

presence today here today with us reminds us of the awesome responsibilities that we share. They are the reasons that we must choose carefully. They deserve the very best that we can give them--the best education, the best career opportunities, the best environment in which to grow and mature. So as you undertake the responsibilities of this session, may the faces of these young people be your reminder of the job that we all have to do and do reflect on how your actions will affect not only the parents and grandparents of these young people, but the future of all of Nebraska's children. You have my every good wish for a successful session, and my gratitude as well and the gratitude of our fellow Nebraskans who are so grateful for your willingness to serve. Thank you and may the God Almighty bless each and every one of you in your deliberations. Thank you. (applause.)

PRESIDENT: (Gavel.) Governor Orr, thank you for bringing us your State of the State Address and welcome to Bill, Suzanne and most of all, Taylor. We appreciate your coming at this time to give us your address. Will the committee please escort you from the Chamber at this time. (Gavel.) What do you have left, Pat? I understand we have more bills to introduce, Mr. Clerk.

CLERK: Mr. President, new bills. (Read LB 301-312 by title for the first time. See pages 152-55 of the Legislative Journal.)

Mr. President, in addition to those items I have a series of announcements. Senator Lamb announces that Senator Emil Beyer has been selected as Vice Chair of the Transportation Committee.

Mr. President, I have notice of hearing from the Urban Affairs Committee, signed by Senator Hartnett; and from the Education Committee, signed by Senator Withem. And, Mr. President, I believe that is all that I have.

Mr. President, I have a Report of Registered Lobbyists for the...up through January 9, which is required to be filed pursuant to statute.

PRESIDENT: We have a few more bills to introduce. We'll be at ease for just a few moments.

EASE

CLERK: The Executive Board will meet now in Room 2102;

February 9, 1989

LB 37, 48, 57, 58, 70, 77, 94
97, 115, 120, 126, 133, 142, 156
209, 229, 230, 233, 251, 255, 256
295, 311, 350, 521, 597, 598, 692
703, 777, 780

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 209 as amended be advanced.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. May I introduce a guest, please, of Senator Hefner. We have Mr. Art Anderson of Bloomfield, Nebraska. Would you please stand, Mr. Anderson. Thank you. Mr. Clerk, anything for the record?

CLERK: Yes, Mr. President, thank you. Your Committee on Appropriations gives notice of hearing for March 7...I'm sorry, for February 24. That's signed by Senator Warner. A location change for Appropriations hearings on March 1, also offered by Senator Warner.

Mr. President, General Affairs Committee offers LB 703 to General File; LB 777 to General File; LB 780 to General File. Those are signed by Senator Smith as Chair of the Committee.

Agriculture Committee reports LB 37 to General File with amendments; LB 120 to General File with amendments. Those are signed by Senator Johnson as Chair. (See pages 678-79 of the Legislative Journal.)

Mr. President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis reports LB 77 to General File with amendments; LB 311, General File with amendments; LB 350, General File with amendments; LB 598, General File with amendments; LB 692, General File with amendments, and LB 597, General File with amendments. Those are signed by Senator Landis as Chair. (See pages 679-82 of the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 11:30 a.m. (Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, and LB 256.)

Mr. President, Senator Moore would like to print amendments to LB 48. (See page 682 of the Legislative Journal.)

And, Mr. President, Senator Weihing would like to add his name to LB 521 as co-introducer. That's all that I have, Mr. President.

March 13, 1989

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

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

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

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

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

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

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

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

March 14, 1989

LB 311, 431, 431A

SENATOR WESELY: Certainly, thank you. Mr. President, members, again we are continuing to work with different economic development interests around the state. They have expressed a great deal of desire to proceed with this legislation. And we hope to come back with even more ideas for you on Select File on how to improve the bill. I ask for the advancement of the legislation.

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

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of 431.

PRESIDENT: LB 431 is advanced. LB 431A.

CLERK: LB 431A, offered by Senator Wesely. (Read.)

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Thank you. Just again it would reduce the money now earmarked for the telecommunications division of 125,000 and put it into this program. I move for the advancement of the bill.

PRESIDENT: Okay. The question is the adoption of LB 431A. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of 431A.

PRESIDENT: The bill is advanced. LB 311.

CLERK: Mr. President, 311 was a bill introduced by Senators Landis, Weihing and Schimek. (Read.) The bill was introduced on January 10, referred to Banking, advanced to General File. I do have committee amendments pending by the Banking, Commerce and Insurance Committee, Mr. President.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. Speaker. Let me open my book here and take a look at those amendments. Mr. Speaker, members

of the Legislature, the Banking, Commerce and Insurance Committee heard this bill on February 6 and the proponents of the measure included myself, Dennis Gramms, the Director of the Department of Environmental Control, Dale Hutton, the Department of Environmental Control, and John Rochford, the State Budget Administrator. There was an opponent at the hearing, Jerry Prazen, on behalf of the City of Omaha, and Mr. Prazen asked that the bill recognize all existing means that Omaha had under state law that they could identify that could fund waste water treatment in Omaha. Since there was no intention on the bill's score in any way to limit any existing mechanism that the city had, we had no difficulty in arriving at that. So, the amendment to 311 that the committee adopted simply says nothing in this section, talking about this bill, shall prohibit the provision of loans or loans pursuant to the Conservation Corporation Act to a municipality for the construction, development, rehabilitation, operation and maintenance and improvement of waste water treatment facilities. That was to recognize that the conservation corporation could make loans of this nature, and to make sure that there was nothing that was meant to prohibit any existing rules or powers that cities had. For that reason, I would urge the adoption of the amendment, and I'll explain the bill and it's meaning to the Legislature.

PRESIDENT: Thank you. The question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Please vote, ladies and gentlemen. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of committee amendments.

PRESIDENT: The committee amendments are adopted. Now back to the bill, Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. President, members of the Legislature. In the last several years the Legislature has given money, state appropriations, to cities to help build waste water treatment facilities. That's because the federal government, which has a large program to assist cities, has, as part of its obligations, an element of state match. If cities want the big federal dollars, they have to come up with some state match. And we've filled in the gaps. As a matter of fact, in the last biennium the amount was \$2.2 million of state money to help cities build waste water treatments and leverage federal grants big dollars that cities could get. Well the feds

have changed the game. The feds have said, and this is I think a product of the Reagan revolution, we're going to come to an end of these annual federal appropriations underwriting municipal waste water treatment, we're going to give a balloon, a series of years of relatively large federal fundings, but we're telling the states now begin a revolving fund. You can use these last federal dollars to put into a revolving fund, rather, and then the cities will be able to borrow against the revolving fund and pay back, over time, the costs of waste water treatment. That's the federal change. When the feds did this they said we are indifferent to where the state match comes from. It can come from a straight General Fund appropriation or, if states wish to, they can fund their portion of the revolving fund by bond payments and front-load the revolving fund in one issuance of state bonds, or state appropriations that will count towards a state revolving fund and leverage more federal money. As a matter of fact they don't have to be state bonds, they can be bonds that are issued either, in the case of Nebraska, by NIFA or the Conservation Corporation Act. Those monies will satisfy the federal standards which then give us a whole lot of federal money to build waste water treatment plants. There are two parts to the situation. First, the need, second the mechanism. I've passed out on your desks, and you'll find it listed here, two pages, the document, the need for waste water in Nebraska. In a quick survey, 1987 survey by the Infrastructure Task Force, that had only 11 communities report, it was clear that here was \$97 million in sewer pipe needs in just those 11 communities. In the '89 Waste Water Needs Survey 527 municipalities were surveyed, 350 projects were estimated with a cost of \$93 million, plus waste water related needs for the state of 253 million bucks. Because of the need in Omaha to separate their sewer system from their water system, in Omaha alone it could be as high as \$600 million to do this work. The second page indicates that in Omaha we could be looking at a \$1 billion cost of sewage work. Now I offer that as documentation that there is today and there remains out into the future, about as long as you can see, a need for clean water and waste water treatment. All right, let's move on to the second issue, that is the mechanism. Well here I've got a map for you, a drawing of the project, if you will, how the cycle of a state revolving fund works. Into the revolving fund comes any state appropriations that we wish to make, in the past that's been General Fund. The Governor, this year because she specifically mentioned LB 311 in here State of the State speech, has indicated that her budget is premised on the notion that we'll

be able to use 311 and have no state appropriations against the General Fund. However, if the Appropriations Committee wishes to, they can certainly put in a General Fund state appropriation into the state revolving fund. Whatever amount of money we can leverage from the federal government in these waning days of their program, will get put into the state revolving fund. If there are other special fees or sources, those would go to the state revolving fund. And in the last box on your cycle here, the capital markets, the bond proceeds that would be authorized by 311, they can be put into the revolving fund. There's the pot of money to pay for waste water treatment in the State of Nebraska. What will happen, according to the federal plan, this state revolving fund will give money to local communities who are in need of capital to build a facility, over time they will repay their loans back into the state revolving fund. How will the bonds be paid off? The bonds will be paid off by the debt service payments that the state revolving fund will make to the bond holders to pay off the bonds. Now, this mechanism that you see before you is quite commonly adopted in other states. As a matter of fact Nebraska is the only state in our region seven, of the EPA, that is unable to use bonds as a mechanism to fund some portion of the 20 percent match. The other states in our region include Kansas, Iowa and Missouri, all of whom have this kind of power. Additionally, 30 states have revolving funds up and running. And from these a number have on paper the power to use bonds. Thirteen states have, in fact, already issued bonds for this purpose. There are, as you can see, a developing trend of states that use this bonding mechanism to front-load their state revolving fund. The mechanism is an issuance of bond, either by NIFA or by the Conservation Construction Act, to fund the state revolving fund for the waste water treatment, one of two things will happen, either the state will be able to continue with its state appropriations to the General Fund, and in so doing we will be able to leverage more federal money and build more waste water treatment. In the alternative the state is free to cut back on its General Fund appropriations, move that money into other programs and continue to meet its obligations for building waste water treatment facilities through the operation of 311. I urge the advancement of LB 311 to the next stage of debate. I'll be happy to answer any questions.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor vote aye, opposed nay. Senator Landis.

March 14, 1989

LB 311, 357

SENATOR LANDIS: ...balking kind of a morning hasn't it been.

PRESIDENT: Isn't it, though, I've noticed that.

SENATOR LANDIS: It's the kind of a day we just can't seem to get our work done as quickly as we should. Ah, well, that's all right. I'll talk about this another time.

PRESIDENT: It's been nice visiting with you. Record, Mr. Clerk, please. A record vote has been requested.

CLERK: (Read record vote as found on page 1127 of the Legislative Journal.) 26 ayes, 2 nays, Mr. President, on the advancement of LB 311.

PRESIDENT: The bill is advanced. May I introduce some guests, please, in the north balcony. Senator Chris Abboud and others have guests there. We have 20 American Association of University Women from Omaha, Lincoln, Peru and Osceola and they are here to visit us this morning. Would you please welcome them. Would you ladies please rise, so we can see who you are. Thank you for visiting us this morning. We'll move on to LB 357.

