

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

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LB 50, 54, 157, 203, 330, 357A, 455
496, 571, 583, 584-586, 597
LR 8-10, 52, 53

may. Record, Mr. Clerk, please.

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

PRESIDENT: The Nelson amendment is advanced. Now...is adopted. Now we're on the advancement of the bill, Senator Nelson.

SENATOR NELSON: Just move for the advancement.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor say aye. Opposed nay. It is advanced. LB 157.

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

PRESIDENT: Yes, please.

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, to whom was referred LR 8, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments, LB 50 General File with amendments, LB 203 General File with amendment, LB 330 General File with amendments, LB 455 General File with amendments, LB 571 General File with amendments, LB 586 General file with amendments, LR 9 indefinitely postponed, LR 10 indefinitely postponed, LB 496 indefinitely postponed, LB 583 indefinitely postponed, LB 584 indefinitely postponed, LB 585 indefinitely postponed, all signed by Senator Chizek as Chair of the committee. (See pages 1129-38 of the Legislative Journal.)

Senator Morrissey offers LR 52 congratulating the Falls City Sacred Heart boys basketball team. That will be laid over. LR 53 is offered by Senators Chizek, Abboud and Beyer congratulating the Millard South boys basketball team. (See pages 1138-40 of the Legislative Journal.)

Mr. President, Senator Wehrbein has amendments to be printed to LB 54 and Senator Abboud to LB 597. (See pages 1140-41 of the Legislative Journal.)

Mr. President, on LB 157 which is on Select File, the first order of business are Enrollment and Review amendments.

PRESIDENT: Senator Lindsay, please.

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LB 182, 340, 432, 483, 586, 628, 683
714, 733, 779, 783, 785, 786

Judiciary Committee reports LB 182 to General File with amendments, LB 483 General File with amendments. Those are signed by Senator Chizek. Revenue Committee reports LB 779 indefinitely postponed, LB 783 indefinitely postponed, LB 785, LB 786, all indefinitely postponed. Those are signed by Senator Hall as Chair. (See pages 1144-45 of the Legislative Journal.)

I have a Rules Committee report, Mr. President, regarding proposed rules change offered earlier this session.

Judiciary gives notice of confirmation hearing.

Senator Wesely has amendments to LB 733, Senator Conway to LB 340 to be printed and Senator Robak to LB 628. (See pages 1146-47 of the Legislative Journal.)

Mr. President, Senators Landis, Schellpeper, Goodrich and Barrett would move to raise LB 683 and Senator Wesely would move to raise LB 432, both those will be laid over.

Senator Kristensen would like to add his name to LB 586 as co-introducer and Senator Conway to LB 714. (See page 1148 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Wehrbein, would you care to adjourn us?

SENATOR WEHRBEIN: Sure, I can handle this. Mr. Chairman, I move we adjourn until tomorrow morning at nine o'clock on March 15.

SPEAKER BARRETT: Thank you. You've heard the motion. Those in favor say aye. Opposed nay. Ayes have it, motion carried, we are adjourned.

Proofed by:

Sandy Ryan
Sandy Ryan

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LB 289, 586

Nebraska and their teacher. Would you people please stand and be recognized. Thank you. We're pleased that you could take the time to visit us this morning. Anything for the record?

CLERK: Mr. President, Senator Schmit has amendments to LB 289 to be printed. (Amendment printed separately from the Journal and on file in the Bill Room.) That's all that I have.

SPEAKER BARRETT: Thank you. LB 586.

CLERK: Mr. President, 586 was a bill that was introduced by the Judiciary Committee and signed by its members. (Read title.) The bill was introduced on January 18 of this year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Judiciary Committee, Mr. President.

SPEAKER BARRETT: Chairman Chizek, for the committee amendments.

SENATOR CHIZEK: Mr. Speaker and colleagues, LB 586 was designed to provide a temporary solution to the problems of case overload with the Supreme Court. The committee, of course, as you know, introduced the bill at the request of the court. As introduced, testimony at the hearings expressed concern that the temporary solution of LB 586 would become permanent. Consequently, the committee amendment, on page 1138 of the Journal, advances the sunset date in the bill to December 31, 1990. And I have a letter from Chief Justice William Hastings, who says that in the event the measures relating to the appeals process pass their final test before the full Legislature I, and other members of the court, have a job to draft satisfactory legislation for a permanent appeals court, as well as to construct an informative process to be sure that all people would be aware, because as this goes on it will require a constitutional amendment. And, with that, Mr. Speaker, I would ask for adoption of the amendment that just moves up the sunset date.

SPEAKER BARRETT: Thank you, sir. Discussion on the committee amendments? Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. I rise to support the committee amendment. Basically what the amendment does is, if you like the bill, you'll like the amendment even better. Originally this act is to go to December 31 of 1991, this would just move it back one year to

December, 1990 thus also cutting the cost for this bill, which is not a great amount at any rate. But I would urge the adoption of the committee amendment and will speak to the body on the bill at a later time.

SPEAKER BARRETT: Thank you. Further discussion? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I hate it when he does that. He gives that knowing look, the Chair does. But, as he indicated by his look to me, the bill I'm opposed to. The amendment is all right. The current status of the bill would cause it to die in 1991. They're going to cut that back a year, to 1990. So, although the amendment does not make a clean thing out of an unclean thing, it makes it less dirty. The bill is not wise from a policy standpoint. And I'll go into more details about that when we get to the bill. But I think, at this opportunity, I want to get a few comments into the record. The court system in this state, and the Bar Association, are shot through with the, oh boy, buddy network. There are no female district judges. There aren't going to be any anytime soon. There will never be a female member of the State Supreme Court. There has never been a high ranking official of the Bar Association who is a female. So when you talk about this being a bill to help those old retired judges at the district and Supreme Court level, you've got a bunch of crusty, old men who probably were not that capable as lawyers, not that competent as judges, and thank goodness, for all the litigants who would have to come before them, they've been retired, and this bill is going to call them out of retirement, Senator Kristensen, and reinflict them on the public. To the Supreme Court's credit, and probably they anticipated my reaction, when this group of superannuated former judges (laughter) get through trying to stumble and fumble their way through a case and arrive at a decision, that decision is not final, they make a written recommendation or hire somebody to make it for them to the Supreme Court, and the Supreme Court can accept their recommendation, or not accept it. So, instead of cutting out the work of the Supreme Court, it adds another layer of bureaucracy and gives some employment to these retired judges, who are probably in their wives' way at home. They always talk about the founding fathers. What about the wives of those founding fathers who had to tolerate them? So these judges are in everybody's way. They make a decision, the loser does not like it, so the loser petitions the Supreme Court for a

rehearing. But, before it gets to that point, the Supreme Court can look at the files, the record and the recommendation of this three-judge panel. That is going to take time. They want to get away from having to make reviews. They're going to review the additional documents produced by this additional level of judicial bureaucracy. So instead of having you go from district court to the Supreme Court and they make a final decision, you create an additional layer and you pass through that layer. Then what that layer does is reviewed by the Supreme Court itself. Twice chewed cud goes through the Supreme Court and then, if the Supreme Court, because they say they're so busy, do a slipshod job of reviewing, and the losing litigant recognizes that, he or she can make a motion for a new...a rehearing before the Supreme Court. You can prepare a brief in support of your position. The Supreme Court may determine that the panel did not reach a decision that should be a definitive statement of the law. And that happened not too long ago with reference to a decision one of these panels made on a medical malpractice case. So the law then is put in a state of uncertainty. You win at the district court level. The other side appeals.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: So you go through this appellate level, and you win again. And the other side, who lost, then files for a rehearing and you, who have won, have to take another step. If you've hired a lawyer, you've got to pay that lawyer for an additional bit of work, so it's going to employ lawyers also, and they try to give the impression that this is designed to help the public and the litigants, but it's really an employment bill for retired judges and lawyers. That's not the way it's presented, but I would like those who defend this bill to counteract what I say and, first of all, show that it does not create another step which must, itself, be reviewed by the Supreme Court and also that it does not require the litigants, if they want to get all the way to the Supreme Court, that it does not require them to hire lawyers for an additional step of work that they must pay for, which is not the case under the current system. But, on this particular amendment, I support it.

SPEAKER BARRETT: Thank you. Senator Ashford.

SENATOR ASHFORD: On the bill.

SPEAKER BARRETT: Thank you. Any other discussion? Seeing none, Senator Chizek, would you like to close on the adoption of the committee amendment?

SENATOR CHIZEK: Just very briefly, Mr. Speaker. I think everybody understands the amendment changes the sunset date from...moves it up one year, to December 31, 1990. Even Senator Chambers did not oppose the committee amendment. I urge your adoption.

SPEAKER BARRETT: Thank you. The question is the adoption the committee amendments to LB 587 (sic). Those in favor vote aye, opposed nay. Record.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the committee amendments.

