

January 12, 1989

LB 54, 111, 209, 268, 271, 325, 335
389-408

raised, please stay in your seats.

CLERK: 20 ayes, 21 nays, Mr. President, on the motion to rerefer.

SPEAKER BARRETT: Motion fails. The call is raised. Mr. Clerk, continue with the introduction of bills.

CLERK: Mr. President, I might announce that the Reference Committee, the Reference Committee will meet in the Senate Lounge for referring of bills now; Reference Committee in the Senate Lounge now.

Mr. President, new bills. (Read LBs 389-406 for the first time by title. See pages 206-209 of the Legislative Journal.)

SPEAKER BARRETT: The body will stand at ease while the Referencing Committee handles some more bills.

EASE

CLERK: Mr. President, new bills. (Read LBs 407-408 for the first time by title. See page 210 of the Legislative Journal.)

Mr. President, in addition to those items, I have a notice of hearing from the Government Committee, that is offered by Senator Baack as Chair. Mr. President, I have received a reference report referring LBs 324 through 373.

Mr. President, in addition to those items, announcement that the Appropriations Committee....

Mr. President. some unanimous consent requests, Senator Schellpeper would like to add his name to LB 209; Senator Rod Johnson and Senator Morrissey would like to add their names to LB 325; Senator Dennis Byars to LB 111; Senator Haberman to LB 268, and Senator Haberman to LB 271 as well, and Senator Haberman to LB 335.

SPEAKER BARRETT: If there are no objections, so be it.

CLERK: Mr. President, I have a motion filed with respect to the investigating committee formed to review the Franklin Credit Union situation. That motion will be laid over, Mr. President. It involves the suspension of the rules. Those will be laid

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LB 132, 147, 224, 265, 267, 397, 619
623

the bill on to Select File.

SPEAKER BARRETT: Thank you.

SENATOR KRISTENSEN: I think the Chambers amendment is a reasonable compromise, and it gets to the point of what we wanted to do, and I would call the question.

SPEAKER BARRETT: Thank you. That won't be necessary. Senator Chambers. No closing, thank you. The question is the adoption of the Chambers amendment to LB 267. Those in favor please vote aye, opposed nay. Voting on the Chambers amendment to LB 267. Have you all voted? Record, please.

CLERK: 25 ayes, 1 nay, Mr. President, on adoption of Senator Chambers' amendment.

SPEAKER BARRETT: The amendment is adopted. Anything further?

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

SPEAKER BARRETT: Senator Abboud. No closing. No lights on. Is there any discussion on the advancement of the bill? Seeing none, those in favor of advancing 267 to E & R Initial please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 267.

SPEAKER BARRETT: LB 267 is advanced. For the record, Mr. Clerk.

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, to whom was referred LB 147 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 224 General File, LB 265 General File, LB 397 General File. Those are signed by Senator Chizek as Chair. Natural Resources Committee whose Chair is Senator Schmit reports LB 132 to General File, LB 619 General File, LB 623 General File. Those are signed by Senator Schmit as Chair.

I have a confirmation report from Senator Schmit as Chair of the Natural Resources Committee; and a notice of hearing from the Revenue Committee signed by Senator Hall. That is all that I

SPEAKER BARRETT: The amendment is adopted. Senator Chizek, on the bill.

SENATOR CHIZEK: Mr. Speaker, fellow members, LB 265 addresses two issues which have developed with child support enforcement in the courts, and more specifically the use of referees in those proceedings. Federal legislation requires that those proceedings be done in an expedited fashion. At the same time the statutes outlined in the use of referees were last year declared unconstitutional by the Nebraska Supreme court in the Drennan (phonetic) case. The defect in the statutes involve the delegation of judicial functions to nonjudges. So we have, basically, two separate demands on the process which intersect in this bill. The district court judges, in Douglas County, had asked me to introduce LB 265, to consequently satisfy the state constitutional requirements, while meeting the federal mandates. LB 265 permits the referee to conduct the proceedings as before, but any findings and recommendations made by the referee are reviewed by the district court. LB 265 further provides that any party may take exception to the findings and recommendations of the referee. These exceptions will also be forwarded to the district judge for review with the referee's report. The important provision is the nonbinding nature of the referee's recommendation. The Nebraska State Bar, the Omaha Bar, the Nebraska District Judges have all testified in favor of LB 265. There were no opponents, and I would urge the body to advance the bill.

SPEAKER BARRETT: Thank you. Discussion on the advancement of 265? Seeing none, those in favor of that motion please vote aye, opposed nay. Voting on the advancement of the bill. Please record.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 265.

SPEAKER BARRETT: LB 265 is advanced. LB 397.

CLERK: LB 397, Mr. President, introduced by Senators Chambers and Dierks. (Read title.) The bill was introduced on January 12, referred to the Judiciary Committee. The bill was advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is a bill that grows out of a U.S. Supreme Court decision. What the...Oh, so that you'll understand what it deals with, it deals with the National Collegiate Athletic Association, or the NCAA. This is an association to which the University of Nebraska and all universities and colleges belong, if they want to participate in intercollegiate athletic programs. A recent Supreme Court decision indicated that the U.S. constitutional guarantee of due process that governs proceedings prior to the imposition of some punishment against an individual or deprivation of property would not touch the NCAA because it's a private association, and the U.S. Constitution touches only state action. Since the NCAA is deemed to be a private association, even when it acts in concert with a state university or college, the federal law will not touch its actions. The only way to do that is by state legislation. So what this bill would say is that whenever the NCAA is conducting proceedings that could result in the imposition of a punishment against any university or college in this state, those proceedings have to be conducted in accord with the principles of due process. That is all that the bill does. It does not change an NCAA rule, it does not change an NCAA punishment. It does not change anything about what the NCAA does, except it requires them to conduct hearings that are fair. There has never been an attempt by any court or legislature to define what due process means in every regard. But the general idea is that of a fair hearing, the presentation of evidence against the person accused, the opportunity of that accused one to face his or her accusers, present evidence and then make sure that the process by which a decision is reached is fair. Currently, under the NCAA system, if a person or a school is ruled against the only appeal is to the NCAA itself. The Supreme Court case that I mentioned involved a coach name Tarkanian, who coached basketball at the University of Nevada-Las Vegas. And I'm not going to go through all aspects of that case, but I'll mention this one thing. One of the lower courts found that the NCAA, in conducting its investigation, used an investigator who showed obvious bias against the coach. Due process would not allow a procedure like that to stand. So to bring it right here to Nebraska, if there happened to be an investigator on the staff of the NCAA who, for some reason or no reason, did not like the university, did not like coach Osborne, did not like Bob Devaney, or just didn't like Nebraska, and it was known that he

or she had that bias, that person could still be the investigator, as was the case against Tarkanian. That person's findings would be given over to their committee on infractions, as was done with Tarkanian. The infractions committee upheld those findings. Tarkanian and the university appealed them to the NCAA council, where appeals have to be taken now, and all of those findings were upheld. There was no basis for an appeal further through the NCAA, so that is when Tarkanian went into court. Through some complicated legal maneuverings it wound up in federal court, because the NCAA wanted it moved there, and you can do this if the case is between parties from other states, different states. It was out of that federal action that the decision came down that I mentioned to you in the beginning, that the U.S. constitutional guarantee of due process cannot be imposed on a private association. The only way you get at the conduct of private individuals and private associations is by means of state statutes. And this is why we have laws governing hospitals, businesses, organizations, clubs, every kind of private association, organization or gathering that there can be. The bill is very simple in what it does, and it is so simple and direct that to explain it further would tend to make it more complicated than it is. So having said everything I have thus far, I'm going to restate now categorically what the bill does. It says that any time the NCAA conducts proceedings that could result in a punishment being imposed against the university or any individual connected with the university, those proceedings have to be conducted in accord with due process. If the NCAA fails to do this, and would impose a punishment that would result in the university losing money, the university can then go into court, and if it wins and shows that the NCAA did violate this law, did impose a punishment in violation of due process, Senator Barrett, I'm almost through, but I want it in the record, then the university could go to court and the measure for damages would be based on what the university had earned the previous year. The reason I wanted to put a standard of damages is because it is speculative as to how much they would earn in the year that say they might not be allowed to play, or for a bowl game that they were prevented from attending. So by basing it on what they have earned the previous year and pro-rating that amount to cover the period of time that they were under this punishment in violation of the law, you come up with a measure for the court to use in assessing the damages that the university could win. Now that may not be easy to understand, as I've said it, but when the transcript is produced, if you want to read it over, it will be

as clear as crystal. When I see Senator Kristensen over there with his hands in his pocket and his brow furrowed, I don't know if he's thinking about something else, or if he's trying to figure out what I'm saying. So I'm going to move that the bill be advanced, and if you have any questions then I'm prepared to answer them. And there was no opposition to the bill, by the way.

SPEAKER BARRETT: You've heard the motion to advance the bill. Discussion? Senator Kristensen.

SENATOR KRISTENSEN: Senator Chambers, I only had one hand in my pocket, and I was standing next to Senator Warner, soaking up information. But would you answer me a couple questions, and this isn't designed to lead you into any path or anything. For the record, what...is this sort of a standing bill, giving the State of Nebraska or the university the standing to sue the NCAA?

SENATOR CHAMBERS: Right, in an action that...it would have to be an action against them that resulted in a punishment of some kind. Yes, then it creates a basis for them to go into court.

SENATOR KRISTENSEN: Okay. Is it your opinion that we, as a state, can bind the NCAA when they may not make their decision in the State of Nebraska? Let's say they're based in, where, Kansas City?

SENATOR CHAMBERS: Yes.

SENATOR KRISTENSEN: For example they are going to act in either Missouri or Kansas and their actions are going to be centered there. Are we going to try to bootstrap because they conducted an investigation in this state, that's enough action on their behalf to subject them to our jurisdiction?

SENATOR CHAMBERS: That and the fact that they have members of the association who do reside in Nebraska, because Nebraska is a member of the NCAA, so it has a presence here all the time, as long as if some of its members are. But the fact that it does conduct transactions in this state would make it amenable to state law. And there was an instance in Texas where a coach felt he was being improperly treated and under their general due process laws the State Court of Texas imposed an injunction against the NCAA while the matter is to be carried through court

saying that they could not impose any sanctions against the coach, could not impose any sanctions against the university, and that the university would have to honor the contract it made with the coach and continue to pay him while all the proceedings were underway. That would indicate the strength that a state has in terms of making an association amenable to its laws, even if its headquarters are in another state.

SENATOR KRISTENSEN: Is it your opinion that under the current set of Nebraska law, the way we are right now that this state couldn't do that under our general due process standards right now?

SENATOR CHAMBERS: I think in the same way that this coach in Texas made his move, there is a possibility of that. But this bill goes beyond just assuring the right to due process, it actually creates a cause of action for the university and anybody who is harmed and sets a measure of damages that would give some guidance to the court. So, if this would happen in Nebraska as it did in Texas, then there would be a law that would notify all parties as to how the action would be processed and also what the damages would be if any were shown to exist.

SENATOR KRISTENSEN: And I guess my final question is, and we touched on that earlier, if one of the reasons we get standing is because we have a member of the NCAA present in our state, which is the university, could the NCAA, in order to avoid that standing, could they revoke the membership of this institution to avoid being sued?

SENATOR CHAMBERS: The first thing is that there are standards that must be met by the NCAA itself, based on its own bylaws, as to how a member can be expelled. And no member can be expelled simply for suing the NCAA, because there are schools that have done that already. And that is not a basis for expulsion.

SENATOR KRISTENSEN: They could change their bylaws, though, basically saying that if any state does this sort of procedure that that could be grounds for expulsion, if they could get the other schools to go along with it. They'd have to do that first.

SENATOR CHAMBERS: They would have hundreds of schools to get...to reach that agreement. But even, if they tried to do that, that would be a punitive action against the university and

that in itself could be a basis to make them amenable to this law.

SENATOR KRISTENSEN: And that itself would be the cause of action, that we could sue our revocation out?

SENATOR CHAMBERS: Exactly. Whatever they would try to do, however they would try to circumvent it the very act of circumvention or attempted circumvention would create the cause of action against this bill.

SENATOR KRISTENSEN: I wasn't going to speak until you prompted my attention, but thank you. I think that helps the record.

SENATOR CHAMBERS: That reminds me of something that I could tell about a lawyer who asked one question too many, but I'm not going to tell it.

