

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

March 13, 1989

LB 95, 140, 257, 280, 289, 311, 330
336, 387, 395, 438, 444, 478, 561
588, 603, 606, 643, 683, 705, 710
721, 736, 739, 744, 761, 762, 767
769, 780, 807

indefinitely postponed; LB 478, indefinitely postponed; LB 561, indefinitely postponed; LB 387, indefinitely postponed, all those signed by Senator Chizek as Chair of the Judiciary Committee. (See pages 1081-82 of the Legislative Journal. Journal page 1082 shows LB 721 as indefinitely postponed.)

Mr. President, a series of priority bill designations. Senator Hall would like to designate LB 762 as a committee priority. Senator Hartnett designates LB 95 and LB 444 as Urban Affairs priority bills. Senator Hartnett chooses LB 603 as his personal priority bill. LB 739 has been selected by Senator Hannibal; LB 606 by Senator Schimek; LB 761 and LB 289 by the Natural Resources Committee, and LB 807 by Senator Schmit, personally. LB 769 by Senator Labedz; LB 705 by Senator Ashford; LB 438 by Senator Wehrbein; LB 710 by Senator Scofield; LB 643 by Senator Bernard-Stevens; LB 588 by Senator Chambers; LB 739 by Senator Hannibal; LB 330 by Senator Pirsch; LB 767 by Senator Smith; LB 736 and LB 780 by General Affairs Committee; LB 395 by Senator Peterson. Senator Lamb selected Transportation Committee's LB 280 as a priority bill. LB 311 has been selected by Senator Landis as his personal priority bill; LB 683 by Senator Schellpeper.

Mr. President, I have a series of amendments to be printed. LB 744 by Senator Withem; LB 336 and LB 257, those by Senator Withem. (See pages 1083-88 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Haberman regarding an issue raised by Senator Haberman. (See pages 1088-90 of the Legislative Journal.)

Mr. President, Natural Resources Committee will have an Executive Session at eleven-fifteen in the senate lounge, and the Banking Committee will have an Executive Session at eleven o'clock in the senate lounge. Banking at eleven o'clock, Natural Resources at eleven-fifteen. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you, Mr. Clerk. Proceeding then to Select File, LB 140.

CLERK: Mr. President, 140 is on Select File. Mr. President, the bill has been considered on Select File. On March 2nd the Enrollment and Review amendments were adopted. There was an amendment to the bill by Senator Chizek that was adopted.

March 13, 1989

LB 84, 140, 154, 183, 285A, 340, 405
406, 522, 528, 611, 634, 653A, 655
657, 700, 739, 747, 774, 807
LR 18

record your presence. Members outside the Legislative Chamber, please return. Senator Hefner, please record your presence. Senator Labedz, Senator Haberman. Senator McFarland, the house is under call. Senator Chizek, Senator Haberman apparently is the only one that is absent. Can we go ahead? And did you request a roll call? Thank you. Members, please return to your seats for a roll call vote on the advancement of the bill. Proceed with the roll call vote, Mr. Clerk.

CLERK: (Roll call vote taken. See pages 1091-92 of the Legislative Journal.) 18 ayes...Senator Chizek.

SPEAKER BARRETT: Senator Chizek.

SENATOR CHIZEK: I want to change my vote from yes to no for purposes of reconsideration.

SPEAKER BARRETT: Thank you.

CLERK: Senator Chizek changing from yes to no. 17 ayes, 19 nays, Mr. President, on the advancement of 140.

SPEAKER BARRETT: Motion fails. For the record, Mr. Clerk. The call is raised.

CLERK: Mr. President, your Committee on Revenue, whose Chair is Senator Hall, reports LB 84 to General File with amendments, LB 611 to General File with amendments, LB 739 to General File with amendments, LB 747 to General File with amendments, LB 807 to General File with amendments, LR 18CA indefinitely postponed, LB 405 indefinitely postponed, LB 406 indefinitely postponed, LB 522 indefinitely postponed, LB 528 indefinitely postponed, LB 634 indefinitely postponed, LB 655 indefinitely postponed, LB 657 indefinitely postponed, LB 700 indefinitely postponed, and LB 774 indefinitely postponed. Those are signed by Senator Hall as Chair of the Revenue Committee. (See pages 1092-93 and 1107-08 of the Legislative Journal.)

Mr. President, Senator Baack has amendments to LB 340 to be printed; Senator McFarland to LB 739; Senator Baack to LB 183; and Senator Smith to LB 154. (See pages 1093-1100 of the Legislative Journal.)

Mr. President, I have new A bills. (Read LB 653A for the first time by title. LB 285A for the first time by title. Read

March 27, 1989

LB 147A, 224, 683A, 807

of LR 63 as found on page 1356 of the Legislative Journal.) That will be laid over.

Attorney General's Opinion addressed to Senator Withem. (See pages 1357-58 of the Legislative Journal regarding LB 807.)

New A bill, LB 683A by Senator Landis. (Read by title for the first time as found on page 1358 of the Legislative Journal.)

Mr. President, LB 147A, I have a priority motion. I have amendments to the bill but I have a priority motion. Senator Schmit would move to bracket 147A until April 17, 1989.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President, I move to bracket the bill till April 17th. If we do, fine; if we don't, it's okay also.

SPEAKER BARRETT: The Schmit motion is to bracket the bill until April 17 of '89. Is there any objection? We will proceed then by unanimous consent to bracket the bill. Mr. Clerk, the next bill, please, LB 224.

CLERK: Mr. President, LB 224, the next bill, Mr. President, the first item I have on 224 are E & R amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 224 be adopted.

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

CLERK: Mr. President, the first amendment I have to the bill is by Senator McFarland. Senator, this is your amendment on page 1271 of the Journal. It's AM1005.

SPEAKER BARRETT: Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. Speaker. I would move to adjourn till tomorrow morning at nine o'clock.

SPEAKER BARRETT: You move to adjourn until nine o'clock? I'm

is getting tired. I am just going to have a very short closing. I think we have a very reasonable bill here, and what Senator Wesely talks about, that the medical center lowered their cost by 8 million, or whatever, what he is saying, basically, is that a \$40 million threshold would be too high. That would still be reviewed under the process that we are putting in place here, and many of the things that we have talked about, and many of the projects that have been rejected in the past would still be reviewed under CON with what we are going to put in place with 429. We are not wiping out certificate of need. We are simply changing the thresholds to be more realistic I think with the health care costs and the equipment costs that go into health care today. With that, I would simply urge you to advance the bill. Thank you.

SPEAKER BARRETT: Thank you. And the question is the advancement of LB 429. All in favor say aye. Oh, you have had a request for a machine vote. I am sorry. Those in favor vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted? Record.

CLERK: 27 ayes, 4 nays, Mr. President, on the advancement of LB 429.

SPEAKER BARRETT: LB 429 is advanced. A reminder of those who are going on the field trip, transportation is available at the west side. Mr. Clerk, anything for the record?

CLERK: Mr. President, Senator Haberman has amendments to LB 813; and Senator Warner to LB 807, and that is all that I have, Mr. President. (See pages 1961-63.)

SPEAKER BARRETT: Senator Weihing, would you care to adjourn us.

SENATOR WEIHING: Mr. Chairman, I move that we adjourn until 9:00 a.m., April 27.

SPEAKER BARRETT: Thank you, sir. You have heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Carried. We are adjourned. (Gavel.)

Proofed by:

Sandy Ryan
Sandy Ryan

April 27, 1989

LB 588, 807

the first thing I want to indicate is that I was at a hearing that the Judiciary Committee was conducting. And having come back and been apprised of the fact that there are 32 members here, I'm going to move to ask unanimous consent to pass over 588 this afternoon.

SPEAKER BARRETT: Thank you. Is there any objection? Seeing none, so ordered. The Chair is pleased to announce that Senator Withem has some guests under the south balcony, Phil and Karen Zacher from Papillion, and Bill and Flo Bonfield from Suffolk, Haver Hills, England. Would you people stand and be recognized. Thank you, we're very happy to have you with us this afternoon. Mr. Clerk.

CLERK: Mr. President, the next bill scheduled is LB 807. It was a bill introduced by Senator Schmit. (Read title.) The bill was introduced on January 19, Mr. President. It was advanced to General File. I have committee amendments pending by the Revenue Committee.