SPEAKER BARRETT: The amendments are adopted. To the bill, Senator Kristensen, please, to explain the bill.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and colleagues. We have a real problem in this state right now. We have, obviously, several of them. But this bill addresses one that's very serious, and that problem is that we have a backlog, in our Supreme Court, of approximately 500 cases. We've been building up to this backlog since about 1969, and what's happened is that justice is...can only handle so much. You can only do so much with so many members of a court. We have about, oh, 1,100 cases filed in the Nebraska Supreme Court a year, and right now we handle pretty close to that amount. Those are opinions that are rendered, things that are reviewed and so on. But we've had a backlog that has slowly built up since 1969. There are a couple of handouts that you might want to look at that have been passed out to you that show the progression of the backlog in this state since 1969, and the number of opinions that have been written by our seven Supreme Court justices have remained about the same. But it's the increased numbers of filings, it's a complexity of society, it's just the added burdens that have been placed upon our court that have caused a backlog. And, consequently, what happens is that you may well wait two years to have your case decided in the Nebraska Supreme Court, and that is two long years to decide whether, if you win a plaintiff's case for a car accident, for example, and you were awarded money, but the insurance company didn't want to pay you and they wanted to appeal, you could wait two years before this

case is going to be decided. Most of that time is spent waiting, waiting on our Supreme Court for our seven justices to get a handle and to get a look at this case. What this bill does is it starts to address the problem of the backlog. This is not a permanent, this is not a long-term solution, but this is the best solution of many things that were looked at for a short-term problem of getting rid of the backlog. Next year you'll see us in with a permanent court of appeals. We're going to study that this summer, we're going to look at those sorts of things to determine how should we handle the increased numbers of filings in the Nebraska Supreme Court. I want to go briefly through the bill with you, it allows for an appellant division of our existing district court. The Supreme Court can call up a panel of one or more panels of three active or retired district judges. And, Senator Chambers, in response to you, this bill doesn't mandate, it doesn't authorize, it doesn't do anything more with the retired judges than what we're doing with them today. It's primarily designed to take care of having district judges come in and hear the backlogs. We're not going to pay the district judges any more money. They're willing to take a sacrifice to do this. They realize that the backlog in the Supreme Court is as harmful to them, at the trial level, as it is to all of us, and I'm talking about citizens, people who have our cases before the Supreme Court. A good example of that, remember the telephone deregulation bill that you all passed a few years ago? I think, what, 1986, that's been in the courts still. That was a fairly quick, simple trial on a lot of stipulated facts. We've been waiting almost two years to hear that decision to be rendered because they can't get to it because of all these other appeals. What this will do is bring the district judges up here to hear the backlog of cases. And they're going to have those cases assigned to them, so you're going to have three district judges, they're going to have cases assigned to them that are already on the backlog, and the Supreme Court is going to give it to them. We're not going to give them capital cases, because those are too serious, and we're not going to give them cases that talk about constitutionality of statutes, because those are important. Those are things that the entire Supreme Court ought to decide themselves and review. And we're not going to let them take a look at those things. They're going to hear arguments, they're going to read the briefs and do everything else that they do already now on an appellate level. They're going to give their recommendations back to the full Supreme Court. Then the full Supreme Court of seven members is going to review those

decisions and see if they adopt them. If they don't like the decision that they've reached, they're going to have them reordered and reheard. If they approve of them, after they've looked at everything, the full body of the court will get a chance to have give and take. They don't have to all agree, a majority of the Supreme Court would have to approve that opinion, and it would be published. Senator Chambers talked about a rehearing. You know right now you've got the opportunity for rehearing in the Nebraska Supreme Court. Somebody's got to lose the case, you either win or you lose. The judges have to make that final decision. And whoever the loser is, obviously, would always file for rehearing, but that isn't true. There are only specific reasons for rehearing, mistakes made by the court, obvious things in the record that were mistakes. Rehearings don't happen frequently, because if you had a rehearing that happened automatically or often the cases never end. Somebody's got to be the final decision-maker, and that is our Nebraska Supreme Court. We don't intend this bill to last forever. We don't want it to last forever. What we'd like to do is come up and have a discussion of what a permanent court of appeals should be, how we are going to handle the increased numbers of lawsuits in this state. This is not unique to us, but we're drowning right now in the Supreme Court. It's a shame that we have to wait two years for decisions. And our Supreme Court, right now, sets in divisions and those divisions have existing district court judges come up and help them right now. They're acting solely as an appeals court right now, they don't have the chance to sit down and look at the constitutionality of every case and take a good, long, thorough look on things that you and I think is important. And in response to Senator Chambers, this is not more chewing of the cud, this is not a lawyer...full lawyers employment bill, what this is is addressing the problems that we have in this state, and that is that we have got a backlog, and there is no reason in the world that you ought to wait for two years to have your case heard when it's up there and ready to go. And, with that, I'd be glad to answer any other questions. I'd urge the movement of this bill onto Select File. Thank you.

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

CLERK: Mr. President, Senator Chambers would move to indefinitely postpone LB 586. Would have the option of laying the bill over, Mr. President.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: I'd like to take it up now, your honor.

SPEAKER BARRETT: Thank you. (Laughter.) Senator Chambers, on your motion to indefinitely postpone.

SENATOR CHAMBERS: Your honor, members of the Legislature, (laughter) I would like to ask Senator Kristensen a question, before I begin.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Did you address me as your honor?

SENATOR CHAMBERS: No, no, I addressed the Chair as his honor.

SENATOR KRISTENSEN: Oh, okay.

SENATOR CHAMBERS: You're just a rank and file ordinary person down here on the ground, like myself. Senator Kristensen, the honorable Senator Kristensen,...

SENATOR KRISTENSEN: Thank you.

SENATOR CHAMBERS: ...is it your opinion that the persons who would be assigned, whether retired district or Supreme Court judges, or active district court judges would be competent to rule on matters of law that would be involved in litigation?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Why would they not be allowed to rule on capital and constitutional matters?

SENATOR KRISTENSEN: Because I think there's an inherent responsibility for the full Supreme court to hear those most gravest matters, those being capital cases and constitutionality of statutes.

SENATOR CHAMBERS: But there is some sensing that the public wouldn't feel these people were competent to deal with those, right?

SENATOR KRISTENSEN: Oh, not at all, because these are the exact

people that heard them on the trial level, these are the people that were competent enough to decide the case in the lower courts, that have the experience with them. These aren't just people that we pull off the street and have never seen a lawsuit or an issue of law.

SENATOR CHAMBERS: And they have been reversed before, haven't they, on some of those cases that you say they have decided.

SENATOR KRISTENSEN: There's, obviously, always been reversals in the Supreme Court.

SENATOR CHAMBERS: Which means they were wrong, right?

SENATOR KRISTENSEN: Which means the Supreme Court decided that the case, for one reason or another, wasn't right.

SENATOR CHAMBERS: But the case didn't do anything on its own, the judges, who decided them and were reversed, were found to have erred or been wrong in their ultimate conclusion, isn't that correct?

SENATOR KRISTENSEN: That's correct, or it could have been a new area of law that nobody's ever decided before and the judge, on the trial level, had to make an initial decision.

SENATOR CHAMBERS: A good defense you're giving for them. When you have to be that nimble it's clear that your case is not very strong and your client is awful shaky. But here's what I'm trying to get to, the Supreme Court does not have to accept the recommendation of these panels. Is that right or wrong?

SENATOR KRISTENSEN: That's right.

SENATOR CHAMBERS: If one of these panels ruled on a capital case, the Supreme Court could review that.

SENATOR KRISTENSEN: They can't, by the terms of this bill, review a capital case.

SENATOR CHAMBERS: No, no, I'm saying, if the panel were allowed to review a capital case, the Supreme Court would not be bound to accept their recommendation, the Supreme Court could review that in as much detail as they chose, couldn't they?

SENATOR KRISTENSEN: That's right, although that's not what this bill envisions at all. Yes.

SENATOR CHAMBERS: Exactly. And, if they reviewed an issue relating to the constitutionality of a statute, the Supreme Court could review their decision in that case, couldn't they?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Now I want to get to the bill as it is drafted. But, before getting there, would you state the three steps that a person now would go through in prosecuting an appeal, you know, the three levels.

SENATOR KRISTENSEN: Okay, do you want me to explain to you from county court on up, or do you just want take district court?

SENATOR CHAMBERS: Just state what they are.

SENATOR KRISTENSEN: Okay. You have a trial level.

SENATOR CHAMBERS: Okay, one.

SENATOR KRISTENSEN: Okay, you go to trial, and that trial will either be before a judge or a jury.

SENATOR CHAMBERS: Okay, I just want to know the steps. Okay, trial court is the first.

SENATOR KRISTENSEN: You have a trial court, depending on which court you are in you have the right to an appeal, providing you have the basis for an appeal.

SENATOR CHAMBERS: And you would appeal to which court?

SENATOR KRISTENSEN: If you start in district court, you could appeal to the Nebraska Supreme Court.

SENATOR CHAMBERS: Okay. If you started in county court, so that would be two steps if you started in district court. Now, if you start in county court, where would you appeal to from county court?

SENATOR KRISTENSEN: You go from county court to district court.

SENATOR CHAMBERS: That's two. And then from there you go where?

SENATOR KRISTENSEN: You go to the Supreme Court.

SENATOR CHAMBERS: That's three. Now, under this bill, if a person started in district court and appealed, and let's say that this bill is going to be utilized, what would the steps be?

SENATOR KRISTENSEN: The same, you'd go from district court to the Supreme Court.

SENATOR CHAMBERS: No, not under this bill. If you had this bill... Okay, well where does the appellate division come in?

SENATOR KRISTENSEN: The appellate division comes in once you get to the Supreme Court. You don't have two extra... or you don't have an extra layer of argument or case filing.

SENATOR CHAMBERS: Okay, but here's what I want to know. You go to district court first then, if this bill were in place and it's to be used, that would come in after you've been to district court for the trial.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: And this panel ostensibly takes the place of the Supreme Court reviewing the case.

SENATOR KRISTENSEN: It takes the place of the Supreme Court hearing the arguments, reading the briefs. What this court basically would do would be to look at error courts, mistakes made at the lower end, like...

SENATOR CHAMBERS: Okay, now let's go before my time runs out. After this appellate division panel looks at what is appealed from the district court, they then make a recommendation to the Supreme Court. Is that true?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Under the current state of the law, without this bill, is there any intermediary between district court and the Supreme Court which make a recommendation to the Supreme Court which it may or may not accept?