CLERK: Mr. President, the first item on 357 are Enrollment and Review amendments, Senator Lindsay.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 357 be adopted.

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

CLERK: Mr. President, Senators Schellpeper and Nelson would move to amend. Mr. President, the amendment is AM751, you'll find it in your bill book. (See page 1049 of the Legislative Journal.)

PRESIDENT: Senator Schellpeper, are you handling this?

SENATOR SCHELLPEPER: Thank you, Mr. President and members. Yes. This is an amendment that we discussed the last time that

March 20, 1989

LB 188, 262, 311, 643
LR 2

reviewed LB 311 and recommend the same be placed on Select File; LR 2CA, on Select File; and LB 643 on Select File, those signed by Senator Lindsay as Chair. Education Committee reports LB 188 as indefinitely postponed. That is signed by Senator Withem as Chair of the Education Committee. Amendments to be printed to LB 262 by Senators Lindsay and Ashford. That is all that I have, Mr. President. (See pages 1225-26 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, and let the record reflect that Senator McFarland had 15 first and second graders visiting with us this morning from Hawthorne School. They were in the north balcony and have since had to leave. Senator Moore, please.

SENATOR MOORE: I move we recess until 1:30 p.m.

SPEAKER BARRETT: You have heard the motion to recess until 1:30 p.m. Those in favor say aye. Opposed no. The ayes have it. Motion carried. We are recessed.

RECESS

PRESIDENT NICHOL PRESIDING

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

PRESIDENT: Thank you. Senator Wehrbein, do you have some special guests back there you would like to introduce, and if you would go to your microphone and have them step out even with the columns there so we can see who they are, we'd like to know who your special guests are today.

SENATOR WEHRBEIN: Mr. President, members, yes, thank you. I'd like to introduce some special guests that are here on behalf of Ag Day. They will be going down to see the Governor in just a few minutes for some of their awards. First of all, it concerns a resolution I had this morning honoring Marlan and Mary Johnson from Eagle, Nebraska, which were one of the four national winners in the Outstanding Young Farmer Awards sponsored by the National Jaycees, Marlan and Mary Johnson. In addition to that, Don and Linda Anthony from Lexington, Nebraska, was the first Nebraska winner in the National Outstanding Young Farmer Award, I believe in 1986. Also, Larry Abrahams from West Point,

April 18, 1989

LB 311, 761

Elementary School in Omaha and their teachers. Will you students and teachers please stand to be recognized by your Legislature. Thank you for visiting us this morning. Senator Robak, would you like to recess us till one-thirty this afternoon, please.

SENATOR ROBAK: I move that we adjourn until today at one-thirty.

PRESIDENT: You have heard the motion to recess till one-thirty. All those in favor say aye. Opposed nay. We are recessed till one-thirty.

RECESS

PRESIDENT NICHOL PRESIDING

CLERK: There is a quorum present, Mr. President.

PRESIDENT: All right. Do you have something new to present to us?

CLERK: Mr. President, if I may read an item for the record. I have an Attorney General's Opinion addressed to Senator Scofield regarding LB 311. (See pages 1754-58 of the Legislative Journal.)

Mr. President, LB 761 was discussed by the Legislature this morning. A series of amendments were considered. I now have pending, Mr. President, a motion to reconsider. Senator Bernard-Stevens would move to reconsider the adoption of the Chambers amendment.

PRESIDENT: All right. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: (Mike not activated.) ...pass over that at this particular time.

PRESIDENT: It's passed over.

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

PRESIDENT: Are we on the advancement of the bill? Okay, we're

April 18, 1989

LB 89, 311, 591, 761

Schmit, would you care to close. For closing, Senator Schmit.

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

SPEAKER BARRETT: Thank you. The question is the advancement of LB 591 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 31 ayes, 1 nay, Mr. President, on the motion to advance LB 591.

SPEAKER BARRETT: LB 591 is advanced.

CLERK: Mr. President, I have a motion, a unanimous consent request by Senator Hall to expedite LB 591.

SPEAKER BARRETT: If there are no objections, so ordered. Anything for the record, Mr. Clerk?

CLERK: Mr. President, just one item. Senator Chambers has amendments to be printed to LB 761. That's all that I have. (See page 1761 of the Journal.)

SPEAKER BARRETT: Thank you. Select File, senator priority bills. LB 311. Okay, Senator Landis on the bill.

SENATOR LANDIS: Yes, Mr. Speaker, members of the Legislature. An Attorney General's Opinion, delivered to the Clerk just this afternoon, indicates, upon first reading, that an amendment is in order. I'd like the body's indulgence to pass over 311 today for the purposes of preparing the appropriate amendment, printing it in the Journal and then renewing the advancement of 311 at that time.

SPEAKER BARRETT: Thank you, Senator Landis. So be it. We'll pass over the bill for the time being. Moving then to LB 89, Mr. Clerk.

CLERK: Mr. President, LB 89 was last considered on April 3, at that time Enrollment and Review amendments were offered. Senator Withem offered a motion to indefinitely postpone. Senator Lynch, as introducer, laid the bill over. Senator Withem's motion is now pending, Mr. President.

SPEAKER BARRETT: Senator Withem, please.

April 18, 1989

LB 89, 311, 769

remember...I try never to do that. I wouldn't have survived for 30 some years in politics now, I guess, by doing that. I think this is fair. I think it's a good place to begin. In fact, I think it's a good place to end. But we'll give it a chance and we can talk about it later on. I would simply ask for, please, your support and I need 25 votes for this amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Lynch amendment to LB 89. All in favor vote aye, opposed nay. Have you all voted? Senator Lynch.

SENATOR LYNCH: Oh, I can think of something to say and keep on talking until I see two more greens up there. In the absence of that, I guess I might have to do something I prefer not to do. I could give you the talk about coming before you to stand behind you to talk to you about something I know nothing about but I prefer not to do that. I can see at least three or four bodies up there that haven't voted yet that may be sympathetic to it. Maybe I better shut up right now. But...oh, I hate to do this, folks, but you know how it goes here.

SPEAKER BARRETT: Senator Lynch requests a call of the house.

SENATOR LYNCH: Call of the house.

SPEAKER BARRETT: Shall the house go under call? Those in favor...record, Mr. Clerk. Record vote has been requested. Thank you.

CLERK: (Record vote read. See pages 1763-64 of the Legislative Journal.) 26 ayes, 8 nays, Mr. President, on adoption of Senator Lynch's amendment.

SPEAKER BARRETT: The amendment is adopted. Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President. Mr. President, Senator Conway has amendments to be printed. (See page 1764 of the Legislative Journal regarding LB 89.)

Senator Scofield to LB 311. (See pages 1764-65 of the Legislative Journal.)

Senator Ashford to LB 769. (See pages 1765-66 of the Legislative Journal.)

May 2, 1989

LB 311, 813
LR 92-97

and not by my explanation, which he probably would have...should have meant in saying he was confused by the explanation also. With that, this is an amendment, 30,000 this year, 15 the next, to fund the State Department of Education in its effort to provide technical assistance to the county reorganization committees. I would urge you to adopt the amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Withem amendment to LB 813. Those in favor vote aye, opposed nay. Record, please.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. Anything for the record, Mr. Clerk?

CLERK: Mr. President, yes, thank you. Senator Landis has amendments to LB 311 to be printed. Study resolutions by Urban Affairs Committee, LR 92, calling for a review of fire protection services in rural and unincorporated areas; LR 93, calling for review of Nebraska municipalities with respect to appropriate tools to foster economic growth and development; LR 94, problem of quality drinking water; LR 95, Urban Affairs reviewing the traditional subject matter jurisdiction of the Urban Affairs Committee; LR 96 by Urban Affairs to municipal growth patterns and conditions existing in areas commonly referred to extra territorial zoning jurisdiction; LR 97 by Senator Chambers, is a resolution, Mr. President, asking the Legislature to ask the Board of Regents to establish an endowed scholarship program for full-time Black, American Indian, and Hispanic undergraduate students at the University of Nebraska. That one will be laid over, Mr. President. (See pages 1999-2009 of the Legislative Journal.)

Mr. President, the next amendment I have to the bill is by Senators Rod Johnson, Baack and Coordsen. (AM1574 can be found on page 1952 of the Journal.)

SPEAKER BARRETT: Senator Johnson, please.

SENATOR R. JOHNSON: Mr. President, members, this amendment calls for \$500,000 to be put into the Soil and Water Conservation Fund in the State of Nebraska, the purpose being to provide funding on a cost-share basis with farmers. As many of

him beat the hell out of her. They claim that this young Tawana Brawley who said she had been raped by some white men in New York, they say it's a lie and they say she told it because she felt if she told the truth about where she had been and what she was doing, her mother's boyfriend would have beaten her and that is what these Christians want to run these young women to. Yeah, I mean every word that I'm saying, I really do. And those of you who believe in God, it's amazing to me, as Jonathan Swift said, that you're a coward towards men and brave toward God because you will throw contempt in God's face by disobeying the types of things that he ordered you to do in order to get along with mere men.

SPEAKER BARRETT: Time. The question is, shall LB 769 be indefinitely postponed? A call of the house has been requested. Shall the house go under call? Those in favor vote aye, opposed nay. Record.

CLERK: 25 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those outside the Chamber, please return and record your presence. Senator Bernard-Stevens, please, record your presence. Senator Abboud, Senator Wesely, Senator Pirsch, please report to the Chamber. Senators Abboud, Senator Pirsch. Thank you. Mr. Clerk, would you read the roll on the indefinite postponement of the bill.

CLERK: (Read roll call vote. See page 2038 of the Legislative Journal.) 13 ayes, 30 nays, Mr. President.

SPEAKER BARRETT: Motion fails. The call is raised. Mr. Clerk, have you anything for the record?

CLERK: I have amendments to be printed to LB 89 by Senator Smith; Senator Scofield to LB 311 and Senator Withem to LB 588. That's all that I have, Mr. President. (See pages 2038-42 of the Legislative Journal.)

SPEAKER BARRETT: Thank you.

SENATOR LABEDZ: Mr. President...

SPEAKER BARRETT: Senator Labeledz.

May 9, 1989

LB 311, 817

SENATOR WEHRBEIN: Mr. Speaker, members, I would just like to comment on that. I predict that we will be facing that issue here in, probably in this body, in a few years as whatever happens on that Missouri River. As Boundary Commission members, we have decided we are only going to take a piece at a time because agreement is extremely difficult in many of these areas. There is as much as 20,000 acres, I understand, give or take a few thousand, up and down the Iowa-Nebraska border, particularly, that are going to be in question back and forth. This is an attempt, this is an agreement between Union County, South Dakota, Dakota County, Nebraska, where there is stabilized bank, where there is an agreement, so we are probably doing the easy ones first, but I think this might serve to forewarn the body that perhaps we will be into this area heavy, and I would also stick my neck out and say it might be a 100 to 200 years before some of these are solved because they have been around that long already.

