

November 8, 1989

LB 1-9

LR 1-3

escort the Honorable Kay A. Orr from the Chamber.

Ready for the introduction of bills.

CLERK: Mr. President, new bills: (Read LBs 1-7 by title for the first time. See pages 59-60 of the Legislative Journal.)

Mr. President, in addition to those new bills I have new resolutions. (Read brief explanation of LRs 1-3. See pages 60-62 of the Legislative Journal.) That, too, will be laid over, Mr. President. That is all that I have at this time, Mr. President.

PRESIDENT: If you will stand at ease for just a few moments, we have a couple more bills coming.

EASE

CLERK: Mr. President, further introductions: (Read LBs 8-9 by title for the first time. See page 63 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Senator Labedz, did you have any words of wisdom for the body, please?

SENATOR LABEDZ: Thank you, Mr. President. Yes, I would like to request that the...

PRESIDENT: (Gavel.) Please have your attention to listen to Senator Labedz a moment, please.

SENATOR LABEDZ: Since it is almost noon I would suggest that the Exec Board meet at one-thirty as part of the Referencing Committee to reference the bills that were introduced today, one-thirty in Room 1517.

PRESIDENT: Thank you, Senator Labedz. Senator Barrett, do you wish to adjourn us until tomorrow and tell us at what time, please?

SPEAKER BARRETT: Thank you. Mr. President and members, I move that the body adjourn until nine o'clock tomorrow morning. Thank you.

PRESIDENT: You have heard the motion to adjourn until tomorrow

PRESIDENT NICHOL PRESIDING

PRESIDENT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our chaplain Senator John Weihsing. Senator Weihsing, would you please rise.

SENATOR WEIHING: (Prayer offered.)

PRESIDENT: Senator Weihsing, thank you for your thoughtful words this morning. We appreciate it. Roll call, please.

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

PRESIDENT: Thank you. Do you have any corrections to the Journal today, Mr. Clerk?

CLERK: No corrections, Mr. President.

PRESIDENT: All right, we'll move on to the legislative resolutions then. Mr. Clerk, LR 1.

CLERK: Mr. President, LR 1 was a resolution that was offered by Senator McFarland yesterday. It's found on page 60 of the Legislative Journal and it reads as follows. (Read LR 1.)

PRESIDENT: Excuse me. Senator McFarland, before you start (gavel), could we please have it quiet enough so that we can hear the speaker, please. Senator McFarland, please.

SENATOR MFARLAND: Thank you, Mr. President. I did introduce this resolution and I think it is printed in the Journal for you to read if you would like. You might take a look at it. We are facing a personal property tax crisis in Nebraska and if you will note in the resolution, we have a potential loss of \$222 million in tax revenue which threatens the fiscal stability and jeopardizes the stability of our local governments. The recent court decision in the Northern Natural Gas or Enron case has caused a lot of confusion. There are a lot of lawsuits currently pending. Our tax system in that area is in chaos and it seems to me that if you look at the proposals that are presently before the Legislature, they do not adequately address the personal property tax problem and they're not going to be a solution to that problem and so the resolution, specifically, calls for us, as a legislative body, the Nebraska Legislature,

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to take the leadership in trying to resolve this tax crisis. And it seems to me the only way that we can do that is if we can consider all of the alternatives and solutions available and that we consider revision of the personal property tax system with the possibility of making adjustments to the entire state tax system. Yesterday it was interesting to hear Governor Orr's comments because she said that this is such an important issue that we should set aside the political rhetoric and work for the greater good of Nebraska and I could not agree more with that statement. I even think Senator Johnson, in his prayer, that opened up the session yesterday was even more explicit. He said, may we this day and every day with common effort and integrity of purpose seek to build our human community where the welfare of all is prized above narrow ambition. And I would agree, we need to promote the welfare of all the citizens of our state. We need to prize...to put that as the prize and the goal that we seek to attain. I would ask you just to disregard the personalities and the political parties involved in this whole issue and just ask you to consider what is best for the people of our state. It seems to me we have two alternatives available to us in this special session. The first alternative is to go ahead and follow the narrow dictates of the special session that has been called by the Governor. We can accept that limited special session. I believe that proposes a limited solution, at best. The newspapers have been quoted as saying it's a...it will preserve 30 million or maybe \$42 million in tax revenue. To me, that seems like saying we're going to try and have a \$30 million or \$42 million solution to a \$222 million problem. It's acknowledged that it's only going to be a temporary solution. We have a discriminatory tax system with regard to the personal property tax area in our state taxes. Seventy-five percent, approximately, of the personal property in our state is exempted, whereas only 25 percent is being taxed, and the courts are telling us that that is unconstitutional under the uniformity clause of our state Constitution and the equal protection clause of our federal Constitution. It seems to me that we have these bills that have been proposed, that have been brought in, and they're going to be subject to court challenge. For example, Senator Warner has brought in LB 7 which would reclassify railroad property and exempt it. And we got an Attorney General's Opinion and I don't know if you have taken the opportunity to read through all of that extensive opinion, it's in the Journal also. But it seems to me that that opinion shows the uncertainty of whether this type of legislation would even be constitutional. In the Journal, on page 50, I note it

