

will meet for a brief Executive Session, in Room 1003, upon recess to select a Vice-Chair. Appropriations Committee upon recess in Room 1003 by the Appropriations Committee.

Mr. President, I also have the Committee on Committees report as offered by Senator Lowell Johnson and the Committee on Committees. Also an acknowledgment, Mr. President, that Senator Beyer has been selected...Senator Emil Beyer has been selected as Vice-Chair of the Committee on Committees.

PRESIDENT: The Chair recognizes Senator Lowell Johnson. Could we have your attention for just a moment, please. (Gavel.) Could we have your attention just a moment, ladies and gentlemen. If we could have your attention just a moment, we won't request your attention too long today, but Senator Lowell Johnson has an announcement.

SENATOR L. JOHNSON: Mr. President and members of the Legislature, your Committee on Committees met yesterday, and after careful deliberations completed the committee roster, which you find on your desks, which has been placed there by the Clerk. The report was unanimously adopted by the Committee on Committees, and I, therefore, move at this time that it be accepted and approved by the Legislature.

PRESIDENT: Is there any discussion? If not, the question is the adoption of the report. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the Committee on Committees report.

PRESIDENT: The report is adopted. Back to you, Mr. Clerk. We're ready for the introduction of new bills. Mr. Clerk.

CLERK: Mr. President, new bills. (Read LB 1-80 by title for the first time. See pages 44-61 of the Legislative Journal.)

PRESIDENT: If I could have your attention just a moment, please, we'll introduce a couple of guests. Over under the north balcony, our first doctor of the day for this year is Dr. Dale Michaels of Lincoln, Nebraska. He's from Senator Warner's district. He's here to take care of us on behalf of the Nebraska Academy of Family Physicians. So would you welcome Dr. Michaels. Would you please stand, Doctor. Thank you for

February 9, 1989

LB 37, 48, 57, 58, 70, 77, 94  
97, 115, 120, 126, 133, 142, 156  
209, 229, 230, 233, 251, 255, 256  
295, 311, 350, 521, 597, 598, 692  
703, 777, 780

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 209 as amended be advanced.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. May I introduce a guest, please, of Senator Hefner. We have Mr. Art Anderson of Bloomfield, Nebraska. Would you please stand, Mr. Anderson. Thank you. Mr. Clerk, anything for the record?

CLERK: Yes, Mr. President, thank you. Your Committee on Appropriations gives notice of hearing for March 7...I'm sorry, for February 24. That's signed by Senator Warner. A location change for Appropriations hearings on March 1, also offered by Senator Warner.

Mr. President, General Affairs Committee offers LB 703 to General File; LB 777 to General File; LB 780 to General File. Those are signed by Senator Smith as Chair of the Committee.

Agriculture Committee reports LB 37 to General File with amendments; LB 120 to General File with amendments. Those are signed by Senator Johnson as Chair. (See pages 678-79 of the Legislative Journal.)

Mr. President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis reports LB 77 to General File with amendments; LB 311, General File with amendments; LB 350, General File with amendments; LB 598, General File with amendments; LB 692, General File with amendments, and LB 597, General File with amendments. Those are signed by Senator Landis as Chair. (See pages 679-82 of the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 11:30 a.m. (Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, and LB 256.)

Mr. President, Senator Moore would like to print amendments to LB 48. (See page 682 of the Legislative Journal.)

And, Mr. President, Senator Weihing would like to add his name to LB 521 as co-introducer. That's all that I have, Mr. President.

March 21, 1989

LB 77, 228A, 258, 456, 468, 587, 597  
683

CLERK: (Read record vote. See pages 1252-53 of the Legislative Journal.) 28 ayes, 11 nays, Mr. President, on the motion to raise the bill.

PRESIDENT: The motion passes. Anything for the record about now, Mr. Clerk?

CLERK: Yes, sir, I do. Your Committee on Appropriations, whose Chair is Senator Warner, reports LB 258 to General File, and LB 468 to General File with amendments, signed by Senator Warner. Health and Human Services Committee reports LB 456 to General File with amendments. That is signed by Senator Wesely. Senator Haberman has amendments to LB 587 to be printed; Senator Abboud to LB 597. (See pages 1253-56 of the Legislative Journal.)

Mr. President, a new A bill, LB 228A. (Read for the first time by title. See page 1257 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: We move on then to LB 77.

CLERK: Mr. President, LB 77 is a bill introduced by Senator Warner. (Read title.) The bill was introduced on January 5. It was referred to the Banking, Commerce, and Insurance Committee for public hearing. The bill was advanced to General File and I do have committee amendments pending by the Banking, Commerce, and Insurance Committee, Mr. President. (See page 679 of the Legislative Journal.)

PRESIDENT: Senator Landis, are you going to handle the amendment? Senator Conway, are you prepared to handle that as Vice-Chairman of the committee?

SENATOR CONWAY: Mr. President and members, speaking on behalf of the committee, the committee amendments that were applied to LB 77 were purely technical. The committee amendments would insert and amend Section 81-8,239.01 to give the State Risk Manager the authority to carry out the duties prescribed by the bill as introduced, purely technical, but giving authority to the State Risk Manager.

PRESIDENT: Thank you. Senator Hannibal, did you wish to speak about the committee amendments. I don't see Senator Hannibal

March 21, 1989

LB 77

and his light is on. The question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the committee amendments.

PRESIDENT: The committee amendments are adopted. Senator Warner, Senator Hannibal's light is on ahead of yours. Is that by...ch, okay, Senator Warner, then you go ahead, please.

SENATOR WARNER: Mr. President, members of the Legislature, LB 77 as introduced expands the type of cost that can be indemnified, clarifies that settlements are included currently under statute, but it also adds appeal bonds and associated employee costs where an employee is taking it to court, not including in these costs in indemnification as the law currently provides the...if we did not include those, why, then, it would preclude eventual payment by the state because the employee could always file a miscellaneous claim but it would...what the bill does is authorizes up front payment or immediate reimbursement by the state by the indemnification route if money is in the fund versus later reimbursement by the miscellaneous claims route. And there are some hardship cases that can be caused by the system that we currently have. But it, essentially, also provides process for representation of employee by the Attorney General and the payment of ongoing costs in those indemnification amounts. Representation is under the control of the Attorney General. Payment is made by the Risk Manager, but only upon certification of the Attorney General. And the statute also would allow representation by the Attorney General of state employees for required appearance before other tribunals and courts, and the reason, it would probably be federal agencies, primarily. But that issue was also part of the bill because the occasion does arise where a state employee is requested to come before some group and it would be appropriate that they could have Attorney General representation in the event that that was necessary, and without that specific authorization, under existing law, that would not be clear. What the bill does with the committee amendment is establishes, broadens the indemnification fund which currently exists to, as I indicated, to include appeal bonds and reasonable costs associated with any appearance. It, then, clarifies what the Attorney General's role would be in implementing it. It very clearly denies any assistance to an

