

February 21, 1990

LB 642, 1009A, 1018, 1090, 1099, 1174, 1226  
LR 258

Senator Morrissey. Yes, would you like to put some things in the record, please.

CLERK: If I can, Mr. President, very quickly. Thank you. I have a Reference Report referring certain gubernatorial appointments to the appropriate Standing Committee.

Notice of hearing from Natural Resources Committee. Senator Moore has amendments to LB 1009A to be printed; Senator Baack to LB 1090. (See pages 893-94 of the Legislative Journal.)

A Confirmation Hearing Report from Natural Resources. Natural Resources reports LB 1099 to General File. Signed by Senator Schmit. Education reports LB 1226 as indefinitely postponed. Signed by Senator Withem. Judiciary reports LB 1018 to General File with amendments; LB 1174, General File with amendments. (See pages 895-96 of the Legislative Journal.)

And the last item, Mr. President, a resolution, LR 258 by Senator McFarland. (Read a brief description of LR 258. See pages 896-98 of the Legislative Journal.) That will be laid over, Mr. President. That's all that I have at this time.

PRESIDENT: Now we're back on the advancement of the bill. Senator Morrissey first, please, followed by Senator McFarland.

SENATOR MORRISSEY: Thank you, Mr. President, and members, I must admit I'm perplexed and a lot of you are probably going, so what else is new, Morrissey? But I have always been in favor of things like this, the seven-day waiting period. It doesn't seem like it's really that onerous. Back in '74, I went to Hamburg, Iowa and had to buy...wanted to buy a rifle, had to wait, because I was an out-of-stater, seven days. I went back seven days later and bought it. No problem. And it seems pretty simple, but, of course, lately this drive to and from work is working on me. All the way up...all the way home last night and all the way up this morning I was kind of tearing this apart. And one of my concerns, as I have stated on this floor, has been a sort of a constant or slow chipping away of constitutional rights of our citizens in the state and the nation. I thought, well, this kind of comes under that same subtitle. We've got government reaching clear into our lives and deciding if we're good enough citizens to do certain things, and that kind of bothers me. And this is the argument that a lot of people are using, that we should guarantee a citizen's right to keep and

PRESIDENT NICHOL PRESIDING

(Recorder malfunction.)

(Journal page 1139 shows the prayer was offered by Reverend Patsy Moore, Nebraska Wesleyan University, Lincoln, Nebraska.)

CLERK: Quorum present, Mr. President.

PRESIDENT: Any corrections to the Journal today?

CLERK: I have no corrections this morning, Mr. President.

PRESIDENT: Any messages, reports or announcements?

CLERK: Mr. President, at this time, I have no messages, reports or announcements.

PRESIDENT: In that case, let's go on to number 5 and LR 258.

CLERK: Mr. President, LR 258 was a resolution introduced by Senator McFarland. It's found on page 897 of the Journal. (Read brief description of the resolution.)

PRESIDENT: Senator McFarland, please.

SENATOR MCFARLAND: Thank you. Thank you very much, Mr. President. This is a resolution that I brought with respect to some of the controversy that has occurred recently concerning the Department of Revenue and particularly how bonus payments have been awarded to employees within that department. This is an issue that arose when one of the employees requested, under the Public Records Act, a disclosure of the list of persons receiving bonus payments at the Department of Revenue. Allegations had been made in the papers by various political candidates that...and by others, that these awards of extra funds to particular members in the Department of Revenue staff were being given not on the basis of professional performance but on the basis of political loyalty. I will basically just read the resolution and go over it a little bit. There were payments of bonuses totaling \$66,295 in 1987-88; \$57,000 in the fiscal year 1989, '88-89. There was a request for disclosure and initially the Tax Commissioner and the Director of Personnel refused the employee's request for that information. And I also understand that there was a request by other citizens for that

information as well, which had been denied. The public counsel or Ombudsman's office recommended that the Tax Commissioner reveal the information about bonuses paid and the Public Record Act, I think, is fairly clear about the intent of having a disclosure whenever public funds are involved. The public should be able to know how these funds are distributed and I don't think concealing payroll information is appropriate and secret bonuses are not something that we should really want in a state government. We should be for the concept of open government, for the concept that if taxpayers are paying money into state governments, they have a right to know how those dollars are being spent. There have been some recent developments in this issue and one recent development that occurred just this morning. There was an Attorney General's Opinion on this issue, which basically said that disclosure was required of fiscal records but that any information contained in the personnel files was, of course, personal and could not be disclosed. The real issue then became what about the list that apparently the Department of Revenue has of the bonus payments that were made to particular individuals? They have a printout that I have seen. I haven't seen the names but I saw the printout that was made of how these bonuses were apportioned. The Attorney General's Opinion, for some reason, said that if the list was a result of information that they obtained from the personnel files, that that list did not have to be disclosed. And from the initial comments in the newspapers, the Tax...that I read, the Tax Commissioner was going to continue with his policy of not disclosing that information and require any citizen who wanted that information to go through all the records of DAS and the volumes of printouts and things to get the information and have to make calculations to determine who or who did not get bonuses. That...this morning the Tax Commissioner met with me and also the Director of Personnel and said, as a result of this resolution, they had changed their view on this particular matter. They were, in fact, going to disclose the list of persons who received these bonuses and that that information would be made available to persons who request it. I think that is appropriate. I am appreciative that the Tax Commissioner and the Department of Personnel Director reached this conclusion. They said that they reached it in part because of this resolution and part because of reading the Attorney General's Opinion very thoroughly and very carefully and the import of that opinion. I think it is appropriate that this resolution be adopted. I do have an amendment that I would like to put on that particular resolution and I will introduce

it. It just adds three parts that talks about the Tax Commissioner had in his possession that particular list that I had seen. The Attorney General had rendered an opinion saying that the fiscal records could be released and that initially, at least, the Tax Commissioner had indicated that the opinion confirmed his previous position. And I would also add, in this amendment, that not only should this list be provided to the requesting parties but that a copy of the resolution not only be sent to the Director of Personnel and the Tax Commissioner but also to the Governor of our state. If there are allegations of improprieties within the tax department about secret bonuses being paid, I think she should be aware of them and she should address those issues. So, with that, I will close and I will be introducing this amendment which will include the information about the Attorney General's Opinion and about the list that is there in the department that is going to be disclosed. Thank you.