SENATOR KRISTENSEN: No.

SENATOR CHAMBERS: So this does become an intermediary between, or an intermediate step between district court and an ultimate decision or holding or position by the State Supreme Court.

SENATOR KRISTENSEN: No.

SENATOR CHAMBERS: You say that's not true.

SENATOR KRISTENSEN: That's not true.

SENATOR CHAMBERS: Does the finding of the appellate division automatically stand? Once they make a finding, does that end it?

SENATOR KRISTENSEN: I don't think that you understand the process that they envision here.

SENATOR CHAMBERS: I'm asking you to tell me. When it's gone through this appellate system does that end it, or is there something else that occurs? That's not hard to answer.

SENATOR KRISTENSEN: The appellate system is the review by the Supreme Court. All these people are going to do is hear the arguments, read the briefs, give a recommendation to the full Supreme Court. The full Supreme Court will sit and read everything and basically act as a check.

SENATOR CHAMBERS: Senator Kristensen, that step does not exist in current law, does it? You go right from district court to the Supreme Court and they make a decision.

SENATOR KRISTENSEN: Well, but you also remember that you have division of the Supreme Court...

SENATOR CHAMBERS: That's not what I'm talking about. I'm talking about...

SENATOR KRISTENSEN: No, but that's similar.

SENATOR CHAMBERS: ...because that doesn't happen in all cases.

SENATOR KRISTENSEN: Well, it does right now.

SENATOR CHAMBERS: Not in all cases.

SENATOR KRISTENSEN: Not in all cases.

SENATOR CHAMBERS: And they're getting rid of that.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Thank you, Senator Kristensen. It's difficult for Senator Kristensen to answer the question, so I'm going to make assertions and then he can challenge them, if he chooses to, and it will be a matter of record. What happens, and we'll forget about the county court level so we can eliminate that one step, you appeal from district court to the Supreme Court. Instead of the Supreme Court hearing the case itself, it will assign it to these individuals who are placed on this panel. They will make the review that currently the Supreme Court makes. They will then make a written recommendation to the Supreme Court, and that is not the way it goes now. The district court does not make a recommendation to the Supreme Court. The district court makes a decision and that decision is appealed. In this case the appellate group will make a recommendation to the Supreme Court and the Supreme Court may, but it doesn't have to, adopt the finding of the...the recommendation of this appellate division as its position. So that is a new step, because what the appellate panel decides is not automatically the end of the case. The Supreme Court still undertakes a review. So if they're going to review the recommendations, the files and the records produced by the appellate division, that is in addition to what has been done when the district court decision was reviewed. When the district court currently makes a decision, and you appeal it, the Supreme Court reviews the record of that case, they don't hear it...take new evidence and hear the case over again. There conceivably could be more paperwork generated for the Supreme Court's decision by looking at what this appellate panel did than there would have been in the district court case. This is not going to save time, it's not going to reduce work, it's going to generate and can additional delays because there is another level of straining that must occur before the Supreme Court looks at the case.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: This is not an efficient bill. And if it goes out of existence next December, December of next year, there will be some cases that these panels will have decided. And if they are complicated cases, maybe the cases won't have been decided by them when this thing goes out of existence. So the panel is sitting, hearing a case, December comes and they cease to be. The court is not going to tell them, well, don't continue the case, we're going to find a way to make you an ad hoc group and we'll make you a division of the Supreme Court and you just keep on deciding the cases as though the law never were and as though it were never...it never ceased to be. Mr. Chairman, I believe my time probably...my ten minutes are up? Okay, I'll continue afterward.

SPEAKER BARRETT: Thank you. Discussion on the motion to indefinitely postpone? Senator Crosby, followed by Senator Korshoj and...proceed.

SENATOR CROSBY: Thank you, Mr. Speaker. I'm not going to vote for the IPP motion, and I am going to support the bill simply because I listened to Judge Hastings speak about it and I've tried to do some research, and I'd like to at least see perhaps whether this concept would work and help that backlog in the Supreme Court. But I do have some questions about it. And, believe me, I suppose I could have asked this at breakfast this morning, but my husband had other things on his mind and I do hear Supreme Court decisions and that kind of thing at breakfast, lunch and dinner a lot, believe me. But I thought maybe Senator Kristensen could answer just a couple of concerns that I have. One, to start with, this is not like the writ of cessare to the Supreme Court. It doesn't stop any case being appealed to the Nebraska Supreme Court, right?

SENATOR KRISTENSEN: Yes, exactly.

SENATOR CROSBY: Okay. Then are we taking it for granted that these appellate judges will stop a lot of cases going to the Supreme Court? The reason I ask that question is I can't see really how it's going to get rid of that backlog.

SENATOR KRISTENSEN: Senator Crosby, I don't want to take a lot of your time...

SENATOR CROSBY: Well I'm not making any big statement, I want the questions answered, so...

SENATOR KRISTENSEN: What I think is important for you to understand is that this isn't designed to deter people from appealing. You have a right to appeal to the Nebraska Supreme Court. It isn't like the United States Supreme Court that picks and chooses what sorts of cases it wants to hear. Every case will initially go to the Nebraska Supreme Court. The Nebraska Supreme Court will then decide which cases get assigned to this three-judge panel of district judges. More than likely they will only assign reasonably simple cases or cases that are concerning errors that were made down below.

SENATOR CROSBY: Oh, okay.

SENATOR KRISTENSEN: The amount of child support. They aren't going to be decided major doctrines of law, expanding the constitutionality of our Constitution or of statutes. By law, by our Constitution, they can't hear a murder case or a capital case. So how they're going to take care of the backlog is they're going to be able to deal with all those cases that are ready to be heard right now, but there just physically isn't...

SENATOR CROSBY: Um-huh.

SENATOR KRISTENSEN: ...the body there to...

SENATOR CROSBY: So what they're trying to do is set somewhat a priority system, in a way, as you say, based on errors in the decisions having to do with things that are not the broad spectrum of the law or to change a law, right?

SENATOR KRISTENSEN: They are going to deal with the matters that are assigned to them from the Supreme Court.

SENATOR CROSBY: Now you answered...

SENATOR KRISTENSEN: Most of those are going to be errors.

SENATOR CROSBY: Now you answered one of my questions when you explained who decides what goes to the appellate judges. A lawyer, or whoever is making the appeal, doesn't appeal directly to those...to that appellate group.

SENATOR KRISTENSEN: Not at all.

SENATOR CROSBY: Right, they go to the Supreme Court to start with. Okay, I had one other question. Oh, just quickly, this would help me a little too, just pretend you're teaching a law class, on what one or two premises that a case could be appealed to the Nebraska Supreme Court? Just anything that this appellate group, that would be helpful.

SENATOR KRISTENSEN: Oh, let's see, a good example would probably be child support, for example.

SENATOR CROSBY: Right.

SENATOR KRISTENSEN: We have a divorce proceeding and the judge assigns \$125 as child support. The father who, we'll assume the father was assigned to pay child support, he says, that's just not...that's not right. The guidelines that the Supreme Court issues for determination of child support says I only should pay \$100.

SENATOR CROSBY: Um-huh, okay.

SENATOR KRISTENSEN: The trial judge says 125.

SENATOR CROSBY: Okay, so...

SENATOR KRISTENSEN: What happens is that's the type of error, you know, they aren't going to be deciding interspousal community or...

SENATOR CROSBY: But it does give somebody like that...

SENATOR KRISTENSEN: Right.

SENATOR CROSBY: It still gives somebody like that recourse.

SENATOR KRISTENSEN: Right.

SENATOR CROSBY: Right, okay. Well, thank you, Senator Kristensen. That does clear up some of my concerns about the bill.

SPEAKER BARRETT: One minute.

SENATOR CROSBY: And, as I said, I am going to vote against the kill motion and I'm going to vote for the bill, because I think

it's a good opportunity for us to see if something like this would work and help them clear up the backlog and actually work toward perhaps an appeal system, a middle court system that would eventually take care of something like domestic problems or divorce cases and so on, which are in somewhat maybe a separate category. So, thank you.

SPEAKER BARRETT: Senator Korshoj.

SENATOR KORSHOJ: Mr. Speaker and members, I would like to ask a question of Senator Kristensen, then he can have the rest of my time. You keep bringing up the district court judges and it brings up a subject I'm very interested in. What is their backlog? How much work do they have? It's my understanding that there are lots and lots of district court judges that can do their work in a three-hour day. Is there any statistics on that?

SENATOR KRISTENSEN: Well, I'm not prepared to give you statistics on each district judge. I think it depends on which area that he's covering. I would dispute that some of them can get their work done in a three hour day. A lot of my district judges spend a good share of their day traveling across a very broad district, just to get to hear those cases. And they may spend two hours a day traveling, just to get there and back. The bottom line question that I think you're really asking is, do they have the time...

SENATOR KORSHOJ: Yeah.

SENATOR KRISTENSEN: ...the real busy ones, do they have the time to get there? The way this is designed is that they'll probably take, during the next year and a half, they'll probably serve one month during that period of time to come down here and serve. That would be assuming all of them were asked. They all don't have to take the time. The District Judges Association got together and decided that, yes, we're willing to make that sacrifice and do that. On a long-term basis that is not, you know over the long run we want those people at the trial level, and we want to keep them there.

SENATOR KORSHOJ: But is there any statistics on what their case load is?

SENATOR KRISTENSEN: There is, I just don't have them off the

top of my head or at my hand.

SENATOR KORSHOJ: Okay. Thank you. You can have the rest of my time, if you want it.

