

January 19, 1989

LB 94, 247, 570, 576, 683-808

as yet, please contact Joanne immediately. If you don't have the bill that you are expecting, please contact the Bill Drafters Office immediately. Mr. Clerk.

CLERK: Mr. President, for the record, I have received a reference report referring LBs 496-599 including resolutions 8-12, all of which are constitutional amendments.

Mr. President, your Committee on Banking, Commerce and Insurance to whom we referred LB 94 instructs me to report the same back to the Legislature with the recommendation that it be advanced to General File with amendments attached. (See pages 320-21 of the Legislative Journal.)

Mr. President, I have hearing notices from the Judiciary Committee signed by Senator Chizek as Chair, and a second hearing notice from Judiciary as well as a third hearing notice from Judiciary, all signed by Senator Chizek.

Mr. President, new bills. (Read LBs 683-726 by title for the first time. See pages 321-30 of the Legislative Journal.)

Mr. President, a request to add names, Senator Korshoj to LB 570, Senator Smith to LB 576, Senator Baack to 570 and Senator Barrett to LB 247.

SPEAKER BARRETT: Stand at ease.

EASE

SPEAKER BARRETT: More bills, Mr. Clerk.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 727-776 by title for the first time. See pages 331-42 of the Legislative Journal.)

EASE

SPEAKER BARRETT: More bill introductions.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 777-808 by title for the first time. See pages 343-50 of the Legislative Journal.)

CLERK: Mr. President, I have reports. Your Committee on

January 20, 1989

LB 1-6, 8-12, 14-17, 158A, 690, 760, 781

law? All in favor vote aye, opposed nay. Record, please.

CLERK: (Read record vote as found on pages 385-86 of the Legislative Journal.) 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 16 passes. LB 17.

ASSISTANT CLERK: (Read LB 17 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 17 pass? All in favor vote aye, opposed nay. Have you all voted? Record.

ASSISTANT CLERK: (Read record vote as found on page 386 of the Legislative Journal.) The vote is 43 ayes, 0 nays, 3 present and not voting, 3 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 17 passes. That completes Final Reading. The call is raised. The Chair thanks you for your cooperation during Final Reading. Announcements and messages, Mr. Clerk?

CLERK: Mr. President, your Committee on Appropriations whose Chair is Senator Warner, offers a hearing notice for Friday, March 3. Mr. President, I have a new A bill. (Read LB 158A by title for the first time. See page 387 of the Journal.)

Mr. President, Senator Hefner would like to add his name to LB 781 as co-introducer; and Senator Conway to LB 760 as co-introducer. Senator Crosby would like to ask unanimous consent to withdraw her name from LB 690 as co-introducer.

SPEAKER BARRETT: If there are no objections, so ordered.

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

SPEAKER BARRETT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign LB 1, LB 2, LB 3, LB 4, LB 5, LB 6, LB 8, LB 9, LB 10, LB 11, LB 12, LB 14, LB 15, LB 16, and LB 17. Senator Korshoj, would you care to adjourn the body.

SENATOR KORSHOJ: Mr. Speaker, I move we adjourn until Monday morning at nine o'clock.

February 15, 1989 LB 44A, 95, 140A, 150, 183, 737, 768
781
LR 12, 17

Mr. President, your Committee on General Affairs, whose Chair is Senator Smith, reports LB 768 to General File with amendments; LB 781, General File with amendments. Those are signed by Senator Smith. (See pages 759-61 of the Legislative Journal.)

Urban Affairs Committee, whose Chair is Senator Hartnett, reports LB 95 to General File with amendments; LR 12CA indefinitely postponed; LR 17CA indefinitely postponed and LB 140A indefinitely postponed. Those are signed by Senator Hartnett. (See pages 761-63 of the Legislative Journal.)

Mr. President, notice of hearing from the Retirement Systems Committee. Those are signed by Senator Haberman.

New A bills. LB 44A by Senator Bernard-Stevens. (Read by title for the first time. See page 763 of the Legislative Journal.) LB 140A by Senator Chizek. (Read by title for the first time. See page 763 of the Legislative Journal.)

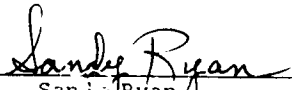
Mr. President, Senator McFarland would like to add his name to LB 183 as co-introducer, and Senator Lynch to LB 737. And that's all that I have, Mr. President.

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

SENATOR CROSBY: I move we adjourn until nine o'clock, Thursday morning, February 16.

SPEAKER BARRETT: Thank you. You have heard the motion to adjourn until tomorrow morning at nine o'clock. Those in favor say aye. Opposed nay. Ayes have it. Motion carried. We are adjourned. (Gavel.)

Proofed by


Sandy Ryan

February 24, 1989

LB 74, 116, 208, 238, 263, 267, 273
344, 781

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 273 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 868 of the Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 273 passes. LB 344 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 344 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 44 (sic) pass with the emergency clause attached...excuse me, 344 with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 869-70 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 344 passes with the emergency clause attached. This ends the Final Reading. Do you have anything for the record at this time? If not, we'll move on to special order, LB 781.

CLERK: Mr. President, LB 781...

PRESIDENT: Mr. Clerk, before you start, may I just say that while the Legislature is in order...in session and capable of transacting business, I propose to sign and do sign LB 74, LB 116, LB 208, LB 238, LB 263, LB 267, LB 273 and LB 344 with the emergency clause attached. Now on to LB 781.

CLERK: Mr. President, 781 was a bill that was introduced by the General Affairs Committee and signed by its members. (Read title.) The bill was introduced on January 19 of this year, Mr. President. At that time, it was referred to the General Affairs Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the General Affairs Committee.

PRESIDENT: Senator Jacky Smith, please.

SENATOR SMITH: Mr. President, members of the body, LB 781...and the reason for its being...the request for it to be on special order is pretty well outlined to you in a letter, a copy of a letter that I sent to Senator Barrett when I made the request, what you have at your fingertips right now. Basically, what we're trying to do in this piece of legislation is to fix, if you want to call it that, what occurred as a result of passage of a bill, LB 911, which we all passed out of here in 1986 which would allow local control of the licensure of liquor licenses at the local level, as I have said. And...but when we gave them that power we did not add a standard set of, I guess, requirements that they have to meet or that they could look at in determining whether to allow or deny for a license. So that's the basic...that's the basic premise of the bill and the committee amendments are all technical. There is no substantive change in the amendments themselves. The listing of the things that we did in them are basically such things as on page 7 a reference is inserted to make it clear that the Liquor Commission can waive the waiting period and issue a license not only if a city makes no decision but also if the city does not make a binding decision. The second thing it does, on page 15, the word "recommendation" is simply changed to "decision" to remain consistent with the usage of the rest of the words in the bill. Number three, on page 18, the bill adopted the notice and hearing provisions of 53-1.116, 4(c), for the cities' hearings on cancellation, revocation or suspension. And the fourth thing is on page 24, language is clarified and harmonized with other usage of the bill. The fifth thing, a new section is added clarifying a city's powers to decide renewals of licenses are the same as when deciding the initial issuance. On page 33, it is changed to "commission" for clarification of the reference and, finally, the seventh thing it does is a new section is added making it clear that local governing bodies cannot grant licenses in violation of the Liquor Control Act. So these are all technical, no substantive changes in the bill itself, and I would ask for your support in attaching these amendments to the bill.

PRESIDENT: Senator Hefner, please. On the bill. Any other discussion on the committee amendments? If not, the question is the adoption of the committee amendments. Senator Abboud, did you wish to talk about the committee amendments? Okay. All

those in favor of adopting the committee amendments vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the committee amendments.

PRESIDENT: The committee amendments are adopted. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President.

PRESIDENT: Okay. Senator Jacky Smith on the advancement of the bill.

SENATOR SMITH: Okay, I will keep this very simple. As I stated when I was talking about the amendments, this is in response to some things that took place or rather there was a shortage in the bill itself, I guess, as far as the Supreme Court was concerned when we passed LB 911 because of the fact that they actually did...we attached some standards. We delegated the authority of the Legislature, our legislative authority, to the cities to make a decision whether to issue or deny licenses, liquor licenses, at their discretion. We also attached, in that bill, a set of standards for cities to look at but we did not limit them to those standards. And so, in addition to looking at those standards, some communities added their own local standards which then did not make it be a uniform method of determining whether or not a license could be granted and that's what became unconstitutional. So what we have done now in this piece of legislation is set up in one section 21 standards which all communities will look at and only look at, nothing in addition, they will all be using the same standards in determining whether to allow or deny a liquor license. That's really the purpose of the bill and if there is anyone that has a question, I would be glad to answer anything further on the description of the bill if you would like to have that done. I should also tell you that this was drafted in response to that Supreme Court decision by a task force of people who were representatives of the League of...they were attorneys representing cities across the state and we had representatives from Lincoln, Omaha, Bellevue...no not Bellevue, Beatrice, Kearney and Norfolk. So we did have a representation from across the state in doing this. And we have also asked for the E clause to become a part of the bill so that it could become enacted immediately.

PRESIDENT: Thank you. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I want to commend the General Affairs Committee for sponsoring this bill.

PRESIDENT: Excuse me, Senator Hefner. (Gavel.) Could we have it quieter so we can hear the speakers, please. Please. Thank you.

SENATOR HEFNER: Thank you, Mr. President. I appreciate that. I was the main sponsor of LB 911 which gave local control in issuing liquor licenses. And the reason I sponsored that bill is that I felt that we weren't listening to the local governing board in the issuing of liquor licenses. They could take a stand on it. They could approve them or reject them and if this applicant wasn't satisfied, he could come down to the Liquor Control Commission here in Lincoln and a lot of times get that changed. But since the passage of LB 911, and I believe that was in 1986, I thought that local control was working very good and some members of the Liquor Commission said that they certainly thought it was working good. But then last December the Nebraska Supreme Court ruled that the bill was unconstitutional and they...Senator Smith told you why they ruled it because we gave the local governing board more standards to consider by their own. We didn't have that in the statutes and so they said this was uncon...it was an unconstitutional delegation of legislative authority. So this bill now, as amended, will correct this section of LB 911. And so I say to you here this morning...

PRESIDENT: Excuse me. (Gavel.) Ladies and gentlemen, could we please have it quiet. We can't hear the speaker. Thank you.