PRESIDENT: Senator McFarland, you do not wish to present your amendments now? Do you wish to talk about your amendments now? Okay. Senator Lamb, please.

SENATOR LAMB: Well, Mr. President and members, I guess I'm a bit confused because as I understand Senator McFarland to say that everything has been accomplished that he wished to be accomplished so I see no purpose for this resolution at this point and I would hope that he would withdraw it.

PRESIDENT: Thank you. Senator Wesely, please, followed by Senator Hefner. Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I rise...Senator Wesely is here now, do you...okay, he passed. Okay. But I would just say I really don't see any need for the resolution at this time. I think everything has been negotiated out. As I understand it, this will be a...these salaries and bonuses will be made available to the public and I understand that they are going to release all this information as far back as in the early eighties. So I think that a compromise has been reached and I would suggest that Senator McFarland withdraw this resolution.

PRESIDENT: Thank you. Senator Goodrich, followed by Senator Warner.

SENATOR GOODRICH: Would Senator McFarland yield to a couple of questions, please.

PRESIDENT: Senator McFarland, please.

SENATOR MCFARLAND: Be glad to, Mr. President.

SENATOR GOODRICH: Well, this is friendly, so relax.

SENATOR MCFARLAND: We're always friendly.

SENATOR GOODRICH: You indicated in your comments that you had seen these lists of bonuses and that sort of thing and you would give us specific figures, for example, for specific years, and that sort of thing. What's the...what are we after here? If you've already seen them and you know the figures as far as the totals are concerned and that sort of thing and you have seen the lists, what's...what are we trying to accomplish here?

SENATOR MCFARLAND: That's a good question, Senator Goodrich, and I should clarify it. I have seen the list of distribution of bonus payments and according to position within the department, you know, whether it's Clerk Typist III and so on down the list. I have not seen the actual names. The names are on the list but they were folded over and I just looked at the distribution according to job position. The whole controversy is, who specifically received the bonuses and how those bonuses were distributed. Now, the controversy that has arisen is that those bonuses are not being distributed to the Department of Revenue employees based upon some kind of professional performance but they are being distributed according to political loyalty and the politics of the situation and I would be glad to discuss those issues as well.

SENATOR GOODRICH: Do you know...do you recall, rather, what the largest bonuses were and the smallest bonuses? That's what...

SENATOR MCFARLAND: Sure. As I recall, the bonuses ranged from 250 to a \$1,000. And there were a number of them given and that's on a yearly basis.

SENATOR GOODRICH: Okay.

SENATOR MCFARLAND: And I think they were given to about...about a hundred and...hundred and...no, I don't have the figures. I'm

sorry. It seemed to me they were given to about 120 persons for the '88-89 fiscal year.

SENATOR GOODRICH: Thank you. Would Senator Warner yield to a couple of questions, please.

PRESIDENT: Senator Warner, please.

SENATOR WARNER: Yes.

SENATOR GOODRICH: Senator Warner, I have seen merit pay raises. I have seen flat amounts up to a certain...you know, a set percentage for everybody. I've seen an awful lot of different versions of pay raises and that sort of thing but I haven't run across, in my years of experience down here, bonuses to employees. How common is this?

SENATOR WARNER: I don't think I can give you a specific answer as to how common it is. There are provisions in which bonuses, by statute, as a matter of fact, in which bonuses can be given to employees, one of which was a bill that was enacted some years ago. If there is an employee that has a suggestion for cost savings, you may recall, I can't recall who had the bill...

SENATOR GOODRICH: I remember that.

SENATOR WARNER: ...but there is that kind of provision under the personnel rules which, to my knowledge, have been in existence for a great many years. There is a possibility for merit pay, for outstanding service, which...over and above whatever the standard pay allowance is. This fact is, as I think everybody here knows, we get a form for our own staff which we can indicate a bonus payment if we feel that it's justified.

PRESIDENT: One minute.

SENATOR WARNER: So it's not unheard of, I guess, in response to your question.

SENATOR GOODRICH: Was this specifically budgeted for, to the best of your recollection?

SENATOR WARNER: In larger agencies, in particular, there is always vacancy savings even though we will reduce a budget with

an average sort of vacancy saving. But in larger agencies there's always some vacancy savings which could be utilized that way and it's not terribly unusual that that would happen. On other occasions, there are specific budget requests from very small agencies that will permit them to do that. It's more common, I suspect, that there is a reclassification of a position which also recognizes a change in the job. That is not infrequent at all and almost automatic.

SENATOR GOODRICH: Thank you very much.

PRESIDENT: Thank you. Senator Warner, please, followed by Senator Wesely.

SENATOR WARNER: Well, Mr. President and members of the Legislature, I have a motion on the desk to indefinitely postpone the resolution, which I would just as soon take up. Oh, if the amendment is ready to take up, I will withhold the kill motion until the amendment is disposed of, Mr. President.