says, we cannot state with certainty that our court would uphold the reasonableness of a classification of this nature, nor can we be certain that this court continues to adhere to the principles enunciated in the 1974 Stahmer case. If we look at the history of the whole tax area in Nebraska in the past 10, 15, 20 years, time and time again this Legislature has made classifications that have been ruled to be unconstitutional by the Supreme Court. And I can remember recently the North Platte case where the commercial property was being valued higher than the agricultural property and the court came in and said, you can't do that, you have got to lower the value of the commercial property to be consistent with the value of the agricultural property. We just had the Enron case in which they are saying, if you are going to exempt that much of personal property tax, that much of the personal property from taxation, then it's unfair to tax the railroads and the car line companies and the pipeline companies when they only have approximately 25 percent of the personal property in the state. That's the alternative we're proceeding with. It's going to be a limited solution, a temporary solution, at best, and it may not be...may likely not survive a court challenge in the future. The other alternative and solution that I am proposing is that we meet in a special session, concurrently with this one perhaps, or just succeeding this one and we consider all our options and all of the various solutions to resolve the crisis. Senator Warner's proposal is contained in the Governor's proclamation. It is worthy of consideration. It is certainly one way of addressing the problem but it doesn't seem to me that that's the only way. Why should Senator Warner's proposal be the only one that's in the proclamation under the call of the special session? I have heard talk from Senator Hall, the Chairman of our Revenue Committee, for example, that talks about eliminating the personal property taxes from our state and perhaps making up the difference by expanding the sales tax. I have heard...I have read things in the paper where Senator Landis, who is on the Revenue Committee, has talked about eliminating personal property tax and perhaps adjusting the corporate taxes to make up for the difference. Senator Elmer has sent us letters talking about reclassifying real property as depreciable and nondepreciable and setting up a tax system that way to resolve the problem. Senator Schmit has even proposed that we eliminate personal property taxes and institute a lottery to make up the difference. All of those proposals are worthy of consideration, in my view. There is no reason why we cannot meet and debate all of those type of proposals as well as others. In that way,

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we could, in effect, try to come up with a complete solution rather than the limited one that is proposed to us. We could come up with maybe a permanent solution instead of the temporary one that is being offered and we could come up with a solution perhaps that would be not subject to court challenge or it would withstand a court challenge, unlike the ones that are being proposed, because I don't believe that they are going to withstand any court challenge. And even if we did not reach a solution in a special session that would be called like this, we would still consider all the possible proposals. We would be meeting here as a group and focusing specifically on the tax issue and not all the other issues that we will get into in the 1990 session, and by this focused attention we will have prepared for the 1990 session by considering the real problems in the personal property tax system and our tax system in general. The Legislature, in my view, is supposed to be one of the co-equal three branches of government. We are supposed to be a deliberative body. We are supposed to come up with solutions. We are supposed to meet together and negotiate and compromise and advise one another and discuss. Senator Weihing expressed it very good today in his prayer. He said, we are supposed to be a body that exhibits collective, creative thought and that's exactly what I believe. That's exactly what I think we should do. But we can't exhibit some kind of collective and creative thought when we are under the restrictions of the special session that has been called. Our hands are tied. We cannot consider the other alternatives and solutions that need to be considered. There seems to be a leadership vacuum in this...in state government and it has existed for the past several years. It seems to me the Nebraska Legislature can exhibit some kind of leadership on this issue. And it seems to me that it is our duty and obligation to fill this leadership vacuum...

PRESIDENT: One minute.

SENATOR MCFARLAND: ...in state government and try to propose solutions and come up with a resolution of this crisis. As most of you know, I have circulated a petition letter. We have obtained the signatures of a number of senators. We need 33 signatures for that petition letter to be successful so that a special session will be called to expand the session to consider all of the alternatives and solutions. I know that a lot of you are undecided and uncertain at this time about whether to take that step. I would ask you to support that

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resolution. We have...support this resolution today and then within the next 10 days you have 10 days to sign the petition letter, to call us into special session so we can consider the broad range of alternatives and options available to us and try to address this problem directly. Don't do it in a limited, temporary way that is probably unconstitutional but do it in a complete and permanent type of a way to try to reach a solution that will withstand some kind of court challenge.