SPEAKER BARRETT: Senator Schmit.

SENATOR SCHMIT: Mr. President, I think that 807 is a bill which will need the full attention of this body, and I would respectfully request permission, and regretfully so, to pass over the bill for the same reasons given by Senator Chambers for passing over 588. I don't think it's possible to get the votes I need out of 32 or 33 people, I need all of them here at the time it's discussed.

SPEAKER BARRETT: Senator Schmit, it occurs to the Chair that would you have any objection if we ordered a call of the house to see how many people are really here? We don't have that many people excused, not to my knowledge.

SENATOR SCHMIT: If you can raise them, Mr. President, I would be glad to comply.

SPEAKER BARRETT: You are asking for a call of the house?

SENATOR SCHMIT: Yes, I am.

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

April 27, 1989

LB 807

CLERK: 18 ayes, 1 nay, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Those members outside the Chamber, please return to the Chamber. Unauthorized personnel, please leave the floor. LB 807.

CLERK: Mr. President, there are Revenue Committee amendments pending to LB 807.

SPEAKER BARRETT: Ladies and gentlemen, the call is raised, but you have experienced what we are going to continue to experience this afternoon and henceforth. I would again ask you to please, please stay close to this Chamber. This is the last afternoon before a long recess. We do have some big trees out there to try to cut down. I repeat, there will be a lot of legislation left on the table, if this continues. Chairman Hall, would you care to deal with the committee amendments. The call is raised.

SENATOR HALL: Thank you, Mr. President, members. LB 807 was a bill that Senator Schmit brought before the Revenue Committee. It dealt with a number of different issues, the principle one being the sale of the educational lands and funds, properties; another being the exemption of materials and supplies in railroad rolling stock from property taxes; also the change in the way ag land is valued from its current valuation method to that of cash rental values, and would allow for a new ag land manual to be put into place. Also it would provide for the Property Tax Relief Fund, which was to be funded through a 2 percent increase in the sales tax. And, last but not least, a provision in it that dealt with the exemption of out of state muni bonds that had been purchased prior to January 1 of 1987. The committee amendments do this, they strip everything out of the bill, except for Sections 1 through 4, which deal with the issue of educational lands and funds and the sale thereof. The committee amendments also provide a little clarification there with regard to the sale. The proposal that was offered by Senator Schmit, in the original version of LB 807, provided for a 12-year window with which to sell those lands. We provided some clarifying amendments in the committee amendments that which ever...if there might be a lease out there that went beyond that 12-year window, which there was testimony to the fact that there was, the committee amendments allowed for that lease to run its course so that the sale would take place upon the termination thereof. So, that is the extent of the

committee amendments. They strip the bill of all issues, except for the sale of ed lands, and they clarify the point at which the sale would take place with leases that currently are in existence, but go beyond the 12-year window that was written into the bill. I would urge adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Discussion on the committee amendments. Chairman Schmit.

SENATOR SCHMIT: Mr. President and members, I would just like to touch briefly on the committee amendments, because I did not introduce the bill, 807, lightly. I introduced it as a composite of a number of bills, each of which had been introduced separately. But I felt that each of them also needed to be addressed and I just want to take a few minutes and point out what I believe are some serious inconsistencies in the way we address issues on this floor. LB 497, as Senator Hall explained, would have provided for an agreement on the...between the railroads and the state in the area of the taxation of railroads' personal property. It would have actually resulted in an increase in the collection of personal property taxes, about \$2 million to the various entities of government, and would have represented, in my opinion, a very significant and substantial settlement in an area which is, today, left wide open. I believe and you will all believe, I agree, that the area of taxes and the various kinds of taxes are a source of deep concern to all of us and a concern which we only seem to address piecemeal. And I think it's time that we resolve some of these issues, whether it be with the railroads or whether it be with banks or whether it be with any other entity. And LB 497, or this portion of the bill, of 807, would have resolved that problem, and we would have it behind us. LB 84, the portion of that which is included in 807, would have valued agricultural land based on cash rental rates. It's my assumption, and I believe I'm correct in that, that cash rental rates do accurately reflect market values. There are thousands of those kinds of contracts that are written every year in most counties, and certainly they very accurately reflect the values of land, the value of commodities, interest rates, all those other factors which are brought to bear upon determining the valuation of farm land. I think that this body does a disservice to the taxpayer of the State of Nebraska, particularly the rural taxpayer when we do not take into account the valuation of agricultural land based upon rental rates. We

hunt and seek and search to try to find some system of valuation based upon market. And I think this is one which we ought to look at. And although I'm not going to oppose the committee amendments, I call it to your attention that I would not be adverse if someone wanted to reconsider this later on, although it will not happen this year. LB 744 is a bill which you probably will say we do not need that now, but it actually increases the sales tax by 2 percent, the reason for that being to create the kind of fund necessary to provide significant property tax relief. We consistently talk about property tax relief. LB 84 provides approximately 94 million, but not on a continuing basis, and we understand that if we are going to have any kind of stability in the tax structure that we have to provide for a continuing source of income. We do not know yet, although there is differing points of view, as to whether the surplus revenue today is the result of adjustment in the tax rates or if it is because of the economy. There is a difference of opinion, honest differences in that area, but I address this problem because I wanted to once and for all place a substantial amount of revenue, sales tax revenue in the budget so that we could properly...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...address the matter of property tax relief on a consistent basis. LB 629, as I introduced it, which is also a part of this bill, would have exempted from taxation the non-Nebraska municipal bonds which were purchased before January 1, 1987. So oftentimes we on this floor enact into law bills which are of a nature that they cause problems for those individuals who took an action based upon the current status of the law. Many people bought non-Nebraska municipal bonds based upon their nontax...nontaxable status, only to find that in 1973 we changed that, and those bonds then became taxable. I don't think that is fair. We were trying to...I hope we wanted to be equitable. I believe very sincerely that we should address that issue, and that is one issue which I think needs to be addressed, and oftentimes these municipal...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...bonds are the nest egg which elderly people rely upon. All of a sudden they have found their income sharply curtailed as a result of the 1987 action, I think that was wrong. I believe we ought to address that. But at this point I

will not object to the committee amendments, Mr. President, and in fact I will support them.

SPEAKER BARRETT: Thank you. Further discussion. Senator Haberman, on the committee amendments. Thank you. Senator Hall. Thank you. Senator Lamb, on the committee amendments. Senator Abboud. Thank you. Senator Haberman, again. On the bill. Thank you. Senator Hall, would you care to make a closing comment?

SENATOR HALL: Only that I would move the committee amendments be adopted, Mr. President, because they do strike the bill down to the form that deals specifically with the sale of ed lands. I would move the adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Shall the committee amendments to LB 807 be adopted? Those in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 1 nay, Mr. President, on adoption of committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. Anything further on the bill? Senator Schmit, would you care to open on the bill as amended?

SENATOR SCHMIT: Mr. President and members, I would like to comment on LB 807 as amended. LB 807 provides for the sale of school lands. There are those, and if you were at the committee hearing, either of the Revenue Committee or the Education Committee, and heard the opposition to the proposed sale you would almost believe that it is immoral and unethical to even discuss such a possibility. I'm going to use approximate figures this afternoon because I don't think the actual figures are that important. Those of you who want them can, of course, obtain them. I'm going to just run some approximate figures by you. And bear in mind that these figures are all obtainable in fact, and certainly are available if you want to run them by your own particular district to determine what happens to you in your district, if, in fact, we do sell the lands. There has been a lot of argument about how much income we receive from the sale of school lands at the...pardon me, from the income from school lands as of now. I want to emphasize that part of the reason why those school lands are bringing in the kind of revenue they are today is because of legislative action in the