SENATOR KRISTENSEN: Thank you. I think it's important for us to look generally at what happens through the Supreme Court. You know, everybody in here probably has disagreed with the ruling of the Nebraska Supreme Court, be it on ag land values, be it on...no, not yet, Senator Korshoj. There is just a whole variety of cases that we probably all disagree. What we're really looking at is the process. And you know sometimes justice delayed is justice denied. And Senator Chambers will smile from ear to ear about that statement, but that is very true. We've got some very important cases that need to be taken care of. This isn't the long-term solution at all, but this allows us to get rid of that backlog that is there. These people are people who already serve on the Supreme Court. You know, district judges, my district judge out in Red Cloud, for example, gets called in every year to sit with the Nebraska Supreme Court. And they divide the Nebraska Supreme Court in half and they call that divisions. And one division will have four Supreme Court justices and one district judge, and the five of them hear a case and they'll make decisions right now. The other division has three Supreme Court justices and two district judges. So right now we're running a system of bringing district judges in. What the key is that the entire Nebraska Supreme Court doesn't get to sit down as a body and review these cases and talk about them. You know, in a committee, for example, the Government Committee, you know, if the whole committee gets a chance to sit down and discuss an issue they can work through some very difficult decisions. If there are only two or three of them there, sometimes you don't have all the perspectives, and that is a good example. What you want to do is have the full body of the Supreme Court review these and have some give and take about is this the right direction we should go, and you need to give them the time to correctly make those decisions. This process, through LB 586, is going to allow them to get rid of that backlog, so next year we can come in here and talk about a permanent solution to increased numbers of filings. We don't want to dissuade people from appealing. If they've got a legitimate error, they ought to have their day at the Supreme Court, and they ought to be given the full due consideration that they can have...

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: ...and that we have the procedures for. I guess we're asking, at this point in time, to let's get rid of that backlog, let's work on a permanent solution for how to handle the increased numbers of appeals and don't try to deny people the right to have their day in front of the Nebraska Supreme Court. Thank you.

SPEAKER BARRETT: Senator Moore, would you care to discuss the motion to indefinitely postpone, followed by Senators Chamber Pirsch, Chizek and Kristensen.

SENATOR MOORE: Yes, Mr. Speaker and members. As I listened to Senator Kristensen describe the need for this bill, it's very similar to some of the discussions I, myself, had yesterday, on LB 84. We're talking about we need a stopgap approach to deal with the problem, I think, so we can more directly deal with the problem in the years to come. Now I guess I need to ask Senator Kristensen a question. Now the way you said it, is it the Judiciary Committee that will be trying to come up with a long-term solution to this problem in the interim?

SENATOR KRISTENSEN: That's right, there is a bill up right now, it's constitutional Amendment VIII that would create an intermediate court of appeals and that is something that's been advanced out, I believe, by our committee that is sitting up here, but that we want to spend more of the summer deciding how best that should operate. There's a lot of options that we have, and that to me is the long-term solution in this state.

SENATOR MOORE: The long-term solution will probably require a constitutional amendment in '90, is that correct?

SENATOR KRISTENSEN: Yes.

SENATOR MOORE: Okay, and 586, now I don't believe you actually talked about the cost. But do you feel comfortable that the A bill is a fairly accurate assessment of what it will cost to implement this bill?

SENATOR KRISTENSEN: Not as it is in your bill book. Since we adopted the amendment you can probably cut those costs in half, that's on the fiscal note in your bill book, because we're cutting down by a full year. So we'll just have a halving of

those costs.

SENATOR MOORE: Well, but I guess that's what my question...you're cutting them down for a full year. But can we...with the sunset we added in once you...will it be a full year...it won't be a full quarter because...well, that is another question I can ask you as far as the cost. But that is fine, you've answered my question for now. I simply want to say I rise to oppose Senator Chambers' amendment, because I think it's a problem we have to deal with. Hopefully, in the months to come we will try and come up with a long-term solution we can put to the voters of the state. I think LB 586...we need to look...on the funding aspect of it. But I don't think we should kill the bill. I think we can look at a way to try and come up with the funding to fund it, so we can indeed have a stopgap measure to deal with this problem of backlog of cases in the Supreme Court because we all know one of the very basic constitutional guarantees is the right to a speedy trial. I, personally, think that applies all the way up through the courts. If you have that tremendous backlog in the Supreme Court, I think we're really...it's not fair to the people of the State of Nebraska. We've got to find a way to deal with it. I think LB 586 offers a good interim solution to dealing with it, so, therefore, I oppose Senator Chambers' motion.

SPEAKER BARRETT: Thank you. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'm mainly talking to the record, because the Legislature is going to rue this day, and I don't expect people to vote for my kill motion. But I think I will be vindicated in days to come. District Judge...Douglas County District Judge Murphy came down and spoke against this idea, mentioning that he, himself, is a clydesdale, not a race horse, that he has a different system and methodology, as do the judges who are trial judges, than those who sit as appellate judges all the time. The appellate judges have the luxury of clerks, libraries, time to sit and cogitate on these issues and discuss them with their colleagues. It is difficult to make the transition from being a trial judge to an appellate judge when you're going to be there for just a short period of time. So you do not have what you might call the appellate mentality, sitting, deciding these cases. And I'm kind of surprised at Senator Crosby, because she had...she didn't use the word experiment, but that's what we're talking about. This is an experiment. Senator Moore correctly called

it a stopgap. And who is the guinea pig? The public. Who stands to lose by hasty or poor quality legal work? The public. But the Legislature doesn't mind experimenting on the public for whom we express so much pretended concern. The judges don't care, of the Supreme Court, but some district judges do, and not all of them like this idea of being shunted from place to place. But there are going to be some district judges who are going to refuse and they're not going to be compelled. So certain others are going to have to do that work. If you look at the court system that would be created under this bill, consider the appellate level that we're talking about, the panel, to be the same floor as the Supreme Court. But the Supreme Court is the study, the appellate level is a kitchen court. They've got some chairs, dinette sets, and they can make do with what they have for the short time they're going to be in the kitchen, but they're just there to grab a quick snack and get on out, so the other judges, who are higher paid and have a greater responsibility imposed on them, can sit back and take it easy and do a lot less work than they're doing now. Some of the cases are not decided because we've got a slothful Supreme Court in some instances. Senator Kristensen, how many panels, at most, will be sitting at the same time, under this bill?

SENATOR KRISTENSEN: Under this bill there is no limit, it just says one or more panels of three.

SENATOR CHAMBERS: Where will the panels sit, if more than one is sitting?

SENATOR KRISTENSEN: You mean logistically?

SENATOR CHAMBERS: Yes. Where will they be located? Where may they be located, because you or I don't know that. Where may a panel be assigned to sit, geographically speaking?

SENATOR KRISTENSEN: Logistically speaking, I assume in this building somewhere, and probably Harland is the...

SENATOR CHAMBERS: Probably what?

SENATOR KRISTENSEN: Harland probably will make some decision where they office.

SENATOR CHAMBERS: Oh, Harland (laughter), and if he can do that and consult...consultation with me as a subcommittee space...I

mean a member of the Legislature's Executive Board Space Committee, this may not be such a bad bill because I have some ideas where they ought to be located, based on the quality of work they'll be doing. (Laughter.) And I don't think the flushing sounds will bother them that much because they can tie in what they say between the flushes. But here's what I want to ask you, in all seriousness, Senator Kristensen. Let's say that one of these appellate panels gets a case which at first blush doesn't appear as complex as it turns out to be, and December...when will this cease to be, December 31st, or whatever the date, that date comes? Will that panel continue to handle that case?

SENATOR KRISTENSEN: Not by statute, no.

SENATOR CHAMBERS: Will they continue to handle it, though, as a practical matter?

SENATOR KRISTENSEN: No, I think that if this thing sunsets, they're done.

SENATOR CHAMBERS: So what would become of the cases that are being heard by panels at that time?

SPEAKER BARRETT: One minute.

SENATOR KRISTENSEN: I don't have the definitive answer. It's my impression and it would be my recommendation that that case would be handled by the Nebraska Supreme Court. It's not like that that date would just come falling out of the blue sky. They know far ahead and would probably scale down towards the end, so they wouldn't have a lot of cases that would have to be reheard.

SENATOR CHAMBERS: So, the 1990 deadline means that we're really talking about a deadline prior to that, if we want the work that these panels do to be completed by the deadline, the statutory deadline.

SENATOR KRISTENSEN: Well, they would probably quit hearing cases, perhaps, a month ahead of time, but they would still be busy up until that period of time writing recommendations and finishing up their work, yes.

SENATOR CHAMBERS: If a case is not completed by then, will they

hurry up to finish and give something over, or would they stop that and then the whole case go to the Supreme Court, in your opinion, as it would have had that panel not looked at it at all?

SENATOR KRISTENSEN: You know, I think the only good answer for that is we ought to create it and find out.

SENATOR CHAMBERS: Do what?

SENATOR KRISTENSEN: We ought to create this intermediate court of appeals and find out the answer to that question, is really the best response I can give.

SPEAKER BARRETT: Time has expired.

SENATOR CHAMBERS: So, if I want to know whether there is something in the fire extinguisher over there, I should set this building on fire. (Laugh.)

SPEAKER BARRETT: Senator Pirsch.

SENATOR PIRSCH: Question.

SPEAKER BARRETT: Question has been called. Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Shall debate cease? Have you all voted? Please record.

CLERK: 25 ayes, 4 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Chambers, would you like to close.