PRESIDENT: Okay. Yes, we have not taken up the amendment yet. Okay, now we are on the amendment. Senator Wesely, did you wish to speak about the amendment? We're on the amendment. Okay, Senator McFarland, on the amendment.

SENATOR MCFARLAND: Thank you very much. (The McFarland amendment appears on pages 1139-40 of the Legislative Journal.) I appreciate the request to withdraw the resolution. I don't think it's appropriate to withdraw it. We are establishing a policy that has not been clearly established by the Legislature and the fact that this matter may be resolved and if the information is going to be disclosed, does not mean that somewhere down the line that the other Department of Labor or another one would withhold the information. I think it's appropriate in this circumstance we approve the resolution for the purpose of indicating what the Legislature's view is on this particular issue. It seems to me that the issue of open government in our state is something that we approved in the Public Records Act. It is inappropriate to withhold information about how public funds are spent. And there is no compulsion right now, short of a lawsuit, for these department heads to disclose information upon request. And so if it happens in the Department of Labor next time or the Department of Social Services, there is nothing from the Legislature that shows our position on this issue. This is a blatantly political

resolution and the reason it's blatantly political, because of the political games that have been played in the Department of Revenue with respect to how it responds to the Legislature. For four years now I have been questioning a lot of the tax policies that have been implemented in our state and when I go around to speak at various places and am asked to address these particular tax issues, I don't find myself being opposed by Senator Vard Johnson, who sponsored the issues. I don't find myself being opposed by ConAgra executives, who sponsored the issues. I don't find myself being opposed by the Omaha Chamber of Commerce, who were in support of these issues. More often than not, I find myself being opposed by the Tax Commissioner or one of his assistants who comes in and during the day, when I trust he has duties over at the Tax Commissioner's Office, comes in and opposes me and talks before the various public service organizations and expounds the values of all of these particular tax policies. To me, those are very political types of statements and it makes me wonder if bonus payments are being paid within that department, how those bonus payments are being delivered. I was interested, you know, initially when the tax policies were passed, the Tax Commissioner, at that time, was going around the state saying, well, this is not a tax increase, this is just a little tolerance factor built in. One of the editorialists commented that, and just, that as a potential senior candidate for the gymnastics squad the State Tax Commissioner is recommended. He says the State Tax Commissioner's acrobatic skill in avoiding that, the overall tax increase, is imbedded in the 1987 Orr administration personal income tax gains...or income tax changes is of Olympics proportions. We have had continuing difficulty, not only I but other senators within this Legislature, getting objective information from the Tax Commissioner. In 1988, we had a special session of this Legislature in which there was a knowledge that there was a tax increase. I called one of the people in the tax department and asked them what was the funding and what was the extra amount of money that had to be spent in order to administrate this whole tax increase program. I talked to a particular person in there who I was told had knowledge of how many employees and how much money was being spent. This person told me 60 full-time employees were added, 40 part-time employees, temporary part-time, at a cost of 2.3 to \$2.6 million. I said, well, I want to get these numbers accurate. Are you sure these are accurate? The person said, yes.



PRESIDENT: One minute.

SENATOR McFARLAND: And I said, well, we'll put them on the low end. We will put \$2.3 million and so on. Then when we went into the special session on that resolution, here we get a nice printout from the tax department that says, no, that information is not true, it's only 30 employees, it's only 12 temporaries at a cost of only 1.2 million. At that point, I'm forced to say, well, who do I...do I disclose the name of that person that gave me the information, jeopardize that person's job over there, because the Tax Commissioner is giving different figures than I'm getting from over there? That seems to be very political to me and I don't think it's appropriate. I think that if bonuses are paid, they should be disclosed. I think that the only reason the bonus...if this resolution had come up, I doubt whether these bonuses would be...have been paid or, excuse me, would have been disclosed. I'm appreciative that they are being disclosed now but I think we, as a Legislature, should not only disclose these for the Revenue Department, we should go on record as saying this applies to the Revenue Department but it sets a precedent for every other department as well.

PRESIDENT: Time.

SENATOR McFARLAND: But I think it's totally appropriate that the Legislature approve the resolution and acknowledge that this expenditure of public funds for bonus payments is information that should be available to any member of the public, upon request, under the Public Records Law.

PRESIDENT: Thank you. Senator Warner, on the amendment by Senator McFarland, followed by Senator Wesely. Senator Wesely, on the McFarland amendment. Senator Hannibal, on the McFarland amendment, followed by Senator McFarland.

SENATOR HANNIBAL: Mr. President and members of the Legislature, yes, I would like to talk, not necessarily on the amendment but to take the opportunity to ask Senator McFarland if he would respond to a couple of questions.

PRESIDENT: Senator McFarland, please.

SENATOR McFARLAND: Thank you.

SENATOR HANNIBAL: Senator McFarland, you suggested that you

have had discussions this morning, I believe, with the people in the administration that the information that was originally sought will be released and you said, I believe, that you thought that the reason for this change was, in part, due to the resolution coming before us and, in part, due to the Attorney General's Opinion. I guess my question would be what your interpretation of the Attorney General's Opinion is. Does it, indeed, allow for the release of these kinds of figures?

SENATOR McFARLAND: Well, the Attorney General's Opinion is rather ambiguous. The specific aspect of it was a list that the Department of Revenue has. In the Attorney General's Opinion that you have, and I passed out to you, there was a comment made that if a list of bonuses was prepared by the department from personnel records in their personnel files, that that could be held confidential. There is also an article that's saying the Tax Commissioner's interpretation of that was that they were going to continue with their policies as they had in the past, which has been nondisclosure. Now, as of...as of Friday...

