

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

[LB52 LB55 LB56 LB64 LB83 LB88 LB90 LB142 LB151 LB163 LB184 LB379 LB420  
LB464 LB558 LB675 LR11 LR23]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-sixth day of the One Hundred First Legislature, First Session. Our chaplain for this morning is Senator Wallman. Would you all please rise.

SENATOR WALLMAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Wallman. I call to order the twenty-sixth day of the One Hundred First Legislature, First Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Any messages, reports, or announcements?

CLERK: Mr. President, hearing notices from the Transportation and Telecommunications Committee offered by Senator Fischer as Chair. A communication from the university regarding a bond request. It's actually a corrected communication. I have notice of reports received from the Department of Education and the Department of Health and Human Services. Those will be on file in the Clerk's Office and available for member review. And report of registered lobbyists for this week, Mr. President. One announcement, the Natural Resources Committee will hold an Executive Session at 10:00 today in Room 2022, Natural Resources at 10:00 today. That's all that I have, Mr. President. (Legislative Journal pages 453-456.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to the first agenda item under legislative resolution.

CLERK: Mr. President, LR11 was a resolution originally introduced by Senator Lathrop and others. It asks the Legislature to direct the Executive Board to continue to reappoint and continue the work of the special committee of the Legislature known as the Developmental Disabilities Special Investigating Committee. Upon its introduction, the resolution was referred to the Executive Board for public hearing purposes. The board met, has referred the resolution back to the floor. There are Executive Board committee

Floor Debate  
February 12, 2009

---

amendments pending. (AM281, Legislative Journal page 433.) [LR11]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LR11. [LR11]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This is the occasion I'm taking to introduce LR11. And it might be an opportunity for you to get a fair overview of the Beatrice State Developmental Center, the issues surrounding that center for the developmentally disabled, and the work of the special investigation committee that was appointed last year. I would start by telling you that the Beatrice State Developmental Center has been down there for many, many years. It had a huge capacity in the old days and care for the developmentally disabled historically many years ago involved warehousing people with developmental disabilities, back when these individuals were regarded as something short of total human beings and they were warehoused. And as we have come to regard them as full human beings entitled to full dignity, the standard of care for people with developmental disabilities has changed. BSDC has had bumps in the road and problems along the way. It is usually a function of the care not keeping up with the changes in attitudes toward the developmentally disabled. Our most recent problems came to light, at least came to light to this Legislature, last spring when we were advised that two federal agencies had been conducting surveys or investigations of the Beatrice State Developmental Center. One agency was the Department of Justice. The DOJ was involved because Beatrice had been reported to the DOJ. They investigate facilities where people are kept for 24 hours at a time. And they came into Beatrice, did their study, issued a report, which is an addendum to our committee's report, and detailed abuse and neglect that was going on at Beatrice State Developmental Center, concluded that the state was violating the civil rights of the 200 or 300-and-some people that lived there at the time, violating their civil rights by abusing and neglecting patients. We also had surveys done by CMS. CMS is the...because Beatrice State Developmental Center receives half its funding from the federal government, CMS is a branch or an arm of Medicaid and they establish the rules for the standard of care for people in such institutions. And they tie the funding to our compliance with those standards. They began to come in, in contrast to--and we heard this when we had our hearings--we used to be the gold standard in the country in the nineties. And in 2001, CMS came in and did a survey and they said, you have some problems. And that was the beginning of a series of surveys that were done. In each survey, CMS would come in and say, these are the problems. We would make promises. We wouldn't do what we promised. They would come back and say, it's a mess. You have more problems. We would make promises. We wouldn't keep them, and it escalated. In November 2007 after several surveys, after the state's failure to do as we promised to rectify the breaches in the standard of care, BSDC was decertified. Now you can talk about it in human terms, talk about it in terms of the people who call BSDC home, which were over 300 in number at the time, or you can talk about it in terms of the money. The decertification means that the \$52 million that we used to split

Floor Debate  
February 12, 2009

---

with the federal government has been taken away. Decertification means that we are not meeting the standard of care, that we will now have to pay the federal government's \$29 million a year to run BSDC, and it will now become an obligation of the General Fund in its entirety. The committee was established in response to these reports. Our obvious concern for the failures at BSDC, we held hearings from June through November to get to the bottom of it. We looked at BSDC. We looked at the systemic problems, we looked at the community-based programs to find out how they're functioning, and we looked at the waiting list. In almost everywhere that we looked there were problems. They are systemic. They go back to personnel practices at BSDC. They go back to a culture at BSDC which no institution can function in, in the culture that prevails at BSDC. And we also looked at the relationship between the community-based programs and BSDC, as the DOJ had done. And what we found is that a lot of the people might be willing to leave BSDC and move into a more integrated setting, which is everyone's goal. Everyone agrees that someone who has developmental disabilities should be in the most integrated community setting available that they'll agree to, but we have problems in the community-based programs. For years, we've underfunded them. We haven't developed the capacity. So resolving the problems at BSDC necessarily involve looking at community-based programs. We have a waiting list that was functionally at zero ten years ago at the end of the Nelson administration. It is now approaching 2,000 families waiting for services for developmentally disabled loved ones, and we are making no effort to move. There's not a proposal in the budget for...to take one person off of the waiting list. We also learned when we did our work after talking to the state's lawyer that the strategy for the state of Nebraska in the wake of our decertification was to clean the place up, fix it up, and try to be recertified. It would be a difficult undertaking because of our history, because of the problems at BSDC, but our strategy was to fix it and to clean it up and to get it ready and invite CMS to come back and take a look again, recertify us, give us our money back, please. That was the strategy, and we started that undertaking a year ago. A year ago we started to clean up BSDC. That was what we were being told. That was the strategy. And where are we today? A year after the DOJ told us what we needed to do, six months after we agreed to do the things the Department of Justice told us we needed to do to fix the problem, we have made very, very little progress. We've hired some people. We've made arrangements for some people to come in. Most of that hasn't even started yet. It looks like it was done in the last month. After five months went by from our agreement with the Department of Justice, much of what we agreed to has not been done. What has been done, much of it has been done in the last few weeks. And we, last week, had our medical license pulled or two weeks ago. It is an institution that was erected to provide care for the developmentally disabled, including the medically fragile. A year after we said we were going to clean the place up, after we recognized the personnel deficiencies and the problems at BSDC, we just had our license pulled because four people died there in January. I'm told yesterday one of those families filed a claim, understandably. [LR11]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR LATHROP: The summary of the events indicates that we've made no progress with the medically frail and so they were moved to hospitals. They were pulled out of their homes, their environment on an hour and a half's notice. The Department of Justice has an investigator who wrote a report. It was three months delinquent, but we finally got it. In it he goes through and looks at BSDC and concludes that it remains an habilitation wasteland where people are parked in front of the television that isn't even on. There's no attempt to take people into the community. I believe that the committee is necessary to continue its oversight. I think the progress must be made... [LR11]

PRESIDENT SHEEHY: Time, Senator. [LR11]

SENATOR LATHROP: Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. As noted, we do have an amendment from the Executive Board committee, AM281. Senator Wightman, you're recognized to open on the Executive Board committee amendment. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. The committee amendment, AM281, does two things. First, it adds a new resolve to the resolution paragraph, being paragraph 4, authorizing the Developmental Disabilities Special Investigative Committee to continue its work until the beginning of the One Hundred Second Legislature, First Session so that it would be in effect for the remainder of the two years of this legislative session or this Legislature. Without this change, the committee would need another resolution next year in order to continue its work. The second part of the committee amendment is simply to harmonize our references to the Developmental Disabilities Special Investigative Committee in the third resolve paragraph so that it is consistent with the other resolve paragraphs. I think that it is necessary that we provide this authorization for the remainder of this two-year period. I think that otherwise we will probably be back here next year reauthorizing it. For this reason, I would appreciate your support for the committee amendment and will try to answer any questions that you may have. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You've heard the opening of the committee amendment from the Executive Board, AM281. Members requesting to speak are Senator Lathrop, followed by Senator Gay, Senator White, Senator Harms, and others. Senator Lathrop. [LR11]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, I'd like to continue with a little more background if I can. The committee, the LR283 Committee as we came to be known, was our response as a body to the findings by the DOJ and CMS. Senator Flood in the last session introduced LR283 to establish this committee. The committee

Floor Debate  
February 12, 2009

---

includes myself, Senator Harms, Senator Gay, Stuthman, Wallman, Cornett, and Adams. We have held hearings and we might...you might ask yourself why don't we just turn this over to the Health Committee and why do we need a special investigation committee? I will tell you it was the unanimous recommendation of the committee that we remain intact. That included Senator Gay who is the Chair of Health and Human Services Committee. So we're not stepping onto their turf. I've talked to Senator Gay at length about this issue. We share a concern over where we're going with BSDC, where we're going with the community-based programs, and we are working together and not at cross purposes trying to find a solution, trying to provide the oversight. And I believe the fact that we can hold hearings and investigate different aspects of the things that we have seen since we began our investigation is an appropriate reason to reauthorize this committee as LR11 seeks to do. Maybe a couple other thoughts: If you've not had occasion to read the report this committee did, it's on-line. I think you can get to it through the Legislature's Web site. It's only 40 pages, and I think it will provide you with the overview you need, if you've not read it, to understand the issues that we're dealing with. They are complex. There are many, many facets to the issues, and there are, in some cases, what appear to be inconsistencies. We have the DOJ and CMS saying that we're doing a terrible job and not meeting the standards down in BSDC. And we have families that say they don't want to leave...they don't want to take their loved ones from BSDC because they're doing a wonderful job. There are many things that we've looked at, many things that we understand, and I think we're well-suited to continue in that effort. And again, as far as the amendment is concerned, I think it makes perfect sense. We haven't had anybody tell us that the problems at BSDC when we put our mind to it, when we put the resources to it and begin an earnest attempt to solve those problems, we haven't had anybody tell us that they can be solved in less than two years. And that's two years, most of which will go without federal funding. So I think because of the amount at stake, the lives that are involved, and the history of BSDC and its problems that the committee is necessary. And I would appreciate your support of not only LR11, but the Executive Board's amendment, AM281. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Gay. [LR11]

SENATOR GAY: Thank you, Mr. President. I rise, I do support the amendment and the resolution. And Senator Lathrop is correct, there are three members, Senator Stuthman, myself, and Senator Wallman, on the Health Committee as well. So we have no problem at all with continuing this on. A few remarks I would say, throughout the summer we spent many time--there are really good people on the committee--we agreed to this. If it's the same people on the committee, there's no sense to go back and try to educate all of you. We will try to do the best as we can, and Senator Lathrop discussed kind of where we've been. I want to discuss...and there's different views on this thing. There's a lot of different, just a lot of things going on, as you all know, in Beatrice. One thing I would say, though, is where we're going. When I look at this thing, and others agree, this has been a long problem. This can be attributed to a lot of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

people, can be attributed to past legislatures who have, I think, kind of have not done maybe what needed to be done on appropriations, different things. So there's plenty of blame to go around on what has happened in Beatrice, Nebraska. We had the state-of-the-art facility at one point. We were national leaders in the area, and we've kind of let that slide. We need to get back to that state of where we were. I'm kind of looking at this, and we're dealing with a lot of situations at once. Of course, we had to remove some of the residents...some of those residents, and that's a very tough deal for the families involved and the changes that are involved. And that's hard on everybody, and we're going to take that into account and try to work as quick as we can but also make right decisions for the long term. When we look at this thing, though, we could have a real opportunity here, and I mean this in the long term of how we deliver services to those with developmental disabilities. Long term, the old days, as Senator Lathrop mentioned, where people were just housed and that was it. That's changing and we need to change and be aware of what's going on. And I'm by no means an expert, but as many other members on the committee, we're learning a lot as we go along. But it's obvious to me that we need to change the way we deliver services. The waiting list, home-based services, those are interrelated but somewhat separate matters. We're going to call this an investigative committee. It's still called investigative committee. We've looked at this. We've had Joe Toy look at this, we've had Liberty come in, we've had Dr. McGee is looking at this report, and it's a good report. He's mentioned we've made some progress, but all the reports are saying somewhat of the same thing--we've got a heck of a lot of work ahead of us. Let's get it done. So I think we've investigated things quite in depth. This is more of a...where I can see the benefit of this would be a transitional opportunity where we're involved in making good choices into the future and have a say in this because we're absolutely going to be involved. We're talking large amounts of money. We're talking systematic changes that need to be made. So you will need to be involved, and I think we can all help you with that. And I assume, you know, that you would look at us for some leadership and where we can go in this. There will be disagreements amongst ourselves probably on how we do this. But what I've seen so far is everybody is working for the right reason. We want to do what's best for the residents and the future residents in how we're going to deliver these services. And I've been impressed with that aspect of it. I think everyone is pulling together... [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR GAY: ...in trying to get that done. So as we go along and have a discussion today, I think we could focus on what's going to be done, not just immediately with Beatrice, but how are we going to deliver services 10, 20, 30 years down the road? This is an evolving...we're learning new things all the time so it's an evolving process that we need to make sure if we make a...we don't want to make a hurried decision. We need to be quick about it, but also we need to make decisions that will have a lasting impact. So that's important, and I'd like to hear more of what's going on. And feel free to contact anybody on this, and we'll try to get you as much information as we can. I know we had

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

John Wyvill trying to keep you up to date. We're trying to keep you up to date best we can. Senator Lathrop mentioned, I think, these are all available on-line. You can view them. But feel free to contact I'm sure anyone on that committee, and we'll keep you informed as best we can. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator White. [LR11]