employee who may be involved in some legal action which was a case of malfeasance in office or willful or wanton neglect of their duties, would retain it as a legal process which it rightfully ought to be. And the other new language spells out the process of contacting the Attorney General with the necessary decisions that they make, and then the directions that would be given for payment in the event that it was authorized by the Attorney General by the Risk Manager. It seems to me that the question may come up as to whether or not these kinds of protections ought to be expanded beyond what it currently is for state employees, and it would be my position that the state does have a responsibility in some of these areas because employees are under the direction, the training, the responsibility of the state as employees, and unless their infraction of responsibilities is in some fashion willful and wanton and malfeasance of office in which they would remain personally liable in other areas, it is not reasonable that since they are acting on behalf of the state and under the directions of the state that they are held personally liable in areas which is essentially beyond their responsibilities when they are acting under the directions of a supervisor or the head of a department. So I would urge that the bill be advanced and expand this process so that more than just the actual cost that are currently authorized by statute, that these other costs, including appeal bonds and other associated costs can also be provided funding through this indemnification fund.

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

SENATOR WESELY: Mr. President and members, if you look at the committee statement, you will see that I was the one committee member who did not vote to advance the bill. I abstained and I know Senator Chambers is going to follow me, and if Senator Schmit is in hearing distance, he might recall some of these issues as well, but I do support the concept of protecting our employees from unfair litigation and reasonable litigation and protect them to do the job that they are assigned to do without having to worry about their own personal welfare in terms of having to pay for attorneys to represent themselves or to pay for penalties against them for doing the job they're assigned to do. I think this is a reasonable bill in an attempt to address that issue. Where I had a concern in committee, and I think my concerns are addressed in the bill and I have looked in the bill and I have looked at some summaries, but I still want to raise

these for the record, deal with those instances where you have employees that do not perform their functions and responsibilities as intended and that they abuse the office or abuse individuals under their authority, and in those cases, frankly, I lose that sympathy I have for any human being to have the right to a fair and decent representation and trial and I still feel that they should have that but I think it's also a responsibility that they, themselves, should undertake and not the state. Let me give you a couple of examples. We had some cases over in the prison system where we had guards that had locked up an individual for a period of time without any sort of review. And, of course, that individual locked up brought some action and the guard involved, I believe, was found to have violated some rules and regulations. A claim was filed and...I'm trying to remember exactly how all this was handled, but it was approved up to the time it came to this floor for the state to pick up the fine or the penalty against that guard. And this Legislature said that individual didn't act in good faith, that individual abused their authority and neglected the rules. And we didn't approve that appropriation and it was quite a controversy. And I don't know if it was that case or a second case I'm thinking of where we ended up with the warden involved in some of these actions who then went around and had a voluntary donation mandated among employees and that warden got caught in that circumstance and was relieved of their job. But we have had a couple of bad instances where individual employees over in our correctional facilities, I think, and this Legislature felt as well, overstepped their lines of responsibility. And I am concerned about making sure that when an employee does that that we don't allow protection for that action. That's what I'm concerned about. I think this takes care of that. I would like Senator Warner or whoever can address that issue, but when we talk here about this...the Attorney General as representation, it doesn't allow for it under malfeasance or willful or wanton neglect of duty. I guess I would define the sort of actions I'm recalling under that and would not be covered. But, nevertheless, I would like to be sure about what we're talking about here. I would also throw out other examples. There are those, obviously, in the Commonwealth situation that feel Paul Amen and Paul Douglas abused their offices and, of course, they have been to court and I think had to represent themselves. Will that change under this...under this law, for instance? Would their action be considered malfeasance or willful or wanton neglect of duty and similar types of actions by employees that are questionable? I

think this is a fine line, a difficult line and we hope that it doesn't happen very often. I think the vast majority, overwhelming majority of state employees do their job well, do an outstanding job; I think deserve the sort of protection this bill is intended to give. But, at the same time, for those handful of instances over the years, just a few that I can think of where it seems as though our employees did not carry out their functions and responsibilities appropriately, I still want to make...

PRESIDENT: One minute.

SENATOR WESELY: ...sure that they understand that they have got a responsibility to be fair and reasonable in carrying out their job. I see also under the bill, under a summary that this Legislature, if there is a claim of over \$10,000 or if the claims board disapproves the claim, or if the agency doesn't have the money to pay the claim, that the Legislature would have a chance to review those claims. So, again, I'm a bit concerned about how much role the Legislature will have in the future under this, how much we won't have under the changes here and will we have an oversight function to make sure that the things happen in this area that we would like to see happen. These are just some questions I would raise for Senator Warner for the record to address. I think probably the bill is okay but I have these concerns and I wanted to share them with you.

PRESIDENT: Thank you. Senator Chambers is next but may I introduce some guests, please, of Senator Carson Rogers first. We have 11 students, K through 6, from Cotesfield, Nebraska and their teacher. They are in the north balcony. Would you folks please stand and be recognized by the Legislature. Thank you for visiting us today. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to start by asking Senator Warner a question. And, Senator Warner, the question will be about language on page 7 which is existing law, but I have to ask it in view of the fact that we are expanding the scope of the existing law. I will read the provisions from lines 7 through 13 that I'm concerned about. "If a state official or employee has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not covered by Section 81-8,239.05, the judgment against that person shall provide for payment to the

state of the state's costs, including a reasonable attorney's fee." How and who will determine whether or not the conduct is covered by that section?

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Frankly, I...give me...I better have some time to look at that. Well, it is...it is suggested to me that since it is established by the judgment that that would determine the interpretation of the statute.

SENATOR CHAMBERS: But the judgment doesn't mention the statute. The judgment...whoever is advising you, can you ask them, are they aware of judgments that refer to this section of statute and said, the conduct complained of was not covered or was covered by this section any judgments that go that far?

SENATOR WARNER: I see no one that can specifically answer that question to the extent that I...I want to go back and review it, Senator Chambers.

SENATOR CHAMBERS: You're right, there is no...I just...

SENATOR WARNER: ...to answer correctly.

SENATOR CHAMBERS: There is no answer. I mean, there is nobody who makes that determination but the Legislature can when we review these claims and that's being taken away from us. Oh, and that's the only question I have at this point.

SENATOR WARNER: I would not agree that the...that this...that the bill results in taking that away from the Legislature, for a couple of reasons, one of which, as this bill is drafted, a level of funding, if any, that's in that indemnification fund would be one block or any limitations that were put on that...

SENATOR CHAMBERS: But Senator Warner...

SENATOR WARNER: ...appropriation could...

SENATOR CHAMBERS: ...that does not go to specific cases. That puts an amount in the fund and then first in, first out. Whoever comes with a claim that the risk manager decides should be indemnified will get their money and no contemplation is had of specific claims when the money is put in that fund.