SENATOR KRISTENSEN: We didn't do that today. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. Additional discussion on the bill? Senator Dierks.

SENATOR DIERKS: Mr. Speaker, members of the body, I just rise to support the bill. As you know I'm a co-sponsor of the legislation. And there is an old saying that it is better to remain silent and be thought a fool than open your mouth and remove all doubt. So it is probably better for me to sit down right now, because I don't understand all the legislative angles here. Thank you.

SPEAKER BARRETT: Thank you, sir. Any other questions, discussion on the bill? Senator Chambers, would you like to make a closing statement.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, in line with what Senator Dierks said, I have to say this, a wise old owl sat in an oak. The more he saw, the less he spoke. The less he spoke, the more he heard. Why can't we all be like this bird? I'm going to take the first step in that direction by waiving any additional closing remarks.

SPEAKER BARRETT: Thank you. You've heard the closing. The question is the advancement of LB 397. Those in favor vote aye,

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opposed nay. Voting on the advancement of the bill. Please vote, if you'd care to vote. Senator Chambers.

SENATOR CHAMBERS: Mr. Speaker, and I will accept call in votes. Senator Dierks and I will accept call in votes.

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

ASSISTANT CLERK: 8 ayes, 0 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your seats. Those outside the Chamber please return. The house is under call. Call in votes will be accepted. The question is the advancement of LB 397. Record your presence, please. Members outside the Chamber, please return. Record your presence. Senator Lynch, Senator Rod Johnson, Senator Peterson, Senator Beck. Senator Schellpeper, the house is under call. Senator Rod Johnson, please, the house is under call. Senator Haberman. Senator Beyer, please, the house is under call. Call in votes are being accepted on the advancement of the bill.

ASSISTANT CLERK: Senator Smith voting yes...changing from no to yes. Senator McFarland voting yes. Senator Landis voting yes. Senator Lindsay voting yes. Senator Lamb voting yes. Senator Rod Johnson voting yes.

SPEAKER BARRETT: Record, please.

ASSISTANT CLERK: 27 ayes, 0 nays on the advancement of the bill, Mr. President.

SPEAKER BARRETT: LB 397 is advanced. The call is raised. Pass over LB 132 at this point and proceed to LB 619. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB 619 was introduced by the Natural Resources Committee. (Read title.) The bill was read for the first time on January 19, was referred to the Natural Resources Committee. They report the bill back to General File without committee amendments, Mr. President.

SPEAKER BARRETT: Thank you. Senator Lamb, will you handle the

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LB 143, 144, 155, 157, 265, 360, 360A
397, 595, 616, 619, 623, 680
LR 38

PRESIDENT NICHOL PRESIDING

PRESIDENT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. As our Chaplain of the day, today we have Reverend Tom Stebbins of the Christ Community Church in Omaha, which is in Senator Pirsch's District. Would you please rise for the invocation.

REVEREND TOM STEBBINS: (Prayer offered.)

PRESIDENT: Thank you, Reverend Stebbins, for your thoughtful prayer this morning, appreciate it. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Any corrections to the Journal today?

CLERK: Mr. President, I do. Oh, no corrections, no, sir. I am sorry. I have no corrections this morning, Mr. President.

PRESIDENT: Well, very good. Do you have any messages, reports, or announcements?

CLERK: Yes, sir, I do. Mr. President, your Committee on Enrollment and Review reports they have carefully examined and reviewed LB 157 and recommend that same be placed on Select File with E & R amendments; LB 360, LB 360A, LB 265, LB 397, LB 619, LB 623, LB 155, all of those on Select File, some have E & R amendments attached. Mr. President, Education Committee, whose Chair is Senator Withem, reports LB 143 to General File, LB 144 indefinitely postponed, LB 680 indefinitely postponed, those signed by Senator Withem. Mr. President, Natural Resources Committee, whose Chair is Senator Schmit, reports LB 616 to General File with committee amendments attached. (See pages 916-18 of the Legislative Journal.)

Mr. President, a new resolution, LR 38 by Senator Lindsay and Senator Hartnett. (Read brief explanation. See pages 918-19 of the Legislative Journal.) That will be laid over.

Mr. President, an Attorney General's Opinion addressed to Senator Lynch regarding LB 595. (See pages 919-21 of the Legislative Journal.) An announcement, Mr. President, Senator Hall has selected LB 262 as his priority bill for this

call is raised. Mr. Clerk.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 360 as amended be advanced to E & R for Engrossing.

SPEAKER BARRETT: Shall the bill as amended be advanced? Those in favor say aye. Opposed no. Ayes have it. Motion carried. The bill is advanced. The A bill.

CLERK: Mr. President, on LB 360A, I have no amendments to the bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I would move the advancement of the bill.

SPEAKER BARRETT: Shall the A bill be advanced? Those in favor say aye. Opposed no. Carried, the bill is advanced. Mr. Clerk.

CLERK: Mr. President, on LB 397, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I would move that LB 397 be advanced.

SPEAKER BARRETT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President, I would like to ask some questions of someone about this bill. It would appear to me...and I'm not a lawyer so I would hope that maybe some of the legally trained people on this floor would answer some questions.

SPEAKER BARRETT: Excuse me, Senator Schmit. You're asking a question of someone?

SENATOR SCHMIT: Yes.

SPEAKER BARRETT: Perhaps Senator Chambers would like to respond. Would you respond to a question, Senator Chambers?

SENATOR SCHMIT: Wait a minute.

SPEAKER BARRETT: Oh.

SENATOR SCHMIT: I would rather pick who I am going to ask, if you don't mind. I would like to...is Senator Kristensen on the floor? I notice he voted against advancement of the bill.

SPEAKER BARRETT: Senator Kristensen is on the floor.

SENATOR SCHMIT: Senator Kristensen, it would appear to me that although this bill is addressed toward the NCAA that it might have ramifications greater than that and because of the fact that in effect we are extending the field of due process to a private organization and I don't know whether that's good or bad, I'm not trained in that way, but it just seems to me like maybe we are getting into an entirely new area; and then Section 6 of the bill provides for the penalty and the penalty, as I understand it, says it shall be a 150 percent of the yearly gross of the athletic program that was affected. And I guess I would like to know, first of all, why you voted against the bill, if you have concerns that are somewhat parallel to mine, and if you would explain to me your position on the bill?

SENATOR KRISTENSEN: Senator Schmit, I had some questions about due process in general about what was going to happen if we applied this to the NCAA, I had some problems with the penalty section. I spent most of the morning with Senator Chambers, once he got here. I was going to talk about the bill but I wasn't prepared this morning to lay out my proposals and pretty much agreed with Senator Chambers. I was going to wait till we had an Attorney General's Opinion on this bill, then look at my thoughts as to what I would do with the bill later. But I had some questions about the penalty section, about the amount of that penalty and how we would measure it and if that was going to be a burden.

SENATOR SCHMIT: I would like to ask Senator Warner a question then relative to a penalty section.

SPEAKER BARRETT: Senator Warner, would you respond to a

question?

SENATOR SCHMIT: I don't know, Senator Warner, how many instances we might have where it would violate due process, but I am just going to ask if, in effect, there was a penalty such as this levied against the athletic program, particularly the football program, what do you envision the penalty to be or what do you think it might be if that were to be found a valid penalty?

SENATOR WARNER: What would the dollar amount be?

SENATOR SCHMIT: I guess that's what I'm asking. Yeah, it says it's going to be 150 percent of the yearly gross amount realized by the affected athletic program.

SENATOR WARNER: Oh, if it was the University of Nebraska-Lincoln, it runs in my mind their yearly budget is for athletics in total, that's not just football, but it runs in my mind it's in the vicinity of 10 million. It might be over that.

SENATOR SCHMIT: Well, I'm a little weak in the knees right now but I'm going to ask one more question.

SENATOR WARNER: If it has reference to the total program, I thought when we...I thought I recalled someone discuss having it related to maybe one event rather than the whole season but I really can't answer that.

SENATOR SCHMIT: Well, I guess I'm a little sensitive to penalties and I'm a little concerned. I would like to ask Senator Chambers...I'm sure he'll have some comments about it, but I'm concerned about the indefiniteness of this kind of a penalty. I concerned, secondly, about the fact that if we extend due process to a private entity, what does it do? Does it mean that another private entity, the Boy Scouts, the 4-H Club, the Future Farmers of America, any of these entities can come back against an institution, a school or any other entity and ask for a similar kind of protection? I know that Senator Chambers is concerned about a certain area of abuse and I have some sympathy with that. But I find myself, from time to time, having to defend some of these things we do and I really think it needs a lot more discussion than we have had. I don't suppose...I don't believe I was here when the bill was discussed on General File...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...and so I guess what concerns me, Senator, is if the monetary loss in this instance could be \$10 million, then if the penalty were 150 percent of that, that's \$15 million, that would just about wipe out the program which may be good or bad, I'm not saying about that, but where do we go then for the funds to carry on the program? Because, as I understand it, the football program basically supports much of the entire athletic program at the University of Nebraska. So I would like to have Senator Chambers discuss some of these items and maybe he can reassure me.

SPEAKER BARRETT: Senator Chambers, yours is the next light so if you would like to answer it now on your time...

SENATOR CHAMBERS: Yes.

SPEAKER BARRETT: ...you have another 10 seconds of Senator Schmit's time. Proceed.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Schmit, I did explain all of this the day that the bill was moving and the penalty is not against the university. The penalty would be against the NCAA if it imposed a punishment on the university without following due process. So I will explain the bill so that it's in context. We have a situation where...I'm going to wait so I won't have to explain it twice. That's only...okay, because he would say he didn't hear what I said and he wouldn't have, okay. Senator Schmit, it's a situation where there have been a number of instances where schools felt that the NCAA system by which they found violations to exist and imposed punishments did not comport with due process. You couldn't confront the one who accused you. You didn't always know with specificity exactly what evidence resulted in which aspect of the punishment, and if you disagreed with the finding of the infractions committee, then you would appeal it to the NCAA Council and if the NCAA Council agreed, that was the end of it. In the Tarkanian case where something like this happened, a lower court found that one of the investigators had an obvious bias against the coach. That is a violation of due process fairness. So if there were a bill such as this in place and say the NCAA upheld the findings of that biased individual and the university wanted to appeal through

the NCAA process and the NCAA still insisted on imposing a sanction, then the university, under this bill, could go to court and they could seek an injunction to prevent the punishment from being imposed because it violated due process pending the outcome of a lawsuit, and let's say that the lawsuit went through to completion. If no punishment had been imposed because the injunction was obtained, there is no monetary fine or punishment levied or damages against anybody. Now let's say that a situation arose where a sanction were imposed, so that I can get to the question that you're asking, and the school was put on probation for a year, that means that the total amount that the football program would have made during that year was lost. How much money they would have made would be speculative. The university's football program, each year, has made more money than it did the year before. So the argument can easily be made that not only did it lose the amount that it made last year but whatever the increase might have been. For example, this year Oklahoma-Nebraska football tickets will be \$25.00 instead of 18.50. So you can reason to the fact that the program would make more money next year than it did this year. You would go into court, and say you win, the court finds that the NCAA did violate due process in imposing the sanction and that damages will be levied against the NCAA. This bill gives a measure of damages so that it's not completely speculative. If the court would find that the NCAA should be fined an amount, you know, the damages that the university would get...I shouldn't even use the term "fined" because it would go to the university, this gives the measure of damages and it also allows reasonable attorney's fee. There is...this bill does not impose any sanction on the university. It's designed to deal with that situation where the NCAA, in violation of due process, imposes a sanction. It creates a cause of action for the university to go into court in the first instance to try to prevent the sanction from being imposed until the whole action is litigated in court. Let's say for some reason you don't get the injunction, the sanction is imposed, you then go to court under this bill and you win. Then the measure of damages that the university would utilize to recover from the NCAA...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...is provided by this bill. So do you have anything else you want to ask me on my one minute that I may not have been clear on?

SENATOR SCHMIT: How is the NCAA funded?

SENATOR CHAMBERS: They're funded through the activities of the various sports programs. The lion's share comes from the basketball tournaments, the final four, and they start out with 64 and a huge amount of their money comes from those tournaments. Then bowl games, like some of them give a certain amount to the NCAA and there are other activities but their money comes from the sporting activities that these young men and women participate in. That's where the lion's share of their money comes from.

SPEAKER BARRETT: Thank you. Senator Schmit.