SENATOR CHAMBERS: Mr. Chairman, I have some unexpected assistance here. I have here a letter from the Nebraska Psychiatric Association and they say, dear senators, the Nebraska Psychiatric Society has received the proposed legislation and wishes to express several concern...oh, this is a different bill. (Laughter.) But, see, if I were that appellate panel, I wouldn't have caught the error. Somebody put it on my desk and I would have gone right through it and I would have issued that to the Supreme Court, and those judges, even though they...I was a creature of their creation, they'd be doing with that panel what you guys are doing now to me. They'd

say, what in heavens name have we put down there? But here's a serious question, I wanted to give Senator Kristensen a chance to get to his mike. Senator Kristensen, I've alleged this session that the Supreme Court judges want to reduce their work and ask for a salary increase, too. Will this bill reduce the work of the Supreme Court?

SENATOR KRISTENSEN: No.

SENATOR CHAMBERS: They'll be working just as hard, with this bill in place, as they are now.

SENATOR KRISTENSEN: It's not like they don't have something else to do, if they get this. They're still going to be writing their full load of opinions. All we're doing is getting rid of the backlog, the things that they could never handle before. They're not going to limit the number of opinions, and they're not going to write less opinions. This is a catch-up, we've got to get rid of that backlog.

SENATOR CHAMBERS: So they won't slow down because they have additional people doing this work that they, themselves, would have had to do otherwise.

SENATOR KRISTENSEN: If they slow down, the backlog is just going to get bigger.

SENATOR CHAMBERS: No, I'm not asking an if, I'm...here's the question I'm asking you, my if. If this bill is passed, it's your opinion that they will not slow down in their activities as a result of knowing that they have others who are assisting with the work that they otherwise would have had to do alone?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: They will slow down?

SENATOR KRISTENSEN: No, they will not slow down.

SENATOR CHAMBERS: Oh. Do you think the judges partake of the same human nature that the rest of us mortals do?

SENATOR KRISTENSEN: Just by the fact that you're a judge or a lawyer or a plumber or anybody...

SENATOR CHAMBERS: No, as a human being.

SENATOR KRISTENSEN: As a human being, doesn't mean that you're not prone to make good faith mistakes, no.

SENATOR CHAMBERS: Is there a tendency among human beings to slack up on the work that they do, if the opportunity presents itself, or are judges a special breed who are not afflicted by that tendency?

SENATOR KRISTENSEN: Are you asking me would I like to take a couple days off, if I had a chance? Senator Chambers, they're not going to reduce the amount of work they do. Those people are dedicated people.

SENATOR CHAMBERS: Okay, because my time...have you heard of an inst...of a situation that has grown up in certain locations where at least a judge and in some cases some judges were taking so much vacation time that the Supreme Court reviewed the situation and they're going to set some rules as to how much vacation time a judge can take? Are you familiar with that, if you're not, then I don't want to be argumentative.

SENATOR KRISTENSEN: I don't have any of the specifics. I'm not well versed in that area.

SENATOR CHAMBERS: Have you heard of such a situation arising, recently?

SENATOR KRISTENSEN: I've heard of allegations.

SENATOR CHAMBERS: Okay. And are they allegations sufficiently strong that the Supreme Court is looking into this situation?

SENATOR KRISTENSEN: I can't tell you what they're officially doing, Senator, no.

SENATOR CHAMBERS: Thank you. Members of the Legislature, we do have judges that are slacking up, slacking off, and not doing the work they should do. And it would be a natural thing, just as when some senators get a very capable staff person to turn more work over to that staff person. If you're speaking about yourself, you call it, and this is what the judges would say, we're delegating authority. But, if you're being realistic and paying their salary, you'd say, no, you're passing the buck. So

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there are always two ways to address the same thing. And depending on whether you're an advocate or an opponent, you put a good face on it...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...or, in this case, I, as an opponent, put an objective face on it. When you go ahead and pass this bill, and 1990 comes, and they show you the need for another appellate division, and its backlog gets heavy and they still are going to have some of theirs going to the Supreme Court, then you're going to need more judges for that appellate division. And that means additional salary, additional money into the judges' retirement system, additional backlogs, additional cases not being decided and you're on the roller coaster with that, like you're on the roller coaster with the salary increases. You were told when you tied all those judges' salaries together that you wouldn't be confronting what we're confronting now. Before one set of raises have even taken effect, they're coming in for very high raises. So now give them this temporary appellate division, as you call it, and before 1990...December of 1990 comes somebody is going to be in here with a bill to wipe out that deadline...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...and they're going to get you to wipe out the deadline the same way they get you to put this thing in place in the first place. They need those extra judges, they'll say.

SPEAKER BARRETT: Thank you. You've heard the closing. The question is the indefinite postponement of LB 586. Those in favor of that motion vote aye, opposed nay. Have you all voted?

SENATOR CHAMBERS: Mr. Chairman.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: I can really take it, but even I can read the lights on the board, so you can call the vote.

SPEAKER BARRETT: Record, Mr. Clerk.

CLERK: 3 ayes, 22 nays, Mr. President, on the motion to

indefinitely postpone.

SPEAKER BARRETT: Motion fails. Back to the discussion on 586 and its possible advancement. Senator Chizek.

SENATOR CHIZEK: Mr. Speaker, colleagues, when the bill was brought to the committee there were a number of us that had some concerns. We felt that the amendment that we had adopted earlier dealt with some of the concerns that some of the members expressed. There were some concerns expressed by, obviously, some of the district court judges. Senator Chambers had mentioned one. I'm not sure that I would describe the court as crusty, "codgey" individuals. But I can tell you that we have a problem, and Senator Chambers says seven of them. I have oftentimes heard as...members of the court referred to as anchored angels. I somewhat disagree with that also, Senator Chambers. But we have a backlog, we have a problem that needs to be addressed. This is a temporary solution. I think the committee, in good conscience, tried to deal with the problem that exists. You can pick holes in the procedure, in this temporary solution, if you want. I certainly disagree with some of the opinions that come from the district court and some from the Supreme Court, but that's not what my support of this particular piece of legislation is about. It's not whether I agree or disagree with opinions, it's not whether I agree or disagree when a judge sends a minor to the Penitentiary in this state, that's not what it's about. It's about a problem with 500 cases of backlog and the people that suffer are the people that are going to the Supreme Court in this state, that's who is suffering. And I think that this particular piece of legislation will help deal with the backlog, and bear in mind it's a temporary solution. So I would ask that you recognize what the problem is. I don't sit in the court day in and day out. I can't tell you how hard they work. I can tell you that facts and figures that I've seen don't lie, and we've got a problem and this bill addresses the problem and I would urge your support of the bill.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you. I think it's important for us to look at what the backlog really does right now. Our Supreme Court, if you look at the handout here that has a couple of different graphs on it, you'll see numbers of opinions. And our court right now is issuing, oh, we're about two years behind.

If we would write numbers of opinions per judge, we're probably writing somewhere around 400, 500 opinions a year. We're seriously behind in a backlog. If we don't take care of this backlog, we're not going to be able to address any other problem that we have in the Supreme Court. We are going to be in, next year, talking about a permanent, intermediate court of appeals. I think that is when the real issue and debate ought to be, do we need more judges, do we need to do certain things to restrict the number of appeals. I happen to don't think we shouldn't restrict the number of appeals, because it's a reflection of society and the problems that society is having. And this morning sometimes you want the forum so you can vent your anger at the Supreme Court or at judges that you don't like, and maybe that is a good exercise for the body to do. But I would urge you to advance this bill on, it's a necessary bill and it's one that is desperately needed, not by judges, not by lawyers, but by the people who are waiting two years to get a decision. You know, two years is an awful long time to wait to see if you're going to get your check when you've been injured. Two years is an awful long time to find out if a bill that we pass in this body is constitutional before it can take place. Two years is an awful long time for people whose very lives depend on the decision of the Supreme Court. And you may say, look, you know, I'm not the person that's before the Supreme Court, but you know, quite frankly, all of us are there every day because they have far-reaching decisions on everything we do in here, every aspect of your business or your profession is dictated in one manner or another by the Supreme Court. And I'd urge you to advance this bill.

SPEAKER BARRETT: Thank you. Before recognizing Senator Bernard-Stevens for additional discussion, Senator Conway is announcing some guests in the north balcony, 31 fourth graders from Homer Community School with their teacher. Would you folks please stand and be recognized. Thank you, we're pleased to have you with us. Senator Bernard-Stevens, followed by Senators Chambers, Schmit and Wehrbein.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, members of the body. I just wanted to express a couple of thoughts I think more for the record than anything else, and possibly Senator Chambers or Senator Kristensen can respond on their time, if they so desire. I look at the statements and the information that has been given to us on the backlog of the Supreme Court. I look at the...I talk with people on the floor and people say

