

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 24, 1989

LB 155, 218, 250A, 329, 330, 335, 346
437, 449A, 478, 504, 809

bill, Mr. President.

SPEAKER BARRETT: LB 155 is advanced. Messages on the President's desk, Mr. Clerk?

ASSISTANT CLERK: First of all, Mr. President, a reminder that the Urban Affairs Committee is having a short Exec Session at one o'clock in the Senator's Lounge. That's from Senator Hartnett. Revenue Committee, whose Chairperson is Senator Hall, refers LB 346 to General File; LB 437 to General File; LB 329 to General File with committee amendments; and LB 504, indefinitely postponed. (See pages 877-78 of the Legislative Journal.)

New A bills. (LB 449A and LB 250A read by title for the first time. See page 878 of the Legislative Journal.)

A series of name additions. Senator Bernard-Stevens to LB 218 and LB 330; Senator Lindsay to LB 478; Senator Hartnett to LB 335; Senators Peterson, Rogers and Beyer to LB 809. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schimek, would you care to adjourn us until Monday.

SENATOR SCHIMEK: Mr. Speaker, I move we adjourn until Monday, February 27th, at nine o'clock.

SPEAKER BARRETT: Thank you. You've heard the motion. Those in favor say aye. Opposed no. Ayes have it, motion carried, we are adjourned.

Proofed by:

Marilyn Zank
Marilyn Zank

March 13, 1989

LB 46, 54, 145, 182, 211, 237, 247
259, 288, 315, 316, 356, 379, 388
411, 418, 437, 447, 449, 449A, 506
587, 630, 651, 652, 809

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Microphone not activated) ...to a new week in this the life of the First Session of the Ninety-first Legislature. Our Chaplain this morning for the opening prayer, Pastor Jerry Carr of First Four-Square Church here in Lincoln. Pastor Carr, please.

PASTOR CARR: (Prayer offered.)

SPEAKER BARRETT: (Gavel.) Thank you, Pastor Carr. We hope you can come back again. Roll call.

CLERK: Quorum present, Mr. President.

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

CLERK: I have no corrections, Mr. President.

SPEAKER BARRETT: Messages, announcements, reports?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 587 and recommend that same be placed on Select File; LB 379, LB 46, LB 388 and LB 145, LB 237, LB 418, LB 506, LB 449, LB 449A and LB 54, all placed on Select File, some of which have E & R amendments attached. (See pages 1059-66 of the Legislative Journal.)

Mr. President, Business and Labor Committee reports LB 630 to General File; LB 315 to General File with amendments; LB 288, indefinitely postponed; LB 316, indefinitely postponed, LB 411, indefinitely postponed, and LB 652, indefinitely postponed, those signed by Senator Coordsen as Chair of the Business and Labor Committee. (See pages 1067-69 of the Legislative Journal.)

Mr. President, a series of priority bill designations. Senator Withem, as Chair of Education, has selected LB 259 and LB 651. Mr. President, Senator Nelson has selected LB 447; Senator Langford, LB 211; Senator Coordsen, LB 182; Senator McFarland, LB 437; Senator Byars, LB 809; Senator Withem, LB 247; and Senator Crosby selected LB 356, Mr. President.

I have an Attorney General's Opinion addressed to Senator Hefner

March 20, 1989

LB 68, 262, 300, 437, 439, 573, 592
595, 614, 745, 754, 798

SENATOR HALL: Mr. President, I would lay the bill over at this time.

SPEAKER BARRETT: The bill is laid over. Thank you. Anything to read in, Mr. Clerk?

CLERK: Yes, sir, I do. Mr. President, your Committee on Health, whose Chair is Senator Wesely, to whom was referred LB 68 instructs me to report the same back to the Legislature with the recommendation that it be indefinitely postponed, LB 300, indefinitely postponed; LB 439, indefinitely postponed; LB 573, indefinitely postponed; LB 595, indefinitely postponed; LB 614, indefinitely postponed; LB 745, indefinitely postponed; LB 754, indefinitely postponed; LB 798, indefinitely postponed, those signed by Senator Wesely as Chair of the Health and Human Services Committee. Mr. President, I have amendments to be printed to LB 437, and that is all that I have, Mr. President. (See pages 1219-23 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, sir. To the next senator priority bill, LB 592.

CLERK: Mr. President, LB 592 was a bill introduced by Senators Abboud, Beck, and Moore. (Read title.) The bill was introduced on January 18, referred to Judiciary, advanced to General File. I have no amendments at this time, Mr. President.

SPEAKER BARRETT: Thank you. Senator Abboud, please. (Gavel.)

SENATOR ABOUD: Mr. President and colleagues, this is a relatively simple bill that was brought in on behalf of the Omaha police force and Douglas County Attorney's Office. The bill provides for a mandatory minimum sentence for individuals convicted of trafficking in cocaine and crack. The bill changes two provisions dealing with the law, LB 592 does, providing for a three-year and also a seven-year mandatory minimum sentence, or excuse me, three and five-year mandatory minimum sentence depending on the amount of cocaine and crack the person is arrested with. I think we are all aware of the serious problems that we have been having in this state dealing with these two particular drugs. It is the hope that, by providing for a mandatory minimum sentence for individuals involved in the selling of these types of drugs, it will send a clear signal to these individuals that these types of...the sale of these types

March 23, 1989

LB 54A, 340, 403, 404, 437, 487A, 488A
566, 599, 787

decision that the tribe could make, if they chose to do so, with or without it. The key is whether or not you're going to provide any additional time and what level of funding you're going to provide and whether or not an appropriate site can be acquired, and all of those things could be addressed in a different fashion. And this portion of the amendment is not necessary, or for that matter adds anything to the bill.

SPEAKER BARRETT: Thank you. The Chair recognizes Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and members, in an effort to be accommodating I'll just simply withdraw this and we'll deal with the issue of the return date, straight up front with Senator Warner's amendment. We'll just do that. I'll just withdraw this portion of the amendment.

SPEAKER BARRETT: Thank you, sir. It is withdrawn. To the next motion, Mr. Clerk.

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

SPEAKER BARRETT: Proceed.

CLERK: Senator Weiing has some amendments to LB 54A to be printed. Revenue Committee reports LB 566 to General File; LB 403, indefinitely postponed; LB 404, LB 599, LB 787, indefinitely postponed. New A bills. (Read LB 487A, and LB 488A by title for the first time.) Senator McFarland would like to print amendments to LB 437, Mr. President. (See pages 1324-25 of the Legislative Journal.)

The next amendment I have, Mr. President, to LB 340 is by Senator Baack. Senator, I have AM837 in front of me.

SENATOR BAACK: Yes, that's correct.

SPEAKER BARRETT: Senator Baack, please.

SENATOR BAACK: This is simply a clarifying amendment at the request of the Department of Roads, which sets out a definite procedure for the Department of Roads in case they're in the middle of a construction project and come across some unmarked remains. And it just sets forth a procedure that they will follow so that they can get it done as quickly as possible and

SPEAKER BARRETT: The bill is advanced and the call is raised. The Chair would like to take a moment to introduce a friend of the family of Senator "Cap" Dierks, Mr. Bob Sweet from Oshkosh, Nebraska, who is a medical student at Omaha and also a constituent of Senator Dennis Baack's, under the north balcony. Bob Sweet, please, take a bow. Thank you. We're glad to have you visiting us this morning. LB 437, Mr. Clerk.

CLERK: 437 was introduced by Senator McFarland. (Title read.) The bill was introduced on January 13, referred to the Revenue Committee, advanced to General File. I have no committee amendments, Mr. President.

SPEAKER BARRETT: Senator McFarland, please.