early 1970s; 1971, as Chairman of the Ag Committee, a bill came before the committee which address the sale...which addressed school lands, principally rentals. Very honestly, I was not at all acquainted with the project or the aspect of that bill at that time, but I took it upon myself to become a little more familiar, found out that in my opinion the school lands were substantially undervalued, and the rental income from those lands was minuscule to say the least. Senator DeCamp was a member of the committee, and took a look at it, and in later years then came back with several bills which did substantially alter the process of appraisal whereby we determined the value of school lands. I will say also that at that time there were on the Board of Lands and Funds several individuals who realized the terrible inequity that was being vested upon the school children of this state because of the lack of properly appraised values, and they did work with the committee to make some substantial adjustments. As I recall, and again these are numbers which are readily obtainable, we were receiving less than several million dollars, in the early seventies, from the rental income from school lands. Also at that time we were...there was no such thing as in lieu of tax. But when we took into account the various factors that ought to be utilized to determine the value of school lands, the rental income on the school lands escalated anywhere from five to ten times what had been the normal rental income, depending upon the part of the state in which you were located and the type of land which you had. There were also a number of other factors that were brought to bear, which then helped to determine the true value of those school lands. And we also, of course, became more aware of the bonus bidding procedure, which is something which most of you in the western part of the state are fully familiar with. As I recall, after we had addressed the issue of appraisal and the values were increased substantially, we then, under Senator DeCamp's prodding, decided to adopt an in lieu of tax proposal. And that in lieu of tax proposal was drawn rather loosely, I would guess, but it was drawn at 143 percent of the appraised value of the land to be returned to the schools of that state. And I recall, a little vaguely, that the reason that was given for that 143 percent was because of the fact that the other subdivisions of government received no income from the school lands, and this was an attempt to reimburse to the taxpayers, through the school system, an amount that was equivalent to what would have been received for taxes on that land had it been, in fact, on the tax rolls. That became law, and of course there has been some recent controversy about that,

and there is at the present time a lawsuit pending as to the constitutionality of that procedure. There are also several opinions, some of which you have before you, others which you will find I'm sure will be readily available, if and when you decide to argue that case you can find an opinion that reinforces almost any kind of...or any point of view which you have. And you can argue from your own position. I would suggest that at the present time roughly the appraised value of the school land is somewhere in the area of \$300 million. We received somewhere around \$17 million of rental income, about \$2 million or a little less, one million eight, goes for the...to support the Board of Lands and Funds and their administrative procedures. Between five and six million, almost six million goes back to those local schools in lieu of tax, which leaves about \$12 million, give or take a million, for income to all the school children in the State of Nebraska from the rental of school lands. Now Mr. Mathis, who is our State Investment Officer, has consistently received about a 12 percent rate of return on the school lands, pardon me, on the other monies he has invested. If you just took that 300 million and multiplied it by 12, you can see we would receive approximately three times as much income from the investment of the school lands...receipts, if they only brought 300 million, as you would receive if you sold them, or pardon me, as you receive when those funds...when those lands are held in trust by the children...for the children. Let me point out also that I believe the lands would be more, and let me tell you why. We all know the natural inclination of a farmer is to buy land. We all know that if there is a piece of land between Senator Moore's farm and my farm, and it's valued at \$1,000 an acre, each of us has a tremendous tendency to want to buy that land, and we have a tendency to pay more than it is worth. Be that right or wrong, it is a fact of life. And for that reason I believe the school lands not dumped on the market en masse, but sold in a prudent manner, as the leases come due, would bring back to the state far more than the \$300 million of appraised value. Now if I were the individual who was in charge of managing the lands I would dispute that, and he has every right to do so, and he does so with some elegance and some eloquence. But I would just suggest, go back and check your own records, check the facts and find out if what I have said is not borne out in truth. Therefore, school lands could, I believe, bring between \$500 million and \$600 million, and of course there will be those who will speak ridiculously, who will say that number is ridiculous. Let me point out, speaking with Mr. Jack Mills

only yesterday about some land in western Nebraska, and I don't like to bring this up, but it was a substantial amount of irrigated, unimproved land, valued on the tax rolls at less than \$1,000, sold, arms length transaction, for I believe in excess of \$1,500. Bears out again some of the arguments we have had on this floor about trying to determine the value of land based upon appraisals, based upon a variety of other instances. But on what a willing buyer will pay a willing seller I think you can see that my arguments are worthy of consideration. Based upon that estimate (recorder malfunction) ...is sold and the money prudently invested could return, on an annual basis to the children of this state, somewhere between 50 and 60 million dollars, and do so easily. Bear in mind also that the mineral rights cannot be sold. The mineral rights remain forever with the school children of this state. So whatever income that is available to the children from the mineral rights will always be available to the children in that respect.

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: Remember also that the lands once sold go back on the tax rolls. And this brings to mind an interesting statistic. Mr. Gildersleeve, testifying before the Revenue Committee, stated that if all the lands were placed back on the tax rolls it would bring back to the local subdivisions of government somewhere between 2.3 and 2.4 million dollars notwithstanding the fact that the in lieu of tax payments are almost 6 million dollars, in lieu of taxes to the schools only. I don't know where the discrepancy is, you have to ask somebody else. I'm sure that will come up somewhere along the line. Bear in mind also that if the lands are sold that other accoutrements will accrue to the local subdivisions, not only the schools will benefit, the counties, the cities, the natural resource districts will also receive directly their revenue. I would also want to tell you that we argue on this floor time, after time, after time about...

SPEAKER BARRETT: Time has expired.

SENATOR SCHMIT: ...how we will possibly support the school children in the State of Nebraska and bring about some sort of equitable property tax relief. Ladies and gentlemen, the first thing you do is to make the most of all of your assets. It makes absolutely no sense to me to have an asset which, in my opinion admittedly, is worth between five and six hundred

million dollars, which brings back to the school children of this state somewhere around 12 million dollars, which if sold and properly invested would bring back five or six times that much money on an annual basis. Now there are people who talk about the sale of the lands almost as if it were immoral.

SPEAKER BARRETT: Time.

SENATOR SCHMIT: Ladies and gentlemen, the school lands were given for the benefit of the children. Today rental income does not compare favorably with interest income, and that brings to mind a totally different set of facts and figures, ones which we ought to consider. And I, therefore, ask you to seriously consider the sale of the school lands of the State of Nebraska.

SPEAKER BARRETT: We have an amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Warner would move to amend the bill. Senator, I have AM1581 in front of me. (Warner amendment is on page 1961 of the Legislative Journal.)

SPEAKER BARRETT: Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, the amendment that is filed, I filed it yesterday and I suspect I will not pursue it today, but perhaps on Select File, if the bill is advanced. I became sort of interested in this issue a few weeks ago when there was some discussion of when in lieu of tax payments began and when I was reading...listening to the figures that Senator Schmit just quoted as to how only 2.3 to 2.4 million in revenue would be raised if land was sold, and currently 6 million is being returned, and that, as he indicated just now, seemed to be a discrepancy. It was kind of a curiosity to me. Well the staff went back and kind of checked a little bit what the history might have been. And it was interesting, I thought, that in 1921 was when the first in lieu of tax concept was enacted by the Legislature. And from that time, until 1957, I believe what the in lieu of tax was given to each school district was an amount of tax the same as if that property had been in private hands. Then apparently, as you will see with the handout, in 1957 there was an amendment attached on Select File to a bill that apparently must have gutted the bill, because the introducers changed on the bill after the amendment was adopted. And it was an amendment that in such a way actually increased the in lieu of tax something

above what the school, in itself, was losing, the school district itself was losing. And that was in effect from '57 on into 1979, and it was legislation which I had introduced which really did not affect the in lieu of tax itself, but it was the bill that had an effective date of a couple years later, three years later, I think, which changed from 35 percent of actual value for tax purposes to 100 percent of actual value and cents on the dollars instead of mill levies. In that process, because of the way the in lieu of tax works, that amount of money going to schools was affected. So, in '82 there was a bill enacted...introduced and enacted which was meant initially to be hold harmless for one more year the schools that were going to have a substantial reduction because of the other legislation. It was interesting to me in the statement of intent on that bill in 1982, says traditionally the percentage for in lieu of tax payments have been set at a slightly higher rate than for property taxes. This compensates for the lack of revenue received by the other, in effect, local governmental subdivisions from school land in the form of taxes. Now, obviously, there may even be justification for that. But then when I was listening to the discussion on I believe it was an Attorney General's opinion or two that was suggesting that the whole concept might be unconstitutional, then as I recall there maybe was a subsequent amendment...request rather for an opinion which I believe maybe indicated that in lieu might not be unconstitutional. But I rather suspect that paying a school district more than the actual value, as current law probably does probably clearly is some constitutional question, and perhaps the courts will determine that. It's kind of interesting, we did some calculations, I just saw these. Obviously....I have two amendments up there, one strikes the bill and inserts this material, and the other one just adds a new section, they're identical otherwise. But if either of these amendments were adopted and we turned to what was most likely a constitutional in lieu for school purposes, it comes out something like 43 counties would probably have less revenue coming in. By the same token, if the land was sold and you had constitutional amendment number 2 was adopted, this is broad numbers estimates, of course, probably about 25 counties would have less receipts, and if you use market value and the higher level maybe 17 counties would actually have less receipts, if the property was sold, than they are receiving now. I do have some of this in chart form, but since I do not particularly intend to pursue it today, other than to just discuss it so that the body is aware that there is such a possibility to be

