and Elmer. Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, first of all I want to thank Senator Schmit and the Natural Resources Committee on the amount of work they've done on this bill. They are to be commended for it because the owners of underground tanks have an enormous problem. We talk about the low-level radioactive waste problem, but I think the owners of underground tanks have a tremendous problem too, as do some of the other people that use pesticides and fertilizers and like that, that contaminate our underground water supply. The federal EPA has ordered all tank owners, now this just isn't service stations, this is all tank owners to have \$1 million liability protection by October, 1990. So that is just about a year and a half away and who has these underground tanks? Well it's more than just the service stations. I know the service stations and the oil jobbers and people like that are very concerned about it, but farmers have a lot of underground tanks. The truckers have a lot of underground tanks, other commercial accounts have underground tanks. The railroads have underground tanks and

let's not forget some of the homeowners. Some of the homeowners have underground tanks. Some of them aren't being used anymore but these underground tanks used to contain fuel oil that they heated their houses with years ago and then they switched to natural gas. So we may have some of these little old fuel tanks that are leaking. In fact, I had a constituent called me and says, well I know that I have an underground tank and I don't know whether it was pumped dry when we discontinued using it, what should we do about it? And I says, well, before you remove it, you'd better let us get a fund in place because if it's leaked very much fuel oil out, well you're certainly going to have a problem. But most of the service stations do keep an inventory control and with fuel prices going up and a lot of it over a dollar a gallon now you can bet your boots that they'll take...they'll really watch their inventory and stick read the particular tank every day. But I feel that we need to do something and by adopting this amendment I think at least it's a start. We're going in the right direction and I know we may have to add more amendments as we go along, but let's get started on it. What are the other states doing about this? Iowa has proposed a bill and I think by now it's passed, but they are charging a half a cent a gallon to put in that fund and then they may use a bonding procedure if the losses get too great. I know that Kansas is working on a bill this year in their legislature and there's many other states that are trying to do about the same thing that we're doing with this bill. So I would urge you to adopt this amendment.

SPEAKER BARRETT: Thank you. Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. Senator Schmit...could I ask a question of Senator Schmit, please?

SPEAKER BARRETT: Senator Schmit, would you respond to a question, please.

SENATOR SCHMIT: Yes, Senator, I'm sorry.

SENATOR SMITH: That's all right. Thank you, Senator Schmit, regarding...I was going to speak on the concern again about the small businesses that Senator Don Wesely brought to us, but I wanted to ask a question. If we were to establish this fund and...let's see, it's the first 25,000, but isn't it only a percentage of the first 25,000 that they'd have to pay, 25 percent of it?

SENATOR SCHMIT: That's right.

SENATOR SMITH: Okay, so that could still accrue to an amount that's around what, \$10,000, something up to that point, in my understanding from what I've read? That would still break a small business, gasoline business. But what I was wondering is, is there any way that you know of could, by establishing this fund, that a small business would be able to be insured then for the other part of that liability, that they would currently...what we're saying is they are going to have to pay the difference right now up to that amount. Is there any...in your understanding is there any insurance company that could be, that they could get to insure them on that first part of the liability?

SENATOR SCHMIT: What you're saying is could they buy insurance on that first 25,000?

SENATOR SMITH: Yeah.

SENATOR SCHMIT: Well, we are hopeful that that will develop, Senator.

SENATOR SMITH: See, that's what I was thinking, that we were trying to come out and do with this and that's why I wondered after Senator Wesely talked, if we weren't putting some mechanism in place. The only thing is, do we have any idea what this would cost?

SENATOR SCHMIT: We don't at this time, Senator, and we're not even certain that it's available but we hope that it will be.

SENATOR SMITH: Okay, so we still...we have that question to be answered too yet then. If that question could be answered, I would feel a lot more comfortable about the fate of the small business, you know, throughout Nebraska. Is there anyone that is looking into that?

SENATOR SCHMIT: Pardon?

SENATOR SMITH: Is there anyone looking into the possibility...

SENATOR SCHMIT: Yes.

SENATOR SMITH: ...of getting that kind of insurance and what the cost would be?

SENATOR SCHMIT: Yes, we've been looking into it. We do not have the answer yet and we hope that, and I know the time is getting late and I apologize again, but we hope that before Select File we will have some of those answers and if we don't have, Senator Smith, then you certainly have a very valid concern and a very deep-seated concern which is shared by many of us.

SENATOR SMITH: Yeah. Senator Schmit, isn't it, from what we've...in our discussions that we've had in the committee, I think it's also very accurate for us to state that if, in fact, we can't do something of this nature, it's probably very plausible that those small operators would not be as prone to report leaks that they may be aware of as they may be to try to cover them up. I mean, it would be just a natural thing for them to do that, wouldn't it?

SENATOR SCHMIT: I'm sorry, Senator, would you repeat the question. I'm sorry.

SENATOR SMITH: If we can't find something, some sort of insurance coverage for the small operators and for the small owners, whoever has a storage tank, they would be more prone to cover up than to report a release, wouldn't they, and you can't really blame them for doing that.

SENATOR SCHMIT: Yes, indeed.

SENATOR SMITH: So if we're concerned about the environment and contamination, I guess I believe that this is really a public concern. This is a concern of all of us. I'm not even sure that going the route of charging the petroleum industry is the right answer, although I think they were, you know, they're willing to do it at this point from what I understand and so that's okay with me, but the larger issue to me is the concern of all of us as public and I think that we're going to have to look at this whole issue of contamination of the environment and whatever that may be of our natural resources and figure out some way that we as the public who really stand to benefit by the cleanup, take hold of the issue and be willing to be responsible for it as a whole. Thank you.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members, Senator Smith raised a number of important questions and I'll to address some of them if I can and hopefully others will touch on them because I'm sure others have information also. But we have a lot of uncertainties in this area, but we heard some people indicate that the insurance on the first \$50,000 of coverage today might be as much as 80 percent of the 50,000. Obviously \$40,000 for an insurance policy for that kind of coverage would be prohibitive. There is some indication that there would be 50 to 70 percent reduction and maybe substantially more in that fee if we were to pass this bill. If, for example, the operator is stuck for only the first 25,000 and you could get a 70 percent reduction in that premium, you would be stuck for the first 7,500 and...I mean the premium would be \$7,500 on a \$25,000 loss. Now I don't know if that's acceptable to some individuals. When you look upon it as an annual cost that's a tremendous cost for some of these small communities and Senator Lamb and Senator Owen Elmer and Senator Hefner and many of the rest of us have discussed this many times and we are deeply concerned because we all know that many of the large distributors abandoned the rural areas a number of years ago and then some of the others came in in some of those areas and picked up the business but there is still a deep concern that the passage of this bill will not address those problems sufficiently and that we may be hauling our fuel 25 and 50 and even a greater miles, and even greater distances. I just want to point out as Senator Morrissey pointed out, this is one more instance where the feds said okay, you've got a problem out there, get it solved by 1990 and we don't care how you do it, but these are some of the parameters. And in the meantime chaos reigns and unfortunately as happens many times on this floor, we try to respond quickly, hopefully not in knee-jerk fashion, but sometimes with not the full extent of information we should have. And as a result of that we find ourselves not doing as good a job as we should. And you know really we're not, as a committee or as individuals, apprised of the serious aspects of the federal act until late summer when we finally decided that this was something which was going to have to be addressed. And even when the bill was being drafted originally we were not as aware as we should have been of all of the ramifications of the federal act. We certainly were not apprised of the responsibilities of the individual station owner, the lack of ability to buy insurance, the lack of interest on the part of

insurance companies, the continuing responsibility even after you sold a facility, of the responsibility of the new purchaser, the variability as to the enforcement and many other factors which I hate to say, in some instances are going to make it a kind of a retirement plan for lawyers because there is going to be many individuals who find themselves in a difficult situation...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...who are going to have to rely upon the courts in an attempt to preserve their equity in their business and it's not a situation which I relish being involved in. And I wish that I felt more comfortable with the bill. I've told you again and again, and I just ask you, do not be at all reluctant to come forward to myself, any other committee member, to committee counsel, volunteer to help your counsel, if you have any questions or any suggestions because the more individuals who read this bill from start to finish, the more we are likely to solve some of those problems which we have today. And if we don't do it, I can guarantee you they're not going to go away automatically. We'll be back here a year from now trying to patch them up in a hurry up situation and hopefully we will have done no permanent damage. But it's a tough situation...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...and I invite all your help and cooperation.

SPEAKER BARRETT: Senator Elmer, followed by Senator Korshoj.

SENATOR ELMER: Thank you, Mr. Speaker. A couple of questions were raised, one by Senator Wesely, that addressed the larger volume dealers and their ability to pay. One thing that you maybe should consider is the larger your volume, the greater amount that you're contributing to the fund because the source of the money in the fund is a per gallon assessment. If you have a large volume you have more liability, therefore, probably should be as equally accessible to the fund as anyone else. Senator Smith had a question about the insurance and the insurance liabilities. Since my business involves the use of petroleum and petroleum products, I'm fairly familiar with the ability to buy insurance. April first of 1990 requires that a service station with the buried tanks have proof to be able to

bear a million dollars in liability in pollution. To my knowledge, currently, at great expense you can buy up to about 500,000 which leaves \$500,000 of liability to be made up by the dealer, and this gap of 500,000, in our experience has been...you have been unable to obtain anywhere in the United States. No insurance company, to my knowledge, offers such coverage for leaking tanks above the \$500,000 limit. And, Senator Smith, if you have another question, I'd yield a little time.

SENATOR SMITH: May I speak?

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker. Senator Elmer, but in your understanding though, since you deal with that, do you think that by establishing this fund we could make it possible for them, at a much lower rate, to be able to insure for that first 25,000 somehow, is that possible?

SENATOR ELMER: Of course.

SENATOR SMITH: So that would make a big difference then.

SENATOR ELMER: The big difference is that with this fund as a backup, then our local dealers can show the federal government that they have the ability and the resources through the fund and their insurance that would go with it, to meet the \$1 million obligation and thereby be able to meet that federally mandated statute. And, thank you, Mr. President.

SPEAKER BARRETT: Senator Korshoj.

SENATOR KORSHOJ: Question.

SPEAKER BARRETT: It has been called. Five hands? Thank you. Shall debate now cease? Those in favor vote aye, opposed nay. Shall debate cease? Have you all voted? Record, please.

ASSISTANT CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Schmit, would you care to close on the committee amendments?

SENATOR SCHMIT: Mr. President and members, as you know, the committee amendments become the bill and we...hopefully we'll be able to dissolve some of the questions that have been raised as we...

SPEAKER BARRETT: Senator Schmit, excuse me. (Gavel.) Thank you.

SENATOR SCHMIT: ...as we debated these amendments. Again, I want to alert you that this is not a simple piece of legislation. It is not in finite form and it is not totally satisfactory to a great many individuals, both in and out of the industry and on and off this floor, and, therefore, I want to ask you again that if this bill advances that you read it carefully, that you take it back home to your own people and you discuss it with them and discuss some of the issues that were raised here by Senator Morrissey and Senator Owen Elmer, Senator Wesely and many others, Senator Smith, because the bill is a very critical bill to the industry and although it is critical to the industry today, whether or not it becomes law may make it very critical to all of us in the weeks and months and years to come. There are a number of variables here as we have pointed out. We do not know what the total cost will be of replacing some of these tanks. We do not know and we hope that we do not ever find excessive contamination and I know, as has been pointed out by Senator Hefner, many station operators are trying now to replace tanks and are replacing them in a new manner which we hope will be more responsible at tremendous cost to the operator. We hope that those costs of replacing those tanks are not so prohibitive that many small communities do not have the services of a local facility available to them. There was a time when a gas station was on every corner in some of these small towns, and as I drive through those communities today and see the area paved over I can't help but wonder whether or not those tanks were removed, if they were removed, was there any examination for contamination? If they were not removed, were they empty or have they, in fact, still the potential for creating havoc with the water supply? I want to emphasize again as I have mentioned on this floor before, that we are not going to clean the environment up at no expense and it would be very easy to say, well, it's the station operators' responsibility, go ahead and stick him for it, but to the extent that we all rely upon them, we probably all have to be responsible to a certain extent for the cleanup. There's going to be a lot of problems about this bill. In the long run, let me tell you that

as you go back home to your districts you will probably receive more criticism for having voted for the bill than you will compliments and some of that criticism will come from the industry which you're trying to help but that will be because, of course, they do not understand in some instances the narrow parameters in which we have to operate. We are taking an existing situation not entirely unlike that of the low-level waste, a little less volatile, a little less emotional perhaps, but maybe, in fact, much more expensive and much more likely to be with us in a long-term basis and probably in some instances perhaps, much less likely to be controlled...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...than is the low-level waste problem. But...and it's not a very glamorous thing to work on. You're not going to get any buildings named after you, you're not going to get any accolades and certainly the general public is not going to understand what you are doing. But it is something which no doubt has to be done and it is another example of a situation which was accepted where the last 70, 80 years we just routinely buried tanks. We buried all kinds of tanks in all kinds of locations without cause or concern and today we are being called upon to make the necessary investment to take care of the problem and to prevent the contamination of our underground water supply and our soil and avert a severe threat of danger to the environment and to our own health. So I hope that perhaps as we review this bill we might go back and think a little bit about the problems of 761...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: .. and maybe just a wee bit more understanding of the problem that developed there as we look at this bill here. I would ask for the adoption of the amendments.

SPEAKER BARRETT: Thank you. The question is the adoption of the committee amendments to LB 289. All in favor vote aye, opposed nay. Record, please.

CLERK: 33 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. Senator Schmit, we're back to the bill.

SENATOR SCHMIT: Mr. President and members, as I said, the amendments are the bill. I have taken a lot of time. Is there anyone here who would like to use some of my time to talk about the bill? Senator Owen Elmer would use some of this and I'd like to hear from Senator Howard Lamb also on the bill. I'm sure there will be some other people who will want to comment on it, but we have now the bill as amended before us. Senator Elmer.

SENATOR ELMER: Thank you, Senator Schmit. I think we've had a good talk about the bill. Everybody understands that it's not in the form that we want to have go to Final Reading. I think everyone understands we have to get together and do a lot of detailed work such as the question about Section 27 which we deleted with the amendment to the amendment, such as who is going to be ultimately responsible down the road when the fund is not being used, such as, is the fee that's part of the bill for each tank that is registered a fair fee for everyone concerned? We have a lot of questions to answer and I hope that the Natural Resources Committee and the people who are interested in our environment really think about what we're trying to do and have ready, by the time we're debating on Select File, the information we need to ask the proper questions and to get the bill in the correct form. I'd urge your advancement, and if I understand it right, Senator Schmit wanted to give the rest of his time that I'm using to Senator Lamb.

SPEAKER BARRETT: I'm sorry, to who? Senator Lamb?

SENATOR ELMER: Senator Lamb, guess he's not here.

SPEAKER BARRETT: He is not on the floor.

SENATOR ELMER: Perhaps Senator Nelson then would like to take the time.

SPEAKER BARRETT: Senator Nelson.

SENATOR NELSON: Yes, Senator Elmer, also have you addressed...you know, we're talking about the small station operators. There are a lot of farmers that also are coming under this same problem with the \$25,000 and the insurance and the buried tanks. I'm assuming that they're under the same provisions as the small station operator but has anyone

really...I'm sure they have not cut them out at all, considered the farmers? They are in this same, very same pinch and, in fact, they probably don't have the way and the method to measure the gasoline in the tanks, and as you said, the expansion and so on and so forth. They would have just as much trouble obtaining the \$25,000 insurance or more. Have you addressed that?

