

January 13, 1989

LB 30-34, 361, 410-460

CLERK: Mr. President, I do, thank you. I have a reference report referring LBs 374-409, signed by Senator Labedz as Chair of the Reference Committee.

In addition to that, Mr. President, I have received a communication from the Chair of the Reference Committee referring the communication received from the University Board of Regents regarding the University Health Care project. That has been referred to Appropriations Committee for public hearing.

Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 30 and recommend that same be placed on Select File; LB 31, LB 32, LB 33 and LB 34, all on Select File, Mr. President, all with E & R amendments attached. (See pages 223-26 of the Legislative Journal.)

Mr. President, new bills. (Read LBs 410-449 by title for the first time as found on pages 226-49 of the Legislative Journal.)

Mr. President, in addition to those items I have notice of hearings from the Agriculture Committee offered by Senator Rod Johnson as Chair; from the Business and Labor Committee offered by Senator Coordsen as Chair; from the General Affairs Committee. That is offered by Senator Smith as Chair. And, Mr. President, a notice of hearing from Senator Warner as Chair of the Appropriations Committee.

SENATOR HANNIBAL: Mr. Clerk.

CLERK: Mr. President, new bills. (Read LBs 450-459 by title for the first time. See pages 236-38 of the Legislative Journal.)

Mr. President, finally, I have an announcement the Urban Affairs Committee has selected Senator Korshoj as Vice-Chair of the committee.

Senator Rod Johnson would like to add his name to LB 361 as co-introducer. (See page 238 of the Legislative Journal.)

(Read LB 460 by title for the first time. See page 238 of the Legislative Journal.)

February 13, 1989

LB 43, 80, 82, 106, 113, 158A, 166
171, 172, 194, 197, 200, 260, 263
296, 321, 322, 332, 340, 353, 433
481, 717, 729, 731, 772, 773, 804
LR 15

SPEAKER BARRETT: Shall LB 263 be advanced? Those in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. For the record, Mr. Clerk, on the President's desk.

CLERK: Mr. President, your Committee on Revenue, whose Chair is Senator Hall, to whom was referred LB 260, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; LB 332, General File with amendments; LB 729, General File with amendments; LB 197, indefinitely postponed; LB 433, indefinitely postponed; LB 481, indefinitely postponed; LB 717, indefinitely postponed; LB 731, indefinitely postponed; LB 804, indefinitely postponed; and LR 15CA, indefinitely postponed. Those signed by Senator Hall as Chair. (See pages 724-26 of the Legislative Journal.)

Urban Affairs Committee, whose Chair is Senator Hartnett, reports LB 772 and LB 773 as indefinitely postponed, both signed by Senator Hartnett. Your Enrolling Clerk did present to the Governor, as of ten forty-five, bills read on Final Reading, Mr. President. (Re. LB 43, LB 80, LB 82, LB 106, LB 113, LB 166, LB 171, LB 172, LB 194, LB 200, LB 296, LB 321, LB 322, and LB 353.)

Senator Warner has amendments to be printed to LB 340; and Senator Labedz to LB 158A. Mr. President, that's all that I have. (See pages 727-28 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, sir. Senator Robak, please.

SENATOR ROBAK: Mr. President, I move we adjourn until tomorrow at nine o'clock.

SPEAKER BARRETT: You've heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Ayes have it, motion carried, we are adjourned.

Proofed by:

Sandy Ryan
Sandy Ryan

February 16, 1989 LB 183, 187, 187A, 214, 214A, 332, 421
433, 516, 556
LR 30

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to this, the one-third mark, the 30th day in the life of the first session of the ninety-first Legislature. Our Chaplain this morning, Harland Johnson. Please rise for the opening prayer.

HARLAND JOHNSON: (Prayer offered.)

SPEAKER BARRETT: Thank you, Harland. Roll call.

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

SPEAKER BARRETT: Thank you. Any corrections to the Journal?

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any announcements, reports, or messages?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 187 and recommend that same be placed on Select File; LB 187A, LB 556, LB 421, LB 516, LB 214 and LB 214A, all on Select File, some having E & R amendments attached. (See pages 765-66 of the Legislative Journal.)

Mr. President, LR 30 is ready for your signature.

I have an Attorney General's Opinion addressed to Senator Lamb regarding LB 183. (See pages 766-68 of the Legislative Journal.)

I have amendments to be printed by Senator Haberman to LB 187; Senator Kristensen to LB 332 and, Mr. President, a motion from Senator Wesely to place LB 433 on General File notwithstanding the committee action. That will be laid over. And that is all that I have, Mr. President. (See pages 768-69 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 30. (See page 769 of the Legislative Journal.)

Members will please return to their seats in anticipation of Final Reading. As a matter of interest, LB 198 will not be read

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to withdraw LB 765.

SPEAKER BARRETT: LB 765 is withdrawn. Next motion, Mr. Clerk.