the backlog is terrible, Senator Kristensen informs me that at some point...at this point it takes anywhere from 20 to 24 months for a case to be heard on the Supreme Court, and that is too long. And I hear all of those things and people will say, yes, we need to do something we have to do something. And I agree, we need to do something. The problem I have with LB 586 is I'm not sure that again we're not being put into a position where, yes, we need to do something. This is the only thing we have, therefore, it's either this or nothing. And so the Legislature will once again do, as we've done in the past, while we need to do something, this is all we've got, we'll pass it, even though this bill may not actually solve the problem, it may in fact create a larger problem. And I think we should look at it very closely. The question that I have in my mind on 586 is some of the areas Senator Chambers touched on earlier, is I have a sneaking suspicion that we may be approaching the problem from the wrong end. We have an increase in cases being appealed. We're not solving that problem, we're not trying to reduce those particular cases, necessarily. Those appeals will go on, and people want to have their day in court in the Supreme Court. They want to have that final decision. Senator Kristensen is absolutely right, we do not have the right, nor should we take their day in the Supreme Court, if they so desire. My concern comes with the person or the individual or the entity that is trying to win a case and they do not have proper funds, they do not have the adequate financial resources and they're competing against a foe, if you wish, that does. What we're doing in this particular case is setting up an intermediate type of situation where a decision will be...or, excuse me, a recommendation will be made and that recommendation, even if it favored the individual with less funds, with less financial funds, it still would be appealed to the Supreme Court. And I fail to see, at this particular point, how this interim procedure will correct that. I also foresee a possibility that if the Judiciary Committee, and if Senator Kristensen and others come up with a bill, a long-term, solid reform on reducing the case log, if it's another intermediate court, I suspect we may have the same problem. I suspect that what we'll have is the same number of courts or cases being appealed, but now since we have another case, another court that is going to be able to help reduce the case load, it may, in fact, encourage more people to appeal even further. So we may have an additional number of appeals and we still have the same problem, but now we have two areas that are being backlogged. I do have some serious concerns upon...about that particular matter. The other concern that I have is the

time period. If it, in fact, takes the Supreme Court, once they begin a case, a period of time, a long period of time, how long, the question has not been asked in the body, how long would it take this intermediate process, this temporary process, how long would it take for these district court judges to study a case, to analyze the case thoroughly, to have enough information at their fingertips and at their disposal to make a reasonable decision? How long will that take? If it, in fact, takes a good, long period of time, will they, in fact, be able to have that significant an impact on the backlog cases...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...in the very short period of time that we're giving them, until December of 1991, until it's sunsetted? I suspect what might happen is that in many cases the sunset that we have in December, 1991, may not be a sunset, it simply may be removed and we'll have this discussion, how can we have a sunset while we haven't come to a conclusion yet of how to solve the problem and we still have a backlog. My concern is that 586 will not necessarily solve the problem that we would all like to do. And my concern is also that the Legislature will support the measure because it's the only one in town without deciding whether or not the only measure in town will, in fact, solve the problem we want to do. Thank you.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'm not going to try to keep this bill from getting a vote today. And after listening to the body, they're going to support the bill because Judge Hastings wants it, then when the salary increase come up he wants that, too, so maybe I won't spin my wheels on that one and just let you go in and give them what they want. But it's kind of interesting that this Legislature is of a frame of mind to say that if certain responsibilities are given to an individual, and he doesn't do his job, you give him more people to do the work he's supposed to do, that's the incentive not to get down and do what they're supposed to do. Nothing in this bill tells us what criteria will be used to select these judges, other than that they may be retired or they may be active; maybe from the district court, maybe retired Supreme Court judges. Senator Chizek did make a Freudian slip, he mentioned the problems that exist in the court system, and he said "people who suffer are those who go to the

Supreme Court". And, Senator Chizek, I agree, those who suffer are those who go to the Supreme Court. Now, if these judges can have their work reduced, and that's what's going to happen, and then they can also get a substantial salary increase, I say more power to them. That's what everybody tries to do in this society. Minimum effort, maximum return, so they want to do as little as possible and be compensated as much as possible for it. Senator Chizek, I'm not taking my position on this bill because of the nature of decisions, although when some judges came before us I had a chance to express my views about a certain opinion they gave. But, if you read through some of the Supreme Court decisions, I mean re...check it for the syntax, check it for logic, check it for clarity, it's pretty poor stuff. And maybe they are in a big hurry, and maybe it's not just a lack of capability in doing their work, but it's out there for everybody to read. And I'm not one of those who, just because somebody puts on a black robe and sits up on a chair that puts them in a position to look down on everybody else, will say that whatever he does is right, that whatever he does is quality work. That is not the case and you all ought to read more of these opinions. I don't mean the ones that just relate to a particular issue that you're interested in. When these advance sheets come out, these little gray com : books, as some people call them, or funny books, read them, r d them. And one county judge in Nebraska had a lawyer reading a case to him from that and he said, I ain't going to have the law read to me from no funny book, didn't even know what an advance sheet was. Maybe, though, he was more correct in his assessment than (laughter) we are who are trying to accord a certain amount of stature to what comes out of the Supreme Court. This I must say, not all of the judges are lacking in capability. Not all of them are lacking in dedication. But remember they get to be judges through a political process. They are filtered through a nominating committee which is composed of people who were put on there for political reasons. That group can then send three names. They send two strikes and a ball, and the ball is selected, a lost ball in high weeds, but it's not as bad as a strike, so you get an incompetent on the bench as a political payoff, and these judges are not selected because of their capability in the law. And there are lawyers on this floor who, if you can get them away from the mike to ask them about some of the experiences they've had with some judges, they'll talk about them worse than I'm doing. But remember, these remarks don't apply to all the judges, but my remarks apply to these panels. And, Senator Chizek, when I used the term "crusty and

superannuated" I was talking about these retired judges...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...who don't have anything to do and no way to make money. So they're going to inflict them on the public, that's what I had said. So you're interested in having this experiment, you profess concern for the public because there is a delay in them having their case heard. Would you rather delay in having an operation by somebody competent, or would you rather go to an auto mechanic to have your tonsils taken out because he can take you in at nine o'clock this morning? This bill is going to move. The salary increase is going to move, but I want these things that I'm saying now in the record. And I've said all that I'd like to say on this bill, and I'm hoping that there will not be enough votes to advance it.

SPEAKER BARRETT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, I rise in support of the bill, but I do want to agree with some of what Senator Chambers has indicated here this morning. If there is one word that has been used more often this session than any other, I believe it would be the word temporary; if not that, it would be stopgap; if not that, it would be something else to indicate something to take the place of something better until we find the perfect solution. Obviously, we are always looking for that perfect solution. But I would expect that one of these days we're going to have to have some sort of an appendage on a bill that would go into the statute books that says this is temporary. Senator Scotty Moore's LB 611 is going to be temporary until we take care of the little problem of foundation aid and equalization aid, and we wield a club over ourselves to address the issue fairly and squarely, as we ought to do. And I wish you the very best, Senator Scotty, but I've been waiting for that for 20 years and it has not happened yet. And your hair will be looking like mine, I'm afraid, before you get that kind of a situation. LB 84, you're involved with that one also, a little stopgap. I don't know yet exactly how you and Senator Lamb got that deal pulled with Hall and Chizek, because they're usually sharper dealers than that. (Laughter.) But you've got it rolling, and more power to you, except that again it's a temporary solution until we find something else. LB 739 is somewhat of an interim, somewhat unexpected return to the taxpayers because, as I listened yesterday, no one expected to

be really raising taxes with 773. If you didn't expect to raise taxes, under 773, you didn't listen to Senator Vard Johnson. He told us we're going to raise the taxes to take care of the needs of 775. Go back and check the record. When I asked him, how much, he said seven to nine million. He stood right behind me. I said, would you believe maybe five or seven times that much? And he spoke very disparagingly of my remarks. I think it turned out to be that I was closer to it than he was. We also have LB 89, obviously, a very well thought out bill. But because we don't seem to want to put the money into it, we're going to have to have some kind of an interim proposal that will be less costly so we can ease our toe into the water and then take a little more bold step next year, and then the next year after that and take care of the responsibility which is ours. We're going to have... I suppose we have a temporary solution to the College of Pharmacy problem, although that may take care of itself, if we don't do something before long. I'd just like to suggest also, I don't believe that the court is going to work less hours. I believe the court is working full time now. I think they will continue to work full time and I certainly think that, for whatever reason, for whatever reason, we need to do something in that area. It is not the court which creates cases, we create those cases. Senator Chambers made it very clear, as he always does, that he's not castigating all of the judges, none of us would. We believe most of the judges are competent. I believe the vast majority are excellent judges. I think it's important that we recognize that performance also can be tied somewhat to workload. Once an employee works beyond a certain number of hours and works under a certain workload the efficiency does not maintain its usual high standards. And I would suspect that the court, upon looking back and seeing the workload that comes... that is coming after them, must certainly feel somewhat frustrated. I don't know, I don't know if this is going to work or not. I've not... I'm not going to suggest...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...that it's a major improvement. I do suggest that some individuals here, Senator Chizek, Senator Kristensen and others are looking at it as a method whereby some of that workload can be relieved. But I just want to caution you that we need to look toward permanent solutions, not temporary solutions. They need to be permanent whether they address the court, whether they address property taxes, whether they address the income tax, whether they address the budget or whatever they

address, they need to be permanent solutions. There is no such thing as a temporary statute. We enact a statute into law and it becomes a matter of the statutes of the State of Nebraska and they remain there. We've talked about temporary taxes and the people laugh. So we don't want to get into the same kind of situation when we address temporary solutions. Temporary solutions have the force of law once they are enacted. If they're bad law, they're bad law, and they're not made any better by the fact that we have called them temporary. So...

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: ...with some regret I still think we need (recorder malfunction) the bill. But I would hope that the committee will look toward a permanent solution.

SPEAKER BARRETT: Senator Wehrbein.

