

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

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LB 13, 18, 19-32, 58, 62, 70, 115
128, 134, 142, 156, 255, 279, 283
284, 296, 298, 312, 321, 322

SPEAKER BARRETT: Thank you. You have heard the closing on the advancement of 134. Those in favor of the motion to advance the bill please vote aye, opposed nay. Have you all voted on the advancement of LB 134? Record, please.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of 134.

SPEAKER BARRETT: LB 134 is advanced to E & R. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. Thank you. Your Committee on Transportation, whose Chair is Senator Lamb, to whom was referred LB 115, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 283, General File; LB 284, General File; LB 58, General File with amendments; LB 142, General File with amendments; LB 156, General File with amendments; and LB 128 indefinitely postponed. Those are signed by Senator Lamb. (See pages 439-41 of the Legislative Journal.)

General Affairs Committee, whose Chair is Senator Smith, reports LB 298 to General File, LB 70 to General File with amendments, and LB 62 indefinitely postponed. Those signed by Senator Smith as Chair. (See page 441 of the Legislative Journal.)

Your Committee on Education, whose Chair is Senator Withem, reports LB 312 to General File with amendments. That is signed by Senator Withem. Banking, Commerce and Insurance reports LB 279 to General File; LB 296, General File; LB 321, General File; LB 322, General File; those signed by Senator Landis as Chair. (See page 442 of the Legislative Journal.)

Mr. President, I have hearing notices from the Natural Resources Committee, signed by Senator Schmit; Health and Human Services, signed by Senator Wesely. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 13, LB 18, LB 19, LB 20, LB 21, LB 22, LB 23, LB 24, LB 25, LB 26, LB 27, and LB 28, and LB 29, LB 30, LB 31, and LB 32. The next bill, Mr. Clerk, LB 255.

the record that needed to be put there and I hope that we will vote to indefinitely postpone this bill.

SENATOR L. JOHNSON: Thank you, Senator Chambers. You've heard the motion to indefinitely postpone LB 156. All those in favor vote aye, opposed no. Has everyone voted? Has everyone voted? Record, Mr. Clerk.

CLERK: 12 ayes, 22 nays, Mr. President, on the motion to indefinitely postpone.

SENATOR L. JOHNSON: The bill is not indefinitely postponed. Is there further discussion on the bill? Senator Hefner, do you have closing?

SENATOR HEFNER: Mr. President and members of the body, I move to advance LB 156 to E & R Initial. I want to thank those 22 senators that voted against the kill motion. I think it's only right and proper that we advance this bill. We have other prestige plates out there. We recognize other groups of people. I think if anybody is...if any group is worthy of being recognized, I think it is those Purple Heart veterans. If we want to kill this bill, then we should have absolutely no more prestige plates and I feel very strongly about that. I can't understand Senator Lynch. Senator Lynch was an introducer of this bill, he co-sponsored it, and now he didn't say why he has a change of heart. But I imagine he has his own reasons for that. So I would urge you to advance this bill.

SENATOR L. JOHNSON: Thank you, Senator Hefner. The question is on the advancement of LB 156 to E & R Initial. All those in favor vote aye, opposed nay. Has everyone voted? Record, Mr. Clerk. A record vote has been requested.

CLERK: (Record vote read. See page 453 of the Legislative Journal.) 26 ayes, 7 nays, Mr. President, on the advancement of LB 156.

SENATOR L. JOHNSON: LB 156 advances to E & R Initial. LB 298.

CLERK: Mr. President, LB 298 was a bill introduced by Senator Barrett and Senator Warner. (Title read.) The bill was introduced on January 10, referred to General Affairs, advanced to General File. I have no committee amendments, Mr. President.

SENATOR L. JOHNSON: The Chair recognizes Senator Barrett.

SENATOR BARRETT: Thank you, Mr. President and members. LB 298, as has been already discussed, is a bill to increase the legal rate for which newspapers are allowed to charge when they publish public notices and those public notices are required by law. And it would seem that every certain period of time, it's been averaging eight or nine years I believe, the newspapers have to come to this body and ask for an increase in those rates. In the bill you will notice on page 2 calls for a raise of from 32 cents per line to 37 cents per line on the first insertion and from 28 cents per line to 32 cents per line for any subsequent insertion and the statutes, of course, identify the number of publications necessary. The conversion tables are also found in the bill itself. It's a very straightforward bill, up or down. Do the newspapers of Nebraska get the increase, do they not? I believe that the fact sheet which has been passed out on your desks is most appropriate and probably answers most, if not all, of the questions that you might have on this issue. Specifically, I would call your attention to the fact that newspapers printing public notices have not had an increase in fees since 1982. The bill asks for a 15 percent increase. The costs of publishing over these eight years, seven years, have certainly increased more than that 15 percent. You can compare these increases in essential costs of publication since 1982 with the costs as you will see in your fact sheet, the cost of postage up 150 percent or more, newsprint up 32 percent, ink up 17 percent. That does not say anything about the film and the chemicals and the labor and the employee benefits, et cetera. I think the only question that has been asked of me that might not be answered on the fact sheet is, why can't publishers increase their subscription and their advertising or rates to take care of increased costs? Well, they have; they do; and they will continue to do it. But our problem here is that they can't raise the legal rate for legal notice publications without legislative approval and that is the sum and substance of the bill and that is the reason why the bill is before us today. With that, Mr. President, I would urge the body to advance LB 298. Thank you.

SENATOR L. JOHNSON: Thank you, Senator Barrett. Further discussion on the bill. Mr. Clerk, amendment on the desk.

CLERK: Mr. President, yes, sir, excuse me. Senator Haberman

would move to amend the bill, Mr. President. Senator, would you like me to read the amendment or...? (Read Haberman amendment. See page 454 of the Legislative Journal.)

SENATOR L. JOHNSON: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, there is a story behind this amendment and I would like to take the time to explain it to you. Quite a few months ago I became concerned about where, why and how rules and regulations are published in the paper and throughout the state. So in doing so, I discovered, and if you look on page 2 of the handout, I discovered that over half of the agencies do not, and I repeat, do not publish in the World-Herald. So I said to myself, well, this is kind of unusual. The World-Herald is obviously the biggest newspaper in the state. They obviously go to every nook and cranny in the state. However, over half the state agencies do not publish in the World-Herald. So the next question that I asked was, why? Because I thought somewhere there was a statute that says that they should. So upon further investigation, if you turn to the fourth letter or page in your handout, Allen Beermann says that he does not use the World-Herald, he does not use the World-Herald for constitutional amendments proposed by the Legislature and they do not...he does not use it for any initiative or referendum petitions, although he is directed by the law to publish in all of the weeklies and daily newspapers this notice. And he is directed by law that he is to pay 32 cents per line, but he does not publish it in the World-Herald because they charge much more than 32 cents a line. And he does not want to have any liability against his office for paying more than the law says. Now also in your pamphlet you will find two letters from the World-Herald themselves, and they state in their letters that they do not have a legal rate schedule because it has always been their policy to charge the regular line rate. There are two letters in there that state that. Also in your pamphlet on the last page is the legal statute that sets the rates a newspaper shall charge. So not knowing where to go, I got the Attorney General involved and I wrote and asked his opinion. The first letter says, while you are correct that the statute does place into law the legal rate for public notices, there is currently no way to enforce that statute criminally as there are no criminal sanctions or penalties for variances of the statute. So in visiting with the Attorney General, I asked him how could we correct this. And he said, Rex, he said, it's real simple. All you do is put an

amendment on the bill or a bill or put in the statute that it will be a Class IV misdemeanor. He said then this office can and will prosecute, they will. Now a Class IV misdemeanor, it says they can't go to jail, we can't put them in prison and the biggest fine that there can be is \$500 and a minimum is \$100 and for each day that that is violated that is what the fine will be. So throughout all of this maneuvering and all of this talking, I put out a news release stating to the public in general throughout the state that the World-Herald violated this statute and were charging much, much more than they should. I told the truth. Then I received a registered letter from the World-Herald saying, Haberman, if you don't retract those statements, we're going to sue you. So I sat out there in Imperial, Nebraska and I said, man, the World-Herald, that big outfit in Omaha is going to sue me, and there for about three seconds I was afraid. I was afraid of this big monster you might call the World-Herald of coming out to Imperial and taking this poor cowboy and farmer and taking him into court and suing him. So finally I said, let's let them try it. So I had to hire an attorney and I did hire an attorney and it cost me \$625, by the way, to hire the attorney, and he talked to the World-Herald. So I did retract the statement to the point that I corrected how much over they were charging. I said, they're still overcharging, but maybe not as much as I first said. To date I have not heard from them. Maybe after today I will and I hope so. I hope I do hear from them and I hope that they do continue with their lawsuit. However, that is not my point really. My point in doing this is, as it is now, if they publish legal notices, rules and regulations, meetings and so on and so forth, half of the agencies might be in violation for paying more, and half aren't doing it because they are following the statute. Then let's say, well, we're going to publish in that Daily Journal (sic). We're going to publish the constitutional amendments and the initiatives and the referendum petitions in the Daily Journal (sic) in Omaha. That goes to 20,000 people. All the rest of the citizens in Omaha don't have any idea of what is going to be on the ballot when they go to vote. Only 20,000 citizens in the City of Omaha are going to receive notices of public hearings on rules and regulations. And I don't think this is correct. I don't think this is right. So this amendment, fellow senators, merely says that if a newspaper does not follow the law they can be prosecuted. And I ask that you adopt this amendment. Thank you.

SENATOR L. JOHNSON: Thank you, Senator Haberman. Senator

Smith, do you wish to discuss the amendment? Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I'd feel just a little more comfortable with this language if it said, any publisher who knowingly charges more than the legal rate for publication. Seems to me that what you need here is something more than a clerical error to trigger criminal responsibility. And this language does not have the element of scienter or knowledge, as you refer to it in the analysis of criminal statutes. Somebody who made a clerical or billing error might trip this criminal penalty, seems to me ought to know that you're charging more than the legal rate. My guess is that maybe that is satisfactory to Senator Haberman. Let me go on to say that I think the case has been made for 298 in contradistinction to the argument that we had yesterday. I am convinced that since 1982, costs have gone up substantially and this Legislature should not be so penurious as to penalize an industry by trying to keep prices down when costs have, in fact, changed. We need to be realists and we need to recognize when costs have changed. We should raise the rate, we should pass 298.

SENATOR L. JOHNSON: Thank you, Senator Landis. Senator Hefner. I do not see him. Senator McFarland, please.

SENATOR MCFARLAND: I would just call the question, Mr. President. I think I'm the last speaker.

SENATOR L. JOHNSON: Senator Barrett, did you want to speak on the amendment?

SENATOR BARRETT: Am I the last light, Mr. President?

SENATOR L. JOHNSON: You are the last light at this time, yes, sir.

SENATOR BARRETT: Fine. Just one quick comment or two. I was not aware that this amendment was to be placed on the desk by Senator Haberman, and I find it a bit difficult to oppose something that the law says you can't do anyway. LB 298 presents a cap. This is the top limit. And I'm a little bit distressed that we have an argument, apparently, between a member of this body and one of the state's newspapers in the form of this amendment. I also am in total agreement with Senator Landis's statement that the word "knowingly" should be

inserted before charges in Senator Haberman's amendment. I will not support the amendment at this point in hopes that some further discussion might take place between General File and Select File. I would hope the body would do likewise. Thank you, Mr. President.

SENATOR L. JOHNSON: Thank you, Senator Barrett. Senator Hefner, did you wish to discuss the amendment? The Chair recognizes Senator Haberman for closing.

SENATOR HABERMAN: Mr. President, members of the body, Senator Barrett, if you look in your pamphlet you'll see where the World-Herald has put down in black and white and signed it, they will not charge the legal rate, they will not charge the legal rate. They are going to charge their regular line rate. The purpose of the amendment is not a personal fight between me and the World-Herald. I threw that in to explain to you how I got started and some of the ramifications. The amendment was drawn by the words of the Attorney General. He says this is what we need if we're going to do something about this. However, I will accept, on Select File, Senator Landis's amendment. Does he have it up there now, Pat? Is the amendment up there to make it "knowingly"?

CLERK: I've drafted it, Senator, assuming that either you or Senator Landis might want to offer that. But...

