

your presence, please. Thank you. Senator Labedz, would you record your presence, please. Senator Robak, record your presence, please. Senator Bernard-Stevens. Senator Chambers, would you record your presence, please. Thanks. We're looking for Senator Lynch, Senator Owen Elmer, Senator Peterson, Senator Pirsch. Senator Kristensen, record your presence, please. Thank you. Okay, we're looking for Senator Bernard-Stevens is all. Senator McFarland, shall we go ahead with your roll call vote?

SENATOR MCFARLAND: That would be fine.

PRESIDENT: All right. The question is the advancement of the bill. Mr. Clerk, please.

CLERK: (Roll call vote taken. See page 297 of the Legislative Journal.) 21 ayes, 25 nays, Mr. President, on the advancement.

PRESIDENT: LB 180 fails to advance. Mr. Clerk, do you have anything for the record, please?

CLERK: Yes, Mr. President, I do.

PRESIDENT: The call is raised.

CLERK: Mr. President, new bills. (Read by title for the first time LBs 600-647. See pages 298-308 of the Legislative Journal.)

Mr. President, in addition to those items, I have hearing notice from the Natural Resources Committee, signed by Senator Schmit. Notice of hearing from the Revenue Committee. That is signed by Senator Hall. Notice of hearing from the Government Committee. That's signed by Senator Baack.

Mr. President, that's all that I have at this time.

PRESIDENT: We will progress on to LB 190.

CLERK: Mr. President, LB 190 was a bill that was introduced Senator Withem. (Read title.) The bill was introduced on January 9, referred to Education, advanced to General File. I have no amendments to the bill, Mr. President.

PRESIDENT: (Gavel.) Senator Withem, just a moment, maybe we

March 3, 1989

LB 74, 91, 116, 208, 238, 263, 267
273, 344, 471, 628
LR 38-41

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Recorder not activated) ...hearty souls who are with us this morning as we convene this last day of the working week. Our opening prayer this morning by Chaplain Clarence Zwetzig of Bryan Memorial Hospital, here in Lincoln. Chaplain Zwetzig.

CHAPLAIN ZWETZIG: (Prayer offered.)

SPEAKER BARRETT: Thank you, Chaplain Zwetzig. We hope you can come back again. Roll call.

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

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

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any messages, reports, or announcements?

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read. Re: LB 74, LB 116, LB 208, LB 238, LB 263, LB 267, LB 273, LB 344. See page 960 of the Legislative Journal.)

Mr. President, resolutions LR 38 and LR 39 adopted yesterday are ready for your signature.

Mr. President, your Committee on Government, Military and Veterans Affairs, whose Chair is Senator Baack, to whom was referred LB 471 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File, LB 628 General File with amendments, LB 91 indefinitely postponed, those signed by Senator Baack as Chair. (See pages 960-61 of the Legislative Journal.)

Mr. President, I have two study resolutions, both introduced by Senator Rod Johnson. (Read brief explanation of LR 40.) That will be referred to Reference. (Read brief explanation of LR 41.) That, too, will be referred to the Exec Board. (See pages 961-62 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. While the Legislature is in

March 14, 1989

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

March 29, 1989

LB 606, 628

and Senator Landis asked if I would close.

SPEAKER BARRETT: If Senator Landis has no objection, please proceed to close.

SENATOR SCHIMEK: Thank you, Mr. Speaker. I would like to very simply say that I think this is a good bill, both for consumers and for bankers. It puts loans on a more business like basis, it lets everybody know exactly what the terms are so that there cannot be any misunderstandings. And I think really it is to protect maybe that unsophisticated borrower. LB 606 will, of course, apply to those loans over \$25,000, will not apply to home loans. But I think those are the amounts that frequently the loans are over a period of years, sometimes the loan officers at the bank are no longer the same people that originally made the terms of the loan, and people's memories get fuzzy after a time. I think this bill will help put this on a more professional, business like kind of plane. I would urge your support for LB 606.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 606 to E & R Initial. All in favor vote aye, opposed nay. Record, please.

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB 606.

SPEAKER BARRETT: LB 606 is advanced. Anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: Proceed then to LB 628.

CLERK: LB 628, offered by Senators Robak and Schmit. (Read.) The bill was introduced on January 19, referred to the Government Committee, advanced to General File. I have committee amendments pending by the Government Committee, Mr. President.

SPEAKER BARRETT: Chairman Baack, on the committee amendments.

SENATOR BAACK: Yes, Mr. Speaker and members, the committee amendment is quite simple. It was an amendment that was proposed by Senator Robak when she came into the hearing. The

bill, as you will notice, as it was originally written, it deals with the notice requirement for entities which fall under the public meetings law. The public meetings law, right now, says that you have to give reasonable notice. Reasonable was not defined in present statute. The bill as it originally came in said that reasonable would mean publication at least three days prior to the meeting in a legal newspaper published or widely circulated in the county in which the entity maintains its principle office. That's the way the...it originally read. The committee amendment, what it does is it keeps this as a reasonable way of providing notice, but it also says that you can also...the reasonableness test is as we have it in current law also. This does not say that this is the only way that you can publicize your meeting. It says that you can do it in other methods, but it has to pass the reasonableness test that we have in current law. With that, I would just urge you to adopt the amendment. I think it more clearly spells out the intent of the legislation. Senator Robak is the one that introduced this amendment, so I think it more clearly defines what the bill is really meant to do. With that I would just urge you to adopt this amendment.

SPEAKER BARRETT: Thank you. Discussion on the committee amendments? An amendment to the committee amendments, Mr. Clerk.

CLERK: Mr. President, Senator Robak would move to amend the committee amendments. (Robak amendment appears on page 1147 of the Legislative Journal.)