CLERK: Mr. President, Senator Wesely would move to place LB 433 on General File notwithstanding the committee action. Senator Wesely offered his motion on February 16. It is found on page 769 of the Journal, Mr. President.

SPEAKER BARRETT: Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. Speaker, members. I have appreciated the levity this morning, a Monday morning, as we come back into session, and it is enjoyable to see everybody once again. The issue I am about to bring to you to discuss is not very funny, though, and, unfortunately, we do need to get serious about a very important topic and I don't bring it to you lightly. I bring it to you with great sincerity. LB 433 is a bill killed expeditiously by the Revenue Committee under the fine leadership of Senator Hall, who is doing a good job of dealing with a number of issues, and I appreciate the action by the committee, and I respect the committee for that action, but...and though I normally wouldn't ask you to consider a piece of legislation killed by a committee, I think this one is important enough to bring to the floor to again raise an issue I think needs to be raised and discussed in the body, and in front of the people of this state. And that question is, what are we...how do we deal with the question of the capital gains exemption of LB 775? LB 775 was passed in 1987. We all, that were here, remember that quite clearly. It took a lot of our time and our attention and a lot of our blood, sweat, and tears because it was a hard-fought battle. Included in that bill was a provision that provided for a capital gains exclusion for individuals that had a capital gain from a company they owned, stock that they had in the company. It was an incentive for entrepreneurs, what it was talked about, and it was an integral part of that piece of legislation. It was said if we touched that bill, if we touched any piece of that bill, if you remember, ConAgra was out of this state. Along with ConAgra, who knows who else might leave the state, and so I supported that legislation. I felt ConAgra was an important part of our corporate community and needed to be kept here. As far as the capital gains part of the bill, I had my doubts. Nevertheless, I stuck with the bill as it was introduced and as it was

eventually passed, but in my estimation, it always bothered me. It hung with me, and my conscience told me that that part of the bill really had a lot of doubtful features to it, and so I followed it since the bill passed in '87. Here it is two years later and I bring to you what I consider a reasonable effort to compromise on the matter. What I think ought to happen is under this piece of legislation to cut off that capital gains exclusion at \$500,000. That is to say if an individual has a capital gain of up to \$500,000 from a company with which they are affiliated, they would continue to have this exemption. But for those individuals who are able to accumulate a greater capital gain, that is to say more than \$500,000, that we ought to expect them to pay the income tax on that additional amount of money. When you are talking about an individual who has accumulated a capital gain of over \$500,000, you are talking about the superrich, the superrich in Nebraska. These are individuals who, obviously, have the assets and resources to do quite well, and have done quite well, and it is recognized under the original LB 775 that these are people we want to keep in the state. I, too, believe that we would like to have these individuals stay in the state, but at the same time to expect these very same individuals to stay in the state and to pay some small fraction of their gain from their work in the state into the state to help fund our schools, and our roads, and our other programs is not unreasonable, in my estimation. These are individuals that are multimillionaires, for the most part. Their capital gain has been part of their assets, but it also recognizes that these are the individuals that have the flexibility and ability to take their income and to do it in a way that is most beneficial in terms of their taxes. What I am talking about is regular Joes like me and most of you in this body, and most of the people in the state, not just most of the people, but 99 percent of the people, probably, in this state don't always have the flexibility that these people do to take their income in capital gains, that is to say that we take our income in income, and we pay taxes on it and we have to, and that is the way the law is, but these individuals have the hundreds of thousands of dollars that they gain in terms of income and other types of remuneration, and in the case of this capital gains, they would be able to take and do take stock from the company that they own, for instance, the company that they are the chairman of, or president of, or whatever, and they get in lieu of income, they get capital gains provided to them. And through this, they are able to shelter their income, although it is all income in my book, it is a different kind of income and

would have further shelter under this provision, and so these are capital gains that are especially accessible to the high income wealthy individuals of this state. This isn't something that affects the vast, vast majority of Nebraskans. In fact, it is estimated under the fiscal note, as I recall, something like 50 to 400 people would be affected by this on an annual basis. Three to four hundred is what the fiscal note says, but in the hearing, the Revenue Department said it would probably be more like 50. Who knows? I mean at this point we don't know. So it doesn't affect very many people but these are certainly individuals of means, of assets, and now these very individuals are not going to have to pay a tax. Now who does this affect? I don't know who those 50 people are, those 400 people are. I do know a few of those people, though, and there is an article that I sent around that I hope you get a chance to look at. It is from the Sunday Journal and Star of April, 1987, and it talks about how that provision would affect certain individuals; Walter Scott is one, and Mike Harper is another. Walter Scott was estimated to save about \$2.7 million in state personal income taxes under this bill and Mike Harper was thought to save somewhere around \$300,000. Now I don't know whether that is accurate or not but it is, nevertheless, some indication of who we are talking about, what kind of money we are talking about. I am not here to say that there is any particular individual or any particular target of this effort. I am talking about fundamental tax fairness. That is what I think we have to discuss a little bit of today because it is not just with the capital gains issue. You are going to hear the very same issue come back on Friday when the Governor proposes her income tax changes and also when I have some income tax changes and some other individuals in here bring us the issue of our overall state tax policy, particularly regarding the income taxes, because, frankly, one of the reasons I think people are very upset with the tax situation is that they feel, and I think rightfully so, that our tax policy in the last two years has been of great benefit to the very high income and of higher cost to the working person and the lower income in the state. I have passed out a chart from the Fiscal Office that indicates the tax benefit and loss under the tax changes of a couple of years ago, and clearly what has happened is our working people in this state are paying more in income taxes and our wealthy, our superwealthy, are paying less. Now that doesn't even take into account this capital gains exemption. As far as I am concerned, that is a direction I don't feel comfortable with. In fact, it is a direction I oppose. I think we have to recognize ability