SENATOR HABERMAN: Okay. I will accept that amendment on Select File, if Senator Landis wants to put it in the bill. I'll close on that and ask you to accept the amendment.

SENATOR L. JOHNSON: Senator Haberman has closed. The question is on the advancement...on the adoption of the Haberman amendment to LB 298. All those in favor vote aye, opposed no. Has everyone voted, please? Record, Mr. Clerk.

SENATOR HABERMAN: Let's have a...

SENATOR L. JOHNSON: Senator Haberman.

SENATOR HABERMAN: Do I have...need a simple majority of those voting, or do I need 25?

SENATOR L. JOHNSON: Twenty-five is required.

SENATOR HABERMAN: Let's have a call of the house then, please.

SENATOR L. JOHNSON: Call of the house has been requested. All those in favor vote aye, opposed no. Record, Mr. Clerk.

CLERK: 17 ayes, 1 nay to go under call, Mr. President.

SENATOR L. JOHNSON: The house is under call. Members should return to their seat. All unauthorized personnel will please leave the floor. Please indicate your presence. Senator Abboud, Senator Farrett, Senator Bernard-Stevens Senator Beyer, Senator Chambers, Senator Goodrich, please return to the Chamber and indicate your presence. Senator Pirsch, Senator Robak, Senator Wesely. Will Senator Wesely, Senator Bernard-Stevens, and Senator Chambers, please return to the Chamber. There are three....Senator Wesely. Senator Bernard-Stevens and Senator Chambers are on the way. Senator Haberman, may we proceed with the roll call at this point? Thank you. Mr. Clerk, call the roll and a record vote has been requested.

CLERK: (Roll call vote taken. See pages 454-55 of the Legislative Journal.) 25 ayes, 15 nays, Mr. President, on adoption of Senator Haberman's amendment.

SENATOR L. JOHNSON: The amendment is adopted. Back to the discussion of the bill, LB 298. Another amendment, Mr. Clerk.

CLERK: Mr. President, Senator Landis would move to amend. (Read Landis amendment as found on page 455 of the Journal.)

SENATOR L. JOHNSON: The Chair recognizes Senator Landis.

SENATOR LANDIS: Thank you, Senator Johnson. Rather than wait for another day and remind ourselves of where we are in the issue, I just whipped up there and put the amendment in. My preference would be that this be a criminal activity that one would have to know one was committing, that you would have to know that you were charging more than the legal rate, otherwise a clerical error would trip this kind of liability. It's not difficult to establish this kind of information, you go in, you show them the rate and they say, well, I'm not going to charge you the rate. And you take that conversation into court and you can establish knowledge in that kind of a situation. So, I would add the word "knowingly" in the Haberman amendment. I believe Senator Haberman has agreed to that and I'd yield the

balance of my time to confirm that with Senator Haberman.

SENATOR L. JOHNSON: Chair recognizes Senator Haberman.

SENATOR HABERMAN: I will accept the amendment.

SENATOR L. JOHNSON: Thank you. Further discussion on the amendment? Senator Warner is recognizes.

SENATOR WARNER: Mr. President, I rise to talk on the amendment only because I regret not having pushed the button sooner, before the last vote. It really makes no difference if you put knowingly or unknowingly or make no change, I don't believe. As I understand the thrust of the law, it's not to govern what the newspaper charges, it is the authorization of what the government can pay. I think you're getting into a whole new scope if you go under the area that you are going to regulate by statute, and it is a constitutional issue as to what, and the freedom of the press, as to what you can or cannot force a newspaper to do. I wouldn't try to follow that argument up, but I have a feeling that you're getting to an area beyond which the Legislature can do. But, irregardless of that, the limitation is not on the paper, the authorization, the limitation is on what government, maximum amount they can pay. Some newspapers will pay...charge less than that rate, and I believe do. But in no case is government authorized to pay more. That is the issue that we're dealing with, not what a newspaper can charge on anything, but what local government is authorized and mandated to pay up to, and I think you're mixing something in with this whole amendment, whether this is added or not, that you...that we cannot do. Thank you.

SENATOR L. JOHNSON: Thank you, Senator Warner. The Chair recognizes Senator Barrett.

SENATOR BARRETT: Mr. President, members, I, too, have some concern about the First Amendment to the Constitution of the United States with reference to this amendment, a freedom of speech question. However, specifically with reference to Senator Landis's amendment to add the word "knowingly", I am in full sympathy with it. As I said before, I believe that it makes a very questionable amendment a far better amendment, at this point. I would urge the body to support the amendment. Thank you.

SENATOR L. JOHNSON: Thank you. Chair recognizes Senator Ashford.

SENATOR ASHFORD: I would ask Senator Barrett a quick question, if I could.

SENATOR L. JOHNSON: Senator Barrett, do you yield for a question?

SENATOR BARRETT: I'd be happy to.

SENATOR ASHFORD: Senator Barrett, are you saying that you are accepting the amendment and then...

SENATOR BARRETT: Yes, I am accepting...

SENATOR ASHFORD: ...would also, with that change?

SENATOR BARRETT: Yes.

SENATOR ASHFORD: Okay. As long as "knowingly" is there, you have no problem with it.

SENATOR BARRETT: I have some still continued concerns about the amendment offered by Senator Haberman. But Senator Landis's amendment to the amendment makes it a far better amendment.

SENATOR ASHFORD: Could I ask Senator Warner a question, because maybe I don't...

SENATOR L. JOHNSON: Senator Warner.

SENATOR ASHFORD: Senator Warner, could you explain to me not the constitutional issue that you raised, but the issue of where the requirement lies, who...in the statute.

SENATOR WARNER: My understanding of the thrust of the statute is a limit that is in effect, authorized what a governmental subdivision must pay for the insertion of a legal ad, up to that amount. I do not understand that there is a prohibition to pay more or to pay less.

SENATOR ASHFORD: It authorizes them to pay a certain amount. It doesn't....Could I ask then Senator Barrett one more question?

SENATOR L. JOHNSON: Senator Barrett.

SENATOR BARRETT: Yes.

SENATOR ASHFORD: Senator Barrett, is Senator Warner's explanation accurate based on your understanding of the bill, that there is nothing in the bill that would prohibit a newspaper from charging more, necessarily?

SENATOR BARRETT: It is my understanding, and I could be incorrect that this is a cap, the bill is a cap, that's right, the legal rate for the state to pay.

SENATOR ASHFORD: I have the same problem, I think, that Senator Warner does. I think....I understand what the amendments are trying to do and I understand Senator Landis's amendment, and I...it is an improvement, but I think Senator Warner makes a good point. I think we may be causing some confusion, and maybe...Senator Chambers is looking at the bill and maybe can clear it up. But there may be some confusion about if we put a cap on what the state can pay and then make it a prohibition for the newspaper to charge a greater amount, we may be dealing with two topics here and prohibiting one thing and then charging someone else with a crime, and I'm not sure that that is what we should do under the bill as it's written now. So that would be...I have the same concerns Senator Warner does. I think we maybe have to go back in the body of the bill and change that somewhat before we add this amendment.

SENATOR L. JOHNSON: Thank you. Chair recognizes Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, for many years we've come by this body, from time to time, and increased what was taken to be the legal rate for printing for the newspapers in the State of Nebraska. It's always been kind of an annual, or not an annual but sort of a regular situation, a ritual. And, as I recall, the explanations to myself have been that this will allow us to charge X number of dollars per line, or X number of dollars and cents per line. So I guess I am a little bit confused now after 20 years when we have some dissension here on the floor, and I really don't know who wants to answer this question. But have we been just kidding ourselves these past years when we have set a rate which is acceptable to most of the

newspapers in the State of Nebraska but unacceptable to our good friends at the World-Herald so that they can just disregard it. Would Senator Warner tell me why then the Banner-Press could not charge more, or could they charge more for a legal notice in David City, just as does the World-Herald? I understand, of course, the difference in the circulations and all of that, but if there is a limit that the Banner-Press can charge, then how does one newspaper circumvent that limit?

SENATOR L. JOHNSON: Senator Warner.

SENATOR WARNER: Senator Schmit, the point I'm trying to raise, it appears to me that the authorization, by law, is a mandate of a maximum that government must pay. They could, obviously, pay less, and it is not a mandate to what a newspaper can charge. As a practical matter, it may come down that way because if they will not run it for that rate it will not be run at all in that newspaper. That is a practical thing. But I seriously doubt if you can mandate, by law, what a newspaper charges for things. But, in any event, this doesn't do it. What it basically does is authorizes what a governmental subdivision can pay, as I view it.

SENATOR SCHMIT: In other words it says that you may pay \$2 a line, you may do it for \$1.50, you may not do it for \$2.50, is that right?

SENATOR WARNER: Local government is not mandated, by law, to pay more than what is the limit set by statute. They could pay less.

SENATOR SCHMIT: Yes, but they cannot pay more, is that right?

SENATOR WARNER: Oh, no, I didn't say they couldn't.

SENATOR SCHMIT: You said they couldn't, or they could? If we passed this...

SENATOR WARNER: I said that I did not believe they could be compelled to pay more, it's optional if they want to pay more.

SENATOR SCHMIT: All right, then suppose that in many counties we have only one newspaper and suppose that in that county the newspaper says they will not print it for the legal rate. But there is a requirement for legal notices to be printed, then

what do we do?

SENATOR WARNER: You're asking me?

SENATOR SCHMIT: Pardon?

SENATOR WARNER: As I recall, you're asking me questions beyond my immediate response, but, as I recall, the language for distribution isn't limited necessarily just to a county. It seems to me I have heard people speak in this area where a particular newspaper is used because it covers a variety of counties, and that is the one that is used rather than some. I believe someone on the floor the other day spoke of on a different bill where some how or other agreement...

SENATOR L. JOHNSON: One minute.

SENATOR WARNER: ...the maximum that the government paid was by law, but it was broken up between two or three newspapers, each taking a little piece of it, so it was partially public service. I do not believe that they are prohibited from spending more, because obviously some do by the list that Senator Haberman passed out. Apparently they do.

SENATOR SCHMIT: Well, Mr. President and members, I guess I'm concerned because in Butler County we have really only one newspaper of general circulation. There are some legal notices that must be circulated and printed in that newspaper. And maybe Mr. Tarr has been doing himself a disservice these past many years, he could have charged more because no one else can fulfill the legal requirement, unless of course they would print it in the World-Herald, which (interruption)...

SENATOR L. JOHNSON: Time.

SENATOR SCHMIT: ...the entire copy also, which is going to charge more money. Seems to me that Mr. Tarr could charge the same thing that the World-Herald charges and get away with it scot-free.

SENATOR L. JOHNSON: Thank you, Senator Schmit. Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I doubt that this issue will be resolved this morning, but I

think it's good that finally we're having a discussion of just what is done and what is entailed when the state mandates a certain thing to be published, then attempts to determine how much is going to be charged for that publication. And here is what I'm trying to say, the newspaper is not owned by the state, it is not licensed by the state, it's supposedly a private entrepreneurial enterprise, able to charge whatever the traffic will bear and competition keeps the prices down and all of that. What the state might be in a position of having to do, and it takes an issue like this to bring it to our attention, is limit the amounts of things and the types of things that are required by law to be published. The newspapers have, some of them, have survived because of the numbers of things that are required by law to be published in a paper of general circulation in the county. Instead of worrying about how much is charged per line, as we are in this particular instance, we ought to look at the entire issue and we ought to stop requiring so much to be published. There are some essential things, maybe when a government body is going to meet, although some papers don't print that. Maybe the only things that should be required to be printed, by law, are those that pertain to legal actions, those matters that are before a court and where notification must be given to the parties. Other than that, don't require the publication of anything and the newspapers won't even come to us with these kinds of issues. If the state tried to order a certain thing to be printed, that could, perhaps, be considered an abridgment of the freedom of the newspaper to print or to refrain from printing what they choose. What is being discussed here is that should a paper decide to print these notices and the law does not require the paper to print them, should a paper decide to print them, this is the maximum that can be charged. If a paper looks at that maximum and says I do not want that amount, then they simply won't print it. If we arrive at a situation where no paper in the county will print for that amount, the proviso should be added to any law requiring publication is something to the effect that if no paper of general circulation in the county will publish the notice for the amount specified in statute, such notice need not be published. Then you will hear a different cry from the newspapers. But I think that is the approach that would be better than the one that we're taking here. And by here I mean the amendment which I voted to adopt and the attempt to put in statute what can be charged. We need to go back to the first question of what is being required to be noticed by way of the newspaper.