discussed at a later date, and I rather suspect that the lawsuits that are filed find something unconstitutional about the current distribution, it may well be that the concept as contained in these amendments would satisfy any constitutional problems that in lieu of tax payment has. I can be very appreciative and understanding of the reasonableness that 143 percent would be used to valuation, instead of 100 percent in order to compensate governmental subdivisions, aside from schools, because the land is not on the tax rolls. But, of course, even if it's reasonable, if it's not constitutional it doesn't really make much difference, and I rather suspect it's not constitutional. So I offered the amendment and handout to perhaps clarify a little bit of the history of in lieu of tax payments, and perhaps address what I suspect may be the real issue, if there is a constitutional one, and that is whether the valuation should be 100 percent of the school...the money in effect is only going to the schools, or if something different might be appropriate. With those comments, Mr. President, I would ask to withdraw both amendments for General File, but should the bill be advanced I may want to consider them more seriously on Select File when people have had an opportunity to see and review all the information.

PRESIDENT NICHOL PRESIDING

PRESIDENT: Just a minute. Senator Lamb, please. Senator Lamb, excuse me. I was distracted and I didn't hear what Senator Warner had said. You said that you withdrew them, is that right? Okay. So we have a new amendment coming up. Mr. Clerk.

CLERK: Mr. President, Senator Haberman would move to amend. Senator, I have your AM1484.

PRESIDENT: Senator Haberman, please.

SENATOR HABERMAN: Yes, Mr. Clerk. I will withdraw those at this time and then refile them on Select File, for Select File.

CLERK: All of them, Senator?

SENATOR HABERMAN: All of them, yes, all 15 or 20 of them, yes. Thank you.

PRESIDENT: They are withdrawn.

SENATOR HABERMAN: (inaudible) on the bill now? No, we're to the bill.

PRESIDENT: Yes, we're now back on the bill. No further amendments are pending. Senator Lamb, please, followed by Senator Abboud and Senator Haberman.

SENATOR LAMB: Thank you, Mr. President and members. I'm pleased that Senator Warner withdrew his amendment, and I hope that he does not pursue it on Select File, because we'll have to circle the wagons, if that happens. Ranchers are under attack. But Senator Schmit has outlined, very accurately and in great detail, the history and the problems with state school lands. And I hope you were all listening. One other little item that he did not cover, and that is the method by which school lands are leased at this point. The system works something like this, you go down to the courthouse after you've been notified, in the local paper, that a certain tract of land will be...the lease is expiring and will be released. So you go down to the courthouse and they will tell you how much the lease will be for the ensuing year, but not for the years on down the line. If it's a seven year lease, you don't know what the rental is going to be on years two, three, four, five, six and seven. So then these people, these farmers or ranchers gather there and there is an auction, a bonus auction, a bonus auction. So that if the people that are interested in this tract...in leasing this tract of land are willing to pay more than the lease price now, then they will...and take a chance on what the rental rates will be down the line, then they can bid a bonus. So you may have a number of farmers or ranchers bidding a bonus on that land. Well, that causes a lot of dissension out in the country, a lot of dissension. It's quite a bit different from what most landlords do when they lease to other people. Ordinarily, if you have a good renter why you keep on and on leasing it to him, the price is negotiated from time to time. But you ordinarily do not get into this bonus bidding. This bonus bidding causes great dissension in the community. So I am standing here to support the bill as it has been amended by the committee amendments to sell the school lands. The school lands should be sold, and Senator Schmit has identified many of the advantages of selling the school lands. One of the main ones, so far as I'm concerned, is it will eliminate this argument over the in lieu of tax and how much it will be, and where do we go from here. The fact that most of the school land in the eastern half of the state has been sold is a factor, because if we sell the

rest of the school land then we're all on even footing. The way it is now, most of the school land lies in the western part of the state, not on the tax rolls out there, and so, if there is not an in lieu of tax payment, those subdivisions of government out there suffer just because there happens to be school land in their area. So that's the reason I support selling the school land, I think it's an easy way out, and Senator Schmit has demonstrated that the return on the money will be greater, if it's sold, and that's because agriculture, in general, does not return a high interest on investment. It's a low interest return on agricultural land. And...

PRESIDENT: One minute.

SENATOR LAMB: ...so the students, the pupils in this state will not suffer, they'll be benefitted if this land is sold. It will also eliminate the dissension on this floor in regard to in lieu of tax, it will eliminate dissension out there where the land is located, among the various people who would like to lease that land, and I would support the bill in its present form.

PRESIDENT: Senator Abboud, please, followed by Senator Haberman. Is Senator Abboud present? Senator Haberman, would you go ahead, please.

SENATOR HABERMAN: Well, Mr. President, members of the body, I rise to oppose the sale of school lands, if for no other reason but one. You can duplicate this building just exactly as it is, if you want to. There isn't anything that you can't duplicate or make more of. You can dam a river and have a lake. You can do everything you want to in this world today, except make more land. There just isn't any more land. This is the best investment that you can have for the school children is land, you're not going to lose it. If you put it in the stock market, as Senator Schmit suggests, you could lose it, because the stock market goes up and down, they're going to use venture capital now, and you can lose that money. You could lose the money. With school land you can't. Now Senator Lamb gave a talk about the fights. Folks, there are 489 leases, so basically you're talking about 489 people. Now Senator Schmit says this will bring in 400 to 500 million dollars, if we sell the school land. I doubt that very seriously. You could go sell the school land and you're not going to get that kind of money, but you haven't thought about this either, Senator Schmit, land that is sold without the mineral rights do not bring the same price of land

that is sold with the mineral rights. If we look at that arm's length transaction you told us about, which told us about so much money this quarter, whatever it was, brought, I'll bet you that the mineral rights with that land were sold. That is a far-fetched example as there isn't a farmer in the State of Nebraska that wouldn't sell his irrigated land, I don't believe, for that kind of money. So there is more to that issue than was explained. Secondly, let's take a look at the school land. In some cases one person owns all of the land around the school land, he owns it all. So when it comes to selling the land he's in the prime seat to buy that land because his neighbor or some other person isn't going to buy that land and then have the problem of driving across the man's section to get to that land, or driving his cattle across the other man's section to get to that land. So that land is not going to bring the market price. Then Senator Schmit says that if we sell the school land all of this money is going to come back to the cities, the counties, and the NRD's, we can't forget them because they are the ones pushing for this sale of the school land. But, Senator Schmit, can you guarantee me that the cities, the counties, the NRD's are going to lower their property tax requests by the extra amount of money that they get? No, you can't do that. Then the schools are going to have to raise the amount of money they ask for, because they're going to lose money. So you can't stand here and say that this is property tax relief money, or a property tax relief bill, regardless of how you cut it, because if people lose money they're going to raise the taxes to get the money back. People who receive money, you have to be awfully, awfully careful to see that they actually lower their property tax requests,...

PRESIDENT: One minute.

SENATOR HABERMAN: ...which I haven't seen any, and I don't think anyone on this floor has seen anybody lower their property tax requests. Now everybody is throwing figures around, so I'll throw some around. The sale price of the school land, when it was sold, was sold for \$15 million, for \$15 million. In 1967 the valuation of the school land sold was given as \$250 million, so the land we sold brought in 15 million, and the valuation of that land today, if it was sold, is \$250 million. That's a big difference, that's a big, big difference. It didn't go down in value, it went up in value. Land will always be there and year, by year, by year it's sneaking up in value.

April 27, 1989

LB 807

PRESIDENT: Time.

SENATOR HABERMAN: We're having a drought, this is the worst time to try to sell any land, so I oppose it for those reasons. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Hefner and Senator Hall.