SENATOR SCHMIT: So if the penalty then is assessed against the NCAA and the funding for NCAA comes from the sporting activities of the various universities, then, in effect, is the NCAA...are they, Senator Chambers, allowed to assess the various programs for a proportionate share of the support they need?

SENATOR CHAMBERS: No, see, Senator Schmit, the NCAA has a pool of money that it's built up as all organizations do that take in more money than they spend. So how they...

SENATOR SCHMIT: Where does that come from?

SENATOR CHAMBERS: From these sporting activities that I'm mentioning.

SENATOR SCHMIT: Okay.

SENATOR CHAMBERS: And the money is invested. It's put in the bank. It draws interest. What some of the high-paid officials of the NCAA did a few years ago was to take from this money no-interest loans for themselves. The director took one of, I think, \$500,000, then they put some of this money in a special fund that would allow NCAA officials and employees to get loans at the low market interest rates. So, already, this money that I'm talking about is being handled by those bureaucrats in a way that's not fair. But this bill would not result in any imposition of additional financial burdens on any of the schools. That's done by their rules, and to change that, they would have to have a convention of all the schools and get the schools to vote to do that.

SENATOR SCHMIT: Wait just one minute. You're giving me more information that I want at this time.

SENATOR CHAMBERS: All right.

SENATOR SCHMIT: I would like to ask the questions, then when you get back on your time again you can use some of that other information.

SENATOR CHAMBERS: Okay.

SENATOR SCHMIT: I guess...do you have any idea of how much money they have in the fund as of now?

SENATOR CHAMBERS: No, I don't know how much money they have.

SENATOR SCHMIT: I see. Do you have any idea, Senator Chambers, what the penalty might be based upon the language in Section 6 of the bill?

SENATOR CHAMBERS: Yes, you mean if a punishment were imposed and wiped out the whole season?

SENATOR SCHMIT: Yes.

SENATOR CHAMBERS: The football program will bring in about \$12 million. I think that might be what they brought in last time, from the estimates that I saw. So a 150 percent of that would be \$18 million that the NCAA would be assessed as damages for violating due process and imposing a sanction. The way to avoid all of that is to just follow due process.

SENATOR SCHMIT: Thank you, Senator Chambers. Senator Chambers makes it sound very, very simple, but I want to point out one of my concerns. The athletic program at the University of Nebraska is not a compulsory program. No one is forced to participate in that program. If in the event that you do participate and there was a time back when I was a student there it was purely for fun because we didn't win any games in those days, that's the course of events. It seems to me as if there might be, in this instance, some new ground that we are opening up which I don't understand and I don't know if all the rest of you do. I'm sure Senator Chambers does. I hope the rest of you do. But I am concerned that at this time if we were to advance this bill, and maybe we will, in the present form that we are plowing new soil,

so to speak, in an area where I'm not so sure that I want to open it up. I think that in some instances, and I'm a staunch believer in due process and sometimes I have complained because of the lack of it, but I think in this instance of a private organization, I am not so sure that I want to vote for...in fact, I'm sure I do not want at this time to vote for the bill. I think that we are getting into an area which I would prefer that we not touch. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Chambers, your light is still on. Would you care to speak again.

SENATOR CHAMBERS: Yes. Mr. Chairman, let me explain this for Senator Schmit as I did to everybody else the day that I brought the bill. Senator Schmit, this bill was drafted because a coach had been placed under some sanctions in a way that was felt to violate due process. Because the NCAA is a national organization and its membership includes state supported universities, the coach brought an action under federal statutes against the NCAA because his due process rights under the U.S. Constitution had been violated. There are a number of federal decisions that have held that the NCAA does constitute state action when it does something. In the case that I'm talking about, the U.S. Supreme Court ruled that the NCAA is a private association, therefore, the federal due process standards do not apply. They need not follow the due process standards under the U.S. Constitution and U.S. laws. So the only way that you can get at the conduct of private associations, even when it's a national monopoly such as the NCAA, which has been described numerous times in the literature as a cartel protecting its own interests in a self-serving way against even the interests of the athletes, the only way you can make them comport with due process requirements is through state law. So what I'm trying to do with this law is not something that's new, it's not something that's different. It's a response to the U.S. Supreme Court decision. Cases such as this had gone to federal court before and federal courts had ruled that a person had a cause of action under federal law because the NCAA, being associated with state schools, was, in fact, engaging in state action. When the U.S. Supreme Court erased all of those decisions...by the way, in a very evenly divided court, well, five to four, it wasn't evenly divided but sharply divided, the one former athlete on the U.S. Supreme Court, Byron White, dissented. He said the NCAA is engaging in state action and gave his argument and he was joined by the other three

justices but, nevertheless, the majority prevailed. So there is not a statute such as this that would allow a clearly defined right of action to exist for the university when it feels that it has been punished through a violation of due process. If you belong to a private association yourself and all of you put money into it, and somebody took the money, you wouldn't want somebody to tell you, well, since this is a private association, you take your risks. If you got in with thieves, that's just the risk that you take. If they were supposed to handle the money prudently and did not, then you wouldn't have an action to make sure that they handled that money properly. Such is not the case. There are other private associations that are amenable to the laws of this state right now. It wouldn't have been necessary to have this bill had not the U.S. Supreme Court said that the NCAA does not need to comply with federal laws and statutes. So this bill does not change an NCAA rule, it does not alter their internal structure. All that it says, no matter how you read it, is that the law comes into place only if a violation of due process occurs. If the NCAA conducts a fair hearing, then they don't have to worry about running afoul of this law. But should the university disagree with the NCAA and take it to court, then the court...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...would make that determination. They would look at all of the proceedings that the NCAA went through to make sure that they were fair, that the one accused had every opportunity to have access to all of the evidence used against him or her, that the punishment was geared to the offense that has been alleged, that the method of investigation, the method of making findings, the method of appeal, all those things would have to be fair. And if that is done, then there are no damages that would be awarded against the NCAA because they will have done what due process requires. Now, if you wanted to look at an article that I have, there was a case in Texas where a coach had left one school and gone to another. The NCAA wanted that second school not to hire him and threatened sanctions if they did. Under the general due process laws of Texas, this coach got an injunction in state court against the NCAA so that the...

SPEAKER BARRETT: Time has expired.

SENATOR CHAMBERS: Just to finish the sentence.

SPEAKER BARRETT: Certainly.

SENATOR CHAMBERS: They could not impose sanctions until that whole matter was resolved.

SPEAKER BARRETT: Thank you. Senator Schmit.

SENATOR SCHMIT: Again, I want to apologize because I wasn't here when the bill was heard first and perhaps Senator Chambers can answer some more questions. But my concern, I guess, is this. Apparently the NCAA is a regulatory group. Is that right, Senator Chambers?

SENATOR CHAMBERS: Not just regulatory but that's part of what they do.

SENATOR SCHMIT: All right. Can they run out of money?

SENATOR CHAMBERS: I don't think so. It's impossible, as long as they have the sporting events they have now it is impossible for them to run out of money.

SENATOR SCHMIT: Now, that's going quite a ways as far as I'm concerned. I don't think, you know, anyone can run out of money but they do have resources. Can they come back and assess the various programs for money if they get...if they are in need?

SENATOR CHAMBERS: You would have to look at what their rules are. Their money comes from these athletic events. And, Senator Schmit, that's why I wish people would pay attention to how much the NCAA is taking in every year from these events, not just football but basketball, baseball, hockey, all of them that make money, help contribute money to the NCAA, and the amount of money they have is not going to be exhausted.

SENATOR SCHMIT: I will agree, Senator Chambers, that the NCAA and the athletic program at the University of Nebraska and many other universities far exceeds in interest most of the legitimate businesses in the state. But I would suggest that, for whatever purpose they exist, for whatever...to whatever degree that they exercise some control over the institutions and the programs, I'm not at all conversant with their program, I'm not at all informed on the need and necessity or anything of that nature. But can you give me an example of...has any such violation of due process occurred at the University of Nebraska,

in your memory, Senator Chambers?

SENATOR CHAMBERS: Well, I can't say...I can't answer the question the way you ask it but just a couple of years ago some players were involved with their tickets. I forget whether they gave them to people they shouldn't have or sold them or something like that, but the whole state was in an uproar because they felt the punishment imposed by the NCAA was unfair, that it was overly harsh and all of those things. There was a lot of publicity in the newspapers, on television and everywhere attacking the NCAA. The university had meetings with them and, based on the heavy outcry, the NCAA backed down. Well, if the NCAA is, in fact, a regulatory agency, if every, as we might say, requirement of their laws had been complied with and the punishment was imposed, they should not have withdrawn it simply because of public pressure. So it indicates that they are as much a political body as a regulatory body. It happens that Nebraska is a strong enough school in terms of the money that it produces to have achieved what it did, with the assistance of the news media and others. But if it were a different school in this state that didn't have that kind of power, and there are other schools that are associated with the NCAA, the outcome may not have been that way and they wouldn't have had recourse, because the NCAA...the university didn't get that changed by appealing it.

SENATOR SCHMIT: Senator Chambers, you're getting all of time again.

SENATOR CHAMBERS: I'll give you some of mine when I get it if you need it.

SENATOR SCHMIT: Okay, fine. How many states have passed this kind of a bill? Do you have...are there a number of states that have done this, Senator Chambers?

SENATOR CHAMBERS: No, because it hasn't occurred to other states because the decision came down in December of last year, December of 1988.

SENATOR SCHMIT: Could this...could the passage of this bill in any way be construed, Senator Chambers, as a limiting factor on the NCAA and their oversight of the institutions?

SENATOR CHAMBERS: No, not at all. It wouldn't limit that at

all. They can do everything with this bill in place that they do right now.

SENATOR SCHMIT: If they can do everything they can do right now, then do we really need it if there hasn't been a problem?

SENATOR CHAMBERS: Yes, they have to do it a certain way. And Tom Osborne has stated that he has some sympathy for Oklahoma because they had to go through an NCAA investigation here and it is brutal and agonizing and he had no idea what it entailed until they came here and did it.

SENATOR SCHMIT: Well, thank you, Senator Chambers.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: I'm just going to make a few comments. I do not know about the necessity of providing due process in this kind of a situation. I'm not at all well versed in that area. I am concerned about the extension of this sort of due process to a private entity. Number two, I do not know either how brutal the NCAA can be in an investigation. I do want to say, at this point, and it may be heresy to say so and it may be extremely risky for me to say so, but I do have to say this that I believe that we have seen the athletic programs at this...at our own institution and a number of institutions reach a point of credence where they almost supersede the academic portion of the university, if they don't. I am not sure that the NCAA does a good job or doesn't do a good job but I think to the extent that some sort of responsibility is placed...

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: ...upon the institutions to make their programs reasonable, I think I'm in support of that. I'm not going to support the bill at this time.

SPEAKER BARRETT: Thank you. Any other discussion? Anything else? Senator Chambers, your light is still on, if you care to speak. And I'm sorry, Senator Korshoj's just went on. We are working under a bit of a handicap here, so bear with us. Senator Korshoj.

SENATOR KORSHOJ: Mr. Speaker, I wanted to give my time to Senator Chambers is why my light went on.

SPEAKER BARRETT: Well, his light is already on so he has...

SENATOR KORSHOJ: He's already spoken twice.

SPEAKER BARRETT: Go ahead, Senator Chambers.

SENATOR CHAMBERS: Thank you. I'll take Senator Korshoj's time. Senator Schmit, this information was just given to me. On the basketball tournament alone last year, just the tournament, the NCAA got \$80 million.

SENATOR SCHMIT: How much?