SENATOR L. JOHNSON: Thank you, Senator Chambers. Chair recognizes Senator Abboud.

SENATOR ABOUD: Question.

SENATOR L. JOHNSON: See five hands? I do. The motion is on the clos...cease debate. All those in favor vote aye, opposed nay. Has everyone voted? Record, Mr. Clerk.

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

SENATOR L. JOHNSON: Debate has ceased. The question is on the adoption of the Landis amendment to the Haberman amendment. All those favor....Senator Landis is recognized for closing. Sorry.

SENATOR LANDIS: Thank you. I want to remember to bring this issue back home to where it is right now, so we know what we're voting on. Jacky Smith wants me to let you know that the General Affairs Committee will be studying this issue, generally, in the area of notices, in the area of what is required by law to be published and fair rates. So there will be a discussion of the issue and its broader implications in time by the body. Secondly, the Haberman amendment was a criminal penalty, minimum 100 bucks, maximum of 500 bucks, if you publish at a rate different or higher than, rather, the legal rate. With respect to the Warner arguments, let's remember that we have an Attorney General's Opinion on our desks that recognizes that a criminal sanction is in the province of the Legislature to consider. We certainly have the opportunity for the Attorney General to tell us that this was beyond our means, and the Attorney General did not do so, in fact, brought it up as a response. Now I'm sure it's one man's opinion. With respect to the statute itself, if you take a look at 33-141, listen to a little bit of the language in it. The legal rate for publication for all legal notices, and guess who's getting the directions here, shall be 32 cents a line, single column, standard newspaper measurements for the first insertion and shall be 28 line, single column, standard newspaper measurement for each subsequent insertion, and then includes the conversion table with the pica width, the first insertion and the second insertion. My guess is that this statute is not directed to local political subdivisions, it is directed to newspapers, making reference to the way they publish, their column size, the style of type that they can use. It also says you can publish

in a larger than that, if you want, but those are the general format of style we want. I think that it's fair to say that this is directed, at least, towards the newspapers, certainly arguably. Third, the issue on whether or not the paper is constitutionally somehow limited here, I think, is answerable by the fact that the paper has the right to say no, we're not going to take this ad. In other words, the state can't force the paper to print anything it doesn't want to print. Now the question then becomes the Schmit question. What happens if a paper chooses not to? The law here has a general goal of what is called "reasonable notice", not actual notice, which is where you get a letter in the mail, but reasonable notice. And reasonable notice varies under conditions. What your general obligation is to have a paper of general circulation in the county. If you don't have a paper in your county, you go to the next county that can provide that. If you can't do that, you do a general statewide paper. But as conditions vary, what becomes reasonable changes. It seems to me that there be... I don't think we're at a hang-up here if, for some reason, the papers stop choosing to do this. At this point, I'd suggest we do this, adopt this amendment, pass the statute onto the next level. We're going to have a week, that is certainly going to give the Press Association time to dig up, and they've got a very fine legal staff available to the Media of Nebraska, I think is their political arm, to come down here. We all know Alan Peterson, a charming fellow and a fine lawyer. My guess is, if there is a constitutional argument, Alan will find it between now and Select File and we'll have a chance to see where we lay in a week's time. I'd urge adoption of the amendment, advancement of the bill today. And, remember that this process we have is a winnowing down, we can use the deliberation over time to improve a bill. This is not a final issue today, we'll have a chance to take a look at it in a week's time. Thank you.

SENATOR L. JOHNSON: Thank you, Senator Landis. The question is the adoption of the Landis amendment to the Haberman amendment. All those in favor vote aye, opposed no. Record, Mr. Clerk.

CLERK: 32 ayes, 1 nay, Mr. President, on adoption of Senator Landis's amendment.

SENATOR L. JOHNSON: The amendment is adopted. Back to the bill. Or, do you have anything further on the desk, Mr. Clerk? Is there anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President, excuse me.

SENATOR L. JOHNSON: Chair recognizes Senator Schimek for discussion of the bill.

SENATOR SCHIMEK: I don't have any further comment, or any comment at this time.

SENATOR L. JOHNSON: Thank you. Chair recognizes Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I just want to call your attention again to the comments that were made by Senator Landis. I do not see in the statute or in the proposed green copy of the bill latitude. I see specifics. The bill says shall do this, and shall do that, and it shall be this, and it shall be this size, et cetera, et cetera, et cetera. It does not appear to me that there is any latitude. I just want to point out again, as Senator Landis has also pointed out, that there are a number of counties where there may be only one newspaper, and if that newspaper so chose not to accept that fee, I do not believe, under this provision, that they can legally charge something else. Now, if they say we're going to run it as a display ad, it's not going to be a legal notice, then I think they are flirting with the law and I don't think that we want to do that. I'm a little concerned, I guess, with the adoption of the Landis amendment which says "knowingly", because it may leave a wide open gate to run through for those who want to circumvent it. Generally, by and large, we recognize that most newspapers in this state accept the legal rate, I believe. But it does place the agencies in a quandary. We may, in some instances, place a subdivision of government in a dilemma where we require publication or notice and where there is not a vehicle for that notice. If the Banner-Press does not print it, do we satisfy the requirements of the law by printing it in Al Novacek's Dwight Doodles, with has a circulation of about 75. I doubt that it would. The point I want to make also is this, as Senator Landis has also pointed out, there may be other methods whereby notification can be accomplished rather than just forcing a newspaper to print a legal notice for less than what they think is a fair rate. But I believe that the law is specific, I believe it has been specific, and I believe that we have reinforced that specificity with the advancement or the adoption of these amendments and hopefully the advancement of the bill. I'm not sure how it's going to happen in some areas

if we run into a bind, but I'm sure there will be some way to get around it. I'm not really concerned about the Omaha area, because there are other areas, other methods whereby legal notices can be taken care of in that area. It might be a problem in some of the outlying counties of the state, and so we might have to take another look at that some time. So far as I know most of the rural area newspapers are willing to print for the amount of money which we have specified here today.

SENATOR L. JOHNSON: Thank you, Senator Schmit. The Chair would like to announce some guests of Senator McFarland in the north balcony of the Legislature, 60 fourth graders from Pyrtle School in Lincoln and their teachers. Thank you for visiting your Unicameral Legislature. The Chair recognizes Senator... Mr. Clerk, I understand a priority motion has been filed.

CLERK: Mr. President, it has, and if I may right before we get to that, items for the record. Unanimous consent request by Senator Ashford and Senator McFarland to add their names to LB 89; Senator Abboud to LB 58; Senator Schimek to LB 776.

Mr. President, Urban Affairs reports LB 106 to General File; LB 194 to General File. Those are signed by Senator Hartnett as Chair. (See pages 455-56 of the Legislative Journal.)

Hearing notices from the Retirement Committee and from the Business and Labor Committee, signed by Senators Haberman and Coordsen, respectively. And new A bill. (Read LB 175A by title for the first time. See page 457 of the Journal.)

Mr. President, the priority motion I have, Senator Haberman would move to adjourn until nine o'clock, Friday morning, January 27.

SENATOR L. JOHNSON: You've heard the motion. All in favor say aye. Opposed no. We are adjourned until nine o'clock tomorrow morning.

Proofed by:

La Vera Benischek
LaVera Benischek

I have hearing notices from the Education Committee, signed by Senator Withem; from Agriculture, signed by Senator Johnson. Mr. President, Senators Moore and Schimek would move to reconsider the adoption of the Haberman amendment to LB 298 adopted yesterday; and a request from Senator Pirsch to withdraw her name as co-introducer to LB 415.

Mr. President, Senator Johnson would like to have a meeting of the Agriculture Committee in Room 1517 upon adjournment. Agriculture Committee, Room 1517 upon adjournment.

Mr. President, Senator Wesely would like to offer notice of hearing by the Health and Human Services Committee.

SPEAKER BARRETT: Motion on the desk.

CLERK: Mr. President, Senator Hall would move to amend LB 70.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. Would the Clerk, please, read the amendment.

CLERK: (Read Hall amendment as found on page 480 of the Legislative Journal.)

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President. Thank you, Mr. Clerk. Ladies and gentlemen, I spelled out earlier what the intent of this amendment does. It just, as I stated, sunsets the provision more than a year after the federal law requiring that the warning be placed on all containers. It also places the E clause on the bill, because I think that it is an important issue. I never denied that. I just think that we were going about it in the wrong way, the body clearly feels otherwise. With that, I think that we should address the issue now and then allow that the requirement for the sign go away, basically 14 months after the federal government law takes effect. I would urge the adoption of the amendment. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the Hall amendment? We'll go back to the regular speaking order. Senator Schimek,

February 1, 1989

LB 70, 156, 298

CLERK: (Read record vote as found on page 533 of the Legislative Journal.) 27 ayes, 5 nays, Mr. President, on the advancement of LB 156.

PRESIDENT: LB 156 advances. LB 70.

CLERK: Mr. President, I have E & R amendments to LB 70.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: There are E & R amendments?

CLERK: There are, yes, sir.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 70 be adopted.

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

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

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 70 be advanced, as amended.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It advances. We'll move on to General File, LB 298.

CLERK: Mr. President, General File, 298 was a bill introduced by the Speaker and Senator Warner. (Read title.) The bill was introduced on January 10, referred to General Affairs. The Legislature considered the bill on January 26, Mr. President. At that time there was an amendment to the bill by Senator Haberman that was adopted. There was an amendment to the Haberman amendment by Senator Landis that was adopted. Mr. President, I now have pending a motion to reconsider the adoption of the Haberman amendment, that is offered by Senator Moore and Senator Schimek. That motion, Mr. President, was filed on January 27th. It's found on Journal page 479.

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

SENATOR MOORE: Yes.

FRESIDENT: All right.

SENATOR MOORE: Mr. President and members of the body, as we move back to General File this morning, we're back to an issue that we debated quite extensively last week. As you all remember, last week we did adopt and put on Senator Haberman's amendment that would allow the state to prosecute certain papers for charging over and above the legal rate. I think there was a good member...good number of members of this body who may have been like me, we liked the message that we were sending when we adopted that amendment. There is a certain institutional paper in this state that I believe we were trying to send a message to. We were not happy with the way they may have been dealing with these legal notices. But I think now that Senator Haberman's amendment has been adopted, it is probably time that we take a step back, look at what we actually can do within the confines of the Constitution. Probably need to take a step back and look at what we actually want to do. Maybe if we've sent our message, we've had our fun and games and gave a...been a burr under the saddle for one of the papers in the state, it's probably time, I guess, I enjoyed voting for that amendment. I always thought, when I voted for it, it eventually would have to come off. As opposed to waiting for Select File, I think we'd be wise today to reconsider the...Senator Haberman's amendment, get that off of the bill while at the same time continue working on some sort of solution to the problem. I think maybe Senator Haberman has some other ideas that he is working on that could also address the problem. I think for the time being it would be wise to get this actual Haberman amendment off, and that would serve as my opening to this reconsideration motion. I would urge the body to vote for the reconsideration motion and take off Senator Haberman's amendment.

PRESIDENT: Thank you. Senator Haberman, please.

SENATOR HABERMAN: Mr. President, members of the body, naturally I oppose removing the amendment because I don't think it's going to do any harm now, and we could take it off on Select File. However, I would like to ask Senator Moore some questions, if I could.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: I will do my best to answer Senator Haberman's questions.

SENATOR HABERMAN: Senator Moore, must a newspaper publish legal notices submitted for publication by political subdivisions at or below statutorily prescribed rates?

SENATOR MOORE: I...you'll have to ask the ques...I don't understand the question. I'm not the expert on this area, and I do not claim to be.

SENATOR HABERMAN: Are political subdivisions in violation of laws which mandate that legal notices be published if, in fact, the newspaper at general circulation will not publish the notices?

SENATOR MOORE: I don't know, I defer to someone else in the body that is carrying the bill, that knows more about it.