SPEAKER BARRETT: Thank you. For purposes of closing, Senator Conway, any closing summary.

SENATOR CONWAY: Very quickly in closing, I think, hopefully, if there were any questions, that people did raise them. If not, later on, between now and Select File, any individual, I would be willing to work with and discuss that, any concerns they may have. Also in closing, I would like to ask unanimous consent to expedite the legislation. It is crucial that we catch up with the South Dakota legislation while we have an agreement and get the two common agreements to Washington. So I would also ask unanimous consent for the body to deal with this in an expedite fashion.

SPEAKER BARRETT: Is there objections? Certainly. You have heard the closing and the question is the advancement of the bill to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 817.

SPEAKER BARRETT: LB 817 is advanced. To Select File, Mr. Clerk, senator priority bills, LB 311.

CLERK: Mr. President, the first order on 311 are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: I move the adoption of the E & R amendments to LB 311.

SPEAKER BARRETT: Shall the E & R amendments be adopted to 311? All in favor say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, I now have amendments to the bill by Senator Scofield. Senator, this is your amendment on page 1764 of the Journal.

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President. I am going to withdraw this amendment, and Senator Landis has an amendment coming on down the track here a ways, but before I do that, I want to have an opportunity to talk about why I offered this particular amendment. And you will notice as well that I had requested an Attorney General's opinion on this bill, which you can find on page 1754 of the Journal. I had some concerns about the financing mechanism proposed in 311, given the arrangements proposed by Senator Landis, that we probably had some constitutional problems, and so I had offered this amendment as a possible way of dealing that, and I also wanted to make it clear that we were not defining NIFA as a municipality. I am going to withdraw this but I wanted to reference you to the Attorney General's Opinion, if you haven't had a chance to do this, and I would like to commend Senator Landis's staff, Charlie, who is sitting over here under the balcony. He spent hours working on this trying to address my concerns and, frankly, I just don't think we have been able to do it, but it isn't because they haven't tried. They had tried very, very hard. My concern about this issue is based on a lot of things are happening at the federal level right now, which, as I recall Senator Landis's letter to us, is why he brought us this bill in the first place. You have on your desk a couple of handouts, which I distributed this morning, talking about the status...one is titled "Sewage Treatment Grant Funding Threatened". Frankly, the status of sewage treatment grant funds to states are still potential targets at the federal level for funding reductions. You have a handout dated April 18th to that effect which comes from NCSL that I would encourage you to take a look at. This is an area that doesn't have much glamor surrounding it but it is

going to really cause a lot of problems for our communities if we can't address it. Senator Landis, to his credit, brought us 311 I think as one mechanism that might be a way of addressing this problem. However, I am not sure that the mechanism he has brought us here is ready to be passed. I still think it has got some constitutional problems, and I bring this to your attention because I think it is serious enough for all of us here in the state to take the actions that are recommended in this handout to make sure that, in fact, the federal government realizes how important this area is. For more background, I would also refer you to an article that I passed out that is titled "Effluent, not Affluent", which is from the National Journal of March 25th of this year, and I would specifically reference you to page 742 of that article which talks about specifically the problems, the whole article, essentially, deals with the problems that communities are going to have with financing wastewater treatment activities, what the federal history has been on this whole issue, and, specifically, what some of the problems are depending on even what size of community you are. I am not going to go into that right now. I am going to withdraw this amendment and move on with this bill, but I want to call that to your attention, so that if you haven't had a chance to look at that as it came forward on your desk, I would do so. As I mentioned, I did also request an Attorney General's Opinion on this bill because it seemed to me that the bill proposes a significant departure from other funding mechanisms that we have allowed in the past. We created, you recall, the Nebraska Mortgage Finance Fund, and the Ag Development Fund, and the Nebraska Development Finance Fund, and provided that these funds would keep monies separate and distinct from any other state monies, and 311, I thought, had authorized NIFA to make deposits into a fund in the State Treasury and further authorize the state to obligate assets to secure these deposits, and I had a problem in that I thought there would be money from other sources in the fund, and both federal grant allocations and state appropriations could become so mushed together, if you will, that we might very well end up with an unconstitutional mechanism. That is where the constitutional question still arises. As I said, Senator Landis's staff has really tried to address this. I don't think we are there yet, in my opinion, but that will come down to, basically, I guess how far you want to address that. It is a very complex area. In fact, it is a real sewer of problems, but at any rate...sorry, Senator Landis...that is why that amendment was offered. The second amendment which I also intend to...

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SPEAKER BARRETT: Thirty seconds.

SENATOR SCOFIELD: The second amendment that I am going to withdraw dropped off the last four sections of the bill because they gave the Department of Environmental Control power to obligate all or any part of a fund and put a lien against that fund. I have real problems with both of those just in terms of the financing mechanisms and all the constitutional problems that we have had with like activities in the past. So I will get into that more, right now, but I will, right now, withdraw this amendment, and then the next amendment that I had filed as well, and let Senator Landis address these questions in an amendment that he is bringing in. Thank you.

SPEAKER BARRETT: Thank you. They are withdrawn.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Landis. Senator, I have AM1620 in front of me. (See page 1999 of the Legislative Journal.)

SENATOR LANDIS: Thank you. Mr. Speaker, members of the Legislature, this is a response to the Attorney General's Opinion that Senator Scofield requested and received which in part said; in summary, it is our conclusion that Section 10 of the proposed bill would authorize use of all or any part of the fund to pay and secure the repayment of loans, and that would be violative of the constitutional limitations concerning indebtedness of the state. The amendment on several occasions recites that this is not a lending of the credit of the state, that the earnings on such appropriations may not be used to repay the bonds that might be lent to support the wastewater treatment fund. It strikes some language that was in the bill and, basically, it serves to create a wall in the revolving fund between the state appropriations, which are walled off, from the rest of the fund, which would consist of federal grant monies and the interest created by the fund, plus the repayments from cities. That is so that the state appropriations money will not serve as a pledge for the repayment of the bonds that might be issued pursuant to 311. Now, there are a couple of technical amendments here to adopt, and then I think there is I think a reasonable but short discussion on the underlying issues. Let me just simply say the wastewater need in this state is very clear. It certainly exists in small towns. We are buffeted by the federal government's redefinition of its role because it is

bringing to an end its grants to states. It has urged states to use revolving loan funds which means that cities will have to repay the money given to them to build wastewater treatment facilities, as opposed to straight grants, which is what we have done in the past. That does hurt cities that don't have a large tax base, and who can't easily repay those kinds of monies. One of the amendments that Senator Scofield will offer addresses that. I intend to accept it. All the Scofield's amendments on the Clerk's desk I intend to accept. There still remains an underlying issue. Let's put the bill in proper technical form and then let's have that discussion. I move the adoption of the amendment on page 1999 of the Journal.

SPEAKER BARRETT: Thank you. Discussion on the amendment offered by Senator Landis? Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President. As I said before, I appreciate the hard work the Landis staff has gone to to try to respond to my concerns and, as Senator Landis said, this amendment separates out money to attempt to get around the constitutional questions that were raised, and Senator Landis has correctly pointed out that there may still be, in my opinion, constitutional questions. We have had a difficult time with this, partly figuring out what is permissible, even at the federal level, and what is permissible, DEC spent a lot of time working on this, and we have looked at other states for models. None of them, from my understanding, really seemed to fit our situation exactly. We are not sure because our Constitution is different than other states exactly how this works out. So we have that constitutional question that faces us I think. And, secondly, there is a fundamental policy question that I will be raising later that remains, I think, regardless of what we know or don't know about constitutionality, and I would hope we don't spend a lot of time here today trying to second guess what a lawsuit on this might bring us. But I think the real policy question that I am going to want to bring to you is, should the state be obligating assets at its disposal to cover NIFA bonds, even though Senator Landis has made an attempt to separate them out. I think the mechanism that is envisioned here puts the state in the middle between NIFA and its borrowers, and it uses the assets of a fund to secure the NIFA bond, and so my concern is, frankly, if a borrower defaults, NIFA still gets the dollars, but the state could come in and have some role to play in this default that we have not had to play before. This goes back to a couple of other Supreme Court cases, and I think we

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will probably find ourselves arguing which of these cases apply, and is this constitutional or isn't, but I am trying to kind of foreshadow what I think the important policy questions are on this. This is a difficult issue to take a hold of even if you have spent some time on it. I am going to support the Landis amendment at this point. As he said, we will try to put it in some kind of decent technical form but I think the bill still has problems, even after all the amendments that we will probably put on the bill today. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Seeing none, Senator Landis, would you care to close? Closing was waived. The question is the adoption of the Landis amendment. Those in favor vote aye, opposed nay. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of Senator Landis's amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, Senator Scofield, I have a note, Senator, that you want to withdraw the next amendment I have which was AM1647?

SENATOR SCOFIELD: I have a substitute up there for that language that I would like to offer if there is no objection. (See page 2205 of the Legislative Journal.)

CLERK: Right, Senator, okay.

SENATOR SCOFIELD: Thank you. The substitution language I had originally drafted as an amendment to this amendment, Senator Landis and I have agreed to this language and we just decided that we would save you some time so you could get to lunch, if we didn't go through the formal procedure of amending an amendment. Let me tell you now what this language would do. The amendment makes three provisions, essentially, with the substituted language. First, it provides that the net bond proceeds will be transferred to the State Wastewater Treatment Loan Fund as soon as they become available. Net proceeds are those bond proceeds less the cost of issuance and financing, which essentially is the investment banker's proceeds and the bond counsel fees. The purpose of this amendment is to get the proceeds into a state fund so that the state can earn the interest off the proceeds. Again, I think that is appropriate

because the issuance of the bonds is for a public purpose. The additional language on this was done at the request of Senator Landis's bond counsel, Kutak, Rock, I think, is the one that you have been consulting with, and it provides that the proceeds going into the revolving fund are less whatever monies must be placed in a debt service reserve fund. It is just necessary that we have a debt service reserve fund to make this operate. And so it is important to get that additional language in there, and requires DEC to get an annual accounting from NIFA of the cost associated as well with the issuance of the bonds. The purpose, again, of this is oversight and accountability. We have had some questions about are we doing an adequate job of even overseeing what NIFA does in this state, and so I think this is one way we can get a little bit more oversight and accountability there. Now as Senator Landis mentioned earlier, he and I have worked together on these and I think we are okay on these at this point. Thank you.

SPEAKER BARRETT: Senator Landis, would you care to discuss it?

SENATOR LANDIS: I simply want to acknowledge that that is the true, that is absolutely right, and that Owen Elmer stopped me in the middle of the debate and said, Kutak, Rock, is that a heavy metal band or a bond counsel firm?

SPEAKER BARRETT: Anything else? If not, the question is the adoption of the amendment. Those in favor vote aye, opposed nay. Record, please.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Senator Scofield, now the next amendment I have, Senator, is by you. This is AM1648, Senator. (See page 2040 of the Legislative Journal.)