SENATOR CHAMBERS: Eighty-million dollars. That's just from the basketball tournament and that's not talking about the college world series which has a network contract and the money that they get from being on cable and other sources of income. The football programs all over this country bring in millions...many more than eighty millions of dollars. The NCAA has plenty of money to respond in damages. Senator Schmit, if the NCAA was a fair organization, you wouldn't find Coach Osborne, Devaney and others complaining year after year about the unreasonableness of the rules. Even the Executive Director held up the rule book, it's thicker than the Bible and more complex than the Internal Revenue Code. They have a man named Al Papik at that university who spends 85 percent of his time just trying to interpret rules so that there won't be an inadvertent violation. This bill is necessary and it would be good if a bill were enacted like this in every state in the country. Then when the NCAA saw Legislatures taking an interest...and Congress is looking at things that the NCAA has done, then they will begin to rationally review their system of rules and make them comport with what is fair. Every rule that the NCAA has now that impacts on an athlete is against the interests of the athlete and in favor of the university. The NCAA is the one that requires athletes to forego certain federal aid in order to participate in the athletic programs. So if we cared so much about these players, if we cared so much about education, we wouldn't be speaking so strongly in favor of an association that says, in order for you to participate, you have to forego state...federal aid of an educational nature. That happens at the University of Nebraska. It happens at universities throughout this country because that's a rule imposed by the NCAA. If an athlete transfers to a school, he can lose a year

of eligibility which reduces his value to that school and his prospects of making it as a pro. So since none of us are naive, we know that these big programs are moneymakers. The NCAA, itself, puts on seminars and forums to explain how to package, how to market, how to sell their athletic programs and that's the way to present it, how to sell your athletic program, try to obtain corporate backing. They have done that for all of the football bowls now, the major bowls. It's not just a case where the networks provide money and the gate from the people buying tickets, but corporations have begun to provide money to subsidize these bowls and some of that money goes right to the NCAA. While telling a player he cannot work or make a nickel by exploiting his talent as a football player or basketball player, whatever the sport is, he or she can be put on television and sent on tours around the country to promote the NCAA and ABC, both of which turn huge profits. So we're dealing with an organization, Senator Schmit, which is not just a collection of nice people trying to do things to uphold the integrity of college athletics and benefit the players. They are trying to continue to have the monopoly that they have. Before Oklahoma and Georgia sued the NCAA and won, the NCAA had determined how many times a school could appear on television. Oklahoma and Georgia felt that was wrong. They took it all the way to the U.S. Supreme Court and the Supreme Court agreed that there was a monopolistic action by the NCAA and they could no longer do it. Now Nebraska and other schools...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...can be on television more than the number that the NCAA was going to restrict them to. If there were enough time and we were going to discuss all aspects of this, then you would see how serious the problem is. The university, I think, would acknowledge to Senator Schmit, if he talked to them, that they need some means and law to withstand the NCAA if the NCAA orders them to impose a punishment in violation of the school's own rules, in violation of due process. And here is where the university is in a Catch 22, Senator Schmit. The University of Nebraska, being a state school, must comply with federal due process requirements. So let's say they extend those due process requirements and find the person not guilty, the NCAA, through its nondue process system says, aha, but you are. So they impose a sanction if the university does not say suspend the coach or take the eligibility from the student. If that is done, then the coach can sue the university because the

university...

SPEAKER BARRETT: Time has expired.

SENATOR CHAMBERS: ...in carrying out NCAA rules violated federal requirements. That's the reality that's being faced.

SPEAKER BARRETT: Senator Dierks, please.

SENATOR DIERKS: Mr. Speaker, members of the body...

SPEAKER BARRETT: Oh, I'm sorry, excuse me. We apparently have a priority motion on the desk, Senator Dierks.

CLERK: Mr. President, I do. Excuse me, Senator. I have a motion to bracket LB 397 until March 13, 1989. That's offered by Senator Kristensen.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you. I think there's been some questions here. The concept of what Senator Chambers talks about is a valid concept. There are some very good things in this bill about due process. There are some very legitimate questions that people will probably have and would like to have it explained. I think Senator Chambers has requested an Attorney General's Opinion that should be out within the week. And I think that some of the people's arguments and some of those things could be examined and Senator Chambers could have a chance to sit down and talk with some of us who are concerned about this bill to work it out. I think we need a week to get the Attorney General's Opinion, look at it and work with it, and then come right back.

SPEAKER BARRETT: Senator Dierks, would you care to speak to the motion?

SENATOR DIERKS: Mr. Speaker and members of the body, I guess I assumed that Senator Chambers would have the opportunity to speak to the bracket motion before I would. Is that not part of the new rules or not bracketing?

SPEAKER BARRETT: No.

SENATOR DIERKS: Okay. I am amenable to whatever Senator

Chambers wants to do with the bill. I just wanted to mention the fact, for Senator Schmit's enlightenment, that I also am on the bill. As a matter of fact, when I read, last fall and winter, of the injustices done to...what I thought were injustices done to Coach Jerry Tarkanian out at Nevada-Las Vegas, I was a little bit incensed about that and began some dialogue with Senator Chambers, and he being the legal expert, I figured that he would be the one to actually bring the bill, but it was partly my urging that he did that. I do feel that we are dealt with in a somewhat superhanded way by the NCAA. I have absolutely no objections to our defining due process in this state for them to qualify by. It's...to me, I think it's only fair. I think that we need to...if we need to be the first state of the nation to do that, well, then so be it, but I think we've got an awful lot of underhandedness on the part of the NCAA and the way they have handled people across the nation and I think we have an opportunity now to rectify that with this legislation. That's...I really can't speak to the legal part of it because I don't have that kind of information but I respect Senator Chambers' ability that way and that's why I asked him to help with the legislation. It's his bill and I certainly support what he's doing. Thank you.

SPEAKER BARRETT: Senator Schmit, on the motion to bracket, please.

SENATOR SCHMIT: Thank you, Senator Dierks. I always need to...I'm always grateful for any enlightenment that I can receive because I need so much of it. But I would just...and I would apologize if I have in any way impugned the integrity of any kind of athletic program at any university. Far be it from me to cast any aspersions upon those very eminent efforts which, of course, we know brings honor and glory to our eminent academic institutions. I think that we have had enough of this. I think that we recognize, all of us do, Senator Chambers more than anyone, that the athletic programs at the universities far supersede the academic goals in the minds of many people and that the old adage of anything goes has become almost a rule of thumb. I don't know whether the NCAA is worth a bucket of wet spit. I don't really care. I'm suggesting that maybe at some point in time the entire situation does need to have some kind of an oversight and I don't know whether what we are doing here today makes the athletic program better or worse. I would like to know. I see there was no...there are no opponents. The university testified neutral and I am beginning to understand

why after listening to Senator Chambers. But I guess the question that I'm asking is, what are we really interested in? The rights of the individual, first and foremost. But also I want to point out again there is nothing that compels anyone to play football, nothing compels you to play basketball. Someone has to make the rules, I guess. If you don't like the rules, you don't play in the ball park. We know that athletes are shipped around the country in a manner which is almost abhorrent. We understand that. I guess that's the way the system is going to work. But you can't have a system that works that way and then you can't have, as Senator Chambers points out, corporate entities that want to dump huge sums of money into the various entities to further enhance themselves, the programs, very rarely the athlete, without having some kind of an oversight. And to the extent that that oversight exists, I think it does some good. They may be high-handed from time to time. Some of the alleged abuses that have taken place, which the NCAA has objected to, certainly have to be considered high-handed also and I think we have to recognize that. I think that there comes a time when we ought to put the athletic programs back in the context that they were supposed to be when they started and that was something for the kids to have fun with once in a while but it is far be it from that anymore. I don't know how a basketball player can possibly participate in an academic program. They're flying all over the country two and three times a week and someone, sure as the dickens, needs to be exercising some oversight in that regard. Maybe the NCAA is wrong. Maybe they do things wrong. Maybe they are high-handed. Maybe they're arrogant, I'm not sure. I'm the least probably qualified person on this floor to make that decision and I freely admit that. But I'm going to ask you if you're satisfied yourself with has happened in the collegiate sports in the last few years? Do you have a better solution? Does the advancement of this bill make it less obnoxious or does it make it better? Does it protect the rights of the player? Does it guarantee him any more of an education than he gets now? I think that we all know that we're not satisfied with what has happened in that area. And I guess I'm just curious because I've watched this thing develop over the years. I've watched the athletic program over the years become the tail that wags the dog and I'm not at this time ready to, I guess, slap the wrists of the only entity that I know of that exercises any control over those programs. To the extent that you intimidate that entity, I think you might give a green light to further abuses within the program. I think it deserves to be looked at,

and the end result, if you don't have some kind of control, if you don't have some kind of oversight, the athlete is the one who suffers.

SPEAKER BARRETT: Thirty seconds.

SENATOR SCHMIT: The university is going to continue on its merry way. The NCAA is not going to be hurt but the individuals who are exploited, and Senator Chambers has used that term, I think, if not, he has talked about the way athletes are used and abused, but the individuals who are abused are always those individual players who for one reason or another take part in a program, and then if something goes wrong, you can be sure they will be dumped and they will be ignored and so someone has to have some oversight.

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: I would ask the members of this body to take a good look at what we are doing to see if we enhance the program or if we diminish the program by the passage of this bill.

SPEAKER BARRETT: On the motion to bracket, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Schmit is right that people play football voluntarily, in a sense, unless you're one of those poor kids who has no way to get in school other than based on your athletic ability and that's why you're recruited. But to say that a self-interested body which makes money out of the activity that it regulates should be allowed to regulate with no oversight is like saying Franklin Credit Union should not be overseen by the National Credit Union Administration and that the National Credit Union Administration, which is an oversight body, should have nobody overseeing it. People put their money into these institutions voluntarily. Nobody puts a gun to their head. But, see, when we talk about money suddenly we understand this. We will attack the credit union's operation, as we should. We will attack the carelessness of the NCUA, as we should. But when it comes to a situation like this where we're talking about athletes and people who cannot stand up against a powerful body like the NCAA, single schools cannot even do it, and the U.S. Supreme Court even acknowledged, Senator Schmit, the power of the NCAA and it said...the majority said despite the power that they have to control athletics all over the country that is not enough to

make the courts say that they are a public body subject to the requirements of the U.S. Constitution and due process. Frankly, I didn't think that anybody would stand up and say they're opposed to due process being granted in any context because all due process means is fairness. Were I having my business challenged by the Attorney General, I would say repeatedly, be fair to me. If I were involved in the petition drive, I would say, be fair to me. There are people who, for those who lost their money in Commonwealth, are saying, be fair to them. But because my name is on this bill and it deals with the very concept of fairness under the law, then suddenly that concept is suspect. This bill is not taking any power from the NCAA. It would be like if I offered a bill that said everybody is entitled to due process in the courts of this state, then somebody would say, wait a minute, Chambers is saying that; something has got to be wrong with it, I want due process for me, but since he's recommending the bill, we better check that again. You can kill this bill if you want to, because this is not one of those things that is going to take my heart out. This is a bill that would help the university. And if you talk to Dick Wood, their lawyer, he will tell you that they need some way to stop the NCAA from bullying them. They need some way to stop the NCAA from putting them in a position to have to violate a coach or an athlete's due process rights under the Constitution or face sanctions. When I brought a bill saying pay the players, you all were told that if the school did it, even if that were fair, then they could be put out of the NCAA. And if I said, then because of fairness and dealing fairly means they are out of the NCAA, that should be the case, and on that proposition people said, no, no, that's too harsh for the university. So when I bring a bill that says that before the NCAA can impose a punishment there must be fairness, all of a sudden now they say, well, the university is in it voluntarily, let them get out if they don't like the rules. Don't get them out on the basis of doing justice to the players but get them out because they want due process and the NCAA won't give it. I do pay attention to things that people say on this floor, not just on a specific issue. And if you kill the bill this year,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...I will just bring it back again. But if you kill this one, you are taking something from the university that it greatly would like to have. So I'm going to fight the

bracket motion. And there are enough of you to do whatever you want to do with this bill and because, pursuant to what Senator Schmit said, you can kill it because I think that's what his ultimate aim is, that can be his only aim. But he knows the number of years I have been on this floor and that makes me no difference and is not a deterrent to me. I will lose this one but I will bring it back next year and I will bring it back next year, but what is going to happen is that one of the states that have written to me for a copy of this bill will simply put it in place. Then everybody is going to say, well, now another state did it, I guess it's all right. Doesn't make me any difference. Do what you will but I will be back again and again and I'm going to oppose the bracket motion.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: I hope you all oppose it, too. Then if Senator Schmit wants to kill it and you all agree with him, go ahead and kill it but don't play a game with me.

SPEAKER BARRETT: Any other discussion on the motion to bracket? Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I will support the motion to bracket. If there is an Attorney General's Opinion forthcoming, that may be helpful to us. I understand thoroughly what Senator Chambers is attempting to do. Senator Chambers is very capable of usually explaining his position to the extent that it usually informs this body in one way or another. Many times I have agreed with him. I have a question here. The fact that I disagree with Senator Chambers on this bill does not mean that I am out to do him any disservice. I think we need to have a discussion of this kind of an issue and I think that when we talk about how powerless the university is, I think we ought to stop and just think a little bit about the university. I do not think the university is powerless. I do not think the athletic program is powerless and I think it would well behoove us to wait for the Attorney General's Opinion. I don't know what it's going to say. I don't...and I'm not sure at this point in time that it will make any difference to many of the members of this body. But I would just suggest that it would not be ill-advised to support Senator Kristensen's bracket motion.

