

January 18, 1989

LB 53, 57, 123, 537-597
LR 8-12

Mr. President, new bill. (LBs 537-538. Read for the first time by title. See page 268 of the Legislative Journal.)

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: The Chair is pleased to announce that Senator Jacklyn Smith of Hastings has visiting the Legislature today Dr. Robert Schlock and 20 students from Hastings College, specifically, psychology and law class, in the east balcony, the rear balcony. Dr. Schlock, would you and your students please stand and be recognized by your Legislature. Thank you. We are pleased to have you visiting with us today. Also under the north balcony from David City High School, Senator Schmit announces the following guests, 8 students from David City High School with their teacher. Would you folks please stand and be recognized. Thank you for visiting. We are glad to have you. Mr. Clerk, more bill introductions, please.

CLERK: Mr. President, first of all, your Committee on Urban Affairs, whose Chair is Senator Hartnett, to whom was referred LB 53, instructs me to report the same back to the Legislature with the recommendation that it be advanced to General File; LB 57 General File; LB 123 General File, all signed by Senator Hartnett as Chair of the committee.

Mr. President, new bills. (LBs 539-557 read for the first time by title. See pages 269-72 the Legislative Journal.)

SENATOR HEFNER PRESIDING

SENATOR HEFNER: Mr. Clerk, do you have some more bills to introduce?

ASSISTANT CLERK: Yes, I do, Mr. President. (LBs 558-593 read for the first time by title. See pages 273-81 of the Legislative Journal.)

SENATOR HEFNER: Do you want to read the bills into the record?

CLERK: Yes, Mr. President, thank you. (LBs 594-597 read for the first time by title. See page 281 of the Legislative Journal.)

Mr. President, in addition to those items, I have new resolutions. (Read a brief explanation of LRs 8-12. See

February 27, 1989 LB 257, 335, 336, 436, 497, 532, 540
654, 670, 705, 800, 809

SPEAKER BARRETT: Thank you. You've heard the closing and the question is the advancement of LB 336. Those in favor please vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays on the advancement of 336,
Mr. President.

SPEAKER BARRETT: LB 336 is advanced. For the record,
Mr. Clerk.

CLERK: Mr. President, I have notice of hearing, appointment, gubernatorial conferee hearing by the General Affairs Committee, Mr. President.

Senator Pirsch has amendments to be printed to LB 257. (See page 886 of the Legislative Journal.)

Urban Affairs Committee whose Chair is Senator Hartnett reports LB 670 is indefinitely postponed and LB 800 as indefinitely postponed. (See page 886 of the Legislative Journal.)

Mr. President, Senators Goodrich, Nelson and Lowell Johnson would like to add their name to LB 809 as cc-introducer. (See page 887 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Hall, would you care to adjourn us until tomorrow morning, please.

SENATOR HALL: Mr. President, I would...as soon as we drop these on the Clerk's desk, is that possible? (laughter) My committee, what can I say? We could read those in I...

SPEAKER BARRETT: Any messages on the President's desk, Mr. Clerk?

CLERK: Mr. President, I have some late messages that have arrived. Your Committee on Revenue reports LB 705 to General File with amendments, LB 540 General File with amendments, LB 497 indefinitely postponed, LB 532 indefinitely postponed, LB 436 indefinitely postponed, LB 654 indefinitely postponed, and LB 335 to General File with amendments attached. (See pages 887-91 of the Legislative Journal.) That's all that I have, Mr. President.

SENATOR HALL: I'm not the introducer of this amendment. I'm carrying it for Senator Lindsay.

SENATOR MOORE: I understand that but when I hear Joslyn and zoo I usually just assume it's your bill and so I apologize for that. And I'm wondering...

SENATOR HALL: Your apology is accepted.

SENATOR MOORE: ...if we do this, what could we possibly come back for next year, Senator Hall? The university's status for review? (Gavel.)

SENATOR HALL: I'm sorry?

SENATOR MOORE: Well, no, actually it's one of those things that in principle it's just like I know Senator Hall introduced a bill earlier this year to reinstate the sales tax on farm machinery. And so given that principle of not exempting things, I will vote against this amendment.

PRESIDENT: Senator Conway, please.

SENATOR CONWAY: Question.