SENATOR HEFNER: Thank you, Mr. President. I will try to talk a little louder. Maybe we can turn up the volume a little bit. But I say to you this morning, who can determine better who should have a liquor license than that local governing board? They're members of that community. They're there to serve the people. The town or city board members know their town or city a lot better than a commission here in Lincoln does and I don't have anything against the Liquor Control Commission members. I think they're doing a fantastic job but the local people know the situations a lot better than they do. And, like I said

before, some of these commissioners have said that local control is working fine. But here are some of the things that they know better than the Liquor Control Commission. They know the law enforcement people better. They know how many members they have on their police force to enforce the liquor laws. They know the applicant better or if this applicant makes a renewal, they know them better. And I believe that we should keep this at the local level. I passed out a letter from the City of Norfolk, they conducted a poll. They had the research associates of Lincoln conduct a poll for the City of Norfolk. And so I just thought I would pass it out and here's what Mike Nolan, City Administrator of Norfolk, says in a letter addressed to me. "We understand that LB 781, the bill which would reinstate local control on issuance of liquor licenses, may be special ordered soon and wish to express strong support for the special ordering of this bill." But in this poll it says 68 percent, 68 percent of our citizens believe that towns and cities rather than the state should decide who gets the liquor licenses. And this is what this bill, as amended, would do. And so I would encourage your support for this bill this morning.

PRESIDENT: Thank you. Senator Abboud, followed by Senator Smith. Senator Abboud.

SENATOR ABOUD: Mr. President, colleagues, I rise to support LB 781. I feel that there are enough assurances that after examining the Nebraska State Supreme Court decision which struck down LR 911 of a couple of years ago and this bill adequately deals with the concerns shown by the Nebraska Supreme Court. Most importantly, it still allows for state control over the issuance of liquor licenses. The commission, as noted on page 9 of the bill, the commission shall consider the local governing body but, in addition, shall examine that particular liquor license application according to criteria spelled out in pages 9, 10, 11, 12 and 13 of the legislative bill. So it provides for local input in the determination of liquor licenses but the ultimate authority is still with the Nebraska State Liquor Commission and, as such, I believe is constitutional. I think it's important to have that local input. The local city council plays an important role in determining, but, as we discovered, the ultimate authority on the issuance of liquor licenses is still with the State of Nebraska. The State Liquor Commission is still the ultimate authority and I believe that this bill deals with the constitutional issues in a manner that will pass constitutional muster before the Nebraska State

February 24, 1989 LB 356, 357, 450, 676, 698, 781, 809

Supreme Court. Thank you.

PRESIDENT: Senator Abboud, please, followed by Senator Smith. Senator Smith, please.

SENATOR SMITH: Are there any other lights on, Mr. President?

PRESIDENT: No, you're the last one.

SENATOR SMITH: Okay, then I won't speak at all on anything further about the bill unless someone has a question and evidently they don't. I would just ask for their support in advancing the bill.

PRESIDENT: The question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 30 ayes, 0 nays, Mr. President, on the motion to advance LB 781.

PRESIDENT: LB 781 passes. Mr. Clerk, something for the record?

CLERK: Mr. President, yes, thank you. Banking Committee reports LB 356 to General File with amendments. Transportation Committee reports LB 450 to General File with amendments. Those reports are signed by Senator Landis and Senator Lamb respectively. (See pages 870-71 of the Legislative Journal.)

Senator Schmit moves to withdraw LB 676. That will be laid over, Mr. President.

Report of lobbyists for this past week.

Mr. President, Senator Goodrich has amendments to be printed to LB 698. (See pages 872-73 of the Legislative Journal.)

And, Mr. President, I have a reference report referring LB 809 to the Revenue Committee. And that's all that I have, Mr. President.

PRESIDENT: We will move on to General File, LB 357.

CLERK: Mr. President, 357 is the bill that was introduced by

February 28, 1989

LB 99, 183A, 227A, 260A, 278, 323, 329A
355, 357, 357A, 386, 437A, 441, 447
491, 511, 569, 678, 720, 724, 726
755, 781

SPEAKER BARRETT: The A bill is advanced. Messages on the President's desk.

CLERK: Mr. President, your Committee on Education, whose Chair is Senator Withem, to whom was referred LB 447, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with amendments; LB 386 indefinitely postponed, those signed by Senator Withem. Natural Resources Committee reports LB 755 to General File with amendments. That is signed by Senator Schmit as Chair. Banking Committee reports LB 99 to General File, LB 278 as indefinitely postponed, those signed by Senator Landis as Chair. Mr. President, Health and Human Services Committee reports LB 678 General File with amendments, LB 323 General File, LB 569 General File with amendments, LB 720 General File with amendments, LB 355 General File with amendments, LB 511 indefinitely postponed. Mr. President, Health and Human Services reports LB 491 to General File with amendments, LB 724 General File with amendments, LB 726 General File with amendments, those signed by Senator Wesely as Chair. Mr. President, Enrollment and Review reports LB 781 to Select File with E & R, LB 357 Select File with E & R, LB 357A Select File, LB 441 Select File with E & R amendments. (See pages 907-13 of the Legislative Journal.)

Mr. President, new A bills. (Read LB 329A, LB 260A, LB 437A and LB 227A by title for the first time. See pages 913-14 of the Legislative Journal.)

Mr. President, I have an appointment by the Governor to the Boiler Safety Code Advisory Board. That will be referred to Reference Committee.

Notice of hearing by the Revenue Committee; notice of room change by Health and Human Services Committee for hearings; and a cancellation of hearing by the Banking Committee, those three signed by the respective Chairs. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. If the gentleman from Minden is so inclined, would he care to adjourn us?

SENATOR KRISTENSEN: Thank you, Mr. President, I'd move that we adjourn the body until tomorrow morning at nine o'clock.

March 9, 1989

LB 54, 84, 140, 162A, 214, 214A, 254
284, 284A, 318, 320, 357, 432, 443
499, 588, 611, 652, 781
LR 1, 7

General File; LB 432 is indefinitely postponed; LR 1 indefinitely postponed; LR 7 indefinitely postponed, and LB 588 advanced to General File with committee amendments. (See page 1049 of the Legislative Journal.)

Your Enrolling Clerk has presented the bills read earlier this morning to the Governor. (Re: LB 284, LB 284A, LB 499, LB 443, LB 214, LB 214A, LB 318 and LB 320. See page 1057 of the Legislative Journal.)

Priority bill designations: Government Committee is 640 and 639, Senator Abboud LB 592, Senator Hall LB 653, Senator Lindsay LB 681, Senator Elmer LB 429.

New A bill, Mr. President, LB 162A from Senator Rod Johnson. (Read by title for the first time as found on page 1057 of the Legislative Journal.)

I have amendments to be printed to LB 357 from Senator Schellpeper and Nelson, Senator Lindsay to LB 54, Senator Baack to LB 254, Senator Chizek to LB 140, Senator Hall to LB 781, Senator Withem to LB 652. (See pages 1049-57 of the Legislative Journal.)

Unanimous consent for addition of names as co-sponsors, LB 611 Senator Rod Johnson; and LB 84 from Senator Haberman. (See pages 1057-58 of the Legislative Journal.)

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

SPEAKER BARRETT: Thank you. The Chair recognizes the member from the 33rd District, Senator Jacklyn Smith.

SENATOR SMITH: Thank you, Mr. Speaker. I would like to make a motion to adjourn until Monday, March 13 at 9:00 a.m.

SPEAKER BARRETT: You've heard the motion to adjourn until nine o'clock Monday morning. Those in favor say aye. Opposed nay. Ayes have it, motion carried, we are adjourned.

Proofed by:

Arleen McCrory
Arleen McCrory

March 27, 1989

LB 147, 154, 155, 254, 265, 340A, 421
619, 623, 683, 781

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Senator Schmit. Senator Schmit, on your amendment. It is withdrawn.

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

SPEAKER BARRETT: Thank you. Senator Chambers, this would be your closing.

SENATOR CHAMBERS: I am not going to close. I will just move to advance LB 340A to E & R Engrossing.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor of the advancement of the bill please signify by saying aye. Opposed no. Carried. The bill is advanced. Mr. Clerk, anything to read in?

CLERK: I do, Mr. President, thank you. A communication from the Governor to the Clerk. (Read. Re: LB 265, LB 619, LB 155, LB 623, LB 154, LB 254, and LB 421. See page 1350 of the Legislative Journal.)

Mr. President, Senator Wehrbein has amendments to be printed to LB 683; Senator Smith to LB 781. (See page 1351 of the Legislative Journal.) That is all that I have. Mr. President.

SPEAKER BARRETT: Thank you. To the next bill, Mr. Clerk. LB 147.

CLERK: Mr. President, the next bill is LB 147. I have no E & R to the bill, Mr. President. I do have an amendment pending, however, from Senator Ashford. Senator, this is AM0891. (See pages 1351-52 of the Legislative Journal.)

SPEAKER BARRETT: Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President and members. This amendment concerns the addition to the separate juvenile court bench in Douglas County of a third juvenile court judge. If I might give a brief history, there are two separate juvenile courts, three, actually, separate juvenile courts in the State

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LB 781
LR 67

SPEAKER BARRETT: LR 67 is adopted. And now, Mr. Clerk, to item 6, LB 781.

CLERK: Mr. President, LB 781, the first order of business I have are adoption of Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 781 be adopted.

SPEAKER BARRETT: Discussion? Seeing none, those in favor of the adoption of the E & R amendments to LB 781 say aye. Opposed no. Carried. They are adopted.

CLERK: Mr. President, the next amendment I have is offered by Senator Smith. Senator, this is your amendment number, AM0986. It is referenced on page 1351 of the Journal. I believe you will find it in your bill books, however. AM0986.

SPEAKER BARRETT: Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Speaker. Members of the body, you remember this bill, LB 781, is really, basically, the same bill as we had last year, LB 911, which was determined to be not constitutional, and so now what we are doing is making the effort through this bill to try to assure ourselves this time we make it correct. So we are working on the bill at this point yet and I have a new amendment to the bill. The white copy deletes...this is to the white copy now, which deletes Section 9 of the Standing Committee amendments adopted to General File which related to renewals of licenses. The reason the committee decided to now delete this section from the bill is because of a lower court decision on this issue which is now on appeal to the Nebraska Supreme Court. As you can see from the handout that you have on your desks, the other changes in the white copy are technical or for clarification. If there are any questions, I would try to answer those. Otherwise, I would ask the body to support us in this amendment.

CLERK: Okay, Mr. President, in that case, Senator Smith, I understand you do have an amendment to that amendment, Senator.

SENATOR SMITH: Yes, this is an amendment to the amendment and this is simply a technical error, drafting error. We referenced

this to local governing bodies, rules and regulations were struck in the white copy and replaced with references to ordinances only. This amendment then reinstates the references to rules and regulations to go along with the references and ordinances, and this is necessary for counties. I would ask the body's adoption of the amendment to the amendment.