SENATOR NELSON: Mr. Speaker, members of the body, I, too, have the same concerns as Senator Haberman. I know that right now it seems like on the surface and so on it might not be a bad idea to sell the land. But, again, through the time and through the years the appreciation has to be considered in. And let's take the original 47 percent of the acres that were sold. That is currently bringing in, and I'm not sure these figures are right, approximately \$2 million. The 53 percent of the land that was retained at a value of whatever it is, 250 or 300 million dollars, is bringing in approximately \$13 million a year. So, using those basis and those figures, it may seem, sure, a temporary solution and we're looking maybe at 10 percent interest and maybe not, maybe an investment of 8 or 9 percent that it might be wise. But again I'm very hesitant to be selling the land and the history of the land that was sold, clear back 80 years ago or whenever, it certainly was not as great a return as we have seen in the land by retaining the land. As far as Senator Lamb's proposal, the opposition or the in-fighting on leasing of the land, I would surely think that somehow or other there could be an equitable solution arrived at to do away with that disparity. I certainly agree also with Senator Haberman, when you go out and see the wind blowing and the 90 degree days now, I don't think this is necessarily the time to say, well, we're going to sell the school lands, that the price will be there. And I also know, by the provision of the bill, I think the bill says that the land shall be sold within one years time. I think right now, of course, that could be amended and changed, that would be a forced sale, and I don't believe that that would necessarily be wise either, because some of these lands are not the most desirable land. So for those reasons, right now, I am in opposition of selling the school lands. I think in the long run we would probably be criticized or it would not be the wisest decision. So, with that, I'll listen to the rest of the discussion, but I'm not supporting it at this time.

PRESIDENT: Thank you. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I didn't vote on this in committee because I wasn't quite sure myself, so I passed. But since that time I've been doing a little more analyzing of it and talking to different people about it. A lot of the people in my district say that they just as soon not sell it at the present time. I realize that Senator Schmit and Senator Lamb said, well, we're only getting 4 percent from an investment. And this is perhaps true. But let's talk a little bit about appreciation, too. Once you sell that land and put that money in the bank or in an investment it isn't going to appreciate anymore, it's going to stay at the 300 million, or 400 million dollars, or whatever we get for the land. So you've certainly got to consider that and consider that a part of the return on investment. I don't know what we could get for this land at this time. Land values have been going up a little, but if we don't get some rain in the next week or ten days it could drop drastically. And I think we need to consider that. In analyzing this a little bit farther I find that the State of Kansas sold their school lands many years ago. And so it's gone. Certainly they received the money. I don't know exactly how much money they received for it, but it's gone. Another state, New Mexico, kept their school lands, and at the present time New Mexico is funding their higher education just about with the income off of these school lands. So I think there is some good arguments why we should keep the school lands. Senator Lamb mentioned well the way that they put it up for rent, or the way they lease it out isn't quite fair. Well, I don't know too much about that, but I think we have people on this commission or this committee that are knowledgeable on how to lease this land. So I think if Senator Lamb doesn't like that then we should change that, and I'm sure this commission or this board would be willing to listen to us and change that procedure, if it was necessary. But in talking to some of the farmers that have leased this land, they feel it's about as fair as the way they rent any of their land. So, at this time, I'm going to oppose this bill.

PRESIDENT: Thank you. Senator Hall, please.

SENATOR HALL: I would yield my time to Senator Schmit.

PRESIDENT: Okay, Senator Schmit, you're almost up anyway, but go ahead.

SENATOR SCHMIT: I'll use all the time, I think, if I can.

PRESIDENT: Okay.

SENATOR SCHMIT: Mr. President and members, Senator Hefner...pardon me, Senator Haberman says that for a variety of reasons we shouldn't sell the land. Let me suggest that, if the Millard school lands case is determined on behalf of Millard, and Senator Haberman loses that million two of in lieu tax money, which is now coming to his legislative district, he's going to come running back to this Legislature, next January, with his tongue hanging out like a steer out of water for three days, begging us to sell that land, because he's been living lucratively off of a very, very heavily slanted formula which favors his district. I am not entirely opposed to that. I really think that the ranch land areas have suffered over the years, because we have retained the ownership of those school lands. Senator Haberman says that the land can be sold and the money squandered and lost, that's right. Not very likely because of the way we handle our investments. But as we know, when the stock market took a dip, October 19th a year and a half ago, stock prices declined, as did rural land values decline. We saw substantial declines in the value of land, that's a fact of life. But the proposal you have here today is protective of that sort of issue. It says the land shall be sold and the money placed in the permanent tax fund. Senator Haberman and Senator Hefner, and Hefner actually talked about the appreciation of land values over the years, and it's a very valid point, Senator Hefner. For that reason I discussed what could be done to address that issue, and I have a proposal for that. We could, for example, take 5 percent of the annual income from the sale of the school lands, which normally must be returned to the school children annually, we could enact...we could propose a constitutional amendment that would say that 5 percent, 4 percent, 6 percent of the annual income should go back to the permanent school fund, thereby providing for growth in the permanent school fund. I would fully support that. I think that would be a very valid constitutional amendment, one which I believe would pass and one which would protect the school children of this state for time to come. Now there has been reference made to the fact that New Mexico kept their school lands and that they are funding all of higher education from their incomes. Let me suggest to you that New Mexico is not a highly populated state, number one; and, number two, that

New Mexico has a substantial portion of that income that comes from the mineral rights, the mineral rights. We do not propose to dispense of those, we propose to keep those, as Senator Lamb has pointed out. We're not going to get rid of the mineral rights, those cannot be disposed of. So, even if you sold the land, the mineral rights remain with the children. Senator Hefner accurately states the fact that Kansas sold the land and squandered the money, that's poor judgment on the part of the Kansas Legislature at some time. There was a proposal made, I believe, when Governor Exon was Governor that the lands be sold, and I do not believe at that time that the provision was required that the money go into the permanent school fund. Maybe Senator Warner might comment upon that, I'm not certain. It seemed to me that Governor Exon's principal objection, at that time, to the sale of the school lands was the fact that the money would be spent and would be gone forever and would not be retained as a part of the permanent school fund, but I could stand corrected on that. I would ask some loyal Democrat to check that out for sure, if not, some articulate Republican will, I'm sure. But the point I want to make is this, it's not whether the act of sale is immoral, it is how you handle the money. Now all of us, from time to time, will read in the newspaper about some individual, usually someone my age or a little older, who has been living in poverty and reclusion and squalor, almost, and then they find that they had substantial amounts of money squirreled away in bank accounts or in a mattress of the house. Now they say, wasn't that foolish, wasn't that ridiculous for that individual to live like that when they had all that resource...

PRESIDENT: One minute.

SENATOR SCHMIT: ...built up there. And I say, yes. Then I ask you, is it not ridiculous for us to continually complain that we cannot support the schools of this state in the manner in which we want to support them when we do not make the most use, the most and wisest and most prudent use of the resource which is most available to us, and that is the school land. If it's worth 325 million, and we get can 36 million a year on it, we ought to do that, especially when we can do so without jeopardizing, without jeopardizing the basic resource. And we can do that under this bill. Secondly, my proposal does not call for a fire sale of the school lands. It calls for an orderly sale of the school lands, I believe Senator Hall has emphasized that as the leases come due.

PRESIDENT: Time.

SENATOR SCHMIT: Mr. President, I have some more comments, but I guess I'm out of time.

PRESIDENT: Thank you. May I introduce some guests, please. Under the south balcony we have 14 members of the Back to the Bible International, and they represent eight countries. Would you folks please stand and be recognized. Thanks to all of you for visiting us today. Also, in the north balcony, Senator Moore has guests, 44 fourth grade students from Lincoln Elementary in York, Nebraska and their teacher. Would you folks stand and be recognized. Thank you. Senator Weihing, please, followed by Senator Schmit.

SENATOR WEIHING: Mr. President and members of the body, a number of the questions that I had in mind have already been discussed. But there...I wish to have Senator Schmit continue on discussion of some of these. How would these lands be sold, Senator Schmit, so that we would not become involved with a depression in private land itself?