SENATOR HABERMAN: Well, it seems to me, Mr. Moore, or Senator Moore, that your reasons for reconsidering the motion don't go very deep. As I would have to say at this time, Senator Moore, that you can't answer the questions that the problem proposes. I don't think that you've asked me for any research on the issue. I will inform you that it is such a serious issue that the Governor, as I understand it, has instructed all of the code agencies to not advertise in the World-Herald until this issue is settled. Now I have not gone back and checked the advertisements on Sunday's, as I thought the issue was being held in abeyance. However, I intend to do that. So I would say to Senator Moore and the rest of the body, I really don't know the reason why the supporters of the increase for the newspapers do not want this amendment on their bill. It does not touch how much newspapers are going to be paid, it doesn't reduce the rate. It does nothing for the supporters who are fighting this amendment. So I would strongly suggest to this body let's leave the amendment on the bill. If the bill advances on Select File, I will have more information and I will be the first one to stand up here and ask you to take the amendment off, if it can be shown to me, or if I find out myself that it shouldn't be there, that it is a detriment to the industry, or what have you. So, at this time, I would ask you not to remove the amendment, and I will ask these questions, quite possibly, later on in debate. Thank you, you gave it a good try, Senator Moore.

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, have you had a chance to look at this opinion on your desk, because it's pretty interesting. It's from Alan Peterson and, don't you know, as predicted, Alan's got his opinion here and, shock of shocks, it finds a constitutional argument, at least it's not an argument, a shadow, I think, is Alan's word for it, on the prospect of criminalizing legal notices. It seems to me that it would be possible to fashion a better remedy than what Senator Haberman has used so far. And I wonder if I could suggest this remedy to you as an alternative to the idea of criminalization, because it is a notion that Alan mentions here in the opinion. What if, instead of criminalizing these notices at over the publishing rate, what if we merely said any notice that is published at higher than the legal rate is ineffective to serve as a legal notice. Now the paper can run it, if they want to, but it's not affective as a legal notice. That's not legal notice. One of the virtues would be that there is no direction to the newspaper whatsoever on that point. We don't criminalize the activity of the paper, we don't send a message as to what they can or can't print. What we say is, if a notice is printed at a rate higher than the legal notice, it's not legal notice. It would be, by the way, effective for those papers who then, following that law, continued to advertise such notices as legal notices. Why? Because it would trip, as Alan points out in his memo under VIII, eight, Roman Numeral, that there is a deceptive overcharging prohibition. If a paper were to say advertise with us, we'll make you pay higher than the legal notice, but this is a legal notice, the paper would be deceiving its customer. It would be saying this is...this will be affective as legal notice, and in fact it wouldn't be affective as legal notice and, as Alan points out, that would be a deceptive trade practice. So, what I think I'm going to do in this case is I'm going to support this reconsideration. I think there is a better remedy than the criminalization path, and that alternative would be to say, for somebody who purchases a legal notice at a rate higher than the legal rate, that notice is ineffective to communicate legal notice. A paper that is purportedly extending legal notice would clearly understand this fact and could not then advertise or could not do this practice without tripping a deceptive pricing act prohibition. I'll support the reconsideration motion. I think there is a better remedy that runs around the Alan Peterson opinion. And it seems

to me that it leaves the burden where it should be, in this case. It has no interference with the practice of newspapers, it simply says that if a paper decides to run a notice at a cost greater than the legal rate, that isn't a legal notice. I'll support the reconsideration motion.

PRESIDENT: Thank you. Senator Schimek, please, followed by Senator Ashford, then Senator Haberman. Senator Schimek, please.

SENATOR SCHIMEK: Yes, Mr. President and members of the body, I don't want to let Senator Moore take all the blame for this motion to reconsider. I, too, was one of the sponsors of this motion. I did it because I think that there were enough constitutional questions raised on the floor the other day during the discussion of this amendment that we need to reconsider it. And, Senator Haberman, I may end up voting for your amendment in the long run. I would just like to hear from you how this would pass constitutional muster. I think Senator Landis may have come up with an idea that might work. But I'd like to hear more discussion on it before we advance this bill with this amendment. Thank you.

PRESIDENT: Thank you. Senator Ashford, please.

SENATOR ASHFORD: Yes, thank you. I'd just ask Senator Landis a question, if I might. Senator Landis, in your proposal or your suggestion would effectively state that the...any notice that was priced above the legal rate would not be a legal notice. Correct?

SENATOR LANDIS: Right.

SENATOR ASHFORD: What...And I understand what you're getting at, another way of handling the problem. I agree with you and I agree with Senator Schimek that there is, I think, a fairly, if not clear, fairly clear constitutional prohibition against the criminalization, and I will vote against that. But in your suggestion, as a way of handling it, are we possibly getting at the wrong party by doing that? Let me pose an example, many times in an estate proceeding, when we...and that is...many of the legal notices are published in estate proceedings. Those notices are sent out maybe a group at a time to a newspaper, and they are published, and there are legal time limits that must be adhered to when those notices must be published by. If it is

not a legal...and then the newspaper sends a bill to the attorney or to the court or whomever and the court either sends the bill on and the attorney pays it oftentimes maybe not looking to see that it is the appropriate price. If there were a will contest or an estate contest possibly over appropriate notice, we might be harming the consumer, in effect, or the person who is using the legal system unduly. I wonder what you think about that.

SENATOR LANDIS: I would, there are two things. Number one, what you posit is a possibility. There could be a private or consumers harm that would result. On the other hand, I think they would have remedy because they would have been deceived by the pricing practices of the newspaper that held out the promise of publishing a legal notice when, in fact, they weren't publishing a legal notice. And I think it would be pretty easy to create that so that there would be a source of remedy to the consumer because of their having fallen into the trap of purchasing deceptively priced goods, in this case, advertising. Secondly, I guess I would consider, since this is the legal rate, that maybe perhaps my remedy might be used in the cases of the publication of legal notices by political subdivisions, in which case most of the work that you were talking about could simply then be done a second time, if it needed to be, and you wouldn't have the same sense of risk of a consumer at loss there at the same time. But because of the nature of the remedy, I think there probably would be some coercive elements on the...that would force a newspaper to decide to either do legal notices at the legal rate, or not do legal notices, which I think is a fair dilemma for the newspaper to be placed in. And, by the way, there is nothing in the Peterson language that would say that that would be an untenable position for us to place newspapers in.

SENATOR ASHFORD: Right, and I'm not necessarily suggesting it's untenable. I wonder if it's just maybe too much of an obstruction to the process of settling estates and dealing with that. But I certainly am willing to look at that suggestion further and see how that goes.

SENATOR LANDIS: If I could have just...it's still your time, Senator Ashford. It does seem to me that we do need to address the situation in which we could have a prohibition against the publication or the paying for publications by political officials for notice and not have any organ in the state who

would publish at that rate.

SENATOR ASHFORD: Well, what about...

SENATOR LANDIS: You could have...

PRESIDENT: One minute.

SENATOR LANDIS: That, too, would be an untenable dilemma.

SENATOR ASHFORD: Well, just a second. What about something to the effect that if we simply make it sort of the nature of a civil remedy, rather than a criminal remedy, and simply suggest that if there is an overcharge that that money would be returned by the newspaper, plus maybe twice the cost, which would be, in effect, a civil remedy rather than a criminal remedy, and would, I think, be enough of a problem for the newspaper at least to do it on a wholesale level, that it would cost them the cost of getting the revenue from doing the legal notice, then plus maybe the cost, plus an additional...the same amount added on. Maybe...I think we could draft that so it would not be a criminal prohibition and could get at the problem.

SENATOR LANDIS: That would be an interesting opportunity. Of course, we have Select File to do that.

SENATOR ASHFORD: Okay.

SENATOR LANDIS: That's a notion worth pursuing.

SENATOR ASHFORD: Thank you. I guess...am I finished? I may be soon...

PRESIDENT: You may finish your sentence, sure.

SENATOR ASHFORD: All right. I'd like to see...I think the criminal prohibition is a problem. I do see the problem Senator Haberman has raised, and maybe we could implement some kind of a civil penalty that would solve the problem. Thank you.

PRESIDENT: Thank you. Senator Haberman, please, then Senator Barrett.

SENATOR HABERMAN: Mr. President, members of the body, Senator Ashford, would you answer some questions for me, please?

PRESIDENT: Senator Ashford, will you respond, please?

SENATOR ASHFORD: Yes, sir.

SENATOR HABERMAN: Must a newspaper publish legal notices submitted for publication by political subdivisions at or below statutorily prescribed rate?

SENATOR ASHFORD: I don't know.

SENATOR HABERMAN: (Laughter.) Are political subdivisions in violation of laws which mandate that legal notices be published, if in fact the newspapers of general circulation will not publish the notice?

SENATOR ASHFORD: I'd have to look at the statutes as to those political subdivisions. SIDs, for example, have to print notices by a certain date or they could be susceptible to some penalty possibly, yes.

SENATOR HABERMAN: Well, how do political subdivisions comply with statutorial legal notice publication retirements (sic), if newspapers refuse to accept legal rates? Here is a public subdivision that goes to put a legal notice in a publication and they won't accept it for what the legal rate says. And the Attorney General says you are correct, the law places in the legal rate for public notices. That is what the law says. Now here is a county, here is a city, school board, and they publish above the legal rate. Senator "Bradford", now I'll tell you this, a person could file a lawsuit against those people.

SENATOR ASHFORD: I don't believe so. I don't think a newspaper has to take a legal...

SENATOR HABERMAN: Now, wait a minute. I didn't say they had to take it. I said, Senator Ashford, if a political subdivision publishes a legal notice over and pays more than the legal rate, they are open for a liable suit. Did you know that?

SENATOR ASHFORD: Okay.

SENATOR HABERMAN: They are.

SENATOR ASHFORD: Okay, I accept that. I don't know, I'm not

aware of this problem, so I...

SENATOR HABERMAN: Well, they are, I can assure you that they are. So we have a bigger problem here than meets the eye. It seems as though all the people who are opposing the amendment really haven't looked at what is happening when somebody pays more than the legal rate. Now we're talking about big dollars. For example, it's \$14,000 to the Game and Parks Commission; \$143,000 to the University of Nebraska, we're talking big money, big money, where some of that was published at above the legal rate. Now to answer Senator Schimek's question about the letter that has been circulated by the Press Association, first of all, Senator Schimek, that is one person's opinion. However, the letter was run by the Attorney General....Is Senator Schimek here? The letter was run by the Attorney General himself and his staff and the Attorney General's answer was there is no problem with that amendment, there is no problem, these arguments are no good, we can beat them all, go ahead with your amendment. So, Senator Schimek, that should answer, in my opinion, the question of the letter that is being circulated. Now it's true that that is only one person's opinion also. However, the Attorney General is the one who would prosecute the case,...

PRESIDENT: One minute.

SENATOR HABERMAN: ...if there was one, and then we give the other side their opportunity to go to court. You know I really can't understand why the Press Association is so violently opposed to this amendment. I can't understand that. What is behind the whole thing? Why don't they want to have it, if one of their own people, or more than one, violate a state statute that they shouldn't be prosecuted? Senator Moore, can you answer that question? I don't think he wants to answer that question, so I won't ask you. So I would ask you not to remove the amendment. As I say, if we can come up with a solution on Select File, I'll be the first one to get up and say let's remove it. However, let's leave it where it is for the present time. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Barrett, please, then Senator Smith.

SENATOR BARRETT: Thank you, Mr. President and members. I think it is interesting the way this issue has mushroomed beyond its

original scope. This is a very simple little bill. Do you want to give them a 15 percent increase, or don't you? Senator Haberman's amendment last week raised a constitutional question, and I requested an opinion from the counsel of the Nebraska Press Association, which we have on our desks. And Mr. Peterson raises some very interesting points, some very interesting issues, some of which speak to the question and some of them don't. I believe that the important point that Mr. Peterson makes is that statutes setting rates in the United States are common and they have been held to be constitutional. That is number one. Constitutional, that is, unless they impair existing contracts or unless they try to force a paper to print something. Now as I remember the amendment, which we are talking about reconsidering, it finds a newspaper guilty of a crime for charging more than the statutory rate. And, if I am interpreting Mr. Peterson's letter correctly, that is coming dangerously close to being unconstitutional, though I rise in support of the motion to reconsider, at this point, because I think when we start considering seriously leaving the amendment on the bill, we are dangerously close to having an unconstitutional bill. And I think there is no question the Supreme Court would suggest to us that they are protected, the papers that is, under the first amendment, the freedom of speech provisions. Though I, at this point, don't understand why we need the amendment, I guess and, secondly, I think Senator Landis raises some interesting points which might be worthy of some consideration on Select File, although they, too, might open another can of worms and get into an area in which we really don't need to be getting into. So, I would move to reconsider, or I would encourage the reconsideration because I think we do have an amendment here which is constitutionally suspect. And, frankly, that is not what 298 is all about. I would urge the body to adopt the reconsideration. Thank you.