SPEAKER BARRETT: Thank you. Any discussion on Senator Smith's amendment to her amendment? Any discussion? If not, those in favor of the adoption of the amendment to the amendment please vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: The amendment is adopted and to the amendment as amended. Senator Smith.

SENATOR SMITH: Thank you. Now I have already explained the amendment itself and so I would ask the body to support us in adopting this amendment, unless there are questions, I would try to answer them. Thank you.

SPEAKER BARRETT: Discussion on the Smith amendment? Seeing none, those in favor of the...excuse me, Senator Hartnett.

SENATOR HARTNETT: Senator Smith...Mr. Speaker and members of the body, Senator Smith, the one...what is in the court, you said when you were just...

SENATOR SMITH: It is a case in Supreme Court, Bosselman, the Bosselman case, which this has with property rights and this deals with license renewal. There are three different ways, in my understanding, that they can contest and this one that we are looking at, if we left Section 9 in the bill, this would give them an opportunity to open it up again. What happens is that there is a licensure...there is a prior standard of licensure, and we are now including in this bill a new standard of licensure. There is no way, and I would like to be able to do that, but we can't do it. We can't change or grandfather in those prior licenses. They have to remain under that other standard.

SENATOR HARTNETT: Okay.

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SENATOR SMITH: And so, by deleting Section 9, we just don't deal with that then.

SENATOR HARTNETT: Okay, thank you.

SPEAKER BARRETT: Any other discussion? If not, those in favor of the adoption of the Smith amendment to 781 please vote aye, opposed nay. Record, please.

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of Senator Smith's amendment to the bill.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, Senator Hall would move to amend. Senator, I have your AM0776 on page 1051 of the Journal.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. This is an amendment that deals with an issue that was before the body just the other day, and it was before the body in the form of a bill that was on consent calendar and it was subsequently struck from consent calendar for approximately the third year. It is a bill that changes the issue with regard to Sunday liquor, and it was introduced again by myself in the form of LB 703 in front of the General Affairs Committee. It was advanced out of the body...out of the committee to this body with no dissenting votes and with no amendments and again was on consent calendar and again was pulled from consent calendar, which is appropriate, I guess, because the issue probably does deserve some discussion here on the floor, and it is an issue of strictly whether or not alcoholic spirits should be able to be sold on sale at the same time that beer and wine is currently sold on Sundays, specifically from the times of twelve noon to 6:00 p.m. Again, this bill would allow for local option of that so, in other words, the local governing body would have control over whether or not they wanted to implement this legislation or the ability to provide for the sale of alcohol. It, I think, is an issue that many of the individuals who are in the business would like to be able to have some continuity because presently they have the opportunity to sell either beer or wine on Sundays between the hours of twelve and six. To have the ability to sell alcoholic spirits at that same time would give them an option that they currently do not have and they would like to

see. So with that, I know that there may be some opposition to this measure but I think the issue is, with the local control provision that it does have in it, it does provide for oversight on the part of the local governing body, and with that, Mr. President, I would urge the adoption of the amendment to LB 781. Thank you.

SPEAKER BARRETT: Thank you. Discussion on the amendment offered by Senator Hall. Senator Smith, followed by Senator Nelson.

SENATOR SMITH: Thank you, Mr. Speaker. Members of the body, Senator Hall has explained his bill. This bill is controversial. I don't think that this is something that we want to attach to this bill, LB 781, which is a bill that we must pass. It is a bill, as I told you earlier, LB 911, which was passed last year which was found to be unconstitutional. This is really a kind of a fix-it bill to try to do the things that we were supposed to have done last year in 911. This is a bill that we need to get through the Legislature. That is why we have it here on special order. I think I would question the germaneness of your request, Senator Hall, because, number one, I am not sure that the sections of statute matches. We are looking at that. But the other thing is that this bill deals with when alcohol can be sold. It does not deal with the issue that we are dealing with in LB 781, which is licensure. And I would then just question the germaneness.

SPEAKER BARRETT: Thank you, Senator Smith. Senator Hall, would you care to respond to the challenge.

SENATOR HALL: Thank you, Mr. President. The issue here is one of local control and LB 781, as Senator Smith stated in her opening, is basically a rewrite of LB 911 that was found to be unconstitutional. The issue in LB 703 is, as I presented it to the committee and here on the floor, is an issue of local control or local governance with regard to when alcohol can be served. The two are basically, not basically, they are exactly the same issue. They both deal with when alcohol can or cannot be served, if the local governing body chooses to allow alcohol to or not to be served. And I think that the issue is germane as I guess water would be to the ocean, and I would urge the Chair to rule in that favor. Thank you, Mr. President.

SPEAKER BARRETT: Senator Nelson, would you care to speak to the

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LB 781

issue of germaneness while the Chair takes a look.

SENATOR NELSON: No, I (interruption).

SPEAKER BARRETT: Thank you. Anyone care to speak to the issue of germaneness?

SENATOR SMITH: I do.

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: Again, I would state that it is not germane. LB 703 deals with Section 53-179. LB 781, which deals with licensure and not with when alcohol can be sold or served, does not even refer to that section of the statutes.

SPEAKER BARRETT: Anyone else care to speak to the issue of germaneness? Thank you. Senator Smith, you are correct in your assertion that 781 does deal with liquor licenses and standards and who issues those standards, and the standards that must be considered, and, of course, the prohibition of the consideration of any other standards. The amendment offered by Senator Hall does speak to the matter of when alcoholic liquor may be sold, and using a strict interpretation, it would appear that they might be different subject matters and the Chair would, therefore, rule that the amendment is perhaps germane, Senator Hall, but not germane enough. Therefore, the Chair rules the amendment out of order.

SENATOR HALL: Mr. President.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Oh, my, Mr. President and members, I guess I have the desire to overrule the Chair, but maybe not enough of a desire. It seems that we just came from an NCSL conference down in New Orleans where they currently allow for alcohol not only to be served on Sundays, but you can walk down the street with it, and I noticed a few of our colleagues from other states doing that. Of course, none of the Nebraska delegation was. I, at this point, guess that, based on strictly the issue of germaneness, I would move to overrule the Chair, not on the...can I ask for one minute of the Chair's time, Mr. President?

SPEAKER BARRETT: Certainly. The body will stand at ease. Senator Hall.

SENATOR HALL: Thank you, Mr. President. I will not challenge the Chair at this time.

SPEAKER BARRETT: Thank you.

CLERK: Mr. President, the next amendment I have to the bill, Senator, I have...

SENATOR HALL: Withdraw that amendment.

SPEAKER BARRETT: It is withdrawn.

SENATOR HALL: That was incorporated in Senator Smith's first amendment.

SPEAKER BARRETT: Thank you, it is withdrawn.

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

SPEAKER BARRETT: Back to the bill, itself, Senator Smith, any opening comment?

SENATOR SMITH: I would just simply say, Mr. Speaker, in opening that I thank publicly Senator Hall for not creating a ruckus between the two of us this morning and I would ask for the advancement of the bill to Select File.

SPEAKER BARRETT: Thank you. Discussion on the advancement of LB 781. Senator Nelson, followed by Senator Hefner. Thank you. Senator Hefner. Thank you. Senator Schmit, on the advancement of the bill, followed by Senator Hall.

SENATOR SCHMIT: Mr. President and members, I just want to say that I voted against this bill originally and I still believe that the issuance of liquor licenses should not be a function of local government. I visited with some of my local people who have said it has not caused them any problems. It has worked fine, but I would anticipate that problems will be forthcoming in the future. I am not going to take a lot of time but I want to put you on notice that I believe we had a system that worked better when the licenses were approved by the State Liquor Commission and I stand in support of that system.

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LB 781

SPEAKER BARRETT: Thank you. Senator Hall.

SENATOR HALL: Thank you, Mr. President and members, I also voted against LB 911 and the bill was subsequently found to be unconstitutional. I think the measure that the General Affairs Committee has advanced to the floor in the form of LB 781 is one that will stand the constitutional test. I think it is...now that it has been amended to provide that those issues are clearly the only issues that a local governing body can use to determine an issuance of new license as opposed to renewals, I think that the standards are clearly set so that the courts will endorse the passage of this legislation, and with that I would urge the body to advance LB 781, even though I do believe that amendment was germane, Mr. President. Thank you.

SPEAKER BARRETT: Thank you. Senator Kristensen, please, further discussion.

SENATOR KRISTENSEN: Thank you, Mr. Speaker. I would like to speak on this bill just real quickly to Senator Smith and ask her a couple of questions about intent and some language.

SPEAKER BARRETT: Senator Smith, would you respond.

SENATOR SMITH: Absolutely.

SENATOR KRISTENSEN: Senator Smith, on page 2 of the amendments that I am looking here on AM986, which I assume is the copy we are working off right now, the white copy.

SENATOR SMITH: Yes.

SENATOR KRISTENSEN: On lines 6 and 7, we have new language that talks about, subsection (d), "encourage temperance and restrict the consumption of alcoholic liquor;". Down on lines 9 and 10, the words "encourage temperance in the consumption of alcoholic liquor" is stricken. Are we changing the intent of the liquor laws by adding in "and restrict the consumption", or are we maintaining the basic intent of our existing liquor laws? We are not here to restrict the number of licenses, this is merely just a restatement of what temperance is and some of the goals, but certainly not a change in intent to restrict the numbers of licenses?

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LB 775, 781

SENATOR SMITH: Yes, Senator Kristensen, that is the intent. It is a restatement of the same language not intended to change the intent of the law.

SENATOR KRISTENSEN: Okay, and so I could make sure that I have got my history correct here. We just merely redefine encourage temperance and restrict consumption. The restrict consumption is another statement of temperance.

SENATOR SMITH: Yes.

SENATOR KRISTENSEN: In other words, temperance is restricting consumption, and it doesn't go to restricting numbers or types of license?

SENATOR SMITH: That is my understanding...

SENATOR KRISTENSEN: Okay.

SENATOR SMITH: ...of what the intent is, as far as at least the committee was concerned.

SENATOR KRISTENSEN: Thank you. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Smith, would you care to close on the advancement of the bill?

SENATOR SMITH: I'd move the bill, please.

SPEAKER BARRETT: Thank you. The question then is the advancement of LB 781 to E & R Engrossing. Those in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB 781.

SPEAKER BARRETT: LB 781 is advanced. I would like to take a moment to announce that Senator Wehrbein has some guests in the north balcony. We have 20 seniors from Elmwood High School in Elmwood, Nebraska along with their teacher. Would you people please stand and be recognized by your Legislature. Thank you. We are glad to have you with us this morning. Moving to Select File, senator priority bills, Mr. Clerk, LB 775.