SENATOR WHITE: Thank you, Mr. President. I rise today in great concern. One of my primary concerns is that when there's much blame to go around, nobody is to blame and nothing changes. A year ago there was a report from the Department of Justice that was not promptly released and there were reports before that were sat on by the executive branch that indicated we had profound problems at Beatrice--sexual abuse. In the Department of Justice report, they described a young woman whose pubic area was shaved by an employee whose supervisor knew of that and waited a week to report it. Since that time, after that was exposed, after our debate, we had a person who was raped because an employee was buying the perpetrator pornography. Now at some point, folks, people are responsible. At some point it's not enough to say there's a lot of blame to go around. Those are human beings, and these events occurred after we expressed concern and outrage on this floor. When is someone responsible? Now we talk about how complex it is and all our problems and what we have to do and, gee, the responsibility goes back decades, all of which means nobody is responsible. With all due respect, I reject that entirely. The people of the state of Nebraska expect us to conduct their business in a dignified, honorable, fiscally responsible manner, and we are not doing it. We are spending staggering amounts of money to violate the patients' constitutional rights. Under no circumstance can that be acceptable. Under no circumstance does that mean we just have to look at it anymore. Four people died in January. Now one of the things that was identified as a problem with Beatrice is our patient count was too high. And we talked about how it was too expensive and we didn't want to hire enough people, and we didn't spend enough for salaries to attract and hold good people. So what happened? In the middle of the night we moved, according to Senator Lathrop's kindness, 45 people from Beatrice to hospitals across the state. These folks now, I am told, are being taken care of and the state is reimbursing the hospitals at the Blue Cross Blue Shield rate. That is staggeringly expensive, and we don't even know...I don't know anyone here, and I've asked, who can tell us what it's costing us on a daily basis because we didn't spend enough money to take care of the hospital, to buy the salaries, and we're now placing them in a full-service hospital at Blue Cross Blue Shield rates. That's coming out of the General Fund. How much is that costing the people of the state of Nebraska right now every day because of our repeated conscious failures to do the right thing in Beatrice? I'm not even talking about the human side. I'm just talking about the fiscal responsibility. And the great irony of it is we shut the hospital down, we move these folks who have lived there, many of them for 20, 30 years, and who are psychologically fragile and very vulnerable, in the middle of the night. They think they're being taken from their home. They're put in strange places.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

And, boy, our patient count now is down enough to qualify for the federal government rules. What an achievement, except that the hospitals we transferred them to don't have any rehabilitation services. So we're in violation of federal law because it's not enough just to give them medical treatment and house them, you have to try to rehabilitate them, to integrate them into the community... [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR WHITE: ...and we're in clear violation of that as well. The people who came and testified to the executive committee pointed that out--that many of them were going up on their own time to provide rehabilitative services. And some of them had been threatened to stop showing up and trying to help their long-term patients. I would tell you right now there are people responsible. And the voters of this state will hold us all responsible and properly so. But after outrage a year ago that we have rapes, that we have deaths, that we're further in violation, it's not enough to say we're all to blame. People need to be held accountable. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator White. (Doctor of the day introduced.) Members requesting to speak on AM281 to LR11 are Senator Harms, followed by Senator Dubas, Senator Coash, Senator Wallman, Senator Adams, and others. Senator Harms. [LR11]

SENATOR HARMS: Thank you, Mr. President and colleagues. I had the fortunate opportunity to serve on that committee, and first I want to thank Senator Lathrop for chairing it. He did a marvelous job for us. He worked very hard on it. He has a lot of his own hours in his own, I think his professional time this summer. We drew him away from his own business. He contributed greatly. The staff that surrounded the committee and Senator Lathrop were outstanding. They probably have as much knowledge about Beatrice as any of us, and I want to thank them also for what they did and how they helped guide us through this issue. I'd have to tell you that I've had a lot of experiences in my life, and I think this is probably one that has upset me the most. When I got the reports from the federal government and I was preparing to participate in the committee and I wanted to read the information, I couldn't read it through in one sitting. It is so upsetting the things that they found and the stories that they told that took place to me is unbelievable. And I would urge everyone in here if you truly want to understand it, get the documents, read them, and you'll understand what we're saying. And I will tell you from the front side of this I have gone into many troubled colleges and I've done consultant work so I focus quickly into management. And I will tell you now in order to fix this issue you have to change the management. There is no management. The issues that you find here and what has taken place is the fact that we never dealt with it. We didn't have management. It was not there and it changed the culture of the organization, which is critical to be successful. Management has to go away. And I'm just being frank with you. I said this after I read the report, I said it at the very beginning

Floor Debate  
February 12, 2009

---

of the committee, and that's exactly what we found at the end. There was no management. The reports that you see and the recommendations that you see very little effort was made to correct those. And I have great doubt in my own mind, even with this committee, this committee will have to work extremely hard to get the changes to occur. Unless we change the culture, it's not going to happen, folks. And my concern is it's got to happen. We've got to take the responsibility to correct this. And I will tell you that from the experiences that I had and listening to the people testify and in talking to the staff that were there, they will tell you that what's going on inside is horrible. And so we owe it to the people who have placed their loved ones into an environment that they expect us to take care of it, to be safe, to be rehabilitated as best we can, we have that responsibility. And I refuse to from that. And I think everyone who is in here has a responsibility. We should not from this responsibility. We made a great effort to put people into a community-based program. We don't have a community-based program, folks. We don't have a program because, number one, we don't have enough doctors, we don't have enough psychiatrists, we don't have enough psychologists, we don't have enough social workers, we don't have enough people to be able to supervise and take care of the people who are being placed in a community-based program. And if you expect to put them further into rural America, it gets worse. We've made no attempt to develop the community-based program. I don't care what they tell you. It's not there and it's very clear that it's not there. [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR HARMS: And the next litigation that's going to come, pardon me? [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR HARMS: Thank you, Mr. President. The next litigation that will come will be because we don't have programs put together. And so I think I would tell you that read those reports, read what we submitted as our findings and recommendations, and then come back and talk to us. Tell us what you think. Tell us what you think are our opportunities to correct this. I'm just telling you, people, we have a responsibility here. None of us now can from it. I've always believed when the complaint gets to you, you own it. And this committee owns it and you own it as colleagues. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Dubas. [LR11]

SENATOR DUBAS: Thank you, Mr. President, members of the body. First of all, I would like to take the opportunity to thank the staff and the senators who worked so diligently over the past nine months on this committee. Thank you is actually too small of a word to express what I know the time and effort that you put into this. It was an extraordinary effort. When I received a copy of the committee's report, while I was disturbed by what I

Floor Debate  
February 12, 2009

---

read, I was very proud of the work that went into that report and the direction and the foresight that that report is trying to put in front of us. We are the people's branch. We are the voice of the people. We make the laws. We are three separate but equal branches of government. But again, the legislative branch is the people's voice. The Legislature's role, our responsibility comes down and rests before each and every one of us today in this resolution. This is the Legislature's duty. We are meant to provide that oversight. We are meant to ask those questions on behalf of the people and for the people. We are asked to make those decisions that will have such a profound effect on people's lives. Yet often we must fight to get the needed information to make those very critical decisions. The warning flags have been waving for a long time on this issue. We knew very well we were on a slippery slope with the reality of losing \$20 million in federal support. This committee stepped up to the plate and finally took ownership of this situation. Of course, they recognized the fiscal impact that this was going to have. But I think more importantly they realized the serious violations of the basic civil liberties of our most vulnerable citizens. The department needs work, and I think we can all agree on that. This has been an issue since before I came here. And as Senator Gay said, there's enough finger pointing to go around for everybody. There are qualified and professional people who work for the department. They put in long hours and they go to great lengths to care for others in conditions that probably most of us in this body would find very uncomfortable. We have to truly take into account the Department of Justice's report, and I would echo Senator Harms's comments. If you have not read that report, please do, but recognize the fact it will be very difficult to get through and it will probably take several attempts. The report observed the staff that is overworked and underpaid and not properly trained for the responsibilities of their assignments. In my estimation, our response has not matched the severity of the situation. Community-based care is a great idea. The closer people can stay to home the better it's going to be for everyone involved. But a change in that direction does not happen overnight nor without adequate resources to provide those services locally. This past week I was invited to a supper put on by ARC. I left that banquet with a sense of hope and a renewed commitment to those citizens of our state who are not by any means asking for special treatment, they are just asking for equal treatment. They want the same opportunities to live and work and play that the rest of us take as a given. They can and are becoming contributing members of our society if we just make sure that those communities have the proper resources... [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR DUBAS: ...to help them in that endeavor. I was so impressed by their determination and pride and self-esteem and, again, it renews my commitment. This all comes down to accountability. I introduced a bill this session before the Health and Human Services Committee asking that one of the divisions of the department become an accredited agency. Accreditation sets a uniform set of standards. It creates that accountability. It puts transparency into place. That's what I think my constituents are

Floor Debate  
February 12, 2009

---

asking from me. They want to know why things are happening, how they're happening, and how their tax dollars are being spent. I think we really need to take into account as the decision makers of this body that accountability factor is critical to the work that we do. We must not just ask for accountability, we must demand it. And until we do that, we will not have anything more than what we have in front of us right now. [LR11]

PRESIDENT SHEEHY: Time, Senator. [LR11]

SENATOR DUBAS: I support this resolution. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Coash. [LR11]

SENATOR COASH: Thank you, Mr. President, members of the body. It's often said that a society will be judged by how it treats its most vulnerable citizens. How are we being judged today? How are we being judged? The report that people have been talking about recommending that we all read I also recommend. This is an indictment. This is an indictment of indifference. It's gone on too long. BSDC is in Senator Wallman's district, but the citizens who live there are all Nebraska citizens. They came from all over the state. This is not his problem. This is our problem. This is our issue. We used to lead the way. Nebraska used to be the leader in providing services for people with disabilities. We are no longer that leader, but we are still Nebraskans, and we know what it is to help our neighbors. We have just failed to help our vulnerable neighbors. Pay me now or pay me later is something that is often heard in this body. Well, we're paying now. We did not get where we got overnight, and we will not get out of this overnight. But we do need this committee, not for our sakes, but for the sake of the people who depend on us. I do urge you to support this resolution. And in closing, I'll read something that I think bears on this. It's called "All Those People Trying to Help Me." All of them hoping for me to do well, all wanting to be kind and useful, all feeling how important helping me was. Yet never did anyone ask me what it was like for me. They never asked me what I wanted for myself. They never asked me if I wanted their help. I do not feel entirely grateful. I feel instead a remote anger stored beneath my coping pattern of complacent understanding. People do the best they can to help in meaningful ways. I know. I just wish all the people with disabilities would say to them, before you do anything else, listen to me. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Wallman. [LR11]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Yes, BSDC is in my district. But once again, I want to praise my committee members and Senator Lathrop for getting an award from the ARC people, a standing ovation. Our committee truly does care for the disadvantaged. And I've lived in Gage County all my life and I consider myself lucky to be a part of this community, and a special relationship between BSDC and the community. The people who call BSDC their home are

Floor Debate  
February 12, 2009

---

important members of Beatrice and Gage County. Whether it being in a parade or having an outing to the movie theater or park, these are wonderful people who have received excellent loving care from most of them from not only those who work there, but from the people in our community. Beatrice is a caring community. And over the last year, those that provide care for the residents of BSDC have taken a lot of shots because of what has taken place in the facility. However, I want to take this time to say that I know most of those people who work there. They are good people. They're people who care, love for the people who live at BSDC, and they go to work every day. For a long time, it was mandatory overtime. And they put in lots of hours, and some of it's free. So they don't go there to get rich. They don't go to BSDC to get rich. If you talk to them and ask them about their concerns, they usually won't even mention their salary. What they will talk about is their desire for good leadership, leadership. They have been begging for management at BSDC and HHS who will listen and respond to their concerns. The committee clearly found that they have not received it. I know these people. I care for them, strongly feel that they do deserve to have the leadership in place so that they can do their best to provide quality care for those who live at BSDC. In the last week, I've gone to the hospitals, visited some of those who were moved out of BSDC in very, very short notice. And while there, I have found workers from BSDC who continue to provide wonderful care. Some of them have gone to the hospitals and volunteered to help on their own time to help the nurses there who were not prepared for this clientele. This speaks volumes, folks, about these people. So I know that if we pass LR11 the committee will do what it can to improve the care at BSDC and throughout the state. This is something that needs to be done, and I look forward to being a part of this change, and I'm proud to be a member of that committee who helped out in this area. And I urge you to support this amendment and the bill. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Members requesting to speak on AM281 to LR11 are Senator Adams, followed by Senator Hadley, Senator Karpisek, Senator Gay, Senator Carlson, and Senator Sullivan. Senator Adams. [LR11]

SENATOR ADAMS: Thank you, Mr. President, members of the body. You know, one of my little personal quirks when I volunteered to be on this group, when I see a problem, the first thing I want to do is just bulldoze into it and fix it. And I'm a realist and I suspected that wouldn't be the case here, but I still have that overriding personality trait that says get in there and get this fixed. But after spending the time that we did on it, the reality of it is this problem didn't come about overnight, and unfortunately for me and the committee members and you guys and more importantly the residents of Beatrice, it isn't going to get solved overnight either. And that's exactly why we need to pass this resolution. The committee made a lot of headway, primarily because of Senator Lathrop's leadership and, indeed, all of the work that the staff did. And my fear is that if the committee goes away the problem doesn't. I will guarantee you the problem is not going away. And instead, the problem gets pushed on Senator Gay's Health Committee