SENATOR HANNIBAL: As of this morning.

SENATOR McFARLAND: But now as of this morning the Tax Commissioner visited with me and said they had changed their view on this. They are now going to disclose that information, that list.

SENATOR HANNIBAL: So that if the...if the interpretation of the opinion is that it does allow for the Tax Commissioner or, for that matter, any other agency of government, including the Governor's office and the Department of Personnel, if the opinion is read and interpreted such that these things may, indeed, happen and you have a situation where they will, in fact, be done, as a matter of fact, my interpretation would be if they may, indeed, be made available by virtue of the Attorney General's Opinion, then, as a matter of fact, we don't have a policy decision. We do have an interpretation of law that would require such kinds of lists being made available. And I'm still very concerned as to why you think that we need to make a policy statement that says regardless of what the law says or regardless of what the interpretation of the law is that we will tell departments of government that they shall release these even if they are against the law or that we shall release them if they are in compliance with the law. It appears to me we don't have any kind of a policy decision here at all. If they

are a part of law and should be able to be released, then they...then there is no discussion as far as a policy decision. And if they aren't allowed to be released by law, there is no policy decision on our part, short of changing law. I would be interested in your response to that.

SENATOR McFARLAND: Do I have the floor?

SENATOR HANNIBAL: Yes, you do.

SENATOR McFARLAND: It's a good point. At the present time, under the Attorney General's Opinion, I would say there is no clear mandate that a list of employee bonuses be disclosed. According to that opinion, it is supposed to be discretionary with the department head. It says they can be considered confidential or if the department head wants to, he or she can disclose that list. I think, from a policy statement, to pass this resolution would be saying it is the view of the Legislature if there is any discretion whatsoever, the presumption should be that the information should be disclosed.

SENATOR HANNIBAL: If that is correct, and I don't necessarily agree with you, but if it was correct, then I guess I would have a question...

PRESIDENT: One minute.

SENATOR HANNIBAL: ...as to why you would...why you would have your resolution and the amendment thereto be limited to just three years and...as opposed to going back and suggesting that we start with disclosures if there is any discretion back to when any kinds of payments of these were initiated, which I believe was back in the early eighties.

SENATOR McFARLAND: I don't have any problem with that. I picked those years because the controversy that has arisen has been that the bonus payments in the past administration and this administration have been awarded on a political basis rather than professional.

SENATOR HANNIBAL: I'm running out of time. I would say that I will talk further on this probably but I would hope that Senator McFarland would remove his resolution, withdraw the resolution. And if he decides not to, then I would probably support a kill motion if it does come before us.

PRESIDENT: Thank you. Senator McFarland, you are next, but may I introduce a couple of guests. The first one, our doctor of the day, is Dr. Kathy Bliese of Omaha, who is in Senator Beck's district. Dr. Bliese, would you please stand and be recognized. And, in addition to that, our Sergeant-at-Arms, Karl Kamprath, has a birthday today. Would you sing him happy birthday. Karl says he's over 65, so we'll let it go at that. Senator McFarland, please, on the amendment.

SENATOR MCFARLAND: Yeah, thank you, Mr. President. Karl, happy birthday to you. Some very interesting things have been transpiring since I introduced this resolution. This has been very interesting to me. The first thing that happened, once the resolution was introduced, I had a visit from the Tax Commissioner and the Director of Personnel who said and explained to me why the information was not being released and asked if I would wait until an Attorney General's Opinion be rendered and I told them I would think about it and see what particularly would be appropriate and talk with my fellow...some of my fellow senators on it. I decided to ask that it be delayed for at least a short time if the Attorney General's Opinion was forthcoming, with the idea that if there was a clear indication in the Attorney General's Opinion that I thought there should be that this information should be disclosed, then we wouldn't have to take up the resolution. And had there been a clearer announcement from the Attorney General's Office that, yes, this information had to be disclosed, then there would have been no problem, we would not have had to discuss this resolution. Then the Attorney General's Opinion comes out and if you read it, it is very...rather unclear. It's somewhat more confusing than it is clarifying. I don't agree with the interpretation that was put on it, and so I asked, as a result of that, that the resolution be introduced and that we express the Legislature's intent on whether this information should be disclosed. Now this...and I read in the newspaper Friday that the Tax Commissioner was going to withhold the information in light of the Attorney General's Opinion. Now, this morning, just before I take the floor, I hear from the Tax Commissioner and the Director of Personnel saying, well, they have changed their view, they are going to release the information and that is fine. I appreciate that. But that does not necessarily mean that the resolution isn't appropriate because I think it needs...the department heads need guidance when they're confronted with the question of how this...how bonus payments

are appropriated. One other interesting thing, after I talked with the Tax Commissioner and the Personnel Director last week and they asked me to wait for the Attorney General's Opinion, I also received an anonymous phone call from a person who worked within the Department of Revenue and this person said to me, Senator McFarland, the staff at the Department of Revenue are very thankful you are bringing this resolution. The person said, believe me, there are political games being played in the Department of Revenue; those bonuses, in fact, are being allocated on the basis of political loyalty to the Governor's tax policies and not on professional performance. As a matter of fact, that person said there is no way that any of us can question the tax policies of the Governor's office without jeopardizing our positions at the Department of Revenue. People who have questioned those policies or made light of those policies have either been disciplined for it or chastised for it or some of them have just kind of faded out of the picture and they have kind of been shuffled to a side or transferred or suddenly they're not...no longer there after a few months. They transfer out of the department. And this person said, I cannot tell you my name because if I told you my name and that I was providing this information to you, my job would be in jeopardy. And I said, look, I've seen the list. There is...it's distributed to a lot of people, it seems to me that maybe it's not being done on political...for political reasons, that it's just being done according to performance or merit increase or whatever. And the person says, that may appear that way on the surface but if you look at all the distributions that have been made over the...year after year after year, they always go to the persons who agree with the tax policies...