PRESIDENT: Time.

SENATOR McFARLAND: So I would urge you to support the resolution.

PRESIDENT: Thank you, Senator McFarland. The members wishing to speak are Senators Chambers, Lamb and Hefner. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, there will be many opportunities for us to speak during this special session and I'm not sure how many of those opportunities I will take but I have got to say a few things. I think this session is the first step in the Governor's campaign for reelection. That's the only way I can account for the way certain members of this body have behaved. The Governor comes in here and she says, do what I tell you to do without deviation and you are behaving with dignity, responsibility and so forth. To disagree is to engage in political rhetoric. As the boss of this Legislature, with my water carriers in the Legislature in powerful positions, I have scheduled this session. I have told you which days you will meet. I have told you which days you will not meet. I have opened my call to include a bill of one of my party members and that's the way it's going to be. This is hardball that I am playing, but I don't want the Legislature to play hardball. I want the Legislature to be a rubber stamp. I am going to withhold the proclamation itself until the last minute. I will not make copies of the actual legislation available. Then there is a person named Boehm who, to me, is one of the dumbest people I have seen in public office in a long time because of what he has done and how he has blundered and he is one of those determining the course of this Legislature. And people sit around here acting as though they are offended at what I say and I am offended at the way the Legislature is being treated. Yes, I started yesterday and I'm going to continue for the rest of the session. The Legislature has integrity as a

body when it comes to its legislating. Now there is something that occurred to me when I heard the Governor in here yapping yesterday, telling us how we ought to behave, and it made me think of an instance where a man named Job was being tested by his maker. And his wife came to him and said, since these bad things are happening to you, there is a course of conduct I advise you to engage in, and I'm going to read what the Holy Bible, as they call it, said. Job, Chapter 2, starting with the ninth verse. "Then said his wife unto him, dost thou still retain thine integrity? Curse God and die." Verse ten. "But he said unto her, thou speakest as one of the foolish women speaketh." Applies to the Governor. The Legislature, as a collective group, may give up its integrity but I will not give up mine, nor will I give up my right to speak and to speak in condemnation and ridicule of what is being done here today and has been done thus far. I wish young Senator Hall was here so I could chastise him for having the audacity as the Chairman of a committee to meet for a hearing on the day that the Governor said this Legislature should not meet. The Governor told us not to meet Friday and here is that rambunctious, disobedient Chairman of the Revenue Committee, thinking because he is a member of the legislative branch he has the right to exercise that prerogative and disobey the Governor. Look at the powerful members of her party in this body. She puts the thumb on them and they knuckle under. They do what she tells them to do. And here is this young upstart. This session is going to buy time for those who are seeking political office and we know it.

PRESIDENT: One minute, please.

SENATOR CHAMBERS: There is no other reason for this session. The Governor whined all the first part of this year, there is no need for a special session, no need for a special session. Exxon said, you need a special session, you need a special session. She said, no, I don't. He said, yes, you do. She said, no, I don't. He said, yes, you do. The pressure continued to build. And then she said, you know, we need a special session. And there were senators who said, we don't need a special session. Then I read the paper where they go out and give these little speeches in outstate Nebraska, I think we need a special session. Then not only do we get one but without seeing a proclamation I get a schedule telling me what days we have got to come here. It's a joke, but it's an unfunny one. And I shall continue to participate in the session in the way that I deem appropriate for me, but I doubt that I will try to improve

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any of these bills. I want to give the Governor just what she asked for and give the state just what these geniuses in tax law have contrived to impose on this state.

PRESIDENT: Thank you. Senator Lamb, please.

SENATOR LAMB: Well, briefly, Mr. President and members, I rise to oppose the resolution. I think we do have a legitimate agenda before us which we can change, which we can amend, and that I have not heard from Senator McFarland, a plan which has the support of many people that he has not submitted a proposal and, as I understand, his recommendation is merely that the Legislature come into session and talk about the problem. As you well know, we will be back in regular session in two months and there certainly will be an opportunity to do that at that time. If Senator McFarland had a definite proposal that needed to be considered at this time, that would be somewhat different. But I think, under the present circumstances, we should go forward as the Governor has laid out. You don't have to agree with the bills. You can amend the bills and some of us may be doing those things. But it's the logical method to proceed at this point, so I would oppose the resolution.