SPEAKER BARRETT: Senator Robak.

SENATOR ROBAK: Mr. Speaker, members of the Legislature, this is a technical amendment to reinstate three words currently in statute that the committee amendment strikes. The amendment is found on page 1147 of the Journal. In lines 16 and 17 of page 1, you will see "to the public" stricken. This amendment inserts "to the public" on line 1...on page 1, line 8, after the word "meeting". I offer this amendment because Media Nebraska, which is in support of this bill, has expressed concern that without the phrase "to the public" public bodies may fail to direct the publicized notice to the public. The phrase was initially removed in lines 16 and 17 because the current law can be read to require actual personal notice to each member of the public, which never was the intent. So this amendment

reinstates the phrase to a more appropriate place in the statute which requires publicized notice. Since the committee amendments become LB 628, I'd like to explain the purpose of LB 628 at this time. LB 628 provides a definition in statute of what constitutes reasonable advanced publicized notice for public bodies under the open meetings law. At present a public body must provide reasonable notice, by a method designated by each public body. LB 628 leaves the current law intact, but provides an optional definition of reasonable notice to mean publication at least three days prior to the meeting in a legal newspaper in the county where the principle office is located; or, if there is no such paper, in any legal newspaper widely circulated in the county. Many of you have received letters from your city councils indicating that LB 628 would cost them a great deal of money, because they do not, nor do they ever want to publish meeting notices. These letters address the green copy of the bill, which the committee amendments rewrite entirely. The lobbyist for the League of Municipalities, Lynn Rex, assisted in the drafting of committee amendments to eliminate concerns of small towns across Nebraska. The small public bodies can continue to post notices in the city hall and county courthouse bulletin boards under the committee amendment. However, that type of notice may not pass judicial muster if the public body is challenged. The issue of what constitutes reasonable advance public notice has indeed been challenged in the courts. LB 628 is necessary because of a federal district judge ruled, in December of 1988, that notice published in a legal newspaper was not reasonable advance public notice. Unfortunately the judge did not define what was reasonable. Reasonable has not been adequately interpreted in case law. LB 628 is necessary to make a legislative statement that notice published in a legal newspaper, three days in advance of the meeting, is reasonable. In the absence of legislative guidance the court can set the standard. If the court rules that reasonable notice was not provided, even if the noncompliance is unintentional, whatever action was taken by the public body can be declared void. Given such a severe sanction there should be no room for uncertainty regarding the meaning of the statutory notice requirement. LB 628 will remove the uncertainty which currently exists for all agenda items at all public meetings at all levels of state government. Gee, it got quiet all of a sudden. I ask your support of the committee amendment and of the bill itself.

SPEAKER BARRETT: Thank you, Senator Robak. Discussion on the

amendment to the amendment. Senator Baack.

SENATOR BAACK: Yes, Mr. Speaker and members, I have no problem with this amendment to the amendment at all. The committee meant to put it in, it was just...we inadvertently left it out. There is no problem with this amendment at all.

SPEAKER BARRETT: Thank you. Any other discussion? If not, any closing comment, Senator Robak?

SENATOR ROBAK: I just urge this bill be advanced.

SPEAKER BARRETT: Thank you. We are on the adoption of the amendment to the committee amendments. All in favor vote aye, opposed nay. Mr. Clerk. Mr. Clerk, record.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of Senator Robak's amendment.

SPEAKER BARRETT: The amendment to the amendment is adopted. To the committee amendments again. Senator Baack, anything further?

SENATOR BAACK: Mr. Speaker, I don't think so. I have explained them and Senator Robak has, and they do become the bill. With that, I'd just urge the adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Senator Lamb, would you care to discuss the committee amendments?

SENATOR LAMB: Yes, Mr. President, just briefly. Question of Senator Baack.

SENATOR BAACK: Yes.

SENATOR LAMB: I believe this bill...I've had a number of letters from local officials that were concerned about the original bill because weekly newspapers are not flexible enough to accommodate the three day notice requirement. Now, as I understand the committee amendment though that concern is alleviated, is it not, in that that is either/or. They can use the notice requirements that they now are using, or they can use the newspaper. Is that correct?

SENATOR BAACK: Yes, Senator Lamb, that's absolutely correct.

As the bill was originally written that was the only way they could do it.

SENATOR LAMB: I see.

SENATOR BAACK: And this says that you're...however you do it, it still has to meet the test of reasonableness, if you end up in court. But they can continue to do it the same way that they're doing now. Yes.

SENATOR LAMB: So that should alleviate the concerns that those local officials had out there in regard to this bill.

SENATOR BAACK: I think it should. yes.

SENATOR LAMB: Thank you.

SPEAKER BARRETT: Any other discussion? Shall the committee amendments be adopted to LB 628? Those in favor vote aye, opposed nay. Record, please.

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of the committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. To the bill as amended, Senator Robak.

SENATOR ROBAK: I move the bill be advanced.