SPEAKER BARRETT: Senator Hartnett, please.

SENATOR HARTNETT: Mr. Speaker and members of the body, if I could ask Senator Kristensen a question.

SPEAKER BARRETT: Senator Kristensen.

SENATOR HARTNETT: You brought up the motion...the rationale for your bracketing motion was asking an Attorney General's Opinion. Did you request the Attorney General's Opinion? Or what's the purpose of the Attorney General's Opinion? I guess I have not heard the rationale for that.

SENATOR KRISTENSEN: I did not ask for the opinion. I believe that Senator Chambers did and probably he would be best to ask the contents of the request.

SENATOR HARTNETT: Senator Chambers, would you...I would like to know, I guess that seems to be the genesis for this bracketing motion is waiting for this Attorney General's Opinion.

SENATOR CHAMBERS: That's the justification but not the genesis.

SENATOR HARTNETT: Okay.

SENATOR CHAMBERS: The Attorney General's Opinion, the request was phrased very broadly in one or two sentences. Sent a copy of the bill and asked was there anything in it that violated the Constitution of Nebraska; something along that line. If I had the copy, I could read it but there was only one or two sentences involved in it.

SENATOR HARTNETT: Thank you.

SPEAKER BARRETT: Senator Landis.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, Senator Kristensen asks us to bracket for a week's time, basically, to give us time to examine the Attorney General's Opinion before we make a final decision on LB 397 and to be illuminated by whatever the Attorney General might have to say on the subject. Is that a fair characterization of the argument, Senator Kristensen?

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR LANDIS: Senator Chambers, let me ask you a question. Is it reasonable to expect that by the time Final Reading came on 397 that the body have available to it whatever instruction the Attorney General might give us as to potential conflicts, legislation, adjustments that we should make in the bill prior to a Final Reading vote on the bill? Is that a reasonable condition for the Legislature to be in?

SENATOR CHAMBERS: What is the time frame you mentioned again?

SENATOR LANDIS: Prior to Final Reading adoption of 397.

SENATOR CHAMBERS: Yes, they would have that, and they should have it.

SENATOR LANDIS: Let me ask you this. Would you agree with Senator Kristensen or Senator Schmit or with the body that 397 would not be read on Final Reading until such time as we had the Attorney General's Opinion, so that if there were some suggestions, if there were some arrangements or changes that needed to be made to comport it to constitutional standards, that we would have that opportunity prior to final passage? Would you be willing to allow 397 not to be read in its Final Reading until we have that Attorney General's Opinion?

SENATOR CHAMBERS: Yes. And Senator Labeledz...Senator Landis.

SENATOR LANDIS: Landis. I know, I heard that Labeledz. (inaudible), Ernie. I have confused with Senator Wesely and Senator Beutler, but this is the first time. By the way, I've been confused for you, as a matter of fact. I've been called Senator Chambers but I've never been called Senator Labeledz before.

SENATOR CHAMBERS: That's because of your wit, charisma, humor and intelligence that you were confused with me. It was just the pronunciation of the names that made my tongue stumble. But I had agreed to with Senator Kristensen was that not only would I not have the bill read on Final Reading but I would be amenable to amendments and I would help with the process of returning it to Select File to attach the amendments. So nothing in my doing was done by subterfuge. That's what I had agreed to do already.

SENATOR LANDIS: Thank you. With that in mind, let me return to asking Senator Kristensen...Senator Kristensen, with Senator Chambers' agreement to the body that we would be able to use whatever the Attorney General had for us to illuminate our work on this bill, is it...would you consider withdrawing your motion to bracket, having that understanding, allowing the bill to be acted on today and then, should we receive instruction, have a chance to take that instruction into account when we know that the bill should be slowed up and adjustments should be made?

SENATOR KRISTENSEN: Well, my initial discussions with Senator Chambers were, as he stated, that we were going to do that when the discussion came up here today about people who had questions on the bill, that's when the bracket motion appeared. So Senator Chambers is right that we had talked about doing that on Final Reading if there were amendments, to bring them back specifically and do them at that time. My bracket motion was basically to calm some of the questions and fears of the body and not any disagreement between just Senator Chambers and myself. So I really don't have a problem doing that.

SENATOR LANDIS: I consider the body do this, that we withdraw the bracket motion and see if the bill has the votes to advance. If it does, we have time to take into account, Senator Chambers has given us the acknowledgement that he will not press for the passage of this bill until we know the Attorney General's advice to us, and, at that point, should there be some specific changes, we would have the time and opportunity to do that. But if there are no changes necessary, the bill would not be impeded in its normal flow through the body and allow it to move on or at least face the trial by fire of a board vote yet this morning.

SPEAKER BARRETT: Thank you. Senator Lindsay, on the motion to bracket, followed by Senator Warner.

SENATOR LINDSAY: Thank you, Mr. President, and members, this bill I think is somewhat...gives me real mixed feelings. I think some of Senator Chambers' arguments are persuasive but, by the same token, I think there are some legitimate questions that may be addressed in the Attorney General's Opinion. I had my light on before Senator Landis's suggestion and that suggestion does sound reasonable to me. I did vote to advance the bill on General File and I would probably vote to advance it again on Select File. I will not vote to advance it on Final Reading

until some of those questions are answered by an Attorney General's Opinion. It does sound reasonable to me and I would go along with the suggested compromise of Senator Landis.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, there really is another issue that would be of concern to me and that's a procedural one. I always appreciate Senator Landis's efforts for compromise, but when you get a bill over on Final Reading, as you all know, then you've got a whole different process. You return bills for specific amendments which are not amendable. You either accept or reject. And, again, I am hesitant about the bill not because of what it's attempting to do, I am like I suppose Senator Schmit on all of these areas, I have a basic reluctance on how much a Legislature should get into some of these areas. And I also understand at times that is the only place that things can be done in athletics. But I would just caution you that the compromise is narrowing your choices when it comes to dealing with the bill, or else you have to have a motion to return it to Select File all the way, which is another process, and open it all up. That avenue is there. But you do restrict your likely choices and we have all who have been here a while have used the ability to better control a bill by getting it over to Final Reading and then restrict the body, in effect, to only considering specific amendments and that is a significant difference between the two levels of consideration.

SPEAKER BARRETT: Thank you. Anyone else care to speak to the motion to bracket? Senator Chambers, your light is on.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, the only one with whom I had discussions this morning when I first came was Senator Kristensen. He expressed his concerns. I had mentioned the Attorney General's Opinion. Senator Schmit had said nothing to me about the bill or asked me any questions so I had no way of anticipating his remarks this morning. I had told Senator Kristensen, before any issue was raised about the bill, that I had wanted it to move along like all the other bills are doing, that when the Attorney General's Opinion comes if there are amendments that need to be offered, I will assist in bringing the bill back for that amending process. First of all, I do not want a bill that would not be efficacious or that would work. What good would it do to get a bill on the books in the form of a law if it was unworkable? This is one bill that

is not being offered just to make a point. This is a bill designed to ensure that due process rights are observed before punishment is imposed on the university. And remember this, the NCAA can compel a university to punish a coach as it did in the instance of Nevada-Las Vegas, or take action against a player, and they do it by saying, if you don't impose this punishment that we feel should be imposed even though your findings indicate it should not be imposed, we will impose sanctions on you. And we can say all we want to about what the university ought to do. But I believe Senator Warner would be one of the first ones who would say, I won't vote for a bill that would jeopardize the university's standing in the NCAA. Others have said similar things. So the NCAA's power is unquestioned. It's been acknowledged by the networks, by the U.S. Supreme Court, by the various schools and universities that are governed by it. What I had indicated, and I say it again, if the Attorney General's Opinion indicates that there are changes that should be made, I will assist in the process of making those changes. But let me ask you the contrary question or a different question. If the Attorney General's Opinion comes back and says there is no problem with the bill, then what? Why has mine been delayed the 10 days or whatever it's going to be? If it moves, then the only one disadvantaged, if it has to come back, would be me because I would have to bring it back for the amending process and that would take some time. But there is no indication that there is anything unconstitutional about the bill. Nobody has shown anything in the bill that could be unconstitutional. So we will await the Attorney General's Opinion before a vote is taken. But I would still not like the bill held here. And remember this, you all can do anything with any of my bills that you want to do with them. I can't stop you from doing that. So if the bill is moved this morning, as the other bills are moving, that doesn't ensure that it's going to pass. It certainly does not bind you to vote for it should there be amendments made necessary by the Attorney General's Opinion. The question that I wish you would consider is what would I benefit as the sponsor of this bill pushing a measure that could not stand constitutional muster? What would I have achieved? Nothing. But there is something that I do want to achieve. So if the Attorney General's Opinion comes back and indicates that there should be some amendments, I would assist in that process.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: So what I hope you will do is advance the bill. And this isn't the first time that something like this has been done and it won't be the last time if you do it. You may not do it in this instance but this has been done numerous times and we all know it. So I hope that you will go ahead and advance the bill.

SPEAKER BARRETT: Thank you. There are no other lights on. Excuse me. Senator Schmit, your light just came on.

SENATOR SCHMIT: Mr. President and members, we all understand that Senator Chambers is one of the more adept individuals at using the system here and he can usually do it to the benefit of his bills. Senator Chambers will not suffer substantially if the bill is delayed. If the Attorney General's Opinion comes back and says it's fine, I see nothing wrong with it, I will be honest with you, that still does not allay my concerns about the bill. The Attorney General will... I am not sure, I have not seen the letter, but apparently it regards the constitutionality. That is not my principal about the bill. My principal concern is the direction in which we are going and I'm not sure that I want to go in that direction. And so I think, as Senator Warner has pointed out, you have limited your options if the bill moves today and you may or you may not want to do that. If a majority of 25 individuals are convinced that the bill is in proper form and they are willing to stand behind it, then they have every right and even an obligation to vote to advance the bill. But if they have some of the concerns that I have felt and a few of the concerns that have been expressed here this morning, then it would appear to me that it would not be unwise for the bill to stay where it is for a short period of time. There are many, many more bills that are going to be piled up behind this bill. All of us have that kind of a bill to be concerned about. I, very frankly, feel that some of those bills might even be the equivalent of this bill insofar as importance to the people of the State of Nebraska. So I still think that it might even be better, Senator Chambers, for your own moving of the bill, for it to remain where it is at until you get that Attorney General's Opinion. That may satisfy many of the members and, if so, it will strengthen your position. I do not think that it's going to change my opinion of what we ought to be doing as a Legislature in this regard. Thank you.

SPEAKER BARRETT: Thank you. There are no other lights on. Senator Kristensen, would you care to close.

SENATOR KRISTENSEN: Thank you. I guess those people who, if we do withdraw the bracket motion, if you are uncomfortable with the bill, you either vote up or down or you don't vote at all and that's a risk I suppose we run of not bracketing. But, at this time, I would withdraw my motion to bracket and let's vote up or down on the bill and we will look at the Attorney's General Opinion at that time and decide what specific amendments, if any, need to be added to it. And I would withdraw at this time.

SPEAKER BARRETT: The motion is withdrawn. We are back then to the pending motion offered by Senator Lindsay to advance the bill. Any discussion? If not, machine vote has been requested. Those in favor of the advancement of LB 397 to E & R Engrossing...Senator Chambers.

SENATOR CHAMBERS: I would like a call of the house first.

SPEAKER BARRETT: Call of the house has been requested. Those in favor of the house going under call vote aye, opposed nay. Record.

CLERK: 18 nays, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Those outside the Chamber, please return to the Chamber and record your presence. Unauthorized personnel, please leave the floor. Senator Ashford, the house is under call. Senator Hartnett, please record your presence. Senator Lamb. Senator Langford, the house is under call. Senators Ashford, Langford and Haberman, the house is under call. Senators Langford and Haberman, we are under call. Senator Haberman is the only one that we're looking for. Senator Chambers, what are your desires? Senator Haberman, the house is under call. Senator Chambers indicates we will go ahead. We are voting then on the bracketing motion offered by Senator Kristensen...I'm sorry, to advance the bill. My apologies. The question is the advancement of LB 397. Those in favor vote aye, opposed nay. On the motion to advance. Have you all voted? Have you all voted? Roll call has been requested. Mr. Clerk.