PRESIDENT: Thank you. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I'm not going to support this resolution. I don't think that now is the time to panic. We need cool heads and I think the three bills that have been brought before us are the way to handle this. And the Revenue Committee will be holding a hearing tomorrow and, Senator Chambers, I am not too excited about meeting on Veterans' Day either because I was supposed to have talked to a veterans' group tomorrow noon and another one tomorrow evening. But when the Revenue Committee was meeting yesterday morning I told Senator Hall that I would like to have the hearings this afternoon instead and he said that the reason he wanted them Friday morning was he was concerned on the length of these hearings and he felt that maybe if we had them this afternoon that it would go into the evening. And so this is why he scheduled them for 9:00 a.m. tomorrow morning. So I am going to try to be there most of the time. But this is a short-term solution, that's true, but at least, at least it will be a start on trying to correct some of the problems that we have with our personal property tax system. Then, I think, after we pass these three bills and go home, well, then we should get ready

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for the next session and try to figure out a long-term solution. And, ladies and gentlemen, this isn't going to be easy. This is a very complex issue. I have been on the Revenue Committee for 13 years and it just seems like every year we have problems. Several years ago we asked the Legislature for \$350,000 to conduct an in depth study of our tax system. Senator Vard Johnson was the Chairman of this select committee that handled this, and still we did not come up with any answers. In fact, finally, Senator Vard Johnson resigned, and I don't believe that Senator Vard Johnson would back away from very many things, but he backed...I felt that he backed away from this. We spent \$350,000 and I understand that in the end it was closer to \$400,000 for the study, but we didn't resolve anything. And so it's going to take a long time to get this resolved, but I think right now we need to pass these three bills that are before us. And so I would just ask you here this morning to vote this resolution down.

PRESIDENT: Thank you. Senator Schimek, please, followed by Senator Withem and Senator Chambers.

SENATOR SCHIMEK: Yes, Mr. Speaker, thank you. I rise in support of Senator McFarland's resolution for perhaps a different reason than others have spoken. But I would like to say that I think Senator McFarland's reasoning was very good and that we do need some kind of a process by which we make these decisions. I am, frankly, quite frustrated because as I have watched the story unfold in the news media, I haven't had any part in it. I'm a legislator, I represent some 30,000 constituents and I have to account back to those some 30,000 constituents when this session is over and when the regular session is over. When do we come together and talk about the problem, yes, talk about the problem, get the experts in that we need to help us find the answers to it and try to arrive at some solutions that will not be political, that will not be short-term but that will be long-lasting? I am, frankly, tired of reading about this special interest group and that special interest group being brought in to solve the problems. We're the ones who need to solve the problem. We're the ones who are the legislators and that is the principal reason why I stand in support of this resolution. Ladies and gentlemen, I think we need a process. We have developed, through the Legislature, a process by which the public can be involved in these policy questions and I think that we have done a service to the public at large in establishing that process. But we don't seem to

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have that process in this legislative body for ourselves. Now one of the criticisms that the political parties have always made about the legislative process is that there is no organization and there is no accountability and there is no process, and I believe that, unless we come up with something different, we are going to continue to make these decisions in a vacuum. I would encourage us, if we do not pass this resolution, to give some long-term thought to this problem because I think it continues to be a problem. Thank you.

PRESIDENT: Thank you. Senator Withem, please.

SENATOR WITHEM: Mr. President and members of the body, I am in support of the McFarland resolution. I did, as he indicated, we are being told by the Secretary of State, I did submit my request to the Secretary of State that I be included among those who are calling officially for a special session and would recognize that that is a change in opinion for me. All summer long when I was asked whether I felt that there should even be a special session, whether the Legislature should call itself into special session, I said no. I said no because I was basically buying the rhetoric that was floating around, no consensus exists on what is the right way to go, what is the right thing to do, so we shouldn't come into special session until that consensus exists. I understand our tax commissioner recently made that same statement that we cannot forge a long-lasting solution because no consensus exists. What is the purpose of political leadership though? It is not to discover a consensus that already exists. You can't go out in the State of Nebraska and discover a consensus. You can't find a parade that has already formed up and started marching down a main street and jump in front of that parade. To form a consensus, particularly on a tough issue like personal property taxes, takes very active leadership by the political leadership of our state. It's tough, it's hard. You have to express some unpopular viewpoints. You have to throw those out. You have to mix it up with people. You have to challenge your own assumptions and you have to build this consensus from the grassroots. It doesn't develop, does not...it is not born full grown, it has to be developed by the leadership in our state. I think, frankly, on this issue we have not had a great deal of leadership coming out of this administration. This is not a new issue. It was two years ago that the train line companies' lawsuits began and we knew we were going to have a problem. It was almost a year ago in the State of the State speech that the Governor indicated we

