

March 2, 1989

LB 391, 398, 810, 811

new bills.

PRESIDENT: The bill is introduced.

CLERK: Mr. President, new bills. LB 810, offered by the Business and Labor Committee. New bill, LB 811, offered by Business and Labor and signed by its members. (Read bills by title for the first time. See pages 939 of the Legislative Journal.)

PRESIDENT: Thank you. Before we go to Final Reading, may I introduce some guests in the east balcony, the rear of the Chamber, guests of Senator Baack. We have 10 students from the Western Nebraska Community College at Sidney, Nebraska and their instructor. Would you ladies and gentlemen please stand and be recognized. Thank you. We appreciate your coming the long distance of about, what, 400 miles to visit us. You hit us at a good time, which is called Final Reading. For the next 45 minutes or so you'll be listening to the Clerk read bills on Final Reading which is necessary. The members of the Legislature will be in their seats at the time of Final Reading, which is unusual, for the most part. But perhaps, if you stick around a little after this, it will be more exciting. Thank you for visiting us. Mr. Clerk, to Final Reading. Will you please go to your seats, please, so that we can begin Final Reading. Unauthorized personnel, please leave the floor. LB 391, Mr. Clerk.

CLERK: (Read LB 391 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 391 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 939-40 of the Legislative Journal.) 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President.

PRESIDENT: LB 391 passes. LB 398.

CLERK: (Read LB 398 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 398 pass? All

March 21, 1989

LB 89, 224, 250, 335, 371, 811

presume we are ready to vote on the advancement of the bill. Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 30 ayes, 2 nays, Mr. President, on adoption of the motion to advance LB 371.

SPFAKER BARRETT: LB 371 is advanced. Messages on the President's desk.

CLERK: Mr. President, an announcement that Revenue Committee will meet in executive session tomorrow at one-fifteen in Room 1520; Revenue Committee tomorrow, Room 1520 at one-fifteen.

Business and Labor gives notice of confirmation hearing, or a report on the confirmation hearing, I should say.

Amendments to LB 89 by Senator Chambers, LB 250 by Senator Schimek, LB 224 by Senator McFarland, LB 335 Senator Hall, LB 811 by Senator McFarland. (See pages 1269-71 of the Legislative Journal) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schellpeper, would you care to do the honors?

SENATOR SCHELLPEPER: Sure would. I would move that we adjourn until 9:00 a.m., tomorrow morning, March 22.

SPEAKER BARRETT: You've heard the motion to adjourn until tomorrow morning. Those in favor say aye. Opposed no. Carried we are adjourned.

Proofed by:

LaVera Benischek
LaVera Benischek

March 22, 1989

LB 89A, 810, 811

amendment simply reflects the actions taken by the amendment in the Education Committee, taking out phase three, which was performance base pay, and also phase four, that had to do with the taxes. It changes then from the A bill requiring \$76,000 to, in fact, \$10,900. I'd offer that amendment.

SPEAKER BARRETT: Thank you, sir. Discussion? Any discussion on LB 89A? Any further statement, Senator Lynch? Thank you. The question before the body is the adoption of LB 89A. All in favor vote aye, opposed nay. Have you all voted? Record.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of Senator Lynch's amendment.

SPEAKER BARRETT: LB 89A is advanced. For the record, Mr. Clerk? I'm sorry, the amendment was adopted, correction. Amendment on the desk.

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

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: This amendment, quite simply, would decrease the appropriation to 100...instead of \$115 million, over the next two years, to \$40 million, over the next two years. But given the vote on the bill, I assume that the body was voting, that they're willing to sustain a 40 and 75 million dollar appropriation, and for the time being at least I don't think this amendment is proper today. So I'll withdraw it.

SPEAKER BARRETT: Thank you, it's withdrawn. On the advancement of 89A, any discussion? Any closing, Senator Lynch? Thank you. Shall 89A be advanced? All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 89A.

SPEAKER BARRETT: LB 89A is advanced. For the record.

CLERK: Mr. President, your Committee on Business and Labor, whose Chair is Senator Coordsen, reports LB 810 to General File with amendments, and LB 811 to General File with amendments. Those signed by Senator Coordsen. That's all that I have,

March 23, 1989

LB 810, 811

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to this, the final workday of the week prior to the Easter weekend. We have with us this morning for the opening prayer, from Senator Pirsch's 10th Legislative District, the Reverend Charles Tyler from the Allen Chapel, African Methodist Church in Omaha. Pastor Tyler, please.

REVEREND CHARLES TYLER: (Prayer offered.)

SPEAKER BARRETT: Thank you, Reverend Tyler. We hope you can come back again. Roll call.

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

SPEAKER BARRETT: Thank you. Any announcements, reports, or messages?

CLERK: Mr. President, only amendments to be printed to LB 810 and LB 811 by Senator Lindsay and Senator Morrissey. (See page 1305 of the Legislative Journal.) That is all that I have.

SPEAKER BARRETT: Any corrections to the Journal?

CLERK: No, sir, no corrections this morning.

SPEAKER BARRETT: Thank you. Members will please return to their seats for Final Reading. While we are waiting, the Chair is pleased to announce that Senator Beyer has his granddaughter with him today, Tami Schnell. She is over near Senator Beyer under the south balcony. Tami, take a bow, please. Welcome to the Legislature. We are glad to have you with us today. Members, please return to your seats. Mr. Clerk, while we are waiting for the members to return to the Chamber and to reach their desks, we have a confirmation report.

CLERK: Mr. President, the Business and Labor Committee, chaired by Senator Coordsen, reports on the appointments of Mr. Robert Allen, Raymond O. Farris, Robert Lundeen, and Timothy Wentz, Boiler Safety Code Advisory Board. The report is on page 1269 of the Journal.

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Mr. Speaker, members of the body, on

April 6, 1989

LB 810, 811

I move the postponement.

PRESIDENT: Thank you. Any further discussion? If not, the question is, shall LB 810 be indefinitely postponed? All those in favor of indefinitely postponing the bill vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to indefinitely postpone LB 810.

PRESIDENT: LB 810 is indefinitely postponed. We'll move on to LB 811, but...(gavel). Could we please hold our conversation down, we're getting a little noisy here and it's difficult to hear. Thank you. Mr. Clerk, on LB 811.

CLERK: Mr. President, LB 811 is a bill introduced by the Business and Labor Committee and signed by its members. (Read.) The bill was introduced on March 2, referred to Business and Labor, advanced to General File. I have committee amendments pending by the Business and Labor Committee, Mr. President.

PRESIDENT: Senator Coordsen, please.

SENATOR COORDSEN: Thank you, Mr. President, members of the body. The committee amendment is the deletion that we just talked about on LB 811, which is adding a denied claim from...or moving a denied claim from 810 into an allowed claim on 811. This is the \$30 claim against the Department of Motor Vehicles for the clerk's error that caused the gentleman to expend this amount of money that he would not have been required to do in the absence of that error. So, with that, I would move the advancement...or the adoption of the committee amendments.

PRESIDENT: Mr. Clerk, you have an amendment to the amendment, to the motion?

CLERK: Mr. President, I do. Given Senator Coordsen, as introducer, has priority status, Senator, I have an amendment to the committee amendments from yourself. This is AM1159, Senator.

PRESIDENT: Senator Coordsen, please.

SENATOR COORDSEN: Okay, that's a technical amendment that says that these payments shall be made out of the General Fund. Is

April 6, 1989

LB 811

this the right amendment?

CLERK: I'm sorry, Senator, would you...

SENATOR COORDSEN: I said is this the technical amendment that provides where the money will be paid from?

CLERK: It inserts "out of the General Fund".

SENATOR COORDSEN: Out of the General Fund, right.

CLERK: Yes, sir.

SENATOR COORDSEN: That was a technical amendment to LB 811 that was left out in the original drafting of the bill. So this amendment also needs to be adopted.

PRESIDENT: Okay, thank you. Any further discussion? If not, the question is the adoption of the amendment to the committee amendments. All those in favor vote aye, opposed nay. We're voting on the amendment to the committee amendment. As I've been reminded, since we're voting about money, this requires 25 votes, so we will need your attention for a few moments. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays on adoption of Senator Coordsen's amendment to the committee amendments.

PRESIDENT: Okay, thank you.

CLERK: Mr. President, Senators Lindsay and Morrissey would move to amend the committee amendments.

PRESIDENT: Senator Lindsay, are you handling that?

SENATOR LINDSAY: Yes, I am, Mr. President.

PRESIDENT: All right.