CLERK: Mr. President, 775 is on Select File. I do have E & R

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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

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LB 89, 137, 308, 309A, 761, 781, 813
814

site. We haven't taken anything away from the power companies. We haven't taken anything away from anybody who can be opposed to the amendment. You really have got to prove to me that this amendment is not good. I can't see where it hurts one person. The only thing it can do is provide good and provide community consent and provide the input that these people have asked for all this time. It is a simple duty to the citizens of this state. There can be no reason that I can see to not support the amendment. I appeal to your sense of decency and your sense of respect for the people of this state to support this amendment. Thank you.

SPEAKER BARRETT: Thank you. The question is the adoption of the Dierks amendment to LB 761. Those in favor vote aye, opposed nay. Have you all voted?

SENATOR DIERKS: Mr. Speaker, let's just have a call of the house and a reverse order roll call vote please.

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

CLERK: 17 ayes, 1 nay to go under call.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those outside the Chamber, please return and record your presence. Member, please take your seats in anticipation of a roll call vote in reverse order. Senator Scofield, Warner, Wesely, Kristensen, Senator Moore, Senator Lindsay, Senator Ashford, please. Senator Kristensen, the house is under call. Mr. Clerk, please proceed in reverse order.

CLERK: (Roll call vote taken in reverse order. See page 2357 of the Legislative Journal.) 16 ayes, 27 nays, Mr. President.

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

CLERK: Mr. President, an Attorney General's Opinion addressed to Senator Haberman. (Re: LB 137. See pages 2358-59 of the Legislative Journal.)

Amendments to be printed to LB 781 by Senator Smith; Senator Nelson to LB 89; Senator Warner to LB 814, LB 813, LB 309A, LB 308. (See pages 2359-64 of the Legislative Journal.)

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LB 362A, 781

we just adopted and take care of the emergency assistance problem. I would move to return the bill for that amendment.

PRESIDENT: Okay. The question is shall the bill be returned? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to return the bill.

PRESIDENT: The bill is returned. Senator Wesely.

SENATOR WESELY: I move the amendment.

PRESIDENT: You have heard the motion to accept the amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the Select File amendment.

PRESIDENT: The amendment is adopted. Senator Wesely, on the readvancement.

SENATOR WESELY: Yeah, I would move to readvance the bill.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. Anything further on that bill, Mr. Clerk?

CLERK: Nothing further on that bill, Mr. President.

PRESIDENT: Okay. We will move on to LB 781, please.

CLERK: Mr. President, on 781, Senator Smith would move to return the bill for a specific amendment. Senator, I believe you distributed copies of your amendment.

SENATOR SMITH: Yes.

PRESIDENT: Okay, Senator Smith, please.

SENATOR SMITH: Thank you, Mr. Chairman. Members of the body, this amendment will replace the original version of LB 781, which you remember is the bill the committee, the General

Affairs Committee has worked on this session to deal with a bill that was passed in 1986, LB 911, which was determined to be unconstitutional, which would have allowed the local option as far as liquor licensing was concerned. The committee did work diligently. We had a lot of input from folks during the public hearing that we held on the bill. And then after the bill came out of committee, wanting to be sure that, in fact, this time it would meet muster with the Attorney General's Office, we requested, I think it was Senator Kristensen that requested an Attorney General's Opinion on the bill, and the state said it was at that point in time. We held the bill back until we had that response. We did finally hear from him, and there were some things in the bill which he said would still be determined to be unconstitutional. What it comes down to is that we have a choice, either we must go totally local control, or not local control. We can't have it both ways because of the equal protection and the equal rights argument. So what we ended up doing was revamping LB 781 with this amendment that I'm now proposing. And I want to make very clear to you that what you see here now, in this white copy, is not an entirely new bill. What it is is the bill with the changes so that you can see where we've amended that bill. So I again restate to you, and I want to make sure you understand that and make it perfectly clear that this is not a new drafted bill. There are some changes that we have made in the bill. I sent out to you a letter, all of you, a letter the other day explaining what we had been doing and on the back summarizing some of the changes of the process that would take place now under the bill with this amended version of it. I guess that...I just wanted to make sure that I reiterate that although it looks to be, it really isn't that big. It's making some changes which now put it under local control. I know that there is opposition surfacing, which just happened at this late date. I had a handout and I see that the same handout has been passed out to all of you. I'm prepared to be able to respond to all of the comments in here regarding technical and policy changes, and tell you that it's nothing but a smokescreen. I've gone out and I've confronted the lobbyists about this and have said to them, if you want to fight this issue, just tell me honestly what the problem is. Is it just the fact that you're opposed to local control, and that is what came out. So I guess that this is going to have to become, if we have any opposition, and I understand there will be, is to discuss the concerns that have been brought here in the yellow and green copies that you have. I'll be very happy to address every one of those concerns that

they have expressed and, hopefully, be able to dissolve, to your satisfaction, their concerns, and let's get down then to the fact that what we're looking at here is simply a matter of do you support what we passed in here a couple of years back, allowing local control. I can tell you that 90 percent of our population, two-thirds, in other words, of the communities and counties...not the counties, but two-thirds of the communities in the state have opted for local control. And what this will simply do, because we have no other option, if we want to allow this, is give all the communities local control of licensing of liquor licenses.

PRESIDENT: Thank you. Senator Wesely, followed by Senator Hartnett and Senator Goodrich. I don't see Senator Wesely. Senator Hartnett, would you like to continue on?

SENATOR HARTNETT: Mr. President, members of the body, I want to get, I think...I serve as Vice-Chairman of the General Affairs Committee. I wanted to ask Senator Smith to get something on the record, some questions that I see or my staff looked through the bill and so forth. First question, number one, on page 2, line 15, 18, there's language granting policy power authority to local governing bodies to enact by ordinance, regulation governing licensing of premises. Are counties, because we do have...in my county we have some outside the city. Does this include, you know, it's for local control that is both city and county. Is that right, Senator Smith? Okay. Since this is done by ordinance, and counties do not enact ordinance, they enact resolution, should that be amended or do you intend that even though it doesn't say resolution, they do everything by resolution, or cities do everything by ordinance. Is that...

SENATOR SMITH: My intent is, Senator Hartnett, that a city could not exceed its authority past its boundaries, for instance.

SENATOR HARTNETT: Well, that's in conflict...that's my other question. But can counties...how do counties handle, if they can't...they don't issue ordinance, they issue resolutions, is my question to you.

SENATOR SMITH: So, how would they handle it? They would...

SENATOR HARTNETT: Yeah, because there are some counties that have...

SENATOR SMITH: They would have the authority that they have for any kind of police powers in the county, presently in the way they cooperate and work with cities.

SENATOR HARTNETT: Yeah, I guess I'm with the word...you just have simply...we just have the word "ordinance" is all.

SENATOR SMITH: He says we've covered it in a section dealing with resolutions.

SENATOR HARTNETT: Okay. Page 4, Senator Smith, if I could continue with another...this is more for legislative intent.

SENATOR SMITH: Yes, I'm glad, because I really wasn't finished when....I was getting ready to continue on with what I was going to do in my explanation. So now what we're doing here is actually doing that.

SENATOR HARTNETT: Yeah. On page 4 of the amendment, in lines 17 to 22, it's stated, nothing in the fact shall be construed or interpreted to limit the power of local governing bodies to regulate and govern the conduct of licensed premises. I think that is what it says on lines 17 and 22. Last year, Senator Smith, we adopted LB 932, which extended the police power of the first class cities to all areas within two miles of the corporate limits of that city, permitting the cities to extend, by ordinance, police powers to the area cities. Is there a conflict? Do you see a conflict, if the police powers of the city go out two miles, who has the right, if there is in that particular jurisdiction? Is it the county can issue a license in two miles, or is it the city? I just want more for...

SENATOR SMITH: As far as...I...

SENATOR HARTNETT: ...legislative intent.

SENATOR SMITH: ...I will have to find out to make sure.

SENATOR HARTNETT: Okay.

SENATOR SMITH: If I tell you wrong, maybe I should just find out positively first. But my interpretation is that what we have in law regarding the right of cities, the police powers of the cities to go out to their bounds should carry with this

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also. I will make sure that that is correct.

SENATOR HARTNETT: Into the two-mile zone, or...

SENATOR SMITH: Yes, within the zone. Senator Hartnett.

SENATOR HARTNETT: Yeah.

SENATOR SMITH: I have to admit that I stand corrected. You're talking about like a police car, a policeman going out.

SENATOR HARTNETT: Well, last year, in LB 934, in Urban Affairs Committee, which we passed a law which simply said the jurisdiction of the city to enforce such ordinance by laws, rule and regulations or resolution shall extend over the city and over the places within two miles of the corporate limits of the city. I guess my...I'm simply raising the question...not...you know, legislative intent is all.

SENATOR SMITH: Okay, what I've been told is that the police powers, as far as the...

PRESIDENT: One minute.

SENATOR SMITH: ...police person being able to go out, exceeds only to the city limits.

SENATOR HARTNETT: Just to the city limits. Okay. So the county then would have the jurisdiction as far as liquor license in this, too.

SENATOR SMITH: To that city limit.

SENATOR HARTNETT: Yeah. Okay, there is a long list of criteria, pages 36 through 39 of the amendment. There are ones that must be followed by local governing bodies in the decision-making process. I count 20, is that correct?

SENATOR SMITH: That's right.

SENATOR HARTNETT: Okay. In item (d) of that list, let's see that's page...

SENATOR SMITH: I have it. (d), did you say?

SENATOR HARTNETT: Yeah, refers to consideration of zoning restrictions in the local governing body Zoning and Land Use Policy. Let us presume the situation of a license being sought within the zoning jurisdiction of the city, with the license being granted by the county. But what you're saying is, from your earlier statement, if it's outside the city limits, that would be the responsibility of the county.

SENATOR SMITH: We are saying here that, based on what I told you, the zoning restrictions which the city itself has within the city limits, the boundaries of the city would apply.

SENATOR HARTNETT: Yeah, so they don't have that two-mile zone and so forth.

PRESIDENT: Time has expired. Senator Goodrich, please, followed by Senator Lynch.

SENATOR GOODRICH: Mr. President, members of the body, would Jackie yield to a couple of questions? This is not technical questions on the amendment itself.

SENATOR SMITH: What did you say?

SENATOR GOODRICH: This is not technical questions on the amendment itself. So you can kind of relax. In other words, (laughter) this amendment, what is it, 50 pages or something like that, 55 pages.