PRESIDENT: Thank you. Senator Smith, please, then Senator Haberman.

SENATOR SMITH: Thank you, Mr. Chairman. I would like to ask a few questions of Senator Haberman and I hope Senator Ashford is around, because maybe, Senator Haberman, you were visiting with him, maybe you can answer the question I was going to ask him. First of all, when he was standing up talking, was he saying that he thought that rates should be published at cost? Was he talking about requiring that rates be published at cost? I mean that the legal notice be published at cost? Is that what

Senator Ashford was discussing with you...

SENATOR HABERMAN: Senator Ashford...

SENATOR SMITH: ...as a consideration?

SENATOR HABERMAN: Senator Ashford didn't discuss that with me. No, I don't know what he was talking about either.

SENATOR SMITH: I wish he was around. Okay.

PRESIDENT: He's coming in the door, if you'd like to wait just a moment.

SENATOR SMITH: Senator Ashford, you're needed again. You should have stayed there. (Laugh.) Brad, what was it, I got in on the tail end of this. You were discussing, I thought, something about the fact that maybe what we should do is require that legal notices be published at cost. Was that what your recommendation was?

SENATOR ASHFORD: What I was saying is that legal notices be published at the legal rate. But, if they are not, if there is an amount charged over and above that, that the indi...that the newspaper would be liable to return that amount, plus an additional maybe twice that amount as a penalty or civil penalty for publishing at above the legal rate. My point was that oftentimes these things get published and are billed and the bill is paid, possibly, without anybody looking at it...

SENATOR SMITH: Um-huh.

SENATOR ASHFORD: ...to see whether it is over the legal rate, or under the legal rate, or whatever. So, that was my...

SENATOR SMITH: Well, one of the things that I've been thinking about here is I've been receiving a lot of letters from small newspapers in the state, Rex, and they are saying that they hope we will support this effort for the increase for the rates because of the increased costs that they've been accruing over the years. But what my concern is, what would happen if, many of our small newspapers in some of the little towns probably do depend upon the legal notice publication by different agencies and groups for their livelihood, to a large degree, how will this impact on them, I wonder, with your amendment, Rex?

SENATOR HABERMAN: I don't think it would, Senator Smith, because I do not know of any, in my district anyway, any small newspapers that charge over the legal rate. However, if they did charge over the legal rate, which they can do, how would you advertise in your district?

SENATOR SMITH: Yes, I know what you're saying. Maybe what we need to do, and maybe it's possible to do this, if no one is abiding by the cap anyway, maybe we ought to just remove the cap. I mean here we're talking about two things, we say that we can't, in statute, pay more than that. We know that people are paying more than that, and we're doing nothing about it. So maybe what we need to do is just remove it. It's something that we don't need to have. I can tell you all one thing, the General Affairs Committee heard this bill in committee and it raised a lot of questions in the testimony that we heard that day. What we have decided to do is to study this issue in depth during the interim.

PRESIDENT: Thank you. Senator Haberman, then Senator Warner.

SENATOR HABERMAN: Senator Ashford made the remark or the suggestion that we have some sort of a refund. Well, Senator Ashford, that is impossible under the present statute as the Attorney General cannot prosecute to go after that refund. Now, Senator Barrett said that it's constitutionally suspected, some of the parts of it. So, as I say, I have ran this by the Attorney General and he says there is no problems, it's constitutional. It doesn't even touch the first amendment, it doesn't even touch it. So we do not have an unconstitutional bill, or amendment, unless it's tried in the courts. Now, the reason it's not unconstitutional, it doesn't bother their first amendment is they do not have to publish the notices. If they don't want to publish them they don't have to, we're not telling the newspapers they have to publish the notices. What we are saying, basically, to the newspapers, if you do publish them and overcharge what the legal rate is, you might have a problem, or you are going to have a problem. That is the only thing we're saying. So I don't see what the big...what everybody is so concerned about. It is constitutional to set the rates, and, again, we're not forcing anybody to accept those rates. So I would again ask you to leave the amendment on the bill and let's go on with it. Thank you, Mr. President.

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

SENATOR WARNER: Well, Mr. President, I just rise to support the reconsideration and some of the other comments that have been made about other options or alternatives would concern me as to whether or not they really would get at it. It seems to me most of the things I've been listening to are what ifs, hypotheticals and do not...I'm not aware that there is a problem that exists, at least it did not come to my attention that there is a problem that exists where legal notices are not filed and available to citizens in every county of the state in some appropriate form. And all we're dealing with is what is the appropriate rate to be established by statute for those legal notices which, if a paper does not choose to do so, fine. But there are other papers that have, and I see no reason for the argument, because it seems to me we're creating a problem where none exists and the only issue before us is what is that appropriate rate. I would urge that the motion for reconsideration be supported, the bill advanced as it was introduced.

PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Ashford.

SENATOR NELSON: Mr. Speaker, I have a question of Mr. Haberman, or excuse me, Senator Haberman or Senator Barrett. Maybe one of them can answer this for me.

PRESIDENT: Which one would you like to have respond?

SENATOR NELSON: Maybe Senator Haberman can answer it for me.

PRESIDENT: All right.

SENATOR NELSON: I understand that a couple years back, or a few years back Douglas, Lancaster County, Lincoln and Omaha, the Legislature passed legislation allowing them not to have to print claims. Well, claims is really the bulk of what we're talking about, that is a good share of the legal advertising and, if so, I have the same...in my mind I'm wondering the same as Senator Warner. Maybe we're making something out of nothing and really we're not getting at the Omaha and Lincoln papers because they are not really involved in this. So, in essence, what we're coming down on is our little hometown newspapers that are striving to keep alive and keep their bills paid. So, I

want to know, is Douglas, do you know for sure is Douglas, Lincoln, Omaha, I think I got it from a good source, but I wondered if it was right? And they are not involved in this, they don't have to print legal claims.

PRESIDENT: You were asking Senator Haberman to respond, please.

SENATOR NELSON: Yes.

PRESIDENT: Yes, okay.

SENATOR HABERMAN: Senator Nelson, I don't answer...do not know the direct answer to the question. But I might say that possibly they publish their claims in another legal entity, called the Daily Record. They might publish them in there, I do not know.

SENATOR NELSON: I understand that they don't have to publish their legal claims, but I'm not...that's what I understand. So really we're not talking really maybe about the World-Herald or the Omaha and Lincoln papers.

SENATOR HABERMAN: Do you know the reason why they don't have to?

SENATOR NELSON: Well, I suppose they talked the Legislature into something a few years ago, you know how that goes. Thank you.

PRESIDENT: Thank you, Senator Nelson. Senator Ashford, then Senator Barrett.

SENATOR ASHFORD: Question.

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

CLERK: 25 ayes, 1 nay to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Moore, were you going to close?

SENATOR MOORE: Yes. Mr. President and members, we've had a

great deal of debate. I will shortly close on this. I think maybe there is some confusion over what exactly the impact of Senator Haberman's amendment has. I know that Senator Haberman and Senator Jacky Smith mentioned about if nobody is following the law here, why do we have it at all? Well, the fact of the matter is that there are 198 papers in Nebraska, and when 197 of those papers publish at or below the legal rate. There is one paper that, for a variety of reasons, charges over that legal rate, and that is the paper that Senator Haberman has a problem with. I share in Senator Haberman's concern. I laud him for bringing it to our attention. I think we should try and attempt some way to deal with it, either through the method that Senator Ashford has described to us, either through the method that Senator Landis has talked about, I think we should try and deal with the situation. Now, Senator Haberman would love to have us not reconsider his amendment, have a bigger hammer there, and make sure we come to Select File then, if there is something better, then take his amendment off. Well I guess I would just have to disagree with Senator Haberman on that note, because I think there is definitely, as you've seen from the letter passed out by the attorney, Alan Peterson, there may be some constitutional problems with this. I think that there are many people, maybe like myself, that when we voted for Senator Haberman's amendment originally, we wanted...we agreed with Senator Haberman, we were a little irked, we wanted to send that message to that one paper that we'd like to see them change their ways. That message has now been sent. I think the responsible thing for this body to do is reconsider Senator Haberman's amendment, then attempt to try to deal with the problem. And, Senator Haberman, I will be with you as we continue trying to work with this problem. But the right thing to do is to get Senator Haberman's amendment out, then start working on the problem. That is my closing. If there are...I would give the rest of my time to Senator Barrett, if he wished to say anything further.

PRESIDENT: Senator Barrett, would you like to continue? You have three minutes.

SENATOR BARRETT: Thank you, Senator Moore. Only to suggest again that the issue has mushroomed beyond proportion. We're talking essentially about one issue, the constitutional question, we have two differences of opinion. It seems to me that the amendment should come off because we do have that specter out there on the horizon of a constitutional challenge.

And why should we go to the expense of a court case when the shadow is now before us. Finally, I would say again, as Senator Warner, I believe, and Senator Moore said, there is no history of violations out here. A hundred and ninety-seven newspapers, apparently, are charging the max or below. If there are any violations out there, I'd be interested in knowing about them. There are none to my knowledge. I would urge the body to vote yes on the reconsideration. Thank you.

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

CLERK: 28 ayes, 3 nays, Mr. President, on the motion to reconsider adoption of the Haberman amendment.

PRESIDENT: The amendment passes. The motion to reconsider passes. Yes. Senator Haberman, please.

SENATOR HABERMAN: Mr. President, members of the body, in my time here in the Legislature, I have heard and I have known people who have said, I will give you a vote to reconsider, however, that is as far as I will go. So we've had enough debate, as far as I'm concerned. So I will ask that we vote on...we're on amendment, right...that we just have a vote on the amendment and, if it goes up or down, let her go.

PRESIDENT: Senator Abboud, please. Senator Moore, please. Would you like to close, Senator Haberman? Okay. The question is the adoption of the Haberman amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 6 ayes, 19 nays on adoption of Senator Haberman's amendment, Mr. President.

PRESIDENT: The amendment fails. Do you have anything else on it?

CLERK. Nothing further, Mr. President, on the bill.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I just am trying to get a feel for what the body is saying with this last amendment, because I thought Senator Moore made a good

point. I think he was saying I'm going to reconsider this remedy. My question to the body is, is it all right with us, is it acceptable with us to pass a legal rate, but knowing that the major paper in the state doesn't follow the legal rate, charges more than the legal rate, and that those transactions continue, that the City of Omaha and others use that newspaper, pay a rate greater than the legal amount, even though they are in the statute? Is it acceptable to this body to have the legal rate ignored, apparently with impunity, by the Omaha World-Herald and by those customers who are doing business with it in contravention with this statute? Was that what the reconsideration vote meant? For myself it did not mean that. It meant that another remedy needed to be fashioned, a different one than the criminalization. But I'm interested in knowing, kind of off the top of your heads, whether or not that is the situation that we find ourselves in. If I could, I'd like to ask just a few questions. I think I understand Senator Moore, because he's been explicit with that. I'd like to ask Senator Barrett a question in that case.

SENATOR BARRETT: Certainly.

SENATOR LANDIS: My question is, would you entertain a different form of remedy that would try to impose the legal rate for those who use the legal rate method as binding for those people who are making and publishing legal rates?

SENATOR BARRETT: Senator Landis, I will not give you a yes or no, I will give you a qualified yes and say I'd be glad to talk to you between now and Select File.

SENATOR LANDIS: That's good enough.

SENATOR BARRETT: That's as far as I'll go.

SENATOR LANDIS: I appreciate that. Senator Schimek, may I ask you a question?

PRESIDENT: Senator Schimek,...