Floor Debate  
February 12, 2009

---

that's already had tons of issues to deal with or it gets pushed back exclusively into the executive arena. And I think a year ago this body said that the Legislature must take a part in this, and we just can't relinquish that responsibility and from it. You know, when I came to this body, one of the things that immediately stuck in my mind and when I leave will always be here is that there is a culture in this Legislature. And though you and I as senators will come and go over time, there's a culture here. You've heard me talk about it before, a culture of cooperation and a culture of civility, the list goes on. It took years to develop the culture of this Legislature. And if somebody wants to change it, it's not going to change overnight. The culture in Beatrice that has created the problems that we face and brings us where we're at didn't happen overnight, and it's not going to get changed overnight. As a body, we need to keep this group together, whether I'm on it or whoever is on it, it needs to be there to continue the work that we've started, to make sure that the Legislature has a foot in the door in trying to resolve this. And let me conclude with this, and then I'm going to relinquish time to Senator Lathrop if he wants it. We need to keep the committee together not just for this body. We need to keep it together for the parents and the guardians of those folks at Beatrice. Because whether we can solve the problem or not, they're depending on us to be their intermediary. They're depending on us to try to solve it. With the creation of this committee, we put ourselves in that spot as the legislative guardian. [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR ADAMS: We can't from it right now. Senator Lathrop, I'm sorry, I didn't leave you much time. [LR11]

PRESIDENT SHEEHY: Fifty seconds. [LR11]

SENATOR LATHROP: Thank you. And I think I'll just use this occasion to express my appreciation for the remarks and the support and to echo a comment made by Senator Wallman. You know, the problems down at BSDC, I feel sorry for those folks that work there. And that may sound like a strange thing to say after we've looked at an institution that seems to be having so many problems. They're good people down there. These are people from the Beatrice community that have a tradition of going to BSDC and working and caring for folks under very, very difficult circumstances. Many of these folks have very profound needs. Some of them have behavioral problems, and they give and they give and they care. And it isn't that we have a bunch of bad people in Beatrice. They're good people. [LR11]

PRESIDENT SHEEHY: Time, Senator. [LR11]

SENATOR LATHROP: They just need somebody to lead them. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Thank you, Senator Adams.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

Senator Hadley. [LR11]

SENATOR HADLEY: Mr. President, members of the body, would Senator Lathrop yield for a question? [LR11]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to questions? [LR11]

SENATOR LATHROP: Yes. [LR11]

SENATOR HADLEY: Senator Lathrop, was there any kind of lay advisory or governance board involved with the Beatrice center made up of lay individuals to involve in the governance process at all? [LR11]

SENATOR LATHROP: Not to my knowledge. There is a group called Friends of BSDC which are parents who have children or had children there that are...that try to advocate for BSDC on behalf of their family members. [LR11]

SENATOR HADLEY: Thank you, Senator Lathrop. I have been privileged and it's been an honor to serve on a hospital board for nine years. There are 90 hospitals in Nebraska, and every one of them have a governance board. And the first thing that you find out when you go on the governance board that your number one priority as a member of the governance board is quality. That's why you're there. You're there to see that the institution has a quality program. Ninety hospitals, approximately 15 members each, we're looking at 1,400 people in Nebraska every day are involved in governance in hospitals dealing with quality. The one thing I learned on a hospital board is being decertified is the death knell of a hospital. So it is just amazing to me that we could get to the point that an institution like Beatrice would be decertified because that's the end of a bad, long process--doesn't happen overnight. And to sit and not understand that this could happen is just amazing to me. Whether it's individual providers or healthcare facilities not being able to take Medicare patients in Nebraska you lock the doors because it is that bad. And that's why I would argue that as time goes on hopefully we might look at some type of governance board situation where we could get people who do have a real interest who will take it on an ongoing basis so eventually the Legislature doesn't have to be providing that oversight. So I would hope that the committee would look at some kind of structure that other hospitals and such as that follow in Nebraska in dealing with governance. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Hadley. Senator Karpisek. [LR11]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. First, I'd like to thank the task force. I think that they've done a tremendous job, and I think we're on the right path. I would like to say that I had put my name in for the task force, and I wasn't very happy that I wasn't selected, and I'm still not very happy that I wasn't selected, not

Floor Debate  
February 12, 2009

---

because of who's on the committee. I think we have the best group of people on the committee that we could, but because I care. I have a lot of people that live in my district or from my district that work there and are also residents there. So I really am supportive of the group. If there is ever an opening, I would like to get on that task force. However, during the hearing on LR11 in the exec committee, I had a very tough time with the testimony. It was tough. I can't imagine what this task force has heard while they've been doing their work. I had a tough day. That whole day it bothered me. I have to say I'm not over it yet. And it isn't the fact that things bad happened there--no blame on anyone, just what goes on there. I thank Senator Wallman. Two years ago I went down, took a little tour of BSDC. I was very impressed with what I saw. I expected the old nursing home stereotype in my head, not what I saw. I saw people smiling, working, living life, enjoying life. I absolutely think that we need to keep BSDC open. I am so glad that this task force has gotten involved. Thank Senator Flood for standing up and starting this last year. It absolutely needs to be done. We have a great responsibility to these people. They need us. Senator Gay is right--there is enough blame to go around, and I don't want to see that. But from now on, somebody does have to step up and accept the blame. And it's not right to keep pushing it on the people that are working there doing their hardest. I do agree we need to get management skilled people. Get the things that are decided on back to Beatrice. Let them decide. I understand that's not happening there now. It's decided somewhere else. And I hope and I know that this task force will accomplish those things and give them the tools that they need. They've got the people that want to work. We can get more people that want to work. But until they see they have the tools and the support, not only of the Legislature but the whole state, we're not going to get people in there that want to give. It's not an easy job. We all know that. With that, I would like to yield the rest of my time to Senator Nantkes. [LR11]

PRESIDENT SHEEHY: Senator Nantkes, 1:40. [LR11]

SENATOR NANTKES: Thank you, Mr. President, and thank you, Senator Karpisek. Just a few points that I wanted to clarify for the record. Number one, I rise in support of the amendment and the underlying resolution, LR11, and also want to add my thanks to the committee for their very diligent, very detailed, very informative work that they have conducted over the past year. There was an indication early in this discussion that maybe there was a lack of attention or resources from an appropriations perspective over the course of many years. I just wanted to provide a snapshot for the body about the type of resources that we are talking about. Right now... [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR NANTKES: ...at the Beatrice State Developmental Center there is about a \$53 million a year appropriation to serve about 200 residents it's my understanding at this point in time. That equates to over \$200,000 per year that we are expending on each of the residents in this population. Additionally, in the community side of things,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

there is about \$172 million a year that we send to community providers to serve a population of about 4,000 people with developmental disabilities as well. That being said, I commend the Governor in his budget request this year asking for additional resources to replace the loss of federal funds so that we can continue to infuse resources to this population. And I made a vote earlier in committee supporting that request in the spirit of partnership with the administration. I'm hopeful that this committee and the executive branch... [LR11]

PRESIDENT SHEEHY: Time, Senator. [LR11]

SENATOR NANTKES: ...will be able to work together to chart the course in a positive manner forward. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Thank you, Senator Karpisek. Senator Gay. [LR11]

SENATOR GAY: Thank you, Mr. President. Senator led right into where I was going. There is appropriations. And I had talked earlier, and I don't want to belabor this because I think we're...I'm very encouraged by what I'm hearing because it is going to require a lot of people. We need to look at--Senator Harms brought up a point--it's not a problem until you have to deal with it. Well, now you have to deal with it. And I'm confident after listening to this that we're going to and we're going to do the right thing. There's a lot of dollars spent in this, but that's not the main thing here. Sometimes we get wrapped up in the dollars. It's how we deliver services and how effectively we do it, what's quality of life. You know, many of you, I know you were at the ARC dinner and we've been to those and you hear these great stories. But that, you know, that really at the end of the day that's kind of where I think we want to get. There's a state of the state's issues, developmental disabilities, how much we spend. And I know we shouldn't be using these props, but this flat line here going from 1977 to 2006, which is the last update of this, it's a flat line--what we spent on ICF/MRs, which that's what we call these types of institutional settings when you go in there. They can be different sizes, but the fact is we're spending a lot of money going to community-based services than we have been. Eighty-one percent of the persons served are right now in community-based services. So we are going that direction. We need to continue to go that direction. But the amount of money and resources that have been in Beatrice...in the seventies, mid-seventies, we were the nation's leader in this field. And then kind of I think what happened was, well, we're the leader in this field and everyone else was looking to us. We quit looking at ourselves, though, and how we're delivering the services. So there's going to be a lot...everyone needs to pitch in. The employees down there are working hard, but I think as a committee member going down there, I think right away several of us left thinking, yeah, this is a management problem, it's a leadership problem, it's systemic along the way. And you can read that again through the reports. But that's why I wanted to get up one more time to encourage you all to help out, be involved, get your

Floor Debate  
February 12, 2009

---

answers, and talk to anybody. And I'm just really encouraged with what I'm hearing. I'm sure this is going to pass with flying colors, and we need to all roll up our sleeves and get to work. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Carlson. [LR11]

SENATOR CARLSON: Mr. President and members of the Legislature, I've heard a lot of very interesting testimony this morning, particularly stuck by Senator Coash saying that a society will be judged by how it treats its most vulnerable citizens. That statement is saturated with truth. It has meaning for all of us, and let's focus on that truth with the situation in Beatrice and others that we're going to deal with yet in this 90-day session. Senator Wallman spoke very eloquently and I appreciated his comments. I want to share a bit of good news before getting into asking a question that relates to this. Mike, who is the head of Mid Nebraska Services in Holdrege, Kearney, and Oxford, had a conversation with him the other evening. And he indicated they had received...taken in a resident from Beatrice who had spent 35 years in Beatrice. He was very concerned about how this individual might be able to adjust to a new environment. And they've been very pleased. The adjustment has been way beyond what their expectations could have been, and this individual is happy. And this individual is receiving the care that he needs. Mike also told me they have room for another patient. And so where we have opportunities like that to put these people in an environment that would better serve their needs, we certainly need to continue to do that. I was going to ask Senator White a question, but I understand that his father is having medical surgery and he's gone to be with him, and certainly our thoughts and prayers need to be with his father. Senator Gay, I'd like to address a question to you if I could. [LR11]

PRESIDENT SHEEHY: Senator Gay, would you yield? [LR11]

SENATOR GAY: Yes. [LR11]

SENATOR CARLSON: When we move residents from a place like Beatrice to another place, we're shifting dollars from a facility like Beatrice, and in the first instance, to a community-based service like Mid Nebraska, and I would call that a positive shift. When we shift dollars from Beatrice to hospitals, the cost has to be significantly greater. And Senator White referred to that with no real figures, but it's got to be significantly more, and in a situation where overall the services provided are really less than what they need. Now Blue Cross and Blue Shield that covers these individuals in the hospital, they have a specific purpose and that's to provide needed medical services but not comprehensive services. So it would be very interesting to me, and I'm addressing it to you, Senator Gay, and if there's somebody else I should talk to, I will. How can we get actual figures on what the cost of the shift to hospital care is? And it must be staggering. We need to know what these costs are. It certainly will further get my attention and I think that of several others in the body. Can we get those figures? [LR11]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

SENATOR GAY: Senator Carlson, that question is a good question and we're asking, and we will receive them. [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR GAY: On a positive note, and I'll try to get this in one minute, the reason that was done was, again, let's focus on the residents. For safety, they needed to be taken care of, and that's what we did. When they are now in the hospitals, which many hospitals have stepped up and received some of the residents, they are receiving day services. Providers are coming in, Region V, ENCOR, other people throughout the state, and they're looking for placements. But we need to make sure they're good placements. And that is being done as we speak. People have been working on this day and night. I've talked to several people on both sides, very upset parents, but also I'm hearing good things that are happening of our staff, state workers. They're calling up. They're keeping parents informed best they can, but it's a tough situation. It has to be a safe environment. And when you move people, that's not a good thing. We don't want to be doing this too often. So if we're going to find a placement, we want to make it fairly permanent. I'll look to see, I can't just off the top of my head... [LR11]

PRESIDENT SHEEHY: Time, Senator. [LR11]

SENATOR GAY: ...but we are working on that. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Thank you, Senator Gay. Senator Sullivan, followed by Senator Campbell and Senator Lathrop. Senator Sullivan. [LR11]

SENATOR SULLIVAN: Thank you, Mr. President and members of the body. I speak in favor of LR11 and also the accompanying amendment. I really hope that we will eventually get beyond any finger pointing and really come together, all parties at the table, to deal with what obviously is a very, very complex and important issue. And I'm confident that we can do that. I intend to read very carefully the report from the investigative committee, and I'm really appreciative of their work. But quite frankly, I think even if we didn't have that report in front of us we have every reason to support the existence of this committee, if for no other reason because they will serve as a pipeline to help us, as senators, deal with concerns that are being expressed by our constituents. I have some constituents from my district that are on their way back, in fact they maybe already have arrived from Arizona, which is where they are spending their winters, but they are residents of District 41, whose daughter has lived in BSDC for 46 years. One evening they received a phone call that said your daughter is being moved, with no indication or forewarning. And by 8:00 the next morning, their daughter was removed from her home, as they refer to it. They have been very distraught all week. As I said, they're on their way back here. They're obviously going to want some informed