SENATOR ELMER: That's correct. Anyone with a buried tank has the same liability and responsibility under the federal law and the farmers with their buried tanks do participate to the same extent as anyone else whether their tanks are above ground or below ground.

SPEAKER BARRETT: Senator Nelson, yours was the next light. Do you wish to...thank you. Senator Coordsen, please, followed by Senator Korshoj.

SENATOR COORDSEN: Thank you, Mr. Speaker, members of the body, listening to the floor debate on this bill this morning, I don't know that the bill is, in fact, so far out of shape that we wouldn't want to move it along this session. There are, of course, underground tanks and other petroleum contamination in the soil all over the State of Nebraska. It's quite probable that there are members of this body that live in a house in town that has a fuel oil tank buried some place on their property that they don't even know about. All of these things enter into this and should be the proper topic for discussion. But it has been rare on this floor when we have put into statute new legislation when we plowed a new field when we enacted that legislation with every single nuance addressed, that we haven't had to come back and make adjustments from time to time in the future as new concerns, as new situations were developed. Many service stations, which is the prime topic of debate this morning, have been stations for...since the days that automobiles came into Nebraska. They're the situation that exist in many cases out there where there has not been a leaking tank, but they still have soil contamination problems that are revealed in tests boring simply from the past practices of disposing of waste crank case oil from the vehicles that were serviced in that station as has shown up in a case in my district. I think it's a bill that we need to advance and probably need to seriously consider passing in a form yet this session. Thank you.

SPEAKER BARRETT: Thank you. Senator Korshoj.

April 21, 1989

LB 183, 289, 470, 508, 509, 602, 605  
627, 669, 743, 772, 793

SENATOR KORSHOJ: Mr. Speaker and members, my question that I was interested in, Arlene Nelson brought up about farm tanks and private tanks so I have no more to say. Anybody wants my time, can have it. I was wanting to give it to Howard Lamb but he left so that's all I have. Thank you.

SPEAKER BARRETT: Thank you. Senator Lynch.

SENATOR LYNCH: Question.

SPEAKER BARRETT: Question has been called. Do I see five hands? I do. Shall debate cease? Those in favor vote aye, opposed nay. Please record.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Schmit, any closing comment? Anything further, Senator Schmit?

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

SPEAKER BARRETT: Thank you. The question is, shall LB 289 be advanced to E & R Initial? All in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 34 ayes, 1 nay, Mr. President, on the advancement of LB 289.

SPEAKER BARRETT: The bill is advanced. Anything for the record?

CLERK: Mr. President, your Committee on Appropriations whose Chair is Senator Warner reports LB 602 to General File, LB 470 to General File with amendments, LB 743 General File with amendments, those signed by Senator Warner.

Enrolling Clerk has presented to the Governor bills read on Final Reading. (Re: LB 508, LB 509, LB 605, LB 627, LB 669, LB 772 and LB 793.)

Senator Lamb has amendments to LB 183 to be printed and I have a lobby report for this past week, Mr. President. That's all that I have. (See pages 1843-44 of the Legislative Journal for above announcements.)

April 25, 1989

LB 89, 289, 586A, 591A, 611A, 767A, 812

plans that had been presented here today is that prudence had to be the underlying concern of all of us. If there was a condition present which would harm or endanger life or limb, then we should take care of it. And, to that extent, the college and the committee and the administration of the university authorized the immediate shoring of that building to prevent the possibility of harm or injury to the occupants. I would, therefore, I think very much oppose the amendment which has been offered here this morning and call your attention again to the possibility of prudence and quality of design by a bridge which collapsed in Tennessee about three weeks ago, a concrete structure. And I'm sure that if we had had consultants look at that bridge and the design of that bridge and the components that went into it, at eight-thirty that night, there would have been just as conflicting opinions as we have here today on the floor. However, at something like eight-forty that evening the bridge did collapse with the loss of at least seven lives in that instance. So prudence, as I indicated to you, was the keynote of our decision in making the...taking the action that we did. Thank you, Mr. President.

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

SENATOR HALL: Mr. President, I would move that we recess until one-thirty.

SPEAKER BARRETT: For the record, Mr. Clerk.

CLERK: Mr. President, I have amendments to be printed to LB 89 by Senator McFarland. (See pages 1901-03 of the Legislative Journal.)

Enrollment and Review reports LB 289 to Select File; LB 586A, LB 591A, LB 767A, LB 611A, all to Select File. (See pages 1903-04 of the Legislative Journal.)

Mr. President, a reminder offered by Senator Withem that there will be the showing of Learning in America today at noon in Room 1117.

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

SPEAKER BARRETT: Thank you. (Gavel.) One other quick announcement. The Nebraska Futures, Inc. briefing which was

May 11, 1989

LB 289  
LR 157, 160, 167, 168

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning Pastor Thomas Saddler, who is Associate Pastor at the Christ Temple Mission in Lincoln. Would you please rise for the invocation.

PASTOR SADDLER: (Prayer offered.)

PRESIDENT: Thank you, Pastor Saddler. We appreciate your being here this morning. Roll call, please.

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

PRESIDENT: Thank you. Any corrections to the Journal.

CLERK: Mr. President, I do. One small correction. On page 2264, line 17, after LB 716 insert "E & R amendments". That's all that I have, Mr. President.

PRESIDENT: Okay, do you have any messages, reports or announcements?

CLERK: Mr. President, Senator Schmit would like to print amendments to LB 289; and LR 157, LR 167, and LR 168 are ready for your signature. That's all that that I have, Mr. President. (See pages 2293-94 of the Legislative Journal.)

PRESIDENT: While the Legislature is in session, capable of transacting business, I propose to sign and do sign LR 167, LR 157, and LR 168. It's good to see the surviving basketball players here this morning. See several of them didn't survive, but we're sorry about that. We'll move on to LR 160.

CLERK: Mr. President, 160, offered by Senator Moore, is found on page 2192 of the Journal. It asks that the Legislature encourage Nebraska communities to establish block home programs and that the McGruff House symbol and program be exclusively recommended for use in Nebraska to allow children and adults to readily recognize the symbol in any part of the state or county they are in.

PRESIDENT: Senator Moore, how you feel?

SENATOR MOORE: I feel good, Mr. President. And, if you take a

May 15, 1989

LB 182, 289, 487, 761, 813

SENATOR SCHMIT: ...hope that we advance the bill onto Final Reading here today.

PRESIDENT: Thank you. Senator Lamb, please, followed by Senator Langford and Senator Abboud.

SENATOR LAMB: Question.

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

CLERK: 30 ayes, 1 nay, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Schmit, do you wish to close?

SENATOR SCHMIT: I have no closing. I only ask that you move the bill onto General File...to Final Reading.

PRESIDENT: You have heard the motion. All those in favor say aye. Opposed nay. It is advanced. Thank you. Do you have any items, Mr. Clerk?

CLERK: Mr. President, I have amendments to LB 289 by Senator Landis; Senator Warner to LB 813; Senators Coordsen and Crosby to LB 813. (See pages 2390-92 of the Legislative Journal.)

Enrollment and Review reports LB 182 correctly engrossed and LB 487 correctly engrossed. That's all that I have, Mr. President.

PRESIDENT: Senator Barrett, do you have some words for us, please.

SPEAKER BARRETT: Mr. President, I move we adjourn until tomorrow morning at eight o'clock.

PRESIDENT: You said eight o'clock.

SPEAKER BARRETT: I did.

May 16, 1989

LB 289, 311, 727

Those in favor say aye. Opposed nay. Carried. They are adopted.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 727, as amended, be advanced to E & R Firal.

SPEAKER BARRETT: Shall LB 727, as amended, be advanced? All in favor say aye. Opposed no. Ayes have it. Carried. The bill is advanced. Messages on the President's desk?

CLERK: Mr. President, I have amendments to be printed to LB 289 by Senator Schmit; and Senator Landis to LB 311. (See page 2437 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Mr. President, for a point of personal privilege, I would just...for information's sake, on my desk there...upstairs there is a set of keys that have a Mickey Mouse key chain on it. I don't know who it is. Maybe it's my staff but I'm not familiar with that since they are gone. So if anyone is missing a set of keys, like Senator Kristensen here, be sure and pick it up so that you can get home. Thank you.

SPEAKER BARRETT: Thank you. Senator Schellpeper, would you care to adjourn the body?

SENATOR SCHELLPEPER: I would move that we adjourn till May 17th at 8:00 a.m.

SPEAKER BARRETT: You have heard the motion to adjourn until tomorrow morning at eight o'clock. Those in favor say aye. Opposed no. Carried. We are adjourned. And thank you for your cooperation. (Gavel.)

Proofed by:

  
Marilyn Zank

May 18, 1989

LB 289, 651A

SENATOR WARNER: Again, Mr. President, thank you, Senator Hall, if you look on those handout sheets, the second one says two programs without 250,000 and you will see that all of the public sectors would lose or that is they would be receiving less than they currently are. So this is what is necessary to at least hold them harmless.

SPEAKER BARRETT: Anything further? Those in favor of adoption of the amendment to LB 651A please say aye, opposed no. I am sorry, on the amendment, yes, the Hall amendment. Those in favor say aye. Machine vote. All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 1 nay, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 651A as amended be advanced to E & R for Engrossing.

SPEAKER BARRETT: Shall 651A be advanced? All in favor say aye. Opposed no. Carried. It is advanced. LB 289.

CLERK: Mr. President, on 289, the first order of business are adoption of Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 289.

SPEAKER BARRETT: Shall the E & R amendments be adopted? All in favor say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, I now have an amendment from Senator Schmit. Senator, I have AM1757 in front of me.

SPEAKER BARRETT: Senator Schmit. While waiting, I am pleased to advise that Senator Moore has a guest under our south balcony, Shirleen Hoffman from Bradshaw. Shirleen, would you

please stand and take a bow. We are glad to have you. Thank you. Senator Schmit, would you care to discuss your amendment?

SENATOR SCHMIT: Yes, Mr. President and members, the amendment we offer here today is a reduction in the size of the fund which we discussed at some length last time. I want to emphasize again that there are a lot of unanswered questions on this bill, and there are a number of amendments that will be offered here today, some of which, of course, are probably not...have not even surfaced yet, but we originally thought we would have a \$10 million fund. At the present time, this amendment would lower that fund down to a minimum of two million and a maximum of five but where you have made a change in the obligations of the fund so that the obligated balance would have to be taken care of prior to the time we would stop the collections. So let me tell you what we are talking about. At the present time, the fund will be collected until we get \$5 million in the fund. If we begin to use the fund, we would use it down to \$2 million. That would become the base of the lowest point of funding the so-called cash reserve. If then we would have \$7 million of obligated claims against the fund, when the collections began again, we would collect up to \$9 million before we would stop collecting. So even though we have a \$5 million cap, so to speak, we would continue to collect until we have collected for the obligated balances. Now I believe that Senator Landis has an amendment which raises the minimum from 2 million to 3 million dollars and he has some reasons for that and some good ones and I am not going to discuss it here today at this time, but I want to point out that we felt that it was not necessary to have a \$10 million cash reserve there based upon the fact that we will collect for obligated balances. So what we have is a flexible maximum, and if there is a need for the fund, we collect it. If not, we would not collect it, and I believe that is a reasonable approach. I would hope that you would agree with me on that, and if there are questions, I would be glad to try to answer them.

SPEAKER BARRETT: Thank you. An amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Warner would move to amend Senator Schmit's amendment.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President, this amendment was...I developed a conversation, actually with one firm that was in my district that brought to my attention that they were having some problem with this and had already spent substantial money, and as this bill is written, no one would be able to benefit from the program until after the effective date of the act irregardless of what time the leaks occurred. What this amendment does, it makes eligible to qualify those who have had leaks found or discovered after the effective date of the act that was enacted in 1986. That's at that threshold the would become effective, that is they would become eligible to be affected by the legislation. In the...there are about 17, I understand around the state, that might be eligible if they meet the other thresholds that are required and another 15 are requiring long-term monitoring that might qualify if they meet the other thresholds. The other part of the provision though is that the reimbursement for any cleanup would only be for those cleanup that occurs after the effective date of the act. They would not be reimbursed for money that they had already spent for cleanup, but they would be...the equity issue it seems to me is that those areas where they have found a problem are eligible just since the state passed a law requiring it, they would be eligible just in the same fashion as those sites that were found after the passage of this bill and they are entitled to reimbursement for that cost if they meet all the thresholds as required in the bill, but only for those costs that will have been spent after the effective date of the act. They will not get reimbursed for things that they had already spent. As I indicated, there is a variety of locations, from my understanding from the Department of Environmental Control, that potentially might be eligible but in the one case that I know about it seemed to me that it was a particularly difficult one. This was a location which, in fact, did not have a leaky tank. They were putting in new tanks to comply with the law. They had the old tanks tested and there was no leakage. But then when they dug in for the new tanks that they found some old leakage, some that had occurred some time in the past, in all likelihood some 20 years or more before that, that they were not aware of, no one was aware of. And it seemed unjust to me that...it happened to be a co-op in my district, but it seemed unjust to me that because they were putting in new tanks to comply with the law, they did not have leaks but they knew they were to have to put them in sooner or later, were just being good citizens, all of a sudden because of unknown contamination were stuck with, potentially at least, stuck with substantial cost.

They've already spent substantial money. This does not reimburse them for what they have spent, but they would be eligible, if they meet all the criteria, if additional cost is required and I think that's a reasonable approach. So I would move adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion on the Warner amendment to the Schmit amendment, Senator Morrissey, would you care to discuss the amendment? Thank you. Senator Hefner. Senator Hefner, on the amendment to the amendment. Thank you. Senator Landis.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature, this issue, because of its timing and the fact that the Legislature spent great energy and effort last night on a major issue, it's quite possibly one that won't entertain the full attention of the body and that's unfortunate because it should. Senator Warner's motion runs in a way contrary to a motion that Senator Schmit just described and that is to reduce, basically, the size of the fund, to reduce the amount that the state keeps at the ready for these kinds of costs. On the one hand, Senator Schmit shrinks the amount of money that we have to meet the problem and Senator Warner expands the list of people who can make claims against the money. So you've got more burden and less means between this one-two punch. Senator Warner's amendment, well-meaning on behalf of his constituent as it may be, it seems to me runs this problem. If you take a look in your bill book at 289, you realize that DEC doesn't wind up running this pup, the Director of Insurance does, that on an annual basis the Insurance Department has got to figure out, certify the appropriate level, make a determination of the size that is there, the number of potential responsible persons, costs of remedial actions, apply actuarial principles, et cetera, et cetera, on the theory, I suppose, that you could actuarially understand risks, identify them, use the principle of pooling those risks through good underwriting analysis and know what your potential risks and losses were and plan ahead. But frankly, there isn't a dollar one in this fund. When 289 begins, there isn't a dollar in the fund, but Senator Warner will see to it that we already have a number of claimants, claiming against an empty fund. In other words, between 289 and Senator Warner's amendment, we'll have claimants against an already insolvent fund. The fund won't exist, there's no money in it at that point and yet potentially we have...we will have already identified and approved of claimants who can make a

claim against a fund that hasn't had time to build up. Unfortunately, I have to say that 289, I wish we could have moved earlier our considerations, I know it's a hard issue, I know it's difficult, but it seems to me that we exacerbate the difficulty of 289 by front-loading into the system a bunch of claimants on a relatively arbitrary basis. 1986 certainly has no magic that I can tell. If the state does have a responsibility, then why doesn't it predate that moment? But what we have is the possibility of front-loading a fund and starting on day one with an insolvent mechanism. I intend to oppose the Warner amendment. I intend to ask the body to expand the amount of revenues and resources this state maintains. I intend to ask the body to create a different larger cushion so that the administrators of this program won't have to turn on and turn off at a moment's notice the taxing mechanism that's at the base of this whole thing and create...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...administrative difficulties, but the place to begin with is to ensure the integrity of the fund, and it seems to me that you can't front-load it with a bunch of obligations when it doesn't even exist at this point to do that. I oppose the Warner amendment.