SENATOR MCFARLAND: Thank you, Mr. Speaker, fellow Senators, LB 437 is a bill that would amend the Employment and Investment Growth Act commonly referred to here in the body as LB 775. It would amend it in this way and I'll just read the statement, I had an introducer's statement. It would not allow taxpayers to claim incentives, refunds or tax credits under the act, LB 775, if there are a number of employees at the end of each year of the entitlement period is less than the number of base year employees. You'll recall that the LB 775 credits are usually distributed on a seven-year cycle and they have a...they report in the initial year or the base year what their employment is at that time. This bill, LB 437, if passed, would apply only to applications filed on or after January 1 of 1989. It would not apply retroactively to the people and corporations that have already had their applications approved by the Department of Revenue in 1977 and '78. The intent of the bill is to prevent companies from reducing existing jobs while still claiming incentives and credits under the act. Although companies are required to qualify under the act, there is no provision to prevent a reduction in the current workforce. The problem with LB 775 with regard to loss of jobs became very apparent a few...a year or two ago with the Mutual of Omaha situation. As you all know, in 1987 LB 775 was debated very thoroughly on the floor of this Legislature and the primary argument that was used for its advancement was that this act is going to create jobs in Nebraska. There is an incentive to job creation and if you create 30 jobs and invest \$3 million you can get tax credits for that purpose and it was jobs...sold as a jobs creation bill. What wasn't mentioned as often was that there was also a provision in the bill that allowed you to get \$20 million, or to

get tax credits if you made \$20 million of investment and didn't add any jobs. As a matter of fact, you could lose jobs and still get the tax credits. The flaw in that bill became readily apparent a few years ago with Mutual of Omaha when it was discovered that they were receiving tax credits at the same time that they were eliminating 1,100 jobs from our state. And I passed around a newspaper saying, with a headline, Mutual of Omaha plans to cut jobs, tax credit defended despite job cutbacks. You might take a look at that if you get a chance to read it. And also there is another thing I have distributed and the headlines, I think, tell the story. It says, Tax Chief says jobs, not revenues are the measure of success of LB 775. Then the headline, I think it was a month later, it says, firms seek incentives but don't add jobs, tax commissioner surprised. There were a lot of surprises. The Mutual of Omaha situation brought the biggest surprise I think when people discovered that, and taxpayers and people that...your constituents discovered that you had passed a bill on the theory that it was going to create jobs and the fact of the matter is that some companies, Mutual of Omaha at that time, were eliminating as many as 1,100 jobs and still receiving tax credits for the process. I introduced this bill in the 1988 legislative session. I introduced it in the Revenue Committee and it was not advanced out of committee. I was told in committee that this was an isolated instance, that this was not going to occur very often and that, in fact, the bill was still in good form and the theory the bill was good. But then something interesting happened last year, and that was the announcement that the Union Pacific Railroad Company in Omaha was transferring 810 jobs out of their Omaha shops and that most of these jobs were going to Arkansas because they have shops down there. And I was interested, if you look at this indication with the Mutual of Omaha headline, there's a little paragraph I'd like to read about Union Pacific use. This was Senator Johnson who was former Chair of the Revenue Committee who said, Senator Johnson noted that Union Pacific also has applied for tax incentives for capital improvements. He said railroad officials assured him that even though the company is reorganizing and reducing its number of jobs systemwide, the number of UP jobs in Nebraska will remain constant or perhaps grow a bit. Well that, as I recall, was made in approximately the fall of 1987. If you look further in the handouts you'll see some headlines that say, UP closing to cost Omaha 800 jobs, and this was around, in the summer of 1988 it's dated. In fact, what Senator Johnson was assuring us would not happen, actually

did happen. In fact, Union Pacific did transfer 810 jobs out of state and yet they are receiving tax credits under LB 775. My reason for introducing this bill again in the 1989 legislative session is to try to correct this problem. It seems to me if the theory of the bill is to create jobs, then we should not have provisions that will allow corporations to take advantage of the tax credits at the time they are reducing their overall number of employees in the State of Nebraska. Now I have to be fair to Mutual of Omaha and the Union Pacific to a degree. My understanding is that Mutual of Omaha laid off those 1,100 people as kindly and gently as possible, that many of the layoffs were people that retired and they just didn't rehire people or people that moved out of...would quit their job, resign, they would not rehire people to replace them. And my understanding also is that they have since that time of the layoff, the layoff of these employees over a period of time, that now Mutual of Omaha has increased their employment and I don't know if they have increased it to the 1,100 number but they have made strides to hire additional employees and also with the Union Pacific. I can see their legitimate business reasons of saying we have a business to run, we need to make a profit. One of the ideas of making a profit is, would be run an efficient and cost effective organization, we have newer shops down in Arkansas and we should therefore relocate our employees in Arkansas. The shops in Omaha were older shops, they could consolidate, they could increase their profits, they could make it a more efficient operation and I don't fault them for that. What I do fault is the Legislature's strict, almost a dedication, to LB 775 like it is some kind of sacrosanct act that no one can change. I think the time to start that change is today. I think the time to start looking at the unintended consequences of 775 is at hand. I think the real question is not whether or not Union Pacific or Mutual of Omaha should make these business decisions, I think they have every right to. I think that is exactly how the free market and the free enterprise system should work. I am disappointed that the jobs are eliminated but I have to understand their situation as well, but that's not the real question. The real question is, should we, as a state, as a matter of policy be providing tax credits...

SPEAKER BARRETT: One minute.

SENATOR MCFARLAND: ...to these companies who are eliminating jobs in Nebraska if the whole intent of LB 775 was to create

jobs? Well, as you can see, I did introduce it this year again. This year the Revenue Committee, instead of holding it in their committee, has advanced it to the floor of the Legislature because we had a good hearing on the bill. We had people speaking both in support and in opposition. The bill has advanced and I think it is worthy of consideration. I can tell you right now that we don't have a lot of lobbyists lobbying for this bill. The people that are really concerned about this bill are the taxpayers that live in your district whose tax increase dollars are being used to subsidize a bill whose philosophy and whose strategy is inherently flawed and misguided. Those are the people that are concerned. Those are the letters that I receive in my office that want...and the people in Omaha who write me and say why are we providing tax credits when...to companies that are decreasing their overall employment in the State of Nebraska?

SPEAKER BARRETT: Time has expired.

SENATOR MCFARLAND: And it is for those people that I would ask you to vote for this bill and advance it. Thank you.

SPEAKER BARRETT: Thank you. A motion on the desk, Mr. Clerk.

CLERK: Mr. President, Senator McFarland as principal introducer has an amendment pending. Senator, your amendment is on page 1324 of the Journal.

SPEAKER BARRETT: Senator McFarland.

SENATOR MCFARLAND: Thank you. This is a rather technical amendment. It doesn't change the intent of the bill at all. It amends for clarification purposes, language in the bill. I have already heard comments from my fellow senators and some of the people who are interested in this bill who had questions about, how do you judge average number of employees? Does this apply to the average number of employees through the entire system of a company? Does it apply to their employees nationwide or just in Nebraska? Also, does it apply on a project basis or a companywide basis? You'll recall that the tax incentives and credits that are provided in 775 for job creation apply to increased jobs on a project, not on the company statewide or anything like that. So, for example, some companies might have a project in say Grand Island, Nebraska, where they could designate that they are going to invest \$3 million in that

particular area and they're going to create at least 30 jobs, they would get tax credits; at the same time they may be reducing their overall employment on other projects or in other areas of the state. So what I have done with this amendment is to insert the word that the taxpayer, if the reduction at the end of the year, if there are an equivalent number of Nebraska employees. Now the word equivalent is interesting in how they arrive at equivalent number of employees. It's fairly simple and fairly good calculation I think. What they do is they take the total number of hours that the company pays to their employees during the entire year and then divides that total number of hours by what an employee working 40 hours a week would have as his total number of hours for a full year. So you get, in effect, equivalent employees is really how many full-time equivalent employees do you have in the state? And they would be related to Nebraska employees, Nebraska employees in the act are defined as employees who reside at least full time or part time within the State of Nebraska. So the amendment would, in effect, clarify those questions. It would designate that it's really what we're talking about as full-time equivalent employees within the State of Nebraska. It would not apply to a company's employees in other areas of the state and it would not apply on a project by project basis but it would apply on a statewide basis, how many total employees they have in the State of Nebraska. And if, at the end, of that particular year they show that instead of maintaining their level employment in the State of Nebraska, that that level of employment has in fact decreased, then they would just lose the tax credits and there is a detailed procedure set out in LB 775 that allows for a payback provision or a refunding provisions of those tax credits. It's already there in the bill and can be implemented fairly quickly. So I think that the language in this amendment clarifies the intent of the bill itself. It answers the questions that were being asked. I have to confess that I think those questions were being asked not so much as far as clarification of the bill, but as trying to give some kind of reason for the group of lobbyists that are working against this bill to try to make an excuse to vote against the concept. The concept is a good one and I think this language clarifies any ambiguities or misunderstandings about the intent of the bill. The amendment, if you look on it, it's really just a two-line amendment and in place of the word "average" you strike it and insert "equivalent Nebraska" employees instead of average number of employees. It becomes the number of equivalent Nebraska employees and I think it clarifies the bill. I would urge the

adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion on the McFarland amendment, Senator Hall, did you care to discuss the amendment?