Floor Debate  
February 12, 2009

---

answers, not only from me, from where...the facility where their daughter is currently being held. So as I said, this committee will be hopefully a direct pipeline for me to interact with this family and help them in some of their concerns. Again, I thank the committee for their work. I thank the good people at BSDC. I thank the people who work with all of these vulnerable citizens. It is a tremendous challenge. I think it takes a special person to work with these individuals, and I thank everyone. Also in my short time here at the Legislature, if people ask me how it's going, one of the things I often tell them is that I have such great admiration for this institution and for the commitment of all of my colleagues here. So I am very confident that all of us, including all of us here in this body, everyone concerned with this issue will get beyond the finger pointing, really come to the table and work on this very complex issue. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Sullivan. Senator Campbell. [LR11]

SENATOR CAMPBELL: Thank you, Mr. President and members of the body. I just have a couple of comments that I would like to make. The other evening I had the opportunity, just scrapped whatever the plans were and had an opportunity to sit down with one of the parents of the 45 that were taken from BSDC. And it was an interesting hour's discussion filled with much emotion on the part of the parent. And if we look to the future, because one of the senators said it's not enough just to look in the past what's happened, but what are we going to do, I would hope that one of the things that we would make every effort and that is before we move people that we know what the next step is going to be and the next step so that we can sit down with the parents or guardians as we of the people at BSDC and advise them. They most fear not knowing the future for their loved one. The second thing is I want to thank the committee. I was so struck by the report. I thought it was very well done. But looking to the future, it's not enough for each of us to stand on the floor of the Legislature and talk about this issue. What's really critical is that we use our newsletters, that we use our speaking engagements, we use the opportunity in the grocery store to begin talking in all of our communities across the state. It is here where the citizens need to know. Several of us were asked to speak last Saturday, and I mentioned to them the fact, and Senator Lathrop will probably correct me because I may not have this right, but the state of Nebraska failed on seven of eight conditions. There is only one other time that this has happened. We also are looking at decertification. There is only one other state this has happened to. And the people in the audience were so struck because they began to understand the seriousness of this issue. So I implore you all: Don't speak just here. Let your voice go back to your community. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Campbell. Members requesting to speak on AM281: Senator Lathrop, followed by Senator Pahls and Senator Gloor. Senator Lathrop. [LR11]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I turned my light on

Floor Debate  
February 12, 2009

---

again because we'd start to talk about and Senator Campbell's remarks were kind of a good segue for what I have to talk about. And maybe it's to point out the obvious. The obvious is that BSDC is run by Health and Human Services and that in turn is run by the Governor, and this really is the Governor's institution to run. It always has been. The institutions of the state are run by the Governor. And our role as a Legislature in the check and balance, which is sort of the brilliance of our democracy, is to provide oversight. We, as a body, we can't go down to Beatrice and run the place. We don't get to decide who the CEO is. We don't get to decide who they're going to hire and fire down there. We don't even get to decide what the population of BSDC will be. All we get to do is provide oversight. And that's what this committee has done and will continue to do. But it isn't enough for us when the subject comes up to stand up on the floor and say, this is terrible, something needs to be done, it needs to get better, we got to do something because we have to provide oversight and not just lofty speeches when we're on the floor about a subject such as this one. In the coming months, in order to resolve the problems at BSDC, in order to improve the community-based programs, and in order to address the waiting list it will be necessary that we speak on the floor, that we not only watch what's going on but comment when we don't agree because the only thing we can do as senators is listen to our constituents, look into the matter, and then speak on the floor of the Legislature. The only way we can influence what happens at BSDC is to stand on the floor and influence the approach our Governor takes to solving this problem. That is not partisan politics. It is us engaged in our constitutional responsibility of providing oversight of the executive branch. Our Governor is going to need support at some point to make these decisions. If you agree with them, stand on the floor and you can support him. If you don't agree with him, stand on the floor and say why. But they're going to be expensive. They're going to be costly. There are issues that you may wanted to have financed with an appropriation that we won't finance because we're spending it fixing BSDC. It's part of what we'll have to pay to resolve the issue. And if you're committed to improving the lives of these people, improving BSDC, you'll have to commit to spending the resources to make the changes necessary to bring in the people necessary to provide the services at BSDC, as well as in the community-based programs. I got involved in this with very little background in developmental disabilities. I've spent nine months working with really terrific people on this issue. The committee has been a committee of very talented senators. I've enjoyed the work. There is so many complexities. [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR LATHROP: I could go on and on and on and on, and I don't think I need to oversell this resolution so I won't. I would just encourage you to read our report, ask questions. There are seven people on this committee who know a great deal about the subject matter. I will also tell you that Senator Coash is in the industry so he understands it very, very well. I can tell from my conversations with him. Talk to us. We'll give you our thoughts and our ideas and tell you what we have divined is the

Floor Debate  
February 12, 2009

---

direction of the state with regard to emerging from this dark place. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Pahls. [LR11]

SENATOR PAHLS: Thank you, Mr. President, members of the body. Of course, I support this committee moving on. I'm going to take a little bit of a different approach because I'm doing it from some life experiences. I'm going to be a little bit more optimistic about this. I do see that we have many problems that we need to address. But I'm going to show you something that I call is a parallel issue that happened to me over 30, 40 years ago in my particular field in education. In the seventies, we were putting children in certain classes because we didn't understand them. We had prejudice against them. So we would actually put children in classes not towards their needs but to what we believed they should...how they should be placed. Well, the federal government stepped in and says, oh, no. No, you don't do that, guys. You have to have rules and reasons why children are placed in resource classrooms, special education classrooms, and it took awhile. I went through that transition as an administrator at the building level and also at the district level. We were frustrated because we had to make some major changes in the way we were treating children and adults. It took several years for us to learn how to work with children who had special needs. It's a training of the administrators, of teachers. Parents were much more involved in the child's placement. There were rules we had to follow. And a lot of it had to do with the leadership to make sure those things did happen. Because if they didn't, they came out and they audited you, and it's something you didn't want to be sitting across the table from somebody who is going through your records and they're asking you questions that you could not in your heart stand up because you said, h'm, maybe something needs to be corrected there. So there are ways of doing this. As I have seen education progress through the last 20, 30 years, it's amazing what has happened. I would encourage a number of you to go to some of these public schools and you would be amazed at how children, how they are placed in certain situations and the quality of education and treatment that they get. It's amazing. And I know you can't recall this, but when we talked about this issue before this committee came about, I stood up on the floor and I said, if we're going to go this route, it's going to cost more money. Because if you put people in the least restrictive environment, it does cost more money. And I think that was indicated by Senator Lathrop that if we do these things right, some of us are going to have to be willing to shift money from some of our projects to help alleviate this situation. It's a fact of life. I'm amazed every now and then when people will stand up and say, well, gee, in special education it keeps going up. Well, with the complicated society that we live in today, children have many, many more needs or they are diagnosed much more than what they were 20, 30 years ago. So that's the situation I've seen some ways that we're in right now is where education was 30, 40 years ago when the federal government stepped into schools and says, you're doing it wrong. And there was resistance because it was change and possibly it was a change that some of us at that time didn't want. But then we started doing a little bit of investigating of ourselves

Floor Debate  
February 12, 2009

---

and of our backgrounds and we said, right. That's why I see this happening to us right now. All the issues and problems are coming to the surface. We're taking a look at it, and you know we're not going to hide them under a stone. [LR11]

PRESIDENT SHEEHY: One minute. [LR11]

SENATOR PAHLS: It's not going to happen. And I think with the continuation of this committee continually looking for better solutions I truly believe, I'm being optimistic because I saw a major change in how we treated young children or children and young adults beginning 30, 40 years ago in education. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Gloor, followed by Senator Council. Senator Gloor. [LR11]

SENATOR GLOOR: Thank you, Mr. President, members of the body. Would Senator Wightman yield to a question? [LR11]

PRESIDENT SHEEHY: Senator Wightman, would you yield to questions? [LR11]

SENATOR WIGHTMAN: Yes. [LR11]

SENATOR GLOOR: Senator Wightman, did the Executive Board discuss at all membership on the task force specifically, perhaps expanding the task force to add some additional senators? [LR11]

SENATOR WIGHTMAN: That was not discussed in committee. It was felt strongly that we should leave the current members of that committee in place in that they had the experience during the past year of having conducted the study and the investigation and they should stay on. Again, we did not consider that as far as expanding the committee. [LR11]

SENATOR GLOOR: Well, I am in agreement that members of the task force, assuming they wish to continue serving, we're well served if they do. It provides a level of continuity. They have the information. They've been involved. But I would ask for some consideration of the fact that we have a large number of new senators who have joined since this task force was organized, some of whom, and Senator Lathrop mentioned one, some of those senators bring a specific level of expertise and some knowledge, perhaps some fresh insight that might be of help to the task force. And I would ask that by way of some consideration if it's possible to add members to the task force. I also understand overly large task forces can be a problem, but adding one or two to me would not seem to be a problem. I would also like to speak to Senator Hadley's comment about perhaps a governance board. Senator Hadley and I go back a ways to the extent that he served on a governance board of an institution that was a sister

Floor Debate  
February 12, 2009

---

institution to the organization that I ran. And so we have in some ways the same but in some ways different perspectives. I would tell you that governance boards, in my opinion, are only as good as the management team that leads that institution. And until we are comfortable that we have quality management in Beatrice, I think a governance board would struggle to find its role and to be effective. I am not opposed to a governance board, but it speaks to me of the need to make sure that we have quality management of that institution. Otherwise, much, much else of what we try and accomplish down in Beatrice will be whistling in the wind. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Council. [LR11]

SENATOR COUNCIL: Mr. President and members of the body, I refrained from getting up sooner to address this issue, and I appreciate all of the comments that have been made about my fellow members of this body. I do, however, feel the necessity to rise to thank Senator Lathrop and the members of the committee for the service they have provided to date, but more importantly their willingness to continue to work hard on one of the most serious issues facing this state. But I want to add that the mere existence of this committee will not affect the changes that we all know need to occur with regard to the operational issues at BSDC or, more importantly, the general provision of service and meeting the needs of the developmentally disabled members of our respective communities. Now whatever your vote on this issue is today, and I trust that it will be a unanimous vote, we all know that the citizens of the state will know how we will vote on this resolution today. They'll see our vote. And like I say, I doubt that it will pass by less than a unanimous margin. But what is more important, in my opinion, in the message to be sent to those who are watching today, those who will be reading the reports of this debate tomorrow, is whether our vote today represents our commitment to take the necessary action to make the changes and to provide the resources that this committee will undoubtedly identify during the course of their continued work on this issue. Now I trust that everyone will vote in support of the amendment and the underlying resolution. But I don't want you to vote in support of this resolution and the amendment if you're not prepared to follow through and cast your vote favorably when those tough policy and appropriations issues come before this body with respect to this issue. So carefully consider your vote and when you vote in favor of continuing this committee, please recognize that for most of the citizenry they're going to consider that your pledge, your pledge to follow through and address this in the only way that this Legislature can address these issues. And I, again, thank Senator Lathrop for pointing out what our role is in terms of addressing this issue. But our role in many instances is the most unenviable of the roles, and we are the people who, unfortunately, seem to be held to the highest level of accountability. So again, when you cast this vote today, view it as a pledge to cast similar votes when we need to take definitive action to correct this issue. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Council. Are there additional members

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

requesting to speak on AM281? Seeing none, Senator Wightman, you're recognized to close. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. President. I want to thank everyone who has spoken on this issue today. Also want to thank Senator Flood and those who were responsible for creating the committee and those who served on the committee and particularly Senator Lathrop who has given so freely of his time during the past year and has certainly had a tremendous input in the committee report, as have all the members. From the statements of many who have served on the committee and many who have not, it appears obvious that one year will not be sufficient to complete the oversight of the activities at BSDC. The committee amendment, as I stated earlier, would expand the time and make clear that this committee would continue to serve as an oversight committee throughout the One Hundred First Legislature so it would be for the remainder of the two years. I thank everyone who spoke and had such heartfelt words on the floor this morning. I just urge you to pass AM281, which would set additional time for the committee, the investigative committee to serve. Thank you, Mr. President. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Wightman. You have heard the closing. The question before the body is on the adoption of the Executive Board committee amendment, AM281 to LR11. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR11]

CLERK: 42 ayes, 0 nays, Mr. President, on adoption of committee amendment. [LR11]

PRESIDENT SHEEHY: AM281 is adopted. We'll now return to floor discussion on LR11. Are there members requesting to speak? Seeing none, Senator Lathrop, you're recognized to close. [LR11]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate your attention to the discussion this morning, your willingness to listen to those of us that have been involved in this committee. We've been moved by what we've seen. We feel strongly about the necessity of this committee, and your willingness to listen to us express ourselves is appreciated. This committee will allow the body to conduct oversight, as it is obligated to do, of the executive branch as it tries to pull itself out of the quagmire that has become the state of our developmental disabilities services and the Health and Human Services in the way they've delivered the services to the DD population. I appreciate your support of LR11. I would encourage you to contact any one of us or talk to any one of us on the committee if you have questions or concerns as we continue with our work. Thank you. [LR11]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the adoption of LR11. All those in favor vote yea;

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

opposed, nay. Please record, Mr. Clerk. [LR11]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of LR11. [LR11]

PRESIDENT SHEEHY: LR11 is adopted. Mr. Clerk, you have items for the record. [LR11]

CLERK: I do, Mr. President, thank you. Your Committee on Enrollment and Review reports LB52, LB151, LB88, LB184, and LB379 to Select File some of which have Enrollment and Review amendments attached. That's all that I have, Mr. President. (Legislative Journal page 456.) [LB52 LB151 LB88 LB184 LB379]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to the first item under General File.