PRESIDENT: The question has been called. Do I see five hands? I do. And the question is, shall debate cease? All those in favor vote aye, opposed no. We're going to need the cooperation of most of you in the Chambers. (Gavel.) We're going to need the cooperation of most of you in the Chamber because of our limited numbers so I do ask your cooperation, please. Record, Mr. Clerk, please. Debate has ceased. Senator Hall, would you like to close, please, on...

SENATOR HALL: Thank you, Mr. President, members, the amendment that Senator Lindsay offers and I'm carrying for him to the bill is, as I stated earlier, LB 540 that came before the Revenue Committee. The question here is not, do you want to do anything for Joslyn or do you want to do anything for the zoo? The question is one of what definition do you give to the issue of memberships and sales tax? The Revenue Department has literally no opinion on whether or not this is a provision that they will support or oppose. They have left the policy decision to the body. Our decision is whether or not we basically have a...not

May 17, 1989

LB 182A, 198, 540

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 182A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See page 2469 of the Legislative Journal.) The vote is 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 182A passes. LB 198, please.

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Hall would move to return the bill to Select File for a specific amendment.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President. I think the amendment is Senator Lindsay's. I co-sponsored it with him but I think it...I would yield to Senator Lindsay for the opening.

SENATOR LINDSAY: Thank you, Mr. President. Thank you, Senator Hall. This amendment is an amendment that was previously argued on, I think, last Thursday, time when it's my understanding that it reached a point when about a third of the Legislature wasn't here. I was not here. It was an amendment that I had previously offered. Senator Hall carried it for me on that day. What it would do, for those of you who were here you would remember it, it was the amendment that would exempt corporations holding a certificate under 501C3 of the Internal Revenue Code from paying sales tax on their memberships. If...the membership also would gain them admission to the particular facility. As I mentioned, this was debated before. It is my understanding that 14 to 16 members were not here at the time. I think I would give a little background on it first. The bill...it was originally offered as a bill, LB 540, to...it came out of committee six to nothing. The Department of Revenue is not opposing the bill...or, excuse me, well, the amendment now, but they are not opposing it. They did not testify at the hearing. They contacted me later and asked that an amendment be offered to the bill which was...excuse me, they contacted me before the committee hearing and that amendment simply changed the language from...we had the description of 501C3, the language from that federal statute, and just instead put in that they wanted the term 501C3, anybody holding the certificate. And that was put

in there. Without that, because of the fact that it was...came out six to nothing and could have been actually without amendments it could have been a consent calendar bill and was not for that reason. As you might remember, the bill was brought to me by the Omaha zoo and I think that's pretty common...commonly understood. But I don't think it can be...it should be seen as a zoo bill nor is as an Omaha bill. I don't know if it's...if it impacts your districts or not and that would depend on what type of organizations would be in your districts. We have done...tried to make some calls to some different organizations seeing if it would apply. The one that we, I guess, found that they think it might apply to them is a Western Arts Museum in Gering. I think Senator Scofield had talked to me earlier about that to see whether it would apply to other organizations. The term...or the definition in the statute deals with holders of the 501C3, the exempt organization certificate from the Internal Revenue Service. It's not defined as zoo or anything like that. It's defined to those charitable organizations if they get voting rights in the corporation by becoming members. If...in addition to this, they are entitled to admittance, the Department of Revenue recently...they have not started enforcing it, but if you look at 540, the fiscal note, it does not...they can't calculate a fiscal note because it has not yet been enforced. This is a reinterpretation of rules that the Department of Revenue has recently come up with and so we don't know how far that's going to extend, whether it's going to stop at the zoo, whether it will extend to some of the other organizations who may fall within it. I put it out there I guess to you as a policy decision. With that, I would urge that the...that you vote to return it to Select File and that we adopt the amendment. Thank you.

PRESIDENT: Thank you. Senator Hall, followed by Senator Moore and Senator Chambers. Senator Moore...Senator Hall, please.