SENATOR LINDSAY: Thank you, Mr. President, colleagues. This is the...I think I may have missed the procedure a little bit on this, I'm learning as I go along. This is the same amendment as last time. The amendment would have stripped it from the past bill and placed it on to the...onto the bill approving claims. This one is the amendment to the bill approving claims. Again,

I've had several questions come up since the vote on the last...on the last bill, and if there are questions regarding the policy on this I'd be happy to answer them. The a...again, just to review it, that the claim file indicated that the claimant was a teacher at a school here in Lincoln. She took custody of a state ward. The state ward stole coins from her, used the coins. She submitted a claim to her insurance company. The insurance company paid her everything but her deductible. We're talking about a \$250 claim. The a...she submitted only that portion of the claim, only that \$250 to the state. The State Claims Board denied it for the reason due to the fact that she was aware of the ward's pattern of stealing. They recommend the claim not be paid. Again, I...I think going back I guess to what Senator Morrissey said a little bit earlier, I think this is a way of discouraging foster parents if the foster parents knows that, regardless of what action...what actions the ward takes, that foster parent can end up bearing the loss. I don't think that is a good policy for this state to have. I think that the Legislature should adopt a policy rather which would say if somebody does all reasonable efforts, which I think has occurred in this case, to limit that loss. I'm also not a fan of exposing the state to a great deal of expense. I don't think that's necessary and I don't think that's what we're trying to do and I guess I'm, to an extent, trying to make a little bit of a legislative record here. It's not an intent to open this up to subrogation claims from insurance companies or anything like that. Just merely, in this type of case at least where the claimant did all she could to try to have other sources pay for the claim and presents a very reasonable, very limited amount of claim, I think it's in the best interest of the state and of the foster care program to approve that claim. I'd urge the adoption of the amendment.

PRESIDENT: Thank you. Senator Coordsen, please.

SENATOR COORDSEN: Thank you, Mr. President, members of the body, again, I think we've discussed this at some length. I won't call on anybody to answer whether the Department of Social Services has that capability to look at and settle claims that arise from foster parents' losses that evolve from their caring for wards of the State of Nebraska. Again, as Senator Lindsay indicated in his testimony, rather than be talking just about the \$250 that was involved in this claim, which I think all of us agree is a fairly insignificant amount except to the person who incurred the loss, we are talking about a policy direction

to the State Claims Board as to how they would proceed in cases such as this that might arise in the future. The State Claims Board has a narrow area of opportunity in which to make decisions based upon their particular guidelines that have been developed from policy decisions made on the floor of this Legislature as to whether or not they can, in fact, allow claims. While this claim is fairly small, there is always a possibility when we change policy that rather significant, generally unsubstantiated claims as to the worth of a piece of personal property that may be damaged, destroyed or stolen by a foster child might come to this body in the future and the State Claims Board, because of our establishment of this policy, would be very nearly required to approve those types of claims. So, again, rather than think about this in the terms of the money, we probably should think about it in terms of the policy that we are establishing this morning on the floor of the Legislature. So, with that, I think that the best interest of the state would be served if the amendment to the amendment was not adopted.

PRESIDENT: Senator Lindsay, would you like to close on your amendment to the amendment?

SENATOR LINDSAY: Yeah, just very briefly, Mr. President. I guess I would concur in a little bit of what Senator Coordsen said and that is that we're trying to present this to the Legislature so that the Legislature will adopt that policy. The Claims Board will abide by what...what this body says will be the state's policy. That's the whole reason for bringing the amendment out to the floor, is to allow this body to make that decision. I think you've heard the equities on both sides. From my viewpoint, I would urge the adoption of the amendment.

PRESIDENT: Thank you. The question is the adoption of the amendment to the committee amendments by Senator Lindsay. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please. Senator Chambers.

SENATOR CHAMBERS: I would ask for a call of the house.

PRESIDENT: All right. Question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 13 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call, will you please return to your seats and record your presence. Those not in the Chamber please return to the Chamber and record your presence. May I introduce some guests, please, while we're waiting. In the north balcony Senator Rod Johnson and Senator Moore have guests from Shelby Public Schools in Shelby, Nebraska. There are 21 students in the fourth grade, and 12 parents and adults. Would you folks please stand and be recognized. Thank you. Then Senator Beck has guests in the north balcony. We have 102 eighth grade students from St. Pius X and St. Leo in Omaha, and their instructors and adults with them. Would all of you folks please stand and be recognized. Thank you for visiting us today. We're looking for Senator Barrett, Senator Dierks, would you record your presence, please. Thank you. Senator Goodrich, record your presence. Jacky Smith, would you please record your presence. Thank you. All right, we're all present now. The question is the adoption of the Lindsay amendment to the committee amendments. This requires 25 votes. Did you ask for a roll call vote, Senator Chambers? A roll call vote was asked for. We will do it in regular order. Mr. Clerk.

CLERK: (Roll call vote taken. See pages 1547-48 of the Legislative Journal.) 16 ayes, 19 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The motion fails. Do you have anything else on it, Mr. Clerk?

CLERK: Nothing further on the committee amendments, Mr. President.

PRESIDENT: Now we are back to the committee amendments. Senator Coordsen, did you wish to speak further on it? The call is raised.

SENATOR COORDSEN: Yes, thank you, Mr. President, and members of the body. I rise to move the committee amendments, but before I do that, I think that we should talk just a little bit about the vote that was just taken. I think the vote, I believe, 19 or 20 to 16, indicates to me that perhaps Department of Social Services, however the process might work through the appropriations, might well be advised to look at creating a fund to compensate foster parents for losses such as this lady received. So with that little editorial, I would move the committee amendments.

April 6, 1989

LB 811

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

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

PRESIDENT: The committee amendments are adopted.

CLERK: Mr. President, I now have an amendment from Senator McFarland, who is excused.

PRESIDENT: Is anyone authorized to handle the amendment that Senator McFarland has in? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, could I have the amendment read so I can see exactly what it is we are dealing with, then I will know if I can take it.

CLERK: Senator, it is on page 3, lines 6 through 14, and would strike claim number...well, let me pull the bill, Senator. What it does...

PRESIDENT: Are you acquainted with the...

CLERK: It is Claim #2027 against the Department of Correctional Services paid to Barbara Shaw in care of Thom Cope, Attorney, out of the Department of Correctional Services Facility Cash Fund in the amount of \$1,000, and it strikes that from the bill.

SENATOR CHAMBERS: I thought it might be the same approach I am taking, but since it is not, I will not take that one up.

PRESIDENT: All right, thank you. Is there anyone else that has been asked to handle that amendment by Senator McFarland? Do you have anything further on it, Mr. Clerk?

CLERK: Mr. President, Senator Chambers would move to amend by disapproving claims #116 and 117 found on page 3 of the bill.

PRESIDENT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is in the same area as Senator McFarland's amendment, but

mine is dealing with two individual claims for \$750 each. These are claims against two corrections officials. In a court case before Judge Urbom, a judgment was rendered against these two individuals in their individual capacities, making them responsible personally for the wrong that they had done. It involved sexual harassment or discrimination. They had made improper statements to a female employee, had engaged in improper conduct, some types of touching, I don't mean of a sexually arousing nature but the fact that hands were laid on, and she was denied a promotion that she should have been entitled to. This claim came before us last year. At that time, Senator McFarland had handed out a copy of Judge Urbom's opinion. I don't have a copy of it with me today, but it stated in detail the reasons the judge for finding against these two individuals personally. We denied the claims. They were prevailed upon by somebody in the Attorney General's Office to bring it to us again. My personal belief as to why it was brought again, after I listened to the testimony, is that the individual who represented them in the first place had said that the case should be submitted to the judge on the basis of the record that had been established before the EEOC and some other agency. I had asked why the case was submitted on the record to the judge instead of taking it to trial. She stated that the Corrections Department, the representatives of these two individuals, had put together the best case that they could. Nothing new would be developed by virtue of a trial. So with the record that had been compiled in earlier hearings on these matters, it was submitted to Judge Urbom. Judge Urbom reviewed the record, ruled against these individuals and assessed damages against them in their personal capacity. We had rejected the claim once, and I think we ought to reject it again. When I was asking why it was brought back again, the person from the Attorney General's Office had said that she thought that those personal damages would be reimbursed by the Legislature. Had she known that they would not be, she would have recommended that they go to trial. So I asked again, if you said that you compiled the best record that you could, why would you have gone to trial? What would have been gained by going to trial? What evidence did you not present earlier that you would have presented then? Well, none. Did you mean it when you say you made the best record at those earlier hearings? Yes. So then going to trial would not have achieved anything as far as producing a record? The acknowledgement had to be made that it wouldn't. But assume that they went to trial, presented the same evidence, Judge Urbom was looking at the same record, but

