

Commission for Postsecondary Education, again, filed pursuant to statute; a report from the Nebraska Games and Parks Commission filed pursuant to statute; the annual report of the Division of Telecommunications; a communication from a series of Natural Resources Districts, Mr. President, with respect to payment of attorneys fees incurred during this past year. (See pages 88-89 of the Legislative Journal.)

Mr. President, I have a series of appointment letters from the Governor, appointments to the Board of Health, to the Rural Health Manpower Commission, the Foster Care Review Board, the Job Training Council, the Oil and Gas Conservation Commission. Those will all be referred to Reference for referral to the appropriate Standing Committee, Mr. President. (See pages 89-97 of the Legislative Journal.)

Finally, I have received a communication with respect to the siting for the low-level radio active waste disposal facility. That communication was received from US Ecology, Mr. President. (See page 88 of the Legislative Journal.) All of those reports will be on file in my office subject to review by members upon their request. That is all that I have, Mr. President.

PRESIDENT: Thank you. (Gavel.) Ladies and gentlemen, we're ready to begin the introduction of bills and some of you I understand would like to hear what the bills are about, so while I don't wish to spoil your fun and visitation with each other, kindly hold it down so that those that wish to listen to the introduction of the bills may do so. We anticipate that this will probably go on until about noon and, of course, free to do whatever you would like to do. Thank you. Mr. Clerk, the introduction of bills.

CLERK: Mr. President, new bills: (Read by title for the first time, LBs 818-878. See pages 97-109 of the Legislative Journal.)

I have amendments to be printed from Senator Rod Johnson to LB 163, LB 39, LB 37. (See pages 110-14 of the Legislative Journal.)

Mr. President, new bills. (Read by title for the first time, LBs 879-922. See pages 114-23 of the Legislative Journal.)

Mr. President, I have new resolutions: (Read brief description

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LB 881-957, 997-1010
LR 229

If I may, Mr. President, I have a Reference Report referring LBs 881-957, and LR 229. (See pages 175-77 of the Legislative Journal.) And, Mr. President, new bills. (Read LBs 997-1010 by title for the first time. See pages 177-80 of the Legislative Journal.) Mr. President, that's all that I have at this time.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Proceeding to the next item on...from the Rules Committee. Chairman Lynch.

SENATOR LYNCH: Mr. President, members, the next one is number nine identified on your list. It specifies that a motion to suspend the rules is not divisible. The reason for this, without reading it all but putting it hopefully in laymen's terms so we can understand it, is that when a motion to suspend the rules is attempted it's intended to accomplish only one thing. You don't suspend the rules to accomplish three, four, five or six different things. But, if the amendment that would accomplish one thing would, for example, suspend Rule 1, Section 2, Rule 2, Section 3, Rule 3, Section 4, because it's necessary to do that to identify those sections of the rules that serve that single purpose, you cannot divide the question and take any one of those three rule changes independently. I think, Mr. President and members, that explains the purpose and intent of this rule change and would suggest that we support it.

SPEAKER BARRETT: Thank you, Senator Lynch. Discussion on the proposal...proposed change number nine? Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, let me tell you what the real purpose of this rule change is. There have been attempts at various times to suspend the rules so that there can be no debate or discussion or amendment on bills, and I have indicated that I would divide that question. So the purpose of the rule is to prevent that from happening. So however many things are put into a rule suspension will have to be taken as a package. In some instances you may have a situation where people will think and believe that you should be able to suspend the rules for the purpose of taking a vote without any additional debate, amendment and so forth. And maybe that is all right. Naturally, I'm opposed to it because

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LB 662, 830, 845, 895, 897, 905, 953
1011-1013

the house is under call. Senator Dennis Byars, the house is under call. The house is under call, unauthorized personnel, please leave the floor. Senator Byars is on his way. We'll proceed with the vote on the adoption of proposal number ten. A roll call has been requested. Proceed with the vote, Mr. Clerk.

ASSISTANT CLERK: (Roll call vote taken. See pages 181-82 of the Legislative Journal.) The vote is 18 ayes, 21 nays on amendment number ten.