to pay taxes and I think we have to recognize the differences in people in this state, their ability to have the different things that we would consider adequate in terms of their lifestyles, in terms of their ability to take care of their kids, take care of their families, and I think we have kind of lost sight of the differences in this state, and probably in this country, because this sort of tax policy isn't something that is confined to Nebraska. It is one that has been pretty much the standard across the nation in the last few years. I did pass out a Bloom County cartoon that kind of talked about this with a Donald Trump conversation, and what we are seeing is a reaction of that, I think not only here in Nebraska, but around the country of people saying that the decade of the rich and famous has got to come to an end, and we have got to talk about the poor and forgotten. We have got to talk about individuals that are the working folks, the elderly, and other individuals that don't have the ability to gain from LB 775 and LB 773, the people that won't have \$5,000 in capital gains, let alone \$500,000, the kind of people that won't have the ability to take that \$500,000 in capital gains and have it tax exempt under the state law. You know we only limited it to those companies that you work for, so there are other people out there that might have stock in some other company or some other way in which they gain in capital gains, and they won't have this exemption. Why we provide it in the narrow focus that it is and why aren't we providing it to just anybody, whatever their income or assets, I have to raise question with that. I do support the targeting into the companies because I can see why you would want to provide some incentive for the entrepreneur, some incentive for the working people of this state to take stock in their companies they work for, to look for capital gains out of the very companies that they are an employee of. I think that is a good idea, and so that is why I cut it off at \$500,000, and that is all negotiable. Frankly, I would feel more comfortable if it were much lower than that, but at \$500,000, it certainly raises the issue of ability to pay.

SPEAKER BARRETT: One minute.

SENATOR WESELY: And so I bring it to you with that idea in mind, but in my estimation, we could lower that down to \$100,000 and still have a very fair exemption in place. Now my time is about to run out, and I don't know if I am going to get very much support whatsoever for this. I am sure most of you would rather not have the issue even brought to the floor, but I feel

strongly about it, and I feel very sincerely that this is something we need to talk about. It is simple. It doesn't need that much study or concern in terms of what all the implications are. It is clear. It is direct. It is an issue that you either feel you are for or you are against and something we ought to talk about. One last point, if we are talking about trying to maintain the assets of these individuals in the state, the bill that we passed doesn't require it whatsoever. These individuals can take their million or two or three or forty or whatever million dollars and there is no requirement that it stay in Nebraska. If they reside here, they can take that money and they can put it over in New York in the stock market, or Washington, or California, or wherever they want to invest. If we want to keep their assets here, we could be making some changes in that regard, and I will talk about it when I take some more time.

SPEAKER BARRETT: Time has expired.

SENATOR WESELY: Thank you.

SPEAKER BARRETT: Thank you. Discussion on the motion? Senator Hall, followed by Senators Hefner, Korshoj, and Labeledz.

SENATOR HALL: Thank you, Mr. President and members. As Senator Wesely correctly stated, the bill was in front of the Revenue Committee, and the committee unanimously decided to indefinitely postpone LB 433. The issue of the capital gains exclusion as it currently sits is one that was a part of the 775, 773 debate as it was heard by the Legislature a couple of years ago. The bill as it is currently drafted was determined by the Department of Revenue, even though the fiscal note says somewhere in the neighborhood of three to four hundred people, it was determined and it was testified by the Department of Revenue to their knowledge that the draft would affect approximately 52 people. And as Senator Wesely pointed out, these are 52 very wealthy people. The issue, I guess, with regard to do we go after that group of individuals that would have over a half a million dollars in capital gains is one that the committee talked about extensively because there was gut reaction, I think, to support the bill on the basis of the fact that, you know, these people can clearly afford the ticket, they can pay the price, they can afford to be taxed and possibly that is how we should go after them. But after we talked about it for awhile in Executive Session, it was determined that, you know, there is really