March 21, 1989

LB 77

SENATOR WARNER: Beyond the review of the Attorney General.

SENATOR CHAMBERS: Right. That's all the questions I have right now because my time will run. We have had some claims from corrections this session in the Business and Labor Committee. The Corrections Department conducts one of those internal investigations where an inmate alleges having been wronged. The Corrections Department finds no wrong on the part of the institution or the inmate. The Attorney General investigates, finds no wrong on the part of the institution or the individual employee. It goes to federal court and the court rules for the employee. The Corrections Department and these employees are very unconcerned about the rights of inmates and they commit violations of the law in depriving these inmates of their rights. And we had one case and it troubles me that the Business and Labor Committee approved the claim anyway...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...where a member of the Attorney General's staff lost the case. The Legislature decided not to indemnify the losing employees because of the nature of their misconduct. She came back to the committee, on the advice of the Attorney General's office, because they were embarrassed at having lost the case, and she flushed a great deal when I was questioning her as to why she is continuing to represent these people when they lost the case in court, they lost the matter on the floor of the Legislature last year. Then they bring it back another year at the instigation of the Attorney General's office who had told the people who had won the case that they were not going to hold to the settlement they made originally because the Legislature would not indemnify these individuals who were found by Judge Urbom to have engaged in conduct that was very, very bad. So the Attorney General's office reneged on a settlement they had agreed to, made the people who won the settlement reduce the amount they accepted so these employees would have less that they had to pay this individual, then the Business and Labor Committee approved of that claim.

PRESIDENT: Time.

SENATOR CHAMBERS: I think the...

PRESIDENT: Senator McFarland, please, followed by Senator

Warner.

SENATOR MCFARLAND: Thank you, Mr. President. This bill does raise several concerns with me and it has to do with a general policy of whether we should defer to the Attorney General's office decisions about indemnifying particular individuals when those individuals may be held individually responsible for their actions in depriving some person of their constitutional rights or statutory rights, or what have you. The question that occurs to me that...is that if the court makes a determination that not only the state should be held liable for the actions of that particular employee during the course and scope of his or her employment but also makes a determination that that individual employee should be held individually accountable and liable for their actions as well, why we should necessarily always defer to the Attorney General's office in making a determination to indemnify that employee, in effect, that employee does not have to pay those damages. It seems to me one of the purposes that we place in these kind of discrimination laws or constitutional rights laws is that you want to hold persons individually responsible for their own actions so that that will serve as a deterrent to these individuals from going beyond the limitations of their employment and discriminating or violating the rights of other individuals. And these rights, we often hear them in the context of inmates but I can tell you that there are a vast number of lawsuits where the rights that are being violated not only are just...are other employees and other people that are citizens of our state as well. The question that occurs to me is certain people are found individually responsible, they have a process right now whereby they can come before the Legislature, as has been done in the most recent cases, and ask the Legislature for indemnification and then it is the Legislature's responsibility and the Labor Committee's responsibility to decide whether their individual damages should be indemnified. With this bill, the problem I see is that we delegate that responsibility to the Attorney General's office. Once the Attorney General's office makes that determination, then they have this fund available to indemnify employees and the Legislature doesn't get to review that process in any way. And that, to me, seems to be counterproductive because it, in effect, eviscerates the deterrence effect that courts have in levying individual liability upon particular state employees for their own actions. The second thing that bothers me about it is that there are sometimes inherent conflicts of interest of the Attorney General's office representing the state and at the same

time representing an employee who may be found individually liable, because there can be some differences of philosophy as how the case should be litigated, what the strategy may be used, and there may be conflict between the defense that is used and the individual might want to use a certain way of handling a particular defense. The state, on the other hand, might want to take a different approach to this. Right now the process is that if an employee comes before the Attorney General's office, the Attorney General makes the determination whether or not to represent that individual employee, whether there...and there may be an inherent conflict but they make that determination. If the individual wants separate representation...

PRESIDENT: One minute.

SENATOR MCFARLAND: ...he or she can ask for that separate representation but has to pay their own attorney fees if they ask for that separate representation. If they are successful down the road, then that...then they get reimbursement for those attorney fees but the problem is most employees don't have the funds to...outlay to hire their own private attorney to defend themselves and I'm troubled by that process as well. There are a lot of necessary revisions that need to occur in this existing process. I would just...I am in the process of drafting amendments that I probably will offer on Select File. I have extreme reservations about this process, particularly because we're taking decisions out of the hands of the Legislature, putting it in the hands of the Attorney General's office and also as a concern for the individual defendants. How are they represented? And I have feelings that there are certain conflicts of interest where the Attorney General's office represents someone and I am not sure that the Attorney General clearly defines the conflicts between the responsibilities toward the state and the responsibilities toward the individual defendant. And maybe I will have a little more to say on this later. Thank you.

PRESIDENT: Thank you. Senator Warner is next, but may I introduce a guest, please, of Senator Dennis Byars. In the east balcony we have Dan Martz of Beatrice, Nebraska who is a student visiting us today. Would you please stand and be recognized, Mr. Martz. Thank you for visiting us today. Senator Warner, please, followed by Senator Chambers.

SENATOR WARNER: The question that was asked initially and I,

frankly, did not know the reply to the...it's on page 7, lines 7 through 13, and the reference there was to Section 81-8,239.05, and what that...and as I understand now what that does, it makes it clear that if any of these are damages or judgments, rather, were outside and were not within the scope of employment of the individual, then there is no liability of the state or any participation on the part of the state in that judgment. So it has reference, as I understand it, solely to whether or not it was in or outside the scope of employment which, incidentally, under existing law the Attorney General also would be the one making that initial determination. As I have been listening to some of the concerns expressed, it would appear to me that rather than with LB 77 it goes to other process that is currently statute and which apparently there has been some concerns about. I would like to tell the body why I became interested in this issue, because it seems to me it is ultimately inexcusably unfair but currently is law. As I understand it, some of these cases are very apt to be filed in federal courts, most usually are, and the state cannot be sued so the individual is the one that is sued. And the one example I know where it went up on appeal and under the federal requirements...federal court requirements an appeal bond had to be filed. Now this is not the kind of bond where you go in and you pay a fraction of the face value in order to secure the bond. You have to...it's fully collateralized. You have to have the full amount. And the one instance that I know of the employee...and the issue was whether it should...the incident is almost immaterial, because of the full face value and the individual had to provide the funding up front, the one individual actually was having his wages garnished. It was a garnishment, in order to pay the bond, and the money goes to those...and a big portion of it happened to be attorney fees, the bulk of it, as I recall, but the individual, through his wages having a garnishment on them, was paying it with no assurance of getting it back. So even if the appeal won, that is if the employee's position was upheld by appeal court, there was no assurance that they were getting money back. And it makes no sense to me that when an individual employee, working under the direction of the agency for which that individual is employed, that they ought to have had the proper training, that the atmosphere within that agency should have been one in which whatever act was done, if it was within that scope of employment, it is unreasonable that you would expect an individual to provide the funds for the appeal to be...go forth when essentially it's only most likely directed to the