SPEAKER BARRETT: Motion fails. The call is raised. Any messages on the President's desk, Mr. Clerk?

ASSISTANT CLERK: Yes, Mr. President, three new bills. (Read LBs 1011-1013 by title for the first time. See pages 182-83 of the Legislative Journal.)

I have proposed amendments to the rules from Senators Lamb, Schmit and Withem. And I have consents to add names to LB 895 from Senator Bernard-Stevens; LB 897 by Bernard-Stevens; LB 953 from Bernard-Stevens; LB 662, Bernard-Stevens; LB 845 from Senator Crosby; LB 830 from Senator Schellpeper; and LB 905 from Bernard-Stevens. That's all I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Lynch, for what purpose do you rise?

SENATOR LYNCH: Mr. President, members, I move that we adjourn until nine o'clock in the morning on January 8th.

SPEAKER BARRETT: You've heard the motion to adjourn until nine o'clock, Monday morning. All in favor say aye. Opposed no. Ayes have it, motion carried, we are adjourned.

Proofed by:


Marilyn Zank

February 15, 1990

LB 42, 50, 143, 159, 240, 240A, 259A
350, 350A, 465, 692, 742, 844, 866
905, 919, 1080A, 1082, 1141, 1183
LR 8, 239, 256

CLERK: (Roll call vote taken. See page 830 of the Legislative Journal.) 2 ayes, 28 nays, Mr. President.

PRESIDENT: The motion fails. Anything for the good of the cause, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, Senator Kristensen has amendments to be printed to LB 159; Senator Withem to LB 259A. (See pages 830-32 of the Legislative Journal.)

A new resolution, LR 256 by Senators Wesely, Withem, Bernard-Stevens. (Read brief explanation. See pages 832-33 of the Legislative Journal.) That will be laid over.

An announcement from the Speaker regarding afternoon sessions next Tuesday, Mr. President; a reminder of the membership. Confirmation report from the Nebraska Retirement Systems Committee. That is offered by Senator Haberman.

Bills have been presented to the Governor, Mr. President, as of 10:43 a.m., those read on Final Reading this morning. (Re: LB 50, LB 143, LB 240, LB 240A, LB 465, LB 350, LB 350A, LB 692, LB 742.) LR 8 presented directly to the Secretary of State.

A new A bill, LB 1080A by Senator Schellpeper. (Read for the first time by title. See page 834 of the Legislative Journal.)

Mr. President, Revenue Committee reports LB 844 to General File, LB 919 to General File, LB 1183 General File, and LB 1082 as indefinitely postponed. Those all signed by Senator Hall.

Mr. President, priority bill designations, Senator Byars has chosen LB 905; and Senator Lamb LB 866.

Mr. President, Education Committee, whose Chair is Senator Withem, reports LB 1141 to General File with committee amendments attached, signed by Senator Withem; and Education Committee reports LR 239CA to General File with committee amendments attached. (See pages 834-36 of the Legislative Journal.)

Finally, Mr. President, Senator Rogers would like to add his name to LB 866; and Senators Weihsing, Goodrich, and Coordsen to

March 2, 1990

LB 96, 98, 118, 304, 307, 317, 428
430, 473, 518, 536, 675, 677, 735
770, 796, 797, 896, 898, 899, 905
920, 998, 999, 1018, 1019, 1031, 1125
1136, 1170, 1198, 1207, 1211, 1220, 1222

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

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

PRESIDENT: LB 1222 is advanced. Mr. Clerk, anything for the record?