it had been compiled in court rather than through these other hearings, you would have to conclude he would reach the same conclusion. And because of the nature of the action by these two individuals, they should be held personally accountable for this money. The last time we disapproved it, I think there was about \$1,000 that each of them had been assessed, but after disapproving those claims, the matter was discussed additionally, and the amount of individual damages, rather than \$1,000 for each individual, was reduced to \$750. So I think we ought to stick by the decision that we made at that point. We ought to establish a policy that we discussed the other day, that when an employee has damages assessed against him or her in their personal capacity, they should be required to respond for those damages. If there are lawyer's fees, court costs, and other amounts of money assessed because the individual was acting in the scope of his or her employment in general, those costs can be reimbursed by the state because the person was acting on behalf of the state and the wronged individual should be able to recover from the state for that damage done to them by the state's employee. But when you get outside that realm of what is allowable, when you do those things that clearly your boss should disapprove of, such as, the sexist remarks, the denial of a promotion on the basis of gender, the references to a woman's pregnant condition in a disparaging way, the discussion of the kind of food that they eat and what it does to a female's figure, nobody on a job should have to put up with that kind of conversation. And Judge Urbom had laid some of these things out in his opinion. So based on that, I believe we should vote to disallow the two claims that my amendment deals with. I am hoping that you will see it the way that I do, and vote again to do this year what we did last year, and I also think it should send a message that we don't want these claims to come back year after year. It could conceivably be brought back again next year. I don't think it would be. I am almost sure that it won't be, but I hope that we will bring this kind of thing to a halt by again rejecting these claims.

PRESIDENT: Thank you. Senator Coordsen, please, then Senator Wesely.

SENATOR COORDSEN: Thank you, Mr. President and members of the body. Far be it from me to engage in conversation with Senator Chambers over legalities. I would come into that fray almost totally disarmed, I am afraid. However, these two cases, and we are not a court of law I think, we are a court perhaps that

makes law, but a court that makes determinations of what is right and wrong in individual situations such as this, and we have no opportunity to hear, or probably will have no opportunity to hear anyone on this floor representing the stand of claim #116 and 117. In the absence of misfeasance or willful and wanton misconduct of duty, the State of Nebraska in their indemnification statutes is required to pay costs such as these even if they are truly, as Senator Chambers alleges, punitive. We have no choice under the laws of the State of Nebraska today but to allow these two claims to be included as part of LB 811. So with that short comment, I would say that our responsibility is to defeat the Chambers amendment. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. President, members. This is an example of an issue of why I have struggled both on the Banking Committee and on the floor to consistently try and keep the Legislature involved in the claim process. There have been efforts through some legislation, indemnification legislation, to take the Legislature out of having the review function and I think the Legislature needs to have that function because on occasion, rarely, but on occasion we find different claims that are approved that we don't like to have approved, as in this instance, in other cases where they have been denied where we think they ought to be sustained. The Legislature is ultimately the voice of the people and the policy-making body for the state and I think this is yet another example of why we need to be involved in the process. I do recall this issue from last year and, in fact, as Senator Chambers says, this is the same situation, we rejected it once last year. It would seem appropriate to be consistent and reject it again.

PRESIDENT: Thank you. Senator Chambers, please. Senator Chambers, did you wish this to be your closing? There are no other lights on but it doesn't necessarily have to be.

SENATOR CHAMBERS: All right, if there are no other lights, this will be my closing.

PRESIDENT: All right.

SENATOR CHAMBERS: Members of the Legislature, we can indemnify people for anything we want to. Somebody could walk out of here as an employee of the state and be doing certain things that are

part of their job that might be based on regulations of the department for which they work. Let's take the Corrections Department case as an example so I can distinguish what I am talking about from what Senator Coordsen may have in mind. Let's say that the laws of this state requires that any agency before it can make rules apply to employees, or in this case the inmates, would have to be properly promulgated, properly noticed to everybody, and a copy given to every individual. And let's say that those procedures were not followed and an inmate were punished for violating a rule which was not properly handled by the Corrections Department. The individual who committed the act that would constitute the violation will be sued by the inmate. That individual, if the policy was found to be wrong, will be ruled against, and if the inmate suffered monetary damage, say something was confiscated or something was damaged, the only way that that money can come back to the individual is by assessing the award against the employee sued. But since the employee was functioning in his or her capacity as an employee pursuant to the policies and practices of the agency, we will reimburse that employee or indemnify that employee for the damages awarded. But if we have a situation where the employee, while acting as an employee, goes outside of what is allowed by the law and by the rules of the agency, then whatever damages are assessed because of that conduct outside of what can be considered within the scope of his or her employment, that person has those damages assessed against him or her in his or her individual capacity, meaning, that I went beyond what I can expect to be protected for as an employee. The line is drawn. Anything I do within that line as an employee, if somebody is damaged by it, will be reimbursed by the state so that I, as an employee, will not have to pay out of my pocket for doing my job as I was instructed to do it. Even if something wrong occurs, I was doing what my job required me to do, or could reasonably be believed by me to require me to do. When I go beyond that line and I engage in sexist conduct, I engage in sexist remarks, I deny a person a benefit of the job because of gender, that person who does such a thing is not to be indemnified because that is not a requirement of the job. As a matter of fact, it goes contrary to what the job requires and what the laws entail. If we are going to enact laws that prohibit gender discrimination, have an employee engage in gender discrimination and be found by a court to have done so, and be assessed damages, and then we, as a Legislature, pay for the damages against that employee, we are subsidizing the violation of the law that we passed. We allowed the court costs, I meant the

April 6, 1989

LB 811

expenses and the lawyer fees.

PRESIDENT: One minute.

SENATOR CHAMBERS: So that you could say whatever they may have been doing that was within the range of their employment, we will indemnify. The lawsuit, they have a right to go to court on that. But when it comes to the damages that the judge specifically levied against that individual because his conduct went beyond what is allowed, the Legislature would be wrong to pay those damages. So I hope you will vote again this year to disallow these claims as we did last year. If you are going to allow these claims, then it means whatever an employee does, unless it is so obviously wrong that even the Legislature is shocked, we shouldn't pay these claims.

PRESIDENT: Thank you. The question is the adoption of the Chambers amendment. All those in favor vote aye, opposed nay. Senator Chambers. The question is, shall the house go under call? All those in favor vote aye, opposed nay.

SENATOR CHAMBERS: I will accept call in votes.

PRESIDENT: All right, thank you. Record, Mr. Clerk, please.

CLERK: 12 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please return to your seats and record your presence. Call in votes are acceptable and, of course, this is the adoption of the Chambers amendment.

CLERK: Senator Elmer voting yes. Senator Moore voting no. Senator Lowell Johnson voting no. Senator Chizek voting yes.

PRESIDENT: Senator Chizek, would you record your presence, please. Senator Robak, would you record your presence, please. Thank you. We are looking for Senator Schimek. And there is Senator Schimek. Okay, the question is the adoption of the Chambers amendment, and Senator Chambers has asked for a roll call. Mr. Clerk, please.

CLERK: (Roll call vote taken. See page 1549 of the Legislative Journal.) 26 ayes, 9 nays on the amendment, Mr. President.

April 6, 1989

LB 811, 812

PRESIDENT: The Chambers amendment is adopted. Anything further on the bill, Mr. Clerk?

CLERK: Not at this time, Mr. President.

PRESIDENT: The call is raised. We are back on the advancement of the bill. Senator Coordsen.

SENATOR COORDSEN: I would move the bill, Mr. President.

PRESIDENT: Any further discussion? If not, the question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of 811.

PRESIDENT: LB 811 is advanced. Anything for the record at this time, Mr. Clerk?

CLERK: Not at this time, Mr. President.

PRESIDENT: All right. Then we will move on to LB 812.

CLERK: Mr. President, LB 812 is a bill introduced by the Appropriations Committee and signed by its members. (Read title.) The bill was introduced on April 4 of this year, Mr. President, pursuant to a motion offered by Senator Warner.

PRESIDENT: Senator Warner, would you like to explain the bill and then we will take up amendments after you have explained it. Would that be agreeable?

SENATOR WARNER: Yes, sir.

PRESIDENT: Okay.

SENATOR WARNER: Mr. President and members of the Legislature, I will make the explanation fairly brief on the assumption that those areas which individual members wish to further discuss the issue will be done in the form of an amendment. So, briefly, as indicated the other day when the bill was introduced, there are seven items contained in this bill in the form of a deficit request recommendation to the body. I should point out, as I indicated the other day, there will be a second deficit bill

April 10, 1989

LB 84, 319, 541, 611, 630, 640, 646
651, 653, 653A, 705, 710, 762, 811
812

now and Select File. I will try and answer your questions, but now I just ask that we advance the bill.