SENATOR HALL: Yes, thank you, Mr. President and members, I rise in support of Senator McFarland's amendment to LB 437 as well in support of the bill. The amendment is basically a clarification of the bill so that it cannot be misconstrued to believe that a company that would have holdings outside the State of Nebraska or enterprises outside the State of Nebraska would be required to use that total number of employees in determining whether they had more or less at the time of application under the Investment Growth Act. So the amendment is one that I support wholeheartedly and I think we should adopt to the bill. But LB 347 in itself is a measure that, as it was discussed in the Revenue Committee, basically I think the committee felt that this was really nothing more than a technical correction to the 775 bill, that all LB 437 did was put into place the intent of the Legislature, the desire that through the passage of the Investment and Growth Act, that jobs be created. We understood that there was a tremendous investment made by some of these companies, but also we expected that jobs be the other side of that equation. We gave away some tax breaks. We lured some of these companies to invest in Nebraska and we expected in return that jobs be created and at least maintained. And all LB 437 does is place in statute the fact that from this point forward, January 1 of 1989, that the jobs will be maintained and there was very modest opposition to the proposal. There were very few proponents as well because I think people took it for granted that this was a provision that was in the original bill as it was before the Legislature. So it was not something that shook up a lot of ruckus, but I think Senator McFarland has pointed out the importance that LB 437 will have with regard to the issue of the maintenance of jobs in Nebraska. I think it's important that we allow for some of these companies to make investments, but it's also important that we require them to maintain, at least at current levels, the number of employees that they have. If you'll look at some of the handouts that Senator McFarland did pass you, I think it clearly states that there was surprise on part of the Revenue Department as well as the administration and I think the Legislature, that as many companies would take advantage of this investment option without the creation of jobs. I think the one article states that of the \$1.1 billion from the first 75 companies that applied for

these applications, more than 25 percent of those were applying under the investment provision that did not create jobs. Most of these companies maintain their current level of employees or will increase it over a period of years, but I think it's important that we clearly state that that is one of the priorities for the application under this program and I think that LB 437, as Senator McFarland has it before us and with the McFarland amendment, clearly spells that out and does nothing more than clarify the intent of the Legislature and balances the equation with regard to investment, tax break and jobs. And we need to make sure that we retain those jobs at least, and I'm sure with the investment that many of these companies are going to make, the retention of jobs will be there and clearly the creation of additional jobs will follow close behind. And with that, I would support Senator McFarland's amendment and urge the body to do as well and then advance LB 437 on to Select File. Thank you, Mr. President.

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

SENATOR LANDIS: Mr. Speaker, members of the Legislature, there is an old Hebrew word, "shibboleth" that has worked its way into our language. Contemporarily it means a slogan or phrase, one that's common to a group, a special group. Originally the word shibboleth meant a password or a code word used at the guard stations of armies and the Hebrews would have a special sacred word that they would say that was specially a part of their religion that would recognize them as one of the troops that were protected by part of the army. And the shibboleth now means just sort of a sacred slogan, a way of distinguishing one group from another. In the Legislature we have developed a shibboleth around 775 and 772 and 270 and that is you don't change this package. That's become sort of a shibboleth for the last couple of years. And yet something happened this year in the Revenue Committee, not on this bill, but I want to take you over to LB 335, a bill that Senator Korshoj has, Senator Rogers has and it is one of their priorities. In that bill is a provision on averaging the requirements for LB 270 tax credits. These are the smaller tax credits, a \$1,000 tax credit, the \$100,000 of investment and the two employees that triggers this tax credit. What we found out was we passed LB 270 and we put in language that the Department of Revenue interpreted to mean you had to have that \$100,000 for the entire year. You had to have those and two employees for the entire year and this year a

bunch of business groups came in and said, no, no, no, that's not what was meant, that wasn't our intention. We've got to change LB 270. We've got to allow for an averaging system that would permit somebody to have less than for the full year but who makes that kind of investment if they make that investment in that year, they ought to be able to get the tax credit. The Revenue Committee went right along with them. The provision is out, it's in Frank Korshoj's bill. It is up here for consideration and there isn't a dissenting vote in the Revenue Committee on that issue. What was the underlying theme? We hadn't captured the intention of the body with the language. So the shibboleth don't change 775, don't change 270, got broken. Why did it get broken? Because we hadn't captured sufficiently the intention of the body with the language. We made it too hard to get the tax credit and the business groups came in and said, please, change 270. And the shibboleth was broken. Well now the very same day Jim McFarland brought his bill, 437, in and he said, you know what, the language of the bill didn't capture the intention of the body. And having just the moment before passed out of committee the idea that, in fact, the language hadn't captured the intent and made the tax credits easier to get in 270, the committee said, that's right, that's right. Jim McFarland has landed an effective and consistent argument here. We didn't mean to give people tax credits for reducing jobs, did we? No, there isn't a person in this body who voted for 775, and I'm one of them who voted to give tax credits to businesses who reduced jobs. That wasn't our intention, that wasn't our desire, that was never spoken on the floor nor was it by the administration. And the point and the time has come to say, you're right, we didn't mean to do that and we're going to make the correction just as we're about to make the correction in making the tax credits easier to get...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...in 270. You've got to play fair here. You've got to go back to the original intent and live by it and the intent of 775 was to expand jobs, not to contract. I'm going to vote for 437. I urge the body to do the same.

SPEAKER BARRETT: Thank you. On the McFarland amendment to the bill, a number of lights. Senator Elmer, would you care to speak to the amendment or to the bill?

SENATOR ELMER: I think that my questions are germane to the

amendment as well as the bill.

SPEAKER BARRETT: Thank you.

SENATOR ELMER: Would Senator McFarland yield to a question, please?

SPEAKER BARRETT: Senator McFarland.

SENATOR MCFARLAND: Sure be glad to, thank you.

SENATOR ELMER: I'm sure as all of you realize, companies large enough to take advantage of the 775 provisions are often families of many, many corporations. Would this bill apply to the entire family or each individual corporate member of a larger corporation?

SENATOR MCFARLAND: Senator Elmer, I read...thank you for the question. As I read 775 it talks about the taxpayer making the application and the taxpayer is the one that has to pay the refund if, in fact, they don't qualify or whatever. My understanding is whichever corporation, how they applied as the taxpayer in their application would be the entity that would be required to disclose how many employees they have in their base year, full-time employees. And so if, for example, you have a subcorporation that applies for the tax credits, then the judgment on the total number of employees would be the total number of employees within that subcorporation.

SENATOR ELMER: Okay, thank you very much.

SENATOR MCFARLAND: If you have a large corporation and they are the taxpayer that applies, it would apply to the large corporation but only to the Nebraska employees.

SENATOR ELMER: Thank you. And one of the other things I think we need to think about when we're talking about this, as technologies evolve it becomes necessary for companies to change the method in which they manufacture or deliver their services. Sometimes this means going to robotic technologies and displaces some workers from one part of their business into another part. I think we should think very seriously about how we can retain businesses in this state who are going through those technological advances within their companies. Instead of going to a state where we have similar type incentives, perhaps when

they make these changes they would make those changes within Nebraska instead of going to another state to do it, and I have reservations about making this change in light of those ongoing growth type and revenue enhancing projects that these companies go through, and that will end my statement, thank you.

SPEAKER BARRETT: Thank you. Senator Hefner, would you care to discuss the amendment, Senator Ashford on deck.

SENATOR HEFNER: Mr. President and members of the body, I rise to support the amendment because I feel that we need some clarification there. Also, I voted the bill out of committee and some of you who have asked me, well how come you did that because you're a strong booster of LB 775 and also 270? But I feel that some of these companies are taking advantage of our program and, in fact, Senator McFarland passed some news clippings out that show, that have shown us that two of them have did that. Well, what this bill would do, this would say that you need to keep your average number of employees up to that what you started with when you received the incentive or your tax credit. And I don't think it was this body's intent, at least it wasn't my intent to do that. What we wanted to do was pass a bill that would create jobs because when we create jobs these employees pay sales tax, they pay income tax and they pay property tax and this is how we're going to pay or how at least we're going to try to raise enough money so that we can give these tax incentives. I don't know whether I'll support the bill all the way through yet, but I feel that we need to have this bill before this body and each of us express our opinions on what we think we passed a couple of years ago. I think that we need to voice our opinions and I would hope that we'd have a good discussion on this bill and so I'm going to support the amendment. I think we need the amendment on the bill and then go from there.

SPEAKER BARRETT: Senator Ashford, on the amendment.

SENATOR ASHFORD: Yes, thank you, I'll talk to the amendment at this point and the bill later. Mr. President and members, I will second what Senator Hefner has said and Senator Landis as well, that Senator McFarland has brought to the body I think a...what is a needed dialogue on the effect of LB 775. I maybe take a little bit of a different view towards 775 than Senator McFarland and I, like Senator Hefner, am not sure what I'm going to do on this bill as it goes through the legislative process.