SPEAKER BARRETT: Senator Scofield.

CLERK: AM1648, Senator.

SENATOR SCOFIELD: Thank you, Mr. President. This particular amendment, essentially, adds NIFA to the definition of public bodies that are required to comply with the provisions of the

open meetings laws. The actual language used is instrumentalities exercising essential public functions. We have, as a Legislature, declared that NIFA has been granted the authority to sell tax exempt bonds for public purposes, and, again, I am not sure there is adequate oversight on the activities of NIFA. They are required to file with the Clerk of the Legislature a copy of each annual report, and this is simply a measure to place some oversight and accountability to the public and the Legislature. There are some other concerns that I have that, since we are getting to lunchtime, that I don't know that I will raise right now, unless anybody wants to specifically question the wisdom of doing this, at this time. There will be some other entities affected by this, specifically, the Nebraska Conservation Corporation, the Small Business Development Authority, Research Development Authority, Branch Rail Revitalization Council, and Nebraska Educational Facilities Authority, and many of these entities have been granted the power and authority to issue bonds to expend and borrow money, and, again, I think it is appropriate that we, as a Legislature, carry out our legislative oversight functions, and are clear about what is happening out there in some of these, what are, quasi-governmental entities. And so that is the rationale for the amendment. It simply means that NIFA has to comply with open meetings laws and there have been some questions in terms of, it seems to me that there have been some emergency situations declared that may be entirely appropriate but, again, I wouldn't want to have things get too far afield from complying with that open meetings law. That is the rationale of the amendment. Thank you.

SPEAKER BARRETT: Any discussion? Senator Landis.

SENATOR LANDIS: We have checked with the other affected groups. They, too, are willing to be under the open meetings law. This is entirely satisfactory.

SPEAKER BARRETT: Thank you. The question is, then, the adoption of the Scofield amendment. All in favor vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: The amendment is adopted.

CLERK: Next amendment, Mr. President, Senator Scofield, AM1596. (See page 2041 of the Legislative Journal.)

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you. This amendment, I brought this so that it addresses specifically the concerns in the articles that you have before you on the potential impact of this process with small towns. The page number that I cited earlier, if I can step over here and find that for a moment, my concern with this issue all along has been that there may not really be adequate opportunity here to use this mechanism to address the problems of the communities that have the biggest need for assistance and, again, I would refer you to the lovely article, "Effluent, not Affluent" which I have starred on page 742, which talks about, again, the history of this whole issue, and would quote a portion of that, which talks about the ups and downs of the wastewater treatment program and the uncertainty of future federal funding, which says, that is not good news for communities that must comply with federal water treatment requirements and a myriad of other environmental mandates, that according to a September, 1988, EPA study, could cost the average household an additional \$100 per year by 1996. The cumulative cost could be greater for municipalities with fewer than 2,500 residents, fewer than 2,500 residents. I read this to you because that is the group of people that I am trying to help out here, although we make it even smaller than that. The studies predicted that small town user charges and fees could rise by \$170 per household. And here is the one I think is important in terms of the observation of this article, and one of the reasons why I have had so many concerns about LB 311. And, again, I am quoting from page 742 of this National Journal article. "Large communities will be able to go to the bond market for the cash they need to build and replace treatment plants, but small communities may have to rely on the state revolving loan program." We do have some funding in the budget that addresses this problem, but I think given the current mechanism under 311, I am not convinced that there is really much there that can be done to help small communities. And so having said that, now I will get into AM1596, which was done with, again, the advice of our research office and the Department of Environmental Control. The purpose of this amendment is to make money available to small communities who are unable to afford loans even with a discounted interest rate, and so it says the state will make available up to \$300,000 for

grants to small communities. The grants will be authorized for up to one-half the eligible project cost. It applies to communities under 800 inhabitants who demonstrate serious financial hardships. This, by the way, is not defined anywhere currently in statute and would have to be determined by the Department of Environmental Control. But the Department of Environmental Control would submit to the Governor and the Clerk of the Legislature a semiannual report on January 1st and July 1 of each fiscal year showing the financial status of the program, fund balance, list of grants, time of payouts, and necessary appropriations required to meet those grants, and, yet, as I indicated before, this was drafted by Rick Bay over at DEC who administers the Wastewater Treatment Program. The program would come out of a separate cash fund and would not affect the State Revolving Loan Fund nor involve the federal requirements associated with the revolving fund. Senator Landis had come to me with concerns about this amendment saying, the last thing I really need on this bill right now is an A bill, and I appreciate that, and we tried to take care of that, and thought we had it taken care of yet this morning, Senator Landis. And as I indicated to you just a few minutes ago, after we consulted again with DEC, it was their wish that we not do that and, again, I think it is primarily because of some of the concerns about where we are in terms of matching these funds, the uncertainty of our situation with the federal government, and so I apologize to you for not being able to do this at this time without an A bill, but I think this is, again, the only way that makes this particular mechanism accessible to small communities. I wouldn't be a bit surprised if you stood up and opposed me on this but I feel an obligation to bring this to the body out of my concern for the future, particularly, of small communities who I don't think can really use 311 or address what are very serious concerns. Thank you.

SPEAKER BARRETT: Any discussion? Senator Landis.

SENATOR LANDIS: I accept the amendment. It is a funding mechanism. At this point, there is not an A bill. If it is offered, I may oppose the A bill and ask that it be done in the mainline budget, but we have some time to do that. I accept the goal that is trying to be achieved here. I approve the amendment.

SPEAKER BARRETT: Thank you. Those in favor of the adoption of the amendment please vote aye, opposed nay. Voting on the

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Scotfield amendment, have you all voted? Have you all voted? Record, please. Senator Landis.

(Legislative Journal on page 2206 shows vote as 25 ayes, 0 nays.)

SENATOR LANDIS: Information, Mr. Speaker, I know the Speaker intends to go to the budget issues in the early afternoon. Would the Chair entertain a request to return to the motion to advance when we come back at one-thirty? That way we could make a motion to recess until an appropriate time. The body seems to be not present for the discussion and I want to know if we can take 20 minutes to do that when we first come back?

SPEAKER BARRETT: How many are excused at this point and how many more amendments are there? Senator Landis, there are only 10 officially excused. There are no other amendments. Would you still like to renew your request or...

SENATOR LANDIS: I will move the bill.

SPEAKER BARRETT: Senator Scotfield.

SENATOR SCOTFIELD: Thank you, Mr. President. I appreciate Senator Landis's request and I think that was probably a good idea, because even with as gracious a fellow as he has been and as hard as his staff and my staff have worked to try to clean up this bill, I am still going to oppose this bill because there are a number of important constitutional and policy questions that I think we have to address on the bill. And so I simply offer that as a concern that I think we need to get into. I appreciate Senator Landis's desire to move the bill, but I want to make just a few comments about some of the things I think we have to look at with this bill. In fact, I have requested a separate Attorney General's Opinion now in light of anticipating the adoption of the amendments which we did, but I think LB 311 represents a significant departure from the way we have typically done business with NIFA. We have inserted under the current scheme the State of Nebraska in the place of local financial institutions, if I understand this process correctly. The effect is that the state is now a primary participant in the debt financing scheme and, in fact, the AG cited this in his opinion. This presents some close constitutional questions that I don't think we have taken care of, even as hard as we have worked to try to take care of them. The arrangement is similar

to what we ran into back when we had the alcohol plant fund before us in 1979, which for some of you whose memory goes back that far, contrasting that to the case which found the mechanism proposed in the Nebraska Mortgage Finance Fund in 1978, that was found constitutional under the special fund doctrine. In 1979, the alcohol plant fund was not found to be constitutional, and I think this mechanism is closer to the alcohol plant fund than it is to the Nebraska Mortgage Finance Fund decision. So I think this puts the state in a different situation than we were before, and I think the arrangement, as I said, is similar to the alcohol plant fund, and the state, as I read this, is obligated to cover the repayment of NIFA deposits even if a municipality defaults on the underlying loan. And so the arrangement is different in that the money will be used to cover that repayment, even though it doesn't necessarily come from state appropriations, and that is an important distinction which we have tried to clarify, and that was Senator Landis's reasoning for bringing us that amendment. But as I understand, there will be money from several sources in this fund and some of them constitutionally may be used to cover defaults and others may not, and so I see a major policy question here in this new arrangement which has to do with the shift in the risk of loss. Previously, in all NIFA bonding situations, the risk of loss in case of a borrower default fell squarely and clearly on the shoulders of NIFA. There wasn't any separate pool of money from any government source guaranteeing the bonds, and I think this is a new arrangement where the risk of loss in the case of borrower default is shifted to the state because of where the state ends up in this whole flow chart mechanism. I think this is an important question and I think we should look at it. As I said, I have requested another Attorney General's Opinion to see if there is some reason why my conclusions on this are incorrect, but I think this is a serious policy question and should be examined in some detail, and as much as I appreciate Senator Landis's desire to move this bill today, given where we are, I think it is a serious enough policy question that we should examine it carefully. Thank you.

SPEAKER BARRETT: Thank you. There are no other lights on. Senator Landis, would you like to close on the motion to advance.

SENATOR LANDIS: I will be happy to close, Mr. Speaker. I will do it as succinctly as I can. Senator Scofield raises two issues, one of which is beyond our control, that is how the

federal government is going to give us money and whether or not a revolving loan mechanism is a good one for small towns. I think Senator Scofield has given us a good idea of a direct grant program that the state would run. I have accepted it into the bill. That is I think a good faith effort on my part on that score. Frankly, the rules are being called from the federal level on the revolving fund. It may not...it may prejudice small towns. That is a possibility but that is something for Congress to change, not us. With respect to the question of NIFA, actually, this authority could be exercised by NIFA or by the Conservation Corporation Bond Authority that we have created, and the question is, that she raises is, what is an appropriate mechanism for repayment. I have acknowledged that state appropriations are not appropriate and I have walled those monies off. I do not have a signal that either interest, federal money, or city repayment money are not available or unacceptable methods for securing those bonds. Let me conclude by saying this, that there are two camps of legal thought here, the AG's office and the Kutak, Rock office. From what I can tell by the AG's office, they cited one section, and I have changed that section, so I think their questions are answered. But even if they haven't been answered, the AG's office and Kutak, Rock have been to court once before. The AG's office said that NIFA was unconstitutional, and Kutak, Rock took them to the Supreme Court and beat them on every count. If I have to put my money on one legal counsel or the other, Kutak, Rock's expertise here has been vindicated in court over and above the Attorney General's analysis on several occasions. Frankly, admittedly, there is a question on any bill we pass. Is this a good way, an option to have? The answer to my mind is, yes, it is. It is something we can put in our back pocket for a rainy day if we need to use it, or we can use it immediately to leverage more federal money, and we ought to have as many financial operations and as many financial options available to us to meet this critical need in all corners and in all sizes of cities in this state as we can have. LB 311 is one of those. I urge its advancement. Thank you.