SPEAKER BARRETT: The question is the advancement of LB 611 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 36 ayes, 1 nay, Mr. President, on the advancement of LB 611.

SPEAKER BARRETT: LB 611 is advanced. Anything to read in, Mr. Clerk?

CLERK: Mr. President, Enrollment and Review reports LB 319 to Select File with E & Rs, LB 640, LB 651, LB 541, LB 653, LB 653A, LB 630, LB 811, LB 812, LB 710, and, LB 646, all to Select File, some have E & R amendments attached. (See pages 1615-22 of the Legislative Journal.)


Senator Conway has amendments to LB 84 to be printed; Senator Hall to LB 762. Senator Abboud would like to add his name to LB 705 as co-introducer. (See pages 1622-28 of the Legislative Journal.) Mr. President, that is all that I have.

SPEAKER BARRETT: Thank you, and the Chair would like to remind members of the briefing on the pharmacy school to be held at this hour in Room 1019. Senator Chizek, please.

SENATOR CHIZEK: Mr. Speaker, I would make a motion we adjourn until April 11th at 9:00 a.m.

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

Proofed by:


LaVera Benischek

April 11, 1989

LB 247, 272, 588, 739, 811

CLERK: Government Committee gives notice of confirmation hearing. Senator Wesely has amendments to LB 247; Senator Chambers to LB 588; Senator McFarland to LB 811; Senator Landis to LB 272. (See pages 1645 of the Legislative Journal.)

SPEAKER BARRETT: Senator Hannibal, I don't believe you have had an opportunity to open on the bill. Would you like to take this time to present the bill?

SENATOR HANNIBAL: Yes, Mr. Speaker, and thank you very much. I will try to be brief, because we have had a pretty good discussion of the bill. I hope that you have had a chance to look at the items, the handout that was before you, the blue covered copy dealing with the LB 739 tax cut. What you have now before you is a proposal of the bill in its original form and is laid out for you in the handout before you. The first page tells you what the four items are that are going to be done. First and foremost we're going to drop the marginal rates, marginal rates you can see, that are blackened out on the right-hand column, go down from the existing rates. You can see from the handout that the two brackets that are being reduced are in the lower and middle income areas. It's going to return or take off the tax rolls. Return...I think Senator Hall did point out we aren't giving money back, it's kind of a shame we can't do that, we aren't doing that. But what we are doing is changing the tax structure so we will no longer collect those taxes. You can't even call it a tax cut because it was an increase that we are trying to take off the rolls, because it was put on inadvertently. But we're rolling back those brackets to those two blackened areas, and they are the lower tax brackets. Secondly, we are going to raise the personal exemption by \$50 per person, that affects everybody. I might point out that the first item, lowering the marginal rate brackets, affects every taxpayer in the State of Nebraska. It affects better the lower income taxpayers, the lower marginal rate brackets, it affects them more dramatically than it does the higher, but it does affect all. The personal exemption obviously affects all taxpayers. Again, because it's a dollar rate, \$50 per person increase in the exemption, affects everybody, but affects the low income tax...low income earners more than it does the upper incomes. Thirdly and fourthly were the items that were left as part of the bill, the child care credit, which affects those people who can take a deduction from the federal income tax, a tax credit away from their liability, they will be able to take an additional 25 percent of that

April 25, 1989

LB 611A, 811

except LB 611A, so we'll take up 611A.

CLERK: LB 611A, Mr. President, offered by Senator Moore. (Read title.)

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Yes, Mr. Speaker and members, LB 611A is the accompanying A bill to LB 611. Basically, the A bill is necessary for the provisions in LB 611 dealing with the income taxpayer, mandating that for a complete income tax form you must fill out the school identification number. The fact of the matter is that for the first year you have to send a variety of those things back and there will be some bookkeeping. Some bookkeeping items will have to take place without raising the A bill. And, as you can see, the dollar amount is in the A bill and I simply move the advancement of the A bill.

PRESIDENT: Any further discussion? If not, the question is the advancement of the bill. All those in favor vote aye, opposed nay. Requires 25 votes. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the motion to advance LB 611A.

PRESIDENT: LB 611A advances. We will move on to Select File, LB 811, please.

CLERK: Mr. President, 811 is on Select File. The first order of business are Enrollment and Review amendments.

PRESIDENT: Senator Hall, do you want to handle those E & R?

SENATOR HALL: Mr. President, I would move the E & R amendments be adopted.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Mr. President, the first amendment I have to the bill is by Senator McFarland.

PRESIDENT: Is anyone authorized to handle Senator McFarland's motion? Do you have anything else on it, Mr. Clerk?

CLERK: Mr. President, Senator Coordsen would move to amend the bill. (The Coordsen amendment appears on page 1894 of the Legislative Journal.)

PRESIDENT: Senator Coordsen, please.

SENATOR COORDSEN: Thank you, Mr. President. This is, Mr. Clerk, amendment number 1291?

CLERK: Yes, sir, it is.

SENATOR COORDSEN: All right, thank you. Mr. President and members of the body, the last time we looked at this bill, this is the claims payment bill, we added back in...or took out of the claims payment bill two claims that, quite frankly, we can't take out. This amendment that I'm offering you this morning would strike the Chambers amendment and reinstate the two denied claims. We, in this body, can make law and there is no one that will deny that we can do that within the framework of the Constitution. But once we've made law and once we've put into place the statutes that govern the State of Nebraska, we cannot disobey that particular law. If we think it's wrong, we can change it. But, while we have our statutes in effect, what we do in this body must be, can be nothing else than in accord with what we have placed in statute. There was an emotional appeal made and perhaps from the basis of emotion was justified and we voted to deny two claims, whether you agree with the claims or not, that are legitimate, that are legal, that do fit within the framework of our statutes and we can do nothing else but put those back in. This case was heard before the Equal Opportunity Commission. This case was heard in appeals court where a change was made but the change was not made in the method of paying the claims. The state is still liable. There was no willful or wanton conduct of responsibility on the part of these employees that was ever charged. The state was found liable for damages in the appeals court. A claim was filed. There were no punitive damages which could have been placed upon the employers to pay. These claims are fully within our current statutes and the Chambers amendment striking the two \$750 claims should be stricken from LB 811. If we think that our statutes are wrong, change them. But while they read as they do, while the conduct of state employees and the charges that may be brought against them read as they do, we, in this body, have no choice but to comply with what we have enacted into law. With that, I would urge the adoption of this amendment.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature...I'm trying to tailgate on Senator Coordsen. For him, for the talk he gave it was about like what I just gave you for me. I have never seen him so exercised and it's good because his juices are flowing this morning and I'm sure it will put him in good stead for some of the very heavy issues we're going to deal with shortly and perhaps I awakened some of those who were in the state of suspended animation. But I would like to ask Senator Coordsen a question or two. Senator Coordsen, if you can recover your composure because, generally, I don't blast off like that, I kind of work up to it. You had started by saying we cannot do what my amendment did which was to deny these claims. Why do you say we cannot do that? Since we did it last year and there was nothing from the Attorney General's office in the form of a directive to the Legislature or any court saying that we could not do that, so why are...

SENATOR COORDSEN: Senator Chambers...

SENATOR CHAMBERS: ...you now saying we can't do it this year?

SENATOR COORDSEN: Excuse me. Senator Chambers, I would imagine, and this is speculation on my part, is because there was no contest, no question raised last year. It's no different than any other deviation from whatever our statutes might provide in any area.

SENATOR CHAMBERS: How is the question different this year when we denied the claim...the claims than it was last year when we denied the same claims? How is the question different?

SENATOR COORDSEN: The question is different in one respect, as I understand it, and that is that it was a claim against the state and these people at that time. This year, there is a claim made by the employees to be rightfully compensated for the cost of our action last year.

SENATOR CHAMBERS: Senator Coordsen, what in the law prevents us from denying these claims?

SENATOR COORDSEN: According to the information I have, it's in 81-8239.05, the state shall indemnify its officials and

employees and its past officials and employees against any judgment for money damages and costs as a result of an act or omission occurring in the course and scope of employment of such official or employee after May 22, 1981. And then it goes on to say, subsection (1) of this section shall not apply, shall not apply in the case of malfeasance in office or willful or wanton neglect of duty. This...these charges were never brought in any of the causes of action. The state cannot be liable for punitive charges. My understanding of Judge Urbom's reasoning in handing down his decision was that the state was liable for the 22,500 and the compensatory damages against the two employees in question was \$2,500.