I look upon 775 and I'm looking at it very parochially. I'm a lifelong resident of Omaha and I saw what happened to my city in the late sixties and early seventies as businesses pulled out of Omaha, as businesses pulled out of downtown Omaha, as the stockyards became less and less of a factor and it was a sad occasion for me. I remember we had a family business in downtown Omaha for 90 years and in the late sixties all that was really left was the Job Corps, Brandeis, Nebraska (inaudible) Company and Union Pacific. Everybody else is pretty much gone and a few banks and it was a very, very sad thing for me to witness because of the involvement that personally my family had had in Omaha for so many years. What has happened in Omaha in the last couple of years I think can be characterized as being a boom. Omaha now is growing. Downtown Omaha is beginning to come alive again. People are working in Omaha and I believe that, at least for my city, it's good. And I also remember my Nebraska history well enough to know that there really wouldn't have been an Omaha had there not been ranchers and farmers in Nebraska that used the banks in Omaha and for their transactions that they did in the 1880s and nineties. So I do look at Nebraska as a whole and as Omaha is a part of that whole. So I look at Senator McFarland's bill and suggest to him that I am a supporter of LB 775 and I'm gratified by what has happened and the investment that has been made in Omaha and in the rest of Nebraska. But I also believe as Senator Landis suggests that there is an issue here that needs to be addressed. I certainly would not fault Union Pacific Railroad or Mutual of Omaha for taking advantage of LB 775 and also reducing the numbers of employees. I am convinced from talking to these employers that certainly in the case of Union Pacific that business decisions had been made early on move the yards out of Omaha to another location, that Mutual of Omaha was going through structural changes and business changes that were occurring and had occurred over a period of years and I am gratified, quite frankly, to see the changes that have been made to the positive with Mutual of Omaha and Union Pacific Railroads and certainly with U S West and the investment that they are making because I think it helps all of us as a state when businesses continue to grow in Nebraska and not move out. And I also believe in the investment portion of LB 775. You could see what happened with the stockyards and other industries in Omaha when they failed to invest in new equipment and to modernize. What happened is, the businesses dried up, moved out of Nebraska and moved elsewhere, so I believe in the investment aspect of LB 775 as well. We're also competing with other states that don't really have

employment criteria in their economic incentive programs. Iowa doesn't...

SPEAKER BARRETT: One minute.

SENATOR ASHFORD: ...and most other states don't. So we actually, in having an employment criteria, have been in many respects more restrictive than many other states. Having said all that, I'll support the McFarland amendment and I'll listen closely to the arguments on the bill. I hope there are some good discussion on the business aspects and the impact that this will have on business in Nebraska and I appreciate the debate. I think it needs to be had and with that, I'll just support the amendment and listen to the debate on the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator McFarland.

SENATOR MCFARLAND: Mr. Speaker, I'd respectfully call the question at this time.

SPEAKER BARRETT: Senator McFarland moves the previous question. Do I see five hands? I do. Those in favor of ceasing debate please vote aye, opposed nay. Shall debate cease? Please record.

CLERK: 25 ayes, 8 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator McFarland, to close. Senator Schmit.

SENATOR SCHMIT: May I raise an objection, please? I believe all of the debate has been in support of the amendment and...

SPEAKER BARRETT: Senator Schmit, we were closing. We are calling for a closing. I think...

SENATOR SCHMIT: I tried to get your attention, Mr. Speaker.

SPEAKER BARRETT: The question again was what, untimeliness or...?

SENATOR SCHMIT: No, all of the arguments on the amendment were in support of the amendment, Mr. Speaker. I believe there are some very valid arguments that ought to be made against the amendment and I object to the proposal to close debate.

SPEAKER BARRETT: The objection is so stated and I think the objection should have been stated earlier and I'm sorry if I didn't recognize you. I would at this point recognize Senator McFarland to close. Thank you.

SENATOR MCFARLAND: Thank you, Mr. Speaker. I'd welcome Senator Schmit's comments on the bill. I know there may be a few people that have reservations about the bill and certainly that may be legitimate and I hope that after this amendment, assuming it is added, we can have that full discussion on the bill itself. The amendment, however, I think is something that if you look at it is a very reasonable and actually clarifies the intent of the bill. It addresses the concerns of some of the people who had, in fact, expressed reservations about the bill. Such people as Senator Ashford, such people as Senator Hefner who indeed have supported LB 775 in the past and have been reluctant to make any changes in it. But the concerns that were expressed was, what exactly is meant by average number of employees and will that apply just to Nebraska employees or to employees out of the state for corporations that have employees across the nation? The amendment itself, I think, addresses those concerns. It actually clarifies, specifies that what we're talking about is full-time employees that are hired and continue to be employed by the taxpayer that applies for the tax credits. It also applies to only Nebraska employees. It doesn't apply to employees in other states because that is what we're really intending here is to keep the jobs of Nebraska employees within the state. So I will ask that you adopt the amendment. Then we can certainly debate the merits of the bill itself and debate whether this is something that needs to be done. I sincerely think that we need to limit tax credits only to corporations and companies that maintain an employment level within our state. But as I said, I think that can be done later. I thank the Revenue Committee for their support and I thank the senators who spoke up and gave their kind comments about supporting the amendment and were quite honest and said they may have reservations about the bill and want further debate on it, and I look forward to the debate, assuming the amendment was added. I would ask you respectfully that you add the amendment, then certainly I would like to hear what Senator Schmit has to say about the bill. I'd like to hear what...or perhaps other members of the Revenue Committee, the three members who may not have voted to advance it out of committee would have to say and I would like to hear what other people would have to say or

questions they may have to ask me because I would be glad to respond. So I would just ask you respectfully to adopt the amendment and then we can debate the philosophy and the implications and the consequences of this bill if it is enacted. Thank you.

SPEAKER BARRETT: Thank you. You've heard the closing and the question is the adoption of the McFarland amendment to LB 437. All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 26 ayes, 1 nay, Mr. President, on adoption of Senator McFarland's amendment.

SPEAKER BARRETT: The amendment is adopted. Motion on the desk.

CLERK: Mr. President, Senator Wesely would move to amend the bill. Senator, this is your amendment on page 1219 of the Journal.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members, I'm going to let you know in just a little bit that you don't have to particularly address that amendment, but I do want to address the bill itself and I've been waiting for that opportunity. But the amendment that I did file deals with the issue of accountability and disclosure of the cost and benefits of LB 775 and it's similar to an issue that was in LB 432, I believe it was, and we talked about it about a week ago. Let me, before I get into that though, just point out what the attempt is here in both Senator McFarland's bill and the amendment that I will eventually be offering to this bill, and that's the bottom line of accountability. You know, yesterday, if you recall, I got up and talked about the Indian remains bill, LB 340, and its advancement, and I said, you know, this is a very important bill, very difficult bill and we spent a lot of time on it and I think advancing the bill was the thing to do but there were questions that I had and I think everybody else had about that bill and it will take probably some more review and then probably some experience to know just what those problems are. And once we identify those problems we need to not be afraid to go back in and address them and correct them. And I was in part thinking about LB 775 when I made those comments yesterday on that piece of legislation because we fought and we struggled and

we argued over LB 775 a couple of years ago and it was one of the worst experiences I think any of us in the body had ever had and in my 11 years here in the Legislature. It tore apart people. It tore friends apart, it tore individuals apart within themselves as they thought about the issues and the conflicting demands that were being placed on them as ConAgra threatened to leave the state, as other businesses joined forces with ConAgra as they all said, circle the wagons, boys, if we don't get what we want, we're out of here. And as we fought with that struggle as the economy was in shambles through the ag crisis and the other problems that we had in Nebraska, we finally, eventually, many of us with concerns, advanced and passed LB 775. Now I was one of those people. I voted for the bill. Senator Ashford talked about this. It has had a dynamic impact on a few companies in Omaha and, of course, across the state there are many companies that have applied and received the breaks. The question is, how many would have qualified and done the job and created the investment anyway. But, nevertheless, we were in a crisis and we reacted to that crisis. And then after we passed that bill, I've dedicated myself to reviewing its impacts and dedicated myself to understanding its problems and its good points and its bad points and the conclusion I come down to is, LB 775 ought to remain in some form in our laws. At the same time, it ought to be corrected where errors are found and one of those errors is being addressed by LB 437 by Senator McFarland. One of those errors is that we have had businesses applying for and receiving these credits and then cutting jobs. I also find in the amendment that I'm offering eventually to this bill, that the other flaw in this legislation is the accountability, that we have not provided for an accounting to the taxpayers of the state of what they are getting back for the investment they make through the credits that they provide under LB 775. And so I think those two flaws are the two things we need to address in this session in 1989 and there are further flaws that will need to be addressed next year and following years as we try to correct the problems with this piece of legislation, a very important piece of legislation. But for right now, I would like to ask that my amendment be withdrawn. I'm going to support Senator McFarland and further address his bill, but I think in fairness to Senator McFarland, and he and I have discussed this, we want to see a direct vote on his particular proposal so that we can address the issue of jobs and its maintenance and not the loss of jobs under LB 775 and I would want to address that later on the bill. But rather than cloud the issue by interjecting the disclosure and accountability provisions I will wait to

offer that amendment on Select File with the intent that this bill be advanced at that point and bring up the issues that address that particular question. So, Mr. Speaker, I would withdraw this amendment at this time.

SPEAKER BARRETT: Thank you. It is withdrawn. Back to the advancement of the bill, Senator Schmit, please, followed by Senator Wesely and Senator Hannibal.