SPEAKER BARRETT: Thank you. You have heard the motion to advance the bill. Discussion? Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. Some of you may have read recently a Lincoln Journal editorial regarding this piece of legislation and the history of it. I think we all need to...perhaps after I get a chance I'll send around a copy of that. The background of this bill was kind of unfortunate. It deals with Nucor Steel's lawsuit against NPPD against overcharging them, something like a \$4.4 million judgment that was granted in December of 1988. Part of their argument on that case was they got inadequate notice about rate increases. The notice that was provided by NPPD, up until I guess recently, their idea of public notice was to run a legal notice in the Columbus Telegram about upcoming meetings. Well NPPD obviously affects more than Columbus, Nebraska, it's in 87 of the 93

counties of this state. And to think that adequate public notice in their mind of their meetings was to let the Columbus Telegram run a little notice, in my mind is a total breach of public trust. And obviously the court agreed with that and awarded against NPPD. Well that court action is leading to this piece of legislation and definitely we need to do something about this problem. I, for one, plan not to try to further amend this legislation. But I do understand that representatives of NPPD, Nucor and perhaps others will be looking at this issue for further amendment on Select File, and I want to provide that warning to you and also alert you to the fact that this bill is perhaps a bigger issue than it's being made out to be. How our public power districts deal with the public is a very important issue, because they are our power districts, they are not private entities. They are elected by us, they are owned by us and they ought to respond to the public perhaps more than they have in the past to let us know what they are doing and why they're doing it. To think that public notice is adequate with one small town newspaper, when the district covers most of the state, seems to me to really not be representation of what I would consider true public notice. So I don't have a particular way to improve this at this time. The bill does, I think, take a step in the right direction, but I think we've got a problem here perhaps bigger than this bill currently addresses. I, for one, want to look at this legislation further on Select File. I just wanted to share that concern with you.

SPEAKER BARRETT: Thank you. Further discussion on the advancement of the bill. Senator Schmit, followed by Senators Abboud and Schellpeper. Senator Schmit.

SENATOR SCHMIT: Mr. President and members, I am deeply appreciative of my good friend, Senator Wesely, alerting you to the possible chicanery, et cetera involved in this bill. It's not often that we have such a dedicated public servant who has so much knowledge of a power industry that he can always, of course, spot this sort of clandestine operation. But we are indeed twice blessed here, I guess, in some of these instances. But I'd just like to say this, I do share with him some of the concern that he has expressed relative to adequate public notice. And we have agreed upon some amendments to the bill which we think...we have not agreed upon them, we have agreed, Senator Robak and myself have talked about this, that there are some concerns that are going to try to be addressed by the

March 29, 1989

LB 628

principles involved in this issue. Senator Wesely is correct that there is some concerns with the Nucor situation. I share some of those concerns. But I would just want to point out to you that certainly matter of public notice has always been a concern of mine. I do not in any way intend to try to abdicate that area of responsibility. On the other hand I want to point out also that public power is a very vital part of Nebraska. I have from time to time taken it upon myself to look into some of those operations and have encouraged some modernization of the public power industry usually, I might add, without much help from this body. And I would suggest that we proceed as the overall board of directors of public power that we'll have an opportunity to address some of those issues. As responsible individuals we have a major responsibility to the rate payers of this state to do that which is in our power to hold down the cost of electric energy. To the extent that we can do so we certainly ought to take action. I hope that you will advance the bill.

SPEAKER BARRETT: Senator Abboud.

SENATOR ABOUD: Mr. President, colleagues, I plan to support LB 628. But I would like to echo Senator Wesely's remarks in regards to public notice in general by public bodies. I think a lot of times, not just public power districts, but cities, counties and other political subdivisions view these laws as something to try to be avoided rather than an opportunity to provide public input into important decisions. I think a lot of times they get themselves into more trouble by not providing adequate notice to the public. It's my hope that with this piece of legislation there will be more notice to individuals in that particular portion of the state that NPPD does provide power to. Thank you.

SPEAKER BARRETT: Senator Schellpeper, followed by Senator Rod Johnson.

SENATOR SCHELLPEPER: Thank you, Mr. Speaker and members. I also rise to echo what Senator Wesely said. The Nucor Steel is in my district. And I would hope that things can be worked out, and Jennie Robak has assured me that they will be on Select File. So, with that comment, I will just vote for the passage of the bill at this time.

SPEAKER BARRETT: Thank you. Senator Johnson.

SENATOR R. JOHNSON: Mr. President, members, as I reviewed Senator Robak's letter I was struck by something in her letter that maybe I have no concern or no reason to have concern with this provision. But it says at present time the public body must provide reasonable notice "by a method designed by each public body". One of the problems we ran into, if I recall, with liquor licenses in providing local option for liquor licenses was that there seems to be concern that standards need to be set that were uniform, so that those standards were uniform across the state, so that a denial of a liquor license was not arbitrary, I think, by the city council. I don't know if this bill....I realize this is a totally separate subject, but sometimes when you are using methods that are designed by each public entity, whether it's a municipality or an NRD or what, I'm wondering if what is reasonable to an NRD or a municipality may be the same reasonableness as to a county board, for example. I guess all I can...I'll ask Senator Robak, she has the remainder of my time, if she'd like, to address that. Maybe you covered that when I was off the floor, but I'm just curious if this has any connection with a similar problem that we saw with the granting of local option on liquor licenses.

SENATOR ROBAK: Yes, LB 628, it does provide a standard now for all levels of local government, every city, every county, every school board and every NRD, and on and on and on, sets the standard.

SPEAKER BARRETT: Thank you. Any other discussion? If not, any closing statement, Senator Robak?