SENATOR CHAMBERS: Senator Coordsen, who brought you the information that you are telling us about? You said based on the information you have. Who brought that to you?

SENATOR COORDSEN: The Department of Labor.

SENATOR CHAMBERS: Have you talked to anybody from the Attorney General's office?

SENATOR COORDSEN: Not on this specific issue. I have an Attorney General's Opinion on another question that I asked.

SENATOR CHAMBERS: No, I want it on this one. Thank you, Senator Coordsen. Members of the Legislature, there are people who want, for some reason, to help these two individuals. I don't know if there is activity in the Department of Labor of a similar kind, a sexist nature which is what Judge Urbom found these men to have engaged in, gender discrimination. And to say as briefly as I can, the whole matter was submitted on the record that had been established before these other commissions to the District Court, Judge Urbom's court. Judge Urbom found against these two individuals in their individual capacity and for Senator Coordsen to stand here and say that because the Labor Department said this kind of sex discrimination is within the scope of employment, I disagree with him. I don't have to accept Senator Coordsen's conclusion. I certainly don't accept that of the Labor Department and maybe that's why we have so many problems in some of the state agencies. There are a group of professors at UN-O, females, who are concerned now because of differentials in the salary they are to receive and it's based on gender discrimination. So if the attitude of the body is to reflect what Senator Coordsen's talking about, then it's all

right to do these things against females. And I think it is not all right. We, as a legislative body under the law as it exists now, are to exercise our judgment and our discretion when these claims are presented to us. If we chose to pay a claim that was based on punitive damages, we are not prohibited from the law...by the law from doing that.

PRESIDENT: Time.

SENATOR CHAMBERS: We can...

PRESIDENT: Thank you. Senator McFarland, please. Senator Chambers, I apologize for not letting you know a minute ahead. Okay.

SENATOR MCFARLAND: Thank you, Mr. President. I just got here so I'm getting my file and things down. This is an issue that was brought up to me by one of the women that worked in the Corrections Department. It was not the woman who was the plaintiff in the lawsuit. It was a woman who was one of the guides and one of the employees of the Corrections Department who was a friend of Barbara Shaw, the person who was successful with her sex discrimination claim against the two supervisors at the Department of Corrections. She had...the woman that came to me was a member of our church. At the time, she had been pregnant and she was, during the sequence of events when the hiring process was occurring, she had given a guide of the facilities at the Corrections Department and one of the two supervisors had came up to her and said...made the comment that aren't we progressive out here? We're having pregnant women give guides...give guided tours of the Department of Corrections. And then he tried to put his hand on her stomach. She was offended by it and there were a number of other offensive things that these supervisors did, not only to the woman from my church but also to Barbara Shaw who had applied for the assistant supervisor position. I have a whole series of quotes that they made that were part of Judge Urbom's decisions. One of the quotes that these supervisors made was when Barbara Shaw would purchase a candy bar or purchase some kind of food at the vending machines, the comment was made by one of the supervisors that, hey, you're getting a little wide back there, aren't you? And aren't you going to take another fat pill? And when are you going to get married and settle down and have a family? Those kind of comments were made in the most demeaning and derogatory manner. I talked with Barbara Shaw after the

initial hearing on this came up way last year when the initial claim was presented and she said that, really, Senator McFarland, she says, I did not...I did not like the comments they made, I thought they were demeaning, they were derogatory. I considered the source of the quotes. But she said the pro...but I could live with that because I could parry them and I could...I could let them slide by and not...and disregard them. But she said when it came to the point where I was applying for an assistant director position and these two supervisors, instead of appointing me even though I was fully qualified, fully trained, fully experienced in the job, when they select one of their buddies to fill this position, then it became too much, then those derogatory, demeaning and sexist comments became the basis for discriminating against me in my career. And she says, I was not going to stand there and I was not going to sit there and let that pass and that is why I filed the suit, that is why I tried to get some kind of legal redress for that kind of violation. And, as a result of that, she took it to court and Judge Urbom, in fact, ruled against these supervisors and their defendants. I have quotes from his opinion that I will read to you and I hope I have another chance to speak on it. I will pass out copies of the quotes and the findings that Judge Urbom made.

PRESIDENT: One minute.

SENATOR MCFARLAND: The real issue here is, should the state indemnify these kind of individuals for this kind of derogatory and demeaning conduct that they had toward women in their department? And my view is that if you are going to deter this type of conduct, then you should have these people personally accountable. The original settlement was that these individuals would be accountable in the amount of \$2,500 in compensatory damages to be split between them. It could be apportioned between them. The most likely was they would each pay \$1,250. I did not see that as an onerous penalty. It's something that would be a financial burden for them, I'm sure, but it's something that it seemed to me only fair and reasonable that they should...they should be required to pay. Otherwise, if the state continues to go in and bail these type of individuals out, that kind...

PRESIDENT: Time.

SENATOR MCFARLAND: ...of sexist and demeaning comments are only

going to continue in all of the departments we have in state government. And unless they are held personally accountable in this particular situation, in effect, the state condones that type of behavior. And, for that reason, I would urge that the Coordsen amendment not be adopted. We have talked about this for two years now. They were not compensated two years ago. They were...they were not compensated this year when they were taken out of the bill as far as indemnification and now, at this late stage on Select File, Senator Coordsen brings it back to compensate them. I think that their conduct cannot be condoned. I don't think their conduct can be defended and I will be glad to get further information to you shortly.

PRESIDENT: Thank you. Senator Coordsen is next, but may I introduce some guests in the north balcony of Senator Hefner. We have 35 sixth through eighth graders from the Zion Lutheran School in Pierce, Nebraska and their principal and teacher. Would you students and instructors please stand and be recognized by the Legislature. Thank you for visiting us today. Senator Coordsen, followed by Senator Chambers and Senator McFarland.

SENATOR COORDSEN: Thank you, Mr. President, and members of the body, there was a story told about a young boy who was born and never spoke and he was two years old and he never spoke and he was four years old and he never spoke. And his parents took him to every speech doctor in the country, every specialist in the country that they could find and he never said a word. And when he was about 10 years old at a family gathering and they had the minister and the aunts and uncles and everything there, all of a sudden this 10-year-old boy said, pass the blank salt, these potatoes are flat. And, of course, everyone was really enthused, but why didn't you speak before? He said, up until now everything was all right. And it's a little bit like this issue that we're talking about this morning. The record shows that the comments that Senator Chambers cites are a matter of the record. The comments that Senator McFarland cites are a matter of the record. And I doubt that there is anyone here that personally has any less sexist bias than I do. The question, when you peel away the oratorical petals from the flower that's presented to us, is what is in the center? What is in the center is that we cannot make this decision based upon emotion. We have to make these types of decisions based upon the statutes that govern our behavior, as a matter of fact, in this...in this circumstance. Judge Urbom's decision was

mentioned. I might quote several things also from Judge Urbom's decision. Referring to Barbara Shaw, Shaw seeks general compensatory as well as punitive damages from Avery and Hendrickson for their individual capacities...in their individual capacities for their violation of her equal protection rights. And then he goes on to clarify the difference between punitive and compensatory damages. The judge's decision says the only evidence of injury is Shaw's testimony, goes on at the end of the paragraph, an amount of general compensatory damages is small but genuine. A reasonable appraisal of that sum is \$2,500. To be entitled to punitive damages from the defendants for their violation, Shaw must prove that the defendants were, "motivated by evil motive or intent", or (acted in a way that suggests reckless or careless indifference to the federally protected rights of others.) The evidence in this case does not support Shaw's prayer for punitive damages. Shaw is entitled to reasonable attorney's fees. And then it goes on that she is entitled to back pay, front pay and general compensatory damages, general compensatory damages in the amount of \$2,500. The State of Nebraska, in statute, is not required to pay punitive damages if we should not decide to do so but we do indemnify our employees for judgments such as this. In my opening, I tried to explain as best as I could in lay person's terms what our responsibility in this issue is.

PRESIDENT: One minute.

SENATOR COORDSEN: It makes not a great deal of difference at the heart of this matter what the statements were made. They're a matter of record in the Equal Opportunity Commission hearing which found them not guilty. They're a matter of record, again, in Judge Urbom's decision which awarded compensatory damages, which they are fully entitled to recover from the State of Nebraska as part of our indemnification statutes. We have no choice. Thank you.