SPEAKER BARRETT: Thank you. Senator Schmit, on the Warner amendment.

SENATOR SCHMIT: Mr. President and members, when the committee debated this bill in the committee, we discussed the retroactive responsibilities and decided to put the bill out without that provision in it. I do, however, have...and Senator Landis has given virtually all of the reasons, and good ones, why it should not be made retroactive. The problem that I have with opposing the Warner amendment is this, that historically in the environmental area we have always attempted to enact legislation which encourages a citizen to report any problem that might be a threat to the environment. We have done so, recognizing that many of the practices that we were involved in, five or ten or fifty years ago, were considered normal practices at that time and that the problems that have resulted from those practices should not necessarily be held against the individual, because at the time they were engaged in, they were the best technology available. We have, of course, a situation here where, in effect, the citizen, the private citizen, and agriculture,

railroads and others help to provide the fund and do, in fact, provide most of the fund to protect the petroleum marketing industry and we felt that there is some logical reasons for that because as we know, that if we do not do this, there may well be areas where there will not be fuel stations available to many of us, and, in fact, it will probably mean a minimal number of those stations available in many parts of the state. But I have a little difficulty, I have severe difficulty opposing the Warner amendment because we are saying that from this point forward the state recognizes there is a problem and, therefore, from this point forward we will assist in the cleanup of that problem. Now the state didn't recognize the problem until January of 1989, in fact, it was after that. As you well know, we had a tremendous amount of difficulty getting this bill put together. Whose is the greater responsibility? Is it the responsibility of the individual operator who had a problem and discovered the problem back in '86 or '87, or is it my responsibility as chairman of the committee for not having recognized it sooner? Is it the responsibility of the industry? Is it the responsibility of the Department of Environmental Control for not having recognized the problem earlier and called it to the attention of the Legislature so that remedial action could have taken place? I understand very, very much why we want to have a retroactive clause, and one of the questions that you can ask logically is, where do you draw the line? Senator Landis has said if you do this, you begin with an obligated balance against an insolvent fund. I want to emphasize that this is not an insurance fund. It was never intended by the committee nor anyone else that we create a form of insurance. This is a fund designed to provide for assistance in cleanup. One of the reasons why we decided to try to cut down the size of the fund is because of the natural inclination to go for the deep pocket theory, the more money available, the more profit you're going to have, the more the cost will be for cleanup, et cetera. So it is not an insurance fund and I don't think it's really fair to speak about insolvency of the fund. We make a commitment, we will carry out...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...we will carry out that commitment, and if necessary, we will then perhaps even increase the size of that checkoff if necessary. I hate to use the word checkoff but we will increase the use of that fund, or increase the size of that if necessary to cover the obligations. So at this point in

time, and I hope I get a chance to speak again, at this point in time I will personally vote for the Warner amendment. I have...I want to say I do not disagree with the arguments made by Senator Landis and there are others here who will have to draw your own conclusions. Number four, you have to recognize that in the overall environmental picture, it is my inclination to try to keep the...encourage the public to report problems. Do we, and you have to answer this question yourself, do we encourage persons not to report a problem if we say the longer you can go without discovery, the better chance you have of getting some assistance on the cleanup.

SPEAKER BARRETT: Time.

SENATOR SCHMIT: Put that is a question you have to answer for yourself.

SPEAKER BARRETT: Thank you. Senator Elmer, would you care to discuss the amendment to the amendment?

SENATOR ELMER: Thank you, Mr. Speaker. Senator Schmit said this very well, that these kind of things when they're put into place and have a starting date like we anticipate as the bill is written, persons who have followed all the rules, have done everything for the environment that is required by the federal government and the State Department of Environmental Control find that they are in a position where they have done everything they were supposed to and seemed to be penalized. And I sincerely appreciate Senator Warner's amendment. I wonder if Senator Warner might respond to a question.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Yes.

SENATOR ELMER: Senator Warner, during your work on this amendment, have you had any opportunity to compile what retroactive liabilities may be there?

SENATOR WARNER: No, Senator Elmer, I cannot tell you what retroactive responsibilities any more than anyone can tell you what the prospective liabilities are. That's a great unknown out there. I can tell you, at least the number, what was given to me, locations that might be eligible if they meet the other thresholds, the communities and the names of those. There is a

number of communities around the state where there are locations that someone might qualify if they meet the other thresholds.

SENATOR ELMER: Could I ask how many of those there might be?

SENATOR WARNER: This list says 17, if I'm reading this correctly, on one sheet and 15 on the other. I could read the towns off quickly, Broken Bow, Butte, Omaha, Gibbon, Central City, Hickman, Bayard, Grand Island, Omaha, Lexington, Waverly, and it's one I didn't even know about, Lincoln, Fremont, Lincoln, Scottsbluff, Omaha, another Lincoln, Omaha, Battle Creek, Schuyler, Allen, Grand Island, Lincoln, Gering, Overton, Lexington, Omaha, Lincoln, Hebron, Lincoln and Omana. These are sites that may qualify if I'm understanding what was given to me correctly.

SENATOR ELMER: Thank you, Senator. An additional question, do you think it might be possible to modify this amendment to put the retroactive section into effect when the fund reached its full mark?

SENATOR WARNER: Well, I don't object to that if you're not going to require the...if you will also amend it so that this company doesn't, or these companies don't have to do anything until the money is available. You know, the whole issue here...I can't understand opposition. The state passed a law that took effect July 1986. It wasn't some arbitrary date that I picked out of the air. The Legislature picked the date by virtue of the date we adjourned in 1986. That law required reporting, it required registration, it required on-site inspection before new tanks could be put in. The one site I know about did nothing more than put in new tanks to replace tanks that did not leak. They were tested and they were being good citizens. Had they dug the hole 75 feet away from where they dug it, they wouldn't have had a problem. You know, in fact, as it was explained to me, they were concerned about the expense of the pipe from the tank to the pumps on that 75 feet.

SPEAKER BARRETT: One minute.

SENATOR WARNER: Now they are being asked to spend \$80,000.

SENATOR ELMER: That's right. It's a...(interruption)

SENATOR WARNER: And that makes no sense. Do you say that

somebody who is a good citizen, complying with the law that we passed, and now we're going to come in and say, well, if by some strange circumstance that your tank was discovered after this is effective, you qualify, but because your tank was found after we passed the law, they are not being reimbursed for one dime they've already spent, the only reimbursement they qualify for is like everybody else, after the effective date of the act and if they meet the other thresholds. And I don't understand how anyone can say that's an inequity.

SENATOR ELMER: I understand that.

SENATOR WARNER: It adds some cost, granted, but no one can tell you what the cost is of the bill, perspective, otherwise either.

SENATOR ELMER: I understand, Senator Warner, and I...

SPEAKER BARRETT: Time. Thank you. Before proceeding to the next speaker, just a very brief announcement. Representing, again, the Academy of Family Practitioners, we have with us this morning under the balcony as usual, Dr. Michels who is back with us again from Lincoln who simply tore himself away from his practice to be with us until about noon today. Dr. Michels will be here to the noon recess for your edification. Senator Nelson.

SENATOR NELSON: Mr. Speaker, members of the body, this is somewhat a difficult amendment to stand up and oppose. I had a lot of first-hand experience and I don't want to take a lot of time on the floor if any of you happen to remember a small town close to Grand Island of which gasoline was down into the first water. This is exactly what happened, the very innocent person trying to do well and meaning very well was actually made liable for the damages. A father-in-law purchased a station for his son-in-law and there were bankruptcies and there was a death and there was estates and the previous owner and you name it. Through the cooperation of DEC and others and the Health Department, we were able to work through it, but I will tell you that the liabilities in this one instance, and I just know that it has to be small towns, large towns, probably hundreds of instance in the same thing, that if we start making a bill retroactive, this simply is untold amount. Sometimes you know if the funds are not there, there...things are worked out for the best that they can and most equitable for everyone else. I know it's good to go back to 1986, but Senator Warner named off

17 towns, probably multiply that by ten, at least a minimum. And I just don't see where it could end. I won't bore you on those details but every other little town, when I was checking this out in Doniphan, we found five old locations that had underground storage tanks. None of us know whether how many of those are covered up by cement, whether they are there or not. A very innocent individual, very, very innocent, just because he happened to purchase it, within ten days he tore it down, but there was gas there that had maybe been there for 15 years. I just don't see how that we can possibly be retroactive and I want to give some time to Howard Lamb.

SPEAKER BARRETT: Senator Lamb, about three minutes.

SENATOR LAMB: Yes, thank you, Mr. President and members. I agree with everything that Senator Warner said except one. The things he said are true in regard to the problem for people in the past as well as in the future and we have, Senator Schmit and the other members of the Natural Resources Committee have submitted a resolution that you'll have an opportunity to vote on, directing or asking our congressional delegation and EPA to look into this situation because under the present rules you aren't going to be able to buy gas in rural America unless you drive for miles and miles. It's going to be a terrific hardship particularly in rural America because they are not going to have enough volume in these small towns to pay the costs. And Senator Warner points up a problem and certainly it's unfair, it's unfair that those people that discovered the problem and took care of the problem are not eligible for the fund. I agree with that, but on the other hand, if we adopt Senator Warner's amendment, I'm just certain that we're threatening the whole bill. I just believe...I don't believe the Governor will sign it, I just don't believe that will happen. And so I wish there was a better solution and we need to continue to strive to find a better solution, but at this point, I cannot vote for Senator Warner's amendment to make it retroactive, although that's certainly the thing that should be done. It should be. It's the just thing to be done, but it's not within the realm of possibility at this point, so I have to vote against that amendment that Senator Warner has.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Well, Mr. President, I can appreciate the dilemma that Senator Lamb has, the dilemma being that this body

should not vote against justice and equity. I suppose we do it from occasion, but we had not ought to knowingly do it. It just makes absolutely no sense to me. You know, if you want to delay it all, delay it for these people, too, that's fine. All they did was comply with the law that this body passed, nothing more. And the one example I know, they absolutely didn't have to put in tanks. They weren't leaking. They were trying to...they were looking ahead, had some capital on hand so they went in and replaced the tanks, and the next thing you knew, and they've spent several thousand dollars to date for which I'm not suggesting they should be reimbursed, but I don't know how much more they will have to spend. They don't know how much more. They are being asked to spend \$80,000 for additional test holes to monitor with. They've already put in...I forgot, seven or eight, I think, or ten, several. I went down and I saw them and they could dip out some gas out of some of them, not out of others. The point is, and Senator Lamb is absolutely right, if we do nothing, there will be many, many locations in which fuel will not be available. There is no way that a small operator can pay what they are being expected to pay in bonds and function. They will close. And it is a serious problem. But you're going to be closing a few possibly of some of these people who did nothing more than are caught between two dates. Now we do this for a whole lot of things. How many retirement bills have we passed because some people were caught in a date inadvertently? I can think of three or four over the years. I can remember one I introduced there was only one teacher involved, my second grade teacher. But she was inadvertently caught and it was obviously an injustice and we enacted it. This is obviously an injustice. Yeah, it may cost more, but there isn't a soul in here can tell me what this bill is going to cost prospectively either, not one of you can. And I don't know if you're adding a half a million dollars or \$5 million to the cost, but I have a suspicion that as a percent of the total cost it's going to be very small and I don't even see where that is an issue. Once in a while we ought to do what's right and just, just as Senator Lamb said the amendment is. We ought to do it all the time, we all try to do it all the time, but when we know, when we know it's an injustice, I see no reason not to adopt the amendment. Oh, by the way, I said some kind remarks about the Governor yesterday, which I meant, and I said that we disagree from time to time. This may be one of those times that we have disagreed from time to time, Senator Lamb.

SPEAKER BARRETT: Senator Pirsch.

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SENATOR PIRSCH: Thank you, Mr. Speaker. I guess the problem is that we have to start somewhere. Nebraska started in 1986 but that was just with finding out what the problem was. I have a question for Senator Warner, if he will yield.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Sure.

SENATOR PIRSCH: Senator Warner, your amendment would say that those who had discovered and reported a leak after the July 1986 date would be reimbursed for those costs.

SENATOR WARNER: No. There is no reimbursement for the expenditures they have already made. In the one example I know they've made several thousand dollars. The only thing they would be reimbursed, eligible for reimbursement, would be for cost required after the effective date of the act. I'm not attempting to go back and reimburse for expenditures they've already made.

SENATOR PIRSCH: Well, would that not be the same thing? You said after the date of the act any costs required.

SENATOR WARNER: This act, excuse me, Senator Pirsch.

SENATOR PIRSCH: After the 1989...

SENATOR WARNER: After the...if...if...they only get reimbursed for the expenses which are required to be made after the effective date of LB 289, but they qualify to be eligible if they meet the other thresholds on those leaks found after 1986, July 17.

SENATOR PIRSCH: Okay, now would there be disparate treatment between those who found, discovered, reported and fixed compared to those who maybe found and reported, but have been dilatory in fixing?

SENATOR WARNER: I would grant that that conceivably could be some...some inequity there. I don't know the size of the dollar amounts of those. I can think of a couple of sites that I'm aware of that...in fact, one of which is owned by the State of Nebraska. If you're not aware of it, it was land that we

approved to be sold north of the pen which was sold, and as a matter of routine checking by an engineering firm, that they dug some holes for structure determinations for a building and in that process in analyzing those they found contamination. No one knows where it came from.

SENATOR PIRSCH: Okay.

SENATOR WARNER: I've heard estimates as high as a million dollars to clean it up.

SENATOR PIRSCH: Thank you.

SENATOR WARNER: Obviously the purchaser didn't buy it.

SENATOR PIRSCH: Senator Warner, you had given us a list of cities and Senator Nelson said 17 and quite frankly I wasn't counting. Is that a list of those who qualify or would there possibly be more that would pop up? Is that what has been reported between '86 and '89?

SENATOR WARNER: I believe it is. This was given to me this morning.

SENATOR PIRSCH: That would be then the entire list. There wouldn't be those that say later that we reported. I mean, we know who reported before '89. Correct?

SENATOR WARNER: Yes.

SENATOR PIRSCH: And that's all of these.

SENATOR WARNER: To my knowledge.

SENATOR PIRSCH: So all of these would be eligible then...

SENATOR WARNER: The ones that are not crossed out.

SENATOR PIRSCH: Between '86 and '89.

SENATOR WARNER: That's my understanding. It's the first two sheets. Actually the balance of the sheets are site investigations ongoing and...

SPEAKER BARRETT: One minute.