SENATOR SCHMIT: Mr. President and members, it seems that more and more this year I find myself in somewhat of a minority position on a number of bills and even more strangely, I find myself in a position where I, in this particular instance, I might even be in opposition to the bill because of some points I want to make here today, notwithstanding the good arguments that have been made in support of the amendment and the bill. I hope that the amendment is properly drawn. I'm not sure that it is, but my principal concerns are these. Number one, businesses do not always follow a steady course and a course in progress. Businesses, as individuals, frequently have reverses. I have a question that I think we ought to raise here today because as I well remember that when the freight train was roaring with engineer Vard Johnson at the helm in 1987, no objections were excepted to any of the arguments which Vard made. And today, again, we're saying well we never intended, we never intended that a business would be rewarded for not creating jobs and I would probably go along with that for the most part. The point I want to make here is this, that suppose, as Senator Ashford made a point of, that because of some event that takes place, a business suffers a reverse, are we going to compound that business's problems then by removing from that business the tax breaks which we had originally given to it? Senator Barrett can tell you of the problems that developed in Lexington when they closed the New Holland plant out there and, of course, now the resurging business climate because of the opening of that plant with IBP. But many businesses that did a lot of business with New Holland suddenly found themselves in serious trouble. We found the same thing in Schuyler, Nebraska, and Senator Schellpeper can tell you, when they closed the packing house there. Many businesses that were companion businesses of that plant suffered severe reverses. And certainly it could not be expected that those businesses then could maintain their workforce. Are we going to doubly penalize that business because of that fact? I'd point out another thing, you all recall a few years ago when we had a lot of surplus crops and

there was a large hue and cry about how we were destroying the fragile soils in the Sandhills and as a result of animosities, somewhat locally, somewhat at a federal level, there was a move to discourage irrigation in certain areas. And companies which had been very dominant in their fields suddenly found themselves upon hard times because of the action of the federal government. Well I can go on and on and on and I can recite many more. The question I want to raise here, and I think certainly it ought to be discussed, and there is a difference, there is a vast difference in a company which sets out to deliberately reduce its workforce by virtue of automation, new technology, et cetera, and one which has to reduce its workforce for other reasons. On the other hand, are we going to penalize a company from accepting new technology that does result in fewer employees just in order to maintain the tax breaks? It's kind of interesting, each time we, as government people, get our oar in the water while we pull the boat forward, someone else's relative position perhaps becomes a little more weak. I think we have to recognize that and we ought not to forget it. Senator Brad Ashford mentioned the boom in Omaha. I would suggest the boom in Omaha would be more of a 22 pop...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...if it were not for the federal expenditures at Offutt and some of the other areas in the city and, of course, the expenditure of state funds and the state investment in that area and, of course, along with it also the federally subsidized housing boom which is going on in that community. We are going to hear more about that at a later date I am sure, and there will be plenty of people who say it is not federally subsidized, that the S & Ls are paying a fair rate. I beg to differ. But the point I want to make is this, that many times by adverse action of a government we impact upon a business in a way which is detrimental to that business. Are we then going to take one more swipe at that business with this bill and say because of the fact that you have reduced your employees, we will now pull that tax break? Are we then, in effect, making the weak weaker, the strong stronger? Are we reducing competition in an area where competition may become vital and be very, very important. I am deeply concerned as I watch the mergers among companies today that we are marching down a path where competition in the business community is not going to be to the best interest of the consumer and to the extent...

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: ...that major companies can take advantage of these kind of bills while the small ones can't, are we going to aggravate that situation? I beg to you to look at the bill very carefully.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker and members, I would rise in support of this legislation and be very happy to discuss a number of the topics that Senator Schmit and others have raised about it. And I want to commend Senator McFarland for continuing to pursue this issue. But first let's recognize the situation that we're in. If you saw the recent story about lobbying last year in the Nebraska Legislature, that the second most amount of money spent lobbying was for jobs for Nebraska to oppose Senator McFarland and my and Senator Korshoj's efforts to try and modify LB 775. We'll be interested to see what sort of money is spent this year to block LB 437 and to block my piece of legislation that will be coming up later, but if nothing else, LB 775 has created a lot of jobs in the lobbying corps and are at least glad to contribute a bit to that job creation activity although I'm not sure they are getting any breaks out of that. But we have definitely got a situation where there are those that are benefitting tremendously from that piece of legislation, almost \$400 million is now estimated to be tied up in potential tax revenue loss under a study that we recently did by Senator Korshoj and my office. We're talking about a \$400 million piece of legislation and we're here now just to ask for a little bit of understanding that when those tax credits go out that that trickle down economic concept that motivated the passage of that bill, the trickle down of helping our wealthiest, most prosperous, most successful corporations, helping them get the tax breaks in exchange for, for the rest of the folks out here, the rest of us out in the state, what we get out of it is the jobs. That's the trickle down concept and what is interesting is that not a lot of trickle down occurs when you have no jobs, there is no trickle down. You don't have the jobs that the rest of us are promised to receive and it's absolutely the trade-off that we adopted that piece of legislation with that understanding because clearly if you're going to go into those corporations that are the biggest and the strongest and most successful, they are the ones with the investment power with the ability to put the money in and to create those jobs.

Then what we're hoping for is jobs out of that for the rest of the people and it's just not going to happen unless we understand, as Senator McFarland tries to do with the bill, that we expect those jobs to be there under any of the circumstances. Now there are jobs being created, I'm not saying there aren't, but at the same time we have lost jobs and people seem to think that that's all right. I don't think it is. But what is interesting, Senator Schmit raised this point, the whole convoluted concept of this tax incentive is really opened for you to think about, as Senator Schmit made the comment. Okay, a strong company makes the investment and supposedly creates the jobs and then they have hard times and they have to cut back on the jobs. And so in those hard times they go back on the tax rolls under this piece of legislation. That's not a very good situation to be in. In good times we give them a tax break, in bad times we tax them. Well, that's the whole base and the nugget, the gist of LB 775, that the strongest, most powerful, most successful corporations receive the tax breaks. But those other corporations, the other 25,000 or however other many businesses we have across the state, and it's somewhere in that range, the ones that are struggling and working and striving to try and maintain themselves and maybe even pick up a job or two out there, but don't have the ability to really have the strength that they would like to see. Now those people, they pay taxes. We tax those corporations. We tax the little guy out there, but for the biggest, the strongest, most successful we provide the breaks. Now that's an interesting concept and Senator Schmit has outlined and laid bare for all of us to see that that's the whole concept of LB 775. And that's why you get back to the whole point of tax breaks and tax incentives. Now I think tax breaks and tax incentives have an important role to play and Senator Hannibal knows this and others do as well, but I kind of feel a little bit responsible for LB 775 because back in '82, '83, and I'll get into this with the next bill up, I introduced the first jobs tax credit bill...

SPEAKER BARRETT: One minute.

SENATOR WESELY: ...and we started the ball rolling and unfortunately the concept that we started out with got multiplied and multiplied into a tremendous tax break under LB 775, much beyond what we had anticipated. But clearly, in my estimation, if we're going to provide for these larger corporations the tax incentives, for the rest of us the trade-off is that we have jobs out of it, that that's really

what we're expecting. And I think the accountability, the factor that I mentioned earlier, if anything, what Senator McFarland and what I am saying is there needs to be an accountability for this bill, that the public needs to know the cost and the benefits of the bill. The public needs to know that they are getting jobs out of the bill and I think holding those people that supported the bill in the past to be accountable and to be responsible and to meet that expectation is not unreasonable, and so I'd ask all of you to support LB 437 and to allow us to proceed with this legislation, recognizing that there are flaws in the original bill and even perhaps some flaws in this concept, but at the same time it does correct a misunderstanding I think occurred in the original bill.

SPEAKER BARRETT: Thank you. Senator Hannibal.

SENATOR HANNIBAL: Thank you, Mr. Speaker and members. I'm going to be taking probably an unpopular position also because I am not going to be supporting LB 437. I do commend Senator McFarland for trying to focus the bill a little bit by changing some language in there on the amendment and I think it was a justifiable amendment. Senator Landis did make a comment that I thought was very good and Senator Schmit alluded to that and that is, when we were passing 775, those of us that did support it and voted for it did not think to ourselves, yes, we're going to vote for 775 because we want to give tax breaks to people who are going to cut jobs. Obviously, we didn't do that. But this amendment, this bill, LB 437, I really have a question as to whether it is going to do anything towards the goal that Senator McFarland has purported to us. Basically what Senator McFarland is saying is, we are only going to give those tax breaks to those people who create, net new jobs. Now that sounds fairly laudable as far as I'm concerned and it sounds like it's a pretty good goal and it's very difficult to argue against. But I try to think to myself and look at, well what if this part of the bill was part of LB 775 some two years ago when we passed it? What would have happened? Would ConAgra have stayed, would they have left? Would Union Pacific have laid off the jobs, would they have applied for these things, would they have started some things? Would Mutual of Omaha done anything different? Would Goodyear have done anything different, some major areas that Senator McFarland has brought up. And my question comes down, that maybe everything would have changed. I think that it's very possible and obviously as Senator Wesely has pointed out, it's very difficult to know what would have