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

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator Coordsen, my grandmother was a woman, my mother is a woman, my former wife is a woman, my sisters are women. I have a daughter who is a woman. I have a profound and abiding respect and maybe an abundance of protectiveness where women are

concerned. I see a double standard everywhere in this society when it comes to women. I can hear some people on this floor get very exercised about the rights of business men, CEOs who happen to be men, and even some of the activities on this floor, some of the young women referred to, and older women, as gals, girlie. All of these kind of things that are not to be offensive to women, they are put-downish and if men were treated in the same way by equivalently demeaning words and conduct, then there would be Hades to pay. In this society, our women are conditioned to feel that they are subordinate and inferior. They affect the appearance of not being offended by things that offend them. And men who would not want to be treated that way, or have their mommas treated that way, will treat other women that way and pretend there is nothing wrong with it. I will never, on this floor, or by any action that I take on or off this floor do anything to further entrench the discriminatory negative attitude that exists toward women in this society. It is easy for arrogant men to lord it over women, assume that pontificating self-righteous position and say, this is the law. Yeah, it's the law, it's the law of chauvinism and sexism. It is wrong. They probably...I can see why a lot of these women bring complaints to me and not other members of the Legislature because they can hear what the attitude is. In agencies throughout this state, there are discriminatory actions taken against women and many times when they come to me they say, it's not the kind of thing that I can prove to the point where anything can be done or will be done about it but I've got to have somebody to talk to. And they come to me. And, for the information of those who may not know, the vast majority of women who work for this state are white. So your women come to me with complaints about how their men mistreat them and demean and degrade them. When they go to school, they're women, they're not gals. I have talked to reporters about referring to the Governor as Mrs. Orr. They didn't refer to Thone as Mr. Thone. They don't refer to us as Mr. Schmit and Mr. Chambers but they refer to Senator Labedz as Mrs. Labedz, Mrs. Crosby. If the title goes with the job, why should it be taken away because a female holds the title? When they are being discussed in terms of their job, they should be accorded the same title that all the men receive. Some people might say that men do these things unconsciously. I don't think so, because they don't do it to other men. They don't do it to Mike Harper. They know how to be appropriately respectful to all of those who can put a hammer on them. But when it comes to women, demean and degrade them, talk about their appearance, ridicule

them because they are pregnant and then have the state pay money to underwrite this kind of misconduct and do it on the basis of some kind of abstract notion that because I find these words in the statute and in my personal opinion...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...this is not the case, therefore, we ought to reward them. And that's what we would be doing, rewarding them for doing to these women what we would probably knock them down for if they did it to ours. Wait a minute, let me speak for myself. Let me speak for myself. Had it been my wife, pregnant, and some fool was going to make that remark about her and touch her stomach, charges would be brought against me because I know how to handle them. All of this nice beating of gums and flapping of lips that goes on on this floor is so much nonsense, full of sound and fury signifying nothing. As long as we can have brought to us the kind of misconduct engaged in by these individuals and then give money from the State Treasury, put there by all the taxpayers to reward them, we are "complicit" and we are wrong. I'm not sure but Senator Coordsen may have voted to deny this money last time. I'm going to ask him that question. Senator Coordsen, when we were denying these claims last year did you vote against denying these claims?

PRESIDENT: Time. Just a moment, you're not on, Senator Coordsen. Now try it, Senator Coordsen.

SENATOR COORDSEN: Thank you. My time?

PRESIDENT: Well, time is really up but why don't you answer his question, Senator.

SENATOR COORDSEN: All right. I would have to check the record, Senator Chambers, but I rather suspect that I did. I don't know that exactly but I suspect that I did.

PRESIDENT: Thank you. Senator McFarland, followed by Senator Hall, Senator Coordsen, Senator Schmit, Senator Haberman and Senator Chambers. Senator McFarland.

SENATOR MCFARLAND: I appreciated your vote at that time, Senator Coordsen. I thought it was correct and very reasonable and judicious of you to rule that way. Let me read...let me read you some of the comments from the opinion about what kind

of things these men said. Judge Urbom says, although the evidence of the supervisors' sexist statements and behaviors by itself does not conclusively prove that they considered the top candidates' gender in reaching their promotion decision, it makes it difficult to believe that their testimony...in their testimony that they lifted themselves above the insensitivity of their usual attitudes as they made the promotion decision. It is a twist of reason to believe that persons committed to equal opportunity would subject one group of workers, here women, to demeaning and unprofessional remarks and behavior. Then he continued. He said, the supervisor made comments to the member of my church and a correctional counsel to the effect that after she had had her baby she probably would not return to work due to maternal instincts. Concerning a tour of the facility that she gave to outside visitors, she said that the supervisor made the comment to the effect that we were real progressive here because they had pregnant women giving the tour. He attempted to pat my stomach. Then you have another comment. It says, the supervisor's reference to women's bodies, weight gaining, maternal instincts, personal lifestyles, his assigning clerical tasks to females and repeatedly calling females "the girls" after warning, indicates a discriminatory animus which relegated females to an inferior position in a professional environment. Further, it was the supervisor's preference to work with someone he was comfortable with socially, another male who was a personal friend, rather than a female whose position might threaten his discriminatory attitudes and practices. Lastly, the judge concludes that Shaw has shown...Barbara Shaw has shown by a preponderance of the evidence that the defendants intentionally discriminated against her because she is female. Intentional discrimination. What is the standard that we have for indemnification? I passed it out to you and it talks about indemnification in Section 81-8239.05. Indemnification shall occur with two exceptions. The one, subsection (2), says, shall not apply in the case of malfeasance in office. And when you...how does one define malfeasance? Well, I have a definition there from the law dictionary which says, malfeasance is the commission of some act which is positively unlawful. And I submit to you that when someone intentionally discriminates against a woman because of her sex and denies a promotion opportunity to her because of that, that is a positively unlawful thing to do, particularly in an area where they are committed to equality of opportunity, and when they do that, I don't think the state should condone it by indemnifying them in that process. There is no basis for it and if we...if we, in

fact, indemnify these individuals, then we are taking taxpayers' dollars to condone and, in effect, indirectly approve of such conduct. I don't think \$750 paid by each of these men is too substantial a penalty for them to pay. As a matter of fact, they have already paid it. The question is now whether the state has to indemnify them for it. It's been before the committee two years. Last year, when it came before the committee with Senator Coordsen's vote these men were not indemnified. This year it comes before us again and I think the decision should be the same. We should not indemnify them for that type of conduct. They may have changed. I trust that it has had an effect upon them. They made...

PRESIDENT: One minute.

SENATOR MCFARLAND: ...a mistake. I appreciate the fact that sometimes people say things that they regret later. I have said things I regret later. But the fact of the matter is that promotion decisions should not be based upon sex or gender. You should base them upon the qualifications of the individual applying. Barbara Shaw merely asked that. She was denied a job which should have been legitimately hers had it not been for the attitudes of these men. They have paid their money. They have made a mistake, then let them live with it. That sends a message to the other employees that they will be held to the same kind of standards and if they make a mistake, they will have to pay too if they intentionally discriminate against people. It seems to me that is the approach that the state should take, that should be our policy and I don't think we should indemnify people and give tacit approval to that type of conduct.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senator Coordsen, Senator Schmit.

SENATOR HALL: Thank you, Mr. President, and members, I reluctantly rise in opposition to Senator Coordsen's amendment because I understand the position that he feels he is in. But I was the Chairman of the Business and Labor Committee the year that this claim came before the committee. We discussed it in length, spent clearly as much time in committee, if not more, than we have on this issue on the floor and debated it fully by the entire body when the claims bill at that time, LB 1235, I think it was, was in front of the body. What we did is we decided to indemnify these employees and we did indemnify them.

The claim that...the amount was somewhere in the neighborhood of, I think, 24 or \$25,000, and, as a state, we indemnified the employees to the tune of \$22,500. What we said was that the balance of \$1,500 or...I think it was 1,500, 750 per employee, was to be paid by those employees as individuals, that there was misconduct, extreme misconduct on their part and we, as a committee and then as a body, supported that idea, supported that concept that there should be some liability on their part, that we did not condone this kind of action or this kind of activity. We did not set the dollar figure at any severe level but enough to say that this is not something that we feel should be condoned by state employees. We indemnified the balance. We said that we will pick up the tab for the balance of the judgment, which was clearly the vast majority of it, and felt that that was our responsibility. But I think we also made the determination that it was not our responsibility to totally indemnify these individuals without saying that there is some cost that has to be paid. And we said, I think a number of us, that we wanted to send a message to all state employees that they must be in some form or fashion, to some extent, responsible for their actions. And we did that when we passed LB 1235 and denied the \$1,500 of that claim, and I think that's the figure that was used. We paid the balance and, as a state, we felt responsible and we felt that that was the right thing to do. We have done that. These individuals have paid their portion of that claim. Now they're coming back and asking that the state should indemnify them for that \$1,500. I don't think we have to. I don't think we should. I think we need to continue to say that employees must, to some extent, be responsible for their actions and they need to be looked at on a case by case basis. In some cases, yes, we indemnify them to 100 percent, you bet. In others, there should be some costs, I think, when it is clearly through their own actions to some extent that they have, without a good cause, without any cause at all, I think, taken things into their own hand, done things that are totally inappropriate within the scope of their workplace and have brought judgment against the state because of that.