SENATOR WARNER: ...my assumption is that they've not been required to do any major expense at this time, but I don't know that.

SENATOR PIRSCH: And we don't really know if any of these locations have completed their cleanup or their...

SENATOR WARNER: The ones that are crossed off, my understanding would be that they would have...

SENATOR PIRSCH: Completed...

SENATOR WARNER: ...complied with whatever was the situation.

SENATOR PIRSCH: And the rest of them have not that are not crossed off.

SENATOR WARNER: They are still in the process as I understand this sheet.

SENATOR PIRSCH: That's a lot more than 17, it looks like.

SENATOR WARNER: No, no, the first two sheets are the ones that probably would qualify. I think the ones that are ongoing probably all qualify, but I believe there is 17 on the first sheet and 15 on the second.

SENATOR PIRSCH: Okay, it's the last two sheets then, isn't it?

SENATOR WARNER: First two.

SENATOR PIRSCH: Okay. And that would be it, though, those that have reported between '86 and '89 and there would not be any more?

SENATOR WARNER: To my knowledge that's true...

SPEAKER BARRETT: Time.

SENATOR WARNER: ...Senator Pirsch, because all I have to go on is what I was handed to by a representative of the Governor's Office this morning as likely places that they knew about. That's all I can say.

SPEAKER BARRETT: Senator Schmit, on the Warner amendment.

SENATOR SCHMIT: Mr. President and members, there's been a lot of discussion and there ought to be more. As I told you when I first introduced this bill and I thought maybe then I would use that practice from now on because I told you what a complicated, terrible bill it had the possibilities of developing into and it didn't get a single negative vote when it moved off General File, Mr. Speaker, and that's not too bad a practice I think. But the point is that we do have a serious problem. The problem that Senator Warner outlined did have a beginning created by this Legislature and there are so many times on this floor that we create inequities. Let me point out another inequity. It is probably totally inequitable as to how we are paying for it. We are allowing the...requiring the consumer to pay for this program, and I don't know if, for example, I came to this body with a problem relative to nitrates that involved agriculture and we were to put a tax on food, I really don't know that I would get much support for that but that may be the only way you could pay for it. Senator Lamb has pointed out that unless we do something, it is very, very likely that in many of the small communities we will not have a source of fuel. And so is it cheaper for myself and Senator Lamb to pay a small additional amount on our fuel so we don't have to pay for the cost of delivering fuel 25 or 50 miles to our farms? You know it's a matter of balance. My reason for supporting the Warner amendment is very simple. In the protection of the environment, I have historically tried to act on the premise that an innocent contamination, an inadvertent spill, a problem which resulted as a lack of proper technology in the past should not now necessarily become the responsibility of the individual who is involved. I wish, if I had the time, I would give you a personal experience which turned out all right but which could have been very, very disastrous because of the lack of technology available at the time when I could have been involved. But what we are saying here today is that because these individuals were caught in a time frame they perhaps should not be covered. Senator Warner is not asking that money expended be reimbursed. He is saying that from this point forward we have in place a proposal and a mechanism which will deal with the problem. So if someone spent \$100,000 prior to the time that this is in place, they won't be reimbursed. But if they have an ongoing problem, then they should be reimbursed and I find it very, very difficult to stand here and argue against that. I do so because I look at now it's going to be

perceived in the future on environmental problems, whether it has to do with nitrates, whether it has to do with chemicals in the soil, whether it has to do with problems with the water or some other nature. Suppose that on my farm I have an inadvertent spill and on that 1,300 acres it's hard for, very unlikely, that someone is going to discover that spill or that problem. And so I say, well, if I report it, I've got to clean it up and pay the cost and so forth. If I don't report it, the chances are ten to one, hundred to one, it will never be discovered, and so I don't report it. Five, ten years from now it does become a problem. Maybe I've sold the farm and then the cost is many times greater of cleanup. Would it have been better to have encouraged me to have reported the problem in order that it be addressed immediately...

SPEAKER BARRETT: One minute.

Senator Schmit ...and the cost be minimized? It would seem to me so many times in government, as Senator Warner says, we do those things that cause inequity, that we do try to keep to a minimum the inequities that we create. We do not have any comprehension, very frankly, I don't think there is any way to draw an adequate fiscal note on this bill. We don't know if there are a thousand problems out there or five thousand. We don't know if it will cost a million or 500 million. We don't know, we really don't know. We have set out upon a course, we don't know really the direction we're going, we don't know how far it is going to take us or how long it's going to take us to get there or what it is going to cost, but we have said these are the parameters upon which we will embark. But if you didn't get on the train as of...if you got on the train too early, you've got to pay your own ticket no matter how long the trip is. It seems...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...to me to be a little, somewhat inequitable, and since we're going to try to address the problem in total, I would suggest we...I know I'm going to support the Warner amendment.

SPEAKER BARRETT: Senator Elmer.

SENATOR ELMER: Thank you, Mr. Speaker, this is really a difficult situation. We're trying to put into place something

so that we can retain services for people that need them and for people to be able to meet liabilities that are going to be required by the federal government by April of 1990 and so that they can prove their liabilities and be able to get the insurance that the federal government requires. So the bill that we're trying to pass is prospective in that regard. On the other hand, we have the obligation that Senator Warner has brought out to people that have been trying to comply with a law that we've had since 1986. Our policy is going to have to be set here some way and I'm not sure how we can address the retroactive, or the retroactive part that Senator Warner addresses. My suggestion might be that we would pass the bill without the amendment and see if we can put together a solution to the retroactive part over the interim and introduce a bill to that effect at the first part of January of next year. Senator Schmit, Senator Schmit...

SPEAKER BARRETT: Senator Schmit.

SENATOR ELMER: ...were you listening to my proposal? Senator Schmit, I was making the suggestion that perhaps we would pass the amendment that you have offered without the Warner amendment and address the retroactive problem by drawing a bill to that effect over the summer and introducing it the first of next session. Do you think something like that might be possible?

SPEAKER SCHMIT: Well, it has been my experience, Senator Owen Elmer, on the floor here that the fewer people who are involved in a problem, the greater difficulty you have getting it addressed, getting a majority of votes on the floor here. If there were 700 people involved here, I would guess we'd have a pretty good chance, but if there are 25 or 30, then I don't know if that group can put together the votes. It's a little bit like the Commonwealth problem. If that covered the entire state equally and equitably, it would have probably been addressed a long time ago, but if you only have a small number, I don't think there will be a great deal of urgency. I think we could probably bring to the floor a bill, Senator, but whether or not we could get the 25 votes on the floor, it would be in my estimation, rather doubtful.

SENATOR ELMER: Thank you. Senator Warner, do you have an opinion about that thought?

SPEAKER BARRETT: Senator Warner, would you respond.

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SENATOR WARNER: Senator Elmer, my problem with the thought is that unless you also delay the need for these people to make the expenditure, you've done nothing for them.

SENATOR ELMER: Thank you, Senator Warner. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Before recognizing Senator Hefner, I'd like to announce that Senator Goodrich has some guests in the north balcony from Loveland Elementary in Omaha, 45 fourth graders with their teacher. Would you folks please stand and be recognized. Thank you, we're glad to have you with us. Senator Hefner, followed by Senator Smith.

SENATOR HEFNER: Mr. President and members of the body, I would have a question of Senator Warner.

SPEAKER BARRETT: Senator Warner.

SENATOR HEFNER: Senator Warner, I know you're concerned about the retroactive problems that we've had. Do we have a copy of your amendment or is it printed in the Journal, or what date does yours start?

SENATOR WARNER: It's on the Journal page 2293, July 17, 1986.

SENATOR HEFNER: Okay.

SENATOR WARNER: That was the effective date of the reporting law.

SENATOR HEFNER: Okay, I couldn't find your amendment on page 2293.

SENATOR WARNER: Oh, that's Schmit's amendment.

CLERK: Yours is not printed, Senator.

SENATOR WARNER: It's not?

CLERK: No, sir.

SENATOR WARNER: I'm sorry. I wasn't aware of that. I obviously didn't...

SENATOR HEFNER: Well, that's okay.

SENATOR WARNER: It's so simple I guess that I...

SENATOR HEFNER: It starts in 1986. Now why did you pick that date? Why don't we go back to 1980 because we've had some problems as far back as then?

SENATOR WARNER: Because that was the effective date of the law that this body passed requiring the reporting and the registration. Prior to that time you didn't have the same requirements that came into effect July 17, 1986.

SENATOR HEFNER: Okay, and your amendment says that if an owner of an underground tank had spent some money, they wouldn't be reimbursed for that, but if they found that it had contaminated since then and would do it after the effective date of this bill, well, then they would be eligible.

SENATOR WARNER: They would be eligible if they made the other threshold, the first 25,000 that they have to pay themselves no matter what. You know, how many of those firms that are identified on those sheets have met the 25,000 or it requires that, I don't know. In any event they...the first 25,000 they pay no matter what.

SENATOR HEFNER: Well, Senator Warner, I appreciate your coming with this amendment, but I just don't know whether we can add that amendment on or not. I feel that we need to get this bill passed because the owners of underground tanks have to have, as I understand, a million dollars of liability insurance by a year from now and so this bill is very important. But I think what we're missing out on this morning is leaky tanks in our state are becoming a problem and it's time that we need to address them. Like Senator Schmit said, we don't know how many there are, but we know there are some out there, and when petroleum products leak into the ground, it is going to cause some contamination. It is going to contaminate the soil that it leaks into and probably eventually get down to our ground water, and so we need to protect our groundwater. This body has saw fit to pass a chemigation bill that I feel is working very well in Nebraska. We do have a nitrate problem that we certainly need to address and I certainly don't have the answer for that either, but I think we need to get started on something. This

bill as written now, I believe, would be a way to start it. I understand that if the Warner amendment is adopted, we could face a possible veto of the bill and this would be disastrous. Senator Schmit, would you yield to a question?

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Will, Mr. President.

SENATOR HEFNER: When the Natural Resources Committee considered this bill...

SPEAKER BARRETT: One minute.

SENATOR HEFNER: ...did you talk about what we should do with those that had leaky tanks before?

SENATOR SCHMIT: Yes, we did discuss it, Senator, and we, of course, recognized, as I said, when the bill left committee, Senator, we had to make a tremendous number of changes in the bill after it got on the floor and that was one of the issues insofar as I was concerned was left up in the air.

SENATOR HEFNER: Mmm, hmm. Okay, and so I guess at this time I'm going to vote against the Warner amendment. I don't know if that's the right thing to do or not, but I realize that we need to get a fund going and I understand the Natural Resources Committee is going to have a study on this this summer. Maybe we can come back and try to do something better next session, but I think for this session we need to get this bill passed as this amendment calls for.

SPEAKER BARRETT: Senator Smith. Well, Senator, I'm sorry, Senator Jacklyn Smith.

SENATOR SMITH: I'll give the rest of my time when I finish. It won't take me very long. Thank you, Mr. Speaker. Members of the body, I'm not going to stand here and repeat all the things that have been said. I just think that not very many people have stood up and supported Senator Warner's amendment. I wasn't sure I would until I sat and listened to the debate. You know, you're all aware, as we are, about, I think maybe the Natural Resources Committee are more aware because we listen to these concerns, but we do indeed have a problem in Nebraska which we're trying to deal with with LB 289. We know that we're

going to have some businesses that are going to go out of business. There are going to be some small communities left without fuel service and that does not mean just the community itself, it means the surrounding farming area. I think that, you know, in listening to the debate we have to remember that the intent of the bill, the bill itself was to assist as far as possible in the preservation of those small businesses and doing what we could to help them. That is the purpose of the bill. And you know, I think he's brought out a very valid point here, the fact that you have some businesses, through no fault of their own because of a federal ruling or requirement which was placed upon these businesses to comply, were doing what they thought they should be doing, what they had to do, in fact, and now through the course of this, they have spent some money and discovered that somewhere down the line before they ever installed the tanks which were not leaking, there was a leak. You know, who is responsible? And that's the question that we've dealt with with so many other issues in this committee which makes it so hard for us to deal with the surfacing many, many issues that we have around this whole area of contamination, not just in this one area alone. And I guess I feel really strongly that, and I've said this before on the floor, if we had this concern, we should have this concern as a society, if you want to call it that, not only in Nebraska, but across the nation. But we here in Nebraska, if we as citizens believe that we have a problem that we have to deal with, I think that we should as citizens figure out that we need to help all of those people that are involved and then it should be a cost that comes back to all of us one way or the other over time. I really believe this is a fairness issue. These people are not asking, in my understanding, by the Warner amendment for anything prior to the time the bill becomes effective. They are saying once the bill becomes effective, let us get some benefits from that part of it then that we can get from here on with the other costs that we do have which is the same thing we're trying to do to the other businesses that we're impacting on in the bill. Based on that, I've decided that I will support the Warner amendment and I hope others of you will decide that's a good way to go. Thank you. I would like to give the rest of my time to Senator Schmit.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Well, Mr. President, and thank you, Senator Smith, I think that it's unfortunate that today many of the

environmental issues which are troubling us were not even thought of, not even a vague idea in anyone's mind when we created the Department of Environmental Control back in 1971. And Senator Smith has had a little experience out there in her area with the plant at Hastings and Senator Nelson has had a problem out there at Doniphan and more recently, I think, at the Cornhusker Ordnance Plant. I have a little problem up at Mead and we do not know how extensive those problems will become and frequently a problem that is left unattended becomes much more serious and then develops into other people's problems. For example, the problem at Mead today is being discussed and the corps is involved and the university is concerned and farmers are concerned, but downstream, guess what's downstream? The City of Lincoln well system. Suppose that that system becomes contaminated, I would suspect that there might possibly be someone who will join Senator Warner in saying, wait a minute, surely this should not be the responsibility of just the people of Lincoln to locate a new well system, surely we have to have some help and maybe they should. Certainly, it isn't the citizens of Lincoln's fault that back...there was a war back in 1940 which required the construction of bombs...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...that they had to build them at Mead and that the technology at that time said just sweep the TNT out the front door and flush it away, but we have a little bit of the same situation here. And I want to emphasize again, we do not know the cost of the problem that faces us but I think that from the standpoint of equity, I think that Senator Warner brings to us a very reasonable bill. Maybe, maybe in the future we may have to take a different look at how it's funded. Maybe it's not fair to include the railroads to the extent they are being included because virtually all but maybe 20,000 gallons of their fuel has been up above ground for years and yet they are making a healthy contribution here. Maybe agriculture is paying too much, but I think it's fair at the time because as Senator Lamb points out, if we close these stations down and I have to haul fuel 50 miles, that's going to be expensive also. So there are many, many inequities. Senator Owen Elmer suggests that we study it over the summer and...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...we're going to be studying it. We have no

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other recourse. So I encourage you to discuss this issue, discuss it over lunch, if you don't want to ruin your lunch, come back after lunch and we'll discuss it some more. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Rogers.

SENATOR ROGERS: Mr. Speaker and members, I don't see how anyone could oppose the Warner amendment. It is a cash program, is this not right, Senator Warner?

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Yes, as it is proposed, it is a cash in the form, but nevertheless it's a tax added on to the price of fuel, so...but it is taxpayer paid for, or consumer actually...

SENATOR ROGERS: Right.

SENATOR WARNER: ...but it is not General Fund money.