must form a full solution to all of our property tax problems and I thought it was pledging to lead that process to find those solutions. We're faced here with a special session dealing with very small parts of the puzzle, parts of the puzzle that I, frankly, don't think are going to fit that well once they get into court. I think a year from now we could very easily be back here with our hands up in the air again saying, what do we do now? The Warner proposal has been declared unconstitutional, the definition question has been declared unconstitutional. Gosh, they...the court found out that this refund thing won't work. We could be back in the very same position a year from now. I think it's time that we, as a Legislature, have to take leadership on this issue and begin to forge this coalition. I know it won't be easy. It will be tough. And I know that there are not the magic solutions out there. I have got some ideas, other people have some ideas, but I think it's time we, as a Legislature, stood up and said we're going to have to provide the leadership to bring about a solution to this issue, because if we don't, as a Legislature, my guess is we're not going to see those solutions coming forward. I don't want to spend more time here with you, Senator McFarland. You're a nice guy and all but I don't really want to spend that much more time with you here in Lincoln, or with any of the other 47 of you. But I think we need to. We were elected to solve these problems and if we don't get busy and try to solve them in their totality, it's not going to get done. We have to do it.

PRESIDENT: Thank you. We have eight speakers in line. First is Senator Chambers, followed by Senator Hall and Senator McFarland. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to tell Senator Hefner that, Senator Hefner, this session is going to be easy because we're not talking about trying to get some things done before the train leaves the station. The train has left the station and has reached its destination. Everything we're doing is pro forma just to go through the necessary steps to make a reality of the Governor's reelection campaign. If my colleagues are naive enough to think we're engaging in legislative deliberation, it's going to be difficult for them to comprehend what is going on. But if you look at all of this in the context of a political campaign, then it becomes crystal clear. Campaigns are known to be disorganized. To move along by hitches, bumps and missteps, you don't have to be honest. As a matter of fact, honesty is the

last thing you want because most politicians who have been in an executive position, if they told the truth, would be given the best reasons why not to put them back in office. So, by delaying the grappling with these serious problems that would reveal further incompetency in the Governor's office and among her henchpersons in the Legislature, it allows those people to have a better chance to get into the offices that they are seeking. That's all we're talking about and if anybody stands on this floor and says, by God, I'm not being political, then may their tongue cleave to the roof of their mouth and their right arm lose her cunning, for it is impossible for an individual in a political office, making political decisions, to say that his or her conduct is not political par excellence. That's what everything is that we're doing but some people are more willing to say it in the record, as I am, than others who will say it out in the corridors and to the lobbyists and to others. But the public needs to know that some people in this Legislature see this body, this legislative body as a co-equal branch of this tripartite government. Now, Senator Schimek, I can see up close but at long range with my glasses, Senator Schimek, things begin to blur and that's the way the Governor would like me to look at her proposals, from a long range with my glasses on so they blur and I don't see the truth. Senator Schimek said one of the criticisms made of the Legislature is that there is no organization and no process. Senator Schimek, there are both of those things but the organization that exists does not include the majority of us and the process is one of exclusion. The Governor anoints people and crafts what she does around those people and those people go to the Governor and say, Gov, let's do it this way, and the rest of the sheep will follow. I have said it before and I will say it again, if only for once a flock of sheep could behave like a pride of lions. That's what we should be thinking of, but the Legislature is not going to do it. I know these bills are going to pass and I hope they pass intact because the bumbles and stupidity I have seen in some of that legislation would bring laughter to me if it were not for the fact that the Legislature is going to be held up as the jackasses who did it, then when everything is struck down and the people start condemning the Legislature again, people are going to run for cover and say, I didn't do it, it wasn't me, look whose name is on the bill. But they will come back and say, but it took at least 25 votes to get it through. There are people looking back to the time when certain exemptions were made and pointing the finger of blame. Now we're doing the same thing again only in a worse, far more

politically partisan fashion. But I will not do it. I will vote against it all and I will continue to talk on these things every time I get a chance. This is going to be a heated kitchen and people have chosen to put themselves in that position. They have chosen to be water carriers. They said, I've got strong shoulders and a hard head and I can take any stick that you want to put against my political cranium.

PRESIDENT: One minute.

SENATOR CHAMBERS: Let them take them then and let them justify what they did or defend it for the record if they can or if they choose to. But since they are so arrogant, since they are so contemptuous they know they need not justify anything, just run the bills out there and the sheep will vote for them. Mark my words. You can take that to the bank. I'm going to vote for Senator McFarland's resolution.