individual because the state could not be made a party. It is a party. We have a responsibility to be supportive of those employees under those circumstances. If the state has failed because of inadequate training, of inadequate supervision and inadequate funding, whatever the case may be, the state ought to have a responsibility back of that employee. If it is malfeasance, if they are taking...and certainly there are numerous court decisions over a period of time that would lay the ground work of what malfeasance of office might be, but if it is in that or other wanton misconduct on the part of an employee, then the process is there in order to not have the state participate in any financial responsibility toward that employee. The bill is based I think on fairness, whether or not there is too much or too little control under the Attorney General's office is not as much an issue in 77 as it perhaps is an issue with the whole process. I think this is a vast improvement over what we have. There is still legislative control to the extent of funding if that is one that wishes to utilize but it does address what is a fundamental unfair and inappropriate expectation on the state's part...

PRESIDENT: One minute.

SENATOR WARNER: ...of its employees as the situation exists and I would hope that the bill would be advanced.

PRESIDENT: Thank you. Senator Chambers, followed by Senator McFarland.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I'm going to have to ask Senator Warner another question if he will respond, and this time I'm on page 4 of the bill.

PRESIDENT: Senator Warner, please.

SENATOR CHAMBERS: In subsection (4), Senator Warner, starting in line 11, it talks about the Attorney General filing copies of awards and settlements, and so forth, and "shall request the risk manager to make the required payments in situations where payments should be made." Then it says, "if funds are available from the indemnification fund." So if no funds are available, there will be no payout because nothing is there with which to pay. Let's say that funds are there but it's a situation where the Attorney General does not make a request that there be indemnification. The last line in that subsection seems to

indicate that the employee could still file a miscellaneous claim for indemnification. Would that be correct?

SENATOR WARNER: Yes, under the current process.

SENATOR CHAMBERS: Even with this bill, I mean, that would not be changed at all by the addition of the new language?

SENATOR WARNER: I believe that, yes, is correct.

SENATOR CHAMBERS: Okay, that's the way I read it, too, but I just wanted to be sure. So that part does not bother me as it might have had it been a different answer. The reason I see what we're doing here in this bill as being associated with what Senator McFarland and I had talked about, if the Attorney General makes a blunder and the matter goes to trial because the Attorney General will not settle or they are going to show the inmate something and the state loses, then the Attorney General, through arrogance, has fostered a federal lawsuit that was unnecessary. We go a step below the Attorney General. Before it reaches that level, the Corrections Department conducts an investigation. Because they rarely rule on behalf of an inmate, we have another fostering of a federal lawsuit, and in at least three of the claims that we have before us that the Business Committee approved of, the Department of Corrections found nothing wrong. So the inmate has to go to court because there is no internal control of the Department of Corrections. By our willy-nilly, rubber-stamping and indemnifying these corrections people who continue to do these wrongs, we are encouraging the lawsuits that will cost the state more money. If the Corrections Department did its job, then we wouldn't have the cost of the lawsuit that must be indemnified, these filing costs, other fees associated with a legal action. When people can do things and not feel they are accountable for the wrong that they cause, what incentive is there not to do it? Yesterday, we bumped a penalty up to a mandatory prison sentence because we said, if you make these guys know there's a price to pay, they will stop selling drugs. But when it comes to these employees in the Corrections Department, the same philosophy does not hold. You want to hold them harmless. What the risk manager and what the claims board have done repeatedly is to say that in their judgment the misconduct does not rise to the level of the kinds of dereliction of duty that would not warrant indemnification. They want to make that judgment but they don't want the Legislature to make it. What we were told when these

claims came before the Business and Labor Committee is that the agency...if the agency for which the employee works says that the judgment should be paid, the claim indemnified, then the risk manager and the claims board will go along. It's in the interest of an agency to say, pay this claim, indemnify it, because that can keep the agency from facing embarrassment by the matter having additional scrutiny and exposure. That's why the Corrections Department said indemnify and pay these claims because the Corrections Department, through failure of its investigative and disciplinary proceedings failed to correct the misconduct of its employees.

PRESIDENT: One minute.

SENATOR CHAMBERS: There are employees out there who are guards...well, they call them corrections officers, who brag about the fact that it doesn't matter what they do because the state's going to pay the judgment anyway and the department is never going to find they have done anything wrong and that's why it goes to federal court. We, as a Legislature, are fostering these federal lawsuits because we will not require the Department of Institutions to have a proper procedure to protect the rights of inmates. A bill like this allows the payment or the indemnification of one of these claims without going through the legislative process. The risk manager can pay the claim. And they have told us if the department agrees that it should be paid, they pay it. Where is the legislative oversight and involvement? So what will the Legislature do? Say, there were some bad claims paid last time because the risk manager agreed to pay them so this time we will not appropriate money for any claims, that's like closing the door after the horse has left the barn. We should exercise our oversight while the issue is alive which requires or justifies oversight. And I think this bill does take that away from the Legislature. One other point. These departments right now, and agencies, can indemnify any claim of any employee up to \$2,000 without coming through the claims process, without coming through the Business and Labor Committee. So they have a certain amount of discretion already as to claims that they can pay, it comes out of their budget, but they can pay them just like that. If we're going to have oversight, we should have it. If we're not going to have it, we should take away the requirement that any of these claims pass through the Legislature for consideration. All or nothing.

PRESIDENT: Time. Senator McFarland, please.



SENATOR MCFARLAND: Mr. President, as an attorney, I haven't dealt with, really, inmate suits. I...my primary contact with this area has been in representation of state employees and they involve state employees not only in the Department of Corrections but also in the Department of Labor, Department of Public Institutions, Department of Social Services. And a lot of times state employees bring claims against their supervisors and their department heads for various reasons, for violation of constitutional rights, violation of the law with regard to sex discrimination, race discrimination, discrimination on the basis of religion, handicapped, and so on. And what happens in those cases, of course, is that there can be individual liability on the part of the supervisor or the department head or whomever has committed the offense. And I think the problem perhaps is illustrated by the recent case that has been a focus of the Business and Labor Committee's attention in the past week and that involved a case of a woman at the Department of Corrections who applied for an assistant director position. She was fully qualified, trained, competent, able to handle the position. She applied. She had had the necessary experience there and the supervisors, the two supervisors, who were making the determination as to who would get the job ended up hiring one of their best friends, one of their buddies, and so she sued them and said that that was sex discrimination. And they went to court and it was filed in federal court and, in fact, she got a judgment from Judge Urbom and he said it was, indeed, sex discrimination and that, indeed, the individuals had been responsible for making degrading and demeaning comments about women, that they had treated this particular female employee in a very discriminatory manner, that they had hired their friend, not on the basis of his qualifications but on the basis that they would feel less threatened if they had their best...one of their best friends hired into the position rather than the woman who deserved the appointment and was fully qualified for it. As a result of that litigation, there was a settlement reached and the settlement was generally this, as I understand it, that the state would pay to the woman \$25,000 in damages and that 22,500 would be the state's responsibility and that the individual defendants would be responsible for \$2,500 of that damages, but that the...as a part of that agreement that the woman would not oppose the Attorney General's office coming before the Business and Labor Committee and requesting indemnification and payment of the total \$25,000 from state funds even though those individual defendants had been held liable for \$2,500 jointly or