basically no way that we could go after these people when we are dealing with this issue of capital gains. Because we are not talking about a tax that comes while they are in the process of earning this money, we are not talking about a tax that they pay on a regular basis, but you are talking about a tax with regards to capital gains that is at a point in time when they, basically, are at retirement, and these people, because of their extreme wealth, have the ability to move and relocate. They have that ability whether we have LB 775 in place or not if they so choose to do that, should they not want to pay just the basic income tax once they decide to cash out, if you will, with this capital gains provision. So what we decided as a committee was that the 52, as I will call them, because that is what the Revenue Department called them, 52 folks who would be affected by LB 433, would have the ability to just pick up and leave this state, establish residency in a Florida or a Washington or any place where they don't have a capital gains tax or have an income tax, for that matter, and they would be able to, in effect, get around this piece of legislation. There is really no way that at that point in their lives they have to stay in Nebraska because you are not attacking them or you are not taxing them on a day-to-day, year-to-year basis. What you are doing is you are saying at the point in time you choose to cash out, you choose to retire, this tax will kick in, and they have made a lot of money over the years, and with that, they have gained a lot of sense with regards to the taxes that they have to pay, and they have got some people who are fairly sharp that work for them that give them some advice with regards to tax planning, and they know that if it means we have to go to Miami or we have to go to Ft. Lauderdale, we have to go someplace else in Florida and set up residence, we will do that prior to...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...that capital gains kicking in and we will establish a residency. So the committee felt that to put LB 433, although the issue of capital gains as it was discussed a couple of years ago was an important one and I did support I think it was a Senator Warner amendment at that time that would have allowed this exemption for anyone, not just those folks who dealt with the issue or applied and were acceptable under the 775 benefits, but would have been applicable to anyone. I think that that is a totally different issue as opposed to the issue that Senator Wesely presents to us in LB 433. The question of whether or not the capital gains policy should be addressed

should be left for another time. LB 433 should not be brought before the entire Legislature because the issue is not one that can be resolved I don't even think to Senator Wesely's satisfaction because he and I have talked about that. The issue of LB 433 should be left as the committee decided and that is indefinitely postponed. I would urge your opposition to the Wesely proposal. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Hefner.

SENATOR HEFNER: Mr. President, members of the body, I had hoped that we wouldn't spend too much time on this bill because the Revenue Committee did hold a hearing on it and there were proponents and opponents to the bill, but the Revenue Committee, after listening to the testimony, and decided that we didn't want to advance this bill to the floor, and we voted unanimously against advancing the bill. I think Senator Haberman was the only one that didn't vote. He wasn't there at the time. But let me go back to a couple of years ago when we were debating the bill, LB 775. Accountants at this time told us that when they work with their clients on estate planning that they advise their clients, their Nebraska clients to move out of the state because of the amount of the income tax that they had to pay. So, ladies and gentlemen, we are not getting this money now or we weren't getting it before LB 775 were passed, because if they had very much tax liability, they would just move out of the state, and we don't want them to do that. And this would happen if we would pass LB 433. We want to keep them here in the State of Nebraska, because when these affluent people are here in Nebraska, they will spend a lot of money. They will give large contributions to a lot of different organizations. They will buy a new car, they will buy new furniture, buy a lot of new stuff, and, of course, when they do that, well, they pay a lot of sales tax, and we want them to do this. Also, more than likely, their income, their regular income will be very good because they have a lot of money to invest, and we will get state income tax on their investments. So I think that we should not vote this bill to the floor this morning. Like I said, the Revenue Committee really analyzed this bill and we feel that we should leave LB 775 just the way it is now because of a lot of these investors will keep investing in small companies and this is what we need. We need people that have the money to invest in these companies, start new companies, to expand companies, and like that, and besides that, if we pass this bill, it isn't going to raise that much money for us

because we will find that these people that do this will move out of the state and we don't want them to do that. So I would urge you to vote against bringing this bill up to the floor at this time.

SPEAKER BARRETT: Senator Korshoj, please.

SENATOR KORSHOJ: Mr. Speaker and members, I am just going to say a few words to get it in the record. I want to thank Don Wesely for bringing this bill up. It is going to go down very hard, Don, but your efforts were valiant. What I want to get in the records, it does point out how we do legislate in a very narrow scope. Say, we pick out 52 people and treat them very special. It is very unfair to do that in legislation. When I go back home, I have a lot of people come up to me and say a bill we just passed was very unfair, and I tell those people, whoever told you government was fair. There is nothing fair about government. This here excusing that tax, I will give you an example, if something bad doesn't happen in the next few years, I am going to have a little capital gains. It is going to be very, very, very small and I am going to be extremely happy to pay a capital gains tax on it, but I then relate my situation to the superwealthy people who doesn't pay, and this is my opinion. I think I have helped my community, my county, probably as much as those people that Senator Hefner refers to that all the money they throw into the society. I guess they probably spend their money very recklessly so they can pay more state taxes, but the gist of my comments, it is just unfair. It is unfair and there is going to be probably 40...4 people vote in that direction that it is unfair, and I just think that as public policy, it is probably bad that we keep passing special legislation. I don't think that it is any disgrace to be poor, as most of the people are, but it certainly is no great honor either to be poor, and so why don't we do something for the lower income and the middle income people, but they are always overlooked when we legislate tax policy. So, once again, Senator Wesely, thanks for bringing this dog up. We will shoot it in the head and it will be dead, but we did get a chance to point out, and I did get in the record how I feel about this special legislation for the superrich. Thank you.