CLERK: LB142, Mr. President, a bill by Senator Hansen, relates to Livestock Brand Act. It changes provisions relating to recorded brands. The bill was discussed yesterday. At that time the committee amendments were presented by the Agriculture Committee, chaired by Senator Carlson. They were adopted. I do have other amendments pending, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Hansen, would you like to give us a short recap on LB142. [LB142]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I would like to give a short recap and just a little bit of history of the Nebraska Brand Committee. It was started in 1940 by this body when it became a one house Legislature. We were looking for, we I say is the industry were looking for a way to recapture losses of animals lost. It was started in 1940 and my grandfather had a part in that prior to 1940 and in actually starting the State Patrol. The State Patrol was expected to do some of these functions, too. But since then the Nebraska Brand Committee had been formed in 1940. It's a statewide agency. It does investigate cattle losses, cattle disappearances, cattle shootings, cattle mutilations across the state. In the One Hundredth Session we changed the constitutional officer, which has always been the Secretary of State, as being chairman of that board. The Secretary of State decided that we should be able to handle this as a committee of cattle producers. And since then it is run by five cattle producers and they pick their own chairman. They do have a cash reserve maximum. In 1998, they reached that maximum. The inspection fees were actually dropped by 10 cents per head, from 65 cents to 55 cents. In 2003, they found that their costs were not being covered by the 55 cents per head inspection fee, and they were bringing in \$2,328,000 per year. The fees were increased and then in 2005, the Nebraska Brand Committee came to the state and asked for a statutory change to a maximum of 75 cents per head inspection fee. And these are all inspection

Floor Debate  
February 12, 2009

---

fees and not what the bill is talking about, and those are transfer fees. But just to give you an idea, that raised the income about \$441,000. And now they are in the situation where in 2003 they were inspecting 4,171,000 head; as of 2008 they were inspecting 3,787,000 head. So the number of cattle in this state are going down. We do have a problem with that. They're trying to do the job with less people. They have 49 full-time inspectors that then inspect that number of cattle, 52 intermittents, they have 6 staff persons, and 3 investigators. And those three investigators go around the state and do investigate cattle disappearances in other counties, other than the ones that are listed in the brand inspection area. Those counties, in 2007, include Hall County, Gage County, Webster, and Clay Counties. So they do do investigations of cattle losses outside the area. Now to the bill and the amendment that was passed yesterday. The amendment that was passed changes considerably what we were talking about prior to...in LB142. And it takes the responsibility away from cattle producers and puts it on the bank...the lenders. And they are the ones that in their due diligence they will ask a cattle person that is asking for a loan if your brand...if a brand has been transferred. We think that that was a good change. It puts the onus on the bank and takes it away from the cattle producers. There are amendments pending I know, Mr. President. And that's all I have for an opening, and encourage the body to look at the amendments carefully. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Mr. Clerk, you have an amendment on your desk? [LB142]

CLERK: Mr. President, the first amendment is by Senator Friend but I've been instructed to withdraw it pending his return to the floor. Mr. President, Senator Hansen would move to amend, AM315. (Legislative Journal page 457.) [LB142]

PRESIDENT SHEEHY: Senator Hansen, you're recognized to open on AM315 to LB142. [LB142]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. After the discussion on the floor yesterday we did additional checking, Senator Carlson and his staff did from the Ag Committee. I did some checking on my own and to find out why that transfer fee was set at \$25 instead of the available \$35, up to \$35. Well, they base almost everything on what they do on what it costs in the office to accomplish. Right now that takes about \$25 per transfer and they have the ability to charge up to \$35. And then we started talking about increasing fees and trying to compare them to Game and Parks, which is a little bit like the two little babies standing side-by-side, and one of them pulls the diaper out and says, well, there is a difference, so...and there is a difference, Senator Stuthman, (laugh) at least in that case. But anyway, what my amendment does is lowers the fee increase on page 2, line 17, to strike "fifty"... "up to fifty dollars" and insert the words "up to forty dollars." That's the amendment, pretty straightforward. The Nebraska Brand Committee thought that they could probably get by with this for a few more years, but not to say they're not going to be back for a fee increase but we would

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

like to see that go up to \$40. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the opening of AM315 to LB142. Members requesting to speak, Senator Carlson and Senator Stuthman. Senator Carlson. [LB142]

SENATOR CARLSON: Mr. President and members of the Legislature, I am in support of AM315 and would just make a couple of brief comments concerning discussion we had yesterday and what we're having this morning. The Theft Prevention Cash Fund, which takes all these dollars in, is very closely regulated. And anytime that that cash fund balance exceeds 45 percent of the budgeted annual expenditure, fees have to be lowered. So by the fact that we raised the ceiling on any portion of those fees, sometimes they have to be lowered. That's not a method by which the brand committee or anyone can stash away money. I think the other important point is when we think back of who brought this bill forward, it was the cattlemen not the brand committee. And the cattlemen feel that this is a way for the brand committee to keep their inspection fee where it is so that they don't have to raise that, because that's an amount per head. And so the cattlemen recommend that the brand committee be given this leeway. And now Senator Hansen has limited the amount from \$50 back to \$40 and it will still serve its purpose for several years. And so I support the amendment and support LB142 and would appreciate your support. Thank you. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Stuthman, followed by Senator Wightman. Senator Stuthman. [LB142]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. I have been opposed to any type of fee increases in any area and I'm really concerned about that and especially the fact that presently what they have in their regulations, in their guidelines, they have the fact that they can go to \$35 for this portion of it for this instrument, to get that filed in the legal process. They're currently charging, I think, \$25 and they still got \$10 that they could charge on it. But I have stated with Senator Hansen that I would agree upon the \$40, if that is where they felt they had to have it. And I will support that portion of it. I don't like to do it but in the fact that they are kind of trying to look out for themselves and it wasn't brought to us by the brand committee, it was brought to us by the Nebraska Cattlemen. And the cattlemen are concerned about the fact that they need to raise that fee. And it's not something that has to do exactly with the brand, the charge of the brand inspection or anything like that, it has to do with the filing of the documents for legal reasons of security and lien protection on these animals. And I'm sure that in time, you know, they may go up, filing of the documents. And this gives them a little bit of a protection. Hopefully, they won't have to come back for many, many, many, many years to raise that fee of it. And I think that the cattlemen, you know, and the brand commission, which I am very proud of, I think they will be responsible enough to keep it at a lower...as low as they can. And they

Floor Debate  
February 12, 2009

---

may never get up to that \$40 cap, which I hope they don't. But there is...if there be a need for it, you know, they don't have to come back to the Legislature at that time to raise their fee for that instrument of filing it in a legal document. So with that, I have decided that I will support this amendment. And I'm supporting the bill. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Wightman. [LB142]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I, too, am in support of both the amendment and the bill. I do want to commend Senator Carlson or Senator Hansen for agreeing to submit the amendment, AM315, reducing the amount of that increase. I understand it's the cattlemen. And I spoke on this issue yesterday, generally if they're in support of that, I would be in support. But I do think it sends the wrong message if we were to increase that by the amount we would be increasing it by going from \$35 maximum to \$50 maximum. On a year like this year when the Appropriations Committee is struggling with a budget and looking at minimal increases, and the Revenue Committee is faced with much the same situation, I just think that it's a better message that we send if we limit the amount of these increases. And so I do want to commend Senator Hansen for agreeing to that change. And, again, I will support both the amendment and the underlying LB142. Thank you, Mr. President. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Are there additional members requesting to speak on AM315? Seeing none, Senator Hansen, you're recognized to close. Senator Hansen waives closing. The question before the body is on the adoption of AM315 to LB142. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. Oh, one second, please. Please record, Mr. Clerk. [LB142]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Hansen's amendment. [LB142]

PRESIDENT SHEEHY: AM315 is adopted. [LB142]

CLERK: I have nothing further on the bill, Mr. President. [LB142]

PRESIDENT SHEEHY: We will now return to floor discussion of LB142. Senator Stuthman. [LB142]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. As I stated, you know, I did support this amendment. But it is really amazing to me to see the difference of \$5 what that makes as far as the vote is concerned. I think there was 27 or so votes, you know, in support of that amendment. And when I had my amendment up there for bringing it back to what it was currently at of 35, I could only receive 12 votes. So that did make quite a bit of a difference. But I really don't think the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

\$5 is going to make a lot of difference in my opinion. It's just the fact, you know, the perception is, you know, we have allowed an increase in that. Hopefully, it will not be utilized. And it may never be utilized. But it gives them an opportunity, you know, to raise that fee. And in respect to the Nebraska Cattlemen, you know, I did support that for it. Thank you, Mr. Lieutenant Governor. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Are there additional members requesting to speak? Seeing none, Senator Hansen, you're recognized to close. [LB142]

SENATOR HANSEN: Thank you very much, Mr. President and members of the Legislature. I just wanted to bring up one more figure, that in...by June 2008, for the '07-08 year, 2,014, I'm sorry, cattle were reported either stolen or lost. The brand...through the efforts of the brand committee, those cattle, all but two head, were recovered at a value of \$1,801,372 to producers in the state of Nebraska. I think they do earn their keep. They do it with a minimum of employees, but they do do a huge job. And I think in the western part of the state where the distances are quite large we have to watch cattle thefts, cattle just disappearances in general. I do appreciate the body's concern on this and the fees. I thank Senator Stuthman for recognizing that a small increase would be justified in the future, even though they don't use that now. And to also say to Senator Stuthman that Nebraska has one of the lowest brand inspection fees in any surrounding state or any western state. The Nebraska Brand Committee is hurting for funds right now. They would like to raise that inspection fee. Knowing that this is not a good time to do this, they decided not to do that this year for sure. When I was driving around last night and talking to the Nebraska Brand Committee Office, I was reminded that in two of the last ten years Nebraska Brand Committee has been in the black. All the other eight years they were substantially lower to the tune of maybe \$350,000 per year. And six of those years I served on the board. That's not good history for me, personally, either. And now I'm sitting on Appropriations and we're...this is not a good record, Senator Fulton. (Laugh) Anyway, I thank you for participation in the debate and ask that you vote for LB142 as amended. [LB142]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the closing. The question before the body is on the advancement of LB142. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB142]

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB142. [LB142]

PRESIDENT SHEEHY: LB142 advances. Next item under General File. [LB142]

CLERK: LB90 introduced by Senator Heidemann. (Read title.) Introduced on January 8 of this year, referred to Judiciary, advanced to General File. I have no committee amendments but I do have an amendment to the bill, Mr. President. [LB90]

Floor Debate  
February 12, 2009

---

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Heidemann, you're recognized to open on LB90. [LB90]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. LB90 would repeal Section 29-4203 of the Nebraska Revised Statutes. By repealing this section, it would remove the requirement that a written consent in a waiver of physical personal appearance must be signed by a detainee or prisoner when an audiovisual court appearance is made in a nonevidentiary criminal proceeding. Removing this requirement would allow for the audiovisual court appearances to occur at a judge's discretion. Audiovisual court appearances may only be made in nonevidentiary criminal proceedings. They would not occur at any time when witnesses testify or when evidence is presented. The court could still require the physical appearance of the inmate if so ordered. If allowed to be utilized more frequently, the use of audiovisual court appearances could improve public safety as prisoners would not have to be transferred between facilities. Tecumseh State Correctional Institution is located in Johnson County which is in my legislative district. There are numerous court appearances made by the inmates from TSCI. There is an increased security risk involved when transferring these inmates to the Johnson County Courthouse in Tecumseh. Inmates are transported in vans to and from the Tecumseh State Correctional Institution. The inmates are easily able to communicate the schedule of dates and times of appearances to others outside of the institution, which places the staff at risk as well as the general public. I introduced similar legislation two years ago. Since that time, a pilot project was initiated in Johnson County. In the spring of 2007, audiovisual court appearance capability was installed between TSCI and the district court in Johnson County. As the fiscal note reflects, one time setup costs at TSCI for the pilot program and dedicated line were approximately \$10,000, with ongoing annual charges of approximately \$2,200 for the T1 fiber-optic line. The Department of Correctional Services predict that as new technology becomes available these costs could be reduced. Since the pilot program began in Johnson County, approximately one-half of the inmates chose not to waive their right to appear in court. By letting the courts decide rather than the inmate, it would make the audiovisual system more cost-effective. Although my primary objective behind this bill is for public safety purposes, the use of audiovisual court appearances has the potential to save money over the years. The prison guards that transport the prisoners are usually paid overtime so that the prison they work at may remain fully staffed. The department estimates that between \$20,000 and \$55,000 per year could be saved on approximately 150 to 225 annual court travel orders if audiovisual court appearances were used at TSCI, the Omaha Correctional Facility, the Nebraska Correctional Youth Facility, the Nebraska State Penitentiary, the Diagnostic and Evaluation Center, and the Lincoln Correctional Center. When working on the legislation two years ago I requested an Attorney General's Opinion on the issue. The opinion found that the waiver requirement...that if the waiver requirement is removed there was no violation of the Sixth Amendment of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

our federal Constitution or its state counterpart, Article I, Section 11 of the Nebraska Constitution. This is because audiovisual court appearances are not allowed to occur for trials or for any other form of evidentiary hearing. Therefore, a criminal defendant would not have the need or opportunity to confront witnesses in the course of an appropriate audiovisual court appearance. In summary, the increased use of audiovisual court appearances would lessen potential security and safety risks of transporting staff for the public and reduce the costs associated with transporting inmates off-site. LB90 was advanced from the Judiciary Committee on a 7 voting yes and 1 abstaining. No one testified against the bill at the public hearing. I urge you to vote favorably upon the advancement of LB90. And I will try to answer any questions you might have. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening to LB90. Mr. Clerk, we'll move to the amendment. [LB90]