CLERK: (Roll call vote read. See page 974 of the Legislative Journal.) 21 ayes, 8 nays, Mr. President, on the motion to

March 3, 1989

LB 78, 129A, 131, 183, 183A, 245, 250
250A, 340, 346A, 397, 408, 443, 447A
499, 509, 533, 538, 576
LR 43

advance the bill.

SPEAKER BARRETT: The motion fails. Messages on the President's desk.

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 183 to Select File; LB 183A to Select File; LB 250, Select File; LB 250A, LB 340, all to Select File, all signed by Senator Lindsay as Chair of the E & R Committee. (See page 975 of the Legislative Journal.)

Transportation Committee reports LB 533 to General File and LB 245 indefinitely postponed. Those are signed by Senator Lamb. Transportation also reports LB 509 to General File; LB 78, General File with amendments; LB 131, General File with amendments; LB 538 indefinitely postponed and LB 576 indefinitely postponed, and also signed by Senator Lamb. (See pages 975-80 of the Legislative Journal.)

Senator Moore has amendments to be printed to LB 499. (See pages 980-82 of the Legislative Journal.)

Enrollment and Review reports LB 408 correctly engrossed and LB 443 correctly engrossed. Those are signed by Senator Lindsay. (See page 982 of the Legislative Journal.)

Mr. President, an announcement from Senator Smith that the General Affairs Committee will not meet in Exec Session at one o'clock. General Affairs will not have their regularly scheduled Exec Session.

Mr. President, a new resolution offered by Senator Coordsen and other members. (Briefly described LR 43 as found on pages 982-83 of the Legislative Journal.)

Mr. President, new A bills. (Read titles for the first time to LB 346A, LB 129A, LB 447A. See page 983 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Moore.

SENATOR MOORE: Mr. Speaker, I move we adjourn and, providing we can get here, I...we adjourn until Monday morning, March 6th.

SPEAKER BARRETT: Thank you. You have heard the motion to

April 5, 1989

LB 157, 397, 486, 488, 506

SPEAKER BARRETT PRESIDING

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

SENATOR LOWELL JOHNSON PRESIDING

SENATOR L. JOHNSON: Are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR L. JOHNSON: Any messages, reports or announcements?

CLERK: Mr. President, Senator Withem has amendments to be printed to LB 506, to LB 488 and LB 486. (See pages 1502-07 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Chambers regarding LB 397. (See pages 1507-10 of the Legislative Journal.)

Mr. President, I have a series of audit reports as filed with my office by the state auditor. Those reports will be on file in my office. That is all that I have, Mr. President.

PRESIDENT NICHOL PRESIDING

PRESIDENT: If you'll take your seats, please, we'll begin Final Reading. (Gavel.) If you'd return to your seats, please, we'll begin Final Reading. Read LB 157.

CLERK: (Read LB 157 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 157 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 1510-11 of the Legislative Journal.) 35 ayes, 0 nays, 1 present and not voting, 13 excused and not voting, Mr. President.

PRESIDENT: LB 157 passes. May I reintroduce to, introduce to you again some gentlemen from Austria that were introduced to you a few days ago, Dr. Erwin Proell who is the Deputy Governor of lower Austria. Would you please stand, Governor. And

April 5, 1989

LB 46, 145, 157, 231, 231A, 237, 247
325, 379, 397, 414, 418, 640, 651
LR 73

way. I think if we still see a lot of recalls going on in this state, still seeing it being used as a harassment tool, we'll come back in and try and make it even more meaningful with maybe some stricter restrictions onto what the reasons can be for recall, but right now I think we've just got a very general statement of reasons. We've got something here that would be a very meaningful process. With that, I would just urge you to advance the bill. Thank you.

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

CLERK: 26 ayes, 0 nays, Mr. President, on the motion to advance LB 640.

PRESIDENT: LB 640 advances. LB 651.

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

PRESIDENT: Yeah, please.

CLERK: Mr. President, new resolution, LR 73, by Senator Abboud. (Read brief description. See pages 1521-22 of the Legislative Journal.) That will be laid over.

I have a request...or bills read on Final Reading this afternoon have been presented to the Governor. (Re: LB 157, LB 46, LB 145, LB 231, LB 231A, LB 237, LB 379 and LB 418. See page 1522 of the Legislative Journal.)

Senator Chambers has amendments to LB 397, Senator Hall to LB 414, Senator Withem to LB 247. (See pages 1522-29 of the Legislative Journal.)

And Senator Schimek would like to add her name to LB 325 as co-introducer. (See page 1529 of the Legislative Journal.) That's all that I have, Mr. President.

Mr. President, the next bill, LB 651 is on General File. It is a bill originally introduced by Senator Hall. (Title read.) The bill was introduced on January 19, referred to the Education Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Education Committee, Mr. President.

April 10, 1989

LB 397, 588
LR 74

opposed nay. Voting on the adoption of the committee amendments. Have you all voted? Record.

CLERK: 19 ayes, 20 nays, Mr. President, on adoption of committee amendments.

SPEAKER BARRETT: Motion fails.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Korshoj.

SPEAKER BARRETT: Senator Korshoj. It is withdrawn.

CLERK: Mr. President, Senator Labeledz would move...well, Senator Conway, you had the first motion, Senator. Senator Conway would move to indefinitely postpone LB 588.

SPEAKER BARRETT: Senator Chambers, your wishes, please.

SENATOR CHAMBERS: Although it's like an arrow piercing my heart, Senator Conway, I am going to lay the bill over, and, thank you.

SPEAKER BARRETT: The bill is laid over. Thank you. For the record.

CLERK: Mr. President, amendments to be printed to LB 397 by Senator Chambers. An Attorney General's Opinion, there is one to Senator Kristensen; the second opinion is to Senator Coordsen. (See pages 1602-12 of the Legislative Journal.)

Mr. President, a new resolution, LR 74, by Senator Chambers. (Read brief explanation. See pages 1612-13 of the Legislative Journal.) That will be laid over. That is all that I have, Mr. President.

SPEAKER BARRETT: Senator Dierks, for what purpose do you rise?

SENATOR DIERKS: Mr. Speaker, for a point of personal privilege.

SPEAKER BARRETT: State your point, please.

SENATOR DIERKS: I just would like to take the opportunity to call the membership's attention to the custom artwork in the bottom floor of the Legislature, a picture of the State Capitol

April 17, 1989

LB 47, 66, 372, 395, 397, 401, 506
683
LR 2

want to create a situation where we have to come back in and discuss this a third and fourth and fifth time. I am exhausted with the issue. I am trying to do what I think is right, trying to work with the farm groups as best I can to give them what they think is best for agriculture, and if that is wrong, then I will be corrected by this body I am sure many times in the future. So I'd ask the bill be readvanced, Mr. President.

SPEAKER BARRETT: Thank you, sir. We have had a request for a machine vote. The question is the advancement of LR 2 to E & R Engrossing. Those in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 36 ayes, 2 nays, Mr. President, on the motion to readvance LR 2.

SPEAKER BARRETT: LR 2 is readvanced. For the record, Mr. Clerk.

CLERK: Mr. President, bills read on Final Reading this morning have been presented to the Governor. (Re: LB 395, LB 47, LB 66, LB 372, LB 401, LB 506.)

Senator Schmit has amendments to be printed to LB 683 and LB 397. (See pages 1720-21 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Two reminders, the blood pressure checks and the cholesterol checks are still proceeding in Room 2102 and will be held up until one o'clock today. So those of you that would like to take advantage of it, please do so between now and one o'clock. Also be reminded that we will start with 761 at one-thirty following our recess. Senator Wehrbein, would you care to recess us, please?

SENATOR WEHRBEIN: Yes, Mr. Speaker, I'd move that we adjourn...or adjourn recess until one-thirty.

SPEAKER BARRETT: You have heard the motion to recess until one-thirty. Those in favor say aye. Opposed no. Carried. We are recessed. (Gavel.)

RECESS

January 16, 1990

LB 397, 488A

PRESIDENT: Okay, thank you. You've heard the motion. All those in favor say aye. Opposed nay. It is advanced. Do you have anything for the record, Pat?

CLERK: Not at this time, Mr. President, no. No, sir.

PRESIDENT: We'll move on to Select File then, LB 397.

CLERK: Mr. President, 397 is on Select File. The bill was considered on Select File on March 3 of last year, Mr. President. I do have an amendment from you, Senator Chambers, with a note that you want to withdraw this one, Senator. This is the one that said this act may be known and cited as... Withdraw?

SENATOR CHAMBERS: Right.

CLERK: Okay.

PRESIDENT: Do you wish that one withdrawn?

SENATOR CHAMBERS: Yes.

PRESIDENT: Okay.

CLERK: Mr. President, Senator Chambers would then move to amend. Senator, I have the one you filed with me last year. I guess it substitutes, does it not, this act shall be known and this may be cited as the Nebraska Collegiate Athletic Association Procedures Act?

SENATOR CHAMBERS: Yes, and...

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: ...it strikes 50?

CLERK: Yes, that's right.

SENATOR CHAMBERS: All right.

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is a bill related to the NCAA, if it wants to have occasion

to sanction the university, it would have to conform to the practices of due process. The problem last year was that the damage formula, in case the bill was violated, would have resulted in punitive damages which are not allowed in Nebraska. So I got an Attorney General's Opinion which says that the bill is constitutional but the formula would have to allow for actual damages, not any punitive damages. So what the amendment does is to comply with the Attorney General's Opinion and it requires actual damages rather than the punitive in the original formula, so I ask for the adoption of this amendment.

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

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Chambers' amendment to the bill.

PRESIDENT: The Chambers amendment is adopted.

CLERK: Mr. President, I have an amendment to the bill from Senator Schmit. Senator Schmit wishes to withdraw at this time, Mr. President.

PRESIDENT: It is withdrawn.

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

PRESIDENT: Okay, Senator Chambers, on the advancement of the bill.

SENATOR CHAMBERS: I move that it be advanced to E & R engrossing as amended.

PRESIDENT: Any further discussion? If not, the question is...Senator Schmit.

SENATOR SCHMIT: Machine vote.

PRESIDENT: Oh, a machine vote has been requested. The question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 3 nays, Mr. President, on the advancement of LB 397.

PRESIDENT: LB 397 is advanced. We'll move on to General File, LB 163.

CLERK: Mr. President, LB 163 was a bill originally introduced by Senators Rod Johnson, Scofield, Hall, Schellpeper, Baack, Ashford, Wesely, and Withem. (Read title.) The bill was introduced on January 5 of last year, Mr. President. At that time, it was referred to the Natural Resources Committee for public hearing. The bill was advanced to General File. I do have committee amendments to the bill. The committee amendments were considered earlier this year, Mr. President. They were adopted on January 12. There was then a motion to indefinitely postpone the bill. That laid it over. A motion was offered by Senator Moore.

PRESIDENT: Senator Rod Johnson, can you fill us in on what is going on.

SENATOR R. JOHNSON: Well, Mr. President, Senator Moore offered the kill motion as a friendly kill motion to lay the bill over until today. I don't know if he is here this morning or not. I believe he is, but I don't know how we proceed. Maybe the Clerk can advise me. I'd ask Senator Moore to withdraw the kill motion, but, again, he is not here at this time.

PRESIDENT: Is Senator Moore excused? Senator Moore is excused. Okay, if you say it is a friendly motion to withdraw, we will hold you responsible later on perhaps.

SENATOR R. JOHNSON: Mr. Speaker, or Mr. President, I'd say that if Senator Moore gets back in time, if he wants to renew the kill, he can.

PRESIDENT: Okay.

SENATOR R. JOHNSON: But I had asked him to place the kill motion on.

PRESIDENT: Thank you. We will move on with the assumption that he did wish to withdraw it. Mr. Clerk, do you have anything further on it?

CLERK: Mr. President, I do. I have an amendment from Senator Haberman. Senator Haberman is excused, Mr. President. The next

January 16, 1990

LB 163, 240A, 259, 259A, 397, 534, 601
730, 818-820, 834, 853, 1043, 1044, 1057
1076, 1098, 1148-1157

guess it is the third Beck amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 12 ayes, 14 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The third Beck amendment fails. Mr. Clerk, do you have anything for the record?

CLERK: I do, Mr. President. Mr. President, reminder, Reference Committee will meet in Room 2102 upon adjournment; Reference Committee, Room 2102.

Mr. President, new bills. (Read for the first time by title: LB 1148-1157.) Mr. President, a new A bill, LB 240A by Senator Hall. (Read for the first time by title. See pages 340-43 of the Legislative Journal.)