if you split it, \$1,250 each. We had a hearing about this last year. I appeared at it. The Labor Committee heard it and the Labor Committee followed my suggestion and recommendation that, in fact, we pay 22,500 for state funds to pay this female...this woman who had won the lawsuit, a young woman, and that the individual defendants, because of their acts...because of their demeaning and degrading remarks, because of the way they treated this particular woman employee should be responsible for paying their own \$2,500 in damages. Well, unbeknownst to us, that claim was approved in that manner. The state allocated 22,500.

PRESIDENT: One minute.

SENATOR MCFARLAND: Those individual defendants then went back...they had been found individually liable...they went back to the woman and her attorney and said, well, the state only approved 22,500 so we're not going to pay this to you. We're going to threaten...we may appeal this and drag this payment out for several years unless you agree to reduce the amount of the settlement. And so, with that leverage, they were successful in reducing the amount of the settlement from 25,000 to 24,000 and the state paid the 22,500, the individuals paid 750 apiece and got out of paying \$500 each and now they're back before us trying to claim indemnification for the 750 that they did pay. I think this case is an illustration of the problems in the process because we will discuss this case when LB 811 comes before the Legislature but it seems to me in certain instances individual defendants should be held individually liable and we should not be coming in to bail them out for their kind of demeaning and degrading remarks that they make about women and the way they discriminate against women in this case.

PRESIDENT: Time.

SENATOR MCFARLAND: Thank you.

PRESIDENT: Thank you. Senator Warner, please.

SENATOR WARNER: Mr. President, I want to respond to a couple of the points that have been made, and, admittedly, I am not an expert in the legal technicalities of this but I recognize basic fairness and I recognize basic unfairness, as all of us can. And the system that we now have has a basic unfairness in it that I don't think can properly be ignored. Much of the concern I have heard about the bill directs to the judgment of the

Attorney General. I don't know if we can write a law that the Attorney General will always have good judgment. I certainly would be for that. Time, in the last day or two the thought has occurred to me that may not necessarily be true but, nevertheless, under the separation of powers, that authority invested in the executive department is granted now and...to that office and, obviously, to a considerable extent will continue to be in the future. Some of the complaints I have heard, however, is exactly the reasons you ought to be in full support of those who have questions, ought to be in full support of the legislation. Some of the things that have occurred in the cases that people are talking about, in fact, I think, as I recall being told, at least, in one of the court cases, the judge, I believe, suggested that what occurred could not have occurred unless the environment was such within that entire agency that had fostered an atmosphere for the kind of action that was subsequently found to be discriminatory. So there is a responsibility at the agency level to make sure that the conduct of that agency is being done in such a fashion as to not encourage or permit those kinds of discriminatory actions or civil rights actions that might be occurring and the state ought to be responsible if it is failing to provide that kind of supervision over the conduct of its employees through an agency. Obviously, if an agency repeatedly came in with...with appropriations or utilization of appropriations to cover these kinds of suits, there isn't any question that the entire Legislature would look upon that very quickly as something that needed to be corrected at that agency level if it was fostering a kind of conduct within that agency that perpetuated suit after suit on these areas. Then you've got to look to the management, not to that individual employee, and the safeguard is still there. If it is outside of the individual, that is if the individual is acting on their own beyond the...their conduct going beyond what is limited by the supervision of that agency, then they would still remain personally liable under the current law and under LB 77, just as they are now. It does not expand that whatsoever. It seems to me that what the bill is attempting to do is to address what is, I think, a very broad level of exposure to employees in many cases least able to pay and are not guilty of any conduct other...misconduct other than the fact that the agency in its general operation may provide no supervision or close supervision to prevent it from being done. So I would urge that the bill be...again, be advanced and that this what I think is a basic...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR WARNER: ...unfair process be closed so that the responsibility for these acts are fairly placed where they ought to be.

SPEAKER BARRETT: Senator McFarland, please.

SENATOR MCFARLAND: Thank you, Mr. President. Senator Warner has...is quite right that there is a problem in this entire process and there are unfairnesses that occur both for the defendant employees of the state and also for the persons who are the people that are the employees, state employees, who have been victimized by discriminatory conduct on the part of their supervisors and their department heads. For that reason, I do not plan to vote against this bill on General File. The reservations I have are really one of process and whether this bill, in its present form, solves the problems in a way that will be fair for all state employees and for all persons that may be the subject of discriminatory conduct on the part of the state or its individual agencies. What I'm going to be doing between now and Select File is preparing some amendments and trying to address some of those concerns. I will tell you the one specific concern that I have is that I do not like the situation where individual employees can be found individually liable by the court and yet be able to be indemnified on every occasion because there is a fund created and because the Attorney General makes a decision and they always get indemnified time and time again for their individual misdeeds. And it seems to me at some point if the federal courts have a policy whereby individuals should be held accountable and should be responsible for being individually liable for their own actions, that we, as a Legislature, should look at that and be able to review that and determine if, in fact, these individual employees need to be indemnified in every and all circumstances. With this bill, my fear is that we will have delegated that responsibility to the Attorney General's office through the risk manager's office, that a fund will be set up, and that every...that almost every or every, it could be, state employee who was sued, even if they are found individually liable, will be able to go to this fund, be indemnified and the fact of the matter they suffered no personal consequences for their action. And it seems to me that they should be held personally

accountable. If you want to deter the type of discriminatory and viola...discriminatory conduct and conduct that violates people's constitutional rights, then in some instances they should be individually responsible. And unless they are held individually accountable, it seems to me there will be all too often the cases where the supervisor or department head or whoever the person is in responsibility will be able to violate the law, violate people's constitutional rights, violate the discrimination laws with respect to age or sex or what have you and yet never really pay the consequences because the state keeps picking up the tab for any liability they may have in these kind of cases. That is my concern. I know that there are other concerns that need to be addressed. So, for that reason, I do not plan to oppose the bill on General File but I can assure you that I will speak on the bill on Select File and I may very well have some change...amendments to try and rectify the situation without giving a blanket immunity to state employees and supervisors and department heads from any individual liability that they may incur because I think the state and we, as a Legislature, have a responsibility to have the final overview of that process and we have the responsibility of saying, do we indemnify these people under these particular circumstances?