happened. I will be, by the way, opposing Senator Wesely's amendment when it comes to this bill, if it comes on Select File because basically what he is trying to do and, again, a very laudable goal. He is trying to put some reporting requirements in that can't be done because it's going to be requiring a subjective guess as to what would have happened without or what would have happened in case and it is going to be subjective. There is no actuarial way that we can come to that. So I look at Goodyear and I say, well, they invested \$20 million, no new jobs and they apply for the the breaks and they get robotics in and they stay here. Now all of a sudden we hear they are adding jobs, never contemplated. They are going to do that. I look at Mutual of Omaha as Senator Ashford had pointed out, say, yes, they applied for these breaks, they put all this computer stuff in here, they get the tax breaks and they lay off 1,100 jobs. Senator Ashford pointed out that was going to happen anyway. Now is it wrong for us to give those things? I look at Union Pacific and, yes, they get these big breaks because they have asked for this computer freight yard center, this dispatch center, 500 new jobs, but they lay off 800, so we penalize them for that. Obviously, as Senator Ashford pointed out, that was going to happen anyway. That was because of a merger completely unrelated to 775. It was because of old freight yards in one place, new freight yards through a merger in another place, it had to happen. But I can tell you I believe that the things that we have had happen that were good because of LB 775 would not have happened if this part of the bill were part of 775. Now that's a belief. Obviously I can't prove that. I can say to you very clearly though that that cannot be proved on the other side and no amount of accountability right now through Senator Wesely's amendment or no amount of accountability after this passage is going to really be able to tell us that. I believe in the concept of LB 775 and I still do and I think...

SPEAKER BARRETT: One minute.

SENATOR HANNIBAL: ...I think I can say with a lot of confidence that the ConAgra issue would not have stayed where it is right now, the Union Pacific issue with the 500 new jobs would not be in Omaha if this part of the legislation was in LB 775. Now if the bottom line is economic growth and the bottom line is strength and jobs, we have got, whether it would have happened anyway or not we don't know, but we have got \$2 billion worth of investment in this state this long term, long term. I think if you put this as a part of LB 775 you forestall that, and

remember, we're only talking about prospective. We're not affecting those people back there. We're talking about new opportunities that probably will not happen. I believe this is a bad thing to put on 775. I realize it's very unpopular to take this position, but I believe that 775 is working and the strength of the state is growing because of it and I will oppose this legislation.

SPEAKER BARRETT: Thank you. I'm pleased to take a moment to introduce guests of Senator Byars under the south balcony, George and Katy Kilpatrick from Beatrice are with us. They happen to be the parents of Senator Hall's LA, George Kilpatrick. George and Katy, please stand and be recognized. We're glad to have you with us. An amendment on the desk, Mr. Clerk.

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

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I'd ask the Clerk to read the amendment if he would, please.

CLERK: Mr. President, on page 7, line 1 after the "period" insert the following new language: Except that if at the end of the tax period the average number of jobs shall show an increase above those required by law.

SENATOR SCHMIT: Mr. President and members, obviously I've just drafted this amendment for an opportunity to speak and I do want you, however, to think about it. As I indicated earlier, many times a business faces adversity and I just noticed this morning Lindsay Manufacturing, manufacture pivots, are looking for a big year. But a few years ago because of a combination of circumstances most of the pivot manufacturers were almost shut down if not out of business, in fact, would have been out of business had it not been for the overseas work. I'm trying to make a point here that I tried to make earlier and I probably didn't do a very good job of it. But I am trying to point out that we have a situation in the state that we have created through tax incentives which does, in fact, give to certain groups a substantial advantage. I want to be certain that if a business happens to fall upon hard times and if that business happens to, for a period of time, have to reduce its workforce,

that the business, if it does survive and comes back and rehires a group of people, might then be available to apply for the tax benefit they lost during that year that they were down, or the two years they were down, if at the end of the tax period the average number of jobs created is sufficient for the entire year, for the entire period. That's not saying it very well, but I think you understand what I'm trying to talk about. Take a look at agriculture. A few years ago we were flying with the geese and then we were knocked down during the early eighties and the middle eighties. Now agriculture has taken off again like a homesick angel and there are those who predict it will never ever stop. I happen to believe otherwise. I happen to believe that every time a cycle goes up it eventually comes back down. I think also, and I will offer an amendment to this bill on Select File that will provide that the benefits be available to agriculture. I don't know, since Vard Johnson is not here, I do not know who the principal proponent of the bill is. Maybe Senator Landis could answer the question for us. Can you tell me, Senator Landis, because I do not have the transcript here when I asked Vard the same question, what was the principal reason for excluding agriculture from the benefits of 775? Do you remember?

SENATOR LANDIS: I do not.

SENATOR SCHMIT: Is there any reason why, if an agriculturally oriented business were to qualify otherwise, it should not be able to qualify for the tax benefits of 775?

SENATOR LANDIS: Senator Korshoj has an active memory and is prepared to respond.

SENATOR KORSHOJ: Yes, I can answer that, Mr. Speaker and members. I went down the aisle and asked Vard Johnson why did you take agriculture out of it? And it was a very simple answer. He says, Marty Strange didn't want it in there. That was the answer he gave me. Thank you.

SENATOR SCHMIT: Well actually, some day Marty ought to make man of the year on the front page of the World-Herald Magazine of the Midlands because he probably has had more influence on agriculture, either adversely or otherwise, than most of us who have been in agriculture for a long time. And I don't say that in a negative manner. I think he has had and has had some positive effect, factly, but the point I want to make is this.

It's kind of strange, apparently, maybe Mr. Strange was not in favor of encouraging the establishment of large feedlots in Nebraska. I just want to make another comparison. I asked Senator Vard Johnson, what was the comparative value of a new job created under 270 as one...as to one created under 775? And it appeared to me that it was about, if a new job under 775 was worth a dollar, that a new job under 270 was worth about seven cents. Vard said, no, Loran, you're a little high, it's really worth about a nickel. Now I understand you're trying to correct that this year. I did see a news item some time ago which pointed out that a new job by someone's standards under 775 costs \$14,000 in tax breaks whereas a new job under 270 costs about 1,200. So much for the poor man's bill. The point I want to make is this. I did not support the bill. I hope the bill continues to work as Senator Hannibal so glowingly says it is working. I hope that it does not, that it does not tilt the scales more than necessary toward the large and powerful and affluent and rich corporations as opposed to the small businesses. I oppose the portion of the bill which did not let it apply to the family owned business. I think that was wrong. The point I want to make is this, that I think it is high time that we recognize that every time we pass one of these bills, we have the law of unintended consequences come into play. That's why you're here today. That's why you're arguing the merits of LB 437, because no one would listen to the arguments on 775 and no one is going to listen very much today to my argument on 437 because they say, oh, my gosh, we never expected Mutual to reduce their workforce and be enriched. I'm going to ask you a question. How many of you want your health insurance to continue to rise? Mutual is a provider of health insurance, competitor to Blue Cross and Blue Shield, by the way, but nonetheless, a very good company. Are we going to say that they must keep those employees on board in order to qualify for the tax breaks even if it results in increased costs of health insurance? I think not. Are we going to say that because of the use of computers and technology that replaces a bunch of people we've got to keep them employed regardless just to pick up the tax breaks? I don't know, I didn't draft the bill. I wasn't a proponent. I'm asking the questions of the proponents. Now I'm asking these questions again today because I want to be certain that you do not aggravate a situation which today is already not very good in some instances. I think it is important that we ask ourselves as we move on this bill, is it doing what we want it to do? If it is doing what we wanted it to do, then we should make changes slowly. Sure, I could ask a

question of Senator McFarland, are we going to go back and get a refund from those companies who legally qualified under the bill? I don't suppose so. I would guess, as I pointed out to Senator Vard Johnson during the debate in 1987, that once the steer gets in the cornfield and has his stomach full of corn, it's a poor time to close the gate. Now we have already closed the gate, we're closing the gate here. Do we strike those companies who qualified and say from this point forward you get no more tax benefits? I don't know. Senator McFarland, what does your bill do in that regard?

SENATOR McFARLAND: I'm sorry, I was reading. What was the question again, Senator?

SENATOR SCHMIT: If the bill, as you have it drafted becomes law, and Mutual of Omaha, for example, does not qualify under this proposal, do we then go back and get a refund from that fine company for the tax breaks they have already earned? Do we shut off tax breaks from this point forward? Or have we, of necessity, allowed them to continue to benefit for the full period of time as outlined under the law in 1987?

SENATOR McFARLAND: I wish we could go back and get a refund but we can't. This bill would only apply for those applications after January 1 of 1989 and my understanding is Mutual of Omaha applied in '87 to get those tax credits. They have a contract with the Department of Revenue, that contract would have to be honored.