SENATOR ROBAK: Yes. LB 628 is not concerned with electric rates, or even concerned with public power districts. LB 628 is only concerned with a portion of the Nebraska open meetings law. The purpose of LB 628 is to remove the uncertainty which currently exists as to the laws notice of requirements for all agenda items at all public meetings at all levels of local and state government including every city, every county, every school board, every NRD and on and on and on and on. There was an editorial in the Lincoln Journal recently that mistakenly created the impression that LB 628 is a bill which is being promoted by the Nebraska Public Power District to permit it to increase rate increases upon its customers without public notice. NPP is a political subdivision of the State of Nebraska

which is governed by a board of directors whose members are elected from districts across the state. The members of the board, which include monthly meetings, are subject to the public meetings law. The law which applies to all public subdivisions...all political subdivisions and all state boards and commissions requires public bodies to give reasonable advance publicized notice of their meetings. If a public body does not provide the required notice, the law provides all actions taken by the public body at the specific meeting can be declared void. In the case of NPPD actions taken at meetings are not limited to the setting of wholesale and retail electric rates, but include awarding of contracts, the issuance of bonds, approval of expenditures and many other issues related to running a public utility. The ability of a court to declare any and all actions taken during a public meeting void, based on a determination that there was some defect in the notice which was given under the public meetings law, is such a severe sanction that there should be no room for uncertainty regarding the meeting of the notice requirement and the word reasonable. But reasonable is not defined in statute, nor has it ever been adequately defined in case law. The uncertainty that has been created by the federal courts order needs to be dealt with by the Legislature, not just for the sake of NPPD, but for the sake of all public bodies in the state. In summary, NPPD and all other public bodies need to know that actions taken at a public meeting are valid and will not be set aside in a later court challenge because of unintentional compliance with an indefinite notice standard. LB 628 does not change the operative provisions of the public meetings law in any respect. It will provide assurance to all of the public bodies that provide notice in the manner specified in the bill that they are in fact complying with the law. I ask for your support in advancing LB 628.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 628 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Record vote has been requested. We're voting on the advancement of the bill. Have you all voted? Senator Chambers. Senator Chambers not voting in lieu of a call for a record vote, did you say? Senator Chambers, you are asking for a record vote. Thank you. Then the Clerk, I believe, can abide by your wishes. Anyone else care to vote? Please record, Mr. Clerk.

CLERK: (Read record vote as found on page 1389 of the

March 29, 1989

LB 628, 681

Legislative Journal.) 38 ayes, 0 nays, Mr. President, on the advancement of LB 628.

SPEAKER BARRETT: LB 628 is advanced. LB 681.

CLERK: LB 681, Mr. President, introduced by Senator Lindsay. (Read.) The bill was introduced on January 19, referred to the Banking Committee, advanced to General File. I have committee amendments pending by the Banking, Commerce and Insurance Committee, Mr. President.

SPEAKER BARRETT: Senator Landis, on the amendments, please.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. This bill by John Lindsay regulates rent-to-own operations. The bill is premised on the model of Iowa, and they have been regulating rent-to-own operations for several years. Iowa, however, has passed the UCCC, the Uniform Commercial Credit Act (sic) and it's bill is written in a way that contemplates recovery and acknowledgment under that law. So when John brought this idea to the bill drafter some of those assumptions of UCCC tie ins were written in the green copy. The committee adopted an amendment which is substantially all of the rules that John wants the State of Nebraska, absent those mistaken bill drafting assumptions that worked into the green copy of the bill because of the Iowa connections to the UCCC, which Nebraska does not have. The white copy or the committee amendment should be treated as the bill for your purposes. And this is basically a scheme of regulation overseen by the consumer, on one part, and the Department of Banking and Finance on the other. It lists the kinds of fees that rent-to-own operations may charge and may not charge. It lists the kind of disclosures that must appear on the face of contracts, it limits the kind of misleading advertising that rent-to-own operations may have. It limits the right of rent-to-own operations to take back goods without giving the consumer a chance to purchase the goods. It gives the consumer a right to renegotiate should there be a late payment late in the paying off of this kind of contract. I can tell you that the committee advanced the bill unanimously quite impressed with the attempt by Senator Lindsay to protect consumers from practices by some of the more unscrupulous representatives of the industry. The industry was present before the committee, they testified in a neutral capacity. They said that they did not object to regulation so long as that regulation was reasoned, principled and fair and

April 3, 1989

LB 44, 44A, 47, 66, 75, 78, 87
220, 240, 262, 348, 372, 399, 401
431, 438, 438A, 546, 548, 569, 569A
582, 582A, 592, 606, 608, 628, 637
681, 706, 777, 790

the time Senator Abboud can have to finish his closing.

SPEAKER BARRETT: Thank you. The question is the advancement of the bill to E & R Engrossing. All in favor vote aye...thank you. Roll call vote has been requested in reverse order. So be it. Mr. Clerk.

CLERK: (Roll call vote read. See pages 1431-32 of the Legislative Journal.) 27 ayes, 10 nays, Mr. President, on the advancement 592.

SPEAKER BARRETT: LB 592 advances. Anything for the record, Mr. Clerk?

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 262 and recommend that same be placed on Select File; LB 569, LB 569A, LB 606, LB 628, LB 681, LB 78, LB 438, LB 438A, LB 706, LB 47, LB 75, LB 548, LB 582, LB 582A, LB 240, LB 790, LB 777, LB 44, LB 44A, LB 637, LB 66, LB 546, LB 87, LB 220, LB 372, LB 399, LB 401 and LB 608, some of which have E & R amendments attached, Mr. President. (See pages 1432-44 of the Legislative Journal.)

Mr. President, your Committee on Health whose Chair is Senator Wesely reports LB 348 to General file with committee amendments attached. That's signed by Senator Wesely as Chair. (See page 1444 of the Legislative Journal.)

That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. As announced before recess, we will move back to LB 431 and LB 431A. LB 431, Mr. Clerk.

CLERK: Mr. President, the first item I have on 431 are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 431 be adopted.

SPEAKER BARRETT: The question is the adoption of the E & R amendments to LB 431. Those in favor say aye. Opposed no. Carried. They are adopted.

April 19, 1989

LB 569, 569A, 606, 628

SPEAKER BARRETT: You have heard the motion to advance LB 569. Those in favor say aye. Opposed no. Carried. The bill is advanced.

CLERK: Senator, on LB 569A, I have no amendments to the bill.

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: I move we advance LB 569A.