PRESIDENT: One minute.

SENATOR MCFARLAND: ...of the administration, who do not question those policies, who follow the standard line, the standard political philosophy, that all these tax changes there was not very much of a tax increase, that the tax incentive program under LB 775 is good for the state. If you agree with those and your consistent and you behave, then you get a bonus. If you object or question those policies in any way, then you are out of the running for any type of bonus increase. And the person went on to say that we should keep it up, we should...there were a lot of things going on in the Department of Revenue that senators would be shocked if they were aware of, that we're just viewing the tip of the iceberg with this bonus

payment situation and said that they hoped that we discussed this, debated it...

PRESIDENT: Time is up.

SENATOR MCFARLAND: ...and argued it on the floor because the department is being used for political purposes to advance tax policies that a lot of people question over there in the Department of Revenue. I can also tell you that when these initial tax changes were made, there was a person in the Department of Revenue who came to me and said, look, these tax policies don't make sense. This particular person pointed out the cliff effect that occurred, that you were exempt from paying taxes up to a certain point, then if you got above that point, then there was a dramatic increase in your state taxes. This was going to happen. This was pointed out. This person said, but I can't go public with this, I can't...I don't want my name associated with it because...

PRESIDENT: Time.

SENATOR MCFARLAND: ...I would be in trouble with it. But you can bring it out on the floor of the Legislature, which we did, and which we discussed and there was a cliff effect and, in fact, some people who earned just a little bit above what was...what would have been exempted for tax purposes, suddenly the tax provisions kicked in and they paid a fairly significant amount of state taxes for just earning slightly more amount of money and going over that exemption level where they would pay no taxes. Those are the kinds of things that have gone on within the Revenue Department.

PRESIDENT: Time.

SENATOR MCFARLAND: And I think the bonus payments will exhibit that. I think if you look at them over a period of years, you will...there will be some implications that they were given to the same people year after year after year and I think it is...

PRESIDENT: Time.

SENATOR MCFARLAND: ...a policy statement we need to make, that bonus payments not only should they be disclosed and open, public should have an awareness of this so that the public can examine and the public can make a judgment for its...for

themselves on whether bonuses are being awarded for political loyalty as opposed to professional performance.

PRESIDENT: Thank you. Mr. Clerk, we have a priority motion.

CLERK: Mr. President, Senator Hannibal would move to refer LR 258 to the Reference Committee for reference to a Standing Committee.

PRESIDENT: Senator Hannibal, please.

SENATOR HANNIBAL: Mr. President and members of the Legislature, I made the motion because there could be two bodies of thought on the issue. I have had...have heard from Senator McFarland that he believes that the resolution is important because, according to the Attorney General's Opinion, the opinion is quite ambiguous and maybe gives a lot of discretion to the...to the agencies of government or the Department of Personnel. I don't happen to agree with that. I happen to believe that the Attorney General's Opinion does not give any discretion and says that contrary to the...to the Tax Commissioner's original thought of trying to keep the personnel files confidential with regard to this and acting as the Tax Commissioner thought was his duty, the Attorney General has said since that, with that opinion, that, no, you would not be violation of those rights that you have in order to disclose these things. I think that, at the very least, whether you agree with the more literal reading of the Attorney General's Opinion or whether you believe, as Senator McFarland, that there could be some discretion involved here, that regardless of which way you believe, that this is not a resolution that is handled typically as we handle resolutions on the floor without going through a committee process and that these types of issues, if they are to be debated and if they are...if there is an issue involved, that at the very least we ought to have it done, not on the floor of the Legislature but that we ought to send it to the Executive Board and go through the referencing process that we would for any issues, any resolutions that would fall under this category, which was a rule that we made some time ago. So my argument is that regardless of how you feel about the resolution, that if there is, indeed, a question, that question ought to be referred to the Executive Board, referenced by the Executive Board to a committee of jurisdiction that they deem appropriate and that if when that discussion takes place and the question is not resolved, comes back to the floor, then we can...we can address

it further at that time. For that reason, I would move that the motion to refer to a committee be adopted.

PRESIDENT: Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, I would support this motion to send it to the Reference Committee. I really...I really don't know what we want to disclose and what we don't want to disclose. Some of the things we can disclose and some of the things we can't. But here the Revenue Department says that they're willing to disclose this which they previously said they didn't care to disclose. But I guess I'm a little baffled here. Senator McFarland wants the Revenue Department to disclose their bonuses and then, on the other hand, he says he don't want to disclose the name of the employee that contacted him before. So who do we want...what disclosure do we want? And how much do we want to protect the confidentiality of people? He wants to protect that employee at the Department of Revenue, and I don't blame him. He probably should be protected. But same way, on the other hand, same way some of these bonus payments probably should be protected. And so I would just say that it looks to me like this would be up to the Reference Committee and to reference it to a committee that could dig it out. I don't know, Senator McFarland, would you care to answer a question?

PRESIDENT: Senator McFarland.

SENATOR HEFNER: Are there other departments that have bonus payments?