Retirement Systems Committee, whose Chair is Senator Haberman, reports LB 834 to General File. Appropriations Committee offers notice of hearing, as does Urban Affairs, (Re: LB 853, LB 1043, LB 1044, LB 1057, LB 1076, LB 1098) signed by Senators Warner and Hartnett as Chairs, respectively. (See pages 343-44 of the Legislative Journal.)

Mr. President, Committee on Enrollment and Review reports LB 259 to Select File with E & R amendments, LB 259A Select File with E & R, LB 534 Select File with E & R, LB 601 Select File with E & R, LB 730 Select File with E & R, LB 818 Select File, LB 819 Select File, LB 820 Select File. (See pages 345-46 of the Legislative Journal.)

And, finally, Mr. President, I have amendments to be printed by Senator Hefner to LB 163. (See pages 346-47 of the Legislative Journal.) And, Mr. President, a request from Senator Weihing to add his name to LB 397; and Senator Schimek to LB 163. That is all that I have, Mr. President.

PRESIDENT: Senator Wehrbein, would you like to say something this morning about adjourning until nine o'clock tomorrow. Wait a minute, we will turn you on. Now.

SENATOR WEHRBEIN: Yes, Mr. Speaker, I would do that. I move we adjourn until nine o'clock tomorrow morning, January 17.

January 19, 1990

LB 87, 159, 163, 163A, 220, 240, 257
313, 315, 397, 399, 486, 488, 488A
756, 856, 911, 963, 1002, 1026, 1033
1037, 1050, 1051, 1090, 1108, 1109, 1141
1168, 1181, 1190
LR 239, 240

PRESIDENT: Okay. Thank you. Senator Ashford, you are next, but may I introduce some guests under the south balcony, please. We have from District 22, which is Senator Robak's district, Dianne Foltz of Platte Center and Betty Grant of Columbus, Nebraska. With them are three AFS students, Jean/David Miquel of Paris, France, and Patty Cervantes from Bolivia, and Shane Walker from Australia. Would you folks please stand and be recognized. Mr. Clerk, you have something for the record?

CLERK: I do, Mr. President, very quickly. Enrollment and Review reports LB 163 to Select File, LB 163A to Select File, those signed by Senator Lindsay as Chair. Agriculture Committee, whose Chair is Senator Rod Johnson, reports LB 856 to General File. (See page 429 of the Legislative Journal.)

Mr. President, Senator Coordsen, as Chair of the Business and Labor Committee, has selected LB 313 and LB 315 as the committee priority bills for the year. And Enrollment and Review reports LB 87, LB 220, LB 240, LB 257, LB 397, LB 399, LB 486, LB 488, LB 488A, LB 756 all correctly engrossed. Those signed by Senator Lindsay as Chair. (See pages 430-33 of the Legislative Journal.)

Mr. President, notice of hearings from the Education Committee and from the Natural Resources Committee, signed by the respective chairs. (Re: LB 1190, LB 1181, LB 1168, LB 911, LB 1050, LB 1090, LB 1033, LB 1037, LB 963, LB 1026, LB 1108, LB 1109, LB 1141, LB 1002, LB 1051, LR 239 and LR 240.) And Senator Haberman has amendments to be printed to LB 163. That's all that I have, Mr. President. (See pages 433-34 of the Legislative Journal.)

PRESIDENT: Senator Ashford, did you wish to speak on the first set of Kristensen amendments?

SENATOR ASHFORD: I call the question.

PRESIDENT: Oh, you call the question. The question is, shall debate cease? All those in favor...Do I see five hands, first? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. What do you think, Senator Ashford? Record, Mr. Clerk.

CLERK: 16 ayes, 0 nays to cease debate, Mr. President.

January 26, 1990

LB 87, 257, 397

CLERK: (Read LB 87 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 87 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 518-19 of the Legislative Journal.) 39 ayes, 0 nays, 1 present and not voting, 9 excused and not voting, Mr. President.

PRESIDENT: LB 87 passes. We're going to skip LB 220 and go to LB 257.

CLERK: (Read LB 257 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 257 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 519-20 of the Legislative Journal.) 41 ayes, 0 nays, 8 excused and not voting, Mr. President.

PRESIDENT: LB 257 passes. LB 397.

CLERK: Mr. President, I have a motion on the desk.

PRESIDENT: Okay.

CLERK: Senator Schmit would move to return the bill for specific amendment.

PRESIDENT: Senator Schmit, please.

CLERK: I have an amendment from Senator Schmit first. Mr. President, I then have a motion from Senator Labedz to return LB 397 to Select File for specific amendment.

PRESIDENT: Senator Schmit withdrew his motion. We now have Senator Labedz's motion. Senator Labedz, please. (Labedz amendment appears on pages 520-23 of the Legislative Journal.)

SENATOR LABEDZ: Thank you, Mr. President. First, before I go

into the reasons why I'm doing what I'm doing this morning, I would like to thank Senator Barrett, as Speaker of the Legislature, for putting LB 769 on the agenda every day this week. I never...and he will agree with me on that, that I never put any pressure on him, other than sending him a letter with 27 signatures to...(laughter)...because 27 senators thought it was the most important issue of the session. And never once did I go into his office and ask him if it was going to be on the agenda the next day. But due to the fact that Senator Chambers, in this morning's paper, said, Senator Labeledz, I beseech you, kill the spider, I don't know whether...who he's referring to as being a spider, but I know in my own mind who the spider is in this situation. In fact we've got about three of them on the floor. I think that it is absolutely necessary that I tell you that when anyone says LB 769 is dead, today is the day that I'm going to tell you that I can put LB 769 on the agenda every single day until we say sine die. And I will be doing that from time to time, and I'm starting with today. Chambers wasn't about to allow a vote on the issue, making good on the pledge he made earlier to hold on with bulldog like tenacity. Well, I can't compare myself as a bulldog, but I certainly can tell you that I am amazed and a little bit shocked that two or three people could hold up the session as they did. I have never done this before, but I will continue, and I promise you that this will be done anytime I see fit when anyone says this is the end, it will never be on the agenda again, how wrong you are because you know and I know that this can be done on any bill that I choose or any of the supporters choose to do. It is very, very, very important bill to me and to at least 29 others, and we do have the votes, Senator Chambers knows it, Senator Bernard-Stevens knows it, and Senator Landis knows it, Senator Nelson knows it. And there are about eight or nine senators that would like to see LB 769 go away, but it will not. I have senators on this floor that are willing to support me and, if we had to, take LB 397, which I intend to do, and any other bill that comes up that I have the opportunity. But don't ever believe that this is the end of it. It will continue on until the day we adjourn sine die. Now, to get to what I want to do. The motion I have up there will completely gut LB 397, strike all sections and insert LB 769. And I would relinquish the rest of my time to Senator Schmit.

PRESIDENT: Senator Schmit, you have about six and a half minutes.

SENATOR SCHMIT: Well, Mr. President and members, Senator Labedz and others have spoken many times this past week on LB 769. Senator Labedz has chosen to offer this motion this morning, and I have agreed that I would speak to the motion, and not only to the motion but to the procedure. The procedure has been done before, will be done again I'm sure some time or other. There are many, many methods whereby this body can function. There are also other methods whereby it can be brought to a halt. I couldn't help but notice in my friends in the press, particularly those who are more liberally bent, speaking rather complimentarily about the efforts of Senator Chambers and Senator Bernard-Stevens to thwart the will of the majority of the Legislature relative to getting a vote on LB 769. That's the way the system works. And, as was pointed out by the press, those particular members are more gifted at using the procedure and the rules than are some of the rest of us. I also pointed out during the course of the week that the least experienced person on this floor can find the method whereby he or she can also tie up this body, if we wish to do so. And if some of us, who do not have any really high priorities, choose to tie up this body and bring it to a halt it doesn't take very much inclination or very much intelligence to do so. Senator Labedz does have the votes, perhaps, to pass this motion. She has on many occasions tallied 30, 32, 33 votes in support of LB 769. The only thing she couldn't do was mechanically, procedurally get to that point where the bill could be allowed to advance with those votes. Senator Chambers announced ahead of time, he told us exactly what he could do and would do, and he is more skillful than most of us in carrying out his promise. Senator Chambers has never once deviated from his convictions relative to the bill. And I do not challenge his convictions, nor his right to those convictions, nor does he challenge myself nor Senator Labedz as to the right we have for our convictions. The point that I think needs to be made is that this body, at some time or another, needs to decide are four days debate on a bill sufficient to relegate it to the ash can or to the boondocks, whatever you want to call it. Is that going to be the rule of thumb whereby if Senator Schmit, or Senator Labedz, or Senator Chambers, or any other member of this body decides we want to talk a bill to death, do we only have to line up conversation for four days and then know that the opponent's bill is going to die. I'm the only person, I think, who has consistently voted against LB 397. I really had no...it is not a high priority kill type idea with me, I just think it's wrong. But if I wanted to stand here before you and argue the merits or demerits

of the bill, the merits or demerits of my action, I could do so. It would be most interesting to contrast the press reports of my actions in that regard with those regarding the efforts of Senator Chambers and Senator Bernard-Stevens to stop LB 769. We don't have to be any profit to know that those reports would be very contradictory, they would be very likely to be condemnatory toward my action. The point that I want to make is this, I have just filed with the Clerk 11 amendments to LB 397 based upon what happens to the vote on Senator Labeledz amendment. Now, given the ten minutes I have to open, and the five minutes to close, plus any other intervening comments, you can all see that that will require most of this morning's effort. Now before you all take off for your offices to work on some work that is demanding of you, or some of you go get a haircut, or something else, I want to tell you that I'm not going to say as of right now what I'm going to do. But don't get too far from the floor. If and when this body decides it's going to operate by the rules, whether they are reasonable or unreasonable, whether we are reasonable or unreasonable, then we are going to decide if we get some work done. I can understand and I can see that Senator Chambers will be able to say, I've fulfilled my promise, I was able to play the Legislature like a master plays the harp. And he has done so, he's done so, he's done so with skill, with expertise, with a proper mixture of indignation and anger and humor so that we all recognize him for the master that he is.

PRESIDENT: One minute.

SENATOR SCHMIT: I'm going to relinquish the rest of that time now to Senator Labeledz. But I just wanted to make those comments at this time. Senator Labeledz.

SENATOR LABEDZ: Thank you, Senator Schmit. There was one more comment that Senator Chambers made this morning. He said I think there will be celebrating by both sides tonight that the issue has been laid to rest. I called Omaha today to get one ticket to the Metro Right to Life banquet at Peony Park. They told me they were all sold out, they have 1,200 reservations. There will not be 1,200 people celebrating tonight, they will be encouraging me, and I will take their encouragement. And, as I said before, this is not laid to rest. The Speaker has been great, but I can put it on the agenda every single day of the session, and especially today, Senator Chambers you have an important bill to you, LB 397. I voted for the bill before. I could carry this on for the rest of the morning, as Senator

Schmit said.

PRESIDENT: Time.

SENATOR LABEDZ: But I respectfully withdraw the amendment. But I did want you to know that this can be done. And, if I wanted to, and if I wanted to be as irresponsible as a few people on this floor, maybe it's because, Senator Chambers, you did fail, in 13 years you have not taught me the strategy that you use but, believe me, I'm learning well this last week. And I can do it, and I tell you now it will be done one of these days. And I withdraw my amendment. Thank you.

PRESIDENT: Okay, it is withdrawn.

CLERK: Mr. President, I now have a motion from Senator Schmit. Senator, I have your AM2235. (Schmit amendment appears on page 523 of the Legislative Journal.)