SPEAKER BARRETT: Any discussion on the advancement of the A bill? Senator Wesely, your light is on. Senator Schellpeper. Thank you. Shall the A bill, 569A, be advanced? Those in favor say aye. Opposed no. Carried. The bill is advanced. LB 606.

CLERK: LB 606, Senator, I have Enrollment and Review amendments pending.

SPEAKER BARRETT: Senator Moore, excuse me, Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President. I move the adoption of the E & R amendments to LB 606.

SPEAKER BARRETT: Shall the E & R amendments to 606 be adopted? All in favor say aye. Opposed no. Carried. They are adopted.

CLERK: I have nothing further on that bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 606 as amended be advanced to E & R for Engrossment.

SPEAKER BARRETT: You have heard the motion to advance 606. Those in favor say aye. Opposed no. Carried. The bill is advanced. LB 628.

CLERK: LB 628, Senator, I have E & R, first of all.

SPEAKER BARRETT: Senator Lindsay.

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

SPEAKER BARRETT: Shall the E & R amendments to 628 be adopted? All in favor say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, Senators Morrissey and Wesely would move to indefinitely postpone the bill. Senator Robak would have the option of laying the bill over at this time, Mr. President.

SPEAKER BARRETT: Senator Robak, your wishes?

SENATOR ROBAK: I will take it up.

SPEAKER BARRETT: Take it up now? Thank you. Senator Wesely.

SENATOR WESELY: Thank you. Mr. Speaker, members, Senator Morrissey and I and some other senators have talked about this piece of legislation. If you recall, on General File, I issued a concern and a warning about what this bill did and suggested that we take a look at it, which I have done. In addition, there were some negotiations occurring between the Nucor Company and NPPD about how to handle the particular problems that they have that initiated this bill, and I want to go back and start from the beginning and try and highlight what I think the situation is. In 1987, in April, which is about two years ago, Nucor was awarded \$4.4 million in a court action that said essentially that their rates were increased by NPPD with unreasonable notice. In other words, NPPD had a rate hearing, adjusted their rates upwards, and did not give adequate notice and, as a result, the rates were overturned and \$4.4 million was returned to Nucor Steel. As a result of that court action, we have this piece of legislation and to essentially put into statute what the court said was unreasonable notice. At the time that NPPD and Nucor had this difficulty, NPPD's practice was to only advertise in the Columbus Telegram as to a notice on their hearings. Of course, the Columbus Telegram does not have a wide distribution around the state. It is localized in Columbus and Nucor Steel is just outside of Norfolk in Stanton County, in Senator Schellpeper's District, and in Stanton County there is only one subscriber to this particular newspaper, and the rate increase that was being proposed affected but one entity, and that being Nucor Steel, but no notice was provided to Nucor, and away they went with the rate increase without a chance to be challenged by Nucor Steel. Well, Nucor did go to court. As I said, they won the case and the court did rule that the idea of having a small town newspaper have a notice when, in

fact, the matter before the body, in this case, NPPD, affected a resident in a different county that didn't have access to that notice was unreasonable. But what we are about to do if you adopt this bill, if you pass this legislation, is put into statute this very practice, that this language in LB 628 would not allow not only NPPD but other public entities in this state the right to publish a notice in their local home-based newspaper and count that as adequate notice when, in fact, the decisions they are about to make affect people that have no idea that there was about to be a decision made or a hearing held. The open meetings law in this fashion is being flaunted and ignored by this practice. Now there is no doubt in my mind as to the injustice perpetrated by NPPD and the court did act and decide against them, but what we are trying to do here is far, far worse than what NPPD did because it affects more than NPPD. It affects all these entities that are under the open meetings law and I, for one, do not feel that this standard of open meetings access and notice is, in fact, reasonable, and I would argue that we should kill the bill and allow us to proceed with the idea that better notice is required than this bill would provide for. Now to give you an example on rate matters and the difference of opinion of how these are handled, the LES board has adopted a policy that says the following: Ratepayers will be notified via their electric bill that a change in electric rates has been proposed. And the date and place of the board meeting, hearing will be included, and an idea of what the rate increase will amount to, so that the public, the people, have a chance to know when they are about to face a rate increase and have a chance to respond. It is public power and our state is the only public power entity in the country, the only state fully under public power, and the public does have an ownership in our public power system. But if they aren't informed of rate setting decisions, they can't act and represent themselves. But LES has responded, I think, in a constructive fashion. What does NPPD have to say? In their policy, they say mandatory requirements for transmitting information to each customer would result in little if any additional benefits while creating considerable additional cost. What this says is it isn't going to help anything to let customers know that there is a rate increase, there is little if any additional benefit, and the cost does not justify doing that. Well, I think they are plumb wrong. When they send out mailings and they send out billings, it ought to be part of that process to let those ratepayers know as an insert, perhaps, in their billing that they are about to have a rate increase. That is not too much to ask. It is the

fair and reasonable thing that most public power districts follow right now. In fact, you will find that to be a common practice but NPPD does not adhere to that. They feel that publishing a little notice in a small town newspaper is all that is required under the law. Well, the court said, no, that is not right. So now they are coming back in to change the law so that would be allowed for. Now this is just one example. NPPD is but one entity affected by this, but, clearly, if you are concerned with the people being able to know what is being done to their rates in public power, what is being done in any other public entity in the state, you don't want to adopt this bill. This bill would truly change the standards that we now have which are supposedly set on an individual case by case basis but also supposed to be reasonable efforts to notify the public of what a board or public entity is to do, and so, in my estimation, to proceed with this bill is a serious mistake. I have got a handout from the Lincoln Journal, which did alert me to this problem, and I hope you have had a chance to read it. It is an excellent summary of the situation. It has been responded to by NPPD and Senator Robak has sent out their response, but I truly think their attempt to trivialize the issue is a mistake. It is a big issue. It is a big problem. We haven't had big rate increases lately for the general ratepayers but that can change at any point and they deserve the chance to know when their rates are going up, just as Nucor Steel deserved the right to know when their rates are going up to the tune of something close to \$7 million, of which \$4.4 million was returned to them. That is a big increase and to not have the right to know and right to participate in that decision is wrong. So I would ask your support to kill this legislation. This is the best way to proceed at this time. Unfortunately, we are in that situation. I haven't had a chance to see if there is any compromises or alternatives but certainly this change is unwarranted and unjustified.