ASSISTANT CLERK: Mr. President, I have a series of items. Your Committee on Appropriations, whose Chairperson is Senator Warner, to whom was referred LB 1031, reports the bill to the full Legislature with committee amendments; LB 1125, to General File; LB 920, to General File; LB 1170, to General File with amendments; LB 536, General File with amendments; LB 1220, to General File; LB 896, to General File; LB 898, to General File; LB 899, to General File; LB 96, indefinitely postponed; LB 98, indefinitely postponed; LB 118, indefinitely postponed; LB 304, indefinitely postponed; LB 307, indefinitely postponed; LB 317, indefinitely postponed; LB 428, indefinitely postponed; LB 430, indefinitely postponed; LB 473, LB 518, LB 675, LB 677, LB 735, LB 770, LB 796, LB 797, LB 998, LB 999, LB 1198, LB 1207, all indefinitely postponed; and LB 1211 and LB 905, advanced to General File with committee amendments. (See pages 1131-37 of the Legislative Journal.)

Senator Landis would ask to print amendments to LB 1136 in the Journal. (See pages 1137-38 of the Legislative Journal.) Senator Warner has asked to announce an Executive Session of the Appropriations Committee in Room 1003, upon adjournment today. And I have a request from Senator Ashford to add his name to LB 1018 and LB 1019.

PRESIDENT: No objections, so ordered.

ASSISTANT CLERK: Then, Mr. President, I have a priority motion. Senator Hannibal would move that we adjourn until March 5, 1990, at 9:00 a.m.

SPEAKER BARRETT: Withdrawn.

CLERK: The next amendment, Mr. President, again, by Senator Warner. I have a note on this one as well that he wishes to withdraw.

SPEAKER BARRETT: Withdrawn.

CLERK: A third amendment from Senator Warner, again a note that he wishes to withdraw, Mr. President.

SPEAKER BARRETT: Withdrawn.

CLERK: Mr. President, the next amendment I have is by Senator Warner.

SPEAKER BARRETT: Pass over it, Mr. Clerk, momentarily. Go on to the next amendment, please.

CLERK: Mr. President, Senator Dennis Byars would move to amend the bill. Senator Byars amendment is on page 1198 of the Journal.

SPEAKER BARRETT: The Chair recognizes Senator Byars.

SENATOR BYARS: Yes, Mr. Speaker. As all of you know, Senator Lowell Johnson has introduced LB 905, which I have made as my priority bill. This bill, basically, is a bill to reimburse the local subdivisions for funds they lost because of the Enron decision. And what I am asking in this amendment, very simply, is to make sure that these counties that will be receiving reimbursements, once LB 905 is passed and placed into law, that they will not have to put these funds back in their budget, and they will be excluded from the lid provisions. It is...it's only really common sense and just, fair and reasonable to do so, because these funds will have already been budgeted once, and this would, in effect, make it a double penalty if we would leave these within the lid provision. It's really quite simple, and I would move the amendment.

SPEAKER BARRETT: Discussion on the amendment offered by Senator Byars. Senator Moore, would you care to discuss it? Senator Withem.

specifying who those somebody's are so that each person is left with the belief that he or she is going to have a tax burden lifted,...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...and somebody else will pay. Time?

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: You didn't give me my minute warning. Did you give me my minute warning?

SPEAKER BARRETT: The Chair announced time, this is the third time. I don't believe you heard me the previous two times.

SENATOR CHAMBERS: Oh, thank you.

SPEAKER BARRETT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, I'm always curious about these bills we introduce, I believe it's LB 905, which wants to hold an entity or a subdivision of government harmless from the actions of this Legislature. If, in fact, a subdivision has been receiving funds from a tax which has been declared not legal, then why should we extend the benefits of that illegal action one additional year? Why should, in fact, this exemption be allowed from the lid, since, in fact, they shouldn't have been allowed...should not have been income there anyway. I'm not going to talk a great deal about it at this time. I just wanted to say that so many times on this floor we talk about these type of bills as to what they are going to do for education, what they're going to do for the children. Ladies and gentlemen, all it does is boil down to a tug of war, a tug of war between various entities to determine who shall pay the tax. And you can believe whomever you want to believe. We know...it's kind of ironic that when we discussed this bill previously on this floor I said it was going to be the largest single tax increase ever enacted by this Legislature. That has now since become the rallying cry for a number of groups and individuals who have chosen to oppose the bill. I did not intend, at the time that I made the statement, that it would be that way, but that's the way it turned out. But the basic inequities in this bill are not going to be corrected, no matter what you do with a dozen or more amendments. I have some