SPEAKER BARRETT: Thank you. You have heard the closing. Those in favor of advancement of the bill vote aye, opposed nay. Voting on the advancement of the bill. Senator Landis.

SENATOR LANDIS: (Mike off) in the body have not yet vote, I am reluctant to call for a call of the house, although I didn't hear a call for a machine vote earlier on. I am surprised there

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LB 311, 812
LR 127, 173, 174-189

wasn't a voice vote on this, but since they seem to be heading for the doors, it looks to me like I am going to have to ask for a call of the house, unfortunately.

SPEAKER BARRETT: Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 12 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call.

SENATOR LANDIS: Mr. Speaker, call in votes would be satisfactory for me, and I believe there was a request for a record vote at the same time as those.

SPEAKER BARRETT: I am sorry. I did not hear the request for the record vote. Senator Scofield, I am sorry. Call in votes have been authorized on the advancement of the bill.

CLERK: Senator Bernard-Stevens voting yes. Senator Labeledz voting yes. Senator Withem voting yes.

SPEAKER BARRETT: Please record.

CLERK: (Read record vote. See pages 2206-07 of the Legislative Journal.) 26 ayes, 1 nay, Mr. President, on the advancement of 311.

SPEAKER BARRETT: Anything for the record, Mr. Clerk? The bill does advance. The call is raised.

CLERK: Mr. President, your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning. (Re: LB 812.) Senator Conway would like to add...I am sorry, Senator Nelson would like to add her name to LR 127.

Mr. President, study resolutions, LR 173 by Senator Wehrbein; LR 174 by Senator Lamb and Baack; LR 175 by Senator Morrissey; LR 176 by Senator Chizek; LR 177 by Senator Hall; LR 178 and LR 179 by Senator Hall; Senator Moore offers LR 180 along with Senator Nelson; LR 181 by Senator Nelson; LR 182 by Senator Nelson; LR 183 by Senator Withem; LR 184, Senator Withem; LR 185, LR 186 by Senator Withem; Senator Chambers offers LR 187, study resolution; Senator Wehrbein has LR 188; and LR 189 by Senators Moore, Withem, and Lamb, a study resolution.

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LB 137A, 162, 162A, 280, 305, 309, 309A
310, 311, 444, 467, 727, 815
LR 213

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

PRESIDENT: Okay. Senator Moore.

SENATOR MOORE: I move we advance LB 280 to E & R for Engrossment.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Enrollment and Review reports LB 162 as correctly engrossed; LB 162A correctly engrossed; LB 311, correctly engrossed, all signed by Senator Lindsay. (See page 2313 of the Legislative Journal.)

New A bill, LB 137A by Senator Warner. (Read by title for the first time. See page 2314 of the Legislative Journal.)

LB 309 is reported to Select File with E & R attached; LB 309A, likewise; LB 467, E & R attached; LB 727, Select File with E & R; LB 305, Select File; LB 310, Select File with E & R; LB 815, Select File. (See pages 2311-12 of the Legislative Journal.)

Mr. President, new resolution, LR 213, introduced by Senators Crosby, Ashford and Langford. (Read brief description of LR 213 as found on pages 2314-15 of the Legislative Journal.) That will be laid over. That's all that I have at this time, Mr. President.

PRESIDENT: We will move on to LB 444.

CLERK: Mr. President, 444, the first item I have are Enrollment and Review amendments.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: I move we adopt the E & R amendments to LB 444.

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

CLERK: Mr. President, Senator Lindsay would move to amend.

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LB 311, 813

CLERK: (Roll call vote read. See page 2397-98 of the Legislative Journal.) 28 ayes, 17 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. The call is raised. Mr. Clerk, next order of business.

CLERK: Mr. President, the next amendment I have is by Senators Wesely, Morrissey, Smith and Coordsen.

SPEAKER BARRETT: Senator Wesely, will you handle it, please?

SENATOR WESELY: Mr. Speaker, this amendment deals with child welfare workers and the Appropriations Committee has an amendment they'll offer shortly, so I'd like to have this amendment passed over.

SPEAKER BARRETT: Thank you. So be it.

CLERK: Senator, may I? Passed over or withdrawn?

SENATOR WESELY: Why don't we pass over it.

CLERK: Mr. President, Senators Landis and Scofield would move to amend the bill. (The Landis-Scofield amendment AM1787 appears on page 2332 of the Legislative Journal.)

SPEAKER BARRETT: Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President and members. This is an amendment that came about as a result of the bill that Senator Landis is working on that deals with waste water treatment. This amendment does not add any funds. What it simply does is addresses an issue that I raised when we discussed LB 311, and that was the notion that the bonding process envisioned in LB 311 may, in fact, work to the disadvantage of those smaller communities. Bonding works a lot better for larger communities and I expressed a concern about trying to do something for the smaller communities. We went back and looked... took a look at the current formula and how we handle it and came up with a funding mechanism for a...to facilitate some help to those small communities in the event that LB 311 passes. As you...as I mentioned earlier, that's the bill that, you will recall, it lets NIFA issue bonds and deposit

the bond revenue in currently in the Wastewater Treatment Facilities Construction Loan Fund. There was an amendment to that bill adopted on Select File that would allow DEC to setup a wastewater facility construction grant program for small towns. Senator Landis expressed a concern then that he would have preferred not to have had that because he had a concern about creating an A bill on his bill, which I understood. He has graciously worked with me and we have come up with this kind of proposal that would allow us to address that. That amendment, incidentally, specified that the Department of Environmental Control, who would administer that program, could incur an annual obligation of no more than 300,000. At this time, DEC is estimating that the financial need for the program would be around 100,000 the first year, '89-90, and perhaps 200,000 in '90-91. And there is currently an over-match to the federal money in the '89-90 General Fund appropriation for Wastewater Treatment Facilities Loan Construction Fund. So now to the amendment, with that background, what this amendment does is simply move 300,000 out of that Wastewater Facilities Construction Loan Fund, sets it aside separately in Program 523 where it would be used for that small town grant program. So there is zero net fiscal impact. And, originally, DEC had planned to move that 300,000 in to Fiscal Year '90-91 to meet federal fund match requirements. However, if LB 311 passes, the NIFA bond revenue generated by FY '90-91 should make up the difference in that amendment. So the way the amendment is drafted, the transfer would not occur unless LB 311 passes, but in the event that it does, this takes care of Senator Landis's concern about an A bill, would allow a transfer that would be good policy for small towns, and does not cause us any trouble with the current federal match. With that explanation, unless you have questions, I would simply ask you to adopt the amendment. Thank you.

SPEAKER BARRETT: Senator Landis, discussion?

SENATOR LANDIS: Thank you. I just want to acknowledge that this is an accounting practice that will allow us to set aside monies that will already exist but for the special purpose of assisting small towns who, because they have small tax bases, won't be able to take advantage of a revolving loan fund nearly as well as they'll be able to take advantage of a grant program. For that reason, I support this amendment and urge you to do as well.

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LB 289, 311, 727

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

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

SPEAKER BARRETT: Senator Lindsay.

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

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

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

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

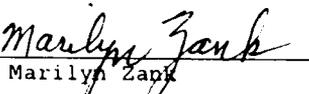
SENATOR BERNARD-STEVENS: Mr. President, for a point of personal privilege, I would just...for information's sake, on my desk there...upstairs there is a set of keys that have a Mickey Mouse key chain on it. I don't know who it is. Maybe it's my staff but I'm not familiar with that since they are gone.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

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

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

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

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Marilyn Zank

basically, the money goes to the same place, it goes back to the municipalities. The amendment to strike this amount of money is supported by the City of Lincoln, the City of Omaha and the League of Municipalities, basically, because if they have to take a preference, their preference is for the MIRF option, not this option. The critical difference for you is to recognize that MIRF is a continuing moral obligation, responsibility over time and, because it is a continuing moral responsibility although not a legal responsibility, it is of sufficient assurance that cities may rely upon it for the issuance of revenue bonds for municipal infrastructure. The critical difference then between this language in 525 and MIRF is that MIRF offers the assurance of cities sufficient to allow them to bond against the income stream. That bonding is what allows them to do real infrastructure work which is a crying need in our cities. It's time to make judgments and choices. It's time to choose between those options. I, for one, side with the notion of a continuing responsibility to help cities improve their infrastructure. I support MIRF and since this does much of the same thing but because of its structure robs the cities of their power to bond, I find it inferior when compared to LB 683. I urge the body to exercise choice and to take this option off the table and then consider up or down the notion of the support of 683. Thank you.

PRESIDENT: Thank you. Senator Warner, please, followed by Senator Schellpeper and Senator Scofield.

SENATOR WARNER: Just briefly, Mr. President. I appreciate Senator Landis's concept of wanting to leave LB 683 as the only game in town, the only bill that would have anything that goes to the cities. And so if you were inclined to want to provide some assistance to cities, that's your choice and only choice. LB 525, in this section, provides you another choice which has a lot of things that are more attractive, it would seem to me. One is...the obvious is that you do not tie up for 20 years a portion of state revenue, which you could not change. I don't know what will happen over the next 20 years but I suspect there will be a special session or two along the line making cuts. This will be cut proof once somebody issues bonds. But we talk a lot about it being for infrastructure and yet we had to bend LB 311 just the other day with Senator Landis's consent because small towns could not do anything in their infrastructure or their sewers, actual needs, and the funds that 311 provides or the program that it provides they were so small that they

May 19, 1989

LB 272A, 311, 706

SENATOR McFARLAND: Thank you.

PRESIDENT: All right, we're all here at this time. Now the question is the advancement of the bill. And a roll call vote has...no. Machine vote. All those in favor vote aye, opposed nay.

SENATOR ABOUD: Roll call vote.

PRESIDENT: Roll call vote has been requested. Mr. Clerk.

CLERK: (Roll call vote taken. See pages 2582-83 of the Legislative Journal.) 26 ayes, 18 nays, Mr. President.

PRESIDENT: The bill is advanced. Anything for the record, Mr. Clerk?

CLERK: Mr. President, Enrollment and Review reports LB 706 as correctly engrossed. (See pages 2583-84 of the Legislative Journal.) That's all that I have.

PRESIDENT: Okay, we will move on to LB 311 on Final Reading. LB 311, Mr. Clerk.