SPEAKER BARRETT: Thank you. Senator Labedz, please.

SENATOR LABEDZ: Thank you, Mr. President. I don't want to repeat some of the things that Senator Hall said and Senator

Hefner, but they were right on target when they mentioned the fact that we went through this on LB 775 and that it failed at that time, and it deserves to fail again this time. I fear many of those affected would establish, as Senator Hefner said, residency in another state, and we must always and must encourage the entrepreneurs to share ownership of their companies with their employees, so I urge the members of the Legislature to reject Senator Wesely's motion, and I don't think it is necessary now to be making any changes in LB 775. Many of us have heard over and over 775 is working. We haven't given it a long enough chance to make sure that it does work even better than it has, and we all know that it is working all through the state. I am very reluctant at any time to make any changes that would discourage the people that we have now encouraged to come to the State of Nebraska, and then say two years later that we are going to make some changes. As far as the article that Senator Wesely passed out that is dated in 1987, where he is talking about Walter Scott and Mike Harper, these are two gentlemen that I know personally and have probably only known them for about two years, ever since we introduced LB 775, and I do know now what they have done for the State of Nebraska in their contributions to many of the activities we have throughout the whole state, and we certainly don't want people like them to establish a residency in another state. So I urge the members of the Legislature to reject this motion quickly and firmly and let's go on with our business.

SPEAKER BARRETT: Thank you. Senator Wesely, please, followed by Senators Schmit and Nelson.

SENATOR WESELY: Thank you, Mr. Speaker. I can understand and appreciate both Senator Hall and Senator Labedz's concerns and Senator Hefner, and, Senator Korshoj, I appreciate your help and support. I don't know how many votes will be against this bill. I am sure it will be quite a number. But I don't think, on the other hand, it is inappropriate to raise a clear-cut issue like this, and though there are differences of opinion, I still think it is quite clear in my mind that these individuals are cutting a fat hog when they have the ability to take over \$500,000 in capital gain and not pay any income tax on it whatsoever. Yes, it is true. They have got the mobility to leave this state, and it is also true that under the provisions of 775, yeah, they can stay here but their money may fly off somewhere else, so we have individuals but we don't have the money that they have. They have got the ability to put that anywhere they want to. I think

there are far better ways to encourage that investment to stay in Nebraska. I have got a bill on venture capital that would provide a tax incentive to invest in local companies, to help them grow and prosper, and if they want to stay and keep their money and put it into something like that, then I don't feel it is inappropriate to give them some incentive. But to give them an incentive just to stick around and put their money wherever they want to doesn't seem to me to really be benefiting the state that much. Oh, yes, it is true, they may contribute philanthropically to different causes, but why is it that they don't feel that they need to contribute to the state as a whole, to all of us in this state, the very state in which their company is located and the workers are located, and the very chance to succeed has been nourished. I think there is a responsibility there as well. Because of this lack of provision of maintain the resources here, in my estimation this provision is not an economic development provision. It is a tax haven, a tax haven for the superrich, and it is time we called it exactly what it is. And speaking of that mobility question, you know, I...at the hearing they talked about...George Penry talked about the ship, the LB 775 ship and it's set sail and we ought to just let it continue on as it sails off into the sunset, and how wonderful and beautiful it is. Well, in my estimation, the ship did set sail when we passed 775 and 773, and off it sails, and maybe it is sailing into a sunset, but the vast majority of Nebraskans are standing on the shore looking at it, waving at it as it goes off into the sunset, and I hope they are having a swell time because I am not on that ship, and I think the vast majority of Nebraskans aren't on that ship, and they sure aren't on this ship, this ship of 52, and whatever else you can talk about, all the other provisions of the bill, and I don't really want to get into that. But even with the fullest complement of jobs and businesses and others affected by it, you are still talking about a ship that doesn't really have the vast majority of Nebraskans. And it is time we recognize that there is a lot of folks that feel left out, they don't feel they are a part of that. They don't feel that they are the ones that this Legislature cares about, as Senator Korshoj was talking about. Now, Senator Hall, if you would yield to a couple of questions. Senator Hall talked about this bill, you can't tax them at the end of the line because they will take their money and move it elsewhere. That is a legitimate point. But at the same time, we have lowered income taxes, particularly in the upper income, and I would be curious. Is there any discussion whatsoever in the Revenue Committee to look at at least taxing these upper

income brackets, having another upper income bracket, or doing something to recognize this problem of inequity in our tax system?