SENATOR MCFARLAND: My understanding is that there are several departments that have bonus payments. The Department of Revenue is the only department, to my knowledge, who has had a request to disclose how those bonus payments were allocated.

SENATOR HEFNER: Okay, do those other departments disclose their bonus payments?

SENATOR MCFARLAND: They have never been requested to and that...and that is why I think this resolution is important because it will establish a precedent which says if they are requested to, they should disclose as well.

SENATOR HEFNER: Okay, so I would support this motion or maybe



better yet would be to have a study on it this...during this coming interim. Thank you.

PRESIDENT: Thank you. Senator Wesely, did you wish to speak about the referring to a committee motion?

SENATOR WESELY: Yes. Thank you, Mr. President, I appreciate that. Members of the Legislature, I would rise in support of the resolution and suggest that Senator Hannibal's motion to return to committee isn't the worst option. The worst option would be to kill it. But I think there is some sense, as Senator Hefner said, about looking at the issue and perhaps studying it further. But I think Senator McFarland is definitely raising an important issue. It does originate in one department, that being the Revenue Department, a department that has over the years become a real focal point of discontent, I guess, in many ways about policies and differences of positions and what have you. And it goes back to the early days when I was down here when, in fact, the Revenue Department was involved in shredding of documents dealing with revenue forecasting and that led to the establishment of a Revenue Forecasting Board to be independent and problems from time to time over tax policy and the Revenue Department seems to be involved in that. Of course, of late, the last few years the tax policy has been of great controversy in this state and, clearly, there is indications that the politicalization of the department is ever present in that individuals perhaps that have been more supportive of those policies than not have benefited from bonuses and the only way to know that is to let the public see those records. I think, clearly, the question is more generally bonuses and how to deal with bonus policy and there I come down on the side of more public disclosure. And the reason I do is that it makes a big difference how you provide bonuses to employees. If, in one instance, you provide those bonuses in the dark and in another you make them in the light of public scrutiny, in the dark you can give bonuses to friends, you can give bonuses for whatever whim or fancy you might have because there isn't really particularly any accountability. And, who knows, maybe that's what's happened but, in any event, you could suspect that that's the case. Whereas, bonuses made where there is some public accountability, some public record, would be made differently. There would have to be some standard, some reasoning that you could use to justify whatever bonuses are provided. And so I would...if I would make an error in judgment, it would be to err on the side of more public

disclosure because there you have accountability that I think would lead to the sort of standards and justifiable decision making that you would want to see in making an important decision like that. On the other side of the coin, you do have the protection of individual privacy and those sort of things, but as public employees you would have to argue that the public taxpayer has precedent in that particular issue. It also gets back to the issue Senator Landis and I introduced from time to time on whistle-blowers, where the other side of the coin of getting bonuses for being a good and faithful employee is the difficulties you get if you're not, if you speak out. And the whistle-blower legislation that we tried to pass year in and year out which always failed also tried to recognize that employees have the right, they think, to speak out as individuals and perhaps not receive either loss of job or punishment as a result of trying to speak out as individuals for what they believe is the truth. But, unfortunately, that legislation has languished. So I think getting into this issue is not bad. I think it's a good discussion, it's a worthwhile discussion. I think Senator McFarland has brought an important issue and I, for one, have had great concerns about some activities over in the Revenue Department and it would be good to bring this out in the open and whether you want to proceed and adopt the resolution, which I would be willing to do today, or whether you want to have a further study and hearing on it, it makes no difference to me, particularly, but I think, again, Senator McFarland is absolutely correct to raise the issue. It's an important issue and I hope we will not ignore it.

PRESIDENT: Thank you. Senator Warner, followed by Senator McFarland and Senator Lynch.

SENATOR WARNER: Well, Mr. President and members of the Legislature, my preference is to indefinitely postpone the resolution. But I guess I'm willing to also have it referred to a committee to look at the statutory provisions as to what they might be, as well as if, in fact, it's to be a policy change or if there is no clear statute for policy then, obviously, it ought to be addressed in law and not by resolution. As I understand, the system has been in effect for a good number of years and which bonus, I thought it was 5 percent, is by statute up to...or by rules and regs rather up to 10 percent, but that 10 percent does not go in the base and it cannot exceed 7.5 percent of the base. And then there is merit pay which also is similar and has been in effect for a great many years which

allows also up to a maximum of 7.5 percent which would go in the base if that occurs. You know, there's nothing new about an agency, that's a code agency, employees feeling some restraint on what they can talk to people. I can remember in the middle seventies when I used to meet with one or two employees of that department trying to understand how the revenue projections, and we met at night and we met someplace where I was protecting that individual's job and all I was trying to do was to get some idea of how revenue projections were arrived at, because I annually wrote a letter to then Bill Peters who was Tax Commissioner, who always provided a response but never an answer. And so that's not new. And I, you know, we may as well call it what it is, this is a resolution which one of the candidates for Governor apparently raised an issue and it's attempted to be elevated by a resolution. I have amendments for it too which I noticed one of the candidates for Governor had taken a strong position against state lotteries which, certainly, I agree with and I thought I might like to add that amendment to this to show at least legislative concurrence of a candidate who was opposed to lotteries, which happens to be the Mayor of the City of Lincoln, but I thought maybe we could do that too if we're going to get into the act of putting in a resolution as every little political issue comes along in the course of a campaign. I would hope we do not get into that basis of conduct but I suppose it's also unavoidable. Every news story I read prior to the session indicated that one could anticipate that. The fact that someone may have their job threatened because they didn't fully conform with...with whatever the governing board was...or the ruling source of some issue, that brings to mind the Board of Regents, as I recall, where they had a little problem with one of their employees and apparently felt the way to resolve it was to fire the individual. So I can understand, certainly, the concern that if an employee of state government expresses their personal opinion, that it can be hazardous and it always has been, I suppose always will be with code agencies, and...