SPEAKER BARRETT: Thank you. Senator Robak, please, on the motion to indefinitely postpone.

SENATOR ROBAK: Yes, thank you, Mr. President, members of the Legislature. I would like to respond also to Senator Wesely and kind of explain this bill a little bit. I think he is misunderstanding the intent of this bill. LB 628 provides a definition in statute of what constitutes reasonable advance public notice for public bodies under the open meetings law. At present, right now, public bodies must give reasonable notice by

any method designated by that public body. This bill does not change the substance of that law, but provides an optional definition of reasonable. Reasonable notice to mean, "publication at least three days prior to the meeting in a legal newspaper in the county where the principal office is located, or if there is no such paper, in any legal newspaper widely circulated in the county." The issue of what constitutes reasonable advance public notice has been challenged in the courts. LB 628 is necessary because a federal district judge ruled in December of 1988 that notice published in a legal newspaper was not reasonable advance public notice. Unfortunately, that same judge did not define what was reasonable. It is our job as legislators to define what reasonable is. LB 628 is necessary to make a legislative statement that notice published in a legal newspaper three days in advance of the meeting is reasonable. Without legislative guidance, public bodies have no assurance that the notice they give will be adequate. Because of the possibility that an action taken at a public meeting without reasonable advance public notice can be declared void, we must provide a specific definition for reasonable advance public notice. LB 628 corrects this situation by giving one definition of what is reasonable advance public notice. Right now, under the law if proper notice of a public meeting is not given, any action taken at that meeting can be challenged and potentially may be declared void. This is the case even if the public body did not intentionally fail to give proper notice. So what we are really talking about here is that a public body may be in technical violation of the open meetings law, even though unintentionally. LB 628 is not concerned with electric rates or even with public power districts. It is only concerned with the portion of Nebraska open meetings law. The purpose of this bill is only to remove the uncertainty which currently exists as to the law's notice requirements for all agenda items at all public meetings at all levels of local and state government, including every city, every county, every school board, every NRD, and on and on and on. The ability of a court to declare any and all that actions taken during a public meeting void based simply on a technical violation is such a severe sanction that there should be no room for uncertainty regarding the meeting of the notice requirement and the word "reasonable". But reasonable is not defined in statute nor have the courts given us any guidance. The federal court's order needs to be dealt with by the Legislature for the sake of all public bodies in the state. In summary, all public bodies need to know that actions taken at a

public meeting are valid and will not be void because of the unintentional failure to give reasonable advance public notice. LB 628 does not change the operative provision of the public meetings law in any respect. Senator Wesely, I will repeat that one more time. LB 628 does not change the operative provision of the public meetings law in any respect.

SPEAKER BARRETT: One minute.

SENATOR ROBAK: In fact, it will provide assurance to public bodies that choose to provide notice in compliance with this bill they are, in fact, complying with the law. I ask for your support of LB 628. Thank you.

SPEAKER BARRETT: Senator Chambers, would you care to discuss the motion?

SENATOR CHAMBERS: Yes, Mr. Chairman and members of the Legislature, I support the kill motion and I have discussed the problems I find with the bill with Senator Schmit and with the representative of NPPD out in the lobby. This bill was brought for NPPD despite what Senator Robak says. It had to be framed to deal with all public bodies because NPPD comes under the public meetings law. But here is the situation, NPPD has customers in 87 counties. They want the bill to be passed so that it says they need publish notice only in the Columbus newspaper. This Nucor is located in Norfolk which is less than 50 miles from Columbus, but the Columbus Telegram does not go there, so here is what the federal judge said. So even if you put this language in the bill, you are flying in the face of what the judge said. The court finds that under either a due process test or the Nebraska statute, NPPD did not provide reasonable notice in this case. So what NPPD is asking you to do is to change the open meetings law to conform to what NPPD is doing now, which is publishing notices of these meetings for rate changes only in the Columbus Telegram. The judge has said that under a due process analysis that is not valid. It is not notice that is required by due process and the judge goes further. On page 10 of his opinion, his memorandum, he says, "Reasonable notice is not defined in the statute nor has it been adequately interpreted in case law, but see Pokorny v. City of Schuyler, 202 Neb. 334, 1979, the posting of a notice in three public places at 10:00 p.m. on the date preceding a hearing is not reasonable advance public notice as required by Section 84-8411." Now get this, in another context, the