CLERK: Mr. President, I have a motion. Senator Landis would move to return LB 311 to Select File for a specific amendment. The amendment is on page 2437.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Thank you. There is no money in this one at all. This is an amendment suggested to me by the firm of Kutak Rock to make an adjustment to some language that I accepted in the Scofield amendment earlier on this bill that has to do with wastewater treatment and the use of bonds. It allows the State Investment Officer to utilize a bond trustee to invest the funds and in so doing it's possible for us to make sure that we get the maximum return on our investment. Our State Investment Officer invests funds at a variable rate but in the years when the invested interest rate, it perhaps might be lower than the issuance rates of the bonds, it's necessary to use the trustee and have the bonds invested rather by a trustee and a guaranteed account at the rate of interest that the bonds were let at. Then the accounts break even and no money can be lost. In other words, if you use the bond trustee mechanism, you can ensure

that you will break even on this money and the guaranteed account will make this system secure. I am passing out to your desk a letter sent to me but also sent to Senator Scofield by Kutak Rock relating the reason for this slight adjustment in the Scofield amendment which was previously adopted by the body with my concurrence. Frankly, I don't know bond council amendments from a hole in the ground. It's very close to being Greek because they work with the inner recesses of the IRS code. All I can tell you is that when Kutak Rock says, Dave, you know what, if we use this trustee mechanism, the whole system works well. Having adopted the Scofield amendment, as you did, it's fine but you need this to make sure that that system works as well. I don't know any better than to say give me the language, and that's the language that we have. That's the reason for it and the rationale in the IRS code available at your desk. I urge the adoption of the amendment.

PRESIDENT: Thank you. Senator Beyer, please. Senator Emil Beyer. Senator McFarland, please. Your light's on. Senator Ashford. Senator Scofield.

SENATOR SCOFIELD: Mr. President, I'm not rising to either oppose or accept this amendment. I am kind of in the same position Senator Landis is as far as not knowing some of this stuff from a hole in the ground and it's a very complex issue. And I guess, at this point, I don't see any problem with adopting this amendment. But at some point before this bill is read I think that it behooves us all to take one more look at it. I raise some policy questions that still concern me about the bill and I think it's because it is a whole difficult issue to look at. And so I just waive this little red flag, saying go ahead and let's accept the Landis amendment for right now but I'm not sure yet that I will ever be able to understand this bill well enough to support it and I will be raising those policy issues later and I just want to throw that out for your information so nobody feels like you got ambushed. Thank you.

PRESIDENT: Thank you. Senator Langford, please. Senator Landis, would you like to close, please, on your motion to return.

SENATOR LANDIS: Will. I appreciate Senator Scofield distinguishing between the procedural issues and the technical issues and, in fact, the substantive policy questions there are. I would anticipate that perhaps we'll have a chance to discuss

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LB 311, 340

that one more time in its substantive form. Right now we need to put this into the correct legalese. I urge the adoption of the amendment, the readvancement of the bill and I would assume that we will have yet again one last chance to briefly capsulize the policy virtues and potential vices of this mechanism. Thank you.

PRESIDENT: Thank you. The question is, shall the bill be returned? All those in favor please vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the motion to return.

PRESIDENT: The bill is returned. Senator Landis.

SENATOR LANDIS: I move the adoption of the amendment.

PRESIDENT: You have heard the motion. Any further discussion? If not, the question is the adoption of the amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The amendments are adopted. Senator Lindsay, would you like to move to advance the file...the bill, please.

SENATOR LINDSAY: Mr. President, I move that LB 311, as amended, be advanced to E & R for Engrossment.

PRESIDENT: You have heard the motion. All in favor vote aye. Opposed say no. It is advanced. We'll move on to LB 340, please.

CLERK: Mr. President, I have a motion. Senators Wehrbein and Rod Johnson would move to return LB 340 to Select File for a specific amendment. The amendment is on page 2527.

PRESIDENT: Senator Wehrbein, please.

SENATOR WEHRBEIN: Yes, Mr. President, and members, I would say at the onset that I will plan on withdrawing this amendment but I do want to get some clarification of the present LB 340 in its present stage and I will explain that briefly and then I am

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LB 272A, 285, 285A, 311, 357, 357A, 525
566

guess you can start reading LB 285. We'll not be holding you to the seats for this next half hour.

ASSISTANT CLERK: (Read LB 285 on Final Reading.)

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 285 become law? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Read record vote as found on pages 2589-90 of the Legislative Journal.) 36 ayes, 1 nay, 7 present and not voting, 5 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 285 passes. Again, consistent with the announcements earlier today, we'll...yes, we'll go to the A bill next. We'll proceed, after the A bill, on Final Reading, bills with motions to return. Nine o'clock is the operative time, nine o'clock. I should hasten to advise that there have been three amendments filed under other motions filed with the Clerk. We have amendments to 209, 183, and 761A. You know what we have to continue, finish, under Item 9, three additional amendments. We stop at nine o'clock for Final Reading. Mr. Clerk, the A bill.

CLERK: (Read LB 285A on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 285A, with the emergency clause attached, become law? All in favor vote aye, opposed nay. Have you all voted? Please record. We've got 33, um-huh. Yes. Record.

CLERK: (Read record vote as found on pages 2590-91 of the Legislative Journal.) 34 ayes, 0 nays, 9 present and not voting, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 285AE passes. For the record, Mr. Clerk.

CLERK: Mr. President, Enrollment and Review reports LB 272A as correctly engrossed; LB 311 as correctly engrossed; LB 357 as correctly engrossed; LB 357A, LB 525, and LB 566 all reported correctly engrossed, all signed by Senator Lindsay as Chair of

May 23, 1989

LB 289A, 311

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

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 289A pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read as found on page 2694 of the Legislative Journal.) 44 ayes, 0 nays, 2 present not voting, 3 excused not voting, Mr. President.

PRESIDENT: LB 289A passes with the emergency clause attached. LB 311 with the emergency clause attached.

CLERK: Mr. President, Senator Scofield would move to bracket LB 311 until January 3, 1990.

PRESIDENT: Senator Scofield, please.

SENATOR SCOFIELD: Mr. President and members, I intend to withdraw this motion, but I wanted to make a couple of remarks on this and I don't see Senator Landis but if he's around I'll give him the rest of my time to address this. You will recall that I have raised, throughout the debate on this, except on the first round, which just simply wasn't around in time to visit about this bill, but I have had some concerns and Senator Landis's office has worked closely with us on this bill and I think the constitutional questions that have been raised have largely been resolved. But if you refer to the most recent Attorney General's Opinion, there are still some policy questions on this bill that cause me some concern and, as you will recall, the other day when Senator Landis pulled this bill back for yet another amendment proposed by Kutak Rock, he admitted...I think his words were, I don't know beans about some of this, and I had to agree with him. It's been very difficult to figure out how this whole process works and I would reiterate some observations on LB 311 that I made on the last round of debate in that I think this bill represents a significant change in that I think the State of Nebraska may, in fact, be inserted into the scheme in place of where financial institutions have previously been. And even though it has repeatedly been made...the point has repeatedly been made that we have, quote, to use Senator Landis's words, "built a wall here" to separate state funds from those other funds. Not understanding yet the

process particularly well and not being completely comfortable with where we are, I have offered the bracket motion and, again, I wish I could find Senator Landis so that he can respond to these things. He's in the Governor's Office, I understand. But I just want you to be aware that we may be departing from traditionally how we've done business here in terms of other schemes financed by NIFA. The state may well now be a primary participant in a debt financing scheme, and I did some checking on this as far as what would the...what dire consequences would occur and to whom if this bill does not pass and it doesn't look to me like anybody would be hurt right now if we didn't pass this bill. And, as far as at this point, people who would.... Good, there's Senator Landis. At this point there is a priority list. We did...some of the good things about this bill is we did put some provisions in there for small towns through the cooperation of Senator Landis and there are some options out there if the bill doesn't pass and that is simply the program would continue as is. But I do want to raise this policy question. I think it's an important policy question. I regret that we've been unable to completely answer that. It certainly has not been because everybody hasn't tried. I think we all have tried and Senator Landis's office has done a very good job of trying to respond to that, but I continue to have concerns about what kind of policy we're embarking upon here and I'm going to give the rest of my time to Senator Landis and for anybody else who wants to talk about this to respond to these. Thank you.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Thank you. Let me just ask if Ms. Scofield would like to frame in any way a particular question that I should use my time to address.

SENATOR SCOFIELD: Senator Landis, the main...the main concern I have here and the main thing I guess I would want you to respond to are my concerns about the policy questions; that, in fact, does 311 represent a change in the position of where the State of Nebraska inserts itself from other similar financing schemes, would be my primary concern. And I would specifically cite the latest Attorney General's Opinion which essentially says we can't comment on the policy questions raised here because we, frankly, don't know either. I'll try to find that language to be more precise. Go ahead if you like, Senator Landis, and explain where we are as a state in the financing scheme and I

will look and turn my light on again and look for that second point. Thank you.

SENATOR LANDIS: Thank you. Mr. President, members of the Legislature, in the past we have paid for wastewater funds through a grant program in which the federal monies given us a pot of money; state, you come up with a one to five matching and you can give this to cities to spend. We have ladled it out and we've given it to people in need. The federal government, through the Reagan years, said, wait a second, this is an endless process; this is not going to work because there is so much need out there; states, we want to encourage you into a revolving fund. No longer will cities be given it as a grant; it will be a revolving fund. Now, states, you can pay as you go. You can leverage some federal money on these last four or five years where we're going to make money available, you can leverage federal money, stick it in your own fund; add year in, year out your own monies, whatever you want, give it to your cities and then have your cities repay it; you can structure the revolving loan fund as you wish but do not look to the federal government to operate our program ad nauseam. We won't. We're coming to an end. Here's the balloon of money. Go out, match against it, start a revolving fund. Now, the pressure to have a revolving fund comes absent LB 311. That comes from federal directives, so we're moving that direction. That has, by the way, its own problems for small towns or whomever because if you don't have a lot of money to repay a loan it's hard to get the loan in the first place, because your repayment is hard to do, a costly item will remain expensive and the loan mechanism may be uncomfortable. Actually, the only method to do that, by the way, now becomes LB 311 with its grant program language. But the federal government says, here's a last balloon of money, come and get it, and you can leverage against your share. Now, we've always done General Fund appropriations. That's where our matches come from and we continue to do that. It's in the budget this year, two plus million dollars are there. We either have before us the future of an endless stream of General Fund appropriations to do our share of matching and to put our share of money into the revolving fund, or we front-load through bonds. LB 311 allows the front-loading of the state match, the front-loading of this pot of money to be lent to cities, and allows us to leverage the maximum amount of federal funds. Is it a new phenomenon? Yes, it is. What is the new phenomenon? That in moving from the grant to the revolving loan program we are front-loading through a bond mechanism actually in addition

to the General Fund appropriation. Currently, those two tracks proceed appropriately. There is a General Fund appropriation; we create the authority to bond. In the future, we may not want to use the General Fund appropriation and if we have the bonding mechanism we can continue to meet our obligations. On the other hand, if we want to match the maximum amount of federal monies we may not only continue our appropriations through General Fund, we may add to it the money from this bonding source, in which case we'll be able to get the maximum amount of federal monies available to us. Either result to me is satisfactory. In one sense, we relieve pressure on the General fund, or, in the alternative and preferable to my mind's eye, we do more. We create a bigger revolving fund and we are able to do more work for cities by building wastewater treatment facilities at a faster rate. Either of those, however, I think, represent a substantial public policy gain. That's the virtue of LB 311.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, sooner or later everything that begins with a mandate from the federal government evolves into a situation where, first, the state and then eventually the local government and finally the taxpayer picks it up. One of my deepest concerns about the entire aspect of the environmental movement is that so long as the federal government had some kind of responsibility for payment they were more reasonable in their requirements of the local entities. The less in financial involvement they have, the more strict they become with their requirements. I have a question for Senator Landis because a question has been asked of me several times by local communities relative to the use of these funds. They said, we really do not need at this time funds for the development of wastewater treatment; is there any possibility that the Legislature will ever consider the availability of the funds from this program in the pursuit of the development of a solid waste site? And...