PRESIDENT: Thank you. Senator Hall, please, followed by Senator Schmit.

SENATOR HALL: Thank you, Mr. President and members, I rise in support of Senator McFarland's motion although reluctantly because like my colleague, Senator Warner, I would rather be home, not harvesting but going to work. The issue here in Senator McFarland's resolution is very simple. I think that it is very easy to take a partisan view of it and almost too easy, but it deals with the Legislature taking a leadership role on the tax issue and it asks that we call ourselves into special session to deal with that. That, I think, is a very simple decision that we can make. All the rhetoric aside, all the barbs aside, it's one that we have the opportunity to choose whether or not we want to look at this problem on a long-term basis. I have always stated from day one after the Enron decision that the Legislature should take a look at this, not on a quick fix, not on a Band-Aid approach, but on a long-term basis if we are going to look at it at all in special session. It was my choice not to come into special session but the Governor called and here I am. We are going to deal with the bills that are before us in committee tomorrow, all eight of them that have been referenced by the Reference Committee. We will deal with them on their face and allow for testimony and the process, I think, will work. Whether or not there is a solution that comes from this special session or not, from the bills that have been introduced I think it's clear on everyone's

mind that that will not take place, that unless you adopt Senator McFarland's resolution that unless you expand the call, call us into a special session that deals with the entire system, allows for the opportunity to look at other alternatives than those that have been proposed, we will be back here in January of 1990 and dealing with the issue again. My genesis in the Legislature was on this very topic. I came in in a special session that dealt with the Banner County case. The Holiday Inn issue was my baptism in this body and I have yet to come up for air. The issue here should, I think, be do we take responsibility for the tax system in this state? I say, yes. I mean, that clearly is the only question you have to ask yourself in terms of Senator McFarland's resolution. If you're for that then you say that the reason we're here is to correct the situation to the best ability that we have. Currently, we don't have the opportunity, we don't have the tools to do that. I would urge that the body support Senator McFarland's resolution. We are here. We're here for at least the next seven to eight working days and I think that during that time our time would best be spent looking at the overall system and addressing it prior to January of 1990. Thank you, Mr. President.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Further discussion? Senator Schmit, followed by Senator Nelson.

SENATOR SCHMIT: Mr. President and members, Senator Hall mentioned the fact that he cut his teeth on the special session as a result of the Banner County decision and many others of us remember that. We recall at the time or prior to the time that we were called into session. Governor Kerrey insisted that he did not need a session, would not have a session, could not have a session. Later on, there was an emergency and it became imperative that we have a session. Then, unfortunately, this body, following a very narrow rule and a rule by the Attorney General, chose not to address the issue, and that very decision not to hear LR 1 introduced by Senator Haberman who is with us today, DeCamp and Pappas, I believe, was determined to be outside the call, and, therefore, we did not address it. When the decision came down from the court, and I will paraphrase the language because I'm not that familiar with it anymore, it seems to me they said that the Legislature had before us LR 1 which would have repealed the uniform and proportionate clause of the Constitution. Since we chose not to address that issue, we,

therefore, must not have wanted to have repealed the uniform and proportionate clause. Therefore, they found LR 8, which we did adopt, to be wanting. Several months ago I recognized, against my desires, that there would need to be a special session. I pointed why I thought so, because on January 1st another entire new taxing entity begins, and we will compound those problems which are today before us. At that time, almost everyone, with a few exceptions, said we did not need a session. That position was held by most people until just a short time before the Governor decided that there was an emergency and a session needed to be called. I regret, as do many of you, that I was not involved in the drafting of the bills. I have some very definite ideas. I stated what those ideas were. I still maintain that the approach which I have proposed is the responsible one, not an easy one, not one which we can solve quickly but one which must be addressed. My deep concern about the present solution which faces us today, as proposed by Governor Orr, in all sincerity, is that it does not address the major issue. LR 1 has already had, according to the copy which I have, a substantial rewrite. The green copy is no longer that which we will be debating. The rewritten version, which I have, has removed the red flags, ladies and gentlemen, from the bill, but the land mines still remain. Let me remind you, those land mines are probably much more dangerous than the red flags. LR 2, the bill which provides for the penalties, provides another system for refunds, brings to mind one of the arguments on the floor earlier when we were discussing LR 2 at the last session. Senator Rod Johnson said we don't need to worry about this because the equal protection clause of the Constitution will protect us in this instance. I rose and I said I don't think they have ever used the equal protection clause in tax cases. I believe I was right at that time. And, Senator Johnson, I couldn't see ahead and you were actually right, because today the court has come back and said they were going to apply the equal protection clause to tax cases. I would suggest that if we pass LR 2, if we pass LR 2 in any kind of form...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...the next admonition we will hear from the court will be that we have taken from the public and from the taxpayer the due process provisions that are mandatory in the Constitution. I don't know why we need to get our hands slapped again, and again, and again. Ladies and gentlemen, we cannot