PRESIDENT: One minute.

SENATOR WARNER: ...and others. But I would think that if, in fact, this is some sort of a legitimate issue, which, obviously, it's a partisan political issue, but if it was, then the proper way to review it is in depth and find out exactly what it is and I would support the motion at this point to go to a Reference...to refer it to the Reference Committee for study by an appropriate committee.

PRESIDENT: Thank you. Senator McFarland, please.

SENATOR MCFARLAND: Yeah, I would like to respond to two things. Am I on? Senator Hannibal questioned about how clear the Attorney General's Opinion is. If you look on the first page where it says, "Spire says public entitled to know state bonus pay", at the bottom of the second column it says, "Not a change", and underneath that it says, it quotes from the opinion, it says, "For example, a list prepared by the agency of those employees who receive bonuses and the amount of each bonus could be kept confidential", the opinion said. And it goes on to say, where the Tax Commissioner says, as I read the opinion, "It basically confirms our previous position on this matter". That is the issue for bringing the resolution. That is the issue where it's unclear and now the Tax Commissioner says this morning that, yes, in fact, even though he is not compelled to disclose that information under the Attorney General's Opinion, he is going to do so at this time. I think that brings to light a whole lot of questions about what...how things are handled in particular departments, particularly with respect to the bonus issue payments. And the suggestion has been made, well, are they being distributed for political reasons and not for performance reasons. I just ask you, there is...one of the articles that I have handed out, it says, "State official's letter draws Hoppner's fire", and then above it it says, "LB 775 success stories sought". And it goes on to talk about a Department of Revenue person who is the department's Public and Governmental Affairs Counsel, who has been sending out letters to corporations around the state and asking for the good news stories on 775. And then it says, we are seeking these good news stories and then a quote, "Please note that this good news information will be considered public information and may be released to the media by the department or the Governor's office." Now this has been a controversial question, the tax policies and the tax credits imbedded in 775. Here we have a Department of Revenue employee paid with state tax dollars, soliciting information on a policy implemented by the Governor's office so that the good news can be distributed to the media. I don't think that's an appropriate use of that official's time. If that person wants to work on the reelection commission...committee for the Governor, he should be a paid staff member of the reelection committee. He should be a campaign manager or a campaign assistant or something like that. We should not, as a state, be paying tax dollars in salary to this particular person so that he can solicit information to

March 5, 1990

LB 1028  
LR 258

this particular person so that he can solicit information to release to the media to benefit the Governor's tax policies and to praise those efforts. The Department of Revenue is not a public relations firm for the Governor's office. It is not a propaganda agency for the Governor's office. It is supposed to administer our tax laws in a fair and objective manner and give to the state senators, who request the information, fair and objective information on that issue. We have a bill before us that will be coming up that talks about full disclosure of the benefits of LB 775. It's a bill that Senator Wesely has introduced for several years now, each time that bill has been stifled. It calls for full disclosure of the benefits and the tax consequences of that particular policy, but yet that bill has not passed the Legislature. Apparently what this Department of Revenue official wants is he wants the good news on 775 so he can use it to broadcast across the...

PRESIDENT: One minute.

SENATOR MCFARLAND: ...state and further the Governor's reelection efforts but he doesn't want to know the bad news that would be disclosed if we were to pass LB 1028 or any other bill requiring disclosure of the full information concerning LB 775. I don't think that's an appropriate use of tax dollars funds...or tax dollars payments in funding to the Revenue Department. If this person is a salaried person, if he is a state employee, his duty primarily is with the Department of Revenue and to carry out the functions over there. The duty is not to solicit and be a public relations man for the Governor's office. And I think that brings in the whole question how these bonus payments are being allocated. The allegation has been made if we look at these bonus payments, look at who they have been paid to, you will find the same persons receiving them every year and the reason they are receiving those bonus payments are not because of their any particular competency...

PRESIDENT: Time.

SENATOR MCFARLAND: ...or performance but primarily based upon their political loyalty to the Governor's office.

PRESIDENT: Thank you. Senator Lynch, please. 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. Record, Mr. Clerk, please.

March 5, 1990

LB 1059  
LR 258

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

PRESIDENT: Debate has ceased. Senator Hannibal, would you like to close, please.

SENATOR HANNIBAL: Very briefly, Mr. President. We have had some good discussion today and I believe that the issue is one that probably could be settled with a motion and disposed of pretty easily. However, to the extent that there could be some need to review statutes, there could be some need to interpret the Attorney General's Opinion, that probably the best place for that would be in the hands of a committee as designated by the Executive Board as we do with all the bills and major resolutions that come before this body. For that reason, regardless of what your particular opinion is of the Attorney General's Opinion, what your particular philosophy is with regard to policy, I think that in either case the best way to move forward on this resolution is to refer it to the Executive Board and that's why I offered the motion and I would urge its adoption.

PRESIDENT: Thank you. The question is the Hannibal motion. All in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 29 ayes, 0 nays, Mr. President, on the referral of LR 258 to Reference Committee for referral to the appropriate Standing Committee.

PRESIDENT: The resolution is referred to the Reference Committee. Anything for the record at this time, Mr. Clerk?

CLERK: Mr. President, one item. I have amendments from Senator Haberman to be printed to LB 1059. (See page 1141 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: Okay, we'll move on to the confirmation report of Senator Schmit's.