PRESIDENT: Senator Landis, would you respond.

SENATOR SCHMIT: ...so, Senator, can you respond to that, please?

SENATOR LANDIS: Please restate the question again in a succinct manner and I'll do my best.

SENATOR SCHMIT: Would it be possible to utilize this same type of funding for the development of solid waste sites for the (inaudible)?

SENATOR LANDIS: I do not know that a pot of federal money exists, and I do not know federal authorization. This bill is tailored to fit with and has been negotiated in concert with the EPA. If you tell me that EPA has a matching program for solid waste, it's possible that this mechanism would work there in that setting as well. But it is specifically because the EPA has worked with a number of states to do exactly this that we know it applies in this area. Solid waste maybe. I can't say "yes" for sure. The answer would lie in federal law.

SENATOR SCHMIT: Is there any reason, Senator Landis, why the federal government resources could not be utilized through the...by the private system of financing bonds and for the cities for the same kind of a purpose?

SENATOR LANDIS: Cities certainly could issue their own bonds, they certainly could.

SENATOR SCHMIT: What is the principal reason for NIFA wanting to become involved? I well recall the establishment of NIFA. It was sort of son of a number of industrial loan programs in the city, home financing program and then an ag financing program, and then Governor Kerrey came in and made it his highest priority so it became NIFA. And since that time any responsibility that they ever felt they had toward agricultural financing has gone down the drain. There have been some home loans financed and there have been a few other industrial loans, but principally it's been a financing mechanism for so-called low-income, first time homeowners, and I might add those low-income homes have now reached almost into the upper five figures, almost six figure loans for homes, far in excess of what we started out with. I really don't know if this is a good idea or not. I have not been in support of the bill. I understand where they're coming from, I understand why they're doing it, but I have some deep concerns about the fact that once we get on this kind of financing mechanism without the oversight of the (inaudible). I'm not sure that we're going to have the best kind of financing, number one, and, number two, I would expect that the requirements that will come down from the federal government through the Environmental Protection Agency will become more and more stringent and the penalties for

noncompliance will become more and more severe than...

PRESIDENT: One minute.

SENATOR SCHMIT: ..they are at the present time and much of an impediment to local communities. And I hope, Senator Landis, that if this bill becomes law that it does not cause tremendous problems for cities in future years.

PRESIDENT: Thank you. Senator Scofield, please.

SENATOR SCOFIELD: Thank you, Mr. President and members. Senator Landis has explained his rationale for the bill and it is true that the federal source of funding for this is uncertain and, you know me, I'm always willing to try to find some other source in General Funds to do things if we can, but that really isn't the issue that I'm raising here. The other point I'd make before I address another question to Senator Landis, and I'll just give him the rest of my time to answer, Senator Schmit, I think this is a mechanism that could well be used for solid waste. There is no requirement that I know of that would require federal monies. Now, I think the policy questions being raised here are the more significant at this point. And, Senator Landis, here specifically is the context I'm raising this question in, and then I'll give you the specific question. I refer to the Attorney General's Opinion dated May 12th. We had raised the constitutional questions and then also asked our question about does this put the state in a different place? Here is the Attorney General's response. In reviewing LB 311 as amended, we are unable to determine whether financial institutions would be circumvented from participation and financial transactions which may be undertaken. The role local financial institutions would play would depend on the structuring of any bond underwriting and undertaken by NIFA. There is not sufficient information before us to conclude whether traditional roles of financial institutions would be supplanted by this state under the provisions of proposed LB 311. In any event, the role financial institutions would undertake under the auspices of a legislative enactment providing for a bond underwriting is a policy question to be decided by the Legislature. To me, it seems that the state might well be obligated to cover the repayment of the NIFA deposits if a municipality defaults on the underlying loan. The arrangement is different here in that the money that will be used to cover the repayment doesn't necessarily come from state

appropriations, as I indicated earlier, and Senator Landis has talked about walling off of a portion of the funds and, as I understand it, there are monies from several sources in this fund, some of them which may be constitutionally used to cover defaults and others which may not. But the policy question, as I see it, Senator Landis, is...has to do with any shift in risk of loss. In all previous NIFA bonding situations, the risk of loss in case of borrower default fell clearly on NIFA. There was no separate of money from any government source guaranteeing the bonds. In this new arrangement, the risk of loss in case of borrower default appears to me, at least, to be shifted to the state and it appears to me that we might get into...into the field of guaranteeing NIFA bonds from monies at our disposal. That's the policy concern I have on this, Senator Landis. I will give you the rest of my time to respond to this. Thank you.

SENATOR LANDIS: Thank you. I appreciate the question. Senator Scofield refers to an Attorney General's Opinion that was dated May 12th and I'm just looking at it for the first time now. I acknowledge what the paragraph says and that is until you get to the actual structuring and the bond document itself, it's hard to know exactly what role they will play. There may be a shift in some traditional pattern inside that bond document. That may occur but what is important to remember is that such a shift could not go so far as to bind the state. Such a shift would be unconstitutional, as we know. Such a shift would burden the obligation of the state to refrain from securing the debts in this fashion and the Attorney General says so. The Attorney General, in the paragraph that you refer to, does say it's possible that the state will stand in some different pattern. But in the paragraph after that one, the Attorney General says, basically, as I interpret it, but whatever that position may be it is not an unconstitutional provision which puts us at the bottom of the pipeline holding the bag.

PRESIDENT: One minute.

SENATOR LANDIS: In conclusion, the Attorney General says, it is our opinion that the provisions of AM16...which, by the way, we have accepted, remove objection because of the constitutional prohibition regarding debt since state funds are expressly prohibited and here it is, state funds are expressly prohibited from securing or paying debt obligations of the Wastewater Treatment Facilities Construction Loan Fund. While we may be in

some slightly different arrangement because of the bond document, we will not be, according to the Attorney General, in an unconstitutional position of guaranteeing these bonds. It's on the face of the bill. It's on the face of the Constitution. It's on the face of the authority that is created by the bill and granted and parceled out in the bill and the Attorney General opines to the same effect that our boiler plate express statement of authority does not extend to an acceptance of any responsibility to repay a defaulted loan payment by a city.

PRESIDENT: Senator Landis, you just finished the time of Senator Scofield's, now you're the next speaker if you'd like.

SENATOR LANDIS: I will waive my time.

PRESIDENT: All right. Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, strange as it may seem a number of local small communities today do have severe financial problems. Notwithstanding those problems, they continue to be pressured by virtue of rules, regulations and statutes enacted by the state and federal government. We are going to have a massive input relative to solid waste treatment sites, I would assume, as the Natural Resources Committee travels across the State of Nebraska during this forthcoming interim period. Without exception, I expect most communities will tell us the same story that we have already heard, that they cannot, do not and do not understand where the resources will come from to meet the requirements of solid waste treatment. At the present time, we all know...and I recounted this morning just briefly a little problem at David City by virtue of a problem at the wastewater treatment plant and I have reread the documents since early this morning and what seems to be a small problem to my good friends at DEC can be a very serious problem to a community such as David City. Now let me give you another scenario. At the present time, you all know, of course, that the City of Omaha has a combined storm and sanitary sewage project that has been there I guess for maybe a 100 years and I believe from about 40th Street to the Missouri River where the storm sewer is the same as the sanitary sewer, causing overflow from time to time into the Missouri River of untreated sewage. Should, for example, the City of Omaha decide to avail themselves of this type of financing, I do not know if they can put in a new sewer system with this or not but they certainly, I believe, could make a strong case for it. I have

been told it might cost several billion dollars. In the event that such a system would be installed, in the event that they would be financed by this kind of a financing package, in the event of failure, where would they look? I think they would look to the state. I do not know...I'm not a lawyer, Senator Landis is a lawyer and a good one, and the Attorney General is a good lawyer, and we are going to be faced with perhaps not a legal decision but, once again, the same kind of decision we face many times on this floor, what is the correct thing to do? Did the Legislature knowingly place the state in a position relative to the securing of the bonds? Senator Scofield and I have discussed this several times. Both of us are free to admit we are not experts. I am concerned that the passage of this bill may, in fact, in some way obligate the State of Nebraska down in the future. I want to go on record today as saying that I do not want to place the State of Nebraska behind these bonds. I do not want to place the State of Nebraska at risk. It is not my intention and I hope that if the bill passes, that the State of Nebraska is not at risk. I am going to say, for the record, Nebraska is not at risk if this bill passes. I want to say, at the same time, I will vote negative on the bill. I would hope that there would be those who have additional information, such as Senator Landis, which will be helpful in the record years to come if difficulties develop from the passage of this bill. At this time, I think that we need to make that record clear because otherwise I can guarantee you, maybe not during my tenure, but sometime in the future there will be a failure and someone will come to the State of Nebraska and point out the moral obligation of the State of Nebraska to the little town of "Dirty Neck", Nebraska that needs to have some help. Thank you very much.

PRESIDENT: Thank you. Senator Scofield, to close.

SENATOR SCOFIELD: Thank you, Mr. President, and thank you, members, who took the time to discuss this issue. As Senator Landis pointed out, the current Attorney General's Opinion would indicate that this mechanism is, in fact, constitutional. What the opinion does not satisfy in terms of my concerns is I'm not sure this is good policy. It doesn't clear up the policy questions that I have raised and, for that reason, I'm going to oppose the bill and perhaps may well find myself at some point encouraging Senator Landis and working with him to reintroduce such legislation should it not pass or in the event that it does pass I would echo those words just spoken and that is I don't

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LB 311

want the State of Nebraska at risk here. I don't want the State of Nebraska put in a different position than we have been here and that's my reason for raising this position here and my reason for opposing the bill. I will withdraw the bracket motion. Thank you.

PRESIDENT: Thank you. Mr. Clerk, you may read the bill, but may I introduce some guests first of Senator Abboud. In the north balcony from Sandoz Elementary School in Omaha we have 61 fourth grade students and their teachers. Would you folks all stand and let us welcome you to the Legislature. Thank you for visiting us today. Mr. Clerk, LB 311 with the emergency clause attached.

CLERK: (Read LB 311 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 311 pass with the emergency clause attached? All those in favor vote aye, opposed nay. And I have been reminded by several in the last few minutes when we're on Final Reading and you should be in your seats, please. Thank you. I would remind you this has the E clause on it which requires 33. Record, Mr. Clerk, please. Senator Landis.