SENATOR WEHRBEIN: Mr. President and members, Senator Schmit, many of your points are well taken. I believe it's time to move on with this issue. One of the standards of our society has been the fact that we can have justice. And I think this is one of the points that we ought to face here as we face the backlog that the Supreme Court is facing. I really don't think it serves any purpose to be name calling or calling about what's been going on, but let's move on. These people are not here to defend themselves. It's one of the things I feel kind of bad about. I really don't think that serves any purpose at all. I think that we would be better served to try to find justice that is appropriate for all. One of the things that causes disrespect for our laws, I believe, is the fact that we're not able to prosecute or to at least take care of justice as it properly should be. And backlogging the court system has contributed to that. I also think that castigating our people involved in the court system unnecessarily also serves to lower the respect for our laws and probably is causing some of the problems we're facing in society today. So I think it's appropriate that we move on and attempt to do something, even if it is only temporary. Doing nothing amounts to a decision, too, and that's what perhaps we are doing in many areas of our society is doing nothing. I think moving on and worrying about whether it's exactly perfect is something that we should perhaps consider, but I think we ought to be moving on, doing something positive, if we have to correct it, if we have to make it permanent in time, let's do it, but let's take care of the

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LB 586

situation as we see it today.

SPEAKER BARRETT: Senator Ashford, please.

SENATOR ASHFORD: Question.

SPEAKER BARRETT: Question has been called. Five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Record.

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

SPEAKER BARRETT: Debate ceases. Senator Kristensen, for closing.

SENATOR KRISTENSEN: Mr. Speaker and colleagues, I appreciate the opportunity today for some very frank discussion about the state of affairs in our judiciary, particularly that in the backlog of the Nebraska Supreme Court. And perhaps there are some who are confused about the procedure, and I'd be glad to clear up any of those problems that you may have exactly how this will work. But I want to talk to you, basically, in closing that if we don't do something with the backlog, the backlog will only get worse, and if it gets worse, the two years is going to stretch to two and a half years, and then it's going to stretch to three years, and it's a situation we can't tolerate. Through the interim we're going to be discussing long-term permanent solutions to really a societal problem, and that's the increased filings and disputes in our courts of law, and ultimately into our appeal system. I think Senator Wehrbein was correct, that we can call names, we can do a lot of things, and we can discuss, all of us, that we've had good and bad experiences in the court system. I would urge you to advance this bill on and address the real problem that we have and that is the backlog in our Supreme Court, and to try to alleviate the problem that we have of waiting two years for justice to be given to many of our appellants. Thank you.

SPEAKER BARRETT: Thank you. The question before the body is the advancement of LB 586 to E & R Initial. All in favor vote aye, opposed nay. Record vote has been requested. Have you all voted? Record, please.

CLERK: (Read record vote as found on page 1657 of the Legislative Journal.) 32 ayes, 2 nays, Mr. President, on the

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LB 182, 211, 586, 642, 767A, 769

advancement of LB 586.

SPEAKER BARRETT: LB 586 is advanced. Anything for the record?

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, reports LB 211 to General File, and LB 642 to General File with amendments, those signed by Senator Chizek. I have a proposed rule change offered by Senator Korshoj. That will be referred to Rules Committee. Senators Bernard-Stevens and Schimek have amendments to be printed to LB 769. General Affairs gives notice of confirmation hearing, as does Business and Labor, those signed by Senators Smith and Coordsen as Chairs. And new A bill, LB 767A, by Senator Smith. (Read by title for the first time.) That's all that I have, Mr. President. (See pages 1657-60 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Peterson, would you like to recess us, please.

SENATOR PETERSON: I move, Mr. President, we recess until one-thirty.

SPEAKER BARRETT: Thank you. You've heard the motion to recess until one-thirty. Those in favor say aye. Opposed no. Carried, we're recessed.

RECESS

SPEAKER BARRETT PRESIDING

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

SPEAKER BARRETT: Thank you. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I have an Attorney General's Opinion addressed to Senator Wesely regarding LB 182. That's all that I have, Mr. President. (See pages 1661-63 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Proceeding immediately then to our General File agenda, 1989 senator priority bills, LB 182.

April 17, 1989

LB 330, 575, 575A, 586
LR 75

PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day, Reverend Frederick Felger of the Central Park Congregational - United Church of Christ. Would you please rise for the invocation this morning.

REVEREND FELGER: (Prayer offered.)

PRESIDENT: Thank you, Reverend Felger, please return to give us our invocation again. Reverend Felger is in Senator Lynch's district in Omaha. Roll call, please. Mr. Clerk, please.

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

PRESIDENT: Thank you. Any corrections to the Journal today?

CLERK: No corrections, Mr. President.

PRESIDENT: Any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 575 and recommend that same be placed on Select File, LB 575A, LB 330 and LB 586 all on Select File. (See pages 1709-11 of the Legislative Journal.)

The last item, Mr. President, I have a report from the Department of Roads Operation Cash Fund for the period of March, 1989. That is all that I have, Mr. President.

PRESIDENT: Fine, thank you. Before we start Final Reading, a few days ago you had introduced LR 75 which has to do with heart disease and cholesterol situation coming up, and since today is the day that we start the blood pressure and cholesterol testing, it was felt appropriate that we take up this LR 75 today rather than wait. Is there any objection? If not, Mr. Clerk.

CLERK: Mr. President, LR 75 is found on page 1692 of the Journal. It was introduced by Senator Wesely. (Read brief description.) Again, Mr. President, on page 1692 of the Journal.

April 24, 1989

LB 330, 586

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB 330.

SPEAKER BARRETT: LB 330 is advanced. LB 586.

CLERK: Mr. President, the first item on 586 are Enrollment and Review amendments, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 586.

SPEAKER BARRETT: Shall the E & R amendments to LB 586 be adopted? All in favor say aye. Opposed no. Carried, they are adopted.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 586 as amended be advanced to E & R for Engrossing.

SPEAKER BARRETT: The question is the advancement of LB 586. All in favor say aye. I'm sorry, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I just want to say one thing on this bill and on another bill. I did everything I could on General File to express what I thought was wrong with the bill and why I didn't think it was wise. It's clear that I'm not going to be able stop the bill or amend it so I'm not going to attempt to do that. And when the judges' salary bill comes up, since you all have persuaded me that you feel that the judges are entitled to the consideration that they're seeking this session, I'm not going to fight them on their salary either. I had said that I would, but since the body is in such a collegial attitude with reference to the judges, their salary bill should fly right through also, but at least it won't have any impediments put in its path by me. And with that, I'm not going to vote for this bill, but I'm not going to try to do anything to stop it.

SPEAKER BARRETT: Thank you. Any other discussion? If not,

April 24, 1989

LB 89, 182, 280, 586

those in favor of the advancement of the bill say aye. Opposed no. Carried, the bill is advanced. LB...anything for the record?

CLERK: Mr. President, two items, amendments to be printed by Senator Smith to LB 89 and to LB 280. (See pages 1875-76 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk, LB 182.

CLERK: Mr. President, 182 is on Select File. I do have E & R amendments pending, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 182.

SPEAKER BARRETT: Shall the E & R amendments be adopted to LB 182? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, Senator Coordsen would move to amend the bill. Senator, I have your AM1498 before me. (Coordsen amendment appears on pages 1877-78 of the Legislative Journal.)

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. Last week, early last week we had a meeting between the proponents of the bill, the opponents of the bill, Senator Wesely and myself were present, and we worked out a series of amendments to address the concerns of the opponents to the bill and what I'm presenting to you in 1498 then is the result of that particular meeting. And I would direct your attention to a handout that went out this morning with a two-page explanation and then the language of the amendment. We'll run quickly through the two-page explanation with the changes in LB 182 that will be brought about with the adoption of this amendment. First is a definition of costs which shall mean the sum or equivalent expended, paid or charged for goods or services, or the contracted or negotiated price. And I would share with you that if we adopt this amendment there will be an amendment to this amendment to change the language in that small amount. Page 2 of the explanation, paragraph 2, will change the standard

would primarily, well, only affects the interstate construction within Douglas County. I know...there is language in the bill urging the department to again apply this year. If I remember correctly, last year they applied, I think it was \$16 million and this year I think the number is, I know it is larger, it seems to me it is around 30 but that may not be exactly right, but there is language encouraging or concurring in the department making that request the second time, and, frankly, if it does not occur, if the state does not receive those discretionary funds, a year from now we will have to look at that issue and make a determination if there is a way and logical method in which the state could help accelerate that program other than with those discretionary funds. I have spoken with Senator Kerrey one day within the last month and talked about it and he was very interested in trying to assist in whatever way he could in that area. So, but the only direct relation to those discretionary funds is concurrence, in effect, in the appropriation bill that the Department of Roads should proceed with those requests, and I know that is being done.

SENATOR HARTNETT: Thank you.

SPEAKER BARRETT: Thank you. Senator Hannibal, please.

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

SPEAKER BARRETT: Thank you. Mr. Clerk, anything for the record.

CLERK: Mr. President, yes, thank you. A series of amendments to be printed to LB 813. (See pages 1942-46 of the Legislative Journal.)

Enrollment and Review reports LB 330 and LB 586 as correctly engrossed. Mr. President, I have an Attorney General's Opinion addressed to Senator Beyer, Byars, (Re. LB 809) excuse me, and Senator Bernard-Stevens had amendments to LB 814, Mr. President, and that is all that I have. (See pages 1936-46 of the Legislative Journal.)

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

May 22, 1989

LB 574A, 575, 575A, 586

PRESIDENT: LB 574A passes with the emergency clause attached. LB 575, please.

ASSISTANT CLERK: (Read LB 575 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 575 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See page 2639 of the Legislative Journal.) The vote is 40 ayes, 1 nay, 7 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 575 passes. LB 575A.

ASSISTANT CLERK: (Read LB 575A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 575A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 2640 of the Legislative Journal.) 41 ayes, 0 nays, 7 present and not voting, 1 excused and not voting, Mr. President.

PRESIDENT: LB 575A passes. May I introduce a very special guest of Senator Pirsch. Under the north balcony, we have the Honorable P.J. Morgan, Mayor-elect of Omaha. Mayor, would you step out so we can see you? Thank you, Mayor, we are honored to have you in our presence this morning. And congratulations to you from all of us. LB 586.