SENATOR SCHMIT: In other words then, for those companies, and I would wish you would go back and read the testimony, the transcripts of the debate on 775 when I made the exact statement, those companies whose accountants and actuaries are worth a pinch of salt...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...know how to take advantage of the full benefits of this bill and when the time comes when you want to close the gate, it's going to be too late. I congratulate those companies. I congratulate them. That's the reason they pay their executives a lot of money, those of us in agriculture ought to hire. I wish to gosh that those of us who are farmers could hire B.J. Scott. (phonetic) He has more intelligence as an older man than most of us do in the prime of our life and he

is a tremendous businessman and I admire him highly. I think if we could hire Mike Harper in agriculture, we'd have a lot of things done differently than we're having done today. But I just want to point out that perhaps the bill is not even necessary perhaps as Senator Hannibal has alluded because the majority of the companies who are going to be involved in the kind of activity which you are trying to prevent have, no doubt, already contracted with the state and we can't have any adverse impact on them.

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: Thank you, Mr. President. I ask to withdraw the amendment at this time.

SPEAKER BARRETT: Thank you. It is withdrawn. Back to the advancement of the bill and the speaking order is Senator Hall, followed by Senators Hartnett, Schellpeper and McFarland.

SENATOR HALL: Thank you, Mr. President and members. Again I rise in support of LB 437 and the advancement to E & R Initial. The bill does not penalize anyone as it's been stated and pointed out that the effective date is January 1 of 1989, so there would...and it is my understanding from talking to the Revenue Department, there are currently 12 companies that have applied since January 1 of 1989. What does the bill do? The bill says, look, you can't have fewer jobs at any point during that period of time that you are claiming tax credits that we have given you. And why have we given those to you? It is because you made an investment in your company. You made an investment in the state. You don't make an investment if you are a company on the edge. If you are a company that's worried or a company that is in trouble, you don't do that. And virtually three-quarters of the 775 applicants have created new jobs. The minimum requirement is the 3 million investment, the 30 jobs and then you've got the 10 million investment and the 100 jobs, and then you've got the Senator Wesely amendment that was the \$20 million investment and no jobs and that's fine, well and good, but what ought to go along with that is a provision that 437 allows us to do and says, look, we are going to require that you at least maintain the same number of jobs during that point in time that you collect those tax credits, simple understanding, simple intent for an investment and growth act, and the growth was in the area of jobs. It was also hopefully in the area of income as those jobs materialized and those

individuals paid income tax. You can't have the one without the other. I mean, the equation doesn't balance. You don't have invest...if you have investment and you have tax breaks without the third component, without those jobs to offset that tax break, you don't have an equation that balances. You don't come up with the solution to that problem, so you have to have the jobs in place. It is required. It is what those companies want to do and each and every one of them have...and the Mutual of Omaha example that has been talked about this morning clearly is a good example because Mutual of Omaha probably a year from now or two years from now will have more employees than they had prior to or at the time of their 775 application. That's not a problem for me. I understand those kinds of situations or those cycles that those companies go through. But during the point in time when they have fewer employees, they probably should not be allowed to have those tax credits if they apply after January 1 of 1989, a company. They've got 15 years in which to use those credits, they've got 15 years. This is not something that they have to use within a one or two or three-year period. They can use it over 15 years, they can take those credits. So there is time there for them to use those tax breaks. Actually, believe it or not, there are companies that are not going to use those credits right away. They've made the investment, they've created the jobs, but they have no need for those credits at this point in time. They are delaying them. They are putting them off, so it is not a situation where you have companies that are in trouble, that have hit some hard times. It's a situation where companies are doing extremely well and they are not even at this point taking their credits because they don't need them right now. So what is going to happen is you're going to see not the situation where companies are...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...who have fallen on hard times, invest \$20 million, there may be a few but clearly the folks who are going to use the provisions that we've offered in 775 are the folks that are clearly on a growth pattern and they are advancing their technology, they are adding to their workforce and they are going to capitalize on that through the Investment and Growth Act that we passed in 775 and that I supported, and I clearly support today. But I support it with the clarification that is in LB 437 that says, lock, it is important that we have jobs in this state and it is important that in order for you to take those credits, you retain those jobs here in this state.

We're trying to attract people here to create jobs. We ought to require people to keep those jobs in place in order to receive credits. It is clearly part of the equation that we can't lose sight of and we need to endorse it through LB 437. It is not new jobs, Senator Hannibal, it just says keep the ones that you have there, don't let your numbers fall down and if they do, you put off taking that credit until a point in time during that...

SPEAKER BARRETT: Time has expired.

SENATOR HALL: ...15-year window, your jobs go back up. That's not too much to ask. That is clearly part of the equation that has to be there and unless we don't require that through LB 437, I think we are not being fair to those other companies, those other companies, for example, that invested \$3 million and create the 30 jobs, those other companies that invested 10 million and create the 100 jobs. Those are the companies that you're cheating. Those are the ones...

SPEAKER BARRETT: Time has expired, Senator Hall.

SENATOR HALL: ...who are...when you're dealing with the \$20 million investment issue and no new jobs, the companies are the smaller companies, or the ones that are, I think, being discriminated against because they are going to keep those jobs. They've invested that money and they're going to create those new jobs. I would urge the body to advance LB 437 to basically, as I stated in my opening, to make a technical change to the 775 bill that we passed two years ago that just clarifies our intent and places our intent clearly in statute. Thank you, Mr. President.

SPEAKER BARRETT: The Chair is pleased to announce that Senator Robak has 49 fourth and sixth graders and their teacher visiting from Hyland Park Elementary in Columbus with us in the north balcony. Would you folks please stand and be recognized. Thank you for taking the time to visit with us this morning, we're glad you're here. Further discussion on the advancement of the bill? Senator Hartnett, followed by Senator Schellpeper and Senator Landis.

SENATOR HARTNETT: Mr. Speaker, members of the body, a few years ago we passed, I think, a very good piece of legislation in LB 775. We did something, I think, especially in the Omaha area where I live, we...I think the economy was on the rocks and I

think we spent, in the Revenue Committee at that time, which I served on at that time and still serve on, we spent many hours debating about...in the committee about the bill before we even brought it to the floor. And then we spent additional time on the floor. I want to commend Senator McFarland for bringing this bill to look at an issue that we had at that particular time. I think if we remember with LB 775 there was two major ingredients in it. One ingredient was the 30 million with 30 jobs. And I think that was the idea that was sold on us, that we would create more jobs within this state, that was the idea, more jobs, more jobs and they would simply...we give...help businesses. As an incentive to businesses they would create more jobs. The other part of the legislation was that 20 million jobs...20 million dollars and no jobs. I think that maybe, looking back at it now, maybe that was the mistake that we made as a body at that time. But I think we're going to have....We're trying to help a company in Lincoln, and I think they didn't qualify under this section, they qualified under the other section. But I think that maybe we have to look at this issue. I think the debate that we've had this morning is good on this issue. Whether this is the right approach or not, I do not know at this time. I voted it out of committee because I think it's something for the body to look at again, 775, and business incentive in this state. So, at this time, I'll support it at this stage. I'm not saying I'll support it down the road, but I think we...the debate has been good and I think we need to look at what we did with 775. Thank you.

SPEAKER BARRETT: Thank you. Senator Schellpeper.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members. I also rise to support 437. In my opinion this bill makes a bad bill that we passed in 1987 much better. I had a lot of problems with 775. I think that rural Nebraska has a lot of problems with 775. And I think that when you will pass this bill, or when we pass this bill you will see that you're not giving the incentives to companies that lay off employees, and that's what we need to do. There's several other things with 775 that need to be changed. But this is one step in the right direction. I don't see how any senator can go back to his district and say that he voted for a bill that would give tax incentives to a company that lays off employees. I think that this bill is a step in the right direction. We need to do some more, but like I say it's at least a step in the right direction. Thank you.