PRESIDENT: One minute.

SENATOR HALL: All we do here in this bill is continue to say that to some extent you must be responsible, that the state is not going to totally roll over and play dead with regard to every or any action that an employee takes. I think that this

was a good decision when we made it two years ago. I would hope that we would continue to follow that same line of thought. The committee, I remember, was unanimous, those members who were voting who were there voted to advance this out and I think that there was very few red votes when this issue was brought before the entire body in the claims bill that year. I would urge the body to continue to support that line of thinking and to oppose Senator Coordsen's amendment. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Coordsen, please, followed by Senator Schmit and Senator Haberman.

SENATOR COORDSEN: Thank you, Mr. President, and members of the body, my great grandmother was also a woman and my grandmothers and my mother and two daughters, Senator Chambers. And, as a matter of fact, I think that my wife is a woman, in fact, I'm sure of it. And I would share with you that I was raised and personally accept and promote absolute equality between sexes, between races in all ways. I don't disagree with the statements that Senator Chambers and Senator McFarland made with regard to the recorded facts of this case. I was raised, as I said, in an atmosphere of, in our community and our family, of as close to total openness, appreciation, understanding as I suppose you can do. And I passed that, I hope, along to my two daughters and my one son. I don't deny, based upon personal experience, that sexism exists in government and industry in a real and well-documented way. I would share with you that when I came in contact with state government in July of 1981 and the months that followed were a devastating learning experience to me of the sexism that existed and exists, I'm sure, today in denying equal opportunity to equally or better qualified people based upon some external factor. But that's not the issue here. The issue here is one of whether we follow our statutes, whether we apply the indemnification statute for state employees, as they're written, equally for every person that's affected by them. If there had been punitive damages assessed against these people, this amendment most certainly would not be here. If we do this and leave 811 as it currently exists, there will be an indeterminable amount of inconsistency in our statutes. All state employees, regardless of gender, will not know...

PRESIDENT: One minute.

SENATOR COORDSEN: ...what their job protection is. I think that the record of this debate, the record of the debate the

last time we talked about this and certainly in the last session of the Legislature, is clear and convincing evidence that this body, this body in no way ever supports gender bias, that we believe, as a body, in equal opportunity, but equal protection under the law goes all ways. We have, as I have stated several times before, very little choice in this matter. If we want to find some way...

PRESIDENT: Time.

SENATOR COORDSEN: ...of punishing people for doing this in the future, let's change the law. Thank you.

PRESIDENT: Thank you. Senator Schmit, please, followed by Senator Haberman. I don't see Senator Schmit. Senator Haberman, please.

SENATOR HABERMAN: Call the question.

PRESIDENT: The question has been called. Do I see five hands? I do and the question is, shall debate cease? All those in favor vote aye, opposed nay. We are voting to cease debate. Senator Haberman.

SENATOR HABERMAN: I hate to do this but I'm going to save time if we cease debate, so I will ask for a call of the house and I'll take call in votes.

PRESIDENT: Okay, the question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 12 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence and the question is, shall debate cease? Authorized votes...authorized call in votes have been...call in votes have been authorized. You want a roll call vote on ceasing debate?

SENATOR McFARLAND: Yes.

PRESIDENT: Mr. Clerk, roll call vote. Okay. We'll have to get the other people in first, Senator McFarland. Yeah. Please record your presence. Look up to see if your presence is

recorded and you must go to your seats now, please. We're looking for Senator Conway, Senator Dierks, Senator Goodrich, Senator Lowell Johnson, Senator Labedz, Senator Lynch, Senator Moore, Senator Peterson, Senator Pirsch, Senator Schimek, Senator Schmit, Senator Wesely. We're going to have a roll call vote on ceasing debate as soon as you get in your seats. Please record your presence. Still looking for Senator Conway. Senator Goodrich and Senator Conway. Now just Senator Goodrich. Senator McFarland, may we go without Senator Goodrich.

SENATOR MCFARLAND: Yes.

PRESIDENT: Okay. Ladies and gentlemen, the question is, shall debate cease? Roll call vote. I believe Senator McFarland asked for a roll call vote. Is this correct, Senator McFarland?

SENATOR MCFARLAND: Yes, it is.

PRESIDENT: Yes. Okay, Mr. Clerk, roll call vote on ceasing debate.

CLERK: (Roll call vote read. See pages 1895-96 of the Legislative Journal.) 27 ayes, 14 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Coordsen, would you like to close on your amendment?

SENATOR COORDSEN: Thank you, Mr. President, and members of the body, I, in no way, personally support any of the recorded actions of the affected individuals. I didn't check into it to see whether they had been reprimanded in their positions or not. If not, they certainly should have been, in my judgment. I think the debate on the floor has clearly indicated this body's disapproval of behavior of that type, not only on the part of these two individuals but any individual, irregardless of sex, that works for the State of Nebraska. As a matter of fact, I think we have expressed our opinion at our general displeasure with that type of activity on the part of the general populace. But the case in point today is whether we, as a body, equally uphold the laws of the State of Nebraska as they are currently written. A vote to support this amendment is certainly not a vote in support of gender bias or any other type of bias. It's a vote that's right. It's in regard to the administration of the laws of the State of Nebraska and how they...how they are

applied equally to all individuals. These people were not found guilty with regard to punitive damages but rather compensatory damages. The Judge says what was done was wrong, was wrong for the State of Nebraska to, even though it might have been unknown to the supervisors, to overtly or covertly support such actions. In a sense, we're all guilty and, as such, we perhaps all pay. I'm sure this will follow these people as far as their individual lives as long as they are employees if, in fact, they are still employees, and I don't know, that's not my issue. My issue is whether this body applies the laws of the State of Nebraska that are on the books in the way that they should be used. I would encourage the adoption of this amendment, and I'm sorry that we had to come to this place in history to do it. Thank you.

PRESIDENT: Thank you. The question is the adoption of the Coordsen amendment. All those in favor vote aye, opposed nay. Senator Coordsen, please. Roll call vote has been requested. Mr. Clerk.

CLERK: (Roll call vote read. See page 1896 of the Legislative Journal.) 18 ayes, 21 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The Coordsen amendment fails. Do you have anything else on it, Mr. Clerk?

CLERK: Yes, Mr. President, I do.

PRESIDENT: The call is raised.

CLERK: Mr. President...Senator McFarland, you have the next amendment. I have AM1002 in front of me, Senator.

SENATOR MCFARLAND: I would pass over that.

CLERK: Senator McFarland would move to amend. Senator, I have 1348 in front of me.

SENATOR MCFARLAND: Withdraw that one as well.

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

PRESIDENT: Okay, we're on the advancement of the bill. Any discussion? If not, the question is the advancement of the

April 25, 1989

LB 811, 812, 813

bill. All those in favor say aye. Opposed nay. It is advanced. Move on to LB 812.

CLERK: Mr. President, LB 812, the first item I have are Enrollment and Review amendments.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 812.

PRESIDENT: You've heard the motion. All in favor say aye. All in favor say aye. Opposed nay. They are adopted.

CLERK: Mr. President, Senator Withem would move to amend. Senator, this is your amendment to strike Section 11. (Withem amendment FA187 appears on page 1890 of the Legislative Journal.)

PRESIDENT: Okay, Senator Withem, please.