SENATOR LANDIS: As one of the co-sponsors of the reconsideration motion, and I guess I can put this in a compound fashion, are you open to considering other alternatives besides the Haberman amendment or, in the alternative, are you satisfied with the current way things are operating with what we know to

be the practices of the Omaha World-Herald in contravention of our statute?

SENATOR SCHIMEK: I think that Senator Haberman has raised a valid issue, and I would certainly be open to any new ideas along that line.

SENATOR LANDIS: Okay. Just with that brief sampling of Senator Moore, Senator Barrett and Senator Schimek, it seems to me that the time between now and Select File should be spent in drafting an appropriate remedy that the body could agree with. I think there is an underlying, and let me see if this...if you wish you can correct me here, there is an underlying dissatisfaction with the notion that the legal rate carries no force of law at this point, operates, apparently, in a vacuum and without any substantive teeth. Senator Warner is still on his feet, and since he's been a good advocate here, maybe you're entitled to 30 seconds for your response. Senator Warner.

SENATOR WARNER: As I understood, was I open to consideration?

SENATOR LANDIS: Yes.

SENATOR WARNER: The answer, if you make just a little longer question, of am I open to consideration and rejection? The answer would be, yes.

SENATOR LANDIS: (Laughter.)

SENATOR WARNER: Because I, frankly, am of the opinion....Let me put it this way, as you know my wife was a reporter. She told me one time, many years ago, that you never win arguments with people who buy ink by the gallon. And I suspect the largest newspaper buys it in a much larger volume than that. (Laughter.) And I don't think....I really don't think the issue that is being talked about justifies consideration by the body, because the remedy of notice to people is being met, and we're throwing around some hypotheticals that are...I don't think, in reality exist.

PRESIDENT: Half a minute.

SENATOR LANDIS: Thank you. I will just close by saying that I think that the final force of the legitimacy of law should not be the amount of ink that you own, purchase and can expend on

newsprint. I think the final force of law should be in the election of duly chosen representatives who do their best in a deliberative and open process to write what should be the rule of law, and that that rule of law should carry sanctions, if it means anything. And when it chooses not to have sanctions, it is meaningless and is nothing more than a resolution. If that is the case, then we should perhaps take this statute off the books. If it is to have the force of law, it needs to have teeth. And I, for one, in perhaps contradistinction to Senator Warner's perception here, think that, if we are going to have this rule, it ought to have some power, it ought to have some sanctions, it ought to have an effect. And it is possible we may not win the argument, but there is a deeper question here, and that is not who gets to write the most ink, but which set of ink constitutes law and which set of ink constitutes editorializing and news stores. To my knowledge, this is the body that is still writing law, and the Omaha World-Herald is still writing news and editorials. I hope we haven't confused the two.

PRESIDENT: Thank you. Senator Smith is next, followed by Senator Moore. But may I introduce a guest, please, first, of Senator Beck. She has as her guest today Ty Grothe, who...Mr. Grothe is seated under the south balcony. Would you please rise and be welcome, please. Thank you. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Chairman. Members of the body, I think that we've kind of gotten off the total subject of what the intent of LB 298 is. It did come out of the committee after consideration, and we do feel that it merits a 15 cent increase for the lines that we're talking about. But I think what we've come to now here is a choice, a choice that we have to make. Are we going to look for a remedy to what we consider to be the issues that we're discussing right now, today, and try to resolve that and add it to this bill, or will we wait and have that be looked at as a part of the...look at the whole issue, I guess to me surrounds the requirement that we do have presently in the state for the multitude of public notices. And some of them, I think, are very outdated. Maybe it's time for us to look at this whole thing surrounding why we require so much as far as public notice is concerned and look at the fact that... My understanding is the reason, in some point in time back, when the Legislature, in its wisdom, decided to eliminate the requirement for Lincoln and Omaha to publish the same kinds

of notices that we have to in our more rural areas, it was because of the fact that supposedly they are much more close to media and to being informed. Now I'm not sure I'd agree with that. I think if you go into a little town, anywhere in town, everyone knows what everyone else does, and they know where all the meetings are going to be held, too, because they all participate in all those meetings. So maybe we need to look at what we are requiring of subdivisions and agencies, et cetera, and not deal with this on this piece of legislation, but hold it up for that point in time. I'd certainly like to get Senator Haberman's input when we did that. Thank you.

PRESIDENT: Thank you, Senator Smith. Senator Moore, then followed by Senator Abboud.

SENATOR MOORE: Mr. President, members, as you know now the bill, LB 298, as it is stripped of the Haberman amendment, simply will raise that legal rate. I'm going to vote for that. Now when we voted out the Haberman amendment, we voted out the part of the bill that was dealing with the problem we have with the one paper in the state. Now I still...right now that problem we have, if it's a problem, whatever you want to call it, maybe problem is not the proper word, but the only paper in the state that charges over the legal rate right now is the Omaha World-Herald. One hundred and ninety-seven other papers charge at or below the legal rate. And I want to mention several charge below the legal rate. But my concern is, after the discussion we've had, what is going to stop the 197 other papers from not charging over the legal rate? I think now that we've had this discussion, I understand Senator Smith has mentioned maybe we should study this, and maybe if we cannot do it this year, we sure as heck continue to look at it because I am concerned now that we've opened this can of worms. And, Senator Haberman, like I said, I apologize to him for getting to the point, but I do think we have to deal with it. But for the time being let's advance LB 298. I would like to work with Senator Landis, Senator Haberman, Senator Barrett. Senator Warner didn't sound like...he was willing to let well enough alone it sounded like, I guess. But I would like to work between now and Select File to try and solve the problem so those 197 papers that are now at or below the legal rate don't for some reason feel they have the ability to go over and above it. I think we do need to deal with the problem. For the time being, let's move 298 and address the overall issue at a later time on Select File, or over the summer.

PRESIDENT: Senator Abboud, please, then Senator Wesely.

SENATOR ABOUD: Mr. President, colleagues, just a short statement. I think that some of the things that have been discussed here in regard to what is, in fact, the legal rate and what is, in fact, acceptable or an amount that local political subdivisions can pay have been confused. I don't think that in any way it's...the present statute, as it currently is, provides for penalties against papers that choose not to charge the rate that is stated in the statute. I think you really have some very real problems dealing with the first amendment when you start placing amounts that are or can be restricted. In Douglas County we really don't have too much of a problem getting legal publications out. We have the Daily Record, the Midlands Business Journal, as well as a number of small town papers in Douglas County that charge a rate that is much, much less than the larger metropolitan edition of the World-Herald. I don't really ever see this as a problem. Maybe Senator Haberman sees this as a problem out in his area. And if he has some papers out in that area that he feels aren't...or are charging too much, then maybe we can deal with it. But as far as I'm concerned, we have a number of small papers that do a good job of handling the legal notices. It really hasn't been a concern. No constituents have been calling me up or requesting that we make these changes. And I think that the statute is working perfectly well. I urge the body to advance LB 298, and then when we look on it on Select File, maybe my discussion of this area will be more pertinent. But at this time, I think the bill is fine, let's just move it and advance it on. Thank you.

PRESIDENT: Senator Wesely is next. But, Senator, may I please introduce a guest of...special guests in the north balcony. Senator Wesely has guests up there and they are from the statewide members of the Nebraska Medical Auxiliary along with their legislative person. Would you please stand up and be recognized by your Legislature. Thank you for visiting us today. Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. President, members. Very quickly. I thought Senator Smith made very good points, as did Senator Landis. I think the goal of advancing the bill is appropriate at this time, but I do think some work needs to be done. Question Senator Landis raised about just ignoring the law seems appropriate that we ought to take some time to look

at. Senator Smith's point about who are we including on these legal notices is absolutely appropriate. The more you find the more requirements there are on legal notices, the more questions you have about why we're doing it, who looks at them, is anybody really benefitting from them? I know I, for one, never pick up the paper and even look at those notices. I doubt 99 percent of the people in the state do. What are they accomplishing? Are they really accomplishing their goals and we're now charging more and taxpayers are going to be paying more? Are we really coming back with any benefit for this increase that we're talking about in this bill? I think it's an appropriate question and I think Senator Smith is right to raise it and I hope the introducers of the bill and the supporters of the bill will recognize some of us are concerned about what we're requiring to have notice and whether that notice is actually doing any good for our state.

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

SENATOR KRISTENSEN: Thank you, Mr. President. I rise in support of this bill as well. As we sat in committee and discussed this, the real issues of the bill are what is a fair increase and I was impressed by the presentation that it has been several years since they've been in for an increase in costs. I've been a strong supporter of political subdivisions in counties and very aware of the increase of cost and the burden that that has on the various subdivisions. However, I think this is a matter of fairness and this is a cost increase that is justified. One of the problems that we have if we don't increase the cost of some of these notice rates, we're going to have small papers out here who are also going to reject publishing and say, we just can't afford the time or cost to do this. And in many of the counties we only have one legal newspaper and if that newspaper continues on because of cost and doesn't print them or publish them, we run into a lot of problems. I support Senator Smith's request to let's study what actually is necessary to publish and why. I think it's a matter of fairness and this is one that we should pass and advance at this time. Thank you.

PRESIDENT: Thank you. Senator Nelson, would you like to...I don't see Senator Schmit at the moment.

SENATOR NELSON: I would like to have a committee member respond

or, let's see, which committee was this held in, Business and Labor?

PRESIDENT: General Affairs I believe.

SENATOR NELSON: General Affairs or Senator Barrett or maybe Senator Smith could respond. I don't think so, General Affairs...this was...all right. Was it ever discussed in committee whether or not it was necessary to still continue the practice of printing tax sales or delinquent tax notices three times in the newspaper? To me, twice is enough and I'm tempted to put an amendment on the bill the next round for that purpose.

SENATOR SMITH: Senator Nelson, we did discuss not exactly that, but we did discuss the whole issue surrounding the requirements to publish claims, legal notices of any kind and the horrendous number of those kinds of things that have...that we require to be published and also the fact that they must be published three times. And the discussion about whether or not twice was enough was brought up and that is what we're wanting to look at as an interim study, the whole issue surrounding this whole thing and we want to look at it in an interim study.

SENATOR NELSON: Thank you, Senator Smith. Thank you.

PRESIDENT: Senator Schmit's light is on but I don't see him. Senator Barrett, would you like to close?

SPEAKER BARRETT: Just move the previous question.

PRESIDENT: All right.

SPEAKER BARRETT: Thank you.

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

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 298.

PRESIDENT: LB 298 advances to E & R Initial. Mr. Clerk, do you have anything for the record at this time?

CLERK: Mr. President, I do, thank you. Your Committee on

February 2, 1989

LB 58, 70, 115, 119, 142, 156, 175
256, 261, 283, 284, 286, 298, 502
LR 23

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We're privileged to have a minister from Senator Bernard-Stevens' area and with us as our chaplain of the day, Reverend Patrick Skinner of the Wesleyan Church in North Platte. Would you please rise for the invocation.

REVEREND SKINNER: (Prayer offered.)

PRESIDENT: Thank you, Reverend Skinner. Please come back and see us again. Roll call, please.

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

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

CLERK: No corrections this morning, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 298 and recommend that same be placed on Select File. That is signed by Senator Lindsay as Chair. Enrollment and Review reports LB 58, LB 70, LB 115, LB 142, LB 156, LB 175, LB 256, LB 261, LB 283, LB 284 all correctly Engrossed. Those also signed by Senator Lindsay as Chair. (See page 553 of the Legislative Journal.)

Mr. President, your Committee on Natural Resources, whose Chair is Senator Schmit, to whom was referred LB 502, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File, and LB 119 as indefinitely postponed, both those signed by Senator Schmit, and LB 286 as indefinitely postponed, that signed by Senator Schmit as well. (See page 554 of the Legislative Journal.)

Mr. President, new resolution by Senator Beyer and Senator Hefner. (Read brief description of LR 23. See page 555 of the Legislative Journal.) That will be laid over, Mr. President.

Mr. President, confirmation report from the Education Committee. That is offered by Senator Withem as Chair.

February 13, 1989 LB 37A, 116, 165, 298, 458

SENATOR LINDSAY: Mr. President, I move that LB 458 as amended be advanced to E & R Final.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 116.

CLERK: Mr. President, may I read some items into the record.

PRESIDENT: Okay.