CLERK: Mr. President, confirmation report offered by Natural Resources Committee, chaired by Senator Schmit, would report on Janet Elizabeth Bernard-Stevens to the Environmental Control Council, Connie Bunge to the Environmental Control Council and Dr. Norman Thorson to the Central Interstate Low-Level Radioactive Waste Commission.

March 5, 1990

LB 163, 163A, 542, 571, 880, 953, 953A  
1019, 1019A, 1124, 1184, 1184A, 1210  
LR 258

SENATOR LINDSAY: Mr. President, I move that LB 953A be advanced to E & R for engrossment.

SPEAKER BARRETT: Thank you. Any discussion on the advancement of the A bill? Senator Haberman.

SENATOR HABERMAN: Mr. President, and members of the body, I would like to advance the A bill as we may need it towards the tail end of the session. I will repeat to you again, there is no cost to this legislation. It will not come back on LB 953 but we may need an A bill on Final Reading later on in the session, and for those reasons, I ask you to advance the A bill.

SPEAKER BARRETT: Thank you. Any other discussion? If not, those in favor of the advancement of LB 953A please say aye. Opposed no. Carried. The bill is advanced. Any matters for the record, Mr. Clerk?

CLERK: Yes, sir, I do. Thank you. Mr. President, I have amendments to be printed to LB 571 by Senator Hefner. Mr. President, a Reference Report referring LR 258, signed by Senator Labedz as Chair of the Reference Committee. (See pages 1149-52 of the Legislative Journal.)

The Revenue Committee reports LB 1124 to General File with committee amendments attached. That is signed by Senator Hall as Chair of the committee. Appropriations Committee reports LB 1210 to General File. That is signed by Senator Warner as Chair of that committee. Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 163 and find the same correctly engrossed, LB 163A correctly engrossed, those signed by Senator Lindsay. Enrollment and Review reports LB 1019 to Select File, LB 1019A, LB 1184, LB 1184A, and LB 880, all to Select File, some of which have E & R amendments attached. That is all that I have, Mr. President. (See pages 1052-55 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Moving on to LB 542, Mr. Clerk.

CLERK: Mr. President, excuse me, LB 542, I have Enrollment and Review amendments, first of all.

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the



cancellation of the public hearing on LR 258.

SPEAKER BARRETT: Senator Baack, please.

SENATOR BAACK: Yes, Mr. Speaker and colleagues. This resolution, I don't know if you remember the other day we had the resolution of Senator McFarland, where he wanted the Department of Revenue to issue the numbers about the bonuses and everything that were paid over the years. They have since done that and he had a resolution, the resolution was referred to committee. The Reference Committee referred it to the Government Committee, and we had scheduled a hearing for tomorrow on that. But the...And I visited with Senator McFarland about it, the Revenue Department did issue those numbers, so at this point we feel no...that we have no reason for a hearing to be held tomorrow on this issue. So this is just to suspend the rules and cancel that hearing that was to be held on LR 258 tomorrow. Thank you.

SPEAKER BARRETT: Thank you. If there is anyone that would like to speak to that motion, please raise your hand. Senator McFarland.

SENATOR MCFARLAND: Just briefly. I did visit with Senator Baack about this, and we visited about whether, even if we held the hearing, there could be any legislation proposed that would change and clarify the language about what is public information and what is personal information. And we came to the conclusion that we probably couldn't introduce any legislation this session anyway. So, to save time and to...for the convenience of the committee itself in having to hear testimony on something that would necessarily come up in legislation for next year, we thought it appropriate just to cancel the hearing. I would commend the Department of Revenue for disclosing the information. I had hoped that they would have done it sooner, but they have complied with that. The information is public, and it can be interpreted and debated according to the wishes of those persons that are concerned about it. It seems appropriate to me that those expenditures of public funds should be made public. They were made public this time. It seems to me that the proper role of the Revenue Department is not to be involved in the matters of politics and trying to be a spokesperson or group of spokespersons for a particular candidate. Their function is to administer the tax dollars that are paid to this state, and that is their primary responsibility, and I hope they



March 12, 1990

LB 642, 953, 1059, 1141  
LR 258, 278

would see it in that manner. So, for that reason, I would agree. I hope you suspend the rules and require that a hearing not be held. And maybe this matter can be considered next year in the Legislature.

SPEAKER BARRETT: Anyone else care to speak to the motion? If not, Senator Baack, anything else? Thank you. The question is the suspension of the rules. Those in favor vote aye, opposed nay. Record, please.

CLERK: 33 ayes, 0 nays, Mr. President, to suspend the notice of hearing rule and cancel the public hearing on LR 258.

SPEAKER BARRETT: Motion prevails, rules are suspended. Thank you. Mr. Clerk, have you something for the record?

CLERK: Mr. President, items for the record. A new resolution, LR 278, asking that the Legislature congratulate Ronald Roskens for his selection to head Service Director of the Agency for International Development. That will be laid over. (See page 1302 of the Legislative Journal.)

Education/Appropriations gives notice of public hearing. Amendments to be printed to LB 1059 by Senator Hall and Senator Smith; Senator Haberman to LB 953 and to LB 642; and Senator Crosby to LB 1141. That's all that I have, Mr. President. (See pages 1303-05 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, Mr. Clerk. We have a priority motion?

CLERK: Mr. President, Senator McFarland would move to recess until 1:30 p.m. this afternoon.

SPEAKER BARRETT: You've heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Ayes have it, motion carried, we are recessed.

RECESS

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Record, Mr. Clerk.