SENATOR HALL: Thank you, Mr. President. As Senator Lindsay has stated, the amendment is one that I offered the other night. There were, I think, 16 members of the body had gone. There were 18 votes on behalf of the amendment. The bill that was introduced by Senator Lindsay to the Revenue Committee was LB 540 and it was like a number of other bills that came before the Revenue Committee, LB 209, which is a bill that deals with the telecommunications and the access charge tax. The genesis of the bill is the fact that there has been a determination by the Department of Revenue that they are going to take a

different approach or a different interpretation with regard to the way the statutes read on this particular issue. There has been no tax collected prior to January 1 of 1989 and none collected for January 1, 1989 or the balance of the year, through May 17th, for this particular provision. The Revenue Department is awaiting the determination of the Legislature with regard to this issue. Should this issue not be resolved this year through the...I would guess this is the last opportunity we will have to address it, an amendment to Senator Schellpeper's 198, then the Revenue Department will begin to collect tax on memberships that include not only admissions to, for example, the zoo but also voting rights. They wanted, they being the Department of Revenue, clarifications for their purposes as to what the intent of the Legislature was. We can vote this amendment up or down and send the message...send the direction to the Department of Revenue. As Senator Lindsay clearly pointed out, this was advanced six to nothing out of the Revenue Committee. There was no opposition to the bill during the public hearing. There was no testimony from the Department of Revenue. They basically told us that we don't care, we just need some direction because we feel that the way it's traditionally been handled we're not necessarily sure that that was an appropriate interpretation. In other words, they changed what they declared was the interpretation of the statutes and began to say we want to collect tax on this provision. Senator Lindsay's amendment clearly just spells out the way that the Department of Revenue has traditionally handled this provision with regard to these types of memberships and it spells out that they only apply to memberships that have voting privileges. In other words, it's not just an annual pass, if you will, to an attraction. It is a membership in an organization that includes abilities, responsibilities, voting rights as well as an admission to that attraction but it...that is the point at which the Department of Revenue makes the distinction. And they are asking the Legislature, through this amendment or through LB 540, which will...because it's on General File and got bogged down, will not be able to be addressed this year, to make clarification. They have no stance on it. If you will open your bill books to 540, look at LB 540A, the fiscal note or the A bill says minimal, which means that it is minimal and probably very little if any revenue is (a) lost, or, (b) to be collected, should the bill fail. I would urge the body to support Senator Lindsay in his efforts.

PRESIDENT: One minute.

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LB 198

SENATOR HALL: The...again, the issue here is one of legislative intent in clarifying or basically by adopting the Lindsay amendment putting into place in the statute the practice that has been in place or been historic with regard to this issue. So I would urge, first, that it be returned to Select File and then the adoption of Senator Lindsay's amendment to LB 198. Thank you.

PRESIDENT: Thank you. Senator Moore, please, followed by Senator Chambers and Senator Landis.

SENATOR MOORE: Yes, Mr. President, and members, you remember Thursday afternoon we debated this last time. Senator Landis and myself both got up and opposed the amendment and, speaking for myself, I said, you know, Senator Hall, I don't what the zoo and Joslyn are going to get next year after we've given them so much this year. But part of that was a little misunderstanding on my part and that's because, once again, when you amend things like this on the spur of the moment it's awful hard to get the right information out. But I think Senator Hall and Senator Lindsay made some good points. I guess I'm going to ask these questions to Senator Lindsay if Senator Lindsay will yield to a couple of questions.

PRESIDENT: Senator Lindsay, please.

SENATOR MOORE: Senator Lindsay, now the way the defi...now I'm reading 540, the same definition, but to your knowledge, to your knowledge, how many organizations does this apply to?

SENATOR LINDSAY: Well, I don't...I wouldn't know the numbers as far as on the 501C3. It's got a three-prong, I guess, approach to it. Number one, it can only apply to the nonprofits that hold the 501C3 certificate that...that's the first step. The second step is it has to gain them voting rights in the corporation, the person who buys the membership. And the third step is that it's got to be...this deals with the exemption only on the admissions.

SENATOR MOORE: Okay, and so...but you're...now, I mean, you're talking more than five, less than a 100. Do you have any idea?

SENATOR LINDSAY: I...I would guess, yeah, I'm sure...well, less than a 100.

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LB 198, 540

SENATOR MOORE: Okay, well...

SENATOR LINDSAY: I'm aware of two. That's...

SENATOR MOORE: Okay, you're aware of two and then the possibility of the museum in Gering. Now do your...the way I understand it, we have not collected tax yet on these type of memberships.

SENATOR LINDSAY: Right.

SENATOR MOORE: Correct?