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Senator Wesely, the committee has discussed the issue of the fifth bracket and adjusting that upward. We discussed it in light of the reduction of what are now currently the two middle brackets, so that there would be as little financial loss, or as little impact to the revenue base as possible. So it is something that we have...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...discussed and I think we will discuss again when the Governor's income tax proposal is heard in committee this Friday.

SENATOR WESELY: I appreciate that, Senator Hall, and I would encourage Revenue Committee to look at that issue. I do have another piece of legislation in the Revenue Committee looking at having an upper income bracket, and there may be ways that that can address this better, but I still think the capital gains provision is onerous and one that we need to address, and I would ask this Legislature to consider it, and consider adopting this motion.

SPEAKER BARRETT: Senator Schmit, followed by Senators Nelson and Withem.

SENATOR SCHMIT: Every time that something on this issue comes up, I have to remind myself my good friend Senator Wesely voted for 775 and I didn't, and I guess, Senator Wesely, sometimes I think that maybe you have pangs of conscience, but, of course, hindsight is always better than foresight except in some particular instances, and we are going to have a chance to take a look at that again on Select File on some other bills that have moved the past week while I wasn't here. One of the reasons, Senator Wesely, why some of the people you have mentioned here are paid such fantastic salaries by their stockholders is because they are good at what they do. They are not only good at running their companies, they are good at convincing those of us who are in government how we ought to vote on certain issues and, as Senator Hall and Senator Bernice

Labadz have pointed out, they have the flexibility and the mobility to move their assets in a manner which is not going to be...which will not allow them to be subjected to the taxes that you want to impose. I well recall one of the gentlemen whose name you mentioned during the course of the debate on 775, he said I am perfectly capable of taking care of my own resources, and I will not pay the tax regardless of whether 775 passes or not. Unfortunately, the individual who is down in the more modest area, three or four or five thousand dollars of capital gains, cannot afford to move his residence to another state so he is going to pay the tax under certain conditions anyway. Most important of all, I would like to call the attention of this body to the fact that once you establish a course, most of the time that course is irreversible. You may nip a little bit here and nip a little bit there but very rarely do you reverse that. I have a provision on the sale of municipal bonds, which I think is a legitimate one, where I think we shortchanged people who bought out of state municipal bonds, and they were not subjected to tax. Then all of a sudden we subjected them to taxes, and I don't think that is right. I think that is inconsistent. I don't think that is at all good tax policy. I don't think LB 361 is good tax policy. Most of all, I don't think it is good tax policy because a large number of rural legislators are saying, well, it is only a temporary interim measure. We are going to follow this for a little while, then we are going to come back. The same groups, the same individuals, the same organizations which couldn't put together a tax policy, couldn't raise the money to put together a tax program on property taxes that was equitable and just for all of the people of the State of Nebraska, now are going to subject their constituents to a massive tax increase because they couldn't find the resources necessary to put together an equitable tax policy. The major businesses of this state contributed substantially toward the drafting of 772, 773, and 775. I disagreed with those bills. They may be working. I am not sure. We have got to make some changes in some of them, that is for sure, and some of those changes have been proposed. But I would just like to suggest that the Revenue Committee has a tough job and those of us on this floor who do not do our work, do not thoroughly examine the work of the Revenue Committee, are doing a disservice to the people of the State of Nebraska, because once you embark on that tax policy, ladies and gentlemen, you are not going to reverse yourselves. We have found under 773 some substantial increases in collections. There is going to be an attempt made to return some of that

money. We have found some problems with 772, we are going to try and collect that. We have even some problems with 775 but, ladies and gentlemen, the basic premise has been drawn...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...that for a certain group of people, and for a certain class of business, we are going to give them certain exemptions. Under 775, believe it or not, the people in this body said, well, yes, we are going to specifically exempt agriculture from the benefits of that bill. I think it was wrong. We are going to specifically exclude family corporations from the benefits of that bill. I think it is wrong but we have set that policy. And, ladies and gentlemen, I don't believe, as I have said many times on this floor, in trying to rethrash the old straw all the time. Not that I wouldn't like to do it, not that I couldn't take some time and do it, but once you have adopted a policy, you are committed to that. So when you look at the bills that come before this body this year, you ought to take a second long hard look and say, well, now, did we really do what we wanted to do in the past years where it really makes a difference? Are we doing something now with these bills which we are going to carve in stone and which we are going to set in place which we are not going to be able to reverse?

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: I suggest it is a lot better to look at the bills we have ahead of us now, rather than to try to go back and redo 775 in the briefer manner which Senator Wesely would like to do, although I am in sympathy with you, Senator Wesely, I cannot support your motion.