Nebraska Supreme Court held that "Notice can be considered adequate only if it is transmitted in a manner which at a minimum has a reasonable certainty of resulting in actual notice". That is from Gruenewald v. Whaara, 229 Neb. 619, 1988, and then in parentheses, (adopting restatement second of judgments, Sec. 21(b), 1982.) What the federal judge said is that NPPD is not giving notice to the ratepayers. The lady out there from NPPD says they have contracts with cities requiring them to notify them, but think of the majority of customers who are not cities and get no notice. When I asked her why they didn't put the notice in the billing statements, she said people don't read these and that sometimes they go to renters and not to owners. I indicated but if they put the notice in the billing statements, then they could show that there was a good faith effort to give that notice, and what the judge did point out in his opinion is that in their billings, NPPD does send seasonal messages and various advertising material, so they can put that in the billing notice. But when it comes to giving notice to the customers of a proposed rate increase, they don't want to put that in the billing notice. They don't want to publish in a legal paper in all of the counties where they have customers. They want to publish it in the Columbus Telegram only, and then they want us to put into law, and this is the effect of that amendment that is in 628, if NPPD...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...publishes notice of a meeting where a rate increase will be considered, it is published in the Columbus Telegram, then that serves as notice to all the ratepayers in 87 counties in Nebraska, and remember what the federal judge said, that for the notice to comport with due process, it has to be transmitted in a way that has a reasonable likelihood of providing actual notice. This is NPPD's bill. NPPD lost a lawsuit. They are now asking the Legislature to put into law a definition of reasonable notice that the court has already said is not reasonable. This bill would make law what NPPD does now, and what NPPD does now has been ruled by the federal court to not give the reasonable notice required by due process.

SPEAKER BARRETT: Time. Senator Morrissey, followed by Senator Schmit.

SENATOR MORRISSEY: Thank you, Mr. Speaker and members. Pretty much all of my arguments have been stated by Senator Wesely and

Senator Chambers. I would note that...well, I have a question for Senator Robak.

SPEAKER BARRETT: Senator Robak.

SENATOR ROBAK: Okay.

SENATOR MORRISSEY: Senator Robak, since that court ruling, how has NPPD done their public notices?

SENATOR ROBAK: It is still by the newspapers. They have expanded to 10 different newspapers.

SENATOR MORRISSEY: They have gone to 10 different newspapers?

SENATOR ROBAK: Right.

SENATOR MORRISSEY: All right, and they also, I might...they also advertise on a regular basis in quite a few different newspapers across the state to different PR items.

SENATOR ROBAK: I am not really sure about that because the intent of this bill is simply to put in statute what reasonable advance public notice is. I don't view this bill as an NPPD bill or a public power district bill.

SENATOR MORRISSEY: Okay. Well, I do, in fact, believe they advertise on a regular basis in many newspapers across the state. They are right now doing their public notices in at least 10 newspapers, as you stated, and if the intent of this bill is to establish a reasonable intent, I maintain that one ad in one newspaper in a very small segment of their business area is not reasonable intent, and I would support the kill motion, reasonable notice.

SENATOR ROBAK: May I ask you a question?

SENATOR MORRISSEY: Well, I don't know if you can or not.

SENATOR ROBAK: What is reasonable?

SENATOR MORRISSEY: What is...I will tell you what reasonable isn't. One ad, one newspaper, one town in a very small percentage of your business district is not reasonable. Thank you.

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

SENATOR SCHMIT: A very quick question of Senator Morrissey. Then, Senator Morrissey, is reasonable notice an inch and a half classified-type ad nailed to the court house door and the city hall door in Omaha to notify 500,000 people a reasonable notice for those people?

SENATOR MORRISSEY: No.

SENATOR SCHMIT: Well, that is what you just approved in LB 298. You voted for the bill. Ladies and gentlemen, Senator Chambers is correct. The stipulation as to what is reasonable notice has arisen out of the dilemma between Nucor and NPPD because as...and he has quoted correctly from the judge's statement, but I want to point out this, that this same dilemma which faces NPPD faces OPPD, faces the REAs, faces the NRDs, faces every public entity. Now if you choose to try in your zealous endeavor to put a burden upon NPPD, you are going to do the same to each and every other public entity. I have no problem with that, but I just wanted to raise one other question. Senator Chambers asked the question, and justifiably so, why not put a notice in the billing statement? Not a bad question. The answer, as I would see it, is this. With hundreds of thousands of billing statements going out, what is to prevent myself as a customer from saying there was no notice in my envelope of a rate increase, and, therefore, I take the entity to court and protest the rate increase. There is no way that NPPD or OPPD, LES, or anyone else, Senator Wesely, can prove that they did, in fact, put that notice in there, and if they can't, then the burden is upon them. I have now at this time an NRD which sent a notice to a divorced wife's former residence of improvements being done under the NRD statutes. She did not receive the notice at her new address. She has a very legitimate complaint and it will probably result in some litigation. So if you get to...the more finite you make the notice requirements, the greater the burden upon the entity. Now I can understand and I did not condone the difficulty between NPPD and Nucor. That is being addressed, and this bill, by agreement between Nucor and NPPD, will have no impact upon that lawsuit. They have agreed upon that, so that is not an issue here. What is an issue is, do you want to place something in the statute, the judge has said the statutes are unclear. Therefore, we ought to try to

clarify them. If, in fact, we want to make them put a notice in every single billing statement, fine, but bear in mind, Senator Wesely, LES must do it also, and OPPD must do it also, and every REA must do it also, and do you know what it is going to do? It is going to add to the light bill. Now that is fine if you don't mind that. It makes no difference to a public power entity. It is not going to cut into their profits. You just add it on the old light bill and that can be done. That can be done. Bear in mind that this problem will not go away, Senators, if you kill the bill. The problem is still there. The only thing is that it will, hopefully, shift to some entity other than NPPD next time. I would not want to wish Senator Wesely the bad luck that it would shift to LES. I would not want to wish my good friend, Senator Chambers, the bad luck it would shift to OPPD, but he would welcome that. It couldn't happen to more deserving people, he says. I would tend to agree from time to time, especially yesterday, there was a time when I agreed with that entirely. But the point I want to make is this, that the greater we specify the specific notice, and I also in a way wish now we had held the bill over. I am not an expert on the bill, as you can see, but I hope that you do not kill the bill, that we discuss the bill, that we find something that we can reasonably...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...work on this, and that we can maybe find a solution. Senator Robak, I hope that maybe we can get Senator Wesely to withdraw that kill motion and talk about the bill some more.