SENATOR L. JOHNSON: Thank you, Mr. President and members of the Legislature. This amendment, offered this morning and printed in the Journal, as indicated, on page 1569, is essentially LB 905, which was amended by the Appropriations Committee and reported to General File previously. LB 905, if you've checked it, is a bill that was supported and co-signed by over 20 senators in the Chamber. With adoption of this amendment, LB 920 would provide a method of reimbursement to the political subdivisions for refunds of 1988 personal property taxes resulting from the Nebraska Supreme Court's ruling in Northern Natural Gas v. State Board of Equalization and the Trailblazer Pipeline Company v. State Board of Equalization, more commonly referred to as the Enron or pipeline cases of 1989. LB 905, as introduced, would have reimbursed each subdivision in full. Senator Scofield also introduced a reimbursement bill, LB 897, which provided for a reimbursement formula very similar to that found in LB 1090 and enacted in 1988, in the wake of the railroad lawsuits. This amendment is somewhat, therefore, a hybrid form of the two reimbursement bills introduced by myself and Senator Scofield. Sections 3 and 4, which are added to LB 920, provide that if the amount appropriated is insufficient to cover all reimbursements in full, the funds shall be distributed first to those major subdivisions, such as counties, tech colleges, NRDs, schools, cities and so forth, whose refunds are greater than 1 percent of the revenues collected in 1988. Section 4 also reimburses the miscellaneous subdivisions, such as fire districts and other small subdivisions, in full. The remaining 1 percent then is reimbursed on a pro-rata basis, depending on the funds available. This formula makes the pipeline reimbursement consistent with what we have done in the past with the railroad cases in LB 1091. The fiscal note for LB 905 showed that it would cost \$4.3 million to reimburse each subdivision in full. This amendment divides the appropriation into three separate sections, found in 5, 6, and 7. And Section 5 appropriates \$2.6 million, which would cover the 1 percent reimbursements of the major subdivisions, and the full reimbursement of the miscellaneous subdivisions. Sections 6 and 7 would then reimburse the remaining amount in full. I have a printout on my desk showing each subdivision in the state that is affected by the Enron decision and the amount that they are required to refund to the pipeline companies. The list is further broken down to show those subdivisions whose refunds are greater than 1 percent of their budget. I'll be handing out a map of Nebraska showing those counties affected and the amounts that were estimated in September, at least, last year, of the

amounts involved. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the amendment offered by Senators Johnson and Byars? Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, Senator Johnson, which bill was this originally, LB 905 you say?

SENATOR L. JOHNSON: This, Senator Schmit, was 905. Yes, sir.

SENATOR SCHMIT: Mr. President and members, I know that some time ago we did reimburse the subdivisions for loss of railroad revenue as a result of the court decision. This, as Senator Johnson has indicated, is a follow-up to that kind of activity. I must object to this reimbursement. If, in fact, those taxes had been collected illegally all these years, then, in fact, those subdivisions have benefited from the collection of an illegal tax for a period of years. And it is hardly good business policy for this Legislature to continue that for another year. Also, I do not believe we can afford it, and I think it is a very, very serious mistake. It may also, and I apologize again, it's an oversight on my part. I intended to ask for an Attorney General's Opinion to challenge the constitutionality of LB 905. I do not believe that we can do that, which it is intended to do here, constitutionally. I think that the state is naturally a generous grandfather, but it would appear to me, as I have said before numerous times on this floor, that the subdivisions that have been involved here they understood, to a certain extent, the issue that was involved. If they did not, they ought to have. And I believe it is inconsistent that we continually try to reimburse subdivisions from state coffers. We are...what we are doing here is to take state tax dollars, we're taking sales and income tax dollars, and we are replacing, to the local subdivisions, property tax dollars. I don't think you can do that. I think that is unconstitutional, and I believe it's a mistake. I believe it was a mistake in the first place to do it. I believe it was unconstitutional in the second place. I believe it is unfair to the other subdivisions of government finally. I regret the situation which has caused it very much, but that is the way the system works. And to argue that we're going to hold them harmless for a year, we've heard that argument on the floor here too frequently, and it rings a little bit hollow with me at this time. I will ask for an Attorney General's Opinion on this, regardless. And I ask you not to vote for it. I hate to do

that, Senator Johnson, because I know you're sincere. I know that others have indicated their willingness to do this, and it's a very generous gesture on your part. But I do not believe we can do it legally. I'm going to check it out. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Byars, followed by Senator Scofield.