SENATOR LANDIS: (Microphone not activated) ...ask the Clerk since it fails on the E clause, will we revote on this measure?

PRESIDENT: Yes. Is that correct?

SENATOR LANDIS: That will be fine. That's satisfactory with me.

PRESIDENT: All right, record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2695-96 of the Legislative Journal.) 23 ayes, 17 nays, 8 present and not voting, 1 excused and not voting on passage of the bill with the emergency clause attached, Mr. President.

PRESIDENT: The bill fails with the emergency clause attached. Now the question is, shall LB 311 pass with the emergency clause stricken?

CLERK: Mr. President, Senator Landis would move to return the

bill for a specific amendment.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. Speaker, and members of the Legislature, it is critical, I think, that I have a chance to have an unalloyed moment of explanation to remind the body that there is not one shred of evidence before you that the state is in any way responsible on this bill. If that allegation is made then it is without legal support. The Attorney General's Opinion, when read carefully, says there is no constitutional objection. Secondly, Kutak Rock firm has opined to this body and you have seen that material. Third, we have specifically, in two different instances, in the bill itself said the same thing. I do not mind and do not...I don't mind that there may be differences of opinion on policy and options to go. Fair enough. Fair game. Those issues are at risk and I think the body is entitled to weigh them, to compare mechanisms as to how you want to proceed. But what is without legal support from either the Attorney General's Office or from any other source that I can tell is that there is a lawyer saying that as a result of 311 the State of Nebraska has a responsibility for these bonds. They do not. The bill says it. The Attorney General recognizes that there is not a constitutional flaw to that objection. Kutak Rock, the leading law firm in the state, says the same thing. That point I want to make clear. Now, admittedly, there is risk in the world. Admittedly, a matter of legal opinion is a guess as to what a court would do but that allegation has not been made by an authoritative source and that is the one thing I want this body to understand. If you have a fear that the State of Nebraska is held responsible under 311 for these bonds, you are not supported by any of the language that affirmatively says that by the Attorney General. That is not what the Attorney General says. And you certainly run into the objections of the Kutak Rock firm that say the opposite as well. You may entertain those fears, but those fears are not supported by a clear, definitive declaration of any authoritative source that I know of. And having made that point clear, I will withdraw the motion.

PRESIDENT: Thank you.

CLERK: Mr. President, Senator Schmit would move to return the bill.

PRESIDENT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members, just so the record is totally clear, in addition to the eminent authority that had been quoted by Senator Landis as having said the state is not at risk, you will recall that I said the state was not at risk and that's all it's good for, my saying it's not at risk, you can add it to those authorities who have said it's not at risk. I did not want to bring this up because I do not want to hurt another bill but this Legislature is very likely to be voting on another bill, which I am supporting, where there is no legal responsibility for us to pay. And, gentlemen and ladies, we know from time to time we find ourselves in that situation. What I am telling you here today is that the opportunity for an obligation here far exceeds anything that we have undertaken in the past. The Constitution was of most concern about the obligation of the state in regard to debt; the opposition of the Governor and a number of other individuals in this state toward use of bonds for highway construction, well documented, with some justifiable reasons. Senator...as I said, Senator Landis understands it much better than I do, but, ladies and gentlemen, what I am saying here today is that notwithstanding the eminent authorities who have said we have no obligation, notwithstanding the addition of my feeble support for that point of view doesn't mean that at a time in the future something might happen that is going, as Senator Landis has said, going to entail some risk. I just do not like the manner in which it's being done. I may be, as Senator Scofield has said, back here next year supporting Senator Landis on his proposal. But, at this time, ladies and gentlemen, I don't believe I want to take that much risk and, therefore, now I ask permission to withdraw my proposal.

PRESIDENT: Thank you. The question now is, shall LB 311 pass with the emergency clause stricken? All those in favor vote aye, opposed nay. Have you all voted? Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 2696 of the Legislative Journal.) 25 ayes, 18 nays, 5 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: Lb 311 passes without the emergency clause. May I introduce some guests, please, of Senator Pirsch. In the north balcony, we have 47 fourth graders from Benson West in Omaha and their teacher. Will you students and teacher please stand so we

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LB 75, 89, 89A, 147, 177, 177A, 272A
311, 362A, 377, 487, 487A
LR 224, 225, 226

SPEAKER BARRETT: LB 362A passes. LB 377.

ASSISTANT CLERK: (Read LB 377 on Final reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 377 become law? Those in favor vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: (Record vote read. See pages 2702-03 of the Legislative Journal.) The vote is: 48 ayes, 0 nays, 1 present and not voting, Mr. President.

SPEAKER BARRETT: LB 377 passes. Matters for the record, Mr. Clerk.

CLERK: Mr. President, your Enrolling Clerk has presented to the Governor bills read...some of the bills read on Final Reading this morning. (See page 2703 regarding LB 147, LB 487, LB 487A, LB 75, LB 89, LB 89A, LB 177 and LB 177A.)

Mr. President, LB 311 is reported correctly enrolled.

Mr. President, new resolutions. LB 224 by Senator Conway. (Read brief description of LR 224 as found on pages 2703-04 of the Legislative Journal.) LR 225 by Senator...by the Appropriations Committee. (Read brief description of LR 225 as found on pages 2704-06 of the Legislative Journal.) That will be laid over, Mr. President. LR 226 offered by Senators Pirsch, Beck, Hannibal, Ashford, Chizek, Hall, Labeledz, Lynch, Abboud and Chambers. (Read brief description of LR 226 as found on pages 2706-07 of the Legislative Journal.) That, as well, will be laid over. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Directing your attention now to the agenda to LB 272AE which we moved over earlier in the day. Mr. Clerk.

CLERK: Mr. President, I have a motion to bracket LB 272A until May 24. That is offered by Senator Landis.

SPEAKER BARRETT: Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature, this is the American Savings, State Securities,

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LB 272A

SPEAKER BARRETT: Motion fails. Mr. Clerk.

CLERK: Mr. President, I have a second motion by Senator Landis to bracket LB 272A until January 3, 1990.

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Thank you, and I'll take this matter up briefly as well. Let me tell you my intentions and you'll be able to measure your own choices against them. I intend to offer this bracket motion. If it fails, I intend to have the bill read and rather than to make any request for a limitation of funds, we should read the bill straight up and see how it does. Now, having told you what my intentions are, let me tell you my reasons for this motion. I have since Select File had four, I would imagine four votes fall off the bill. It seems to me that I do not have 25 votes. I've got votes that want to vote for 272, want to vote for Commonwealth and believe it to be a priority, but not a higher priority than other important spending issues. And I can't disagree with them. A number of those priorities I voted for myself. I believe in them, I want to see them be law. I can understand why when they have to make a choice, if they are jeopardizing a higher spending priority by voting for this bill, that they create a problem for themselves, and frankly, you know that to be true and I know that to be true. And because that's the case, I want to live to fight another day. That's why I offer the motion. Thank you.

SPEAKER BARRETT: Thank you. For discussion, Senator McFarland, followed by Senators Warner, Moore and Hall.

SENATOR MCFARLAND: Thank you, Mr. Speaker. Ideally we should vote on bills not on the basis of what point we consider them in time or how are they, are listed on the agenda schedule or whether they come up during the middle of the session or in the last of the session. Ideally we should look at each bill on its own merits, vote on it whether we approve of it or disapprove of it and have those bills that are the most meritorious be the ones that pass. In my view, of course, this is one of the most if not the most meritorious bill that we had before us this session. The people of State Securities and Commonwealth and American Savings have been waiting years to be reimbursed on the guaranty that was provided to them when they deposited their savings, their life savings, their futures in the institutions only to find out that those savings were not protected and they

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LB 272A, 311, 355, 355A, 357, 357A, 362
362A, 377

where others have not a lack of priority or a responsibility for this issue, but a higher priority elsewhere which is endangered if this bill passes. In a Legislature of Timmy Hall's I'd run this bill in a minute, but that's not the situation today and, frankly, I need to live to fight another day and that's why I make this motion. I move to bracket 272 (sic) until next year.

SPEAKER BARRETT: Thank you. You've heard the motion to bracket the bill until January 3 of 1990. Those in favor of the bracketing motion vote yes, those opposed vote no. Have you all voted? Please record.

ASSISTANT CLERK: 25 ayes, 21 nays to bracket the bill until January 3, 1990, Mr. President.

SPEAKER BARRETT: The bracketing motion is adopted. The bill is bracketed. While the Legislature is in session and capable of transacting business, I propose and I do sign LB 355 and LB 355A, LB 357 and LB 357A, LB 362 and LB 362A, LB 311 and LB 377. (See page 2707 of the Legislative Journal.) Anything for the record, Mr. Clerk?

ASSISTANT CLERK: I have nothing for the record, Mr. President.

SPEAKER BARRETT: Senator Hefner, please.

SENATOR HEFNER: Mr. President, I move that we recess till one-thirty.

SPEAKER BARRETT: You've heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Ayes have it, we are recessed until one-thirty.

RECESS

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Microphone not activated.) ...balcony, Senator Wehrbein has some guests. We have 40 fourth graders from Nebraska City, and their teachers. Would you folks please stand so we may welcome you to the Legislature? All of you students, please stand. Thank you for visiting us today. If you would start making your way to your seats, please, we would begin

of the Governor.

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Well, Mr. President, I don't suppose I have any reason to be any more optimistic that this body's interested in wastewater treatment than they are in storm sewer treatment in Papio...in the Papio Creek development. I just want to point out that it's kind of ironic the body has just voted against funding an existing program even though there is a more than 4 to 1 match involved, or approximately a 4 to 1 match of federal dollars, while we started off a whole new series of new programs this year. Now, the other day we enacted LB 311 by 25 votes and I raised the issue at that time as to whether or not it is wise to provide a new method of bond financing for wastewater treatment facilities, but my principle concern is the fact that a number of years ago the federal government gave considerable incentives to the wastewater treatment facility development of the various cities and provides substantial amounts of money in grants for that program. The state then added money to those programs so that the local community had a very small portion of responsibility. As the program became more and more expensive, the usual scenario took over. The federal government reduced substantially their portion of the contribution, the state followed suit, and we shoved more and more of the responsibility back to the local government. Now we are almost at the point where we're going to give the entire responsibility relative to financial cost to the local government. If we would provide this amount of money to the Department of Environmental Control, it would mean that at least for this year the state was going...would be willing to provide some assistance in the wastewater treatment facilities that would not be then necessary to be raised through bond financing. I believe I have said it many times on this floor, we like to stand here and take credit for those things that seem to be proper. This past session, the most popular by-word was the issue of property tax relief. There were a number of years when we handed out, over a period of years, more money for wastewater treatment than we are going to provide this year in property tax relief. At the present time, this is a very minuscule amount of money, but it is significant in that it does provide some indication to certain entities that the state does have some commitment to assist them. It's about 1.2 million, I believe, and I would just want to caution you that you are going to be approached, I'm sure in the future, from your own community relative to whose