SENATOR SMITH: No, the amendment is not 55 pages. The bill, itself, is that many pages. The amendment is contained within the bill. I wanted the amendment to be included, so you can see the changes we made in the bill.

SENATOR GOODRICH: You've got 55 pages here.

SENATOR SMITH: Well, that's the bill, now when it becomes the copy.

SENATOR GOODRICH: You had it drafted some place and handed out to us at least, the idea being though that this was all drafted after the bill was heard, and that sort of thing. Isn't it?

SENATOR SMITH: When I opened...when I made my opening, Senator Goodrich,...

SENATOR GOODRICH: I don't know what you said then.

SENATOR SMITH: ...I said that this is the bill. I have the amendment contained, wherever you see new language that is the amendment. So this is the bill now. What I have...what you have there is the bill. If you accept my amendment it's a part of that bill. I could have given you a sheet of paper that says on page such and such insert these words. The words you see are, if you look through the whole bill, you've got it in the bill without having to have a separate thing to look at the bill with and compare.

SENATOR GOODRICH: Reading the first two pages it says, strike the original sections and insert the following new sections. Section 1, go right on through 55 pages of it. My thought being though is this, it's my understanding that the people that are going to be mostly affected by this have never had a chance to have any input in the drafting of it.

SENATOR SMITH: Oh, yeah, they did. They had the...they had the opportunity...

SENATOR GOODRICH: Oh, no, they didn't.

SENATOR SMITH: They had the opportunity to input...

SENATOR GOODRICH: No, this was drafted...

SENATOR SMITH: Well, you go ahead and talk, and I'll have my time.

SENATOR GOODRICH: This was drafted in such a...without their even being around, and then you're handing it to us to adopt. And, quite frankly, they're saying they have real problems with it. And the problems may be resolved in this amendment to your satisfaction, but it is not resolved to their satisfaction. So, consequently, I'm wondering if maybe it wouldn't be the best idea if we'd hold this bill and have a public hearing on this in January, and start from scratch.

PRESIDENT: Thank you. Senator Lynch, please, followed by Senator Crosby.

SENATOR LYNCH: Mr. President, members, Senator Smith, could I

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ask you a question. I...believe me, I'll be gentle.

SENATOR SMITH: What?

SENATOR LYNCH: You're tough, so it won't make any difference anyway. (Laughter.) I know you're Chairman of the committee, and this is your job. And I know you never were involved maybe personally with all of the language.

PRESIDENT: Senator Lynch, I want to interrupt you a moment. (Gavel.) Please, let's hold the conversation down, we're having a problem hearing the speakers. Thank you. Senator Lynch.

SENATOR LYNCH: But, you know it is kind of tough to understand Senator Goodrich makes a point with a 55-page amendment on Final Reading. However, that notwithstanding, as I read through some of the sections like, for example, with some of the local control that would be established in this bill, if we're going to have local control I would agree that we should, some how, define that. For example, counties are creatures of the Legislature. Generally, they can do no more or no less than what the law allows them to do. Does this bill provide authority then for the counties to not only approve issue?

SENATOR SMITH: Sure.

SENATOR LYNCH: That's for counties outside the jurisdictions of the cities. And let me further qualify that, if I can, quickly.

SENATOR SMITH: Sure.

SENATOR LYNCH: For example, the City of Omaha has a three-mile limit. In Douglas County, while I was there, even though their planning and zoning jurisdictions extended beyond the city limits into the three-mile limit, their jurisdiction over licenses, to recommend the licenses to the state, like in the old days, like the county used to recommend to the state, like in the old days, generally ended at the city limits. So that hasn't changed.

SENATOR SMITH: That's right.

SENATOR LYNCH: The limits exist.

SENATOR SMITH: No.

SENATOR LYNCH: But there is authority given to counties here...

SENATOR SMITH: Yes, to be called...they are construed to be communities, too.

SENATOR LYNCH: So they would have the right to make decisions for renewal.

SENATOR SMITH: Yes.

SENATOR LYNCH: Quick example, if I can, because I have some concerns...

SENATOR SMITH: Sure, sure.

SENATOR LYNCH: ...without reading it and going into some detail. For example, what if a little town, or community or county was taken over by a group of people that didn't like drinking at all, they really thought it was sinful and nobody should ever do it. What would happen, for example, well, Ernie doesn't believe in drinking; took over Ernie's part of town and he decided, somebody came along with their renewal for a liquor license, and they controlled the city council. Would the fact that morally, ethically and in principle, by design and as far as their way of life is concerned and whatever else it might be they decided that their town shouldn't have this bar that existed for 40 or 50 years. Do they have the authority, under this act, to say you don't get your renewal? And then how would they appeal, if they didn't like it? An extreme example, obviously, but, you know, it could happen, for example.

SENATOR SMITH: Yeah. Basically what would happen is if...what we're doing is we have no choice, Senator Lynch, we have to either give local option, or we can't let them have it. We can't just do it, so that's why we went this way. What it would do now is say we give it to you, the communities, to decide, do you want to allow this license, based on...they must follow the criteria which is set out in here. And I remind you, this is not new, we went through...this is...what you see, the pages and pages are the standard they must follow, all that stuff in there that was in there, it's not new, it's what we did together in committee.

SENATOR LYNCH: Okay.

SENATOR SMITH: But they have to meet all that criteria in order to get that license. And if they...if the community itself has become, whatever you want to call it, prohibition, then if they decide they don't want any licenses, that is the option of that community. Of course, if it's really only the few people that sit on the governing body, and it's not the will of the body or the people I mean, those people then, when it comes up for re-election, I'm sure, if liquor is an important part of their life, can get those people out of there and get people in who support drinking.

SENATOR LYNCH: How about the appeal process, is that...would they have...

SENATOR SMITH: There is an appeal process.

SENATOR LYNCH: ...to appeal to a higher authority?

SENATOR SMITH: It goes to the district court.

SENATOR LYNCH: It goes to...they have to go to the district.

SENATOR SMITH: Yes.

SENATOR LYNCH: I see. But one of the criteria could be that any kind of grounds then, I guess I use that rather obnoxious, in some ways, as an example, but any kind of grounds could be used for not renewing someone's license.

SENATOR SMITH: No, they have to follow the standards for rejecting. And they also cannot...there are some things that are set in statute. They must...they can't arbitrarily and capriciously do anything, that is already by law, as you know. So, I mean if they...they can't, in other words, just make up some weird reason why you can't do this.

SENATOR LYNCH: But they don't have to take advantage of the law and have any control. They can continue, the county, that city, whatever it might be a township, of course...

PRESIDENT: One minute.

SENATOR LYNCH: ...would have to exist within a county, so I guess that would be county authority. But the counties

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automatically aren't given this, whether they want the responsibility or not, they can assume it under this law. Is that right?

SENATOR SMITH: They will...

SENATOR LYNCH: Local jurisdiction, they don't assume it, the state still maintains the responsibility they had in the past. Is that right?

SENATOR SMITH: The state, no. The locals now have that authority, and they...to deny or to approve a license. And if it's been approved then it goes to the commission, and the commission reviews it.

SENATOR LYNCH: Okay.

SENATOR SMITH: And then, if it's been denied,...

SENATOR LYNCH: Then the over...okay, let me real quickly, does the oversight of the license...that's where you're talking about law enforcement, the oversight for those licenses...

SENATOR SMITH: Yes.

SENATOR LYNCH: ...would be the responsibility of the sheriff's office, in the case of the counties, the police departments of the cities.

SENATOR SMITH: Actually...

SENATOR LYNCH: They would have to do what the liquor control people do right now, call and check and make sure they're not serving kids under 18 and all the rest of it.

SENATOR SMITH: There is still the process of having to go through and filing the licenses and all that sort of thing. The Liquor Commission makes sure all of that is legal.

SENATOR LYNCH: Okay, thank you.

PRESIDENT: Time. Thank you. Senator Crosby, followed by Senator Wesely.

SENATOR CROSBY: Senator Smith, thank you, Mr. President, I

didn't want you to take off. My questions are easy, and then you can have the rest of my time, okay? I'm against, in general, I'm against loosening the liquor laws, because I just feel like tight liquor laws are good. I am concerned about...this is my question, does changing this, in this way, giving more local control, is it a green light to have liquor in convenience and/or grocery stores, or is it going to make it more difficult? And my reason for being concerned is that I don't like it being too easily available to minors. I know the minors are going to be upset with me, but I don't care. I've had minors in my home, and I'm against it. So, that's all I want to know.

SENATOR SMITH: Okay, thank you.

SENATOR CROSBY: If you'll just explain that part of it to me.

SENATOR SMITH: Yes, thank you.

SENATOR CROSBY: And you can have the rest of my time.

SENATOR SMITH: All right, thank you. In my interpretation and from what I've been told this will, in fact, tighten up the liquor law. And that is why we have the "they" that Senator Goodrich is talking about out there, the lobby don't want local control, they want to be able to have a proliferation of licenses. And I might also mention, since I have the floor here, and no one else can take my time, since you've given it to me, that if you talk to "they" outside the glass, the municipalities, of course, like this. We've talked to all of the liquor people, they're all supportive of this. You have a letter on your desk from Frosty Chapman, who is Executive Director of the Liquor Commission, who thinks it's a good idea, and there is nothing wrong with it, it's constitutional in their thinking. You have a letter from the commissioners, the Liquor Commissioners, who think this is a good idea and this is the way we should go. We have one group, Gas n' Shop people, who don't want this. They don't represent all of the liquor industry, it's a group of people who want to be able to put their alcohol wherever they want it, that's what it comes down to, and they are trying to do everything they can to keep this bill from moving. You know, if this bill goes or not, it's not going to kill me. But the thing is we did pass a piece of legislation, LB 911, and we thought at that time what we were doing was to allow the option of communities to be able to keep those kinds

of things out, if they wanted to do that. But the bill was deemed unconstitutional because of that equal representation and equal rights protection thing that we had there and there would be a different set of standards they'd have to go under, the ones who had a prior license, and the ones who would come under this new act. That made it unfair and unconstitutional. So that is why we had to try to address it this year. We still have some things that they said were unconstitutional. When it came down to the fact if we pass this piece of legislation the only option we have, if we're going to give the local people control, is to give them total control. So that is what this amendment, that I have added to the bill, is trying to do.

PRESIDENT: Okay, thank you.

SENATOR SMITH: Each community decides for themselves whether or not they're going to allow the license, but they have to follow the criteria set forth in here, so it's the same across the state.

PRESIDENT: Were you through, now? Okay, thank you. Senator Wesely. Okay, Senator Lindsay, please.