SPEAKER BARRETT: One minute.

SENATOR McFARLAND: Thank you.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, accountability is the issue that I'm concerned about here. And I probably get more complaints across my desk from the inmates than most of the senators. So I have the opportunity to see a lot of these things happen in corrections that would not have to ripen to the position of a lawsuit. One of the claims that was brought to us, and Senator McFarland touched on it, was a repeat of last year that we rejected as a Legislature because the court specifically found against this individual in his individual capacity. The rest of the claim, the Legislature approved of. Then it comes back again because the Attorney General's...the person who represented this individual went to him and told him to bring it back again. And it was brought back to the Business and Labor Committee. The Corrections Department would not pay the claim. It's \$750. The risk manager recommended that we pay

it, knowing that it's a personal judgment against this man in his individual capacity operating beyond his duties as an employee. And the risk management recommendation was that we pay it. So how are you going to tell me that we can trust a risk manager under this bill not to approve the payment of these claims that are against individuals in the form of damages in their individual capacity? That recommendation for payment is being made right now in a case that the Legislature already rejected. So I think these issues that Senator McFarland and I are discussing are connected with this bill. If there were a fund available from which this claim could be paid by the risk manager, the risk manager and the Attorney General would get together and they would pay it and that would be the end of that. And it would encourage a proliferation of lawsuits because inmates would see that the employees are going to be held immune when they do something wrong. Then when a lot of lawsuits are filed, you are going to see the people from corrections running over here saying, we need more money for this or that because the courts are being clogged. The courts are clogged with lawsuits because the Corrections Department and its employees do not observe the Constitution and the laws when it comes to dealing with inmates and their rights. The inmates do not have anybody to come over here and lobby for them. They do not have anybody who can talk to the risk manager, who can talk to the Attorney General and say, spare us from embarrassment. I'll tell you why this claim came back. The person in the Attorney General's office who was representing these two individuals told them that they should enter into a settlement because they had made as good a record as they could at the other hearings. There would be no need in taking it to trial in federal district court because no new evidence would be developed. Present the record to the judge and let him make a decision. When the judge ruled for the inmate, then the Attorney General's office was miffed and upset. A bad legal judgment had been made and the attorney who represented these people said, that had she known they would not be indemnified for this personal judgment, she would have recommended that they go on to court. And I asked her if she meant what she said about having developed as good a record as could be developed at these earlier hearings, what would have been gained by going to court if nothing new would have been developed? She had no answer. The case before us was won based on the professional embarrassment of a member of the Attorney General's office so we're going to have that claim before us again on the floor of the Legislature and I will offer an amendment...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...to strike that. But these issues are tied up in 77 because if the fund were there, this claim would have been paid.

SPEAKER BARRETT: Thank you. Senator Lynch. Thank you. The question has been called, it will not be necessary. We don't have any other lights on. Senator Warner, would you care to close on the advancement of your bill?

SENATOR WARNER: Yes, thank you, Mr. President, and members of the Legislature, just a couple of points. Under the provision of the bill, it's not the risk manager that makes the decisions, it is the Attorney General who directs the risk manager what to do and I understand there is concern with the Attorney General, but, nevertheless, that would be the office which would be making the decision as to whether or not, assuming there was an appropriation, anything was to be paid. I want to go back so we understand there is one thing that is significantly different when these go into federal courts where the state is involved as opposed to a private company. If, under a same set of circumstances, it was a private company, there is probably little question but what the company, the employer and perhaps as well as the employee and perhaps only the employer would be the one that would have the suit filed, but through federal court, this suit cannot be filed against the state. They go to the individual, not because the individual was acting outside of their responsibilities, not because it was malfeasance of office and not because they had performed something outside of what they were directed to do, but the state cannot be sued so it goes to the individual. I would maintain that if there is not proper supervision, then the state shares in that responsibility or has full accountability for that responsibility for having failed to give the kind of training, the kind of direction, the kind of supervision that permitted whatever the infraction might have been, whatever the discriminatory type of act that occurred. The state ought to be responsible for those kinds of acts if they are permitting them to go on and not direct it at the individual employee. Certainly, it's not hard to imagine what is the employee to do if they are directed by their supervisor. Well, yes, they can quit. It's not always an option that you have in life. Sometimes you have to proceed. Yet, under the law as it now exists in these cases, they become

March 21, 1989

LB 49A, 77, 231A, 262, 285A, 575A, 592  
714

individually liable and that is not placing the responsibility where it ought to be placed. I would urge that the body advance the bill, and if some of these other concerns that actually go beyond the provisions of 77 are to be addressed, that perhaps can be done or at least considered but, by all means, let's at least give some basic fairness to those employees who are perhaps subject to cost that is beyond any reasonable basis to assess against them.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 77 to Enrollment and Review. All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 29 ayes, 1 nay, Mr. President, on the advancement of LB 77.

SPEAKER BARRETT: LB 77 advances. For the record, Mr. Clerk.

CLERK: Mr. President, Enrollment and Review reports LB 592 to Select File; LB 49A, LB 231A; and LB 285A, all to Select File. (See page 1257 of the Legislative Journal.)

I have a motion to reconsider an amendment offered to LB 262 yesterday. That's offered by Senator Bernard-Stevens.

New A bill, LB 575A, by Senator Barrett. (Read by title for the first time as found on page 1258 of the Legislative Journal.)

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

SPEAKER BARRETT: Thank you. To the next priority bill, LB 714. Mr. Clerk.

CLERK: Mr. President, LB 714 was a bill that was introduced by Senator Lamb, Senator Bernard-Stevens, Hefner, Robak, Smith and Conway. (Read title.) The bill was introduced on January 19, referred to the Revenue Committee. The bill was advanced to General File. I have committee amendments pending by the Revenue Committee, Mr. President.

SPEAKER BARRETT: Chairman Hall, on the committee amendments.

SENATOR HALL: Thank you, Mr. President, members, Mr. Clerk, the amendment that I have is an amendment to the committee amendments?

March 22, 1989

LB 77, 139, 164, 253, 291, 325, 409  
448, 493, 500, 508, 663, 691, 714  
722

with amendments. That's signed by Senator Coordsen. Government Committee reports LB 409 to General File; LB 508, General File; LB 722, General File; LB 139, General File with amendments; LB 164, General File with amendments; LB 663, General File with amendments; LB 253, indefinitely postponed, as is LB 291, LB 448, LB 493, LB 500, and LB 691. (See pages 1286-91 of the Legislative Journal.)

SPEAKER BARRETT: The call is raised.

CLERK: Mr. President, Senator Pirsch would like to add her name to LB 325 as co-introducer. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Kristensen, please. Would you care to recess us.