SPEAKER BARRETT: Senator Landis, further discussion on the advancement of the bill.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. Let's remember that this issue is now phrased prospectively. What principle will we live by, starting now and forward on these tax credits? What principle does this Legislature endorse for jobs, credits in 775? Senator McFarland is not going back and taking away credits from anybody, that's not what the language does. The question is now that we know how it works, now that we know what the language that we passed has meant to people, do we continue to endorse this unintended consequence? Is that our principle? Are we saying business, it makes no never mind what your employment is, if you make an investment in one of your project areas but close every place else, we'll give you a tax credit. Fair enough, that's what the body chooses to do. But Senator McFarland's bill, because it applies prospectively, asks us what we intend to live by in the future. Now I was here two years ago when we passed a bill at the urging of a group called Jobs for Nebraska. They're out in the Rotunda today. They spent \$103,000, \$103,000 persuading this body that 775 was a good bill. And the name of that group was not investments in Nebraska, it wasn't part of the project growth for Nebraska, it was, as Jerry Conway points out to me early this morning, Jobs for Nebraska. It was a clear, a clear statement that we were giving tax credits for people who were expanding job opportunities in Nebraska. And it hasn't come to pass. But Jobs for Nebraska is out in the Rotunda today, opposing 437. Apparently we don't define jobs the same way. Apparently that word must mean something different, either that or there's been sort of a violation of the truth in packaging code. Thank God it doesn't apply to lobbying, because in fact we would have a whole lot of criminal convictions. But in this case I think that when you have something called Jobs for Nebraska it ought to mean that. If I understand Senator Schmit's notion correctly, we have apparently a new rationale for 775. It's not revenue, which was the original notion, no, that's been killed. No, it's not jobs, it is if you take away tax credits from ailing companies, those ailing companies may go under. In other words 775 must be some kind of a network under failing companies. Once we've thrown them this life preserver we have to keep it there so that they won't go under. Some kind of a resuscitation device for people who are suffering economic adversity. Well, in that case whatever boundaries are left in

775, I mean anybody can come in apparently with an ailing company and say I ought to get a tax break, under Senator Schmit's theory, because that is what would justify Senator Schmit in allowing companies who are making reductions to continue to keep their tax credits. I think that policy is folly. The burden to get a tax break, because any tax break is a tax transference. The burden ought to be on the person getting the credit to justify its social value. We were persuaded to the social value of the creation of jobs was sufficient to transfer taxes away from these companies and to other people. It was a black eye to find out that taxes were being transferred to you and I...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...because of companies ability to adjust their employment practices from one side of the ledger to another, to get the tax credit, but then to reduce their jobs at the same time. That's a sham. And Jobs for Nebraska ought to be darned ashamed of themselves if they are in here asking for the continuation of this kind of black eye, given the massive expenditure of money they made and the representations they made two years ago. We need to set a clear policy for the future that we intend a narrow definition but that we intend to stand by the notion of jobs expansion for Nebraska and take that at its face value, not its sham or hoodwink definitions that we are now being urged upon by the lobby to continue to endorse by permitting 775's unintended consequences to remain.

SPEAKER BARRETT: Thank you. Senator McFarland, followed by Senator Hefner.

SENATOR MCFARLAND: Mr. President, I'd respectfully call the question.

SPEAKER BARRETT: The question has been called. Are there five hands? Are there five hands to close debate? Thank you. Shall debate now cease? All in favor vote aye, opposed nay. Shall debate cease? Have you all voted? Record, Mr. Clerk.

SENATOR MCFARLAND: Could I ask for a call of the house, Mr. Speaker.

SPEAKER BARRETT: Senator McFarland requests a call of the house. The question is, shall the house go under call. Those

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in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: 17 ayes, 2 nays to go under call, Mr. President.

SPEAKER BARRETT: Motion prevails, the house is under call. Members, please record your presence. Call in votes will be recognized to cease debate. Members, return to your seats and record your presence. The house is under call. Members outside the Chamber please return and record your presence. The question is, shall debate cease? Call in votes have been authorized.

ASSISTANT CLERK: Senator Beyer voting yes. Senator Smith voting yes. Senator Withem voting yes. Senator Nelson voting yes. Senator Abboud voting yes. Senator Peterson voting yes. Senator Scofield voting yes.

SPEAKER BARRETT: Record, please.

ASSISTANT CLERK: 26 ayes, 5 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator McFarland, for closing on the advancement of the bill. The call is not raised.

SENATOR MCFARLAND: Thank you, Mr. President. Thanks for the votes to cease debate. I think we've had a full discussion of this. It's a very simple bill, actually. It is saying to companies that apply for benefits and are receiving tax credits under 775 that if, in fact, you do eliminate jobs from the State of Nebraska then you just lose the tax credits. As a concept it's very simple and very fair. I think it is really consistent with the entire philosophy and the arguments that were generated in '87 when 775 was passed. It was supposed to be a jobs creation bill. Some people have said...raised the question, well do we want to penalize companies that may have a cycle, up and down? I really don't look at it as a penalty. I think that mischaracterizes it. In 775 what we were doing, it seems to me, we were saying we're going to give you a benefit, we're going to give you a tax credit benefit if, in fact, your jobs...your number of jobs increase in Nebraska. It seems to me that what this bill would do is, in effect, say if you decrease jobs then you lose that benefit, you lose that tax gift, in effect. I think....And it's just like the free market system is playing

and functioning as it should. I think I'm of the belief that the free market system works and that the less government interference in it the better. And in fact if a company lost jobs under this bill they would be in the same position if there had been no interference with some kind of a tax incentive process. They would just lose the benefit, something that they didn't have before anyway. They wouldn't have had it before if the system, the free enterprise, the complete free market had functioned the way it had before '87. The question is asked, what purpose would this bill serve now? It doesn't apply retrospect...or retroactively to companies that already have used the benefits, and that is true. I don't think it would be...I mean those companies applied with the understanding that 775 was in effect, they signed a contract with the Department of Revenue. I don't think it would be completely fair to go back and ask them to give up their tax credits that they are entitled to at this time under the contract. But what I would like to happen is for all future companies to be aware that that is a situation that exists, that when they make that application they know that they've got to keep their jobs at the same or increasing, or they just lose the tax credit. And I think that is a completely fair type of proposal to make to companies. If there are future Union Pacific Companies I would like them to be in the situation. Ask yourself what would UP have done had they known at the time that they were transferring 810 jobs out of state, had they known that they would lose their tax credits? And I'm hoping that they would have at least considered not eliminating those jobs, and that is the whole intent. We want to try to preserve jobs in Nebraska. The headline that I passed out, it says, Union Pacific eliminates 810 jobs, \$23.6 million payroll in Omaha. It left the state. LB 775 was in existence, it left anyway. If this bill had been in effect at least UP would have...Union Pacific would have been able to say, well, we've got to make these business decisions. We have received a benefit under 775 that we would not have received had not 775 been...not been in effect, but we've got to consider that we're going to lose this benefit if we move the jobs out of state. Hopefully that would give them some second thought, hopefully it would deter companies like that from eliminating jobs and would preserve the jobs in Nebraska. I have to be realistic and fair and honest and say I don't think it affected Union Pacific's decision one iota. They are a huge corporation. They are a multimillion dollar industry. They are one of the best railroads in the country. My father works for them, my uncle works for them, my brother, I've worked for them, cousins work

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for them. They are an excellent company, they always have been. They do a great job with the way that they operate their business,...

SPEAKER BARRETT: Thirty seconds.

SENATOR McFARLAND: ...and they've always been good. I don't think it would make effect upon them. But I think that for some companies it might. For some companies they would say, well let's keep the jobs here, let's maintain the tax credits, let's preserve those jobs. I don't think we should make the same mistake. We've had a lot of debate. We've only had two people that have really expressed reservations against the bill, Senators Hannibal and Schmit. I admire them for expressing their views, that's their perfect right to do it. The vast majority of senators who spoke on this bill, I think there were about eight or nine of us, all spoke in favor of it and the reason is that the arguments for this bill are...

SPEAKER BARRETT: Time.

SENATOR McFARLAND: ...in favor of it. And I would ask you not to vote according to what Jobs for Nebraska lobby dictates to you, but to vote on the merits of the bill, and I think if you do you'll vote in favor of it. Thank you very much. I urge you to advance it to Select File.

SPEAKER BARRETT: Thank you. Senator McFarland, would you like to check in, please.

SENATOR McFARLAND: I'd like a roll call vote, Mr. President.

SPEAKER BARRETT: Roll call vote has been requested. The question is the advancement of LB 437 to E & R Initial. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See pages 1367-68 of the Legislative Journal.) 16 ayes, 29 nays, Mr. President.

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

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: Thank you. Proceed then to LB 335.

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SENATOR ROGERS: Mr. President, body, I think we've had plenty of debate on this bill. I think everyone stands at ease now that they know what it means, what it will do for small towns, small communities out in rural Nebraska. I don't think that there is any need to explain it anymore. I just ask for the advancement of the bill.

SENATOR LAMB: Debate is ceased. The motion is to advance LB 335. All those in support vote aye, those opposed no. Have you all voted? Record, Mr. Clerk.

CLERK: 40 ayes, 1 nay, Mr. President, on the motion to advance LB 335.

SENATOR LAMB: LB 335 has been advanced. Anything on the desk, Mr. Clerk?

CLERK: Mr. President, I have amendments to be printed from Senator Smith to LB 780. and Senator Hartnett to LB 437. Attorneys General Opinion addressed to Senator Hartnett (re. LB 379) and an explanation of vote from Senator Kristensen. That's all that I have, Mr. President. (See pages 1370-73 of the Legislative Journal.)

SENATOR LAMB: Senator Hannibal, would you care to recess us over the lunch hour?

SENATOR HANNIBAL: I will, Mr. Speaker, Mr. Chairman. I would move we recess until one-thirty.

SENATOR LAMB: All those in favor say aye. We are recessed.

RECESS

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Roll call.

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

SPEAKER BARRETT: Any announcements?

CLERK: Nothing at this time, Mr. President.