SENATOR ROGERS: No, that's what I was referring to, I mean, we're all going to pay for it. You know we've talked about the liability and closing up the little stations and something, I haven't heard that many comments this morning. We talk about our underground water here, I think that's something that we should be very concerned about also. We're blessed, this is one of the best places in the whole nation. The consumer is going to pay for it, they talked about a veto, I don't see why the Governor would veto it. I mean, it isn't General Fund money. Like Senator Warner said, it's those of us that use it are the ones that are going to pay the bill. I can see no reason to wait. It's not only...we talk about the liability and closing my little filling station but I think a very important factor is to continue to do these things to keep our underground water as pure as we can and I'll give the rest of my time to Senator Warner.

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President, the only comment I would make, and maybe someone can check, the conversations, a great deal has been indicated that the Governor has said if this amendment adopted it will be vetoed, and that has not been my impression. My impression was that there was a concern about this because

there was some additional cost, obviously. But I am not aware that if this is adopted it is going to be vetoed. That's not my understanding, but if I'm in error, some of you who have gone back can say that I'm in error. But I think it's the right thing to do and it ought to be adopted.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Well, Mr. President and members, I'm going to just review again, because I believe I have a responsibility to do that. Some of the reasons that Senator Landis touched upon as to why we shouldn't make it retroactive, he says, or not he said, but the petroleum marketers association have decided it shouldn't be retroactive and my response to that is this. That, of course, again, there is a very small number of individuals who are involved and so the majority says, well, let's just take care of those from this point forward. The additional fiscal impact of the Warner amendment cannot be calculated and that is correct. But by the same token, as Senator Warner has said, there is no way, I could not pull a figure out of the air and give you any idea of how much money we are going to expend on this issue before it is taken care of, nor can I tell you how many millions, tens of millions, hundreds of millions of dollars we will be called upon to raise, appropriate, spend to handle other environmental issues and most of them, most of them I think are probably worthwhile and will need to be addressed in order to protect the health and safety of the citizens of this state. The third negative is that it will increase the initial demands on the fund and that's a very serious one, but I don't think it is necessarily one which cannot be addressed because we do know, we do know how much money has been spent by some of those individuals, and in some instances, as has been indicated on the floor, we know what some of their costs might be at this time to complete the cleanup which is something which we do not know insofar as those future problems are concerned. It may...they say it may delay the cleanup of spills for those tanks that are reported after the date of the act because of the fact that it places an extra burden on the fund. Well, it's a matter of getting in line I guess, it's a matter of getting in line. I think that it's possible for any one of us to go back to our districts and probably locate some instance where there is a problem out there not too far from home, even though it is not in our district, where an individual may be totally put out of business because of this problem. I'm going to draw a little parallel which is not really a parallel but a few years ago on

this floor we went to great lengths to assist in the encouragement of business in Omaha and part of that was that a major company, ConAgra, made a major commitment to build on the riverfront as a result of some encouragements that we gave. The city, I believe, and the County of Douglas, City of Omaha and County of Douglas, assumed certain responsibilities and, lo and behold, what happened? Contamination of the soil was discovered up there and I do not know at this time the total cost of that cleanup but it is in the millions of dollars. I know of instances where individuals have attempted to acquire land, some of it in that area, some of it in other areas, but are totally unwilling to purchase land today because of the environmental cost of cleanup. And in most instances, they don't even know if there is going to be a cost there or not, but because of the inability to determine the cost of the cleanup, some pieces of land, formerly with a certain substantial value, today may not have any value. We are entering into a new era, ladies and gentlemen, relative to this sort of an activity. How we treat individuals...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...in this instance is going to have a tremendous impact upon how the public looks upon various aspects of these programs in the future. So what we do here, ladies and gentlemen, from the standpoint of equity may very well affect many environmental programs as we proceed, may affect your own livelihood, your own business, but more than that, may affect the entire State of Nebraska from the standpoint of how we address and how we accept the responsibility for cleaning up the environment which when, very frankly, it was being contaminated, most of us did not realize it was taking place. So I tried to address the negatives of the Warner amendment. I tried to tell you why I support it and I'm glad to discuss it some more, but I really think, I hope you will discuss it over lunch and, remember, as Senator Elmer said, this isn't going to be the last of it. There may well have to be something done...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...at a later time, but the longer you put it off the less likelihood of addressing it in an equitable manner insofar as I am concerned.

SPEAKER BARKETT: Senator Langford.

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Mr. President, the Legislature was discussing LB 289. Senator Schmit had offered an amendment that you will find in your bill books. It is AM1757. Senator Warner had moved to amend that amendment, Mr. President. We were discussing Senator Warner's amendment.

PRESIDENT: Thank you. Senator Elmer, your light was on next. Would you like to talk about this please?

SENATOR ELMER: Might as well get the ball rolling this afternoon, Mr. President and members. Senator Warner has an amendment that we all feel is probably morally right, but I think we have to be pragmatic about the situation. Economically and in all practicality, I believe we are going to need to go ahead with the way the amendment has been originally drafted and probably would need to defeat this amendment. Thank you, Mr. President.

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

SENATOR MORRISSEY: Thank you, Mr. President and members. First of all, we have to realize that there is absolutely no way to implement this program without discriminating against someone. If we do what Senator Elmer suggested and study it, you are going to discourage people or you are going to encourage them to slow down their spending on what they are now cleaning up because they won't be reimbursed for what is already spent. So you will encourage them to slow down any clean-up efforts that might be going on. If you adopt Senator Warner's amendment, you are going to discourage against the people that fell into that category that have already cleaned up because they will get no reimbursement, but yet the people that are still working on it will get some money for any future effort they put into this, and I have a question for Senator Warner, please.

PRESIDENT: Senator Warner, please.

SENATOR MORRISSEY: Realizing, Senator, that the fund will take no action until it has built up, how do you foresee this working? Now these people apply for this, are they going to apply for it, and it is on a first come, first serve basis, and if these folks apply to it and then they wait until it builds up to a certain level, and then we drain it right down immediately and then try and build it back up again, and drain it down, that

is the confusing...one of the many confusing aspects of the whole bill and of this particular amendment.

SENATOR WARNER: Senator, I would see absolutely no difference with or without the amendment, because if it only affects, as the bill is drafted now, those in the future, the first one in, if it is 90 days after the session and it cost a half a million dollars, there won't be anything in there either. They will have to wait until the money is built up. You know, this would be the same, you will wait until the money builds up. I don't know how else it would work.

SENATOR MORRISSEY: Okay, and I really...this is the true rock and a hard place, folks. You have just got to decide in your own mind who you are going to discriminate against, and I probably won't know until I push the button how I am going to vote on Senator Warner's amendment. I am sure I have got people in my district that it would affect, one way or the other, and you must realize that if we adopt this amendment, the Governor may veto it, and if this bill is absolutely necessary to pass, so if we add this amendment and make it liable for veto, we had better be more than willing to override that veto if it comes back, because we definitely must have this bill in the form it is in now, and I can't disagree with Senator Warner on his amendment, but we have to make those decisions, who you are going to discriminate against, and if it will cause a veto, and if we are willing to override the veto if the bill comes back if this amendment is attached. Thank you.

PRESIDENT: Thank you. Senator Rod Johnson, please, followed by Senator Schmit and Senator Warner.

SENATOR R. JOHNSON: Mr. President, I stand to support the amendment. I have been working with some constituents of mine who have been in situations where contamination has occurred in particular areas of my district. They have been working with the EPA and the DEC, and in many cases, financially the response to this cleanup has been a tremendous hardship on them and I think anything we can do in this Legislature to assist those folks I think would be a welcome relief to many of them who simply either are going to have to expend great amounts of dollars to try and correct the problem, or simply go out of business. And as has been pointed out, in some circumstances, you are going to see some areas of this state probably without service in petroleum because people will not risk the threat of

huge clean-up costs. So the current problem is very severe, as has been pointed out in the handout that Senator Schmit and Warner have passed out to us, and I think it is worthwhile that we take a serious look at that problem that exists. Mr. President, I would give the remaining part of my time to Senator Coordsen.

PRESIDENT: Thank you. Senator Schmit, please. Oh, okay, Senator Coordsen, you have three minutes about.

SENATOR COORDSEN: Thank you, Senator Johnson. I would have a question of Senator Schmit if he slows down just a little bit. It has to do with the intent of LB 289. Now, as I understood this bill, Senator Schmit, when I signed onto a committee bill, and I understand the problems that exist in outstate Nebraska I think as well as anyone, but my understanding of 289 was that it was introduced in response to the federal government's proposed million dollar liability for any bulk tank owner. Now is there a time line when this liability has to be shown to the federal government by an owner?

SENATOR SCHMIT: There is and I am not exactly sure when that time is, Senator. As I understand, we probably could get by without passing this bill yet today or this session and still make the time line, but it wouldn't be very good business from what I understand, and the industry would be very, very nervous.

SENATOR COORDSEN: Well, my understanding of the conversation both before lunch and most recently after lunch is that essentially then we are talking about two separate issues. One is compensation for those people who have incurred expenses under currently existing state law, and then the other issue is providing a system to enable basically retail petroleum marketers a way to comply with federal law and stay open in the future, is that your reasonable assumption?

SENATOR SCHMIT: Yes, you are exactly correct, Senator. Two separate divisions but you have pinpointed both issues.

SENATOR COORDSEN: Okay, so from that in mind then, the pending amendment to the amendment would be addressing the first issue which would be compensation for those who have incurred expenses in complying with state law. The bill itself or the Schmit amendment, which is the bill, should it be adopted, is to enable owners of underground storage tanks to comply with future

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federal regulations.

SENATOR SCHMIT: Yes, but the Warner amendment only applies to expenses incurred from the time the act becomes law rather than for expenses that have been incurred prior to the time the act becomes law.

SENATOR COORDSEN: But by people who have had some...

SENATOR SCHMIT: Difficulty...

SENATOR COORDSEN: ...been put on the list, have had orders against them, had our state DEC causing them to predict some expenses or do some testing or that sort of thing?

SENATOR SCHMIT: That is right.

SENATOR COORDSEN: Okay, thank you.

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

SENATOR SCHMIT: Well, Mr. President and members, as you all know, of course, time is running out. The clock continues to run and we have spent a lot of time on this bill, and I emphasized to you on General File that it was a complicated bill, that there were many ramifications of the bill, and many of the expenses of the bill which we would not be aware of until we got into it, and I think I am not going to disappoint you in that respect. Unfortunately, as so often happens, in order to be fair and honest, we need to take time with this bill at this time and address some of these issues. Senator Coordsen outlined for you the two separate areas of interest here, the two separate areas of concern, and I want to reemphasize that again, and I guess without telling you how to vote, but telling you why I am voting the way I am, I want to say this. As Senator Warner pointed out, we passed a bill that said you had to do this and this and this based upon this and this and this, and certain, the clock began to run. Certain entities then began to discover that they had certain responsibilities and certain expense. We did not have in place any compensation program and so they began to do what they had to do. Senator Warner has seen fit to bring an amendment to this committee, to this floor, which says that if XYZ Company had expended \$100,000 to clean up a problem to this date, they will not be reimbursed

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that money, but, if, in fact, they have continued expense from this time forward, they should be allowed to enjoy the benefits of the bill. On the basis of equity, I cannot disagree with that. On the basis of the additional cost to the bill, I really cannot disagree with it because I think it will be a small portion of the total cost of the bill. It may be significant to those individual entities who are involved. It may mean the difference between life and death of their business, and so I would find it very difficult to say that when we create a fund financed by the public to benefit certain entities from this point forward, I find it difficult to say that those who happened to fall before the time line should be exempted from those benefits. I think that if we do that, if we do not adopt the Warner amendment, then we may very well be setting a bad precedent, ladies and gentlemen, for further environmental problems that develop in the future, and it is my deep concern that if we do not accept responsibility for those who have knowingly complied with the law, in the future there may be a tendency to not want to reveal environmental problems for fear of being stuck with the financial responsibility knowing that in the past the Legislature then acted at a later date and assisted certain entities which in this case was to their benefit, but if you encourage the delay of reporting, encourage the nonreporting of environmental damage or environmental problems, then I think it is to the detriment of all of us and, of course, the ultimate expense of clean up then becomes even more serious and more detrimental. So I know Senator Warner says that it shouldn't even be a problem and in some ways I can see where he is coming from because we do not like to knowingly create problems on this floor and, therefore, I support the Warner amendment and I support...I am not going to say at this time, in fact, I'm not really adverse against...

PRESIDENT: One minute.

SENATOR SCHMIT: ...Senator Landis's proposal, because if we have to put the money in there, maybe we should do it, and the combined wisdom of this floor may be better than the wisdom of the committee. And so I am not going to argue that point a great deal. Thank you, again.

PRESIDENT: Thank you. May I introduce some guests in the north balcony of Senator Withem. We have 60 fourth grade students from Papillion, Nebraska with their teacher. They are from the Hickory Hill Elementary. Would you folks please stand and be

recognized by the Legislature. Thank you for visiting us today. Senator Warner, please, followed by Senator Bernard-Stevens. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Question.

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

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

PRESIDENT: Senator Warner, would you like to close on your amendment to the Schmit amendment, please. Just a moment please. (Gavel.) Please, let's hold it down so we can hear the speakers. Thank you. Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, we have spent a lot of time on this one issue but perhaps it helped also to develop an understanding of the issue itself. It seems to me that the arguments I have heard in opposition have been a couple, one of which is that if this amendment is adopted that it would be vetoed. Now I don't know where that rumor started. I am, frankly, beginning to get a bit suspicious that there is some lobby group promoting this bill that is trying to use the veto threat rather than fact, because the administration...and I said it before lunch, the administration has not said anything to me differently than what they told me this morning and what they told me this morning was they had a concern about the bill, the amendment, because of cost and they did not yet know what they were going to do. I had it reaffirmed later and that was the same answer and I think this business about the veto to this amendment and the bill has its roots somewhere else than in the administration. Secondly, there is another time line here that you're putting a few people in a whale of a predicament. I suspect that any place that has some contamination that is now known, they're prohibited from qualifying if this amendment is not adopted. They, obviously, could not get insurance or a bond, while they had contamination, for the future and they perhaps can't afford to pay to have it cleaned up. I don't know where those people are going to end up but they are being put in an almost untenable position. True, one could argue that those who have already spent money for cleanup are entitled to some consideration but, at least, they

have the money to do it with. A lot of these groups that may well be affected by this amendment are not going to have the funds. And, finally, I want to talk about public policy. My own position on cleanup of groundwater or any other problems has been that the contaminator in the future should be charged but I do not take the position that that is true of the past unless, in fact, the contaminator can, in fact, be determined without question. But, beyond that, it seems to me that we're talking about a 100 years case in Nebraska of contamination that has occurred without doing anything about it and it becomes then a broad public policy responsibility it seems to me to clean that up. You...some of you have, in speaking on this amendment, have identified the fact that a piece of ground can have contamination that someone only owned for a few days. They had no...in no way did they contribute to that contamination nor was there any way that they could know about it. It's just that they happened to acquire that piece of property in that time frame. It seems to me totally unjust in the public policy of forcing someone to pay for cleanup that they didn't cause and with this amendment at least a few who tried to comply with the law that was enacted in 1986 will be given some assistance, no reimbursement for what they have spent but at least they would have the same status as others who have the benefit of the legislation without this amendment. And I would urge the body to adopt the amendment.

PRESIDENT: The question is the adoption of the Warner amendment to the Schmit amendment. All those in favor vote aye, opposed nay. Senator Warner.