CLERK: Mr. President, Senator Lathrop would move to amend, AM290. (Legislative Journal page 434.) [LB90]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on AM290. [LB90]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This is more on the order of a friendly amendment and not an attempt to alter the substance of Senator Heidemann's bill. The bill came through Judiciary Committee. We looked at this and I supported it. It basically, the way we have it set up now is if you have a nonevidentiary hearing, that means you're not going to take evidence, so we're talking about a bond setting, a pretrial, something like that where we're not going to take evidence, right now we require the waiver of the detainee, somebody could be in one of our prisons or one of our jails. And what Senator Heidemann's bill does is take away the requirement that they waive that. And now the judge before whom the hearing will be held can make that judgment whether the prisoner should be present or whether they can do this audiovisually. Because it is not about the prisoner waiving but rather the district court making the decision about what...how to conduct a hearing, a neighboring statute, 29-4204 where all the safeguards are found on how do we do this and protect the prisoner's rights, it now includes a provision that says the detainee or prisoner waives the right to counsel physically present. And because we no longer require, with this bill, the prisoner to waive their appearance we're taking that language out of a neighboring statute in which the safeguards for this procedure are found. It's a very simple thing. I think Senator Heidemann supports it. And it basically takes away something from the neighboring statute that would imply that the prisoner still has an opportunity to waive or this is about the prisoner waiving their right to appear. That having been said, I hope you'll support LB90 and AM290. I also want to take this occasion to express my support. I think this is a thoughtful matter. We have a lot of people, for a nonevidentiary hearing, that's a small 15-minute hearing usually where no one is going to testify. We have safeguards in place where the lawyer and the detainee, if they're not in the same place,

Floor Debate  
February 12, 2009

---

have a private line that they can communicate on before the hearing and during the hearing. And what we're doing is saving the Department of Corrections putting the prisoner in the van where it's a security risk, driving him up to Omaha or to Wayne County or anywhere in the state for a 15-minute hearing where there's no evidence. I think it makes sense. I support the bill and the amendment. Thank you. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM290 to LB90. Members requesting to speak are Senator Lautenbaugh, followed by Senator Pirsch, Senator Heidemann, and Senator Stuthman. Senator Lautenbaugh. [LB90]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I, too, rise in support of this amendment and the underlying bill. We had a very full and fair hearing on this in Judiciary, I think. We discussed it fully. It is an important thing to do for cost saving. I know we're all reiterating the same thing, but this does not involve evidentiary hearing or any rights of the accused would be affected. This is just a prudent public safety thing as well. I applaud Senator Heidemann for bringing it. I believe we all voted to advance this. And I would urge your approval. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Pirsch. [LB90]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I want to thank Senator Heidemann for bringing this forward. I can tell you as a prosecutor for nearly a decade, having done thousands and thousands of these hearings, having served on the Crime Commission, this is a bill that is sorely needed. We have, as Senator Lathrop mentioned, a lot of types of hearings that are just perfunctory in nature, nonevidentiary. We're not talking about trials here. And the situation is in many of these cases, as it was in Douglas County for a long while, the prisoners are housed in a jail which is not located by the courthouse where the court rooms are. And so anytime you have any of these hearings which might be small and really perfunctory in substance, nonetheless the prisoner would have to be transported over to the courthouse to do so. In so doing, you had all kind of safety considerations--escape considerations, it was always a dangerous situation introducing, because you'd have to, you know, bringing the prisoner out of the planned and jail environments into essentially society, having to transport through society, that always introduced risk elements to the guards, to the prisoner himself, and to others. And so it all...you know, I tend to notice that that would aggravate the prisoners having to do something out of the ordinary. So it definitely was a safety concern in many ways because you have the ability then to immediately deal with these prisoners. At their facility you have the potentiality to give these prisoners quicker hearings, which on an expedited basis actually is in their interest. And so, again, it has a good side benefit of it does reduce costs when you talk about the cost to the guards and bringing them over, having to fit these specialized transportation vans which are heavily, you know, essentially mobile jail cells, the risk of having accidents, which have

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

happened on the way where cars collide into the transportation vehicles where the prisoners are housed and so putting them at risk. There's a multitude of reasons why this makes sense, and again costs are just one of those, decreased costs. And so this proposal would leave the judges in charge to determine if this is what they want to do or if they do have, for some reason, the feeling that they want the prisoner there in person they can always choose that as well. So the judge is always in charge, it's at their discretion. For all those reasons I do support the underlying LB90. And I would urge you to give it a green light. Thank you. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Heidemann. [LB90]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I just wanted to comment briefly that I do support AM290 to LB90. It cleans things up a little bit. I do want to express my thanks right now to Senator Lathrop, Senator Ashford, the Judiciary Committee, and to Senator Council, who had some concerns on this. We worked through those concerns. I think we've addressed everything that needed to be addressed. I think this bill makes a lot of common sense, and that's the reason that I'm carrying it forward. It could affect my district. But I think it could affect...I think it could affect the rest of the state. It should make things run more smoothly. I did it for safety reasons and also for cost-effectiveness. Once again, it just makes common sense. I urge you to support LB90 and the amendment to LB90, AM290. Thank you. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Stuthman, followed by Senator Council. Senator Stuthman. [LB90]

SENATOR STUTHMAN: Thank, Mr. President, members of the body. I truly support this amendment and this bill. When I was serving on the county board in Platte County we had put up the new detention facility. And at that time we made the decision to put the needed technology in the facility so that we could utilize this type of technology. And I think it has worked out very well because of the fact of the time involved to transport these inmates for the court appearances, and this just works so much better and also for the safety of it. I would like to ask Senator Lathrop one question, if he is available. [LB90]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB90]

SENATOR LATHROP: Yes, I will. [LB90]

SENATOR STUTHMAN: Senator Lathrop, with this amendment the inmate, can he still demand to be...have his...be present at the courthouse at the hearing? [LB90]

SENATOR LATHROP: No, I think that's the point is that... [LB90]

Floor Debate  
February 12, 2009

---

SENATOR STUTHMAN: That's the issue. [LB90]

SENATOR LATHROP: ...is that previously they had to waive their right. They could effectively demand to be there by not waiving their right. Now it leaves it to the...I mean, he could, he still has this recourse, judge, I want to be there, and the judge says, why do you want to be there. And he says, well, you know, here's why. And the judge can say, yeah, it sounds like a field trip to me or no, it sounds like a good idea, I understand your concerns, you know, order Department of Corrections to bring the prisoner to the courthouse. But, again, these are nonevidentiary hearings, so they are typically things that are quick and matters at which or hearings at which no one testifies. [LB90]

SENATOR STUTHMAN: Thank you, Senator Lathrop. And this is what I wanted to get on the record and I appreciate that, Senator Lathrop. Because I know what we had in the past where there were certain inmates that had wanted to utilize that time, you know, as a field trip to get out of the facility and be in a vehicle and go to the courthouse and appear in person. And I think this is a very important bill that will address that part of it. And it would be up to the judge to make that decision, even if there is a request that he would like to go out and get a ride in the cruiser car and have a little bit of a field trip that day. So I'm very supportive of this because of the fact with the technology that we have right now and the fact that the detention facilities, you know, are not in the courthouse like they had used to be. We've got larger detention facilities. Our facility in Columbus holds about 132 inmates. We generally have about 120-some in there, half of which are local county inmates, but the rest are from other parts of the state or elsewhere. And I think this makes it very worthwhile. It's very cost-effective. And it's for safety. And thank you, Mr. President. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Council. [LB90]

SENATOR COUNCIL: Yes, Mr. President. I rise in support of the amendment and I would like to thank Senator Lathrop for introducing the amendment designed to address some of the concerns I expressed with regard to the underlying bill. And that concern is that we ensure that this audiovisual communication system provides the safeguards that are necessary to enable the inmate or prisoner and his or her legal counsel to communicate confidentially. I know a lot of statements have been made with regard to this provision applying to nonevidentiary hearings. But those of us who have been involved in criminal practice know that despite the fact that there may not be witnesses sworn to testify, that evidence is discussed oftentimes at these "nonevidentiary hearings," particularly with regard to bond review hearings where the prosecutor will discuss evidence that they intend to ultimately introduce at trial. And it is oftentimes necessary for the attorney to communicate with his or her client with regard to that evidence and to do that in a confidential manner. This amendment, AM290, provides those safeguards. And with the provision of those safeguards, I urge my colleagues to support the amendment and then the underlying bill. [LB90]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

PRESIDENT SHEEHY: Thank you, Senator Council. Are there additional members requesting to speak to AM290? Seeing none, Senator Lathrop, you're recognized to close. [LB90]

SENATOR LATHROP: Just very briefly. I think it's a noncontroversial amendment, no problems there. I do want to thank Senator Council for her diligence in scrutinizing legislation coming through the Judiciary Committee to make sure that people who are accused and people who are...have been convicted are still...that their rights are still preserved. She's done that in this case in a sense to the amendment and the bill. Thank you. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the adoption of AM290 to LB90. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB90]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment. [LB90]

PRESIDENT SHEEHY: AM290 is adopted. We'll now return to floor discussion on LB90. Seeing no requests to speak, Senator Heidemann, you're recognized to close. [LB90]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Appreciate the discussion that we've had this morning. I once again want to thank Senator Lathrop and Senator Ashford, the Judiciary Committee. I do want to thank also Senator Council for bringing forth some concerns. I'm glad we're able to take care of them. I believe this is a good bill. And I urge you to vote for the advancement of LB90. Thank you. [LB90]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You have heard the closing. The question before the body is on the advancement of LB90. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB90]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB90. [LB90]

PRESIDENT SHEEHY: LB90 advances. We'll now move to the next item under General File. [LB90]

CLERK: LB83, introduced by Senator McGill. (Read title.) Introduced on January 8 of this year, referred to the Judiciary Committee. The bill was advanced to General File. I do have committee amendments, Mr. President. (AM96, Legislative Journal page 356.) [LB83]

Floor Debate  
February 12, 2009

---

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McGill, you're recognized to open on LB83. [LB83]

SENATOR MCGILL: Mr. President, members of the body, there is no question that any individual who is the target of domestic abuse or violence is in harms way. Abuse can be physical or psychological in nature. While there is usually an intended target of this abuse, there are also other victims that reside within the same household. These other victims are usually children or domestic pets living within the household. They are often used as control targets to keep the target victim from removing themselves from the abusive situation. Threats of violence or actual acts of violence against children and pets can paralyze the target victim and prevent he or she from fleeing the relationship and seeking protection. Nebraska law allows victims of domestic abuse to seek a protection order providing relief from imposing restraint on their liberty from threats, from actual violence, molestation, phone calls, contact, and communication, and access to the residence where the victim resides. Additionally, it awards temporary custody of minor children and provides for their safety and their welfare. LB83 would extend the same protection to any domestic animal or animals held or owned by either party or child residing in the household. A great deal of research has been done relating to pets and domestic violence. Statistics from these studies show that up to 75 percent of women who have been abused report that their pets have also been abused. In a study done in the state of Wisconsin, 68 percent of abused women reported their pets had also been abused. It was also revealed that in 75 percent of these incidents the pet was abused in front of the children. LB83 makes it clear to any Nebraska court that they can include pets in a protection order. I would urge you to support LB83. Thank you, Mr. President. [LB83]

PRESIDENT SHEEHY: Thank you, Senator McGill. You've heard the opening of LB83. As was noted, we do have a Judiciary Committee amendment, AM96. Senator Lathrop, you're recognized to open. [LB83]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm here to offer committee amendment, AM96. This is just a clarification of the language. We had some concern from the original version of the bill that it was broad enough to include livestock. And, of course, our friends, the Cattlemen's Association, and our friends that are engaged in ranching enterprises had some concern. We've narrowed the language with this amendment so that we are talking about pets. And that's how simple the amendment is. I'm going to use this occasion to visit about the bill, if I might. And that is this isn't just about...it sounds almost trivial to talk about in the course of a fight between two people that are ending a relationship to talk about the dog. But it's more than just the little dog that's getting caught in the middle. This is about, and I think Senator Council is going to...she practices in this area and I think she's going to address this, but this is about how an abuser continues to exert influence over the abused in a relationship that's terminating. And so I would encourage you to approach this not as

Floor Debate  
February 12, 2009

---

something trivial like it's the family pet and it's kind of funny, it's more than that. This is about the relationship. This is about how an abuser continues to exert influence over the abused. And with that, I'll encourage you to support AM96 and LB83. Thank you. [LB83]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM96 to LB83. Mr. Clerk, you have an amendment to the committee amendment? [LB83]

CLERK: Mr. President, Senator McGill would move to amend the committee amendment with AM326. (Legislative Journal page 457.) [LB83]

PRESIDENT SHEEHY: Senator McGill, you're recognized to open on amendment to committee amendment, AM326. [LB83]