CLERK: Mr. President, I have an explanation of vote offered by Senator Abboud. A new A bill, LB 37A by Senator Rod Johnson. (Read for the first time by title. See page 720 of the Legislative Journal.)

I have a motion from Senator Hannibal to reconsider the Final Reading vote on LB 165. That will be laid over.

I have amendments to be printed to LB 298 by Senator Barrett. (See pages 721-22 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Now back to LB 116, please.

CLERK: Mr. President, on LB 116, the first item, I have no E & R. I do have an amendment pending, though, by Senator Chambers, Mr. President. Senator Chambers.

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is the bill which is increasing the penalty on prostitution to try to bring state law into compliance with Omaha's ordinance. I am offering an amendment that would prevent any person who is a party to the act of prostitution or the solicitation of prostitution from testifying against the other party. This is a crime which can only exist if two people are involved. Society, as I pointed out on General File, has decided to place the onus on the female member or participant. In Omaha, there is a problem with male prostitutes, homosexual, and probably some heterosexual, but that is not the problem that the businessmen ever discuss or express any concern about. So even when it comes to one who is engaging in prostitution selling his body or her body, the one who does the selling that is to be condemned and placed under this heavy punishment is the

February 21, 1989 LB 154, 227, 298, 318, 408, 440, 713

Select File with E & R amendments, LB 318 Select File with E & R amendments, LB 440 Select File with E & R and LB 154 Select File with E & R. (See pages 794-97 of the Legislative Journal.)

Mr. President, Speaker Barrett has amendments to be printed to LB 408. (See page 797 of the Legislative Journal.)

Mr. President, your Committee on Transportation whose Chair is Senator Lamb to whom was referred LB 227 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with committee amendments attached and LB 713 General File with committee amendments attached. (See page 797 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Thank you. We'll move on to Select File, LB 298.

CLERK: Mr. President, LB 298 is on Select File. I have no E & R. I do have an amendment to the bill, Mr. President, from Speaker Barrett. The amendment is found on page 721 of the Journal.

PRESIDENT: Thank you. Speaker Barrett, please. Just a moment, Speaker. (Gavel.) Could we please have it a little quieter so we can hear the speakers. Speaker Barrett.

SPEAKER BARRETT: Thank you, Mr. President and members. The amendment being offered on LB 298 I think addresses a couple of concerns that came up on General File when the bill was discussed for the first time. LB 298, as you recall, is the bill that raises the rates to be paid for publication of legal notices. A couple of major concerns I believe were voiced on the floor when we did debate the bill the first time. One of the questions was whether or not a political subdivision finds that it can't find a newspaper which will publish any notice at the legal rate, and I believe the other concern which was raised involved the question of a public official finding that to publish the type of notice that he or she needs, they would have to pay more than the legal rate. So the amendment which I'm offering offers two new short sections listing three specific situations where the public official could negotiate with a legal newspaper to publish the notice at a rate higher than the legal rate. However, the higher rate does have a cap or a limit. A negotiated rate could never be higher than the newspaper's lowest scheduled rate for classified ads of the type

that are trying to be purchased. In these three specific situations and only in these three situations, then, could public officials pay more. And then, of course, as I said, that higher amount is also limited. And the other matter of addressing the other question involves Section 3 where you can't find any newspaper to publish its notice, Section 3 of the amendment provides that if legal notice cannot be purchased at the rate set forth, then and only then the public official or the legal notice purchaser can give legal notice by posting. That essentially is it. I would urge the body to adopt the amendment because some of those uncomfortable with the perceived gaps in our legal notice statutes I think can be mollified at this point with this amendment. I urge the adoption. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. President, members of the Legislature, I support this amendment found on page 721. It contains a couple of different elements, all of which I think acknowledge a set of realities that make sense. First, it allows for a different legal rate for papers of \$100,000 or more...a 100,000 subscriptions or more that has a statewide circulation. Why? Because the law should not force anybody to operate at a loss. The rate that they can charge is the lowest rate they charge for classified ads. That is the rate that exists in the marketplace, clearly they should be able to make money, but it is the lowest rate possible. So, what you're acknowledging is the lowest rate that the newspaper in this category charges and apparently can make a profit at, but without a chance for enrichment. The discipline mechanism actually was suggested on General File by Senator Chambers and that is if a newspaper will not offer, consistent with legal rates, advertising along these lines, the person who is to offer the legal notice is excused from the responsibility for publishing the legal notice. Instead it can be done by nailing it up at the courthouse door, another form of publication that's recognized in other sections of the statutes, actual notice or other constructive kinds of notice methods. In other words, if there is a monopoly, you are not requiring the city council to do business with a monopolist who won't obey the law. There is, in other words, discipline for somebody to follow the law because if they don't follow the law the people that they're doing business with will be excused from their obligation to use the legal notice. I think that is a sensible method of

discipline in this situation and I support the Barrett amendment, and with the Barrett amendment, I support 298.

PRESIDENT: Thank you. Senator Barrett, would you like to close on your motion?

SPEAKER BARRETT: No closing, Mr. President, just urge the body to adopt the amendment. Thank you.

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

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

PRESIDENT: The Barrett amendment is adopted. Anything else on it, Mr. Clerk?

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

PRESIDENT: Okay, Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 298 be advanced to E & R for engrossing.

PRESIDENT: Senator Schmit, your light came on.

SENATOR SCHMIT: Has the...is it too late for discussion?

PRESIDENT: Pardon me?

SENATOR SCHMIT: Is it too late to ask a question on the bill?

PRESIDENT: No.

SENATOR SCHMIT: Okay. I'd like to ask a question of Senator Barrett, then.

PRESIDENT: Okay. Senator Barrett, will you respond, please.

SENATOR SCHMIT: Senator Barrett, at this time, if the bill becomes law, if The Banner Press in David City wants to charge more than the legal rate, are they allowed to do so to print a legal notice?

SPEAKER BARRETT: It is possible to negotiate if...only if Section 2, the bill does not apply. That is my understanding.

SENATOR SCHMIT: What does Section 2 say?

PRESIDENT: Senator Landis, are you going to respond to that?

SENATOR LANDIS: No, I'm not. Senator Schmit has Senator Barrett on the griddle and...

PRESIDENT: Okay, Senator Barrett will be back in a moment, Senator Schmit.

SENATOR SCHMIT: You're not charging me for this time now, are you?

PRESIDENT: Oh, yeah.

SENATOR SCHMIT: I thought you would.

PRESIDENT: Senator Barrett doesn't seem in a hurry so it's all right with us. He'll be back shortly.

SPEAKER BARRETT: Sorry, Senator Schmit, it appears that the reason why The Banner Press would want to do that is critical. Now, if the three sections in Section 2 come into play, the public official can negotiate for those three subtitles, (a), or 1, 2, and 3.

SENATOR SCHMIT: Well, Mr. President, members, Senator Barrett, suppose The Banner Press says we just won't take it for that, we want more money. If one institution can charge more, why can't another? And The Banner Press is the only newspaper in the county, is there a reason why they should be forced to print the notices for a specified rate when another institution does not need to do so? And if they do not need to do so, then why do we need the bill? Why not just let it be a free-for-all?

PRESIDENT: Senator Landis, did you wish to help out on this situation?

SENATOR LANDIS: Sure. It's best to open up in your Journals to page 721 to see how this works. If the city wants a legal notice in color or if they want the legal notice placed in a

special place, the front page, and they want special treatment, that is a negotiable rate. Why? Because the city wants something special. If they want just a regular legal notice, no special treatment, the legal notice rate applies. If the paper refuses to print the legal notice at the legal rate, then the city or the county is excused from having to have it published. Why? Well, it's not a criminal charge against the newspaper, but what it allows is, it allows their client, the person who is going to buy the ad, to walk away. If the Banner County News (sic) says, yeah, well, I don't want to follow the legal rate, the county can say, yeah, well, that's fine. If you won't publish it at the legal rate, we don't have to publish it at all and you don't get any business on this score. Once you start charging the legal rate, we'll run the notices. Otherwise, we'll tack them up at the county courthouse door. Because smaller papers do make a profit, they have every reason then to allow the publication at the legal notice. Could they suggest a higher rate? Yes, they could. Could we force them to charge the legal rate? There is a constitutional objection that can be raised by a paper and basically you have 196 papers that are following the legal rate. So long as that legal rate is an amount that the paper doesn't lose money at, I think we can expect to have compliance particularly when the city or the county can walk away as this permits them to do. That's why the amendment works.

SENATOR SCHMIT: Is it legal for the World-Herald to charge the regular classified rate and print it as a classified notice?

SENATOR LANDIS: It is legal under this for the Omaha World-Herald to publish at the classified rate which is a rate at which they would make money as well.

PRESIDENT: One minute.

SENATOR LANDIS: The difference is that the Omaha World-Herald cannot print at the legal rate which we now have and do anything other than lose money. I would ask the body if it's fair that we, by law, force the pricing of any object at below cost. That, to me, is not a reasonable principle and that's what we do with the legal rate that applies to all newspapers, the Banner County Press (sic) in the same way it would treat the Omaha World-Herald with their differing cost structure. That's why subsection (3) is in Section 1 of this amendment, Senator Schmit.

SENATOR SCHMIT: In other words, you have a...we have an amendment here which will allow the World-Herald to legally charge more than the legal rate by printing it in the classified section?

SENATOR SCHMIT: They will be able to publish it in the legal rate section. They will be able to publish it at their lowest rate that they charge and, yes, they'll be able to charge above the legal rate for others, on the rationale that the Omaha World-Herald provides statewide coverage for statewide elections that no other paper can in this state at this time produce. The value is different, the cost is different, and that's why it's there.

PRESIDENT: Time.

SENATOR SCHMIT: Thank you, Mr. President.

PRESIDENT: Senator Haberman, please, then Senator Wehrbein.

SENATOR HABERMAN: Mr. President, members of the body, I have a letter here addressed to Mr. Spire from the Policy Research Department and it says, this is dated December 12, and to my knowledge it has not been answered. Dear Mr. Spire: Several state agencies have run into a problem with legal notices, and I would like your advice on how to handle it. State law, Section 33-141, sets out a legal rate for the publication of legal notices, but some newspapers charge more than the rate established by the law. In many cases, a state agency may simply use another newspaper or publish its legal notices. In some cases, however, this is not desirable nor even possible. For example, some federal programs require legal notices to be placed in newspapers with certain circulation characteristics. Public notices in these cases are notices of hearings, meetings and rule changes. In some cases the Omaha World-Herald, which charges more than the rate set out in Section 33-141 is the only newspaper which qualifies. For example, it may be desirable to publish a notice in a newspaper which charges above the legal rate in order to inform the largest possible number of citizens or obtain the maximum number of bidders for a state project. My question then is, can a state agency publish a legal notice in a newspaper at more than the legal rate if it is determined to be in the best interests of the state or if it is required to do so by federal regulations? Does it matter if the notice is paid

for with federal funds? This raises some key questions that have not been answered. Now, Senator Landis said that a city or county don't have to publish in the paper if they charge more. However, the law says that the city and county shall publish in the paper. So, Senator Landis, beings as you are the expert on this, will you answer a couple of questions for me, please? Or, Senator Barrett, Senator Landis isn't here, would you answer a couple of questions for me, please?

SPEAKER BARRETT: Yes.

SENATOR HABERMAN: Are political subdivisions in violation of laws which mandate that legal notices be published if, in fact, the newspaper of general circulation will not publish the notices?

SPEAKER BARRETT: I don't believe so, Senator Schmit, or, Haberman, I'm sorry.

SENATOR HABERMAN: Must the newspaper publish legal notices submitted for publication by political subdivisions at or below statutory prescribed rate?

SPEAKER BARRETT: Must they publish at or below statutory rates?

SENATOR HABERMAN: Yes.

SPEAKER BARRETT: I believe a county is publishing at three-quarters of the statutory rate.

SENATOR HABERMAN: Must a newspaper publish legal notices submitted for publication by political subdivisions at or below statutory prescribed rate? The answer is...

SPEAKER BARRETT: No.

SENATOR HABERMAN: How do political subdivisions comply with statutory legal notice publication requirements if newspapers refuse to accept legal rates? How are they going to comply with the statutory legal notice?