SPEAKER BARRETT: Senator Nelson

SENATOR NELSON: Mr. Speaker, members of the body, this is one portion of LB 775, as most of you will recall in the debate, I think Senator Warner, Senator Schellpeper, myself, and some of us, that felt that was truly an unfair part of that whole package. I would like to ask Senator Hall at this time, if I recall from the debate a couple of years ago, this was about a 2.8 or a 2.9 million dollar figure. Was that brought out lately?

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Senator Nelson, the issue of the total cost was not, and the total figure that 775 would have allowed for would be different than the figure that would be in Senator Wesely's bill, because he would allow for in 433 those exemptions up to 500,000, and the tax would kick in only over and above that figure, so it would be a much smaller figure.

SENATOR NELSON: Correct, very, very hard to determine, I can understand that. Senator Labedz made the remark that this would be...that these businesses have given their employees the opportunity to purchase stock, which is very fine. The railroads, Peter Kiewit, many of them, I will guarantee you that 95 or 98 or 99 percent of the regular employees certainly would not come under the provisions of this bill so I don't think we are talking about the average Joe or the average working person up and down the street. Also I probably will be voting against this because I think the discussion and the whole bill is rather remote at this time. One of President Bush's proposals is to cut this capital gains tax back down to 15 percent, which anyone can guess, but I would suggest that there will be a cut and there will be a change on capital gains. So it would probably make this bill, no use for the bill. I do have to relate to you one of...a corporation or a business that I know and this can tell you about how unfair it is. The local business people donated \$1,000 about 15, 18 years ago, to a business at home to get started. That \$10,000 to those local business people, I think, about 30 of them helped him get started, would be equivalent to about \$10,000 right now. Those business people will still have to pay tax on their business when they sell their business, and the corporation has grown very successfully and very good. I made the remark to the owner of the corporation here about a year or so ago, he said something about taking his money, and I said that is about like you. You made your money on the farmers and you made your money on the local business people, and the people in the State of Nebraska. Now you are telling me that when you retire and so on, you will just take your money and run, which is exactly what probably will happen. The corporation is now a Delaware corporation, so you and I both know how much tax or why they become a Delaware corporation, and as I said to him, that is just exactly like you, you old skunk you, and kind of laughed a little bit. The other people helped you get started. They helped you start your business and then you take your money, but I have no doubt that that is exactly what would happen, so with the federal

legislation being proposed change, and these facts, but I do want it on the record, I think this is about the most unfair portion that we could give on L3 775.

SPEAKER BARRETT: Senator Withem, please.

SENATOR WITHEM: I would call the question.

SPEAKER BARRETT: Shall debate now close? Do I see five hands? Those in favor of ceasing debate please vote aye, opposed nay. Please record.

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

SPEAKER BARRETT: Motion prevails. Senator Wesely, would you care to close?

SENATOR WESELY: Thank you, Mr. Speaker and members. I see the handwriting on the wall but forward I go, and I do so not because I...well, not because of any other reason than I really believe in this. I think that for all kinds of good reasons as expressed by other senators that many of you will vote against this. That doesn't mean that I don't feel just as strongly as I did before the debate started or that other people in this state may feel differently than the majority in this body. I think most people understand that the superwealthy have all kinds of options available to them that the normal, typical average individuals in this state just don't have. They can take their income in different ways to avoid taxes. They have the ability to move their money around. They have the ability, themselves, to move around. If they want to get away from the tax situation, they get away from the tax situation. Does that mean we don't still try to put together a fair tax system? I think we still have to make that effort, and I think in addition, although I do appreciate the looking at the superbracket by the Revenue Committee, again, you put the superbracket on on the income tax and those individuals shift it over into capital gains side. I think you have got to try and do the best you can to put together what you think is a fair system, and even though we did adopt this policy two years ago as Senator Schmit says, that doesn't mean we shouldn't raise questions. And I did support 775, and I did care about economic development, I did care about ConAgra, and I did care about trying to build for the future of this state, but this provision of the bill, in my estimation, is not a major part of the positive side of that