SENATOR LINDSAY: That's correct.

SENATOR MOORE: And so to keep the status quo, we need to pass this amendment and bill?

SENATOR LINDSAY: That's correct.

SENATOR MOORE: Well, that...given that new light on what the actual situation is, understanding that to really keep the status quo in place this should be adopted and since LB 540 was introduced and a hearing has been held, now that I know, have a better understanding of this whole bill, I will support it today.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Weihing, Senators Hall and Lindsay may see this as a little sugar to sweeten the circumstances for the zoo but it may turn out to be that we're pouring salt on Senator Schellpeper's bill. So I would like to ask Senator Lindsay a question.

PRESIDENT: Senator Lindsay.

SENATOR CHAMBERS: Senator Lindsay, Senator Hall is very testy. He always want me to ask him questions on bills but I choose the one I will question. Senator Lindsay, why is it necessary to do this?

SENATOR LINDSAY: I'm thinking maybe I should have Senator Hall come back and take my microphone. It's necessary because I

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Annie, Gus and Mitch and I had left my pass at home, I, clearly, would pay to get in the door rather than accept the wrath of those three kids of mine and I would pay sales tax on that admission. That's correct.

SENATOR ELMER: Thank you, Senator Hall. I, like Senator Moore, had some misunderstandings about how this would work and given the clarifications and explanations I can certainly support this amendment. Thank you.

PRESIDENT: Thank you. Senator Warner, followed by Senator Abboud and Senator Langford. Senator Warner, please.

SENATOR WARNER: Well, the question that I was wondering about, I guess, was asked by Senator Smith but I have...I have a little difficulty in rationalizing why you would exempt the sales tax from the membership and yet require those who perhaps are unwilling or are perhaps unable to buy a daily ticket, charge them the tax. If anyone ought to be able to buy, it would be somebody who felt they could pay \$30 as opposed to the admission just to go in. In any event, it would seem to me the policy ought to be the same, whether you bought on a daily basis or if you bought the what in essence is a season ticket.

PRESIDENT: Senator Abboud, please, followed by Senator Langford. Senator Langford. The question has been called. Do I see five hands? I do. And the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

PRESIDENT: Debate has ceased. Senator Lindsay, are you going to close?

SENATOR LINDSAY: Yes, I am. Thank you, Mr. President.

PRESIDENT: All right.

SENATOR LINDSAY: Members, I would like to reemphasize just a couple of things here, questions that have come up, people come back and asked about. Number one, this is not in any manner intended as an end run or anything like that with the bill...or with the amendment. This did originate as LB 540. The language is the same. LB 540 is in your bill books and did have a

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LB 540, 1124

PRESIDENT: The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber and record your presence so that we may continue. Please record your presence, ladies and gentlemen, so we can take this vote. We're looking for Senator Lamb, Senator Hannibal, Senator Beyer, Senator Pirsch. We need Senator Labedz and Senator Wesely. Senator Hannibal is excused. We need Senator Lamb, Senator Labedz, and Senator Wesely.

SENATOR SMITH: Mr. President, we could go ahead and start.

PRESIDENT: All right, thank you. The question, ladies and gentlemen, is the adoption of the Schmit amendment. A roll call vote has been requested, so, Mr. Clerk.

CLERK: (Roll call vote taken. See page 1893 of the Legislative Journal.) 36 ayes, 0 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The amendment is adopted. Anything further on the bill, Mr. Clerk?

CLERK: Yes, there is, Mr. President.

PRESIDENT: The call is raised.

CLERK: Mr. President, the next amendment I have is by Senator...Senator Schmit, I understand...Senator Schmit, everything else of yours? Okay. Senator Lindsay would move to amend, Mr. President. Senator Lindsay. (Lindsay amendment appears on page 1893 of the Journal.)

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Thank you, Mr. President. I have discussed this amendment with Senator Schmit and Senator Smith. If it gets too controversial, I've agreed that it would be withdrawn. It's an amendment which would amend into the bill LB 540 from last year. That is the bill that would exempt from sales tax those organizations holding a certificate, under 501C3 of the Internal Revenue Code. The intent of it is to exempt admissions, and that is the sales tax, the sales tax on admissions for organizations holding those certificates. If, by holding such...or by being a member of such organization that they would obtain voting rights in the organization. The bill