SENATOR WITHEM: Yeah, I've got to shift gears here. I have two amendments on this bill and was planning on taking the other one first but this is fine, we'll go ahead and take this one. Section 11 of this bill deals with the student...the SSIG program. And, again, there was a lot of confusion, I filed this motion on General File. We discussed...I filed it with the full intent and full inclination to withdraw the amendment, just have a little debate and a little discussion as to what this whole thing is all about with the student assistance program. I did indicate I would bring the amendment back on Select File, at which time I would ask for a serious yes or no amendment. The debate is a lengthy one. It is going to be fought on three different fronts this session, probably four now that I see the main line appropriation bill, LB 813, has similar sort of language in it as this dealing with how the dollars to the student...the SSIG program are distributed. Currently, they are distributed to specific campuses based on a formula that defines need but does not take into account the cost of attending the institution. Such a formula tends to favor public institution students over private institution students. Historically, this has been a sore point. Most states, it's my understanding, I would say all states and maybe I'm wrong but I would have to be proven wrong before I would not believe that all other states distribute their dollars with a factor in their formula that

April 27, 1989

LB 325, 586A, 588, 611A, 683, 683A, 811
812

LB 325, LB 586A, LB 611A, LB 683, LB 683A, LB 811, LB 812 all reported correctly engrossed. That's all that I have, Mr. President. (See pages 1978-79 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Pleased to announce that Senator Dennis Byars has some guests in the north balcony from Diller High School. Would you people please stand and be recognized? Thank you for being with us this afternoon. Also some special guests under the north balcony, from the North Platte area, and guests of Senator Bernard-Stevens, we have some champions and runners up from an auto mechanics class and their teachers, from North Platte High School. They've just won the Plymouth AAA Troubleshooting Contest. Would you four students and your two teachers please stand and be recognized. Thank you, we're very pleased to have you with us and congratulations to all of you. Let the record also indicate that Senator Moore had 27 third and fourth graders from Staplehurst and Ulysses in the north balcony. They have just left the Chamber. Mr. Clerk, to the first bill on General File. LB 588.

CLERK: Mr. President, 588 was a bill introduced by Senator Chambers. (Title read.) The bill was introduced on January 18, referred to the Government Committee. The bill was discussed, Mr. President, on March 29. It was discussed again on April 10. At that time the committee amendments were defeated. There was then a motion offered by Senator Conway to indefinitely postpone the bill. Senator Chambers agreed to lay the bill over, Mr. President. That motion is currently pending.

SPEAKER BARRETT: Senator Conway.

SENATOR CONWAY: Is Senator Chambers in the building?

SPEAKER BARRETT: I'm sorry.

SENATOR CONWAY: Is Senator Chambers in the building?

SPEAKER BARRETT: We are not certain.

SENATOR CONWAY: Does he have someone designated to represent him on this bill, or will we just pass it over?

SPEAKER BARRETT: The Chair recognizes Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature,

May 4, 1989

LB 325, 811, 812

CLERK: (Read record vote. See page 2095 of the Legislative Journal.) 45 ayes, 0 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 325 passes. I would like to introduce some guests in the north balcony of Senator Warner. We have 50 fourth grade students from Norris at Firth with their teachers. Would you folks please stand and be welcomed by the Legislature. Thank you for visiting us today. Mr. Clerk, LB 811 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 811 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 811 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote. See page 2096 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 811 passes with the emergency clause attached. Mr. Clerk, LB 812 with the emergency clause attached.

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Hall would move to return LB 812 to Select File for specific amendment, that being to strike Section 8 as found on page 6 and 7 of the bill.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President and members. This is the bill, as you know, the deficit appropriations bill that deals with the issue around specifically in Section 8 that the amendment would strike on the Pharmacy College at the University of Nebraska Medical Center. We had discussion and debate on the issue both at the first and second stages of debate and I had offered an amendment at that time that would have appropriated money for an independent study, would have set aside the funding so that the money would have been appropriated but not until the Legislature had the opportunity to get an independent study. Studies to date have, as I said earlier, in my opinion been studies that one could call incestuous in that they were done very often by folks who had an interest in the facility or

solid decision, a solid, good public policy decision that is going to make sense. Obviously, we would like both parents to be notified in an ideal world. And I suggest to you that in most cases, if you have a one parent requirement, if that minor girl is going to make the decision to notify one parent, she'll notify both of them, that's her desire. But if it's...if the requirement of notifying two is going to dissuade her from notifying at all, that encourages abortion. The two parent requirement in 20...out of the Minnesota experience, in 20 to 25 percent of the cases encourages abortion, encourages judicial bypass, which is an easy road to abortion. I really wish you'd listen to this and think through this on your own without necessarily following what the lobbyists may be telling you to do on this, because this really makes sense. So I would encourage you, please, to adopt this amendment at this time. This is the only amendment I'm going to offer on General File. On Select File, consistent with the concerns that Judge Urbom had with confidentiality and the concerns that the court had with Hodgson, with the 48-hour rule, I believe it should be 24 and not 48, but I'm not going to argue that today, but I do think that the one parent makes good, solid sense. It answers some of the concerns that I believe Senator Lynch and maybe some of the others, Senator Hannibal and others may have raised in their very, very well thought out comments on this bill. So let's relieve some of the pressure here and let's pass an amendment that is good public policy, because it is good public policy and makes good sense. Thank you.

PRESIDENT: Thank you, Senator Ashford. We'll try to have better attention for you when you close. While the Legislature is in session and capable of transacting business, I propose to sign and do sign engrossed LB 330, LB 325, and LB 811. I'd like to introduce a special group up in the north balcony today. Senator Moore has a group of 52 fourth grade students from Willard Elementary School in York, Nebraska. They are accompanied by their teachers. Would you folks please stand and be recognized, students and teachers. I want to draw your attention to Senator Moore's necktie, ladies and gentlemen, if you'll turn around and show us. As I understand it, when the students in this school read a book they get a, is that a flag, Senator Moore, and all the...you'll notice the great number of flags. So apparently you're learning to read, which is an important thing for all of us. We're happy that Senator Moore gracefully wears the tie. Thank you for visiting us today. Senator Haberman, please, on the Ashford amendment. Senator

May 4, 1989

LB 132, 323, 325, 330, 769, 811
LR 116-121

Senator Ashford amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please. Record vote has been requested.

CLERK: (Read record vote. See pages 2099-2100 of the Legislative Journal.) 32 ayes, 4 nays, Mr. President, on the adoption of the amendment.

PRESIDENT: The Ashford amendment is adopted. Do you have anything else on it, Mr. Clerk?

CLERK: I do, Mr. President. May I read some items into the record?

PRESIDENT: Yes, you may.

CLERK: Mr. President, the Enrolling Clerk has presented to the Governor bills read on Final Reading this afternoon. (Re: LB 330, LB 325, LB 811.)

A study resolution by Senator Withem. (Read brief explanation of LR 116.) It will be referred to the Reference Committee. LR 117 by Senator Johnson. (Read brief explanation.) LR 118 by Senator Johnson. (Read brief explanation.) LR 119 by Senator Rod Johnson. (Read brief explanation.) LR 120 by Senator Johnson. (Read brief explanation.) LR 121 by Senator Johnson. (Read brief explanation. See pages 2100-04 of the Legislative Journal.)

Senator Schmit has amendments to be printed to LB 132; Senator Landis to LB 323. (See page 2104 of the Legislative Journal.)

Mr. President, the next amendment I have to LB 769 is an amendment from Senator Lindsay. Senator, I understand you wish to withdraw this amendment, however, and substitute another amendment, is that correct?

SENATOR LINDSAY: That is correct.

CLERK: And, Senator, the amendment you would like to substitute is the one that reads on page 5, lines 22 and 23, strike the original language and insert the following, a new Section 9, is that right? (See Lindsay amendment found on pages 2104-05 of the Legislative Journal.)

May 9, 1989

LB 325, 330, 588, 811, 814

That is all that I have, Mr. President. (See pages 2207-17 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Senator Landis.

SENATOR LANDIS: I move we recess until one forty-five, Mr. Speaker.

SPEAKER BARRETT: A motion to adjourn, or recess, I am sorry, until one forty-five. All in favor say aye. Opposed no. Carried. We are recessed until one forty-five.

RECESS

PRESIDENT NICHOL PRESIDING

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

PRESIDENT: Do you have items for the record, Mr. Clerk?

CLERK: Mr. President, I have a communication from the Governor addressed to the Clerk. (Read communication regarding LB 330, LB 325, and LB 811 as found on page 2218 of the Legislative Journal.)

Mr. President, I have amendments to be printed to LB 588 by Senators Withem and Hartnett. That's all that I have, Mr. President. (See page 2218 of the Journal.)

PRESIDENT: All right, we'll turn over the page to number 11 and start on LB 814.

CLERK: Mr. President, the Legislature considered 814 yesterday. It's the capital construction bill. Mr. President, the... Senators Hartnett and Korshoj had offered an amendment to the bill, Mr. President. That amendment was subsequently divided. When the Legislature left it, I believe, they had acted on several of the amendments. I believe the next one, Mr. President, is an amendment to strike Section 29 from the bill. Senator, is that consistent with where you are?

SENATOR HARTNETT: That's great, yeah, yeah.