SENATOR MCGILL: Mr. President, members of the body, this is a pretty quick little amendment. We went through several versions of how to make sure livestock and other farm animals were left out of this bill and what we're trying to do. And while we were making some of those last minute changes, we made a change that wasn't consistent with the Animal Cruelty Act. This goes in and strikes the word "agriculture" and inserts "livestock." This is an amendment that we worked on with the Nebraska Cattlemen and the Nebraska Farm Bureau. They are satisfied with the language in this amendment, especially now that it's being brought in line with the Animal Cruelty Act. Thank you, Mr. President. [LB83]

PRESIDENT SHEEHY: Thank you, Senator McGill. You have heard the opening of the amendment to committee amendment, AM326. Members requesting to speak are Senator Schilz, followed by Senator Council, and Senator Wightman. Senator Schilz. [LB83]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I stand here today very grateful that Senator McGill was forward-thinking enough to put this amendment forward. I would like to say that it does allay some of our fears but not all of our fears as livestock producers and as agricultural folks. We've seen time and time again where situations come along where unintended consequences could cause us huge concerns in our industry. And so I'm looking at the amendment and I see that it does address some of those concerns. The main problem that I have as I look at a bill like this, and maybe when Senator Council stands up she can help me out here. So I won't ask for a question now because I'm sure she'll be there. But my question is, do we need the language? Does it need to be there? Are there not things in place now within the law that take care of these sorts of situations? I guess, the one thing that I don't want to see on that level is us to stand up here and put something into law that creates even more troubles. How do we move forward if...what happens if there's a dispute on whose pet it is and who owns it? And how do we come from there? And are we going to have people standing in the courtroom with one person on one side, one person on the

Floor Debate  
February 12, 2009

---

other side, the dog dropped in the middle, and everybody going, come on, boy, come to me. I mean, are we talking about that kind of...and I'm not trying to make light of it. I'm just talking about what I've seen when you get into these kind of proceedings and what can happen. And, you know, as we talk about victims of domestic violence and things like that most of the time, as far as I understand it, and if I'm wrong, somebody can surely correct me. But most of those times those folks that are looking for those protection orders are also not in a very good position to be spending lots of money and lots of their resources on lawyers and working out those kind of issues that could crop up from this. So I am still going to stand in opposition to this bill. And I would hope that everyone else would look at this not only on the level of livestock producers and things like that, but exactly how far do we want to go in taking pets from being property, which they are, to some other level. And that's my question on this bill. And with that, I'll yield. Thank you. [LB83]

SENATOR ROBERT PRESIDING

SENATOR ROBERT: Thank you, Senator Schilz. Those wishing to speak, Senator Council, Wightman, Stuthman, and Loudon. Senator Council, you are recognized. [LB83]

SENATOR COUNCIL: Thank you, Mr. President. And to Senator Schilz, perhaps it would be appropriate to describe the protection order process and what this legislation is designed to address. Under the current law, an individual can go into court and upon an affidavit only and if bond is required obtain without a hearing an order enjoining the actions of the alleged abuser and also providing affirmative relief in the sense of granting certain rights in terms of custody of minor children. That abuser, the alleged abuser then has a specified number of days in which to request a hearing to be heard on that matter. Now barring their requesting that hearing, that protection order stays in effect for a year based solely on the affidavit. The concern that is being addressed by this legislation is a reality, and that is oftentimes the abuse takes the form of psychological control of the victim. And that psychological control oftentimes manifests itself in terms of the relationship of the person being abused to a household pet. And that the abuser knows that if he, generally the case, but he or she threatens to take some action, harmful action toward the pet, that he or she is in a controlling position with regard to the person being abused. And that those individuals then are reluctant to flee the situation. And we are often...people who are victims of domestic violence are often asked, well, why didn't you just flee? Why didn't you just leave? Well, oftentimes there is this psychological hostage situation being presented by the presence of the family pet. Now the question that was asked as to, what is the necessity of making the change now? Doesn't the court have the authority to do that? Well, the concern was that the language as it currently is written in the statute does provide that the court has broad authority with regard to orders but it's specifically limited to the safety and welfare of the petitioner and any designated family or household member. The question was,

Floor Debate  
February 12, 2009

---

does that give the courts the authority to deal and treat a pet as a "household member?" And that's not clear, Senator Schilz, nor have I been presented with that exact situation. But to make it clear that the court has that authority, if the evidence supports it, and that is allegations in the affidavit. If the person who is the victim of abuse doesn't set forth anything in their affidavit regarding any action or threats with regard to the pet, then the court has no authority to issue any order relative to the care or custody of that pet. So it's based upon the allegations in the affidavit. And if the person places allegations in the affidavit that the alleged abuser contests, he or she has a right to come in and challenge that. Now, yes, it may result in a circus in the court but that happens. That happens in divorce cases where we all know of situations where some of the most contentious divorces have been centered around who gets the family pet. [LB83]

SENATOR ROBERT: One minute. [LB83]

SENATOR COUNCIL: So I think the change is necessary to address those situations where individuals are being victimized or feeling victimized by threats or actions taken against their pet and not having any recourse. So for those reasons, I support AM96 and the correction which we tried and went to great lengths to address the livestock community's concern. And I think that AM326 does that. [LB83]

SENATOR ROBERT: Thank you, Senator Council. Senator Wightman, you are next and recognized. [LB83]

SENATOR WIGHTMAN: Thank you, Mr. President. I, if Senator McGill is present, would like to ask her a question or two. [LB83]

SENATOR ROBERT: Senator McGill, will you yield to a question? [LB83]

SENATOR MCGILL: Yes. [LB83]

SENATOR WIGHTMAN: Senator McGill, as I look at LB83, and I know that you've got the amendments, both an amendment and we're talking about an amendment to the amendment, it provides that the protective order can enjoin "the respondent from harming or killing, without justification, any domestic animal." And then it goes on in the amendment to provide that it would not include agricultural animals or animals used for commercial use. Can you tell me what you believe the words "without justification" would mean? [LB83]

SENATOR MCGILL: I don't have a direct answer for that, to be honest. [LB83]

SENATOR WIGHTMAN: Well, let me... [LB83]

SENATOR MCGILL: I'm assuming if a person was attacked by said animal in some sort

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

of way that that would be a justified means of defending oneself from a dog or whatever it might be. [LB83]

SENATOR WIGHTMAN: Let me pose a possible scenario that an animal is in the house, kept as a house animal, escapes, goes out into the street and is hit by an automobile but not killed. Would one be justified in killing the animal because of the suffering of that animal? [LB83]

SENATOR MCGILL: I think you could make a justifiable case. [LB83]

SENATOR WIGHTMAN: But you could also, in this situation, have a big hearing on whether or not that was justifiable as well, I suppose. [LB83]

SENATOR MCGILL: Well, in that case, the animal wouldn't be alive anymore. And so there would be no need to protect them from anything or what... [LB83]

SENATOR WIGHTMAN: Well, the killing would be the question when the animal was injured. Say a cat got out and got into the street and that's not an uncommon thing or maybe a small dog and was hit by a car and was injured. Then the killing, there could be a question whether that was justifiable or unjustifiable. And, of course, could pose a real big question to the judge as to... [LB83]

SENATOR MCGILL: Well, that's... [LB83]

SENATOR WIGHTMAN: ...whether or not maybe there was even a problem in letting the cat out onto the street. [LB83]

SENATOR MCGILL: Regardless, in any of these cases the judge does get the ultimate say on if it's warranted to include an animal in the protection order. And if the woman's request seems justifiable on her end of things and the court has the ability to make that determination. [LB83]

SENATOR WIGHTMAN: And, I guess, my concern is that the court may spend a lot of time refereeing disputes between two parties in a marital situation usually, probably or a custody situation. And then I read on the...and I think that's probably covered by another section, it's covered by part of the statute that you're seeing to amend in that it would be a Class II misdemeanor. Can you tell us right offhand what the penalty would be for a Class II misdemeanor? [LB83]

SENATOR MCGILL: It's a fine of some sort. I don't know that off the top of my head though. [LB83]

SENATOR WIGHTMAN: Could it include jail time? [LB83]

Floor Debate  
February 12, 2009

---

SENATOR MCGILL: I don't believe...I don't know the answer to that. [LB83]

SENATOR WIGHTMAN: I'd have to look it up. [LB83]

SENATOR MCGILL: Yeah. You look it up. [LB83]

SENATOR WIGHTMAN: I should know that but I do not. It seems to me that perhaps to provide one penalty, one class of misdemeanor for domestic animals and then those that might do harm to a child or something, maybe it would justify some variation as far as the penalties are concerned and the degree of the misdemeanor. But...so these are some of my concerns. I think it could open the floodgates to allow time spent in litigation. [LB83]

SENATOR ROBERT: One minute. [LB83]

SENATOR MCGILL: I would just like to remind the body and Senator Wightman that this is from my perspective, this is more about the psychology of using the pet and the threat of hurting the pet against the woman to prevent her from leaving and to threaten her. That is my greater concern here with this legislation, isn't just the safety of this pet but the psychology and the weapon. That pet is a member of the family. And for a woman who's in an abusive situation that pet is the one living being in the household that loves her unconditionally and can therefore be used as an even more...as a weapon just like a child could be. [LB83]

SENATOR WIGHTMAN: And, Senator McGill, I understand the problem. And I know there is a lot of psychological warfare that goes on between parties in situations such as this. But I'm also concerned about what maybe the unintended circumstances might be. Thank you, Mr. President. [LB83]

SENATOR ROBERT: Thank you, Senator Wightman and Senator McGill. Senator Stuthman, you're next and recognized. [LB83]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. As you probably are aware that I am not very supportive of this bill. But it has come a long way to address the fact of the domestic animals. The amendment to the amendment that we have here that, you know, strikes out the agriculture part and puts in commercial livestock, adds the word "livestock" in it. But I've had the question of, how do you identify commercial? And maybe I would like to address Senator Schilz. I would like to ask him a question. [LB83]

SENATOR ROBERT: Senator Schilz, will you yield to a question? [LB83]

Floor Debate  
February 12, 2009

---

SENATOR SCHILZ: Yes. [LB83]

SENATOR STUTHMAN: Senator Schilz, how do you feel...what is a commercial livestock operation? Can you identify what is meant by "commercial" since you're in the business of livestock production. [LB83]

SENATOR SCHILZ: Right. Well, Senator Stuthman, I would contend that, you know, commercial livestock operation, if you hear that word you're thinking of some operation that has employees and things like that. But I think it could go clear down to that person that buys four or five head, puts them out and sells them later on. So I'm not sure it would apply to both of those, but I think if you're just looking at it on the surface I think what you're saying is it's an operation where you have employees, where you're doing it on a day-to-day basis, it's your job. And... [LB83]

SENATOR STUTHMAN: And the commercial part of it would be the fact that these animals are used, hopefully, to make a profit on. And they're raised up to sell to a slaughter plant or something like that. Would you say that would be the definition of the commercial part of it? [LB83]

SENATOR SCHILZ: Yes. [LB83]

SENATOR STUTHMAN: Okay. Thank you, Senator Schilz. I think that is possibly right because a lot of people think of the commercial in the livestock operations as either a commercial feedyard or a commercial hog site or anything like that, you know, where you have other owners. And the interest that I had in it was the fact that, you know, some operations are private, they're just of the owner. But I think the definition of the commercial part, you know, which has been addressed and has been relayed to me that it is an operation that there is an intent to profit from, and that is the raising of the livestock, hopefully to make a profit and move on from there. So I'm satisfied with the amendment. I'm a little bit concerned yet about the fact that we have to take out a portion of the bill, the livestock part of it. Why wasn't it put in there? What we really wanted to address and that is really the household pet. But then you can have a pet that is a bucket calf that is probably out in the shed. And, I think, really a bill, in my opinion, should address the issue that you're really concerned with, like Senator Council had stated, you know, what they deal with probably on a weekly or daily basis as the fact that there are pets and there are numerous pets in some households and that's what we're trying to address. I don't think the issue comes down to, you know, the 100-cow herd or anything like that. But, you know, that has been taken out of it. But maybe it should have never been put in there in the first place. So I am a little bit concerned yet with the fact that we're trying to address something that is maybe a little bit broader than we really had it, that the bill was really intended to. So I will listen to the debate. And I haven't made a decision yet how I will vote on this bill. Thank you, Mr. President. [LB83]

Floor Debate  
February 12, 2009

---

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Louden, you are next and recognized. [LB83]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I probably...I would rise in probably opposition to the entire bill. It helped when they put the amendment on there with the commercial livestock operation. But although you say the Cattlemen and Farm Bureau or somebody may be in favor of it, I certainly don't think it's something we need to do. I guess, my first question as Senator Stuthman has said that why wasn't this addressed when the bill was written. For one thing, what looks like to me in the section we are, we're talking about victims of domestic violence. Why are we talking about victims of domestic violence? And this is the part that really is...where they're being threatened. There's all kinds of issues that's happening to those people. Now we're putting animals in the same situation. Now do you get a protection order for an animal, just for the animal along the line? I would think there would be better ways of doing this, either through the property or something like that. But I see...I don't see any reasons why we want to dilute such an important part of the statutes by starting to add animals into the situation. And as I read some of the bill, as I understand it, "Directing the care, custody, or control of any domestic animal owned," now what if these people are raising dogs or cats or fish or whatever? Then you're talking about some property that's a business. But yet you can go ahead and file a protection order to keep those...the other person involved from having anything to do with it. So then you're starting to talk about something altogether different as a business. So I question why it was brought up like this. If there was a situation where they were using these animals as a psychological reason to get control over someone I think there would have been better ways to do this than to where we have come so far. I would like to see this bill probably held for awhile and see if you couldn't do a little bit better job of it than what we have. I think there's better ways of doing it than just to put in an amendment in here and then turn around and put another amendment in to take out "livestock" commercial operations or something like that. That was the same wording that was put into that rodeo bill here a year ago that Senator Cornett had that they were doing away with Mexican rodeos and they put something in there. But in that case, you were dealing with livestock. Here you're dealing with all kinds of animals. And it looks like to me that we are regulating a very important part of statutes down to where we're also including animals in it. And I would like see it better. And until it is, I can't support the bill or the amendments. Thank you, Mr. President. [LB83]