SENATOR KRISTENSEN: Thank you, Mr. Speaker. I would move to adjourn (sic) us until this afternoon at one-thirty...recess.

SPEAKER BARRETT: I believe the motion is to recess. Thank you, Senator Kristensen.

SENATOR KRISTENSEN: No, I think I said adjourn.

SPEAKER BARRETT: Those in favor say aye. Opposed nay. Ayes have it, we are recessed until one-thirty.

RECESS

PRESIDENT NICHOL PRESIDING

PRESIDENT: Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. What should we do first, Mr. Clerk? Any reports or announcements?

CLERK: Yes, Mr. President, I do. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 77 and recommend that same be placed on Select File; LB 714 on Select File, both of those having been signed by



April 3, 1989

LB 77, 431

SPEAKER BARRETT: Thank you. The question is the advancement of LB 431. Those in favor say aye. Opposed no. Machine vote has been requested. All in favor of the advancement of LB 431 vote aye, opposed nay. Voting on the advancement of 431. Have you all voted? Have you all voted on the advancement of the bill? Have you all voted? Senator Wesely.

SENATOR WESELY: Yes, I would ask for a call of the house, Mr. Speaker.

SPEAKER BARRETT: Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 20 ayes, 1 nay, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Those outside the Chamber, please return. The house is under call. Senator Byars, please record your presence. Senator Langford, Senator Landis. Senators Elmer, Goodrich and Pirsch, the house is under call. Senators Schmit and Weihing, please return to the Chamber, the house is under call. Senators Elmer, Pirsch, Goodrich and Schmit, the house is under call. Senators Elmer, Pirsch, Goodrich and Schmit, the house is under call. Senator Wesely.

SENATOR WESELY: Yes, that's okay. We can go ahead with the roll call, awaiting those other people, we might as well go ahead.

SPEAKER BARRETT: You are requesting a roll call. Thank you. The question is the advancement of the bill. Mr. Clerk.

CLERK: (Roll call vote read. See pages 1445-46 of the Legislative Journal.) 20 ayes, 15 nays, Mr. President, on the motion to advance the bill.

SPEAKER BARRETT: The motion to advance fails. The call is raised. Moving to LB 77.

CLERK: Mr. President, 77, I have E & R amendments, first of all.

SPEAKER BARRETT: Senator Lindsay.

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

SPEAKER BARRETT: Shall the E & R amendments to the bill be adopted? Those in favor say aye. Opposed nay. Carried. They are adopted.

CLERK: Mr. President, Senators Warner and Chambers would move to amend the bill. (The Warner-Chambers amendment appears on page 1446 of the Legislative Journal.)

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President and members of the Legislature, LB 77, you will recall, is a bill that was discussed a few days ago on General File which dealt with indemnification process relative to state employees and primarily that they would be brought into a federal court in relation to some performance of their job. In some of the discussion on General File there was concern expressed that punitive damages, which would be one of the three things that may be filed as a judgment against an employee perhaps should not later be reimbursable to the state for...that this individual should not be reimbursed by the state for those punitive damages. What this amendment does is excludes punitive damages from the possibility of the individual being indemnified for those and would leave that as a decision which the Legislature would subsequently make through the claims process should the individual choose to do it. In the process, should the case be appealed to a higher court, the bonding mechanism that is required in the federal court would still cover the punitive damage during the appeal process but once that was completed and if the state or the state employee still lost, then the punitive damages would be a personal obligation although they would be free, under the provisions of this amendment, be able to request reimbursement through the legislative small...or legislative claims process. And that's the purpose of the amendment.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, were this April 1st, you might this were an April Fool's joke with Senator Warner and I being together on an amendment. But we had discussed it, it is a serious amendment. And what it does is to take the position, generally, that where punitive

damages are awarded a person, an employee, or whoever works for the state and has the punitive damages assessed will not be able to get them from that fund that is set up. They won't be reimbursed from that fund. However, if they should want to come to the Legislature through the claims procedure and that would come before the Business and Labor Committee, as those claims will do, that person would be allowed to do that so the door is not slammed on them altogether. The policy, you can say, is not to reimburse punitive damages, with a proviso. And what made me go for the amendment is the possibility of a member of the public being damaged by a state employee whose conduct is going to result in punitive damages being awarded against that employee because of the nature of the act. Perhaps a great amount of monetary damages will not be won by the harmed party. Maybe the greater damage would be the kind that would result in the granting of punitive damages. I told Senator Warner that I'm not so anxious to see that an employee is held accountable for his or her conduct that I would put into the statute a proviso that would make it impossible for a wronged individual to recover even if it's in the form of punitive damages. So if I were the employee and somebody had been wronged by me, maybe I felt I could make a case to the Legislature, maybe I would borrow some money, maybe I would come up with it somehow and pay the person, then I would come back for reimbursement. Maybe I would try to go to the Legislature if I could work it out, even before I had made the payout. And the case might be to make sure that the wronged individual has a chance to recover. If I am as poor as Joe's turkey, as an employee, and somebody wins punitive damages against me, it's a judgment that is empty and hollow because I have nothing with which to respond. So if we adopt the amendment that is being offered, as a general rule, punitive damages will not be reimbursed but the possibility is there for a case to be made by the Legislature on a case by case basis. And although I am shaky in the knees, although my spine is quivering, although a part of my judgment says no, another part of me says, ah, but yes.

SPEAKER BARRETT: Further discussion on the amendment. Seeing none, Senator Warner. Thank you. The question is the adoption of the Warner amendment to LB 77. All in favor vote aye, opposed nay. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the Warner-Chambers amendment.

April 3, 1989

LB 77, 714

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: I move the bill be advanced, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the motion to advance the bill. Seeing none, those in favor of the advancement of LB 77, please vote aye, opposed nay. Those in favor of the advancement please say aye. Opposed no. Thank you. Motion carries. The bill is advanced. LB 714, Mr. Clerk.

CLERK: Mr. President, 714, I have Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I would move that LB 714 be advanced.

CLERK: E & R amendments, Senator.

SENATOR LINDSAY: There are E & R?

SPEAKER BARRETT: E & R. Thank you. Shall the E & R amendments to the bill be adopted? Those in favor say aye. Opposed no. Carried. They're adopted.

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

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Now, Mr. President, I move that LB 714 as amended be advanced.

SPEAKER BARRETT: Thank you, sir. Discussion? Senator Withem.

SENATOR WITHEM: Yes, Mr. Speaker, members of the body, I have absolutely no problems with the bill, Senator Lamb, but I do have a question or two about the way in which it will operate. I was not here on General File to hear the full discussion on this bill concerning its operation. I have, however, been

April 6, 1989

LB 77, 99, 135, 143, 206, 213, 228  
228A, 247, 323, 324, 371, 381, 423  
486, 487, 487A, 488, 488A, 508, 509  
566, 592, 605, 627, 643, 669, 714  
722, 756, 781, 793  
LR 70

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 Dr. Paul Lundell of the Dundee Presbyterian Church in Omaha. Would you please rise.