SPEAKER BARRETT: The amendment that I have offered speaks to that, Senator Haberman. They are allowed to post. They are allowed to post legal notice, they are allowed to post. Section 3 of the amendment refers to it I believe.

PRESIDENT: One minute.

SENATOR HABERMAN: Well, members of the body, due to the questions raised by the Policy Research Office of the Attorney General which, in my opinion and it should be yours, are good questions, I would like to see us hold this bill and not advance it today until we get those answers because what are we going to do when it's the law, federal law, that the state has to spend money in excess of the legal rate in the World-Herald? They are breaking the law. The state agency is breaking the law. But evidently that seems to be all right in this case because it's the World-Herald. But until that question is answered, until the question is answered, how does the state legally break the law, I don't think we ought to advance this bill because I don't know of any way the State of Nebraska can legally break the law.

PRESIDENT: Time.

SENATOR HABERMAN: So it is going to be interesting to see what happens. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Well, Mr. President and members, we have an extremely interesting paradox here. Apparently in Douglas County, the Douglas County Board will be able to nail a sign on the courthouse door and notify 500,000 people in Douglas County of the legal notices as prescribed by state law. But in Butler County, because the newspaper there may be willing to print it for the legal rate, then the county board is forced to spend the money to publish in the newspaper. Now I've always supported fair rates for newspaper publishing particularly when those rates are...when those practices are mandated by this Legislature. But it would seem to me that if 500,000 people in Douglas County can march single file down to the Douglas County Courthouse and read the notice on the courthouse steps every morning, then those of us in Butler County can probably do the same thing and 500 people in Arthur County can probably do the same thing, and it is an interesting situation that the greater number of people are going to be sufficiently notified by a notice on the courthouse door but they are not sufficiently notified in such a manner in Butler County if the newspaper there is willing to publish for the legal rate. So now we have the bare truth out here and that is that we have really

developed a sort of a small subsidy for the newspaper industry and that's all right with me so long as we know what we are doing. We have subsidized many different entities in this body and by our action but we have usually done it under one guise or another, and in the past, we have taken it to mean that it was important for the public to be notified as to what the various subdivisions were doing and, therefore, we have said you must publish, you must notify. I've been a strong supporter of that. I'm a strong supporter of the publishing of expenses by the counties. I've tried to have the natural resource districts do that a number of times without much success. But now it would appear that where there is unanimity in the point of view as to the fairness of the rate, then the counties, the cities are forced to publish. But where there is a lack of agreement as to what is fair, then that discretion is left up to the county board or the city to ignore that and to use the less expensive system of notice. It does not answer the question raised by Senator Haberman as to how the state will provide for notice. Do they put a notice on the Governor's mansion? Do they put a notice on the Capitol? How then do we inform the public of the sale of surplus property, the many other bids which are important to the public to be notified of, and what is the uniformity that is involved? It would seem to me that maybe we are opening up more of a problem here than we are resolving. But it is certainly to the uninitiated such as myself, it would appear that we are mandating a rate which the counties and the cities and the rural areas must pay, but it is devil take the hindmost in Douglas County and the City of Omaha and the county board there must then pay whatever is demanded by that institution unless, of course, publishing it in the Daily Record or the "Whammo" or something of that nature will suffice. That might be something which ought to be investigated. Thank you.

PRESIDENT: Thank you. Senator Barrett, then followed by Senator Landis, then Senator Haberman. Senator Barrett, please.

SPEAKER BARRETT: Thank you, Mr. President and members, there was confusion on this bill on General File. I'm sorry there is a bit of confusion on Select File. My apologies, but a quick comment to Senator Schmit, I believe, for his statement of a moment ago in which he is concerned about perhaps Douglas County getting by a little cheaper than others. There are other newspapers in Douglas County that can and do and will accept these legal notices. We've got the Daily Record, we've got the Midlands Business Journal, and I think those two could satisfy

the requirements that are asked for. With regard to Senator Haberman's concerns and holding the bill until they are addressed, let me suggest to you that a political subdivision cannot be held hostage anymore by a newspaper. Again, I call your attention to Section 3 of the amendment which calls for the posting of notices. It spells out where the posting is to be placed. If no place is specified, then notice has got to be posted in all of three places, that is in the regular meeting place of a political subdivision giving the notice, for example, a city council, school board meeting place, if they have to give notice, also where the thing described in the notice is to occur, maybe a post...a room where the meeting is to be held. And finally, it identifies a public bulletin board in a municipal or a county office. I think that is very clear and I see no reason why we should stumble around any further on the bill. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: Let's call that 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 Barrett, would you like to close? Senator Barrett, would you like to close on the advancement of the bill?

SPEAKER BARRETT: No, I think the questions now have been addressed, Mr. President. Senator Landis, if you'd care to say anything, I would yield.

SENATOR LANDIS: Thank you. I don't think we've adopted the amendment, have we?

PRESIDENT: Yes.

SENATOR LANDIS: We did?

PRESIDENT: Yes.

SENATOR LANDIS: Terrific.

February 21, 1989 LB 298, 312
LR 32

PRESIDENT: We're on the advancement of the...

SENATOR LANDIS: In that case let me just say, I didn't remember the vote on that one. I glad it got adopted. If you'll...now on the question of the advancement of the bill and you're listening to the argument, there are two or three questions to ask yourself. If you think that the law should force somebody to operate or sell a product at a loss, vote against the bill. If you think that there is no difference between the cost structure of printing a thousand newspapers and printing 100,000 newspapers, vote against the bill. But if you have some belief in the notion of the marketplace where a consumer comes to somebody who is selling a product and if the product's price is too high they can walk away, then I think you have every reason to think that 298 is going to work. What it says is, if a newspaper will not charge the legal rate but wants to charge more than the legal rate, whoever is doing business with them can walk away and publish their notice on the courthouse door, and that should suffice. That is what a consumer does when they are getting an extortionate price put on a product. It is what we normally believe in and that is that there is discipline in the marketplace that will work here, we allow the political subdivisions to walk away if the newspapers won't charge the legal rate. That is a reasonable method of discipline. I urge the advancement of the bill.

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

CLERK: 35 ayes, 0 nays, Mr. President, on the motion to advance LB 298.

PRESIDENT: LB 298 is advanced. LB 48.

CLERK: May I read some items for the record, Mr. President?

PRESIDENT: Yes, sir, Mr. Clerk.

CLERK: Mr. President, new resolution, LR 32 offered by Senator Wesely. (Read brief explanation. See page 798 of the Legislative Journal.) That resolution will be laid over.

I have amendments to be printed to LB 312 by Senator Withem and

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

PRESIDENT NICHOL PRESIDING

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

REVEREND JOHNSON: (Prayer offered.)

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

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

PRESIDENT: Thank you. Any corrections this morning?

CLERK: Mr. President, I have no corrections.

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

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

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

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

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

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

March 2, 1989

LB 176, 298, 327

to employment for disabled citizens of Nebraska, but neither is it the intent to subject employers to exorbitant expenses in order to accommodate just one employee. The de minimus expense means that employers will not be burdened with an exorbitant expense for just one employee, but if a reasonable de minimus expense can be made so that that employee can have a job, then that is what is required. With that, I'll withdraw the motion.

PRESIDENT: It is withdrawn. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President.

PRESIDENT: You may read the bill, please.

CLERK: (Read LB 176 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is shall LB 176 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 945 of the Legislative Journal.) 41 ayes, 0 nays, 4 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 176 passes. LB 298.

ASSISTANT CLERK: (Read LB 298 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 298 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 946 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 4 excused and not voting, Mr. President.

PRESIDENT: LB 298 passes. LB 327.

ASSISTANT CLERK: (Read LB 327 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 327 pass? All

March 2, 1989

LB 48, 49, 61, 176, 226, 298, 327
349, 391, 398, 408, 416, 458, 459
502

2 present and not voting, 4 excused and not voting,
Mr. President.

PRESIDENT: LB 502 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 391, LB 398, LB 458, LB 459, LB 48, LB 61, LB 176, LB 298, LB 327, LB 349, LB 416 and LB 502. May I introduce some guests, please, of Senator Hefner. Under the south balcony we have Mr. and Mrs. Darrell Henry of Coleridge, Nebraska. Would you folks please stand and be recognized. Thank you for visiting us today. Mr. Clerk, something for the record?

CLERK: Mr. President, your Committee on Education reports LB 226 to General File with amendments, signed by Senator Withem. Agriculture Committee reports LB 49 to General File with committee amendments, signed by Senator Johnson as Chair. That's all that I have, Mr. President. (See page 950 of the Legislative Journal.)

PRESIDENT: Thank you. We'll move on to Select File. LB 408.

CLERK: Mr. President, the first bill on Select File, LB 408. The first order of business are E & R amendments.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Mr. President, I move we adopt the E & R amendments to LB 408.

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

CLERK: Mr. President, the first amendment I have to the bill is by Senator Barrett. Senator, I have AM306, it's on page 692 of the Journal.

PRESIDENT: Senator Barrett, please.

SENATOR BARRETT: Thank you, Mr. President and members. Yes, this little amendment is on page 306 or rather 692 in the Journal. It affects only the exchange program, Mr. President. The original bill put a limitation on which would have prevented an exchange student from attending a high school within 150 miles of his own school. We heard from a superintendent in Columbus who said we may have some students who would like to go

March 2, 1989

LB 48, 61, 161, 176, 298, 327, 334
349, 354, 354A, 391, 398, 416, 458
459, 502, 542

adopted...or, excuse me, as amended be advanced.

PRESIDENT: You've heard the motion. All in favor say aye.
Opposed nay. It is advanced. LB 354.

CLERK: LB 354, Senator, no amendments to the bill.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 354 be advanced.

PRESIDENT: You've heard the motion. All in favor say aye.
Opposed nay. It is advanced. LB 354A.

CLERK: On 354A, Senator, I have no amendments to the bill.

PRESIDENT: You've heard the motion...Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 354A be
advanced.

PRESIDENT: You've heard the motion. All in favor say aye.
Opposed nay. It is advanced. Mr. Speaker, did you wish to say
something about the time of the meeting tomorrow morning before
we adjourn?

SPEAKER BARRETT: Thank you, Mr. President, just a reminder that
we will convene at eight o'clock tomorrow morning for the
purpose of reading, I believe it is LB 92, the big bill. Thank
you. Eight o'clock, tomorrow morning.

PRESIDENT: Okay, Mr. Clerk, do you have something for the
record?

CLERK: Mr. President, I do. Senator Rod Johnson would move
that LB 161 be placed on General File pursuant to Rule 3,
Section 19, and that will be laid over.

Your Enrolling Clerk has presented to the Governor as of
eleven-o-five this morning bills read on Final Reading this
morning. (Re: LB 391, LB 398, LB 458, LB 459, LB 48, LB 61,
LB 176, LB 298, LB 327, LB 349, LB 416, LB 502. See page 956 of
the Legislative Journal.)

Banking Committee reports LB 542 to General File with amendments

March 7, 1989

LB 48, 61, 92, 92A, 147, 147A, 154
176, 298, 327, 349, 360, 360A, 391
398, 416, 441, 458, 459, 502

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our chaplain of the day Reverend Steve Janovec of the People's City Mission in Lincoln. Would you please rise for the convocation.

REVEREND JANOVEC: (Prayer offered.)

PRESIDENT: Thank you, Reverend Janovec. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Any corrections to the Journal this morning?

CLERK: No corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 147 and recommend that same be placed on Select File; LB 147A, Select File.

Mr. President, Enrollment and Review reports LB 154, LB 360, LB 360A and LB 441 as correctly engrossed, both those items signed by Senator Lindsay as Chair of the Enrollment and Review Committee. (See pages 1003-04 of the Legislative Journal.)

Mr. President, communications from the Governor. (Read communications regarding signing of LB 391, LB 398, LB 458, LB 459, LB 48, LB 61, LB 176, LB 298, LB 327, LB 349, LB 416, LB 502, LB 92 and LB 92A. See page 1004 of the Legislative Journal.)

Mr. President, an appointment letter from the Governor appointing Ms. Kathy Campbell to the Child Abuse Prevention Fund Board. That will be referred to Reference. (See page 1005 of the Legislative Journal.)

I have a report from the Job Training area for the Department of Labor, Mr. President. That will be on file in my office. (See page 1005 of the Legislative Journal.)