SENATOR SCHMIT: Well, Senator Weihing, that is of course a very good question. It is one of the principal concerns, not only of this Legislature, but of the local communities and of the educators who would rely upon the revenue to support the schools. And that is, of course, up to this Legislature. We can devise and design the system of the sale of the school land which best suits the children of the State of Nebraska. The proposal that I believe the Revenue Committee settled upon was one which would allow for the sale of the school lands as the leases terminated. And I think that is a reasonable one. There may need to be some additional stipulations placed there, I'm sure we can do that. Senator Haberman mentioned the fact, and it's a very good factor, the fact that right now we have a drought, this might make a poor market. I'm sure that we might want to add in there, Senator Weihing, that the land should not be sold for less than the appraised value, and there might be other stipulations. We could set the requirements as tight or as loosely as we want, with one thought in mind, and that is to protect the equity and the value of that asset for the children of the State of Nebraska and to achieve the maximum amount of return for time immemorial for the children of Nebraska.

SENATOR WEIHING: Now Senator Haberman brought up the fact that land is always there, and it always have a value, some value, it does up and it goes down. Of course over time it has gone up in value. But now with regards to the sale and having the money and investing it, how do you perceive that this...actually once you have a body of money, you can continue to build on that and still have interest, this we all recognize. But having this within the state realm, how do you perceive that this could be handled so that it get done wisely and judiciously?

SENATOR SCHMIT: Well, as you said, Senator Haberman said the land is always there. The thief can walk over it, the wind can blow over it, it is always there. But why is it there? It is there for the benefit of the children. When the land was deeded to the children, under the federal grants, land was, of course, preeminent as a resource, as this country was agricultural in nature. And to you and I land has a particular value which, in some cases, far transcends actual value. My home farm has a value much greater to me than it does to my neighbor. But we do have today, and we must recognize that because of a variety of changes in the monetary system, that what was once a fair rate of return, 4 to 5 percent on agricultural land, which is about all, as you and I know, that agricultural land will return year in and year out, that was a fair rate of return. It was also considered a fair monetary return for interest at one time. Today, because of interest bearing checking accounts, because of a variety of other interventions, the deregulation, as they say, of the cost of money, rates of return vary from 8 to 14 percent, and, as I said, our investment officer, Mr. Mathis, has consistently earned in excess of 12.5 percent. I think that is the most important issue we have to look at here today.

SENATOR WEIHING: Thank you. I support looking at this...

PRESIDENT: One minute.

SENATOR WEIHING: ...measure. And, as has been brought out, we can continue to build on that reserve. There are many things that have to be looked into. As with anything that is new, we have to look into it and to the future and devise the best that we can. As I see it, we certainly would have to have the protection against any of the agencies or other parts of our state government wanting to dip into this. Any time there is a pile of money out there, a pot of money out there, there are going to be others that are wanting to be getting into it, into

the future. I think it's a viable pro...it is a viable bill, and one that we should certainly explore. I support it.

PRESIDENT: Very good, thank you. Senator Schmit, followed by Senator Withem.

SENATOR SCHMIT: Mr. President and members, I think I'd like to dwell just a little bit upon what Senator Weihing has mentioned. We ought to discuss the issue. It ought not be off limits, it ought not be something which is too sacred, too highly moral and too highly ethical to even address. We, today, find ourselves constantly trying to find sources of revenue that are of a consistent, and substantial and continual nature in order to support our school systems. We have debated, for many hours, LB 89 on this floor. We have debated a number of other bills designed to help support the schools. It seems to me, and I think that Senator Lamb put it very honestly when he stated the lands in the eastern part of the state have been sold substantially. The land in the western part of the state have been retained. And, if you look at it in a very uncluttered way, it's almost as if I put \$10,000 in the bank and Senator Lamb put \$10,000 in the bank and we agreed we're going to live off the income. And all of a sudden I have the opportunity to draw my \$10,000 out, and I took it. And then I said to Senator Lamb, well, Senator Lamb, you and I agreed that we would live off the income of that bank account. And Senator Lamb says, that's right, but at one time you had some money in the bank also. You have now taken your money out of the bank, and so you enjoy the benefits of operating of your own capital, and now you want me to divide my capital with you. And I said, that's right, isn't that fair? And he says, well, I don't really think so, but let me look at it a little while. And that is essentially where we are at. When the Legislature, in 1974, provided the in lieu of tax payments it was an attempt to sort of rectify, to a certain extent, the situation which was very inequitable from the standpoint of the rural western part of the State of Nebraska, because it recognized, it recognized very effectively that those of us in the eastern part of the state who had sold our lands, we had the benefits of the lands on the tax rolls, we had the private investment that came in and took over, we had all those opportunities and then we still had that wonderful resource of school lands in the western part of the state. Now much is made of the fact that the school lands that were sold, the best land sold in the early...late nineteen hundreds and early...late eighteen nineties and early nineteen

hundreds, apparently, and it brought only 20 some million dollars. What a minuscule amount of money it was. But, ladies and gentlemen, at that time it was a fair market price. And if you were to take the income from that land at that price and contrast it with the income that has been received from the land, you might find that the inequity is not nearly as great as you would expect. I have asked for those numbers, strange as it may seem, they have been very difficult to come by. I have a hunch that when those numbers are presented to us the inequity will not be nearly as great as you might anticipate. Number two, in order to guard against that I have proposed a solution, if you sell the school lands you take a portion of that annual income and you propose a constitutional amendment that says let us provide for appreciation of the permanent school land fund, let us set aside a percentage of that money so that it goes into the permanent school funds and we only pluck the apples and the oranges, the fruit off the tree, we don't cut down the tree. I think that's a very wise proposal and certainly one which we ought to look at. I reiterate again, the bill doesn't have to pass today, doesn't have to pass this year. It needs to be discussed, it needs to be debated, we need to get these issues on the table so that when we address the issue,...

PRESIDENT: One minute.

SENATOR SCHMIT: ...number one, support for schools; number two, property tax relief; number three, general support of government and where it's going to come from, we say are we making the best use of all of our resources? I think the answer is obvious in the case of the school lands, we are not making the best use of all those resources, and most of all, most of all, land in private hands, notwithstanding some of the arguments to the contrary, is generally handled better than land in the hands of the public. The State of Nebraska is the largest landowner in the State of Nebraska. Now Senator Haberman raised another point, he said much of this land is surrounded by another man's ranch or farm. And...okay, much of it, I stand corrected, once again Senator Haberman has accurately corrected me and I appreciate that, Senator Haberman, glad you're on the floor. The point is this, Senator Haberman says it won't bring very much if...it won't bring very much if my ranch surrounds that school land and old Schmit wants to buy it. Well I suggest that if Senator Schmit's land surrounds that school land and Senator Haberman wants to buy it, he's just got enough persnickiteness in him that he's going to make me bid a fair price for it,

because he knows there is going to have to be a fence around it, and he knows that I'm going to have to provide him access, and he knows there's got to be a road to it, and he knows that there is no way...listen, there hasn't been a fence around this land for 100 years, therefore why should there be a fence now?

PRESIDENT: Time.

SENATOR SCHMIT: Well, there will be a fence if it is sold, there will be a fence and there will be a road, there will be access, and it will draw taxes, Senator Haberman, and it will be a benefit to all of the people of the State of Nebraska, but most of all it will be a benefit, a maximum benefit to the school children of this state, and that's what we ought to be looking at, not does it benefit me personally, or you personally, or the entity of government, how does it impact upon the school children? Now we can argue...

PRESIDENT: Time.

SENATOR SCHMIT: ...that we ought to hold the valuables. Am I out of time, Mr. President?

PRESIDENT: Yes, sir.

SENATOR SCHMIT: Thank you, Mr. President.

PRESIDENT: Senator Withem, please, followed by Senator Lynch.