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resolve this problem with the present bills, LB 1 and LB 2. I have not studied LR 3...LB 3. We cannot resolve the problem in a regular 60-day session which will be forthcoming in 1990. There will be too many other problems at that time. We need to take the time now slowly, deliberatively, painfully, working with all the groups, principally the legislators. Of course, it's good to listen to those groups who spend the taxpayers' money, who have supported these bills. They have a responsibility to protect their entity but it is the Legislature's responsibility to draft the legislation and we should represent the taxpayers to the best of our ability. We should do that in slow, deliberate and a very painful process...

SPEAKER BARRETT: Time.

SENATOR SCHMIT: ...and, therefore, I support the McFarland resolution.

SPEAKER BARRETT: Thank you. Senator Nelson, followed by Senator Lamb.

SENATOR NELSON: Mr. Speaker, members of the body, I, too, will support Senator McFarland's resolution. I hope that, through our deliberation and our consideration, that we can lay all politics aside. I was elected by my constituents probably by a larger majority of the party that I am not represented to come down here and be as knowledgeable as I can be and to find out the facts and then try to make the best decision. I feel, by the very narrow call and these bills that were given us, I, too, have a lot of concern with a major change, particularly in LR 1. I would defy any senator on this floor right now to say that they fully understand the implications of that bill. Another thing that bothers me, I think Senator Schimek alluded to it very much. I don't blame the interested parties that had a lot of input in the drafting of these bills. They represent their own special interest. The one tax study group here, I called them last Friday. They named off the individuals that had met earlier that morning, primarily the railroads, the pipeline companies, the realtors, the Farm Bureau, and the school boards, and so on, and I said that is fine, but where was the Legislature? Who represented the Legislature? Who represented the taxpayers and my constituents? I think the answer was, well, that is coming. I am not comfortable. I am not saying that the draft is all right or they are wrong, excepting that for us to come down here and all along I have said, we don't

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need a special session yet, we do not have the knowledge or the input, and for us then to come down here and make major legislation. I am not saying at this point it is right or it is wrong. I am not just not comfortable with what we are asking to do in such a very short time. Maybe I will get myself educated enough but I think that we owe that to our constituents and to the people of the State of Nebraska. They are looking forward to us for some guidance, and I think that this is the time that we take our time and that we try to lay all politics aside. The Governor, in these proposals, may or may not be right, but I don't think that any one of us know in our mind and can go home and say that, yes, yes, what we did was right, and I certainly do support Senator McFarland. Let's give us some more time. Let's try to educate ourselves, and then come up with the best solutions possible. We will do nothing but go home with mud in our face if we do not take the time to deliberate and come up with the solutions that we have. Thank you.

SPEAKER BARRETT: Senator Lamb, please.

SENATOR LAMB: Mr. President, I respectfully call the question.

SPEAKER BARRETT: The question has been called. Do I see five hands please? I do. The question before the body is, shall debate cease? Those in favor vote aye, opposed nay. Please record.

CLERK: 25 ayes, 9 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Warner, for what purpose do you rise?

SENATOR WARNER: For a point of information from the Chair, point of order, can I inquire what the number of votes would be required for the adoption of the resolution. As I recall, there is a provision on resolutions that under some circumstances, they can be adopted with less than the majority of elected members and I don't...

SPEAKER BARRETT: Senator Warner, I believe our present rules state that resolutions may be adopted by a majority of the members present.

SENATOR WARNER: Unless, unless...I would ask that we require the majority of the elected members if that is permitted under

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the rules, the seriousness of the...oh, I don't want to comment on the resolution.

SPEAKER BARRETT: I believe any member can request that the number be a majority of elected members, 25 votes in other words.

SENATOR WARNER: I make that request, Mr. President.

SPEAKER BARRETT: Thank you. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, where in the rules does it say that a member can request that it takes 25 votes to adopt a resolution?

SPEAKER BARRETT: I believe it is in Rule 4, Senator Chambers, check Section 5 or 6, along in that area. We are ready, apparently, then to recognize Senator McFarland for the purpose of closing on LR 1 found on Journal page 60. Senator McFarland.