SENATOR LINDSAY: Thank you, Mr. President, colleagues. I do rise in opposition to the motion to return the bill for amendment. I guess at the outset I don't envy Senator Smith trying to craft a proposal to overcome a constitutional deficiency like this, they are extremely difficult to...I mean, lawyers work on them all the time and can't get them figured out right. So it is a difficult issue to try to work around. I do have some specific objections, I guess, to some changes that are included in the bill or, excuse me, in the amendment. I guess it starts with having an amendment that has some, what may or may not be substantial policy changes, and what may or may not be good policy changes. Don't know if they are or not. That, of course, is up to the body. But I think it should require some public input on some of those changes. Some of those...at least those that I guess I mostly strongly, or I think aren't strong changes and that should require that, I guess I'd like to go through a little bit. And I think they're listed out in your handouts, some of them. One is that the amendment has, as one of the policies, to restrict the consumption of alcoholic liquor. It may or may not be good. I don't know. I don't know if that's what the people want. The thing is I don't know if that has been open to public comment. We're adopting it on...or

attempting to adopt it on Final Reading without getting some indication of what the people's, what their judgment on what that policy should be. Like I say, whether actual restriction, or whether it's just a matter of regulation, it should...and deserves public commentary. Second is the, I think, under...911, of course, was ruled unconstitutional and this bill was originally brought to correct those deficiencies. I think 911 gave the local governing boards the option of local control. This Legislature made a policy decision that local bodies should have local control. What 1851 would do is to require the local governing bodies to approve or deny liquor licenses. It's not an option anymore, it is a requirement that local boards do that. It's my understanding, and I'm not sure who, and maybe you would know your specific districts. It's my understanding there are some local boards that don't want to make those decisions, they want to leave that up to the Liquor Control Commission. They don't have that choice anymore. Under this amendment, the local boards are required to do so, the Liquor Commission has no say in it for the retail licenses. So it takes the Liquor Control Commission out of the game, basically. They don't have the discretion to issue or revoke, excuse me, they do have the issue to revoke but they don't have the issue to, or the ability to determine who should or should not receive the license. And I believe in the words of the amendment that the Liquor Control Commission will be exercising administrative duties, which are just basically...they'll be pushing the paperwork after the local boards have made the decisions in this particular area. It does cause a little bit of, I don't know if you say confusion or whatever as far as between...on license revocations. It's a matter of, I guess, who gets there first. The local governing board can revoke, or the Liquor Control Commission can revoke. As a matter of fact, I think the Liquor Control Commission can revoke and the local governing board can put it right back into place. I think that's the way it would work. I think my biggest complaint about it is the changing, and this was touched on, I think, briefly by Senator Lynch, is the change in the standard of review. I believe under 911 and under the current law, right now...

PRESIDENT: One minute.

SENATOR LINDSAY: ...the law that was in effect prior to 911, is now in effect right now with the unconstitutionality, it allowed an appeal from a decision of the Liquor Control Commission under the APA, Administrative Procedures Act, and that goes...the

difference there is that the district court would have to find substantial evidence that the order was supported. And the Supreme Court then would review the entire matter referred to as de novo on the record. They would actually review the the evidence and make their own decisions on credibility of witnesses and that type of thing. Under 1851, I think it slants a little bit the other direction, that the appeal is made, I believe, to the...the venue is the county where the district court, where the local board is. But the standard of review is that just whether there was evidence sufficient as a matter of law, which is basically some credible evidence. If there is any credible evidence as far as whether the order should have issued,...

PRESIDENT: Time.

SENATOR LINDSAY: ...the order would be supported. I think there are some questions here as far as whether we want to make these policy changes. That is, I guess, my reason for rising in opposition to it.

PRESIDENT: Senator Smith, please, followed by Senator Haberman and Senator Weihing.

SENATOR SMITH: Well, Mr. Chairman, I don't know whether the body wants to listen to my explanation of every one of these points on both of the handouts they got. I'm prepared to do that, if they want to take...for me to take the time to do it. As I said, a lot of these things are very...I mean, there really is no substance at all to them. One of the things that Senator Lindsay...and I'm sorry, I was talking over here on the side with some other people, but I did hear...so I didn't hear the first part of your speech, Senator Lindsay. But the last part, where you talk about the change that takes place in the appeals process, I'm sure you're probably aware that cities cannot...the reason we had to make that change to the district court for that appeal process is because cities cannot act under the administrative, what is it, the administrative...yes, so that's why we had to make that change. See, we're trying to do what we have to do to make this constitutional and that is why we made the changes we made in the bill. That's the total reason for it. But, anyway, what I would do on my time now, and I'm going to press my light again right away, after it goes off, is start and go through, since you all have these handouts, and try to respond to some of the things that they have stated in here.

First of all, if you would look at the one that talks about technical problems with the amendment...

PRESIDENT: Were you through, or just taking a breath?

SENATOR SMITH: No, no, I'm not.

PRESIDENT: Okay.

SENATOR SMITH: Okay, actually when you talk about, number one, Section 4 eliminates the power of the commission to receive license applications from manufacturers, distributors, nonbeverage users and so on, page 5, lines 4 through 10, the language on page 5 says the commission has to approve "deniance" on the license. The power to receive applications is implicit in that power. We don't have to state that. They can do that. We don't have to state that they can make...that they can receive applications. How can they act upon them, if they can't receive them? It's just like we don't say that when we talk about what commissions or anyone else can do, that we have to tell them you can go and unlock your door and go in that day. This is implicit. Number two, the amendment completely eliminates the power of the commission to hear and determine appeals. I've told you about the fact that the appeals process has now gone to the district court, because local control is final. This is a local control piece of legislation, that's the process we have to use in order to do that. Number three, Section 7 states that either the city or the Nebraska Liquor Control Commission may revoke a liquor license after the commission has caused a forfeiture of the license. There is no standard to determine who may revoke the license. It is possible that both may attempt to revoke a license with conflicting results. And they talk about page 22, lines 16 through 24, and page 23. They are only revoked for cause, which would have to be a violation of the Liquor Control Act. This can be a problem. Case law states that the license can only be revoked once for violation under a section of the statutes so that the commission and the local governing body can act at the same time. Instead, either of them can act. I can't see what the problem with this is. Number four, there are three sections dealing with the revocation of liquor licenses, and all three sections have different standards. What this does, instead of saying that you have three different standards here, is that you provide three different ways that licenses can be revoked. It's not three different standards. Number five, Section 12 allows

the applicant a hearing before the local governing body. There is no provision for notifying the applicant of when the hearing will be held. We all should know that it's statutory already, that public hearing notification has to be given. We just dealt with LB 591 not too long ago, talking about due process and the process of notification and that sort of thing. Six, Section 12 allows a local governing body to cancel, revoke or suspend a license without any notice or hearing. This is the same answer I gave you from above, localities can't act capriciously, they can't. Under law, they're not allowed to do that. Section 7, or excuse me, number 7, Section 12 allows the local governing body to suspend the liquor license...

PRESIDENT: One minute.

SENATOR SMITH: ...but does not state how long or how to repeal a suspension. This is already covered in other community statutes. We're not amending in this LB. What I'm saying is that it's already there in statute. We just simply...we didn't put it in here, it's there in the statutes. By the way, we're going to be looking at the liquor law in our committee as a part of one of our interim studies, because the liquor law is very garbled and very...it's difficult to mesh. So it's already there, even though we did not list it here, it's in the law. Number eight, Section 12 is the criteria for granting a liquor license. Subsection (t) states compliance with liquor laws and municipal ordinances, this makes no sense if this is a first time applicant. The application should read past compliance. Well, as far as I'm concerned, I think that they should be in compliance currently, not just in the past, if that is what they're construing this to say here.

PRESIDENT: Time.

SENATOR SMITH: I will press my light again.

PRESIDENT: Senator Smith, we're going to break now, according to the Speaker's orders, because supper is ready. And we'll be going on number eight which is the Final Reading of 285, which will take approximately a half hour. And I understand Senator Emil Beyer is ready for you in 2102. So those of you who wish to do that during this half hour may do so. The speaking order, from now on, is Senator Haberman, Senator Weihsing, Senator Hartnett, Senator Hefner, Senator Elmer, Senator Langford, Senator Nelson, and Senator Smith. So, with that, Mr. Clerk, I

Enrollment and Review, Mr. President. That's all that I have at this time. (See pages 2591-92 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Returning then to LB 781. We were, I believe, on a motion to return the bill. Is that right, Mr. Clerk?

CLERK: Mr. President, Senator Smith had moved to return the bill for a specific amendment.

SPEAKER BARRETT: I'll proceed to the lights. Senator Haberman, on the motion to return.

SENATOR HABERMAN: Mr. President, members of the body, for the last half hour you have observed a form of harassment, harass, harass, harass. Take the time, make people angry, pull votes off of the bill. You have been told, you have been told that possibly there is one entity that wasn't included in this amendment, and it might be the convenience stores. Well, for your information, the retail liquor association people, the liquor distributors association people, and the wholesalers association people were all in on drafting this amendment. They were all in on drafting the amendment. The committee has had the amendment for approximately 10 days. None of the committee members, until tonight, raised a question. But some way they got a list of technical questions to ask, tear it apart, cause confusion and defeat the bill. So, as I say, you've been told it's bad. Well, it's not bad. If it is bad, bad, bad, and we pass the legislation with the amendment, as we should, the Chairman of the committee and other members of the committee have assured me that this summer they will correct anything that these people think is bad, bad, bad. But you just don't stand up here and harass somebody and harass a bill and say technical this, and this is going to happen, those people don't have any control, because you can't ask every Tom, Dick and Harry to meet on a bill. You had the representatives of the liquor...retail liquor, the distributors and the wholesalers of liquor. You cannot possibly include everybody. And, if somebody has their nose out of joint, because they were not asked, they are using that as an excuse, purely an excuse to say this is a bad bill, because they don't want the bill. It's just that simple. So, I would ask you to do this, support the legislation, you know the background of why it's being harassed. They were included in on the amendment, it's a good amendment, so let's adopt the amendment and get on with our business. I'll give the rest of

my time, Mr. Speaker, to Senator Owen W. Elmer.

SPEAKER BARRETT: Senator Owen W. Elmer, please.

SENATOR ELMER: Thank you, Senator Haberman. Ladies and gentlemen, this is just an issue of local control. Every city that's reported to the League of Municipalities wants this amendment. Law enforcement was brought up by Senator Lynch. That will not change. The State Patrol, the Liquor Commission and the local law enforcement will cooperate and operate just exactly as they always have. There's visit about restriction of liquor consumption. There's conversation about policy changes. These all have been addressed at the hearings. The preponderance of testimony, by large majorities, has been in favor of the strict local control that this amendment will give. This is merely a last minute end run by people who do not want our state and our municipalities to have local control or proliferation and the continuation of expansion...