DR. LUNDELL: (Prayer offered.)

PRESIDENT: Thank you, Dr. Lundell. We appreciate your message this morning. Roll call, please. Record, please.

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

PRESIDENT: Thank you. Do we have any corrections to the Journal?

CLERK: No corrections, Mr. President.

PRESIDENT: Good. Any messages, reports or announcements?

CLERK: Mr. President, Enrollment and Review reports LB 77, LB 371, LB 592, LB 643, LB 714, and LB 781 as correctly Engrossed. Enrollment and Review also reports LB 99, LB 323, LB 143, LB 213, LB 381, LB 423, LB 509, LB 793, LB 605, LB 135, LB 324, LB 756, LB 206, LB 669, LB 486, LB 487, LB 487A, LB 488, LB 488A, LB 228, LB 228A, LB 627, LB 508, LB 722, and LB 566 to Select File, some of those having Enrollment and Review amendments attached. (See pages 1533-40 of the Legislative Journal.)

Mr. President, Senator Warner would like to print amendments to LB 247 in the Legislative Journal. That's all that I have, Mr. President. (See page 1540 of the Journal.)

PRESIDENT: Okay. We'll move on to LR 70.

CLERK: Mr. President, LR 70 has been offered by Senators Ashford and Moore. It's found on page 1476. (Read brief summary of resolution.)

PRESIDENT: Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President and members. Last year we passed legislation which authorized the profession of

April 11, 1989

LB 77, 371, 592  
LR 74

SPEAKER BARRETT: The resolution is adopted. Members, please return to your seats for Final Reading. To our friends in the balconies, we are about to proceed into Final Reading which is the final time the bill is considered by this Legislature and constitutionally we are required to read every bill in its entirety. The Clerk will, very shortly, start reading the bill and the vote will be taken for the final time in order to either pass it into law or not pass it into law. Members, return to your seats for Final Reading. (Gavel.) Members, please take your seats for Final Reading. Please read LB 77, Mr. Clerk.

CLERK: (Read LB 77 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 77 pass? Those in favor vote aye, opposed nay. Record, please.

CLERK: (Record vote read. See page 1630 of the Legislative Journal.) 40 ayes, 0 nays, 9 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 77 passes. LB 371 with the emergency clause attached.

CLERK: (Read LB 371 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 371 with the emergency clause attached become law? All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Record vote read. See page 1631 of the Legislative Journal.) 40 ayes, 1 nay, 2 present and not voting, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 371E passes. LB 592.

CLERK: (Read LB 592 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 592 become law? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Record vote read. See page 1632 of the Legislative

April 11, 1989

LB 77, 84, 325, 371, 592, 643, 714

Journal.) 32 ayes, 7 nays, 3 present and not voting, 7 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 592 passes. LB 643E.

ASSISTANT CLERK: (Read LB 643E on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 643 with the emergency clause attached pass? All in favor vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: (Record vote read. See page 1633 of the Legislative Journal.) The vote is 42 ayes, 1 nay, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 643E passes. LB 714E.

ASSISTANT CLERK: (Read LB 714E on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 714 with the emergency clause attached become law? All in favor vote aye, opposed nay. Have you all voted? Record.

ASSISTANT CLERK: (Record vote read. See page 1634 of the Legislative Journal.) The vote is 41 ayes, 0 nays, 2 present and not voting, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 714E passes. Anything for the record, Mr. Clerk?

CLERK: Mr. President, one item. Senators Haberman and Hall have amendments to be printed to LB 325. (See page 1634 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. And while the Legislature is in session and capable of transacting business I propose to sign and I do sign LB 643, LB 592, LB 371, LB 77, LB 714. To General File, Mr. Clerk, LB 84.

CLERK: Mr. President, LB 84 was introduced by Senator Lamb with Senators Conway, Haberman, Beck, Korshoj, Rod Johnson and Carson Rogers added as co-introducers. (Read.) The bill was introduced on January 5, Mr. President. It was referred to the

April 11, 1989

LB 77, 84A, 84, 371, 592, 643, 714  
739, 747

the revenues are at that point. There will be plenty of time to introduce legislation to remedy the situation. With that, Mr. President, I would ask that the amendment be adopted.

SPEAKER BARRETT: Thank you. Question is the adoption of the Lamb amendment to 84A. Those in favor vote aye, opposed nay. Record.

CLERK: 27 ayes, 2 nays, Mr. President, on adoption of Senator Lamb's amendment.

SPEAKER BARRETT: The amendment is adopted. On the bill, Senator Lamb, would you care to move the A bill?

SENATOR LAMB: I just move that the A bill be advanced, Mr. President.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor of that motion vote aye, opposed nay. Record.

CLERK: 26 ayes, 3 nays, Mr. President, on the advancement of LB 84A.

SPEAKER BARRETT: LB 84A is advanced. I'd like to ask your cooperation in addressing the next two bills. Mr. Clerk.

CLERK: Mr. President, LB 747 was introduced by Senator Chizek. I do have a motion to indefinitely postpone, as offered by Senator Hall. Senator Chizek would have the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Chizek, your pleasure.

SENATOR CHIZEK: Lay it over.

SPEAKER BARRETT: It shall be laid over. Thank you. Anything for the record?

CLERK: Mr. President, bills have been presented to the Governor that were read on Final Reading this morning. (LB 77, LB 371, LB 592, LB 643, and LB 714.) Senator Withem has amendments to LB 84 to be printed; Senator Hannibal would like to add his name to LB 739 as co-introducer. That's all that I have, Mr. President. (See pages 1637-38 of the Legislative Journal.)



April 17, 1989

LB 77, 371, 423, 592, 643, 714, 761  
LR 78

Morrissey's amendment.

PRESIDENT: The Morrissey amendment is adopted. Do you have anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

PRESIDENT: Okay.

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

PRESIDENT: Senator Dierks, please.

SENATOR DIERKS: Mr. President and members of the body, I would move that we adjourn until tomorrow morning at nine o'clock.

CLERK: Mr. President, some items for the record, yes, thank you. A communication from the Governor to the Clerk. (Read. Re: LB 77, LB 371, LB 592, LB 643, and LB 714. See page 1736 of the Legislative Journal.)

A study resolution proposed by Senator Goodrich, LR 78. (Read brief explanation.) Senator Landis has amendments to LB 423 to be printed, Mr. President. (See pages 1736-37 of the Legislative Journal.) That is all that I have.

PRESIDENT: The motion is we adjourn until tomorrow morning at nine o'clock. All those in favor say aye. Opposed nay. You are adjourned until nine o'clock tomorrow morning.

Proofed by:

  
LaVera Benischek