SENATOR BYARS: Thank you, Mr. Speaker, members of the body. I'm not sure, Senator Schmit, not having been here when we debated fully the reimbursements that this body granted to the subdivisions who had lost dollars due to the court decision affecting the railroads, but I would presume at that time that if there had been a question of constitutionality it would have been brought at that time. This is the first time I've heard any question in relationship to this matter at all, and I certainly would be anxious to know as the district that I represent is very, very seriously impacted by these reimbursement dollars. I think, because most of the subdivisions of government in the state, are receiving basic equal treatment under this reimbursement bill, that that would not be a problem. But I think it's imperative that these subdivisions who really are suffering hardships, not because of anything that they have done on their own behalf, but because of tax decisions that were initiated by this Legislature and that were ruled...that were overturned by the courts of the State of Nebraska. And I feel that we have a tendency to forget the people that are affected, the people that are truly those subdivisions. They aren't just an entity, a county, a city, an NRD, a technical community college, but they are people who, because of these extreme hardships that are imposed on them to make these refunds, cost them in property taxes. And I think that any way the State of Nebraska can relieve that, I think we definitely need to do so. It's absolutely imperative that the subdivisions receive this help, because of that Senator Johnson and myself have asked that you allow us to place what was in effect LB 905 into LB 920 as an amendment, and we ask you to support the amendment and move the bill. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Scofield.

SENATOR SCOFIELD: Thank you, Mr. President, members. I rise to support the Johnson amendment. He has adopted essentially the same language that we used for the situation that occurred with

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, members of the body. Very briefly, LB 1091 was a bill that I was very much involved in with many members of the body, particularly with the help of Senator Scofield and the Appropriations Committee. And we did set a good precedent two years ago. And I don't really have too, and in fact I don't have any problems supporting such a bill, even if my county, which it's easier, Senator Carson, Senator Rogers, I understand for me to stand up and support it because my county is going to be one that benefits, and that does make it a lot easier, easier to do. But the way I've looked at whether it be the railroad lawsuit or the pipeline case, what have you, it's money that was originally there that, through no fault of the counties, is going to have to be...is simply not going to be there. And this is one of those that the Legislature can say, gee, we know you didn't plan on this, it's one of those things that just happened, it was a legal matter, and we can help you for this one time, but don't come back and ask us again, because you're going to have to find how to deal with those losses in years to come, assuming that things do not develop with some of the things that we did in the special session. Hopefully that special session will prove to be fruitful. So I hope that the body does support the amendment offered by Senator Johnson is a good amendment, it's a well thought out amendment in terms that it does give the Governor a choice. The Governor, if we pass the amendment and later LB 920, can simply go on and say, yes, I'd like to give full reimbursement, or she can have the choice of saying we're just going to hit those counties that have been impacted by it 1 percent or more, which would mean the day...everybody would have to eat some of the losses, but we'd cover the major losses that would be very, very harmful to certain counties. So I think it's a well thought out amendment. I think it's a good bill, LB 905, if I remember correctly, and I would urge the body to support that. I also would like to throw out another comment that I think most senators here, if there would be something in our county that we, or anywhere in our district, that we went through and we were counting on something budgetary wise, but something happened legally, whether it was in the agriculture industry, whether it was in the business industry, and all of a sudden, through no fault of our own districts, they lost that money, I think any of us would be in here saying that we would like to help out, though. So, there are certain counties that obviously will not be helped by this. But I suspect there will be some other time in the future where they will be asking for