SPEAKER BARRETT: One minute.

SENATOR ELMER: ...of liquor licenses in an unrestricted manner in their towns. This is a constitutional bill and that is why they don't want it, because they will get the local control that they have always been desirous of. I'd urge the return to Select File for the adoption of this amendment.

SPEAKER BARRETT: Thank you. Senator Hartnett.

SENATOR HARTNETT: Mr. Speaker, members, I missed one question, Senator Smith. And I guess I take a little offense to some of the remarks by one of the other senators about harassment. I simply had some questions that were raised, I think we need to get them in the record, and that is really the purpose of my comments. On page 38, and I talked to...past evidence of discrimination involving applicant, Senator Smith, do you want to...

SENATOR SMITH: Sure. All right, this is one of the criteria that they have to meet as far as the standards are concerned in applying for the license, which you're...for the edification of the other members of the floor. This is past evidence of discrimination involving the applicant as evidenced by finding of fact before any administrative board or agency of the local governing body, any other governmental board or agency of the

local governing body, or any governmental unit or court of law. What this is saying is that, yes, if they have shown that in the past that the applicant has shown discrimination, something which the Equal Opportunity Commission would fight, things like racial discrimination, discrimination because of sex and so on, then that person could be disqualified from receiving a license.

SENATOR HARTNETT: Yeah, thank you very much. Senator Hefner, do you want to use the rest of my time?

SPEAKER BARRETT: Senator Hefner.

SENATOR HEFNER: Mr. President, I call the question.

SENATOR WITHEM: Point of order.

SPEAKER BARRETT: What is your point, Senator Withem?

SENATOR WITHEM: Well, I believe my point would be that the time of the five minutes, of allotted time was Senator Hartnett's. He had already spoken a couple of minutes. I doubt if...I mean it would be, I think, incredibly unfair to be able to pass off to somebody else and have them call the question. Frankly, I have real...little or no interest on the particular bill, but I think that was probably improper.

SPEAKER BARRETT: I did not follow that and I absolutely agree.

SENATOR WITHEM: Thank you.

SPEAKER BARRETT: Thank you. Good point. I did not hear that. Now, interestingly enough, ladies and gentlemen, interestingly enough, Senator Hefner's light is the next light. Now, Senator Hefner, you are recognized by the Chair.

SENATOR HEFNER: Mr. President, I call the question.

SPEAKER BARRETT: Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Shall debate cease? Please record.

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

SPEAKER BARRETT: Debate ceases. Senator Smith, would you care to close.

SENATOR SMITH: Yes. Thank you, Mr. Chairman. I would like to explain, on behalf of Senator Hefner, I think what he did was he knew that he was the next person who was going to speak, and he was going to call the question on his own time. So he didn't get a chance to speak. I will give him the first minute of my closing.

SENATOR HEFNER: Mr. President, and members of the body, Senator Withem, I apologize to you. I wasn't listening and I just thought the Speaker was calling me to speak on my own time and I was going to call the question, so I apologize to you for that. But, let's go back a few years when LB 911 was introduced, and I was right in the full debate on that, and 911 gave local option. What this amendment would do would say there is no option, that the local governing board has the full power to make that decision with no option. And I think that there again the local governing board knows best. I figure that they know how their local police force is operating. They know this person that is applying for that license, or for a renewal, they know the operator and the owner. And, Senator Crosby, I feel that this amendment would tighten our liquor laws. Also, like here in Lincoln, the Lincoln City Council would have full control of that, or if they was outside the city limits of Lincoln, then the Lancaster County Board would have full control. But I just feel that this is the way to go, and I just wanted to get that into the record. Senator Smith.

SENATOR SMITH: Thank you. All right, in closing I would just remind the body, this bill, as you see it here, that everyone is calling a new bill, is not a new bill. This bill was worked out by the committee. There were some points in it that were found to be unconstitutional. What we did was take the bill, make the changes that you see, the new language is all that is new in it. This whole bill is not a new piece of language that I did in my office, after we worked in the committee on it. This is what we did to comply with what the Attorney General said we still had to do. Our choices came down to one of two choices, you either have to be all or none. So, in order for the two-thirds of the communities that already have local option, we elected to go the local option route, and it has to be local option all the way. That is why all the changes that you see in the bill are there. In order to make it be constitutional, these are the things that we had to do. Basically, the local governing board will have 45 days from the day they receive the application to hold a hearing

on the application and issue an order of denial or approval, based on the designated criteria provided by this law, which was already in here. I didn't change all the criteria and all those things in this amendment, and I want to make that very, very clear to all of you. I would also tell you that some of the things that we did take out of the original bill, before we sent it out of committee, were requests by the very group that are coming in with some of the comments they have here, complaining because we took it out. It doesn't make sense to me. This becomes then local control, and that, to me, is the basic argument here. So when you vote you have to vote whether you're supporting local control or not, it's that simple. I do believe that it now has become a workable bill, with this amendment. And when I say workable I believe that it's constitutional. This is the aim we had when we came into committee this year, to address what they said was unworkable with LB 911. We tried to address that, we've had to rework it twice. We now believe that all of those concerns have been addressed. This is what we have to have if we want to make this be constitutional. Yes, this is true, Senator Goodrich, whether you believe it or not, I hope 48 or 47 other people do, besides myself. And I will tell you that, of course, there are some things that will probably show up. We're going to look at the liquor law during the interim study. We're going to be looking at this bill itself. There may be some things that we need to still look at...

SPEAKER BARRETT: One minute.

SENATOR SMITH: ...as far as what we're saying here with local control. We're willing to do that. You make your mind up. It all comes down to whether you believe that communities should have local option to determine for themselves whether or not they want to establish licenses. But, remember, they must all use the same criteria. They can't discriminate, they can't use different criteria, they have to use the same standards across the state to do this, so it's fair for everyone that they look at who is requesting a license, and that means everyone that requests a license. I ask for your support to return the bill to Select File, and then for your support for the amendment itself. Thank you.

SPEAKER BARRETT: Thank you. The question is the return of the bill to Select File for purposes of amending. All in favor vote aye, opposed nay. Have you all voted?

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SENATOR SMITH: Mr. Speaker, I hate doing this, I'm short two. Now I'm only short one, none. Thank you.

SPEAKER BARRETT: Please record.

CLERK: 28 ayes, 2 nays, Mr. President, on the motion to return the bill.

SPEAKER BARRETT: The bill is returned. To the amendment, Senator Smith.

SENATOR SMITH: Mr. Speaker, I believe that we have discussed...that's what we were doing this whole time was discussing the amendment. I would only say one thing, and that is as far as the involvement is concerned of all parties, this bill is not a bill that is the League of Municipalities bill. It's a bill that, yes, they helped work on. It's a bill that in my office, my staff, and I have to give a lot of credit, I'm very proud of that young man that was able to draft a bill which we now, by all the things that we've been told by people that have looked at this, is going to be constitutional. There were some changes that we made in the bill, and then what we did was we put that amendment, the amended version out so that those people who have a concern were contacted, the ones that Senator Haberman commented about were contacted. They had an opportunity, and in my understanding there was no problem with it. This concern came after the fact. We passed out to you, the members of the body, the explanatory cover letter and what it would do, and told you that all members of the committee had a copy, and we had some in our office, if others wanted it. The reason that we did it that way was because the Clerk told me it would cost us \$800 to print this in the bill...or in the black book, and we just didn't think that it was...we should spend \$800 to do that, that those who were interested could have it. Since that time, we've had the copies made available, so now you all have one on the floor. I think we've explained the bill. It's just a matter now of how you feel about the issue. And I would ask for your support for LB 781 as amended by this amendment. Thank you.

SPEAKER BARRETT: Any discussion? Senator Elmer, your light is on.

SENATOR ELMER: Thank you. Just very briefly, Mr. Speaker. This has been circulated through a panel of attorneys who

specialize in liquor law. It's been approved by the Liquor Commission. Virtually all of the community that is involved in distribution and sale of alcoholic beverages had signed off on the amendment, except a few very narrow interests, and there have been...which have historically been the same interests that have challenged the law in the past. I'd urge that we adopt the amendment.

SPEAKER BARRETT: Senator Schellpeper, you have a comment?

SENATOR SCHELLPEPER: (Response inaudible.)

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Those in favor of closing debate vote aye, opposed nay. Please record.

CLERK: 27 ayes, 0 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Smith, to close. Closing is waived. Thank you. The question is the adoption of the Smith amendment to 781. All in favor vote aye, opposed nay. Have you all voted? Voting on the adoption of the amendment.

SENATOR SMITH: Mr. Speaker.

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: I guess I'm going to have to ask for people to...a call of the house. We're already under call, aren't we?

SPEAKER BARRETT: Technically, yes.

SENATOR SMITH: I don't see very many people in their seats, so maybe we'll have to ask for people to check in, and then I'd like to have a roll call vote.

SPEAKER BARRETT: Members, please check in. Senator Hefner, please. Senator Lamb. Senator Lowell Johnson. Senator Coordsen, please. Call in votes are authorized? Thank you. Roll call vote has been requested in reverse order. So be it. Senators Landis, Moore, Scofield and Warner, the house is under call. While the Legislature is in session and capable of transacting business, I propose to sign and I do sign reengrossed LB 285, reengrossed LB 285A. Senators Landis, Moore and Warner, the house is under call. Senator Smith. Proceed

with the roll call vote. Take your seats. Reverse order on the Smith amendment. Mr. Clerk.

CLERK: (Roll call vote taken. See page 2593 of the Legislative Journal.) 29 ayes, 7 nays, on adoption of the amendment, Mr. President.

SPEAKER BARRETT: The amendment is adopted. Senator Smith, would you like to readvance the bill?

SENATOR SMITH: Yes, Mr. Speaker. I would request that the bill be readvanced.

SPEAKER BARRETT: Thank you. Senator Lindsay, discussion?