SENATOR WITHEM: Mr. President, members of the body, I am going to make a number of different types of comments on this bill, try to get them all in in my five minutes. Number one comment I want to make on deals with the in lieu of taxes, I know that is not the direct issue that is being debated, but it's been debated enough around this issue. And Senator Warner filed an amendment, and then he withdrew it, that dealt with the in lieu of tax issue. A couple of weeks ago we had a motion to bring a bill to the floor that would have dealt exclusively with the in lieu of tax issue. Much has happened on that issue since then, and I'd like to at least give the body my perspective on what I'm thinking about that in lieu of tax issue now. Keep in mind that when we spoke the other day we had two separate Attorney General's Opinions that led us to believe that a court would rule the in lieu of taxes unconstitutional. We may have represented on the floor what was our misunderstanding, at that

point, of the history of the in lieu of tax issue, that it was only instituted 16 some years ago. Looking back at the history that Senator Warner's office has done on this, it's obviously not true. The in lieu of taxes has been with us some 70 years practically. What happened 16 years ago was the manner of calculating the rent for the farmland...school lands was changed to the point where, instead of being a minuscule amount of money, it was a substantive amount of money, and that was the contribution that then Senator DeCamp made to this. The two AG's opinions that we had made it very clear to us that the courts would rule, though, that this is unconstitutional. Keep in mind it doesn't make any difference if you've had a law for seven months or 70 years, or 700 years, if it's unconstitutional it's unconstitutional. Shortly after that discussion Senator Dierks got another opinion that tended to contradict, in my opinion tended to contradict those other two opinions. A fourth opinion that came to light that I think is probably more on the issue than any other is an opinion written to Senator Emil Beyer, back in January 7, 1987, where Senator Beyer was not asking about school lands and funds, he could really care less about that, he was asking is it possible to set up, for the Legislature to pass a bill establishing an in lieu of taxes, state owns property charging an in lieu of taxes. AG, at that time, made a very clear opinion, no, you can't do that. State owns property, you can't tax it and you can't have an in lieu of taxes either. So it appears to me as though if we could get a definitive opinion on this particular issue it would be very clear that it probably is unconstitutional. We can't get a definitive opinion, and it's probably legitimate that we can't, because the State of Nebraska, our own Attorney General, is performing his constitutional responsibilities right now defending the current statute in the court because the School District of Millard has sued the state over this whole question of unconstitutionality. That will probably be determined by the court, hopefully, by the time we get into next year's session, and we can deal with that with legislation. I would prefer, personally, not to mess up Senator Schmit's bill at this point by getting that issue before us. But I did want to at least kind of summarize for the body the developments in the in lieu of tax constitutionality question that came up before. The second point I want to make is a response, maybe, to what Senator Lamb had to say. Senator Lamb, I don't really know if I want...if I'm going to vote to advance LB 807 or if I'm not, I really don't know. I'm listening to the discussion, I think it's a good one. I tell you, though, I will not make it on the

April 27, 1989

LB 807

determination of the facts that you were talking about. My determination is going to be whether we are better served by...the school children of the state are better served by selling the lands than...or if they're better served by keeping them. I'm yet to be convinced one way or the other on that issue.

PRESIDENT: One minute.

SENATOR WITHEM: I guess the basis for my decision, the basis for the argument, as I see it, really comes down to what you think is going to happen in the future. If you think that you're going to see, in this state, the continued type of inflation and escalations in land values that you've had since the turn of the century when the majority of lands were sold in the eastern part of the state were sold, then you're probably better off keeping the lands, that will be a better investment. But, if you believe that land values, particularly these lands that we now control, keep in mind the school lands now are not the black land farm that produces bumper crops, they tend to be the ones that didn't sell, back at the turn of the century. And if you think that they are not going to escalate in value, triple, quadruple, tenfold improvement, that they're just going to have a modest increase, and maybe not even a modest increase, but stay as they are now, then probably your best bet is to convert those assets into raw cash and invest those monies, as Senator Schmit says you do.

PRESIDENT: Time.

SENATOR WITHEM: I'm yet to be convinced which of those two solutions is the best. I think Senator Schmit is bringing us a good piece of legislation for our consideration, and I'm pleased he did. And, Senator Schmit, I may vote to advance your bill, and I may not.

PRESIDENT: Thank you. Senator Lynch.

SENATOR LYNCH: Question.

PRESIDENT: Oh, oh, excuse me. Mr. Clerk, Mr. Clerk has a priority motion. Senator Lynch.

SENATOR LYNCH: If that motion is out of order, I'd yield my time to my good friend and neighbor, Senator Dierks.

April 27, 1989

LB 807

PRESIDENT: No, can't do that. We have a priority motion that comes now. Sorry. Mr. Clerk.

CLERK: Mr. President, Senator Hall would move to bracket the bill until January 3, 1990.

PRESIDENT: I'll leave the same speakers order on, in case we get....

SENATOR HALL: Thank you, Mr. President and members. The motion to bracket is clearly a very friendly one because the issue, I think, as debate has shown this afternoon, is one that is important to many members of the body and I think every aspect of the state, because it does deal with a question that is important and is one that is very significant. I think it deserves clear discussion, I think that was the primary reason the Revenue Committee advanced 807, as it currently exists in this form, to the floor of the Legislature. We did not dismiss it as a wild-eyed scheme of Senator Schmit's. It's rare that he brings those types of proposals to the body, or at least it's rare that they get to the full body. The issue is one that I think many members are affected by our...we're currently discussing it in a number of different court cases, we're discussing it in a number of different opinions from the Attorney General's office, whether or not the issue of in lieu of taxes is one that is constitutional. I think there are a number of us that find that decision is one that we want to wait and see how that turns out. Let's wait and see what the courts have to say. The court determination, as Senator Withem pointed out, is one that should come probably before the end of the year. What I'm hoping will happen is between now and that time, with help from Senator Withem's office, the Education Committee, some folks on the Revenue Committee, and hopefully even some people from Senator Schmit's and Senator Warner's office who have some background in this area, we can find out what has taken place over the last number of years with regard to the ed lands, put together some information that details where we have been, look at the issue of where we should be going, and then discuss even more fully and more well-informed the thought of possibly selling the ed lands, because it, at first reaction or first blush for me, it is an idea just based on pure economics that I can support and is one of the reasons why I endorsed advancing it to the floor. But I think to vote to advance the bill today, off of General File, would not be prudent on our

part without having a little more information. I think to wait until next session is not too long a wait. I would much rather have more information in hand before making what I would consider a considerable giant step, but yet one that I am leaning toward making at this time. So, with that, it is clearly a friendly bracket motion to allow for us to garner more information and then make a very, hopefully, well-educated decision early next year with regard to this issue. So I would urge the motion be adopted. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Dierks, followed by Senator Scofield. Did you wish to talk on the bracket motion?

SENATOR DIERKS: Yes, I do.

PRESIDENT: Okay.

SENATOR DIERKS: Mr. President, members of the body, Senator Withem wanted to talk about the future, and I think we should, the future for the children in this state. I think in order to do that we should talk a little bit about the history. I believe we need to talk about what's happened in other states. For instance, the oil wealthy states and the mineral wealthy states, like Oklahoma, Texas and Wyoming, who were in some cases prudent enough to set aside the severance taxes in a permanent fund to help fund highway construction and this sort of thing, some of those states were not that prudent and they're in a bind today. Now perhaps we could liken our school lands to that same sort of property, or that same sort of holdings. We have them...when we sell them we no longer have them. And I think that the permanent school trust fund did earn approximately 7 percent on total funds to date, while the school trust land earned about 4.5 percent annual return. Some place here I've got some figures that Senator Lynch was looking at. Okay. If you take the temporary school fund, this is a two year...this is a biennial report, and we all got this little booklet, everybody in the Legislature got this. The annual...biennial report tells you that the temporary school fund had a total of \$39 million, and the permanent school fund had a total of \$42 million. I'm sorry, \$2.9 million. So what we have from the schools...that lands that are still out there in our state, we're receiving roughly 39.5 million every two years, while that that's been deposited and being held in trust is returning right at 3 million, I'm sorry, 1.5 million every year, 2.9 for the biennium versus almost 40 million for the biennium. When you

stop and realize that the value of that land that was sold was 53 percent of the total land we held at that time, it seems very evident that good business judgment would say that we keep that land and try to work with it and make it do for us what severance taxes do for people with oil fields, mineral fields and the like. I have no objection to Senator Schmit's provision that we would try to bolster and add to our permanent trust fund with funds from the temporary school fund. But I have problems with advancing the bill, and I would, for that reason, vote to bracket. Thank you.

PRESIDENT: Thank you. Senator Scofield, please, followed by Senator Bernard-Stevens, Senator Haberman, and Senator Schmit.