SENATOR ROBERT: Thank you, Senator Louden. Those wishing to speak, Senator Schilz, Howard, Council, and others. Senator Schilz, you are recognized. [LB83]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. As I was sitting here thinking about this and going over the words that Senator Council brought up, she said something that I think is...and I don't know if it was the intent of the bill or anything else, but she said something that caused me to pause. And that was that we

Floor Debate  
February 12, 2009

---

want to...or what this bill would do would bring pets up to the same level and the same standard as other household members, children, everything like that that are in...that are within the household. And is that what we want to do? Is that where we're going with this to elevate pets to that level? I think that that's exactly the reason why I stand here in opposition to the bill and in opposition to the amendments. And it's not that I don't recognize that the amendments are trying to get us where we need to go, but I think that it just takes us over a precipice that I'm not sure that we want to...we don't want to step across. So with that, I would yield the rest of my time. [LB83]

SENATOR ROBERT: Thank you, Senator Schilz. Senator Howard, you are next and recognized. [LB83]

SENATOR HOWARD: Thank you, Mr. President and members of the body. And I don't mean to in anyway disparage this bill because I'm certainly concerned about the animal that may be involved in this situation. But I have a number of questions, if Senator McGill would yield. [LB83]

SENATOR ROBERT: Senator McGill, will you yield to a question? [LB83]

SENATOR MCGILL: Yes. [LB83]

SENATOR HOWARD: Thank you. In reading the notes on this, it appears that this is regarding a domestic violence situation. Am I correct, that's what it's intended to address? [LB83]

SENATOR MCGILL: Yes. [LB83]

SENATOR HOWARD: In thinking of a situation where an individual would find it necessary to remove herself, possibly, or children from a situation, oftentimes shelters don't allow pets to be taken into those shelters with the family. So I would anticipate then the animal possibly is left behind in this situation. Is that kind of what you're envisioning here? [LB83]

SENATOR MCGILL: In Lincoln it actually is taken, I believe, to the Humane Society, here. If a woman checks herself into a shelter and has a pet with here then the Humane Society watches over that pet while she's at the shelter. [LB83]

SENATOR HOWARD: That's good. (Laughter) But I don't know that that's always the case in Omaha. In thinking back to cases that I had been involved in, in child protection service cases and related situations, oftentimes that animal was left behind. And if we had a concern, we'd call the Humane Society to come in and investigate. But in reading this it pertains to harming or killing the animal, which if that animal is in a situation where it would be at-risk, does this also relate to neglecting the animal, just to treat...not

Floor Debate  
February 12, 2009

---

feeding the animal as a means of payback, per se? [LB83]

SENATOR MCGILL: It could be but it doesn't go on... [LB83]

SENATOR HOWARD: But it doesn't specify neglecting. It really pertains to harming, which is abusing... [LB83]

SENATOR MCGILL: Yes, right. [LB83]

SENATOR HOWARD: ...or killing, which is obvious. [LB83]

SENATOR MCGILL: You're right. [LB83]

SENATOR HOWARD: But there is not a specification regarding neglect. [LB83]

SENATOR MCGILL: There is not. And I think in most of the cases where they're asking for a protection order, the woman intends to take the pet with her and therefore it wouldn't be in his custody anymore. [LB83]

SENATOR HOWARD: Well, which goes to the next issue that I was concerned about. How would you see this being enforced if this animal were to remain in this home but the woman and the child, say, as an example, had found it necessary to leave? How would you enforce that statute with that animal at risk? [LB83]

SENATOR MCGILL: Well, since the animal would be with her, I mean, it would be the same way that a protection order would be enforced in general. [LB83]

SENATOR HOWARD: But not necessarily,... [LB83]

SENATOR MCGILL: How... [LB83]

SENATOR HOWARD: ...not necessarily, it doesn't specify in here the individual would be taking that pet, as I read it. I mean, your intent may be such that the individual takes their animal and the animal isn't subjected, but... [LB83]

SENATOR MCGILL: Well, it would be up to the judge in terms of what the terms are. [LB83]

SENATOR HOWARD: Right. [LB83]

SENATOR MCGILL: And perhaps Senator Council would be better to answer that question since it is a little more technical. [LB83]

Floor Debate  
February 12, 2009

---

SENATOR HOWARD: (Laugh) Well, I appreciate that. But my point being that I have real concerns about how this would be enforced only regarding how this is written. So thank you. Thank you, Mr. President. [LB83]

SENATOR ROBERT: Thank you, Senator Howard. Those wishing to speak, Senators Council, Carlson, McGill, and Price. Senator Council, you are next and recognized. [LB83]

SENATOR COUNCIL: Thank you, Mr. President. I'm going to attempt to answer some of the questions posed by my colleagues. And, I guess, I'll start with the last set of questions first. With regard to what the proposed legislation enables a judge to do in a situation where a petitioner alleges sufficient facts in her, and I'm going to use that because they are by far the overwhelming majority of the individuals who petition for protection orders, is that in her petition if she alleges that there is a pet in the household, that this pet is being used as a part of the psychological abuse that's being exerted upon her, she can request in her protection order affidavit that the judge enter an order allowing her to have custody of that pet, to take that pet. And that's what the legislation provides. It allows a court to direct the care, custody, and control of any domestic animal possessed. And so the objective of the legislation is to allow the courts the authority to do just that. And that gets to the question that Senator Schilz asked. Whether you want to accept it or not, in many households pets have been elevated to the status of a member of the household to the point that harm done to a pet is as seriously responded to by the family members as harm to one of the minor children. The question, and I regret that Senator Schilz misunderstood me, the point that I was making with regard to the language in the current statute is the language says "household member." And that could be limited in its definition to human household members. The intent of the amendment was to make it clear that household members could be defined broadly to include domestic animals. Now as soon as we try to address that by saying domestic animals, the concern was expressed by members of the livestock community that, whoa, well what about the situation where the petitioner attempts to use this process as a shield rather than a sword. And that shield being where in an area of the state, a rural portion of the state the abusing party raises livestock and the petitioner asserts that two or three of the head of the cattle are pets and to try to use this statute to prevent that individual from engaging in his business by selling that animal or having that animal slaughtered. We wanted to protect against that. And that's why we went to the Farm Bureau and the Cattlemen's Association to try to find out the best terminology that could be used to exempt those types of animals from the coverage of this statute. And we believe that we've accomplished that by the use of the terminology "commercial livestock." The final question which was asked by Senator Wightman is unfortunately confusing what the criminal penalties are that are set forth in this piece of legislation with the criminal penalties that would apply to the actions that are attempted to be enjoined. [LB83]

Floor Debate  
February 12, 2009

---

SENATOR ROBERT: One minute. [LB83]

SENATOR COUNCIL: Remember, what the statute allows is for the court to issue an order preventing people from taking particular action. If they take that action not only would they be subject to criminal penalty under the existing statute, but that criminal penalty is not for the action they actually took, i.e., the killing, it's for violating the order of the court. If you violate the order of the court, first time you do it it's a Class II misdemeanor, second time you do it it's a Class I misdemeanor, third time you do it it's a Class IV felony. Now if the person actually violates the order by killing an animal who he has been restrained from being in contact with or taking that action, clearly the killing of the animal gives rise to another criminal charge. [LB83]

SENATOR ROBERT: Time, Senator. [LB83]

SENATOR COUNCIL: So in that regard I think the bill is clear in its operation and effect. [LB83]

SENATOR ROBERT: Thank you, Senator Council. Senator Carlson, you are next and recognized. [LB83]

SENATOR CARLSON: Mr. President and members of the Legislature, if Senator Council would yield, I'd like to ask her a few questions. [LB83]

SENATOR ROBERT: Senator Council, will you yield to a question? [LB83]

SENATOR COUNCIL: Yes, sir. [LB83]

SENATOR CARLSON: I don't know if...well, you don't have...you've got the bill in front of you. [LB83]

SENATOR COUNCIL: Yes, sir. [LB83]

SENATOR CARLSON: Would you go to page 2 and line 22? [LB83]

SENATOR COUNCIL: Yes, sir. [LB83]

SENATOR CARLSON: Now I may be looking at this wrong. But "Directing the care, custody, or control of any domestic animal owned, possessed, leased, kept, or held by either party or a minor child residing in the household." Now I think I was looking at this wrong because we're not talking about a minor child there in the same vein as the domestic animal. We're talking...this is saying that the minor child owns the animal. [LB83]

Floor Debate  
February 12, 2009

---

SENATOR COUNCIL: Correct. [LB83]

SENATOR CARLSON: Okay. But then we go to definition of a household member. And to me a household member is a human being. But this bill would be elevating a pet to a level of a human being. A human being in a household is not a piece of property, would you agree? [LB83]

SENATOR COUNCIL: That's correct. [LB83]

SENATOR CARLSON: Is a pet a piece of property? [LB83]

SENATOR COUNCIL: Pet is a property...the piece of property, Senator Carlson, but it also has in many instances the same emotional connection to humans as do other humans. [LB83]

SENATOR CARLSON: I agree that that's the case. But we're in a category here. I think that a pet is a piece of property. I think in the circumstances of this bill in a contest between a husband and a wife, and you've alluded to most of the time it's the wife that's accusing the husband or the husband is a threat to the wife, and I'm not in disagreement of that. But if we're talking about a piece of property it could also be a woman owns a rocking chair that's in her family, and it was her great grandmothers, and this is a prized piece of property. And there could be threats about destroying that piece of property. I'm very concerned about elevating pets from a position of a piece of property to a household member. And I'm having difficulty getting that behind me and with that. You can respond if you want to. But I appreciate how you've responded already. [LB83]

SENATOR COUNCIL: And, Senator Carlson, if I may, the statute as it currently is written also addresses personal property. For example, the current law would allow and grants a judge authority to remove someone from the house. The house is property. And under the current law the judge can say, despite whether or not the abuser's name is on the deed to that house, he can direct that that person leave the house in order to protect and prevent further abuse. And I think that's the part of this equation that apparently is being missed. These are actions designed to prevent further abuse. And there is a recognition among the domestic violence community that individual abusers use pets to control and to inflict abuse on their mates... [LB83]

SENATOR ROBERT: One minute. [LB83]

SENATOR COUNCIL: ...by taking threatening action against the pet, by actually harming the pet, that that's a way to exert this psychological control. The intent of this legislation is in those situations, and no one is saying that it occurs all of the time or a great percentage of the time, but in those cases when it does occur we want the court to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Floor Debate  
February 12, 2009

---

have the tools to protect that individual against that form of abuse. And my time is probably up. But the bottom line is if that is an issue and that is not occurring, the person against whom the petition is filed has every right to request a hearing and be heard. [LB83]

SENATOR CARLSON: Thank you, Senator Council. [LB83]

SENATOR ROBERT: Thank you, Senator Carlson and Senator Council. Senator McGill, you are next and recognized. [LB83]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I just wanted to talk a little bit about the amendment briefly. And, you know, if anybody does, we're wrapping up here pretty soon today. But if you do have any thoughts, for those of you who are concerned about the cattle industry still, if you have thoughts and amendments we've spent more time in Judiciary in Exec on this bill than any of them so far. (Laugh) Which might seem shocking, but we had this very debate within our Executive Committee or session. And Senator Christensen who doesn't look like...oh, I guess he is up here, he was an advocate for these same thoughts. And we crafted this legislation and the language to meet the standards that he felt were appropriate for this legislation. So we knew that this same discussion would unfold up here, seeing how long we spent on it in Exec alone (laugh) on this bill. But if there are folks who want to approach me about some language that would help further ease your concerns, I'd be very open to that so we can debate those items when we do get back to this bill on General File. Thank you, Mr. President. [LB83]

SENATOR ROBERT: Thank you, Senator McGill. Mr. Clerk, items for the record. [LB83]

CLERK: Mr. President, thank you. Your Committee on Education, chaired by Senator Adams, reports LB464 to General File; LB64 to General File with amendments; LB163, General File with amendments. Natural Resource Committee, chaired by Senator Langemeier, reports LB56 to General File with amendments. I have a new resolution, LR23, by Senator Janssen. That will be laid over. An amendment to be printed: Senator Flood, to LB55. A series of name adds: Senator Pirsch to LB90; Senator Utter, LB56; Senator Gay and Christensen to LB420; Senator Giese, LB558; Senators Fischer, Christensen, and Carlson to LB675. (Legislative Journal pages 457-461.) [LB464 LB64 LB163 LB56 LR23 LB55 LB90 LB420 LB558 LB675]

Mr. President, I have a priority motion. Senator Flood would move to adjourn until Tuesday morning, February 17, at 10:00 a.m.

SENATOR ROBERT: Members, you have heard the motion. The question is, shall we adjourn until Tuesday, February 17, at 10:00 a.m.? All those in favor signify by saying aye. Opposed, nay. We are adjourned.