legislation. In my estimation, it had nothing, no impact other than to provide some tax relief to those that have the greatest and largest ability to pay, and I just don't think that is right. I think you should think about it. You have to ask yourselves, now how many people experience any capital gains in the first place? I mean there are many of us out there struggling day to day just trying to pay for the child care, and pay for the house, and pay for the car, and pay for everything that you have got to have to live on, and at the same time, we have no extra cash to put away for savings. Capital gains is the last thing we think about. We'd love to have a dollars worth of capital gains, let alone hundreds of thousands of dollars or millions of dollars of capital gains. There are many people in those situation. And how many people earn even \$500,000 in a lifetime, let alone accumulate \$500,000 in capital gains? I think there are a lot of folks out there that are today maybe retired and never even saw \$500,000 in their lifetime, let alone have the ability to save and earn that amount in capital gains. And as you look at your own individual districts, you have got to ask the same question, how many people from your own district are going to benefit from leaving the provision as is? How many people do you know of that would be able to claim 500,000 plus in capital gains? Now I just think you have got to come to the conclusion that it is very few people, and it is the very people that I think have the best ability to pay. I am very discouraged by trend lines and the way I think some things have gone in terms of tax policy in this state and in this nation. I have felt for quite some time that we have too much recognized the very powerful and the very rich, and we have taken their concerns to heart and we have responded to them, but the concerns of the working people, the concerns of the elderly, the concerns of the folks out there that work two or three jobs just to scrape together \$15,000 to try and live on, take care of their kids and broken families with only one income, the sort of life that they have to lead, and how we can and should help those people. Now this Legislature has responded. I am not saying you are hardhearted or cold-hearted. This body has been responsive, I think, to the needs of many individuals in great need. We have adopted ADC benefit increases and many other efforts that I think are worthy, so I don't want to imply in any way, shape, or form the members of this Legislature haven't recognized that other side of the state, but at the same time, those very people that I think we understand have a great need look at this policy of capital gains, and look at these individuals with the superincomes, and

the hundreds of thousands and millions of dollars, and they have to ask, why they can't feel the need to pay a little bit of tax on that, and don't feel that that is a particularly fair thing to do. I would like to ask your support for this measure, and I would like to ask your consideration of the issue. It is more than just this vote. I think this is the first of many other discussions on this floor about what...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...fair tax policy ought to be. We are going to be talking about property tax relief. We are going to be talking about income tax relief. We are going to be talking about general tax policy. And I hope you will understand that there are many of us that feel that our tax policy in this state have simply got to change and reverse direction back toward a more equitable, fair system, and I, for one, feel that this is but one step in that direction, a step that is unlikely to be taken but, nevertheless, one that needs to be discussed and considered as we look at overall tax policy, and I now ask for your support for the measure.

SPEAKER BARRETT: Thank you. You have heard the closing, and the question before the body is the placement of LB 433 on General File notwithstanding the action taken by the Revenue Committee. Those in favor of that motion vote aye, opposed nay. A record vote has been requested. Have you all voted? Have you all voted? Please record.

CLERK: (Read record vote. See page 882 of the Legislative Journal.) 11 ayes, 26 nays, Mr. President, on the motion to raise the bill.

SPEAKER BARRETT: Motion fails. Anything to read in, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Your Committee on Enrollment and Review reports LB 361 and LB 361A to Select File, those signed by Senator Lindsay as Chair. Natural Resource Committee reports LB 199 as indefinitely postponed, signed by Senator Schmit. General Affairs Committee reports LB 686 to General File with amendments, and LB 704 General File with amendments, those are signed by Senator Smith. (See pages 882-84 of the Legislative Journal.)

Senator Smith to LB 433. I have a request by Senator Lamb to print a message in the Journal, Mr. President, and a motion by Senators Withem and Schmit. Both of those will be laid over. That's all that I have, Madam President. (See pages 1383-87 of the Legislative Journal.)

Madam President, on LB 569, it's a bill introduced by Senators Rogers and Morrissey. (Read.) The bill was introduced on January 18, referred to the Health Committee. The bill was advanced to General File. I have committee amendments pending by the Health and Human Services Committee, Madam President.

SENATOR LABEDZ: Senator Wesely, on the committee amendments.

SENATOR WESELY: Thank you, Madam President, members. LB 569 deals with an issue that we've looked at over the last couple of years, EMT's being able to use automatic defibrillation equipment. They are now authorized, under their scope of practice, to provide for defibrillation, but they've come up with a new machine, so essentially we've got to put in the statute this new machine and clarify the ability to utilize this new machine. We passed the bill last year to authorize this and take care of it, but unfortunately, as we frequently have happen with health licensure issues, the bill passed and then the rules and regs to implement the legislation went to the Attorney General last fall and the Attorney General said there wasn't enough detail and clarity. So, essentially, the bill before you will put into statute the rules and regs that were recommended by the Department of Health to implement the bill we passed last year. Because of this concern about constitutionality and the ability to implement licensure issues in general, and this one in particular, this committee amendment adds a severability clause to the bill which allows, if there are any constitutional problems with any particular part of the bill, it will be that part of the bill that is declared unconstitutional, not the whole bill. So that we can at least go forward in some degree with this legislation and get it resolved. So I would ask for adoption of the committee amendments.

SENATOR LABEDZ: Senator Morrissey on the committee amendments.

SENATOR MORRISSEY: Yes, Madam Chair and members, I would just rise to urge your support of the committee amendments. This is a bill that was worked on last year. We need to get it passed this year. I would just urge your support of the committee