SENATOR SCOFIELD: Mr. President, I, too, rise to support the bracket motion for many of the same reasons that I think Senator Withem and Senator Hall and Senator Dierks have raised. Senator Withem, in particular, and I think some others have alluded to the emotional nature of selling school land. And I don't really think that's what we're about here. I think we're talking about how you appropriately manage assets. And we're talking about a huge parcel of assets, in this case real estate assets, that it's prudent, it seems to me, to approach this very cautiously. It's our responsibility to look at any assets that the state has, in this case assets intended to benefit school children and make sure that we do the best job for them. One point that I think has not been made that should, as we consider this, it's been made in I suppose a little bit different fashion, but of the 1.5 million acres that we currently own, about 80 percent of those acres are range land. So I would seriously question whether one could actually raise the kind of money that has been suggested earlier if, in fact, these lands were put up for sale. There's also been some illusion to the mineral rights under the land. I have no idea what those might be worth. I think there's only about 29 counties that have any mineral rights at all, I believe, if the numbers I remember are correct. And I don't know what their value is, but I think we would not want to just plunge blindly ahead and sell the land and assume that we're keeping a valuable asset, we may and we may not. Those are some of the kinds of questions, I think, that have to be answered before we can proceed. About 40 percent of the land is held by 8 counties, so that would certainly have a bearing, I suppose, on where those 8 counties happened to be, and I don't know for sure. But, if they happen to be in Senator Baack's district, maybe there are some valuable mineral rights, and if

they are in mine that is less likely. Another valuable asset that lies under some of that land, no doubt, is water, should also be considered. As far as actually talking about an orderly sale, I think we could have some real problems with dumping a lot of this land on the market, even though there is some talk of an orderly sale, I can't help but think that one of the disadvantages of doing any kind of government business is that we don't have the advantage a private business person does. We publish what our intentions are, and if we're bidding for a building, for instance, the person coming in to bid on the building knows how much money we allocated, so they know what to bid. On the other hand, if we're going to sell land, and it's not too hard for somebody to go in and find out how much is for sale and when it's going to come up, seems to me that that places us in a position that is different than a private seller, and we might do less well than a private seller of land. So all of those things, I think, have to be considered. Another issue we haven't looked at are the kinds of improvements you would find on school land. Some of those are of some value, would have to be figured in, would certainly have an impact on the final sale price of that land. So I think all of those, along with a lot of other questions, have to be raised in terms of how do you manage those assets, what is the asset that we currently hold really worth, could you in fact dispose of it in an orderly way, I doubt it. My bias right now, frankly, without looking at this in much more detail is it is probably not prudent to consider selling the land for a lot of the same reasons that Senator Dierks raised. That's not to say I'm not willing to look at it. I think we have a responsibility to look at any kinds of assets we're asked to manage. But I think for right now we should start collecting a good look at what, in fact, the asset might be worth and what the disadvantages we have as government owners of property if we, in fact, wanted to look at that. I suppose the other thing we ought to look at too, given the varying value of farm and ranch land over the last few years, we ought to look at a way to suspend sales if land prices should suddenly have a plunge, as we've had in the past. So I think it's a very, as Senator Hall said, this is a major step which it's prudent to look at. I don't favor it right now, I'd have to have some overwhelming evidence, I think, that we could in fact do a better job of managing the assets in cash...

PRESIDENT: One minute.

SENATOR SCOFIELD: ...than to have a balanced portfolio of land

April 27, 1989

LB 807

and cash assets. But those are relevant questions and for that reason I will support the bracket motion. Thank you.

PRESIDENT: Thank you. Senator Haberman, please.

SENATOR HABERMAN: Mr. President, Senator Schmit, Senator Schmit, are you listening?

PRESIDENT: Senator Schmit, Senator Haberman...

SENATOR HABERMAN: Senator Schmit, if I would have run to the well as many times in my 11 years as you have run to the well in your 20 years, I could walk instead of run. (Laugh.) Mr. President, we have to study this issue because we have some problems. We have some land, school leased land that people have put pivot irrigation on. They have a ten year contract to pay it off, so how can we go in there and cut the stubs from underneath that man? We have some land where the Board of Educational Lands and Funds have paid for and is paying for to put a pivot machine on irrigated land. How we going to work that problem out? So I wholeheartedly support the bracket motion so that this body can sit down and address all the problems and come to a solution and go from there. Thank you, Mr. President.

PRESIDENT: Senator Bernard-Stevens, followed by Senator Schmit.

SENATOR BERNARD-STEVENS: Question.

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

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

PRESIDENT: Debate has ceased. Senator Hall, did you wish to close? Senator Schmit.

SENATOR SCHMIT: I'm going to close for Senator Hall, at his invitation. I want to just say this, I appreciate the fact that Senator Hall and many of you have discussed this issue this afternoon and taken some time. I did try to wrangle a deal out of the Speaker that if we took it up with 40 members present, he'd let me advance it with 21 votes, but he wouldn't do that, so it looks like we take the next best alternative. And I think

that Senator Scofield hit the nail on the head when she said it's management of an asset that we ought to be considered about, and we ought to be willing to look at it and we ought to be willing to debate it, and that's basically what I wanted you to do here this year. It isn't the first time that I've brought an issue to this floor that I did not expect to become law immediately. In fact there would be a tremendous number of bills that ought to perhaps be bracketed for a year, probably a good portion some of you will say, that I bring to the body. And I would accept that. But I think that Senator Haberman also raised some points, and I think we ought to try to find the answer to those questions that he raised. Senator Haberman, I would suggest that there are no questions that you asked that can't be answered, certainly we can find the solutions to those problems. I sort of think that many times, many times on this floor we think we have to find the solution immediately. Well, usually the solutions do not come quite as rapidly as we would like to have them. I think that sometimes the problems are not discovered quite as readily as we think they ought to be discovered. You know, a fellow who was one of my flight instructors one time, I told him, I said, all of a sudden something happened. He said, Schmit, nothing ever happened suddenly in an aircraft, you only discover it suddenly. And I can attest to that many times. And that is true here on the floor, nothing ever happens suddenly, we just sort of lollygag along here, from year to year, and day to day, and month to month, and all of a sudden we discover that something which we thought was under control is not under control, and as a result we find ourselves reacting to one crisis after another. As former member, Senator Carpenter, said we react the best under crisis. I don't necessarily agree to that, but I will say that we can react in a crisis where we frequently will not react otherwise. But it is a poor way to legislate, it is a poor way to legislate under the pressure of shortage of funds, the pressure of the threat of a court suit, any one of the other multitudes of reasons why we sometimes respond to pressure. So whether you are for the sale or against the sale, whether you are for the in lieu of tax payments, or against the in lieu of tax payments, I think that today most of you are better informed about the school lands issue than you were a few months ago. I would hope also that the Board of Lands and Funds is aware of the fact that this Legislature is seriously looking at the school lands as an asset on behalf of the school children, and that we want to maximize the return. That means also that the board take a look at their own practices of management, that

they take a look at their own methods whereby, as Senator Lamb points out, they pit neighbor against neighbor on the bonus bidding, they take a look very seriously at their own management fees, their management expenses, which I think may be just a little bit greater than any professional manager would charge the school children of this state. I think we've raised a number of issues. We're going to be helped, somewhat perhaps, along that same line with a court decision in the future. But that won't be the end of it, that's not going to be the end of it relative to the school lands. And we ought to be better prepared and better informed. It is a major asset, it's a major amount of money, and it is a major responsibility. It should not be addressed lightly, and it won't be. But I think we have served the people of the State of Nebraska and the school children well this afternoon for the hour and a half, or hour and 40 minutes that we debated this issue. And I would enjoy doing it again, and I encourage you all to become much better informed on it in the ensuing five, or six, or seven months before we come back here in January, when we might take another look at it. So, with that, Mr. President, I support the bracket motion and hope that we can move on to other issues.

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

CLERK: 27 ayes, 1 nay, Mr. President, on the adoption of the motion to bracket the bill.

PRESIDENT: The bill is bracketed. Do you have anything for the record, Mr. Clerk?

CLERK: I do, Mr. President. Mr. President, notice of hearing from the Appropriations Committee and from the Health and Human Services Committee.

Attorney General's Opinion addressed to Senator Weihing regarding LB 340. (See pages 1981-83 of the Legislative Journal.)

Amendments to be printed by Senator Landis to LB 356; Senators Withem, Beyer and Hartnett to LB 285; Senator Withem to LB 813. (See page 1983 of the Legislative Journal.)

Mr. President, I have a reference report referring gubernatorial