CLERK: Mr. President, I have a motion on the desk. Senator Haberman will move to return the bill for purposes of striking the enacting clause.

PRESIDENT: Senator Haberman, please.

SENATOR HABERMAN: Mr. President and members of the body, I would like to bring to your attention some of the facts and features in 586.

PRESIDENT: Senator Haberman.

SENATOR HABERMAN: Well, Mr. President, it's also hard here to try and explain something when you've got half the people back there.

PRESIDENT: Would you hold up a moment, please. Incidentally, ladies and gentlemen, we have two famous guests with Mayor-elect P.J. Morgan, former two senators, Senator Eugene Mahoney and Senator William Skarda. Would you welcome them to our presence this morning. Thank you. It's good to have both of you back with us this morning. Would you hold up just a moment, Senator Haberman. Senator Haberman, would you like to proceed now, please.

SENATOR HABERMAN: Well, Mr. President and members of the body, I would like to bring to your attention some of the facts pertaining to LB 586. Now 586 is an 18-months program that would cost us \$383,000. I would like to explain to you what it is, therefore, the record will show what it is and why I'm going to vote no. This legislation states that one or two, possibly two retired judges will sit as an appellate court for the district court judges. There are only two that are qualified to do this. Now those two judges are going to draw a salary of \$14,000 the first year, which is fine. They deserve the \$14,000. But to support those judges we're going to hire two secretaries, 36,000; two law clerks at 58,000, and two staff attorneys at 67,000. And this is for an 18-months program, we're hiring these people for 18 months. So, for the first year, it's going to cost \$264,000. Then they're supposed to travel all over the state and help the district judges. Well, that's almost impossible in 18 months. It's going to take at least a couple of months for some of those judges and everybody to get out to other parts of the state. Now I have been told by Senator Kristensen, whose legislation this is, that this summer they're going to have an interim study on how to create a new appellate court to handle some of these problems. So I say with that information that do we really need to start a new program when it's going to be changed? Now what I'm leery of...and Senator Kristensen says it won't happen, that this will be carried on and financed year after year after year. He says, no, that isn't going to happen. So what we're going to do is these six people that we're hiring, we're going to fire them in 18 months. How many of you believe we're going to do that? We're going to hire two attorneys, two law clerks and two secretaries and at the end of 18 months just let them go. We

aren't going to to that. That only happens in the Legislature when you lose your chairmanship and you lose two employees, then we boot them out. It doesn't happen in the courts or in the court system. They keep these employees. So I wanted to bring to your attention that this is an 18-months program. It's supposed to be a temporary program. I am not against the program but if we're going to put one into place, let's hear the whole program, what it's going to be, how they're going to handle it and have the total cost. So, Mr. President, thank you very much for your time. I withdraw the motion.

PRESIDENT: The motion is withdrawn. Would you read the bill, please, Mr. Clerk. Please return to your desks, ladies and gentlemen, so we can continue with Final Reading. Mr. Clerk.

CLERK: (Read LB 586 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 586 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 2641-42 of the Legislative Journal.) 37 ayes, 6 nays, 4 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 586 passes. LB 586A, please.

CLERK: (Read LB 586A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 586A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 2642 of the Legislative Journal.) 37 ayes, 7 nays, 3 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 586A passes. LB 603, please.

CLERK: (Read LB 603 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 603 pass? All

May 22, 1989

LB 586, 586A, 603A, 603, 611A, 611

LB 611A, please.

CLERK: (Read LB 611A on Final Reading.)

PRESIDENT: Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read as found on pages 2646-47 of the Legislative Journal.) 35 ayes, 10 nays, 3 present not voting, 1 excused not voting, Mr. President.

PRESIDENT: LB 611A passes. Senator Barrett, please.

SPEAKER BARRETT: Thank you, Mr. President and members. I would like to suggest that there are another dozen or so bills that are available to be read on Final. I'd like to add them to the list today and if you'd like to make a note of them we'll tack them on to the end of the current agenda on Final Reading. They start with LB 137 and LB 137A, LB 211, and LB 215, LB 228, and LB 352, LB 639, and LB 761, and LB 762, LB 762A, LB 815 and LB 815A, and LB 817 and LB 817A. Those we can read this afternoon with a suspension, and I would like to so suggest. Thank you.

PRESIDENT: Did you want to suggest something about recessing?

SPEAKER BARRETT: I would move we recess until one-thirty.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. We are recessed till one-thirty. Thank you.

RECESS

PRESIDENT NICHOL PRESIDING

CLERK: Quorum present, Mr. President.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign, LB 611, LB 611A, LB 603A, LB 586, LB 586A, LB 603. Let the record show please that Senator Coordsen had some guests in the north balcony. There were seven 9th grade students from Milligan High School in Milligan, Nebraska and the teacher.

May 22, 1989

LB 84, 84A, 586, 586A, 603, 603A, 611
611A, 739A, 744

CLERK: (Read LB 739A on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 739A pass? All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: (Read record vote as found on pages 2658-59 of the Legislative Journal.) 40 ayes, 7 nays, 2 present and not voting, Mr. President.

SPEAKER BARRETT: LB 739A passes. LB 744.

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

SPEAKER BARRETT: Proceed.

CLERK: Mr. President, communication from the Governor to the Clerk. (Read communication regarding LB 84 and LB 84A. See page 2659 of the Legislative Journal.)

Confirmation report from the General Affairs Committee. Your Enrolling Clerk has presented to the Governor bills read on Final Reading this afternoon, Mr. President. That's all that I have. (Re. LB 586, LB 586A, LB 603, LB 603A, LB 611, LB 611A.)

SPEAKER BARRETT: Thank you. Proceed then to the reading of LB 744.

CLERK: (Read LB 744 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 744 become law? All in favor vote aye, opposed nay. Have you all voted? Have you all voted? Senator Withem.

SENATOR WITHEM: Let's do a roll call vote, please.

SPEAKER BARRETT: Thank you. Roll call has been requested. Members, please check in. Senators Rod Johnson and Byars, please record your presence. Senator Lynch, please. Senator Warner, please record your presence. Senator Smith. Senator Byars. Senator Dennis Byars, please, record your presence. Proceed with the roll call. The question again is the...whether

January 11, 1990

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case. Our Supreme Court is made up of seven justices, and our backlog really started about 1969 and has reached what I felt in the last couple of years is a crisis situation. Thus, last year we introduced a bill called LB 586. If you'll remember, it was call the band-aid court, and the band-aid court was designed to temporarily address the increasing amount of backlog of appeals to the Nebraska Supreme Court. This amendment is the permanent solution to what we temporarily did last year. This is the enabling constitutional act that will allow us to set up an intermediate court of appeals. It will be a court not subservient to the Nebraska Supreme Court, necessarily, but will be another court of appeals for us to use to address the backlog. Quite frankly, there is a lot more to the bill. The committee amendments specifically are clarifying. What they do is clarify that you have a right, an absolute right, to an appeal to an appellate level court, either to the appeals court that we are going to be creating or to the Nebraska Supreme Court. Right now, for example, if you were in county court, let's say that you had a small dispute of \$5,000 with your neighbor, you have the opportunity to appeal that to the district court, and if you didn't like the decision of the district court, you have the right to appeal that to the Supreme Court. These amendments will just guarantee that you will always have the right to appeal from the district court, and that you won't be cut off at the district court level for your appeal. It also does a little bit of cleaning up on the ballot language, but the major thrust of the committee amendments is to guarantee us at least one appeal to the appellate level, and I would ask for the adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Discussion on the committee amendments. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, this is, to my way of thinking, one of the most serious bills that has come before the Legislature because it deals with the fundamental right that has always belonged to the citizens of this state ever since there was a court system; that was the right to take an appeal of an issue, whether it involved criminal charges or a civil matter, to the State Supreme Court. The purpose of this amendment is to take away that absolute right and leave it up to the Supreme Court to determine whether it chooses to allow you to appeal a matter to the Supreme Court, itself. The only two exceptions would be a capital case, meaning where the death penalty has been imposed, or one

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SENATOR KRISTENSEN: Thank you. Last year we had LB 586, which was a band-aid court. The court was allowed to create an appellate division from the district bench, and it was we brought district judges in from across the state to serve on a panel of three to hear cases and make recommendations to the Supreme Court on how to decide that. That will terminate in December of this year.

SENATOR ASHFORD: Has that been implemented?

SENATOR KRISTENSEN: Yes, they have been up and hearing cases since September.

SENATOR ASHFORD: And currently are those judges sitting in the division now, are they sitting in...or how are they hearing the cases currently?

SENATOR KRISTENSEN: They are hearing them in a panel of three. The Supreme Court has not set in division for some time. They found that to be not a very good experiment in managing caseload because they were getting inconsistencies between the various divisions, so they went back to sitting en banc and then...

SENATOR ASHFORD: And the court administrator...who makes the selection on the cases, caseload, whether it will go to this appellate court or whether it will go to the court as...

SENATOR KRISTENSEN: Under the band-aid approach we have got right now?

SENATOR ASHFORD: Yeah.

SENATOR KRISTENSEN: The court makes that decision but it is screened through the clerks and through the administrator, himself, but they take a look at those cases and try to decide which of those are error cases and which are doctrinal cases.

SENATOR ASHFORD: So, which, in effect, are error cases meaning if there is a mistake on the record, what do you mean by error cases?

SENATOR KRISTENSEN: Error cases are those cases where somebody may complain that my sentence is excessive, and that they didn't have any reason to stop my vehicle, or maybe a divorce case