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Thank you, Mr. President. Mr. President and members, I'm going to speak only very briefly. I appreciate what Senator Labedz has done. I just want to demonstrate again that every time a bill comes up on Final Reading, whether it's my bill or any other bill, it is subjected to the same kind of motion that we can offer here today. Strike all sections, and insert, et cetera, et cetera. So that no matter what we do there isn't, as I said, the least experienced, someone corrected me and said the dumbest member. I said that's not true. I said no person on this floor can be categorized in that manner. But some of us are less experienced than others. Some of us have more talents in other areas than others. But I just want to point out that, if Senator Labedz wants to attach that bill to almost any number up there, she can do so. I recognize that we are not as tenacious as are some other individuals. I want to recognize that the very withdrawal of the bill by Senator Labedz will be taken as a sign of weakness by some people. And there will be, again, Bernice, you're a little bit wrong, there will again be chortling in the streets because they'll say, well, we absolutely did survive. But as I said earlier, I have, I believe, 10 or 11 amendments up there, that will occupy the rest of the morning, if we choose to do so. And I can be as urbane and as articulate, I suppose, as I have to be to keep the conversation going. The question I want to ask you this as

members is, do you really want to allow the minority to control the body? Someone, and I think it was Senator Bernard-Stevens, and I respect him very much. He said, you know there have to be some minority rights. Well if minority is going to rule then after three tries in a Congressional primary I ought to be sitting in the House of Representatives. (Laughter.) The facts are that eventually the majority rules, eventually the majority prevails. And so I want to point out here the majority can always prevail. We are a disciplined body, we are a respectful body. I do not condemn anyone for using the rules, I do not condemn anyone for using their expertise, I do not question their right to do so. But I just want to point out again that the newest member of this body can walk on this floor and do exactly what Senator Labeledz did this morning, and if you have 30 votes you're going to get the job done. You don't even need 30 votes. The point is well taken, I think, that Senator Barrett was very gracious, we had four days of debate, but is four days adequate? What are the most important issues? One of the editorials said they're other important issues, taxes, education, compared to children I don't think they're that important. I respect the fact that Senator Chambers believes that when a child is born it is entitled to all the benefits of society. I am sure that he respects my concern and my belief that when the child is conceived that child is entitled to those benefits. We have a basic difference of opinion. The facts are that on this floor I think this morning we have demonstrated that any one of us can tie up the body. I do not choose to do so. I'm sorry and apologize for the time I have taken, but there comes a time when it is important, I believe, to make a point. I hope I have made that point. And, as Bernice has said this morning, that time will come again. I'm sure that if I were to do so and take the morning, this morning, that there would be reciprocity, and that would mean that if we're going to spend four days on the debate of 397, that when another bill came up we'd spend four days, that would just about take the balance of the session to handle about ten bills. I don't think we want to put this body in that position, nor do we want to put the Speaker in that position. I want to thank you for your time this morning. Mr. Clerk, I'd ask permission to withdraw that amendment and all the other amendments.

PRESIDENT: They are all withdrawn. Read the bill.

CLERK: (Read LB 397 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 397 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 524 of the Legislative Journal.) 29 ayes, 7 nays, 10 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 397 passes. LB 486.

CLERK: (Read LB 486 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 486 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 524-25 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 486 passes. LB 756.

CLERK: (Read LB 756 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 756 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 525-26 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 756 passes. LB 534, please.

ASSISTANT CLERK: (Read LB 534 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 534 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on pages 526-27 of

January 26, 1990

LB 87, 257, 397, 486, 534, 601, 730
756, 818-820, 1009A

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 819 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 530 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 2 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 819 passes. LB 820.

ASSISTANT CLERK: (Read LB 820 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 820 pass? All those in favor vote aye, opposed nay. Record, please.

CLERK: (Read record vote as found on page 531 of the Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 820 passes. (Gavel.) If I could have your attention a minute, Speaker Barrett has an important announcement for you.

SPEAKER BARRETT: Thank you, Mr. President. Very briefly, to all members, the video taping will take place now. We'll complete it in Room 2102. At the conclusion of Final Reading, those of you who have not taken advantage of the taping, which is now in progress, please go over to 2102 at your leisure. This will be the last time that they are here in the building. Thank you, Mr. President.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 87, LB 257, LB 397, LB 486, LB 756, LB 534, LB 601, LB 730, LB 818, LB 819, and LB 820. Mr. Clerk, anything for the record?

CLERK: Mr. President, I do, thank you. I have notice or report of registered lobbyists for the period January 19th through January 25. New A bill by Senator Moore, LB 1009A. (Read by title for the first time. See page 532 of the Legislative Journal.)

January 26, 1990

LB 87, 240, 257, 397, 486, 534, 567A
567, 601, 730, 756, 818-820, 960A
LR 248

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of 567.

PRESIDENT: LB 567 is advanced. Do you have anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. New A bill, LB 960A offered by Senator Withem. (Read by title for the first time. See page 536 of the Legislative Journal.)

Bills have been presented to the Governor that were read on Final Reading this morning, Mr. President, as of 10:50 a.m. (Re: LB 87, LB 257, LB 397, LB 486, LB 756, LB 534, LB 601, LB 730, LB 818, LB 819, and LB 820. See page 536 of the Legislative Journal.)

New resolution, LR 248, offered by Senators Rogers and Lamb. (Read brief description of resolution. See pages 636-37 of the Legislative Journal.) That will be laid over, Mr. President.

Senator Baack has amendments to be printed to LB 240 in the Journal. (See pages 537-41 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: Thank you. We'll go on to LB 567A.

CLERK: Mr. President, 567A, (title read.) Senator, I have two amendments filed. I assume the latter in time is the one you prefer?

PRESIDENT: Senator Withem, please.

SENATOR WITHEM: Yeah, this reduces the appropriation bill by \$6,000, I believe, reflecting the amendment we made, taking the commission out and it also changes the years, would urge the support of the amendment.

PRESIDENT: Any further discussion on the Withem amendment? If not, the question is the adoption of the Withem amendment. All those in favor vote aye, opposed nay. We're voting on the adoption of the Withem amendment. Record, Mr. Clerk, please.

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

February 1, 1990

LB 87, 163, 257, 397, 486, 534, 601
610, 688, 692, 730, 756, 818-820, 923
956, 980, 1021, 1067, 1069, 1230

9:00 a.m.

SPEAKER BARRETT: Have you anything for the record?

CLERK: I do, Mr. President. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 956 and recommend that same be placed on Select File; Transportation Committee reports LB 980 to General File with committee amendments, and LB 1021 as indefinitely postponed, those signed by Senator Lamb; Health and Human Service Committee, I am sorry, Banking Committee reports LB 1069 to General File with amendments, and LB 1230 indefinitely postponed, those signed by Senator Landis; and Health and Human Services Committee reports LB 1067 to General File, LB 688 General File with amendments, and LB 923 General File with amendments, those signed by Senator Wesely. (See pages 619-25 of the Legislative Journal.)

A communication from the Governor to the Clerk. (Read. Re: LB 87, LB 257, LB 397, LB 486, LB 756, LB 534, LB 601, LB 730, LB 818, LB 819, LB 820. See pages 625-26 of the Legislative Journal.)

Mr. President, Senator Moore has amendments to LB 163 to be printed; Senator Wesely amendments to LB 610 to be printed. (See pages 626-28 of the Legislative Journal.)

And, Mr. President, a hearing notice from Retirement Systems Committee. That was given to me by Senator Haberman; and, finally, Mr. President, I have a request from Senator Abboud to add his name to LB 692 as co-introducer. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The motion before the body is to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. The ayes have it. Motion carried. We are adjourned. (Gavel.)

Proofed by:

Marilyn Zank
Marilyn Zank

The university, if they wanted to have a lawsuit, would refuse to comply with the Attorney General's order. Then, based on the duty placed on the Attorney General, he would initiate action of some kind in court to require the university to comply. At that point, all of the issues, the conflict between the NCAA rule and the law could be brought into play. To facilitate that type of scenario, I am willing to drop this penalty provision that exists in the law now that would be aimed at the university. That way there is no impediment to the university deciding which course it wants to pursue. I would choose to have them pursue the course of granting the aid to the student and making the NCAA take a move or attempt a move against the university. Now there was one time Senator Terry Carpenter gave me a compliment. He said that he had watched me set land mines in succession and then watch them go off in succession. We now have in place LB 397 which creates a due process that the NCAA must follow before it can impose sanctions on the university. If the university, recognizing a discriminatory situation, says the law tells us we cannot discriminate anymore and we're going to obey the state law, the NCAA would say, all right, then we're going to sanction you under our rules. I don't think there is a court in the land that would say that it is in accordance with due process to punish somebody for obeying the law. You cannot punish somebody for obeying a valid law and be in compliance with due process. Due process requires fairness. It requires rational action. But even without LB 397, built into LB 708 is all of the machinery necessary for the university to protect itself from improper imposition of a penalty by the NCAA. It would be a very regrettable set of circumstances to say that a rule of a private association has more stature than a state law.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: It does not. The fear that some people have is that the NCAA will be offended if we try to stop discrimination that we see actually occurring. I am going to talk about some of these things and break them in smaller bites so that I can be clearer than perhaps I am now. But I'm trying to give a context in which I can offer my support for Senator McFarland's amendment by acknowledging that it will not take away from the main thrust of the bill and it will make it easier for the university to be in a posture to have a lawsuit brought, whichever way they decide to act, than would currently be the case with the penalty language. So the only penalty language being struck from the bill is that that would relate to the

the university has a cause of action at law if it wanted to seek damages, or in equity if it wanted to seek an injunction that would prohibit the NCAA from imposing such a sanction. Those at the university know this. Tom Krepel knows this. And when I find out who these other people are at the university, who are misrepresenting this bill, then I'm going...I'm going to be frank with you, I'm going to do what I can to hurt the university. I'm tired of this blindsiding, this underhanded dealing with me. I have communicated with the counsel for the university. He is a vice-president. His name is Richard Wood. I have dealt with him above the table and aboveboard with all of these people. Nothing has been said to me during the time that this bill came out of committee and now other than Chancellor Griesen having a meeting with me in my office where he pointed out the groups of students that are discriminated against. He said that this January they were going to try to change the NCAA rule so that that discrimination would be wiped out. They were unsuccessful in doing that. Now there are people calling Arlene Nelson and others and misrepresenting this bill by saying it has something to do with the Tarkanian case in Nevada. LB 708 has nothing to do with the Tarkanian case, nothing whatsoever. Whoever told her that told her a lie. And I cannot fault Senator Nelson for believing them because she has no reason to think people from the university will lie. But this bill has nothing to do with the Nevada situation. LB 397 that dealt with due process grew out of that case and I, frankly, acknowledged it and discussed it.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: But to indicate that this bill in any way relates to the kind of problems that existed at Nevada-Las Vegas, that resulted in an attempt by the NCAA to impose sanctions, is totally and absolutely false. And when the university comes over here for its budget, then I am going to get them, and I mean it. I have not lied about the university or any of these other things that I deal with. If I don't like a bill, I say I don't like it, but I don't tell lies about what the bill does. And anybody on this floor is entitled to believe that information coming from the university is not a lie. Now they can express a difference of opinion, but a lie is inexcusable and it's a different type of cat. And I'm glad that Senator Nelson did not remain silent because she has revealed to me the kind of things that they are saying to others. And had she not spoken, there would be people accepting that but it

But no matter who analyzes the bill, I can tell you what they are going to have to come up with; first of all, that the bill says in simple terms, there can be no discrimination against athletes in the granting of aid simply because they are athletes. The bill prohibits the NCAA from threatening or imposing a penalty on the university for complying with this bill. If the NCAA violates this bill by threatening or imposing a penalty, it is subject to a \$25,000 fine. Furthermore, a cause of action is created for the university so that even before the NCAA would impose a punishment, the university could go into court, and under the cause of action created by the terms of this bill seek an injunction that would prohibit the NCAA from imposing a punishment. If the NCAA would go into court to try to dissolve such an injunction, its argument would be similar to the following, the NCAA does, in fact, have a rule that discriminates against a category of students in a way that others are not discriminated against who are similarly situated, and the NCAA is asking this court to uphold that discriminatory rule and allow us to punish the university for obeying an antidiscrimination law that was passed by the Legislature. I don't think even the NCAA is that silly, and I will tell you why I say that. I have mentioned it before, the NCAA adopted a rule requiring drug testing of athletes. The State of Washington or California has a law in place prohibiting such testing. The NCAA has said that the universities and colleges in that state do not have to test their athletes because there is a law prohibiting it. So those schools are all out of compliance with an existing law...rule of the NCAA right now and they are not sanctioned, and they are not sanctioned because there is a state law. The law of the state is paramount to any rule of any private association. LB 397 that was passed by the Legislature and signed by the Governor has brought the NCAA within the realm of state law.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: It is subject to the laws of our state and the provisions of our Constitution that guarantee due process. Nobody has been able to successfully argue that discrimination is consistent with due process. So if the basis on which the NCAA would try to impose a sanction is a rule that discriminates, their case on its face has to fall because such a presentation violates the principle, not only of due process, but equal protection of the law. It is a serious matter and I regret that there are members of the Legislature more concerned