SENATOR LINDSAY: Mr. President, colleagues, I'm not going to beat a dead horse. I just want to, I guess, make sure that everybody is aware at least of what my position on this is, and that is I don't think we're talking about an issue of local control. Local control, I think, the Legislature has, at least in the past under 911, determined that local control is good policy, and I'm not going to quibble with that. That is not the question. I think what's been brought out in some of the debate, though, is there is some question about exactly what the amendments do. That is my objection to the bill now, as amended, I guess. It's just there are some questions to it. There are some things that I'm not sure that we intended to do here and that is by readvancing it now we are going to accomplish those things. Personally, my biggest objection has been with the standard of review, not with the appeals process. Senator Smith very accurately states that, sure, you've got to give the cities...they can't come under the ABA, under the Administrative Procedures Act, they have to come under a separate appeals process. But there is nothing to prevent cities from having a direct appeal to the courts and yet having a different standard of review. We are stripping a lot of your license holders, the people in your districts, and you'll hear from them, I'm sure, when it starts coming up, but you're stripping them of some of their judicial review, of the court's ability to review a local board that may get out of control. In Nebraska, we're fortunate we've got...the local boards we've got are good. Once in a while they do get bad. And, if they weren't getting bad, then there would be no reason to have a lot of recalls that we've had going on around the state. And, remember, those are the ones that the people aren't happy with,

and those are the ones that are going to be determining these, and for all practical purposes there is no rep...or no judicial review or administrative review of the local governing body's decision because it's just a standard of some credible evidence. I think there are some questions that...concerning the amendments that we've adopted. Like I say, I'm not quibbling with the local control. Some of you, I'm sure, have a lot of pressure to vote for local control. It's not what you're voting against, if you vote against the readvancement. I think what we're voting against is the uncertainty of what the amendments would do. I would urge that you vote no on the readvancement.

SPEAKER BARRETT: Thank you. Senator Korshoj. Senator Korshoj, would you like to talk on it? Thank you. Senator Haberman, do you want to talk? Thank you. And, Senator Langford. Not necessary, thank you. The question is the readvancement of the bill. All in favor say aye. Board...machine vote has been requested. Thank you. Those in favor of the bill's advancement vote aye, opposed nay. On the advancement of the bill...readvancement of the bill. Record, please. Record vote has been requested.

CLERK: (Read record vote as found on page 2594 of the Legislative Journal.) 29 ayes, 7 nays on the readvancement of the bill, Mr. President.

SPEAKER BARRETT: The bill is readvanced.

CLERK: Mr. President, Senator Lindsay would move to return the bill. (Lindsay amendment is on pages 2594-96 of the Legislative Journal.)

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: This is going to be a very short opening, because it's not my intention to tie up the bill or the body. We've heard this before when we voted on it. We...a good chunk of the body wasn't here. I just want to put it up for a vote again. This provides for local control of Sunday liquor sales, from the hours of noon and 1:00 a.m. It's just...it would allow sales of liquor, as opposed to just beer and wine, between noon and I guess now it's six o'clock, I guess. But it would provide a local option. I'm not going to take my whole opening, I'm done. Like I say, I just hope to put it back up for a vote and let those, at least those who weren't here, have a say on the

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question. Thank you.

SPEAKER BARRETT: Senator Haberman, would you care to discuss the motion? Thank you. Senator Wehrbein.

SENATOR WEHRBEIN: Mr. Speaker, members, if I understood right, I would strongly oppose this returning to Select File for this issue. It's not necessary to open up Sunday afternoon sales for more.

SPEAKER BARRETT: Senator Smith.

SENATOR SMITH: Mr. Speaker, since it is my bill, or the committee's bill, I feel obligated to stand and make a statement. I'm not going to stand here and argue against it. We've dealt with this issue a number of times on the floor. All I'm going to do is just say that my vote is going to be no. You guys vote the way you feel you have to vote.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: Question.

SPEAKER BARRETT: Not necessary. Thank you. Closing, Senator Lindsay?

SENATOR LINDSAY: Yes. I just, again I just...the intent is to let the body vote on it. I think we've all heard the arguments for and against it, that I'd leave it up to you. We know what the law is now. And what this would do is just to provide the local governing boards with the option to allow those sales on Sunday afternoons. We already sell wine and beer, it's just a question of is there or is there not a distinction between the two. I'd leave it up to you and urge the adoption.

SPEAKER BARRETT: The question is the return of the bill to Select File. Those in favor vote aye, opposed nay. Senator Lindsay.

SENATOR LINDSAY: Mr. President, it's obvious the votes aren't there. I'd just ask for a record vote, we can go ahead and record it.

SPEAKER BARRETT: Thank you. Record vote has been requested. Please record.

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LB 177, 739, 781

CLERK: (Read record vote as found on page 2596 of the Legislative Journal.) 22 ayes, 21 nays, Mr. President.

SPEAKER BARRETT: The motion fails. To the next bill, Mr. Clerk, LB 739.

CLERK: Mr. President, 739, the first motion I have is by Senator Nelson to return the bill for a specific amendment. I have a note, Senator, you'd like to withdraw that amendment. Is that correct?

SENATOR NELSON: That's correct.

SPEAKER BARRETT: Thank you, it is withdrawn.

CLERK: Mr. President, the next motion I have on the bill is by Senators McFarland and Hall, and that would be to return to strike the enacting clause.

SPEAKER BARRETT: Senator McFarland.

SENATOR MCFARLAND: Senator Hall is not here. We would move to withdraw that amendment as well.

SPEAKER BARRETT: Thank you, it is withdrawn.

CLERK: Mr. President, same for the next, Senator?

SPEAKER BARRETT: It is withdrawn. We'll move on to the next bill under consideration. Obviously, LB 89 has been handled and LB 132. We'll move to LB 177. Mr. Clerk.

CLERK: Mr. President, 177, the first motion I have is by Senator McFarland. He would move to return the bill for a specific amendment. (McFarland amendment can be found on page 2597 of the Legislative Journal.)

SPEAKER BARRETT: Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. Speaker and fellow senators. This LB 177 is a protocol act, it establishes a protocol officer for the State of Nebraska. We debated it much earlier in the session. It had passed last year and been vetoed, and then it...we brought it back again this year because nothing had

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LB 177, 187A, 209, 279, 285, 285A, 289A
362, 362A, 651A, 761A, 781

question is the striking of the enacting clause. Those in favor vote aye, opposed nay. Record.

CLERK: 35 ayes, 0 nays, Mr. President, to strike the enacting clause.

SPEAKER BARRETT: Thank you. Motion is adopted. The amendment is adopted. The enacting clause is stricken.

CLERK: Mr. President, if I may, your Committee on Enrollment and Review respectfully reports that they have carefully examined and engrossed Legislative Bill 177 and fine the same correctly engrossed LB 187A, LB 279, LB 289A, LB 362, LB 362A, LB 651A, and LB 781, all signed by Senator Lindsay as Chair.

Mr. President, the Enrollment Clerk has presented to the Governor LB 285 and LB 285A read earlier this evening on Final Reading.

SPEAKER BARRETT: Mr. Clerk.

CLERK: Mr. President, I have one final item. I have a unanimous consent request to unbracket LB 209, which has been pending on Final Reading.

SPEAKER BARRETT: Thank you. If there are no objections, so ordered. I have just been advised that E & R, the Bill Drafters, have done an amazingly good job and they are to be congratulated. They've been working hard on all of the bills. They've been processed and have been returned to the floor in order that adjournment might be possible should it be the will of the body. With that announcement, we can proceed into Final Reading now if that is the body's desire. We can adjourn until Monday morning at nine o'clock. Monday will be dedicated to Final Reading in its entirety, Final Reading all day. I think we need to say thank you to the Bill Drafters for the work that they have done. It is up to the body. Senator Hall.

SENATOR HALL: Mr. President, I would move that we adjourn until Monday morning at 9:00 a.m..

SPEAKER BARRETT: You've heard the motion to adjourn until Monday morning at nine o'clock. Those in favor please vote aye, opposed nay. Record, please. Members take your seats for Final Reading. Motion fails. (See vote of 7 ayes, 31 nays, as found

May 23, 1989

LB 525, 566, 588, 651, 651A, 695, 706
781

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 695 pass? All those in favor vote aye, opposed nay. Have you all voted at least once? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read as found on page 2713 of the Legislative Journal.) Vote is 46 ayes, 1 nay, 2 present and voting, Mr. President.

PRESIDENT: LB 695 passes. LB 706 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 706 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 706 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read as found on page 2714 of the Legislative Journal.) Vote is 46 ayes, 0 nays, 3 present not voting, Mr. President.

PRESIDENT: LB 706 passes with the emergency clause attached. Senator Robak has some visitors in the north balcony. I believe they're just leaving. Have 19 eighth grade students from Holy Name School at Lindsay, Nebraska, and their teacher. Wave to us so that we can recognize you folks. Thank you for visiting us today. LB 781 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 781 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 781 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read as found on page 2715 of the Legislative Journal.) 44 ayes, 3 nays, 2 present not voting, Mr. President.

PRESIDENT: LB 781 passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 525, LB 566, LB 588, LB 651, LB 651A, LB 695, LB 706, LB 781. Mr. Clerk.

May 24, 1989 LB 95, 132, 134, 158, 158A, 175, 175A, 182, 182A
183, 183A, 198, 228A, 228, 261, 261A, 280, 283
285, 285A, 302, 303, 303A, 305, 309, 309A, 310
312, 312A, 335, 335A, 340, 340A, 469, 525, 566
588, 651, 651A, 695, 706, 727, 781, 816, 816A

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us on our closing day as our Chaplain, Reverend Harland Johnson. Would you please rise for the invocation.

REVEREND HARLAND JOHNSON: (Prayer offered.)

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

PRESIDENT: Do we have any corrections this morning?

CLERK: Mr. President, one small correction. (Read correction found on page 2719 of the Legislative Journal.)

PRESIDENT: Okay, do you have any messages, reports, or announcements today?

CLERK: Mr. President, I do. I have a series of communications from the Governor. First of all, Mr. President, the last few bills read on Final Reading yesterday afternoon have been presented to the Governor as of 2:48 p.m., yesterday. (Re: LB 525, LB 566, LB 588, LB 651, LB 651A, LB 695, LB 706, LB 781. See page 2720 of the Legislative Journal.)

Mr. President, a series of communications from the Governor. (Read. Re: LB 228A.) A second communication to the Clerk. (Read. Re: LB 134, LB 158, LB 158A, LB 175, LB 175A, LB 182, LB 182A, LB 198.) A third communication. (Read. Re: LB 95, LB 261, LB 261A, LB 280, LB 283, LB 303, LB 303A, LB 312, LB 312A.) A fourth communication, Mr. President, to Mr. President, and Senators. (Read. Re: LB 183, LB 183A.) A fourth, Mr. President, to the Clerk. (Read. Re: LB 132, LB 285, LB 285A, LB 302, LB 305, LB 309, LB 309A, LB 310, LB 335, LB 335A, LB 340, LB 340A, LB 469, LB 727, LB 816, LB 816A.) The last letter I have received, Mr. President, with respect to signing of bills. (Read. Re: LB 228. See pages 2720-22 of the Legislative Journal.)