SENATOR WARNER: Mr. President, there are so many absent and it does require 25 votes on Select File, I would request a call of the house and a roll call vote.

PRESIDENT: Okay, thank you. The question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 18 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. Senator Warner, Senator Wesely, would you check in, please. Thank you. Senator Baack. Senator Morrissey, please, check in, please. Senator Coordsen,

Senator Pirsch, Senator Haberman, Senator Rod Johnson. Thank you. Senator Lamb, please. We're looking for Senator Lamb. I understand Senator Lamb is on his way down. May I introduce some guests of Senator Carol Pirsch. We have Red and Marti Thibault from Omaha District 10 and their guests, Egberth and Edith Stratbucker from Nottuln, West Germany and Minster and Dieseldorf. Would you folks please stand and be recognized. Under the south balcony. Thank you for visiting us today. Senator Lamb is here now. And the question is the adoption of the Warner amendment to the Schmit amendment and a roll call vote has been requested. Mr. Clerk, please.

CLERK: (Roll call vote read. See pages 2524 of the Legislative Journal.) 19 ayes, 18 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The amendment to the amendment is not adopted. May I introduce some guests, please, of Senator Langford. Under the north balcony we have Pastor Murdock and some members of the First Baptist Church in Kearney. Would you folks please stand and be recognized. Thank you for visiting us today. Mr. Clerk, we have another amendment to the amendment. The call is raised.

CLERK: Mr. President, Senators Landis, Coordsen and Warner would move to amend the bill. That amendment is on page 2390.

PRESIDENT: Senator Landis, are you to handle that? Okay.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, if you will look in your Journals, you will see that we strike "two" and insert "three", strike "three" and insert "five". What does that mean? We're now talking about the reimbursement pool and the trigger mechanism for additional revenue raising responsibilities. The Schmit amendment sets the pool up between two and \$3 million when it falls in that range the...when it falls out of that range, rather, there is a necessity of triggering additional revenue by DEC and our Department of Revenue. And that number is changed in this amendment to between three and \$5 million. It's appropriate to have a larger floating sum. It's appropriate to have a higher trigger value. It's appropriate to have more space between the top end of that amount in the fund and the trigger mechanism so that we don't have a too narrow window and give our administrators too difficult of an obligation to turn off and on the revenue necessary to run this pool. As I understand it, Senator Schmit

is not opposed to the amendment. I guess we will find out. But this language came to me, basically, by representatives of the administration who said this is a source of concern administratively for them. I share that concern. That's why the change is here. And I will yield some time to Senator Schmit. Perhaps you have a reaction to the amendment. We had a passing conversation.

PRESIDENT: Senator Schmit, please.

SENATOR LANDIS: I would yield a moment to Senator Schmit. Senator Schmit, your reaction to the amendment.

SENATOR SCHMIT: Mr. President and members, I really do not have any deep concern about the amendment. We have kicked it around all the way, as I indicated to Senator Landis, from five to 10 million and down to two to three, and he proposes three to five. And I guess my concern is that this is...first of all, you know, there has been a lot of conversation about the impact of the bill and what the Governor is going to do, this bill is not going to have any General Fund impact. The people out in the country are going to pay for the bill and I'm not anxious to put any more money in it than necessary. I believe, Senator Landis, does your amendment still contain the...you have not done anything relative to the known obligations factor, have you? Well, we did have that in the committee because we felt that gave the funds some flexibility which, as I indicated earlier, would allow for the accumulation of whatever money was necessary for known obligations. But I guess at this time, again, I feel a little bit about this amendment like I did about the Warner amendment, I just think the body has got to take a look at this and decide it themselves. But I would hope that if you...and I think I'm going to...in fact, I will support this amendment, Senator, because I don't want to cause the administrators a lot of unnecessary grief. If later on we decide we don't need that much money, we will probably take it down. If we decide we need a bigger cushion, we will probably take it up. But I would...I'm not making any deals here or making any trades but I think that if you start out with that kind of a cushion, maybe when...if I make a motion to reconsider the Warner amendment you might not be quite as concerned about the impact of the known obligations. I think that Senator Landis addresses an issue here which we all are aware of, they have an unknown factor. We don't know whether they are going to have \$50,000 worth of claims the first month or 500,000 or

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5 million. We don't know if they will...they might be in the tens of millions or hundreds of millions and, to that extent, I am willing to go along with the proposal as outlined by Senators Landis and Coordsen and Warner and accept their amendment.

PRESIDENT: Senator Landis, back to you.

SENATOR LANDIS: Senator Schmit, thank you very much. That's an ample answer and I appreciate it the expansion of the notion. Since there is basic agreement, I would hope that perhaps we can get to a vote on this relatively quickly. Thank you.

PRESIDENT: Thank you. Senator Coordsen, did you wish to speak on this?

SENATOR COORDSEN: Very briefly, Mr. President, in that the way the bill is drafted all of the money in the fund is spent as a demand...as a demand is made for it. If there isn't money in the fund to pay the claims that are made, then the claimant, as I understand the bill, simply has to wait. The changing from three to five, I think, would perhaps accelerate the process and give a little bit more of a safety mechanism for the small operators that are having the problem out there that they wouldn't have to wait and perhaps try to find other sources of money to cover potential cleanups while they were waiting for money in the fund to accumulate to help them make their cleanup. So that was my philosophy in signing onto this amendment. I think that whole bill would work just a little bit better with a higher threshold and a higher ceiling. And I would like to give what remaining time I have to Senator Morrissey.

PRESIDENT: Senator Morrissey, you have almost four minutes.

SENATOR MORRISSEY: Thank you, Senator Coordsen. Mr. President and members of the body, right now the way the bill reads when the fund reaches five they shut it off, then they let it fall clear down to two which Senator Landis would change to three and then they will collect it back up again only to three, the way it reads now. Senator Landis would change it to five. So the way it is now we collect five, let it drop to two, and then kick it back up to three. Senator Landis would change it to collect five, let it drop to three, kick it back to five again. Because of the unknown of this situation, I don't...I feel we cannot allow this to be underfunded when we start. As we get a feel for this as we move along then we can change these numbers. But

right now if we let it drop too low and the problems keep popping up and we let the fund get too low and we delay cleanup, in that delaying of the cleanup we will be incurring more expenses as we delay cleaning up these leaks because if we delay cleaning some up because the money isn't available, they're going to get larger and larger as they continue to leak and they will continue to put more and more burden on the people of the state and the owners that we're depending on to distribute our petroleum out there in the field. When I first read this newest version of this bill this was the first thing that jumped out into my mind was these funds, they let it drop too low and we didn't build it back up to five. So it is a definite unknown and I think we must adopt Senator Landis's amendment until we can get a better feel for what is going on out there because if we let it drop too low, and I feel what is in there now is too low, it can cause us more money and more problems in the future. Thank you.

PRESIDENT: Thank you. Senator Warner, please.

SENATOR WARNER: Well, Mr. President, under the circumstances, I have to request my name be withdrawn as the sponsor of the amendment, and I am going to have to oppose it. The cliché of taxation without representation was what this country was founded on. Now we're going to have taxation without participation. A whole host of the people I represent are going to be denied the opportunity to participate but they're going to pay and that don't make any sense. I was willing to increase because I think it's necessary. I heard one of the sponsors say, just a few minutes ago, didn't know if it was going to cost 5 million, 10 million or a 100 million, yet the amendment right before was rejected because it had a cost. You don't know what it's going to cost. Makes no sense what you're doing. Now, unfortunately, the amendment has to be adopted, I don't deny that. I can't vote for it, obviously, not the direction you're going. I can't even get up and hassle the bill because I know we have to do something. I guess I could but I won't. The only thing I have to do and I'm going to say it on the floor is I will write... I will write to the company, it's a co-op, because I have to give an explanation why the Legislature rejected this. And what I'm going to write to them is that the organization that was representing them did not support it, that that's the only one I know of. I would urge you to adopt the amendment. I'm going to vote no.

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PRESIDENT: Thank you. Mr. Clerk, we have a priority motion.

CLERK: Mr. President, I do. Senator Ashford would move to reconsider the vote just taken on Senator Warner's amendment to the Schmit amendment.

PRESIDENT: Senator Ashford.

SENATOR ASHFORD: Thank you, Mr. President, and members, I voted no initially on the Warner amendment and I will be frank with you, I have had difficulty understanding this issue anyway and I was confused when I voted against the Warner amendment, and I am convinced that it is a broad-based problem in discussing this with other senators who have more familiarity with the...with the issue than I do. And so I would...I would move to reconsider. I think that there is a very valid reason that I simply missed when I voted to...voted no. So I would move to reconsider.

PRESIDENT: Thank you. Senator Morrissey, please.

SENATOR MORRISSEY: Yes, I got up and spoke in complete confusion before on Senator Warner's amendment and in the small amount of time between when I spoke and the vote discussing it with my colleagues here I came to the conclusion that it does discriminate against the least amount of people. Like I said earlier, there is absolutely no way to implement this program without discriminating against someone. And I would simply support the reconsideration and hope you would adopt Senator Warner's amendment. What I said about the veto earlier, I picked up on the floor here. Where it came from, I don't know. I do believe that if that rumor is true, I feel this bill...and I would hope everyone on the floor here realizes that this bill is important enough that we can get it passed this year and we can do whatever we have to do, and I feel Senator Warner's amendment will indeed discriminate against the fewest people possible. Thank you.

PRESIDENT: Thank you. Senator Schmit, please, on the reconsideration of the Warner amendment.

SENATOR SCHMIT: Well, Mr. President and members, I just want to say that, as I had indicated earlier, broad public policy...and I think Senator Warner put it pretty plainly, when you look at the past, when we passed a bill in 1971 that created the DEC, we

didn't even think about underground tanks. We thought in terms of chemicals and we thought in terms of soil erosion and smoke pollution and a whole series of events. Since that time, we have found a whole new bibliography of problems that weren't even of our concern at that time. What we have tried to do in the past is to say that known polluters...known polluters are not going to be tolerated, but when you use the best technology, as Senator Landis said, 80 years ago cast iron tanks were buried and they were buried for many years, have never had any problems. Today we have an entirely new technology, an entirely new concern, an entirely new population and so we're going to take a different look at it. We're setting down a whole new series of rules but you should not...we should not penalize the people who lived by the rules for 10, 20, 30, 40, 50 years and then because we set a new set of rules finally found themselves in violation. I think that we're going to have to make some changes in this bill. Senator Morrissey and I have discussed it many times. It's going to be more of a controversial issue next year probably than it is today. We're going to find out and it's kind of like getting on a bucking horse, you never know what kind of a ride you're going to get till you let him out of the chute. This may...I don't expect this to be an easy ride and I think that's what Senator Landis foresaw with his amendment and so we're going to kind of gird our loins for him. But I think that at this point in time I just really have a difficult time singling out a small group of people and saying because they happen to fall in that certain time zone we cannot even help them out with their costs from this point forward. And my concern is, as I said earlier, and I'm going to say it once more, if we adopt that philosophy here, then we're going to probably find ourselves locked into having to adopt it in every other instance of environmental contamination that we face. I don't think that will be acceptable. I don't think we should do that because I think it will discourage that which we're trying to do to protect the environment. So I would ask you, please, to reconsider the Warner amendment and vote for it.

PRESIDENT: Thank you. Senator Langford, please, followed by Senator Coordsen.

SENATOR LANGFORD: Call the question.

PRESIDENT: 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. Voting to cease debate. Record,

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Mr. Clerk, please.

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

PRESIDENT: Debate has ceased. Senator Ashford, would you like to close?

SENATOR ASHFORD: Thank you, Mr. President, and members, maybe if I'm here long enough, I will be able to say I have a mind that's at least half as agile as Senator Schmit, but I didn't understand the issue when it first came up. It is...the analogy to an insurance policy insuring an event that occurs prior to getting the insurance is just not a valid analogy to this situation. There are overriding public policy considerations which have been well stated and I would just move that we reconsider the vote. Thank you.

PRESIDENT: Thank you. The question is the reconsideration. All in favor vote aye, opposed nay. Senator Ashford.

SENATOR ASHFORD: Well, I don't know, maybe we'll have to...I guess we'll have to consider having a...what is it called?

PRESIDENT: I don't understand what you're saying.

SENATOR ASHFORD: Call of the house. That's it, call of the house.

PRESIDENT: The question is, shall the house go under call? All those in favor vote aye, opposed nay. Call in votes are authorized. Record your presence, please. Please return to your seats and record your presence.

CLERK: 23 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Please record your presence. Call ins are authorized.

CLERK: Senator Labedz voting yes. Senator Scofield voting yes.

PRESIDENT: Okay, record, Mr. Clerk, please.

CLERK: 26 ayes, 3 nays, Mr. President, to cease...to reconsider the vote on adoption of Senator Warner's amendment.

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PRESIDENT: The motion is adopted and we will reconsider.

CLERK: We're now back discussing the Warner amendment to the Schmit amendment.

PRESIDENT: Senator Coordsen, did you wish to discuss the motion? Senator Nelson.

SENATOR NELSON: Mr. Warner...oh, excuse me, Senator Warner, would you please respond to a question? I asked Senator Schmit and I think Dave gave me the answer. If we are to reimburse or make whole again the ones that we're talking about in your amendment, do you construe it as the same basis as the new ones? In other words, the department shall provide reimbursement from the fund in accordance with Section 25 in an amount not to exceed \$975,000 per occurrence for the cost of remedial action to eligible people, and that the people would be responsible for the first \$10,000 and then 25 percent up to the 25 (inaudible), will these people that you're talking about in this two-year span be under the same provisions, not a 100 percent, with maximums?

SENATOR WARNER: (Microphone not on) ...that they are under the same provisions for those costs incurred after the effective date of LB 289. Any expenditures prior to the effective date, they are not reimbursed.

SENATOR NELSON: In other words...

SENATOR WARNER: After...after this bill is enacted, they qualify...

SENATOR NELSON: Okay, in other words, any expenses now between January...or '86 until September or whenever this bill becomes effective will not be covered.

SENATOR WARNER: They would not be reimbursed for expenses already paid but they would have the other...if they met the thresholds for expenses after...for cleanup after the effective date of this act, then they qualify along with everyone else.

SENATOR NELSON: Sure, even if the spill happened some time ago. I have in front of me, folks...and this is a real...a real tough one here because we are voting on such an unknown. I guess it's kind of like morally...not quite as bad as maybe the securities

or so on, but I have in front of me a news media article that Iowa allocated \$17 million in a state fund to help clean up these gasoline station owners and the state fund would be generated by a \$50.00 fee on each tank and, in addition, a state levy of two-thirds of a cent. I guess, of course, they have a bigger state than we have and maybe, of course, they should sell more gasoline, too. Two-thirds of a cent on each gallon of gasoline and each storage tank owner would pay a \$100 per tank. So I guess that I know how serious this is and I know exactly what we can run into is why I'm a little bit hesitant to say yes on this bill because I'm voting for such an unknown and I know unless the money is there. But I really don't think it's fair for, say, two people to use it and maybe another 100 are out there or 17 or 15 and there would be no money to help them clean it up and I know...and I know what the federal regulations are, and for someone to say, well, I won't do anything about it or I will not notify them, boy, I tell you it's a pretty stiff penalty and I just can't think of too many that would subject themselves to that if they really knew what the penalty was. So that was my question of Senator Warner, what...what restrictions would apply on this amount of money. Thanks.