SPEAKER BARRETT: A priority motion on the desk.

CLERK: Mr. President, Senator Chambers would move to bracket the bill until April 26.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, at no point have I said that we should not try to give an indication in the statute, if we can, of what reasonable notice would be, and my hope was that when the kill motion were read that the bill would be laid over so that we could work something out. I have asked that it be bracketed for a week because that would give us all the opportunity, who have an interest, to do

something, and when Senator Robak asked what is reasonable notice, and the court had indicated that it has to be notice calculated to give the people who are involved actual notice of the meeting. It doesn't say that you have to guarantee that every ratepayer who is affected receives actual notice. The method that you employ has to be designed to give actual notice and that would be met if it was adopted as a policy to put these notices in the billing statement, and if one ratepayer actually did not get the notice, that would not be sufficient to say that the method of giving notice was inadequate. You could show that the policy and the method was aimed at getting notice to all those who are affected, and because of the large number, some may say that they didn't get it when they did, some may actually not get it, but such a large number and such a large percentage would have the notice that the interests of all of those in the affected class could be looked after. So I am not asking that NPPD, OPPD, LES or any other power district be required to prove that every ratepayer received actual notice, but what should be avoided is what we have in the present set of circumstances, and I want to see if I can find what the judge said here. On page 11 of his memorandum opinion, the court finds that a single publication in the classified section of the Columbus newspaper with a limited coverage area which, in fact, did not include the City of Norfolk does not fulfill NPPD's obligation to give Nucor reasonable notice and an opportunity to be heard with respect to the rates to be charged Nucor. The notice published in the Columbus Telegram did not contain any specific notice that rate setting was the subject of the board meeting. The publication provided no more than that an agenda could be inspected at general offices in Columbus. So the notice printed in the Columbus Telegram did not even notify the people that rate settings were to be considered. So what I am hoping the body will agree to do is bracket this bill. Now a bracket motion can prevail on a request for unanimous consent. If that fails, then I would have to take a vote. But before asking for unanimous consent, I wanted to make it clear that I am not doing this just to delay the bill, but to delay it in order that we will have an opportunity to try to craft some language that can be reasonable for these power districts but, at the same time, not impinge on a way not foreseen or desired on every other public entity in this state who is subject or that is subject to the open meetings laws. Remember, if this law is passed, you are taking NPPD's current practice and making it the law for every public entity in this state as far as the public meetings law is concerned. So I am going to ask unanimous consent to bracket

April 19, 1989

LB 628, 681

LB 628 until April 26.

SPEAKER BARRETT: Thank you. Are there objections to bracketing the bill for a week? Any objection? If not, so ordered. The bill is bracketed. Excuse me.

SENATOR ROBAK: Yes, I will accept the bracket motion. I am willing to discuss amendments. The only requirement is that whatever is reasonable for NPPD must be reasonable for all other public bodies, including state agencies, and I do accept the bracket motion.

SPEAKER BARRETT: Thank you. The bill is bracketed until April 26th. Mr. Clerk, LB 681.

CLERK: Senator, I have, on 681, I have E & R amendments, first of all.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I would move the adoption of the E & R amendments to LB 681.

SPEAKER BARRETT: Shall the E & R amendments be adopted to 681. Those in favor say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, Senator Lindsay would move to amend the bill. (See Lindsay amendment on page 1570 of the Legislative Journal.)

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President. Colleagues, LB 681 is the Consumer Rental Purchase Agreement Act that was advanced to Select File two or three weeks ago. The amendments that I filed are printed in the Journal, and these amendments were suggested by E & R, but since they do affect substantive portions of the bill, E & R felt it was better to run the amendments on the floor rather than running them as technical amendments. It affects four different areas of the bill. The first area, that it would take out what is a repetitive reference to the term "If applicable" on page 4, line 20 of the bill. That portion is not intended, or that change, deletion is not intended to create any liability on the part of any consumer

PRESIDENT: The motion fails. Do you have something for the record, Mr. Clerk?

CLERK: Mr. President, amendments to be printed to LB 628 by Senator Schmit. That is all that I have. (See pages 1815-17 of the Legislative Journal.)

PRESIDENT: May I introduce some guests, please, of Senator Barrett in the south balcony. We have 15 seniors from Gothenburg High School and their teacher and superintendent. Would you folks please stand and be recognized by your Legislature. Thank you for visiting us today.

CLERK: Mr. President, Senator Labeledz would move to reconsider the vote on the motion to overrule the agenda.

PRESIDENT: Senator Labeledz, please.

SENATOR LABEDZ: Thank you, Mr. President. Inasmuch as there was some senators excused and others...

PRESIDENT: The call is raised.

SENATOR LABEDZ: ...not voting, I thought it might be a good idea, in fact, an excellent idea to reconsider the vote and possibly convince two senators that this is a right thing to do because they are senators' priority bills and we have the same motion coming up on Final Reading that many of us would like to support. So I urge the senators to continue the debate on the reconsideration and see if we can convince two other senators to support the motion. Thank you.

PRESIDENT: Thank you. Senator Chambers, please, followed by Senator Schmit.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, Senator Barrett is completely and totally able to justify what it is that he does as Speaker, but a point is reached where others should say something and this is one of those points as far as I am concerned. I think the discussion has been cheapened by trying to compare what is being done here to what Senator Barrett is doing. Final Reading has been converted by us in some instances to a point at which debate occurs. Motions are offered, then withdrawn, in order that a last statement can