SENATOR McFARLAND: Thank you, Mr. Speaker. As the special session is progressing in its present form, we can go ahead and pass the three limited proposed solutions that are on the agenda, and we can pretend that that is going to be a solution and we can go out of here and say, yeah, we took action, we solved the problem, wink, wink. But the truth of the matter is that one or two years from now those bills and that legislation, if it is passed, is going to be subject to court challenge and the Nebraska Supreme Court is going to do just as it has done in the past several years and strike them down and say that they are unconstitutional, and that they violate the uniformity clause of our state Constitution. Now I realize that may be after the 1990 elections and some of the people here in this body and elsewhere are concerned about those elections, and their only concern is getting reelected, but it seems to me that we have a duty and obligation to go beyond the concern of being reelected. We have a duty and obligation to protect local governments and schools from an even greater crisis down the road in one or two years when the Supreme Court strikes down these bills as unconstitutional, and then we are faced with massive refunds of personal property taxes that will really put the schools and the local governments in a financial crunch. It seems to me if we proceed in this path, we are merely putting off the tough decisions. We are perpetuating the deceit and misrepresentation that has gone on for the past three years in

state government. Maybe you remember when the people of Nebraska were told, in 1987, that they were going to get a revenue neutral income tax plan, and that that would not be a tax increase, and, suddenly, a year and two years later we found out that that was not at all the case. The people of Nebraska had been deceived and misled, and that there was, in fact, a tax increase. Last year we talked about a property tax relief plan that was going to take effect and relieve...give some relief on the property taxes of people who are overtaxed in our state; and yet now we find this year that no one's personal...no one's property taxes is really going down, and that, in fact, some of the farmers in the larger, more heavily populated counties, their taxes on their property is even going to go up substantially. Maybe you were here a few years ago when, I think it was last year or the year before, when it was said that, through deception and deceit, that there was going to be community consent in this state before any nuclear waste site dump was going to be located here. But then when the resolution and the bills came up to pass a right to vote on that issue, suddenly community's consent was no longer available. We can pass these three limited and very suspect proposals and pretend like it is a solution, but I suggest to you that that would just be perpetuating the deceit and misrepresentation that has been too long existing in state government. It is really not necessary that we vote on this resolution. I mean it is nonbinding. Eight of our members are absent. As a matter of fact, it may be embarrassing to some of our members who may vote against this resolution, and then in one or two years have to look back on that vote and realize that the proposals on this agenda did not solve the problem, and that the court decisions have, in effect, told us that these proposals are unconstitutional. But I appreciated the discussion we had here today. I appreciate my colleagues, many of whom stood up to support this resolution, and the important thing is not the resolution. The important thing is the petition letter that is being circulated that we can call ourselves into a special session to discuss all the alternatives and solutions.

SPEAKER BARRETT: One minute.

SENATOR MFARLAND: I would ask you today, tomorrow on Friday, and this weekend, to consider and review the bills that have been introduced; ask, are they really a solution to this problem? I think the answer is obviously no. As you listen at the Revenue hearing on Friday, ask, will these bills withstand

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the court challenge? I suggest the answer will be no. Consider whether we considered all the possible alternatives to this crisis and whether we should do that, and if you believe, as I do, then join me and my other fellow senators, who have already signed the petition letters, requesting an expanded special session so we can try to resolve this problem in a complete and a permanent and a fashion that will not be subject to court challenge. At this time, Mr. Speaker, I would respectfully withdraw the resolution.

SPEAKER BARRETT: The resolution is withdrawn. Thank you. Anything for the record? LR 1 is passed over. Anything for the record?

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: Proceed then to LR 2 then, Mr. Clerk.

CLERK: Mr. President, LR 2 is a resolution that was introduced by Senator Conway. I do have a request from Senator Hefner, unanimous consent to add his name as co-introducer.

SPEAKER BARRETT: So ordered.

CLERK: Mr. President, LR 2. (Read resolution as found on page 61 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Conway for the purpose of the introduction of LR 2. Senator Conway.

SENATOR CONWAY: Mr. Speaker and members, this resolution was offered, at this time I prepared these resolutions for the regular session and at the time being somewhat concerned about the timeliness by virtue of the fact that a great deal of time will pass before this body were to reconvene after this accident. I think it would be in the interest of the Siouxland community for us to pass this resolution at this, recognizing their efforts. I was out of the state at the time, with several of you at a meeting, when this crash occurred on July 19th, and, as we watched on national news and watched an area that we in Nebraska are a part of in the tri-state area with South Sioux City and North Sioux City all making up that tri-state area, the response was unbelievable, the national attention was unbelievable and I think well put by, I believe, a New York columnist who said that for the families and victims of the