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

SENATOR WARNER: I will just close.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Just want to further elaborate on the question proposed by Senator Nelson. If a firm has already spent a \$100,000 prior to the enactment of this bill, and if they have to spend another \$100,000 subsequent to the enactment, the firm still must pay the first \$25,000 of the newly incurred expense. The first \$100,000 is not applicable to the base expense of \$25,000. They still have to expend another 25,000 subsequent to the enactment of this act so that they're not getting any benefit for having been involved in a cleanup prior to the enactment of this act. They still have to operate under the same rules. Same old ball park, we lay down the rules, they play by our rules. I don't think there is anything at all that could be considered to be superbeneficial to the existing...preexisting situations. In fact, the cost is going to be less to us and I think that it's just a simple matter of equity. I want to say again that it's kind of unfortunate, I

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think we had 32 people check in, it's extremely difficult to get 25 votes out of 49. I have a tough time with that normally. It's tough to get 25 out of 40 if everyone is here today. But it's impossible to get 25 out of 32 and so I would hope that if some of you are in your offices and not up here today, this is an important bill, ladies and gentlemen, extremely important. They're important amendments. And so I would hope that you would come forward and vote on this bill. I hope you would support the amendment. I think that, as I indicated earlier, I accepted the Landis amendment because I'm not sure. I wish I could stand here and tell you I'm positive. I'm not positive. You're not going to be faulted, ladies and gentlemen, for your vote for this amendment because...if it turns out to be more expensive than we expected. I do not expect it to be, but I think that we're going to see some positive benefits from the passage of this bill and we're going to be...it's going to be with us a long time. We can't turn our back to it. And so I would ask you to support the Warner amendment. And, remember, no credit for previous expenditures. Starting out with dollar zero, they've got to spend 25,000 and then the exposure is the same as for a new entity. I hope you support the Warner amendment.

PRESIDENT: Senator Haberman, please. Senator Bernard-Stevens. Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, Senator Schmit, could I ask you a couple of questions?

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Yes, Senator.

SENATOR HEFNER: The amendment that we're on now is AM1757? Is that correct?

SENATOR SCHMIT: I don't know, Senator. I don't have it before me.

CLERK: No, Senator, we...excuse me, Senator. We're back considering Senator Warner's amendment, AM1818.

SENATOR HEFNER: Yes, but isn't that an amendment to the Schmit amendment?

CLERK: Yes, sir.

SENATOR HEFNER: To Schmit's amendment, AM1757.

CLERK: That is correct.

SENATOR HEFNER: Okay. Okay, the reason I'm asking him this question, I need to do a little background here. Okay, this amendment says that the owner of the tank pays the first 25,000. Is that right?

SENATOR SCHMIT: He pays...

SENATOR HEFNER: Isn't that what you said just a little while ago?

SENATOR SCHMIT: He pays the first 10,000 and then he pays the next 25 percent up to a maximum of 25,000.

SENATOR HEFNER: Okay. And where does...and then his liability insurance kicks in?

SENATOR SCHMIT: The liability insurance...the fund may have to take care of everything between that amount and nine hundred...that amount and a million dollars. Then liability insurance kicks in at a million dollars, Senator.

SENATOR HEFNER: Okay. Well, thank you. One more...I guess one more question, Senator Schmit. If we adopt the Warner amendment, do you think the amount in the fund will be enough?

SENATOR SCHMIT: I believe it will be, Senator. We will have to build it to whatever amount is necessary but I do not believe it will be a significant difference in the overall cost of the program.

SENATOR HEFNER: Okay, and what is the amount of that...what will the amount of that fund be when it's at its maximum?

SENATOR SCHMIT: Under the Landis amendment which we just adopted, it will peak at \$5 million plus any known obligations which they may be 10 million which would then put it up to 13 million and we would have to build to, but it may only be 2 million so that would be a total of 7 million tops.

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SENATOR HEFNER: Okay, but, in your opinion, you think this is enough even if we adopt the Warner amendment?

SENATOR SCHMIT: I do believe so. I believe the Landis amendment gives us an additional cushion that is necessary and I believe it's satisfactory.

SENATOR HEFNER: Okay, thank you. I have a question for Senator Warner. Mr. President, I have a question for Senator Warner.

PRESIDENT: Senator Warner, please.

SENATOR HEFNER: Senator Warner, we was talking about the administration a little while back and what contact did you have with them on your amendment?

SENATOR WARNER: Mr. Gary Rex stopped in my office...no, I spoke to him on the phone this morning and he said to me that they had a concern about the amendment, they did not have a position yet that whether or not they would veto it. And a staff member went and talked to him and in the course of the morning, after that comment was made, my understanding of his comment then was that they had told no one that they would veto the bill if the amendment was adopted, but, again, expressed their concern related to cost and that they did not yet have a decision. That was my understanding of their position.

SENATOR HEFNER: Okay, then I'll ask you the same question I asked Senator Schmit. Do you think that the amount in the fund will be enough if we adopt your amendment?

SENATOR WARNER: Senator, I...Senator Schmit, as chief sponsor, a few minutes ago said that it may take 5, 10, or a 100 million without my amendment. We're talking about 15 or 17 if what they gave me was...17 and 15 and there could be some more, obviously, with it. I don't know how many service stations are in Nebraska but there, obviously, are hundreds. I have no idea how many locations have spilled fuel. I talked to Senator Pirsch this morning and it was chemical, not fuel, that was on state property that was discovered.

PRESIDENT: One minute.

SENATOR WARNER: You know, there is no rationale that this fund is jeopardized by this amendment in the total picture.

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SENATOR HEFNER: No, but I think you have to realize that it will add to the cost.

SENATOR WARNER: Senator...and the people who are going to benefit from the amendment are going to be paying and you want to deny them the benefit from the tax they're going to pay. That don't make any sense.

SENATOR HEFNER: Okay, thank you.

PRESIDENT: Thank you. May I introduce a couple of groups in the north balcony, please. Senator Nelson has 25 fourth graders from the Lincoln Elementary School in Grand Island and their teacher. Would you folks please stand and be recognized. Also, in the north balcony, we have 22 Japanese college students from Japan, from Kyotat Academy of International Culture and their sponsor. Would you folks please stand so that we may recognize you. And we're happy to have you folks with us this afternoon. In the south balcony, Senator Schellpeper has 40 fourth graders from Wisner-Pilger School at Pilger, Nebraska. Would you folks please stand and be recognized. We're happy to have all of you folks visiting with us today. Senator Warner, please, followed by Senator Morrissey.

SENATOR WARNER: I will close.

PRESIDENT: Okay. Senator Morrissey, please, followed by Senator Ashford.

SENATOR MORRISSEY: Thank you, Mr. President, and members, I'll get rid of Senator Crosby's jelly bean here. Senator Hefner, Senator Warner's amendment addresses people that took responsible action since 1986. There could be hundreds, could be 10, could be hundreds, could be more people out there that are just waiting and have been waiting since '86 and purposely ignored doing anything about what they knew was out there. Could be, maybe yes, maybe no. So that's what brought me around to Senator Warner's argument, we are punishing people that were following the rules and regulations and doing their best to clean up and live up to their responsibilities. And as to what Senator Nelson said that there are stiff penalties for people that don't live up to this act, that's true, and earlier there were penalties but it is so hard to tell when you've got a leak in one of these tanks, previous to the legislation that required

monitoring systems and more intensive testing. You're going out there, you've a two to three to four thousand gallon tank in the ground and you're taking a wooden stick and sticking it down in the ground and measure, and then reading off of that stick as to how many gallons of gas you've got in that tank. That is far from a very scientific method and it's very easy to miss a small leak that may have been going on for years contaminating a lot of ground and it's very hard to tell if that was going on. I simply say it again that the bill is very important. I think we can get it passed with Senator Warner's amendment and with Mr. Landis...Senator Landis's amendment, and we can override a veto if that should come up, and now we're not even sure if that will come up. It's very important that we do this. You must realize that if we don't make this bill...pass this bill this year, we're going to have a lot of problems out in the country and I think Senator Warner's amendment does make it more fair and equitable to all people. Thank you.

PRESIDENT: Thank you. Senator Ashford, please, followed by Senator Elmer. 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: 26 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Warner, to close, please.

SENATOR WARNER: Mr. President, and members of the Legislature, I would first like to thank Senator Ashford for the reconsideration motion and I did not know you were going to do that, and Senator Morrissey for his words. I spoke maybe a bit harsh a time or two during this, for me, I feel strongly about this issue on an equity basis and I would appreciate the consideration of the body once again on the amendment, and I would give the balance of my time to Senator Schmit.

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, Senator Landis asked me to reassert again my position and my opinion as to the manner in which individuals who are impacted by the Warner amendment would participate in the bill. He said he thought it was of some concern, is of some concern to the administration and

justifiably so. I want to reiterate that monies expended thus far are monies that have been expended at the total cost of the entity involved. If they are to participate under the bill, under the Warner amendment, if they had...if they spent \$100,000 so far, that money is gone. If they have to spend another \$100,000, they first have to...they have to spend the first dollar of that new money and then they spend \$10,000 before they become involved at all in the sharing of the fund. They have to spend a total of \$25,000 of new expenditure before they can participate totally in the fund, as would any other entity that is not...that is going to be covered under the bill. So there is no way that we go back and pick up any of the expense that has been incurred prior to this time. It is from this point forward so that we do not have that concern relative to the outstanding obligations. The money expended is money gone. That's money expended as you had to do so based upon that law at that time. All we do now is to say under the current law we treat the individuals who have a problem the same as we treat the ones who were not knowledgeable about a problem that occurred. So I think it's simplified. I believe it's equitable. I believe it's fair and I would hope that you would support it. I believe it will, more than anything else, it will foster confidence in a program because, as you all know, any time you have a small group, be they Commonwealth, be they environmental people, be they educators or farmers who are left out, be they the little waste folks, we have a terrific problem trying to solve that problem of inequity. Let's not create another category of those individuals in this instance where we can afford it, where we can avoid it. And thank you very much. I would hope you would support the Warner amendment. I would hope that everyone is here.

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

CLERK: 26 ayes, 1 nay, Mr. President, on adoption of Senator Warner's amendment to the Schmit amendment.

PRESIDENT: The Warner amendment to the Schmit amendment is adopted. Now we're back to the Schmit amendment.

CLERK: Mr. President, I have an amendment to that by Senators Landis, Coordsen and Warner. That amendment is on page 2390.

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PRESIDENT: Senator Warner, are you going to handle that?

SENATOR WARNER: Excuse me, Mr. President. Oh, is this an amendment?

PRESIDENT: Yes.

SENATOR WARNER: Well, I would rise to ask that my name...

PRESIDENT: We have an amendment to the Warner ..

SENATOR WARNER: ...be put back on the amendment, it was taken off...

PRESIDENT: We have another amendment to...

SENATOR WARNER: ...and, secondly, to support it. As I indicated before we were diverted back to the other amendment, I feel it needs to be passed and hope the body does.

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

SENATOR MORRISSEY: Yes, Mr. President, and members, we're back on the original Landis amendment to change 2390...let me look real quick. Can I call the question?

PRESIDENT: Well, no, I wouldn't think so at the moment.

SENATOR MORRISSEY: Oh, you wouldn't, huh? Okay, I would just say this is by...like I said earlier, this amendment is needed. That's the first thing that jumped out at me when I looked at this contract. These funds weren't quite enough. We let it drop too low and we didn't build it back up enough. I think it's very needed, something we can all support. If we find out later that it's a completely outlandish figure, we can change it, but right now we don't know and to let it drop too low and to not have enough money in this fund would do us more harm, much more harm than good. I would support the amendment.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, as I said earlier, I support the amendment...

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PRESIDENT: Senator Schmit, excuse me. (Gavel.) Please, let's hold it down so that we can hear the speakers. Thank you.

SENATOR SCHMIT: I support the amendment. I think that, no doubt, Senators Warner, Landis and Coordsen have done some research and they feel justified in it and we kicked it around a lot all the way, as I said, from \$10 million down to \$2 million and this may be the proper amendment. Let's go with that. If we need to change it a year from now, we'll do it. I support it. Hope you vote for it.

PRESIDENT: Thank you. Senator Coordsen, please, followed by Senator Hartnett.

SENATOR COORDSEN: Question.

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

CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Warner, are you going to close on this? Senator Landis, are you going to close?

SENATOR LANDIS: Ah, well, the leopards and the spots that return. Good, good. Listen, this is the thing that says the fund goes up to five, goes down to three, and then you kick it back up to five instead of the opposite numbers that are now in the bill at three and two. And I urge the adoption of the amendment.

PRESIDENT: The question is the adoption of the amendment to the Schmit amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the amendment to Senator Schmit's amendment.

PRESIDENT: The amendment to the Schmit amendment is adopted. Any other amendments, Mr. Clerk?

CLERK: We're back to Senator Schmit's amendment, Mr. President, that you will find in your bill books.

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PRESIDENT: Okay, we're back to the advance...the adoption of the Schmit amendment. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, as has been indicated earlier, there has been a lot of discussion on this bill and there will be a lot more. As you go back to your districts, you're going to find many individuals who don't agree with the bill. You're going to find many who do. Hopefully, we have brought forth an amended bill which is going to be of some help to the industry and some help to the public, but it's not the final version. I can guarantee you this is one bill that will be back here next year. Hopefully, it will be ready for introduction on the first day of the session and we will be working on it the first few days of the session rather than the last few days of the session. This is the kind of bill that ought to be debated by 49 people. There ought to be that many people in attendance here today. I'm sorry I didn't have the bill here last night when we had a full house but it's not to be. So, today, we must vote on it, hopefully, with those of you who are here; hopefully, we will adopt this amendment and that we can then proceed with the bill. I think it's a good start. A lot of people in the industry, a lot of people in the administration, a lot of people in the Legislature have worked hard on this bill. Let's continue that work and try to make some substantial progress this afternoon. I move for the adoption of the amendment.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Discussion? Senator Langford. Thank you. There is no discussion. The question is the adoption of the Schmit amendment to 289. All in favor vote aye, opposed nay. Record.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Schmit's amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Senator, I now have a second amendment by yourself, AM1883.

SENATOR SCHMIT: Thank you, Mr. President.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members, this is an amendment which I have discussed with some of you and with many of you I have not had the opportunity to discuss it in detail. But this is an amendment which I told you I would bring and which I sent around to your desks several days ago which would amend some language of the ethanol legislation so that it would facilitate the ability of the Ethanol Authority to invest in a nonprofit public corporation. I want to make several points clear and then I will open myself up for questions. The bill...the amendment does several things. It strikes language that says that not more than five...\$3 million can be invested to fund ethanol research and development plants. It strikes the provision that limits ownership to 49 percent of the total entity. It strikes the 5 million or 10 percent, whichever is less, on capital costs and I believe there is one more provision. It adds that the Ethanol Authority can invest in a nonprofit corporation. I want to go back just a little way and explain to you the history of what has occurred here. It has been more than a year ago that I began to research the possibility that the plant at Hastings, which was then in receivership, might in some manner or means be acquired by the farmers of the State of Nebraska for the purpose of ethanol production and the development and research that might be of value in extending the ethanol industry, both in Nebraska and nationwide. The bid which we have...which I prepared and which was given on this plant, was not...was not a bid which was given off the cuff. It was based on a tremendous amount of research and understanding of everything that there was possible for us to know about the plant and the ability to put together a plan of operation that the FSLIC and the creditors see stands a reasonable possibility of working and being the best solution to that situation. When I first began to research this, it was apparent that there were two schools of thought. One was that the FSLIC had a white elephant on its hands and just wanted to dump it. The other was that the FSLIC had a very viable asset and wanted to make the most of it. Somewhere in between there it seemed to me was a true answer. And I think that at the present time the proposal that we put together is perhaps the best possible solution. The question is, why did I do it? Why was it done? It was done because I think it is important that we keep this very fine operating entity of the...and a very fine example of the ethanol industry operating as a research and development center and as a model for good operation here in the United States, both for the energy and ethanol and grain use, to

develop the clean grain concept, to develop the utilization of by-products which were considered by the passage of LB 587 and to develop the ownership through a nonprofit public corporation as I have outlined in the proposal which was offered to FSLIC. It is not unusual, of course, for us to propose that a public corporation own this plant. Nebraska is the state of public power. It is a state which prides itself upon public power and the public ownership of power. It's sort of interesting that when I proposed selling the private...the public power entities to private investment that I was informed emphatically and repeatedly from many aspects that I was making a serious mistake. Therefore, it seems to me that since ethanol is power, ethanol is energy, and a few years ago we encouraged the public power districts to become involved in the ethanol industry, therefore, it is...it follows that the ownership of that plant by a public group would be a very likely step. Third, you might want to know where are the bids now, just what is the status of our bid and what is the status of the rest of the bids? I think it's important that you understand this. Our bid is the one which has put us in as one of the three final bidders. The FSLIC, as I understand, and John DeCamp as the lawyer for the firm, is no way a part of the bid except as a lawyer for me and this entity because he did it for me as a friend, the position, as it stands at the present time, is that the FSLIC has stated our bid, which was a cash bid and caused them to consider us as one of the final three bidders, is now subject to renegotiation. The terms which have been presented to us, and John has spoken at length with the FSLIC, the terms which have been presented to us, we think, may not make it feasible for us to buy the plant. It may not be economically feasible under those conditions. Therefore, we will make a counteroffer of something which we believe is reasonable, workable and financially has a chance of success. That bid may or may not be accepted and it may or may not require the assistance from the Ethanol Authority. We do not know now at the present time. More important than that, we are at the present time negotiating with several public entities to see if it's possible to put together a joint venture of the farmers of the State of Nebraska who have contributed the funds, whether they use any of the funds at this time or not, and some other public entity. We have discussed this with several entities at the present time. I'm not going to reveal those at this time but I just want to say they are involved in the public area and they are public entities. We want to see if it's possible, if it will be feasible, if it's desirable, to put together a group of entities in that manner that might be able

to purchase the plant. I cannot commit that any of these will, in fact, want to participate, in the final analysis. But we are discussing the issue and there is a considerable amount of interest. And at least one of the entities has, by resolution, in the past indicated a substantial interest in development of ethanol as a new power source. I have also visited with a group of individuals who are interested in developing the solid waste and other forms of throwaway articles, such as used tires, as a source of energy to provide the BTUs necessary to provide the distillation that has to take place at this plant. There are many other aspects of this area that need to be developed, that will be developed, if and when this bid is successful. I believe that in this instance this kind of research, this kind of development can best be handled through the type of public offer which we have made and the type of public corporation which we have put together. I want to emphasize again, because there are those...and it has been explained to me, very frankly and very honestly and very up forward, there are those who take a negative point of view of this situation because myself and John DeCamp are involved in it. I have said earlier, John DeCamp has no personal involvement except that he has worked for me as an attorney on this plant. Secondly, my involvement is only to the same extent of any of the farmers involved and that is the amount of my own checkoff funds that were contributed to the project. Third, I want to point out again, that if and when the bid...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...is successful, I am willing to withdraw from active leadership of the rule and let someone else take it over. But, at this point, it so happens by virtue of the past year's effort, I am the only one who is in the position to make it happen if it can happen at all. Do I need the amendment? I do not know. We may not even need the Ethanol Authority's help if we get the bid. By the same token, I believe, perhaps, the Ethanol Authority should have the flexibility to make the final determination as to how much they want to become involved and...no matter who ends up buying the plant. I think that if I had...if I had my druthers, ladies and gentlemen, if this were the early part of the session, I would prefer to hold off on this amendment rather than to ask you to adopt it at this time. I would prefer to hold off and, if necessary, bring in a totally new bill. But we are short of time and I would...at this time I'm telling you, I do not know...

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LB 289

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...if we need the amendment for sure or not, but I would ask you to consider it. I will be glad to answer any questions and hope that I can resolve any concerns that you might have.

SPEAKER BARRETT: Thank you. Senator Haberman, discussion?

SENATOR HABERMAN: Mr. President, I will have to raise the question of germaneness. LB 289 refers to the Environmental Protection Act, the Petroleum Products and Hazardous Substance Act, Storage and Handling Act, owners of tanks, protection of the environment; the State Fire Marshal has a role; owner of tanks, septic tanks; and Hazardous Petroleum Release Remedial Action Act, and I do not believe that this amendment is germane. I have discussed this with Senator Schmit and I think he is kind of leaning that way, too, but I would make an official challenge of the germaneness, Mr. President.

SPEAKER BARRETT: Thank you, sir. Senator Schmit, would you like to respond?

SENATOR SCHMIT: Mr. President and members, I just...I sort of expected maybe that my good friend, Rex, would ask that and I believe it is germane because 289 does have a section which refers to the storage of ethanol in tanks and it discusses that aspect of it. But if it is permissible to the Chair, in order to save time, Mr. President, rather than debate the germaneness issue, I would move for a suspension of the rules, if that would be acceptable to Senator Haberman.

SPEAKER BARRETT: Thank you.

SENATOR HABERMAN: Mr. President, a suspension of the rules for what purpose?

SENATOR SCHMIT: I would move that we suspend the rules...the issue of germaneness.

SPEAKER BARRETT: Senator Schmit, I believe that you were making a motion then to suspend the rules.

SENATOR SCHMIT: That is right.

SPEAKER BARRETT: The germaneness rule...

SENATOR SCHMIT: That is right.

SPEAKER BARRETT: ...so that we can consider your amendment.

SENATOR SCHMIT: That is right, Mr. President.

SPEAKER BARRETT: Thank you. Senator Morrissey, would you have any comment on that subject? I'm going to go through a number of lights quickly.

SENATOR MORRISSEY: Yes, I would. Mr. Speaker and members, Senator Schmit, it was great for two days, you and I were agreeing with each other and it was wonderful. But I think we're done on this particular point anyway. I realize how committed Senator Schmit is to this issue but I would reiterate something I said earlier, we must pass 289, we must do it to maintain our petroleum distribution network. And there is vetoes you can override and there is vetoes you just simply cannot override. And I, in no way, can support suspending the rules to allow consideration of Senator Schmit's amendment because I do feel if, by chance, it was adopted that it would pull this bill under and there is no way that we could pass it with this amendment on it. Thank you.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, any comment on the rule suspension? Thank you. Senator Schellpeper.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker, and members, I also rise to oppose to suspend the rules. I think that we're getting into something here that we probably shouldn't be into and I think we need to go on with this bill. This is a very important bill to the industry and I don't think...I'm not saying that the ethanol isn't also important but I think we need to have two separate bills. I think we're trying to mix two different things here and I think 289 is too important to have a bill...or an amendment like this on it. So I would move...or urge that we not suspend the rules. Thank you.

SPEAKER BARRETT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, when I drew the

amendments to LB 289, I was well aware and probably just almost as much aware of the importance of the bill as my good friend Senator Morrissey and Senator Schellpeper, although I realize my awareness level sometimes rises and falls, Senator Morrissey, with the issue, but I just want to way this. It was not my intent to encumber the bill in any way. It was not my intent back in 1971 to cause any problems for the petroleum industry with the creation of DEC. It is not my intent today to cause any problems for them by any amendment or proposed amendment which might cause difficulty with that bill. I have come a long way in the last 18 years with the ethanol industry. As I said when I explained the amendments, I have no problem whatsoever if this body feels at this time they do not want to address it, but I am not going to debate the issue for another hour and a half or so when we have a lot of important work to do. I believe very strongly that perhaps, as I said, I don't know if I need the amendment or not. I do not know. My concern is that I wanted to bring it to your attention, I wanted to bring to the attention of this body on the public record what I am doing, why I am doing it, the direction I am going, and where I hope to arrive. Rather than to cause any difficulty for the proponents of LB 289, Mr. President, I ask permission to withdraw the motion and go on with the bill, and I hope that if any of you have any questions about what we are doing here, have any questions about what I am doing relative to the proposal, that you will contact me privately and we will discuss it further at some other time, and I may be back to you again some other time.

SPEAKER BARRETT: Thank you, sir. It is withdrawn.

CLERK: Mr. President, I have no further amendments to the bill at this time.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 289 as amended be advanced to E & R for Engrossing.

SPEAKER BARRETT: Thank you. You have heard the motion to advance the bill to E & R Engrossing. Discussion? Senator Pirsch, did you care to discuss it? Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, we have had a good discussion here. It started this morning and it is about ready to wind up, but there is one thing more that I would

like to get into record. We talked about how this would help to keep people in business, how it would help the owners of these underground tanks stay in operation. I think that is very important. Also, we adopted the Warner amendment which says that we are going to try to help those that had a problem before, and I believe...I believe that is all right, too. But I think we also need to consider that this is certainly going to help our environment. Leaking tanks throughout the state are causing a lot of problems for us, and not only in Nebraska, but all across the nation. So we need to address it, and like I said this morning, when petroleum products leak into the soil, it causes contamination, contamination to the soil, the ground, and eventually it gets into our underground water, and this is what we should be concerned about. I feel that we need to take a lot of action to keep this from happening and I believe that this bill will do that, or it will help do that, and this is why we need to. Also, if petroleum products leak from an underground tank, it could get into the storm sewers in our towns and our cities, and if the gases build up, it could cause a major fire or it could cause an explosion, and this bill will certainly help those owners of those underground tanks address that problem. And so I feel that we need the bill to clean up and protect our environment. Urge advancement of this bill.

SPEAKER BARRETT: Thank you. Discussion on the motion to advance? Senator Elmer, your light is on.

SENATOR ELMER: Thank you, Mr. Speaker and members. I echo Senator Hefner's comments. As you all know, this bill sets up a method whereby there is from a 1/10th to a 3/10ths of one cent per gallon gasoline tax that would be used to fund the liabilities that may be incurred. This is to be paid by all users of fuels in Nebraska, all users. This bill does fill a very public need for all our citizens in the state. We have many of these tanks that are orphans. People have no idea where they came from, who had owned them in the past, that are causing problems. That is a public responsibility. Second, we have a public need to protect the environment from all of these types of situations. Thirdly, we need to be able to maintain essential services in our small rural communities that would lose them otherwise because of the liabilities and the need to meet those liabilities and to prove that these people can meet the liabilities that our federal government has required. This bill addresses those needs for all of the citizens of the state, and I urge the advancement of this bill to Final Reading.

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LB 289A, 289

SPEAKER BARRETT: Thank you. Senator Langford.

SENATOR LANGFORD: Call the question, please.

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

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. The motion is the advancement of the bill. Senator Schmit, anything further?

SENATOR SCHMIT: Mr. President and members, I just want to say once again that I deeply appreciate the tolerance of the Legislature on this particular bill. It is a very important bill, as Senator Morrissey has said, and Senator Schellpeper, and others. We all understand that. Senator Hefner understands it better than most of us but it is a deeply important bill. We are going to be back again and again and again, but I would encourage you to participate this summer when we hold interim hearings on this issue and other environmental issues, because they are going to become more and more important as the years progress, and many of you...many are much younger than I am, you are going to have to work with those problems a lot longer than I have to, so I would hope you would become deeply involved and try to resolve these issues as we proceed and I know that the industry appreciates your concern and your tolerance. I know that those of us in the rural areas, particularly, as Senator Landis pointed out, appreciate your concern, and as we hold those hearings this summer, please try to participate and come out so that we can resolve these issues in an unhurried manner. I move for the adoption...or advancement of the bill.

SPEAKER BARRETT: The question is the advancement of the bill to E & R Engrossing. All in favor say aye. Opposed no. The ayes have it. Carried. The bill is advanced. To the A bill.

CLERK: Mr. President, LB 289A, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 289A be

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

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

SPEAKER BARRETT: Senator Schellpeper.

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

SPEAKER BARRETT: Senator Moore.

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

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

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

SPEAKER BARRETT: Yes, for the record.

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

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

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LB 289A, 289, 683

vote aye, opposed nay. Voting on the motion to return. Have you all voted? Senator Scofield.

SENATOR SCOFIELD: Let's, if we could, Mr. President, move along here very quickly and have everybody check in and have a roll call. Thank you.

SPEAKER BARRETT: Thank you. Record your presence, please. We are technically under call. Return to your seats and record your presence. Any members outside the Chamber, please return and check in. Senators Ashford, Pirsch. Senator Elmer, please. Senator Haberman. Senator Pirsch, please record your presence. Senator Scofield, only one missing, may we proceed? Members, return to your seats. (Gavel.) The question is the return of the bill to Select File. Mr. Clerk, proceed with a roll call.

CLERK: (Roll call vote read. See page 2601 of the Legislative Journal.) 22 ayes, 20 nays, Mr. President.

SPEAKER BARRETT: Motion fails. Moving to LB 705, Mr. Clerk. All right, that bill moves to Final Reading. We then proceed to LB 289A.

CLERK: Mr. President, Senator Schmit would move to return LB 289A to Select File for a specific amendment. The amendment is on page 2536.

SPEAKER BARRETT: (Gavel.) Senator Schmit.

SENATOR SCHMIT: Mr. President and members, this is a technical amendment that replaces General Fund appropriations with Cash Funds, which reflect the amendments which we made to LB 289 yesterday, makes some minor adjustments in the agency's administrative costs for the fire marshal and the DEC. It actually reduces some of their expenditures and some of their costs, and I move for the adoption of the amendment.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor then of the return of the bill to Select File vote aye, opposed nay. Record, please.

CLERK: 29 ayes, no nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: The bill is returned. Senator Schmit, please.

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LB 75, 89, 89A, 147, 177, 177A, 272  
279, 289A, 289, 487, 487A

ASSISTANT CLERK: (Read LB 272 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 272 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 2691 of the Legislative Journal.) Vote is 47 ayes, 0 nays, 2 present not voting, Mr. President.

PRESIDENT: LB 272 passes with the emergency clause attached. I understand we're going to skip LB 272A for the moment and continue on with LB 279 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 279 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 279 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 2692 of the Legislative Journal.) Vote is 44 ayes, 0 nays, 5 present and not voting, Mr. President.

PRESIDENT: LB 279 passes with the emergency clause attached. While the Legislature's in session and capable of transacting business, I propose to sign and do sign LB 147, LB 487, LB 487A, LB 75, LB 89, LB 89A, LB 177, and LB 177A. Continue on with LB 289 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 289 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 289 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 as found on page 2693 of the Legislative Journal.) 44 ayes, 0 nays, 2 present not voting, 3 excused not voting, Mr. President.

PRESIDENT: LB 289 passes with the emergency clause attached. LB 289A 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.